

***The EU's normative power and Russia: the role of social norms, cultural values and public attitudes***

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Abstract

This paper will address the fourth dimension of the conference. Do emerging powers support or challenge the idea of the EU as a normative power? And how should the EU address emerging powers in order to increase its normative power in ideas, principles, actions and impact? The concept of the EU's normative power requires the principles being promoted to be legitimate, coherent and consistent. In order to be accepted by the country-recipients those principles should be as well clear, convincing and attractive. The paper adopts an innovative approach to the analysis of the EU's normative power by incorporating ideas from the law and economics discipline which pays particular attention to the questions of transplanting legal norms, the compatibility of institutions, and to the role of values and local conditions. The Legal Transplant Effect theory of legal change together with Cultural Value Dimension theory can help explain why certain values and norms are important factors for the successful import of institutions.

To answer these questions, the paper will consider the case of Russia – one of the emerging powers. The EU's normative power capacity is challenged by Russia when the EU aims to promote the rule of law and democratic principles without paying sufficient attention to the existing social norms, underlying values and local conditions. The argument is based on the analyses of a national survey which was conducted in Russia in 2012 (N=1,605). A regression analysis demonstrates that basic value orientations along with other commonly used socio-economic indicators of individuals in society have a significant effect on their attitude toward public institutions, and also towards the perception of the democratic norms of governance. Those attitudes and their underlying values should be taken into account by EU policy makers in order to ensure the EU's normative power is supported by the emerging powers.

## Introduction

After the demise of the Soviet Union, the ‘Washington consensus’ approach to transition was offered to Central and Eastern Europe as a ‘formula’ which would lead countries to democratic values and a market economy. Russia - as the biggest economy to be reformed and the country which inherited most of the Soviet Union institutions - was viewed as a potential leader in the reform process which potentially could moderate and facilitate further reforms in other former Soviet Union countries. However, decades later when the process of transition is considered to be, in some ways, complete, there are still different views and different estimations of the success or failure of the Russian transformation to a democratic state with market economy values. Still, on the economic front, Russia performed well and its performance in recent years was considered as ‘solid’ by experts from the World Bank<sup>1</sup>. In 2012 Russia overtook Brazil, South Korea, and Turkey in its economic growth, which “was inconceivable only two years ago”<sup>2</sup>. All that allowed Russia to be recognised as one of the emerging powers in the world. At the same time, through all years of its existence, the EU has been trying to establish its own identity as an international political player, trying to expand its influence in the region by developing its own ‘self’ as, what is called in the literature, a ‘civil power’ (Duchene, 1972)<sup>3</sup>, ‘soft power’ (Nye, 1990)<sup>4</sup> or the latest ‘power of ideas and norms’ (Manners, 2002)<sup>5</sup> which became known as the concept of Normative Power Europe (NPE).

The concept of NPE presents the EU as a political and international power and I. Manners (2002) analyses it from ontological, epistemological and methodological perspectives (Manners in ‘Normative Power Europe’, ed. by Whitman, p.240). The concept of NPE raised many debates in the literature with particular emphasis on the following areas: the legitimacy of the EU being ‘a normative power’ and the EU having ‘normative power’ over other states; the EU as a normative type of actor; literature which studies principles,

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<sup>1</sup> World Bank, (<http://www.worldbank.org/content/dam/Worldbank>), last accessed on 14 April 2013

<sup>2</sup> World Bank, ‘World Bank Group – Russian Federation Partnership: Country Program Snapshot’, (<http://www.worldbank.org/content/dam/Worldbank/document/Russia-Snapshot.pdf>), last accessed on 14 April 2013

<sup>3</sup> Duchene, F. ‘Europe’s Role in World Peace’, in R. Mayne (ed.) ‘Europe Tomorrow: 16 Europeans Look Ahead’, 1972, London: Fontana

<sup>4</sup> Nye J.S., ‘Soft power’, Foreign Policy, 1990

<sup>5</sup> Manners, JCMS 2002, v40, p.238

actions and impact of the EU (Diez, Pace 2007)<sup>6</sup>; studies which provide frameworks for EU foreign policy<sup>7</sup>. EU aims to expand the normative power of its principles through their import and transposition to the wider neighbourhood. As Manners argued “the concept of normative power is an attempt to refocus analysis away from the empirical emphasis on the EU’s institutions or policies, and towards including cognitive processes, with both substantive and symbolic components”.<sup>8</sup>

The paper attempts to consider the role of the EU as a normative power in the region and to contribute to understanding its role in the Russia’s transition to democratic values and principles. Do emerging powers support or challenge the idea of the EU as a normative power? And how should the EU address emerging powers in order to increase its normative power in ideas, principles, actions and impact? The concept of the EU’s normative power requires the principles being promoted to be legitimate, coherent and consistent. In order to be accepted by the country-recipients those principles should be as well clear, convincing and attractive. Overall, the EU’s normative power will be shaped in world politics if it fulfils the three maxims: live by example, be reasonable and do least harm (Manners, 2008)<sup>9</sup>. The EU does relatively well with the first two elements, however the focus of many practitioners and academics are focused on the third part - how to ensure that normative power Europe brings positive changes to the societies, and is legitimised by the states.

Terms ‘norms’, ‘principles’ and ‘values’ have been well researched in the sociology and political science literature. However the terms are often used from the point of view of different methodological perspectives and school of thoughts and “the very definitions of the terms employed are subject to debate, as are the theoretical relationships between the concepts” (Lucarelli in ‘Values and Principles in European Union Foreign Policy’, 2006, p.2). This fact requires specific attention to the use of the terms and the specific meaning and definitions of the terms will be given throughout the paper. Terms ‘European norms’<sup>10</sup>,

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<sup>6</sup> Diez, T. And Pace, M. ‘Normative Power Europe and Conflict Transformation’, 2007, available from <http://aei.pitt.edu/7798/1/diez-t-01a.pdf>, last accessed 14 April 2013

<sup>7</sup> The major models which were developed extensively recently are related to governance by conditionality (Schimmelfennig, Sedelmeier 2004). Given the decreasing importance of the conditionality factor in the EU – EE countries relations, an external governance theory was developed (Lavenex, 2004; Lavenex and Schimmelfennig 2009).

<sup>8</sup> Manners I. ‘Normative Power Europe: A Contradiction in Terms?’ in *JCMS*, 2002, 40-2, p.239

<sup>9</sup> Manners, I. “The Normative Ethics of the European Union” in *International Affairs*, 84:1, 2008, p.47

<sup>10</sup> Here the EU distinguishes 5 core and 4 minor norms which constitute the principles of the EU existence and reflect its values. Core norms: peace, liberty, democracy, rule of law and human rights. Minor: social solidarity, anti-discrimination, sustainable development, good governance.

‘values’<sup>11</sup> and ‘principles’<sup>12</sup>, strictly speaking, are not identical and they relate to each other through “the prism of estimation of how successful the implementation of the values into the principles has been” (Lucarelli, 2006, p.10) – however, they are often used by the EU in the public discourse as quasi-synonymous and refer to the European norms of governance (for example rule of law, human rights, sustainability). This paper employs as well the notions of ‘cultural values’ and ‘social norms’<sup>13</sup>. Social norms which are considered in the paper represent ‘a general category of social norms’ and refer to the norms of rule of law, absence of corruption, democratic accountability. They can be addressed as well as a generalised category called ‘norms of governance’ (Licht, 2006). Core European Union norms and laws and policies constitute together an ‘acquis communautaire’ (the body of EU law) and ‘acquis politique’ (Manners, 2002, JCMS v40, p.242).

The question of diffusion, transferring and sharing European norms and values lies in the middle of the debates about the EU being a ‘normative power’ and implementing ‘normative power’ over neighbouring states. With introducing the European Neighbourhood Policy (ENP) the EU is even more closely faced with the necessity to be able to spell out, name and transfer its values and norms in a way that is understood and perceived correctly by its partners. According to Manners, there are five main channels through which the EU norms diffusion occur: contagion (unintentional diffusion), informational diffusion (strategic communications), procedural diffusion (cooperation agreements), transference (exchanging goods, trade, technical assistance), overt diffusion (physical presence of the EU) and the factor of ‘cultural filter’. According to Manners “cultural filter is based on the interplay between the construction of knowledge and the creation of social and political identity by the subject of norm diffusion” (JCMS, 2002, v.40, p.245).

It is often quite clear what should be transferred from the EU point of view - however the question ‘how’ remains often unanswered or answered only partially. All current models of the cooperation between the EU and CEEC which were developed recently (external governance, social learning and social drawing) emphasise the importance of the domestic norms and interests of countries recipients. This study, however, adopts an innovative approach to the analysis of the EU’s normative power by incorporating ideas from the law and economics discipline which pays particular attention to the questions of transplanting

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<sup>11</sup> ‘Values – notion laden with an absolute (i.e. non-instrumental) positive significance for the overall order and meaning we try to give to our world.’ (from Lucarelli, 2006, p.10)

<sup>12</sup> ‘Principles – are normative propositions that translate values into general ‘constitutional’ standards for policy action.’ (from Lucarelli, 2006, p.10)

<sup>13</sup> Licht (2003): social norms of governance - rule of law, corruption, democratic accountability.; and ‘cultural values are the core terms of social norms’.

legal norms, the compatibility of institutions, and to the role of values and local conditions (what Manners calls a 'cultural filter'). The Legal Transplant Effect theory of legal change together with Cultural Value Dimension (CVD) theory can help explain why certain cultural values and norms are important factors for the successful import of institutions.<sup>14</sup>

To answer these questions, the paper will consider the case of Russia – one of the emerging powers. The EU's normative power capacity is challenged by Russia when the EU aims to promote the rule of law and democratic principles without paying sufficient attention to the social norms, underlying values and local conditions existing in the country.<sup>15</sup> The argument is based on the analyses of a national survey in the second section of the paper which was conducted in Russia in 2012 (N=1,605)<sup>16</sup>. A regression analysis demonstrates that the basic value orientations along with other commonly used socio-economic indicators of individuals in society have a significant effect on their attitude toward public institutions, and also towards the perception of the democratic norms of governance. Those attitudes and their underlying values should be taken into account by EU policy makers in order to ensure the EU's normative power is supported by the emerging powers.

There is an existing body of literature on which the design of the research question is based. The first group is literature from comparative law scholars which show the connection between legal change (legal transplants) and institutional development (La Porta et al. 1998, Ajani 2007, Berkovitz et al. 2003, Pistor 1999). Among the stream which was used by current research is the scholars who support the LTE theory of legal change (Berkovitz, Pistor and Roland, 2003; Ajani, 2007; Bakarjieva Engelbrekt, 2009). Their idea is that it is the method of transplanting that matter - not the origin of transplanted law. They consider local conditions, social norms and values of country recipients as important factors in the successful import of legal rules and ideas. Another approach which was used in this work is by A. Licht (2002, 2003), who developed the theory explaining the role of cultural values in shaping the social norms in the society with reference to the cross-cultural psychology studies (Licht 2003, Grössl 2005, Hofstede 1980, Schwarz 1992). According to Licht (2006) there is a

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<sup>14</sup> Institutional economics places emphases upon the cooperation of the institutions and organisations in society (Coase 1960, Eggertsson 1990, North 1993, Williamson 1975). According to D. North, the following problems connected to the interaction of political, legal and economic institutions could be solved more efficiently via the institutional economics approach: the match between formal and informal rules, enforcement characteristics of the rules (actually often based on the informal rules); politics and policy; flexibility of institutional sets of rules. D. North and G. Roland share the view that it is very much informal rules which play a central role in institutional change.

<sup>15</sup> There is a growing body of literature on the rule of law norm promotion and its effects on legal systems. "One of the most favoured methods in rule of law reform is to transplant and borrow law, and to influence the legal system in a certain direction." (Richard Zajac Sannerholm, 2013, SSRN)

<sup>16</sup> Survey, Glasgow University, under the ESRC projects ES/J004731/1 and ES/J012688/1

connection between cultural values and such norms of governance as rule of law, corruption and democratic accountability.

The next section will focus on the theory and history of legal transplants in Russia in order to highlight the role of foreign law and particularly European law in Russia's institutional development. It will also retrospectively consider those factors which historically were important for the construction of EU – Russia relations and which matter for cooperation today.

### Theory and history of legal transplants in Russia

*“We share a continent, a history, a rich and diverse cultural heritage forged throughout the centuries.*

*European and Russian intellectual and creative life from science to philosophy, from arts to music and literature have been enriching and influencing each other to the point of being one and the same.” J.M. Barroso<sup>17</sup>*

There are a lot of examples of the importing of institutions in Russian history – from the forced implementation of Christianity (or, to be more precise, the enforcement or fulfillment of formal ceremonies) to the reforms of Peter the Great who studied Swedish legislation. The reforms of Peter the Great were the first attempt at complex institutional transformation of Russian society according to Western standards; having come to a conclusion about the disadvantages and backwardness of the dominant norms, he carried out an attempt to change them to the formal rules of European countries, which had already proved their efficiency. Catherine II made an attempt to codify Russian law inspired by examples of European law (Beccaria, Blackstone, and Montesquieu<sup>18</sup>), but those efforts did not bring any measureable success. M. Speranskii used French and German law when preparing draft codes for Alexander I. A. Koni – the prominent Russian lawyer and judge, was known by his reformist approach to law, his thesis degree contained the elements of the ‘supremacy’ of law above all.<sup>19</sup>

The market reforms of the 1990s were largely based on the import of institutions<sup>20</sup>. They are described by the expert on Russian law, W. Butler, in the following way: “The

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<sup>17</sup> Speech by President Barroso at the Russia-European Union – Potential for Partnership conference: “Moving into a Partnership of Choice”, 21 March 2013, Moscow

<sup>18</sup> W.E. Butler “Russian Law” Oxford University Press, 2003, p.11

<sup>19</sup> Г. М. Миронова и Л. Г. Миронова “Кони А. Ф. Воспоминания о писателях”, М.: Правда, 1989

<sup>20</sup> The reasons for this were the lack of institutional preconditions for market development and the need to search for a change for insolvent institutions of a centrally planned economy.

legislation of the period called perestroika (1985-1991) was greatly influenced by scholarly and legislative proposals elaborated especially in Hungary from the end of the 1960's and in Poland from the beginning of the 1980's. The economic reforms of the Soviet system during the second half of the 1980's were thus grounded in a body of enactments, including economic and labor law, that had previously been tested in other socialist systems. The peculiarity of those models was the attempt, one that proved to be ephemeral, to reconcile well-rooted dogmas of socialist law with new options of economic policy, captured by the slogan 'the making of a socialist market'".<sup>21</sup>

Comparative Law studies were popular amongst Russian scholars, which reflect their interest towards foreign law and the idea that Russian law could be improved through introducing parts of foreign legislation. After the standstill period of the Soviet era, interest in foreign law was renewed at the beginning of the 1980s. Butler describes this process as follows: "By the 1980s Soviet jurists had begun to recognise what G. F. Shershenevich had pronounced nearly a century before: 'Russia, forced to catch up with Western Europe, must be acquainted with everything that is done in the West, including in the legal domain'. Bilateral symposia with Soviet legal scholars, especially from the Institute of State and Law of the then USSR Academy of Sciences, were arranged on a long-term basis to address the difficult issues of law and law reform. Direct links between the Institute of State and Law, The Soviet Association of Maritime Law and The Vinogradoff Institute at University College of London generated collected papers for more than forty symposia, striking new ground in legal research with Soviet legal specialists. The American legal profession sent thousands of attorneys to the Soviet Union through continuing legal programmes, law teachers, and political scientists under a variety of schemes, and also held bilateral symposia"<sup>22</sup>.

The mechanism which allows bringing new laws to the country-recipient originating in other countries' sources of law<sup>23</sup> is known as the process of legal transplanting<sup>24</sup>. The term 'legal transplant' was coined by legal historian and comparative lawyer A. Watson. In legal theory, it is one of the methods of developing, updating and adjusting the legal system to the

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<sup>21</sup> G. Ajani in *International Encyclopedia of Comparative Law*. V. XVIII. State and Economy. Ch.3, p.2.

<sup>22</sup> W.E. Butler "Russian Law" Oxford University Press, 2003, p.15-16.

<sup>23</sup> There are the two main sources of law recognised by Western society now. In Western societies, legal changes are supposed to be made by judges and legislators. The source is case law or reiteration. In Soviet countries (with a continental law system) law is made by statutory or parliamentary (government) law (G. Ajani "Legal Change and Institutional Reforms", 2007)

<sup>24</sup> "The terms 'legal transplants', 'legal borrowing', and 'reception' are commonly used to address the same phenomenon, namely the spreading and dissemination of legal models from a donor, or exporting a legal order to a receiving one" from G. Ajani "Transplants, legal borrowings and reception" *Encyclopaedia of Law and Society*, Sage, 2007.

changing conditions. There are different theories of legal change which are developed within comparative law scholarship<sup>25</sup> and which consider the process of transplanting and borrowing rules and norms from different perspectives.

Legal Origin theory (LOT) in conjunction with Institutional Possibilities Frontier (IPF) theory, states that the process of legal change and the outcome of transplantation differs depending on whether the country–recipient and country–donor have similar or different legal orders. A study of these differences in legal orders and their impact on economic growth and legality in the countries involved was made by a group of scholars including R. La Porta, F. Lopez-de-Silanes, A. Shleifer, and R. W. Vishny (LLSV)<sup>26</sup>. They argue that transplants from a country with a Common law tradition to a country which also practices Common law will work more effectively with less transaction costs. The theory has its advantages and pitfalls among which the comparative law scholar A. Bakarjieva Engelbrekt distinguishes that the theory does not provide explanation for legal change, and is in fact a static theory<sup>27</sup>. There are six known commonly recognised legal families and Russia is difficult to attribute to one of them. This fact makes it difficult to apply LOT theory to the majority of former soviet Union states.

The above theory was later criticised by another group of scholars - D. Berkowitz, K. Pistor, and J.-F. Richard (2003) - who stated that the method of transplanting matters more than the legal order (legal family) of the country of origin of the legal transplant. This approach is known in the legal literature as Legal Transplant Effect (LTE) theory of legal change<sup>28</sup> and in it, the authors methodologically connect the concept of law adaptability to the demand for law in the society, familiarity of the population with the new law and the compatibility with local conditions. “If the transplant adapted the law to local conditions, or had a population that was already familiar with basic legal principles of the transplanted law, then we would expect that the law would be used”.<sup>29</sup> The authors emphasise that if local conditions and rules are different in the country–recipient then the new law, rule or norm can be not compatible with the transplanted one. The country-recipient will not achieve the fully efficient legally enforced rule because of “the mismatch between preexisting conditions and

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<sup>25</sup> A. Bakarjieva Engelbrekt “New Directions In Comparative Law”, 2009, p.226

<sup>26</sup> R. La Porta, F. Lopez-de-Silanes, A. Shleifer, and R. W. Vishny “Legal Determinants of External finance” in *Journal of Finance* 1997 LII (3) pp. 1131-1150.

<sup>27</sup> A. Bakarjieva Engelbrekt “New Directions In Comparative Law”, 2009, p.226

<sup>28</sup> Berkowitz D, Pistor K, Richard J.-F. “The Transplant Effect” *American Journal of Comparative Law*, 2003, N 51; Bakarjieva Engelbrekt A. «New Directions in Comparative Law», Edward Elgar, 2009

<sup>29</sup> Berkowitz D., Pistor K. and Richard J.-F. “The Transplant Effect”, *The American Journal of Comparative Law*, 51:1, 2003, p.167



institutions and transplanted law, which weakens the effectiveness of the imported legal order".<sup>30</sup> These pre-existing conditions, norms, beliefs and values of the society constitute the informal institutions of the society. In Williamson's (1975) approach to institutional analysis they occupy Level 1 of the institutional 'hierarchy', Level 2 is formal institutions such as legal rules. According to D. North, the institutional system includes legal rules and informal constraints. He argues that all sources for institutional change can be generalised as "opportunities perceived by entrepreneurs", as only changes in agents perceptions and preferences can cause further changes in the society's formal and informal rules. These changes in agents' opportunities and preferences are classified in the following way: 1) Changes in relative prices (external source) which are caused by changes in agents' tastes, which in turn are caused by the acquisition of learning and skills (deliberate institutional change); 2) Changes in formal rules as a result of legal changes, legal reform, and reception of new laws; 3) Changes in informal rules such as norms of behaviour, beliefs, personal standards. D. North and G. Roland share the view that it is very much informal rules which play a central role in institutional change.<sup>31</sup> Norms become formal when they are 'formalised, i.e., embodied in written rules'<sup>32</sup>, or they may stay informal and 'be based on conventions, customs...'<sup>33</sup>. In this research however I am not interested in the distinction between formal and informal norms as such, or internalisation of norms but more on the social norms<sup>34</sup> which have not yet been formalised (based on customs, beliefs, traditions, shared values of the society) and which are referred as social norms of governance in the work of A. Licht. The overall conclusion is that if the law is coherent and clear, and compatible with existing social norms on the society then the transplanted laws and norms will work. The authors suggest "that legal transplants may work, if they are adapted, or if the population is already familiar with the basic principles of these laws"<sup>35</sup>.

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<sup>30</sup> Ibid., p.171

<sup>31</sup> Ibid., p.171; for more on the origins and development of social norms, see also Sunstein, "Social Norms and Social Roles," 96 Colum. L. Rev. 903 (1996).23 I; Coleman in Foundations of Social Theory (1990); "The implication is that transferring the formal political and economic rules of successful Western market economies to third world and Eastern European economies is not a sufficient condition for good economic performance" (D. North "The New Institutional Economics and Development" Economic History 9309002, EconWPA, 1993)

<sup>32</sup> Berkowitz D., Pistor K. and Richard J-F. "The Transplant Effect", The American Journal of Comparative Law, 51:1, 2003, p.175

<sup>33</sup> Ibid., p.175;

<sup>34</sup> Berkowitz D., Pistor K. and Richard J-F. "The Transplant Effect", The American Journal of Comparative Law, 51:1, 2003, p.188; see also Sunstein, "On the Expressive Function of Law," 144 U. Pa. L. Rev. 2021, 2050 (1996); Sunstein, "Social Norms and Social Roles," 96 Colum. L. Rev. 903 (1996) at 925; Knight 'The Bases of Cooperation: Social Norms and the Rule of Law', 154 J. Inst. & Theor. Econ. 754 (1998)

<sup>35</sup> Berkowitz D., Pistor K. and Richard J-F. "The Transplant Effect", The American Journal of Comparative Law, 51:1, 2003, p.188

For this paper the assumptions of the LTE theory are applied to Russia as it provides us with possibility to make several important observations about the process of Russian legal development and the role of the West in this process. The first observation highlights the unique place of Russian legal order within the existing legal families.

*Legal origins.* It is argued that Soviet Union law could not be referred to any of the existing groups and that post-Soviet countries are now the ‘owners’ of mixed legal systems which are partially new and partially inherited from the Soviet Union law. According to Butler “Soviet law claimed, on the basis of ideological axioms, to be unique amongst all existing and precedent legal systems”<sup>36</sup>. According to the findings of legal historians, the origins of Soviet law were in the European-Romano-Germanic civil law system. It was also influenced by Polish, Swedish, English, Italian, Dutch, and Lithuanian laws. Because of the huge territory of the USSR and later Russia, and the many ethnic groups living in this territory, many legal systems were operating simultaneously, such as “the customary law of various tribes and peoples, Islamic law, Baltic law, canon law, Judaic law, etc.”<sup>37</sup> At the same time, Soviet law in general did not belong to any one single legal family (for instance the Romano-Germanic legal family).<sup>38</sup> As an example, the Soviet codes of the New Economic Policy (NEP) period (1921-1928) were used. Those NEP codes at the time were modeled on those from Germany, France, and Switzerland. NEP laws suited the requirements of ‘the law in transition’ as they combined Soviet laws and elements of market laws (which are a necessary element for an emerging market environment). The USSR and consequently Russia have unique legal systems which cannot be referred to any of the existing legal families. However there are more similarities between Western and Russian rules and norms than is often stated and it is important to distinguish between them. Areas of similarity and difference are important to research of this kind.

*Old laws of Soviet Union and new laws of Russia.* After the Soviet Union, the legal change in former member countries was characterised by the coexistence of the old law with new law; by self-adjustment of the reforms during their development; and by the different wavelength of the reforms. The body of the old Soviet law overlapped with the new law which states were developing after the collapse of the USSR. Soviet law was retained in the legislation of the CIS countries for two reasons. Firstly, most institutions were inherited by CIS states from the Soviet system, and they would not function or be understood properly

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<sup>36</sup> W.E. Butler “Russian Law” Oxford University Press, 2003, p.3.

<sup>37</sup> Ibid, p.15.

<sup>38</sup> Ibid, p.3.

without considering their origins in the Soviet system. Secondly, Soviet law was the basis for the legislation systems of the union republics (before the Soviet Union collapsed) and its transition into the legal systems of the independent republics was settled by the ratification decrees of the Commonwealth of Independent States Treaty.<sup>39</sup> In the beginning, the leaders of the three countries which initiated the creation of the CIS agreed not to apply the norms and rules of Soviet law in the legislation of the independent republics. It was stated in Article 11 “From the time of the signature of this Agreement, the application in the territories of the signatories thereof of the norms of third states, including the former Union of Soviet Socialist Republics, shall not be permitted”. The law of the Soviet Union was considered as the law of a third party and could not be applicable to the legislation of the newly created CIS. But the implications of that decision came later when countries realised that they were left without a system of rules and instruments for solving disputes. Then ratification decrees to the aforementioned treaty were accepted. Soviet law obtained official status to be implemented in the territories of the CIS. The presence of old laws in the new legislation in Russia has made the acceptance of new norms more difficult.

*Different speed of reforms, legal borrowing.* In the early 1990s, the CIS was faced with the situation where economic reforms were developing much faster than the laws which could provide a legitimate and explanatory basis for economic agents. The process of privatisation is a well-known example of poor legitimacy of economic reform. In Russia (especially during *perestroika* and the years after the demise of the USSR) the changes in law were often caused by the necessity of rapid transformation and filling gaps in laws - for instance, a series of decrees issued by Yeltsin which facilitated the transfer of state-owned land under the framework of reforming agriculture and land law<sup>40</sup>. Sometimes this filling of the gaps in law was achieved by simply borrowing law from other countries. This was the case with legislation for business organisations in Russia. Many legal provisions for certain forms of business were directly borrowed from German and American commercial law<sup>41</sup>. In this case, legal transplanting will bring hardly any positive effect as it applies a more formalistic approach to the introduction of the new law than a functional one. At the same time, it can have an adverse effect on the future norm and rules transfer as those norms will be associated with a negative outcome.

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<sup>39</sup> The text of the Commonwealth of Independent States Treaty  
<http://www.therussiasite.org/legal/laws/CISagreement>.

<sup>40</sup> Gordon B. Smith “Reforming the Russian Legal System”. Cambridge University Press. 1996, p. 312.

<sup>41</sup> Ibid.

*Different levels of institutional development.* Another example of this concerns the fact that the Russian financial market was considered to be ‘developing’ and one of its features is that it incorporated the legal models from countries with developed financial systems. The major area of borrowing was in the legal area of financial derivatives and options with the United States as a country of origin – for example, the Russian Federal Securities and Exchange Commission, an institution similar to the United States Securities and Exchange Commission, was created. However the work of that Commission was not estimated as efficient as it was using mostly administrative measures for governing the financial markets instead of market ones. The reason for this was that local conditions in Russia were not ready for the acceptance and functioning of such highly efficient market mechanisms. As well as the existing values and norms, the Russian financial environment and infrastructure did not match the same ones as the country-donor. The Commission stopped its existence in 2004 and was substituted by the Federal Financial Markets Service which is more adapted to the Russian reality<sup>42</sup>. In this way the first argument is supporting the idea that contemporary Comparative Law science cannot attribute Russian law to any of the known legal families and defines its position as “undetermined”.<sup>43</sup> Transported norms should not be too different or too advanced as too big gaps bring the danger of losing the whole effect (this is the case for the core European norms of governance). It is easier to implement smaller changes and norms than to announce big aims when, critically speaking, they cannot be achieved at once because of the reasons mentioned above.

The main difference between the Western and Soviet legal systems were the approaches to property rights distribution (both for fixed assets and intellectual), freedom of contract, equal development of different branches of law (civil, commercial, family, environmental)<sup>44</sup>, and the traditionally low level of law enforcement in Russia. Most Russian laws from before 1917 or after were not comparable with European standards and did not match the requirements of international conventions. The Soviet period held back the development of law and law enforcement mechanisms which would be based on the rule of law principles rather than on an enforcement mechanism which is based on state control. As a

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<sup>42</sup> Sen T. “Zapadnie pravovie modeli v rossiiskoj deistvitelnosti”, Rossiiskij ezhegodnik predprinimatelskogo prava, N3, 2009, p.411.

<sup>43</sup> Ibid, p.4.

<sup>44</sup> “In the real world of administrative law one encounters a range of offences and penalties which have no equivalent in Anglo/American law, whereas in criminal law and procedures the equation of public and individual rights and the system of investigation and adjudication proceed, even in their post-Soviet form, from premises, considerations and values quite different from Anglo/American legal systems” (from W. Butler “Russian Law” Oxford University Press, 2003, p.9).

consequence, by the end of the twentieth century (exactly before the beginning of the reforms) the law in Eastern Europe was much less developed than in Western Europe.

Apart from its large territory and crude feudalistic system, there were other reasons that predetermined the slow development of law in Russia. Mostly, these were the absence of transportation infrastructure (even today), the strong power of the tsar, population pressure which emerged before industrialisation (and the related increasing poverty), backwardness in the development of inter-regional markets and trade (due to the absence of transportation and the lack and underdevelopment of the judicial system), shared values (egalitarianism, collectivism, religious beliefs – it is particularly these shared values which arguably play a very important role even today in the transition process of Russian economy), the traditionally expansionary land policy held by the tsar (the lack of fertility was compensated by the opening up of new lands in Siberia rather than through the development of agricultural techniques, raising the fertility of the land and so on). Also, violent reprisals had a negative influence on human resource potential. In addition, of course, isolation from the outside world, particularly deepened during the experiment of the Soviet period, also had a negative influence on the development of modern law. Some of core European norms itself were created with the aim to distinguish Western Europe from the communist Eastern Europe and they were reflecting the biggest gap in values between the two regions. However today, when 20 years have passed since the beginning of transition, it is exactly those norms which are often made the target for the fastest approximation.

All the points mentioned above constitute what is called the ‘uniqueness’ of the Russian legal system. This brings us to the second observation which is made through applying LTE theory and concerns the importance for the method of transplanting of such factors as local conditions and social norms into the country-recipient.

Social norms and EU norms of governance in Russia: understanding values and public attitudes

The first section presented the specific features of the Russian legal system and its differences / similarities with the EU and how they can affect the transference of legal norms and rules from the EU to Russia in the present day. This section focuses on the importance of social norms and values for the institutional development of Russian society and on their

acceptance / responsiveness to the European norms and values, focusing in particular on the European norm of *rule of law* for the purpose of empirical analysis.

Differences between the legal systems mentioned above and the importance of the method of transplanting both indicate that factors such as local values, norms and beliefs have played a significant role in the Russian case in the development of the legal system and wider transition to a market economy. The literature on social norms and their interaction with law offers different approaches to the study of social norms – for example, the works of R. Ellickson (1998), J. Elster (1989), R. Posner (1998).

There are external and internal views on social norms. The external view is characterised by the interest in social norms from such disciplines as economics and later on law and economics: “Economic scholars’ interest in social norms and their interaction with legal norms is related to the empirical findings that social norms affect the efficiency of resource allocation as well as economic growth” (Grössl 2005). J. Elster (1989) defines two assumptions which allow us to consider social norms and rules from a law and economics point of view: “The norms are still rational - this makes it subject to study by economists and lawyers” and “it is normally cost-benefit analysis from the individual either obey the norms or not”. The influence of social norms in the economy can be found in the scholarly literature on ‘social capital’, while the external view also uses evolutionary game-theory. All these disciplines take social norms as an exogenous variable – however, as indicated in the literature, they have several pitfalls with respect to addressing countries in transition (Grössl 2005). Firstly, during transition ‘social norms may arise or they exist which do not increase but decrease aggregate welfare’ (Grössl 2005). The second problem is related to law enforcement. As R. Ellickson (1998) raised this question: “since the collapse of the Soviet Union in 1991, Russia has lacked an effective law-enforcement system. Legal centralists might ponder how Russian society has continued to function – fitfully to be sure – with its legal system in ruins.”

Inefficient legal enforcement can be partially explained by the absence of appropriate social norms or by the presence of contradictory ones. If the research design requires us to focus on those dimensions then the internal approach to social norms can offer better explanations on how social norms affect law and social capital. “Internal view states that individuals internalize social norms which then become part of their objectives” (Licht 2003, Grössl 2005). The internal view is based on the study of cross-cultural psychology as it is developed in Licht (2003). Social norms are considered here as an endogenous variable

which is connected to cultural values. Licht's approach is based on Cultural Value Dimension theory developed by Hofstede (1980, 1991, 2011) and Schwartz (1992).

The following value dimensions can help to describe each society, attaching specific weights for each dimension (Hofstede 2001, Schwartz 1999):

- 1) Individualism as opposite to collectivism – this refers to the relationship between the individual and society.
- 2) High power distance as opposite to Low power distance – this refers to the level of legitimacy which is attached to the unequal power distribution in institutions.
- 3) Masculinity as opposite to Femininity (mastery versus harmony in Schwartz's classification) – this attaches different values to the achievements, assertiveness, material status.
- 4) High as opposite to Low uncertainty avoidance – this refers to cultural preferences while dealing with uncertainty.

Russia could be characterised as a country with Hierarchy and High power distance which is compatible with the unfortunate social norm of paying bribes - one of the most difficult problems for Russian society nowadays. In Licht's study, these cultural values correspond with norms of governance. He considers such norms of governance as rule of law, corruption and democratic accountability. For societies in transition (or post-transition) like Russia, the norm of rule of law plays a crucial role as "Rule of law states that members of a society are allowed to exercise power, i.e. to have the capacity to exercise choice only if they are entitled to do so by law...In societies where this rule of law is missing, law enforcement has a high probability to be rather poor thus leading to the predomination of countervailing social norms in all areas of life. As a result the society may continue to live with a high gap between the law on the books and law in action." (Grössl 2005). While the statistical modelling which follows includes an analysis of personal characteristics such as age, gender and religiosity, we are particularly interested in the ones that indicate broader cultural values, such as hierarchy / equality and individualism / collectivism.

The closer people think they are to a state with the Rule of Law indicates more positive social capital, and the smaller the gap between social norms and introduced laws, the more efficient the legal transplants. There is a consensus in the literature which studies the rule of law that the method of the research should include more cooperation with the public, as the way the public perceives the rule of law in the country actually affects the level of law

implementation in reality - as well as allowing for a contrast with the official view “of means and ends with the perceptions and reactions of those who are supposed to benefit from the legal reforms” (Bergling 2006, Alkon 2009): “The question that fascinates and perplexes rule of law assistance providers is how rule of law develops. Clearly building rule of law does not happen overnight and depends on many elements. One fundamental element is the attitude of the majority of the population, as rule of law depends on the majority of the population voluntarily following the law. Rule of law practitioners often identify changing attitudes of a specific part of a population (such as lawyers, police officers or elected officials) as an underlying goal of rule of law assistance programs. Rule of law practitioners also identify changing attitudes of the population at large as a goal, usually under the guise of “public awareness campaigns” or teaching law to non-lawyers.” (Alkon 2009, p.19). Similar empirical research on public attitudes to the rule of law in Russia was completed by Gibson 2006; Miller, White and Heywood 1998.

For that reason the data contained in the nationwide survey conducted in Russia in 2012 (N=1,605) were analysed using the regression analysis method. Using this dataset, the hypothesis which was developed in Licht, Hofstede was tested for the Russian case i.e. that there are values which underlie social norms and which affect norms of governance in certain directions.

Table 1 contains the outcome of the ordinary least squares (OLS)<sup>45</sup> regression analysis showing partial (b) and standardised (beta) coefficients predicting support for the idea that Russia is close to the creation of a rule-of-law state, coded 5=very close, 4=close, 3=don't know, 2=not very close, 1=very far away. A description of the independent variables is provided in Annex 2.

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<sup>45</sup> The method of OLS was used here instead of the more methodologically appropriate multinomial logistic model because of the way the DV is coded. The answers assume 'equal' distances between the scale points and were recorded accordingly.



Table 1. Predicting Proximity to the Legal state in Russia (OLS Regression Estimates)

	(1)		(2)		(3)	
	B	Beta	B	Beta	B	Beta
Age	.03*	.44*	.04**	.54**		
Age sq	-.46*	-.46*	-.55**	-.56**		
Gender	-.16**	-.07**	-.14**	-.06**		
Marital status	.00	.00	.00	.00		
Tertiary education	-.04	-.01	-.01	-.00		
Urban resident	-.09	-.03	-.00	.00		
Family living standards	.16***	.08***	.08*	.04*		
Country economy improved past year	.43***	.29***	.30***	.20***		
Frequent church attender	.02	.02	.03	.03		
Distance to power (hierarchy/ equality)			.15***	.13***	.26***	.23***
Self- reliance or state help (individualism/collectivism)			-.25***	-.10***	-.37***	-.14***
USSR demise (Soviet heritage)			.06**	.06**	.08***	.09***
Trust in Government			.16***	.22***		
Constant	2.83		2.77		2.52	
Adj R-squared	.11		.20		.09	
(N)	(1,548)		(1,406)		(1,458)	

\*, \*\*, \*\*\* statistically significant at  $p < .1$ ,  $p < .05$ ,  $p < .01$  respectively

Source: Nationwide survey conducted in Russia in 2012, N=1,605

Model 1 explains the difference which socio-economic characteristics make towards explaining the population's opinion about Russia's proximity to a state with the rule of law. Model 2 includes cultural values from the Hofstede / Schwartz typology of values (Licht 2003). Model 3 checks only for the effect of values without controlling for other characteristics. In both models (1) and (2), women tend to think that Russia is closer to the idea of creating a state with the rule of law than men. The pattern of variable age shows the influence of age on the estimation of proximity of Russia being close to a state with the rule

of law can be described using the parabolic function i.e. originally, the belief in the state decreases but then after a certain age, it begins to rise again. For family living standards – the higher the family living standards, the higher the belief that Russia is close to establishing a state with the rule of law. The same applies to those who thought that Russia's economy improved over the last five years - they tend to think that Russia is closer to such a state. Those who felt that the power distance is smaller (more equality in terms of power related to people) were more likely to optimistically estimate Russia's proximity to that type of state. Those citizens who had a more egalitarian / collectivist approach to society were less likely to think that Russia was close to the idea of creating such a state. The regression coefficient of the variable which indicates autonomy or individualism in the Licht's study has a similar sign. Finally, those people who did not regret the demise of the USSR were more likely to think that Russia had rule of law norms of governance.

## Conclusion

The EU makes essential efforts to develop and progress its relations with its neighbours with the purpose of cementing security and sustainable development in the whole region. This paper has analysed the EU as a normative power focusing on its relations with one of the emerging powers – Russia. Does Russia support or challenge the idea of the EU as a normative power? And how should the EU address those challenges in order to sustain its power of ideas and principles over neighbouring states? In particular, this paper has highlighted the explanatory power of Legal Transplant Effect theory over Legal Origins theory, applying it to Russia by focusing on two factors.

First – the 'uniqueness' of legal order of Russia. There are more similarities between Western and Russian rules and norms than is often stated. However, there are other areas which are different, and it is important to distinguish between them. Areas of similarity and difference are important to this field of research. The Russian legal system is characterised by the unique combination of old and new laws. The presence of old laws in new legislation in Russia makes the acceptance of new norms more difficult. Path dependence of legal borrowing can have an adverse effect on future norm and rules transfers because of the negative experience which can affect the outcome in the present day (for example, the reforms of the 1990s represent a good example of this). Transported norms should not be too

different or too advanced as too big gaps bring the danger of losing the whole effect. This is the case for such core European norms of governance as rule of law and human rights. It is easier to implement smaller changes in order to achieve those big aims than trying to achieve the greater objective all at once because of the reasons mentioned above.

Second – the ‘importance’ of the method of transplanting and such factors as local conditions and social norms. Social norms play an essential role when transplanting pieces of foreign law to domestic society. A. Licht stated (applying the framework of CVD theory) that there are cultural values under the social norms and every type of society ‘possesses’ its own set of values. Later, Licht, Goldsmith and Schwartz developed a hypothesis about the connection between cultural values and social norms of governance. The hypothesis was tested in order to see if Russia’s existing cultural values and norms affected the acceptance of European norms (or approximation of existing ones with the western one). Public attitudes in 2012 show the influence of the socio-economic characteristics and values dimensions on individuals’ opinions about the proximity of Russia to a state operating under the rule of law. Values were shown to be significant predictors of how Russian people perceive the norms of governance. The ‘distance to power’ (equality) value is positively correlated with the ‘proximity to the rule of law’ state and shows that ‘rule of law’ is potentially associated with equality in the minds of Russian citizens. As for the ‘individualism / collectivism’ value, people who believe in communitarian values tend not to recognise Russia as a state with the rule of law. Overall, the model with the cultural values dimension included had the biggest explanatory power amongst all three models.

Future research will adopt a more explicitly comparative and time-series approach i.e. comparing between Central and Eastern European states with different levels of institutional development like Belarus, Ukraine, Russia and Moldova. It will also use both the European Values Survey and the World Values Survey, to look at changes in the values, social norms of governance and public attitudes that occur over time. However, the clear findings from the Russian case presented here indicate that more research of this kind should be conducted in order to help us understand these types of developments in EU international relations.

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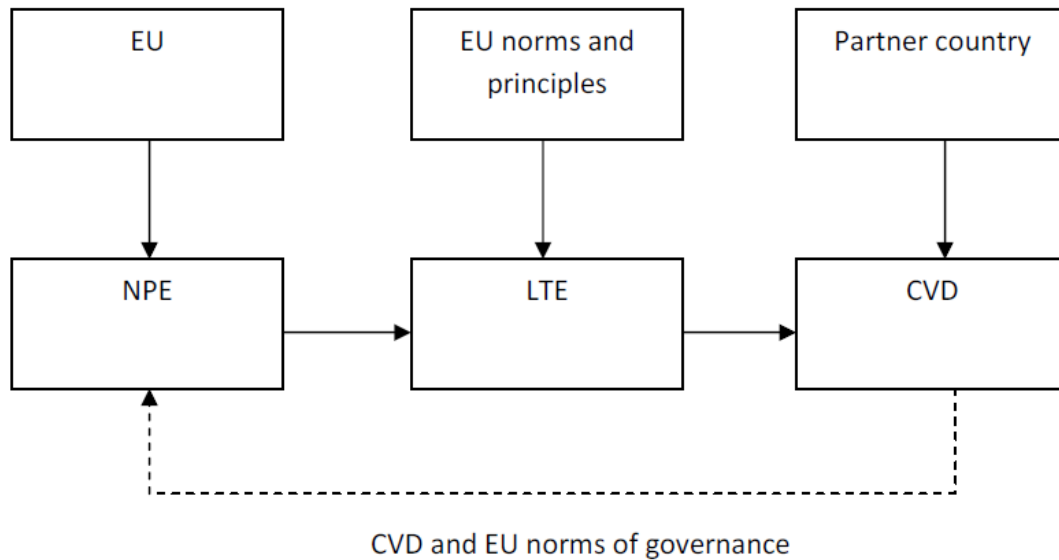
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## Annex 1

### LTE approach to the NPE concept



Source: Author's own

## Annex 2

The social background variables are all scored zero or one unless otherwise noted. Age see above. The economic conditions over the past year variables are scored from 5=much better, 4=somewhat better, 3=stayed the same, 2=somewhat worse, 1=much worse. The family economy at present variable is scored from 5=very good, 4=good, 3=average, 2=bad, 1=very bad. USSR demise variable and values dimension variables are all scored from 1 to 5. Independent variable 'Distance to power' (hierarchy/equality value) and independent variable 'Self-reliance or State help' (individualism/collectivism value) were coded from the questions on the distance from power of citizens (equal treatment; on 1 to 5 continuous scale) and their level of reliance upon state support.