LEGAL TECHNIQUES AND TECHNOLOGY AS THE MOST IMPORTANT FACTORS FOR THE SUSTAINABLE DEVELOPMENT OF THE SOCIETAL LEGAL SYSTEM

ALEXANDER MALKO,

Institute of State and Law of the Russian Academy of Sciences (Saratov, Russia)

MARGARITA KOSTENKO,

Southern Federal University (Taganrog, Russia)

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Legal techniques were initially developed as a kind of repeater of the legislator's will into the language of law with the help of special skill in legal design. Historically, the theory of legal technique was formed in stages with state reforms, social transformations and active work on systematizing legislation having significant impact on it. At the present stage, legal technique resources are legislated in some CIS and European countries, and the status of legal technique is firmly entrenched in legal theory and practice in continental law countries as well as common law. Complications from modern legal life in society and the need to optimize legal activity drive the search for new ways to improve the legal technology field. The uniqueness of legal technology is that it links all types of legal activity into a single production process, standardizes its potentially separate segments and introduces sound stability into legal processes. This makes it possible to improve effectiveness indicators for consolidating legislative priorities and implementing them in practice, in order to ensure the national interests of the state. Combining the potential of legal technology and legal technique provides legal activity a systematic and constructive validity for legal transformations, hinders the expansion of legal errors, optimizes the stages of legislative activity, systematizes the actions and operations that are being implemented, and ultimately ensures high indicators for legal development and the achievement of the state's constructive tasks.

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Introduction: Evolution of the Legal Technique Doctrine

Traditionally the instrumental nature of the law is associated with legal technique. It is a special art of communication within the legal field and includes a system of resources used to prepare legal acts (other legal documents) and other types of legal activities that ensure the perfection of form and content. At the same time, legal technique has largely evolved empirically, which has provided high reliability for its theoretical foundations. Legal technique is firmly rooted as a fairly distinctive category, reflecting the historical conditions in which the legal system of a particular state develops while at the same time having international components.

Legal technique appeared even at the birth of the law itself, although, according to the German scientist Rudolf von Jhering, scientific views on legal technique began to appear much later. At the same time, the philosophical foundations of legal technique were laid by the ancient philosophers Socrates, Plato, Aristotle and Cicero; they drew attention to the importance of observing certain rules, which affected the development of legal technique. The ancient Roman lawyers, participating in lawmaking and law enforcement, had already called for brevity of exposition and in fact sought to implement this rule of legal technique. Its tools began to emerge during this period. However, the transition to a systematic study of legal technique, the development of its theoretical positions and the formulation of a doctrine of legal technique occurred much later, which is a quite natural process.

The evolution of the legal technique doctrine is characterized by distinct stages, based not only on the spasmodic movement to scientific results, but also on reformatory resources, the scientific interest in which has significantly intensified during periods of social transformation and state reforms. The early stages of the legal technique theory are associated with the British scientist and politician Francis Bacon. A lot of researchers consider Francis Bacon to be the father of the legal technique doctrine, which is consistent with the scientific paradigm followed by the scholar. The meaning of all his scientific work he saw in the revival of science, which should be ahead of practice and noted that "science aims to enrich human life with real events, i.e. the new means."[1] Legal technique is precisely such a field of science, thanks to which legal life is enriched by practical methods for improving the law.

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[1] *Бэкон Ф.* Новый органон, или Истинные указания для истолкования природы [Francis Bacon, *The New Organon, or True Directions Concerning the Interpretation of Nature*] (Nov. 7, 2018), available at http://modernlib.ru/books/bekon_frensis/velikoe_vosstanovlenie_nauk_noviy_organon/.

Francis Bacon contributed to the development of legal technique by laying out several rules for legislative composition, especially the need for the legal language to be laconic and exact, so that no pretexts were given for ambiguous interpretation of legal acts. He was one of the first to notice the role of incorporation as a reliable manner for composing a corpus of legal acts as way to systematize legislation and claimed that people needed science in the first place to solve practical problems.

Samuel von Pufendorf,[2] a German thinker, historian and jurist, developed the idea for the first approaches to the legal technique doctrine and began not only to make serious requirements for the substance and purely technical aspects of legislation, but also extended the concept of legal technique beyond the bounds of exceptional legislative technique. The scholar included legal enforcement, stating that legal acts created by the government ought to be clear to the addressees; in other words, they ought to be set forth in plain language and be brought to the knowledge of citizens. In case of discrepancies in formulations, Pufendorf recommended addressing interpretation directly in a legislative body, or in special bodies delegated with the right of interpretation.

French scholar, Charles de Montesquieu, based on the rational ideas from the rational nature of humans and their surrounding environment speculated about what should be the "style of legal act" regarding the importance of the successive terminology and the consistent principles used in legislation. In the opinion of Montesquieu, one should be extremely cautious about changing previously established laws:

> It is necessary to observe such solemnity and to take so many precautions that the people come to the conclusion that the laws are holy, since so many formalities are required to repeal them.[3]

Montesquieu also gave an account on several legislative statement principles in "The Spirit of the Laws" mentioning, among them, a simplicity and brevity in style, whereby the norms should set forth in a laconic and precise manner. The scholar pointed out that the essential condition of a law is the demand for "every word of its statement to evoke the same ideas with all people."[4] He also proceeded to say that laws should not go too far into refinements, as "they are meant for ordinary people and contain the sound ideas of an ordinary housefather rather than the art of reasoning."[5]

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[2] *See, e.g.*, Samuel von Pufendorf, *Two Books of the Elements of Universal Jurisprudence* (1660); Samuel von Pufendorf, *Of the Law of Nature and Nations* (1670); Samuel von Pufendorf, *On the Duty of Man and of the Citizen* (1671) and other works.

[3] *Монтескье Ш.* Избранные произведения [Charles de Montesquieu, *Selected Works*] (Moscow: Gospolitizdat, 1955).

[4] *Id.*

[5] *Id.*

Jeremy Bentham, the English sociologist, jurist and theoretical founder of political liberalism is also considered to be the father of nomography – the science of making legislation. Bentham characterized the linguistic rules for composing laws, as well as the rules for their internal structure. When composing a procedural law book, he pointed out that it was necessary to be motivated by principles that would provide simplicity, lack of ambiguity, and comprehensibility for the addressees.

This stage of the formation of legal technique theory can be traced back to the period from the early 16th century to the late 18th century. This formation laid out the general ideas on the subject of legal technique, whereas the term "legal technique" was being coined in to legal use and the scope of its application outlined. In the 18th century, separate elements of legal technique contents were researched, wherein the indicated fact implies a new step in the development, motivated by the intensive development of social processes for the emerging role of regulators.

The second stage in the development of legal technique doctrine began in the early 19th century, marked by the first special "Legal Technique" writing, dedicated to the study subject area by the German scientist, Rudolf von Jhering. Jhering also noted that legal technique had emerged in the early days of the law itself, although scientific views on legal technique were just beginning to appear much later.[6] Jhering described the purpose and role of legal technique as "something that ought to convince every layman in his ignorance... a legal method... it just creates a legal actor."[7] Subjectively, "technique" means the legal art of finishing legal material; on the objective level, it is a technical mechanism for a legal act.[8] Jhering formulated the concept of legal technique understanding it essentially to be a legislative technique. He classified the accumulated rules of legislative technique, thoroughly analyzed many of them, proposed some new rules for law-making, and defined the purpose of legal technology, including the nature and direction of its tools. In "Legal Technique," Jhering proved that technique was important for legal activity by claiming that

> technique is implicitly endued with significant ethic value whereas technical practical jurisprudence, being extremely careful with the smallest detail when dealing with the material, can praise itself for improving legal technique for the good of the sublime and the great; its hardly-visible work on the low-profile of the law fosters its development even more strongly that any intellectual work.[9]

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[6] *Иеринг Р. фон.* Юридическая техника [Rudolf von Jhering, *The Legal Technique*] 33–34 (A.V. Polyakov (comp.), Moscow: Statut, 2008).

[7] *Id.* at 18–19.

[8] *See Id.* at 34.

[9] *Id.*

An important step in the development of the doctrine of legal technique at this stage was the formulation of the right targets for legal technique that determine the nature and direction of its instrumental basis. Thus, in particular, Jhering and François Gény, developing the ideas regarding the interrelation between law and interests, saw in legal technique a means of translating social needs into the language of law and constructing mandatory norms for maintaining order in society, which the sources of law serve in a formal sense. Positivism and communication in law represent the inalienable aspects of legal activity, determining its effectiveness.

Serious attention to the text of standard laws for achieving potential simplicity and clarity only began in the 19th century.[10] Lord Thring, who has become famous for the art of editing laws, specified rules in an essay on practical legislation regarding the internal distribution of articles in a standard law.[11]

At this stage the legal technical requirements for law-making and certain other types of legal activities related to law-making (in particular, the technique of systematization) were formed. However, the general scope of legal technique was still in the law-making field, and this period lasted from the beginning of the 19th century until the threshold of the 20th century. The achievements during this stage include the entry and "rooting" of legal technique into the legal framework of the Roman-Germanic system, as well as its systematic study as an independent research topic.

The third stage in the development of the legal technique doctrine is associated with active research into the technique and elaboration of numerous technical tricks, which began during the 20th century and continues to the present time. This is evidenced by the practice of most states to consolidate, in particular, the rules on law-making technique. However, there are examples of a different status of legal technique.

Presently in many European countries, the legally fixed rules of law-making have been applied for many years. This experience is highly instructive and useful not only with regard to methods for drafting legal texts, but also in terms of the correct choice of subject matter (regulation), the form of instrument, restrictions on amendments, and additions to legal texts, even in their legal expertise. It can be stated that the requirements for legislative technique have not found a uniform legislative consolidation as it is impossible to identify all requirements for drafting laws.

The ratio of doctrinal principles and regulatory requirements for bills and other regulations differs from country to country. In particular, there are several approaches to the sources where legal technical rules are set out, including: laws, parliamentary regulations, guides, recommendations, and special government and ministry of

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[10] *Ильберт К.* Техника английского законодательства: из книги «Legislative Methods and Forms», by Sir Courtenay Ilbert. Oxford, 1901 [Courtenay Ilbert, *The Technique of English Legislation: From the Book "Legislative Methods and Forms," Oxford, 1901*] 4–5 (A. Nolde (trans.), St. Petersburg: Senate printing house, 1907).

[11] Henry Thring, *Practical Legislation: The Composition and Language of Acts of Parliament and Business Documents* 3 (London: John Murray, 1902).

justice documents. Given such diversity, the recognized status of legal technique in a particular state's legal system can be observed, which does not minimize its role and is associated exclusively with the insufficient study of the required unification and harmonization of legal technical resources to ensure uniform standards and deeper interaction between legal systems.

Attention is drawn to the diversity in the legal force of the laws in which they are contained. In Poland, France, the Czech Republic and Hungary there are legal technical operations contained either in parliamentary regulations or in special documents issued by the government and the ministries of justice. A striking example is the regulation of legal technical operations in Poland through the regulations of the Sejm and the Senate of the Polish Republic,[12] and the Decree by the Chairman of the Council of Ministers "Rules of Legislative Technique"[13] dated 20 June 2002.

In Germany the legal technical requirements are contained in the Law on Preparing Legislation and the Handbook on the Rule-Making Technique dated 22 September 2008, developed by the Federal Ministry of Justice of Germany (hereinafter referred to as the Handbook).[14] The Handbook is based on legal norms and practical rule-making experience, the increased influence of European rule-making, and most of its recommendations refer to specific stages of the rule-making process.[15] The German Federal Ministry of Justice, aware of the importance of rule-making technology for the legislative process, accompanied the rule-making process with a kind of "guidebook" on the use of rule-making techniques in the form of recommendations that "are designed to ensure legal perfection while at the same time preserve the uniformity of the legal technique used in federal legislation..."[16]

In the European political and legal landscape the particular interest presents the legal technique in the United Kingdom of Great Britain and Northern Ireland as representative of common law countries with an excellent approach to official sources of the law in comparison with the countries of the continental laws. Great Britain similarly regulates issues around statute registration through the following

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[12] Регламент Сейма Республики Польша от 30 июня 1992 г. [Regulations of the Sejm of the Republic of Poland of 30 June 1992] (Nov. 11, 2018), available at http://www.parliament.am/library/Standing%20orders/POLAND.pdf; Regulations of the Senate of the Republic of Poland, confirmed by the Senate Decision of 23 November 1990 (Nov. 11, 2018), available at https://www.senat.gov.pl/en/about-the-senate/regulamin-senatu/.

[13] Decree of the Chairman of the Council of Ministers of the Republic of Poland "Rules of Legislative Technique" dated 20 June 2002, Dziennik Ustaw, 2002, No. 100, Item 908.

[14] Опубликование Справочника по нормотворческой технике. 22 сентября 2008 года: рекомендации Федерального министерства юстиции Германии по единообразному оформлению законов и нормативных постановлений [*Publication of the Handbook on the Rule-Making Technique, 22 September 2008: Recommendations of the German Federal Ministry of Justice for Uniform Design of Laws and Regulations*] (3rd ed., Berlin: Federal Ministry of Justice, 2008).

[15] *Id.* at 3.

[16] *Id.*

laws: the Parliament Act 1911, the Parliament Act 1949, the Acts of Parliament Numbering and Citation Act 1962,[17] the Law on Rule-Making Legal Acts of 1996, and also the additional information contained in a number of manuals – Guide to Making Legislation of 2014,[18] Drafting Guidance of 2018,[19] A Manual for Those Concerned with the Preparation of Statutory Instruments and the Parliamentary Procedures Relating to Them of 2006.[20] This demonstrates the increasing importance of rule-making legal acts, even in common law countries, and the role of technical and legal rules in preparing their texts.

In the near-abroad countries, there is an aspiration to legislatively establish legal technique rules. For example, Kazakhstan and Armenia have laws "On Legal Acts,"[21] in Byelorussia, the Kirghiz Republic and Tajikistan laws have been passed "On Normative Acts,"[22] and in Moldova "On Legislative Acts."[23] Russia has not adopted a similar legislative act yet, which indicates the many unresolved theoretical problems.

At the present stage, we can say that legal technique is firmly rooted in legal theory and practice, and the idea of Jhering that

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17 *Богдановская И.Ю.* Закон в английском праве [Irina Yu. Bogdanovskaya, *Law in English Law*] 34–63 (N.S. Krylova (ed.), Moscow: Nauka, 1987).

18 Cabinet Office, Guide to Making Legislation (July 2014) (Dec. 8, 2018), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328408/Guide_to_Making_Legislation_July_2014.pdf.

19 Office of the Parliamentary Counsel, Drafting Guidance (July 2018) (Dec. 8, 2018), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293866/guidancebook-20_March.pdf.

20 Her Majesty's Stationery Office, Statutory Instrument Practice: A Manual for Those Concerned with the Preparation of Statutory Instruments and the Parliamentary Procedures Relating to Them, 4th edition (November 2006) (Dec. 8, 2018), available at www.opsi.gov.uk/si/si-practice.doc.

21 Закон Республики Казахстан от 6 апреля 2016 г. № 480-V «О правовых актах» [Law of the Republic of Kazakhstan of 6 April 2016 No. 480-V "On Legal Acts"] (Nov. 11, 2018), available at http://adilet.zan.kz/rus/docs/Z1600000480; Закон Республики Армения от 29 апреля 2002 г. № ЗР-320 «О правовых актах» [Law of the Republic of Armenia of 29 April 2002 No. ZR-320 "On Legal Acts"] (Dec. 8, 2018), available at http://base.spinform.ru/show_doc.fwx?rgn=19491.

22 Закон Республики Беларусь от 10 января 2000 г. № 361-З «О нормативных правовых актах Республики Беларусь» [Law of the Republic of Belarus of 10 January 2000 No. 361-Z "On Normative Acts of the Republic of Belarus"] (Nov. 8, 2018), available at http://www.pravo.by/pravovaya-informatsiya/normotvorcheskaya-deyatelnost/pravovye-akty-po-teme/; Закон Кыргызской Республики от 20 июля 2009 г. № 241 «О нормативных правовых актах Кыргызской Республики» [Law of the Kyrgyz Republic of 20 July 2009 No. 241 "On Normative Acts of the Kirghiz Republic"] (Nov. 8, 2018), available at http://base.spinform.ru/show_doc.fwx?rgn=28680; Закон Республики Таджикистан от 30 мая 2017 г. № 1414 «О нормативных правовых актах» [Law of the Republic of Tajikistan of 30 May 2017 No. 1414 "On Normative Acts"] (Nov. 8, 2018), available at http://base.spinform.ru/show_doc.fwx?rgn=97969.

23 Закон Республики Молдова от 27 декабря 2001 г. № 780-XV «О законодательных актах» [Law of the Republic of Moldova of 27 December 2001 No. 780-XV "On Legislative Acts"] (Nov. 8, 2018), available at http://base.spinform.ru/show_doc.fwx?rgn=5135.

> technology indirectly has significant ethical value, and practical jurisprudence, referring to the technical processing of material with extreme care, even with attention to the little details that can improve the technique of law in favor of everyone; its subtle work in the low places of the law contributing to the development of the latter often more of a deep nature[24]

found its actual confirmation in spite of the resistance which it met from natural law advocates. The scope of "legal technique" includes its doctrinal and typological peculiarities, the specific character of the legal form and structure, special juridical and stylistic aspects of the legal matter formation, as well as the scientific views on it. As a result of finding an independent place for legal technique in the late 20th century and early 21st century, there was a tendency for it to move to a new development stage, prompted by the complications of modern legal life and the need to optimize the processes for implementing legal activities.

1. Preconditions for Transitioning from Instrumental to Technological Support of Legal Activity

Technologies have a significant impact on social development. They help to choose algorithms for reasonable behavior and contribute to the creation of truly new approaches. The term "technology" was introduced into scientific circulation for the first time by Johann Beckmann in 1777, in relation to the industrial sector.[25] Bernard J. Hibbitts notes that the law is technological because, "it was predominantly born as a technology, namely, communication technology."[26] Although the specificity of social connections is their ability to be empirically implemented until a certain level of complication. After that, the risk increases significantly, which requires the "inclusion" of the technology which, according to Joseph Agassi, is an awareness of the method of action, a kind of theory on technique.[27] This is the moment observed in the present period due to the fact that legal activity has become a complex process in which the role of labor tools belongs to legal technique.

However, technological processes are mediated not only by certain methods, rules, ways to apply technique, but also by the division into elementary procedures and operations having their corresponding theoretical foundations. This is what separates technique from technology, i.e. process mediation of legal technique resource usage from the entirety of its instruments.

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[24] Jhering 2008, at 34.

[25] Johann Beckmann, *Beiträge zur Ökonomie, Technologie, Polizei und Kameralwissenschaft* (Göttingen: Vandenhöck u. R., 1777).

[26] Bernard J. Hibbitts, *The Technology of Law*, 102(1) Law Library Journal 101, 104 (2010).

[27] *See* Joseph Agassi, *Technology: Philosophical and Social Aspects* 14 (Dordrecht: Reidel, 1985).

> Thus, legal technique is the cumulative effect of intentions, skills, procedures, methods, sensitivities and emphases aimed at producing some given reality out of the given dynamics in the name of and as an act of – and in conformity to – the "law."[28]

Technological security is inherent in any activity that has a complex nature among its individual elements and a corresponding set of relevant tools.

A legal activity is a process and at each step or stage, certain resources are consistently applied. The characteristic of changeability ensures the transition from one state of legal validity to another in the process of achieving an expected legally significant result. Norbert Wiener notes that

> the theory and practice of law entail two groups of problems: a group of problems related to General purpose law, the understanding of justice in law; and a group of problems related to the techniques by which these concepts will become effective.[29]

Legal technology is designed to accompany the complex legal reality of reliable instrumental solutions, which in a sense can be considered technological standards for implementing legal activities. The legal process, combined with a properly built technological process, creates a purposeful transformative activity in a legal environment.

The main goal for legal technology is to streamline the diversity of legal processes, procedures, actions and operations used by legal entities. It has the ability to manage their choices by synchronizing the procedures, actions and instrumental solutions required for this. Legal activities subordinated to technological requirements acquire a systemic character, purposefulness, orderliness, and "the regularities of technological stages and the corresponding orders and rules that mediate them should be presented as a form (regime) of legal activity... and legal activity does not exist outside of technological principles and rules..."[30] After all, purposefully influencing the legal reality is only possible if there is an algorithm of actions, an ability to coordinate and support the necessary positive changes to the law with instrumental decisions.

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[28] Csaba Varga, *Doctrine and Technique in Law*, Internationales Rechtsinformatik Symposion / IRIS 2004, Salzburg, 26–28 February 2004 (Jul. 3, 2018), available at https://ru.scribd.com/document/167936751/Legal-Technique.

[29] *Винер Н.* Кибернетика и общество [Norbert Wiener, *Cybernetics and Society*] 29 (Moscow: Izdatelstvo inostrannoy literatury, 1958).

[30] *Власенко Н.А.* Юридическая техника как комплексная система знаний // Доктринальные основы юридической техники [Nikolay A. Vlasenko, *Legal Technique as a Complex System of Knowledge* in *Doctrinal Basis for Legal Technique*] 162 (N.A. Vlasenko (ed.), Moscow: ID "Yurisprudentsiya," 2010).

The content boundaries of legal technology are still in the process of forming and this process should reflect the individuality of different legal areas, forming its specific content in unity. The technological processes of lawmaking, law enforcement, interpretation and systematization each pursue its own goals and objectives, which affect the process and relevant instrumental basis. The exact application of a specific tool at a particular stage in the production cycle is necessary to move forward or adjust in order to achieve a certain legal result.

The methodology for scientific knowledge of legal technology at the present stage is based on a variety of approaches that make it difficult to consolidate its place in legal theory and practice. The most significant are research positions which represent a comprehensive view of the existing approaches that accumulate theoretical knowledge and practical experience. In this case, the unity of the goals, tasks and resources that form its substantive basis is ensured.

Legal technology is a special branch of scientific knowledge for administering stages of legal activity for preparing, registering and adopting a variety of legal decisions based on applying rule-making or doctrinally sound legal technical resources, as well as methods for designing changes in law and planning actions to achieve legal prospects in order to ensure the most effective and systematic legal practice. To achieve this goal, legal technologies should be looked at as integrated technologies, when the design and implementation of legal reforms are made based on the corresponding indicators of state development, coordinating the implementation of different types of legal activities by optimizing the consistent application of steps, stages, particular segments and the tools required for this purpose.

The essence of legal technology is to optimize the actively transforming impact on legal activities, when the actions of an authorized entity become orderly and synchronized with strategic objectives and technical and legal resources. The study of the technical side of a particular stage of legal activity will allow tools to be established for monitoring the actions of entities in more detail to normalize legal processes and, in a sense, to manage the management decision. This quality of legal technology allows the concept of sustainable legal development to be effectively implemented, to implement the principles of a "smart" state regulatory policy and to ensure a qualitative transition to new legal standards for legal activity.

In our opinion, the basis for the theoretical and methodological difficulties in introducing legal technologies in practice relates to the discussion over whether, for example, the development of laws is art or science? Supporters of the first position consider it is an art[31] because each law requires an individual approach, while others believe that it is enough to master technology and skill. In our opinion, it is wrong to oppose art and science, because they are designed to solve completely different problems. If art in the given context appears in the form of creativity which

[31] *See* Geoffrey Bowman, *The Art of Legislative Drafting*, 64 Amicus Curiae 2 (2006).

provides uniqueness in the law, then the role of science consists in ordering the activity organization to achieve the required results thereby providing sustainable development for the system. We believe that the scale of creativity in law should not be overestimated. After all, a large number of legal tasks can be successfully solved by the skillful deployment of technical legal resources within a framework of certain legal procedures, operations, and actions. At the same time, the effective use of technical and legal tools is similar to art. It is possible to say that uniqueness is born in creativity, and it is further repeatedly applied, finding technological patterns in proportion to the solved problems.

Legal technology is not limited exclusively by definition to the application of a sequence of legal technical resources, and their optimization, but also provides process validity based on established laws establishing legal validity. Consequently, legal technology should include everything that is associated with the legal process, rules and procedures for using technical legal resources to implement legal activities.

Some foreign scholars consider legal technology not from the standpoint of organizing professional legal activity, but believe that it appears as "a system of social methods created to monitor the behavior of large groups of people, and as an institutionalized form of dispute resolution."[32] Organizing the introduction of legal technology can really be considered as a specific method for implementing types of legal activities, and managing them by algorithm. The initial task for determining the essence of legal technology is to assess the focus of its potential for work within the law, or outside of it in terms of the social action of law. This approach can be conditionally called communicative in a broad sense since, in this case, legal technologies are able to expand their capabilities beyond the legal environment. But it is still difficult to agree that these are social means. They have an expressive legal nature.

Communication consists of transferring information through the signal system outside, and within the law as a means of legitimizing public tasks that require legal support. It is legal technologies that can systematically realize the task of combining political, socio-economic and legal processes, procedures, actions, and their administration and synchronization. This is the main essence and advantage of legal technologies that are able to consolidate volitional acts by authorized entities into a common system to achieve the objectives of transformations in the law.

The uniqueness of legal technology is that it links all types of legal activity into a single production process, standardizes its potentially separate segments and, in a certain sense, introduces stability into legal processes. At the same time, it is reasonable to admit that the law will always have the intellect of lawyers, including

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[32] Mary E. Cato, *The Limits of Law as Technology for Environmental Policy: A Case Study of the Bronx Community Paper Company*, Master's Thesis, Virginia Polytechnic Institute and State University (1996), at 1.

their emotional intellects, which allows you to make decisions in unusual life situations. However, this does not detract from the role and importance of legal technologies aimed at identifying patterns and establishing rules for implementing legal activities.

As for the dilemma of "legal technique *v.* legal technology" there is no complexity or mystery, in our opinion. The fact is that there is some substitution between the concepts. Although "legal technique" is most often referred to in literature as the instrumental know-how of legislation,[33] "for me it is the instrumental skill covering the entire legal process from making to applying the law."[34] What is called legal technique is often actually a legal technology, as a process of creating and expressing rights, and legal technique is the toolkit that allows you to create, modify and interact with law. The combined potential of legal technique and legal technology is capable of modernizing various tasks to increase the effectiveness of the legislative and law enforcement practice.

Scientists note that

> these terms should be regarded as two independent, but interrelated phenomena that function in one objective reality and solve common goals and objectives.[35]

Therefore, they can be considered complex categories, only by the simultaneous application of which is it possible to carry out a transformative function in the legal reality, especially in the context of large-scale legal modernization. Legal technology and legal technique, combining their potential, provide legal activity a systematic and constructive validity for legal transformations, reduce legal errors, optimize the stages of lawmaking activity, systematize the actions and operations that are being implemented, and ultimately ensure high indicators of the legal development and achievement of state construction tasks.

The transition to technological support of legal activities is the answer to the complication in society's legal life, the strengthening of the role of law in addressing state construction tasks. These factors influence the need to prevent the occurrence of legal technological and legal technical defects. Actually, legal technique was developed for the sake of improving the form and content of the law. Therefore, at this stage, an important development for the technological side of legal activity

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33 Varga, *supra* note 28.

34 *Id.*

35 *Шарно О.И.* Соотношение категорий «техника» и «технология» в контексте правореализации // Вестник Волгоградского государственного университета. Сер. 5. Юриспруденция. 2012. № 1(16). С. 254 [Oksana I. Sharno, *Relations of the Categories "Technique" and "Technology" in the Context of the Implementation of Law*, 1(16) Bulletin of Volgograd State University. Series 5. Jurisprudence 251, 254 (2012)].

should be formulating a concept that will prevent technological defects. Only in this case can we talk about the successful transition from instrumental to technological support of legal activities.

2. Technological Defectology of Law

Legal technologies should be developed as one of the most important areas within the defectology of law, which represents the doctrine of shortcomings in legal activities and legal errors, as well as methods for suppressing and mitigating them in a timely fashion. In this case, the technological component allows you to control the process to prevent certain distortions in legal activities. Different kinds of legal defects arise due to shortcomings in legal activities and legal errors caused by improper actions in applying the rules of legal technique.

Despite the fact that legal technique is an important condition and a means for preventing and correcting mistakes, nevertheless, at the present stage, many defects are caused precisely by violations of legal technique requirements. The specifics aspects of technical legal defects are such that at the modern level of legislative development, far from all of the requirements of legal technique are regulated by the rules of law. This significantly affects the ability to identify and prevent factors that determine the error.

One of the significant consequences from the presence of legal technical defects in the law is the discrepancy in the actual meaning with the form of a textual or other external expression of the legal prescription. Such defects can arise due to excessively abstract formulations, one of the reasons for which is the influence of the existing socio-political situation on the creator of the right. Some legal technical defects are noticeable to the "naked eye," which include, in particular, excessive congestion in formulations for normative legal acts, discordance of legal terms, when an unreasonable repetition of identical combinations of sounds interfere with the perception of the material, the choice of semantically unsuccessful terms, complex grammatical sentence constructions, and so on.

The nature of technological defects differs somewhat from legal technical defects and is associated with process, procedural and other violations which led to the appearance of certain flaws and inaccuracies in the sequence of applying legal technical resources. Both types of defects in the law are interrelated and interdependent, but their delineation allows a more focused look at the causes of their occurrence, and thus ensure work towards their targeted prevention, detection and suppression.

Technological defects are a consequence of underestimating certain order and proper instrumental support for implementing legal activities, the use of which either legitimized the adoption of legal decisions, or optimized the achievement of an expected legal result. In the first case, this ensures compliance with the principle

of lawfulness, and in the second case, this reduces costs by eliminating redundant procedures, operations, etc. and the need to use comparable technologies. In our opinion, the prevention, detection and suppression of technological defects will positively effect a significant reduction in legal technical defects, and in this sense it is the technological defects that initially provoke the defectiveness factor in the law. After all, the established processes, procedures, operations and other actions of an authorized entity should prevent the occurrence of errors, distortions, and inaccuracies.

With technological defects, legal-competence mistakes are closely connected, i.e. these are flaws and inaccuracies committed by an official regarding establishing the boundaries of his own jurisdiction. It can be overstating or understating the jurisdiction, appropriating the jurisdiction of other state authorities, local self-government bodies, or federal executive bodies, or a lack of harmony in legal decisions between the relevant bodies or officials. This category of errors is accompanied by a choice of technical and legal instruments that are disproportionate to the scope of the established jurisdiction for the relevant authorized entity. With such flaws, legal technical resources make it possible to obtain an external form of expression by the subject's jurisdiction, which is presumed by the subject. In this case, legal technical resources, on the one hand, help to formalize legal decisions, including those made based on defects and mistakes made, and on the other hand, the ability to formalize erroneous decisions, which helps flaws to be "removed from the shadow flaws is a great merit." Although this will require an expert assessment of the disproportion between legal technical tools and official powers.

In the future, we can talk about creating a kind of legal technical model or matrix for implementing certain powers by an official, which will work to improve the performance discipline and ensure the established powers are accurately applied. This circumstance encourages us to approach preparing jurisdictional norms[36] with particular scrupulousness that accurately and explicitly correspond to the rights and obligations of the authorized entity, which is "a necessary condition for strengthening the discipline of civil servants and officials, and an important guarantee of respect for the rights of citizens."[37] Legal technical provisions for jurisdictional norms allow us to

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[36] According to S. Belousov, a jurisdictional norm is understood as a generally binding rule of conduct aimed at regulating public relationships regarding the establishment, consolidation and implementation of powers of the jurisdiction's subjects, within the scope of their subjects and in accordance with the tasks and functions assigned to them. At the same time, the scientist distinguishes among the functions of jurisdictional norms like: establishing the subjects of a jurisdiction; empowering subjects with powers within their jurisdiction; and defining goals, tasks and functions of jurisdictional subjects. In our opinion, such norms have the additional function of instrumental security associated with the subject-regulatory function. *Белоусов С.А.* Компетенционные нормы российского права: Автореф. дис. … канд. юрид. наук [Sergey A. Belousov, *Jurisdictional Norms of Russian Law: Synopsis of a Thesis for a Doctor Degree in Law Sciences*] 17 (Saratov, 2002).

[37] *Id.* at 14–15.

clarify the limits on the subject matter for the authorized subject from an instrumental standpoint. The following logical rule can serve as a guideline for improving such norms: if it is proven that such a norm (or system of norms) is not effective enough due to certain defects, then eliminating the identified defects can improve its efficiency.[38] This rule can be fully extended to the principles of working with technical and legal defects, which also reduce the effectiveness of legal norms.

A defect can occur at an immediate stage in implementing an appropriate procedure or operation. We believe that by the nature of legal technical resources and the sequence in which they are applied, it is possible to reliably enough establish the type of legal activity, its specific stage or procedure (or other segment of the relevant activity). Consequently, technological certainty opens up the possibility to prevent defects by establishing or limiting the choice of legal technical instruments. However, it should be noted that the legislative regulation of the procedure, the rules for implementing a certain legal action and accompanying legal technical requirements does not differ in equivalence from regulation. For example, the procedural law book of the Russian Federation gradually fixes the sequence of legal actions within the framework of appropriate judicial proceedings, although, for most of them, there are no legal technical requirements which are primarily restricted to formally attributive and structural rules.

The prevailing majority of procedural norms are concentrated in the field of law-making and law enforcement activities, which is justified by virtue of their specifics characteristics. However, these norms are accompanied, with rare exceptions, by legal technical requirements, which selectively regulate this aspect of the activity. In this regard, one of the technological defects is a gap in establishing the procedures and legal technical tools required to effectively implement it. Moreover, the gap in this case is of a functional nature with a negative connotation.

There is a natural question: is any procedure to be accompanied by technical and legal tools? We believe that the formal rule in this case may be the following: any procedure or a combination thereof, the result of which is a prepared legal act, requires technical and legal security. And whether the relevant rules will be contained in the legal act[39] or in a special act regulating the rules for preparing, adopting and enforcing any type of legal act is not fundamental. Also, such rules can be established in recommendations and documents of a referential nature.[40] Combining legal technical rules for a certain set of processes should be guided by a unity of purpose towards which all these legal actions are directed. The unity of

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[38] Эффективность правовых норм [*Efficiency of Legal Norms*] 243 (M.: Yuridicheskaya literatura, 1980).

[39] No special law on normative legal acts has yet been adopted in the Russian Federation, although international practice shows a preference for this approach in regulating the rules for preparing, enforcing and revoking normative legal acts.

[40] For example, *Handbook on the Law-Making Technique*, *supra* note 14.

the goal is determined by the unity of the means of achieving it, and when the legal technical instruments radically change on the way to the goal, this always indicates a change in the guidelines that require a scientific justification and an update of its instrumental basis.

The formation of technological defectology of the law opens up new opportunities for assessing the effectiveness of legal activity, both from the point of view of selected legal processes and technical and legal instruments, and the validity of the subject's actions. Because it allows differentiation of legal errors and defects arising in practice and, therefore, the development of rules based on this empirical experience in response to legal errors and defects. Here there is a connection between theory and practice regarding the origins of legal technique and legal technology. The potential of legal technology is aimed at managing decision-making and routing resources as part of legal activities in order to improve the efficiency and quality of resource provision.

3. The Prospects for Implementing Legal Technologies

The main task for legal technology as a science is to transform the legal reality, taking into account the pre-existing ideas about the changes required in the legal system, and supporting them with the appropriate resources selected in accordance with a given sequence of processes, procedures, operations, and other legal actions based on identified economic, political, social, legal and other patterns. This requires an understanding of the direction future developments will take with a clear system of actions by authorized entities that provide legal support for public administration.

The theory of sustainable development is a rapidly developing scientific field and can be considered a progressive concept for strategic planning in developed countries. "Sustainable development" means continuous progressive development, the main principle of which is to reconcile the interests of present and future generations, and tactical and strategic goals. Any development involves changing the existing elements of the system, and stability is traditionally associated with avoiding change, "preserving" relationships and obstructing anything new. However, a timely change in legislative provisions, reflecting the dynamics of public relations, is an indicator of the smooth operation of regulatory mechanisms and the sustainable provision of law and order.

Designing sustainable development involves identifying goals and the mechanisms for achieving them, which creates prerequisites for interaction between legal policy and legal technology. Legal policy is the scientifically-based, consistent and systematic activity of state and municipal bodies to improve regulatory mechanisms, and the civilized use of legal means to fully provide human rights and freedoms, strengthen discipline, legality and law and order, and to create legal

statehood and a high level of legal culture in the life of society and the individual. In legal policy, a conceptual framework is laid out in the form of goals, principles and tasks that determine the tactics and strategy for legal development. The role of legal policy is to balance the spontaneity, variability and non-linearity of legal life, which are considered to be legal risks.

> In the final analysis, legal technique serves in fact as a bridge between law as an issue of positivism and its practical implementation as shaped by legal policy considerations.[41]

Legal policy can fill the "void" in the scientific substantiation of a choice in a given set of legal decisions based on modern scientific concepts, and thus facilitate the coordination of actions of authorized subjects and processes, and optimize the legal technical resources for which legal technology is responsible. In the context of stable development, the role of legal technology is to effectively contribute to creating a stable legal system by preparing, adopting, and promulgating various legal acts with the help of a scientifically based set of principles, means, methods and rules, in accordance with plans and forecasts.[42] The combination of the stability factor and the transforming function of legal activity provide a complex interaction between legal technique and legal technology which ensures the consistency and constructive validity of legal reforms, prevents legal errors, and optimizes the stages of lawmaking activities.

The process of technological development in legal activity begins with the creation of a regulatory framework for optimizing legal activities related to preparing various legal acts. These goals are partially achieved through developing and adopting legislation on legal acts. In this law, the stages of the law-making process should be fixed, and the parameters for effectively planning norm-setting activities, and the rules for drafting normative legal acts, implementing expert activity and accounting for its results should be established. It should be noted that unresolved legislative issues will significantly hamper the development of legal activities in the future, which is especially aggravated by declining quality in drafting laws and increasing volumes of corrective legislation. It must also determine the legal technical specifics of law enforcement and contain requirements for implementing interpretation and systematization activities.

In our opinion, the adoption of such a law testifies to the recognition of the official (legitimate) status of legal equipment resources. However, a large-scale transition to standardized technological support for legal activities can be carried out only if

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41 Varga, *supra* note 28.

42 *Бахвалов С.В.* Законодательная технология (некоторые проблемы теории и методологии): Автореф. дис. ... канд. юрид. наук [Sergey V. Bakhvalov, *Legislative Technology (Some Problems of Theory and Methodology): Synopsis of a Thesis for a Doctor Degree in Law Sciences*] 22 (Nizhny Novgorod, 2006).

changes are made in the system of normative legal acts: 1) determining the sequence of actions by authorized entities, coordinated with the legal technical rules for preparing laws or other legal documents; 2) establishing rules for expert activity (for example, when carrying out expert examinations of draft laws, including an assessment of regulatory impact, monitoring law enforcement, etc.). Important documents for establishing rationing rules are also of a referential and recommendatory nature, containing technological standards for implementing various types of legal activities. Despite the non-applicability of the application, the role of the final rationing sources is significant. Since they allow for more detailed specifications of various types of legal activity implementations by virtue of their capability.

A more complex task is to restructure the thinking of the legal community to incorporate technological elements. In a general sense, such subject-specific thinking connects the human intellect and the technical means for carrying out activities. In the aspect of the subject area under consideration, this is the intellect of the lawyer and legal technical resources that help to consolidate the sequence of acts of thought. Technological thinking regarding the comprehension of legal activity comes to the fore when it is necessary to solve large-scale state tasks having significant social and legal consequences.

Legal technologies should be viewed as a promising method for ensuring national interests, the study of which mainly has a "bias" towards the political and economic aspects. Although the most important factor is correctly chosen and implemented legislative priorities that can neutralize negative trends within the country and internationally, and reflect the Russian characteristic of legislative consolidation of national interests. It is possible with the help of legal technologies to implement the interests of the Russian state's federal system in the most comprehensive way, the principle of social justice in Russian society, the priority of public interests over departmental, narrow interest groups, and to strengthen the clarity and thoughtfulness of legislative decisions, establishing an approach to determine the sequence of transformations to provide software development for legislation. A separate place in ensuring national interests should be hindering legal defects and mistakes and improving the current legislation. The role of legal technologies in solving these problems is significant, since they allow not only for consistently implementing the required legal transformations, but also for offering the most effective legal technical and legal-technological tools.

The 2017 Report on the State of Civil Society in the Russian Federation prepared by the Public Chamber of the Russian Federation shows that the main demand by an absolute majority of Russians is for social justice, and among its main indicators, in particular, the unity of law is singled out.[43] This indicator reflects the attitude of

[43] Доклад о состоянии гражданского общества в Российской Федерации за 2017 год [2017 Report on the State of Civil Society in the Russian Federation] (Nov. 8, 2018), available at http://www.opiv.ru/upload/doklad_o_sostoyanii_gragd_obshestva_RF_2017.pdf.

Russians towards the realization of the principle of equality of all before the law, regardless of wealth, social status, nationality and other characteristics. Consistent implementation of this principle can be realized with the help of modern legal technologies that synchronize legal procedures ensuring guarantees of individual rights and freedoms and equal responsibility for all, to monitor the actions of authorized entities within the framework of law enforcement activities.

Improving legal activity and, first of all, law-making should be based on the concept of "smart" state administration, the basis of which is the stimulation of qualitative changes by introducing new technologies. An example of introducing such technologies is the introduction of procedures for assessing the regulatory impact and the actual impact of rule-making legal acts in the law-making process, thanks to which the optimal level of impact on public relations is chosen. Qualitative and quantitative cooperation by stakeholders in sustainable development makes management "smart" and provides a special role for legal technologies. In this case, technologies aimed at reducing defects in legal activity, improving the quality of rule-making legal acts, and forecasting the consequences of adopting given legal rules will be actively developed.

A new level of development for the legal system is seen in the close interaction between legal and information technologies. This will help to transform primary data into a new quality of information and, on this basis, to offer optimal legal solutions. Information technologies help to not only optimize and improve systems and processes, but become a catalyst for radical changes over time, and in the near future will become the basis for the judicial system.[44] Their ability to serve an impressive array of legal information, at the same time taking into account the large number of facts, circumstances, characteristics, etc., creates a real opportunity to search for weak points in the logical structure of legal work, and allows you to convert the professional activities of a lawyer. At the same time, legal technologies are responsible for optimizing legal processes based on their resource support, which will eventually lead to the possibility of automating the methods for tracking and monitoring the state of the legal system.

Introducing technologies into the process of legal decision-making management helps to minimize the physical movement of people and documents, significantly reduce the time to consider applications, complaints, appeals and other documents, and to create opportunities to more fully take advantage of electronic document storage.[45] And, what is perhaps more important to prevent the emergence of serious errors in the implementation of legal activities arising from the presence of the

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[44] *See* Harry K. Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (London: H.M.S.O., 1996).

[45] For more details *see* Waleed H. Malik, *Judiciary-Led Reforms in Singapore: Framework, Strategies, and Lessons* 53 (Washington: The World Bank, 2007).

human factor of different origin. The formation and use of information resources allows not only to optimize the information technology process, ensuring the timely provision of information, its validity, reliability and completeness, but also to design a new legal reality, setting certain standards for the stability of the legal system. The increased technological efficiency of legal activity is aimed at improving the quality of legal life, the protection of rights and freedom, and ensuring the stable rule of law and legal security of state.

Conclusion

Legal technology is a special legal phenomenon that ensures technological perfection of legal activity based on optimizing resource support and reducing defects in the law. They are able to act as a driver for modernizing the legal life of society. After all, it is possible to improve the qualitative aspect of legal activity by introducing an established sequence of procedures, operations, and actions into the legal practice accompanied by the necessary tools. This is confirmed by interviews with jurists who note that the rules of law that establish such a sequence[46] are the most difficult to understand and apply. The development of legal and technological strategies addresses many issues aimed at determining the optimal tactics for achieving a given legal result.

The concept of improving legal activity using legal technologies is based on establishing sound choices of procedural and instrumental solutions as a priority. This does not just work to improve the effectiveness of the law enforcement practice, but also ensures high standards in observing civil rights and freedoms, the modernization of legal statehood. The image of the future legal system of the state should be created now. For this, it is necessary to develop the practice of consolidating technical, legal technical and legal-technological rules. And it is not so important, in exactly what status these rules will be initially fixed. Gradually accumulated empirical experience will encourage transitioning certain rules to mandatory standards of legal activity. However, the first step that triggers this process is certainly the adoption of special legislation on the legal status of various sources of law and the special requirements imposed on them.

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[46] The survey was conducted from March to August 2018, which was attended by 160 practicing specialists of the Southern Federal District of the Russian Federation in the field of legal proceedings, the prosecutor's office, notary, customs, the state registration of cadastre and cartography, the federal prison service. According to the results of the answers, 43% of respondents consider the law to be the most problematic for understanding and applying the rule of law, establishing the sequence of procedures, actions, operations defined by the provisions of the law, and 38% of respondents have difficulties with legal norms that establish specific content of rights and obligations of addressees of law. At the same time, the prevailing majority of respondents (64%) believe that the legislatively fixed sequence of instruments necessary to implement the provisions of the law accompanying the enforcement stage will reduce the number of law enforcement mistakes, systematize the technology of application of the law, subject to complex processing of the legislative array.

Normally fixed (legitimized) technologies should become the basis for ensuring legal security. Legal security is considered in two aspects, firstly, as a set of measures, means and methods of legal provision (protection) carried out in the legal system and through the law, and secondly, the state of legal protection (guarantee) for the vital interests (statuses, regimes, etc.) of subjects of the law in connection with entering into legal relationships.[47] Even in countries where the rules of legal technology are fixed, they nevertheless do not determine the legal technical standards of legal security. Although it is rightly noted that it is possible to provide all kinds of security with the full protection of the law itself, which acts as a guarantor of security within the existing legal system, and "legal defects have no boundaries and permeate the entire social organism."[48] Therefore, it is important to create a basis for preventing legal defects, penetrating "dirty" technologies into legal transformations, and legal technologies are one of the effective methods for achieving these goals.

The formation of high-tech jurisprudence is a way to optimize legal activity, provide better service to international, supranational and national law, create conditions for improving the legal system, managing the adoption of optimal law-making decisions and improving transparency in the law enforcement process.

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[47] *Фомин А.А.* Юридическая безопасность субъектов российского права (вопросы теории и практики): Автореф. … докт. юрид. наук [Alexey A. Fomin, *Legal Security of Subjects of Russian Law (Theory and Practice Issues): Synopsis of a Thesis for a Doctor Degree in Law Sciences*] 12 (Penza, 2007).

[48] *Id.*

Information about the authors

Alexander Malko (Saratov, Russia) – Professor, Institute of State and Law of the Russian Academy of Sciences (135 Chernyshevskogo St., Saratov, 410028, Russia; e-mail: i_gp@ssla.ru).

Margarita Kostenko (Taganrog, Russia) – Associate Professor, Department of Legal Ensuring of National Security, Southern Federal University (22 Chekhova St., Taganrog, 347928, Russia; e-mail: makostenko@sfedu.ru).