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Review: Patterson, D. and Pardo, M.S., eds. (2016). Philosophical Foundations of Law and Neuroscience. Oxford: Oxford University Press. 272 pp. 215

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THE ORIGINS OF NATURAL LAW THINKING IN THE IDEAS OF ANCIENT GREEK SOPHISTS: PROTAGORAS AND ANTIPHON

Abstract. Protagoras and Antiphon are the first authors known to us who offered their views on the correlation between human nature, on the one hand, and the requirements of the law and positive morality, on the other. With Protagoras and Antiphon, the conventional character of law and morality, as well as the existence of a moral obligation to obey the law, became vital subjects of philosophical discussion.

Protagoras, according to Plato's testimony in the dialogues "Protagoras" and "Theaetetus", attempted to reconcile individual and public interests with the help of the concept of universal virtue, which all citizens of the *polis* should participate in. This attempt, however, is difficult to regard as successful, since, according to the logic of Protagoras, virtue is only a means for the survival of individuals and ensuring their security. While providing justification of the paramount importance and natural character of civic virtues, Protagoras at the same time allows for the possibility of following them only for appearance, as a cover for selfish motives.

Antiphon views the contract between people as the sole and sufficient basis of law and morality. Approaching the problem from an individualistic point of view, Antiphon sharply contrasts nature and convention. Nevertheless, he considers the former rather in terms of benefits and harms of following it, and not as a source of objective moral prescriptions. According to this interpretation, nature and convention are two different worlds; one may chose which of them to follow, but it is impossible to reconcile them.

Neither Protagoras, nor Antiphon offers any consistent concept of human nature, and that is why their ideas could not be characterized as natural law in the full sense of the word. Their views of nature do not yet contain fundamental standards, with which human law and conventional morality could be compared. The main weakness of both theories is their inability to give account of the social character of human nature. At the same time, the undoubted merit of Protagoras and Antiphon is the very statement of the question of the priority of nature or the convention, individual or public interests, as well as of the possibility of their harmonization. The ideas of two senior sophists played a decisive role in shaping the intellectual climate, in which, primarily in direct controversy with them, Plato and Aristotle produced much more elaborate concepts of human nature; and the natural law tradition emerged.

Keywords: natural law, nature, law, moral, human nature, convention, sophists, Protagoras, Antiphon

REFERENCES

Barney, R. (2017). Callicles and Thrasymachus. In: E.N. Zalta, ed. *The Stanford Encyclopedia of Philosophy*. [online]. Available at: https://plato.stanford.edu/archives/fall2017/entries/callicles-thrasymachus/ [Accessed 28 November 2018].

Decleva Caizzi, F. (1986). "Hysteron proteron": la nature et la loi selon Antiphon et Platon. *Revue de Métaphysique et de Morale*, 91(3), pp. 291–310. (in Fr.).

Decleva Caizzi, F. (1999). Protagoras and Antiphon: Sophistic Debates on Justice. In: A.A. Long, ed. *The Cambridge Companion to Early Greek Philosophy*. Cambridge: Cambridge University Press, pp. 311–331. DOI: 10.1017/ccol0521441226.015

Gagarin, M. (1991). The Truth of Antiphon's "Truth". *The Society for Ancient Greek Philosophy Newsletter*, [online] pp. 1–9. Available at: http://orb.binghamton.edu/sagp/190/ [Accessed 12 November 2018].

Jaeger, W. (1936). *Paideia. Die Formung des griechischen Menschen.* Erster Band. Berlin; Leipzig: Walter de Gruyter & Co. (in Germ.). [Russ. ed.: Jaeger, W. (2001). *Paideiya. Vospitanie antichnogo greka* [Paideia: The Ideals of Greek Culture]. Translated from German by A.I. Lyubzhin. Volume I. Moscow: "Greko-latinskii kabinet" Yu.A. Shichalina].

Kelly, J.M. (2007). *A Short History of Western Legal Theory.* Oxford: Clarendon Press.

Kerferd, G.B. (1953). Protagoras' Doctrine of Justice and Virtue in the "Protagoras" of Plato. *The Journal of Hellenic Studies*, 73, pp. 42–45. DOI: 10.2307/628234

Kerferd, G.B. (1957). The Moral and Political Doctrines of Antiphon the Sophist. A Reconsideration. *The Cambridge Classical Journal*, 4, pp. 26–32. DOI: 10.1017/s1750270500012203

Kerferd, G.B. (1981). *The Sophistic Movement.* Cambridge; New York; Melbourne: Cambridge University Press.

Lebedev, A.V. cont. (1989). *Fragmenty rannih grecheskih filosofov. Chast' 1. Ot jepicheskih teokosmogonij do vozniknovenija atomistiki* [The Fragments of the Early Greek Philosophers. Part I. From the Epic Theocosmogonies to the Birth of the Atomistics]. Moscow: Nauka. (in Russ.).

Levi, A. (1940). The Ethical and Social Thought of Protagoras. *Mind*, 49(194), pp. 284–302. DOI: 10.1093/mind/xlix.194.284

Lukovskaya, D.I. (2008). Stanovlenie politiko-pravovoi mysli v Drevnei Grecii [The Formation of Political and Legal Thought in Ancient Greece]. *Istorija gosudarstva i prava* [History of State and Law], (11), pp. 25–29. (in Russ.).

Maguire, J.P. (1947). Plato's Theory of Natural Law. In: A.R. Bellinger, ed. *Yale Classical Studies*. Volume 10. New Haven: Yale University Press, pp. 151–178.

Maguire, J. P. (1977). Protagoras... or Plato? II. The "Protagoras". *Phronesis*, 22(2), pp. 103–122. DOI: 10.1163/156852877x00029

Makovel'skii, A.O. (1940). *Sofisty* [The Sophists]. Issue 1. Baku: Azerbaidzhanskii Gosudarstvennyi Universitet im. S.M. Kirova. (in Russ.).

Makovel'skii, A.O. (1941). *Sofisty* [The Sophists]. Issue 2. Baku: Azerbaidzhanskii Gosudarstvennyi Universitet im. S.M. Kirova. (in Russ.).

Manuwald, B. (2013). Protagoras' Myth in Plato's "Protagoras": Fiction or Testimony? In: J.M. van Ophuijsen, M. van Raalte and P. Stork, eds. *Protagoras of Abdera: The Man, His Measure*. Leiden: Brill, pp. 163–177. DOI: 10.1163/9789004251243_009

McCoy, M. (1998). Protagoras on Human Nature, Wisdom, and the Good: The Great Speech and the Hedonism of Plato's "Protagoras". *Ancient Philosophy*, 18(1), pp. 21–39. DOI: 10.5840/ancientphil199818110

Ostwald, M. (1990). Nomos and Phusis in Antiphon's Περὶ 'Αληθείας. In: M. Griffith and D.J. Mastronarde, eds. *Cabinet of the Muses: Essays in Classical and Comparative Literature in Honor of T.G. Rosenmeyer.* Atlanta: Scholars Press, pp. 293–307.

Plato. (1990). Protagor [Protagoras]. Translated from Ancient Greek by Vl. S. Solov'ev. In: *Sobranie sochinenii v 4 tomakh* [The Collected Works in Four Volumes]. Volume 1. Moscow: Mysl', pp. 418–476. (in Russ.).

Plato. (1993). Tejetet [Theaetetus]. Translated from Ancient Greek by T.V. Vasil'eva. In: *Sobranie sochinenii v 4 tomakh* [The Collected Works in Four Volumes]. Volume 2. Moscow: Mysl', pp. 192–274. (in Russ.).

Plato. (2006). Gosudarstvo [The Republic] / Translated from Ancient Greek by A.N. Egunov. In: Plato. *Dialogi* [Dialogues]. Moscow: AST: AST Moskva; Pushkinskaya biblioteka, pp. 374–454. (in Russ.).

Popper, K.R. (1947). *The Open Society and its Enemies. Volume I. The Spell of Plato.* London: George Routledge & Sons Ltd.

Reale, G. and Antiseri, D. (1983). *Il pensiero occidentale dalle origini ad oggi.* Brescia: La Scuola. (in It.). [Russ. ed.: Reale, G. and Antiseri, D. (1997). *Zapadnaya filosofiya ot istokov do nashih dnei.* [Western Philosophy from its Origins to the Present Day]. Translated from Italian by S.A. Mal'ceva. Volume I. Saint Petersburg: TOO TK "Petropolis"].

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PROZHITOK AS THE ESTATE IN LAND IN THE MUSCOVITE STATE: FROM THE 16th CENTURY TO THE FIRST HALF OF THE 17th CENTURY

Abstract. In the Muscovite State of the second half of the 15th century the pomest'e system began to take shape. The pomest'e estates were granted by the crown or the church on condition of service and held for a period of service only. The holders were not entitled to dispose of pomest'e lands, and their estates were not hereditary. It raised the question of how the needs of retired servicemen and decedents' family members should be supplied. The question was resolved by means of prozhitok — the law institution that provided the opportunity for the above-mentioned persons to obtain a part of pomest'e land without condition of service.

The prozhitok estate provided the limited proprietary right in land. It was granted for a lifetime of a holder who was not entitled to dispose of the land plot. The decisions to grant the prozhitok estates were taken by the landowners (the crown or the church) on a basis of a petition. The sizes of granted land plots were determined on a case-by-case basis. The unified rules for determination of land plots' sizes were established only in the second quarter of the 17th century.

The prozhitok estate could be granted only to the holders of the pomest'e estates and their family members unable to do military service and thus not eligible to obtain or retain the pomest'e estates. In most cases the prozhitok estates were granted to the widows and unmarried daughters of the deceased holders of the pomest'e estates or more rarely to their mothers and unmarried sisters. Also the

prozhitok estates could be granted to the holders of the pomest'e estates retired from service because of old age or ailment and to the sons of the deceased holders unable to do military service because of ailment.

Typically, the prozhitok estate was considered as terminated after the death of its holder or taking the monastic vows. It was also considered terminated when its female holder entered into marriage. When the prozhitok estate was terminated the land plot was returned to the crown or the church and then granted to some serviceman as the pomest'e estate. It means that the land plot was held without condition of service only temporarily. The lack of vacant pomest'e lands forced the landowners to grant the land plots before the prozhitok estates termination. So the new type of grant — pozhid — was invented. The pozhid estate resembled the pomest'e estate on hold: the exercise of the holder's rights was delayed until the prozhiok estate termination. For several reasons such grants were forbidden in 1621–1622.

Over many years prozhitok developed as the institution of customary law. It became the subject of legislative regulation only in the twenties of the 17th century. The enactment of Sobornoye Ulozhenie in 1649 was crucial for the prozhitok institution as the code generalized the experience in application of legal norms and systematized the acts related to the prozhitok estates.

Keywords: prozhitok, pozhid, pomest'e, votchina, property law, landownership, Sobornoye Ulozhenie of 1649

REFERENCES

Alekseev, Yu.G. and Kopanev, A.I. (1975). Razvitie pomestnoi sistemy v XVI v. [Evolution of the Pomest'e System in the 16th Century]. In: N.I. Pavlenko, ed. *Dvoryanstvo i krepostnoi stroi Rossii XVI — XVIII vv.* [Nobility and Serfdom in Russia from the 16th to 18th Centuries]. Moscow: Nauka, pp. 57–69. (in Russ.).

Antonov, A.V. (2013). *Istoriko-arkheograficheskie issledovaniya: Rossiya XV – nachala XVII veka.* [Historical and Archeographical Researches: Russia from the 15th Century to the Early of the 17th Century]. Moscow: Drevlekhranilishche. (in Russ.).

Antonov, A.V. cont. (2015). *Materialy po istorii Nizhegorodskogo kraya kontsa XVI — pervoi chetverti XVII veka. Ch. 1* [Materials on the History of Nizhny Novgorod Territory from the End of the 16th Century to the First Quarter of the 17th Century]. Part 1. Moscow: Drevlekhranilishche. (in Russ.).

Blum, J. (1953). The Beginnings of the Large-Scale Private Landownership in Russia. *Speculum*, 28(4), pp. 776–790. DOI: 10.2307/2849204

Blum, J. (1971). *Lord and Peasant in Russia: From the Ninth to the Nineteenth Century.* New Jersey: Princeton University Press.

Cherepnin, L.V. (1953). Osnovnye etapy razvitiya feodal'noi sobstvennosti na Rusi (do XVII veka) [The Major Stages of Development of Feudal Ownership in Rus' (prior to the 17th Century)]. *Voprosy istorii* [Issues of History], (4), pp. 38–63. (in Russ.).

Kijas, A. (1984). *System pomiestny w Państwie Moskiewskim w XV — pierwszej polowie XVI wieku. Historiografia i problematyka*. Poznan: Wydawn. Naukowe Uniwersytetu im. Adama Miciewicza. (in Pl.).

Man'kov, A.G. (1980). *Ulozhenie 1649 goda — kodeks feodal'nogo prava Rossii* [Ulozhenie of 1649: The Code of Russian Feudal Law]. Leningrad: Nauka. (in Russ.).

Nevolin, K.A. (1851). *Istoriya rossiiskikh grazhdanskikh zakonov. T. 2* [History of Russian Civil Laws]. Volume 2. Saint Petersburg: Tipografiya Imperatorskoi Akademii Nauk. (in Russ.).

Nosov, N.E. ed. (1987). *Zakonodatel'nye akty russkogo gosudarstva vtoroi poloviny XVI — pervoi poloviny XVII veka. Kommentarii* [Legislative Acts of the Russian State of the Second Half of the 16th Century to the First Half of the 17th Century. Commentaries]. Leningrad: Nauka. (in Russ.).

Petrov, K.V. (2002). Nekotorye vidy zemel'noi sobstvennosti i sistema russkogo prava do nachala XVIII veka. Prozhitok [The Several Types of Land Ownership and the System of Russian Law until the Early of the 18th Century. Prozhitok]. In: A.P. Pavlov, ed. *Rossiiskoe gosudarstvo v XIV — XVII vv.* [The Russian State from the 14th to the 17th Century]. Saint Petersburg: Dmitrii Bulanin, pp. 115–153. (in Russ.).

Rozhdestvenskii, S.V. (1897). *Sluzhiloe zemlevladenie v Moskovskom gosudarstve XVI veka* [The Service Land Tenure in the Muscovite State of the 16th Century]. Saint Petersburg: Tipografiya V. Demakova. (in Russ.).

Samokvasov, D. Ya. (1905). *Arkhivnyi material. Novootkrytye dokumenty pomestno-votchinnykh uchrezhdenii Moskovskogo gosudarstva XV — XVII stoletii. T. 1* [Archive Material. Newly-Discovered Documents of Pomest'e and Votchina Bureaus of the Muscovite State from the 15th to the 17th Century]. Volume 1. Moscow: Universitetskaya tipografiya. (in Russ.).

Staroverova, E.V. (2017). "Kormlya" kak institut veshchnogo prava v Severo-Zapadnoi Rusi XIV–XVI vv. ["Kormlya" as the Institute of Property Law in North-Western Rus' from the 14th to 16th Centuries]. In: D.A. Pashentsev, ed. *Prava i svobody cheloveka i grazhdanina: teoreticheskie aspekty i yuridicheskaya praktika: materialy ezhegodnoi Mezhdunarodnoi nauchnoi konferentsii pamyati professora F.M. Rudinskogo, 27 aprelya 2017 g.* [Rights and Freedoms of Man and Citizen: Theoretical Aspects and Legal Practice. The Proceedings of the Annual International Scientific Conference in Memory of Professor F.M. Rudinsky, 27 April 2017]. Ryazan: Kontseptsiya, pp. 127–131. (in Russ.).

Staroverova, E.V. (2017). Pravo "kormli" v Severo-Vostochnoi Rusi XIV — XVI vv. [The Law of "Kormlya" in Northeastern Rus' from the 14th to 16th Century]. In: *Nauchnye trudy. Rossiiskaya akademiya yuridicheskikh nauk*. [Scientific Proceedings. Russian Academy of Legal Sciences]. Issue 17. Volume 1. Moscow: OOO "Jurist" Publ., pp. 117–121. (in Russ.).

Storozhev, V.N. (1889). Ukaznaya kniga Pomestnogo prikaza [Book of Decrees of Pomestny Prikaz]. In: *Opisanie dokumentov i bumag, khranyashchikhsya v Moskovskom arkhive Ministerstva yustitsii*. [Description of the Documents and Papers Stored in Moscow Archive of Ministry of Justice]. Volume 6. Moscow: Tipografiya Tovarishchestva Kushnerev i Ko, pp. 3–212. (in Russ.).

Veselovskii, S.B. cont. (1915). *Smutnoe vremya Moskovskogo gosudarstva 1604–1613 gg. Vyp. 4. Arzamasskie pomestnye akty (1578–1618 gg.)* [The Time of Troubles in the Muscovite State in the Period from 1606 to 1613. Issue. 4. The Pomest'e Acts of Arzamas (1578–1618)]. Moscow: Imperatorskoe Obshchestvo Istorii i Drevnostei Rossiiskikh pri Moskovskom Universitete. (in Russ.).

Veselovskii, S.B. (1947). *Feodal'noe zemlevladenie v Severo-Vostochnoi Rusi. T. 1* [Feudal Landowning in Northeastern Rus']. Volume 1. Moscow; Leningrad: The Akademiya Nauk SSSR Publ. (in Russ.).

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THE COURT OF THE EURASIAN ECONOMIC UNION: CHALLENGES OF FUNCTIONING

Abstract. The Court of Eurasian Economic Union is envisaged by the Treaty on EAEC (Eurasian Economic Community) as one of the bodies of the Union. Its principal aim is to ensure uniform application of the Treaty and compliance of the agreements adopted by the Union member states as well as acts of the Union bodies with the Treaty.

All member states, bodies of the Union and, in certain cases, economic entities has the right of appeal to the Court. The Court is empowered to adjudicate cases of disputes arisen within the framework of the Union as well as to issue advisory opinions. Court decisions are binding while advisory opinions are of suggestive nature. When hearing cases, the Court applies the Treaty on EAEC, international treaties of the states concluded within the framework of the Union and norms of international law.

Established in 2015, the Court of EAEC appeared to be in demand among the states, economic entities and bodies of EAEC. The analysis of the activities of the Court and its legal framework enabled to identify a number of outstanding issues related to the status and organization of the activities of the Court. Thus, the competence of the Court as stipulated by the Statute does not reflect the power (as stipulated by the Treaty) of the Highest Eurasian Economic Union to appeal to the Court with a request. The limits of competence of the Court are not clearly and sufficiently denoted, the fact that might serve grounds for the unwarranted expansion thereof. The procedure for initiation of issuance of advisory opinions and termination of proceedings in such cases is not sufficiently regulated. There is no clarity as to the legitimacy of the collective dissenting opinions of judges.

The analysis of the Court practice shows that in broad terms it fulfills its mandate. The decisions adopted by it enabled to elaborate critical legal positions and clarify many practical issues in such areas as functioning of the Customs Union and internal market of the Union, general principles and rules of competition, protective measures for internal market and transportation policy.

Keywords: Eurasian integration, Eurasian Economic Union, Treaty on Eurasian Economic Union, Court of EAEC, decisions of the Court of EAEC, advisory opinions of the Court of EAEC, legal positions of the Court of EAEC

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REFERENCES

Anufrieva, L.P. (2016). EAES i "pravo EAES" v mezhdunarodno-pravovbom izmerenii [Eurasian Economic Union and "the Law of Eurasian Economic Union" in International Law Dimension]. *Moskovskii zhurnal mezhdunarodnogo prava* [Moscow Journal of International Law], (4), pp. 48–62. (in Russ.). DOI: 10.24833/0869-0049-2018-3

Azhibraimova, A.M. and Rezvanova, O.A. (2018). Osoboe mnenie sudyi Suda Evraziyskogo ekonomicheskogo soyuza: sravnitel'no-pravovoi analiz [Dissenting Opinion of a Judge of the Court of the Eurasian Union]. *Yustizia Belorussii* [Justice of Belorussia], (6), pp. 16–22. (in Russ.).

Chaika, K.L. and Savenkov, A.N. (2018). Problemnye voprosy v praktike Suda Evraziyskogo ekonomicheskogo soyuza [Problem Issues in the Practice Eurasian Economic Union Court]. *Gosudarstvo i pravo* [State and Law], (10), pp. 5–22. (in Russ.).

Entin, K. and Pirker, B. (2018). The Early Case Law of the Eurasian Economic Union Court: On the Road to Luxembourg? *Maastricht Journal of European and Comparative Law*, 25(3), pp. 266–287. DOI: 10.1177/1023263X18781193

Fedortsov, A.A. (2017). Pervyi etap v sozdanii I razvitii Suda Evraziyskogo ekonomicheskogo soyuza [The First Stage in the Creation and Development of the Court of Justice of the Eurasian Economic Union]. In: Yu. N. Starilov, ed. *Sovremennye problemy mezhdunarodnogo I evraziiskogo pravosudia* Materialy Mezhdunarodnoi nauchno-prakticheskoi konferentsii. [Contemporary Problems of International and Eurasian Justice. The Materials of the International Scientific and Practical Conference]. Issue 10. Voronezh: Izdatel'skii dom VGU, pp. 115–120 (in Russ.).

Ispolinov, A.S. (2013). Navyazannyi monolog: pervoe preyudicial'noe zakluchenie Suda EvrAsES [An Imposed Monologue: The First Preliminary Ruling of the Court of The Eurasian Economic Community]. *Evrasiiski yuridicheski zhurnal* [Eurasian Law Journal], (8), pp. 21–30. (in Russ.).

Ispolinov, A.S. (2015). Evrasiiskoe pravosudie: ot Suda soobshchestva k sudu soyuza [The Eurasian Justice: From the Community's Court to the Court of the Union]. *Gosudarstvo i pravo* [State and Law], (1), pp. 80–88. (in Russ.).

Ispolinov, A.S. (2016). Pervoe reshenie Suds EAES: revisia nasledstva i ispytanie iskusheniem [The First Judgment of the Court of The Eurasian Economic Union: A Revision of Legacy and a Temptation Challenge]. *Rossiiski juridicheski zhurnal* [Russian Juridical Journal], (4), pp. 85–93. (in Russ.).

Ispolinov, A.S. (2016). Statut Suda EAES kak otrazhenie opasenii i somnenii gosudarstv-chlenov [Statute of EAEU Court as Reflection of EAEU Members Concerns and Doubts]. *Pravo. Zhurnal Vysshei shkoly ekonomiki* [Law. Journal of the Higher School of Economics], (4), pp. 152–166 (in Russ.). DOI: 10.17323/2072-8166.2016.4.152.166

Ispolinov, A.S. (2017). Reshenie Suda EAES po sporu Rossiyskaya Federatsiya protiv Respubliki Belarus': pravosudie posredi politicheskogo konflikta [Judgment of the Court of the EAEU the Russian Federation v the Republic of Belarus: The Justice in the Midst of Political Conflict]. *Internet portal zakon.ru*. [online]. Available at: https://zakon.ru/

blog/2017/3/17/reshenie_suda_eaes_po_sporu_rossijskaya_federaciya_protiv_respubliki_belarus_pravosudie_posredi_poli [Accessed 12 January 2019]. (in Russ.).

Ispolinov, A.S. and Kadysheva, O.V. (2016). Praktika primenenia dosudebnogo poryadka passmotrenia sporov v sudah evrasiiskoi integracii [The Practice of Pre-trial Consideration of Disputes in the Eurasian Integration Courts]. *Zakon* [Law], (10), pp. 120–126. (in Russ.).

Kembayev, Zh. (2016). Sravnitel'no-pravovoi analiz funkcionirovania Suda Evraziyskogo ekonomicheskogo soyuza [The Comparative Study of Functioning of the Court of the Eurasian Economic Union]. *Mežđunarodnoe pravosudie* [International Justice], (2), pp. 30–45 (in Russ.).

Leigh, M. and Ramsey, S.D. (1987). Judicial Independence and Impartiality: A Preliminary Inquiry. In: L.F. Damrosch, ed. *The International Court of Justice at a Crossroads*. New York: Transnational Publ., pp. 123–155.

Neshataeva, T.N. (2016). Edinoobrasnoe pravoprimenenenie — tsel' Suda Evraziyskogo ekonomicheskogo soyuza [Uniform Law Enforcement — Goal of the Court of the Eurasian Economic Union]. *Rossiiskoe pravosudie* [Russian Justice], (11), pp. 5–17 (in Russ.).

Neshataeva, T.N. (2017). Sud EAES: ot pravovoi pozicii k deistvuyushchemu pravu [The Court of the Eurasian Economic Union: From Legal Opinion to the Effective Law]. *Rossiiskoe pravosudie* [Russian Justice], (9), pp. 5–21 (in Russ.).

Rosanò, A. (2018). Wrong Way to Direct Effect?: Case Note on the Advisory Opinion of the Court of the Eurasian Economic Union Delivered on 4 April 2017 at the Request of the Republic of Belarus. *Legal Issues of Economic Integration*, 45(2), pp. 211–219.

Seitimova, V.H. (2018). Institut osobogo mnenia: dialektika integracionnyh processov v praktike Suda Evraziyskogo ekonomicheskogo soyuza [Institute of Separate Opinion: Dialectics of Integration Processes in Practice of the Court of the Eurasian Economic Union]. *Evrasiiski yuridicheski zhurnal* [Eurasian Law Journal], (3), pp. 69–73 (in Russ.).

Sokolova, N.A. (2015). Evrasiskaya integracia: vozmozhnosti Suda Soyuza [Eurasian Integration: Powers of the Eurasian Union Court]. *Lex Russica* [Lex Russica], (11), pp. 96–103. (in Russ.).

Tolstykh, V.L. (2018) Ot apologii k apologii: nekotorye obshchie problemy deyatel'nosti Suda Evraziyskogo ekonomicheskogo soyuza [From Apology to Apology: General Problems Arising From the Activity of The Eurasian Economic Union Court]. *Mežđunarodnoe pravosudie* [International Justice], (3), pp. 66–76 (in Russ.).

Tumanyan, A.E. and Borel, Yu.S. (2016). O pravotvorchestve Suda Evraziyskogo ekonomicheskogo soyuza [The Law-Making of the Court of the Eurasian Economic Union]. *Evrasiiski yuridicheski zhurnal* [Eurasian Law Journal], (10), pp. 25–28 (in Russ.).

Volova, L.I. (2017). Perspectivy deyatel'nosti Suda Evraziyskogo ekonomicheskogo soyuza (EAES) v kontexte razvitiya evraziiskoi integracii [The Prospects of Activities of Court of the Eurasian Economic Union in the Context of Development of the Eurasian Integration]. *Evrasiiski yuridicheski zhurnal* [Eurasian Law Journal], (2), pp. 143–147. (in Russ.).

Vorobyov, M.V. (2017). O roli Suda EAES v razreshenii mezhgosudarstvennyh sporov [On the Role of the Court of the Eurasian Economic Union in the Settlement

of Inter-State Disputes]. In: Yu. N. Starilov, ed. *Sovremennye problemy mezhdunarodnogo i evraziiskogo pravosudia* Materialy Mezhdunarodnoi nauchno-prakticheskoi konferentsii. [Contemporary Problems of International and Eurasian Justice. The Materials of the International Scientific and Practical Conference]. Issue 10. Voronezh: Izdatel'skii dom VGU, pp. 127–131 (in Russ.).

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CITATION:

Baishev, Zh.N. (2019). The Court of the Eurasian Economic Union: Challenges of Functioning. *Trudy Instituta gosudarstva i prava RAN — Proceedings of the Institute of State and Law of the RAS*, 14(1), pp. 57–75.

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INTERNATIONAL OBLIGATIONS OF UNRECOGNIZED STATE. THE CASE OF TRANSDRISTRIAN MOLDAVIAN REPUBLIC

Abstract. Unrecognized states are formations separated themselves from another state and had declared itself a new self-standing state. The inner structure of the formation does not differ from the structure of other states in that it possesses a constitution, legal system and state bodies. But such a formation is not recognized by the international community in the capacity of a subject of international law or is recognized by a minor number of states.

Unrecognized states do not have interstate treaties with UN members, yet this does not mean that no international obligations are obligatory for them. General principles of international law and peremptory norms are obligatory notwithstanding recognition. Moreover, unrecognized state sometimes accept voluntarily international obligations of some treaties, still they are not recognized as parties thereof. The status of unrecognized states differ from the status of other actors not states in international relations: sometimes intrastate or even non-governmental organizations, e.g. European union, are accepted as parties to international treaties. Unrecognized states can never become parties to international treaties.

Thus a situation of irresponsibility is created, when an unrecognized state has no partners who could question a responsibility in case of a breach of international law; neither the jurisdiction of treaty bodies created to monitor implementation of the treaty obligations.

Transdnistrian Moldavian Republic is a good illustration here. Its Constitution contains a rule that the generally recognized principles and norms of international law and international treaties are a part of its legal system. The Republic does not have interstate treaties, but accepted some normative acts on the recognition of the most important human rights treaties. This is in fact a joining of the Republic to the treaties. Yet the Republic is not a party to them because the Vienna Convention on the law of international treaties 1969 allows only the subjects of international law to conclude international treaties which unrecognized Transdnistria is not. Thus the situation is created where the international community cannot submit a claim of failure to fulfill a treaty to Transdnistria.

We submit that this is not so with generally recognized norms and principles because an obligation is emerging in the contemporary international law that all actors of international intercourse must fulfill those principles and norms. The events around the indictment of the former President of the Republic are a good example of breach of international law. The Republic broke the European Convention on human rights which diminished the acceptance of international law by the Republic.

Keywords: unrecognized state, generally recognized norms and principles, responsibility in international law, international law in the legal system of a state, methods of customary development of international law

REFERENCES

Alenova, K.K. (2017). Znachenie priznaniya gosudarstv i mesto "nepriznannykh" gosudarstv v mezhdunarodnykh otnosheniyakh [The Value of the Recognition of States and the Place of "Unrecognized" States in International Relations]. In: *Razvitie nauki v sovremennom mire. Sbornik statei mezhdunarodnoi nauchno-prakticheskoi konferentsii* [The Development of Science in the Modern World. The Collection of Articles of the International Scientific-Practical Conference]. Moscow: OOO "Tsentr nauchnykh issledovanii i konsaltinga", pp. 44–49. (in Russ.).

Aust, A. (2000). *Modern Treaty Law and Practice.* Cambridge: Cambridge University
Press.

Claessen, H.J. (1996). State. In: D. Levinson and M. Ember, eds. *Encyclopedia of Cultural Anthropology.* Volume 4. New York: H. Holt.

Dörr, O. and Schmalenbach, K. eds. (2018). *Vienna Convention on the Law of Treaties. A Commentary.* 2nd ed. Berlin: Springer. DOI: 10.1007/978-3-662-55160-8

Frowein, J.A. (1987). De Facto Regime. In: R. Bernhardt, ed. *Encyclopedia of Public International Law. Instalment 4: Use of Force; War and Neutrality; Peace Treaties (N-Z).*
Amsterdam: North-Holland.

Kofeinikov, D.V. (2015). Elektronnaya torgovlya v stranakh BRIKS: sostoyanie i perspektivy [E-commerce in BRICS Countries: State and Prospects]. *Sovremennoe pravo* [Modern Law]. 2015. № 8. 136–138. (in Russ.).

Kovban, A.V. (2016). Formy priznaniya gosudarstv v mezhdunarodnom prave i sotrudnichestvo nepriznannykh gosudarstv [Forms of Recognition of States in International Law and Cooperation of Unrecognized States]. In: Yu. G. Chernyshov, ed. *Dnevnik Altaiskoi shkoly politicheskikh Issledovanii. No 32. Sovremennaya Rossiya i mir: al'ternativy razvitiya (Separatizm i ego rol' v mirovom politicheskom protsesse): sbornik nauchnykh statei* [The Diary of the Altai School of Political Studies. No 32. Modern Russia and the World: Development Alternatives (Separatism and its Role in the Global Political Process): The Collection of Scientific Articles]. Barnaul: Altaiskii universitet Publ., pp. 42–46. (in Russ.).

Lukashuk, I.I. (2004). *Sovremennoe pravo mezhdunarodnykh dogovorov* [Modern Law of International Treaties]. Volume 1. Moscow: Wolters Kluwer. (in Russ.).

Lukashuk, I.I. (2005). *Mezhdunarodnoe pravo. Obshchaya chast'* [International Law. General Part]. Moscow: Wolters Kluwer, 2005. (in Russ.).

Marusin, I.S. (2000). O nekotorykh pravovykh aspektakh vzaimootnoshenii s nepriznannymi gosudarstvami [Some Legal Aspects of Relations with Unrecognized States]. *Rossiiskii ezhegodnik mezhdunarodnogo prava* [Russian Year-Book of International Law]. Saint Petersburg: Rossiya-Neva, pp. 218–229. (in Russ.).

Mednikova, A.A. (2018). Istoriko-teoreticheskii analiz pravovogo statusa nepriznannykh gosudarstv na primere pretsedentov sushchestvovaniya nepriznannykh gosudarstv v sovremennom mire [Historical and Theoretical Analysis of Legal Status of Unrecognized States on the Example of Precedents of Unrecognized States in the Modern World]. *Mir yuridicheskoi nauki* [World of Jurisprudence], (8), pp. 21–25. (in Russ.).

Movchan, A.P. (1996). *Mezhdunarodnyi pravoporyadok* [International Law and Order]. Moscow: IGP RAN. (in Russ.).

Olson, J.S., Lee, B.P. and Pappas, N.C.J. eds. (1994). *An Ethnohistorical Dictionary of the Russian and Soviet Empires*. Westport: Greenwood Press.

Smith, G., Law, V., Wilson, A., Bohr, A. and Allworth, E. eds. (1998). *Nation-Building in the Post-Soviet Borderlands. The Politics of National Identities.* Cambridge: Cambridge University Press.

Tams, C.J., Tzanakopoulos, A., Zimmerman, A. and Richford, A.E. eds. (2014). *Research Handbook on the Law of Treaties.* Cheltenham; Northampton: Edward Elgar Publishing.

Zhigulin, A.M. (2016). K voprosu ob osobennostyakh zakonotvorcheskogo protsessa gosudarstvakh s nepriznannym statusom [To the Question about the Peculiarities of the Legislative Process in the State With an Unrecognized Status]. *Vestnik rossiiskoi natsii* [Bulletin of Russian Nation], (4), pp. 205–214. (in Russ.).

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Proceedings of the Institute of State and Law of the RAS, 14 (1), pp. 76–93.

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COSMONAUT'S LEGAL STATUS: BRIEF PROFESSIONAL COMMENTARY

Abstract. For the first time ever, the status of a cosmonaut of the Russian Federation shall be treated not only through the review of the legislation or a separate regulatory act but also through the summarization of practical activity in the area of manned cosmonautics.

The history of shaping a legal status of a cosmonaut has started since 1960. Over the first two decades of manned cosmonautics, four Regulations on cosmonauts of the USSR have been introduced and refined. However, for a quarter of a century in the Russian Federation, the practical space activities have been running without any instrument regulating the legal status of a cosmonaut. During the period 1992–2017, the preparation of the Regulation on cosmonauts in the Russian Federation was facing serious obstacles.

The Regulation on cosmonauts of the Russian Federation approved by the Russian Government in 2017 has significant drawbacks and gaps. A list of challenges of the legal status of a cosmonaut to be addressed is provided. It is expected to

supplement the Regulation on cosmonauts by new standards pertaining cosmonaut's rights and obligations based upon space expertise.

It is proposed to define the concept "cosmonaut" and cosmonaut's job descri-
ption using four components: speciality "cosmonaut", qualification " cosmonaut",
position "cosmonaut" and profession "cosmonaut". Such approach differs from the logic of the applicable Regulation on cosmonauts 2017 where the cosmonaut's job description shall be treated as a synonym of the cosmonaut's professional activity.

The need for availability of a Model Contract for execution of manned space mission and Model Contract for preparation to execution of manned space mission is rationalized; its content is provided in sufficient detail.

It is proposed to introduce an international dimension into the legal status of a cosmonaut, and in doing so not only to use the whole array of rights and privilegesof cosmonauts stipulated by the international law, but also to empower a cosmonautto act as a representative of the State both at the overseas or international mannedspace object.

The new regulatory acts, the need for which is given rationale in the article, will contribute to bridging gaps of legal regulation in the area of space missions in Russia
between the western expertise and national practice of manned cosmonautics.

Keywords: astronaut, astronaut's labour function, professional activities of an
astronaut, astronaut's rights and obligations, astronaut's legal status, contract for
undertaking of space mission, Statute on astronauts

REFERENCES

Baturin, Yu.M. (2018). *Vlasteliny beskonechnosti. Kosmonavt o professii i sud'be* [The Lords of Infinity. The Cosmonauts Reflection on Profession and Destiny]. Moscow: Alpina Publ.

Bugrov, L. Yu. (2013). *Trudovoi dogovor v Rossii i za rubezhom* [Employment Contract in Russia and Abroad]. Perm: Permskii gosudarstvennyi natsional'nyi issledovatel'skii universitet.

Comins, N.F. (2007). *The Hazards of Space Travel. A Tourist's Guide.* New York: Villard.

Harrison, A.A. (2001). *Spacefaring. The Human Dimension*. Berkeley: University of California Press.

Hobe, S., Schmidt-Tedd, B., Schrogl, K.-U. and Stubbe, P. eds. (2017). *Cologne Commentary on Space Law. Outer Space Treaty.* Berlin: Berliner Wissenschafts-Verlag.

Kichenina, V.S. (2017) Pravovoi status kosmonavtov i inykh uchastnikov kosmicheskikh poletov [The Legal Status of Cosmonauts and other Participants in Space Flights]. *Voprosy rossiiskogo i mezhdunarodnogo prava* [Matters of Russian and International Law], 7 (12A), pp. 166–171.

Yakovenko, A.V. (2002). *Kosmicheskie proekty. Mezhdunarodno-pravovye problem* [Space Projects. International Legal Issues]. Moscow: Nauchnaya kniga.

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Батурин Ю.М. Правовой статус космонавта: краткий профессиональный комментарий // Труды Института государства и права РАН / Proceedings of the Institute of State and Law of the RAS. 2019. Т. 14. № 1. С. 94–120.

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Baturin, Yu.M. (2019). Cosmonaut's Legal Status: Brief Professional Commentary. *Trudy Instituta gosudarstva i prava RAN — Proceedings of the Institute of State and Law of the RAS*, 14(1), pp. 94–120.

АНАТОЛИЙ ВАЛЕНТИНОВИЧ НАУМОВ

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ТЕОРИЯ УГОЛОВНОГО ПРАВА НЕ ДОЛЖНА СВОДИТЬСЯ К АНАЛИЗУ И КРИТИКЕ УГОЛОВНОГО ЗАКОНОДАТЕЛЬСТВА

Аннотация. Уголовное право как в нормативном, так и в социологическом смыслах включает в себя три компонента — уголовный закон, судебную практику и уголовно-правовую доктрину, и развитие этой отрасли права возможно только в их единстве. Наука уголовного права в определенном смысле выше других компонентов указанной «триады» и предполагает разработку отраслевых принципов, целей и задач. При этом совершенствование уголовного законодательства — не единственная цель теории уголовного права. Она не должна ограничиваться только критикой действующего законодательства и предложениями по его совершенствованию. Однако подавляющее большинство современных отечественных работ по уголовному праву — монографий, статей в периодических изданиях, диссертаций — посвящены критике Уголовного кодекса РФ. Действительно, он не совершенен, но «перекос» в «законотворческую» сторону существенно сокращает сферу уголовно-правовых исследований. И всегда будут востребованы теоретические исследования, посвященные анализу предмета и метода, системы и задач уголовного права, его источников.

Дискуссионным, в частности, остается вопрос о юридической природе постановлений Пленума Верховного Суда РФ и постановлений Конституционного Суда РФ. Разъяснения Пленума Верховного Суда РФ являются особой разновидностью судебного толкования, с их помощью суды получают достаточно надежный инструмент для понимания «буквы» уголовного закона и ее применения к конкретному случаю. В постановлениях Конституционного Суда РФ нередко затрагиваются методологические проблемы науки уголовного права. Применительно к ряду уголовно-правовых запретов решения Конституционного Суда РФ являются источником уголовного права наряду с Уголовным кодексом. Конституционный Суд РФ конкретизировал наиболее важный принцип уголовного

права — принцип законности и уточнил характеристики преступности запрещенных уголовным законом общественно опасных деяний, что прямо связано с вопросом об основаниях уголовной ответственности. В этом смысле Конституционный Суд РФ сформулировал новое и важное дополнение содержания принципа законности — требование определенности уголовно-правовых норм, и в первую очередь, уголовно-правового запрета. Таким образом, судебный орган опередил доктрину уголовного права в решении одного из важнейших для уголовного судопроизводства вопроса.

Ключевые слова: уголовное право, наука уголовного права, Уголовный кодекс РФ, судебная практика, постановления Пленума Верховного Суда РФ, нормативность, постановления Конституционного Суда РФ, принцип законности

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THE THEORY OF CRIMINAL LAW SHOULD NOT BE REDUCED TO THE ANALYSIS AND CRITICISM OF CRIMINAL LEGISLATION

Abstract. In both normative and sociological senses criminal law includes three components — criminal legislation, judicial practice, and criminal law doctrine, and the development of this branch of law is possible only in their unity. The criminal law doctrine is to a certain extent superior to the other components of the "triad" and involves the development of the branch's principles, goals and objectives. At the same time, the improvement of criminal law is not the only goal of the theory of criminal law. It should not be limited only to criticism of the current legislation and proposals for its improvement. However, the vast majority of modern domestic criminal law publications, such as monographs, articles in legal periodicals, dissertations, are devoted to criticism of the current Criminal Code of the Russian Federation. Indeed, the current criminal law is not perfect, but the "imbalance" of research into the "law-making" side significantly reduces the scope of criminal law doctrine. And there will always be demand for theoretical studies on the analysis of the subject and method, system and objectives of criminal law, its sources.

Debatable, for example, still is the issue of the legal nature of the decisions of the Plenum of the Supreme Court of the Russian Federation and, in particular, the judgments of the Constitutional Court of the Russian Federation. The explanations

of the Plenum of the Supreme Court are a special kind of judicial interpretation and a fairly reliable tool for the courts to understand "the letter of the criminal law" and it's applicability to the particular case. As for the assessment of the legal nature of the judgments of the Constitutional Court of the Russian Federation, thecriminal law doctrine often fails to notice that they touch upon the methodologicalproblems of the theory of criminal law. In relation to a number of criminal lawprohibitions, judgments of the Constitutional Court of the Russian Federation area source of criminal law, along with the Criminal Code. The Constitutional Court ofthe Russian Federation specified the most important principle of criminal law —the principle of legality and clarified the characteristics of criminality of sociallydangerous acts prohibited by criminal law, which is directly related to the issueof criminal liability. In this sense, the Constitutional Court formulated a new andimportant addition to the content of the principle of legality — the certainty ofcriminal law rules, and, first of all, the criminal law prohibitions. Thus, the judicialauthority overtook the criminal law doctrine in solving one of the most importantissues for criminal proceedings.

Keywords: criminal law, criminal law doctrine, Criminal Code of the Russian Federation, judicial practice, decisions of the Plenum of the Supreme Court of the Russian Federation, normativity, judgments of the Constitutional Court of the Russian Federation, the principle of legality

REFERENCES

Alekseev, S.S. (1981). *Obshchaya teoriya prava*: *v 2-kh t.* [General Theory of Law in Two Volumes]. Volume I. Moscow: Yuridicheskaya literature. (in Russ.).

Alekseev, S.S. (1982). *Obshchaya teoriya prava: v 2-kh t.* [General Theory of Law in Two Volumes]. Volume II. Moscow: Yuridicheskaya literature. (in Russ.).

Babayev, M.M. and Pudovochkin, Yu.E. (2015). Dialektika traditsiy i novatsiy v ugolovnom prave [Dialectics of Traditions and Innovations in Criminal Law]. *Biblioteka kriminalista. Nauchnyy zhurnal* [Library of the Criminalist. Scientific Journal], (2), pp. 9–28.
(in Russ.)

Bobotov, S.V. (1978). *Burzhuaznaya sociologiya prava* [Bourgeois Sociology of Law]. Moscow: Yuridicheskaya literatura. (in Russ.).

Bratus, S.N. ed. (1975). *Sudebnaya praktika v sovetskoy pravovoy sisteme* [Judicial Practice in the Soviet Legal System]. Moscow: Yuridicheskaya literatura. (in Russ.).

Dubber, M.D. (2005). The Promise of German Criminal Law: A Science of Crime and Punishment. *German Law Journal*, 6(7), pp. 1049–1071.

Fletcher, G.P. (2000). The Nature and Function of Criminal Theory. *California Law Review*, 88(3), pp. 687–704. DOI: 10.15779/Z38PT53

Gardner, J.A. (1961). The Sociological Jurisprudence of Roscoe Pound (Part I). *Villanova Law Review*, 7(1), pp. 1–26.

Gershenzon, M. (1990). Predislovie [Preface]. In: *Vekhi: Sbornik statei o russkoi intelligentsii N.A. Berdyaeva, S.N. Bulgakova, M.O. Gershenzona, A.S. Izgoeva, B.A. Kistya-*
kovskogo, P.B. Struve, S.L. Franka [Landmarks: A Collection of Articles on the Russian Intelligentsia of N.A. Berdyaev, S.N Bulgakov, M.O. Gershenzon, A.S. Izgoev, V.A. Kistiakovskii, P.V. Struve, S.L. Frank]. Reprint of the Edition of 1909. Moscow: "Novosti" Publ. (APN), pp. 3–4. (in Russ.).

Holmes, O.W. (1897). The Path of the Law. *Harvard Law Review*, 10(8), pp. 457–478.

Holmes, O.W. (1899). Law in Science and Science in Law. *Harvard Law Review*, 12(7), pp. 443–463.

Jescheck, H-H. (1981). The Significance of Comparative Law for Criminal Law Reform. *Hastings International and Comparative Law Review*, 5(1), pp. 1–25.

Lacey, N. (2001). In Search of the Responsible Subject: History, Philosophy and Social Sciences in Criminal Law Theory. *Modern Law Review*, 64(3), pp. 350–371. DOI:
10.1111/1468-2230.00325

Luneev, V.V. (2004). Tendentsii sovremennoy prestupnosti i bor'ba s ney v Rossii [Trends in Modern Crime and Fight against it in Russia]. *Gosudarstvo i pravo* [State and Law], (1), pp. 5–18. (in Russ.).

Pound, R. (1922). *An Introduction to the Philosophy of Law*. New Haven: Yale University Press.

Rarog, A.I. ed. (2018). *Ugolovnoe pravo Rossii. Chasti Obshchaya i Osobennaya* [Criminal Law of Russia. General and Special Parts]. 10th ed. Moscow: Prospect. (in Russ.).

Robinson, P.H. and Darley, J.M. (1998). Objectivist Versus Subjectivist Views of Criminality: A Study in the Role of Social Science in Criminal Law Theory. *Oxford Journal of Legal Studies*, 18(3), pp. 409–447.

Seidler, G.L. (1957). *Doktryny prawne imperializmu*. Warszawa, Państwowe wydawnictwo naukowe. (in Pl.). [Russ. ed.: Seidler, G.L. (1959). *Yuridicheskaya doktrina imperializma* [Legal Doctrine of Imperialism]. Translated from Polish by A.Kh. Makhnenko. Moscow: Gosyurizdat].

Shlyapochnikov, A.S. (1960). *Tolkovanie ugolovnogo prava* [Interpretation of Criminal Law]. Moscow: Gosyurizdat. (in Russ.).

Stephen, C. (2012). International Criminal Law: Wielding the Sword of Universal Criminal Justice. *International and Comparative Law Quarterly*, 61(1), pp. 55–89. DOI: 10.1017/S0020589311000704

Stone, J. (1965). Roscoe Pound and Sociological Jurisprudence. *Harvard Law Review*, 78(8), pp. 1578–1584. DOI: 10.2307/1338955

Topornin, B.N. (2000). Sistema istochnikov prava: tendentsii razvitiya [Sources of Law System: Trends of Development]. In: *Sudebnaya practika kak istochnik prava* [Judicial Practice as a Source of Law]. Moscow: Jurist, pp. 9–45. (in Russ.).

Tumanov, V.A. (1971). *Burzhuaznaya pravovaya ideologiya. K kritike ucheniy o prave* [Bourgeois Legal Ideology. To Criticism of Doctrines of Law]. Moscow: Nauka. (in Russ.).

Vengerov, A.B. (1966). O pretcedentnom tolkovanii pravovoy normy [On the Precedent Interpretation of a Legal Norm]. In: *Uchenye zapiski VNIISZ* [Scientific Notes of the All-Union Research Institute of Soviet Legislation]. Issue 6. Moscow: VNIISZ Publ., pp. 3–19. (in Russ.).

Volzhenkin, B.V. (2005). *Sluzhebnye prestupleniya* [The Official Malfeasances]. Saint Petersburg: R. Aslanov Publ.; "Yuridicheskiy center Press". (in Russ.).

Zagorodnikov, N.I. (1961). Prestuplenuya protiv zhizni [Crimes against Life]. Moscow: Gosyurizdat. (in Russ.).

Zhalinskiy, A.E. (2008). *Ugolovnoe pravo v ozhidanii peremen: teoretico-instrumental'nyi analiz* [Criminal Law in Expectation of Changes: Theoretical and Instrumental Analysis]. Moscow: Prospect. (in Russ.).

Zhalinskiy, A.E. (2015). Aktualnye problemy ugolovnogo prava Rossii i zarubezhnykh gosudarstv. Retsenziya na sbornik «Aktualnye problemy ugolovnogo prava i kriminologii [Current Issues in Criminal Law of Russia and Foreign States. Review of Collection of Articles "Current Issues in Criminal Law and Criminology"]. In: Zhalinskiy, A.E. *Izbrannyye trudy. T. 3. Ugolovnaya politologiya. Sravnitelnoye i mezhdunarodnoye ugolovnoye*

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REGULATION OF TAX AND CURRENCY EXCHANGE OBLIGATIONS OF INDIVIDUALS, OWNING THE PROPERTY ABROAD

Annotation. Globally financial regulation of the obligations of individuals, who owning property abroad, is influenced by two competing tendencies: the need to liberalize currency exchange regulation and the need to strengthen fiscal control over taxpayer operations abroad. The following processes show the intensive development of tax law in many countries: spread practice of giving to taxpayer, owning the property abroad, the additional procedural obligations, that are not related to the fact of presence of the taxation object; introduction the tax rules on controlled foreign corporations; the development of new measures to counter tax evasion at both the domestic and international levels.

The level of economic development of a country determines the extent to which the exclusion of currency exchange laws by tax rules is expressed. If in developed countries the most important task is to combat tax evasion, then in developing countries the improvement of currency exchange relations in order to preserve economic stability often comes first. Compliance with this trend can be noted in the development of financial regulation in the Russian Federation. Tax liabilities of the owners of property abroad are constantly becoming more complex, both basic and derivative obligations of individuals are expanding, at the same time, there is some mitigation of currency legislation, which nevertheless needs to be improved to match the level of development of currency relations with the participation of individuals.

Keywords: property abroad, individuals obligations, foreign bank account, share in a foreign organization, controlled foreign corporation, resident, tax liabilities, currency regulation

Balakina, A.P. (2004). Grazhdanstvo i rezidentstvo kak elementy pravovogo statusa nalogoplatel'shchika [Citizenship and Residency as Elements of the Legal Status of the Taxpayer]. *Finansovoe pravo* [Financial Law], (5), pp. 17–20. (in Russ.).

Barnashov, A. (2000). Eksterritorial'naya yurisdiktsiya SShA: doktrina "minimal'nykh kontaktov" [United States Extraterritorial Jurisdiction: The "Minimum Contacts" Doctrine]. *Rossiiskaya yustitsiya* [Russian Justitia], (5), pp. 42–48. (in Russ.).

Dubovizkaja, E.A. (2008). *Evropeiskoe korporativnoe pravo* [European Corporate Law]. 2nd ed. Moscow: Wolters Kluwer. (in Russ.).

Ferlazzo, N.L. and Serranò, M.V. (2007). Il condono fiscale, nei rapporti con lo Statuto del contribuente e con gli aiuti di Stato, alla luce delle conclusioni dell'avvocato generale dell'UE del 25 ottobre 2007. *Bollettino tributario d'informazioni*, (23), pp. 1845–1847. (in It.).

Filatova, V.V. (2017). Osobennosti valyutnogo regulirovaniya stran v usloviyakh chlenstva v EAES [The Characteristic Features of Foreign Exchange Regulation under the Eurasian Economic Union Membership]. *Tamozhennaya politika Rossii na Dal'nem Vostoke* [Customs Policy of Russia in the Far East], (2), pp. 92–97. (in Russ.).

Golovko, L.V. (2015). Dva al'ternativnykh napravleniya ugolovnoi politiki po delam ob ekonomicheskikh i finansovykh prestupleniyakh: Crime Control i Doing Business [Two Alternative Directions of Criminal Procedure Policy in Cases on Economic and Financial Crimes: Crime Control and Doing Business]. *Zakon* [Law], (8), pp. 32–45. (in Russ.).

Hilling, M. (2013). Justifications and Proportionality: An Analysis of the ECJ's Assessment of National Rules for the Prevention of Tax Avoidance. *Intertax*, 41(5), pp. 294–307.

Joscelyne, M. and Wentworth-May, M. (2012). The UK's New CFC Regime. [online] Thomson Reuters Practical Law. Available at: https://uk.practicallaw.thomsonreuters.com/: resource id 0–519–8741 [Accessed 22 December 2018].

Khamenushko, I.V. (2013). *Valyutnoe regulirovanie v Rossiiskoi Federatsii: pravila, kontrol', otvetstvennost'* [Currency Regulation in the Russian Federation: The Rules, Control, Responsibility]. Moscow: Norma. (in Russ.).

Khamenushko, I.V. and Romashchenko, L.V. (2018). Liberalizatsiya valyutnogo zakonodatel'stva dlya fizicheskikh lits, prozhivayushchikh za rubezhom [Liberalisation of Currency Legislation for Individuals Living Abroad]. *Nalogoved* [Nalogoved], (3), pp. 81–89. (in Russ.).

Krokhina, Yu.A. (2011). *Finansovoe pravo Rossii* [Financial Law of Russia]. 4th ed. Moscow: Norma; INFRA-M. (in Russ.).

Krokhina, Yu.A. (2015). Amnistiya kapitalov: ponyatie, pravovye osnovy i garantii realizatsii [Capital Amnesty: Concept, Legal Basis and Guarantees of Implementation]. *Akademicheskii yuridicheskii zhurnal* [Academic Law Journal], (3), pp. 19–24. (in Russ.).

Lukyanets, K. and Polezharova, L. (2016). Deofshorizatsiya rossiiskoi ekonomiki: prognoz nalogovykh postuplenii ot kontroliruemykh inostrannykh kompanii. [De-Offshorization of the Russian Economy: The Forecast of Tax Revenues Received from Controlled Foreign Companies]. *Ekonomika. Nalogi. Pravo* [Economy. Taxes. Law], 9(3), pp. 128–134. (in Russ.).

Manyakhin, T.V. (2004). Mirovaya praktika valyutnogo regulirovaniya: osnovnye metody i problemy ikh primeneniya [World Practice of Currency Regulation: The Main Methods and Problems of Its Application]. *Finansy i kredit* [Finance and Credit], (25), pp. 66–71. (in Russ.).

Milogolov, N.S. and Pinskaya, M.R. (2014). Pravila nalogooblozheniya kontroliruemykh inostrannykh kompanii: sravnitel'nyi analiz [Controlled Foreign Companies' Taxation Rules: Comparative Analysis]. *Finansovyi zhurnal* [Financial Journal], (4), pp. 36–46. (in Russ.).

Ovcharova, E.V. (2013). *Finansovyi kontrol' v Rossiiskoi Federatsii* [Financial Control in the Russian Federation]. Moscow: Zertsalo-M. (in Russ.).

Pepelyaev, S.G. ed. (2015). *Nalogovoe pravo* [Tax Law]. Moscow: Alpina Publ. (in Russ.).

Pistone, P. (2014). Coordinating the Actions of Regional and Global Players during the Shift from Bilateralism to Multilateralism in International Tax Law. *World Tax Journal*, 6(1), pp. 3–9.

Rust, A. (2008). CFC Legislation and EC Law. *Intertax*, 36(11), pp. 492–501.

Sadchikov, M.N. (2016). Kontrol' kak kriterii nalogovo-pravovogo statusa kontroliruemoi inostrannoi kompanii [Control as an Element of Tax Status of Controlled Foreign Company]. *Vestnik Saratovskoi gosudarstvennoi yuridicheskoi akademii* [Bulletin of Saratov State Law Academy], (5), pp. 142–146. (in Russ.).

Samarin, A.A. (2015). Pravo i eksterritorial'nost' v usloviyakh globalizatsii [Law and Extraterritoriality in the Light of Globalization]. *Vestnik Saratovskoi gosudarstvennoi yuridicheskoi akademii* [Bulletin of Saratov State Law Academy], (1), pp. 115–124. (in Russ.).

Schmidt, P.K. (2016). Taxation of Controlled Foreign Companies in Context of the OECD/G20 Project on Base Erosion and Profit Shifting as well as the EU Proposal for the Anti-Tax Avoidance Directive — An Interim Nordic Assessment. *Nordic Tax Journal*, (2), pp. 87–112. DOI: 10.1515/ntaxj-2016-0005

Shakhmamet'ev, A.A. (2014). *Mezhdunarodnoe nalogovoe pravo* [International Tax Law]. Moscow: Mezhdunarodnye otnosheniya. (in Russ.).

Sinel'nikov-Murylev, S.G., Trunin, P.V. and Levashenko, A.D (2015). Aktual'nye problemy valyutnogo regulirovaniya operatsii fizicheskikh lits v Rossii [Current Problems of Foreign Exchange Regulations of Individuals` Transactions in Russia]. *Rossiiskii vneshneekonomicheskii vestnik* [Russian Foreign Economic Journal], (12), pp. 3–13. (in Russ.).

Starzhenetskaya, L.I. (2016). *Pravovoe regulirovanie nalogooblozheniya kontroliruemykh inostrannykh kompanii: opyt zarubezhnykh stran i Rossii* [Legal Regulation of Taxation of Controlled Foreign Companies: The Experience of Foreign Countries and Russia]. The Doctor of Legal Sciences Thesis. Moscow: Moscow State Institute of International Relations (University) of the Ministry for Foreign Affairs of Russia. (in Russ.).

Tikhomirova, A.V. (2016). Valyutnye operatsii [Foreign Exchange Transactions]. *Vestnik Yuzhno-Ural'skogo gosudarstvennogo universiteta. Seriya Pravo* [Bulletin of South Ural State University. Series Law, 16(4), pp. 59–65. (in Russ.). DOI: 10.14529/law160410

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ADMINISTRATIVE REFORMS IN INDIA

Abstract. Unlike other developing countries, India abandoned the concept of catching-up development, and all its administrative reforms supported the ideology of Indian identity by introducing the most promising scientific achievements in the field of public administration. We identify three stages of administrative reforming in India: 1) the stage of formation of the national public administration; 2) the stageof the state interventional development of the public administration; 3) the stageof liberalization and informatization of the public administration. Since India hadreceived independence, the new state used of the achievements of the colonialcivil service and maintained institutions guaranteeing the unity of the state. TheIndian government has succeeded in establishing a "living democracy" as theinherent part of Indian culture which supports the traditions of pluralism and isbased on the application of rule by consensus and accommodation. Establishedin 1966, the First Administrative Reforms Commission ensured the leading role ofthe state in economic development. It improved the organizational foundations ofpublic administration, including the mechanisms of socio-economic planning. TheCommission's reports prepared the base for constitutional recognition of India as asocialist republic. The most important instrument of the Union public administrationwas the licensing system, which extended to all spheres of economic activity andspawned the creation of numerous inspections with broad jurisdictional powers.The economic crisis and the inability of the Union to solve the social problems byinterventionist methods — these were the reasons of the liberal reforms of the 1990s — 2000s. The rejection of the license system, the transition to the methods

of soft administrative and legal regulation, the empowerment of decentralized bodies have changed the main areas of activity of the Indian public administration. The National Institute for Transforming India has provided the solutions to the problems in 80 areas of the country's socio-economic development, acting through the mediation of all stakeholders — central, state and local government officials, public organizations and citizens. Liberal reforms are also aimed at democratizing governance and forming a citizen-oriented administration. They are focused on the implementation of innovative e-technologies in business and public administration.

Keywords: public administration, democracy, methods of governance, Welfare State, New Public Management, New Public Governance, E-government

REFERENCES

Baghel, C.L. and Kumar, Y. (2005). *Public Administration*. New Delhi: Kanishka Publ.

Grinin, L. (2013). Modeli razvitiya Kitaya i Indii [Development Model of China and India]. *Gosudarstvennaya sluzhba* [Public Administration], (2), pp. 87–90. (in Russ.).

Luce, E. (2010). *In Spite of the Gods: The Strange Rise of Modern India*. New York:Knopf Doubleday Pub. [Russ. ed: Luce, E. (2010). *Bez oglyadki na bogov. Vzlet sovremennoi*
Indii. Translated from English by B.Pinsker. Moscow: IRISEN; Mysl'].

Manor, J. (1983). Anomie in Indian Politics: Origins and Potential Wider Impact. *Economic and Political Weekly*, 18(19/21), pp. 725–734.

Nilekani, N. (2009). *Imagining India: The Idea of a Renewed Nation*. New York: Penguin Press. [Russ. ed.: Nilekani, N. (2010).*Obraz novoi Indii: evolyutsiya preobrazuyushchikh idei*. Translated from English by O. Dakhnov. Moscow: Alpina Publ.].

Popondopulo, F. and Sheveleva, N.A. ed. (2015). *Publichno-chastnoe partnerstvo v Rossii i zarubezhnykh stranakh: pravovye aspekty* [Public-Private Partnership in Russia and Foreign Countries: Legal Aspects].Moscow: Infotropik Media. (in Russ.).

Prasad, K. (2006). *Indian Administration: Politics, Policies and Prospects*. Delhi: Pearson Longman.

Rai, Sh. (2017).Fragmented Responses toward Global Governance: The Indian Context. *Indian Journal of Public Administration*, 63(1), pp. 63–84. DOI: 10.1177/0019556117689849

Rajan, A. (2017).Institutional Dynamics of Governance Reform in India (1991–2016). *Indian Journal of Public Administration*, 63(1), pp. 41–62. DOI: 10.1177/0019556116689765

Rudolph, L.I. and Rudolph, S.H. (1987). *In pursuit of Lakshmi. The Political Economy of the Indian State*. Chicago; London: The University of Chicago Press.

Sharma, A. (1982). The Cultural Context of Management. *Indian Journal of Public Administration*, 28(1), pp. 145–156. DOI: 10.1177/0019556119820110

Sharma, A. (2008). New Public Management in India: Reinventing Administration. *Indian Journal of Public Administration*, 54(1), pp. 91–111. DOI: 10.1177/0019556120080107

Steger, M.B. (2003). *Globalization: A Very Short Introduction*. Oxford: Oxford University Press.

Subrata, K.M. (2014). *Politics in India. Structure, Process, and Policy.* New Delhi: Oxford University Press.

Ul'yanovskii, R.A. (1989). Vstupitel'naya stat'ya [Introductory Article]. In: Nehru, J. *Vzglyad na vsemirnuyu istoriyu. Pis'ma k docheri iz tyur'my, soderzhashchie svobodnoe izlozhenie istorii dlya yunoshestva. V 3 t.* [Glimpses of World History: Being Further Letters to His Daughter Written in Prison, and Containing a Rambling Account of History for Young People. In Three Volumes]. Translated from English by N. Ter-Akopyan. Volume 1. Moscow: Progress. (in Russ.).

Volkova, A.V. (2015). Osobennosti formirovaniya politiko-administrativnykh institutov razvitiya v sovremennoi Indii [The Features of Formation of Political and Administrative Development Institutions of Modern India]. *Vestnik Sankt-Peterburgskogo universiteta. Seriya 6. Politologiya. Mezhdunarodnye otnosheniya* [Vestnik of Saint Petersburg University. Series 6. Political Science. International Relations], (3), pp. 37–45. (in Russ.).

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"THE PATH TO TRUTH IN SCIENCE IS A COMMUNICATIVE PROCESS": ANNIVERSARY OF PROFESSOR D.I. LUKOVSKAYA

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REVIEW

Cercel, C.S. (2018). *Towards a Jurisprudence of State Communism. Law and the Failure of Revolution*. London: Routledge. 240 pp.

Abstract. The present essay is a review of the 2018 book by Professor Cosmin Cercel *Towards a Jurisprudence of State Communism. Law and the Failure of Revolution*. In reviewer's opinion, this book is a good contrast to the books and articles written in the first post-Soviet years in the Central European countries, when the intellectuals glorified the Western ideals and condemned the socialist past of their countries and the ideological legacy of the communist regimes. The focal point of the book under review is to rethink the history of authoritarianism in Romania through analyzing the formalist legal ideology that was utilized by communist regimes for their purposes. In author's opinion, the ideas of Soviet jurisprudence do not significantly differ from the bourgeois discourse about law that characterizes the modernity. In the perspective of this discourse, the formal and procedural autonomy of legal rules (the regime of legality) is opposed to the substantial exceptions from these rules which are justified with references to higher values. These latter underpin the legitimacy of the laws. There were different versions of postulation of such values in the Western and in the communist legal theories, but all these versions are equally based on the same dualist paradigm of legal thinking.

The author contextualizes this analysis of the legal philosophy of the interwar period within a broader perspective of psychoanalysis. In his opinion, all the

theoretical attempts to understand law through its connection with the state represented a kind of psychological defense of the classical jurisprudence against the revolutionary changes of the first decades of the XX century. These attempts are considered by the author as a function of psychoanalytical replacement and ousting of the historical facts from legal mentality, as far as these facts undermined the legal rationality and demonstrated the triumph of political violence over legal order. This semantic background was important for legal and political changes in the postwar Romania after 1945 — the wide discretional powers of the regime were justified with reference to the principle of exception which allows avoidance of rules in the name of people, country or state. This theoretical construction was largely utilized by the authoritarian regime which did not invent anything new but just followed the theoretical paths protracted in the interwar legal philosophy and theory.

Keywords: Communist theory of law, regime of legality, rule and exception, Marxism, legal formalism, ideology

REFERENCES

Agamben, G. (1995). *Il potere sovrano e la nuda vita. Homo Sacer*. Torino: Giulio Einaudi editore. (in It.). [Russ. ed.: Agamben, G. (2011). *Homo Sacer. Suverennaya vlast' i golaya zhizn'* [Homo Sacer. Sovereign Power and Bare Life]. Translated from Italian by I. Levina, O. Dubitskaya, P. Sokolov, M. Velizhev and S. Kozlov. Moscow: Evropa Publ.].

Agamben, G. (2003). *State di eccezione. Homo Sacer*. Torino: Bollati Borighieri. (in It.). [Russ. ed.: Agamben, G. (2011). *Homo Sacer. Chrezvychainoe polozhenie* [Homo Sacer. State of Exception]. Translated from Italian by M. Velizhev, I. Levina, O. Dubitskaya and P. Sokolov. Moscow: Evropa Publ.].

Benjamin, W. (1965). *Zur Kritik der Gewalt und andere Aufsätze*. Frankfurt am Main: Suhrkamp Verlag. (in Germ.). [Russ. ed.: Benjamin, W. (2011). K kritike nasiliya [Toward the Critique of Violence]. Translated from German by I.M. Chubarov. *Kul'tivator* [Cultivator], (1), pp. 114–126].

Cercel, C.S. (2018). *Towards a Jurisprudence of State Communism. Law and the Failure of Revolution*. London: Routledge. DOI: 10.4324/9781315544113

Hendley, K. (2011). Varieties of Legal Dualism*:* Making Sense of the Role of Law in Contemporary Russia. *Wisconsin International Law Journal*, 29(2), pp. 233–262.

Lenin, V.I. (1969). Gosudarstvo i revolyutsiya [State and Revolution]. In: Lenin, V.I. *Polnoe sobranie sochinenii* [Collected Works]. 5th ed. Volume 33. Moscow: Izdatel'stvo politicheskoi literatury, pp. 1–120. (in Russ.).

Marx, K. and Engels, F. (1848). *Manifest der Kommunistischen Partei*. London: Gedruckt in der Office der "Bildungs-Gesellschaft für Arbeiter" von J.E. Burghard. (in Germ.). [Russ. ed.: Marx, K. and Engels, F. (1955). Manifest kommunisticheskoi partii [Manifesto of the Communist Party]. In: Marx, K. and Engels, F. *Sochinenija* [Collected Works]. 2nd ed. Volume 4. Moscow: Gosudarstvennoe izdatel'stvo politicheskoi literatury, pp. 419–459].

Pashukanis, E.B. (1980). Obshchaya teoriya prava i marksizm [Toward a General Theory of Law and Marxism]. In: Pashukanis, E.B. *Izbrannye proizvedeniya po obshchei teorii prava i gosudarstva* [Selected Writings on the General Theory of Law and State]. Moscow: Nauka, pp. 32–181. (in Russ.).

Schmitt, C. (1922). *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität*. München: Duncker und Humblot. (in Germ.). [Russ. ed.: Schmitt, C. (2000). Politicheskaya teologiya. Chetyre glavy k ucheniyu o suverenitete [Political Theology. Four Chapters on the Concept of Sovereignty. In: Schmitt, C. *Politicheskaya teologiya. Sbornik*. [Political Theology. Collected Papers]. Translated from German by Yu. Korinets and A. Filippov. Moscow: "Kanon-press-Ts", pp. 7–98].

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REVIEW

Patterson, D. and Pardo, M.S., eds. (2016). Philosophical Foundations of Law and Neuroscience. Oxford: Oxford University Press. 272 pp.

Abstract. The collaborative monograph edited by M.S. Pardo and D. Patterson is dedicated to comprehension of the scientific concerns arisen in the application of

neuroscientific research findings in the field of law. The authors discuss the prospects of changing the conceptual system in jurisprudence as a result of theoretical "intrusion" of neurosciences, thus demonstrating that the legal instruments will be inevitably changing provided that the neuroscientific findings are absorbed.

The strengthened focus of social science community on brain researches conducted by physiologists, psychologists and neuropathologists has become evident over the last two-three decades and is attributable to technological advances. Since it became possible to monitor cerebral activity in real time mode without any recourse to surgical intervention, many psychologists and philosophers invented a hypothesis about an indispensable and explicit linkage between the behavior (macro-level) and neural, i.e. cellular mechanisms (micro-level). Consistent with this hypothesis, such disciplines as neuromarketing, neuroculturology and neuroethics start to emerge. The main emphasis in each of these disciplines is to observe physical causal interpretation of this or that activity.

Neurojurisprudence falls under the scope of this trend too. Potentially, any legal concept and any legal issue may fall within the range of interests of this new discipline. However, the principal legal concern lies not in its subject, which is yet difficult to denote, but in the method. As a main assumption, underpinning all neuropsychological findings for lawyers, serves a reductive mindset (attitude) where the build-up of certain properties at the macro-level (personality) may lead to changes at the micro-level (cellular cerebral structures). This, however, causes a phenomenon where most legal categories lose its own meaning. Thus, a category of free will in case of acknowledging a legal entity as being programmed and subordination of his/her behavior to physical laws becomes a fiction the fact that entails impossibility of imposing legal responsibility. The governmental policy with regard to preventive measures aimed at preventing delinquency becomes not very effective if a will-driven nature of a moral choice is lacking.

The monograph under review provides the analysis of neuroscientific challenges in the context of developing sector-wise legal sciences, including criminal law and criminology, presents socio-cultural and moral & ethical implications of the conducted neuroscientific research where the legal behavior of an entity is linked with the functioning of different areas of the brain. The paper provides a broad presentation of findings concerning the impossibility of reducing a legally relevant human behavior down to its mental and cerebral activity, the fact that makes it appealing and useful for lawyers.

Keywords: neuroscience, experiment, legal theory, responsibility, free will, legally relevant behavior, offences

REFERENCES

Morse, St.J. (2007). The Non-Problem of Free Will in Forensic Psychiatry and Psychology. *Behavioral Science and the Law*, 25(2), pp. 203–220. DOI: 10.1002/bsl.744

Patterson, D. and Pardo, M.S., eds. (2016). *Philosophical Foundations of Law and Neuroscience*. Oxford: Oxford University Press.

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