The Philosophy of Law and Legal Science

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By

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The book is devoted to various actual problems of philosophy and philosophy of law. It discusses the problem of monism-pluralism in philosophy and philosophy of law, criticizes the philosophy of postpositivism and postmodernism, and invites a return to dialectics as a universal global methodological basis for scientific cognition.

On the basis of dialectics, this book deals with law. It explores the subject of philosophy of law, ontology and epistemology of law, methodology and content of law, legal consciousness and its deformation, problems of legal science and their solutions, legal progress, and so forth. It substantiates the theory of comprehending the study of law. It proposes new ideas and suggestions.

This monograph is addressed to researches in the field of philosophy and philosophy of law, lawyers, teachers, postgraduates, students, and also everyone who is interested in problems in philosophy and law.

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INTRODUCTION

The present monograph continues a series of our works on philosophy and philosophy of law.

Law is inconvincible without philosophy. From philosophy comes the concept of law, of the legal being, of the state, of justice. The majority of philosophers, beginning in ancient times, in their works necessarily dealt with questions of law, the legal regulation of social relationships, and legality. Suffice it to say, the origins of this philosophy in contemporary Russia lie in the theory of natural human rights, leading from philosophers such as B. Spinoza and J. Lock. Earlier, in the USSR, a very different philosophy held sway, in accordance with which the idea of right was not the same: according to V.I. Lenin, right was understood as the will of the ruling class, built in law.

Thus it is necessary to admit that until now neither philosophers nor lawyers have come to even a general understanding of law. Law is also influenced by philosophy—already contemporary philosophy has a characteristic indeterminacy.

That's why our philosophical-legal research began with a consideration of actual problems of philosophy and was based on formulated conclusions that appealed directly to law and philosophy of law. Furthermore, in this book special attention is paid to contemporary legal education and solutions to these questions are proposed.

Working on this monograph, we conducted sociological research in Russia and abroad on law, legal progress, and legal consciousness and its deformation. The results of the research we think will be interesting to professionals.

We would like to express our gratitude to the famous scientists and statesmen D.A. Kerimov, V.V. Korabelnikov, and A.A. Korolkov for attention to our work and its positive assessment.

We hope, that this book will generate interest among specialists in philosophy and philosophy of law, lawyers, teachers, postgraduates, students, and also among everyone who is interested in problems of philosophy and law.

S.I. Zakhartsev
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CHAPTER ONE

PHILOSOPHY: PARTICULAR PROBLEMS

§ 1. The problem of monism-pluralism in philosophy

The relationship of many Russian citizens to the USA and European countries is internally contradictory. This contradiction is related to the issue that these countries, traditionally perceived as enemies of Russia, have encroached on its integrity, independence, and wealth. However, the majority of our citizens sincerely believe that Western countries are more developed economically, technically, socially, and scientifically. In other words, Russia is still far away from the West. The slogan "Catch up and overtake America!" is known by all citizens of Russia since childhood. But the slogan by itself is meaningless, because it isn't really clear what catching up means—according to what indicators, where, and, most importantly, why?

Nevertheless, the indicated contradictions contribute to the attempts of Russia to adopt Western culture, values, education, technical achievements, and experience. Such processes periodically affect all spheres of life, art, and science.

At the end of the twentieth century, these processes directly affected philosophy. Western and Soviet philosophy always had significant differences. Let us name some of them. The Soviet philosophical school was based mainly on a materialistic platform. In Western philosophy there was a variety of influences from idealism, positivism, anarchism, utopianism, and so on. Domestic philosophy was directed to achieve results. Western philosophers were oriented more toward the impossibility of knowing the truth, but also had a greater focus on humans—knowing them and their actions. Domestic philosophy had a monotheoretical character, while the West agitated for pluralism. These differences became the basis for various areas of twentieth-century world philosophy, much of which interweaved the most interesting aspects of philosophies of science.

Speaking objectively, both Western and Soviet philosophers have reached great heights in the twentieth century. Many works have been prepared that have left an appreciable trace in the philosophical thoughts of humanity. Soviet specialists came from the idea that the world is knowable. The indicated message, which was based on the dialectical method of cognition, was a platform for Soviet philosophical thought. Western thinkers, in contrast to dialectical monism, worked on the pluralism of ideas.

Today, all foreign scientific works are available to Russian philosophers. At the same time, foreign scientists can fully familiarize themselves with the achievements of the Soviet scientific school.

What happened as a result? Ideas put forward by foreign scientists were in demand in Russia. However, the works of Russian thinkers were not absorbed or leveled, and previous ideas were not refuted, contrary to the expectations of some Western scientists. On the contrary, the philosophical problem of the relation of monism to pluralism as competitive philosophical ideas was escalated. About this problem, we have written in works on philosophy of law.[1]

In 2010 in St Petersburg, traditional philosophical readings were held. Among the published philosophical articles, we really liked the work of V.P. Ogorodnikov, which was devoted to the indicated question.[2] We agree with V.P. Ogorodnikov, taking into account that for the content of this book the problem of monism-pluralism in philosophy has a special significance—so let's stay on that subject and consider it in more detail.

As is well known, according to pluralist (lat. *pluralis*, "plural") philosophy, reality consists of many independent beings that do not form an absolute unity. Pluralism is atomism (understood in the absolute sense) and monadology. It is believed that the term "pluralism" has its origin in the work of H. Wolf. Contemporary Western philosophy rejected monism and is pluralistic on its own. It recognizes many independent, often separate beings, determined entities, and "layers of existence."[3]

Monism (from Greek *monas*, "uniqueness") is a doctrine concerning unity. H. Wolf primarily defined monists as those who only recognize one

[1] S.I. Zakhartsev, "Law and Truth," in *World of Politics and Sociology* 9 (2012), 146–52. S.I Zakhartsev, *Some Problems of Theory and Philosophy of Law*, M. (2014).

[2] V.P. Ogorodnikov, "Monism and Pluralism as Competitive Ideas in Philosophy of Science," *Philosophy of Science: Perspectives of Development* (St Petersburg, 2010), 160–64.

[3] *Philosophical Encyclopedic Vocabulary*, M. (2003), 345–46.

main substance.[4] According to V.P. Ogorodnikov, monism claims that a variety of origins, reasons, and bases of any development cause by itself system synthesis, in which the system-center is one such basis, reason, and so on.[5]

Ideas of pluralism became very popular in Western philosophy in the twentieth century. As a common ideology of idealistic philosophical schools (structuralism, existentialism, hermeneutics, etc.), as a result these ideas eventually logically merged into the philosophy of postmodernism.

Ideology: the methodological bases of pluralism are:

— indeterminism: the denial of certainty, doctrine of the existence of conditions and events for which there is no reason or the reason cannot be specified. In other words, the absolutization of eventuality.
— nominalism: the absolutization of the unitary.
— anomologism: the denial of reasonable patterns and relations.

V.P. Ogorodnikov writes absolutely truly that the application of indicated postulates to different subject areas gives the following varieties of pluralism:

— ontological pluralism: the postulation of independency—a non-subordinate variety of the substrate and substantial origins of the objective world.
— epistemological pluralism: the absence of the existence of objective truth—an attempt to justify equality, the "equal verity" of different, even controversial points of view in one and the same moment of reality.
— methodological pluralism: an attempt to justify the equality of all cognition methods.
— sociological pluralism: an idea of equality, standing in a row with different factors of social development.
— axiological pluralism: postulation of the equality of evaluation criteria of human values, until the plurality of these values is approved.
— logical pluralism: a principal lack of any system of logic that is adequate in the world.

[4] *Philosophical Encyclopedic Vocabulary*, M. (2003), 274.
[5] V.P. Ogorodnikov, "Monism and Pluralism as Competitive Ideas in Philosophy of Science," *Philosophy of Science: Perspectives of Development* (St Petersburg, 2010), 160.

— political pluralism: a system that uses basic concepts of sociological pluralism to justify the ideas of plurality of different political doctrines and the process of their practical implementation (reality of political actions).

In practice, these indicated postulates lead to: political disorientation; the "reconciliation" of science and mysticism; equating monism with political and ideological totalitarianism and pluralism with democracy; the justification of the equal rights of different experiments: vital, scientific, and mystical, as well as to valuable ("praxeological") pluralism; justification of individualism and selfishness in public life and practice; justification for the idea of the truth and equality of one and the same phenomenon—"epistemological" pluralism; the absence of dialectical methodology—"methodological" pluralism and so forth.[6]

We will focus on ontological, epistemological, and methodological pluralism. This choice was due to the fact that ontological pluralism is the basis for all other kinds of pluralism. In the first place, we are interested in the confrontation between epistemological and methodological pluralism and monism from the point of view of philosophy of law.

Ontological pluralism, as noted by V.P. Ogorodnikov, is incompatible with the data of contemporary science. The facts, which were received by contemporary science, evidence that the material world in all its manifestations, at any level of organization—physical, chemical, biological, and sociological—is monist. There is no other system that couldn't represent the subordinated and coordinated unity of elements. Pluralism postulates the absence of subordination between elements and means the lack of connection between them, that is, the lack of a system.[7]

Involved in this equitable conclusion, it is particularly important to mention social monism—the fact that, for a long time in philosophical literature, there was felt a kind of secret controversy of natural and human (social) sciences. Furthermore, opinions were expressed that if the material world (or even, the world studied by natural sciences) were regulated, social being, social society, would be quite unknowable—pluralistic to the study, equal from its point of view, and so on.

But social being is also subjected to laws and strictly subordinated. It is necessary to admit that in all periods of the existence of humans and humanity, society has never been completely pluralistic and absolutely

[6] V.P. Ogorodnikov, "Monism and Pluralism as Competitive Ideas in Philosophy of Science," *Philosophy of Science: Perspectives of Development* (St Petersburg, 2010), 161.
[7] V.P. Ogorodnikov, 162.

equal. That was true not only of the slave system but also of today. In the Socialist system there was a command-administrative system, with privileges for certain citizens; however, despite equality being formally declared, in fact people were not equal. In the capitalistic world, people don't have equal economic rights, because they have different economic opportunities, different social statuses. The question of whether it is possible to create an "ideal society" with absolutely equal rights and opportunities is under discussion. But from a logical standpoint, it would not seem to be possible. Such a conclusion inevitably follows from the fact that even if equal rights and opportunities could be artificially created, some will want to take advantage of such opportunities, some will not want to take advantage of them, and some will not be able to. As a result, people in such a society would soon have different opportunities, which will lead to different rights and to different living conditions.

In a society within the framework of the state there are no equal and stable centers of decision-making. With the Constitution of the Russian Federation, Russia attempted in 1990 to generalize all the best experience of liberalism in the whole world, with the principle that the separation of power would be strictly established and each branch of government would be tightly controlled. As a result, taking into consideration its mentality, what appeared was a presidential republic, where the last (and the most important) word is still left to the president. There is the same clear subordination and organization in every developed country (we do not need to talk about undeveloped countries here), to the extent that if you wish to go out and join a demonstration to express your opinion in public, then you are welcome; nevertheless, before you can do so it is necessary to coordinate with the authorities the time and place of the demonstration; declare to the police the number of participants; coordinate slogans, which must not contain calls for violence or Nazism or fascism; take measures to ensure the safety of participants at the demonstration; and so on. If these conditions are not met, you will be charged with administrative or criminal responsibility by the authorities. Thus, it is said that democracy is first the hard and brutal compliance of law and only in tenth place is it freedom of speech and lifestyle. This freedom is only allowed up until the moment when it affects another person, in particular the powerful people in a society and their interests. It is almost always thought that Soviet people were vainly forbidden from visiting capitalist countries, to stop them from getting acquainted with the capitalist way of life, with their existence, in a global and everyday sense of this word. If we immerse ourselves in the existence of the inhabitants of European countries, we can easily see that it is very modest (in comparison with contemporary Russia), economical,

and strictly defined within a framework of laws and structures. What strikes one immediately and is very visible, is the great economic difference between the majority of the population and a small stratum of elites (economic, political, spiritual), which basically determines life in the country.

It is very naive to put a sign of equality between a pluralism of opinions and Western democracy. Pluralism makes it necessary to consider whether such opinions may be illegal (for example, calls to violence, to fascism), invalid, intentionally false, unethical, or immoral. In Western democracies the pluralism of opinions has strictly defined frames and there are severe repercussions for going outside these frames.

In other words, it is necessary to admit an obvious fact: society is a non-equilibrium system.

The concept of pluralism, by definition, is tied to the metaphysical interpretation of the process of determination. Pluralism is based on judgments of the almost endless number of qualitatively single types, the same determinants of any event, which are implied to be "equal." This gives an opportunity to come to a conclusion about the uncertainty of all processes—the impossibility of knowing the reason for this or that event until it is over.

Such an approach, as was correctly noted by researchers, in fact is identical to indeterminism and is the philosophical and methodological basis of subjective idealism. Pluralism of determinism conceals indeterminism and subjective idealism within itself, because it creates the opportunity to choose a position arbitrarily, from which all concrete relations could be represented as nondeterministic. It is known that a similar technique is used by positivism (including postpositivism) in the justification of agnosticism.[8]

Such a conclusion, in fact, means the plurality of ideology. If it refuses the single, all-embracing concept of determinism, there therefore cannot be a single concept of ideology. And in all this plurality, it is possible to reach the point of absurdity and outright irrationality, to put forward awkward doctrines and ideas, to justify mysticism, coincidences, and so on. And all such descriptions will be considered to be equivalent.

Of course, all this goes against science and scientific requirements, to which we have already got accustomed. The task of any science is to find laws, revealing something's essence. Things that are irregular or completely random are unknowable, because it is only possible to know

[8] V.P. Ogorodnikov, "Monism and Pluralism as Competitive Ideas in Philosophy of Science," *Philosophy of Science: Perspectives of Development* (St Petersburg, 2010), 163.

what is repeated and commonly reproduces. To know means to understand, to reach a single-sensing, specifically shaped reflection of the subject, to reach the abstract that is significantly common to a certain class of objects—to concepts.[9] It isn't necessary to prove the importance of concepts in the logic of thinking.

Here it is important to accurately and clearly distinguish what is meant. We are not discussing whether there could be different opinions in science, different points of view. On the contrary, as is known, truth sometimes is installed in a dispute. We are talking about undermining the approach to forms and laws of thinking. Not about observing or identifying scientifically and defining patterns accurately. On that subject, as some philosophers consider, identifying patterns is an empty work, because they don't give real knowledge and they aren't patterns in their origins. In this case, we should talk about pluralism also as absolutely singular and, in fact, the uselessness of argumentation of received conclusions (science is either anarchy or individual logic). Exactly these arguments were made and tested by K. Popper, P. Fyerbend, T. Kuhn, and other representatives of postpositivism and postmodernism.

In their philosophy and its falseness, the essence of which is to move away from generally scientific bases, it is necessary precisely to understand and to evaluate. Not all Russian philosophers, we think, have been able to sort out this problem. For example, R.A. Zobov writes:

> As in the classical and in the non-classical science a number of human qualities remain beyond its consideration. From this background comes an increasing interest in all sorts of "absurd ideas," i.e. ideas that clearly don't fit into the frames of classical theory, but often give results that allow a fresh look at certain problems. Increased interest in absurd ideas in non-classical science contributed to the expansion of the scientist's consciousness. The rejection from a certain stereotypes was perceived more easily than in the frames of classical science.[10]

Then, standing up to the position of K. Popper, R.A Zobov writes that laws that lie as the basis of particular sciences are limited. Any provision is scientific insofar as it is refutable (principle of falsifiability). Thus, Zobov comes to the following conclusion: all laws coexist alongside one another and any of them can give a preference.[11]

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[9] Ibid.

[10] R.A. Zobov, "Philosophy of Science and Human Problem," *Philosophy of Science: Perspectives of Development* (Methodology of Applied Science) (St Petersburg, 2013), 158.

[11] Ibid., 159.

Anyone can come out with what Zobov calls "absurd ideas," which cannot be represented in the contemporary scientific picture of the world. *The question isn't in ideas, but in checking and evaluating exactly against a scientific method.* For many, S.P. Korolev's ideas about launching a person into space seemed to be sick fantasies. Furthermore, the announcement of the first flight of a person into space was believed to be physically impossible. And, indeed, most scientists think there is no shame in going beyond the limits of the known picture of the world—such ideas are often the most productive. However, it is necessary to remember and to understand that the ideas and thoughts of a scientist should be checked and implemented by a scientific method: methods of cognition should be used strictly; it should be logical, with the possibility of being verified by other scientists. Herein precisely lies the principal difference between monism and pluralism: the latter allows ideas to be inspected using any method of cognition, and believes that inspecting them is not necessary and not always possible, because the truth is still not understandable (or each researcher has his or her own).

Stemming from this philosophy, the authors of this work have seen published scientific-sounding statements that reason whether Yuri Gagarin was an alien and whether he was killed and "returned to himself." As a check to such absurd (already without quotation marks) ideas, arguments were outlined about the multidimensionality of spaces, civilizations, and so on.

That's why it is very important not to destroy science, approaches to science, and principles of building scientific knowledge. And, to recall the words of A. Einstein: science is directed at the cognition of the world, serving the Truth, obtaining true knowledge. To this aim, its methods of cognition can be considered scientific. So, actually, think a significant number of scientists.

Here occurs a question, Is monism possible in philosophy? Historical experience convincingly demonstrated that no, it is impossible. Philosophers are very different; they look at being very subjectively. No wonder, then, that books on philosophy generally begin with a detailed consideration of the history of philosophy. Truly philosophical ideas and views are eternal; they often come back to humanity in some modified form, are developed, are not forgotten. The historical experience of humanity has already accumulated many similar ideas. There could be no monism in philosophical thought, at least because of the eternal conflict between idealism and materialism.

However, monism is possible and necessary in the philosophy of science and, scientific achievements convincingly testify about the

monism of the world. It is necessary to emphasize once more that monism doesn't imply the impossibility of different and controversial ideas. Different, controversial, and even absurd ideas are needed. But monism involves a strictly scientific evaluation, which is made, of course, on the basis of monistic scientific methodology.

Thus, clear boundaries can be distinguished between science and non-science. Philosophers (or people, who are trying to be them) can put forward any ideas, even that the Earth is flat, or that it is kept on three elephants, or that they soon will fly to the Earth's axis. Such reasoning is their right. But it is necessary to evaluate such ideas through rigorous scientific methodology, which by definition should be monistic. Otherwise, due to the pluralism of scientific methodologies and approaches, we could come to a conclusion about the correctness of indicated reasoning.

Here we can specifically bring various obvious examples, which objectively are part of the history of thought about the world, being, and the role of humans in it.

Nowadays, the pluralism of ideas also imposes a pluralism of scientific methodologies. Wherein it is very important (!) that they are mutually beneficial to each other. So, the thesis about the a priori impossibility of the world's cognition contains in it almost any philosophy, almost any methodology and epistemology, or generally the lack of them. The recognition of the world's unknowableness by and large made methodology and epistemology meaningless. From such positions, science does not need them, because as a result there is nothing they can bring. But such an approach gives full freedom to the separate philosophers for creativity. Nevertheless, these efforts, unfortunately, are not productive. Their conclusion will be approximately like this: yes, we don't know anything. And then they will put forward original ideas about the uselessness of epistemology. This, in particular, was the theory of the "famous" R. Rorty. He substantiated that epistemology is a genetic disease of European philosophy, which he thought also applied to science and to truth. R. Rorty, as is well known, considered the claims of science to true, authentic knowledge to be unjustified. Wherein, according to R. Rorty, the truth is something "that, we need to believe in," rather than the "accurate image of reality."[12] There is opinion, and it seems to be objective enough, that Rorty has done more to promote the slogan "death of epistemology" than any other thinker of the second half of the twentieth century.

[12] See the following works of R. Rorty: *Philosophy and the Mirror of Nature* (Princeton, 1979); *Consequences of Pragmatism* (Minneapolis, 1982); *Philosophy in History* (Cambridge, 1985); *Contingency, Irony, and Solidarity* (Cambridge, 1989); *Philosophy and Social Hope* (New York, 2000).

But how productive is this position from the point of view of his own life, his own scientific work? If it is necessary to do scientific research, in order to strive to prove things, then will this work by and large lead to nothing? Maybe it is better to try to prove that the work is really necessary to understand the world and life, strive toward this, and not be offended by science, even if as a result dreams will not be realized? That's why, it seems, interest in postpositivism and postmodernism disappears, and philosophers and scientists will again be considered possible and necessary in order to obtain true information.

In this way, in the philosophy of science, as in science itself, it is necessary to desire to know the world—to focus on Truth and the completeness and objectivity of knowledge. This goal can be achieved with the help of monism and the methodology of cognition.

But what kind of monism? This monism can be the dialectical method of cognition.

For many years in the USSR, the dialectical method was considered to be a universal, general scientific method. After the end of this period, using the named method in particular, Soviet science (and this is objective) made a significant breakthrough in development. The achievements of Soviet scientists in the field of physics, chemistry, mathematics, aerospace, and so on do not need to be mentioned. Humanitarian disciplines, including law, were dynamically developed. Furthermore, the approach to dialectics as a general scientific method satisfied absolutely everyone.

After the disintegration of the USSR there followed radical changes, curiously enough, that significantly affected methodology. So, the method of dialectics was subjected to obstruction, and statements appeared arguing that there was no universal and general method of philosophy. Some of them went further and announced that a named method in fact represented a road to nowhere. And some experts came to the paradoxical conclusion that true philosophical thought didn't exist in the USSR.

As a result, Russian philosophers were divided into several groups. The first group consistently continued to defend the dialectical method as a general method of science,[13] another group proposed to treat it on a par with other scientific methods,[14] and finally a third one, for various reasons, tried to subvert the importance of dialectics for science.[15]

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[13] For example., G.I. Rusavin, *Methodology of Scientific Cognition*, M. (2009), 8.
[14] See, *Philosophical Encyclopedic Vocabulary*, M. (1997), 266.
[15] See, for example, V.N. Sadovskiy, "Karl Popper: Hegel's Dialectics and Formal Logic," *Questions of Philosophy* 1 (1995), 139–48.

As stated above, this required a return to the content of dialectics, to evaluate its meaning again. According to Hegel's philosophy, under dialectics, a usage of regularity in science was understood, which concludes in the nature of thinking and, at the same time, this regularity on its own. According to Hegel, dialectics is movement as the underlying basis of everything as a true spiritual reality, and at the same time the movement of human thinking, which in a speculative plan participates in this movement absolutely and totally. All movements flow due to "reasonable" laws of dialectics. The law of moving thinking is also a law of the moving world.[16] This understanding of dialectics became a basis for the formulation and justification of different dialectical directions (including Marxist–Leninist dialectics).

One of the main subjects of study is this development. Dialectics is a philosophical doctrine about the most general regularities of development of nature, society, thinking, and cognition.

Development, in its turn, is impossible to imagine without dynamics, movement, and change. Such changes aren't of a single character, but are complex and systematic. Consistency changes mean changes of quality—that's why this development is characterized first of all by qualitative changes.

These qualitative changes aren't disorderly. They occur in a system and therefore imply a presence of interdependence between previous and further changes—their continuity. In this regard, we can formulate a reasonable conclusion about the existence of the direction of changes and, respectively, in development. Wherein, development from the philosophical point of view, including systematic qualitative changes and direction, is an irreversible process. The irreversibility of changes is understood as the appearance of qualitatively new opportunities, which didn't exist before.

Thus, in a general initial sense, development is the directed, irreversible qualitative changes of the system.

If it is necessary to consider the specifics of the dialectical concept of development, the above mentioned definition could be extended by indicating the internal mechanism of development, which is connected with internal contradictions.[17]

As development widely understood as one of the main basis of dialectics, what is dialectics for science? Apparently, all.

The development of scientific knowledge is considered as constant change, movement, and dynamics of knowledge. The dialectical development

[16] *Philosophical Encyclopedic Vocabulary*, 134–35.
[17] P.V. Alekseev & A.V. Panin, *Philosophy*, M. (2005), 434.

discloses such compulsory properties of scientific knowledge as objectivity, accuracy, certainty, consistency, logicality, verifiability, theoretical and empirical validity, and practical utility. Together these properties define and guarantee the objectivity of scientific knowledge. Dialectics is a method that is vitally necessary for every science.

A famous quotation by Hegel can be given here:

> Cognition is moving from content to content. First of all this translational motion is characterized by the fact that it starts with simple certainties and that what follows after them becomes richer and more concrete. In fact, the result contains its beginning, and the motion of the last one enriches it with a new certainty. The general constitutes the foundation; that is why translational motion should not be accepted for some flow from some other to some other. A concept in its absolute sense is kept in its otherness, general in its isolation, in judgment and reality; at what stage a further definition raises above all mass of its previous content and not only nothing loses as a result of its dialectical translational motion and leaves nothing behind, but also it carries with it all it has acquired and enriched and compacted inside itself.[18]

Without development, science is dead. Without constant implementation based on dialectics of the functions of cognition, explanation, heuristic, forecast, and practical implementation, any theory will cease its existence. First of all it will stop in its development, soon it will be foreshadowed by a noticeable lag from its vital needs, and then it will go into otherness. However, the objective (again dialectical) world development of knowledge can force it to get back to the forgotten history; however, this process is really labor-consuming and costly.

At the present time a lot is known about general scientific methods. However, on closer examination it turns out that in their application there is the dialectic. Even if we take such compulsory methods of science as a systematic approach, here is also clearly a trace of change and development. The system isn't constant. It is developing and changing in a minimum of two directions. The first direction is the division into smaller subsystems, a certain ornateness of a system; the second direction is oppositional, consisting in the consolidation of subsystems, their merger and incorporation of the part into the whole. In other words, the system is also dynamic in its development and requires cognition exactly from the dialectical point of view. Our attention was intentionally drawn to this because in a variety of academic and dissertation works in legal science,

[18] G.W.F. Hegel, *Comp*. in 14 t. M. (1937). T.5.: 34.

this method is extolled as "universal" and "basic" for other scientific methods.

Beside the principal of development, in dialectics it is necessary to distinguish between the principal of the material unity of the world and the principal of the general connection and mutual conditioning of phenomena.

The principal of the material unity of the world implies that everything in the real world is ordered, represents a system, is not a chaotic mass. This principle is expressed also in the real existence of different forms of substances, including social forms, which are characterized by people and society and their interaction. In the development and material unity of the world, interaction has an important place. Dialectics is based on the idea of a general connection, which, in its turn, implies mutual interdependence of phenomena. Connection is a relation, and the basis of each relationship is interaction. Hence we come to an idea of interdependence as a necessary addition to the idea of a general connection; together they express the fact that in the world, in real being, there is no single phenomenon, which anyway wouldn't be connected with other phenomena.[19] For example, social-economic changes, observed in Russia at the end of the twentieth century, led to changes in the relationship between the property of individuals and legal entities. Due to such changes, the institution of private property was restored. A change in one object or phenomenon necessitates a change in another object. The restoration of private property in law, from the one side, determined the elimination of collective rights, and from the other side it demanded serious changes in other areas of law. In the economy it led to the implementation of new economic models and, consequently, to the inevitable refusal of the old rules of the leading economy. In politics, the restoration of private property in Russia led to the strengthening of the role of Russian corporations in world politics, which resulted from a change in the balance of political forces and so on.

As is known, the main laws of dialectics are:

—the law of unity and struggle of opposites
—the law of mutual transition of quantitative and qualitative changes
—the law of the refusal of denial

The law of unity and the struggle of opposites indicate the existence of different forces and tendencies, and these forces are simultaneously in a unity and in opposition to one another. In other words, dialectics connects development in all areas of a real world with the contradictions inherent in

[19] *Philosophy*, V.P. Salnikov, ed. (St Petersburg, 1999), 302.

any phenomenon, process, and object. Dialectical contradictions wear an internal character; in the constant competitive interaction of driving forces, phenomena change and, consequently, develop.[20] Internal unity and the contradictions of connections inside a science—their constant understanding and the competition of opinions—ultimately determine its scientific development. In this sense, the indicated law is the methodological basis for other scientific laws.

The law of the mutual transition of quantitative and qualitative changes derived from the law of unity and the struggle of opposites can generally be formulated thus: quantitative changes to an object or phenomena, that gradually accumulate and multiply, at a certain stage lead to a change of quality of this object. Objectively observed in the twentieth century, interest in atomic physics, the realization of certain research on this subject, has gradually led to the qualitative improvement of knowledge. The named law equally applies to other sciences and also to scientific methods.

The essence of the law of refusal is denial, in that it examines development in the form of the changeability of every other levels (steps, grades), which are connected with each other in such a way that every next level of development is a denial of the previous one.

The main dialectical categories are as follows: the whole and the part, separate and general, reality and opportunity, structure and elements, theoretical and practical, content and form, purpose and means, reason and effect, and so on. For example, a demand for the regulation of concrete social relationships is the reason for the publication of legal norms. The publication of the norms is the effect of the regulation made necessary by the indicated relations. Or, a specific act of a person is the reason for the application of legal norms. The application of the norm, as fixed in its consequences, is the effect of a person's action.

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[20] Internal dialectical ("vital") contradictions should be distinguished from formal-logical contradictions. Formal-logical contradictions take place also when they concern one and the same object (or subject), in the same time, in the same sense, expressing opposite judgments and inferences. For example, in 2009 an opinion was expressed about the elimination of corruption in the internal affairs authorities; almost simultaneously, the increasing amount of corruption among employees of the internal affairs authorities was also discussed. In this case, we are not talking about the logical contradiction within the system, but about the violation of formal logic—that is, about logical contradiction, a distortion of the truth. From the logical point of view, it is obvious, that there can only be one truth from the indicated thoughts. Philosophical sciences require avoiding formal-logical contradictions.

Academician V.S. Stepin very accurately described the contemporary role of dialectics in science; this opinion is one to which many scientists should pay attention:

> In the early 1990s, after the disintegration of the USSR, evaluated judgments appeared, according to which there were no achievements in our philosophy, it was torn off from world philosophical thought and it was necessary to start all from the very beginning. Such judgments could be found even in philosophical books and encyclopedic vocabularies of those times. They were purely ideological phenomenon, arising in line with the sweeping criticism of the Soviet era. What was considered to be positive in the Soviet era, automatically was announced as a negative, a "plus" sign was replaced by a minus sign. But such statements don't require any serious thinking; they don't hold criticism referring to the real facts. It is significant that famous American historian of science and Massachusetts Technological University (Boston) professor Lauren Graham's fundamental research on the historical development of the philosophy of science in the USSR ended with the general conclusion that this area of research in the country is "impressive intellectual achievement" and "universality and the degree of elaboration of the dialectic-materialistic explanation of nature has no equal among contemporary systems of thought"[21] [22]

Dialectics was and is a universal scientific method not because it was ideologically advantageous to a concrete government, but for objective reasons. It has somehow been "forgotten" that many famous pre-revolutionary philosophers also relied on dialectics as a universal scientific method. For example, B. N. Chicherin long before the creation of the USSR wrote that without dialectics there is no philosophy.

Yes, in the USSR, dialectics was really a dominant philosophical theory, in science and also in teaching. Other philosophical concepts were considered critically one-sided and not always complete. While this shouldn't have been so, this doesn't detract from the value of dialectics. Complementing absolutely the accurate statement of V.S. Stepin, sadly we have to admit that the significant achievements of Soviet philosophical thought, including dialectics, unfortunately aren't in demand enough today. This, unfortunately, impoverishes contemporary science.

This methodology, as is well known, doesn't tolerate pressure from the side and aims to obtain so-called impersonal and intersubjective scientific knowledge. Methods that it studies are aimed at fixing objective knowledge,

[21] L. Graham, *Natural History, Philosophy and Sciences about Human Behavior in the USSR*, M., (1991), 415.
[22] V.S. Stepin, *Philosophy of Science: General Problems*, M. (2008), 85.

without any admixture of subjective and individual factors and especially without the admixture of ideology. According to the opinion of T.G. Leshkevich, contemporary methodology is the most persistent and resistant to change of all spheres, aimed at the study of methods of scientific cognition and ways of organizing activities.[23]

Here, furthermore, it is important to understand that even a critical approach to Marxist–Leninist dialectics shouldn't reject dialectics in general or minimize its enormous value. Thus, it needs to be taken into account that the dialectical method is also developing and changing, that is why approaches to its content can be dogmatic. This again finds the expression of the principal of dialectics as a constant development and change.

P.V. Alekseev and A.V. Panin in this context wrote that along with the politicized and ideological model of dialectics (which is reflected in the works of V.I. Lenin and I.V. Stalin), in the frame of dialectical materialism, it is possible for another model of dialectics that is humanistic and dialectical. It can be in consistent connection with the principles of materialism, dialectics, and humanism, and dialectics itself can reveal its versatility in relation to nature, society, and the spiritual world of humans.[24]

The indicated scientist wrote many interesting works about dialectics. But, according to them, recent publications helped them to see in dialectical materialism different, and in a political sense, oppositional directions and see more clearly than previously in deciding on the positions of really comprehensive dialectics.

Supporting this idea in general, it is necessary to draw attention again to the fact that dialectics doesn't exclude opposite judgments. But it is important to verify them scientifically. In other words, freedom of opinions shouldn't destroy the unified methodology of cognition, which is universal for all.[25]

In such circumstances, evaluating the position of the present dialectical method of cognition, we come to the conclusion that it will long remain a universal method (methodological basis) for philosophy, philosophy of science, and other disciplines, including philosophy of law.

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[23] T.G. Leshkevich, *Philosophy of Science*, M. (2005), 107.

[24] P.V. Alekseev & A.V. Panin, *Philosophy*, 446.

[25] V.G. Budanov describes the contemporary stand of philosophy of science and synergy, named philosophical theatre (See V.G. Budanov, "Methodology of Synergetic: Principles, Technologies," *Philosophy of Science: Perspectives of Development* (Methodology of Applied Sciences) (St Petersburg, 2013), 47). We hope that different thoughts don't turn philosophy into the theater of the absurd.

Still we are amazing people; we have an amazing state. Nowadays to everyone—in Russia, and in the West—it is obvious that the Soviet system of secondary and higher education was one of the best, if not the best in the world. It brought fruits, raised prominent scientists who were in no way inferior to those from the West, and in many aspects exceeded them. Today's system of education has been reformed, as a result in our country of our voluntarily departure from the ideas and achievements that we had. Western scientists accepted with pleasure Soviet-Russian achievements in science, and used those that achieved successes.

This happened in almost all scientific fields, including jurisprudence. For example, a famous American lawyer, G. Berman, on the basis of three schools of law (legal positivism, theory of a natural law, and historical school of law) he believed to be competing, suggested creating integrated jurisprudence.[26] But it is significant, as noted by I.Y. Kozlihin, that students of G. Berman saw his main merit not in his suggestion "to connect three competing schools," but in the dialectical method of studying history of law. "Integration of three main schools—it is just one of the moments of Barman's integral jurisprudence; furthermore and it is even more important that he proposed reconciling them via the dialectical method"—as was stated in one of the articles devoted to the work of G. Berman. Here is another example of using the dialectical method to obtain the whole, that is, the integral vision of law.[27] What we are trying to give up, for some reason, is actively used in the world.

This example shows another. Contemporary philosophers of law have repeatedly attempted to create some integral[28] theory of law, in which to combine the best from other concepts of law (legal positivism, theory of natural law, and the historical school of law), but this actually means an attempt to create a mutually acceptable unified theory of law. However, if such unification succeeds, it will mean that the integral theory of law will be accepted and recognized by almost all specialists. And therefore, it entails monism in the philosophy of law. Scientists proposing other theories and concepts of law have to check their proposals with integral theory. But the most interesting thing is that such monism no longer

[26] See G. Berman, *Faith and Law: Reconciliation of Rights and Religion*, M. (1999), 341–63.

[27] Quotation according to I.Y. Kozlihin, "Integral Jurisprudence: Discussed Questions," *Philosophy of Law in Russia: History and Contemporaneity; Materials of the 3rd Philosophical—Legal Readings in Memoriam acad. V. S. Nersesyants*, M. (2009), 251.

[28] In a number of sources, this is integral.

frightens the current supporters[29] of the pluralist scientific view and methodologies. That is, its role in currently available pluralist legal theories and concepts isn't justified.

In other words, to be science there must always be some landmark, a reference point, a trait, from which comparison and measurements can start. Such a landmark must be accepted by all, so that the results of research that starts from this point can be evaluated. If it is not so, pluralism fast becomes subjective and unscientific.

Such a conclusion shows once more that all people as part of their nature always strive for order, certainty. By taking us out of dialectics and in fact not proposing anything in return, scientists themselves became hostages of the situation, because even when making discoveries or major scientific achievements it is difficult to justify and even to describe the results.

Dialectics implies the possibility of the world's cognition and, accordingly, situates in it phenomena and processes. Moreover, the provision of dialectics, including in terms of cognition, significantly enough, develops and tests arguments. This, in particular, makes it positively differ from a variety of other philosophical theories.

As you know, discussions over whether the world is knowable have gone on for as long as philosophy has existed. For example, in Western philosophy today a widely spread point of view argues for the impossibility of total (absolute) cognition of the world. According to the opinion of supporters of these views, cognition is rejected as are the limitations of scientific knowledge, and the infinite multidimensionality and multilevels of an object of knowledge. For example, B. van Fraassen's concept of "constructive empiricism" says that no one theory can be absolutely verified, and it is completely determined by empirical facts. R. Rorty went further and suggested, in fact, refusing epistemology.

However, the point of view that the world is unknowable is a simple one. With this approach, you can put forward any idea one wants, one can refuse the obvious and even doubt one's own existence. That, of course, can be "proved": because a person can perceive the fact of his existence subjectively (and, ironically—is it a real fact?). But how productive is such an approach? And how honest is it to life in general and to science in particular? As was already noted, standing on such a position of agnosticism or utopianism isn't productive even to one's own life.

[29] In Russia, the problem of the creation of the integral theory of law involves, mainly, specialists of institutions of state and law of the Russian Academy of Science.

And dialectics, at the present moment, seems to be not only a universal but the most valuable method of cognition of the world. Of course, cognition is going slower, as it would like. However, there is a forward movement.

One of the most promising ways of further improving dialectics as a universal method we can see in the convergence of its basis in the philosophical concepts of Russia and the West, and further, of the East. Today, the convergence between Russia and the West is actively taking place. The unity of scientist's efforts will result in an increase in the number of philosophical works, and soon, according to the dialectical law of qualitative-quantitative changes, will develop into fundamental works, which are not affected by ideology and conjecture. Then, similar processes in unity on the basis of the dialectics of the philosophical schools will start between Russia and the East.

In conclusion, we allow ourselves a variety of assumptions. Of course, philosophy doesn't overcome the problem of monism-pluralism. Like a faithful companion of philosophical research, it will no longer be around. However, objectively in its lifetime, further scientific discoveries will make a primary focus on monism, which is connected with dialectics, as the most clear and developed methodology. The dialectical method of cognition will be the methodological basis of philosophy of science. It seems to us that interest in postpositivism and postmodernism will end relatively quickly in a majority of such doctrines. People generally, and scientists in particular, always tended toward cognition of the world—to a true cognition, to true knowledge.

§ 2. The role of personality in the methodology and role of a researcher's results in the formation of methodology and worldview

The study of postpositivistic philosophy, which some researchers consider to be "contemporary," "new," "important," and so on, makes one think about its origins. We are talking not about the origin of postpositivistic ideas as they are, but about why scientists and philosophers are "suddenly" trying to abandon existing knowledge and achievements, to re-interpret them, and in the light of the impossibility of cognition, to convince of the rightness of "new" interpretations. What is the reason for the appearance of such radical views?

It seems, that the basis for such processes could be either the, discoveries of science (objective reasons for refusing previous knowledge

and experience), or drastic changes in personality (subjective, psychiatric changes), convincing scientist to see all of this "differently."

So, it was in the Middle Ages with the philosopher Abelard, who corrected his philosophy. The same happened with Kant, who stood at the second period of life in a fundamentally different position from the first. There are also later examples.

There is a sense to focus attention on the personal reasons for forming such a philosophy. Thus, it is necessary to stop on two of the brightest representatives of postpositivistic philosophy, who formulated the most radical views: P. Feyerabend and K. Popper. We will shortly examine their biographies and opinions about science.

It is known that P. Feyerabend dreamed of becoming a famous singer and scientist. But fate decreed otherwise. Feyerabend was born in Vienna in 1924 to a poor family. In 1943, at the age of 19, Feyerabend was admitted to the officers' school, graduated as a lieutenant, and as a member of the German-fascist troops was directed to fight against the Soviet Union. In the war against our fathers and grandfathers, he served in the occupied territory in Russia, where, probably, he distinguished himself by courage and cruelty, which is proved by the fact that he received the Iron Cross medal and other encouragements of command.[30] However in 1943 he was seriously wounded, and was disabled for the rest of his life—he couldn't move without pain and walked on crutches. In 1945, apparently, he was hiding from the Soviet troops, because as a fascist officer and a medal holder according to the laws of war he could be shot. He immigrated abroad and lived for a long time far from his homeland, in the USA.

His aim of becoming a scientist and conducting experiments on his own was disturbed by his lack of proper education, his hard illness, and his life, which was maimed by war. He couldn't commit discoveries in science.

The background of such shocks formed his specific ideology on philosophy and science, which concluded in scientific pluralism and turned into scientific anarchism. According to Feyerabend, pluralism must

[30] Wikipedia and various other publications reflect the opinion that Feyerabend didn't want to go to war, that he was against the war, and so on. However, we are more prone to believe other sources, and we also believe that such a change of worldview in people often takes place after such a tragedy occurred to them. By the way, in the books of Feyerabend, we didn't find deep remorse for his action in the war against Soviet citizens.

prevail not only in politics but also in teaching.[31] According to these ideas of pluralism and anarchism, Feyerband wrote that the development of science appears as a chaotic jumble of arbitrarily written theories, without any real explanations. Accordingly, the development of knowledge involves a proliferation of competing theories, mutual criticism of which stimulates cognition. Wherein, the success of any theory connects not with objective data but with the skill of a particular author of the theory who organized it. Thus, according to Feyerabend's point of view, a scientist who is seeking recognition and the dominance of his ideas, has the right to use propaganda, psychological treatment, ideological techniques, and so on.

Feyerabend defended the idea of the equal rights of any method of cognition. He writes, that anarchism is an excellent cure for the philosophy of scientific cognition, and also for those who are inclined to limit themselves by one universal method of cognition. According to this scientist's point of view, philosophy couldn't successfully describe science in general, and it couldn't develop a method of separation of the scientific works from other entities—myths. He claimed that there are no united, rigid scientific criteria. And if that is so, it is quite logical to consider the connection of scientific facts with non-scientific facts. In other words, science, philosophy, religion and even magic are all good for cognition, all have an independent value.

And there is more. Feyerabend puts forward a principle of continuity, orienting the researcher on formulating theories that are incompatible with both well-grounded facts and with tradition.

According to research on the creativity of this scientist, Feyerabend was convinced that science's characteristics were a twentieth-century myth, which differed aggressively in relation to other forms of cultural creativity, rather than with any ideology of the past. The pathos of scientific convention is connected nowadays with the power of the state, providing generous funding for scientific research, which inevitably harms the interests of alternative methods of capturing reality. Thus, it is a basis of government politics of education: science initially establishes necessary ways of perceiving the world, forming a condescending attitude that is mismatched with its standard models of the world. Such privileges of scientific discourse, according to Feyerabend's opinion, should be abolished as being inconsistent with the principles of democracy and

[31] See, for example, P. Feyerabend, *Against the Method: Essay of the Anarchistic Theory of Cognition*, M. (2007); P. Feyerabend, *Selected Works by Methodology of Science*, M. (1986).

humanism. Science must be separated from the state, as it is separated from myth, art, folk medicine, and so on. According to his conviction,

> science is much closer to myth than scientific philosophy is willing to accept. This is one of many forms of thought, produced by a person, and not necessarily the best of all. She is noisy, loud, immodest, but in relation to other forms, obviously only for those who have previously prepared to decide in favor of some ideology or for those who take it not thinking even about her possibilities and boundaries.[32]

There are many such extensions in the philosophy of Feyerabend.

In terms of criticism, it is necessary to note that the indicated philosopher didn't pay attention to sustainable trends of science development and didn't evaluate principles of development. Finally, if you agree with his point of view, it is logical to cancel any education (because it is based on science, not myths or folk cognition). In fact, Feyerabend's dislike of education and educated people could explain that higher education he received from hard physical pain, weakness, and as a humiliated defeated officer. Surely, it was embarrassing for so ambitious a person, which apparently Feyerabend was. He never made the discoveries in science about which he dreamed.

Now what about the biography of K. Popper (1902–94). Popper was born in Vienna into quite a wealthy professor's family. He wanted to become an outstanding physicist or mathematician, graduated from the university, received the diploma of a teacher of mathematics and physics in the gymnasium, worked according to this specialty, protected and got a degree, and worked on the discoveries in the indicated sciences.

However, he was prevented by circumstances: namely, the growth of anti-Semitism in Austria. Popper didn't protect his homeland or ideals of justice, nor did he struggle against fascism and Nazism; instead he immigrated to New Zealand. In New Zealand, Popper was for a long time "on the sidelines" and didn't have the opportunity to carry out fundamental research in physics and mathematics; or, maybe, he just failed to make important discoveries in physics or mathematics.

Under the influence of these circumstances formed the philosophy of this scientist, which he developed and formulated when he was in England. The paradigm of his philosophical ideas was the conclusion that science is capable of real discoveries, but that science doesn't understand the truth. The growth of knowledge is achieved in the process of rational

[32] *Contemporary Western Philosophy*, ed. by T. G. Rymyantseva, M. (2008), 756.

discussion, in which there is necessarily criticism of existing knowledge—hence the name of this philosophical direction is "critical rationalism."

Popper considered that no theory could be confirmed finally; therefore, every theory, by its definition, has a hypothetical character. In other words, theory is formed by and confirmed not by laws but by plausible statements.

In contrast to the principle of verification, Popper justified the principle of falsifiability (the refutability principle of any statement). This principle helped the philosopher interpret the process of learning as a part of the general theory of evolution. Scientific hypotheses and theories pass through peculiar "natural selection" due to criticism and attempts of refutation. More grounded and less controversial theories win. However, according to Popper, they win only till the moment when a more consistent, coherent theory is found. Hence, science consists of historically variable ideas about the world, which are corrected by the method of trial and error.

Popper fundamentally denies the historicism of Hegel, Marx, and history as a science. According to Popper, there is no unified history of humanity, but there is only a scattered set of histories, connecting with different aspect of a human's life—and among them is a history of political power. It is usually elevated to the rank of world history, but it is abusive for any serious concept of human development. In the history of political power, as philosophical thought, there is nothing like the history of international crimes and mass murder (including, that is true, some attempts at their restraint).[33]

Important in the philosophy of Popper is also the idea that people could not "create heaven on earth"; therefore it is necessary to abandon the search for a miraculous formula, which turns our corrupted human society into the ideal community.

Looking critically at Popper's philosophy, it is necessary briefly to note another idea. Reducing Popper's idea of the growth of scientific knowledge to the completion of theories and observations is not quite fair, as it ignores the concept of truth, including the truth of basic things (truth of facts of life, human breath, being in general, etc.). Furthermore, determining facts that were not described by the theory doesn't mean the need to completely abandon the theory. Newton's mechanics, despite the presence of a large number of contradictory facts, is still actively and successfully used by scientists. V.I. Lenin's definition that "right is a will of the ruling class, erected in the law," although it does not completely satisfy scientists, is still recognized as one of the edges of law. In addition

[33] *Contemporary Western Philosophy*, ed. by T. G. Rymyantseva, 562.

to hypotheses, facts, and observations there are many economic, technical, political, and other factors that also strongly influence the growth of scientific knowledge.

Important and very fair comments on Popper's philosophy were made by researchers on creativity analyzing the philosopher. They noted that the ideas in Popper's book largely coincided with the attitudes of political and ideological elites in the USA in those times. Popper's reasoning caused indignation even in pure historians of philosophy, who were engaged exclusively in the analysis of intellectual systems of the past. As a result, a collective article was published, which revealed the amateur character of Popper's concept of the issues discussed. In particular, the philosophy of H. Hegel was set out by Popper from an old popular book without recourse to the original texts.[34] But there is a question: did this political immigrant come to England and take a position that was different from the official ideology? Of course not. Otherwise, he would have been sent back to a "secondary role" in New Zealand.

In the context of biographies, the following can be observed in a lot of philosophers of the twentieth century who refuse the truth, knowledge, and science, who profess general pluralism, and so on. Almost all, first, suffered strongly in twentieth-century wars and cataclysms, which objectively existed; second, they did not always adequately behave in these cataclysms (we mean that they served fascism, escaped from their homeland, etc.); and third, the majority, for the most part, did not make scientific discoveries, even though they strived toward this.

On this issue, we need to remember that the most famous Soviet-Russian philosophers of law, D.A. Kerimov and S.S. Alekseev, were the same age as Feyerabend or even younger than Popper, they did not emigrate from their country and did not wait for the war to be over, but honestly fought against fascism on the front line and were awarded with medals.

Now it is necessary, for comparison, to consider the biographies of three other twentieth-century scientists, for example, A. Einstein, R. Oppenheimer, and S.P. Korolev.

The choice of these scientists isn't random. First, the indicated people also dreamed of becoming famous scientists. Second, the works of these scientists have a philosophical character. Thus, Einstein was considered to be a famous philosopher, and Oppenheimer dedicated a number of works to philosophical thoughts about peace and the fight for peace and the necessity for strict international control over fundamental scientific researchers and the arms race. Korolev seemed not to be a philosopher and

[34] *Contemporary Western Philosophy,* ed. by T.G. Rymyantseva, 563.

did not write philosophical books. However, the direction of his works in physics on knowledge of the world, space, and the universe without a doubt allows him to be regarded either as a philosopher or a practicing philosopher. The ideas of Korolev introduced in his life, about space exploration, the flight of a person into space, the "lunar program," and so on, convincingly testify that he was a philosopher of science and a philosopher in spirit. Third, these indicated people also had difficult fates. Einstein was forced to emigrate from Germany to the United States. Oppenheimer was suspended from scientific activity because of his sympathy for the communist party and the struggle for peace and non-proliferation of nuclear weapons. Korolev in 1930 was illegally arrested and sentenced to ten years in prison.

However, Einstein, Oppenheimer, and Korolev did not only dream of becoming famous scientists, they became them, forever glorifying their names. They were never disappointed in science; on the contrary, they saw the future in it, the way to righteousness, justice, and cognition of the truth and the world.

As a philosopher, Einstein devoted part of his works to a strict criticism of positivism and postpositivism. He famously said that there can be no science without faith in what is possible to cover reality with our theoretical constructions, without faith in the internal harmony of our world.

His works and results are famous to many people, as are the well-known works of Oppenheimer and Korolev, and all convincingly show that the world isn't pluralistic. However, the individual elements of being are not equal between one another but are interdependent and rigidly structured. Without rigid interdependence, structure, and impact on one another, it is impossible to have nuclear explosions or controlled fuel burning, or to send a ship into orbit, and so on.

These scientists committed no offences against science, in contrast to Popper, Feyerabend, and others. Thus we can put forward the not indisputable but still very believable hypothesis that the lack of individual discoveries in the concrete sciences led these philosophers to their categorical conclusions about the lack of truth in scientific knowledge and scientific anarchism. So, let us say, it was some kind of "revenge" on science for their individual failures. It is considered that if the indicated philosophers or others made real achievements in concrete sciences (physics, mathematics, biology, etc.), it is unlikely that they would have announced them to be untrue, anarchic, alogical, and so on.

A well-known saying is that "being determines consciousness." Consciousness influences successes and failures, events and upheavals,

life turns and fractures, and so on. All this, without any doubt, is reflected in human creativity.

The roots of behavior and human convictions and this promise are checked already many times, they need to be searched for in the history of a life, and significantly in childhood and youth. It is necessary to clarify, however, that we don't have to rely absolutely on the biographical factor; we cannot agree that biography has a strong influence in human creativity and especially on philosophy.

Science would lose its entire meaning if it didn't pursue the truth, strive toward the truth, wish for the truth. Considering the truth determines the special status of scientific knowledge. Without receiving true (truthful) facts, it is impossible to achieve fair and correct decisions. This is especially true for legal disciplines. All people desire justice, strive for justice, which, in its turn, is possible to reach only with truthful knowledge.

This again shows the importance of certainty in science and life, the importance of the dialectical method of cognition.

In philosophers of postpositivism and postmodernism, however, we don't exclude other motives. The Western world loves popularity. And, especially there, radical views, statements, and actions rarely bring fame, popularity, and—as a result—a certain income. In the West, they came up with different measurements of popularity, ratings, and indexes, and also an index of quotation of scientific works. A scientific person will write some nonsense (for example, that in order to be a real philosopher, you may need to sit in jail) and he will be criticized, blamed—and therefore also quoted!—by many specialists. From here, popularity, attention, and a certain income are all possible. In Russia, previously, this was impossible.

A similar idea was expressed by other specialists. For example, it is noted that Feyerabend's work *Against the Method* has become a significant scandal in postpositivistic philosophy and methodology of science, which to some extent justified the author's high expectations. The composition was originally oriented to shock public opinion, to which it provided a resounding success and forced people to listen to the expressed position.[35]

In conclusion, we would like to say that the works of P. Feyerabend and K. Popper, despite the criticism, deserve attention. They left their mark in philosophy and diversified philosophical thought. With their very controversial conclusions, Feyerabend and Popper showed how paradoxically philosophical creativity and interest in it could be

[35] *Contemporary Western Philosophy*, ed. by T.G. Rymyantseva, 756.

stimulated. Another question: should we rely on the conclusions of the above mentioned scientists?

It is quite possible to study myths, mysticism, and other such subjects. Their study could give interesting results. So, the authors of this monograph, together with psychologists and doctors, have conducted studies on the psychophysiological features of the extrasensory. They have also studied the possibilities of using the extrasensory in solving crimes and searching for missing people in operational search activity. However—this is the main point!—such research was conducted scientifically, but not with the help of other extrasensory practitioners, such as healers, shamans, and so on. On the basis of this research was formulated a scientific direction for the "extrasensory," and this name was started to be used in legal sciences, directed to the struggle against criminals (in criminal science, in operational search activity).[36] Global achievements either in the field of psychology or in the field of criminal science, however, haven't been received.

Nevertheless, this is certainly not a reason to give up science and scientific knowledge. New researchers, inspired by this experience, will go further. The amount of research will grow in quality, of course, and create new scientific knowledge and results.

§ 3. Briefly about philosophy of science

The two previous sections were required to talk about the author's vision of the philosophy of science, its objectives, and its content.

It is necessary to agree with V.S. Stepin that the twentieth century has turned the philosophy of science into a specialized field of research, requiring not only philosophical and logical knowledge but also the ability to navigate a special scientific material. As the named specialist writes, the philosophy of science is developing with the science itself. It acts as a kind of consciousness of the science. The close connection between philosophy and science can be traced throughout history. In ancient times, when the science was newly born, philosophy had already included in it separate scientific knowledge. With the philosophy of concrete sciences spinning off from philosophy, a new type of relationship appeared. From one side, philosophy, relying on the achievement of science, developed its ideas, principles, and categorical apparatus, and from the other side it became the

[36] S.I. Zakhartsev, *Science of Operational Search Activity: Philosophical, Theoretical-Legal and Applied Aspects* (St Petersburg, 2011).

methodological basis for the processes of fundamental scientific discoveries, its interpretation, and inclusion in the culture.[37]

In general philosophy of science is a part of philosophy—studying the concepts, boundaries, and methodologies of science. Philosophy of science as a direction of Western and Russian philosophy is represented by a variety of original concepts, offering a particular model of science and epistemological development.[38]

In Soviet philosophy of science there existed a direction on cognition of the primarily natural and exact sciences. Humanitarian sciences were paid less attention. Furthermore, statements were considered about the fundamental and irresistible differences between natural and humanitarian sciences. Now such a position is fairly reviewed. Philosophy of science, without any doubt, must study and research the knowledge of all sciences—natural, humanitarian—not prioritizing taking a particular side.

As V.S. Stepin wrote, it is necessary to realize that cognition of socio-humanitarian sciences, from one side, and sciences about nature, from the other, have not only specific but also general features, because it is a scientific cognition. Their difference is rooted in a specific area of the field. In socio-humanitarian sciences, the subject includes the person in it and his or her consciousness, and it often acts as a text with human meaning. Fixation of this subject and its study needs special methods and cognitional procedures. However, despite the complexity of the subject of socio-humanitarian sciences, the search for laws and regularities are compulsory characteristics of a scientific approach. The philosophical-methodological analysis of science, regardless whether it focuses on natural sciences or socio-humanitarian sciences, itself belongs to the sphere of socio-historical cognition. Furthermore, it is necessary to consider that the strict demarcation between sciences of nature and sciences of spirit derives from nineteenth-century science, but it is largely ineffective according to science of the last third of the twentieth century. The natural sciences today are increasingly starting to conduct research on complex developing systems, which have "synergetic characteristics" and include as its components a person and his or her activity. The methodology of research of such objects brings together the knowledge of natural cognition and humanitarian cognition, blurring the rigid boundaries between them.[39]

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[37] V.S. Stepin, *Philosophy of Science: General Problems*, 11–12.

[38] A.I. Nesterov & P.N. Pekarskiy, "About Methodology in Philosophy of Science," *Philosophy of Science: Perspectives of Development* (St Petersburg, 2010), 16.

[39] V.S. Stepin, *Philosophy of Science*, 9–11.

It is necessary to join V.S. Stepin and some other researchers in considering that in the framework of philosophy of science it is necessary to pose a question about the possibility of extending the concept of "scientific cognition" rather than absolutizing natural scientific installation as the only truth. On this occasion, V.N. Mihailovskiy asks whether the history and philosophy of science can be the same for everyone; and he answers himself, "Obviously, may be, if there is such a science."[40]

On the basis of the above, the authors of this monograph also consider themselves to be supporters of "universal" scientific cognition, including natural science and also humanitarian science. They view the philosophy of science in the same way.

However, this position isn't shared by all scientists. V.N. Mihailovskiy gives the example that having the earlier dominance of natural scientific methodology has led to significant difficulties in "teaching" disciplines in the humanitarian sphere, for example, history. Although the achievements of history are widely known, the real basis of its success remains doubtful for many representatives of natural scientific knowledge. This point of view remains widespread: that history is nothing more than a collection of facts and opinions in the absence of a clear theoretical structure and the conventional methodology of research. The possibility of the epistemological equality of history with the exact scientific disciplines is not considered seriously. However, historians themselves believe that theorizing is inherent to them; nevertheless, it is not as formalized as in physics or similar disciplines. But philosophy of science should take into account that the scientific picture of the world, if it has a holistic character, must include a person.[41]

The example given by V. N. Mihailovskiy is typical not only for the historical sciences, but also for pedagogical, sociological, and legal sciences. In a natural scientific environment the following statement about the division of sciences for natural and "unnatural" (humanitarian) is still conventional. Such statements have no basis in fact but are nevertheless still used, including by some teachers during lessons.

At the same time there are opposite examples. Thus, V.S. Stepin argued that due to the complexity of the socio-humanitarian sciences, the setting for its objective study and the search for laws and regularities are compulsory characteristics of the scientific approach. This fact isn't always taken into consideration by the supporters of "absolute specificity" of socio-humanitarian knowledge. His opposition to natural sciences was

[40] V.N. Mihailovskiy, "Philosophy of Science by University Education," *Philosophy of Science: Perspectives of Development* (St Petersburg, 2010), 21.
[41] Ibid., 22–23.

sometimes incorrect. Socio-humanitarian knowledge is widely interpreted: including philosophical essays, publicity, art criticism, fiction, and so on. But the correct statement of the problem should be different. It requires a clear distinction between definitions such as "socio-humanitarian knowledge" and "scientific socio-humanitarian knowledge." The former includes the results of scientific research within it, but it doesn't boil down to it, because it supposes other, nonscientific forms of creativity. The latter is limited only by the frames of scientific research, which in this case, of course, is specific. Of course, this research is not isolated from other spheres of culture, but it isn't a basis for identification of science with the other, although it is closely connected with forms of human creativity.[42]

Despite this fact, it is necessary to agree completely with A.E. Nazirov that traditionally there is a division between humanitarian philosophy and natural sciences, whereas in contemporary conditions it is important to examine the science as a holistic phenomenon of spiritual culture.[43]

A.E. Nazirov speaking on humanitarian sciences, says that the analogy in natural sciences highlights the levels of fundamental and applied research, and also the level of developments (humanitarian technologies). The place of this last one, still to a significant degree takes place through religious, occult-spiritual, meditative, extrasensory, and folk-medical practices. However, we cannot agree with these scientists that in Western Europe in recent decades people more often appeal not to psychoanalysts but to philosophers, which could endow their lives with more long-term senses than could psychoanalysts.[44] Where A.E. Nazirov has come by such information, he doesn't specify.

To check this approval, research of public opinion was conducted in German, Czech and Italian engineering companies. Such a choice was made because engineering companies usually employ a sufficiently educated stratum of the population, who, it seems, can go to philosophers. One thousand people were interviewed in each country. Furthermore, a similar study was conducted in the USA. The results completely contradict the information given by O.E. Nazirov. So, in the indicated environment, the most common appeals are to religious leaders (in each country, this applies to about half of the respondents) and to extrasensory sources (approximately a tenth of the respondents). Appeals to philosophers in the indicated countries are rare, and thus are not widely spread. In this regard, it will be interesting to know why A.E. Nazirov derived such conclusions.

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[42] V.S. Stepin, *Philosophy of Science*, 9–10.
[43] A.E. Nazirov, "Tasks of Scientific Interuniversity Round Table," *Philosophy of Science: Perspectives of Development* (St Petersburg, 2010), 5.
[44] Ibid., 7.

In order to open up the nature of philosophy and scientific knowledge, as was already noted, it is necessary to use dialectics. Philosophy of science, with its help, is trying to find the regularities of science and scientific thinking, and the natural course of the formation and change of concepts.

A.I. Nesterov and P.N. Pekarskiy rightly pointed out that philosophy of science within its search must discover the hidden logic of the development of scientific knowledge. The detection logic of scientific development means understanding the regularities of scientific progress, its driving forces, reasons, and historical conditions. However, the named scientists write that the contemporary vision of this problem is substantially different from that which prevailed until the middle of the last century. First, it was believed that in science there is a continuous incremental growth of scientific knowledge, a steady accumulation of new scientific discoveries and increasingly accurate theories, creating as a result a cumulative effect on the different directions of nature cognition. Now the logic of scientific development is considered to be different: it develops not only through continuous accumulation of new facts and ideas—step by step—but also through fundamental theoretical changes. In one moment, they force scientists to redraw the usual common picture of the world and rebuild their activity on the basis of fundamentally new worldviews. The logic of a slow evolution of science (step by step) changed the logic of scientific revolutions and catastrophes.[45]

The specified categorical opinion requires clarifications. In dialectics there is a well-known law refusing denial. The specified law considers development, including scientific development, in the form of successive levels (steps, grades), connecting with each other in such a way that each succeeding level is a denial of the previous one. Arising to a new level of development involves scientific discovery and the denial of previous knowledge. This process wasn't interrupted or changed. Dialectics implies a permanent and compulsory development, which occurs also by changing previous knowledge to the new one.

If A.I. Nesterov and P.N. Pekarskiy mean the theory of scientific revolution of T. Kuhn and his supporters, it is necessary to remember that it was repeatedly and rightly criticized.[46] Without repeating the criticism

[45] A.I. Nesterov & P.N. Pekarskiy, "About Methodology in Philosophy of Science," *Philosophy of Science: Perspectives of Development* (St Petersburg, 2010), 17.

[46] Among critics, we especially like Noble laureate and famous physician V.L. Ginsburg's thoughts about Kuhn's theory. Ginsburg really concretely showed that Kuhn used old material while thinking about "contemporary science," didn't

and recognizing the achievements of T. Kuhn, it is necessary to state that he also didn't allow a true science of knowledge to be obtained.

As was mentioned, it is necessary to proceed from the necessity of understanding and the possibility of the scientific achievement of an objective truth. Any scientist, writes V.S. Stepin, takes as one of the basic units of scientific activity the search for truth, perceiving truth as the highest value of science. This setting is embodied in a number of ideals and norms of scientific cognition, which expresses its specific character: for a certain ideal of knowledge organization (for example, the requirement for the logical consistency of the theory and its experimental confirmation), in search of explanations for phenomena based on laws and principles, expressing essential connections of researched objects, and so on.[47]

Such a position allows us to specify the criteria for scientific knowledge. It is considered that the system of scientific knowledge must meet the criteria of certainty, reproducibility, hatchability, verifiability by different subjects, consistency, completeness, logical consistency, simplicity, and so on.

Scientific knowledge, as V.B. Markov writes, has always been considered a disclosure of the essence of being, of stable and unchanging laws, and therefore was the bearer of the properties of truth, and also universality and necessity. Unlike opinions, which are considered to be preconceived, a scientific theory is a disinterested contemplation of an essence, it directs us to the comprehension of the essence of being, and not to instrumental knowledge, which generalizes practical experience. For Aristotle, the sample of knowledge was not only lived wisdom, but the science that he defines as universal and evidence-based knowledge, based on a small numbers of universal statements—axioms. Truth for Aristotle occurs as a property of knowledge; it is characterized as conformity to what is talked about in an utterance—to the objective state of affairs.[48]

According to the author's idea, this book is to a greater extent dedicated to the philosophy of law. It is gratifying that specialists in

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consider the contemporary achievements of the science, and admitted anti-historical statements on which he built the theory. See. V.L. Ginsburg, "About Physics and Astrophysics: Articles and Speeches," 2nd ed., M. (1992), 185–207. We notice that V.L. Ginsburg until death based his thought on dialectics as the main scientific method of cognition.

[47] V.S. Stepin, *Philosophy of Science*, 116.

[48] B.V. Markov, "Structural-Functional and Communicative Methods to the Analysis of Scientific Knowledge," *Philosophy of Science: Perspectives of Development* (Methodology of Applied Sciences) (St Petersburg, 2013), 61.

philosophy of law are actively involved in the process of discussion on criteria and standards of scientific knowledge in the field of jurisprudence.[49] It is also expedient to support the opinion of I.L. Chestnov that the scientific criteria of jurisprudence (juridical theory) could not differ from scientific criteria, as they are. Any theorist of the law will agree with this axiom—even a radical supporter of normativism and self-sufficiency—and the autonomy of legal system.[50]

This thesis is also very important because it clearly shows the priority of the philosophy of science over other philosophical-specialized sciences (philosophy of law, philosophy of economics, etc.). The mission of the philosophy of science is connected with science studies, solving the question "what is science," elaborating common criteria of what relates to science and what does not. Philosophy of science is a basis for other sciences. It is necessary fully to support philosophers of law who argue for the criteria of scientific knowledge as "the truth (adequacy, validity, reliability, integrity, unambiguousness) of researchable perception in the process of description and explanation of law as the embodiment of legal justice."[51]

However, I must say, that lawyers are so fond of strengthening scientific standards and criteria that among them some have pointed out the "conscious refusal of usage without necessity to the slang of 'bird language' and charming metaphors for the formulation and discussion of the newest scientific problems."

Such a scientific standard, first, isn't understandable and, second, is subjective. From the perspective of refusing "charming metaphors," it turns out that it is proposed to refuse also the famous beautiful philosophical statements of Socrates, Plato, Aristotle and so on. Why are their deepest statements, formulated in simple and accessible language, not scientific? Are they going to harm jurisprudence and its understanding? This is unlikely. But, from the other side, an exception is discussed from the standard of "refusal from usage without necessity." However, in legal research there isn't enough subjectivity. The researcher will easily justify this "necessity." As a result, such a standard occurs, which in fact solves

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[49] See, *Standards of Science and Homo juridicus in the Field of Philosophy of Law: Materials of the 5th and 6th Philosophical; Legal Readings in memoriam acad. V. S. Nersesyants,* M. (2011).

[50] I.L. Chestnov, "Postclassical Criteria of Science of Legal Theory," *Standards of Science and Homo juridicus in the Field of Philosophy of Law*, M. (2011), 62.

[51] V.G. Grafskiy, "It Is Too Early to Make a Point: Instead of a Conclusion," *Standards of Science and Homo juridicus in the Field of Philosophy of Law*, M. (2011), 159.

the usage of slang and "bird language." Finally, the term "bird language" can hardly be called scientific or legal.

However in general, the work of lawyers is needed as a support. Philosophy of science can, will, and must develop not only top-down (from philosophers to sciences) but also bottom-up—from specialists of concrete sciences to philosophers.

§ 4. Philosophy and global problems of humanity

One seventh of the twenty-first century will end in 2014. Summering up this short time interval, we can confidently say that nothing is known of how the world of the twenty-first century will turn out. That is, the global problems of being and survival, accumulated by humanity during the previous years and centuries, continue to be extremely relevant.

So, there is still a threat of nuclear war and nuclear weapons. The confrontation between the USSR and the USA that took place in the twentieth century led in the twenty-first century to the expansion of the number of countries that have nuclear weapons. A reduction in the number of countries having such weapons isn't expected. At the same time, in the twenty-first century, all the talks about the reduction of strategic nuclear forces subsided. On the contrary, many countries have openly declared that they are testing new weapons systems—which moreover are more powerful and effective. Thus, to the reasons for possible nuclear conflict can be added one many have already forgotten—war for faith.

The application of new technologies has not removed but, on the contrary, has increased the possibility of a technological disaster, also including nuclear and military facilities. At the beginning of the century the nuclear submarine *Kursk* sank with a nuclear weapon and nuclear reactors onboard. Soon after, another Russian nuclear submarine sank. On the bottom of the ocean already lie six submarines with nuclear reactors (four Soviet-Russian and two American). Soon after we also saw the ruinous and fatal nuclear catastrophe in Japan (Fukushima). It clearly showed that all the world, including the highly technological Japanese, are not insured or somehow protected from technological accidents. Let's think about how many nuclear facilities are situated in the USA, Russia, China, and other countries. How many military industries involving not only nuclear weapons but also chemical, bacteriological, and other kinds of weapons of mass destruction exist in the world? And at any moment, a technological catastrophe can occur.

As we know, such accidents, as with Fukushima, don't go unnoticed. They significantly worsen the already disgusting ecological situation on

the planet. Ecological safety is another globally unsolved problem, which is staying before humanity. That is, all global problems of humanity are interrelated. Ecology, as was already proved by specialists, has a harmful influence on health and leads to new diseases. In addition, there are the famous facts of the reduction of the Earth's ozone layer and the problem of clean drinking water, clean air, and natural food.

Connected to ecological problems is the question of the exhaustion of energy resources.

A separate problem is the overpopulation of the planet. Scientists are arguing over the optimal population of the Earth. For example, they state that the maximum number of people shouldn't exceed 1 billion people. Currently the population of the Earth is already 7 billion people. According to forecasts, by 2025 there will be more than 8 billion. Overpopulation raises other questions: how will people breathe, what will they eat and drink, and how will they keep warm?

New global threats to life on the Earth in the twenty-first century include terrorism and drug addiction. The century began with terror attacks in the USA (skyscrapers were blown up). At the same time, in Russia, there were acts of terrorism in the Caucasus. Other countries haven't escaped the threat of terrorism, or the dangers of drugs, which have flooded the whole of human civilization.

But these specified global problems are the external side of threats hanging over the population. Such threats are also internal, the content of which is no less dangerous. These include the threat of continuing biomedical experiments and tests (cloning, transplantation of organs and brains, etc.). Another threat is informational violence over the human. Experiments in the manipulation of consciousness are still conducted. Separate threats refer increasingly to common violations of human rights, associated with total control over movement and communication.

Between the human as individual and humanity as a totality of people on Earth are communities of people, generally united in countries. It needs to be said that countries themselves at the present stage are living through crisis processes. The question in this case isn't about wars between countries (which is dangerous, as already mentioned), but about the fundamental approach to the state, its rights and opportunities—for example, the problem of the social state. Nowadays, many developed European countries are suffering from an inflow of migrants from the so-called undeveloped countries. Migrants from undeveloped countries receive a tolerable unemployment compensation, and other forms of help and so on, but all this is at the expense of the working, generally, native population of the country. The main population actually provides for these

migrants. But some migrants are simply not willing to work, or even to adopt the culture and accepted rules of behavior in the country. Such questions over whether it is necessary to have tolerance, equality, and universal social guarantees are already openly discussed in Europe. A question arose about the establishment of limits of tolerance and universal social guarantees. A good example of the above is the success of a book by German politician T. Sarrazin, *Germany: Self-Destruction*,[52] which has a nationalistic character. In Germany alone it has sold more than 1,200,000 copies, what is a considerable number for a modern work. The crisis of the social states has already begun. And where this crisis will lead, we do not know: will countries and their citizens be destroyed and will there be a new round of Nazism?—this is the question and at the same time the real threat to human existence.

Here are the global problems (threats) facing humanity in the twenty-first century. Global problems in this case are understood to be those that are:

1. deadly dangerous
2. harmful for all humanity, no matter where on Earth
3. unsolvable by the forces of one state (one nation)

There are possibly at least two classifications for such problems. The first allows the awareness of such problems to be divided into:

1. problems that are already known to humanity
2. unknown problems; in its turn, these can also be divided into (a) threats that can be assumed based on current realities, and (b) quite unknown threats (for example, the threat of drug addiction has started to be regarded as a global problem of humanity only relatively recently, although drugs have been known about for a long time).

Another classification of global problems has been conducted on a different basis. This proposes to divide problems into two levels:

1. dependent on humans and humanity
2. independent from humans and humanity

[52] See, T. Sarrazin, *Germany: Self-Destruction*, translation from German, M. (2013).

Several already mentioned problems refer to the first level. To the second can be referred:

— forces of space
— powers of nature

There is no doubt that humanity and the Earth as a planet is a part of the space system. To deny it seems pointless. It is also pointless to deny the fact that humans know very little about this system. And it is very naive to think that they don't depend on this system. The dependence on space implies the impossibility of being protected from it. For example, humanity can do nothing to oppose a collision with a large meteorite, which is capable of destroying the Earth and the atmosphere, the attenuation of the Sun, and so on. A meteorite that fell on Chelyabinsk in 2013, during the fall, released an energy equal to 20 explosions of the nuclear bombs in Hiroshima. I must admit, that the planet Earth and life on it, by definition, is always vulnerable from space forces.

The powers of nature are also entirely unexplored by humanity. Although we have seemingly reached the largest discoveries in physics, chemistry, biology, and other sciences, people still are unable to predict floods, earthquakes, and other natural cataclysms. The experiences of the twenty-first century again show how humanity is vulnerable to nature. It is enough to remember that at the end of 2004 around the Indian Ocean, a tsunami instantly destroyed more than 200,000 people. In fact, the powers of nature and its possibilities are not explored enough. And, in fact, these powers always present a threat to humanity.

However, space forces and the powers of nature have not destroyed the Earth yet. This, first, inspires optimism, and, second, involves the special role of the Earth in outer space.

However, the Earth and civilization can be destroyed from the inside by the human.

And here occurs a question: what does philosophy undertake as the "science of sciences" in order to solve the above mentioned looming problems, which could destroy civilization? It should be recognized that if something is undertaken, these efforts are clearly not enough. With this conclusion, likely, everybody will agree.

The reasons for these unsuccessful attempts according to the solutions to the mentioned questions are connected with the issues that philosophers at the present time have lost authority and social influence. With this conclusion, probably, many people will agree. The decrease in philosophers' authority and status will be discussed separately. But this

reason is rather subjective and is largely connected with the main reason: that philosophers by and large have nothing to offer to the solution of this problem.

In sum, the crisis of being is coming, a problem of existence of being will occur. And this crisis coincides with a crisis in contemporary philosophy. As for philosophy today, there is no more urgent problem than the problem of the survival of humanity in the future, or, as it can be said, the problems of the future being.

Commenting on the situation in science, it is necessary to say the following:

First, we need to recognize the incorrect way in which the solution of the global problems of humanity have been approached by professional specialists from particular sciences (physicians, chemists, doctors, etc.), who do not combine their efforts. For example, the problem of nuclear weapons is a problem not only for physicians but also for other scientists (historians, political scientists, economists, ecologists, doctors, etc.). A problem so complex usually isn't solved alone. The lack of an integrated approach affects the quality of such scientific work. Particularly bad and one-sided are the forecasted consequences of some of the risks for humanity. It is necessary not only to clearly understand the danger of existing problem, but also to see what will happen during future breakthroughs, on the basis of which a concrete plan of actions can be offered.

In confirming these words, we can give an example. In April 1986 there occurred an accident at the Chernobyl nuclear power plant. There was no idea about what happened, and scientist didn't have a concrete plan of action for the liquidation of the consequences. Action to liquidate the threats had to be undertaken spontaneously. In March 2011 in Fukushima, Japan, an accident occurred at a nuclear power plant. However, just as happened 25 years previously, scientists again were not ready for the accident. And actions for the liquidation of the accident also had to happen spontaneously, and were not always of a thoughtful character.

Second, it is necessary to recognize incorrect ways of removing these problems through law, legal regulation, and legal prohibitions. Few philosophers and philosophers of law thought about the possibilities of law and the limits of its capabilities. I must admit that the law isn't omnipotent.[53] The rules of law are systematically ignored by states when it suits them. A bright example is the USA and the actions of that country in Yugoslavia, Iran, and so on. Nowadays, the world is multi-polar, and each

[53] About this see, S.I. Zakhartsev, *Some Problems of Theory and Philosophy of Law*, ed. by V.P. Salnikov, M. (2014).

powerful country that has nuclear weapons in fact can make everything with the countries of the so-called third world. Other powerful countries can support or condemn such a policy, but they cannot do anything to prevent a possible nuclear war and as a result, a catastrophe. The law theoretically can be an effective regulator of peace on the Earth only in the case of a unipolar world. In this case, the dominant country can set up strict standards, which will be mandatory for everybody. However, a unipolar world is possible only in the case of the absorption of all states by one state that is all-powerful. Today it is impossible because many countries have nuclear weapons. So the USA practically absorbed the USSR, but then a strong Russia re-emerged, which still had modern weapons, human and territorial resources, and economical potential. And, in the confrontation with the USSR, the USA overlooked the rise of China, India, and Islam. And I must admit that, although powerful countries together can apply standards of international law, which are directed to the saving of peace, they can also violate them if it is necessary. There is no doubt that standards of law can effectively work only in that case, if the control over their execution is situated in the same hands. That's why standards of international law relating to prevention of global problems have a declarative character.

I need to say that it is very common that people who are trying to solve a question don't know what to do because they are addressing unfamiliar spheres of life. Many physicians, chemists, economists, and other scientists, being on the whole law-abiding people, sincerely think that the law can solve all questions. That isn't so. The law isn't omnipotent and limitless in its possibilities.

We see the situation thus. For the solution of global problems, it isn't enough that their general awareness may be only limited. Nowadays in all states political regimes have elements of democracy, that is, the power of people and the population. When the population truly understands and is aware of the horrible consequences, either people will force the authority to take concrete steps to solve problems or pacifists and humanists will come to power in those states.

Furthermore, it should be compulsory to teach global problems in secondary and higher educational institutions. In fact, it is precisely in school that a person forms his or her personality and develops an attitude to the world and his or her place in it. Unfortunately, the problems facing humanity are not taught in schools, and, if they are taught, it is usually perverted. So, pride of one's country is mixed with the idea of the power and omnipotence of that particular country. In England, for example, the

struggle for the national interests of this kingdom throughout the world are promoted.

In addition, it is important also to attract public opinion to the global problems of humanity all over the world. This isn't currently happening. If any particular state issues questions about environment, war, and accidents, then the other countries are not promoting and analyzing them. Everything again depends on a few scientists in a concrete narrow specialty, in which they are trying to solve something.

Thus, some physicians, biologists and other scientists considered that the Earth and humanity have already passed the so-called point of no return and are moving to destruction. The apparent overpopulation of the planet in combination with the development and escalation of nuclear and other weapons of mass destruction, environmental pollution, and the continuing destruction of the ozone layer and other problems allows us to consider such a conclusion as reasonable. And it is important to understand here that if the Earth's destruction and liquidation of life can be solved, then so can any of the other existing problems.

Such a development of events is quite possible and real. It is necessary to admit that, despite the expressed proposals to solve the problems, it is loosely believed that humanity and the leaders of the states will suddenly grow wiser, and understand, and then all together take the necessary steps to minimize risks of a possible catastrophe.

However, this specified conclusion allows looking at the situation from the other side. After all, the experience accumulated by people and well-known historical facts allow us to say that humanity has always survived all catastrophes and cataclysms so far.

There are a lot of examples. Such cases include the appearance of incurable diseases which until recently led to increased mortality and a decreased population (until the acceptable level), but more recently was solved by the invention of the necessary vaccines. While using deadly weapons and wars again caused the reduction of the population, wars then stopped and the invention of anti-weapons allowed the enemy to be restrained.

While the overpopulation of cities in the Middle Ages led to starvation, which caused mortality and the reduction in number of citizens until the acceptable level, life again flourished later.

To discuss such matters is obviously to be very cynical. But it is necessary also to think about it. After all, overpopulation, scarcity of food and raw materials, and a lack of energy resources can be considered separately as individual global problems or can be seen as problems that arise from one another. Lack of food and energy resources sooner or later

will inevitably lead to the starvation or mass extinction of people. Extinction will continue until certain limits, until people will be able again to feed themselves, to keep warm, and to live on.

Or the destruction of the ozone layer and environmental problems will lead to the appearance of a new incurable disease or mass mortality. Next, the ozone layer will be regenerated, forests will flourish, and the necessary vaccine against the disease will be invented.

Thus, apparently, it is impossible to destroy humanity simultaneously everywhere. Even assuming nuclear war, countries that have this deadly weapon are likely to destroy one another, which will give an opportunity for the development of Australia, New Zealand, Franz Joseph Land, and small oceanic islands. From where again, maybe from the very beginning, humanity can start its development over again.

The outlined course of events gives an opportunity to put forward a *hypothesis of cataclysms and circulation of human life on Earth*. Its essence is that humanity with its actions will reach a certain frontier, after which it will be unable to fully occupy the planet. As a result of achieving this frontier, catastrophes or cataclysms will occur that will affect (sacrifice) a large part of the population of the planet. Then the survivors of the cataclysm will begin a new life. This life probably will start from the very beginning, because during catastrophes, undoubtedly, much accumulated human knowledge, achievements, and life experience will be lost. But solving the problems of overpopulation will restore the environment and energy resources. Then as humanity develops, reaching overpopulation, violating ecology, inventing deadly kinds of weapons, and fighting, the process of its activity will reach a new frontier, a cataclysm will occur and then a new round of life, cleared of invented technologies, experiences, and knowledge.

In confirmation of the legality of this hypothesis we can say that despite the accumulated array of knowledge, scientists haven't been able to come to a conclusion on where humans were formed and how human life began on planet Earth. It is stated, for example, that the Earth existed for many millions of years. The sources here are deliberately not indicated for the reason, that, first, they are all contradictory, and second, they are also hypotheses. Assuming that the Earth was formed over millions, if not tens of millions years, as a result of the occasional impacts of the forces of nature and space, a logical question arises about the human population of the Earth. It is reasonable to assume that this population has existed before, perhaps repeatedly.

To assume that the world was created by God, probably isn't correct at all, because at the time of the appearance of Jesus Christ the being had

already been on Earth. The God, Jesus Christ, on the basis of faith, strongly changed the world and being. But the world and life without any doubt had already existed on the planet Earth. It is quite possible that the coming and resurrection of Jesus Christ was a new round of life of humanity.

Thus, scientists continue to find obscure and unknown objects, which they are not able to explain or even to say how old they are. There are specialists who suggest an extraterrestrial origin for certain discovered objects. But maybe these are terrestrial objects from an earlier period, from destroyed civilizations that existed earlier on Earth.

And here it is very important to set up the following question: who destroyed these civilizations? We get only one answer: humanity has destroyed itself.

It is necessary objectively to admit that all civilizations constantly destroy one another. In every century, destruction is constantly going on, leading to at least two terrible wars that dramatically reduced the population of the planet. Experience clearly shows that humanity, formed into states, cannot create for a long time. It tends toward destruction, murder, and self-destruction. The relationship of the fraternal peoples of Russia and Ukraine, who together survived the horrors of World War II and had been for a long time joined in a single-state structure, in 2014 began to disintegrate and they began to kill each other.

The idea that humanity will go on and will be kinder, wiser, and smarter is not justified. Historical experience convincingly shows that humans and humanity, alongside their virtues, also harbor the inherent vices of envy, greed, and aggression. I remember the great Russian thinker L. Tolstoy, who said that there would be no wars when water instead of blood flowed inside a person.

Unfortunately, self-destruction is one of the features of humanity. Why should we not assume that there have been several such self-destructions?

Judgments about whether any of the global risks of human existence will be realized, sometimes can be found in philosophical literature. V.S. Stepin writes that apparently in the third millennium according to the Christian calendar, humanity must realize a radical change to some new form of civilized progress. Some philosophers and futurologists compare contemporary processes with the changes that humanity experienced during the transition from the Stone to the Iron Age. This point of view has a deep basis, if we consider that solutions to global problems imply a radical transformation of previously adopted strategies of human activity. It is necessary to revise our previous relation to nature and our ideals of domination, focusing instead on transforming the natural and social

worlds, the development of new ideals of human activity, and new understandings of human perspectives.[54]

This point of view is more optimistic than those that stated this work, although they also carefully indicate the inevitability of cataclysms.

Thus, in this monograph we are putting forward for discussion a hypothesis of cataclysms and the circulation of human life on the Earth. The specified hypothesis of being on the Earth contains newness and is highly relevant in the light of facing the global problems of humanity. It is like any other theory about future life on Earth: it has weaknesses, which can be discussed. In fact, discussion of the stated problem invoke the authors of this book.

We specifically placed here our theses about future life before reviewing philosophy of law. There is a conviction that the problems of humanity cannot be considered or would be incomplete without also considering the opportunities of law. The law isn't omnipotent, but represents a complex social phenomenon, consideration of which will be discussed in the next chapter.

[54] V.S. Stepin, *Philosophy of Science*, 104.

CHAPTER TWO

LAW: THE ORIGIN AND NATURE

§ 1. The subject of the philosophy of law

Scientists haven't come to a common opinion on the question of what philosophy of law is and what its subject is.

According to D.A. Kerimov, philosophy of law, being one of the main directions of the general theory of law, formulates the fundamental problems of the dialectics, epistemology, and logic of legal being, serving as the general theory of law and the entire complex of legal sciences.[1]

S.S. Alekseev believed that the philosophy of law is the science of law in human life, of the human being. According to his opinion, philosophy of law is presented as a scientific discipline, which aims to give a philosophical explanation of law, its meaning, and its purpose, to justify it from the perspective of human beings, and that its system of values exists in it.[2] As the specified author wrote, the crucial meaning in the philosophy of law has as its "philosophical core" the philosophical explanation of law and the philosophical understanding of law, which are expressed in its values.[3] To some extent, on the same subject, Y.V. Tihonravov gave the subject of philosophy of law a very short definition—the study of the meaning of law.[4]

O.G. Danilyan and S.I. Maksimov write that philosophy of law first is identifying the sense of law, and also the justification for understanding this meaning. Wherein, according to their opinion, the subject of philosophy of law is the non-juridical (limited) basis of law.[5]

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[1] D.A. Kerimov, *Methodology of Law* (Subject, Functions, Problems of Philosophy of Law), M. (2000), 83.
[2] S.S. Alekseev, *Philosophy of Law*, M. (1998), 2.
[3] S.S. Alekseev, *The Law: Alphabet—Theory—Philosophy*, M. (1999), 395.
[4] Y.V. Tihonravov, *Basics of the Philosophy of Law*, M. (1997), 46.
[5] See, *Philosophy of Law*, ed. by O.G. Danilyan (Kharkov, 2009), 8.

V.S. Nersesyants provided a slightly different definition: the subject of the philosophy of law is law as the essence and law as the phenomenon in its difference, relationship (matched or mismatched), and desired unity. The same subject was further expressed by the scientist a little bit differently as right and law in their difference and their relationship in a desired unity.[6]

G. I. Ikonnikova and V.P. Lyashenko, on the contrary, believe that philosophy of law explores the law not only as the essence or phenomenon in its difference, relationship (matched or mismatched), and desired unity, but above all that it is interested in the most general principles of legal reality and its cognition.[7]

G.F. Pukhta wrote that positive law deals with already existing law and philosophy—and that is how it should be.[8]

Y.G. Ershov believes that the philosophy of law should be considered as the science of the cognitive and social bases of law.[9]

V.P. Malakhov wrote about the subject of the philosophy of law as its essence.[10] Although, in a more expanded definition, given in the same work, he defines the philosophy of law somewhat differently: philosophy of law is a set of basic methodological assumptions, which only make possible the understanding of law, the meaningful self-unfolding of justice, and the direct formation and reproduction of legal life.[11]

Finally, O.E. Leist actually came to the conclusion that the philosophy of law "is not a science, but an ideology, that seeks to lean on a scientific basis and justification."[12]

Definitions of other philosophers of law also differ.

Furthermore, there exist two methods of studying the philosophy of law. As S.S. Alekseev noted, this scientific discipline is built on two scientific planes (levels):

— as a native philosophical discipline, considering the law from the perspective of a specific universal philosophical system or historic-philosophical developments

[6] V.S. Nersesyants, *Philosophy of Law*, M. (2011), 2.
[7] G.I. Ikonnikova, V.P. Lyashenko, *Philosophy of Law*, M. (2013), 16–17.
[8] G.F. Pukhta, "Encyclopedia of Law: About Science of Law," *History of the Philosophy of Law* (St Petersburg, 1998), 377.
[9] Y.G. Ershov, *Philosophy of Law* (Ekaterinburg, 1995), 9–10.
[10] V.P. Malakhov, *Philosophy of Law: Ideas and Proposals*, M. (2008), 28.
[11] Ibid., 10.
[12] O.E. Leist, *The Essence of Law: Problems of Theory and Philosophy of Law*, M. (2011), 264–65.

— as an integrated philosophical-legal field of knowledge, which, on the basis of a certain quantity of philosophical ideas, carries out the scientific study of legal material.[13]

So, it happened historically that philosophers of law "came from the depth of philosophy" and this has been traditionally based on the first scientific approach.

Philosophers of law, who have a legal education, on the contrary, prefer the second scientific method and include the philosophy of law in the system of legal sciences. Hence, the subject of the philosophy of law is determined by taking into account that philosophy of law is a legal science, a part of the general theory of law, and so on.

The authors of this monograph, like almost all lawyers, adhere first to the second approach. But the more philosophy of law was parenthesized into jurisprudence, the general theory of law, the more insistent and confident philosophy of law departs from these frames, setting questions that jurisprudence is unable to embrace.

It is forced to rethink once more philosophy and philosophy of law, to assess the state of philosophy of law from the position of the modern day.

As you know, philosophy is a special way of understanding and mastering the world. As a worldview, a system of knowledge, it forms a coherent and valuable view about the world and the place of humans within it. It is considered that it is true, that philosophy goes out of the frames of concrete sciences. Furthermore, exactly from the depth of philosophy "were born" the technical and humanitarian sciences, including jurisprudence. Philosophy gave the impact for the development of legal sciences and determined their direction. The basis for this development was the thought of philosophers about law. Starting from ancient times, all philosophers, without exception, related their works to the law, observed it directly or implied it as an important component of building the world and society. That was how this self-direction in philosophy—philosophy of law—was generated.

This direction, we need to admit, was never the main concern—philosophy traditionally observed the global problems of being, cognition, and peace. And law invisibly (or visibly) was among these problems as an important way of regulating social relationships. Objectively, philosophy gave birth to the legal sciences and not vice versa. And naturally, it is philosophers who formed and substantiated nineteenth-century philosophy of law as a direction in philosophy, and later on as a scientific discipline,

[13] S.S. Alekseev, *Philosophy of Law*, M. (1998) 2.

intended for the formation of the worldview of the law, the philosophical understanding of law, and the understanding of the methodology of law.

V.S. Stepin has fundamentally researched this question and noted that since the middle of the nineteenth century philosophy began to form new approaches. There then occurred a critical attitude to the classical ideal of the last and absolute true philosophical system. Philosophy was aware of itself as a developing system of knowledge, which, like science, doesn't end at any stage of its development by achieving a final and comprehensive picture of the universe. At the same time, philosophy in this period began to pay attention to specific cognition and knowledge, not only in science but also in other spheres of culture—art, morality, political and legal consciousness and everyday thinking, religious experience, and so on. Checking its constructions by the way of constant reference to the real development of different spheres of culture, separate areas of philosophical knowledge began to gain a relative independence. They constitute the special philosophical disciplines (ontology, theory of cognition, ethics, aesthetics, philosophy of law, philosophy of science, etc.).[14]

Thus, philosophy of law is considered to be a connected scientific discipline between philosophy and legal science, but it doesn't belong to the latter.

Philosophy of law isn't included in the general theory of law; it indicates its direction of the cognition of law, the methodology of law, and it formulates approaches and fundamental problems of law, searching for solutions. Thus it turns out that the subject of philosophy of law includes fundamental questions of legal being, essence of law, methodology of law cognition, values of law, awareness of law, logic of law, and the human's place in the legal relationship.

Here occurs a tangible distinction between the subject of philosophy of law and the general theory of law, because the jurisdiction of philosophy of law includes understanding the global fundamental problems of law and indications of the methodological principles and benchmarks of the theory of law.

In fact, the purpose of these individual philosophical directions is exactly so that they become peculiar "bridges," benchmarks for the theoretical sciences for all areas of knowledge (from economics and mathematics to the theory of law). Philosophy of law acts as a "bridge," a connected link between "pure" philosophy and the theory of state and law as the main basis for all legal areas of knowledge.

[14] V.S. Stepin, *Philosophy of science*, 13–14.

The circumstances, in which the philosophy of law lost some of its significance for legal sciences are simple and clear. Philosophers, as was already noted, did not consider reviewing the problems of law as the main direction of philosophy and did not pay it the necessary attention. The initiative was intercepted by the lawyers, and it became, of course, normal to consider the philosophy of law primarily from these legal positions. From this moment, the philosophical component was noticeably weaker. And philosophy on its own has become more like one segment of the theory of state and law.

However, the approach to the classification of philosophy of law in relation with the general theory of law at the present time is not currently acceptable.

First, in this approach arises the problem of the distinction of the subject of the theory of state and law and the philosophy of law. Attempts at distinction have intensified subjectivism in the theory of state and law. There were too few systematic attempts "to raise eyes to heaven" and lead out philosophy of law from purely legal disciplines.

Wherein, *second*, it is important to understand that philosophy doesn't tolerate restrictions that limit it to one science. Placement of the philosophy of law within the legal sciences implies a restriction of this discipline within the general theory of law. That is, it starts becoming not about philosophy but about philosophizing in the limits of legal science. In this sense, philosophy of law loses its truly philosophical purpose.

G.F. Shershenevich, criticizing philosophers, wrote that they consider law without going into specifics of legal realities.[15] This is largely true. But in front of philosophers of law stand other, more global problems, requiring philosophical reflection—for example, the law and scientific-technical progress (law should promote, moderately regulate, and somewhat hinder such progress, e.g. in biomedical experiments over the human); the law and truth (whether the law is necessary in order to establish objective truth and receive real knowledge or where it is enough for legal truth); the interaction of law and non-scientific knowledge; the law and extraterrestrial civilization; the problem of forming a single world legal system through the convergence of norms, and so on; and, of course, the philosophical understanding of the correlation of law and freedom, law and justice, law and equality, legal values, legal progress, and so on. In

[15] G.F. Shershenevich, *General Theory of Law*, M. (1911), 15–16. His thoughts in this matter in one form or another have been repeated in his other works. See, for example, *History of the Philosophy of Law*, M. (1907; republished, St Petersburg, 1999), 20–21.

addition, it is precisely philosophy of law that can objectively estimate the state of legal science and legal works.

The study of the philosophy of law and the content of concrete legal norms and realities are made according to necessity, for the solution of the above mentioned issues, and other global tasks.

Furthermore, G.F. Shershenevich's remark refers to the beginning of the twentieth century—to a time when the philosophy of law was not an interdisciplinary science, when its scientific foundation had not been formulated, and it wasn't adequately "forearmed" by legal knowledge.

Third, separate lawyers, even when preparing work on the philosophy of law, don't like and don't want to go outside jurisprudence. That is, really philosophical and philosophical-legal problems tend to be considered strictly within the limits of legal disciplines, without going deeper and sometimes without connecting to philosophy. This by itself greatly impoverishes and "crops" research. But, sometimes, this work cannot be attributed to the philosophy of law, because it was written according to the theory of state and law and the history of political and legal doctrines, but not the philosophy of law. In this case, philosophy becomes like closed gates, under cover of which anything you want can be written. But, unfortunately, this way does not lead in the direction of cognition.

The leading philosophers of Russia, apparently, desired to connect with the problems of the philosophy of law. This is noticeable, at least according to the presentations at the round table of the Constitutional Court of the Russian Federation, which was attended by the academicians V.S. Stepin, A.A. Guseinov, and V.A. Lektorskiy.[16] Specified scientists have set up questions in front of lawyers, that undoubtedly have a philosophical-legal character: the law and informational violence in the world, the law and private property, the law and experiments on humanity, and so on. Does the legal community actively turn on the understanding of these problems? But the more it immerses itself in it, the more obvious is the fact that these questions do not so much have a legal character but a philosophical-legal and philosophical character. This again confirms the conclusion that philosophy of law in the conditional hierarchy of knowledge should be placed over the general theory of law, and not inside it. The study of the philosophy of law inside legal sciences is incorrect.

In modern legal dictionaries, the condition of the philosophy of law is reflected fairly objectively. So, the dictionary edited by A.Y. Sukharev

[16] See, *Philosophy of Law at the Beginning of Twenty-First Century through the Prism of Constitutionalism and Constitutional Economics*, ed. by V.V. Mironova & Y.N. Solonina, M. (2010), 11–27, 90–93.

and A.B. Barihin states that philosophy of law is a science about the most general theoretical and philosophical problems of jurisprudence and political science, which for a long time acted as an integral part of philosophical systems. In modern society, as is written further, philosophy of law is mainly the integral part of a widely developed legal science; often the term "philosophy of law" is used as a synonym for the general theory (general study) of law. However, since the end of the nineteenth century, philosophy of law is often understood more narrowly, as an autonomous discipline, distinct from the theory and sociology of law, which aims to study not the applicable law but the ideal spiritual principles at the basis of law. The basic concept that is understood in this way by philosophy of law is the "idea of law."[17]

Such a reflection of the contemporary state quite clearly shows that philosophy of law in the twentieth and twenty-first centuries has increasingly moved away from philosophy. Ideal spiritual principles, undoubtedly, need to be studied; however, they cannot reduce philosophy of law to the study of these problems only. There are many more global problems in law, which can be evaluated only by philosophy. That's why global ideological problems are named "philosophical." In this sense, O.E. Leist rightly pointed out that philosophy of law doesn't necessarily criticize applicable law and does not always oppose ideal law, which doesn't exist yet. Philosophy of law always sets a goal not only of assessing applicable law but also of understanding the nature and the meaning of the law in general.[18]

If the subject of the philosophy of law is to cut until it reaches the "ideal spiritual principles of law," then it isn't clear what "philosophy" of law is exactly for the named science. For such a narrow and precisely legal science, another more specific name can be proposed, which does not use vain philosophy.

What is the reason that we mislead ourselves, believing that the "ideal spiritual principles of law" are a philosophy on their own? Obviously, such an interpretation gives a philosophical and methodological understanding of law in a very truncated form; more precisely, it will not give such an understanding.

Here again, the approach is very important. In neo-Kantian and neo-Hegelian or other interpretations, it is necessary to study the "idea of law" from philosophical and philosophical-legal positions. This review will

[17] See, *Big Legal Vocabulary*, ed. by A.Y. Sukhareva, M. (2003), 737–38; A.B. Barihin, *Big Encyclopedic Vocabulary*, M. (2005), 671.
[18] O.E. Leist, *The Essence of Law: Problems of Theory and Philosophy of Law*, M. (2011), 272–73.

give an impulse to the development of the general theory of law; indicating the way to cognition. Wherein, it is very important that cognition of neo-Kantian, neo-Hegelian, and other directions is carried out from philosophical positions, comprehensively, objectively, and widely, including all philosophical knowledge. But this is possible if the philosophy of law is put over the general theory of law. Otherwise (if the philosophy of law is to be considered a legal science), these indicated approaches and directions will be the study only of the limit of legal sciences, and this study will not be full. If so, such scientific work will turn from philosophy into fiction, because it is hard to be a supporter of, for example, neo-Hegelianism without a complete study of Hegel's doctrines, his supporters and opponents, the works of others philosophers, and philosophical criticism. If the researcher tries to appeal to truly philosophical thought, he or she will then obviously go outside the subject of legal science. In this regard, philosophy of law cannot be examined as a part of the general theory of law—that is, to limit its subject within the frames of legal science.

So in general, we can agree with the scientists that philosophy of law differs from the general theory of law not only because of a higher degree of abstraction of philosophical concepts and categories, but also because the exit is outside legal problems.[19]

Another question is very important here, which is connected with interaction with and interpenetration in sciences. Is the philosophy of law possible without diving into philosophy, and does this increase the potential of the general theory of law? Apparently not, because, in this case, from where will the philosophy of law consume ideas?

This, of course, doesn't mean that the philosophy of law should become exclusively the destiny of philosophers. About this, G.A. Gadzhiev noticed correctly, "We don't need to think that philosophical thoughts—the monopoly of professional philosophers and the attendance of philosophy by lawyers, economists and writers—are invalid intellectual poaching."[20] However, in practice, we often see the opposite: lawyers are reluctant to attract philosophers to comprehending philosophical problems of law, declaring that the philosophy of law is a legal discipline and the "patrimony" of lawyers but not philosophers.

[19] O.E. Leist, *The Essence of Law: Problems of Theory and Philosophy of Law*, M. (2011), 264.

[20] G.A. Gadzhiev, *Ontology of Law* (Critical Research of the Legal Concept of Reality), 2013, 6.

Fourth, a scientific discipline, one of the components of which is philosophy, by its definition must dominate and play the main role. Otherwise, this discipline will cease to be a philosophy.

All such disciplines (philosophy of economics, philosophy of history, philosophy of medicine, philosophy of law, etc.) are created on a philosophical basis. The order of their formation is as follows. Philosophy is general in relation to a concrete science (particular). First, inside the philosophy is highlighted a direction, related to a specific science. At the same time, in science are formed questions that go outside its subject and require philosophical thinking and resolution. Further integration of this philosophical direction and science lead to the creation of a new scientific discipline. But in such a construction, a particular (knowledge from the concrete science) may not prevail over the general (philosophy). To consider philosophy from this position—for example, that of economics or law—isn't logical and correct. It should be the other way around.

Does such integration always happen? Experience shows that it does not. In a number of natural and humanitarian sciences, it doesn't happen. One of the reasons for this is that not all, for example, natural sciences need such integrations. Philosophical problems (or problems, requiring a philosophical level of understanding) in these sciences are relatively few. There is no need for the formation of independent directions in philosophy.

Here it is clear that for the formation of scientific disciplines such as philosophy of economics, philosophy of medicine, philosophy of law, and others, law should be a demand within it, should be a desire to reach out from it, "to rise" to philosophical knowledge. Such sciences strive to philosophy. They strive, with philosophy's help, to solve their scientific problems; but, of course, they do not attempt to evaluate philosophy from the position of economics, medicine, or law. That's why the keyword of the mentioned disciplines undoubtedly is philosophy.

Thus, the philosophy of law is an interdisciplinary science. Such scientific disciplines we propose to call *philosophically-specialized*.[21]

If there is no understanding of the priority of philosophy, absent the need for philosophers, what will form the philosophically-specialized scientific discipline? However, the scientists, who are ready to study philosophy of law without philosophers, curiously enough, meet. But will it be philosophy? This is the question.

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[21] S.I. Zakhartsev, "Philosophy of Law: Some Thoughts about the Subject," *The World of Politics and Sociology* 7 (2012), 122–31; S.I. Zakhartsev, *Some Problems of Theory and Philosophy of Law*, M. (2014).

However, they also like to hide behind the words "law," "law science," and "jurisprudence." In confirmation, we can give an example. Earlier, the authors of the current research got acquainted with one study guide on legal psychology. It was indicated in it that legal psychology is a psychological science and that the material in this guide was supplied primarily from a psychological point of view. The guide was interesting and informative, filled with psychological themes and thoughts. During reading, only one question occurred: in the title of this guide, why was the word "legal" featured? This word was clearly excessive, because the content of the guide really had a psychological direction. The words "legal" and "legal science" were highlighted only in the introduction and conclusion. In the main part of the work, only two direct examples were found, both connected with legal practice. Thus, in the conclusion, it was concluded that knowledge of psychology is very important and should be actively used in jurisprudence. With such a conclusion, of course, there is no sense to argue. But we need to admit that this work was written from the perspective of psychology, and jurisprudence, according to the contemporary popularity of legal science, was a kind of shield or veil that gave the guide a more attractive title. By the way, this isn't the only example. We also found a study guide, devoted to logic, but for lawyers. It was a good study guide exclusively devoted to logic.

The question arises: does a similar situation arise in relation to philosophy when preparing pure legal works, to the extent that the alluring word "philosophy" is occasionally interspersed?

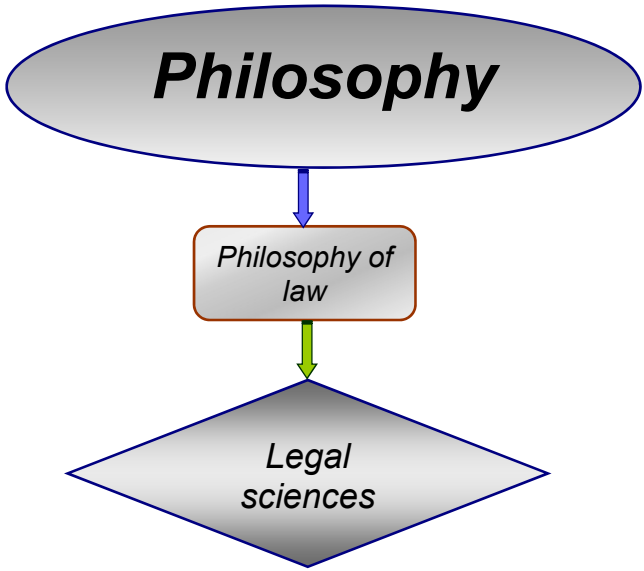
Fifth, the location of the philosophy of law inside the general theory of law couldn't affect the accuracy of the definition of the subject of the researched discipline. Philosophy has philosophical and methodological purpose. If it is based on philosophy, it is obvious that the subject of the philosophy of law surely must combine in it philosophical and methodological components.

Contemporary Russian philosophers of law often are repelled not from philosophy, but from law. Perhaps that is why in their arguments they generally focus on one aspect of the subject. For example, S.S. Alekseev and V.S. Nersesyants wrote about the researched science mainly from the point of view of a worldview.[22] This approach, of course, wasn't complete; which is why it was rightly criticized by other specialists.[23] There were not enough attempts to combine philosophical and methodological positions.

[22] For example, S.S. Alekseev wrote that the final decision in the philosophy of law has a "philosophical core." See, *The Law: Alphabet—Theory—Philosophy*, 395.

[23] D.A. Kerimov, *Methodology of Law*, 14–15.

Thus, philosophy of law takes place between philosophical and legal sciences. Schematically it can be depicted thus:



As a basis it can be taken that philosophy develops fundamental problems of ontology, epistemology, axiology, anthropology, logic, ethics, praxeology, and cognition. In this case, the subject of the study of philosophy of law must accordingly be the fundamental problems of ontology of law, epistemology of law, axiology of law, anthropology of law, logic of law, ethics of law, praxeology of law, and justice.

From the point of view of determining the components of the subject of philosophy of law, the position of the authors of the current work isn't so original. Discussions about which items among those mentioned above are included or, conversely, excluded from the subject have been conducted for a long period. Our approach is expressed in the desire to bring philosophy of law closer to philosophy, to raise it above the general theory of law, and not to consider it inside the legal sciences. And, most importantly, we consider philosophy of law as an individual philosophically-specialized science.

We are pleased to note that specialists occur in the legal environment who consider the philosophy of law more from the philosophical than from the legal positions, for example, the famous German lawyer R.

Alexy. There is an interesting review by S.I. Maksimov of the works of this scientist. S.I. Maksimov writes of R. Alexy that "it is difficult to accuse in any prejudgments, as it often happens, when professors of philosophy insist on the philosophical character of philosophy of law, and professors of law. R. Alexy is a lawyer, along with the lectures on the philosophy of law he also reads lectures according to the problems of public law. So, let's not hurry to accuse him of being treasonous to corporate interests . . ."[24]

It is necessary to say also that S.I. Maksimov, being a famous lawyer, considers legal reality primarily from philosophical positions.[25]

V.D. Zorkin writes on the necessity of the unity of efforts of philosophers and lawyers under the philosophical wing. The realities of time, the scientist considers, extend to

> philosophers talking about and lawyers listening to philosophers and understanding that the law consists not only of the collection of laws, otherwise one legislative reform is enough, and huge libraries, even if shelves go up to the top, become wastepaper. There is no need to withdraw into narrow frames, it is necessary to have a wide view on jurisprudence by prominent Russian thinkers—those who are engaged in intellectual work, whether it is the practical work of a lawyer or teaching or academic activities. And the main impulse, as it seems to me, still must set the philosophers.[26]

Attempts to consider the subject of philosophy of law inside jurisprudence are constantly faced with contradictions. For example, not all scientists are included in the subject of the philosophy of law and ontology of law. Actually, what philosophy doesn't study ontology? Is it possible for philosophical thought, for example Hegel's, to be attributed to the philosophy of law?[27]

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[24] S.I. Maksimov, "Philosophy of Law as a Problem of the Philosophy of Law," *Philosophy of Law: Contemporary Interpretations; Selected Works; Articles, Analytical Reviews, Translations* (Kharkov, 2012), 17.

[25] See, S.I. Maksimov, *Legal Reality: Experience of the Philosophical Comprehension* (Kharkov, 2002).

[26] V.D. Zorkin, "Philosophy of Law: Past, Present, Future," *Philosophy of Law at the Beginning of the Twenty-First Century through the Prism of Constitutionalism and Constitutional Economy* (Moscow-St Petersburg Philosophical Club Edition), M. (2010), 43–44.

[27] One of the last really interesting philosophical-legal books dedicated to the ontology of law was a monograph by G.A Gadzhiev. See, *The Ontology (Critical Research of a Legal Concept of Reality) of Law*, M. (2013).

It caused a dispute, in our view unjustified, over its inclusion in the subject of philosophy of law and legal logic. While it is clear that logic is a philosophical science, so there is no obstacle to study the logic of law in the frames of the subject of philosophy of law.

Not enough attention is paid to questions of human consciousness, awareness of human rights, and legal consciousness, which is why, apparently, many do not even think about the necessity of including these questions in the subject of philosophy of law. V.P. Malakhov expressed the correct thought that many domestic legislators have completely overlooked legal consciousness; it is represented only implicitly, in its content.[28]

Not all specialists include ethics of law in the subject of philosophy of law. The origins of law must guard what is good. The problem of good and evil is the central problem of ethics. Studies of good and evil, morality and immorality, morals, virtue, justice, happiness, and duty are traditionally studied by ethics as a philosophical discipline, but also have a most important meaning for philosophy of law.[29] The view of ethics affords an evaluation of the law not only, for example, from an epistemological position but also from a moral one, as to what is really important for the understanding of legal being. In terms of legal being, by the way, there are sufficient examples of things that centuries ago were considered to be moral that became immoral or even criminal, and vice versa.

Ethics as a science about the highest human good, and about kindness, acts as a kind of methodological guideline for the cognition of law. That is, cognition takes place not only for the cognition by itself, but in a particular direction.[30]

Ethical values precisely underlie all legal concepts. In this sense, legal ethics searches for ideas, principles, and fundamentals that regulate human

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[28] V.P. Malakhov, *Philosophy of Law: Ideas and Proposals*, 10.

[29] About ethics, see A.A. Guseinov & G. Irrlitz, *The Short History of Ethics*, M. (1987); A.A. Guseinov & R.G. Apresyan, *Ethics*, M. (1998).

[30] Using monographs, we had to consult many works on philosophy of law, ethics, and reasoning about the ethical side of criminal proceedings, and also about operational-search events, connected with the silent monitoring of wiretapping, secret examinations of living spaces, control of mailings, etc. See S.I. Zakhartsev & O.A. Chabukiani, *Operational-Search Events and Investigations: Concepts and Relationship* (St Petersburg, 2010); V.I. Rohlin, S.I. Zakhartsev, M.A. Mironov, & A.P. Stukanov, *Institute of Rehabilitation in Russian Legislation (Appearance, Development, Concept, Perspectives)*, ed. by V.I. Rohlin (St Petersburg, 2007); S.I. Zakhartsev, Y.Y. Ignaschenkov, & V.P. Salnikov, *Operational-Search Activity in the Twenty-First Century*, M. (2015), and others.

behavior, directing human actions, and establish the criteria for what is good. It also considers the main problems of the application of such moral ideas, principles, and fundamentals to specific situations connected with moral choice. The process of cognition of legal being without ethics impoverishes itself and loses its goals and directions. Therefore, there is no doubt that the ethics of law is included in the subject of studying the philosophy of law.

Thus, philosophy of law is a philosophical-social science, the subject of study of which are the fundamental problems of the ontology of law, epistemology of law, axiology of law, anthropology of law, logic of law, ethics of law, praxeology of law, and legal consciousness.

A not indisputable judgment was expressed by V.S. Nersesyants. First, he said that the scientific profile and disciplinary affiliation of the philosophy of law "has several aspects. If we are talking about the philosophy of law in general, it is obvious that we are dealing with an interdisciplinary science, combining certain beginnings, at least two disciplines—legal science and philosophy. . . . This interdisciplinary component is general for all the versions of the philosophy of law, regardless of whether they are developed as a separate legal or philosophical science."[31]

V.S. Nersesyants's thesis that philosophy of law is an interdisciplinary science should be accepted.[32] However, V.S. Nersesyants later wrote, "When the question occurs about the interdisciplinary belonging of jurisprudence or philosophy of particular variants of the philosophy of law, essentially we are talking about the *conceptual difference* [emphasis original] of legal and philosophical approaches to the main problem [meaning and including all other, more private problems] of any philosophy of law: 'What is the law?'"[33]

That is, if one develops V.S. Nersesyants's thought further, it in fact turns out that we have two different scientific disciplines: philosophy of law in a philosophical approach and philosophy of law in a legal approach. However, it is clear that this is not the case.

On the contrary, the strength and power of the philosophy of law is in its versatility, its interdisciplinary. The sphere of its cognition is situated at the junction of two branches of knowledge of the philosophy of law. Such

[31] V.S. Nersesyants, *Philosophy of Law*, 17.

[32] S.S. Alekseev correctly wrote that the philosophical-legal integrated level of scientific knowledge is expressed in the formation and development of a special self-sufficient scientific discipline, covering philosophy (for its principles) and also jurisprudence (for its main content). See, S.S. Alekseev, *Philosophy of Law*, 3.

[33] V.S. Nersesyants, *Philosophy of Law*, 17.

scientific crossing in the nineteenth and twentieth centuries have opened a wide stratum to the cognition of what surrounds us. Nobody dragged to different corners the philosophy of economics, philosophy of culture, molecular biology, physical chemistry, and so on. If we are talking about the issue that the philosophy of law is studied by lawyers and philosophers from different sides, then we should recognize that the science of the "philosophy of law" at the present time doesn't exist at all: it doesn't exist physically, or it is at the level of being formed. And there are separate directions in philosophy that is interested in law. And besides them, there are separate theorists of law who consider the fundamentals of philosophy also in law.

But this opinion, apparently, isn't true. Philosophy of law is and exists exactly as an interdisciplinary science.

V.S. Nersesyants's judgment, in our opinion, is related to an inaccurate definition of the subject of the philosophy of law. If we are talking about the subject of the law only from the jurisprudence point of view, which now occurs often enough, we really only get legal science, which is somewhat detached from philosophy. And this gap will increase. What else can we get? Philosophy of law in this way will be more a "dive" into legal particulars and nuances, moving away from the highly philosophical comprehension of legal being. S.S. Alekseev liked Y.G. Ershov's statement that the philosophy of law "has little interest in speculative constructions, divorced from real legal processes and phenomenon."[34] From this, Y.G. Ershov concluded that the philosophy of law in this sense "grows" on the fundamental of all legal knowledge.[35]

But this point of view doesn't stand up to criticism. First, it isn't the case from the historical point of view: philosophy of law "grew" out of philosophy, not from legal knowledge. And, second (and most importantly), it is perhaps hard to dispute the fact that philosophy is the basis for other sciences, including jurisprudence. Accordingly, exactly on the basis (or, when you like, foundation) of philosophy were legal knowledge and the study of legal being obtained, and not vice versa.

Already now, from this legal approach, many theorists of law denote the difference between the theory of state and law and philosophy of law, and don't find clear and convincing boundaries. Certainly, according to the indicated approach, it is difficult to find them. V.S. Nersesyants writes that the main problem of the philosophy of law is the question of what law is. But when we are talking about legal sciences, the knowledge of what is law is the theory of state and law.

[34] See, S.S. Alekseev, *Philosophy of Law*, 4.
[35] Y.G. Ershov, *Philosophy of Law*, 9.

Hence, it is necessary to conclude that philosophy of law cannot be turned into a pure legal discipline. The subject of the philosophy of law is wider than that of legal science. Through being divorced from philosophical knowledge, philosophy of law as a legal science will be replaced by the theory of state and law and, partly, by sociology of law and some other legal sciences. In this form, its meaning is lost before philosophy. Philosophy will not get rich from legal knowledge.

Wherein, of course, there shouldn't be a separation of philosophy of law from law. The scientific power and importance of the philosophy of law lies in its interdisciplinarity, interdependence, and mutual enrichment of knowledge.

However, in his approach to the study of the philosophy of law, V.S. Nersesyants strongly differentiated between the philosophical and the legal. Thus, he wrote, that *in philosophy of law as a special philosophical discipline* cognitive interest and research attention primarily focused on the philosophical side of things, on demonstration of the cognitive capabilities and heuristic potential of a particular philosophical conception of law. The essential meaning in this interpretation was given to a meaningful concretization of the concept with reference to features of the object (right), its understanding, explanation, and development in the conceptual language of this concept, in line with its methodology and praxeology. *Concepts of philosophy of law, designed from the position of jurisprudence,* for all their differences, in their turn, tend to be dominated by legal motives, directions, and research guidelines. Its philosophical profile here isn't defined by philosophy, but is due to the needs of the legal sphere in its philosophical reflection. Hence, the predominant interest in such problems is the meaning, place, and importance of law and jurisprudence in the context of a philosophical worldview, in the system of philosophical study about the world, humans, forms and norms of social life, ways and methods of cognition, system of values, and so on.[36]

As we can see, again we are talking not about a single science, created on the basis of the integration of knowledge, but about disciplines, having quite different subject areas. In a single science there cannot be such a significant difference in subjects and approaches. That is, again, implicitly, we are talking about different sciences that are strictly separated between one another.

In other words, in V.S. Nersesyants's approach it turns out that there was no knowledge integration between philosophy and jurisprudence. Accordingly, a subject area was not created of the study of philosophy of law and its methodology was not developed. So, to assert that the science

[36] V.S. Nersesyants, *Philosophy of Law*, 18.

of philosophy of law exists is, at the least, premature. However, this conclusion contradicts objective reality and, incidentally, the conclusions of V.S. Nersesyants, who always wrote that the specified science exists.

It seems that it is necessary to abandon the classification of philosophy of law as "a special philosophical discipline" and philosophy of law "as a legal science." This classification from the scientific point of view, as can be seen, isn't accurate and is regressive. It recalls a famous anecdote about the rebranding of Russian Railways into two ministries: a ministry called "There" and a ministry called "Back."

In other words, there can be very different approaches to the subject of philosophy of law, depending on the positions of philosophers, lawyers, sociologists, psychologists, political scientists, and other specialists. But these approaches and concepts should be within only one discipline—philosophy of law. And it is impossible to divide a scientific discipline or science itself into parts depending on the directions of a scientist's thoughts. So, it is impossible and absurd to say that there is a special psychological science of the theory of state and law (for example, based on the views of L.I. Petrazhitskiy), a special sociological science of the theory of state and law, and so on. It must be a question of different approaches and concepts inside one scientific discipline. However, philosophy of law sometimes tries to be divided into two different scientific disciplines: "philosophical philosophy of law" and "legal philosophy of law." Which, of course, isn't correct.

Philosophy of law really occurred in the depths of the philosophy. Later, there was an accumulation of philosophical and legal knowledge. This accumulation naturally resulted in the diffusion of knowledge, the rethinking of the subject, and, as a result, the creation of a new science—the philosophy of law. Philosophy of law, as well as any spin-off from this whole branch of knowledge, for a time "fought" for its independence, developed its scientific basis, and received general acceptance in the philosophical and legal environment. At the present time, it is a recognized interdisciplinary independent science, resulting from the integration of knowledge of the philosophy and jurisprudence of law and legal being.

Philosophy as the "mother of all sciences" thereby fulfilled its mission before this science, "giving rise to" a new, very important scientific discipline. This historical evolutionary process is typical of the scientific life.

As a result, it should be recognized that philosophy of law is an interdisciplinary science and should be perceived in this form. If it will eliminate or not evaluate any of its components, this science will cease to exist. There is no need to be afraid of interdisciplinary sciences. At the

present time, most major scientific discoveries are connected with the integration and diffusion of scientific knowledge, even seemingly incompatible ones. But if they are possible in physics, chemistry, medicine, biology, and so on, why are they impossible in law?

It is necessary to say that not all specialists accept the approach suggested here to the subject of the philosophy of law. Lawyers don't particularly like the "placement" of the philosophy of law not inside legal sciences but above them.

A common critical remark is the already mentioned question of whether such an approach can lead to a separation of philosophy of law from law. We don't agree at all with this idea. Philosophy of law has already taken place as an interdisciplinary science. It already contains the baggage as a purely philosophical and also legal science that allows it to carry out its scientific mission. Therefore, at the present stage, it is impossible to say whether establishing the philosophy of law "above" jurisprudence, in the philosophy of law, will be considered a problem that is irrelevant to legal realities.

In addition to the fact that it isn't right to speculate on these statements on the philosophy of law, this approach will not consider specific legal norms and questions. On the contrary, the proposed approach allows the frames of the philosophy of law to be "reasoned about" and also to analyze specific legal norms, which of necessity will be connected with decisions of problems before the philosophy of law. In the analysis of the philosophical questions, connected, for example, with law and justice, it is necessary to consider specific norms according to the establishment of the truth in procedural law. Furthermore, in law there are many questions that are needed to enable a philosophical understanding.

Here it is appropriate to quote D.A. Kerimov's statement about the leading methodological role of the philosophy of law in a system of legal sciences that doesn't exclude but allows branches of legal science to develop methodological problems that rarely reach not only general theoretical but also philosophical-legal problems (for example, problems of guilt and responsibility in a civil and criminal law). In other words, philosophy of law uses the extracted branch of legal science knowledge to further the more comprehensive and deeper cognition of legal reality and perspectives for its improvement.[37]

Some critic-lawyers set up the question, If the philosophy of law is an interdisciplinary science, where on the philosophical or juridical faculty should it be studied? This suggests that legal direction isn't the most important for "pure" philosophy; thus, the teaching of the philosophy of

[37] D.A. Kerimov, *Selected Works*, 3 vols, vol. 1, M. (2007), 34.

law should be on the juridical faculty among the legal disciplines. Furthermore, attempts are made to justify the conclusion that the philosophy of law is also a legal science.

In this conclusion there is too much subjectivism and not enough logic. To study philosophy of law it is necessary to come from the philosophical and the juridical faculties. Wherein, naturally, philosophy of law is more studied on the juridical faculties. This is because its creation and purpose derive from the philosophical services of the general theory of law and other legal sciences. Philosophy of law is the main nexus between jurisprudence and philosophy. However, this doesn't mean that the philosophy of law is a legal science and a part of general theory and law. Philosophy is also not a legal science, though it is studied precisely on the juridical faculties.

In conclusion, we should repeat that philosophy of law is a philosophically-specialized science, that studies the fundamental problems of the ontology of law, epistemology of law, axiology of law, anthropology of law, logic of law, ethics of law, praxeology of law, and legal consciousness.

§ 2. The origin of law

The question of the origin of law has always loomed large in jurisprudence. We now want to present our thoughts to specialists.

There is no doubt that the law occurred before the state, which in its essence is an organized community of people. That is, historically, that first a person appeared, then people, and then states. With this conclusion all scientists agree, regardless of which concept of the origin of life on the Earth (evolutionary, divine, or otherwise) they adhere to.

But in what moment in relation to the person did the law occur?

It is obvious that the need for law only arises when there are at least two people—when there is a certain community. In this case, their cognition requires the establishment of mandatory rules of behavior, such as the definition of "who is the elder," whose opinion has more priority, and so on. Even the smallest societies need order and organization. Certain relations arise—that is, there occurs the law. In other words, when on the Earth two people were near to each other, among them a relation formed: that is, law occurred.

However, if the person remains alone, he still strives for order and establishes it for himself. The person regulates his behavior and his daily routine for himself, making in convenient form for himself marks about its observance. He has installed for himself his own routine, telling himself

when to work, when to rest, and what and in what sequence to do things. So, in fact, he has set up for himself what is right. He doesn't need the right to be codified in the form of laws. But in the form of being the regulator of his own behavior he has the right, and this right is based on the laws of nature and on the person's own nature.

This conclusion is confirmed by hermits, who consciously choose to live out of the way of other people. According to them, even though completely alone they still established legal norms and created rules of behavior according to which they lived; moreover, they gave themselves the responsibility for their violations. For example, as one of the hermits said, one of the forms of punishment for violations of his own behavior was additional kneeling for a certain time. In the history of Orthodox religion there have been many examples of people refusing to live in society with people; yet, when alone, at the behest of the mind, they still installed legal norms. For example, the famous Russian St. Seraphim of Sarov, as is well known installed his own norms of law and toughened his own behavior.

In other words, since the moment of inception on the Earth, people have consciously striven for law—it was necessary for their survival. This necessity told on their minds. Thus, the consciousness of humans tends to desire order in life. Furthermore, maybe in the consciousness of humans is incorporated the desire to live according to rules and constant order, which is law. The consciousness shows and tells us that humans will not survive in the other variant.

As is known, people are created from two shells, and external (tangible) and internal (intangible, spiritual). Consciousness is external and internal. It controls the body. But consciousness also develops an internal world, requiring the pursuit of knowledge and intelligence. And through the consciousness, any person understands that he can't, if alone, survive without established rules for himself. And moreover he will not be able to live among other people without established rules of behavior.

Of course, early human law had a really primitive character, but it is important that it occurred with a person. Also, at the same time, there occurred in human consciousness the idea of the law of freedom of thought, feelings, and respects for personal dignity. Therefore, it should be recognized that the law was "born" with a person.

The appearance of other people crystallized the specified words. Furthermore, there also appeared respect for a person's birth, freedom of word, with which early humans were undoubtedly endowed, self-esteem, and the need to protect rights.

Specified rights are inherent to a person from birth. Thus, in our opinion, the law was in every early human, the law was "born" with the human. Primarily, from here, we think, originate natural human rights.

It is necessary to pay attention to the fact that norms of law are characteristic of all terrestrial beings. Each species of animals has their own understanding of their rights and responsibilities. Thus, they have right. Observation of any animal completely proves this theory. The life of the animal world is also ordered.

We need to say, that practically all specialists, studying natural human rights, note that each person has specified rights. But they delicately skirt the question about how they arise. In fact, they are not granted by someone from the side. Each of us has them from birth.

A commonly used expression is that natural human rights are inherent to the nature of everyone. It is, on the one hand, impossible to satisfy everyone with this reference to a kind of human nature. But, on the other hand, if you think about it, it explains nothing. Yet a few lawyers had a desire to understand what this "nature" is that everyone likes to refer to.

One of the few to have this desire was famous Russian philosopher B.N. Chicherin. He wrote that natural rights are a system of general legal norms, derived from the human mind. However, beneath the mind, B.N. Chicherin understood, there existed somewhere outside a "supreme determinate beginning as in the subjective and also in the objective world, as in conscious and also unconscious," some "law of all being."[38]

We must proceed from the fact that the law isn't material. And if it is born with a person, it should be initially laid into his mind. Exactly there, along with the person, the law is born. In this sense we need to agree with L.I. Petrazhitskiy, who substantiated that the law is initially present in the human mind. He wrote that the law is a phenomenon rather than an external material thing in the world, as, for example, are stone and wood; it is "a phenomenon of the spiritual world, a psychiatric phenomenon, a phenomenon of our soul."[39]

Another question is where in the human mind is law "situated"? L.I. Petrazhitskiy believed that laws are emotions and thought that he had opened in the human mind special legal emotions.

But is the law emotion? As you know, emotion (from the Latin *emoveo*) means "shake, excite." Hence for everyone the general sense of emotion is an exciting, erected state, associated with an assessment of the significance of an individual influenced by phenomena, factors, or events.

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[38] B.N. Chicherin, *Philosophy of Law*, M, 2010. P. 94.

[39] L.I. Petrazhitskiy, *Theory and Politics of Law: Selected Works*, ed. by E.V. Timoshina (St Petersburg, 2010), 251.

Emotions are expressed primarily in the form of direct experiences of satisfaction or dissatisfaction of the actual needs or expectations of a person.[40]

The law and emotion are different concepts. The law, like any other phenomenon, can cause certain emotions in people (for example, positive or negative). But this only underlines the difference between them.

We think that the law is a part of human consciousness. The law is situated in the consciousness of each person: it is born and it develops together with him. Everyone is born with consciousness. And exactly in the consciousness of the person, there is a legal component, a kind of a legal consciousness, responsible for its behavior in nature and society. Precisely through the consciousness of the person there is a need in law, and also a desire for the law. Desire for law, in our opinion, is one of the laws of the human mind.

Consciousness, apparently, is the source of natural human rights. Like consciousness itself, these rights are inalienable: the right for freedom of thought, consciousness, religion, movement, and so on. Need for the rights inherent in the person, in the consciousness, is the highest form of psychic activity of humans. The task of society, in this case, consists of ensuring normal, healthy human consciousness.

In the 1980s, E.P. Velikhov, V.P. Zinchenko, and V.A. Lektorskiy expressed the opinion, which it was considered was supported by D.A. Kerimov, that philosophy until recent times was limited by general arguments according to consciousness (relation between being and consciousness) and psychology, and in the last decade the existence of the problems of consciousness has been forgotten.[41]

Recently, interest in consciousness has rapidly increased. V.A. Lektorskiy on this occasion said that consciousness, which for centuries was considered to be the undisputed field of philosophical analysis, became the subject of research in the frames of different specialized sciences. These questions are not new. But today they are occurring in a new context and

[40] According to the convictions of psychologists, emotions like all other psychiatric phenomenon are not studied enough and are understood differently by different authors. There is no general definition of emotions.

[41] See: D.A. Kerimov, *Methodology of Law*, 380; E.P. Velikhov, V.P. Zinchenko, & V.A. Lektorskiy, "Consciousness: Experience of Interdisciplinary Approach" *Questions of Philosophy* 11 (1988), 10.

require new answers, taking into account what has been done in the field of research of consciousness by specialized disciplines.[42]

However, until now there has been no completely clear answer to the question of what consciousness is. In a general sense, the essence of consciousness was clearly outlined by M.S. Strogovich and D.A. Kerimov. As they write, consciousness is usually defined as a spiritual condition, which subjectively reflects objectivity and on this basis produces and creates human knowledge. Consciousness is the highest form of psychic human activity, subordinating, regulating, and controlling all other phenomenon of mental life.

The concept of consciousness is a psychological one; it is a phenomenon of human mental life. Consciousness is primarily expressed in the understanding by the comprehension of certain factors and regulations and by the setting of specific goals and finding the means to achieve these goals. The activity of mind is what characterizes consciousness as a dominant phenomenon of the human mind.[43] Thus, it is important to emphasize that consciousness isn't confined to activities that reflect objective reality. It consists in intellectual activity aimed at changing this objective reality and the desire to improve the being.

Human activity is subordinated to consciousness. And especially in the consciousness is pledged the necessity of law for life.

Thus, the following theses can be indicated:

— the law was born earlier than the state
— the law was born along with the first human
— in the mind, or more precisely, in the consciousness of each person, is pledged the need for law
— striving for law is the law of the human mind
— natural human rights took its place from the mind, or more precisely from human consciousness.

As you know, states were born later than humans. The formation of states led to the development of legal sciences, creating several scientific schools and approaches. These schools began to compete with each other. The competition strengthened the contradictions between the directions of the law so that now it is hard to reunite it. Debates about the origin of the

[42] Quotation according to I.A. Kanaev, "Problems of Consciousness in the Interdisciplinary Perspective" (review of the scientific conference), *Questions of philosophy* 10 (2012), 171–75.
[43] D.A. Kerimov, *Methodology of Law*, 384; M.S. Strogovich, *Selected Works*, M. (1990), 53–54.

law sometimes reach tough confrontation; although, in our opinion, these debates are sterile and unproductive.

And, most importantly, in debating the origin of law, most specialists strictly adhere to only one version of its origin, absolutizing it, arguing with its opponents, and somehow not admitting the thought that there can be several origins of law. It can be connected with human nature and also with the will of the state. We believe that at *different stages of existence on Earth and of humanity, the law arose in different forms repeatedly.* At least, the birth of the law occurred three times. First with the appearance of humans and their consciousness on the Earth, in which was pledged the pursuit to law. Second with the appearance of the first state and the birth of law in it—already positive, regulatory, and rigid. Third with the birth of customs: legal customs and norms of law were determined by the time and mentality, culture, and development of separate societies.

L.I. Petrazhitskiy has expressed this theory well. He wrote that we have a picture of an ever-increasing variety of competing theories, each of which raises any particular factor or element of human life "as the basis" of all social life and its history, all social processes. The basis of all human society, the factor that determines all other phenomena, are the conditions of production of material goods, productive forces, and means of production; all other issues come down to imitation from the side of members of society to more outstanding creative individuals; the third comes down to a collapse and conquest of one tribe and other social groups by others; the fourth is the decisive struggle for existence and natural selection; the fifth lies in the properties of a race; the sixth in the physic-geographical conditions of life of the concrete society, and so on. The falseness of these conceptions, according to L.I. Petrazhitskiy's opinion, determines the absolutization of its single principle, discarding other factors. "Wherein, as scientists consider, if the meaning of these and other theories consisted only in the statement that so-and-so favored by the history factor has its own so-and-so area of activity and the share of values in the social life and its history, so all or many of these theories could be true."[44]

Returning to the state, we need to emphasize, that in this case it isn't so important what it refers to. What is important is that the appearance of the state also "spawned" the law, but in another form than in human consciousness—in the form of generally regulatory settings, the observance of which is ensured again by the state.

[44] See L.I. Petrazhitskiy, *Theory of Politics and Law: Selected Works*, 439–40. The authors of this monograph have written many times that during studying the existence or the essence of law there is no need to absolutize it.

The "birth" of the law by the state has a lot of well-known reasons. It is the necessity of regulating the social relationship between people and the necessity of retaining power, property, and wealth, and the necessity of regulating natural human rights. Thus, the positive law was supposed to act and acted as a counterbalance to the desires of separate individuals. Indeed, objectively, in the consciousness of any person are born positive (kind) thoughts and also negative (bad and dishonest) thoughts, though they sometimes need to be implemented. Even natural rights for every person are different. Some people consider the right to life and freedom natural and necessary, but there are also those who believe that it is natural for life to be free at the expense of others, that they have the right to exploit others and profit from others for their own benefit. For this reason, the state and positive law was able to be formulated and outlined an approximate list of human rights, recognized as natural and necessary for all. And the meaning of the positive law for human life is no less great.

Thus, scientists who believe that law came from human nature and specialists who believe that law came from the state are both right.

Wherein we need to argue that although unnatural and positivistic approaches are united under one term—"the law"—it is very difficult to bring them under one denominator even though that at the same time we are talking about different things. They are different due to their origin, essence, way of usage, even though they have the same name—the law.

We need to say that now among positivists there are practically no scientists who deny natural human rights. Further, among unnaturalists there is no one who rigidly pushes the role of the government to secondary roles. But it failed to create a unified concept that could satisfy everyone. However, one of the reasons not yet overcome is the actual difference between concepts of law. Natural human rights occur only from consciousness. Positivism largely comes from the state. Can natural human rights come from the desire of the state? No. The state cannot force anyone to be free. It can organize conditions for the realization of freedom and equality, but the state still will not be able to cancel freedom of thought, religion, dignity, and even word.[45] Thus, natural human rights cannot come from the state, they can come only from the essence of the person, its consciousness. Positivism, on the contrary, largely comes from the state—from the consciousness also, but the priority is after the state. And the will of the state expressed in laws are not always liked by people (or their consciousnesses).

[45] The state can suppress freedom of speech for some time under the threat of rigid repressions, but it cannot cancel it.

Here it should be noted that natural human rights have been declared a priority in modern Russia. Of course, here there is some kind of constant idealism and romanticism, because in practice norms estimated by the government can limit some natural human rights, including the right to life. Furthermore, there are values that objectively exist in life and are not less valuable than human rights: fatherland, faith, protection of those nearest to one with one's life, and so on.

It seems that in the modern sense one is prohibited from talking about one or another concept. In a historical sense, yes—the law was created earlier than the state, natural human rights came earlier than over-regulation. It seems that now the problem should be interpreted like this. The law comes from the nature of a person, from his or her consciousness. For consciousness, the law is a part and has a huge meaning. Here we are talking about the streamlining of life, existence perceived by consciousness. But the law comes not only from the consciousness but also from the state. In practice, the law comes from the state and depends on the state's economy, policy, culture, and traditions. All the above mentioned things have an influence on natural human rights, up to the limits of some rights. In its turn, also, natural human rights influence the state and from them come the law of impact. However, the natural rights cannot influence the state's economy and the already existing mentality.

Furthermore, the law arises also on the basis of already existing customs in society, which over time receive legal status. *Wherein there is no need to deny the already named conceptions and so on of the origin of law.*

In connection with the above, as already mentioned, more useful and correct is a consideration of the law as a complex multidimensional social phenomenon. This approach will allow us not to try to cross "a hedgehog with a snake," which sometimes can be observed in scientific works; instead we will evaluate the law fully and comprehensively.

In this section, we repeatedly mentioned the name of famous lawyer L.I. Petrazhitskiy; therefore, and according to psychological thought, the impression might have been given that the authors of this monograph are supporters of his theory. At the same time, the authors are not supporters of the concepts of L.I. Petrazhitskiy.

Nevertheless, we need to recognize that L.I. Petrazhitskiy's psychological theory significantly enriched jurisprudence and the philosophy of law, and its author is a serious thinker. We need to agree that the law is born in human mentality; however, first, it is not only born in mentality and, second, it is born not as a special legal emotion but in consciousness. We fully support the scientist that it is impossible to

absolutize any one factor of being, as a universal means of cognition for all that is named "on all occasions of life." However, unfortunately we regret that L.I. Petrazhitskiy on his own, despite of what has been said, has absolutized psychology for the cognition of law. Thus, the law, according to L.I. Petrazhitskiy, is a real mental phenomenon of a special kind, with a nature of which we can get acquainted directly and authentically in our soul, that is by the way of observation, comparison, and analysis of our own states in motion. Dividing the law on the intuitive and positive, and also on the official and unofficial, he writes that all these kinds are only varieties of one psychological concept of law as imperative-attributive experiences, but with different psychological compositions. Governmental and social power, according to his opinion, in fact isn't a will or power, but an emotional projection, an emotional phantasm, something unreal, and so on.

For obvious reasons, we don't agree with these arguments. It is impossible to support because it isolates more than 15 kinds of positive law (including the right of the words of religious and ethical authorities, the right of legal idioms, the right of the one-sided promise of the monarch) and other such fabrications.[46]

However, in relation to the works of L.I. Petrazhitskiy, it is necessary to add two more positive considerations. First, unfortunately, in the twentieth century in general and in legal science in particular, few concepts and theories were created (even controversial ones) that were popular worldwide and objectively caused great interest. L.I. Petrazhitskiy's theories were in great demand. Second (which few know), as a teacher, social activist, and prominent lawyer, L.I. Petrazhitskiy made a great contribution to the solution of the problems of equality between men and women in Russia. If today there are many female lawyers in Russia, this is in large part thanks to the specified specialist.[47]

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[46] See, L.I. Petrazhitskiy, *Theory of Politics and Law: Selected Works*, 380–560.

[47] Finishing his work (one of the first in Russia) about the necessity of equality between men and women, L.I. Petrazhitskiy wrote, "Let's express our wish and hope that in any case, eventually our future colleagues . . . women, will pay special attention, on the one hand, to study of the customary law and connected with them feelings, perceptions, and volitional movements as peculiar, but powerful and unfriendly mental strength (for the success of the struggle it is necessary to know your enemy and its properties), on the other hand, to the science policy of law as a means to cause the movements of friendly forces not only by the way of the inspired resolutions, petition and etc., but also by the way of a serious and truly scientific, deeply grounded system of argumentation." See, L.I. Petrazhitskiy, *Theory of Politics and Law: Selected Works*, 243.

To sum up, we need to agree with V.S. Nersesyants that the original creative efforts of L.I. Petrazhitskiy had a noticeable influence on the development of domestic philosophy, theory, psychology, and sociology of law.[48]

At the end of a section, it is necessary to repeat the conclusions. According to the presented concept, at different stages of human existence the law has arisen in different forms at least three times. First, with the appearance of humans and their consciousness on the Earth, in which the desire for the law is laid—the necessity of law. Second, with the appearance of the first state and the arrival from it of positive law. Third, with the birth of customs, which receive the status of legal customs and norms of law from the time and mentality, culture, and development of separate societies.

Of course, the theory of the origin of law represented here is no more than a scientific supposition, although, in our opinion, it is quite reasonable, or at least has a right to exist. However, it is necessary to understand that any theory of the origin of law cannot be considered to be true, as long as science cannot answer questions about the origin of life and humanity. At the moment, there are no answers on these questions. There are many supporters of the divine origin of humans, life, existence, and everything connected with it. Today, theories are developing about the extraterrestrial (space) birth of humanity, and so on. We can only believe in one concept.

But until we know the exact truth about the main indicated questions, the particular answer—for example, to how does law occur—also cannot be given. We can only wait for answers to these questions.

At the same time, we want to believe that thoughts on these questions are slowly bringing us to solutions, helping either confirm hypotheses or, on the contrary, clearly contradicting them, which also adds to knowledge.

In conclusion, we need to say with regret that during recent times in Russian jurisprudence not enough attention has been paid to questions of the origin of law. The authors hope that this paragraph will push scientists to the discussion of this very interesting question.

§ 3. Questions of ontology and epistemology of law

What is the law? Over the millennium of human existence there has not developed a single and suitable definition for everyone.

[48] V.S. Nersesyants, *Philosophy of Law*, 710.

The law is like a big diamond. As you know, the most common faceting of a diamond is 57. Scientists see a particular facet of the stone, sometimes even considering it in detail, while overlooking that there are at least 56 other facets of the same stone.

The same happens with law. Specialists in one facet of this phenomenon judge it as a whole. It is obvious that theories that are received in this way eventually balk at unsolved contradictions. Later new thinkers appear who also sometimes genuinely believe that they see the whole subject and who sharpen their views from one manifestation of the subject. Their theories are also contradicted by other concepts, which again are far from ideal.

How many different concepts of understanding the law have there been historically? It would seem there have been many (positivistic, natural, contractual, psychological, historical, sociological, etc.). However, there are not so many as the facets of a diamond. That's why there is an assumption that until a significant number of independent concepts are created that objectively and fully disclose specific facets of the law, a single and general concept will not be able to be created. But when the number of definitions of law reaches critical mass, they will grow in quality; as a result, they will receive an understanding of law on a completely new level, which may be amazing for all of us.

Hence, here is another question: if we combine all that we know *now* about the law, could we receive something that is more satisfying to everyone? Apparently not. We came to the understanding that it is impossible to stop only on one concept of law, trying to "make" that one general, main. It is necessary to strive to embrace the law as a whole, to study law overall. This *comprehensive approach*[49] to the study of law in this case is the most appropriate.

For the specified cognition of law, philosophy is needed. It is precisely philosophy that allows us "to rise" above the problem, to evaluate its historical aspect, its dynamics, according to the development of scientific knowledge about the world and its existence. I think that, philosophically, a significant amount of legal research, although having a global aim, in fact represents the work at the foot of the pyramid. And it is naive to believe that "the huge distance" will be passed quickly. And sometimes instead of rising to knowledge, the work is conducted "in a circle." For example, more than a century ago N.M. Korkunov summed up a convincing result of the attempts to create a so-called encyclopedia of law. He wrote, "To create from the encyclopedia of science a science that would be, however independently, a special science and embrace the

[49] From Latin, *comprehen,* "universality," *comprehendo*, "universal."

content of all separate sciences, was not possible."[50] At the same time, a century later, we propose to return to this idea.

Another typical example: at the present time there are attempts to combine theories of natural and positive law into an integral theory of law. But the law does not only have these two theories. So, the construction in such a way is doomed to failure. Philosophically, we need to rise over the problem and evaluate that the combination of only the specified theories will not be enough.

The contemporary relation of legal science to the law requires philosophical evaluation. Thus, at the present time, it is clearly observed that many specialists begin to write that the phenomenon of "law" is sublimely good. That is, all that is connected with the true law is fair and honest. And what is unfair, totalitarian, undemocratic (although contained in the legal norms) is already not a law. Here we find commonplace expressions such as lawless law, illegal authority, illegal relationships, and so on. That is, the law in the recent years has begun to be idealized.

This approach has become so common among students that teachers of a number of industry disciplines complain that in universities, where students are inspired by the idea between the difference and contradictions of law, it is really difficult to force future legal experts to study codes and other legislative material, since many students are convinced that almost all of it isn't the law at all.[51]

It is important to understand that if we see this phenomenon of law "through rose-tinted glasses," it is impossible to get a closer understanding of the law and its essence.

It should be admitted that if legal norms of reformist laws lead to mass impoverishment of the popularity or infringe requirements of education and health, then that is a legal outrage. At the same time, the popular phrase "lawless law," which is also used, justifies the law itself, explains everything, and makes everyone happy. Under these circumstances the law will become a holy thing, an idol, to which everyone will pray and not allow criticism. They say, the law by definition is good, honest, pure, and free from bad admixtures. Or, that the law is freedom, justice, equality, and not their opposites. For example, V.S. Nersesyants started his book on the philosophy of law as follows: philosophy of law deals with the

[50] N.M. Korkunov, *Lectures on the General Theory of Law* (republished, St Petersburg, 2004), 33–34. See also, A.I. Ekimov, N.M. Korkunov, ed. by V.D. Zorkin. M. (1983).
[51] O.E. Leist, *The Essence of Law*, 312.

knowledge of law as a necessary form of freedom, equality, and justice in the social life of people.[52]

But such an understanding of law is one-sided and therefore not objective. Impaired cognition of any phenomenon contradicts the very essence of philosophy. During non-critical research, it is impossible to receive true knowledge.

For the philosophy of law, this specified provision is fraught with great danger. A non-critical approach brings the understanding of any phenomenon to a hypertrophic form. This inevitably leads to a perverted understanding of a phenomenon, its essence and concept. Subsequent criticism, which sooner or later breaks, often not only destroys the formed approaches to the studied phenomenon, but also discredits the phenomenon itself, and its connected concepts and ideas.

A clear inflection point in one direction overloads the problem, as a result causing a "pendulum effect." As a result, even the brightest and most reasonable ideas, receiving a hypertrophic form, are subjected to indiscriminate criticism, are for a long time forgotten and are replaced by other concepts, which are proved to also be not without flaws.

In addition, philosophers of law don't always take into account the reflection of philosophy. Throughout the history of humanity and human development, philosophy was characterized by a constant reformulation of its main problems. One concept that seems quite reasonable, is inevitably replaced by another that fundamentally differs from it. If the specialists, for example, see the perspectives of natural-legal theory as the dominant theory of law in Russia for a long time, so it is necessary to be more meaningfully critical of this theory.

New attempts to isolate law from criticism are doomed. Even assuming the divine origin of law, one prays to God, not to the law. What is natural? Opposing God to the law or supplementing God with the law is absurd and meaningless.

Again, if you try to idealize the law and create such law to which everyone should strive, it is still not correct to reduce it to the form of freedom, equality, and justice. The law is much more varied and ambiguous than the above specified categories. Moreover, accurately determining specified philosophical categories is a hard philosophical question.

The law is an important and necessary phenomenon of social life. But the same importance is also accorded to other phenomenon—culture, economics, and so on. Is it possible, for example, to have ideal justice in economics, to take a simple example, if one person wants to sell

[52] See, V.S. Nersesyants, *Philosophy of Law*, 1.

something at a more expensive price and the other to buy at a cheaper price? Is it possible to have an ideal justice in a legal dispute between individuals over the division of property—everyone has their own justice. Is an unambiguous assessment of cultural works possible (for example, *Black Square* by Malevich)? Will it be completely fair? Thus, no one writes about a wasteful economy, uncultured culture, and so on.

Here it needs to be said that the authors of the current work don't identify law and right. However, it is fundamentally wrong to counter these concepts, and especially to counter them in a one-sided fashion, shielding the law as a phenomenon from criticism. I want to ask, why do we write "a lawless law" and not, for example, "a lawless right"? What white washes legal norms? Moreover, it happens that the norms that seem legal today and in all senses fair, in historical periods don't already seem legal. For example, reforms in Russia that were conducted in the 1990s and were issued with the relevant legal norms, at first seemed to be exactly legal and liberal. However, after a short time, they led to significant negative consequences: the breakdown of the state, separatism in Russia, nationalism, the impoverishment of a considerable part of the population, armed conflicts, and so on. The ambiguity of the result of the conducted reforms recognized the governance of the country.

Now it is obvious that the legal norms that established these specified reforms could hardly be attributed to law (in the sense that is laid down by the separate scientists-idealists).

But there are also opposing examples. Marshal G.K. Zhukov's order for the protection of Leningrad at any price in its cruelty would seem unlikely to fit within legal frames. However, the course of history has objectively demonstrated the highest justice of such a decision—its rightness and correctness has exactly a legal character. Now it is clear to all of us that if Leningrad hadn't remained in our hands, the number of dead would have been much greater and the question of the victory over fascism would have remained open. It is necessary to say that the history of humanity has already accumulated many legal standards that include violence and cruelty.

For this reason, wrote R.Z. Livshits, it is true that for one and the same group of people, one or another law represents equality and justice and is legal, but for other groups it is not. Therefore, there is no general and unambiguous criterion for differentiating legal law from illegal. Wherein, one and the same law can be legal and illegal on different levels of social development.[53]

[53] About this see, R.Z. Livshits, *Contemporary Theory of Law: A Brief Essay*, M. (1992).

In this regard, the concept of legal and illegal laws cannot become the reference point for government authorities and officials in applying the law. In other words, this concept is a kind of speculative construction, which cannot be realized with the application of the law. Here on this level is once again vividly displayed the question of the scientific, dialectical validation of ideas and constructions.

Deep research into the problem of "legal-illegal" laws was conducted by O.E. Leist. According to his absolutely fair opinion, a serious obstacle on the path to the formation of meaningful philosophical directions for studying law in recent times was a conception that until recently was named by its supporters "the historical-materialistic concept of differences and relation of right and law" and is now renamed "libertarianism." The law was issued by the state; this concept opposes the law, the essence of which is seen in freedom, equality, and justice. On this is based the definition of "lawless law," which doesn't correspond to the notions of freedom, equality, and justice. On the basis of this concept, it is really hard to find "legal laws" in the centuries-long history of humanity. If one considers the law as the embodiment of freedom, equality, and justice, so the history of law begins in the seventeenth and eighteenth centuries, and all previous law (Laws of Hammurabi, Laws of Manu, Roman slave law, all law of the Middle Ages, in Russia, the Russian truth, all laws and codes, etc.) should not be considered as law. It turns out, that the "libertarian concept" would have abolished a great part of the history of law. While acknowledging the theoretical courage and consistency of the founder of this concept, V.S. Nersesyants,[54] it is necessary to note that recently he has abolished a great part of the history of law. The state, according to his opinion, was constituted only on the basis of "legal laws," and everything else is considered to be the history of the state and was a form of despotism that fundamentally differs from the state.[55]

And there is more: as O.E. Leist continued his thought, on the basis of abstract reasoning, it is difficult to formulate any specific recommendations for a contemporary legislator who fundamentally acknowledges the ideas of freedom, equality, and justice but is not always able to embody them in law. Furthermore, out of sight of the supporters of the criticized concept, the opposite relation fell out—of a good law and a shaky, unsecured, and therefore bad law. An example of such a relation is Article 59 of the Constitution of the Russian Federation on the right of replacement of military service by an alternative, civil service, and the impossibility of the

[54] See V.S. Nersesyants, *Theory of the State and Law*, M. (2001), 28–30, 46–49, and following.
[55] O.E. Leist, *The Essence of Law*, 307–8.

realization of this right due to the lack of a legislative definition of the procedure for its implementation. Supporters of distinguishing between right and law didn't notice that the right differs from the law in its ability to be implemented in a particular legal relationship, in its rights and duties, and therefore the right cannot be embodied in over-general formulations (good according to the plan), having no developed mechanism of a specific legal relationship.

Furthermore, as O.E. Leist just noticed, out of sight of the supporters of distinguishing between right and law, also fell the implementation process of both. This is because, in this opinion, right consists of ideas of freedom, equality, and justice, and law includes texts, which can contradict these ideas. However, history knows of the bad execution of laws, texts that proclaim freedom, equality, and justice only as a disguise for injustice, terror, and the violation of basic human rights and freedoms. The Constitution of the USSR of 1936 was one such law—its democratic provisions were of a declarative character and it was a form of propaganda in the years of mass repressions. According to the opinion of the supporters of the libertarian idea, is this constitution a "legal law"?[56]

Fully agreeing with the specified scientist, it is necessary to add one example, which brightly characterizes the one-sided inaccurateness of this approach "to the law as to the definition of a good phenomenon in relation to the bad law."

The Constitution of the Russian Federation determined a person and his rights as the highest value of the Russian state. For the implementation of such a law, laws were issues that were not bad according to the content. It seems that everything was correct. Indeed, there were no complaints by and large to the laws—they all corresponded to the Constitution of the Russian Federation, fulfilling its promise to hold human rights as the highest value.

However, the question arises of whether it is accurate that the human and his rights were considered to be of the highest value. Are there no other values above the rights of a specific person in Russia? Should the priority be to the single person, opposing single interests to the general? What about other values, such as country, state, faith, and finally the life and health of their compatriots?

In 1915 the famous Russian lawyer S.A. Kotlyarevskiy wrote about this. He noted that there is no legal state without the consciousness of citizens for the value of law, without love for the law and struggle for law. But there is no state where there is not readiness to sacrifice this love, and this habit had already forged a legal path in terms of duties to the

[56] Ibid., 309–10.

Motherland, responsibility, security, and service worthy of historical development.

> In this sense, the hypertrophy of legal instinct, what could be called political effeminacy, may occur as a dangerous property in the struggle for life (and from this struggle in the most acute form, no state is insured), if it isn't balanced by a sufficient supply of basic immediate patriotism. On the other hand, the state needs not only the willingness of citizens to sacrifice themselves, it needs their ability to survive this sacrifice as the rise of national enthusiasm, it should have inherent power to trigger this enthusiasm. It turns on a strange paradox: the ability of citizens to sacrifice their legal goods is also associated with a high level of state organization. Painful and dangerous—in appearance—disharmony turns into such high harmony that the commandment of life if to search for it everywhere.[57]

Russia is attacked by invaders at least twice per century; its citizens have grown up in this community, were brought up by this collective work, and especially perceive the words "patriotism," "fatherland," and "self-sacrifice for others."

The same has been said by the Russian Orthodox Church, as the spokesman of opinion of the Russian people. In the Declaration about the rights and the dignity of person of 6 April 2006, adopted by the Tenth World Russian National Council, it was said:

> Rights and freedoms are inextricably connected with the obligations and responsibility of the person. The individual, implementing its own interests, is called to relate them with the interests of those nearest, family, community, nation and all humanity. There are values that stay no lower than human rights. There are such values as faith, morality, holy places, the fatherland. When these values and the implementation of human rights are in contradiction, society, government and law should harmoniously combine both. It is impossible to prevent situations when the implementation of human rights would suppress faith and moral tradition, which would insult religious and national feelings and revered shrines and would threaten the existence of the fatherland. The "invention" of such "rights" is dangerous because it legitimizes behavior condemned by traditional morality and all historical religions.[58]

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[57] S.A. Kotlyarevskiy, *The Power and the Law: Problem of Legal State*, M. (1915), 373–74.

[58] http://www.pravoslavie.ru/news/16935.htm.

Thus, the Russian Orthodox Church confirmed its opinion that today public interests in Russia can go no lower than individual and private interests.

Therefore, there is no doubt that the Constitution of the Russian Federation should declare the highest value of the law not only to be a specific person but also Russian society and the importance of the fatherland and its protection from invaders.

It should be said that the norms of the Constitution of the Russian Federation are not fully thought out in terms of the Declaration of the rights of a specific person as the highest value or the underestimation of the significance of the motherland and fatherland. Thus, these laws contain norms according to the protection of the state and society. That is, in fact, the norms of the Constitution in this case are an example that the law might not be perfect but might be worse than the laws it implements.

Thus, the law should not be idealized. It represents a phenomenon of a social life, of human life, and reflects processes happening to people. Talking about natural human rights (the right to life, and freedom of conscience, movement, religion, etc.), nobody will argue against the idea that these rights appear with the human at birth, rather than before birth. That is, the law is inseparably connected with alive humans, who are born and thereby appear in social life. Accordingly, it is impossible to separate the law from the human and society. The law isn't a cloud, floating somewhere outside the people. And since the law is inseparably connected with the human and society, it isn't necessary to talk about it as one would about something supernatural and sublime. It just reflects society in general and the virtues and vices of specific people.

It remains a mystery why exactly the law endures such idealization among legislators (basically theoreticians of law). Economy, culture, and politics are estimated by specialists in these branches more carefully and objectively, without illusions.

It is likely that the phenomenon of the law contains in it the constant desire for kindness, honesty, and justice. Or, maybe, the ideal of law is created by scientists who are somewhat removed from specific legal realities, the cogs of legal mechanisms, red tape in disputes, injustice, dishonesty, sneaky tricks, bribery, or pressure on the court, and so on. It should be noticed that all these properties were always already present in law during the whole of history. They are repeatedly described in the literature and historical works and also by lawyers themselves.

It is necessary to live in reality. On behalf of one of the present authors, five thousand citizens of Moscow completed a physiological questionnaire. They were asked the question, "What is the law according

to your opinion? If this is difficult to answer, with what word (or words) do you associate the law?"

The answer was greatly puzzling. Of those who replied, 86% answered that the law is prohibition, or law was associated first with prohibition and punishment; 5% found it difficult to answer; 9% answered differently. But the other answers weren't given nearly so much importance as the default understanding of law as punishment.

It is necessary to say that earlier, during the preparation of a previous monograph on the philosophy of law, two thousand citizens of Moscow were asked the same question. The numbers were very similar. That is, 83% of respondents associated the law with prohibition and punishment.[59]

Why is this so? Scientists write about the measure of freedom, equality, and justice, but by people in society law is mainly associated with prohibition and punishment. And why are prohibition and punishment in the law more meaningful for people than mandatory rules or legalized order of any action?

Of course, it would be desirable to conduct a similar question with a maximum consideration of all parameters of the respondents: age, education, social status, and so on. It would also be desirable to breakdown the answers according to social groups. This, of course, will give an opportunity for a more accurate understanding of the answers as social opinion rather than a random sample of five thousand citizens of Moscow.

This opens the way for a wide-ranging scientific work. It would be particularly interesting to conduct a similar survey in the most developed European countries and to compare this with the data gathered in Russia. We don't exclude the possibility that in Western Europe the results could be different. But they may also be the same, as according to our observations in such countries there has developed not only a law-abiding attitude, but also a fear of the law. Thus, without conducting research abroad, we turn to a quotation by the famous Austrian philosopher F. Hayek, "Understanding our own rights, we understand what we shouldn't do."[60]

On the one hand, it is good that the law is associated by Russians with prohibition and punishment but not with violence and cruelty. However, on the other hand, prohibition and punishment isn't a positive human reaction. It is not encouraging and usually doesn't cause positive reactions.

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[59] S.I. Zakhartsev, "Some Problems of Theory and Philosophy of Law," ed. by V.P. Salnikov, M. (2014), 50.

[60] Quotation according to V.P. Malakhov, *Philosophy of Law: Ideas and Proposals*, 154.

So, it is logical to assume that the law doesn't create positive emotions among the majority of people. And, talking more specifically, it causes negative emotions. Thus, even if we assume that a survey of a specific segment of the population would produce different results, 86% of people still associate the law with prohibition and punishment, which is too many.

Why are prohibition and punishment dangerous? They do not look for salvation and protection. Prohibition can be used as a requirement; but the soul doesn't like prohibitions. And here it is important to understand and to feel the difference. We can give a simple example: everyone understands the importance of traffic rules. It can be said that traffic rules regulate rules of behavior on the roads, and this is good. It can be said that traffic rules require specific behavior on the roads. But it can also be said that the rules list prohibited behavior on the roads and establish punishment for such failures. It seems there is no difference. All statements are truthful and fair and the meaning by and large is the same. However, the first phrase seems to have a positive attitude toward the rules, whereas the second one seems neutral. But the third phrase has an openly negative attitude, where the only reason to abide by such rules is the danger (severity) of punishment. People who perceive the law in such a way are not expecting either help or something good to come from it. On this occasion, V.P. Malakhov quite correctly noted that legal consciousness is negative in the sense that all its specificity is found in the sphere of prohibitions.[61]

Thus, in relation to the Russian mentality, respect for the law in general and for the rights of others in particular can be achieved with the help of strict punishments. More will be said about this in the chapter related to legal consciousness and legal nihilism.

However, the issue mentioned above can be viewed from the other side. The law to a certain extent is the protest of society about human behavior. And it also can be said that society to a certain extent forms the law generally and human rights in particular. In other words, there is continuous dialectical intertwining and interdependence. Hence, these are largely the roots the authors of the current monograph use to develop their direction for comprehending the study of law.

It is necessary to admit that the following thought, which was expressed by V.M. Sirih and supported by O.E. Leist, wasn't fully understood: "Recognition of the regularities of law as the subject of the general theory of law is purely formal. In fact nobody during the process of presentation identified or even made attempts to name specific patterns

[61] V.P. Malakhov, *Philosophy of Law*, 154.

of law."[62] But the research process did not identify the essential characteristics of law (normativity, official establishment and protection by the government, consistency, formal definition, credibility), which to a certain extent is not related to its regularities, and on the basis of which is formulated the *legal* [our emphasis] concept of law.

The specified features are the symptoms of systematic patterns of law as a legal phenomenon. Furthermore, these features that were identified during the study of law, in one form or another, are related in all books on the general theory of state and law, and also O.E. Leist's book. In the law, researchers have also noted other patterns.

Above, the word "legal" was specially highlighted, because here the law is seen only as and only through the prism of legal rather than philosophical knowledge. In the same way, a surgical operation can be seen only from the point of view of medicine as a set of actions to excise a malignant tumor. But it can also be seen from a philosophical point of view concerning the good in principle of surgical intervention, the criteria of admissibility of such interventions, the realities of the preservation of quality of life after surgery, and so on. The same is true with jurisprudence. The law, from the legal point of view, has patterns, which were studied sufficiently by the theory of state and law. From the philosophical point of view the question is broader: this concerns values of law and the cognition of its norms, the appropriateness of methods chosen for the purposes of cognition, the humanism of law, and the question of original justice of limits to the rights of other (the same) people and the permissibility of violence in the law, the limits of violence, and the reality of obtaining the necessary legal regulation, and so on.

The law, as with any legal phenomenon, can be evaluated through the past, present, and future. If in the past, law is more or less clear, present law is reminiscent of the philosophical question of whether a half-filled glass is half empty or half full. Future law is vague enough, because it is impossible to say what scientists at the present time imagine will happen.

In the proposed contemporary concepts (natural, libertarian, integral, etc.) there is a lot of idealism. However, humanity hasn't yet succeeded, and in the near future, without any doubt, it will be impossible to create an ideal society, even though the society is absolutely fair. Even though the ideal society's models of idealized law are not feasible to their full extent, they will be refracted in different directions, possibly reaching to what is

[62] V.M. Sirih, *Logical Reasons of the General Theory of Law*, vol. 1, M. (2000), 40; O.E. Leist, *The Essence of Law: Problems of Theory and Philosophy of Law*, M. (2011), 307.

illegal. Examples of good ideas turning into lawlessness and terror are known by all.

Perhaps, the light at the end of the tunnel will be visible when humanity comes to a common understanding of the word "justice." When this term will be equally clear to all humanity, it might be possible to talk about legal concepts that ensure implementation in life and being. Exactly in this case the norms of law could be fair for all. However, justice is a philosophical category. In the history of humanity there hasn't been created a legal consciousness that is unified and acceptable to all. Therefore, a different understanding of justice will be required that allows different and mutually exclusive approaches to the law to understand what the law should be. It is thought that it is necessary for humanity to go through many stages in its development, for more than one century more to pass in order to come to the law as a universal guarantor of justice.[63]

It is necessary to take into account the dependence of the law on external factors, for example, the economy. According to F. Engels, the law is almost completely dependent on the economy. The law depends on the economy according to positivism. The law is partial, but also depends on the economy according to naturalism. Even if we recognize the law as a kind of reality that is dominant and ruling in the world, without a strong economy many natural human rights will become slogans that contain nothing and have no practical meaning (the right to a dignified life, the right to dignity, the right to secure old age, etc.). That is, the law, at least partly, is to some extent dependent on the economy. This conclusion is very important because in this case it is necessary to convince objectively that the law cannot be completely fair. In fact, the economy cannot be fair. And if the law is at least partially dependent on the economy, it is at least sometimes unfair by definition.

In general, contemporary society is still far from such heights as freedom, equality, and justice. And the concrete legal mechanisms that lead to the achievement of these goals, these ideals (this is how they should be considered), have not yet been created.

Developing such legal mechanisms can largely be associated with the universalization (if it is possible) of concepts of justice, equality, and freedom. Here wide horizons open for the philosophers, including those who specialize in the philosophy of law.

And in the modern world, developing, opening, or creating something isn't enough. It is equally important to publish these achievements, to speak and, further, to be heard. The trinity—to create, to speak, and to be

[63] A.I. Ekimov wrote significant works about law and justice; see, for example, *Justice and Socialistic Law* (St Petersburg, 1980).

heard—is a scientific ideal, which is sometimes achieved, frequently reached with a delay, and sometimes not reached at all.

Many contemporary specialists, cognizing the law, push off from any suitable concepts of the origin of law.

However, it seems more correct first to assume the essence and the content of law. This process is really interesting.

In fact, the law is a protection from violence and the violence of the enforcement of standards, and a violence regulator. And the mentality, traditions, culture, and other social factors of a society determines the different parameters of regulation of violence.

The law is the implementation of human needs and its limits and the regulator of needs. Wherein, if it speaks so, the law provides humans with a humane life.

The law is concrete laws, issued by the government and the being; it is not dependent on specific laws and even encourages us to publish these laws.

The law is a reasonable regulator of life activity and nonsense, absurdity, and recklessness (for example, senseless and comic law in case law, etc.). The law shows both the intelligence and the recklessness of humanity.

The law strives for justice and, at the same time, allows injustice.

The law directs the establishing of objective truth and, at the same time, admits its failure.

The law is dynamic and, at the same time, contradictory in its dynamics. Thus, depending on external social factors, one and the same act can be a crime and can be the efficient conduct of the case (e.g., speculation).

The law in some cases forms the police and, at the same time, is an instrument of the police. Wherein, the law cannot solve all the problems of humanity, although many people see it like this.

The law regulates the economy and, at the same time, depends on economic processes.

These thoughts can continue and continue. Ultimately it is seen that the law is undoubtedly a complex dialectical multi-factorial social phenomenon, depending on objective and subjective factors. To the subjective factors, for example, can be attributed the tyranny of a person who is competent to adopt legal norms (examples).

Thus, the law is a complex social phenomenon, multidimensional and contradictory, which should be considered without idealization. This conclusion underlies the formation and formulations of the authors of this work on the theory of *comprehending the study of law*.

Definitions of the law common in our time, although they reveal the features of the law, first are relatively one-sided and, second, as was already mentioned, consider the law idealistically and not objectively.

If the law on its own is a complex and contradictory social phenomenon, so, respectively, the legal being is also soaked in these contradictions. The inconsistence of legal being is manifested in the adoption of legal law in the sphere of economics, which almost always improves the situation in some ways and nevertheless worsens the situation in others. So, it is necessary to emphasize that we are talking about the adoption of legal laws.

Or we can talk of law enforcement practice. Today, so-called competitive process is fashionable. It is considered to be more democratic, providing equality of parties and so on. During this process, parties often provide to the court opposite and mutually exclusive information. This means that at least one of the parties is lying openly. As a result, the court renders a decision. And the specified action is considered to be legal! Thus, the decisions of the court depend on the cunning of parties and the resourcefulness and eloquence of lawyers, and so on. As all know, such judgments aren't always correct. And the law in this case—the aspect that is most paradoxical!—in fact acts as a regulator of lies, a provocateur and stimulator of lies, and not for the establishment of truth and justice.[64]

Interest in the law, recently, as it seems, has increased in the scientific community. Informative work has appeared that explores the essence of law. Sometimes, there can be found quite sharp criticism of the modern state of law observance; however, it is the laws themselves that are criticized always and everywhere. Wherein, it is nice that instead of sweeping criticism, specific and meaningful proposals appear for the improvement of laws and other regulatory legal acts. In fact, dissemination and popularization of the law is one of the elements of legal being. But almost everywhere, the law is idealized. For example, it is a known opinion that current laws are bad and thus not legal.

It seems that many lawyers consciously or according to fashion make methodological mistakes in their arguments. They copy their procedures of argumentation from jurisprudence and procedures of proof from natural science, where artificial variables are necessary (for example, "ideal gas"). Therefore, such terms appear as "ideal society" and "ideal state." The

[64] Some processualists (we support them) believe that the competitive process means that the court must establish objective reason. But this, unfortunately, doesn't change the essence of law, which by its forms actually regulates lies (or the possibility of lies) by at least one of the parties in the court.

word “ideal” is not added to the term “law” because many people consider that the law is ideal by its definition.

Are there such rough analogies in the humanitarian sciences? We believe that there are not, since it is obvious that ideal conditions in the society and in the state are impossible in principal for all. Principally, it is impossible to create law that is suitable for everyone. However, for the Russian legislator and its scientific support from scientists this obvious philosophical conclusion has ceased to be a problem. As a result, in Russia numerous laws have been issued that are never to be executed because of the impossibility of their demands. The most amazing thing has been the authors of these laws trying to justify their mistakes by claiming that the laws are issued for an ideal society, and that Russia is still a long way from being that. In fact, such an explanation clearly demonstrates the departure of the specified authors from the basis of philosophy and their own methodological mistake. In physics, you can put an experience, taking into account ideal conditions of some process or substance. However, to adopt laws in justice based on the ideal idea—that, for example, there is no more crime—is unacceptable. Such laws will not be respected but society will be made angry; this will force legislators to make adjustments. Nevertheless, this can worsen the social situation in the state, which cannot be held by the public authorities.

It is necessary for the lawyers—scientists and practitioners—to be closer to philosophy, to base their ideas on it, and to doubt more, in order to look critically at legal phenomena. A step in this direction will be the beginning of a movement from the observed mythical legal idealism to the legal side of legal realism, the comprehended study of law.

Nowadays, perhaps, there is no one field of public relations that to varying degrees is not regulated by law. The norms of law on their own reflect and characterize the economy, culture, politics, history, intelligence, ways of thinking, attitudes to the person, and so on.

In such circumstances, the law is one of the forms of reflection of being. And since the law isn’t convincible with the human being, so this is a form of reflection of the social being, which appears to regulate existing social relationships.

The question about the possibility of the legal being existing without the human also needs to be viewed through the prism of realism and objectiveness. In what kind of existence is there law but no humans? Who would law regulate in a world without people? Would it be necessary to have law if there were no people? The answers on these and other similar questions are obvious. The legal being, of course, cannot be without humans. The law without humans makes no sense.

In this regard, the law shouldn't be considered as a fully independent substance.

The next moment is connected with that through which law and legal reality are cognized. Nowadays in Russian legal science the opinion of V.S. Nersesynats is widespread that the law is cognized through the legal law.[65] As this scientist wrote, legal libertarian epistemology holds as truths the objective scientific knowledge of the nature, properties, and characteristics of legal law and about the preconditions and conditions of its approval as a current law. Analyzing the foregoing statement, A.N. Chaschin writes that according to V.S. Nersesynats opinions on epistemological differences between libertarianism and just naturalism are manifested in the fact that the emphasis is on making law, not on the right (just naturalism has a peculiar focus on natural law). It differs from legalism (legal positivism) in that the latter studies every law as a right, and libertarianism as a right studies only legal law, separating laws from the right and contradicting them. Just naturalism searches for truth in natural law, legalism searches in positive law, and libertarianism searches in legal law.[66]

Such a point of view is doubtful for the reason that, as was already mentioned, legal law is a very subjective concept. And what can be considered to be legal for one social group will be illegal for another one. In the first approximation, it seems to us that it is more appropriate to evaluate the law as a whole through its sources. It isn't necessary to allocate from the right only laws and only legal laws. Right must be evaluated as a whole, taking into account each source of law, including legal practice, which is fairly widespread in the world experience. Here it is very interesting to quote a statement from the Director of the Institute of Philosophy of Russian Academy of Sciences, A.A. Guseinov, about his contact with law. He writes, "As a Director of the Institute I had a couple of times dealt with the court. All this left on me a heavy feeling. Considering the real everyday life of the Institute, I can say: for 95%, maybe for 99% of all relations in the Institute, its positive activity is based on traditional, well-established patterns of behavior, oral agreements, commonsense—to words on things that if they were taken to court, would immediately be called into question."[67] A.A. Guseinov also writes that by

[65] *Nersesyants V.S.* Philosophy of law. M. (1998), 64.
[66] A.N. Chaschin, *Contemporary Legal Doctrines of Russia*, ed. by T.N. Radko, M. (2014), 54.
[67] A.A. Guseinov, "Philosophers and Lawyers Have Many Common Themes," *Philosophy of Law at the Beginning of the Twenty-First Century through the Prism*

saturating Russian society with lawyers "we violated the historical format by which our society measures the correlation of right and law with justice, morality, and tradition."[68]

A comprehensive and systematic assessment of the law through legal sources allows us to achieve a more objective and honest understanding.

The legal being is dialectical, in that is contains also internal contradictions. It is manifested more brightly within the legal regulations of the social relationship. On one hand, society is striving for the maximum regulation of the social relationship within the law; literally, that any life situation, first, will be the related legal norm and, second, that this norm will not be contradicted and will be clearly understood and applied. Everyone can see and feel the movement in this direction. The legal array is significantly increasing. Recently, this has gone to the extent of lawyers having a nonexistent understanding of the human orientation of all laws. There was need for a more narrow specialization for specialists of criminal, civil, and administrative law. However, there also the growth of the legal array is objectively determined by the necessity for a more narrow differentiation of specializations. Thus, the civil law "fostered" specialists in land law, family law, labor law, and so on. However, the further growth of laws and subordinate legislations continues to require even more "narrow" specialists. For example, currently, lawyers are very valuable, even on such a small part of the administrative law as traffic regulations. Applying traffic regulations and analyzing road traffic accidents have thousands of nuances. And these nuances are very important to people.

But, on the other hand, it is preferable for any society that laws will be well known, simple, and understandable for all people. Nowadays even lawyers do not have enough power to deal with the many nuances of the contemporary legal system of the concrete state. As a result, many people, paradoxically, are defenseless before the norms of the law. The specified conclusion confirms countless examples of educated people with significant life experience who have been easily deceived not only by fraudsters but also by governmental authorities (inspectors of traffic police) or by smart lawyers.

In the legal being there is another paradox and internal contradiction. Society and people, on the one hand, are interested in everything being clearly regulated by the law; and, on the other hand, they cannot "digest" the already existing legal array. Wherein, the law, unfortunately, for

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of Constitutionalism and Constitutional Economics, ed. by V.V. Mironova & Y.N. Solonina, M. (2010), 14.

[68] Ibid.

objective reasons, acts against humans and society. Not so long ago the phrase "It is impossible to take a step without breaking anything!" was treated with humor; however, now people are more likely to hear tragedy in it. In this case, everyone—ordinary citizens as well as governmental authorities—is in principle under the same conditions. Governmental authorities, whose service is regulated by a complex of instructions and orders, can also easily become the subjects of administrative and criminal responsibilities. Following on from the above, there is a Russian proverb, "If there was a person, it would be an article."

Thus, the law and legal reality appear as a complex and dialectical contradictory phenomenon.

The above mentioned issue allows the theory of *comprehending the study of law* to be formulated in "broad strokes." First of all, it is necessary to say that the relevance of the formation and formulation of this theory is caused by the necessity to appeal to the concept of law from philosophical positions, to evaluate it comprehensively and fairly, refusing the method of the idealization of law often applied at the current time. The specified theory must perform the role of a private theory in the philosophy of law.

As is known, all theories study a pattern of occurrence, its functioning and development. From the point of view of the philosophical theory of cognition, an object is that on which cognition is directed. The object is that part of reality that research efforts are directed to attaining. This reality performs existing social relationship objectively, which are regulated by the law.

The subject should reflect the main, essential parts of objective reality. On the basis of the dialectical theory of cognition, the subject of the theory of comprehending study of law is the law by itself as a complex, contradictory, multidimensional, dynamically changeable social phenomenon, *evaluated without any legal concept dominating.*

The subject of the theory of comprehending the study of law also includes the following:

— patterns of essential dialectical contradictions in the law and the legal being (some of which were mentioned above)
— patterns of influence on the adequate and objective evaluation of the law and the legal reality of external factors (to such factors related to economics, politics, ideology, the role of the head of state, etc.)
— perspectives on the law of development in the context of legal reality

At the beginning of this chapter, a comparison between law and a diamond was made. When we substantiated the necessity of its 57 facets, it is necessary to notice that the diamond was formed from carbon. We believe and hope that as soon as law researchers open approximately the same variety of facets and characteristics of law, it will clearly define the essence and purpose of law. This will not happen now, and, we suppose, not in the near future.

The way to the cognition of law lies not through the persistent justification of any one concept of law, which is often "blamed" by many scientists. However, attempts to take "the best" from existing legal concepts are not confined to the integral theory of law. If the law is not fully cognized, it is impossible to say what is "the best" in it or what is "the worst." We are not talking about the unity of different legal concepts. The meaning of a proposed approach is seen through a strictly objective, real, deidealized, deideologized cognition of law, which does not avoid the domination of any concepts. More objective minds will evaluate the law as a complex, contradictory, multidimensional social phenomenon, which will clearly reveal its contradictions and flaws, its strengths and weaknesses, and the opportunities and limits of its opportunities and so on. The sooner this happens, the sooner will we be able to come to the cognition of law.

§ 4. Questions of methodology of law

The purpose of the philosophy of law also includes in the definition of a common methodological base for the cognition of law. The presence of a common methodology in law is a philosophical and philosophical-legal problem that philosophy of law has to decide. It is advisable to focus on this question in detail.

The transformations that have occurred in Russia in the 1990s, ironically, greatly touched the philosophy and methodology of scientific research. In particular, dialectics were subjected to obstruction, despite earlier being recognized in Russia as a universal scientific method for the cognition of law.

This position in philosophy became a fever spreading to the methodology of other sciences, including legal science. It also spontaneously formed groups in it, which began to practice different approaches to dialectics. Ultimately, this led to the destruction of the clear methodology that had been developed in the legal disciplines. In the basic science for all legal disciplines, the general theory of the state and law, scientific methods began to be interpreted in completely different ways. For example, some

scientists still believed that dialectics was a universal method of cognition.[69] Other specialists considered dialectics to be equal in value to other scientific methods.[70]

A group of scientists formed who denied the methodological meaning of dialectics. For example, A.B. Vengerov wrote, "hyperbole of the materialistic dialectics turned methodology into artificial searches for the 'rise' of the scientific knowledge from the concrete to the abstract, to the scholastic arguments about the lack of antagonistic contradictions in a socialistic state etc. It is necessary to understand that the crisis of socialistic ideas in that form, in which it was implemented in a totalitarian state and its legal sphere, at the same time, meant a crisis of dogmatic materialistic dialectics."[71] And then, continuing his thought, the author wrote about the formation of the scientific principle in studying the state and law, which "involves getting rid of the myth, utopianism and vulgarism, and asserts the primacy of objective scientific knowledge over the selfish interests of certain classes, social groups, and separate scientists."[72]

Commenting on what he saw in the methodology of law, O.E. Leist quite emotionally noted:

> Some authors on inertia continue journalistic criticism of Marxism–Leninism; the majority of theorists reject only certain aspects of Marxism, seeking to maintain the number of previous conventional ideas. Nowadays it is hard to find among the specialists on the theory of the state and law at least one scientist firmly standing on the former Marxist–Leninist positions. But it is even more difficult to find a scientist who firmly stands on the other philosophical-ideological positions, which could be crowned the building of legal science. If the general theory of law was exempted from the mandatory criticism of the bourgeois ideology and the search for "peculiarities of socialistic type of legal relations" received an opportunity to calmly develop its stricture of concepts and categories, but with philosophy of law the situation is much worse. The ideological-philosophically vacuum, which was created in recent years, hasn't been filled yet with anything else. Not without reason, an opinion has been expressed that philosophy of law isn't needed at all.[73]

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[69] D.A. Kerimov, *Methodology of Law*, 49–50, 83; R.K.H. Makuev, *Theory of the State and Law*, M. (2010), 35 and so on.
[70] See, for example, *Theory of the State and Law*, ed. by M.N. Marchenko, M. (2009), 11, 15–16.
[71] A.B. Vengerov, *Theory of the State and Law*, M. (2009), 21.
[72] Ibid.
[73] O.E. Leist, *The Essence of Law*, M. (2011), 307.

This statement, of course, is extremely subjective, because many scientists haven't lost methodology in general and dialectics in particular. On the contrary, they have tried (unsuccessfully) even more to develop it in relation to law. We could take, for example, the works of the most distinguished philosopher of law D.A. Kerimov.[74] However, the above mentioned quotation of O.E. Leist eloquently shows that in terms of the methodology of legal sciences a certain "perplexity" was observed.

In particular, there is no characterized phenomenon for legal science when separate specialists are trying to get around questions of dialectics in methodology. Thus, in his textbook, S.M. Koshelev writes that those in the theory of the state and law used special and private methods of cognition of law (for example, the particularly-sociological method, comparative legal method, etc.). However, the method of dialectics isn't mentioned by the author either among universal or among general or among private methods of cognition.[75] Periodically, we began to come across cases in academic literature on legal disciplines where the authors began to avoid expressing an opinion about methodology of one or another industrial or applied science.[76]

The questions of dialectics and its understanding and meaning were considered above. Now it is necessary to focus on how dialectics is important for the legal sciences.

As already mentioned, since development in the broadest sense is one of the foundations of dialectics, this leaves the question of what dialectics is for science. The answer is obvious: science cannot exist without development. Development of scientific knowledge assumes constant change, movement, and dynamics of knowledge. Without development, a science is dead. It will stop in its development and then it will make lag behind the necessities of life. Experience shows that objective (again dialectical) world development of knowledge can force a return to a forgotten theory; however, it isn't always possible to make up for what was lost. For example, in the USSR, cybernetics was considered for a long time a lie and wasn't developed. After almost half a century, an objective flow of life and development of scientific knowledge forced a return to this forgotten theory. However, during the extended downtime, there was a significant backlog in Russia in terms of cognition of the essence of information technologies, production of computers and other electronic devices, mobile telephones and so on. This, in its turn, determined the lag of legal science in questions about information technologies, observed in

[74] See, D.A. Kerimov, *Selected Works*, in 3 vols, M. (2007).
[75] S.M. Koshelev, *Theory of the State and Law* (St Petersburg, 2007), 12.
[76] See, for example, *Administrative Law*, ed. by L.L. Popova, M. (2005).

many legal disciplines. So, after the delay, information law was recognized in our country as an independent branch of law. In criminal law, only in 1996 did articles appear that provided criminal responsibility for crimes in the sphere of computer information, and for about two years these articles weren't used because the criminal procedural law wasn't ready to handle this kind of material evidence, such as "harmful programs, attached to criminal cases in electronic form." There was accordingly a noticeable lag in criminalistics: there were no methodical recommendations on tactics of investigating actions and methods of the disclosure of computer crimes. Nowadays, when information technologies are used actively to commit many crimes (fraud, illegal withdrawals, illegal bank activity, legalization of cash, money laundering, corruption crimes, etc.), the legal sciences again are not situated at the forefront in ensuring practice by methodical recommendations for proving such crimes.

That is what causes the departure from dialectical principles of development, a denial that the development plays the first role in the science and it isn't necessary to disturb it.

Even critics do not doubt that the general methods that are used in the law (systemic-legal, comparative-legal, historical-legal, etc.) are hardly able to do without dialectics.

As you know, dialectics is based on the idea of universal communication, which, in its turn, implies the interdependence of phenomena. For example, a social phenomenon such as crime implies the existence of a way of combating crime and the availability of criminal law and crime procedure. Criminal procedure cannot exist without criminalistics; in the same way, criminalistics is inextricably linked with criminal procedure, criminal law, combating crimes and so on. The appearance, for example, of computer crimes caused necessary changes to criminal law, and the development of criminal procedure required new approaches in criminalistics. Exclusion from the Criminal Code of the offense of "speculation" implies, on the one hand, the exclusion of this act from crime statistics, and, on the other hand, changing the direction of criminalistic methods of investigations of crimes.

The general laws of dialectics are actively used for the cognition of law. The law of unity and the struggle for opposite points indicates the coexistence of different forces and tendencies and these forces simultaneously agree with and contradict each other. In this case, right is a bright example of this law. The law means justice, but it permits injustice; the law struggles with violence, but at the same time it regulates social relationships with the help of coercion and violence and so on.

An example of the law of mutual transition of qualitative and quantitative changes can be observed in information law. At the beginning, it wasn't known and wasn't recognized by the law, and then scientific publications and regulations appeared that increased in quality and quantity and led to the justification of the information law.

Thinking about this law, V.S. Nersesyants noted that qualitative changes in philosophical-legal knowledge (its multiplication, clarification and concretization, increase of volume, etc.) occur in general from the positions and boundaries of one or the other concept of law, which forms the ground of a certain concept of the philosophy of law, its methods and subject. Quantitative changes in philosophical-legal knowledge are connected with a transition from the former concept of law to the new concept of law, with the formulation of a new philosophical-legal theory with a corresponding new method and a new subject. Of course, the degree of such qualitative change can be different, but new concepts express a qualitative leap in the process of the development of philosophical-legal cognition and in the process of philosophical-legal thought.[77]

An example of the law of negation can be considered in environmental law. Environmental law hasn't only been considered a legal science for a short time. Then it began to be considered in the context of other legal disciplines, that is, there was a denial of previous knowledge. Finally, it emerged as an independent branch of law, wherein, there was again a denial of the previous stage of development.

V.K. Babayev writes correctly that each of the dialectical laws manifests itself in any legal phenomenon or process. Thus, any legal norm, particularly a newly adopted one, reflects the unity and contradiction of the regulated social relationship, coincident at the same time on conflicting interests. It occurs when there are changes in social life, which gradually accumulate and reach the new qualitative condition and require a fundamentally different legal norm. New social relationships replace the former and newly adopted legal norms regulate these relations, denying the old one and preceding it with legal requirements.[78]

The main dialectical categories are whole and part, individual and general, reality and possibility, structure and elements, theoretical and practical, content and form, purpose and means, cause and effect, and so on. For example, the need for regulation of concrete social relations is the reason for the publication of legal norms. The publication of norms is the consequence of the necessity for the regulation of the mentioned relations.

[77] V.S. Nersesyants, *Philosophy of Law*, M. (2011), 12.
[78] *General Theory of Law*, ed. by V.K. Babayev (Nizhniy Novgorod, 1993), 42.

Or, a specific act by a person is the cause of the application of a legal norm. The use of norms, as fixed in their effects, results from an act by a person.

Using the described principles, laws, and categories, dialectics is implemented as a universal method of cognition. Dialectics laid and is laying the basis of the development of the legal sciences.

About this, V.K. Babayev wrote that during the study of law the method of dialectics appears when law is viewed as a phenomenon, which, first, is determined by the nature of a person, or the socio-economic, political, religious, or other condition of social life. Second, it is closely associated with other social phenomena. It is hard to find in society a sphere of social relations where there are no legal norms or social phenomena that the law will not have contact with in one way or another. Balancing the law with other social phenomena, it is possible to identify the place of the law in society, its characteristic features. That is exactly why the law is compared with politics, economics, morals, and customs. Third, the law is constantly evolving. Every new stage in the progressive movement of society is a new stage in the development of the law. Gradual quantitative changes (law upgrading, in particularly) in the legal system lead to the qualitative transformation of law.[79]

Overall, as was concluded by R. Lukich, it is impossible to become a good lawyer if one is restricted by special, exclusively professional methods and doesn't approach the law from the position of a more general, dialectical method.[80]

Unfortunately, the legal science of judgments is sometimes influenced by ideology and politics. The authors of the current monograph are related to scientists and seek so-called pure science, which is open to anyone's influence. Perhaps A.B. Vengerov and other specialists who actively criticize dialectics are also committed to the same ideals. However, far from trying to get away from ideology and politics, they, on the contrary, are immersed in it. For example, A.B. Vengerov wrote, "Indeed, relying on such dogmas as dialectics and, for example, the unity and struggle of opposites, Stalin and his supporters approved unlimited and increasing class struggle in the socialistic society. You know the genocidal struggles with its own people that this transmission of dialectical knowledge led to in the 1920s to 1930s in Russia, to the processes of collectivization, elimination of the creative intellectuals from public life and so on."[81]

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[79] Ibid.
[80] R. Lukich, *Methodology of Law*, M. (1981), 43.
[81] A.B. Vengerov, *Theory of the State and Law*, 21.

But does dialectics say anything about collectivization, genocide of one's own people, and the elimination of the intellectuals? Where are the scientific philosophical arguments that specifically indicate the impossibility of using dialectics as a universal methodological foundation? Why are the actions of politicians, who perhaps do not know dialectics in full, being used as arguments for its destruction? Is this a scientific, philosophical discussion?

In this sense, E.I. Temnov rightly said,

> Traditions of scientific and academic studies of the theory of the state and law over several decades in our country have been connected with the development of materialistic, historical, dialectical directions in the Marxist–Leninist understanding. However, materialism, dialecticism, and historicism already occurred in the early stages of the formation of scientific knowledge, where they were consistently developed by scientists of many generations and logically should also be present in the contemporary stage. Dialectics acts as a philosophical (ideological) basis of the theory of the state and law and is a doctrine about the most general logical relations, formation, and development of being and cognition.[82]

However, not all experts fully realize this truth. As an example, we can quote a scientific article by I.A. Klimov and G.K. Sinilov according to which the operational (search activity [OSA]) of the science is rather conservative, having a really applied character. At the beginning, the specified authors note that in Soviet times, dialectics was considered to be a methodological basis for the theory of OSA, and, they further write, "Since the development of the theory of OSA historically coincided with the period of functioning of the Soviet type of statehood and its collapse and reformation occur at the present time, so in these conditions is inevitably the evolution of the point of view on the methodology of the theory of OSA."[83] That is, to paraphrase, that the evolution of points of view on the philosophical and methodological aspects of the theory, according to the opinion of the specified authors, depends not on the development of philosophy and philosophy of law, but on the reformation of the state, changes to the constitutional order, and so on.

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[82] See, *The General Theory of the State and Law*, M. (2010), 33.

[83] I.A. Klimov & G.K. Sinilov, "Methodology of the Theory of Development and Improvement of the OSA Practice in the Conditions of Modern Russian Society," *Actual Questions of the Theory and Practice of Operational-Search Activity*, M. (2001), 33–34.

By the way, in a science, the OSA approach of the negation of dialectics was blamed and not accepted by most specialists.[84] It was noted that some scientists studying modern investigation and its different manifestations, from one extreme (Marxist–Leninist understanding of the universality of the dialectical method) rushed to another conclusion and wrote that the

> "dialectical method of cognition, freed from the ideological accretions of 'universality' and 'portability' is equal in the system of scientific methods." Is it so equal in this system? Of course, we can disagree with classics of Marxism–Leninism, as it did the esteemed professor (and now it is fashionable), but why through the baby out with the bathwater? Was dialectics invented by V.I. Lenin? If not, shortly before him G.F. Hegel justified the universal character of the dialectical method and made out of it "the system of scientific methods." . . . Even if we assume the presence of the dialectical method in "the system of scientific methods, studying the investigation (and not above them due to his universality), so he is situated, as we think, on the top of the pyramid of methods of non-metaphysical cognition (and if you like, of the system)."[85]

It is a pity that some Russian specialists are so susceptible to outside influence. For example, I.L. Chestnov supposes that cognition (full, absolute) of the world is rejected *in contemporary epistemology* (our emphasis). With regard to the law he supports various foreign experts and states that "A famous English anthropologist E. Lich . . . writes, that any social (including legal, for example: law and crime) concept is endowed with different meanings in different contexts: legal can become criminal and vice versa. That's why, according to his opinion, there cannot be eternal laws of human society and inalienable human rights. Thus, we can conclude that any social institute is contextualized historically and socio-culturally: its content is set by the era and peculiarities of the culture of a certain society." And further, "It is obvious that the law is contextually relevant as a historical epoch and also as a certain culture—civilization through the scientific community, which is developing, transmitting, and promoting the proper theory of law. That's why the theory of law (law

[84] See, S.I. Zakhartsev, "Dialectical Methods in Operational-Search Activity," *Legal Science: History and Modernity* 7 (2012), 62–69.

[85] A.Y Shumilov, *Phenomenon of the Scientific Schools of Professional Investigation*, M. (2007), 45.

understanding) cannot jump the boundaries of the intellectual consensus, the episteme of epochs and culture-civilization."[86]

Well, the law really reflects the modern epoch and culture. But is it only modern culture? Does the law not reflect previous epochs? And thus doesn't the law outstrip the reflection that is the reflection of future social relations? Well-thought legal norms live for centuries. A bright and universally known example is Roman law. It reflected the experience of its creators (historical aspect) and its contemporary epoch and outlived a dozen further epochs (outstripping reflection). The law is able to—and even aims to—look into the future, to "jump" through its epoch and culture. Therefore, to "bind" the law to a certain epoch isn't fundamentally correct.

Precisely on this theory of the reflection of objective reality in law, D.A. Kerimov wrote that

> this theory, which reproduces the superfine mechanism of the human mind, not only detects the failure of agnosticism, but also plays a very important methodological role in the whole system of the sciences, including the law, because legislation and its implementation are not that other that is a reflection and the most outstripped reflection of objective reality, directing its development. The problem of reflection is the key problem in law; therefore, its solution will contribute to the further improvement of law adoption and enforcement. In this regard, we must turn to the definition of reflection. This category, first, has a historical character, because during the progress of sciences it is constantly evolving and enriching; second, it is systematically improved through the process of cognition; and, third, it has a universal quality, because it reveals itself on the different levels of cognition of either the organic or non-organic world.[87]

Certain other of E. Lich's and I.L. Chestnov's conclusions are also disputable. Thus, the dependency of law on epoch and culture is not manifested in all cases. In particular, such natural human rights as freedom of thought, freedom of religion, freedom of conscience, and so on hardly depend on epoch, culture, or civilization. The indicated rights are related to those that it is hardly possible to take away. At least, no one has the possibility to take away the right to freedom of thought and conscience. It is possible to interfere with the freedom of religion, but not to take it

[86] I.L. Chestnov, "Criteria of the Modern Understanding of Law," *Philosophy of Law in Russia: History and Modernity; Materials of the 3rd Philosophical-Legal Readings in Memoriam Acad. V. S. Nersesyants*, M. (2009), 254, 256, 260.
[87] D.A. Kerimov, *Methodology of Law*, 101.

away. Most European countries have sad experiences of wars over religion.

And the fact that the legitimate sometimes becomes criminal (and vice versa) shouldn't be used to argue that there cannot be eternal laws of human society. Indeed, one of the dialectical facets of law is its dynamic and that it is contradictory in its dynamics. Sometimes, what is criminal becomes legal and vice versa—for example, approval (prohibition) of abortion. However, deliberate murder for mercenary motives is considered to be criminal regardless of epoch. Punishments for such crimes were indeed different and depended directly on the level of culture, civilization, epoch, and so on—but not the crimes themselves. Legal protection against murder is one of the eternal laws of human society. The same applies to laws derived from the Commandments, for example, such as, do not steal.

Furthermore, initially we didn't agree with I.L. Chestnov's message that contemporary epistemology denies cognition of the world. It turns out, as already mentioned, that other opinions are not modern, are old, and are imperfect. However, it should be recognized that, on the contrary, arguments about the impossibility of cognition contain obvious flaws.

As was noted above, it is necessary to understand correctly the philosophical problem of monism and pluralism. Different and conflicting opinions in science are possible and necessary. However, it is necessary to check all judgments, moreover, in a scientific way. Only in such a way is it possible to speak of scientific knowledge and not about chaotic—or, as is fashionable after P. Feyerabend, "anarchic"—sets of concepts, judgments, and logical conclusions. And for constancy it is necessary to have dialectics as a universal method of cognition.

At the same time, this seemingly simple conclusion is not perceived by all. There are specialists who, possibly due to conjuncture or hostility "to all things Soviet," deliberately substitute concepts: they begin to talk about science, and then through artful reasoning change science to ideology, and their conclusions that are based on reasoning about ideology are again made about science. As a result, a false conclusion is reached, although the reasoning seems to be correct. Nevertheless, the philosophical-logical fallacy, which consists of the substitution of concepts, may go unnoticed by unsophisticated readers, students, or even post-graduates.

A striking example of this can be seen in a statement by O.E. Leist:

> In the philosophy of law differences of opinion are inevitable and unavoidable, because they expresses the diversity of ideological positions of researchers, reflecting valuable orienting points and also different philosophical setups of researchers—their support for sociology, or religion, or politics, or psychology, or morality, or other forms of social

> consciousness. There is nothing wrong in this. The history of humanity proves exactly that originality and diversity of ways of thinking have been and are the basis of intellectual development, and thus social progress. And vice versa: the unity and uniformity of the ideology in any society is a sure sign of totalitarianism, which is an artificially and violently engrafted unanimity, stopping every possible deviation from it. The existence in public consciousness of several ideals, and varieties of each as well as different submissions about ways of achieving it, are natural for the reason that people by their nature cannot think the same way. There were always different ways of justifying ideals, including legal ones.

According to this quotation, we can say the following: there is no dispute over the idea that opinions about legal ideals can be different. It is useful, important, and necessary. But the ways of checking such opinions should only be scientifically reasonable and not "always different," as O.E. Leist writes. And Leist makes no argument to support his opinion that makes a frightening link to totalitarianism and struggles with other ways of thinking, which might make unsophisticated readers believe in it. Thus, Leist does not pay attention to the fact that totalitarianism, strictly speaking, has nothing to do with the discussion about the ways and methods of cognition.

Scientific methods of cognition are able to identify and distinguish serious legal concepts from legal concepts that are mythical, adventurous and subjective, anarchic, frankly stupid, or unrealized, and other ideas. M.I. Kleandrov wrote about this well. He paid attention to a simulation method of modeling the situation that arises in the implementation of specific proposals to improve legislation, law enforcement practice, and so on, which unfortunately is very rarely used. While using this method, regarding the specific proposals of some theorists, he submitted them to analysis; in fact, on the central ideas in their theses, we can say only say: God forbid, if this will happen. And so, without a model, externally it looks decent.[88]

Thus, a unified scientific methodology is needed for legal science. This function was successfully fulfilled by dialectics. The laws of dialectic acts are the basis for other scientific methods. Wherein, it was already noted that the dialectical method has not been forgotten in the West; on the contrary, it is actively used. In particular, the famous American lawyer G. Berman uses the dialectical method as a main research method for the

[88] M.I. Kleandrov, *PhD Thesis of the Lawyer: First Steps of a Researcher*, M. (2004), 52.

creation of integral law. This way was supported by his students and followers.[89]

It is necessary to say that not all Russian lawyers refused dialectics. On the contrary, a broader approach to the study of dialectics provides a great opportunity for the development of a universal method in law. For example, the noteworthy efforts of V.M. Sirih accords unity to the dialectical ideas of Hegel, Marx, Engels, and other scientists.[90] Certain steps in the cognition of the development of the dialectical method of cognition in law have also been taken by the authors of the current edition.

Although it is difficult to understand where these efforts will lead, there is no doubt that these efforts are positive and that they promote the further development of science and its methodology.

According to what is mentioned above, the dialectical method of cognition will long remain a universal method (methodological basis) for the philosophy of law, the general theory of law, and others legal sciences.

§ 5. Legal progress

Another significant problem for the philosophy of law is legal progress.

In philosophy, progress in the most general sense is commonly understood as a development from lower to higher.[91] This understanding of progress has for quite a long time been popular in dictionaries. For example, V.I. Dal defined progress as a mental and moral movement forward.[92] In modern dictionaries, progress is defined as the transition to a higher stage of development, a movement forward, change for the better, and improvement.[93]

With this approach, progress acts as a component of dialectics. The basis of the dialectic method is development, an incremental increase in knowledge, movement forward, which is progress. The fact that progress is inextricably linked with regression only emphasizes its dialectical nature as a result of the unity and struggle of opposites. Understanding the consciousness of this progress is an important starting point, which starts

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[89] See, G. Berman, *Faith and Law: Reconciliation of Rights and Religion*, M. (1999).

[90] V.M. Sirih, *Logical Foundations of the General Theory of Law*, vol. 1. M. (2000), 180–90, 258–59, and others.

[91] *Progressus*—movement forward, success (Latin)

[92] V.I. Dal, *Explanatory Dictionary of the Living Great Russian Language*, 4 vols, vol. 3, M. (2007), 478.

[93] See, for example, *Explanatory Dictionary of the Russian Language*, A.E. Bahankov, I.M. Gaydukevich, & P.P. Shuba (2000), 281.

measuring according to the principle of "what it was" and "how it then became." From here it is possible to allocate the main properties of progress: relativity and concreteness. N.I. Kareev wrote,

> There is nothing absolutely perfect. There is only such relative and comparative perfections, and we can place them in a well-known order . . . according to the degree of their removal from the imperfect to the nearness to our point of view. . . . Applying this ideal order to the sequence of historical facts, we evaluate the course of history as concurring or dissenting from this ideal order, that is, as progressive and regressive, and, summing up, expressing our judgment over the whole of current history, determining its meaning.[94]

Progress is possible, apparently, in any system. Even if the system is constant and seemingly unaltered, this condition of rest in the historical period can be assessed as progressive or, on the contrary, regressive. Indeed, the condition of rest preceded origination, movement, and improvement. The condition of rest again, in the longer historical period, may look like stagnation, and perhaps, as the foundation of further movement.

In general, our world and being tend to change and evolve.[95] This is evident in the nature of environments and in the products of human activity—for example, in techniques and in social life. Finally, it is felt in human consciousness. Dissatisfaction with what has been achieved is objectively inherent to human consciousness.[96] After implementation it would seem the most desirable wishes are temporary rest and then following impulses for moving forward. And this is inherent not only to ambitious and dedicated people, but also to self-sufficient people. The absence of impulses for development and moving forward tend toward human degradation.[97]

The phenomenon of progress and regression is present in all areas of being, it is important to choose correctly the same starting point and time

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[94] N.I. Kareev, "Philosophy, History and Theory of Progress," *Collected Works, Volume I: History from the Philosophical Point of View* (St Petersburg, 1912), 122–23.

[95] A. Whitehead correctly noted that humanity has only two directions: it either progresses or degrades; conservatism in its purest form contradicts the essence of the laws of the universe.

[96] E. Auerbach is credited with a popular expression: dissatisfaction is not the only source of suffering, so too is progress in the lives of individuals and entire nations.

[97] "He who does not go forward, goes backwards: there is no standing position" (expression attributed to V.G. Belinskiy).

interval. In this regard, countless kinds of progresses can be distinguished: technical progress, intellectual progress, moral progress, economic progress, and so on. In its turn, these kinds of progress can be dialectically enlarged or, on the contrary, divided. For example, in technical progress we can identify progress in the field of mechanical engineering, aircraft construction, shipbuilding, and so on. In economic progress, we can identify progress in the field of banking, and so on. If we look from the other side, progress in the study of nuclear physics is a component of progress in physics in general and, further, is scientific progress.

Here we note that it isn't necessary to associate progress exclusively with an active or sometimes revolutionary human activity, with the attainment of new scientific secrets, with reaching new highlights, and so on. It seems that it isn't necessary to prove that movement and development of the materialistic world, nature, and consciousness is revolutionary.

The obvious difficulty lies in determining the criteria of progress. Indeed, even the specified kinds of progress are not so similar to one another and, accordingly, have radically different criteria for their evaluations.

In scientific and educational literature, we encountered attempts to determine a general and universal criterion of progress. The most interest was shown to the approach to understanding of this criterion through the systematic-structural scientific approach. If we evaluate progress in any phenomenon of being or in the process of the systematic-structural, so, in general, the universal criteria of progress includes the following features:

— an increase in the degree of differentiation (diversity) of a system, combined with the integration of its parts and components
— an increase of mobility, efficiency, and reliability of materialistic systems, and an increase in their ability to overcome contradictions
— the replication in the expanding scale of the main functions of the system
— the growth of the system's autonomy in relation to external conditions
— an increase of the degree of organization and integrity of the system[98]

At the same time, this approach cannot satisfy all requests. So, it is obvious that it isn't completely applicable to the evaluation of the social phenomenon, even if it considers them as a system. In particular, it is not

[98] See, for example, P.V. Alekseev & A.V. Panin, *Philosophy*, 492.

applicable to progress in consciousness and to mental progress, in terms of knowledge that was carried out by many generations of philosophers.

Thus, the problem of defining the common, universal criteria for progress in philosophy and science has not yet been decided. This necessitates a search for a criterion of progress directly for each type.[99]

Thus, for the goals of real research, of course, there is much interest in progress in jurisprudence or legal progress, which, it seems refers to the scientific management of the philosophy of law.

Here it is appropriate to ask whether legal progress exists. The answer to this should be positive. Human development leads to improvement to law and the legal regulation of its activities. Thus, modern civil law is largely based on Roman law; however, it is ahead on the regulation of certain specific kinds of activities. Criminal law justifies and injects concepts of the offense and its elements, and establishes the statute of limitations and accountability, recognized as unacceptable physical punishments, and so on. Criminal procedural law cancelled such kinds of truth establishment as fight, ordeal, and torment.[100] Thus, the legal progress is evident.

At the same time this phenomenon hasn't been studied in detail by the philosophy of law. In this regard, the authors of the current work in their research will be drawing from the philosophical understanding of progress in general, which is based on what is logical to refer to as its legal component.

Legal progress should be defined as the transition to a higher level of the development of law and the improvement of legal regulation.

Originally we wanted to link legal progress exclusively with the *qualitative* improvement of legal regulation. It seemed that quality change is a key concept, which fixes the transition from one condition to another. And this point of view, in principle, was well justified. At the same time, it summarized and again comprehended empirical material, and it was decided to abandon this approach. For example, as a result of scientific works there is refinement of a concept in law. It seems a small detail, but such improvement—even minor!—allows a better understanding of legal norms and avoids failure in its implementation. Is this not progress? Such clarification in this case isn't associated with global improvement and doesn't lead to qualitative positive changes, but nevertheless it is still

[99] The work of such scientists as S.M. Popova, S.M. Shakhrai, and A.A. Yanik deserves attention and appreciation, as they tried to measure progress in the economic sphere of life. See *Measurement of Progress*, M. (2010).

[100] As F. Iskander noticed with humor, it is progress, my dear friends, when one still kills, but does not cut off the ears.

movement forward. And it means progressive movement! Furthermore, everyone knows the example about the meaning of a comma in the expression "behead not pardon." Do they always fully understand the meaning of changes in legal norms? Can they always be calculated precisely? Probably not. Therefore, positive changes in legal regulation are a progressive movement and legal progress.

The main characteristics of legal progress are:

— relativity
— specificity

Relativity of progress consists in the definition of the subject (phenomenon, process, action, etc.) in relation to which the progress is evaluated. For example, in the USSR there was no broad access to global legal thought. And when that access occurred, legal ideas were considered through the prism of criticism. At the present time, each specialist has free access to any book in law, and has the possibility to express points of view on them and not to be subjected to censure or other repressions. That is, regarding the change from the USSR to Russia in regard to legal science and access to the law, the legal progress is evident.

On this basis, progress isn't a scientific abstraction, it is always concrete. The identification of progress involves specifics and clear and understandable results. Particularly, the development of fingerprinting from the beginning of the twentieth century allowed their active use in crime investigation; objectively, they were not used in the previous period. And if we compare early twentieth-century criminalistic tools with modern criminalistics, an obvious progressive development is again obvious.

As for progress in general, progress in one component of legal regulation often entails backward movement in another. These movements are interrelated, independent, and systematic. Consideration of law as a system of norms allows one to evaluate legal progress through the prism of the systematic-structural approach.

In this case, returning to the issue mentioned above, legal progress is characterized by the level of autonomy of the legal system in relation to external conditions, an increase in the ability to overcome internal contradictions, and improvement of the degree of organization and integrity of the system. To speak about full autonomy of law in modern world development, of course, shouldn't happen. Right like any other social phenomenon is dependent on external conditions.

For example, the change of the state course, political regime will inevitably entail changes in the legislation. We can speak about the

autonomy of a system only in the context the law; even though inevitable changes will implement the function of justice and human protection against illegal encroachments, and ensure legality in the state, in respect of human freedom and dignity. That is, even if there are significant changes to the state, the law should protect people from violence and humiliation to dignity and personality, and prevent torment, torture, and tyranny.

Legal progress can be viewed from two points of view: global (broad) and specific (narrow). The global approach is associated with human development in general, its legal consciousness and legal culture. In a global sense, in a modern society legal processes will be appreciated not right away but in the future. In its turn, today it is possible to evaluate the presence of legal progress in comparison with previous centuries. And, as was already noted, a conclusion was made about the presence of legal progress, expressed in the prohibition of torture, in the improvement of the law of evidence, and so on.

A narrow approach to the study of progress is related to a specific (mostly contemporary) stage of human development. It is always necessary to evaluate legal processes from a narrow approach.

In current legal reality, the diffusion of different legal systems and their further distinction as separate is observed: the learning experience of other countries in terms of legal regulation and stubborn adherence of a country to "its" course, ignoring international practice; the implementation of advanced scientific achievements, completely ignoring scientists' opinions, pushing them away from the possibilities to influence the process of the formulation of laws; the clear movement in the direction of improvement of legal regulation, and, on the contrary, the pendulum motion away—that is, the adoption of one concept, then a withdrawal from it and the adoption of a conflicting concept, then a return to the first one, and so on; the issue of legal regulations for "long term use" and for a "specific person."

In 2010, the authors of the current work conducted a really interesting piece of research into legal progress over the past 25 years.

They interviewed 800 people aged 50 or over with a higher education. Of these, 400 people had a higher non-legal education and were not related to the legal sphere. Another 400 people had a higher legal education, worked in law enforcement, or taught legal disciplines.

The age of the interviewed people was not chosen randomly. If we take their minimum age—50 years—this means that 25 years ago (in 1985) they were already grown-up, educated people with an established worldview and system of values. Although this question wasn't asked, most likely each of the respondents by the age of 25 had already gained a

higher education. That is, each of the respondents had the ability to be objective and analytically "mature," allowing them to evaluate legal processes that had happened in Russia over the past 25 years.[101]

Respondents were asked two questions:

1. How, in your opinion, have the law and legal regulation changed over the past 25 years? What has become better and what has become worse?
2. Has legal regulation over the past 25 years improved or worsened?

Among non-lawyers: 47% of respondents said that the law, according to their estimates, was more equitable 25 years ago than it is now. Wherein 41% noted that at the present time court decisions depend more on money, relations, status, and administrative resource than earlier.

But 34% of respondents noted that today people have greater opportunity to study law by themselves and to receive legal information. Wherein 50% said that at the present time there are more legally literate people than there were earlier.

However, 62% said that the law, according to their opinion, had become more complicated and contradictory. And despite the accessibility of legal acts via the internet, it is difficult to understand such laws without the help of legal professionals. Thus, 59% said that today the law was no longer for the people in the broader sense, but for lawyers, who make it more complicated, because there is no simplicity of presentation in the law.

As a positive, 27% noted that today, in relation to the previous issue, law has become much more invested in individual rights and freedoms (especially the freedom of speech and movement). But 18% objected that today, in comparison with before, the law has forgotten the interests of the state and society.

Thus, 71% showed that 25 years ago they felt themselves much more protected by the law than they did now. Perhaps, that explains why in relation to legal progress over the past 25 years, the respondents said the following:

— 54% of respondents thought legal regulations over the past 25 years had generally got worse
— 32%, on the contrary, thought that legal regulation had improved

[101] The eldest interviewee was my teacher and co-author of two monographs, a participant in World War II, and an honored lawyer of the Russian Federation, Professor V.I. Rohlin (born in 1926), who died in 2014.

— 14% could not answer[102]

Among lawyers: 68% of respondents said that the law had become more contradictory than earlier. In comparison with other years, 72% said that the legal array has significantly increased. Wherein 67% said that now, out of necessity, the narrow specialization of lawyers was greatly extended. If 25 years ago, specialization wasn't so obvious and had a general character (for example, specialists in criminal law and specialists in civil law), now merely in civil law dozens of specialist areas had appeared and been developed, each of which required a deep knowledge of specific cases and events.

According to the opinion of 34% of respondents, the present time featured a greater number of declarative legal regulations, having no legal mechanism of implementation. In this development, 28% had paid attention to the absence or lack of mechanism of accountability for non-compliance in comparison with the previous years.

Of respondents, 45% said that before the law was more equitable than it was now and it generally was less dependent on official positions, personal relations, and money. So, earlier there were many more opportunities and chances objectively and impartially to consider a case, to dispute it, and to obtain a fair result. About that, only 2% of lawyers thought that today legal regulation strives toward justice more than before.

Considering the past 25 years, 70% noted a significant increase in the level of legal literacy of the population. Wherein, 47% reported a sharp fall in legal awareness of the population and a desire to know the law in order to avoid responsibility.

Of respondents, 73% said that in contrast to the earlier time, now in law there is a priority for personal rights and freedoms over social and state interests. However, 41% of respondents did not positively evaluate the changed priority of personal rights and believed that now there is not an optimal balance between personal rights and social and state interests.

In relation to legal progress over the past twenty-five years, the lawyers said the following:

— 37% of respondents thought legal regulations over the past 25 years had generally got worse
— 36%, on the contrary, thought that legal regulation had improved
— 27% could not answer

[102] We would like to note once more that among non-lawyers we interviewed only people with a higher education.

The obtained results we think are of interest to all: for lawyers and for non-lawyers, for the participants of the interview and also to the broad masses.

In evaluating the results, it should definitely be born in mind, that over the past 25 years a fundamental break in the existing order in Russia has occurred, and legislation has significantly changed (this research, as was mentioned, was carried out in 2010). During these drastic changes, in the first stage there arose significant contradictions in laws, inconsistencies in regulations, and different interpretations of one or other events.[103] On the stages of break-up of the existing order and social being, legal regulation apparently develops regressively; however, in the future it is aligned and it starts developing forward. It seems that if the survey were to be conducted shortly after 1917 and the subsequent civil war, legal development would also have been deemed regressive rather than progressive. At the same time, the subsequent years brought significant achievements to Soviet law.

There is a confidence that criticism of contemporary legal regulation, first, is objective, and, second, that many of the expressed comments will no longer be made later.

The results of the survey are very important, because on their basis it is possible to allocate the basic criteria of legal progress. These criteria are important precisely for the law and are of concern not only to lawyers but to all members of society.

1. It is obvious that everyone is waiting for justice from the law and legal regulation. The constant achievement of justice is one of the main criteria for the evaluation of legal regulation. Furthermore, justice gives confidence in human *protection* by the law from wrongful actions. And the vast majority of people evaluate the law on the basis of whether they have achieved justice and a fair decision in a legal dispute. If they have, they feel themselves really protected.

It is significant that almost all layers and non-lawyers, on the theme of justice, clearly believe that over the past 25 years the law and legal regulation have become less equitable and that there are now fewer opportunities to receive an objective and fair result.

2. The legal progress is associated with the *comprehensibility* of legal regulations and the *simplicity* of its presentation. Nowadays, apparently, there is no need for criteria such as legal accessibility. Accessing regulatory legal acts via the internet and other communicative tools have made the law available to all. But other criteria of progress—such as the comprehensibility and simplicity of legal norms—have become more

[103] The common phrase "God forbid we live in the era of changes" is very appropriate here.

evident. Being able to access the texts of regulatory documents doesn't mean they are comprehensible, or simple to understand and apply. All people, lawyers and non-lawyers alike, strive for simplicity of presentation of norms and comprehensibility of norms. Comprehensibility and simplicity of presentation are the main steps for overcoming legal illiteracy, making it impossible for people to be fooled and, consequently, minimizing the possibility of people committing wrongful actions against themselves and those nearest to them.

There is a well-known phrase that if the laws were simple and understandable to all, there would be no need for lawyers. Logic and human life experience suggest that we will never achieve a state wherein laws become understandable to absolutely all of us and are simple to perceive. Lawyers don't need to worry about the future of their occupation. However, it is always necessary to strive for clarity, and the serenity and perspicuity of legal norms. And this, without any doubt, is an important criterion of legal progress.

A definite progressive step in this direction is a book that was prepared by a collective of authors under the direction of T.Y. Khabrieva and Y.A. Tikhomirova. The book is related to the conception of the development of Russian legislation. It is quite clear in that it sets out directions and perspectives for the further improvement of Russian legislation that allows lawyers, businesspeople, politicians, and other interested readers to look to the future.[104]

3. Talking about legal progress is possible only if legal norms do not wear a declarative character but have a clear *legal mechanism for their implementation*. The survey showed that many regulatory legal acts have not been implemented because the mechanisms for their application haven't worked out. When the norms only declare something and nothing more, they became a shield, behind which lawlessness can be created. Such norms drop the authority of law in the eyes of law-abiding citizens, provoking them into committing illegal acts. Only a clear and consistent procedure for the implementation of concrete norms allows us to come to the desired result—legal order.

4. The criterion of legal progress is *the level of legal awareness* and *legal culture* of a person. If the law in all its diversity and the state were able to increase the proportion of law-abiding people, this, without any doubt, would be an important criterion of legal progress, as an accomplished fact and as the basis for further development.

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[104] See, *Concepts of Development of the Russian Legislation*, ed. by T.Y. Khabrieva & Y.A. Tikhomirova, M. (2010).

Conversely, a low level of legal awareness shows the population's distrust of the law and the doubt in its ability. Under such circumstances, it is frivolous and ridiculous to talk about legal progress. Such a kind of law will not wait for justice and protection; its clarity will cause the population to laugh, because regardless of the requirements of norms, the law will not be respected. The legal mechanism of implementation of norms will not be of interest to anyone.

This criterion can be specified as the level of credibility of the law.

It should be said that the survey showed another moment that requires understanding and relevant adjustments in the legal politic. Over the last 25 years, a person and his or her life, rights, and freedoms have been recognized as the highest value. Many specialists consider the merit of modernity to be the priority of human rights over public rights. It is noticeable to the population, to lawyers as well as to non-lawyers. However, the attitude to this state of affairs, as the survey showed, is far from identical. First, of the non-lawyers, an insignificant number of respondents paid attention to the priority of personal rights, and most said that the interests of state and society have been forgotten in the law. Among lawyers, a significant number indicated the priority of the rights of personality over the public. But also, significantly, the majority of specialists did not evaluate this priority as positive and specified that there is now no balance between individual rights and public interests.

Before the survey, the authors believed that the protection of human rights and the priority of human rights was one of the criteria of progress. However, on the basis of the results of the survey, we need to argue that the priority of individual rights over public interests is considered to be not only progress but also, according to some people's opinion, evidence of the regression of legal regulation. It is possible that in other countries, the situation looks different. But in Russia, as repeatedly stated, the rights of the state and society are traditionally placed lower than personal rights in the scale of importance.

In this regard, it isn't even clear whether it is possible to select the existence of a *reasonable balance between the interests of the individual, society, and the state* as a criterion of legal progress. In the proposed phrasing, probably, it is possible, but only with the compulsory condition that this balance will be readily perceived by the population and society.

Therefore, dialectics shows that, on the one hand, it is logical and correct to seek to establish a clear legal regulation of all legal relations. On the other hand—its opposite—people are striving to bring brevity and clarity to the regulatory legal acts, and not to increase the bloating, complexity, and severity of perception, which is inevitable with an

increase in the legal array. This dialectical contradiction is at the center of legal regulation.

At the same time, there is a clear accumulation of legal knowledge, and an increase in its quantity. Wherein, there is no transition to a qualitatively better measurement. However, it is clear that we are moving away from a transition in the quantity of legal regulations toward qualitative improvement, simplification, and ease of usage.

Thus, the main criteria of legal progress are:

— the achievement of justice in legal decisions and human protection by law
— clarity in regulatory legal actions, and simplicity in its presentation
— clear legal mechanisms for the implementation of standards
— a level of legal awareness and awareness of legal culture, a level of credibility to the law
— the presence of a reasonable balance between the interests of individual, society, and state

The above mentioned research and conclusions allow us to talk separately about the values of law.

First, it is necessary to say that theorists and philosophers of law traditionally haven't come to one conclusion on the question of the exact identity of values of law. There are different approaches, to which we would like to draw your attention.

In one of the last books on the philosophy of law published under the editorship of the esteemed M.N. Marchenko, concepts of values and values of law are given quite subjectively. The author of the chapters about these values, V.N. Zhukov, who has a PhD in philosophical sciences, accidentally or essentially retreated from the approach to values accepted in society as important, significant, beneficial, useful, and so on. The approach was based on the principals of another approach, according to which "in the broader sense, under these values is usually meant the phenomenon of reality (facts of the ideal and real world), having *one or another* [our emphasis] meaning for society, its groups or separate individuals."[105] Then he writes that the division of values into positive and negative is accepted widely but not by all. If we are to understand value and usefulness, there will be no negative values. But if we proceed from the understanding of values as a phenomenon of reality, having some

[105] *Philosophy of Law*, 2 vols, vol. 1, ed. by M.N. Marchenko, M. (2014), 301.

value for people, so the recognition of negative values will be quite justified.[106]

This approach, which was outlined by V.N. Zhukov, really exists in philosophy. It is associated with the worldview of thinkers who argue that social phenomena can be perceived positively by one person and negatively by another. That is, the same phenomenon has a positive value for one and a negative value for another. On this basis, separate philosophers have concluded that there are no values that are only positive or only negative, and so values are considered to be a contradictory phenomenon.

However, this approach is not shared by all philosophers. And this is first of all because phenomena and values cannot be considered to be synonymous; that is, it is possible to relate different phenomena differently. But the word "value" is specially highlighted as a concept that initially has a positive meaning, a positive color. By "value" we understand a subject or phenomenon with positive meaning, the usefulness or importance of which has been already proved and evaluated. In relation to these subjects (or phenomena), it is said that they are useful. The value is estimated, or to be exact, it is a positively estimated category of the phenomenon or subject. For negative assessments in science and in the Russian language there are other terms, but not the word "value." Otherwise, society will get confused by these concepts.

For the law, V.N. Zhukov proposes statements about negative values that are completely unacceptable. If taken up, it will be necessary seriously to talk about the value of crime, including the value of terrorism, deliberate murders, cannibalism, child abuse, and so on. It is not clear why in the description of such actions the word "value" should be used. What is the sense in evaluating such actions as cannibalism or serial killing, or raping and killing children, as a "negative value"? It seems to us that V.N. Zhukov's statements are close to sophistry, or that he doesn't fully understand what the law is.

Furthermore, such a phenomenon as crime is always very negatively perceived by all society and law, which clearly refutes the theory of the philosophers who claim that all phenomena are contradictory. If we assume hypothetically that crime has a positive value, we thus lose the meaning of the law itself and the legal relationship.

And finally, it is not clear why V.N. Zhukov's arguments detailed above were put in the book! V.N. Zhukov approach to the values described above, as was already mentioned, isn't supported by many philosophers. And we share their opinion.

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[106] Ibid., 322.

I must say that the book on the philosophy of law edited by M.N. Marchenko was very useful and informative. It deserves a positive rating. But the third section, written by V.N. Zhukov and devoted to the axiology of the state and law, seemed to be a failure.

We also don't agree with the approach that right itself is considered to be a value in the philosophy of law. Right is a dimensional, contradictory phenomenon; however, there is no value in it. On the contrary, every person and every society wants it to be consistent, understandable, and easy to implement.

Wherein, there is absolutely no value to right itself without people and without life. This, it may seem, is not a complex conclusion; it is necessary to pay attention to why this is so. The existence of humans and humanity on Earth, of course, are values themselves. Were we to determine which values are *in life*, the list would be very long and individual. The list would include health, work, leisure, family, friends, books, science, education, and so on. But can the law be referred to as such a value? It seems not, for the simple reason that the law as was already mentioned is a compulsory companion of human existence. It is not possible for the law, even that established by a person for himself, simply not to exist. Moreover, without law, even at the primitive level of legal traditions, there can be no society. In the same way, a person cannot exist without food or air. Is the air a value? The value is *pure* air. And the air by itself isn't a value, but simply the necessary means for existence. If there is no air, there is no life. The same is true of a value such as *healthy, useful food.* But the food by itself is only the necessary means of existence of the person and humanity.

Furthermore, the law by itself is a compulsory condition of human and social life. If a person does not have human rights and norms defining his activity, he will not be able to survive. But the *justice* of law, and the *simplicity and comprehensibility* of its norms and so on, are already values of the law.

Maybe to solve the problems of the axiology of law the starting point should be to develop the basic criteria of legal progress: justice in legal decisions, human protection by the law, comprehensibility of the regulatory legal acts, simplicity of its presentation, and clear mechanism for the implementation of legal norms. Indeed, such things are especially valuable for society, people, and specific individuals. And the law, as was already noted, is needed not for itself but for people.

CHAPTER THREE

LEGAL SCIENCE: ACTUAL PROBLEMS OF CONTEMPORANEITY

§ 1. General problems of scientific works in jurisprudence

The concept of this book covers the research of legal science. This chapter indicates common and very frequent omissions found in scientific works on jurisprudence, touching on contemporary problems of teaching legal disciplines, the ethical problems of legal science, and other questions.

The end of the twentieth century and the beginning of the twenty-first in Russia was characterized by an increase in PhD theses and monographic works on jurisprudence. The increase of the interest in the law seems to be something to welcome. However, in getting acquainted with research, we could not help but notice the fact that, unfortunately, not all of them are really relevant, revealing a new layer of problems for theoretically and practically meaningful works. It is necessary to be objective. Some of the authors have only received candidate degrees or doctoral degrees in legal sciences because it is fashionable. After putting their scientific degree on their business cards, these people cease their communication with science, or almost ceased it.

In the end, it turns out that people who are actually willing to connect their life with science are few and far between. In this chapter, we talk about the works of such people. We analyze the submitted research and draw attention to certain important circumstances, about which we will speculate.

1. In many of these monographic works, mainly in the sector of the legal sciences, connection is lost to philosophy of law. In fact, this leads to the fact that not all possible methods of research are used in these specific cases, although they are in one or two (although it is specified that it applies to all of them). Hence the completeness of the study and the objectivity of the results suffers. Sometimes the logic of the presentation of materials is broken. Historical dimensions are not taken into account in the conclusion, without which it is impossible to evaluate the

contemporary condition of legal being. And many other comments are made that characterize the retreat of philosophers from philosophical-legal settings.

D.A. Kerimov's observations on the process are very correct. According to his opinion, the breakaway of the sector of the legal sciences from the philosophy of law is fraught with the danger that only traditional problems that were solved and known long ago are considered, which distracts from new problems, which are constantly proposed by the activity of society. It is necessary to refuse the tendency to separate what is representative from the sector of the legal sciences and proclaim in their works the beginning of one or another philosophical-legal principle, and then "forget" it. And only at the end does this principle again "remember," in order to show the correspondence of the obtained results to the original philosophical-legal principle. This method of legal research turns philosophical-legal principles into a shield, behind which it is possible to hide from reproaches of philosophical-legal ignorance, and the research itself in fact is deprived of its philosophical-legal basis, loses scientific importance, and acquires pseudoscientific form. Therefore, the usage of methodological principles of the philosophy of law in the sector of the legal sciences should be meaningful, "have knowledge of the case," and be creative.[1]

Indeed, in many applied works, the authors write about that what they care about, not always paying attention to the bases of philosophy, sociology of science, and jurisprudence, and sometimes even without knowing of these bases; nevertheless, they do not forget to specify which the methods which they have been used for the methodological basis of the research. However, without a philosophical foundation each science becomes a fiction, a vinaigrette of judgments, logically unrelated to one another.

On the indicated problem, it seems to be important to pay attention to chairs and members of dissertation councils, scientific advisors, and consultants, and also the specialists themselves.

2. Another comment refers to good and full monographic research: their scientific results are implemented slowly or not implemented by the legislator.

The results of the scientific research are formulated into concrete proposals for amendments to legislation, the vast majority of which remain only "on paper." This is associated with the absence of the necessary connection between scientists-legislators and legislative authorities. Many interesting and useful proposals are not studied at all. In the apparatus of

[1] D.A. Kerimov, *Methodology of Law*, M. (2000), 82.

the legislative authorities, there are no departments that are tasked with studying the results of the scientific research. On the contrary, in scientific councils and agencies there are no agents with the function of bringing the results and proposals of scientists to their logical ends.

As a result, the conclusions of the specialists remain in monographs, scientific articles, and dissertations, where they sometimes "die." The necessity of preparing a dissertation with little focus on eventual results also doesn't help.

Perhaps, the time has come to create a scientific center to bring the proposals of scientists to legislators.

The creation of such a center, of course, is associated with a large quantity of problems. First, it is, natural that it will not be able to "digest" all the proposals from specialists. Second, these proposals might "fill up" for many years the center and also the legislative authorities. Third, not all the proposals of the specialists should be released for consideration, for example, to the State Duma of Russia. Fourth, there is a wide polarity of views of specialists on different problems. There are other objective problems too.

But still, the function of the implementation of the scientific proposals in the area of law is needed. Accordingly, there is a need for an authority to implement this function into an activity. A working version of the functioning of the system implementing the scientific proposals can aid the next one. It seems that there must be specific and multi-level systems to evaluate the proposals. As a variant, if a specialist who has analyzed the practice of the application of legislation came to the conclusion that it is necessary to make adjustments to the law, and has approbated the results, so he or she should receive a conclusion from the scientific organization. This scientific organization (which could be a university, a scientific research institution, or a dissertation council) should submit proposals to the academic center. In this center, the proposals should be explored by specialists, and after expert evaluation be sent to the appropriate parliamentary committee or apparatus for further study, and then submitted for consideration to Parliament or the legislative authority of the constituent unity of the Russian Federation.

In principle, there is nothing original in this scheme. It is very similar to the existing method of the evaluation of dissertations. But during consideration of dissertations, the expert council of the Higher Certifying Commission, for example, evaluates whether the work deserves to be honored by the scientific degree. However, an expert council isn't responsible for "promotion" of the research results. As a result, it happens that the author of the relevant work, which contains important proposals,

receives a scientific degree, but the ideas and proposals themselves aren't implemented anywhere. It is also happens that ideas are implemented after some time, when the necessity for the change is overdue. And, later, deputies express confusion and ask where the scientists were before, even though the importance and urgency of the changes have been already formulated in dissertations, where relevant draft laws were also given.

Regardless that it is a dissertation, if it contains concrete proposals for improving legislation, the dissertation council should also request that the work be sent to the center for evaluation and implementation.

It seems that the proposed way, on the one hand, should increase the status of scientific-legal organizations and, on the other hand, should increase the responsibility of these organizations.

Scientists and legislators should move toward each other. Parliamentarians should also be particularly interested in the quality of the adopted laws. That's why the practice of expert legal assessments of draft laws and if necessary their extensive discussion in the scientific community should be more common.

All the above mentioned ideas provide an opportunity to bring together scientific proposals and their implementation.

Otherwise, what occurs is what actually happens now, where there is an objective gap between practice, law, and science. For example, the law declares one thing, yet in practice the requirements of the law sometimes distort, change, pervert, or simply are not implemented for various reasons. Sometimes, such reasons are objective, sometimes not. Such processes are revealed by science. It reveals noncompliance of the law and the causes and formulates proposals, which are reflected in scientific works (initially, in monographs and dissertations). Further proposals remain to be claimed.[2]

Then a new researcher appears who reveals the same, already known problems, and adds his or her comments to them, which sometimes have no principle character—and thus a new thesis is defended. But this circular movement doesn't end there. And after a short time there is a new specialist who "reveals" the same problems, formulates similar conclusions, and rightly insists that amending the law is necessary and already overdue—but, as the old proverb said, the cart is often still there.

[2] For example, from 1995 to the present time, more than two dozen candidate and doctoral dissertations were defended, which were devoted to the usage in criminal proceedings of the results of operational-search activity. In the vast majority of theses, necessity justified the regulation of the order of usage of such results in the Code of criminal procedure and cited specific proposals. At the same time, the order of the usage of the indicated results in the Code of criminal procedure isn't regulated.

Furthermore, it is important to understand that a significant part of these proposals to improve legislation have a technical character. In many laws, there is a lack of clear definitions of terms and updates, or a few words and sometimes even a comma need to be added. These proposals during implementation will only improve and simplify the law, they won't change its spirit and they don't require significant time or financial and other costs. However, these laws are rarely implemented.

The Russian Federation more or less operates a mechanism to implement achievements in medical science. In jurisprudence, though, such a mechanism hasn't been created. However, it is necessary to notice that being a scientist-lawyer is a very important and prestigious occupation. The state and we ourselves shouldn't allow our specialists to be written "into the table."

It is necessary to consider the following: life objectively shows that it is impossible to prepare voluminous regulatory legal acts that take into account all cases, even in a particular branch of law. There are always dozens of examples, not covered or even sufficiently regulated in a particular act. All codes require additional clarifications on their application. Interpretation of the law is used to fill existing gaps "in the spirit of the law," which derives from the perspective of goals, tasks, principles, and so on. However, they are not always able to help.

This leads to the question of where else the spirit of law is reflected. Oddly enough, there is such a document. It is an explanatory note, attached to the draft law before its consideration by the legislative authorities. It usually indicates the relevance of the adoption of the law, its priorities, and the main aspects that are subject to change. Many parliamentarians are not lawyers (and even if they are lawyers, they are not usually specialists in the particular branch of the adopted law), yet in order to understand the meaning of the proposed changes they first of all need to read this explanatory document, from which they will then vote. After reading this explanatory note it should be possible to understand what the thoughts of the deputies who adopted it were. Finally, it should say why the law was adopted at that particular time (rather than earlier or later).

Moving in the direction of openness and democracy, it would be preferable to publish these explanatory notes.

It is important, yet it is difficult to approve, and, apparently, it sometimes happens that the explanatory note doesn't reflect the character of the regulatory legal act. That is, the note includes the correct targets, but the norms by themselves are outlined in such a way that the implementation of the declared goals will not be able to be achieved, and,

in case the alleged law is accepted, the legal regulation will be worse than before.

In this case, by the way, it will be clear who and for what purpose the deputies were misled. Furthermore, the publication of the note will give an opportunity for scientists not directly admitted to the draft laws to engage in discussion more quickly, to clarify standards, to offer variants on the achievements of the goals, or to argue that the acceptance of such a law doesn't correspond to the specified goals.

For example, in 2000, for more than a year, a group of professionals worked on a new Code of Criminal Procedure (CCP). Explanatory notes were prepared for the project, and deputies of the State Duma of the Russian Federation were persuaded to adopt it. The CCP was due to become effective six months after its publication. However, since it was published, the scientific community and practitioners have revealed so many shortcomings and omissions that it hasn't yet been enacted in law(!) and dozens of amendments have been hastily made. On this, of course, nothing ended, in fact it was only just beginning. Today, the modern CCP has a ten-year history, and 700 amendments have been made to it. It is obvious that the law was adopted long before it had been properly prepared.

This raises a few questions. The first concerns practitioners: is it possible to work under such conditions, to fight crimes, to protect victims, and be illegally blamed? The answer is clear.

Another question concerns the deputies of the State Duma: how was it possible to adopt such a law?

And here we should read the explanatory documents to the draft law prepared by the authors of the CCP. And then we should ask, why they misled deputies: was it due to their arrogance, was it intentional, was it due to ignorance of objective reality, was it due to some other reason? I suggest this was, in general, a shameful story for the law, and deputies will also make their conclusions.

D.A. Kerimov noted that at the present time the Russian legislator falls into extremes, when it at least takes into account the objectivity of the regulation of social relations. As a result, not only does confusion appear in legislation, but also law and order give way to chaos and tyranny. The absence of legislative culture and ignorance of the orders of the legislative mechanism by the majority of deputies, and also by the official authorities of the state structures, as a result will lead to a sharp separation and break in ties between the objective and the subjective and to the underestimation of their dialectical intersections and mutual transitions.[3]

[3] D.A. Kerimov, *Methodology of Law*, M. (2000), 103.

It is better to publish an explanatory note not with the already adopted relevant law, but earlier. For example, a practice should be installed that explanatory notes and voluminous draft laws (for example, codes) should be published at the moment that they are admitted for consideration to the State Duma. This will allow scientists to get involved quicker in the discussion and to avoid stupid things happening in regard to the law. After all, there is not an absence of clearly-defined criminal procedural strategy, which, defensively, may be used to refer to the authors of the CCP, as there certainly was such an absence in the document proposed by them and adopted by the State Duma because the first variant consisted entirely of gaps, omissions, and holes.

It should be said that the CCP was criticized after it was adopted by almost everyone, and rightly so. But the question is, why wasn't there such a wide discussion of this law before it was adopted? And why were the comments not anticipated by the small group of specialists who had already seen the project before it was considered by the State Duma, and why did they not try to amend it?

In legislative experience there are many more such outrageous facts. But since we are talking about criminal process, it is necessary to give an example from the above branch of law. In 2000, the State Duma of the Russian Federation issued a Resolution dated 26 May 2000, No. 398-III "On declaring amnesty in connection with the 55th anniversary of victory in the Great Patriotic War of 1941–1945." Subparagraph "b" of paragraph 8 of the resolution demanded that all criminal cases be stopped that were in the hands of the preliminary investigation authorities and courts, or that were crimes committed before the resolution came into effect in respect of persons who were awarded medals of the USSR or the Russian Federation.

In this formulation the deputies, of course, didn't notice anything special. They didn't notice that the reference in paragraph 8 wasn't to prisoners, but only to suspects or the accused. They didn't notice that this paragraph does not cover the type of crime (whether a minor offense or particularly serious) of which the person is accused.

In the end, the effect of this paragraph was extended to bandits in the 1990s, if they had won state awards. So, because these criminals, as a rule, had experience of combat action in Afghanistan and Chechnya and had awards, they had to be released from custody and their criminal cases stopped. Moreover, according to the CCP of that time, in order to stop the case due to the amnesty, it wasn't necessary for the person to have pleaded not guilty of a crime. It was only necessary for him to accept the application for amnesty. And investigators had not once heard from the accused: I plead not guilty, but agree in the application to the amnesty for

myself and the termination of the criminal proceedings. The reasons for consenting to the application for amnesty were very different, but were understandable: the desire to be free from custody, unwillingness to communicate with legal proceedings. However, for the majority of the described groups of people, it didn't matter; without any rehabilitation, the criminal cases against them were stopped.

One of the deputies of the State Duma, who adopted this absurd resolution about the amnesty, justified himself by explained that he and some of his colleagues understood this paragraph differently. Namely, that if the defendant in a criminal case is a veteran of the Great Patriotic War and has won awards, it is necessary to release him and to stop the case.

A month later (in June 2000), in a rush, the State Duma of the Russian Federation adopted the resolution, which contained the above mentioned absurdities about the amnesty. But some people had already been released. And nothing could prevent the publication in advance of the project that the deputies would have liked to adopt. In this case, the gaps and mistakes would be immediately identified by scientists.

In general, the above mentioned issue shows the problem of isolating broad layers of scientist-lawyers from the authorities in the adoption of legal acts. This, in fact, is not how it is supposed to be.

Given the fact that in the State Duma, the Council of the Federation, and the government authorities there are not enough non-lawyers, it turns out that the scientists sometimes receive the possibility to study law and legislation, which was not adopted by the specialists. It is necessary to realize the stated problem and to find ways for its solution.

It should be said that there is a book, with a positive assessment, which was prepared by the Institute of Legislation and Comparative Law under the Government of the Russian Federation and dedicated to the concept of developing the Russian Legislation (edited by T.Y. Khabrieva and Y.A. Tikhomirova).[4] The concept of development should be published and widely discussed, in order to take into account the received comments and suggestions to prepare a high-quality law. Maybe, it would be better for the indicated institute to take on a coordinating role to promote the proposals of scientists.

3. In scientific work on jurisprudence, economic effects of received results and formulated proposals are almost never considered and forecasted. Moreover, proposals and conclusions sometimes can have very serious consequences, both politically and economically. But this side,

[4] See, Concepts of Development of the Russian Legislation, ed. by T.Y. Khabrieva & Y.A. Tikhomirova, M. (2010).

which is very important for the implementation of proposals, is totally overlooked.

For example, the ideas expressed in constitutional law about the return of direct gubernatorial elections require serious economic costs. Changes to customs law in the Labor Code of the Russian Federation can significantly increase or decrease the profitability of the Russian budget. In land law, certain proposed changes require enormous economic investments, which are not considered by those writing dissertations.

A clear example can be found in the work in administrative law devoted to the necessity of the reformation of government authorities. According to the program of reformation, supported by scientific work, dozens of departments in the ministries and organizations have been restructured and renamed. Even the "militia" was renamed the "police." As a result, a huge amount of money was spent. Will these incurred costs be paid back?

At the present time, Russia is part of a market economy. Accordingly, while formulating conclusions and proposals, it is necessary to understand, first, the costs for the implementation of proposals, and second, the economic consequences.

M.I. Kleandrov wrote correctly about this. He noticed that quite often proposals are justified but simply cannot be implemented. By the way, this is sometimes inherent to the federal legislator. The norms of a number of laws and certain proposals by individual writers of dissertations (which perhaps can serve as the theoretical basis for these standards) are intended for execution in an ideal society, which Russia is still far from. Therefore, is it any wonder that laws are often not implemented or implemented in an opposite way to how was intended—a fact that some individuals involved with the law try to "adapt" by themselves in order to use for personal selfish interests (e.g., bankruptcy law).[5]

A thesis in essence is a project for the improvement of legal regulation. Any project, except purely theoretical ones, has to be calculated and its costs, investments, and benefits determined. This is not happening. Hence proposals on a cosmic scale and of the same stupidity are being assembled.

There are also positive examples. Thus, humanization of criminal law legislation in reducing the punishment of imprisonment for economic crimes has contributed to reduced costs for maintaining convicts. Proposals to enhance the use of such kinds of punishment as a penalty also has contributed to an increase in the treasury and has not incurred any extra charges.

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[5] M.I. Kleandrov, *PhD Thesis of the Lawyer: First Steps of a Researcher*, M. (2004), 52.

Of course, the thesis on jurisprudence should not be devoted to economic calculations. However, it is very important to take into account the costs of implementation in order to understand economic effect. And of course, the costs should be balanced with benefits from the implementation of the proposals. That is, if innovations require costs, but the population of Russia will benefit in the protection of their rights and freedoms, and in increased justice, then such ideas are useful and require implementation.

4. In addition to economic benefits, there are also political effects, social effects, and so on—in other words, specific benefits from substantiated changes in the thesis. But this benefit also isn't always forecast, evaluated, or even mentioned in the works. Often, it happens because the author of the dissertation doesn't see or doesn't set up the final goal of the research. The standard phrase applied to dissertations is that the author wants to make suggestions to one or other regulatory legal act, in order to improve regulation of the social relations in a specific field. But even if we agree with this proposal and make amendments, the regulation of social relations isn't going to improve. In fact, there was no depth in the work, and the analyzed regulation of social relations in general isn't evaluated as the whole regulatory legal act, and is considered only in its small part. The act itself, as it turns out, isn't perfect and doesn't correspond to the realities of the time. And the fact that it will be made meaningless changes the situation, but not in a positive direction.

Sometimes the result of formulating the proposals is to clarify, but this may actually have no effect because the regulatory legal act is imperfect by itself.

What are the benefits of such studies? There is a minor benefit, which is better understood as a little segment in one or two norms of the law. Probably, it will bring some benefit, but due to the condition of changing the regulatory legal act itself—and nothing else. As a result, it's a pity for the work of the candidates.

5. Artificial complication of science: legal science annually grows with the introduction of new knowledge (at least, we want to believe this). Various studies have been conducted that cover different sides of legal reality, formulating conclusions, and clarifying concepts. Ultimately, such movement creates scientific progress, which can be welcomed.

However, alongside that, an imaginary movement forward happens, and *artificial complication of science*. This can be attributed to several typical cases encountered in many dissertations:

— The desire of applicants to bring all vital functions into line with legal norms, to regulate in the law all that is possible according to the theme of the research. In dissertations in almost every specialization, one can find proposals about the inclusion in law of one or other definition, the legislative regulation of private cases of application of certain norms, and so on. Instead of following the advice of the sages and making laws simpler and more understandable, it is constantly proposed to add to them, to regulate them in more detail, and "to make them heavier." Attempts to simplify laws are very rare.
— Many authors of dissertations who are developing a specific theme, try to give the law "their" definition. In fact, it turns out that this new definition isn't new at all, and itself represents the retelling of another definition. If there is no possibility to suggest a new definition, the applicants are definitely trying to clarify something in an already existing concept. This process is almost endless and, as a rule, is empty from the point of view of the content. In our informal question to one of the applicants about how he was going to rephrase an already existing concept, he answered honestly that he would like to bring something new.
— The artificial "complication" of language: some specialists have a tendency to use terms that are difficult to read and difficult to reproduce. Simple and clear words are replaced with synonyms, which are rarely used even in the scientific literature. And it is normally when these concepts could be used precisely and correctly. But many of the concepts have several meanings; this ultimately only adds to the confusion. It is wise to use concepts that are taken from philosophy. However, it has now become popular to borrow terms from physics and mathematics, which are outwardly similar in meaning but are used in the technical disciplines and are not quite suitable for jurisprudence. Here we can also include the complication of the proposed concepts. In scientific work we rarely meet short and capacious determinations; increasingly, we find massive determinations, containing hard-to-understand phrases. Apparently, applicants who permit such things sincerely think that there is a true science. However, they are wrong. And they have completely forgotten that the highest professional achievement of a lawyer is the ability to express thoughts and laws in simple language that is clear to everyone.

The remarks allocated in this item are typical of many contemporary works. As a suggestion, we offer strengthening demands for the scientific work of dissertation councils.

6. The next problem is connected with interpretation of the law. As you know, every scientist-lawyer deals with the interpretation of legal norms. No one has the right to prohibit the specialist (or the person impersonating it) from making comments, analyzing, discussing specific norms, or expressing suggestions for their application.

The question, then, is how free are scientists in terms of the breadth of their interpretation of the regulations of law. And more precisely, can they make comments on legislation that offers to break the law or to evade its execution?

Of course not, is the probable answer to all these questions. Furthermore, the statement of the question seems, at first glance, to be awkward.

However, there is a problem. And in the confirmation of our words we give specific examples from criminal procedural science.

For criminal proceedings in Russia in the last two decades one of the most relevant problems is the use of the results of operational search activities as proof in criminal cases. And here, the federal law "about operational search activity" (OSA) indicates that illegally received results of operational search activities turns out to be used as proof. In this book it is argued that while carrying out operational search activities and the application of their results, "the fact of violation of the Federal law *about operational search activity* [our emphasis] should not entail cancellation of the obtained results."[6] And, further, "The same approach should be applied also while deciding on the question of giving the procedural status of evidence of a material object, obtained by operational search activity by violation of the Federal law. The fact that this violation was situated from the frames of criminal process doesn't mean that the violation by criminal proceeding law established a procedure for forming the physical evidence."[7] It is easy to assume that this refers to allowing the use of illegally obtained results of operational search activities (e.g., in criminal proceedings), but the authors of the comment refer very calmly to the illegal organization of events.

For non-specialists in such a delicate sphere it is necessary to explain that operational search events are, for example, telephone tapping, control of emails, correspondence (also via the internet), observation (surveillance),

[6] Comments to the federal law "About Operational Search Activity," ed. by A.Y. Shumilov, M. (1997), 120.
[7] Ibid., 120–21.

interrogation, and secret examinations of homes.[8] Most of these are allowed on the basis of a judicial decision, if there are sufficient grounds for a limited numbers of articles of the Criminal Code of Russian Federation. It is hard to say what the authors of the indicated comment understood under the illegal organization of events and the receiving of illegal results. In judicial practice concerning the accusation of illegally carrying out operational search events, we can conclude that what is meant is the apparently illegal examination of a home, interrogation with the use of violence and torture, or carrying out interception without a proper permission of the court, and so on.

The indicated position was strictly condemned by the legal community.[9] Some even believed that in this case, the authors of this comment just made a mistake or did not accurately express their thought.

But several years passed and in a tutorial (!) on operational search activity literally the following was written:

> Due to the fact that among the given grounds of inadmissibility of evidence, there is no direct guidance on the recognition of evidence admissible in connection with the violence of requirements of the Federal law about OSA, we can say that the meaning of CCP and the violation of this law doesn't influence the classification of the evidence, obtained in the process of OSA. If associated with the results of OSA by themselves, it is not evidence, and the violation of the regulations of operational-search legislation are not direct connected with the production of investigative and procedural actions. As a result, they don't influence the content of the investigative actions and the nature of the data, obtained during this operation.[10]

The author of cited phrase was O. A. Vagin.

But this isn't all. The named scientist repeated his opinion in the comment to the federal law

> "About operational search activity," the introductory article to which was written by the esteemed V.D. Zorkin. Moreover in this comment O.A. Vagin went further and, after the above quoted passage, wrote the

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[8] See S.I. Zakhartsev, *Operational Search Activities* (St Petersburg, 2004); S.I. Zakhartsev & V.N. Medvedev, *Withdrawal of Information from the Technical Communication Channels* (Legal Analysis), ed. by V.P. Salnikov (St Petersburg, 2004).

[9] About this see, S.I. Zakhartsev, Y.Y. Ignaschenkov, & V.P. Salnikov, *Operational Search Activity in the 21st Century* (St Petersburg, 2006).

[10] *Theory About Operational Search Activity*, M. (2006), 574–75 (the author of the paragraph is O.A. Vagin).

> following: "The position of the Federal law about OSA does not regulate criminal-proceeding relations, therefore, it cannot determine the admissibility of evidence, which can be obtained only in the manner or ways provided within the regulations of CCP. The requirements of admissibility can be presented only according to the results of OSA (for example, telephone tapping, control of emails, correspondence [also via the internet], home invasion, control delivery, operational experiment, and others) submitted in documents or as material evidence. What about other results of OSA (for example, interrogation, making inquiries, observation, and some others), which are the only information about the facts, do they not change the content of the actual data obtained as a result of carrying out investigative actions?[11]

Thus, according to O.A. Vagin's opinion, the results of illegally conducted operational search activities—interrogation, observation, making inquiries—can be easily used as proof in criminal cases! In other words, the following forms of proof, apparently, can be used: the results of interrogation conducted using torture, the results of secret observation in a private house made without judicial decision, and falsified documents received during an event "making inquiries."

Making such comments is somehow not serious in the opinion of O.A. Vagin. Every first-year student knows that illegally carried out legal action generates illegal results and does not have legal power. There is no sense in arguing about the danger of such actions for human rights and also for legality, the objectivity of criminal proceedings, and so on. Such issues are obvious.

It is necessary to note that, in the introductory article to the above named comment, V.D. Zorkin himself wrote correctly: "The results of operational search activities are not evidence, but merely information about the sources of those facts that *are received in compliance with the Federal law on OSA* [our emphasis] and can become evidence only after they are secured in a proper procedural way."[12]

About the legality S.S. Alekseev rightly said, "Legality is one of the few social phenomena that is based on the principle of 'or': either unconditional, absolute legality everywhere, or its collapse, if deviation is allowed from the strict requirements even in the smallest things. Indeed

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[11] See, Comment to the federal law "About operational search activity." *With the application of decisions of the Constitutional Court of the Russian Federation and the European Court of Human Rights*, introductory article by V.D. Zorkin, M. (2006), 239–40.

[12] See: V.D. Zorkin, Introductory article on the comment to the Federal law "About operational search activity," M. (2006), 17.

permissibility to break the law 'even in the smallest things,' 'for good reasons' 'sometimes' in fact means the permissibility of derogation from it in any and all cases (is it so hard to justify that exactly this case is 'the smallest one,' 'respectful'?)."[13]

We can give another typical example. Part 4 of article 157 of the Code of Criminal Procedure of the Russian Federation states: "After directing the criminal case to the head of the investigative authority, the investigative authority may perform investigative actions on it and operational search events only on behalf of the investigator. In cases where the criminal case is directed to the head of the investigative authority, according to which the person who committed the crime wasn't found, the investigative authority is obliged to make investigative and operational search events to establish the identity of the person who committed the crime, notifying the investigator about the results."

The content of this regulation, in our opinion, is clear enough and cannot be ambiguous. Since the investigative authority directs the criminal case, operational search events as part of the case are carried out only on the behalf of the investigator (except in cases where the person who committed the crime is not found during the course of the investigation). From the first sentence of the regulation, the word "*only*" could be excluded—the sense of what is written doesn't change. However, the legislator, through the formulation "*only* on the behalf of the investigator" makes an emotional note in the article in order to exclude categorically a double interpretation of the article, and to make its content clear to everyone.

However, A.E. Chechetin in his monograph writes that after the direction of the case by the investigative authority, "operational search events in relation to persons involving criminal liability can be made without order of the investigator."[14] The motivation is as follows: "Implementation by operational units with the obligation to solve crimes may not be subjected to the decisions of investigators and from the availability (or lack) of its order."[15] No more, no less.

Scientists—specialists in other fields of law—helped us gather a rich-enough collection of such comments on the laws that go completely against the outline of the norms of the laws themselves. So the problem of deliberately perverse interpretation of the law exists in all branches of the law!

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[13] See, S.S. Alekseev, *Law and Restructuring*, M. (1987), 503.
[14] A.E. Chechetin, *Operational Search Activity and Personality* (Barnaul, 2006), 12.
[15] Ibid., 10.

And everything is okay if we are talking about misprints, incorrect wordings, and, finally, mistakes. But in these cases we are talking about offers to disregard the principles of the law, the deliberate introduction of misconceptions. And the authors of such statements are lawyers, who have candidate degrees and PhDs in the legal sciences.[16]

And who are the readers? If we consider that most of the examples are presented in textbooks, then, not counting teachers, the readers are mostly students at the juridical universities—future lawyer-practitioners, including enforcement authorities. This isn't just bad, it's scary!

Paraphrasing a famous proverb, the law isn't as scary as its interpretation!

How we can struggle with this problem, admittedly, is not clear.

One of the variants can be the strict, principled relationship of the scientific community to knowingly false fabrications, such as public condemnations of such interpretations and critical analysis of such statements at conference and seminars. The authors of such "pearls" should receive public recognition of their wrongness.

7. It perhaps seems that over the last decade only a small number of original works have been published by authors. There were also a few works containing notable new provisions and conclusions (albeit very controversial, they were at least new). In general, scientific works represent them as rewritings of each other with some additions and clarifications. Works on such "endless" subjects as philosophy and philosophy of law also, as a rule, don't differ in terms of their originality. Furthermore, they do traditionally rewrite the history of philosophical and philosophical-legal knowledge. But then again we often find the same approaches in these supposedly almost new works on the history of philosophical-legal thought. As if to deepen the problem, some of the traditional approaches to the philosophers of law and their works are used.

Thus, most researchers consider the famous Russian philosopher B.N. Chicherin to be a liberal and a defender of natural human rights and freedoms in Russia. Such, for example, was the opinion of V.S. Nersesyants.[17] G.I. Ikonnikova and V.P. Lyashenko write that the main content of B.N. Chicherin's philosophy of law is that natural law is a system of unwritten norms and rules. These norms and rules are the basis for and the principles of creation of the positive law—a doctrine about truth, justice, and equity.[18] E.V. Kuznetsov writes that the science of law

[16] We don't know what O.A. Vagin and A.E. Chechetin are teaching now or where they are working.

[17] V.S. Nersesyants, *Philosophy of Law*, 685.

[18] G.I. Ikonnikova & V.P. Lyashenko, *Philosophy of Law*, M (2010), 122.

in Russia until the nineteenth century overcame the backlog of Western European jurisprudence and in many relations went forward due to the works of B.N. Chicherin about natural law.[19] Many other specialists write in the same vein, but usually without references. This approach is firmly rooted in textbooks on philosophy of law.[20]

However, having studied the works of B.N. Chicherin, we cannot agree with the indicated conclusions. For example, this philosopher has denied the necessity and desirability of equity, even formal equity, in economic rights. He argued eloquently and somehow cynically that

> people are equal only as free persons, and not as members of the highest whole, where they can have different purposes and therefore different rights and responsibilities. That's why in article 1 of "Announcement of the rights of human and citizen" the following was added to the statement at the beginning on freedom and equity: "social distinctions can be based only on common utility." This is a quite wide beginning; it can require not only the difference in political rights of various social classes, according to their political ability, but also hereditary advantages, on which exactly were based monarchy and aristocracy.[21]

This opinion of B.N. Chicherin illustrates several things well. The first is that Chicherin divides society into classes. Second, political and economic rights should not be regarded as the same, as we are talking about *different rights*, not about *equality*. Third, it isn't clear who will evaluate and install "social distinctions . . . based only on common utility" and how this will be done. However, with regard to this and other works by Chicherin, we think that he meant that this "common utility" will be evaluated by the representatives of the highest aristocracy, but not by the general population. And the benefit from this "common utility" will likely have a small number of recipients. That is, civil rights for everyone, and economic privileges only for an elite. From this follows, fourth, that the lawyer-legislators should ensure with the help of their works the interests of the ruling elite, and maybe, first of all, their economic interests. It is necessary to consider one further important issue. In his works, B.N. Chicherin developed the idea of a transition from autocracy to constitutional monarchy, which merited him a special place among contemporary researchers. However, Chicherin is not considered to have been a representative of a noble, wealthy family. The transition to

[19] E.V. Kuznetsov, *Philosophy of Law in Russia* (St Petersburg, 1989), 97.
[20] See, for example, *Philosophy of Law: A Course of Lectures*, 2 vols, vol. 1, ed. by M.N. Marchenko, M. (2014), 518.
[21] B.N. Chicherin, *Philosophy of Law*, M. (2011), 108.

constitutional monarchy provided himself and the people of his circle with wide political and economic opportunities.

And more can be said about B.N. Chicherin as a liberal and humanist. He believed that "the state isn't obliged to deliver to the citizens the means of living. It is a private case. Every person finds a job for himself and earns a livelihood. When, due to unfortunate circumstances, a person has no possibility to earn a livelihood, he asks for the help of those nearest to him. Here lies the vocation of charity, first private, and if this is lacking, from the public. The state cannot come to the aid of suffering people. But charity does not become the law for them; it acts as forces and opportunities."[22] In other words, if the state has no capabilities (or it has other priorities), a person will not receive unemployment compensation, tolerable living conditions, or even a livelihood. In fact, the state, according to B.N. Chicherin, isn't obliged to feed everyone and, accordingly, to ensure the right to life.

Without diminishing the contribution of B.N. Chicherin as part of the world of philosophy and philosophical-legal thought, we cannot call him a liberal. On the contrary, having reread once more the works of this philosopher,[23] it seems that the estimation of B.N. Chicherin as a liberal is likely incorrect.

Approximately, the same was said by V.A. Tomsinov, who noted the political views of B.N. Chicherin were in constant development. During his life he was called a "liberal conservator," but this definition only applies to the mixed, composite character of the worldview of thinker.[24]

It seems that the works of other philosophers and philosophers of law can be evaluated quite deeply and more objectively than they sometimes are in works of contemporary literature, which for certain reasons often repeat one another.

D.A. Kerimov looks even more strictly into this problem. He rightly draws the attention of the scientific community to the almost complete absence of fundamental research on contemporary domestic jurisprudence, the dominance of "bad commentators and bad legislation," the "helpless generalization of helpless law-enforcement practice," the unsystematic accumulated abundance of materials on private and secondary questions, and the insufficient number of new ideas and developments at various

[22] B.N. Chicherin, *Property and the State* (St Petersburg, 2005), 605.
[23] See, for example, the following works of B.N. Chicherin: *Philosophy of Law*, M. (2011); *General State Law*, M (2006); *Property and the State* (St Petersburg, 2005); *Questions on Philosophy*, M. (1904); *Questions on Politics*, M., (1903), etc.
[24] See. V.A. Tomsinov, "Boris Nikolayevich Chicherin: Biographical Essay," introduction to *General State Law*, M. (2006), XXVIII.

conferences, symposiums, and round tables that would be capable in the main of adding their weight to support the appearance of activity of legal science.[25]

In regard to dissertations, we would like to add one more observation. Many contemporary dissertations on jurisprudence "dazzle" with references from which it is difficult to draw a conclusion on whether the aim of the research was to create something new, to add a little bit to what already exists, or simply to mention as many scientists as possible. This is especially true in regard to candidate's dissertations. Moreover, as some dissertation authors told us, their supervisors required that each page of the text contained a reference to a scientist.

Of course, we don't belittle the importance of references. Scientific works need to be written on existing material. But in these works, especially those that have numerous references, it isn't always clear what comes from the source and what is new. Wherein, what is new, as already mentioned, for the most part isn't original. It isn't pleasing to see that the references are put in not to serve the thesis, or out of respect to reputable scientists in a specific science, but only in order to mention these sources.

There is what we wish: write new and controversial works. The truth is born in dispute.

8. The Russians, including lawyers, have become noticeably less keen to read. Especially in regard to printed materials, chiefly books and scientific magazines. All this leads to the reduction in the pressruns of scientific literature. Accordingly, the ideas and opinions of specialists in the law and legislation have become harder to disseminate even within the scientific and professional area.

A partial solution to this situation could be duplication of the ideas and opinions of the various scientific magazines and the partial repetition of material previously written in other books. These partial repetitions of previously written material are an objective necessity in communicating views to professionals. Thus, it is necessary to increase advertising for books and articles on relevant topics via the internet. A suitable arrangement would be the following: the user types into the electronic database the legal question that he or she is interested in and the database lists the books and articles that reflect the answers and opinions asked for by the user.

We have here identified eight problems and shortcomings of contemporary Russian legal science. However, it is clear that the list probably will be supplemented.

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[25] About this see, A.N. Chashin, *Contemporary Legal Doctrines of Russia*, ed. T.N. Radko, M. (2014), 107.

To some extent, one consolation is that contemporary foreign legal science also has many problems. So, two monographs by the authors of the current book were translated into English and German and published abroad. We received feedback from foreign specialists on questions that were raised in the books on shortcomings in legal science and legal regulation. In its turn, these experts shared with us their difficulties, some of which have a global character. First, the difficulty is scientific: the absence of a single philosophical and theoretically-legal approach in jurisprudence (in many countries, ideas are spread in the science about the impossibility of cognition of being, including, in terms of law, the denial of epistemology and the impossibility and uselessness of finding an objective truth in criminal proceedings, and so on).

I hope that all scientists in their turn will do everything they can to solve these problems, and other problems that haven't been mentioned here. It seems that we can achieve much more if we often discuss existing problems all together and negotiate on ways of resolving them.

§ 2. Ethical problems in legal science

We don't want to write about ethical problems in scientific legal work, but it is impossible not to write about them. As a thesis, four of the most serious ethical problems can be denoted.

1. In the last 20 years the problem of the correctness and ethical correctness of maintaining scientific discussion in law has been particularly relevant. Caustic phrases, bordering upon insult, began to be directed against not only aspiring lawyers but also prominent scientists.

Moreover, such insults did not spare either contemporary figures or those who are long gone. For example, P.F. Yudin, an academician of the Russian Academy of Sciences of the USSR, following the release of one of his latest works, has been called the "duty 'philosopher' of the regime," an "arrogant philosopher," and "a thieving guard useful for the authorities' 'truth.'" And the reasoning of P.F. Yudin has been characterized as "idle juggling with quotations from classics." It is doubly frustrating that the indicated insults were hurled not by just anyone, but by the academician V.S. Nersesyants.[26]

Harsh words have also been directed at other famous lawyers. A.Y. Vishinskiy has been called "one of the most heinous figures in the whole of Soviet history," "a deft, sophisticated, and shameless lackey of the leader and the totalitarian system," and so on. At the end, V.S. Nersesyants

[26] V.S. Nersesyants, *Philosophy of Law*, M. (2011), 355.

came to the conclusion that "NCIA (National Commissariat of Internal Affairs) authorities" thus helped Vishinskiy, Arzhanov, and many others to "correctly" understand Marxism–Leninism and, thanks to this, they would soon became academicians and corresponding members. It would be fair, of course, to recognize "academicians" to be appropriate "authorities" due to their great contribution to the ideological education of "personnel."[27]

Similar expressions now can be seen in a considerable number of legal works. For example, recently I.Y. Kozlihin in readings that were devoted to the philosophy of law called the same A.Y. Vishinskiy a "notorious scoundrel."[28] What is outlined above clearly shows that consideration of the indicated problem of the ethics of scientific discussion are long overdue.

First, we need to define whether the expressions of V.S. Nersesyants are insults. Obviously, they are. If they are insults, then, according to the legislation of almost all countries, they should be said responsibly. In other words, if such expressions are addressed to living people, it is difficult to avoid responsibility. Wherein, in Soviet and Russian criminal law, criminal responsibility for such insults has come into place. Therefore, we cannot believe that such statements could come from lawyers.

The next question is, where are these statements contained? The answer is striking: in scientific and educational literature! However, scientific and educational literature isn't the gutter press. In science, there is no place for insults, humiliation, condescension, and disdain. This is not allowed in principle and is not ethical.

Furthermore, disputes in the scientific literature should be conducted within the science. We can and should try to evaluate the position of one or another scientist according to exactly scientific questions. Wherein, the political careers of these scientists, their private lives, moral and immoral actions, and other aspects are not included in the subject of science. If, for example, this was included in the scientific literature studying Peter Abelard, would it add to our interest in his reasoning as a philosopher, as a theologian, and as one of the founders of conceptualism. All know the famous sad history of Abelard and Eloise, which has meaning only from the point of view of formatting and further changing the views of Abelard. But in the philosophical literature, there is no need to give subjective

[27] Ibid., 363–64.

[28] I.Y. Kozlihin, "The General Theory, Integral Jurisprudence or Encyclopedia of Law?" *Encyclopedia of Legal Science or Integral Jurisprudence? The Problems of Studying and Teaching: Materials of the 7th Philosophical; Legal Readings in Memoriam Acad. V. S. Nersesyants*, executive editor V.G. Grafskiy, M. (2013), 9.

emotional evaluations of the rightness or wrongness of the behavior of Abelard in relation to Eloise and the further punishment of Abelard. For these evaluations there are magazines, popular journals, and TV programs—but not the scientific literature. However, we also don't want to hear such statements in journalistic programs.

In his book, V.S. Nersesyants cited essays on many philosophers from different times. However, he refrained from insults in addressing, for example, Aristotle, who considered slaves (people!) like he did things. But he does insult some recently dead contemporaries. Is such a position permissible for a scientist and for a person?

As you know, it is impossible to serve two gods at the same time. You cannot call for freedom, legal culture, equality, and pluralism of opinions (!), and at the same time use offensive words against colleagues to argue that their opinions (even if wrong!) don't coincide with their fabrications. If specific people are personally nasty, the science doesn't have any relation to it.

The requirement for ethics to be discussed has particular relevance because scientists have started using ugly, offensive expressions to address each other in the educational legal literature. The quotation given above and other similar quotations are found everywhere, including in textbooks on theory of the state and law, and philosophy of law—subjects, by their definition that are pure and exalted and free from dirt and worldly vanity. Exactly the same is seen in philosophy of law. V.S. Nersesyants and other scientists who use such expressions are contrary to the spirit of science and violate the ethics of debate. The beauty of philosophical thought is melting. Aristotle's expression "Plato is my friend, but truth is dearer!" is famous to all and sounds stronger than the dozens of insults, yet it is perfectly correct and beautiful.

The next question is, who were these offensive expressions used against? At the meeting, which was held in 1938 according to the questions of science of the Soviet state and law and which was so "colorfully" described by V.S. Nersesyants, all except Vishinskiy were present and the speakers included M.A. Arzhanov, P.F. Yudin, S.A. Golunskiy, and M.S. Strogovich. All of them became corresponding members of the Academy of Sciences of the USSR.[29]

There is some sense in briefly looking at their biographies and contributions to science. M.S. Strogovich was a recognized Soviet scientist, a great specialist in the field of theory of the state and law. In 1940 M.S. Strogovich with S.A. Golunskiy published one of the first

[29] Yudin Pavel Fedorovich was also elected as an academician of the Academy of Sciences of the USSR.

Soviet textbooks, *Theory of the State and Law*, which trained several generations of lawyers.[30] Furthermore, M.S. Strogovich is known as an expert on criminal procedure and prosecutorial supervision.[31] His two-volume *Course of Criminal Procedure* forever and quite rightly went down in history as a classic scientific-educational doctrine.[32]

His co-author on the textbook, S.A. Golunskiy, in addition to his contribution to the theory of law, is rightly considered one of the pioneers of Russian criminalistics. He is the author of the first Russian educational and scientific works on criminalistics.[33]

M.A. Arzhanov is a famous theorist, who, undoubtedly, has left his mark on the general theory of law.[34]

P.F. Yudin has never been a lawyer. However, as a Soviet philosopher he was well known all over the world and he led the Institute of philosophy of the Academy of Sciences of the USSR. Yudin's main doctrines were devoted to the history of Marxist philosophy, the problems of dialectical and historical materialism, and the theory of scientific communism.[35] These doctrines are also known abroad.

Are the works of these scientists of interest today? Of course they are. Criminal-procedural and forensic works haven't lost their relevance. The works on the theory of law and philosophy from the standpoint of the present day seem to be really quite controversial. But they also need to be studied, even to be compared with modern philosophy and modern law. Without the past, as you know, it is impossible to understand the present and to look to the future. Thus, there is no doubt that each of the mentioned authors was a great scientist.

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[30] S.A. Golunskiy & M.S. Strogovich, *Theory of the State and Law*, M. (1940).

[31] See, for example, M.S. Strogovich, *Material Truth and Judicial Proof in the Soviet Criminal Process*, M. (1955); M.S. Strogovich, *Prosecutor's Supervision over the Observance of Legality in Activities of the Inquiry Authorities and Preliminary Investigation*, ed. by M.S. Strogovich & G.N. Alexandrov, M. (1959 etc.).

[32] M.S. Strogovich, *Course of Soviet Criminal Process*, 2 vols, M. (1968–1970).

[33] See, for example, S.A. Golunskiy, *Technique and Method of Crime Investigation*, M. (1934); S.A. Golunskiy, *The Examination of the Crime Scene*, M. (1936); S.A. Golunskiy, *Criminalistic Method*, M. (1939); *Criminalistics*, M. (1959).

[34] See, for example, M.A. Arzhanov, S.F. Kechekyan, B.S. Mankovskiy, & M.A. Strogovich, *Theory of the State and Law*, M. (1949); M.A. Arzhanov, *State and the Law in Their Relation*, M. (1960).

[35] See, for example, P.F. Yudin, *Materialistic and Religious Worldviews*, M. (1930); P.F. Yudin, *Who Are "National Socialists"?* (Sverdlovsk, 1942); P.F. Yudin, *From Socialism to Communism*, M. (1962).

Why then write that they became corresponding members due to NCIA authorities, which helped them "'correctly' understand Marxism–Leninism and thanks to this soon became academicians and corresponding members"?

We should stop separately on A.Y. Vishinskiy. We do not do this because we wish to protect or somehow evaluate this political figure. In the books on philosophy of law, the scientists should evaluate exactly as scientists, not as prosecutors, ministers, or public figures. A.Y. Vishinskiy can be related to in many ways: as an objectively famous scientist, a theorist of the law and a processualist, an academician of the Academy of Sciences of the USSR, a director of the Institute of the state and law. He was a supporter of a normative (even, narrowly normative) understanding of law. His works are now criticized, in many respects fairly, but this doesn't erase either the fact of the works or their scientific value.

The normative (or, if preferred, narrowly normative) approach to the law objectively has its place in the history of law. This approach, indeed like many others, has its weaknesses. These weaknesses should be identified and analyzed, but not used to insult scientists. It's a pity that this has happened exactly now, when freedom of speech has begun to forget about the ethics of scientific discussion, culture, and humanism. And then we could speak of nihilism, of the absence of legal culture, and then we could wonder where it came from? At the same time, one academician addresses another academician with the following words: "a deft, sophisticated and shameless lackey," an "arrogant philosopher," and so on. And where is this written? In a textbook! Moreover, a textbook on the philosophy of law!

Today, students are studying and graduating from the universities who grew up in Russia in the period of freedom of speech and opinion. The task of teachers (and textbooks) is to ensure the harmonious development of this generation. An important step in this development is the possibility for students to receive objective knowledge, to be free in the choice of their worldview. Philosophy, and also philosophy of law, is the basis for the formation of a worldview. This basis must be solid, strong, and clean.

Probably, it isn't necessary to prove that training also has an educational function. The task of legal universities is not only to give students appropriate knowledge, but also to educate them in a spirit of compliance with the laws, respect for the rights and freedoms of each person, and a love for their motherland and people. How does the showdown between the scientists in the textbooks contribute to the education of lawyers? What, then can we teach the students?

However, now the problem of the ethics of conducting discussions is relevant not only to legal disciplines but also to all sciences in general. T.G. Leshkevich, speaking about the problems of science, correctly noted that very often scientists greatly exaggerate their personal contribution to science, comparing their activity with the activities of their colleagues, which creates many problems, founded in scientific debate, and violates scientific correctness and scientific ethics.[36]

For work on the law, such things, for obvious reasons, are especially unpleasant.

Dear colleagues! Let's respect one another and our readers!

It should be separately noted that the authors of the current work have a great respect for V.S. Nersesyants's contribution to legal science. Therefore, to read in this scientist's works insulting, dismissive, and extremely subjective expressions in relation to other specialists is especially frustrating.

2. In the opening lecture notes on the philosophy of law that were published in 2009 in Ukraine (Kharkov), we surprisingly have read that the "*Ukrainian legal mentality was formed during the process of the constant struggle of our people for their statehood, culture, language, and religion* [our emphasis], and the Russian, under the influence of the strong absolutist state."[37] Further, the authors of the cited textbook have identified several features of the Ukrainian national character, in particular the following: "Individualism and the desire for freedom, and a negative attitude towards strong government as such, which borders on anarchism; the extreme manifestation of individualism is a feature of *isolation, stemming from the quite tragic history of the Ukrainian people, who have faced constant attempts to enslave them by other states*."[38] In the same spirit, there are several further paragraphs in the textbook. The authors of the above mentioned lines are a philosopher the fairly well-known in Russia, S.I. Maksimov, and the less famous M.P. Kolesnikov.

First, let us ask ourselves the question of what it means that states are constantly seeking to enslave Ukraine? According to the content of this book, the states this refers to include the Soviet Union and Russia. Thus, according to the opinion of the mentioned authors, being in Kievan Rus, royal sovereign Russia and the USSR, the poor Ukrainians have always been enslaved, and struggled for their faith, independence, and statehood.

And now it is necessary to come back directly to philosophy. I think that there is no sense to waste words in order to convince readers in the

[36] T.G. Leshkevich, *Philosophy of Science*, M. (2005), 203.
[37] *Philosophy of Law: Lecture Notes*, ed. by O.G. Danilyan (Kharkov, 2009), 157.
[38] Ibid., 158.

dishonesty of the cited Ukrainian lecture notes (it can be noted at least, in the phrase "Kievan Rus").

But why do such expressions appear in literature on the philosophy of law? Unfortunately, the answer is not clear. The contemporary Ukrainian government is in need of a philosophical explanation for why Russians and Ukrainians are citizens of two absolutely different nations who have nothing in common. They need a philosophical (the highest scientific) justification for why there was no Kievan Rus, and also for why it is irrelevant that the USSR for most of its existence was ruled by natives of Ukraine (N.S. Khrushchev, L.I. Brezhnev, K.U. Chernenko).

In other words, the government would like to conduct their politics on the basis of the philosophy and philosophy of law. And the role of the philosophy of law in this case comes down to "servicing" the government in their dirty deals.

Such a policy primarily relies on the philosophy and philosophy of law held by the leaders of Ukraine since the 1990s until the present day, so it is more than 20 years old. Thus, the cited lecture notes were published in Russian in order to confuse the young Russian-speaking generation, who weren't alive before the fall of the Soviet Union and the birth of the Russian-Ukrainian nation. And the textbook on the philosophy of law in which the same content was published with the same purposes but in Ukrainian.[39] The result of this deception and entanglement was the Civil War that happened in Ukraine in 2014.

With regret I have to think that there is a deceit in the reasoning about the mission and the meaning of the philosophy of law. After all, the philosophy of law in Russia has always served the powers that be. For example, the famous religious philosopher Feofan Prokopovich was in favor of Peter I and the monarchy has justified caesaropapism; in the later period, B.N. Chicherin justified the necessity of the difference of political rights for different social classes; this was pleasing to the forms of philosophical reasoning found in Soviet times and also now.

Maybe the role of the philosophy of law in relation to the legal sciences really comes down to the philosophical justification of the law that benefits the ruling power? And the law itself is really only a social institution that ensures the interests of the ruling (prevailing, governing) class. Is there a need to "break a spear," inventing a special idea of law? Thinking so, of course, means that we don't want that to be the case, although the question about whether the law can exist without ruling ideology was solved repeatedly by philosophers.

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[39] *Philosophy of Law: Textbook*, ed. by O.G. Danilyan (Kharkov, 2009), 183–84, and others.

The authors of these lines became the owners of a rich legal library, including the pre-Soviet and Soviet periods. Putting Soviet and post-Soviet books near one another, we are involuntarily amazed at how varied the views of one and the same scientists are on the law, state, and political leaders. Moreover, it draws attention to one interesting detail. If a scientist zealously and shameless praised the Soviet system, but did not really refer to the Soviet leaders, in the 1990s, he will have started violently and shamelessly to abuse this system. Here is also a serious ethical system of modern science.

In Soviet times, all works on jurisprudence (and not just these) had to contain references to K. Marx, F. Engels, V.I. Lenin, and the rulings of the General Secretary of the Central Committee of CPSU. However, even in this difficult time the scientists did differently. Some referred to and then wrote about the science. But there were also others who invented a striking language of praise, which then rapidly declined and began to give new, already sharply negative assessments of contemporary history and law.

These processes were well noted by D.A. Kerimov:

> We cannot be silent about one sad fact, the scientist writes. Recently some representatives of the science have found it fashionable to rewrite our history, including the history of law, often distorting it. And in this unseemly business, unfortunately, individual lawyers are actively participating. For example, one of them wrote in 1963: "The socialist system is organic alien tyranny and lawlessness"; in 1972: "Socialist law in all its content, principles, 'insides' . . . is a factor of morality and culture"; in 1981: "Socialist law is the first in the history of legal systems to have a Law of workers—the Law with a capital letter, answering the centuries-old inspirations of humanity. . . ." But the most remarkable is that the cited author literally in a short period of time argues the opposite. In 1995, he notes that: ". . . a society in its underlying principles, suppressed by lawlessness and injustice, reacted to the horrifying reality, gave a signal that the direction it is necessary to go in order to escape from the depth of totalities and to move to legal civil society, is the way of the law and legality"; that "legal science needed to repent and cleanse itself, gaining an understanding and a clear recognition that Soviet legal science was at the service of a totalitarian system . . ."; in 1997, "Soviet law is represented as an ugly reality—terrible in its essence and its consequences." And such kinds of expressions are already accompanied by similar apologetics in relation to the modern Russian regime. . . . It shouldn't be overlooked that science isn't a position: it is indifferent to grades, titles, and ranks, it doesn't tolerate arrogance, lies, and servility.[40]

[40] D.A. Kerimov, *Selected Works*, 3 vols, vol. 1, M. (2007), xxix–xxx.

If we want to engage genuinely with philosophy and philosophy of law, so, first, it is necessary to be always honest and avoid conjecture and servility.

Furthermore, it is necessary to serve the truth, to always seek to receive true knowledge, and to avoid approaches, and if the truth isn't reachable, don't write everything you want.

And finally, but fundamentally, it must not contain deliberate dishonesty in favor of the authorities.

While we have to note the peculiar ethical problem for the philosophy of law and law: attempts of the philosophical explanation of dishonesty in favor of the authorities.

3. The third ethical problem, which is relevant for the legal sciences, is the problem of plagiarism. It is obvious to all that in the legal science the scientist begins scientific work not from the very beginning, but on the basis of existing scientific works. Acquaintance with them and the designation of their results are kinds of "points of reference," watershed moments, separating the already known from the new, which the author will "introduce." However, there are also facts of "borrowing" scientific thoughts for further extradition of one's own. Perhaps, many specialists are faced with the same facts.

Such cases have spread among students especially because of the internet. Analysis conducted on the internet showed that diplomas on almost any legal theme are available over it. In the teaching practices of the authors of the current book, we have already collected plenty of evidence of students submitting works completely downloaded from the internet. And these works are probably downloaded from the internet to be used by unscrupulous authors for their dissertations and monographs. Indeed, on the internet there are many such published works.

Furthermore, in regard to computer technology, "aged" scientists traditionally are not very familiar with the internet, electronic correspondence, and the electronic publishing of scientific works. This generation traditionally trusts books. However, it now has become common to publish works (both literary and scientific) on the internet. Moreover, this practice at the present time can be more profitable in a number of situations. For example, so there is no need to go to an editor's office or wait until the book is published. There is no need to think about press runs. It is enough "to lay out" the book on the internet and those who are interested in its content will familiarize themselves with it. Wherein, many more people have the possibility of familiarizing themselves with the electronic version, rather than the printed version. Moreover, electronic scientific (including legal) journals and sites have already appeared.

It should also be noted that, according to the press data studying public opinion, the generation of Russians under 25 already don't like to read print books: they receive all their information from the internet in electronic form. They even read classics on mini computers.

During the work on this monograph, a survey was conducted of 700 lawyers from different Russian companies. It was found that on controversial matters of interpretation and application of legislation, 647 of them primarily focus on electronic databases and reviews of legislation that are available in electronic networks and search systems. The surveys conducted of 500 masters, graduates, and adjuncts showed that 474 of them were primarily guided by internet publications in the preparation of scientific works.

And here a legal problem occurs—the problem of the authorship of scientific works. It is not always possible to determine who first published their thought on the internet. It is most likely that the scientist may face the massive violation of his copyright. And proving authorship of works that are mostly published on the internet is not so easy.

Furthermore, specialists working on computers need to consider the following: usually, computers situated at home and at universities are connected to the internet. It isn't so difficult to steal the entire contents of a computer over the internet. That is, an interested person could download all one's notes from under one's nose even while one is continuing to work on it and then publish them under his own name or somehow or other use one's doctrines. Thefts through computer networks are quite common now. However, thieves are mostly interested in other information: bank account numbers, passwords to electronic cards, and so on. There is no evidence yet of the theft of scientific works. However, it cannot be excluded that there will appear thefts of scientific works via the internet. Therefore, in a number of governmental organizations it is prohibited to keep copies of secret documents on computers connected to the internet.

In essence, working on a computer that is connected to the internet is the same as writing formulas on one's fence—almost anyone can see what is written.

At the present time, jurisprudence isn't ready for the protection of the copyright of scientific works published in electronic form. Apparently, the legal community needs to develop some recommendations that will allow the protection of the copyright of scientists.

We emphasize that it is very important not to condone plagiarism. For example, the chief editor of the vakovskiy journal *Drug Control*, A.V. Fedorov, has uncovered plagiarism: an article of his was completely rewritten by one young applicant and published under a different name

without any references to the actual author. The editor wrote a letter to the university at which the article was published. Soon he received a reply saying that the indicated applicant "during the writing of the article did not base his position on the use of the works of other authors with the aim of issuing them as his own, and didn't intend to plagiarize scientific research. Thus, the author who believes that his right was violated should refer an appropriate claim to the court."[41] In other words, instead of the academic council of the university conducting proceedings to establish the fact of the incident and to condemn the young scientist, the university administration let it be understood that it was not going to investigate the indicated fact. That is, the offender who committed plagiarism appears as a precedent of impunity.

As was rightly noted by V.S. Stepin, ideally the scientific community would always reject researchers convicted of intentional plagiarism or of deliberate falsification of scientific results in return for worldly benefits. The community of mathematics and natural scientists stands closer to this ideal, but humanitarians, for example, greatly mitigate sanctions to researchers who deviate from the ideal of academic honesty.[42]

4. An important question is also financial support for scientists. T. Parsons emphasized the need for adequate exchange with society that allows people in scientific occupations to make their living only due to their professional training.[43] For jurisprudence, this problem is doubly relevant. First, financial support of professors and lecturers at legal universities leaves a lot to be desired. The same applies to scientific institutions. This, of course, doesn't have a positive effect on the quality of scientific research. Moreover, in jurisprudence, it has become a common practice for authors to have to pay for the publications of their own scientific works. Furthermore, protection of a thesis also entails certain costs. In the end, it should be recognized that not all good specialists have the opportunities necessary for them to conduct research and to protect it. In general, the work of scientist-lawyers isn't sufficiently financially supported. And jurisprudence itself has become quite an expensive science, which not everyone can afford.

This situation, second, creates conditions under which legal science is starting to be the prerogative of the elite. Each passing year it is becoming harder to become a scientist for people without sufficient wealth.

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[41] A.V. Fedorov, about the article by D.K. Sogomonov, "To the Question about the Object of 'Reborn' Smuggling", *Scientific Notes of St Petersburg Filial of Russian Custom Academy* 1.45 (2013), 105.
[42] V.S. Stepin, *Philosophy of Science*, 118.
[43] T.G. Leshkevich, *Philosophy of Science*, M. (2005), 203.

Is it good or bad that legal science is becoming the prerogative of the elite? Historical experience shows that when access to science is not open and welcoming, it begins to disappear and wither, turning into a regime of stagnation. Furthermore, if legal science is only for the elite, we received scientists will be creating legislation "for ourselves" and "for itself." However, how can such legislation correspond to the word "law"? How can it protect even the main rights of all citizens of Russia, rather than only those of the few? Historical experience again convincingly shows that in Russia this experiment is ending with the radical breaking of the existing system with consequences that that entails.

Finally, we should note once again the four ethical problems of legal science that are especially highlighted here: ethics of scientific discussion, servility of governance, plagiarism, and insufficient funding of science and scientists.

§ 3. The main scientific problems of legal science

In Russia at the end of the twentieth century and the beginning of the twenty-first, there is an increased interest in scientific problems. Fundamental works have been issued on the philosophy of science.[44] Scientometric indicators have become popular and common. That is, enough universities study and evaluate the effectiveness of scientists' scientific activity, guided by the index of citations of works.

In legal science, scientific questions have always been raised. For example, fundamental works devoted to the methodology and sociology of legal science have been written by D.A. Kerimov.[45] Serious research into the history of the law and legal study has been conducted by V.S. Nersesyants and other specialists.

However, many of the scientific questions found in legal science have not often been considered separately from one another. Comprehensive research into scientific questions has not been enough. Now, given the observed pluralism of methodologies and the introduction of various scientific indexes, such research is especially important.

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[44] This primarily includes the works of V.S. Stepin. See, for example: *Philosophical Anthropology and Philosophy of Science*, M. (1992); *Philosophy of science: The General Problems*, M. (2008).

[45] See the following works of D.A. Kerimov: *Philosophical Problems of Law*, M. (1972); *Methodology of Law* (Subject, Functions and Problems of the Philosophy of Law), M. (2000); *The Problems of the General Theory of the State and Law*, 3 vols, *Vol. 1: Sociology of Law*, M. (2001), and so on.

The purpose of this section is to outline some of the most relevant scientific problems of legal science.

1. The methodological problems of legal science have been repeatedly indicated in this book. Here the authors focus attention only on the issue that all humanitarian sciences without clear methodologies are prone to crisis and self-destruction. The reason is very simple. All humanitarian sciences, unlike natural sciences, have low intersubjectivity. They are very dependent on specific researchers. Furthermore, humanitarian sciences are less verified. Speaking simply, if five hundred years ago an apple fell down, today apples still fall down, and they will continue to do so in the future; this can be proved by every researcher. However, in legal science there are many abstractions and evaluated knowledge. Now, methodological problems, undoubtedly, are one of the main scientific problems of legal science.

Generally, we should agree with the opinion of I.L. Chestnov, who wrote that the theory of law today is not experiencing the best of times. And this applies not only to the domestic theory of the state and law, but also to the more prosperous Western legal science. The complexity of the situation of the theory of law is primarily concerned with the ideological crisis provoked by postmodernism.[46]

2. The above mentioned issue is causing another scientific problem: dependence on legal knowledge, level of education, ideology, worldview, and so on. Legal science is full of controversial conclusions. This is particularly evident in the history of legal science. Here there is a double subjectivity: the subjectivity of legal knowledge and the subjectivity of historical knowledge, which also depends on the ideology of the researcher and his or her beliefs and even emotions. For example, V.S. Nersesyants in his works on philosophy of law and history of political and legal doctrines describes how the law was quite restrained under the slave system in the law of the Middle Ages (when tortures such as breaking on the wheel, quartering, burning alive, etc., were allowed and actively used), but in later political regimes the law has left a noticeable bloody trail. But when it comes to the description of the Soviet system, bile, insults, and so on literally stand out from the page. As a result, this scientist came to the conclusion that in the USSR there was no law at all—completely and

[46] I.L. Chestnov, "Practical, Clavecinist Jurisprudence: Exit from the Dead End of Law Dogmatization," *Encyclopedia of Legal Science or Integral Jurisprudence? The Problems of Studying and Teaching: Materials of the 7th Philosophical—Legal Readings in Memoriam Acad. V. S. Nersesyants*, executive editor V.G. Grafskiy, M. (2013), 46.

totally. As V.S. Nersesyants wrote, "Social (including economic) relations are regulated here by other (non-legal) remedies and standards."[47]

This conclusion was not consistent with reality, according to S.S. Alekseev, who generally disagreed with the late ideology of V.S. Nersesyants and wrote that such an evaluation was not accurate.[48]

In particular, the autonomous development of blocks of private and public law under socialism was reflected in the fact that public law could be suppressed and changed by the non-legal methods of state authorities, but the private law remained a quite complete law, which was used by citizens and courts—other governmental authorities, who are competent in the sphere of private law. Thus, the institution of marriage, although it underwent certain technical changes in the Soviet period, still remained a legally true (honest civil-legal) institution. Citizens of the USSR entered into marriages, used the mutual rights and duties of spouses, divorced, had marriages recognized as invalid, and so on based on the norms of family law in administratively-legal or judicial order. Therefore all family codes of the RUFSR are laws, moreover, legal laws, and in fact the sources of law.[49]

However, the works of V.S. Nersesyants have many followers, who perceive the conclusions of this scientist as scientific facts and try to develop them. On the basis of these conclusions, legal science is also moving. But is this knowledge true? And can the extremely subjective conclusions of V.S. Nersesyants be the basis for studying the history of the state and law? Here is a question, to which side exactly is legal science moving?

It is remembered that in the 1990s a variety of dissertation councils worked really hard to protect research in which there was no criticism of the Soviet system.

In sum, there is no doubt that there is a serious scientific problem in legal science in such areas as constant subjectivity, exposure of ideology, worldview, political regimes, and other factors, which generally are external. There are many cases of one and the same scientist during his life repeatedly changing his opinion and relation to the law under the influence of such external factors rather than new scientific achievements in jurisprudence. It is enough to look at the early and later works of S.S.

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[47] V.S. Nersesyants, *Jurisprudence: Introduction to the General Course of the Theory of the State and Law*, M. (1998), 20.

[48] S.S. Alekseev, *Selected Works: The Science of Law: General Social Problems*, M. (2003), 97.

[49] About this, see A.N. Chashin, *Contemporary Legal Doctrines of Russia*, ed. T.N. Radko, M. (2014), 38–39.

Alekseev.[50] Thus, scientific problems in legal science don't merely depend on the knowledge of a specific researcher, but also depend on the era in which the research was conducted.

It should be said that young specialists solve this problem in a really very peculiar way. That is, often the following expression can be heard: it isn't important what work you have, it is important who your supervisor is. Unfortunately, such an expression is largely true. Many things depend on the status and credibility of the supervisor.

But really these things entail a deliberate dependence by young researchers on the opinion of their supervisors, which can be quite subjective. And it also means that science is dependent on their "authority," on their opinions and ideologies, but not always on their depersonalized knowledge.

Unfortunately, the science of law, like any humanitarian science, is reasonably subjective. It has its authority and quite rarely revises knowledge. This is largely due to the fact that many authorities don't allow things that contradict their reasoned opinion to enter the wide scientific discussion. There are less empirical measurements, having an objective character. These obstacles reinforce the role of the supervisor. The more the supervisor is respected, the more chances for protection and the publication of books or even articles.

Ideally, the knowledge should be depersonalized; however, lawyers cannot fully provide it. That is, it first gives an opportunity for dishonesty, and second reduces the rate of development of science.

3. A scientific problem that has become quite common in humanitarian science involves the mixture of monographs, manuals, and textbooks. For legal science, this is especially relevant. This issue concerns textbooks or manuals that have been prepared as monographs, yet are represented as independent studies or the combination of generalized research. At the same time, the content of some monographs is of a descriptive character, where the work doesn't pose questions and the research part does not reach reasonable conclusions. It seems that someone has specially mixed the concepts in order to confuse everyone.

Scientific research works should also be more or less clearly distinguished between theoretical, applied research, and scientific developments. Theoretical

[50] See, for example, S.S. Alekseev, *Civil Law During the Period of Detailed Building of Communism*, M. (1962); *The Problems of the Theory of Law: Lecture Course in 2 Volumes* (Sverdlovsk, 1972–73); *A Legal State Is the Fate of Socialism*, M. (1988); *The Lessons: Russia's Hard Way to the Law*, M. (1997); *Philosophy of Law: History and Contemporaneity, Problems, Tendencies, Perspectives*, M. (1999).

research is connected with the improvement and development of concepts and categories of the apparatus of legal science and is directed to the comprehensive cognition of objective reality. First of all it is directed to the elucidation of its essential relations and patterns; to applied research (there is research directed to solving specific socio-practical questions of legal science and scientific developments) and the resolution of scientific problems related to the creation of new methods, recommendations, and use of new forms of law and so on, in parallel with the improvement of that which already exists. It is unacceptable for such works to need the same requirements that are accorded to the introduction of their results into practical legal activity.[51]

In the Soviet Union there was also the problem of the mixture of monographs, textbooks, and manuals. But it was not scientific, and was associated with other causes. As remembered by the famous criminal law expert R.S. Belkin, the "Legal literature" could "digest" all lawyers who were willing to publish their monographs. Therefore, many criminal law experts published their monographs as manuals.[52] Nowadays, this problem has already become scientific.

4. The fundamental research of legal practice requires many years. Therefore, it is necessary to start researching much earlier, when there is a need for another natural transformation of the system of civil, criminal, and administrative proceedings. Only under this condition can scientifically-based recommendations and developments for the implementation of results into legislative and judicial practice be prepared on time and at an appropriate level. Offered recommendations and developments should be subjected to comprehensive discussion in the scientific community, wider legal society, and among practitioners.[53]

However, experience shows that in Russian life everything happens in an opposite way to how it should. There are very few long-term studies of legal practice. And dramatic changes in legislation are usually made spontaneously, quickly, and too late. Wherein, discussion of the draft laws in wider legal society isn't implemented. Practitioners are introduced to the new changes and, naturally, are not ready for them.

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[51] The indicated scientific problem in relation to the science of criminal law is well introduced by A.V. Volevodz. See, "About the Effectiveness of Implementation of Achievements of the Criminal Procedure Science to the Practice of Criminal Proceedings," *Library of Criminal Law Expert* 1.12 (2014): 360–70.

[52] See, R.S. Belkin, *History of Domestic Criminal Science*, M (1999).

[53] On this issue, see A.G. Volevodz, "Criminal-Legal Obstructions to the International Cooperation in the Sphere of Criminal Proceedings," *Library of Criminal Law and Criminal Science* 2 (2013), 164–72.

Thus, the legal science on objective and subjective reasons does not respond in time to changes in legislation and the practice of its implementation, and, generally, does not fully fulfill its function.

And here we need to argue that few scientific organizations are ready to conduct long-term research. Specialists have no desire to spend time on it because such research is costly, is not always beneficial from the point of view of using the results, and has no quick return in the form of, for example, scientific degrees, recognition, and so on.

One of the possible ways of solving the indicated problem is separate, well-funded, long-term legal research.

5. The problem of scientometrics in legal science. As you know, scientometric data in the last decade was actively used in science for different kinds of reports on scientific organizations and scientists themselves, and for the evaluation of their scientific activities over a certain period of time. The most common forms are various citation indexes, which are based on statistical scientific methods.

At this stage, the indicated methods have been slightly supplanted by the practice of commissioning expert evaluation of the works of scientists, and also by the method of reviewing scientists' separate doctrines.

In legal science, scientometric evaluations are becoming more common. Quite interesting books have appeared on legal scientometrics.[54] Some separate legal sciences are trying to develop their own scientometrics. Probably, the interest in scientometrics would be less strong if the universities did not have to pay higher salaries to those with higher index citations.

However, the dependence on payment isn't the only reason for the contemporary interest in scientometrics. The practice of reviewing, as you know, is always subjective and has all the disadvantages associated with subjectivism. This necessitated the search for intersubjective depersonalized methods of evaluation of scientists.

Focus on the relevance of scientists' doctrines through the number of citations of their works initially seemed quite attractive. However, the active use today of the practice of evaluation through the Hirsh index and other indexes of citations is also not free from serious objections, including subjectivism. For example, chief editors of scientific journals in making decision about publishing can give preference to authors who reference their works, and vice versa.

But there is also another side. Quoting an author doesn't provide an evaluation of the author's work. It only takes into account that reference was made to the work of a specialist. Thus, it is easy enough for the

[54] See, A.Y. Shumilov, *Introduction to Legal Scientometrics*, M. (2012).

quoted material from a book or article to be stupid or to express an opinion that is not in accordance with the law—and this work will be criticized, but also will be referenced and cited. A work attracting a negative assessment that is roundly criticized will end up with a high number of citations!

In the index of citations, great importance is placed on the popularity of the law. Thus, specialists in forensic-expert activity, due to the relative importance of their works for the specific legal science, will always have a lower index than specialists in the civil law. Moreover, specialists in the theory of the state and law, by its definition, will have generally higher rankings, because all serious scientific research begins with a theoretically legal basis.

It should be considered that interest in some branches of the law increases and then decreases. For example, today it is unlikely that anyone would be interested in works on collective law, although earlier they were quite popular. How should we evaluate the doctrines of scientists who are developing such law?

The same question relates to the works of separate scientists. Thus, earlier there were few references to the works of famous pre-revolutionary lawyers. Now, the opposite is true, and it has become popular to refer not to contemporaries but to the works of the Russian legal writers of the nineteenth and early twentieth centuries. There were vivid personalities in this period; interest in these works was almost extinguished, and then it vividly ignited. To these, for example, are related the works of the Russian religious philosopher of law I.A. Iliyn and the founder of the psychiatric concept of law, L.I. Petrazhitskiy.

Indexes of citation are not free from subjectivism and are also affected by the Russian custom of referring to the government of the state and not the leadership of ministries and agencies and so on. If we were to consider objectively and fully everything that was published in Russia during the twentieth century, the largest index of citation would be to works by K. Marx, F. Engels, and V.I. Lenin. During Soviet times, they were referred to in all scientific works. The same sort of thing, to varying degrees, is true to the present day. In the system of the Ministry of Internal Affairs, for example, there is a fashion to refer to the speeches of the Minister of Internal Affairs. In a number of universities it is necessary to refer to the doctrines of the rector (or dean of a legal faculty).

It is also an important ethical aspect. How ethical and correct is it to measure the contribution of scientists to science through the citation method? In principle, is it correct to use such a measurement? In cultural studies such comparisons have been avoided: e.g., which composer—

Tchaikovsky or Glinka—has been quoted more. In art studies, as you know, mathematics are not used to compare the contribution to art of Aivazovskiy or Repin. Furthermore, a question was repeatedly raised about whether there is the possibility of scientometric evaluations in humanitarian sciences, including jurisprudence.

If such evaluations are possible, thus, first, they should not be between each other (it is not ethical), and, second, they should be comprehensive. In addition to the number of citations, the following aspects should also be taken into account: their popularity in Russia, their popularity abroad, the number of monographs, their reconcilement, popularity, and use in the educational process at universities, and so on.

The big contemporary scientometric problem is to develop an objective scale for ranking scientists. Now, we can propose to use reconcilement, indexes of citation, and other evaluations together. It is necessary to say that in Soviet time there were works that were concerned with the scientometric problems of legal science. Such research was mostly carried out by specialists in the theory of the state and law and a number of sectorial legal sciences. However, the disadvantage of these works was that they mainly considered the problems of legal science from inside legal science. But, to be objective, it is necessary to "climb" over legal science and to look at the existing problems "above" and "from the side." For such evaluation and research needs philosophy and philosophy of law.

Special attention should be paid to this simple truth, because philosophy of law, as was already mentioned, sometimes tries only to study the "ideas of law," "the sense of law," forgetting about the scientific—truly philosophical—part of this scientific discipline.

In general, sociology of science now represents a quickly developing philosophical direction. It is quite possible that specialists in this field of knowledge will be delighted again by its achievements, which will be positively reflected on legal science.

§ 4. Problems of legal education at the present stage

Today, legal education in Russia is going through a difficult period. This is largely due to issues stemming from the early 1990s education reforms, which despite the changes in presidents, ministers of education, and governmental authorities in general has become permanent. The common phrase about the difficulties of life during eras of change is as relevant as ever for legal education. Thus, some problematic questions of getting a legal education today can be highlighted.

1. To the readers of this book, of course, there is no need to explain the importance of getting a completely qualitative legal education, and also that consequences may occur if an investigator, prosecutor, and so on pursues his or her legal activity without knowledge of the law and legislation.

Doctors, long ago realized the danger of getting non-qualitative medical education and don't allow it to be received in absentia. In legal science, however, it is still possible to obtain such an education in absentia.

The authors of the current monograph have repeatedly spoken against getting a legal education in absentia. However, this appeal, like the appeals of other specialists, still remains unpopular. On the contrary, it is very simple to get a higher legal education.

Since the 1990s there has been high demand in the Russian Federation for legal education. Demand, as is well known, breeds supply. In Russia, during the indicated period, dozens of legal universities and faculties have opened. The majority of institutes and universities considered it necessary to have a law faculty. Of course, such a deluge has had a sharply negative impact on the quality of the education.

However, for people already with a higher education, getting a lawyer's diploma provided significant and unjustified benefits. It allowed them to get a legal education not only in absentia but also in a short time.

In a word, such a state policy clearly showed that legal education in contrast, for example, to medical education could be said to be "second class."

Further reform of Russian education led to a partial transition to Western standards of education. In particular, the two-tier "bachelor–master" education system has replaced the former and understandable system, when one graduated as a "specialist." Here, a question occurs: why would someone believe that a foreign education is better? Experience of a community of foreigners (from students to professors) gives us the opportunity to make the completely opposite observation—that Soviet–Russian education is much better than overseas. During communication with colleagues from foreign states, even the most stringent opponents of Russia admitted that Russian education is at the least not worse than foreign. So why would Russia begin to copy the Western system? Diplomas from prestigious Russian universities were positively perceived in the West. Famous Russian scientists had no problem arranging to teach in the best overseas universities. And, to that end, no one was interested that a Russian doctor of sciences or professor had never received a specialty "master's."

However, in our country the two-tier system of higher education (bachelor–master) has been adopted. But what happened later? Further, people who had not received a specific bachelor of law were allowed to receive a specialty master of law. As a result, as was rightly argued by A.V. Fedorov, practice has shown that master's courses in the legal specialties have admitted a significant number of persons who received higher education in other subjects (zoology, geology, engineering, and so on). Not having a base legal education (and master's courses do not give such an education)—figuratively speaking, not being able to fly—they immediately begin to engage in the program of "highest piloting." It is impossible to imagine that a person who does not have a basic medical education would be allowed to start preparing, for example, to carry out a heart operation. Why does this not happen in medicine? Indeed, there, professionals are prepared in whose hands people's life and health are placed. So why is it possible in jurisprudence? In fact, lawyers no less than doctors (only in another sphere), are responsible for the life and health of citizens, the protection of their rights and freedoms, and the normal functioning of the state in general.[55] And if such master's courses are available from technical universities (shipbuilding, economics, engineering, mechanics, etc.), it is necessary then to wonder what type of lawyers we now have. Further, these "lawyers" consult with people, and as a result people are left without property and as debtors. Others end up letting innocent people get prosecuted—without malice, they just don't have enough knowledge to understand the case, and so on.

The same was said in principal by I.Y. Kozlihin. According to him, what is happening in the educational sphere can hardly be called reform, as reform is at least the system of goal-oriented actions, directed to the improvement of something.

> I was never lucky enough to meet someone among colleagues who endorsed what is happening: it was wrong and bad, and now has become right and better. First, the transition to the two-level bachelor–master system has destroyed the previous five-year system of education, which for all its possible disadvantages didn't recommend itself as bad. Now the former education system has been truncated to four years. There might be nothing wrong with this. The famous Soviet universities in Sverdlovsk, Saratov, and Kharkov did so. But contemporary four-year education is not the coherent system of university education of Soviet times, but something

[55] A.V. Fedorov on V.M. Marischak and O.D. Parshin's article "Contemporary Tendencies of the Development of the Institute of the Criminal Responsibility for smuggling" and in the master's course on the direction "jurisprudence," *Scientific Notes of St Petersburg Filial of Russian Custom Academy* 1.49 (2014), 272–75.

> chaotic. Everything came down, essentially, to the reduction of the courses and even exclusion of some of them. Two-year master's courses seem to be able to compensate for problems; in reality, nothing compensates as the master's courses accept not only bachelor-lawyers, but also specialists of the other bachelor specialties. Moreover, graduates of the master's courses receive the right to teach in the legal universities. The absurdity of this is obvious.[56]

Thus, legal education loses its status. And that status is quite high. Indeed, we repeatedly met and are still frequently meeting situations when economists, engineers, historians, members of the armed forces, and even doctors would like to have a higher legal education. Whereas, there are far fewer lawyers who want a diploma in engineering or the military.

Finally, it should be said that the increase in the number of legal universities and faculties, contrary to the naive expectations of some optimists, brought not an increase but a decrease in the quality of education. It is necessary to continue the process of certification of legal universities and faculties regarding the ability of preparation of the professional lawyers.

2. The next question concerned the possibility or impossibility of protecting dissertations for scientific degrees of legal-science candidates who do not have a higher legal education. Paradoxically, in Russia, for a long period of time, it was allowed to grant a dissertation on legal sciences to persons without a higher legal education. Were these works good? Unlikely. Such protections haven't contributed to the authority of legal science; there have probably been positive exceptions, but they are exceptions. Only in 2011 did the Government of Russia pay attention to this abnormal situation.[57] The government's decision, oddly enough, caused many protests. In Russia, it is seen as prestigious to have a higher legal education, and being a candidate or a doctor in the legal sciences is even more than that.

3. Focused on the practice of Western jurisprudence, it basically turned the students into narrow-profiled specialists. The contemporary capitalistic world, where, to put it mildly, economics has a significant influence, is

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[56] I.Y. Kozlihin, "The General Theory, Integral Jurisprudence or Encyclopedia of Law?" *Encyclopedia of Legal Science or Integral Jurisprudence? The Problems of Studying and Teaching: Materials of the 7th philosophical—Legal Readings in Memoriam Acad. V. S. Nersesyants*, executive editor V.G. Grafskiy, M. (2013), 11.

[57] Resolution of the Government of the Russian Federation from 20 June 2011. No. 475 г. "About Introduction of Changes to Resolution of the Government of the Russian Federation from 30 January, No. 74," *Meeting of the Legislation of the Russian Federation* 26, article 3799 (2011).

also waiting for those with narrow profiles; however, it is also ready for graduates of the universities who can work independently.

Soviet-Russian education, on the contrary, was oriented to the preparation of widely profiled specialists: engineers, doctors, and so on. It is hard to say which system is better. Experience shows that good specialists in any systems are drawn to knowledge and development. Narrow-profiled specialists, because they already have knowledge, seek to study theory more deeply. Widely profiled specialists seek to learn deeply in one or two directions. No wonder, it is said that any theorists of law should know a minimum of two directions in the law.

The danger consists in the fact that the Western system of education never destroys itself. We want first to destroy all that we have and only after that build something from the ruins (or, again, to copy from the West). Thus, scientists are asking the fair question: if we refuse our usual system of education, to whom, on what course, and to what extend do we need to teach fundamental legal disciplines: theory of the state and law, history of the state and law, history of political and legal doctrines? There is no clear answer to this question. As a result, we can't exclude that in the course of our "reforms" in our country we will lose or almost lose the basic legal disciplines; we will still be releasing attorneys but will have lost the school of teaching. In this case, sooner or later, but more likely earlier, the law itself will also be lost.

Moreover, "reforming," "pre-reforming," and "post-reforming" are constantly trying to step on the same rake: to appreciate and to develop what we have; to sprinkle heads with ash, to destroy everything, and then to think of a popular question: what should be taken further?

This question on the role of legal education has received a good and clear answer. S.S. Alekseev and V.F. Yakovlev wrote that it is important to focus not so much on the acquisition of great practical knowledge as on the acquisition of fundamental positions of science about the state and law, which will allow one to see like a specialist: seeing the regularities of its development, deeply understanding the objectives of its activities, detecting the problems proposed by life and finding ways of solving such problems, and constantly improving knowledge and independently increasing the level of professional preparation.[58] It is necessary to build cognition of any specific branches of law on precisely such a basis.

[58] Quotation according to V.V. Zaharov, "Contemporary Model of the Domestic Legal Education: Traditions and Innovations," *Encyclopedia of Legal Science or Integral Jurisprudence? The Problems of Studying and Teaching: Materials of the 7th Philosophical—Legal Readings in Memoriam Acad. V.S. Nersesyants*, executive editor V.G. Grafskiy, M. (2013), 154.

Such an approach is especially important and useful under contemporary conditions, where, as a result of the permanent growth of the number of laws, it is already impossible even with the help of electronic search systems to observe all the array of regulatory legal acts. Furthermore, it is impossible to include them in the system of education for further study. And it is even unserious to speak about their study in the frames of a bachelor's degree. Higher legal education should teach an understanding of law, the system of law, the regularities of its development, and the role of the state, law, and specific lawyers in society; it should teach independent work skills, their correct interpretation, and the correct implementation of norms of the law. Successfully highlighting this problem, I.L. Chestnov correctly noted that employers often meet graduates of legal universities with the phrase, "Everything that you have been taught in the university, forget it; now the elders will tell you what is necessary to work."[59] However, having a wide basic legal education, a desire to know the law and an ability to work independently, the majority of graduates had no problem in mastering the concrete norms.

In the development of the indicated phrase, there is sense in telling about the research, which was conducted for the purpose of the current monograph. This research surveyed 500 graduates of the Russian legal universities and faculties who had work experience of no less than one year.

The following questions were raised:

—Was your employer satisfied with the quality of your legal knowledge when you were applying for a job?

—How do you rate your knowledge immediately after beginning work?

—Did your knowledge of the theoretical-legal disciplines help at work during implementation of the specific norms of law?

The following answers were received:

—373 people responded that their employer wasn't satisfied with the quality of their legal knowledge. As a rule, they did not have enough knowledge according to the practice of implementation of the concrete norms of law, in order to be able to compose legal documents.

[59] I.L. Chestnov, "Practical, Clavecinist Jurisprudence—Exit from the Dead End of Law Dogmatization," *Encyclopedia of Legal Science or Integral Jurisprudence? The Problems of Studying and Teaching: Materials of the 7th Philosophical—Legal Readings in Memoriam Acad. V. S. Nersesyants*, executive editor V.G. Grafskiy, M. (2013), 48.

—347 people responded that they were not satisfied with their legal knowledge after beginning work. Wherein, 128 people responded that they were satisfied with their knowledge. And it was noted that many lawyers in the firms where they have worked over the years became "artisans"—that is, people who know a small number of legal norms and the practice of its implementation well. However, they didn't know (or forgot) other legislation and sometimes addressed simple questions, regarding the branches of law, which was not associated with the work. The remaining respondents abstained.

And finally, we were very interested in the answers to the third question:

—466 people responded that during the work of implementing the specific norms of law, they were helped by their knowledge of theoretical-legal disciplines and wide legal horizons.

Commenting on the answers, some respondents revealed that often at work attempts were made to push them into illegal (and sometimes criminal!) actions (e.g., they were asked to commit tax evasion, to give advice on how to deceive creditors, help to confuse a criminal investigation, or to challenge evidence collected by himself, etc.). And, especially, their awareness of themselves as lawyers, their understanding of the purpose of their work and their responsibility for their actions, stopped them from committing illegal actions. All this is the result of a good basic legal education.

It is significant, that in pre-Soviet and Soviet times, persons who preferred not to take on operational work in the security services were those with a higher legal education. This is because the fundamental legal education, which was given immediately after school, as a rule, produces consciousness, on the basis of the strict observance of the law. But, primitively speaking, it is hard to imagine an intelligence agent being strictly guided by the rules: don't cheat, don't steal, and so on. And not every lawyer could "cross" through settings obtained in his youth.

Thus, everyone who considers himself a lawyer should have a fundamental theoretical-legal knowledge.

4. The actual problems of teaching should also include the question of what should be taught to students as the fundamental science of law: the theory of the state and law, the encyclopedia of law, the integral theory of law or something else.

This question is not a new one for law and for higher legal education in Russia. It was actively discussed at the end of the nineteenth century. That discussion ended when the idea of the encyclopedia of law was refused.[60] Russian lawyers for the entire twentieth century have had to experience the essence of law without recourse to an "encyclopedia." And this way of cognition was successful. Why then rename the science under the clear and understandable name of "theory of the state and law"? It is unable to answer this question. Maybe, proponents of the encyclopedia of law sincerely believe that it would be better, and maybe the motive is the desire "to leave a trace in science," which in fact is nothing more than pride.

The argument of the proponents of the encyclopedia of law seems, at least, unconvincing. And the most important reason is that if somebody would like to invent something better, it is not necessary suddenly to abandon what it was. So that's that; however, the quality of teaching basic legal disciplines in the USSR, undoubtedly, was one of the highest in the world. Nevertheless, if the reforms in this part take on a "Russian" character, there would thus be a danger that everything will be as it always was: it will be refused from the position of the theory of state and law, and the new one would be worse. Certain steps in this direction have been made already. Thus, in 2008, a very interesting book was published under the name *Encyclopedia of Law*, which included sections about the dogma of law, sociology of law, and philosophy of law.[61] If it had been written as a monograph, had examined scientific questions, and had proved that the law should be taught as an encyclopedia, it would have been great. But the book was written as a textbook. Students who bought the book were confused. The same confusion arose in teachers. Who suffered at the end? The prestige of legal science and the authority of teachers. Not surprisingly, it became known that in some universities this really interesting book was not emphatically recommend by teachers as educational literature, because there is no subject in the university under the name of "encyclopedia of law."

Full higher education needs philosophy as the cornerstone and the theory of state and law and philosophy of law as philosophically specialized science, binding philosophy and the theory of law.

5. Another modern hobby was testing offsets, exams, and paper tests. In the legal sciences, this, unfortunately, is again a step backward rather than forward. Implementation of testing can bring benefits to the natural

[60] See, N.M. Korkunov, *Lectures on the General Theory of Law* (St Petersburg, 2004), 33–34.
[61] See, Y.I. Grevtsov & I.Y. Kozlihin, *Encyclopedia of Law* (St Petersburg, 2008).

sciences. In humanitarian sciences it is harmful rather than helpful. All humanitarians should be fluent in the Russian language to a high level, to be able clearly and exactly to express their thoughts. For lawyers, clarity and accuracy of expressing thoughts is essential. Another such skill is learned also during tests and examinations. This is not the only argument. It is necessary to consider that legal science contains a variety of mutually exclusive approaches to this or that phenomenon. For example, to right, state, law, and so on. What is the correct answer to the test question, what is right? It could be understood by legislators as the measure of freedom, equality, and justice, as a will of the ruling class, erected in the law, as a mental phenomenon, as the identity of law, and so on. How does the student know what worldview is held by the teacher or the person who is going to check the answers? Besides, the above mentioned issue is needed to understand that testing is a form of learning not how to think but how to make arguments and to prove what is important for jurisprudence, and by the method of elimination to guess the answer. However, such "solutions" are quite harmful for practical work, taking into account the diversity of situations in life.

6. The problem, which is not associated with reform of legal education, but directly associated with teaching, is a traditional and permanent discussion about that how many branches there are in legal science. This question is solved in completely different ways by different universities. Apparently, it is also taught in different ways. Furthermore, because of uncertainties, some universities are trying to teach a little bit from a variety of branches and in other universities teaching of some branches is almost absent. For example, prosecutor-supervisory and operational search activity are not taught in every university. The problem is not even whether branches of law are really the branches of the law, such as, for example, prosecutor-supervisory and operational search legislation, but whether there are others. In fact, operational search legislation, is almost the only branch that secures restrictions on human rights to the secrecy of private life, secrecy of correspondence and telephone conversations, and allows and regulates unofficial examination of homes, cars, and offices, and the collection of information on health, property, and material wealth, friends, and acquaintances. In other words, it regulates and protects against the complete invasion of private life and the natural rights of the person.[62]

Prosecutor-supervisory legislation, on the contrary, is an essential tool for the protection of human rights.

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[62] See, *Theory of Operational Search Activity*, ed. by K.K. Goryainov, V.S. Ovchinskiy, & G.K. Sinilov, M. (2006).

To the question about why these disciplines are not taught or taught in the regime of "3 lessons," we answer that these are not the branches of the law and the emphasis in the training at the requested university (faculty) is made on the detailed study exactly of the branches of law.

As a result, young lawyers don't always have a clear conception even about the legal system. Wherein, today two extremes are spread. Some graduates from the universities name not more than 10 branches of law in Russia (criminal, administrative, civil, and appropriate types of procedural law, to which are added constitutional, family and [rarely] one or two more branches of law). Or, alternatively, they list all possible types of legal branches, including aerospace, computer, and so on. The most interesting thing is that the same inconsistency and subjectivism can be found in academic literature. There, along with the generally recognized branches of the law, can be found the names either of newly formed branches or of branches the formation of which there is generally no doubt over.

There is doubt whether this book will mainly fall to the experts, who know well the debates about the number of branches of law. There is no sense to repeat these debates. Our purpose is to show the necessity and importance, finally, in according the indicated question "to a common denominator."

In this context, there is great interest to be found in S.S. Alekseev's offer about classification of branches of law and in allocating the classification in accordance with the respective branches.

The scientist divides the law into three main components:

1. *The profile, basic branches*, covering the main legal regimes; moreover, it is necessary to select and put over the entire system of branches a really basic branch of the entire system—constitutional law; then three material branches—civil, administrative, criminal law, and the appropriate procedural branches—civil procedural, administrative-procedural, criminal-procedural law;
2. *Special branches*, where legal regimes are modified, adapted to specific spheres of social life: labor law, land law, financial law, social security law, family law, criminal-executive law;
3. *Comprehensive branches*, which are characterized by connecting dissimilar institutions of profiling specialties and branches: commercial law, the law of prosecutor supervising, naval law, environmental law.[63]

[63] S.S. Alekseev, *The Law: Alphabet—Theory—Philosophy: Experience of Comprehensive Research*, M. (1999), 45–46.

It seems that on this level of development of science the process of cognition through its classification is quite acceptable. In this regard, we suggest that the academic literature and teaching of law should be based on S.S. Alekseev's proposed classification.

Above we outlined several problems of teaching legal disciplines in modern Russia. It is very important not to gloss over these problems, but to reveal, to criticize, and to unite efforts to fix them.

In conclusion, we would like to quote the words of D.A. Kerimov about what legal education should be. The scientist writes that the sense of legal education should be not only in the "coin box" of the various and numerous pieces of information and forms of knowledge, as in the acquisition of critical thinking skills and in communication ability in the facts of legal life, but also concrete practical solutions to relevant important legal cases, in their strict logic and evidence. Legal education seeks not only to comprehend complex legal phenomenon and processes, but also to sow in the souls of students "the holy fire" in terms of creative daring and bold innovations, opening new horizons of legal theory and practice.

For the achievement of this goal it is necessary to have knowledge of not only the fundamental "dogmas" of jurisprudence but also to a certain extent other sciences, which have in varying degrees a relation to constantly existing legal problems. After all, the most fruitful and promising ideas, theories, and concepts are born at "junctions" of two or more sciences. It is appropriate in this context to remember that legal education in Russia originally and traditionally was organically associated with the entire complex of other branches of knowledge, in particular with philosophy, sociology, ethics, and psychology. Russian lawyers were obliged to have a breadth of views, high culture, and morality, to be encyclopedic, and to know the uniqueness of the psychological nature of the nation, national customs, and traditions of development. These principles should be implemented in contemporary legal education.[64]

§ 5. The main problems of contemporary legal practice

Legal practice seems to be far away from philosophy and philosophy of law. It is a cliché to say that philosophy is not needed where it is necessary to work, but is needed when talking about work.

However, from the practice of the implementation of legal rules comes the belief in law, legal consciousness, and a normal way of life of society.

[64] D.A. Kerimov, *Selected Works*, 3 vols, vol. 1, M. (2007), xxi.

And on the contrary, if practice turns around relation to law, then we see the appearance of legal nihilism, an increase in the number of violations, and social being ceasing to be healthy.

Moreover, a number of practical questions have already gone beyond the comprehension of practitioners, and its significance is achieved not only at a theoretical-legal level but also at a philosophical level.

Some of these global questions will be covered in this section.

The first problem is an excessive formalization of the norms of procedural law, the ordinary routine of doing even simple legal cases. This provision, of course, is inconvenient for participants in the legal relationship. People don't want to mess with the law, because it "will be ridden on the courts," will be forced to come out at an inconvenient time, and will involve repeating one and the same words and speaking publically on unpleasant occasions.

But if ordinary citizens in order to participate in proceedings need to ask for a leave and endure other inconveniences, so for the legal clerks, even from the side of the state, there is work. And the work they make is important often not only for the result but also for the sake of the work itself, for its process. They don't particularly need the result. And it seems that it isn't needed for the state.

It can be confidently stated that the law is still moving in the direction of the strengthening of formalism. This also applies to Russian law, which was traditionally criticized, and to the rights of developed foreign countries, where the number of regulatory legal acts already exceeds the level of study, even if one was to spend one's whole life on it. There is more and more formalization of legal actions in the law—step-by-step regulation of the steps and the smaller steps. Accordingly, in the process of smaller violations, if the procedural procedure is violated, it can be interpreted as a real violation of the law with appropriate conclusions. In some countries, sometimes it is impossible to undertake some processes without violating some formality! Furthermore, legal science, what was written about above, is still developing in the direction of detail of all procedural actions; scientific works dazzle with proposals to regulate whatever can be regulated.

However, it is necessary to have a good understanding of what was paid attention to several times above: that the law is not as bad as its interpretation and its interpreters. Indeed, the norm of law cannot always be ideally described, and, moreover, it may not be possible to understand it clearly. As a result, very different interpretations occur of simple and by definition not compulsory actions for regulation. Such interpretation leads sometimes to disastrous consequences.

In confirmation of his words, we can bring two paradoxical examples: one, from Anglo-Saxon law, another from our Russian law.

In England, a person was judged innocent of committing a crime because the prosecutor was late to the trial. The English judge, who strictly complied with all formalities, began the trial at the appointed time and determined that the defense was present while the prosecutor was not. He thus came to the formally correct conclusion that if there is no one to blame, there is therefore no prosecution; thus, he listened to the defense and acquitted the accused. A lot of noise was made about this story, because the society did not understand why they then needed criminal proceedings. Are they necessary to comply with formalities or to achieve the highest justice, protection of the rights and health of citizens, and the protection of people?

An even more wild case occurred in Russia. To understand it, we need to describe it more precisely. Earlier, the Russian CCP had disadvantages, but in comparison with its present wording it was not understandable enough. According to the Russian CCP, a criminal case was initiated during the detection of a fact of crime; the person who committed the crime was accused under the same criminal case, and after investigation the case proceeded to court. If it was revealed during the investigation that the accused person didn't act alone, but in a group, the other participants also faced a charge in the same criminal case. Questions on the application of the indicated norms from the prosecution, the defense, and the court didn't arise.

The vagueness and excessive formalization of the demand of the modern CCP led to the practice whereby a criminal case, directed to the court, should be initiated not in fact but against a concrete person; otherwise, it has been argued, the person's rights to defense would be violated. Therefore, now, after initiating the criminal case by the fact of the crime, after setting a case against the person who committed the crime, it has become necessary to initiate another criminal case against the criminal. Then the criminal cases are joined into one case and sent to the court.[65]

And now we come to the case itself. In a certain city, the fact of the rape of a girl initiated a criminal case. A maniac, who committed the crime, was found and a criminal case was initiated against him, which was joined to the case initiated earlier. During the investigation it was established that the maniac acted with an accomplice. He was also found and the criminal case was formed within the framework and he was

[65] This, by the way, improves the statistics of the authorities of pre-investigation, because the number of cases investigated and directed to the court increases.

accused. In the court, in the first instance, both maniacs were found guilty under the weight of the collected evidence and a severe punishment was imposed.

However, the Supreme Court of the Russian Federation revised the judgment. In its decision, it was noted that a separate criminal case against the second maniac was not initiated. That is, strictly formally, he was accused and the evidence was collected without the existence of a criminal case against him. So, formally, all the collected evidence against the second maniac had no legal power. The second maniac was acquitted!

This is despite the fact that the norms of the CCP in this question are unclear; there is no unambiguous, understandable requirement to initiate separate criminal cases against all participants.

Did the law and justice prevail in the given examples? This is doubtful.

In the end, it actually turns out that in terms of practice, the right is not with the law and justice but with lawyers and formalities. Practical workers sometimes have no understanding of law, the sense of law, and the purpose of their work. Hence, murderers and maniacs are acquitted due to a failure to comply with formal procedures, and not the failure to comply with the rights of the defendant. It should be remembered that one of the judges, pronouncing an acquittal for violation of the law, said: "Of course, the failure to comply with the law, I could have eliminated during the trial. After all, it is clear that the defendant is guilty. However, I specifically brought in an acquittal in order that the prosecutor will receive punishment later and learn how to work!" However, prosecutors can't be taught by these methods, only because there is part of them that does their work not for the result but for the sake of the work itself.

This raises a serious theoretical-legal and even philosophical-legal question about the limits of legal regulation, and also about the true aims of legal work—criminal proceedings.

The second problem associated with the truth in law concerns the following issue. Earlier, in pre-Soviet times, legal disputes were considered as an absolute rule establishing an objective truth. This order was also saved by the Soviet legal era. On this postulate, all generations of Russian lawyers were raised.

However, with the reforms and cataclysms that happened in Russia at the end of the twentieth and the beginning of the twenty-first centuries, Russian legislation was affected by global transformations. Their magnitude is largely associated with the issue that the Russian Federation removed the requirement to establish an objective truth from the CPC (Civil Procedural Code), APC (Administrative Procedural Code), and

CCP. It was replaced with conventional, contractual, and other "legal" truths.

At the same time, legislators were hurried as always and did not edit the legal norms to ensure they would have an unambiguous interpretation. As a result of contradiction in the laws, the practice began to decline, and specialists in the sectors of legal science and in the theory of law were divided in their opinions. The question thus rose to a new, already philosophical level. It is necessary again to evaluate what an objective truth is, whether it is possible to establish it, and whether it is necessary to establish it in the legal disputes.

In philosophy, truth is understood as knowledge that objectively reflects actual reality. Truth can also be defined as the conformity of thoughts to reality. These definitions reflect two characteristics of the truth: *objectivity and concreteness.* Under objective truth is understood the adequate reflection of an object by the cognizing subject, reproducing the cognizing object so that it exists by itself, outside consciousness. There is no subjective truth, as there is no knowledge, which could be true for one person but wrong for all others. Concreteness of truth is a reflection of the knowledge of a certain relationship and an interaction inherent in the study of phenomenon, depending on the conditions, pace, and time of their existence. Abstract truth that is fit for all life occasions doesn't exist. The truth is always concrete.[66]

Procedural law in Russia was always directed to the achievement of exactly objective truth.

The need to establish an objective truth, without a doubt, contributed to the development of the dialectical method of cognition. In philosophy, the dialectical doctrine about the possibility of establishing an objective truth was the guide for the entirety of legal thought. In many foreign countries,[67] on the contrary, objective truth was not accepted or established. To a certain extent, such a task was also associated with philosophy. In the mentioned countries there was no appreciable dominance of dialectics and a theory of cognition based on it. In the philosophy and culture of such countries, which were already written about, other theories of cognition were quite common, including the idea of the impossibility of establishing objective truth. In such circumstances, something named "legal truth" was born in the West. The indicated definition has little in common with objective truth in the philosophical sense. It is associated with the decision of a court, issued in a particular case. And such a decision, issued in

[66] *Philosophy*, ed. by V.P. Salnikov (St Petersburg, 1999), 285–86.

[67] First of all in England, in the USA, and in other countries with the Anglo-Saxon system of law.

compliance with all necessary procedures, is considered to be not only legal but also true!

The fact is that the truth of legal truth is conditional. It may coincide with an objective truth, or it may not. In reality, legal truth is a kind of notional unit of the assessment of the fairness of justice. Legal truth can be called a kind of fruit, the result of the agreements adopted in society in terms of justice.

What we have set out illustrates the influence of the culture and mentality of the West on the law. Western society is pragmatic. It is advantageous for them to resolve disputes quickly and clearly, rather than "digging" into the nuances of cases. Society has become accustomed to the idea that it is more optimal to make decisions on the basis of legal precedent, rather than to examine again all evidence in search of this unknown "justice." Furthermore, for the West, "economy" has always had a special meaning. They do not impose the court costs on the parties of the case, a practice that existed abroad for centuries. These costs include those directly related to the proceeding and also the costs that accrue directly from the collection of evidence. The court, according to the established practice, should not search for evidence and prove it. It acts as an arbitrator and only evaluates evidence, for which the parties incur the sometimes significant costs. Besides, the factor of the speed of justice has a physiological and not only economic importance. In addition to that, of course, establishing a legal truth is easier than an objective one. To make a decision about who better has proven rightness is easier than to investigate the case in detail.

As a result, Western society has got very accustomed to the idea that the person who gave the best arguments is right from the point of view of the court. And behind the person who is said to be right is legal truth. Yet it is unimportant that this truth is actually a fiction—a shield—rather than the truth. I.L. Chestnov highlights interesting results of research conducted by lawyers in the USA. He writes even by the 1930s US "realists" showed how greatly the decisions of a judge were influenced by the judge's culture (education in northern or southern states), race, religious affiliation, age, and gender, as well as the judge's subconscious image of the parties—participants in the trial, and supporters of the "school of critical legal research" in the 1970s and 80s—political and ideological preferences, and socio-economic status.[68]

[68] I.L. Chestnov, "Criteria of the Modern Understanding of Law," *Philosophy of Law in Russia: History and Modernity: Materials of the 3rd Philosophical—legal Readings in Memoriam Acad. V. S. Nersesyants*, M. (2009), 258.

In general, any trial is a cognitive activity. Is it possible from the perspective of cognition to consider legal truth to be the truth? Obviously it is not. From the philosophical point of view, legal truth is not truth at all. The word "truth," in the sense this words is being used, was probably chosen for its relevance to justice. Legal truth is sometimes named a "formal truth," "conventional truth," "judicial truth," or "contractual truth." In this case, synonyms for the word "formal,", "conventional", "judicial," and "contractual" were apparently chosen in order to underline the falsity and incorrectness of using the term "truth" in such cases.

Actually, there is no legal truth at all. There is only one type of true knowledge—what is true. There is only one type of untrue knowledge—what is false, inaccurate, and incorrect. When we say "legal truth," then, we need to understand it as the simple *judicial decision* that is the most appropriate for the particular situation. If the word "truth" is important for a particular legislator, so to avoid confusion he proposes to use the term "conventional truth";[69] that is, it is knowledge that can be considered really relevant to reality (correct, clear) only with an established share of assumption. The term "conventional truth" shows and emphasizes conventionality and the possible inaccuracy of what lurks behind knowledge. However, the legislator didn't yet accept this proposal.

Currently, as a result of the reforms in arbitration and civil proceedings, it is proposed to establish not objective but legal (conventional) truth. Wherein, the principle of establishing such truth is treated as "regulatory leadership, the beginning of civil procedural law, in accordance with which movement of the trial . . . should go in the direction of using all that prescribed by the civil-procedural norms, which means *for the authentic, and in cases that are impossible or inappropriate under the law, the likely establishment of circumstances* [our emphasis], having relevant meaning for the proper resolution of the case on its merits."[70]

This approach, occasionally encountered in modern procedural literature, is rightly criticized by reputable scientists. That is, M.K. Treushnikov writes that the author's statements, denying achievements of the truth as a goal of justice, are built on abstract and formal judgments. The lack of guidance in the CCP of the Russian Federation on the duty of the court to take all statutory measures for comprehensive, full, and objective investigation of the actual circumstances of a case is taken as the basis of reasoning. Indeed, the author points out, this has changed the

[69] See, S.I. Zakhartsev, *Science of Operational Search Activity: Philosophical, Theoretical-Legal and Applied Aspects* (St Petersburg, 2011); S.I. Zakhartsev, "Law and Truth," *World of Politics and Sociology* 9 (2012), 146–52.
[70] See, G.L. Osokina, *The Civil Process*, M. (2013), 137.

conception of the CCP of the Russian Federation from the point of view of the principle of competition as a mechanism for achieving the truth, but not as a refusal from this goal of justice. On the contrary, in the new version of the CCP and APC the set of types of evidences are extended to include detailed rules of evaluation of evidence, introduce regulations for the participation of specialists in the process, and save previously existing guarantees for checking the legality and validity of judicial acts.[71] The same thing applies to other specialists.[72]

Statements from a number of authors discuss the issue that according to modern civil, procedural, and arbitration law in Russia before the courts a goal is not set to reach the truth, and the courts don't reach this goal, which differs from the objective indicators of judicial statistics. These are the results of the activities of the courts of appeal in cassation and supervisory instances. The cancellation of the judicial acts in these instances, as a rule, evidences judicial error and not the achievement of truth by the court in the first instance.[73] The same was true in pre-Soviet times; for example, famous Russian lawyer E.V. Vaskovskiy wrote that the aim of proving a statement is to establish that it is true.[74]

And, moreover, an objective truth is necessary if it is to be established in criminal-procedural law, which also suffered from the reforms. Almost all authoritative pre-revolutionary specialists have written about the necessity of establishing an objective truth in criminal proceedings, including I.Y. Foynitskiy, S.I. Viktorovskiy, V.K. Sluchevskiy, and others.[75] For example, I.Y. Foynitskiy wrote that the truth is the highest law of justice and that the desire for it must be imbued in all his measures. The indicated position was supported also in Soviet times. That is, M.S. Strogovich indicated that the truth established in the criminal process, which is the result of the investigation that is resolved by the court case, is an objective truth. This is the complete and accurate accordance of reality with the objective results of the investigation and the court case with the

[71] M.K. Treushnikov, *Judicial Proofs*, M (2005), 12.

[72] See, for example, A.T. Bonner, *Establishing the Circumstances of the Civil Cases*, M. (2000); S.M. Amosov, *Judicial Cognition in the Arbitrage Process*, M. (2003).

[73] M.K. Treushnikov, *Judicial Proofs*, M (2005), 15.

[74] See, E.V. Vaskovskiy, *The Civil Process: Chrestomathy*, ed. by M.K. Treushnikov, M. (2005), 362.

[75] See, for example, I.Y. Foynitskiy, *Course of the Criminal Proceeding*, 2 vols (St Petersburg, 1996); S.I. Viktorovskiy, *Russian Criminal Process*, M. (1997); V.K. Sluchevskiy, *Textbook of the Russian Criminal Process*, M. (2008).

circumstances of the investigation and its resolution in the court case about the guilt or innocence of the prosecuted persons.[76]

The CCP of the Russian Federation didn't reproduce those provisions. Scientists involved in the preparation of the new law explain that the requirements for comprehensive, complete, and objective research of the circumstances of the case were allegedly incompatible with the CCP of the Russian Federation's principle of competition and the special role of the court—which is designed as an arbitrator that does not support either one or the other side—in solving the argument between the prosecution and the defense.[77]

However, under the chaotic requirements of the CCP of the Russian Federation, with all its inconsistencies, the aim of establishing an objective truth according to the case, even if not clearly and plainly regulated, is still a guarantee of legitimacy. Developing the indicated thought, K.F. Gutsenko noted that references to truth were excluded from the criminal-procedural law, and that, while some guaranteed achieving its provisions, it cannot by itself "liquidate" this objective, nor depend on legislation on the regularities of cognition. That's why the legislator was forced to make provisions in the CCP of the Russian Federation for a number of procedural rules, directing preliminary investigation and judicial proceedings in a certain way, which, ultimately, should lead to the establishment in each criminal case of exactly that which has long been called the truth—what is true. The rules of this kind include, for example, provisions that define the subject of proof that fully and comprehensively covers the circle of circumstances necessary for the correct resolving of a criminal case; clear requirements, applicable to merits and procedural forms of proof; the responsibility of the relevant authorities and officials to make decisions on the basis of their inner conviction on the totality of relevant, admissible, reliable evidence.[78]

The given arguments indicate that imposing the principle of adversarial law in the modern CCP of the Russian Federation is quite combined with the principal of the comprehensive, complete, and objective investigation of the circumstances of a case. As for the court, acting on the opinion of the authors of the modern CCP of the Russian Federation, who have made its role only that of a referee who does not establish an objective truth, it is necessary to pay attention to the opinion of S.A. Sheyfer. According to his opinion, we cannot agree with such a structure for several reasons: primarily because of certain requirements that convictions cannot be based

[76] M.S. Strogovich, *Course of the Soviet Criminal Process*, M. (1968), vol. 1: 132.
[77] See, S.A. Sheyfer, *Proof and Proving in Criminal Cases*, M. (2009), 37–38.
[78] G.F. Gutsenko, *Criminal Process*, 206.

on assumptions. This requirement, coupled with a determination of the validity of the verdict as the actual circumstances of the case, means that while bringing a conviction, the court should be convinced in the correctness of its conclusion about the guilt of the defendant—that is, that it should not be guided by formal truth but rather by material, objective truth. The proposed structure is also based on the false interpretation of the role of the court in the adversarial process, as if completely removed from the establishment of the de facto circumstances of the case. The court, while remaining the subject of proof and being required to remain an objective and impartial arbitrator, has a right, however, to collect evidence in order to verify evidence that has already been given to it, or to clarify otherwise unclear things or circumstances.[79]

Indeed, disclosure for many crimes is complex and difficult work, which it is not always possible for an investigator to cope with. Besides, sometimes unfavorable situations hinder the establishment of the truth: a lack of informative traces left by the event, their destruction due to natural phenomena or citizens who lack an understanding of their meaning. But an objective difficulty of investigating crimes doesn't mean it is impossible to establish the truth through a criminal case. Against such a possibility, many of the highlighted crimes remain unsolved to the present day. The possibility of cognition of the truth despite the difficulties is a manifestation of a philosophical principle of the cognition of the world. Different positions entail the transition of the agnosticism's positions, with which it is impossible not to agree. And this pattern is confirmed by the practice of disclosure of serious crimes that for many years remain unsolved.[80]

The same position was always defended by the authors of the current book, remembering the aphorism of famous ancient Roman lawyer Minucius: the truth goes towards the one who is searching for it.[81]

We completely agree with the specialists over the necessity of finding an objective truth that accords with criminal cases, which makes it necessary to add some more thoughts.

1. The lack of the necessity of finding an objective truth would greatly complicate the identification and proof of the facts of bringing to criminal liability the obviously innocent and would lead to deliberately incorrect

[79] S.A. Sheyfer, *Proof and Proving in Criminal Cases*, 46–47.
[80] Ibid., 44–45.
[81] See S.I. Zakhartsev, "Proving, Proofs and Kinds of Proofs," *Criminal-Procedural Law*, ed. by V.I. Rohlin (St Petersburg, 2004), 159–60; S.I. Zakhartsev & O.A. Chabukiani, *Operational-Search Events and Investigations: Concepts and Relationship* (St Petersburg, 2010).

judgments. Is it possible in principle to talk about the deliberate innocence of a person or about a deliberately incorrect judgment? If we do so, are we admitting that it is impossible objectively to establish guilt?

2. If there cannot be a principle of comprehensiveness, completeness, and objectivity of investigation, as many processualists consider in the modern CCP of the Russian Federation, then, apparently, criminal proceedings seem to be a one-sided, incomplete, and unobjective process. However, who needs such proceedings? Obviously, neither victims nor accused would be interested.

The most acute problem is understood by investigation officers, employees of operating units, and prosecuting officers. They remember what happened in Russia in the 1930s and 40s, the years of the mass repressions, when finding an objective truth was formally required, but actually finding the truth wasn't encouraged. Therefore, the vast majority of practitioners recognize that to avoid a repetition of such lawlessness, it is necessary to establish an objective truth.

It is ironic that scientists, who support formal rather than objective truth, used generally to fight for the expansion of the rights of the accused. Now, however, their efforts focus on the criminal proceeding foundation of lawlessness in regard to the accused: the investigator, who is investigating the case, will not be affected whether or not the accused is guilty; the prosecutor, supporting the charges, will be indifferent to its content; the court without seeking the truth, but trusting the prosecutor, will bring an indictment against an innocent person.

In 2008–9 a survey was conducted of 500 operational employees with work experience exceeding one year.[82] Of the total, 477 (95.4%) considered it necessary to establish an objective truth.

However, the question of whether it was always possible to establish an objective truth during operational-search activities obtained the following answers:

— 367 persons (73.4%) said that truth is established in three-quarters of cases
— 102 persons (20.4%) indicated that truth is established in two-thirds of cases
— 31 persons (6%) abstained[83]

[82] See S.I. Zakhartsev, *Science of Operational Search Activity* (St Petersburg, 2011), 214–15.

[83] It is necessary to clarify that the failure to identify the truth here implies unsolved crimes, but not the implementation of cases in relation to the innocent.

Not only in scientific publications but also in practice, we have to face a surprising opinion: if the investigator sees the innocence of the defendant, he still needs to send the criminal case to the court in order to receive an acquittal. It is argued that acquittal declares a person innocent of committing a crime, and the decision to dismiss the question of the guilt of the accused is not completely removed. But if we are to establish an objective truth, the court under these circumstances cannot make either an acquittal or a conviction.

Thus, it appears that the previously established Russian approach to the compulsory establishment of objective truth is acceptable and necessary for the proceedings. Thus, the principle of establishing legal truth, practiced in some countries, has repeatedly come under criticism from foreign specialists because of its ambiguity.

As was already noted, in 2010 the Institute of the State and Law of the Russian Academy of Sciences hosted the 5th philosophical–legal readings in memoriam acad. V. S. Nersesyants on the theme "Standards of scientific legal theory." The participants on the standards of scientific jurisprudence included also a requirement for truth.[84] That is, for legal science, legislators also required the establishment of objectivity and truth. Otherwise, actually, it cannot be, because in the absence of truth in the science, the science itself loses meaning.

But it remains a mystery why, if the possibility and necessity of establishing truth in legal science is accepted, do legislators not consider it as a necessary achievement of the truth in law enforcement? Such specialists should try to "climb" over their purely practical knowledge, to evaluate the essence of law and law enforcement, to begin to explore (or explore deeper) philosophy of law. One should pay attention to the precise words of V.D. Zorkin: "I think that the vocation of the philosophy of law and their supporters is not in looking up from the people, to bring them ideas that lead to the law, that lead to the truth."[85]

We believe it is necessary to establish in the proceedings an objective truth. The legal truth from the point of view of the theory of cognition is not a truth.

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[84] V.G. Grafskiy, "It is Early to Make a Point, Instead of a Conclusion," *Standards of Science and Homo juridicus in the Field of Philosophy of Law: Materials of the 5th and 6th Philosophical–Legal Readings in Memoriam Acad. V. S. Nersesyants*, M. (2011), 159.

[85] V.D. Zorkin, "Philosophy of Law: Past, Present, Future," *Philosophy of Law at the Beginning of the Twenty-First Century through the Prism of Constitutionalism and the Constitutional Economy*, 45.

The third problem from practice required philosophical-legal reasoning. It is because lawyers in their practical activity often work against the law, against justice, and in favor of specific persons.

In this also seemingly understandable question, there is a serious philosophical problem. After all, young people who after school enter universities to understand the law, clearly do not do so with the goal of protecting maniacs, justifying thefts, deceiving people, and telling criminals how to commit crimes and not get caught through manipulating imperfections in the law. We are talking in this case about lawyers, or even mostly about lawyers of firms and organizations and solicitors.

Why then, do those who have been studying the law in their absolute mass, seeking to know and follow the laws, then work against the law, against justice? First of all, primitively thinking, they are guided by the material aspect.

But we want to put this question in a slightly different form. After all, if a doctor ceases to treat a patient or even tells him how to kill himself, he becomes a criminal. If an economist, knowing all the details of the economy, begins to advise on how to steal unnoticed, he also becomes a criminal. If an engineer begins to tell others how to avoid compliance with technologies and not get caught, he becomes an offender, and so on.

Only lawyers (advocate, legal adviser, lawyer in the company) can imply that they will tell you how to break the law and to avoid responsibility for it. And such lawyers, paradoxically, seem to be necessary for society.

Furthermore, the actions of the indicated doctors, economists, and engineers are strictly constricted by morality. In addition, they will be told, you were taught to heal, to build, to invent, to save and so on. But nobody says that to lawyers. Furthermore, if the lawyer is able to turn an illegal case in his favor, in the eyes of society he will be a good specialist!

What is the reason for such surprising turns of our being? What are the specifics of the lawyer's occupation that make it necessary for him not only to comply with the law but also to struggle against it? Does this lie in the imperfection of society, in the priority of material values over the spiritual, in the weaknesses of people, or in the genesis of law itself as a controversial, multivariate entity? No part of the science can fully answer the asked questions, only philosophy can.

To help those who will be engaged in the indicated problem, we conducted research. This involved interviewing 600 first-year students of legal faculties and universities, 600 third-year students, and 600 graduates. They were asked the question, "Are you studying to be a lawyer to help

law offenders and criminals avoid responsibility, protect law offenders in the court, and consult on how to get around the law?"

The answers were as follows:

— 479 first-year students answered that they were not. 98 persons said that they were. The remainder abstained.
— 337 third-year students answered that they were not. The willingness to defend iniquity was expressed by 181 persons. 82 students abstained.
— 288 graduates said that they were not. 247 graduates said they would protect and help even criminals. 65 abstained.

If we had been asking already practicing lawyers, it would not be surprising if it turned out that the vast majority of them would be ready to help criminals. Wherein, almost all lawyers have at least once consulted their friends, relatives, and acquaintances about how to get around the requirement of the law.

The fourth problem: corruption in law enforcement.

Corruption in law enforcement is not only a Russian phenomenon. People are suffering in other countries from the indicated evil, which has been proved by many foreign publications. For example, the famous French writer Stendhal at the beginning of the nineteenth century wrote, "Justice was almost always corrupt."[86]

In recent times, much has been written and published about corruption and much research has been conducted. These works are informative and sufficiently in detail to reveal the essence of the problem. But there is no tangible movement in the direction of improvement. And the reason is not that scientific recommendations are not implemented in practice. The majority of countries struggle against corruption in the legal sphere and take into account the opinion of the scientists.

The main reason is that the vast majority of scientific research into corruption in law enforcement is conducted from the bottom up. They start from specific cases where such corruption has been manifested.

Corruption in legal practice in general, and in Russia in particular, requires a philosophical and philosophical-legal study starting from long ago. This study in the first approximation draws a bleak conclusion, because in the legal sphere, in the law enforcement, everything is ready for corruption. Thus, we can observe the following points:

[86] *Encyclopedia of Aphorisms*, M. (2003), 439.

— It is not necessary to establish an objective truth. Accordingly, any decision—fair or not—is suitable, if only this decision can be justified.
— The laws are highly formalistic, which makes it difficult to instigate their full compliance and means that they can be used to accuse the opposite party in the violation of the law.
— Lawyers even on the student bench are ready to study law in order to earn money from their knowledge, regardless of whether they are defending justice or injustice.
— We witness the professional deformation of legal awareness of law enforcement officers.

As a result of the above, a corrupt judge who takes a bribe for an illegal decision has a high qualification and can skillfully turn the case as necessary to be directed as he wishes. And it is extremely difficult to prove that he was guided by the motive of corruption. Furthermore, in many countries there are restrictions on the conduct of operational search activities in relation to judges.[87]

The concerns outlined above are applicable not only to Russia but to almost all countries—and not only to judges, but also to investigators, interrogating officers, and prosecutors. In every country, a competent lawyer is able to interpret a case so that its meaning will change.

It seems that without solving the outlined global problems in this chapter, it is almost impossible to struggle effectively against corruption in law enforcement.

The fifth problem is peculiar to Russia—the prestige of judicial law in Russia is not high. People are still slowly getting used to the courts as the way to solve conflicts, argue, and understand who is right. Often it is believed that a judge who helped one side to win the dispute was not disinterested (Russian proverb, "The laws are nothing for me, if I know the judges") or the judge is unintelligent and doesn't understand the laws properly. The courts haven't yet gained significant credibility in Russian society.

In the legal state the court, as you know, occupies a special position. After all, people appeal to them in cases of disputes and conflicts. In Russia this is not observed yet.

The non-authority of the court well shows also the underdevelopment of arbitration courts. As is well known, entrepreneurs and, particularly, successful businessmen from all over the world, traditionally solve

[87] S.I. Zakhartsev, *Operational Search Activities in Russia and Abroad*, ed. by V.P. Salnikov (St Petersburg, 2003).

questions in the arbitration courts, because there they can participate in the choice of their judges. In Russia, famous businessmen choose English law and English arbitration courts to solve their conflicts!

I think that largely this condones the legal nihilism of the significant part of the Russian population. However, the modern Russian judicial system's lack of high standing is associated with other reasons, which have been discussed in this section.

CHAPTER FOUR

LEGAL CONSCIOUSNESS AND ITS DEFORMATION

§ 1. Legal consciousness

Philosophy of law is unthinkable without research into legal consciousness. In this chapter, we will consider some problems of legal consciousness, legal nihilism, and professional deformation, which extend and refine the authors' previously published view of these questions.[1]

As was already mentioned, the law originated on the Earth at least three times. It appeared first with the appearance of people on Earth, in whose consciousness the desire and necessity for law is inherent. It appeared second with the emergence of the first state and the emergence from it of positive law. And it appeared third with the origination of customs, which over time received legal status.

There is no doubt that in each of the coils of the origination of human rights there is also legal consciousness. In the consciousness of a newly born person there is a desire for law to evaluate rights on a primitive level (right to life, to nourishment, to health care), partly regulate behavior, and, in the future, perceive and evaluate legal customs and regulations of law, issued by the state. The law and, accordingly, legal consciousness are always close to the person. Only the level of awareness of law differs.

Consciousness and legal consciousness relate to each other as a whole and a part. That is, human consciousness necessarily involves awareness of the law. If a person for some reason has not learned to read, to count, and to write, he will not have any awareness or understanding of the majority of scientific truths, including legal ones. But consciousness, even on a primitive level, will exist. And legal consciousness still will exist. In all life conditions (in non-populated places, in non-civilized societies, among non-educated people), a person even on the primitive level will

[1] S.I. Zakhartsev, "Legal Consciousness: Concept and Levels," *Legal Field of Modern Economy* 2 (2012), 48–53.

always understand and evaluate the rules of behavior—that is, what he can do, and what should be avoid. In addition to the requirements of consciousness in law, the regulation of behavior will help, as will customs, which are quite common in the non-educated layers. On the basis of such traditions and one's own consciousness, the person will evaluate his behavior; that is, he will be guided by legal consciousness.

In other words, law is inconceivable without the awareness of it by the person. But consciousness is impossible to imagine without law, which is vitally necessary for each person.

The question of whether legal consciousness is inherent to the person from birth is little studied. On the one hand, legal consciousness is associated with appropriate mental development. Legal consciousness is a reasonable activity. From this point of view, legal consciousness doesn't arise but is formed later. On the other hand, the person is endowed with rights from birth. Mental activity begins from birth. Thus, legal consciousness begins to form from the beginning of mental activity—that is, practically from birth. Hence there originated a famous piece of wisdom: A woman asked a sage a question, "At what age is it necessary to begin to educate a child?" The sage asked, "How old is the child?" "Just turned five," replied the woman. "In that case," concluded the sage, "you should have begun his education five years ago."

That is, the beginning of a child's mental activity, even primitive mental activity, lays the foundation of the understanding of the law, legal consciousness, and behavior. He will comprehend and evaluate legal customs and laws later, during the course of his life.

However, philosophy of law and legal science, of course, are uninterested in the legal consciousnesses of preschoolers, and focus instead on the legal consciousnesses of adults.

Principally, science defined approaches to legal consciousness long ago. Under the subject of legal consciousness, we commonly understand the system of legal feelings, emotions, ideas, views, evaluations, installations, performances and other forms of expressing the relation of the person to the existing law and his or her rights and freedoms, legal practice and its implementation, and desired laws and other desired legal phenomena.

On the regulatory impact of legal consciousness, P.P. Baranov highlighted the following moments:

1. Legal consciousness not only contributes awareness in the citizen of the goal of legally important behavior, but also is a source and a channel of this awareness. Legal consciousness helps people to

comprehend thoroughly the situation. Exactly here occurs the invisible process of the "splitting" of consciousness between legal and illegal.

2. Legal consciousness helps the person "see" the set of possible means from the achievement of goals and legally important behavior and helps make choices of specific tools from this hypothetical variety.
3. Legal consciousness of the person helps people correctly evaluate the social effectiveness of a chosen strategy of achievement of the goals of legally important behavior.[2]

Legal consciousness, that is, the internal evaluation of legal reality by the person, in addition to direct legal norms, provides influence and other factors. To such factors, in particular, relate the existence in society of the system of moral norms, the rules of behavior accepted in the society, the example of the people and co-workers who surround one, and so on. As this experience shows, these factors provide a greater influence on the formation of legal consciousness than on legal norms. In this sense, V.N. Kudryavtsev, who long ago justified this thesis, is absolutely right. In his opinion, the norm of law in its disposition determines the behavior desirable for society and personality. However, it is necessary to take into consideration one principle provision: legal consciousness was always closer to the "action" than it was to the legal norm. It is precisely legal consciousness and not the legal norm that "prevents wrongful behavior" and gives "desirable legal meaning" to action.[3]

In legal science, legal consciousness can be subdivided into three levels: (1) simple, (2) scientific (theoretical), (3) professional. However, despite the common use of this division, such a position arouses criticism. After all, academic workers in the field of law, without any doubt, have a *professional* legal consciousness. Furthermore, through their pedagogical practice and scientific publications these specialists develop legal consciousnesses as do citizens and also professionals among future and existing lawyers. The indicated category of people is in charge of the formation of legal consciousness.

However, it is not correct to say that, for example, the chairmen of the courts, the heads of the major law firms, and the directors of law firms have professional legal consciousnesses, and professors of the theory of law have scientific consciousnesses—that is, not professional consciousnesses.

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[2] *General Theory of Law*, ed. by V.K. Babayev (Nizhniy Novgorod, 1993), 480 (author of the chapter, P.P. Baranov).

[3] V.N. Kudryavtsev, *Law and Behavior*, M. (1976), 38.

In this matter there is felt a contradiction between scientific and professional legal consciousness, which, of course, shouldn't happen.

It seems that scientific legal consciousness relates to the professional legal consciousness and is the highest level.

It is necessary to take into account that in jurisprudence, as in medicine, many practical workers have scientific degrees and titles. In fact, after someone achieves a certain successes in practical jurisprudence, he has a conscious need to increase his knowledge, to organize it better, to newly estimate and reconsider. What can be done that cannot be done in science?

That's why many accomplished practical workers strive toward science, trying from the scientific point of view to look again at certain problems, to share experiences, and, conversely, more thoroughly evaluate the proposals of other colleagues.

This process is known to everyone. Many famous statesmen, politicians, judges, prosecutors, and lawyers not only have high scientific degrees but have become well-known scientists.[4] However, they have the same legal consciousness. So is legal consciousness professional or scientific? It is hardly possible to assume that their legal consciousness changes depending on the location: professional in the office and scientific in the faculty or at home.

What was said above related not only to the state and public statesmen but also to famous practitioners. It is known that many specialists actively and effectively combine science and practice. Their main sphere of activity is associated with practice (lawyers, investigators, prosecutors, etc.), which does not disturb them from preparing dissertation research or teaching. Again, the same question arises over their legal consciousness.

[4] It is impossible to name all such figures. The Chairmen of the Constitutional court of the Russian Federation, V.D. Zorkin and V.A. Tumanov, are famous theorists of law; the Chairman of the Supreme Arbitration court V.F. Yakovlev was a member-correspondent of the Russian Academy of Science. An academician of the Russian Academy of Science, T.Y. Khabrieva, occupied a responsible position in government service as the Deputy of a Minister. Two member-correspondents of the Russian Academy of Science, D.A. Kerimov and S.S. Alekseev, were public deputies of the USSR. The same was true earlier. For example, a famous theorist of law, academician A.Y. Vishinskiy, was a General Prosecutor of the USSR; prominent positions in the General Prosecutor's office in that period were occupied by two member-correspondents of the Russian Academy of Sciences, M.S. Strogovich and S.A. Golunskiy. If we consider the pre-revolutionary period, L.I. Petrazhitskiy was a deputy of the First State Duma of the Russian Empire, and B.N. Chicherin was the mayor of Moscow. This list can be significantly broadened.

We propose to classify legal consciousness into:

— professional
— non-professional (ordinary)

Wherein, professional legal consciousness can be divided into:
— scientific and scientifically-practical (complex)
— non-scientific (strictly practical)

Scientific and scientifically-practical legal consciousness is the highest level of legal consciousness.

Practical workers occupy the lowest level of professional legal consciousness: they do not strive and cannot strive for objective reasons to rise to a higher level of awareness and perception of legal reality. As experience shows, these people, as a rule, turn into artisans; they know a very narrow part of the law very well, one that we have to deal with in everyday activity. Other components of law even within the same industry are often (or quickly become) unknown and incomprehensible to them.

Maybe the next thought is indisputable. *A real lawyer should do or try to engage in scientific activity.* Without that, legal norms are forgotten and even famous provisions became possible to implement only in typical cases.

Only scientific activity allows systematizing knowledge, constantly improving and broadening cognitive horizons. Therefore, effective practical legal activity is impossible without the thought of movement forward, without constant expansion of the cognition of law and legal being.

Apparently, the same was thought by O.E. Leist, who proposed to divide the levels of professional cognition of law into:

— practical jurisprudence
— general theory of law
— philosophy of law[5]

The professional legal consciousness of practicing lawyers doesn't go beyond the evaluation of current law; everything that relates to evaluation of this law, to perspectives on its change and development, to problems of the origin of law, its sense and social purpose, are unconnected with its practical activity. The habit of thinking with wordings and concepts of cash law led to conservatism in some parts of the corporation of lawyers and the rejection of innovation in the legal system, even if these

[5] O.E. Leist, *The Essence of Law*, 259.

innovations led to the improvement of the content of law and its implementation. The professional legal consciousness of lawyers sometimes disagreed with the needs of society and generally accepted norms of justice. The state for practical jurisprudence is the sum total of officials and state authorities, who have rights to solve and consider different categories of cases; practicing lawyers are interested in jurisdiction or the jurisdiction of the cases entrusted to them, and therefore in the competence of different state institutions and officials, the hours and days of their work, the order of the registration of documents (claims, statements), periods of consideration of cases, and appeals to decisions, and so on.

The general theory of law, according to O.E. Leist, is the second level of knowledge about law, being higher than practical jurisprudence. The general theory of law doesn't teach how to solve specific cases. But it helps during research of materials in cases where it is necessary to distinguish legal facts from circumstances, which have no legal meaning, to determine the presence of legal structures and their qualification, to solve sometimes difficult questions of the choice of the norm that is going to be applied, to check the legal power of this norm, elements of which are contained in different regulatory legal acts, and so on. The general theory of law is seen in the state and is formed by the law legislative organization, who implement law and protect it from violations. The general theory of law studies such problems, which are conditioned by the existence of the state, as the ration of the private and public law, the legal status of the state authorities and officials as a special subject of law, especially the material-legal and procedural norms, place, and role of the court and other law enforcement authorities in law enforcement, the rule of law, and so on.

The third and highest level of cognition of law is *the philosophy of law*, which seeks to understand the laws of being, the place and role of law in the socio-cultural world of different civilizations, its connection with the person, and with the collective and society and state, and with social awareness and the culture of humanity. Since philosophy of law uses the conclusions of other public sciences and, moreover, is not free from orientation on the specific system of values, philosophical views on the state, as also on the law, are diverse. The ideals and value orientations that one sees in the state's otherworldly power depend on the validity of moral ideas (1. organization, form of society; 2. a machine to suppress one class by another, an instrument of violence and coercion; 3. highlighted in society as a result of the division of labor into hierarchically centralized class of persons, the occupation of which consists in management and

coercion; 4. the personification of Russia, fatherland, the nation, etc.). Philosophical views of law are diverse and contradictory, but they are connected by practical jurisprudence and are able to influence the practice of solving legal cases.[6]

It is available to agree with such a high evaluation of the philosophical-legal consciousness of law. While supporting the classification proposed by O.E. Leist, it is necessary to note that he didn't specify an important detail: general legal and even philosophical-legal levels of knowledge include not only theorists-thinkers but also some practicing lawyers and also officials who combine practical and scientific work. Wherein, if we agree with Leist's thought that philosophy of law has a practical function, in a number of cases this can influence the practice of reviewing legal cases and the general problems of praxeology of law entering the subject of this discipline.

It is necessary to discuss conventional legal consciousness separately. This level of legal consciousness is the most common, as the absolute majority of people do not have a legal education. The formation of such legal consciousness is significantly influenced by upbringing, the environment of people's lives, the immediate conditions of their existence, and their level of life, intellectuality, education, and so on. The biggest factor here is the value of experience with communication of right. This experience is both accumulated by human actions and replenished through the media, communications, films, and so on.

Conventional legal consciousness begins from common awareness. Speaking about it, V.S. Stepin wrote that common awareness, as a rule, doesn't make a reflection on its deep basis. A person in everyday life understands what space, tome, good, evil, justice and so on are, and apparently through this understanding evaluate concrete events, acts, and actions of other people. But usually such people don't think about the meaning of these categories, and, if we talk about their definition and the identification of connections and relations, common thinking cannot solve them. They can be solved by philosophy. Philosophy carries out reflection on the universals of culture, bringing them to the judgment of mentality, turning them into special ideal objects, with which philosophers then operate on, like mathematician do with numbers and geometrical figures, studying their properties and relations.[7] Agreeing with this opinion, D.A. Kerimov adds, "the connections and relations indicated (and other) universals of culture solve not only philosophy, but all other humanitarian

[6] See, O.E. Leist, *The Essence of Law*, 259–66.
[7] Quotation according to D.A. Kerimov, *Methodology of Law*, 388.

and social sciences, including legal science and first of all philosophy of law."[8]

Lawyers haven't paid proper attention to conventional legal consciousness. Perhaps, that's why in the academic literature on jurisprudence we meet very simple concepts of conventional legal consciousness. For example, A.B. Vengerov believes that "conventional legal consciousness is a relation to the law, its evaluation on the level of stereotypes, clichés and rumors, plied in some or other social group, sometimes in crowds."[9] In this definition, the author completely ignores such important factors as the formation of legal consciousness in intellectuality, education, and finally upbringing. A person who was educated in law and morality, even though not a lawyer, will not evaluate the law through the prism of stereotypes, clichés, and rumors and so on. Whereas a person who is intellectually developed and educated will do this. A.B. Vengerov's proposed definition can be attributed to well-known physicians, mathematicians, doctors, teachers, and so on, although their legal consciousness in terms of jurisprudence is not professional and not scientific. D.A. Kerimov rightly said the maturity of consciousness of the individual does not depend on the level of intellectuality that is neither hereditarily acquired nor closed in value itself. This special mentality and character is produced by a person in the process of practical activity, in communication with other people, and in the conditions of life of the whole society.[10]

Other disputed judgments occasionally encountered in scientific and academic literature include the contradiction of conventional legal consciousness to scientific consciousness. Thus, conventional legal consciousness in relation to scientific consciousness is often characterized in a negative way. At the same time, the significance of the conventional legal consciousness is very large. To be exact, it is a peculiar indicator of the effectiveness of the action of legal norms. And in this context, it gives impulses to the scientific understanding of such norms, formulating proposals according to its improvement. The scientific legal consciousness is unthinkable and impossible without studying conventional legal consciousness, which is the starting point for the study of certain social legal relations.

As intellectuality is traditionally understood as the highest form of awareness, it is not correct to ignore it during the evaluation of the conventional legal consciousness.

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[8] Ibid.
[9] A.B. Vengerov, *Theory of the State and Law*, 563.
[10] D.A. Kerimov, *Methodology of Law*, 393.

Furthermore, conventional legal consciousness, like most of the mass legal consciousness, is the basis of law enforcement. The higher the level, the higher, apparently, is the level of legal order. Therefore, lawyers with their every word and action should raise the level of the conventional consciousness.

It is necessary to comment briefly about one more question. Nowadays, the scientific revolution introduced the term "intuitive knowledge"—the understanding of the essence of a subject received through intuition, the immediate comprehension of the essence of things. Will there soon be a question of whether there is an intuitive legal consciousness?

It is necessary to say that the term "intuition" was not given enough attention by philosophers, and also by psychologists. As a result intuition, as a rule, determines perceptual cognition.

It seems that the case is a little bit different. Intuition is likely to be a presentiment that comes before feelings and last until feelings. Hence, speaking about intuitive knowledge it is more correct to define it as a presentiment about the features of a subject, but not as an understanding about, an understanding of an essence. That is, in this case, we are speaking about awareness and moreover not about legal consciousness. Therefore, we believe that it is not correct to speak about intuitive legal consciousness.

At the same time, intuition can play a specific role in legal behavior. Thus, people who do not have legal education and a professional legal consciousness, but have life experience, can come intuitively to legally correct decisions in difficult situations. That is, intuition can act and acts as a kind of prompter for consciousness. However, it is not necessary to mix it with consciousness and cognition.

§ 2. Legal nihilism in Russia

The question of legal nihilism in Russia has been raised repeatedly in the works of Russian philosophers of pre-Soviet times. In Soviet times, little was written about this deformation of legal consciousness. The term "nihilism" was well-known only due to the school curriculum (I.S. Turgenev's immortal work *Fathers and Sons*); however, it wasn't implemented in law.

In post-Soviet times, interest in legal nihilism has significantly increased. The idea has appeared in many different scientific and journalistic works. Now, in Russia, the pendulum always swings at full

amplitude and the word "nihilism" is mainly associated precisely with legal content, which is also not sufficiently correct.

The term "nihilism" has a Latin origin (from Latin *nihil*, "nothing") and a variety of values. The most famous such kinds of nihilism are as follows:

— Ontological nihilism, according to which the being doesn't have objective sense and value. Such an approach was periodically popular in philosophy.
— Epistemological nihilism, which denies cognition and knowledge. The most famous modern to profess epistemological nihilism is R. Rorty.
— Moral nihilism, according to which nothing is moral or immoral.

And, finally, there is legal nihilism, which is interesting in the context outlined in this chapter.

As researchers have noted, legal nihilism includes in it three components of denial. The first of them is the domination of a negative attitude to existing legislation. Under the influence of political-economic circumstances, and the formation of crisis conditions in society, the law loses its legal content and is not perceived as a means through which to protect the rights and legitimate interests of individuals and society in general. Respect for legal norms disappears as a means of regulating the social relationship. Further, the denial of these norms leads to their failure. The second component is a negative relation between society and the existing legal order. And, finally, the third component is the dismissive attitude of the public consciousness to freedom and formal equity as the basic values and fundamental principles of legal regulation. It becomes a result of the action of the stringent requirements of the state, which doesn't recognize the value of law in the mechanism of regulation of the public relationship.[11]

And, indeed, historically this happened to the extent that kindness, justice, and honesty in the legal consciousness of Russians was not identified with right. The majority of the population of our state in pre-Soviet times lived in communities. Within these communities, there existed an individual theory of traditions and customs that had for their members the status of a generally binding regulator of the public relationship. Legal custom was one of the most important sources of law in Russia. It was precisely these customs that were considered to be fair

[11] N.A. Varlamova, "Legal Nihilism: Past, Present and Future of Russia," *Open Society: Informational-Analytical Bulletin* 1.12 (2002), 12.

and had priority in relation to the norms of law, which, in fact, the majority of the population didn't know.

It is necessary to remember and consider that Russia for many centuries—until 1917, in fact—was an agrarian country, where the vast majority of the population was illiterate or semi-literate. What nuances of legal regulation could thus be spoken about? The public relationship in such communities was regulated by morality and ethics, which were reinforced by appropriate customs, which in fact received legal status.

It was exactly legal customs, and not natural law or positive law, that were a foundation for legal regulation in ancient Russia. V.S. Stepin correctly writes on this question that various manifestations of the spirit of collectivism were manifested in a community's life, which N.A. Berdyaev identified by the terms "commonality" and "collegiality." Berdyaev emphasized that collegiality is different from commonality; that is, that such a condition of collective life is defined by external coercion. Collegiality also implies the unification of people with their internal motives by common purpose and common cause. But in the real system of life orientations, these different and even contradictory meanings are often intertwined. Their link can be found both in the mentalities of traditional peasant community and in Soviet times.[12]

To collegiality it is necessary to add having the Russian mentality of compassion and heartiness. But these light qualities are often manifested by persons who are pursued by the state and law. Hence, the old proverbs, "From the lower Don there is no insurance" (Cossack proverb) and "Moscow for us is not a decree" (proverb the authorship of which is attributed to the Tambov region). Persons who were pursued by the state (i.e., criminals) in ancient Russia for some reason always evoked sympathy, which was never observed in the West.

But also the ruling elites of Russia (pre-Soviet, Soviet, and modern), nevertheless, also were not distinguished by any particular respect for the law. For example, B.A. Kistyakovskiy's famous quotation from the article "In Defense of Law (Intellectuals and Legal Consciousness)," published in the journal *Milestones* in 1990: "The dullness of legal consciousness of Russian intellectuals, the lack of interest in legal ideas is the result of our persistent evil—the lack of a somehow legal order in the everyday life of the Russian people." Wherein, the named scientist in this article came to the conclusion that the spiritual development of Russian intellectuals did

[12] V.S. Stepin, "Value of Law and Problems of Formation of Legal Society in Russia," *Philosophy of Law at the Beginning of the Twenty-First Century through the Prism of Constitutionalism and Constitutional Economics*, M. (Moscow–St Petersburg Philosophical Club, 2010), 22.

not include any legal ideas. Complementing his thoughts, B.A. Kistyakovskiy writes:

> If we are to take into consideration the comprehensive and disciplining value of law and realize the role that it played in the spiritual development of Russian intellectuals, it turns out that the results are extremely disappointing. Russian intellectuals consist of people who neither individually nor socially are undisciplined. And this is due to the fact that Russian intellectuals have never respected law, have never seen the value in it: from all cultural values, the law situated itself in the largest paddock. Under such conditions, a strong legal consciousness couldn't be created in our intellectuals; on the contrary, the last one is situated on the extremely lower level of development. . . .
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> . . . All universities have established legal faculties; some of them have existed for more than one hundred years; we also have half a dozen special juridical higher educational schools. All these amount to about 150 legal departments in the whole of Russia. But none of the representatives of these departments have given either a book or even a legal study with a broad public value that would affect the legal consciousness of our intellectuals. In our legal literature it is impossible to specify even a single article that would put these ideas first, as in *Struggle for Law* by Ihering. Neither Chicherin nor Solovyov have created anything significant in the field of legal ideas. And all the good that was given to them was almost barren: their impact on our intellectuals was negligible; at least all that was found in it was the echo of their legal ideas.[13]

B.A. Kistyakovskiy quotes the following well-known poem by B.N. Almazov:

For reasons organic
We are quite unsupplied in
Legal common sense,
This devil of Satan.
Wide Russian personalities,
Our truth ideal
Doesn't fit in narrow forms
Of legal beginnings.

Speaking on this theme, V.D. Popkov accurately noted that the history of the Russian state indicates contradictory trends in the field of intellectuals in its relation to the state and law. On the one hand, it is obvious that the origin and development of intellectuals in Russia is connected with the state, its activity, including legal activity, and the

[13] See www.vehi.net/vehi/kistyak.html.

maintenance of law enforcement. However, in Russian political and legal history, the negative attitude of certain circles of intellectuals to the "law of the state" and law enforcement are also observed. For example, the Slavophiles expressed approval, denying the meaning of legal norms for the social life of Russia, which, from the point of view of the Slavophiles, prefers "spiritual life" and "internal truth," in contrast to the West with its "external form" and "bill honesty" of the Western European bourgeois.[14]

The same was observed among regional elites. As V.S. Stepin writes, many populations were voluntarily a part of the Russian Empire, but the condition of entering was the following: "we will not live according to your laws, we will live according to our customs." And an empress or emperor wrote, "let them go under our crown and live according to their customs". But when Russia conquered new countries, bringing them into the empire, the local elites and the customs and traditions of ethnic cultures were saved. So public education occurred in which none of these cultures disappeared, where there was no unification of cultures in that sense, as happened in Europe in the era of the formation of the nation states, when many ethnic groups and ethnic cultures disappeared. Russia's ethnic enclaves, which were a part of the empire, preserved these cultures, but the price for this preservation was a contradictory connection between cultural examples and customs, determining different relations to laws and legal norms. Hence, difficulties of establishing a united legal regulation and movement in legal society arose. Justice in this case acted as a kind of compensation for the lack of a united legal community. People's consciousnesses divided the laws between just and unjust, and believed that those that were considered unjust should never been implemented.[15]

In ancient Russia it is difficult to find a king, emperor, or autocrat who didn't glorify themselves by their cruelty and complete denial of human rights. But the kings who forever left in history not only a bloody trail but a bloody river are quite numerous enough for us to be going on with. And some of them were remarkable for their cruelty, even among other cruel rulers.

We can name two of the most popular historical examples. The first is Ivan IV, more commonly known as Ivan the Terrible. Famous Russian historian N.I. Kostomarov, studying the activity of Ivan the Terrible, emphasized the following:

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[14] *Theory of the State and Law*, ed. by M.N. Marchenko, M. (2009), 805–6 (author of chapter: V.D. Popkov).

[15] V.S. Stepin, *Value of Law and Problems of Formation of Legal Society in Russia*, 18–20.

> Vainly we have tried to explain his misdeeds by some guiding purpose and wish to limit the arbitrariness of the highest class, who vainly tried to create from him the image of a democratic sovereign. On the one hand, people of the highest title in the Moscow state were not so hostile to the lower layers of society, that it was necessary for the people's interest to start a fighter campaign against them. . . . On the other hand, the ferocity of Ivan Vasilyevich was comprehended not only by the highest class but also by the public mass, as showed by a slaughter in Novgorod, where people baiting bears for fun, returned to find guardsmen plundering the entire townships and so on.[16]

Thus, guardsmen were the highest creatures that it was necessary to pander to always and everywhere. And peasants suffered from the tyranny of the newly made landlords. The condition of working people was even worse, as with all disgraced owners, ruin had befallen many people; on the subject of disgraceful life conditions there are many examples, such as when the king beheaded certain boyars and then sent men to ravage their ancestral lands. On the basis of the above outline, N.I. Kostomarov came to the following conclusion: "With this new state of affairs in ancient Russia, the feeling of legality disappeared. . . . The establishment of life-guards was obviously such a monstrous weapon of demoralization to the Russian people that hardly anything else in history could match, and examining them, a foreigner correctly observes: 'If Satan wanted to invent something to damage humans, he couldn't have invented anything better.'"[17]

Another ancient Russian autocratic ruler particular memorable for his cruelty was Peter I, whose policy had overtly violent features and who significantly influenced the alienation of society from the law. The state during the time of the reign of Peter I had a strong police orientation, and bureaucratic arbitrariness passed all permissible limits. Everyone on duty was tasked with taking something from the ordinary people into the treasury, believing that he could "now for himself suck from the poor people till they were bones and on their ruin arrange benefits for himself."[18] As a result of Peter I's reign, as A.I. Alexandrov writes, a sharp drop of immoral standards in society was observed, which inevitably entailed an increase in criminality.[19]

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[16] N.I. Kostomarov, *Russian History in the Life Stories of Its Main Personalities*, M. (2004), 226–27.
[17] Ibid., 235.
[18] Ibid., 682.
[19] About legal nihilism, see A.I. Alexandrov, *Philosophy of Evil and Philosophy of Criminality* (St Petersburg, 2013), 168–80.

However, as caught the attention of another famous Russian historian, V.O. Klyuchevskiy, two means of defense have remained against arbitrary and inept rulers: lies and violence. Peter I gave out strict orders to search and execute those who escaped, and they openly lived with their entire settlements in the spacious courtyards of strong masters in Moscow. Other runaways sheltered in the forests and contemporaries of Peter talk about the unprecedented development of robbery. Bands of robbers, headed by fugitive soldiers, connected with well-armed cavalry troops, destroyed populous villages, stopped treasury fees, and invaded the cities. "Through robbery, those at the bottom answered the tyranny of those at the top: it was a silent frankpledge of lawlessness with impossibility here and careless despair there. A metropolitan clerk, passing for a General, and a provincial nobleman threw out of the window decrees of a terrible converter and together with forest robberies were little worried by the fact that in capitals were a semi-state Parliament and nine and then ten arranged boards in Sweden with systematically divided departments. Impressive legislative facades covered the general mess."[20]

As you know, Peter I was very fond of the popular Russian proverb, "The mind may stay sober, but the tongue gets drunk." Guided by this, he stayed sober, but often got his closest dignitaries drunk in order to find out their true thoughts, feelings, deeds, and intentions. Not to drink for dignitaries was impossible. And they—the elite of former Russia—the richest and most noble magnates, the ruling class, the intellectuals in that meaning, got drunk. They got drunk, knowing and realizing that they were observed by the all-powerful emperor and that their fun, real or fake, could end with them in jail or on the gallows. One episode demonstrates this: during one of the feasts, Peter I found that out the Head of the Secret Expedition (the main security service of Russia at that time), Earl P.A. Tolstoy, didn't drink. Peter reacted by going to him, and, as historians describe, said something like, "oh, you are a bald head, if you were not clever, I would have strung you up long ago."[21] It was hardly possible in such circumstances for grandees and their inheritors to form healthy, normal legal consciousnesses. They were also unprotected from the tyranny of the emperor, as their bondsmen were from their own.

A descendant of the cruel Head of Security Service of Peter's reforms was the famous writer and thinker Leo Tolstoy. However, he, as an eminent moralist, never believed in the power and importance of law (positive and natural). From the point of view of Leo Tolstoy, the law is "despicable deception," jurisprudence is "twaddle about law," and it is

[20] V.O. Klyuchevskiy, *Russian History* (Moscow/St Petersburg, 2009), 730.
[21] E.V. Anisimov, *Palace Secrets*, 2nd ed. (St Petersburg, 2007), 49.

necessary to live not by the law but by the conscience. As P.I. Novgorodtsev writes, Tolstoy argued that all efforts that resulted in the constitution and declaration of laws were vain and useless; it was a wrong and false way.[22] Where, from what society, and under what circumstances Tolstoy so absorbed legal nihilism, apparently, is not necessary to describe here.

This cold, dismissive attitude to law was demonstrated by prominent representatives of the ideological current of public thought at the end of the nineteenth and beginning of the twentieth century, which couldn't, in its turn, influence the same relation of society to him. For example, A.I. Gertsen wrote, "Legal insecurity, since olden times, gravitated over the people, and was for him a kind of school. The blatant injustice of one half of the laws taught him to hate the other; he obeys them because of their power. Complete inequality before the court killed in him all respect for legality. A Russian, no matter what rank he may hold, circumvents and violates the law everywhere it can be done with impunity; and he absolutely acts in the same way toward the government."[23]

These quotations and facts uncovered in the last decades objectively refute the pre-Soviet propaganda that depicted the Russian people as legal and law-abiding.

Frank disregard for law was observed in the Soviet period and also in the post-Soviet period. The phenomenon of legal consciousness and legal nihilism in Soviet times requires separate consideration, as it is quite controversial. On the one hand, we can confidently talk about legal nihilism during the October Revolution of 1917 and the subsequent Civil War. On the other hand, in the period between 1960 and 1970, the level of legal consciousness of the Soviet people was relatively high, which is confirmed by the low level of criminality and violence against law, by the respect for the law, and by the possibility of achieving justice in relation to the USA and Western Europe. However, by 1990, everything was ruined, years and "gens" of lawlessness has taken its toll, the level of legal nihilism again became very high. This situation led to aggravated "restructuring," involving the deception and impoverishment of the population. As scientists noted, democratic values, which were proclaimed

[22] P.I. Novgorodtsev, *The Crisis of Contemporary Legal Consciousness*, M. (1909), 4.
[23] A.I. Gertsen, *Collected Works*, 30 vols, vol. 7, M. (1956), 231.

at the initial stage of the transitional period—freedom, equality, justice—remained unreachable for many, or sometimes even false.[24]

The Russian state, as A.I. Bastrykin writes, is now in a very difficult position: romanticism for the days of restructuring has already evaporated; the "courage" of the first years of "radical democratic reform" has exhausted itself. In place of the enthusiasm for updates and the "hopes of youth" in public consciousness came despair, skepticism, disbelief and anger, sadness and disappointment.[25]

As a result, the level of legal nihilism in Russia is now high.

According to the opinion of A.I. Alexandrov, all individuals, though not always consciously, depending on the level of their general and legal culture, decide for themselves the question of the observance of the law, trying on the norms of the legal system in relation to their own moral values and interests; an important role in such a decision is played by their subjective attitude to the law's constitutive institute—the state. Only highly conscious individuals, distinguished by their outstanding level of general and legal culture, are able to comply with the law, abstracting from their attitude to install it in the state. Such people can separate the activity of incompetent, dishonest, or corrupt government officials from the state. For the majority of subjects, the conditions of social life, which were set by the state (economic conditions, employment of the population in manufacturing, level and timeliness of remuneration of labor, degree of integrity of public officials, identified by a public institution), are peculiar conditions of the transaction between the state and citizen about his obedience to the law. The level to which the human obeys the law—that is, fulfills his duty before the state to comply with the law—directly depends on the state's real or imaginary execution of its duties to the man.[26] In case of violations, according to the opinion of individuals, the state frees the citizen of his obligations, and the individual receives a kind of psychological "carte blanche" to perform his duties, including his duty to comply with laws.[27]

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[24] E. Bashkirova, "Transformation of Values of the Democratic State," *Post Communistic Transformation and Formation of Democratic Society in Russia* 3 (2000), 50.

[25] A.I. Bastrykin, *Theory of the State and Law* (St Petersburg, 2005), 114–15.

[26] A.I. Alexandrov, *Philosophy of Evil and Philosophy of Criminality* (St Petersburg, 2013), 181.

[27] In A.I. Alexandrov's book is positive in that he is one of the few who justifies the author's proposals according to the solution to the problem of legal nihilism. Other articles and monographs in their absolute majority end with the general and in fact empty slogan that it is necessary to correct the situation, to struggle with

In confirmation of these words, let us cite two egregious examples. In the mid-1990s, studies of professional preferences of Russian teenagers were carried out (who they wanted to become). According to the result of the survey, among the most popular choice was the occupation of a hired murderer ("assassin").[28]

In 2013 the authors of the current book conducted a sociological survey among law enforcement officials and received really impressive results. From 700 surveyed investigators and operational employees, 502 stated that during investigating and solving crimes, those who struggle with criminality believe more in the highest justice than in the norms of law.[29] In what other country you can get such answers from people who are directly standing at the forefront of the struggle with criminality?

On the question of how to reduce legal nihilism, it is necessary to express several proposals. They are not indisputable; however, they can be claimed by Russian society and the legislator.

It should be borne in mind that the relation between people and human values, society, kindness, law, and so on is formed in childhood. It is precisely in childhood that the assessment and understanding of what is good and what is bad occurs. Therefore, families play a huge role in the formation of correct life. If a significant proportion of parents in Russia are infected with legal nihilism, they will *never* (it is necessary to highlight this word) bring up children to respect the spirit of the law.

Then, an important educational role is played by schools and their environments, as it is here that teenagers grow up outside the family. Here, much more can be done. Schools can and must promote the law and its role in everyday life, work, and communication. Such work is not conducted. To that end, oddly enough, teachers themselves are uninterested. In fact, many teachers themselves often use different offensive swearwords against children. This applies to teachers at many schools, including elite ones. Why is it necessary to explain to teachers that during such offences pupils have a right through their legal representative or on their own to bring teachers to justice?

The role of the environment where teenagers spend their time after lessons is also very important. And here again there are problems. The majority of Russian citizens are not rich; many live on the poverty line.

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legal nihilism and increase the level of legal consciousness. But how we can really increase it, scientists usually keep quiet.

[28] A. Zarubin & V. Vagin, *Reputation: Capital of Personality*, M. (2007), 25.

[29] S.I. Zakhartsev, "Professional Deformation of Legal Consciousness among Workers of Police, Judges and Prosecutors," *Library of Criminal Law Expert: Scientific Journal* 4.9 (2013), 335–43.

They are unable to provide their children with cultural time after lessons. So, their children are brought up by the "street." However, a "street upbringing" will not instill respect for the law; in fact, the opposite is more likely.

After school, service in the army awaits boys, which, without any doubt, does not add to respect for the law, especially to human rights. As a result, after their service in the army, twenty-year-old men are turned out who not only (like their parents) don't believe in the law, but are what is called experienced in life.

A question occurs here: where can reserves be taken to form a healthy relation to law?

Perhaps, it is necessary to go in the following direction.

First, it is necessary to work among the adult population, with those who are the parents of youths. But what would work? In fact, the adult population of Russia during the last twenty-five years had been repeatedly deceived. In the indicated period, as E.V. Kusnetzov writes, the consciousness of many people has muddled up such concepts as "kindness" and "evil," "legitimate" and "unlawful," and "legal" and "illegal." The words "mercy," "decency," and "goodwill" have almost completely lost their meanings.[30]

During preparation of this monograph, a curious survey was conducted. To start with, over 3000 employees of different firms and companies, and also governmental officials (Russian citizens of Russia), were interviewed. They were asked the following questions: Is it possible, in your opinion, in Russia to achieve justice with the help of law? Do you believe in the power of law in Russia?

The purpose of the survey was to identify individuals with nihilistic legal consciousnesses. Of the 3000 interviewed, 2012 persons were discovered who do not trust the law, do not believe in the power of law, and believe it is impossible to achieve justice with its help.

In the next stage of the survey, separate interviews were conducted with precisely these 2012 persons. They were asked a question, What needs to be done with the law, in order for you, personally, to begin to trust it and believe in its power?

The answer, frankly speaking, was impressive. Of the 2012 persons, 1978 answered approximately the same way. In their opinion, only two things are necessary: first, for all laws to be enforced, and, to this end, second, for nonfulfillment of these laws to be punished very strictly.

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[30] E.V. Kuznetsov, "Crisis of Contemporary Legal Consciousness," *Legal Consciousness* 3 (1994), 3–10.

Though, the phrase "very strictly" was replaced by respondents with words such as "harsh," "cruel," and "ruthlessly."

The indicated survey has shown well the mentality of Russians and then what they are waiting for from law. Experience shows that in Russia power is traditionally respected. To this end, there are suitable Russian folk proverbs: "For one beaten, two are unbeaten" and "With a good stick, a carrot is unnecessary". Most likely, exactly this can explain the low level of criminality and legal nihilism in the USSR in the years between 1960 and 1970. In that period, people were afraid of law, respected it, and willingly complied with it. As early as the mid-1980s, the government became weak and took almost no responsibility, and the laws in consequence ceased to be fulfilled.

Therefore, it is likely that the stricter the responsibility for violation of legal norms, the more respect there will be for law. It is useless to try to convince respondents that law is good. They have not believed in it from childhood and are not going to believe in it now. But they are ready to be afraid of law.

Of course, the fear of law, as discussed above, in itself is not ideal: it would be much better for people to *believe* in law. But in this case, it is better to be afraid and comply with legal norms out of fear. If people fear the law, they will instill the same fear in their children, and their children will do the same in their grandchildren, and their grandchildren and great-grandchildren, likely, will already respect the law and see that it protects them.

But here it is very important that the majority of the population see what happens when legal norms are violated.

Skeptics could counter-argue with the famous historical example of when pickpocketing in European countries was made an offence punishable by death; pickpocketing was at its height exactly during the period in which pickpockets were executed. But it is not so in Russia.

In Russia, despite the skeptics, the legislator's move to tighten responsibility is bringing positive results. We can think of several examples to illustrate this. Recently in Russia, unlike in Europe, few drivers stopped for pedestrians on crosswalks. After a significant tightening of responsibility for this violation of law, cars began to stop for pedestrians. After tightening responsibility for driving while drunk, the number of drunk drivers dramatically reduced. This regulatory legal act resulted in the rules of the road and traffic regulation being respected more. Oddly enough, the cause of this was not principally that some drunk drivers were able to bribe the inspectors of the traffic police. By paying the

traffic police one big bribe, many of them did not want or couldn't pay another one.

However, at present the punishment for talking on the phone while driving a car is not so big. In Russia, no one sticks to this requirement of the rules of road traffic regulation. Alas, apparently, this is the mentality.

Here it is important not to accept regulatory legal acts that are impossible to perform and where it is impossible to punish nonfulfillment strictly. The government should ensure that if a regulatory legal act is adopted in Russia that its enforcement is necessary rigid. People need to see that everything outlined in the law is strictly fulfilled. It is worth mentioning that, of course, punishment for offenses should be coherent and adequate. But in Russia, in appearance, punishments for offense should be of a maximum strictness for all possible offences.[31]

Work experience in one of the largest private Russian companies has revealed difficulties in employees observing workplace discipline (particularly, arriving late to work and leaving early). Measures taken by the company management, including fines and reprimands had no effect. Then, one instance of being late became a fireable offense. Employees ceased to be late. Furthermore, new employees also stopped being late, as they at once perceived the rules of the company and began to obey them. This is the specific mentality of the Russian people.

The legal nihilism of the adult population in Russia is mainly connected with the fact that people don't know their rights and responsibilities. Why don't they know? This is partly the influence of parents, as a rule, who do not believe in law, and partly because nobody has taught them even the basics of law.

It is necessary to say that the idea of mass legal education in Russia was put forward time and again. And it always failed. According to the fair remark of V.A. Tumanov, "the possibilities of a purely educational impact, as practice shows, are quite limited."[32] O.E. Leist said correctly that conversation about the population studying law should be concrete. Which parts of law and what volume is it desirable for every citizen to know, regardless of occupation? Is it necessary for every family to have a

[31] In order to avoid unnecessary criticism, we emphasize again the phrase "adequacy of punishment." Of course, we do not mean that those who travel without the right ticket should be deprived of their freedom or that people who cross the street on a red light should be shot. The punishment should definitely be strict, but appropriate to the deed.

[32] V.A. Tumanov, "About Legal Nihilism," *Soviet State and Law* 10 (1989), 25.

computer containing the entire mass of current (quite complex and often changeable) legislation?[33]

In order to overcome nihilism, in our view, it is necessary to educate the population about the legal issues which they are facing or which they could face every day. Surveys that have been conducted show that first of all people are interested in knowledge of rights, especially rights of behavior in the places people constantly are. It refers to rights and obligations at work, at home, and in the family; it includes to whom and how one should apply in case of violation of concrete rights, and also how to complain if an official or authority doesn't take measures to protect rights. Moreover, of course, it is necessary to know the Constitution of the Russian Federation.

A proportion of lawyers, remembering previous experience, may be skeptical about this idea. However, in support of the given research and reasoning, there is an example relating to the rules of road traffic regulation. Such rules are generally taught from childhood, and all know how they should behave on the road. Yes, many people are unaware of particular nuances, and ordinary people will not be able to judge complicated cases of road accidents; however, all know and understand their rights and obligations. Without a doubt, this assists in the safety of road traffic.

Second, law should be taught in schools. This includes lessons of law being brought up at school, more detailed teaching of the subject "Fundamentals of the state and law," and so on. Here study should lead to greater detail and a different understanding. It is necessary to agree with O.E. Leist that it is necessary at school to study the Constitution of the Russian Federation, the basic concepts of private law (family, labor, civil, and others), and the general principles of public law (administrative, criminal, procedural, etc.). An indispensable part of legal study should be clarification that ignorance of the law does not excuse one from responsibility for its nonfulfillment. It is also necessary to explain to pupils where and how they can receive more detail information about law, in case they need it. Pupils also need to understand that those who want to engage in entrepreneurial activity first of all should study the appropriate branches of law and legislation.[34]

Third, the juvenile judiciary should spread. Children should see that their rights can really be defended and that there are specialists who will defend such rights if necessary.

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[33] See O.E. Leist, *The Essence of Law*, 256–57.
[34] See O.E. Leist, The Essence of Law, 257.

Fourth, criminality to a large extent is economically motivated. As long as the standard of living of many Russians is situated at the poverty line, it is difficult to require compliance with legal regulations and standards. It is necessary to increase life standards. We understand that this paragraph sounds more like a slogan, as the economic processes we observe in the world do not give confidence that the level of human well-being will grow. However, in a country as big as Russia, it is necessary always to remember the level of prosperity of ordinary citizens, and to strive to raise it and build internal policy appropriately.

It seems that such measures, applied in aggregate, of course, not immediately, could lead to a decrease in legal nihilism and an increase in the level of legal consciousness.

Furthermore, we suggest that the governmental authorities hold a competition for the best program increasing legal consciousness among Russians.

§ 3. Professional deformation of legal consciousness

The theme of the professional deformation of legal consciousness and its origins, causes, and consequences have long been in the sphere of scientific interest of the authors of this book. Perhaps, it is connected with the fact that in practical law enforcement activity it is unpleasant to face people on a professional basis who have a deformed consciousness and to personally experience how this is dangerous. Perhaps, an interest in this theme lays a love for psychology, aided by personal acquaintance with famous psychologists. It cannot be excluded that there are some other, unknown reasons. However, questions of the professional deformation of the employees of operative divisions of law enforcement authorities have been studied in reasonable detail. The results of this research are reflected in a monograph.[35] That work took a wider theme and studied questions of the professional deformation of consciousness of practical lawyers: investigators, prosecutors, judges, and operative workers. This allowed the author to extract for science new types of professional deformation of legal consciousness, which were successfully implemented in educational process and attracted interest from scientists and practitioners abroad.[36] In this section, we will specify some results of this previous research.

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[35] See S.I. Zakhartsev, *Science of Operational Search Activity: Philosophical, Theoretical-Legal and Applied Aspects* (St Petersburg, 2011), 99–109.

[36] See S.I. Zakhartsev, *Some Problems of Theory and Philosophy of Law*, M. (2014), 113–26.

However, writing about the professional deformation of the legal consciousness of scientists-lawyers, admittedly, we didn't want to wait until the next unpleasant moment. Once, as part of the sub-faculty, the authors of these lines involuntarily witnessed the indignant monologue of a famous scientist. He was railing against someone's scientific article and was outraged that there were no references to his works in it. "What science can be in this scribbling," he exclaimed, "if it does not even mention me in it!" After reading the article and remembering the works of the interlocutor, it was correctly (at least, so it seemed to us) pointed out to him that had never written anything on the indicated theme of the article. The specialists who were present at that time on the sub-faculty heard him literally give the following answer: "It doesn't matter. I am a star and the main authority in this discipline. References to me should be everywhere." This scientist, of course, didn't pass the article, and the author became his real enemy.

At the beginning of this research we stressed that the academic environment, sincerely beloved by the authors of the current book, mainly consists of worthy and decent people. However, such examples, unfortunately, are not unknown. This obliges us to look attentively at the problem raised.

As you know, in the theory and philosophy of law there are three types of deformation of legal consciousness: legal infantilism, legal nihilism, and rebirth. However, it is obvious that such classifications are unsuitable for professors of legal high schools and scientists. That is, as it has been repeatedly proved, to allocate different types of professional deformation of legal consciousness, other approaches are needed.[37]

We can give a general and simple definition of the professional deformation of legal consciousness, reflecting the essence of this phenomenon. It seems that the professional deformation of legal consciousness is the distorted change of legal consciousness of a person under the negative influence of his occupation.

With regard to lawyer-pedagogues, initially it is necessary to divide the same teachers into a minimum of two big groups:

— famous scientist-pedagogues

[37] See, S.I. Zakhartsev, *Science of Operational Search Activity: Philosophical, Theoretical-Legal and Applied Aspects* (St Petersburg, 2011), 9–109; S.I. Zakhartsev, "Legal Consciousness: Concept and Levels," *Legal Field of Modern Economy* 2 (2012), 48–53; S.I. Zakhartsev, "Professional Deformation of Legal Consciousness among Workers of Police, Judges and Prosecutors," *Library of Criminal Law Expert: Scientific Journal* 4.9 (2013), 338–48.

— those who have not succeeded and not become famous scientist-pedagogues

It is necessary to emphasize that the majority of famous lawyer-pedagogues are not subject to professional deformation. However, alas, the minority are. Conducted surveys of specialists—from postgraduates to professors—have helped us identify several characteristic types of professional deformation of famous scientist-lawyers.

According to the opinion of respondents, the most common deformation is *painful vanity* and narcissism.

A characteristic of such scientists is the sincere belief that they are the most talented in jurisprudence and are involved in all discoveries in science. They require that their surname is always mentioned in all works that in one way or another affect the sphere of their interests. Repeatedly, we have seen such a scientist seek to "fail" an applicant and hinder his defense just because he did not see his surname in the dissertation abstract. Dissertation councils, as you know, are often created in several specialties. So, even in a case where the theme of the research and is unconnected to the specialty of the scientist, the latter still required his surname to be specified in the dissertation abstract.

Specialists, who are subjected to such deformation in relation to their works, are not shy and without self-irony use such words as "my fundamental research," "my prominent achievements," and so on.

Before describing another deformation, it is necessary to say several things. The period in which a scientist is most fruitful, when his or her most valuable works are written, actually is not so long. Conducted research allows us to affirm that a scientist's active phase, as a rule, lasts no more than 10 to 15 years. Further, even specialists who created prominent results generally have modified and made further development to their own discoveries. Of course, there are cases when great scientists and in their old age do not lose the sharpness of their minds and continue to create. But they are rare. The authors of the current monograph were happy to discover some prominent Russian scientists who had not lost the freshness of their ideas and thoughts. However, according to their explicit confession, they have already objectively lost to senility a part of their capacities to work, their creative fuses, their quickness and originality of thinking.

And the majority, as was mentioned, often working on additional formulations and the development of their previously formed ideas. This work is often successful, but sometimes during this the professional deformation of legal consciousness appears. Conventionally, it can be

named *extreme subjectivism*. People, who are exposed to the above named deformation, manifest a belief in the infallibility of their own ideas, in their absolute and eternal truth. As a result, such scientists still consider the concepts and conclusions they formulated twenty or thirty years ago or more to be true—moreover, they consider it to be the only truth. And they shut their eyes to what has occurred during the intervening period—the legislation that has strongly changed, the development of approaches to law, and, finally, to the social-economic transformations in the country and the world.

Scientists with the described deformation explicitly don't notice that. And when noticing changes is impossible, so specialists don't change or clarify their position, but stubbornly try to prove their rightness, based on their previous works.

Unfortunately, quite often, examples of such deformation can be given from different branches of law. That is, once the authors' noticed the work of a famous proccesualist, who proved that the results of operational search activities couldn't be used in investigations on criminal cases. Such a position was true in Soviet-Russian criminal processes in the 1980s and earlier. Later, the new federal law "About operational-search activity," allowing named results to be used in an investigation, was adopted into the CCP of the Russian Federation, which also established the possibility of their usage and completely changed judicial practice. The proccesualist indicated above, noted these regulatory legal acts; however, he further wrote that using such results of operational search activity in an investigation is not just wrong but illegal.

In humanitarian studies, as in jurisprudence, famous scientists can be found whose deformity is to *distrust youth*—that is, young scientists. Such a deformation, as a rule, results in an artificial "slowdown" of the young scientist in terms of the defense of a candidate or doctoral thesis, obtaining academic degrees, publishing books, or involvement in a team of authors writing academic literature.

Repeatedly we heard the idea that it is indecent to defend a dissertation in legal science before forty years of age! Some sincerely affirm the desirability of an established "age of consent," determining the age at which a doctoral dissertation on law can be defended. It might be acceptable if such statements did not come from scientists. Whereas, although it is not always so, periodically such calls do come from scientists, who objectively make a significant contribution to jurisprudence.

Wherein, it is obvious that such thoughts go against science and the principles and purposes of scientific cognition. To science there is no upper or lower limit on the age at which a specialist may conduct research,

make discoveries, or even prepare themselves for future achievements and write useful and informative monographs.

In medicine, physics, and several other sciences, such deformation of consciousness of scientists is not peculiar. It is probably also present, but in a much smaller size. And the defense of doctoral dissertations when aged thirty is not rare there.

Specialists in humanitarian studies are subjected to such attitudes quite substantially. According to observations, among reputable scientist-lawyers, the number of people who are ready to support young scientists are approximately equal to the number who, on the contrary, are ready to "slowdown" a young scientist's career growth.

Unfortunately, among professional deformations encountered, *unethical behavior* in relation to colleagues and junior colleagues is not rare. Mostly it occurs in people who have recommended themselves in science. The question here is not only how one scientist with an obvious superiority complex communicates with other colleague. This is bad, but can be the result of ordinary ignorance. We are talking here about behavior such as one scientist settling a score with another, creating obstacles to the students of his "enemies," or writing libelous letters to dissertation councils or to the Higher Certifying Commission.

The leading example is a case where the conflict between two reputable professors almost completely paralyzes the work of the dissertation council at one of the most prestigious educational institutions. The professors "in principle" failed each other's students. Furthermore, if one of the professors was supportive of the author of a dissertation (even if not a student!), the other professor out of principal did not give him a chance to defend his thesis. The members of the dissertation council divided approximately into two equal parts: one part supported one professor; the other part supported the other. And this took place not just anywhere, but at one of the most prestigious higher schools with good scientific traditions.

However, it is not only famous specialists who are subject to professional deformation. Professors who have not become widely famous can be subject to it. The difference is that the types of indicated deformations are different.

As above, there is sense in considering the most frequent types of professional deformation of legal consciousness of scientist-pedagogues who have not become widely famous that we encountered and identified during the research. Here it is reasonable to ask a question, who relates to this category? Of course, dividing into known and unknown is quite conventional. At the same time, it is necessary to admit that in the last two

decades in Russia, there has been a significant increase in the numbers of doctors and candidates of legal sciences whose work and research has been rebutted. We can place these people primarily in this category. They teach legal disciplines and sometimes write articles and books, but they have never been reputable specialists of the scientific community.

One of the most widespread professional deformations of legal consciousness in this category of scientists is *fear of one's own opinion*. We located quite a few works where such authors very carefully express their own opinions. They also speak carefully at conferences and defenses. I heard one such scientist say that if you agree with the opinion of another scientist then praise him at least twice; however, if you don't agree with him still praise him once! Scientific works by these specialists carry a generally descriptive character. It is quite difficult to crystallize from them the position of the authors on one or another question.

Another type is *conjuncture*. Famous scientists are subjected to conjuncture, but we think to a much lesser agree. As a rule, they set a high value on their own opinions, even if they are controversial. In the environment of less well-known specialists, conjuncture is quite commonly found. We think that every scientist has met such a type of professional deformation of legal consciousness—when pedagogue-lawyers repeatedly during their academic careers change their points of view on one or another question. Wherein, they have changed them not only because they came to think in a different way, but because it is profitable from the point of view of the contemporary policy of the state, or the opinion of management or a more reputable specialist. Conjuncture forces a number of specialists not to write what they know, but to comply with the opinion of a more reputable lawyer-pedagogue.

A professional deformation such as *plagiarism* can be considered here in the context of the ethical problem of legal science. But at the same time, plagiarism is a definite deviation from normal legal consciousness resulting in the violation of copyright. More wildly, it is allowed for lawyer-teachers. In this case, we should speak exactly about violation of consciousness and, accordingly, the legal consciousness of a scientist.

There are professional deformations of consciousness, some of which are characteristic of famous scientist-pedagogues and others that are characteristic of those who have not succeeded in becoming famous scientist-pedagogues.

Three of these can be highlighted.

First: *those who wish to leave a mark on legal science in any way possible.* This involves substantiated absurd and sometimes not really normal ways of solving problems in law and legislation. Scientists who

have not succeeded—the "inventors" of such ideas—come to believe in and aspire to somebody's account of becoming famous. Take, for example, the case already given from textbooks on operational search activity—when specialists substantiated the possibility of using it during an investigation to illegally obtain the results of operational search activities. The irrationality and absurdity of such statements is obvious.[38]

The second type is the commitment of crimes. We don't so much want to write about such types of deformation of legal consciousness, as about lawyer-pedagogues committing criminal actions. However, it is known to everybody that there are such cases and they feature both famous and not famous lawyers. First, we intend to mean *corruption*, which is associated with admission to university, and the passing of tests and examinations. It is necessary to say that there are not so many empirical cases, that is, where a bribe taker has been caught red-handed and a judgment of conviction has been handed down. Without any doubt, there are far fewer such cases than the number of cases where these latent crimes have been committed.

According to the observations of the authors of the present research, the struggle with corruption in legal universities is not as effective as it should be. It creates the impression that at universities neither rectors nor students are interested in the struggle with such manifestations of corruption. It seems that it is very important for rectors to save the prestige of their universities, and many students in their turn are happy that they can without effort (for a fee) pass tests or examination. There is no obvious sign of active struggle by academic teaching staff to tackle the manifestations of corruption among their colleagues. The authors are writing here about this problem with confidence because while hiring new lawyers we have repeatedly heard their honest answers about particular lawyer-pedagogues and how much money they take. We are also disappointed by just how little attention is given to the problem of the struggle with corruption in legal universities and science faculties. Specialists try to avoid writing about this phenomenon.

In the last twenty years, one more professional deformation appeared, which "infected" famous and not-so-famous lawyer-pedagogues. It is associated with the transformations that occurred in Russia in 1991. Previously, lawyers were prepared generally to work for the law enforcement authorities, other governmental authorities, and governmental organizations. From the 1990s on, students at legal universities often wanted to be hired to work in private companies and advocacy. And, as

[38] *Theory of Operational Search Activity*, ed. by K.K. Goryainov, V.S. Ovchinskiy, & G.K. Sinilov, M. (2006), 574–75.

was already noted, students are less interested in the norms of law than how to avoid responsibility for failing to comply with it. And there are teachers who explain the details and facts in their *teaching of how to avoid responsibility during a failure to comply with the law*, and what gaps there are in the legal regulation of concrete branches of law and how they can be used.

We have repeatedly met with such deformation. The famous criminalist I.A. Vozgrin in 2000 did not allow the defense of a candidate's dissertation on criminal science, which was devoted to the tactics of lawyer in countering criminal investigations. I.A. Vozgrin outlined that the task of criminal science is to help employees of investigations according to the objective investigation of crimes and the correct application of norms of criminal-procedural law.[39]

However, in the same year the authors met a teacher who explained to his students in details what they need to do to "destroy" a criminal case using bribery, what position should be taken during investigations in particular cases, and the circumstances under which a bribe cannot be proved—including explaining and recommending places to transfer a bribe. When we expressed bewilderment, the teacher answered that he doesn't consider such teaching to be a professional deformation. He teaches the norms of criminal-procedural law, tells where and how they are implemented, and the situations in which they in fact don't work. After that, he added that he prepares advocates, who should protect clients. And in principle, he added, such knowledge will not be redundant.

It is necessary to mention that we have also heard periodically about similar facts of teaching. The indicated provisions, it seems, relate exactly to the professional deformation of legal consciousness. Teachers are required to teach lawyers in the spirit of complying with norms of law and law-abidingness, and not to teach them not to comply with the law or how to avoid responsibility.

For ethical reasons, in this paragraph we deliberately have not provided the surnames of the scientists who are subject to professional deformation.

Surely, the majority of lawyer-pedagogues, having definite experience of academic activity know about such deformation. But for young professionals to know about these facts in legal science seems to be unnecessary. Therefore, what is written above is mostly addressed to them. I think that reading this text will be useful to the people whose behavior was the basis for what was outlined above.

[39] We don't know if this dissertation was defended.

Thus, the professional deformation of legal consciousness of scientist-legislators acts as a brake for legal science. It doesn't let it develop, it requires obedience to authority, and it disturbs movement of thought. In fact, scientists who suffer from professional deformation of legal consciousness lead science "in a circle," preventing it from improving.

How should we struggle with the professional deformation of scientist-lawyers? The preferred way is the internal healing of science. For this it is necessary to condemn severely those whose legal consciousness is distorted, keep their behavior under public (sub-faculty, university, etc.) control, and not indulge them. They should be forced to make an apology in case of offences. It is necessary to prevent scientists from inherently false fabrications and to force public refutation of "fabrications" that are not relevant to the law and right.

In conclusion, it is necessary to emphasize that there are few scientists with a deformation of legal consciousness; this, first, makes us happy and, second, gives us a certain confidence in the future.

At the same time, the law enforcement authority's professional deformation of legal consciousness is not particularly surprising. On the basis of conducted research, several basic types of deformation of consciousness of employees of the police, judges and prosecutors were identified.

Types of professional deformation of legal consciousness in employees of police: The first type of deformation is conventionally named "for fear of the law" and covers fear of powers.

This deformation includes employees *who avoid making decisions according to questions that relate exactly to their legal powers and competence.*

To such employees are inherent:

— a fear of making mistakes
— a wish to receive specific instruction from management on every question
— the categorical rejection of decisions according to "sharp" operational questions
— a fear of conspiracy (being "set up") against oneself on the part of colleagues
— statements of secrecy "just in case"
— a persistent wish not to work, but to give advice on work
— a lack of initiative

To directors, who are subjected to this deformation, besides the issues mentioned above, are also inherent:

— working on samples, but not according to the law
— avoiding taking responsibility and shifting it onto others
— "blurring" responsibility through numerous approvals
— betting on subordinates, who must unquestionably obey and execute orders, regardless of their legality, morality and honesty

To senior employees is also inherent an intriguing and constant fear of conspiracy against themselves on the part of superior subordinates and the heads of neighboring departments, and so on.

On the basis of this information, the reasons for such behavior sometimes is associated not with professional activity but with vital insults and complexes. For example, an unpleasant attitude (or even a secret envy) toward all people who are more educated, more beautiful, younger, stronger, or more successful.

The second type of deformation is named *legal cynicism*; it includes various separate subcategories.

Legal cynicism consists of employees who consider it necessary for everyone to comply with the law, except for themselves. This includes police officers with legal knowledge (i.e., it is not due to legal infantilism), who perceive it necessary to comply with legal norms (i.e., it is not due to legal nihilism) and do not allow changes in their views. However, this also applies to other people. In his own behavior (at work or at home), an employee quietly admits violations of the norms of law. Moreover, if policemen embark on a criminal path, they are trying to hide their behavior for understandable reasons; however, considering the category of employees by their behavior readily demonstrates a dismissive attitude to the law, exposing them to show. Typical cases of a cynical attitude to law in the behavior of individuals include unpunished drunk driving, hooligan antics on the street, and so on, accompanied by proud stories about their own bravery the next working day.

At work, cynicism to the law is expressed in demonstrative evading of the requirements of legislation, departmental orders and instructions, and so on. Wherein, time and situation do not hinder the employee in acting in strict accordance with the requirements of laws and orders and that it is indicated that the behavior wasn't caused by any necessity or plausible motivation.

The third type includes employees who are *willing to struggle with criminality* and do their duty well for the correct purpose. However, over

time, on the basis of true and clear instructions, they deform their consciousness, which is expressed *in a distorted perception of reality of surrounding people, including colleagues at work*.

Such employees can be divided into two parts.

The first part includes employees who, although they perceive the surrounding reality as distorted, will not commit crimes and violate the law "for the benefit of the law" (this type can be named "*false mirror*"). Their deformation consists of excessive suspiciousness, sometimes approaching a maniacal, constant detection of supervision behind themselves, and so on. To these persons is inherent distrust of colleagues, and suspiciousness of their corruption, abuses, and so on. Along with this, the appearance of such suspicions is enough to prompt strange gossip, nasty letters, and careless statement. As a rule, such employees have no sense of humor or have a very specific sense of humor.

At work, the deformation of these employees is most clearly revealed by:

— an expressed accusatory inclination for criminal and operational cases
— a complete confidence in their own infallibility and the infallibility of their own actions and decisions
— a reluctance to check their own suspicions and deductions, having an accusatory inclination
— an arbitrary and, as a rule, explicit enough interpretation of the law

These persons often have inflated egos and a cautiously hostile attitude to colleagues. In discussing such employees with experts, we involuntarily noticed one characteristic detail: that such people immediately believe bad things about other employees. If, on the contrary, the person is characterized positively, these people appear to doubt the sincerity of the speaker and also question the purpose this person has in positively estimating the employee.

Other employees, in contrast to the above, for example, struggle with criminality to achieve correct goals and are able to commit crimes (the "Robin Hood effect"). As indicated, such people believe that the crimes they commit "benefit society." To help us understand the motivation for such crimes, we can turn to Zheglov's common phrase from the cinema: "The place of meeting couldn't be changed": "A thief should sit in jail and nobody cares about how I sent him there." Crimes committed "for the benefit of others" can be conventionally classified as follows:

— crimes directed toward the criminal prosecution and conviction of a person who probably committed a crime. Such crimes include abusing and exceeding official positions, forgery, falsification of evidence, provocation of bribery, and so on. Typical cases of such crimes are associated with planting and discovering ammunitions, weapons, or drugs during an investigation.
— crimes aimed to outrage a person who probably committed a crime. These crimes include such shameful actions as beating during arresting a criminal or bringing him to the investigation department, mockery, torture, and so on

It is difficult to say what motivates these types of employees in their criminal activities. Historical experience shows that if you are able to violate the law in a particular way, sooner or later others will certainly appear who will behave toward you in the same way. However, in an operational environment, sometimes this truth is neglected and guided by the thesis, "We are an operational department—we can do anything."

All employees having the third type of deformation, regardless whether they are committing crimes, are characterized by the fact that they don't tend to change their points of view. Thus, if they convince themselves of the guilt of a particular person, it is almost impossible to argue them out of such a belief. Even if in the course of time their true guilt is established, these employees don't recognize the wrongness of their suspicions, and come up with various arguments.

The *fourth type* includes employees who do not have the desire to struggle with criminality and exercise their duties (or initially don't have) and turn *to criminality* (this type was named "rebirth"). At the present time, the criminal behavior of such people is associated with illegal enrichment and other manifestations of corruption, which is to say selfish motives.[40]

One element of this is that employees need to come to law enforcement authorities with the right attitudes and beliefs. But criminal environments, not the achievement of justice, "break" their psychology. According to the words of such persons, they become "wiser," which seems to mean to them the skill of "closing one's eyes" to the criminal enrichment of a person and, if possible, to one's own personal participation in that enrichment. To justify their own actions, they tell other employees that "the world cannot be changed," that their "superiors are also earning

[40] In practice, other cases of the commitment of crimes by employees are known: murders, rapes, and so on. But they are committed, as a rule, not due to the official activity of the perpetrator but for other, primarily personal reasons.

illegally," and so on. Hereafter, such employees more actively get involved in the process of their own enrichment in different ways: "protection" of firms, participation in corporate raids, knocking out debts, entrepreneurs artificially creating "problems" and their "solutions" for reward, and so on.

Another element is police employees deliberately joining the law enforcement authorities in order to earn money by using their official position. Such persons initially have a criminal attitude, which is impossible to eliminate. In aggregate, this is caused at the present time by the prestige of work in police departments that struggle with criminality in the economic sphere.

Types of professional deformation of legal consciousness of judges. The results of the conducted surveys allow us to differentiate several different types of named deformation.

The first type of deformation is conventionally named "*fear of making a mistake*."

The origin of this deformation is the absolutely normal desire to judge completely objectively, establish the truth, punish the guilty, and not allow the innocent to be accused. To achieve this desire (purposes), the judge carefully and scrupulously sorts out all details of the criminal case. This is wonderful. However, in the future it turns out that the basis of such absolutely correct behavior lies not in the establishment of truth and the triumph of justice, but in human fear and mistakes. At which point, such judges are afraid not only of perpetrating injustice but of the trouble they will get in if they make such mistakes.

As a result, fear turns into deformation. It is reflected in the fact that the named judges implicitly highlight investigatory evidence against the accused. If the accused admits his guilt in the court, the judge renders justice calmly and confidently. In which case, this sometimes demonstrates an excessive adherence to principles and a dislike of the action of the accused.

But if the accused doesn't admit guilt, the judge's mind starts to become anxious. He starts to reflect on what would happen to him if he condemns an innocent man. In such cases, the trial begins to become a form of critical evaluation of all actions of the investigative process, controversies with the prosecutor, and other elements. It leads to the solving of such cases if the evidence of guilt is sufficient, but if the accused is still not exposed sufficiently, it ends as a rule with a suspended or minimal sentence (just in case).

For such deformation of judges there is a common humorous saying: "Sincere acknowledgement softens responsibility, but it extends the period

of time!" In other words, if the accused doesn't admit guilt, the most likely outcome is that the judge will bring a guilty verdict, but it is likely that it will not be so strict. However, if the accused admits guilt, the judge by definition will bring the verdict of guilty, in which connection he will evaluate the recognition of guilt and help investigate softening the circumstances of responsibility; but how will his evaluation affect the punishment? We know cases, when the accused has admitted guilt as part of a criminal group, but those "in the secondary roles" received greater punishment than those admitting active participation in the crime.[41]

Similar cases have drawn our attention to other professionals. The most detailed study of such actions was conducted by the famous processualist from St Petersburg S.A. Novikov. This scientist conducted a questionnaire for one of the judges, who described the motives of his decisions as follows: "When the judge brings a guilty verdict to the accused who denies his guilt, often deep in his mind, despite the large amount of incriminating evidence, he is afraid that he will make a mistake. Therefore he hands down a less severe punishment. If the accused admits guilt, and himself gives the details of how he committed his crime, he thereby gives the judge confidence in the correctness of making decisions, which frequently leads to an extremely severe punishment."[42] In this case, what we have now is the deformation of legal consciousness of the judge, which manifests itself in the fear of committing mistakes, in fact, in the fear of their rights and their power to give a fair verdict.

Some respondents had to face up to the situation, such as when a judge behind the scenes uttered to an investigator or operational employee, what do you think, how do I need to judge now?

There is an opposite deformation, named *legal self-confidence*. It is associated with working out a judge's confidence and the infallibility of their actions. They aren't afraid of the law or their powers; they willingly implement their decisions, guided by their own legal consciousnesses. However, over time, the judges come to believe in the infallibility of their decisions. Moreover, their belief in the guilt or innocence of the accused is formed at the appointment of the trial. The trial for them is nothing more than a formality. Having already made their decisions, and not waiting until the end of the trial, they have already written the sentence.[43]

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[41] V. Mahov & M. Peshkov, "A Bargain about Recognition of Guilt," *Russian Judiciary* 7 (1998), 18.

[42] S.A. Novikov, *Truthful Testimonies: Legal Measures of Stimulation in Russia and Abroad* (Criminal Proceedings) (St Petersburg, 2008), 54–55.

[43] The practice of writing a sentence before the end of a trial is common among some judges.

In their majority, they are judges who have significant experience of judicial practice and who have rarely made mistakes. But they are self-confident and it is almost impossible to convince them in their mistakes. If such a judge is before a judicial review and he has decided that the accused is not guilty, it is almost impossible to convince him of the opposite.

The source of this deformation, as a rule, lies in human weaknesses, pride, and narcissism. If the judge, who is professionally prepared and confident in himself, ceases to improve his knowledge and critically perceive himself and his actions, he could eventually become one of the samples of a deformed personality.

Another deformation is associated with the hostility of a judge to certain kinds of activity or to certain types of crime. The authors of the current book named this type the *syndrome of resentment*. This hostility, as a rule, is associated with personal troubles or resentments. In the future, constantly circulating thoughts of the desire for revenge lead to a distortion of consciousness, which is implemented by unduly harsh sentencing.

Thus, a significant proportion of judges hand down more severe sentences to police employees who are committed for trial than to other civil citizens. The motivation for such judges handing down severe sentences is as follows: the stricter the attitude to the police, the greater the ensuing legality. However during surveys of such judges, other motives appear. For example, the child of a judge being detained by the police or a lack of attention by the police to the judge's personal requests (for example, help in getting a driving license, etc.).

A proportion of judges "don't like" some specific types of crime, so they award that type of crime with the maximum (or almost maximum) punishment. It is easy to guess that in this case the judges or their relatives or acquaintances have been the victims of exactly these types of crime (robbery, vandalism, etc.).

One case is quite common: when a judge who has been attacked and injured by a hooligan in a fight later hands down severe verdicts to any guilty males whom the judge thinks—or is manipulated into thinking—are known for their pugnacity.

Some judges are not free from the deformation of *legal cynicism*. It consists in the demonstrative, cynical behavior of judges, and a disregard in relation to law.

Many of the anonymously interviewed employees of the law enforcement authorities who work as practicing lawyers were faced with a situation when a judge was too drunk to handle a trial. An example given

was of a judge who was frankly inadequate and in this condition managed to sentence the accused to two years imprisonment, while the minimum sanction for the crime was three years. After the end of the trial, the prosecutor questioned him about this. The judge rushed to catch up with the convicted, who was on his way to the convoy car and followed him into the street with three fingers raised in the air shouting, "For you not two years, but three. Three, do you understand?"!

We know criminal cases where the defendants agreed to a special procedure and the judges passed sentences without getting acquainted with the materials of case. For example, in one case the judge invited in the investigator, asked him about the essence of the crime and the evidence, and asked for an electronic version of the indictment so he could put it in the verdict. Wherein, criminal cases are never left out of the secretariat of court. That is, we now have a quietly cynical attitude to legal norms and their observance.

Similar stories are told by judges, who seem to savor telling their colleagues, enjoying, apparently, their status. Judges, who are subject to the described distortion, begin sincerely to believe that their legal provision is "above the law."

At the same time, the judges' "light" attitude to the observance of legal norms is not distributed to other citizens. Here it is always a declared requirement for all to obey the law even in its smallest formalities.

The source of the described deformation is impunity or a lack of punishment for offences. This causes a certain permissiveness in such judges.

Writing about the next deformation of judges—*rebirth*—is the most difficult. On this question, there is not enough empirical material, as there are few cases that have brought judges to criminal liability and their further conviction for crimes related to official activity. But, as we all know, the lack of facts about judges abusing their powers and betraying the interests of the service doesn't mean the absence of corruption in the judiciary. There are few registered and proved facts. Therefore, we do not give specific examples and do not descend to rumors and speculations; here, we only detach rebirth as an objectively existing type of professional deformation of the legal consciousness of judges.

Deformation of legal consciousness of prosecutors.

In prosecutors, in principle, is inherent the same deformation; as with judges, certain nuances determine the specifics of the work. If the judges are quite independent, so the system of the prosecutor's office will be strictly vertical and a person who gets in to it will immediately feel

himself a part of this system. But in his work supervising legality, the prosecutor is relatively independent.

Hence this deformation is inherent, on the one hand, in "people of the system" and, on the other hand, in people who have considerable independence.

A typical deformation of "people of the system" is the fear of their own mistakes. It affects careers relevant to a high position. In turn, a proportion of prosecutors insure themselves by making one or another decision. Other prosecutors, as with judges, on the contrary appear confident in the infallibility of their actions. Legal cynicism is also present. The reasons in general are similar to that affecting the judicial system.

The deformation of legal consciousness of prosecutors is also an influence when the service of a person consists in supervising the work of others; in such cases, he involuntary begins to change, getting used to giving advice (whether correct or not), his habitat appears to be to give advice, sometimes without bearing responsibility for the result. It is necessary to have deep professional knowledge and a strong moral spirit in order not to undergo deformation and to remain professional.

This practice has gathered quite a few examples of the responsibility of employees of the prosecutor's office (including employees of investigating committees, when they were a part of the prosecutor's office) for betraying the interests of the service. In this case, it is interesting that this type of professional deformation, like rebirth, is present in the prosecutor's office. The basis of rebirth, as a rule, is a selfish motive, which at a certain stage of life "breaks in two" normal legal consciousness. In connection with this motive for justifying their criminal actions, different people come up with different arguments:

— it is impossible to live on the given pension, so there is a need to save money for old age
— corruption in Russia is invincible
— a wish for social justice: that is, to take money from those who have earned it illegally (also sometimes with the sincere addition of "at the expense of workers")
— it is impossible to change the world, everyone earns on the interest of service
— my social security isn't sufficient (no apartments, cars, or cottages will be provided), so it is necessary to earn enough to pay for them
— my parents worked honestly and died in poverty, so I will not repeat their mistakes

— I would like to live well, as others do, and so on

Such conclusions are nothing more than pathetic attempts to justify criminal behavior, the basis of which is lying, greed, avidity, and envy. However, the same justifications are expressed by other employees of the law enforcement authorities who were captured performing illegal activities.

It is necessary to say that in Soviet times scientists carefully approached their research on deformations of the legal consciousness of employees of the law enforcement authorities. Indeed, with a very low level of criminality in the country and a serious selection in the law enforcement authorities, deformation of legal consciousness, especially where criminal manifestations were involved, was rare. Cases of double-dealing, corruption, and betrayal of the interests of the service did take place, but did not have a mass character.

At the present time, the situation has changed, but not for the better. Emergency actions, which are accepted by the leadership of the country to bring about order in the law enforcement authorities, have had specific positive results. These results are chiefly the punishment of specific persons for their criminal actions. To some extent, this has stopped others from committing illegal actions. But, alas, it has not changed their minds, and has only forced them to act (that is break the law) more carefully. Wherein, if the consciousness is deformed, it never returns back to its normal state.

In the end, it is necessary to admit the similarity between types of professional deformation in all employees of the law enforcement authorities. There are also similarities in the circumstances that lead to the deformation of legal consciousness. It has obliged the science to study more carefully the existing problems and to develop a set of recommendations to make improvements for personnel working in law enforcement authorities. This work should begin from the moment a person is studied as a candidate to work in the law enforcement authorities. At this stage, it is necessary to pay attention not only to the person's formal factors (criminal record, administrative offences, mental and physical health), but also to the person's internal world (unscrupulousness, passionate love of money and other such values, instability of morale, envy, greed, etc.). More importance should be attached to these factors of a person's identity when making senior appointments in the law enforcement authorities and in all other governmental services.

Besides, it is obvious that the traditional classification of the deformation of the legal consciousness (legal infantilism, legal nihilism,

and rebirth) has already become outdated for employees of the law enforcement authorities.

But such classification doesn't satisfy modern realities and is not satisfactory in relation to people who are not associated with the law enforcement authorities.

That is, it is a fact that infantilism, nihilism, and rebirth also affect ordinary people. However, in addition, there is also found other deformations such as manifestations of *legal cynicism*. Especially at the present time, this is inherent to well-off people. They appreciate their peace and want everyone around them to comply with their rights and, most importantly, obligations. At the same time, they can themselves afford to commit illegal actions: driving a car without a driving license and being drunk, illegally storing weapons, hooliganism, arbitrariness, and so on.

In a low-income and socially unprotected environment, the same facts of deformation of legal consciousness manifest as a *fear of law*—the fear of implementation of one's own rights. The fear of the implementation of one's own rights sometimes occurs even in cases where a crime has been committed in relation to the person. There are many cases when people don't go to the police when criminal actions have been committed against them. Wherein, they don't have legal rejection (as a nihilist has), but they believe that at the present time the authorities will not search for the criminals, and, if they do, it will be worse for the people because of the criminals or their accomplices. These people are not denying the power of law, but they try to stay far away from the law enforcement system, even in cases where their own rights have been violated.

Facts about the "Robin Hood effect" can also be found. Such cases, as a rule, are about revenge and giving back to offenders via illegal ways (even criminal). Thus, people who have decided to take revenge were usually law-abiding and didn't commit crimes before they sought revenge. And, furthermore, after they have taken revenge, they will not commit further crimes. But such a desire, for example, of a father to revenge the rape of his daughter using his own hands, naturally deforms legal consciousness because it uses illegal methods. Which is to say that it is not quite correct that rebirth has occurred in the legal consciousness of the father who dealt with the rapist. Here we are speaking about another deformation—committing one specific crime in relation to one specific person, in connection to which the deformed person considers that his action is "for the benefit of everyone."

Another deformation of consciousness is known as "legal self-confidence." People who are affected by it consider that they know

everything far better than anyone else and they have their own opinion on every question. Not being professionals, they sincerely understand that they know better than anyone else how to heal correctly, how to teach correctly, how to catch criminals, how to guide the state, or even how to write poems and to play football. In relation to the law, this is reflected in a disrespectful attitude to it as being a "simple and comprehensible phenomenon for everyone," on which it is a pity to waste a lot of time. As a rule, these people by virtue of their distorting "all-knowing" legal consciousness conclude stupid legal contracts for property transfers, and so on, and as a result cause themselves great damage.

Professional deformation of employees of law enforcement authorities is a serious problem for science and the practice of law. Unfortunately, not enough is being done. The authors hope that this work "nudges" theorists and practitioners to bring order to the law enforcement sphere.

CHAPTER FIVE

NEW GLOBAL PROBLEMS OF LAW

§1 Biomedical experiments on humans as a philosophical-legal problem

In the second half of the twentieth century as a result of new inventions, biomedicine underwent a stormy development. This is process is evident to all of us, and continues today.

Work and concrete results have appeared in the following areas:

— artificial reproduction of humans
— transplantation of human organs
— replacement of genetic code
— manipulation of the mind
— human cloning
— replacement of internal human organs with the help of stem cells

It seems that such processes should be hailed. However, in fact, it is not so, because the results of such biomedical experiments have not been considered and calculated until today.

Furthermore, biomedical law also had not been prepared for any of the abovementioned processes. The processes themselves as a whole have clearly not been properly regulated, nor have the effects of individual transactions on specific people.

At the same time, B. Yudin noted, modern biomedicine has expanded the technological opportunities to control and intervene in the natural problems of conceiving, passing, and completing human lives. Different methods of artificial gene reproduction, replacement of damaged organs and tissue, replacement of damaged genes, and active influence on the aging process have led in all cases to situations where the consequences of the achievements of scientific-technological progress cannot be predicted. At the same time a real threat of destruction has occurred to the original biogenetic base—a threat to human origin and human physical and

psychological health.[1] For example, genetic engineering in a short time turned into avant-garde scientific-experimental research into the world of the living. Nowadays it provides an opportunity to interfere with the genetic code of a human and change it, which seems to be positive development for the treatment of a number of inherited diseases. However, the temptation of the planned improvements is affected by human nature and the aim for considerable human adaptation in the field of the modern, artificially created techno-sphere. A danger is that organisms participating in genetic experiments could change due to the genetic information of other individuals, and the results of such interactions could lead to uncontrolled mutations. A variety of experiments in the area of genetic engineering testifies to the unpredictability of its immediate and long-term consequences.[2]

We need to consider what could happen as a result of mutations, and we receive an answer: everything. This includes the fact that the human organisms thus obtained could lose the opportunity to reproduce in the normal, natural way. Or, as a result of mutations, will be struck down with incurable diseases and so on.

Here we emphasize immediately that we are not against scientific development. The fact that medicine will learn to treat inherited diseases is magnificent. But all the research on humans and humanity, according to our predictions, must be conducted within a strict legal framework. Thus, clear stipulations must apply to the conditions for such experiments, the procedures for monitoring people with artificial changed genetic codes, the people responsible for this, and so on and so forth. The same applies to experiments with stem cells. Without deep research, such procedures cannot be extended.

The existence of a legal framework is very important in the global sense, taking into consideration the possible consequences for humanity as a whole, and, in private cases, for the protection of specific individuals, who could otherwise suffer from the results of experiments and fraud on the doctor's side.

An example, which we think is not so unique today, was told to us by a leading doctors specializing in IVF (in vitro fertilization).[3] As you know, there are many families in Russia that cannot create a baby on their own. Such families are referred to clinics for artificial insemination. According to the statement of the specified specialist, doctors can usually determine which parents are able to have children long before performing the

[1] Quotation according to, T.G. Leshkevich, *Philosophy of Science*, 204.
[2] Ibid., 205.
[3] For ethical reasons, we are not revealing the name of the person.

necessary tests. However, the patient is not informed of the doctor's prognosis and is encouraged to undergo the procedures. And they do this because IVF procedures cost a lot of money and generally provide very good earnings for the clinic and in particular for the doctor. When the first IVF procedure, as expected, doesn't show a result, a second procedure will be proposed, and then a third one, and so on. Poor people who want to have children sell their cars and flats, take out money on credit, and get into debt to recoup the costs of the IVF treatment, yet don't know that all these attempts are fruitless. As a result, a great deal of money is earned from other people's misfortune.

Different schemes are used to earn money with the help of IVF from people who could create a baby. Here, doctors artificially "spoil" the first attempt and propose to make second and third attempts, in which everything will be all right. The first, spoiled attempt, however, brings in net earnings. And, furthermore, those patients who successfully receive a baby from a second or third attempt create an indirect alibi for those who couldn't have a baby with the help of IVF at all but are encouraged to undergo multiple procedures. Thus, doctors immediately warn patients that a baby may not be the result of the first procedure. It is not always possible to determine if such failures happen objectively or due to the intentions of doctors.

All specialists know that crimes in the medical sphere are the most difficult to prove. First, to prove criminal intent you have to have a very good medical education, which investigators, prosecutors, and policemen do not always have. Second, doctors almost always refer to the uniqueness and unpredictability of different human organisms. Third, medical society is very corporate and almost always protects doctors who committed medical crimes, even if the consequence was disability or death. Forms of protection are standard: the doctor did everything correctly, according to medical protocols, indications, and so on.

Nowadays, technologies of in vitro fertilization receive government support and regions are given out quotas, paid by the government, for carrying out such operations. This, without a doubt, will lead to further fraud by unscrupulous staff. The scheme is very simple: money is taken from the patient for the procedure; at the same time, without telling her, a payment is issued for the operation from the government quota budget. And the two sums of cash are divided between the doctors.

We need to understand that now a generation of people have grown up who are the result of artificial insemination (conceived with the help of IVF or from a surrogate mother). Today it is hard to say exactly what

health such people will have, what immunity, and what capabilities. We hope that everything will be all right.

It is necessary to remember that technologies and opportunities for having children in an artificial way have already moved science and its mind-set forward. Even if in the future it is discovered that producing children in such a way is dangerous for humanity, stopping this process will hardly be possible because, first, it has become a commercial industry, second, there are many specialists in the sphere of artificial impregnation and surrogate motherhood, and, third, there is a demand for such procedures, which especially in Russia are constantly increasing. In other words, for example, IVF has earned a lot of money and being a doctor in this field is a very prestigious occupation. In its turn, people who don't have children yet want them of course will not stop before trying such methods, even if they understand the possible negative consequences. And we can understand them.

Alongside surrogate motherhood, new ethical-legal questions appear that were unknown previously. For example, according to V.P. Salnikov, O.E. Starovoytova, A.E. Nikitina, and E.V. Kuznetsov, surrogate motherhood destroys the traditional introduction of the social roles of mother, father, son, daughter, and so on. The legal relation between the biological mother (who gives birth) and the genetic mother (the ovum's donor) is not understandable. This refers to artificial insemination with a donor's sperm. These technologies question the age-old principle of a parent's responsibility for his or her children, and the significance of family in the life of a particular person and of a whole humanity at all. Hot debates caused opportunities for the government to require permission for commercial surrogate motherhood. In this case, heavy moral problems will occur in cases where a child is born "to order" and is "not good quality,"—that is, is ill or is not of the desired gender.

Besides, there is no regulation to cover what happens when a child is unclaimed by neither the biological mother nor the genetic parents. He will become useless, to the mother who brought him into this life and to the parents who refused him. A child isn't an animal derived from a special process and should not be the victim of a medical experimentation.[4]

Experiments on the artificial extension of human life also conceal many dangers both ethical and legal. If such projects turn out to be successful, this

[4] See I.K. Babadzhanov, "Surrogate Motherhood: Some Questions of a Law Regulation," *World of Politics and Sociology* 10 (2012), 107.

would clearly add to the overpopulation of Earth,[5] possibly causing ecological and economic disasters—people need the resources to eat, drink, breathe, and so on. Ecological changes in their turn are the cause of mutations between people and also between animals with unpredictable consequences.

For some time there have been significant successes achieved in medicine in the transplantation of human organs and the replacement of damaged organs and tissue.[6] Unfortunately, medical achievements in this segment are again far ahead of legal regulation. When the appropriate legal standards were issued, economic pressure quickly led to the development of a "black" market in human organs. Of course, such a market is used by criminals. It is criminal because it is led by leading criminals[7] and also because of the way the necessary organs are received, transported and delivered. It is enough to say that, today, globally there are dozens of criminal groups that supply human organs. Such groups are widespread in countries with bad economic situations. The methods they use to "extract" hearts, kidneys, and other human organs, for example, in African countries, we can only guess at. What is more, despite the fact that formal restrictions exist in a variety of countries against the import of human organs, it is no secret that such process are still implemented. What is more, we think, that such activity takes places with the knowledge of governments, which are interested in the life improvement of their citizens.

In Russia, from our perspective, there is no regulation to protect people in terms of the donation of their organs. We can only guess how people (citizens of Russia!) can even think of selling their kidneys for money. And this is happening in the twenty-first century against the background of medical development! What protection of personal rights and equity is there going to be if the economy of society is strictly divided into two parts: those who can afford to pay a lot for alien organs and their

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[5] The problem of demography is well known to everyone. It is considered that the maximum sustainable population of the Earth is around 900 million people. The current population of the planet is already more than 6 billion.

[6] In Russia, the founder of transplantation is considered to be famous surgeon N.I. Pirogov. In 1835 in St Petersburg, Pirogov for the first time in Russia prepared and read the lecture "About Plastic Operations in General and about Rhinoplasty in Particular." In this lecture, based on his own experience, he substantiated the problems of transplantation and expressed ideas about its further development. See M.B. Mirskiy, *History of Domestic Transplantation*, M. (1985), 9.

[7] We use the currently "fashionable" term "protection racket."

transplantation (the minority), and those who are forced to sell their organs to survive (the majority). In fact, the second are the donors for the first.

Generally, of course, young, healthy human organs are needed for transplantation. Where can they be found? One source of such organs in Russia (and some other countries) is from victims of car accidents. The paradox occurs that sick people who need such operations and the doctors who perform them to a certain degree are interested in increasing the number of young people involved in fatal car accidents! And here another quandary occurs, which also faces police in foreign countries. A case was discovered in which two doctors did not help young people involved in car crashes whose injuries were light, which ultimately led to their deaths (or they did help, but not fully and with delay). The victims' organs were sold to clients. The same situation was revealed in a hospital, when young people with minor illnesses and healthy organs in demand for transplantation were "treated" to death. Organs have been sold and transplanted. The question is whether such cases could occur in Russia.

But if the replacement of human organs, human codes, and so on is something new, experiments on influencing the human mind are well known from longer ago. Nazi Germany was particularly successful in conducting such inhuman experiments. At the same time, such research didn't stop after World War II. Some specialists continued to conduct this type of research, with good aims, to increase efficiency, vitality, the onset of drowsiness, fatigue, and so on.

In fact, the danger of such experiments is acutely obvious. An increase in efficiency, especially in combination with artificial mental retardation, could turn people into slaves who can only perform specific work (human-driver, human-turner, human-baker, etc.). Thus, as a result of such experiments on "service breeds" of human, it could lead to the liquidation of certain personalities. But this is a visible stage. And what will this lead to? It is a real possibility that a long way in the future it could lead to a loss of the knowledge gathered by humanity and a return to the slave system.

Of course, it is possible, that such manipulations will increase the efficiency of people who will use it, for example, to increase efficiency during exam preparation. However, such "treatment" would represent nothing more than a kind of drug or psychotropic substance. But, once again, the consequences for health still have not been calculated. For example, what will be the habituation effect from such manipulations? For how long will be the human organism have enough power to be much more efficient, vital, and so on? Experiments on the mind need to be seriously legally estimated.

One more very serious question for law is the permissibility or impermissibility of cloning. The serious study of cloning started approximately in the period between 1950 and 1960. At that time in Europe and the United States, scientists discussed the possibility in principal of the artificial creation of a living being that is genetically the same as its parents. A real scientific breakthrough was made in 1990 when a mammal was artificially created for the first time—Dolly the sheep. This raised the question of performing the same experiment with a human.

This problem was considered in detail by T.G. Leshkevich. She writes that when talking about cloning human beings, the efforts of many theorists were needed to comprehend the consequences of this step. According to the opinion of famous American scientist P. Dikson, every method used on mammals could be adopted to humans. In this case, we would receive copies of adults, copies of our relatives and friends; moreover, we could come to the situation of multiplicity, in which it is difficult to distinguish between a genetically real human being and an artifact—that is, a human artificially created by us. At the same time, in a 1998 paper at a symposium dedicated to reproductive medicine, American physicist R. Sead publicly announced his intention to return to work concerning cloning humans. There are some willing to participate in this experiment.[8]

But most of the scientific world holds a sharply negative view on the idea of cloning. This is, first, because the consequences of such experiments are very dangerous. Second, they ask whether the received clone will be a human—will it have normal mind, will it accept living according to the estimated moral rules of a society and its laws, how will people perceive it and how will it perceive people, and so on?

There are other arguments against cloning, noted by T.G. Leshkevich, which we will put forward shortly. She wrote that there are considerable doubts over the pureness of experiments on cloning at the present time due to the sharply deteriorating global problems of contemporaneity. Such kinds of experimentation, even if done in secret, could lead to unplanned mutations, the results of which will be unpredictable. It is also unlikely that cloning will give exact copies of selected samples. The appearance of Dolly the sheep only came about after 227 unsuccessful attempts, so there is also a purely technical character to such fears. As E. Platonov claims, the first successful cloning of a child will need no less than 1000 attempts; in the process numerous still-born and mutant children will be produced. Cloning with the aim of helping families without children is also problematic. Even if the result turns out to be positive and removed from

[8] T.G. Leshkevich, *Philosophy of Science*, 206.

all negative social factors, cloning assumes the reproduction not of a new organism but of a copy of the mother or father—that is, the parents will receive not a child but a sibling, a brother or sister. Furthermore, cloning will also support those who cannot reproduce naturally, such as homosexuals. Technologies of artificial reproduction remove one of the leading arguments against homosexual relationships—the inability to further human reproduction. Such technologies will open opportunities for different forms of the family-marriage relationship, will strengthen unconventional families, and will bring into doubt the whole system of family relationships. Discussion of cloning of outstanding individuals reveals one more unexpected aspect to which this technology is likely to be vulnerable: geniuses often suffer from serious pathologies. Schizophrenia, epilepsy, and a variety of other different neuropsychiatric disorders are only a small set of characteristics of outstanding individuals.

In general, writes T.G. Leshkevich, cloning is a very complex experimental technology, which could lead to the reproduction not only of etalons (when the goal coordinates with the result) but also of mutants. From the methodological point of view, Leshkevich discusses mismatching goals and received results; in terms of cloning humans, this would be immoral and criminal.[9]

V.P. Salnikov, O.E. Starovoytova, A.E. Nikitina, and E.V. Kuznetsov distinguish five main problems of cloning.

1. Cloned human beings will repeat the genome of an already existing person—that is, they will not have, in the full sense of the word, genetic uniqueness.[10]
2. Human cloning is unnatural because it is not a natural method of reproduction.[11]
3. Human cloning could lead to the rebirth of eugenics. In order to improve the human gene pool, ideas have been expressed ideas to clone Noble laureates, outstanding people, and other individuals

[9] T.G. Leshkevich, *Philosophy of Science*, 207–9.

[10] The official position of the Russian Orthodox Church states, "The idea of cloning is an undoubted challenge to human nature, inherent in him is the image of God, an integral part of which is freedom and the uniqueness of individuals." See *Informative Bulletin Department for External Church Relations of the Moscow Patriarchate* 8 (2000), 79.

[11] The head of a republic center of human reproduction for the Ministry of Health of the Russian Federation, A. Akopyan, notes, that "cloning closed an evolutionary chain." See K. Vasilenko, "Cloning and Other Sensations," *Medical Sheet* 4 (2001), 8–9.

who brought benefits. Such cloning could lead to a society split between "elite" and "simple" people. Wherein, the last group is at risk of discrimination. For example, this could be expressed in providing better conditions for living and development. Discriminated-against persons could be used as slaves, and, also be subject to genocide. It needs to be noted that the "elite" category could signify either the clones (for example, on the basis of having A. Einstein's genotype), or people who have been brought to life in a natural way (on the basis of "natural" origin). One more demonstration of eugenics could be a simple attempt to establish a category of persons, who are or are not right for cloning. It is absolutely clear that even in cases of legislative authorization, this method of reproduction will not lead to the cloning of everyone. So, it will be necessary to take into consideration the most important factor of health. And, besides, it is obvious that cloning antisocial individuals (for example, Chikatilo) will not be approved.

4. Some people believe that cloned beings are not people. Some religious confessions, such as Catholics, have expressed doubts about whether a cloned being will have a Soul. This point of view is supported by some individuals who aren't religious, but believe that, almost through synergy, something important occurs that makes a person a person.
5. The consequences of human cloning are unpredictable. Taking part in the procedure is dangerous to life and health.[12]

Other scientists also came to the same conclusions, thereby putting into law one of the most important roles for the proper settlement of these processes. So, M.I. Kovalev writes, already at the current level of genetic engineering development there is a real danger of genetic knowledge abuse[13] and unpredictable consequences of experiments with human species. In order not to be late in solving these tasks within the framework of human rights, it is already necessary to schedule real ways to solve a variety of legislative questions. Juridical science and legislative practice in the field of the regulation of human biology and genetics must develop according to the achieved results and opened perspectives of genetic

[12] V.P. Salnikov, O.E. Starovoytova, A.E. Nikitina, & E.V. Kuznetsov, *Biomedical Technologies and Law in the Third Century*, ed. by V.P. Salnikov (St Petersburg, 2003), 28–33.

[13] M.I. Kovalev, "Human Genetics and His Rights: Legal, Social and Medical Problems," *State and Law* 1 (1994), 15–17.

medicine, biology, and genetics, leaning on the first, and predicting the social, and consequently, also juridical consequences of the second.

D.A. Kerimov correctly concluded that in Western countries there is active discussion (less so in Russia) over a variety of questions on eugenics, cloning, paternalism, replacement of organs, test-tube fertilization—all of which refer to the biosocial and bioethical spectrum. These discussions have, first of all, a moral orientation; however, they are not connected with jurisprudence and law in practice, and few effective results have been achieved. The unpredictability of some of these experiments is fraught with huge, hard consequences and has done irreparable harm. Therefore, a review is urgently required on all kinds of researchable innovations to integrate the legal component, the law, and, first, international law; with its help there is the possibility of setting up a moratorium for separate experiments across the world. Otherwise we will receive unwanted inconsistencies and negative consequences, which will create scientific research and results concerning the interests of the whole of humanity for which concert has not been gained. Let's take, in particular, the mentioned "improvements" to the human race with the help of cloning. Will humanity really manage to produce an "improved variant" of their race? Will this variant fit with historical changes in social standards of living? Who will be asked to identify whether the human race is "improved"? What methods, means, and ways will be used to identify this "improvement"? Will the next generation be satisfied with the contemporary representation of the "improvement" of the human race? Without preliminary science-based answers for these and many other questions, it is unacceptable to conduct experiments on people and generally on humanity. Without a legal decision here (equally applicable in other similar cases), we cannot continue.[14]

With the indicated conclusion, without any doubt, we should agree. But it is necessary to take into account two difficulties before working on legal regulation.

First, assuming that clones with their bodies are the same as people, but do not have human souls in the full sense of the word, it is very likely that they will not be perceived as people. In this case, clones can be used to conduct hostilities as soldiers, and also for murderous commitments, such as terror attacks. Sadly, such a scenario is a real possibility. And separate reactionary regimes that do not openly support cloning, nevertheless will create clones secretly to participate in hostilities, implement special tasks, and so on. Unfortunately, humanity has seen many examples of restricted research being conducted nevertheless—a

[14] D.A. Kerimov, *Methodology of Law*, 534–35.

prominent example being the creation of nuclear weapons. Despite the fact that all Western countries have warned of the dangers of nuclear weapons and have accepted relevant rules and moratoriums, research into the improvement of such weapons, as it appears, still continues. Furthermore, despite the legal restrictions, the number of countries with nuclear capabilities only continues to rise. Over the past decade, the ranks of countries with nuclear capabilities have been swelled by North Korea, Iran, and Israel. This shows, objectively, that today law can only slow down some negative worldwide processes but not completely stop them. Or is it necessary to regulate more cleverly and more strictly the social relationship in the sphere of restrictions. And here it is necessary to consider another difficulty: all people, even the very rich, suffer from diseases. They are interested in being treated using any methods. That's why many of them are ready to invest huge amounts of money into genetic engineering, to pay for works that slow the aging process, extend life, and transplant organs. They are, in their majority, people with great authority and they lobby hard for the promotion of such research in their countries. This process is very hard to stop because of the personal interest in such experiments and research. Furthermore, some of the world's homosexual oligarchs could use cloning to continue their generation.

Today, it must only be stated that the regulatory acts that have appeared, which limit biomedical experiments on humans and humanity, are not perfect enough because they do not fulfill their purpose.

The abovementioned biomedical problems are of interest not only to the question of life but also to the question of death. Biomedical technologies in a variety of cases will allow the physical life of a person to be supported as an individual even after the mind is gone. We are talking about cases where a person has been injured as a result of, for example, a car accident and their brain function has partly stopped, leading to the irretrievable disappearance of the mind. However, in the condition of the person as an individual, with a healthy heart and internal organs, contemporary medicine could keep him alive for a long time. In such condition, nothing is realized, nothing is felt, nothing is perceived. There is no chance for the recovery or return of the mind. The ultimate end is always the same: death, which sometimes happens quickly and sometimes after a few years.

Can a person in this state be regarded as a person or not? Does he have the right to death?[15] Can relatives ask doctors about euthanasia,[16] in order

[15] M.I. Kovalev writes, "There are no solid arguments that can be said against the idea that a person has a right to life or death. Both of these human rights are so tightly bound that they let's say are two sides of one medal, which are very delicate

to end his suffering? These questions are of current interest, especially when considering the large number of tough car accidents, hostilities, terror attacks, and other injures.[17]

In different countries, the question of the permissibility of euthanasia is solved in different ways. The Netherlands was the first to officially allow euthanasia for people. Then it was allowed by some other countries and also by some states in the USA. In Russia, today, euthanasia for people is prohibited.[18] A peculiar alternative to euthanasia are hospices, which have functioned in Russia since 1990.[19]

Here another question occurs regarding the rightful owner of the body of the deceased. Is it permissible for doctors to use a body or its parts for medical purposes and also for organ transplantation? Is permission needed from relatives and, if it is needed, is this set in stone? Such questions must be carefully weighed not only from the ethical point of view, but also from the legal side.

The abovementioned issue is connected to another problem: the artificial freezing of humans. What is, for example, the legal status of a person who is frozen when clinically dead (with the aim of preserving the body until a time when scientists have found a way of treating cancer or another incurable disease)? Such cases can already be found. In particular, the first volunteer was James Bedford, who was frozen in 1967. In the United States, a culture was created of "a society of life extension." Such

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and fragile, that is they to be handled with special care. However with the right to death many more problems occur than with the right for life." See M.I. Kovalev, "Right for Life and Right for Death," *State and Law* 7 (1992), 71.

[16] Euthanasia (greek ευ- "good" + θάνατος "death") is a method of medically induced death. It is considered that this term was proposed by philosopher F. Bekon. After more than 300 years, euthanasia was used against another outstanding philosopher, S. Freud.

[17] Highly informative research on legal thanatology was carried out by O.E. Starovoytova. From her point of view, legal thanatology is a branch of legal knowledge that includes within all the complexity of legal thanatological problems. The main issues include the juridical definition of death, right to death, death as a juridical fact, euthanasia and law, legal regulation of transplantation of human organs and tissues, and other problems, which are directly bound up with somatic human rights. See *Legal Somatology Foundation*, ed. by V.P. Salnikov (St Petersburg, 2006); *Body and Law* (St Petersburg, 2006).

[18] Even in religion, answers to this question are ambiguous. For example, in Orthodox religion, to which we belong in Russia, a person doesn't have such a right. However, some religions are supposed to have the right to death.

[19] See V.P. Salnikov, E.V. Kuznetsov, & E.V. Starovoytova, *Legal Thanatology* (St Petersburg, 2002), 112.

cryonic societies have occurred also in other countries. Such situations create, first of all, a juridical problem. On one side, a person isn't alive and isn't a subject of law. On the other side, third parties have obligations toward the deceased to carry out all possible actions with the aim of revitalization and treatment. When this will take place isn't clear, nor what will happen if the indicated goals can't be reached. Will it entail juridical responsibility and, if yes, to whom and in what form? Furthermore, a question occurs about the principal ethical permissibility of such experiments. The results of such experiments are not known, because no one "frozen" has been defrosted yet. Many people could express a wish to extend life in such a way. Is it permissible in this case to open cryopreservation to everyone? What is needed and what are the necessary conditions to be followed in order to bring such people back to life?[20]

Accordingly, biomedical experiments are one of the most important global problems of law, requiring at the same time very balanced and very accurate solutions.

§2 Information space as a threat to human and its rights

The problems of the status of humans in information space and the protection of human rights and freedoms in it are sometimes raised by scientists. At the same time, many people cannot imagine the scale of these problems—they cannot fully estimate the emerging risks for humans relating to the immunity of private life, freedom, and physical and mental health.

Dangers related to this uncontrolled spread of information are one of the most important problems for humanity in the twenty-first century. Its solution, without any doubt, will be related to law and necessary legal regulation.

The majority of people don't think enough about where information about them is stored, who uses it, and whether it is protected. A typical answer that can be heard during an interview is, "Maybe information about me is stored by the police." But just as likely it is not stored there. The police, through the operational search activities, generally have information about particular individuals who have been convicted or they have an operational interest in. They are less interested in law-abiding citizens.

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[20] V.P. Salnikov, O.E. Starovoytova, A.E. Nikitina, E.V. Kuznetsov, *Biomedical Technologies and Law in the Third Century*, ed. by V.P. Salnikov (St Petersburg, 2003), 14.

At the same time, a giant informational array is stored for each person by different government and private organizations. What is more, much of this information is stored electronically, which may be under less control and isn't well protected from massive distribution.

Let's consider the main places where information about people is stored. Actually, information about each person starts to be stored long before birth. At the maternity hospital, each pregnant woman is required to establish a birth card exchange (or form 113/u). This card is a special medical way of accounting that is necessary for pregnancy control. The first page contains personal biographical information about the future mother, also about inspections, diseases, harmful habitats and abnormalities (alcoholism, drug addition, mental diseases, etc.).

After childbirth, in the maternity hospital, information is carried in a card exchange including information about the condition of the newborn. The information stored includes all that peculiar to a particular child: peculiarities of childbirth and the consequences for the child; psychological parameters (height, weight); information about the method of feeding used; the vaccinations that are done in the hospital; information about congenital diseases, anomalies, malformations, and diseases that the newborn has had in the maternity ward; diagnosis of illnesses and treatment; information about the individual characteristics of the newborn child; defects of the musculoskeletal system; congenital malformations, anomalies, and so on.

This information is concentrated in paper form in the archives of the medical institutions, where the protection of personal data exists, to put it mildly, conditionally and can be found on the computers of doctors.

We know of several cases when doctors moving to a new job automatically copied data about their patients and newborn babies to removable media. Where are they now? Out of curiosity, you can read the correspondence of some doctors on the internet. Sometimes, there is cynical and detailed discussion of mothers and babies.

And, in relation to any person, there follow several further stages of recording information about him and his parents:

— registration of birth (in registry office of acts of civil status)
— registration of the child's place of residence
— registration with police of obligatory medical insurance
— registration of citizenship
— registration in the district hospital for children
— registration in pre-school institutions (nurseries, kindergartens)
— registration in comprehensive schools

Each of these agencies has their own database, which is maintained in electronic form.

Next, each person begins an adult life. And at each interval on dozens of occasions he fills our information about himself and his relatives (such as parents, children, wife), about his health, property, and social status, his place of residence and his relatives, and so on and so forth. Such information is stored by many institutions:

— tax authorities
— places where passports are issued and other places of registration
— military commissariats
— authorities of Russian registry
— records of traffic police
— registry authorities of acts of civil status
— records of the Ministry of Internal Affairs about previous convictions
— and so on

All these institutions have full and detailed information about everyone. This information is also stored in electronic form. And although, without a doubt, they are protected better that in medical institutions, they are still available to access. For example, we have already seen all the above mentioned databases on sales in the markets of Moscow.

In addition to these records, there are databases in organizations that are necessary for each person:

— educational institutions (colleges, high schools, academies, universities)
— medical institutions (polyclinics, hospitals, dispensaries)

This includes also databases of airlines, railways, and maritime companies, which can also be found for sale. Such databases, in addition to passport data, also store information about when, where, on what flight and at what time a person left and, accordingly, arrived. Thus, should a person wish for some reason to hide the fact of a trip, it is easy to establish that the travel took place.

If a person is involved in business, even if it is a small one, there is a much larger amount of information about him. Nowadays, several huge databases have been created for searching legal entities, their founders, and directors for assessing the trustworthiness of a business.

For example, specialized information databases ("Cronos," "Spark," "Integrum," etc.) contain constantly updated information about legal entities and physical individuals, their registration and accounting data, and places of registration, share capital, date of establishment, owners and shareholders, and executive directors. In addition, information is stored about their affiliated persons (physical and legal), balance sheets, financial reports, risk availability, and so on. Additionally, on the website of the FNS (Federal Taxation Authority), Egrul.nalog.ru, all actual information about any legal entity can be found. And the website Service.nalog.ru gives one the opportunity to check documents that were submitted by tax authorities about changes to the constituent documents of any organization, including information about the legal entity and changes in participants, address (location), or directors.

There are several others websites that provide similar information. For example, Finrazvedka.ru provides research activities on the economic situation of competitor companies, partners, suppliers, and customers by analyzing their financial documents. The information agency valaam-info.ru contains information about legal entities and physical individuals. The Central Catalogue of Credit Histories database contains information about credit histories of borrowers of their obligation according to loan agreements (credit) and so on.

But this is not all. People leave information about themselves without thinking, not only when it is necessary (in public institutions or for business). People leave this information everywhere, even in the service sector. It is now common for large stores to have databases of their buyers, where they record fully a customer's surname-name-patronymic, residential address, family composition, and means of communication (mobile number and home phone number, email address). The same databases are held by delivery services, massage salons, swimming pools, credit institutions, insurance companies, and so on; each has a detailed database, and their storage of this information is not always reliable.

The mass media (TV, radio, newspapers) also have their own databases. These databases, of course, are selective and don't apply to the general population. Generally, they contain information only about famous and interesting people for editions. If the media company is concerned with politics, they collect information about politicians and also material that could compromise them. If it is a business magazine, the information will be collected by journalists on businesspeople and their families and so on. Journalists rarely conduct their own investigations, they take out collected material for social discussion, including intimate questions and

sometimes collected material stored "until better times." However, the "victims" of such investigations may also be ordinary people.

The internet deserves special attention. The internet is essentially a huge database and a kind of mass media. First of all, it is possible to find on it many of the abovementioned databases and types of information. Second, highly personal information about people can be actively spread and discussed on forums and social networks without the knowledge of the person in question. Also photos can be published that compromise or discredit this person. Let us say once again a few words about personal photos. For some reason, many people believe that an emailed photo cannot fall into the wrong hands. Of course, this is in fact not the case. But deleting photos from the internet is already almost impossible. On the contrary, there are groups who specialize in searching the internet for intimate photos and then widely publishing them on different websites.

Generally in the world, and particularly in Russia, further information processes are continuing. So, electronic diaries are being introduced in schools and single electronic payment documents and single identifying document are being created, and so on. Thus, the process of receiving full information about a person will continue.

Therefore, it is now relatively easy either to obtain necessary information or to distribute it via the internet. However, one needs to understand that one has a right to personal and family secrets, and the protection of one's good name. A huge electronic array of data is already circulating right now in society that cannot be taken back under control. Despite assurances from organizations about keeping personal information secret, markets are constantly replenished with fresh databases.

This situation is already damaging individuals and their rights and freedoms, as evidenced by many examples. In particular, many crimes have been committed where criminals have precise data about particular individuals, such as debt. Other criminals, who receive information about rich clients from stored information databases, use such information to commit thefts. Cases of bullying are also widespread, and some such cases end tragically. For example, a photo of a girl was taken from a social network shortly before her wedding and published among photos of prostitutes on a pornographic website. The wedding didn't take place. The girl's mother was stigmatized by neighbors and committed suicide. There are many cases of usage of a person's personal data for illegal and immoral activities.

How can we be assured that each of us will not be the victims of such kinds of criminal activities or stupid jokes? There are no such guarantees because there is no clear legal regulation of the information space. And, in

fact, there is no protection of personal data at all. The cases outlined above require from lawyers a serious understanding of what is happening and the development of specific legal measures.

Another problem is the rapidly growing mass control of people's movement. Today in big cities cameras are installed almost everywhere it is possible. They can be found at highways and intersections, squares and parks, and stations and restaurants, and in hotels and toilets, schools and kindergartens, private offices and public institutions, supermarkets, small shops, buses and the metro, and so on—in one word, everywhere.

The internet reveals that during the course of one day the average inhabitant of Moscow comes into the view of such cameras 30–50 times on his way to work and return home! We checked this out ourselves and made sure that this data is correct. And when one considers how many times a person comes into view of office cameras at work, this number will be much larger.

Many of the abovementioned issues can have positive effects. For example, video controls recording the situation on highways could prove objectively who was guilty in a car accident. Video cameras can also show the rudeness of social employees to clients.

However, there are many questions, such as where these videos are stored and who has access to them. Life experience shows that many people have access to these recordings. Furthermore, snapshots from hidden video cameras are after some time published on the internet for anyone to see. Nowadays, no inhabitant is insured from this. Such captured image could include a person awkwardly falling over (which some could see as ridiculous), a non-photogenic face, conflict between passers-by, and arguments with relatives, which can in a moment be seen by many people. Even more frustrating is when video cameras are installed in restrooms and later published, cases of which we have already seen. Of course, nothing new will be seen, but without a doubt such cases are unpleasant for the people captured on video.

Today, there are quite a few people who hunt for videos of all the negative moments of the lives of famous people and then collect and distribute them over the internet; this includes traffic violations, scandals, weird behavior, and statements of failure. Among such people is the Rector of MGU (Moscow State University), the academician V.A. Sadovnichiy, who not long ago was the subject of a video showing him incorrectly calculating interest during his speech to the auditorium. The recording of V.A. Sadovnichiy's speech was recorded by a video camera hanging in the auditorium (we don't know why it was hanging there). But already by the evening of the same day the fragment with the

academician's clause was published on the internet, and later, distributed. Of course, it was only the fragment with the clause rather than the whole speech of this famous scientist. The next day, the whole internet could access copies of this fragment. Furthermore, someone has already detailed V.A. Sadovnichiy's clause on Wikipedia.

There is one more danger. As everyone knows, all records from the video cameras are related to crime. But overseen images can also be used for blackmail, the secret surveillance of a person, or to carry out an attack, and so on.

Assurances that such records will not be shared with outsiders do not correspond to the truth. Such records have already appeared and do appear on the "black markets," where one can already find confidential databases and records from the Ministry of Internal Affairs and customs. It is necessary to understand, on the one hand, that such records could be bought by parents that show the behavior of their children. But, on the other hand, they can also be bought by killers or robbers to monitor their victim—which is something else altogether.

But the main question is whether it is necessary to install cameras at every step. Is it good if people are always being monitored? Will people have the right to a personal life, personal things, and personal secrets?

Humanity has struggled for so long time for its rights and freedoms, is it now to be placed under doubt?

Today, nothing can be kept secret from mobile telephones, which not only can be used to call you anywhere but which also are set up to show your location. Mobile operators are already officially proposing services that determine, for example, the location of a son or a husband with the help of his mobile telephone. Mobile telephones by their nature are transmitters—let's say, a kind of personal lighthouse and also in some cases a collar. Information about the movements of a mobile phone owner is stored only by mobile operators; nevertheless, it occurs in the market and has become widely available. In fact, with the wide usage of mobile telephones, people have lost their right to the secrecy of their movements and, partially, the secret of their private lives.

Here it is necessary to discuss wiretapping of telephone conversations. As everyone knows, the secret of telephone conversations is one of the most important natural human rights, protected by the government. In the Russian Federation, this right is enshrined in article 23 of the Constitution of the Russian Federation. Telephone conversations can be wiretapped according to the federal law "About operational search activity," with the obligatory observance of the grounds and conditions of this event that are indicated there. Only these authorities have the right to wiretap telephone

conversations and conduct operational search activities. Violation of the secrecy of telephone conversations could lead to the responsibility established by law.

However, earlier technical methods that allow the wiretapping of telephones were strictly taken into consideration. Now, the development of technical methods and the lack of legal regulation has meant that the market for wiretapping and recording equipment in Russia has become almost uncontrolled. There are many people advertising the provision of such services. And people have ceased to be surprised by facts from their personal conversations appearing in internet records. Professionals, of course, object that the wiretapping of telephones is not a cheap pleasure, and that it also requires both financial and time costs. To wiretap a telephone will only be wanted if a person's conversations are of any interest. But this is little consolation for those who have to deal with it. And the most important thing is that every person in fact could be unprotected from this outrage.

Furthermore, contemporary information technology gives wide opportunities for the editing of records and their falsification. Of course, an expert in most cases could distinguish an original record from a fake. But all this will happen only after a person has been publicly discredited.

The same is true of personal correspondence. The secret of correspondence and messages in the Russian Federation is recognized as a natural human right, which is protected by the Constitution and other laws. But, in practice, personal correspondence on computers and the internet can easily be attacked by hackers. Many products are sold in the markets that allow internet messages to be opened and read.

Generally, the situation where the total control of a person is a possibility is obvious not only for Russia but also for the whole world. In the middle of the twentieth century, humanity had made so many nuclear bombs it didn't know what to do with them; similarly, today so many video cameras and recorders have been produced that people are beginning to suffer from it themselves.

It is necessary to take the following into consideration: today we are all oversaturated by electronics. Electronics are situated at home and at work, people are computerized and carry with them at least one mobile telephone. However, there are is no objective research about the harm of these electronics to health. We must repeat that a mobile telephone is a transmitter. The fact that carrying a transmitter with you constantly isn't good for the health is realized by a lot of people. Furthermore, this issue has been talked about for a long time.

In Russia, a generation that constantly uses mobile phones and other electronic means of communication has not yet grown up, while doctors, probably, cannot objectively assess the harm for health. It can be hoped that such harm will be minimal.

In addition to physical health, information space has a significant influence on the human mind. Such impact can be classified in several directions; the most common are:

1. Impact on politics. If carried out during elections, which are periodically held in Russia to appoint various authorities, it affects the formation of relationships to politicians and public figures. It is clear, that such an impact can prove both positive and negative and include undeserved denigration of the person.
2. Impact on economics. This has an affect by constantly bombarding minds with advertisements about discounts, sales, beautification, privileges, and son. All these discounts and beautifications are well calculated economically to bring sellers a real profit. And following so-called discounts, there is a wish to sell stale (and in general unnecessary) goods—of course for a profit. Information space has an impact on people and provokes them to buy unnecessary goods and things.
3. Impact on religion. Beside world religions, which we must respect, human consciousness and thinking is targeted by dozens of sects, prophetic motions, and so on. These religious organizations spend a lot of money; to finance their existence they carry out programs in order to involve and bring in young people and so on.
4. Impact on amorality. Human are so arranged that they contain within themselves the propensity for morality as well as wickedness. The mass media, with its frankly amoral programs and wicked plots, provokes violence and rudeness, which unfortunately pull in high ratings. The internet—the favorite toy of teenagers—is filled with plots about pornography, murder, mugging, brawls, and so on. As a result, such plots tempt many people to try and participate in such activity at least once.
5. Impact on race and nationalism. It would seem in Russia—a country that defeated the Nazis—that there wouldn't be a question about nationalism. But there is such a question. And in Russia, recently, it is quite acute, as evidenced in wars in Chechnya, separatism in the Caucasus republics, and various nationalist motions.

Taking into account the spread of mass media, a human cannot hide from all these kinds of psychological violence. In every point in the city he is reached by advertising, pre-election slogans, nationalist appeals, propositions to join a particular party or sect, and so on. The indicated appeals and propositions rarely bring positive emotions. This causes the accumulation of aggression in humans that needs an outlet. Negative energy spills out to affect family, colleagues at work, and passers-by.

Wherein, we need to understand that such advertisements (both social and political), and also other propositions and appeals, are prepared by professionals. They are experts in personal and group psychology, and on this basis actively use information technology to influence public consciousness. Such technologies themselves were already invented quite a long time ago. And today with the development of information space, they have become more effective.

From our perspective there has been insufficient research on the harmful impact on human psychological health. Furthermore we need to know and to understand how the excessive impact on consciousness will be spillover into society. Is it necessary for our society to have another shock? How ruinously will it reflect on all of us and generally on Russia?

To summarize this chapter briefly, let's repeat that humanity at the end of the twentieth century faces new global problems, relating to his corporeal nature and the impact on him of information space. Their danger must be realized as soon as possible and concrete legal mechanisms must be worked out in order to solve the abovementioned problems.

CONCLUSIONS AND FORECASTS

Finishing a work on the philosophy of law is always more difficult than starting it. One has only to complete survey all the questions and it immediately becomes obvious that not everything has been covered; there is then the wish to rewrite, to add more detail, to clarify, and so on. There is always the desire to be better understood and also to deepen the questions that have been raised.

Therefore, the authors end this book not only by repeating their conclusions, but also by adding forecasts for the development of philosophy of law, legal regulation, and legal reality.

If attention is given here to the conclusions made, so it is also necessary to encourage researchers not to abandon the purpose of cognition of being on the basis of the principal possibility of such cognition. Accordingly, there is no sense to abandon dialectic as the universal method of cognition, and one that is objectively more developed in philosophy and also in science.

The authors hope that interest in postpositivism and postmodernism in the majority of such doctrines will end relatively quickly. People generally, and scientists particularly, always tended to and tend to cognition of the world—to a true cognition, to true knowledge. Under such circumstances, science and philosophy of science should look to monism. Almost all secondary education and a major part of higher education in the entire world is built on monism. People all over the world in schools and colleges study and take for granted the same physical laws, chemical formulas, historical and social processes, and so on. Refusing monism, leveling the values of scientific knowledge as cognition of the truth, in fact means the destruction of the educational system, which, of course, no state will allow.

But, nevertheless, if science strives for the certainty of its concepts subjects, and being, so philosophy likely will never solve the problem of understanding something. This problem, the faithful companion of philosophical research, will always be near.

Against the background of world instability, all states will strive to develop science and to set even more ambitious tasks before it. These tasks concern receiving new and, undoubtedly, *true* knowledge about humanity, nature, society, and the structure of the world. The purpose of

receiving new knowledge can have a humane or an inhumane character, and it can be directed on the enrichment of specific persons and states and the strengthening of their power. Experience convincingly shows that humans could not form states for a long time. They strove for enrichment, for the absorption of others, which always leads to destruction and, ultimately, to self-liquidation. It is necessary objectively to admit that humans constantly throughout their existence have engaged in destroying one another. Wherein, alas, historical experience convincingly shows that humanity has not become kinder, wiser, and more caring toward itself.

At the present time, humanity has accumulated a variety of global problems, which are deadly for the Earth (threat of nuclear war and application of other weapons of mass destruction, overpopulation, lack of energy resources, environmental damage, and so on). We can believe that, unfortunately, in our perspective some of these named threats to life will be implemented. What we have outlined gives the opportunity to put forward a hypothesis of cataclysms and the circulation of human life on the Earth. Its essence is that humanity with its actions always reaches a certain frontier, after which it is unable to live properly on the planet. As a result of achieving this frontier, catastrophes or cataclysms occur that affect (sacrifice) the large part of the population of the planet. Then the survivors of the cataclysms begin a new life. This life probably starts over from the very beginning, because during the catastrophes, undoubtedly, humanity loses the significant baggage of its accumulated knowledge, achievements, and life experience. But solving the problems of overpopulation restores the environment and energy resources. Then humanity develops, reaches overpopulation, violates ecology, invents deadly kinds of weapons, and fights, during the process reaching a new frontier, leading to cataclysms, and then a new round of life, cleared of many invented technologies, experience, and knowledge. However, we hope that such a turn will not come soon.

The most important direction of philosophical thought is philosophy of law. Philosophy of law is a philosophical-social science, the subject of which is the study of fundamental problems of the ontology of law, epistemology of law, axiology of law, anthropology of law, logic of law, ethics of law, praxeology of law, and legal consciousness. Philosophy of law is the main binder between philosophy and law—the legal sciences.

The authors believe that in the different stages of the existence of humans on Earth, the law repeatedly arose in different forms. The birth of law has occurred at least three times. First, with the appearance of humans and their consciousness on the Earth, when the pursuit of law is pledged. Second, with the appearance of the first state and the birth of law in it—

already positive, regulatory, rigid. Third, with the birth of customs, which in time receive the status of legal customs and norms of law within the mentality, culture, and development of separate societies, and the development of legal customs and norms of law.

It is impossible to agree with the theory of an extraterrestrial and non-human origin of law. It seems that law is a social phenomenon that is inseparably bound up with being and humanity. The law is a diamond: bright, beautiful, radiant. However, the most solid have 57 facets. As soon as researchers studying the law open approximately the same number of its facets (strong and weak sides of law, contradictions and flaws, opportunities of law and limits of these opportunities, etc.), the essence of this complex social phenomenon will open.

Traditionally the majority of lawyers and philosophers examining law from the angle that most appealed to them. The main problem with such attempts is the absence of an all-embracing and versatile study of the law and its manifestations that is absent in the comprehensive approach. On the basis of the dialectical theory of cognition, the subject of the theory of comprehending the study of law is the law by itself as a complex, contradictory, multidimensional, dynamically changeable social phenomenon, evaluated without the domination of any legal concepts.

On the basis of the conducted research, we established the main criteria of *legal progress*. In particular, this refers to:

— achieving justice in legal decisions, protecting humans by law
— the clarity of regulatory legal actions and the simplicity of its presentation
— a clear legal mechanism for the implementation of standards
— the level of legal awareness and legal culture, the level of credibility of the law
— the presence of a reasonable balance between the interests of individuals, society, and the state

Quite large scale research on legal science and practice has been conducted by the authors, which has allowed them to formulate general problems in scientific works on jurisprudence, ethical problems in legal science, general scientometric problems in legal science, problems in contemporary legal education, and general problems in legal practice.

G*eneral problems in scientific works* on jurisprudence include:

— in the majority of monographic works, mainly in the sectorial legal sciences, the connection with the philosophy of law is lost

— scientific results are implemented slowly or are not implemented by the legislator
— in scientific work on jurisprudence, the economic effect from the received results and formulated proposals are almost never considered and forecasted
— also there is no consideration of the political effect, social effect, and so on
— it manifests artificial complications of science
— it contains incorrect and deliberately wrong interpretations of law
— there are a small number of works of original authorship published over the last decade
— Russians, including lawyers, have begun to read visibly less

We have highlighted the four main *ethical problems* in contemporary legal science:

1. ethics of scientific discussion
2. servility of government
3. plagiarism
4. insufficient funding of science and scientists

This is related to the *main scientometric problems* of legal science:

— methodology of science
— dependence on the legal knowledge of specific researchers (their subjective estimations, level of education, ideology, worldview, etc.)
— the mixture of monographs, manuals, and textbooks
— retardation of legal science from the practice of implementation of legislation
— the problem of the scientometric method in legal science

Problems of contemporary legal education in Russia are associated with reform and have repeatedly came under criticism from everyone from professors to students. The authors of the current work have also conducted appropriate research and identified several problems, in particular:

— the possibility of getting the diploma of magister of law for people who have a bachelor degree in non-legal specialties
— the orientation on preparing “narrow” professionals

— the question of what to teach to students as a fundamental science of law: theory of the state and law, encyclopedia of law, integral theory of law, or something else
— the undue fascination with testing instead of answering to teachers
— the permanent and unsolved problem of the number of branches of law in legal science

To these *main problems of legal practice* are related:

— the excessive formalization of the norms of procedural law and the ordinary routine of doing even simple legal cases
— the necessity of establishing the objective truth in law
— that many lawyers in their practical activity implement in favor of specific persons, against the law and against justice and truth
— corruption in the law enforcement sphere
— low credibility of judicial power in Russia

The work also contained traditionally conducted surveys, dedicated to legal consciousness, legal nihilism, and the professional deformation of consciousness. On the basis of the results of this research, we proposed several measures to negotiate and reduce legal nihilism among the Russian population. In our opinion, it is necessary to:

— strengthen responsibility for those who commit law violations
— teach the basis of law at school
— spread juvenile judiciary
— direct the internal policy on increasing the level of human well-being

In previous works we have repeatedly written about the necessity of reviewing approaches to the professional deformation of legal consciousness. These proposals have been heard in the scientific environment. We have continued to develop that theme in this work and have substantiated it with several of the most common types of professional deformation of academic teaching staff at legal universities. Wherein, the types of professional deformation were divided by the authors into categories of deformed personalities: first, famous scientist-pedagogues, and, second, those who have failed to become famous scientist-pedagogues. Furthermore, we formulated types of professional deformation of legal consciousness, which are related to both categories.

Among *famous scientist-pedagogues* the following types were highlighted:

— painful vanity, narcissism
— extreme subjectivism
— distrust of youth and young scientists
— unethical behavior in relation to colleagues and junior colleagues

Among scientist-pedagogues who did not become famous, the following types of professional deformation of legal consciousness were highlighted:

— fear of their own opinion
— conjecture
— plagiarism

The general types of professional deformation among scientist-lawyers are as follows:

— the wish to leave a mark on legal science in any way possible
— corruption
— teaching illegal actions

Furthermore, the new research clarified and developed the author's earlier theories, adding new types of professional deformation of the legal consciousness of practical workers.

The conducted surveys provide a possibility to pay attention to some regularities of the essence of law. The law shows positive and negative patterns. The positive are known to everyone, but it is important to remember the patterns that have or might have negative consequences; these negative patterns are:

— dependence of law on external factors (economic, political, etc.)
— dependence of law on persons issuing legal norms, including the tyranny of these persons
— lack of overall directivity of legal norms on establishing objective truth and justice
— lack of directivity on full equality among people

What will the law and legal beings be in the twenty-first century and further into the future? Let's make several forecasts:

1. We expect law and philosophy to converge. The law is needed in philosophy. In its turn, through the law, philosophy can perform as a specific regulator of social relationships, and can faster and more effectively develop and implement philosophical ideas, doing even more to bring humanity and justice into law. In other words: setting and discussing the goals—the destiny of philosophy and the implementation of ideas, and giving them legal meaning—in relation to law.

   Philosophers will strive more for the law and will partly integrate with lawyers. This contributes to the fact that the law will take an increasingly large role in people's lives.
2. In law itself, electronic documents will expand. People have already got used to electronic payment documents and have the evaluated the possibility of identifying a person through a payment card. Everything is moving toward the creation of individual electronic chips and cards, containing full information about a person. The existence of such chips could have positive or negative outcomes. One of the negative outcomes is the possibility of the state using chips to control people (chips, it is likely, will allow following a person's movements, payments, and private life, etc.). Furthermore, it may increase the risk of fraud. At the same time, for law-abiding people, the introduction of electronic documents (even maybe a single one) could resolve problems with registering rights, receiving different permissions, passports, driving licenses, and so on. It is quite likely that many necessary documents could be received through one's own computer without the need for standing in queues and so on.

   There is confidence that the gradual refusal of document turnover will be observed. Another question is over the data storage device that will be replaced.
3. It is quite possible that gradually a practice of conducting trials through teleconferencing will be implemented. We have already experienced conducting international meetings using teleconferencing. If the appropriate procedures are developed and adopted, procedural rights during trials using teleconferencing will be respected and it will greatly simplify and speed up the process of trials.
4. In the twenty-first century, for sure, there will be further scientific discoveries that will significantly change the world and human life. These discoveries will require legal evaluation and legal regulation of the application of the results of these discoveries. Most likely,

this will lead to a lot of interesting work that will need to be done by scientists in the field of the legal sciences.

5. For many centuries, the Russian Federation has been heavily at war every half century. We hope that in the current century Russia will avoid war. However, with absolute certainty we can say that armed conflicts between states will occur. This leads to the development and improvement of international law. The struggle for peace will force states to join together in coalitions, and also to develop closer legal space.

   It is possible that the development of communications will actively develop international private law, international administrative law, and international labor law. Earlier this was impossible due to the underdevelopment of communications between states. The observed century of high technology resolved this problem.

In conclusion, we would like to thank you for reading this often challenging book. The authors hope for kind feedback and constructive criticism.

BIBLIOGRAPHY

1. Avakyan, S.A. *Constitutional Law of Russia*, 2 vols, M. (2007).
2. Avtonomova, N.S. *Philosophical and Methodological Problems of Structural Analysis in Humanitarian Studies*, M. (1997).
3. Adler, A. *Lectures on Analytical Psychology*, M. (1996).
4. Alexandrov, A.I. *Criminal Police and Criminal Process in Russian Statehood: History, Contemporaneity, Perspectives, Problems* (St Petersburg, 2003).
5. Alexandrov, A.I. *Philosophy of Evil and Philosophy of Criminality* (Questions on Philosophy of Law, Criminal Police and Criminal Process) (St Petersburg, 2013).
6. Alexandrov, A.S., & S.A. Frolov. *Relevance of Criminal-Procedural Evidence* (N. Novgorod, 2011).
7. Alexandrov, R.A. *Problems of Contradiction to the Drug Business in the Russian Federation*, ed. by V.P. Salnikov (St Petersburg, 2005).
8. Alekseev, P.V., & A.V. Panin. *Philosophy*, M. (2005).
9. Alekseev, S.S. *Selected Works: The Science of Law: General Social Problems* (Publicism), M. (2003).
10. Alekseev, S.S. *Problems of the Theory of Law*, 2 vols, (Sverdlovsk, 1972–73).
11. Alekseev, S.S. *The Law: Alphabet—Theory—Philosophy*, M. (1999).
12. Alekseev, S.S. *Philosophy of Law*, M. (1998).
13. Allahverdov, V.M. *Consciousness as a Paradox* (Experimental Psychology) (St Petersburg, 2000).
14. Amosov, S.M. *Judicial Cognition in the Arbitrage Process*, M. (2003).
15. *Analytical Philosophy: Selected Texts*, M. (1993).
16. Andreev, I.D. *Theory as a Form of Organization of Scientific Knowledge*, executive editor N.K. Vahtomin, M. (1979).
17. Apel, K.O. *Transformation of Philosophy*, M. (2001).
18. Arzhanov, M.A. *State and the Law in Their Relation*, M. (1960).
19. Aristotle, *Compositions*, 4 vols, M. (1975–81).

20. Aron, R. *Fictional Marxism*, M. (1993).
21. Atmazhitov, V.M., & V.G. Bobrov. *About Legislative Regulation of Operational Search Activity*, M. (2003).
22. Babadzhanov, I.K. "Surrogate Motherhood: Some Questions on Law Regulation," *World of Politics and Sociology* 10 (2012), 107.
23. Bayev, O.Y. *Selected Works*, 2 vols. (Voronezh, 2011).
24. Barihin, A.B. *Big Encyclopedic Vocabulary*, M. (2005).
25. Bastrykin, A.B. *Criminalistics* (St Petersburg, 2003).
26. Bataille, Georges. *Internal Experience* (St Petersburg, 1997).
27. Bachinin, V.A., & V.P. Salnikov. *Causality as a Philosophical-Legal Problem* (St Petersburg, 2002).
28. Bashlyar, G. *New Rationalism*, M. (1989).
29. Bednyakov, D.I. *Non-Procedural Information and Investigation of the Crimes*, M. (1991).
30. Belkin, R.S. *History of Domestic Criminal Science*, M. (1999).
31. Belkin, R.S. *The Course of Criminalistics*, 3 vols, M. (1997).
32. Belkin, A.R. *The Theory of Proof*, M. (1999).
33. Belousov, A.V. *Procedural Layout Proofs while Investigating the Crimes*, M. (2001).
34. Belson, Y.M. *Russia in Interpol*, ed. by S.F. Zibin (St Petersburg, 1994).
35. Belyaev, N.A. *Criminal-Legal Policy and the Ways of Its Implementation*, L. (1986).
36. Bergson, A. *Creative Evolution*, M. (1998).
37. Berman, G. *Faith and Law: Reconciliation of Rights and Religion*, M. (1999).
38. Berman, J. Garold. *The Western Tradition of the Law: Epoch of the Formation*, 2nd ed., M. (1998).
39. Behtereva, N.P. *Healthy and Sick Human Brains*, L. (1980).
40. Behtereva, N.P. *Magic of the Brain and Labyrinths of Life*, M. (2008).
41. Behtereva, N.P. *Neurophysiological Aspects of Psychic Activities of a Person*, L. (1974).
42. Behtereva, N.P. *About the Human Brain* (St Petersburg, 1994).
43. Baudrillard, Jean. *The System of Things*, M. (1995).
44. Bondar, N.S. *Human Rights and Local Governance in the Russian Federation* (Saratov, 1997).

45. Bondar, N.S. *Russian Legal Education as a Constitutional Value: National Traditions and Cosmopolitan Illusions*, M. (2013).
46. Bonner, A.T. *Establishment of the Circumstances of Civil Cases*, M., 2000.
47. Bosholov, S.S. *The Basics of the Criminal Policy*, M. (1999).
48. *Future of Fundamental Science: Conceptual, Philosophical, and Social Aspects of the Problem*, ed. by A.A. Krushanov & E.A. Mamchur, M. (2011).
49. Burdanova, V.S. *Search for the Truth in the Criminal Process* (St Petersburg, 2003).
50. Varlamova, N.V. *Contemporary Russian Federalism: Constitutional Model and Political-Legal Dynamics*, M. (2001).
51. Vartanyan, G.A., & E.S. Petrov. *Emotions and Behavior*, L. (1989).
52. Vasilenko, K. "Cloning and Other Sensations," *Medical Sheet* 4 (2001), 8–9.
53. Vasiliev, A.A. "The Concept of Legal education in the Context of Conservative Legal Doctrine of Russia," *Legal Education and Science* 3 (2012), 11–14.
54. Vaskovskiy, E.V. *The Civil Process: Chrestomathy*, ed. by M.K. Treushnikov, M. (2005).
55. Lebedev, S.A., V.V. Ilyin, F.V. Lazarev, & L.V. Leskov. *Introduction to the History and Philosophy of Science*, M. (2007).
56. Vdovin, Y.I. *Protection of the Rights of Citizens during Implementation of System of Operational Search Activity in the Network of Relations* (St Petersburg, 2000).
57. *Prominent Thinkers of the West*, M. (1998).
58. Vengerov, A.B. *Theory of the State and Law*, M. (2009).
59. Viktorovskiy, S.I. *Russian Criminal Process*, M. (1997).
60. Vinnichenko, N.A., V.I. Rohlin, & S.I. Zakhartsev. *Legal Regulation of the Usage of Results of Operational Search Activity in Criminal Proceedings*, ed. by V.P. Salnikov (St Petersburg, 2004).
61. Vitgenshtein, L. *Selected Philosophical Works*, M. (1994).
62. Voblikov, A.B. *Authorities of Internal Affairs in the System of Political Power*, M. (1999).
63. Vodko, N.P. *Characteristics of Organized Criminals*, M. (2001).

64. Vozgrin, I.A. *Introduction to Criminalistics: History, Foundations, Theory, Bibliography* (St Petersburg, 2003).
65. Volevodz, A.G. *International Search, Arrest, and Confiscation of Money and Property Received in Criminal Way* (Legal Foundations and Methods), M. (2000).
66. Volevodz, A.G., & A.B. Solovyov. *International Search, Arrest, Confiscation and Transfer to Foreign States of Money and Property Received in a Criminal Way, and also Material Evidence on Criminal Cases*, M. (2007).
67. Vorontzov, S.A. *Law Enforcement and Security Services of the Russian Federation: History and Contemporaneity* (Rostov-on-Don, 1999).
68. *Worldwide Encyclopedia: Philosophy of the Twentieth Century*, ed. by A.A. Gritsanov, M.A. Mozheiko, T.G. Rumyantseva, S.Y. Solodovnikov, & O.V. Tereschenko (Minsk, 2002).
69. Gadamer, H.G. *Truth and Method: The Basis of Philosophical Hermeneutics*, M. (1988).
70. Gadzhiev, G.A. *Ontology of Law* (Critical Research of the Legal Concept of Reality) M. (2013).
71. Gaydenko, P.P. *Breakout to the Transcendent: New Ontology of the Twentieth Century*, M. (1997).
72. Gaydenko, P.P. *Evolution Concept of Science*, M. (1980).
73. Garmayev, Y.P. *The Usage of the Results of Operational Search Activity During Investigation of Criminal Cases about Corruption*, M. (2005).
74. Gasimov, N.G. *International Search for Accused Criminals*, M. (2003).
75. Hegel, G.V.F. *The Science of Logic* (St Petersburg, 1997).
76. Hegel, G.V.F. *Political Works*, M. (1978).
77. Hegel, G.V.F. *Phenomenology of Spirit: Philosophy of History*, M. (2007).
78. Hegel, G.V.F. *Philosophy of Law*, M. (1990).
79. Gerder, I.G. *Ideas on the Philosophy of the History of Humanity*, M. (1977).
80. Gertsenzon, A.A. *Criminal law and sociology*. M., 1970.
81. Ginzburg, V.L. *About Physics and Astrophysics: Article and Performance*, 2nd ed. N. (1992).
82. Golunskiy, S.A., & G.K. Roginskiy. *Technique and Method of Criminal Investigation*, M. (1934).

83. Golunskiy, S.A., & M.S. Strogovich. *Theory of the State and Law*, M. (1940).
84. Golbach, P.-A. *Selected Works*, 2 vols, M. (1963).
85. Goryainov, K.K., Y.I. Kvasha, & K.V. Surkov. *Federal Law about Operational Search Activity*, M. (1997).
86. *The State Secret and its Protection in the Russian Federation*, P.P. Anikin, A.L. Balyberdin, M.A. Vys, V.S. Gusev, and others (St Petersburg, 2003).
87. *Civil Society in the Era of Total Globalization*, scientific ed., I.I. Kalnoy & A.V. Gorban (Simferopol, 2011).
88. *Civil Society: History and Contemporaneity*, scientific ed., I.I. Kalnoy & I.N. Lopushanskiy (St Petersburg, 1996).
89. Grevtsov, Y.I., & I.Y. Kozlihin, *Encyclopedia of Law* (St Petersburg, 2008).
90. Grib, V.G. *Counteraction of Organized Crimes*, M. (2001).
91. Grigoryev, V.N. *Investigation of Crimes in Emergency Conditions* (Legal Support, Organization, Method), M. (1994).
92. Grigoryev, V.N., A.V. Pobedkin, V.N. Yashin. *Criminal Process*, M. (2005).
93. Grahem, L. *Natural Science, Philosophy and Sciences about Human Behavior in the Soviet Union*. M. (1991).
94. Gumbolt, V., *Language and Philosophy of Culture*, M. (1985).
95. Gurevich, P.S. *Philosophical Anthropology*, M. (1997).
96. Gurov, A.I. *Professional Criminality: Past and Contemporaneity*, M. (1990).
97. Guseinov, A.A. *The Prominent Moralists*, M. (1995).
98. Guseinov, A.A., & R.G. Apresyan. *Ethics*, M. (1998).
99. Guseinov, A.A., & G. Irrlitz. *The Short History of Ethics*, M. (1987).
100. Gusserl, E. *Ideas of Pure Phenomenology and Phenomenological Philosophy*. M., 1994.
101. Gusserl, E. *Phenomenology of Internal Consciousness of Time*. M., 1994.
102. Gutsenko, G.F. *Criminal Process*, M. (2005).
103. Gutsenko, G.F., L.V. Golovko, & B.A. Filimonov. *Criminal Process of the Western States*, M. (2002).
104. Derrida, Jacques. *Positions* (Kyiv, 1996).
105. Dolgov, K.M. *From Kierkegaard to Camus: Philosophy, Esthetics, Culture*, M. (1991).

106. Dolya, E.A. *Formation of Evidence on the Basis of Results of Operational Search Activity*, M. (2009).
107. Dubyagin, Y.P., & O.P. Dybyagina. *Problems of Search for the Missing*, M. (2003).
108. Egorshin, V.M. *Militia. Police. Sheriff* (St Petersburg, 1994).
109. Egorshin, V.M. *Problems of Provision of Economic Security of the Modern Russia* (St Petersburg, 1998).
110. Elinskiy, V.I. *Foundations of Methodology of the Theory of Operational Search Activity*, M. (2001).
111. Ermolovich, G.P. *Police. Society. Criminality in the USA* (St Petersburg, 2008).
112. Ershov, Y.G. *Philosophy of Law* (Ekaterinburg, 1995).
113. Efremov, A.M. *Provision of the Rights and Freedoms in Operational Search Activity* (Irkutsk, 2000).
114. Zhurin, S.I. *Practice and Theory of Usage of Polygraphs*, M. (2004).
115. Zarubin, A., & V. Vagin. *Reputation—Capital of Personality*, M. (2007).
116. Zakhartsev, S.I. "Dialectical Methods in Operational Search Activity," *Legal Science: History and Modernity* 7 (2012), 62–69.
117. Zakhartsev, S.I. *Science of Operational Search Activity: Philosophical, Theoretical-Legal and Applied Aspects* (St Petersburg, 2011).
118. Zakhartsev, S.I. *Some Problems of Theory and Philosophy of Law*, ed. by V.P. Salnikov, M. (2014).
119. Zakhartsev, S. I. "Legal Consciousness: Concept and Levels," *Legal Field of Modern Economy* 2 (2012), 48–53.
120. Zakhartsev, S.I. "Philosophy of Law: Some Thoughts about the Subject," *The World of Politics and Sociology* 7 (2012), 122–31.
121. Zemlyanov, V.M. *Its Counterintelligence* (Minsk, 2002).
122. Zemskova, A.V. *Theoretical Foundations of Usage of the Results of Operational Search Activity During Investigation of Crimes* (Volgograd, 2002).
123. Zenkovskiy, V.V. *History of the Russian Philosophy*, L. (1991).
124. Zorkin, V.D. *Russia and Constitution in the Twenty-First Century: View from Ilyinka*, M. (2007).
125. Zotov, A.F. *Contemporary Western Philosophy*, M. (2002).

126. Ivanov, I.I. *Criminalistic Prevention* (Genesis, Theoretical and Methodological Basis, Perspectives of Development in the Sphere of Criminal-Procedural Legislation), ed. by I.A. Vozgrin (St Petersburg, 2003).
127. Ivanov, I.I. *Prevention of Crimes* (St Petersburg, 2005).
128. Ivanov, O.E. *Self-Consciousness as a Basis of Metaphysics: Experience of a Philosophical Propaedeutic*, (St Petersburg, 1995).
129. Ignaschenkov, Y.Y. *Examination of Premises, Buildings, Constructions, Plots of Terrain and Vehicles: Legal Questions* (St Petersburg, 2005).
130. Ikonnikova, G.I., & V.P. Lyashenko. *Philosophy of Law*, M. (2013).
131. Ilyin, I.A. *Theory of the State and Law*, ed. and introduction by V.A. Tomsinov, M. (2003).
132. *Informative Bulletin Department for External Church Relations of the Moscow Patriarchate* 8 (2000), 79.
133. *Institute of Rehabilitation in the Russian Legislation* (Appearance, Development, Concept, Perspectives), V.I. Rohlin, S.I. Zakhartsev, M.A. Mironov, A.P. Stukanov; ed. by V.I. Rohlin (St Petersburg, 2007).
134. Ioffe, O.S., & M.D. Shargorodskiy. *Questions of Theory of Law*, M. (1962).
135. *History of Informatics and Philosophy of Informative Reality*, ed. by V.M. Ysupov & V.P. Kotenko, M. (2007).
136. *History of Political and Legal Doctrines*, V.G. Grafskiy and others; ed. by V. S. Nersesyants, M. (2010).
137. *History of the Police of Russia*, ed. by V.M. Kuritsin, M., 1998.
138. *History of Contemporary Foreign Philosophy: Comparative Approach* (St Petersburg, 1997).
139. *History of Security Services of Russia*, compiled by S. Shumov & A. Andreev, M. (2004).
140. *History of the Philosophy of Law* (St Petersburg, 1998).
141. Kamishanskiy, V.P. "About the Legal Education and Occupation of Lawyers in Russia," *The Power of the Law* 2 (2010).
142. Kandiba, V.M. *Criminal Hypnosis: Examples of Technologies of Criminal Mental Impact*, 2 vols (St Petersburg, 2001).
143. Kant, I. *Compositions*, 6 vols, M. (1963).

144. Karnap, P. *Philosophical Foundations of Physics: Introduction to Philosophy of Science*, M. (1971).
145. Karpets, I.I. *Investigation* (Notes of the Head of the Criminal Investigation). M. (1994).
146. Kerimov, A.D. *State Organization of Social Livelihood*, M. (2014).
147. Kerimov, A.D. *Strong State*, M. (2009).
148. Kerimov, A.D. *Strategic Miscalculations of the Russian Political Elite*, M. (2011).
149. Kerimov, D.A. *Methodology of Law* (Subject, Functions, Problems of Philosophy of Law), M. (2000).
150. Kerimov, D.A. *Legislative Technique*, M. (1998).
151. Kerimov, D.A. *Selected Works*, 3 vols, M. (2007).
152. Kerimov, D.A. *Problems of General Theory of the State and Law*, 3 vols, M. (2001).
153. Kerimov, D.A. *Philosophical Problems of Law*, M. (1972).
154. Kipnis, N.M. *Validity of Evidences in Criminal Proceedings*, M. (1995).
155. Kitayev, N.N. *Unjust Sentences* (St Petersburg, 2006).
156. Klark, P. *Criminality in the USA: Comments Concerning Its Nature, Reasons, Warnings, and Control*, M. (2002).
157. Kleandrov, M.I. *PhD Thesis of the Lawyer: First Steps of a Researcher*, M. (2004).
158. Klyuchevskiy, V.O. *Russian History* (Moscow/St Petersburg, 2009).
159. Kovalev, M.I. "Human Genetic and His Rights: Legal, Social and Medical Problems," *State and Law* 1 (1994), 15–17.
160. Kovalev, M.I. "Right for Life and Right for Death," *State and Law* (1992).
161. Kozlihin, I. Y. *Selected Works* (St Petersburg, 2012).
162. Kozlova, E.I., & O.E. Kutafin. *Constitutional Law of the Russian Federation*, M. (1995).
163. Kozlovskiy, A.Y. *Theoretical-Legal Foundations of Operational Search Activity of Custom Authorities of the Russian Federation*, M. (2011).
164. Kolesnikov, A.S. *Philosophy of Bertrand Russell*, L. (1991).
165. Komarov, S.A., & A.V. Malko. *Theory of the State and Law*, M. (2001).

166. Kondrat, I.N. *Criminal Politics of the State and Regulatory Legal Regulation of Criminal-Procedural Relations*, M. (2014).
167. *Concepts of Development of the Russian Legislation*, ed. by T.Y. Khabrieva & Y.A. Tikhomirova, M. (2010).
168. Korenevskiy, Y.V., & M.E. Tokareva. *Usage of the Results of Operational Search Activity in Proof of Criminal Cases*, M. (2000).
169. Korkunov, N.M. *Lectures on General Theory of Law* (St Petersburg, 2004).
170. Korolkov, A.A. *Spiritual Anthropology* (St Petersburg, 2005).
171. Korolkov, A.A. *Russian Spiritual Philosophy* (St Petersburg, 1998).
172. Korolkov, A.A. "Philosophy of Law as a Component of Russian Culture," *Philosophy of Law* 1 (2000), C. 57.
173. Korolkov, A.A. "Philosophy of Law: Western European and Russian Tradition," *History of the Philosophy of Law*, author-compilers A.P. Albov, D.V. Maslennikov, & V.P. Salnikov (St Petersburg, 1998).
174. Kostomarov, N.I. *Russian History in Life Stories of its Main Personalities*, M. (2004).
175. Kotlyarevskiy, S.A. *The Power and the Law: Problem of Legal State*, M. (1915).
176. Koshelev, S.M. *Theory of the State and Law* (St Petersburg, 2007).
177. *Criminal Science*, ed. by V.P. Salnikov (St Petersburg, 1999).
178. Korpachev, N.M. *Criminal-Legal Regulation: Mechanism and System* (St Petersburg, 1999).
179. Korpachev, N.M., & V.S. Prohorov. *Mechanism of Criminal-Legal Regulation: Criminal Responsibility* (St Petersburg, 2000).
180. Krylov, I.F., & A.I. Bastrykin. *Search, Inquiry, Investigation*, L. (1984).
181. Kruchkov, V.A. *Personality and Power*, M. (2004).
182. Kudryavtsev, V.N. *Law and Behavior*, M. (1976).
183. Kudryavtsev, V.N. *Strategies of Struggle with Criminality*, M. (2005).
184. Kudryavtsev, V.N., & A.I. Trusov. *Political Judiciary in the USSR* (St Petersburg, 2002).

185. Kuznetsov, E.V. *Philosophy of Law in Russia* (St Petersburg, 1989).
186. Kun, T. *Structure of Scientific Revolutions*, M. (1975).
187. Kutlunin, A.G. *German Philosophy of Life* (Irkutsk, 1986).
188. Lakatos, I. *Selected Works on Philosophy and Methodology*, M. (2008).
189. Lakatos, I. *Falsification and Methodology of Scientific-Research Programs*, M. (1995).
190. Lapaeva, V.V. *Types of Legal Understandings, Legal Theory and Practice*, M. (2012).
191. Lebedev, S.A. *Philosophy of Science: Vocabulary of Main Terms*.
192. *Foundations of Legal Somatology*, ed. by V.P. Salnikov. (St Petersburg, 2006).
193. Levi-Strauss, C. *Structural Anthropology*, M. (1983).
194. Leibin, V.M. *Psychoanalysis and Philosophy of Neo-Freudianism*, M. (1977).
195. Leist, O.E. *The Essence of Law: Problems of Theory and Philosophy of Law*, M. (2011).
196. Lekar, A.G. *Prophylactics of Crimes*, M. (1972).
197. Lektorskiy, V.A. *Subject, Object, Cognition*, M. (1980).
198. Leshkevich, T.G. *Philosophy of Science*, M. (2005).
199. Livshits, R.Z. *Contemporary Theory of Law*, M. (1992).
200. Lobanov, S.D. *Being and Reality*, M. (1999).
201. Lokosov, V.V., & V.L. Shulz. *Base of Consolidation of Russian Society* (Sociological Aspects), M. (2008).
202. Losev, A.F. *Essays of Ancient Symbolism and Mythology*, M. (1994).
203. Losskiy, N.O. *History of Russian Philosophy*, M. (1994).
204. Lukich, R. *Methodology of Law*, M. (1981).
205. Lurie, F.M. *Political Search in Russia: 1649–1917*, M. (2006).
206. Lisenko, V.V. *Police and Morality* (St Petersburg, 1996).
207. Makarevich, E.F. *Political Search: History, Fates, Versions*, M. (2002).
208. Maksimov, S.I. *Legal Reality: Experience of Philosophical Awareness* (Kharkov, 2002).
209. Makuev, R.KH. *Theory of the State and Law*, M. (2010).
210. Malakhov, V.P. *Philosophy of Law: Ideas and Proposals*, M. (2008).

211. Malko, A.V., & A.P. Mazurenko. *Law-Making Policy of Russia: History and Contemporaneity*, M. (2014).
212. Mamardashvili, M.K. *Classical and Neoclassical Ideals of Rationality* (Tbilisi, 1984).
213. Mamiy, M.R. *Judicial Control and Prosecutor Supervision as a Guarantee of Legality* (Rostov-on-Don, 2007).
214. Marx, K., & F. Engels. *Compositions*, 50 vols, 2nd ed. 1956–81.
215. Markushin, A.G. *Operational Search Activity*, M., 2012.
216. Marchenko M.N., & E.M. Deryabina. *Legal System of the European Union*, M. (1999).
217. Minin A.Y., V.I. Popov, & V.A. Kudin. *Practice and Order of Conduction of Secret Actions Against Organized Criminality in the USA*, M. (1999).
218. *Ministers of Internal Affairs of the Russian State (1802–2002)*, ed. by V.P. Salnikov (St Petersburg, 2002).
219. Mirskiy, M.B. *History of Domestic Transplantation*, M. (1985).
220. Mikhailov, V.I. *Counteraction Against Legalization of Revenue of the Criminal Activity: Legal Regulation, Criminal Responsibility, Operational Search Events and International Cooperation* (St Petersburg, 2002).
221. Molchanov, V.I. *Time and Consciousness: Criticism of Phenomenological Philosophy*, M. (1998).
222. Moskalkova, T.N. *Ethics of Criminal-Procedural Evidence: Stage of Preliminary Investigation*, M. (1996).
223. Motorniy, I.D. *Contemporary Terrorism and Evaluation of Diverse-Terroristic Vulnerability of Civil Objects*, M. (2004).
224. Nazirov, A.E. *Philosophy of Science* (St Petersburg, 2009).
225. Naumov, A.V. *Crime and Punishment in the History of Russia*, 2 vols, M. (2014).
226. *Scientific-Practical Comment to the Criminal-Procedural Code of the Russian Federation*, ed. by V.M. Lebedev, M. (2002).
227. Nersesyants, V.S. *History of Ideas of Legal Statehood*, M. (1993).
228. Nersesyants, V.S. *History of Political and Legal Doctrines*, M. (2005).
229. Nersesyants, V.S. *Philosophy of Hegel's Law*, M. (1998).
230. Nersesyants, V.S. *Philosophy of Law*, M. (2011).
231. Nietzsche, F. *Compositions*, 2 vols, M. (1990).

232. Novikov, S.A. *Testimonies of the Accused in Contemporary Russian Criminal Processes* (St Petersburg, 2004).
233. Novikov, S.A. *Truthful Testimonies: Legal Measures of Stimulation in Russia and Abroad* (Criminal Proceedings) (St Petersburg, 2008).
234. Obraztsov, V.A. *Criminalistics: Pair Categories*, M. (2007).
235. *General Theory of Human Rights*, ed. by E.A. Lukashova, M. (1996).
236. *General Theory of Law*, ed. by V.K. Babayev (Nizhniy Novgorod, 1993).
237. *General Theory of Law and the State*, M. (2010).
238. *Society and Nature of Pre-revolutionary Russia: Legal Analysis*, V.P. Lukyanov, V.P. Ocheredko, V.P. Salnikov, & I.A. Sobol (St Petersburg, 2003).
239. Ovchinskiy, A.S. *Information and Operational Search Activity*, ed. by V.I. Popov, M. (2002).
240. Ovchinskiy, V.S. *Criminal Science and Biotechnology*, M. (2005).
241. Oganyan, K.M. *Philosophy of the Human* (St Petersburg, 2010).
242. Ogorodnikov, V.P. *Cognition of Necessity: Determinism as a Principle of the Scientific Worldview*, M. (1985).
243. Oizerman, T.I. *Problems of Historical-Philosophical Science*, M. (1982).
244. Oizerman, T.I. *Philosophy as a History of Philosophy* (St Petersburg, 1999).
245. Ol, P.A., R.A. Romashov, & A.G. Tischenko. *State, Society, Personality: Problems of Compatibility*, ed. by R.A. Romashov & N.S. Nizhnik, M. (2005).
246. *Operational Search Actions on Communication Channels* (Legal Analysis), B.M. Evstratikov, S.I. Zakhartsev, V.N. Medvedev, & V.P. Salnikov (St Petersburg, 2005).
247. *Organization and Method of Prosecutor Supervision for Compliance with Legality during Receiving, Registration, Check and Permissions of Applications and Messages about Crimes*, ed. by V.I. Rohlin (St Petersburg, 2004).
248. Osipenko, A.L. *Struggle with Criminality in Global Computer Networks: International Experience*, M. (2004).
249. Osipkin, V.N. *Prosecutor's Supervision over Operational Search Activity* (St Petersburg, 2003).
250. Osokina, G.L. *Civil Process*, M. (2013).

251. Otcheskaya, T.I., & D.V. Volodina. *Actual Questions of Legal Responsibility of Judges in the Russian Federation* (Novokuznetsk, 2012).
252. Petrazhitskiy, L.I. *Theory and Politics of Law: Selected Works*, ed. by E.V. Timoshina (St Petersburg, 2010).
253. Petruhin, I.L. *Personal Secrets* (Human and Law), M. (1998).
254. Petruhin, I.L. *Judicial Power: Control Over Investigation of Crimes*, M. (2008).
255. Pobedkin, A.V. "Guarantees of Independence or Corporate Privileges?" *Bulletin of the Voronezh State University*, 1.16 (2014), 115–26.
256. Pobedkin, A.V. "From Non-legal Reality to Legal Nihilism: Conceptual Methodological Approaches to the Evaluation of Status of Legality in Russia," *Library of Criminal Law and Criminal Science* 4.4 (2013), 109–22.
257. Pobedkin, A.V. "Theory of Criminal-Procedural Evidence—Scientific Fiction? Concerning Differentiation of the Procedural Form of Preliminary Judicial Proceeding," *Bulletin of the Moscow State University of Internal Affairs* 7 (2013), 31–36.
258. Pobedkin, A.V., & V.N. Yashin. *Civil Process*, ed. by V.N. Grigoryev, M. (2004).
259. Polyakov, A.V. *General Theory of Law: Problems of Interpretation in the Context of Communicative Approach* (St Petersburg, 2004).
260. Popova, S.M., S.M. Shakhrai, & A.A. Yanik. *Measurement of Progress*, M. (2010).
261. Popper, K. *Logic and Growth of Scientific Knowledge*, M. (1983).
262. Popper, K. *Open Society and Its Enemies*, M. (1992).
263. *Human Rights and Contemporary State-Legal Development*, executive ed. A.G. Lisitsin-Svetlanov, M. (2007).
264. *Legal and Spiritual Culture of Employees of Law Enforcement*, V.P. Salnikov, KH.S. Gutseriev, V.P. Fedorov, & A.I. Khudyak (St Petersburg, 1996).
265. *Legal State: Reality, Dreams, Future*, V.M. Boer, F.M. Gorodenets, E.P. Grigonis, and others; ed. by V.P. Salnikov (St Petersburg, 1999).

266. *Legal Communication: Statement of the Problem*, L.S. Mamut, N.V. Varlamova, L.E. Lapteva, and others, M. (2012).
267. *Practice of Criminal Search*, ed. by A.I. Alekseev, M. (1999).
268. Primakov, E.M. *The World after 11th September*, M. (2002).
269. *Problems of Theory of Law and the State*, ed. by V.P. Salnikov (St Petersburg, 1999).
270. *Prosecutor Supervision*, ed. by Y.E. Vinokurov, M. (2001).
271. *Wiretapping of Telephone Conversations in Operational Search Activity*, N.N. Buharov, S.I. Zakhartsev, V.I. Rohlin, and others (St Petersburg, 2005).
272. Rassel, B. *History of Western Philosophy*, 2 vols, M. (1993).
273. Rivman, D.V., & V.S. Ustinov. *Victimology* (N. Novgorod, 1998).
274. Rieker, P. *Hermeneutics and Psychoanalysis: Religion and Faith*, M. (1996).
275. Rodionov, K.S. *Interpol: Yesterday, Today, Tomorrow*, M. (1990).
276. Romanovskaya, V.B. "Spiritualism and Legal Consciousness: Ratio of Phenomenon," *Bulletin of the Nizhniy Novgorod University of N.I. Lobachevski*, 1 (2011), 161–69.
277. Romanovskaya, V.B. *Repressive Authorities in Russia in the Twentieth Century*, ed. by V.P. Salnikov (N. Novgorod, 1996).
278. Romanovskiy, G.V. *The Right of Inviolability of Private Life*, M. (2001).
279. Romashov, R.A. *Constitutional State: History, Contemporaneity, Perspectives of Development* (Krasnoyarsk, 1997).
280. Romashov, R.A., P.A. Ol, & M.V. Salnikov. *Foundations of Theory of the State and Law* (St Petersburg, 2002).
281. Ronin, R. *Its Intelligence: Ways of an Agent's Enlistment, Methods of Penetration in Mentality, Forced Impact on Personality, Technical Means of Hidden Observation and Elimination of Information; Practical Manual*, M. (2003).
282. Rorty, R. *Incident, Irony, Solidarity*, M. (1996).
283. Rorty, R. *Philosophy and the Mirror of Nature* (Novosibirsk, 1997).
284. *Russian Prosecutor's Supervision*, ed. by A.Y. Sukhareva, M. (2001).

285. *Russian Law in the Fifth to Nineteenth Centuries* (Historical Sketches), S.B. Glushachenko, A.V. Evseev, T.E. Kanukova, and others; ed. by V.P. Salnikov (St Petersburg, 2002).
286. Rossinskaya, E.R. *Criminalistics: Questions and Answers*, M. (1999).
287. Rohlin, V.I. *Prosecutor's Supervision and State Control: History, Development, Concept, Ratio* (St Petersburg, 2003).
288. Ruzavin, G.I. *Methodology of Scientific Cognition*, M. (2009).
289. Rumyantseva, T.G. *Aggression: Problems and Search in Western Philosophy and Science*, M. (1991).
290. Rutkevich, A.M. *From Freud to Heidegger*, M. (1985).
291. Ryzhakov, A.P. *Collecting (Check) of Evidence: Testimony as a Form of Proof*, M. (2007).
292. Savenko, A.I., & A.A. Savenkov. "How to Defeat Corruption: Legal Practice of Great Britain," *Legal Field of Contemporary Economy* 7 (2012), 7–16.
293. Savenkov, A.N. "Counteraction against Corruption as an Important Direction of Social-Political Development of the Russian Federation: A View of Parliamentary," *Scientific Notes of the St Petersburg Filial of Russian Custom Academy* 1.41 (2012), 14–34.
294. Sadchikova, P.I. *Psychology and Logic of Feelings* (Saratov, 2000).
295. Salnikov, V.P. "Institutionalization of Corrupt Relationships," *Protection and Security* 1 (2013), 13–15.
296. Salnikov, V.P., S.V. Stepashin, & N.G. Khabibulina. *State Ideology and Language of the Law*, ed. by V.P. Salnikov (St Petersburg, 2002).
297. Salnikov, V.P., S.V. Stepashin, & A.G. Khabibulin. *Statehood as a Phenomenon and an Object of Typology: Theoretical-Methodological Analysis* (St Petersburg, 2001).
298. Salnikov, V.P., O.E. Starovoytova, A.E. Nikitina, & E.V. Kuznetsov. *Biomedical Technologies and Law in the Third Century*, ed. V.P. Salnikov (St Petersburg, 2003).
299. Salnikov, V.P., E.V. Kuznetsov, & E.V. Starovoytova. *Legal Thanatology* (St Petersburg, 2002).
300. Salnikov, V.P., O.E. Starovoytova, A.E. Nikitina, & E.V. Kuznetsov. *Biomedical Technologies and Law in the Third Century*, ed. by V.P. Salnikov (St Petersburg, 2003).

301. Salnikov, M.V. "The Political-Legal Tradition as a Factor Determining Specific National Legal Systems," *Legal Science: History and Contemporaneity* 9 (2013), 174–92.
302. Salnikov, M.V. "Political-Legal Tradition, Legal Culture and the Legal System: On the Question of the Ration of Categories," *The World of Politics and Sociology* 9 (2012), 153–56.
303. Sarrazin, T. *Germany: Self-Destruction*, trans. from German, M. (2013).
304. Sartre, Jean-Paul. *Problem of Method*, M. (1994).
305. Safonov, I.I. *Organization of Disclosure and Investigation of Terrorism*, ed. by A.S. Podshibyakin, M. (2004).
306. Sedova, G.I., & V.V. Stepanov. *Inquiry: Functions and Organization of Activity*, M. (2003).
307. Sergeev, A.P. *Housing Law*, M. (2008).
308. Sidorov, S.A., & I.L. Chestnov. *Mechanism of Legal Regulation in the System of Social Control* (St Petersburg, 2014).
309. Silnov, M.A. *Questions of Ensuring Admissibility of Proof* (Pre-trial Stages), M. (2001).
310. Sinilov, G.K. *Introduction to Operational Search Psychology*, M. (2006).
311. Sinykov, V.N. "Legal Education in the Context of Russian Legal Culture," *Journal of Russian Law* 7 (2009), 31–42.
312. Sluchevskiy, V.K. *Textbook of Russian Legal Process*, M. (2008).
313. Smirnov, M.P. *Operational Search Activity of Criminal Policy of Foreign Countries*, M. (1995).
314. *Contemporary Western Philosophy*, ed. by T.G. Rumyantseva.
315. Solovyov, A.B. *Actual Problems of Pre-trial Stages of Criminal Proceedings*, M. (2006).
316. Sorokin, V.D. *Legal Regulation: Subject, Method, Process* (Macro Level) (St Petersburg, 2003).
317. Spasovich, V.D. *About the Theory of Judicial-Criminal Evidence in Connection with the Structure of Courts and Judicial Proceedings*, M. (2001).
318. Spinosa, B. *Compositions*, 2 vols (St Petersburg, 1999).
319. Stavtsev, S.N. *Introduction to Heidegger's Philosophy* (St Petersburg, 2000).

320. *Standards of Science and Homo juridicus in the Field of Philosophy of Law*, executive editor V.G. Grafskiy, M. (2011).
321. Statkus, V.F., & A.A. Zhidkih. *Authorities of Preliminary Inquiry in the System of Ministry of Internal Affairs of Russia: History, Contemporary Condition, Perspectives*, ed. by V.A. Alferov, M. (2000).
322. Stepanov, A.A., & M.G. Shananin. *Usage of the Results of Operational Search Activity During Production of Investigative Actions* (St Petersburg, 2005).
323. Stepashin, S.V. *Security of Humanity and Society* (Political-Legal Questions) (St Petersburg, 1994).
324. Stepin, V.S. *Theoretical Knowledge*, M. (2000).
325. Stepin, V.S. *Philosophy of Science: The General Problems*, M. (2008).
326. Stepin, V.S. *Philosophical Anthropology and Philosophy of Science*, M. (1992).
327. Strogovich, M.S. *Selected Works*, T. I. M. (1990).
328. Strogovich, M.S. *Course of the Soviet Criminal Process*, 2 vols, M. (1968–1970).
329. *Judicial-Legal Reform in the Russian Federation: Results, Condition, Perspectives*, I.A. Antonov, V.A. Gorlenko, N.N. Mikhailov, & I.L. Tretyakov (St Petersburg, 2006).
330. Surkov, K.V. *Principles of Police Intelligence* (St Petersburg, 1995).
331. Sirih, V.M. *Logical Reasons for the General Theory of Law*, vol. 1, M. (2000).
332. *Theory of the State and Law*, M.A. Arzhanov, S.F. Kechekyan, B.S. Mankovskiy, & M.S. Strogovich, M. (1949).
333. *Theory of the State and Law*, ed. by M.N. Marchenko, M. (2009).
334. *Theory of Operational Search Activity*, ed. by K.K. Goryainov, V.S. Ovchinskiy, & G.K. Sinilov, M. (2006).
335. Teterin, B.S, E.Z. Troshkin. *Initiation and Investigation of Criminal Cases*, M. (1999).
336. Tihomirov, Y.A., & S.M. Shakhrai. *Risk and Law*, M. (2012).
337. Tihonravov, Y.V. *Foundation of Philosophy of Law*, M. (1997).

338. Tolmosov, V.I., & S.A. Sheyfer. *Problems of Admissibility of Evidence in the Pre-trial Stages of the Russian Criminal Process* (Samara, 2003).
339. Tolstoy, Y.K. *On the Theory of Legal Relationship*, L. (1959).
340. Tomsinov, V.A. *History of Russian Political Legal Thought: Tenth to Thirteenth Centuries*, M. (2003).
341. Tosunyan, G.A., & A.Y. Vikulin. *Money and Power: Theory of Division of Authorities and Contemporaneity*, M. (1998).
342. Treushnikov, M.K. *Judicial Evidence*, M. (2005).
343. Tuzova, T.M. *Specific of Philosophical Reflection*, M. (2001).
344. Tulmin, S. *Human Understanding*, M. (1984).
345. Whitehead, Alfred North. *Selected Works on Philosophy*, M. (1990).
346. *Criminal Process*, ed. by K.F. Gutsenko, M. (2004).
347. *Scientist-Lawyers of the Moscow State University in the Modern Law*, ed. by M.K. Treushnikov, M. (2005).
348. Fedorov, A.V., & A.V. Shakhamatov. *Legal Regulation Assistance of Citizens to Authorities, Implementing Operational Search Activity* (St Petersburg, 2005).
349. Fedyunin, A.E. *Procedural-Legal Problems of Using Technical Devices During Inquiring and Investigating into Crimes*, ed. by S.P. Shcherba (Saratov, 2006).
350. Feyerabend, P. *Against the Method: Essay of the Anarchistic Theory of Cognition*, M. (2007).
351. Feyerabend, P. *Selected Works on Methodology of Science*, M. (1986).
352. *Philosophy*, ed. by V.P. Salnikov (St Petersburg, 1999).
353. *Philosophy for Postgraduates*, V.P. Salnikov, Y.A. Sandulov, KH. S. Gutseriev, & I.I. Kalnoy; ed. by I.I. Kalnoy (St Petersburg, 2001).
354. *Philosophy and Methodology of Science*, ed. by V.I. Kuptsov, M. (1996).
355. *Philosophy of Law at the Beginning of the Twenty-First Century through the Prism of Constitutionalism and Constitutional Economics*, ed. by V.V. Mironova and Y.N. Solonina, M. (2010).
356. *Philosophy of Law*, 2 vols, vol. 1, ed. by M.N. Marchenko, M. (2014).

357. Foynitskiy, I.Y. *Course of Criminal Proceedings*, 2 vols (St Petersburg, 1996).
358. Fomushkin, A.A. *Voice and Speech Discloses Criminal Secrets: About Implementation of Psycholinguistic Cognitions in Criminalistics and Operational Search Activity* (St Petersburg, 2003).
359. Fuko, M. *Intellectuals and Power*, M. (2002).
360. Khabermas, Y. *Philosophical Discourse about Modernism*, M. (2003).
361. Khabibulin, A.G. "Corruption as a Threat to National Security: Methodology, Problems and Ways of Solving It," *Journal of Russian Law* 2 (2007).
362. Khabibulin, A.G. "Political Subjectivity and Ideology as Valuable Properties of the State," *Legal Science: History and Contemporaneity* 8 (2012), 7–13.
363. Khabibulin, A.G., & A.I. Sekivanov. *Security Strategy of the Russian State: Political-Legal Research*, M. (2008).
364. Khabibulin A.G., & A.I. Sekivanov. *Strategy Security of the Russian State: Political-Legal Research*, M. (2011).
365. Khabrieva, T.Y. *Interpretation of the Constitution of the Russian Federation: Theory and Practice*, M. (1998).
366. Khabrieva, T.Y., & V.E. Chirkin. *Theory of the Modern Constitution*, M. (2007).
367. Heidegger, M. *Introduction to Metaphysics* (St Petersburg, 1997).
368. Kholodniy, Y.I. *Implementation of Polygraphs During Prophylactics, Disclosure, and Investigation of Crimes* (Genesis and Legal Aspects), M. (2000).
369. Khropanyuk, V.N. *Theory of the State and Law*, ed. by V.G. Strekozova, M. (1995).
370. Tsukanov, V.V., & A.Y. Shumilov. *Citizens of Russia Helping Border Police as a General Problem of Administrative, Military, and Operational Search Law*, M. (2008).
371. Chashin, A.N. *Contemporary Legal Doctrines of Russia*, ed. by T.N. Radko, M. (2014).
372. *Person and Law Enforcement Activity*, KH. S. Gutseriev, V.P. Salnikov, S.V. Stepashin, and others (St Petersburg, 2000).
373. Chelisheva, O.V. *Epistemological Foundations of Criminalistics*, ed. by I.A. Vozgrin (St Petersburg, 2003).

374. Cherepanov, S.K. *Philosophy of Uncertainty: Uncertainty and Paradoxes* (Novosibirsk, 2004).
375. *Pure Doctrine about Hans Kelsen's Law*, executive editors V.N. Kudryavtsev & N.N. Razumovich, M. (1988).
376. Chicherin, B.N. *Philosophy of Law*, M. (2010).
377. Chicherin, B.N. *General State Law*, M. (2006).
378. Chicherin, B.N. *Property and the State* (St Petersburg, 2005).
379. Chuvilev, A.A. *Operational Search Law*, M. (1999).
380. Sharihin, A.E. *New Paradigm of Operational Search Activity and Its Role in Provision of Economic Security of Russia*, M. (2007).
381. Sharogradskiy, V.I. *Dialectic of Formation of Philosophical System of Marxism*, L. (1987).
382. Shakhrai, S.M. *Globalization in the Modern World*, ed. by V.P. Salnikov (St Petersburg, 2004).
383. Shakhrai, S.M. *Globalization in the Modern World: Political-Legal Aspects* (St Petersburg, 2004).
384. Shakhrai, S.M. *The State and Globalization: Methodological and Political-Legal Problems*, ed. by V.P. Salnikov (St Petersburg, 2005).
385. Shvirev, V.S. *Analysis of Scientific Cognition: Main Directions, Forms, Problems*, M. (1988).
386. Sheyfer, S.A. *Proof and Proving in Criminal Cases*, M. (2009).
387. Sheyfer, S.A. *Investigative Actions: Systems and Procedural Form*, M. (1981).
388. Shershenevich, G.F. *History of Philosophy of Law* (St Petersburg, 1999).
389. Shestakova, S.D. *Method of Russian Criminal-Procedural Law: From Inquisitional to Competitiveness*, ed. by V.P. Salnikov (St Petersburg, 2003).
390. Shestakova, S.D. *Competitiveness of the Criminal Process* (St Petersburg, 2001).
391. Shestov, L. *Selected Works*, M. (1993).
392. Shumilov, A.Y. *Introduction to Legal Scientometrics*, M. (2012).
393. Shumilov, A.Y. *Operational Search Science in the Russian Federation*, 3 vols, M. (2013).

394. Shcherba, S.P. *Usage in Preliminary Investigations of Federal Law of Detention in Custody of Suspects and Accused*, M. (1997).
395. Ebzeev, B.S. *Personality and the State in Russia*, M. (2007).
396. Ekimov, A.I., & N.M. Korkunov, ed. by V.D. Zorkin, M. (1983).
397. Ekimov, A.I. *Justice and Sociological Law*, L. (1980).
398. Einstein, A. *Physics and Reality*, M. (1965).
399. Ehrlich, O. *Basic Foundation of Sociology of Law* (St Petersburg, 2011).
400. Yudin, P.F. *Who Are the "National-Socialists"?* (Sverdlovsk, 1942).
401. Yakovlev, V.F. *Selected Works*, 2 vols., M. (2012).
402. Yaspers, K. *Meaning and Appointment of History*, M. (1994).