Baev Valery Grigorievich

Marchenko Alexey Nikolaevich

SOCIOCULTURAL ANTHROPOLOGY OF LAW

Collective monograph / ed. N. A. Isaeva , I. L. Chestnova. - SPb .: Alef-Press, 2015 .-- 840 p.

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The authors of the review make an attempt to evaluate the collective monograph “Sociocultural Anthropology of Law, published under the editorship of St. Petersburg professors N.A. Isaev and I.L. Chestnova. The monograph is designed to substantiate a new scientific discipline - sociocultural anthropology of law, the subject of which is the "human dimension" of law in the context of culture. " In the study under review, law acts “as a social phenomenon in all its versatility, in other words, within the framework of legal reality, within the boundaries of which people act, socialized in a given culture, constructing the dominant social ideas about law, including their symbolic embodiment in legislation and other forms of normativity. rights, and their implementation in legally significant practices.

Thus, according to the authors of the monograph, a distinction should be made between the formal legal force of a normative legal act and its actual social action. The effect of law is the transformation of norms into prevailing practices and personal knowledge, and not the legal force of a normative legal act; the existence and operation of law is always the activity of people reproducing information containing rules of behavior in a symbolic form. Hence, it follows that the subject of law is a person, and not an impersonal legal status ... The rule of law is not just the wording of an article of a legal text, but a formulation reproduced by social perception and mass action (practices) of broad strata of the population.

The work under review does not sufficiently highlight the important issue of the role of the objective interests of individuals and social groups, as well as the

majority of the population. The authors of the book actually ignore the objective (independent of the will of people and their mentality) factors of influence involved in the formation of the rule of law. If the work deals mainly with the mental component of law, then how does the mentality of “elites and reference groups” form a legal norm, and then embody it in social “practices”? Undoubtedly, the objective interest, before becoming the driving force of social (including legal) development, must be realized by people (subjects of law).

Bogdan Varvara Vladimirovna

THEORETICAL AND APPLIED PROBLEMS OF PROTECTING BUYERS 'RIGHTS IN THE SOVIET STATE

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In this article, the author examines the experience of Soviet civilians in resolving topical issues in one of the most problematic areas of Soviet civil law: protecting the rights of buyers. Scientists have repeatedly noted the low level of protection of the rights of buyers, critically assessing the civil law mechanism inherent in the law for protecting the rights of the latter. The author substantiates the point of view that the protection of buyers' rights as a legal phenomenon in the Soviet state was transformed from a socio-political - a culture of serving citizens. It is shown that by the end of the 1980s. in the science of civil law, several theoretical approaches to solving this problem have been formed, which served as the basis for the formation of modern civil legislation on the protection of consumer rights. The work uses general scientific and special legal research methods: analysis and synthesis in the processing of theoretical views, specific historical method. The scientific novelty of the study is that the author for the first time turns to the experience of the Soviet doctrine aimed at resolving problematic issues in the field of protecting the rights of buyers. As a result, we come to the

conclusion that, firstly, the development of legal thought in the field of consumer protection was preceded by the creation of a social phenomenon "consumer service culture" aimed at meeting the material and cultural needs of Soviet citizens. Only after the adoption of the Fundamentals of Civil Legislation of the USSR and the Civil Code of the RSFSR did the social phenomenon gradually transform into a legal one. Secondly, consumer protection as a scientific area emerged in the late 1960s, incorporating developments in the field of civil, administrative and criminal law. Thirdly, in the science of civil law of the Soviet period, the main complex of consumer rights was formed, which became the basis of the Law of the Russian Federation "On Protection of Consumer Rights", and modern legislation is based on the achievements of the Soviet civil science.

Gavlo Veniamin Konstantinovich

Titova Kristina Alexandrovna

Improving the forensic methodology of preliminary and judicial investigation in cases of embezzlement in the field of housing and communal services (HCS)

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The article examines the theoretical and practical problems of the forensic methodology of preliminary and judicial investigation in cases of embezzlement in the field of housing and communal services. Shown is the increased danger to society and the state of embezzlement and corruption in the field of housing and communal services, which requires the development of an effective methodology for their prevention, preliminary investigation and trial. It is argued that at the current stage of the development of the science of forensic science, we should talk about the development of a full-structure forensic methodology for investigating thefts in the housing and utilities sector, containing practical recommendations for preliminary investigation and trial. The scientific field of forensic research in the

field of its technology, tactics and methodology cannot be limited only by the framework of the preliminary investigation. It is necessary to expand its subject matter, including in it and the trial with its central stage - judicial investigation and judicial situations.

For various reasons (stages of the trial, admission (denial) of guilt by the defendants, the presence of evidence, conflict, etc.), the authors highlight the typical for judicial proceedings cases of embezzlement committed by persons using their official position in the housing and utilities sector, situations with their subspecies, and their forensic methods are shown. permissions. Considering judicial situations, it should be noted that there are various groups of them.

Taking into account the stages identified in the science of criminal procedure, all situations of judicial proceedings are classified into “situations of the initial, further, final stage of judicial consideration of criminal cases.

The main procedural technique for obtaining evidentiary information in court is the interrogation of various participants in the process. Investigated the judicial situations of considering these criminal cases in a special order without a trial (49.2%). The defendants made such a request voluntarily after a preliminary consultation with the defense lawyer, they were aware of their statement, these situations were not conflicting.

Complex judicial situations when new evidence appears and new facts and information about embezzlement become known (21.2%) are considered. Methods for their resolution are proposed.

Denis Goncharov

The ratio of regulatory and protective functions in the legislation on combating crime

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Crime prevention legislation and the branches of crime prevention legislation have a regulatory function; and criminal legislation, in addition, is protective. Changes in regulatory norms may, and in some cases should - entail a change in the meaning or text of protective norms; conversely, changes in safeguards may require regulatory changes. The article describes examples that emphasize two aspects of the functional links of criminal legislation with acts of related industries: firstly, the focus of criminal legislation on the protection of social relations emerging in the field of crime prevention, criminal proceedings and the execution of sentences; and, secondly, the need to change the norms of one industry affiliation due to changes in the norms of other industries. Thus, Federal Law No. 66-FZ of 06.04.2011 introduced article 314.1 "Evasion of administrative supervision" into the Criminal Code of the Russian Federation, which appeared simultaneously with the adoption of the Federal Law "On Administrative Supervision over Persons Released from Places of Deprivation of Liberty" dated April 6 , 2011 No. 64-FZ.

The protective function of criminal legislation is aimed at protected and protective relations. Harming the normal operation of crime prevention, criminal justice and enforcement systems in terms of the protective function of criminal legislation should be considered taking into account the danger to both the protected and the protective relationship. The essence of the protected relations emerging in the field of special crime prevention, pre-trial and judicial criminal proceedings, and the execution of criminal penalties is determined by the norms of the preventive, criminal procedural and criminal-executive branches of legislation. The criminal-legal prohibition to commit specific socially dangerous acts in the areas of crime prevention, criminal proceedings and the execution of sentences, combined with the threat of punishment for its violation, is the essence of a protective public relation. Of the preventive, criminal procedural and criminal-executive relations regulated by the prescriptions of the regulatory branches, only those that consist of an obligation and (or) prohibition can be protected by criminal law .

Public relations regulated by the authorizing norms, for example, criminal procedural legislation, do not need criminal legal protection.

The article analyzes the relationship between the protective function of criminal legislation and the regulatory function of crime prevention legislation, criminal procedure legislation, criminal executive legislation on the example of the norms enshrined, in particular, in Art . Art. 174, 174.1, 183, 185.3, 185.6, 294, 299 - 303, 305 - 313, 314.1, 315 of the Criminal Code of the Russian Federation and in the corresponding articles of related industries.

Ivanchin Artem Vladimirovich

Theoretical model of the prescriptions of the Criminal Code of the Russian Federation on the basis of criminal liability and insignificance

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In the article, on the basis of knowledge of the essence of the corpus delicti, the need for a fundamental clarification is substantiated as Art. 8 of the Criminal Code of the Russian Federation, as well as prescriptions of insignificance in criminal law. The author notes that the corpus delicti does not exist in life, but in the criminal law. In life, all crimes cause any consequences, are characterized by spatial and temporal frameworks, etc., but the designer (legislator) often leaves them outside the scope of the composition, outlining the corresponding crime in the law. As a result, the establishment of signs of corpus delicti means only the fact that the deed is prohibited by the criminal law, but still does not say anything about the danger of the deed. The correlation of the act with the composition and the establishment as a result of the correspondence between them is only the basis for the assumption of the public danger of the deed. However, this assumption in a specific case can be refuted, which is clear from the content of Part 2 of Art. 14 of the Criminal Code (norms on insignificance). Taking this into account, the article proposes to modify the norm on the basis of criminal liability (Article 8 of the

Criminal Code), indicating that it is the commission of a socially dangerous act, the signs of which correspond to the corpus delicti provided for by this Code. This modification presupposes a corresponding modification of a number of other provisions of the Code, which mention the corpus delicti, for example, Part 1 of Art. 29 of the Criminal Code: "The crime is considered completed if the signs of the act committed by the person correspond to the corpus delicti ...". Based on the stated position, the author considers it necessary in the course of the future codification (or in the course of the reform of the current criminal law) to accordingly change the norm on insignificance (part 2 of article 14 of the Criminal Code): “An act is not a crime, although it is prohibited by this Code, but due to its insignificance, it does not represent a public danger. Finally, the work proves the expediency of introducing the following norm into the Criminal Code: “If the action (inaction) of a person only formally corresponds to a feature that in the Special Part of this Code entails increased (qualifying feature) or reduced (privileged feature) criminal liability, the latter occurs without taking into account this attribute "(in the current version of the Code, this norm should be fixed in part 3 of article 14).

Lushnikov Andrey Mikhailovich

Lushnikova Marina Vladimirovna

L.A. SYROVATSKAYA

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The article examines the life path and scientific heritage of an assistant, senior lecturer, associate professor, professor of the Department of Labor and Collective Farm Law (Labor Law and Social Security Law) of the All-Union Institute of Laws (MYUI, Moscow State Law Academy) in 1967–1999. Lily Alexandrovna Syrovatskaya . It is concluded that she made a significant contribution to the development of the Soviet and Russian science of labor law,

investigated a number of topical problems of the industry, primarily related to responsibility in labor law (material and disciplinary). Her particular merit is the substantiation of the position that material liability in labor law includes not only the material liability of employees to the enterprise, but also of the enterprise to the employee.The initial premise was that the responsibility of employees to the enterprise, like the enterprise to the employee, is based on the fact that they are parties to an employment relationship, the content of which is mutual obligations, including those arising from causing harm. She also made a significant contribution to the development of the doctrine on the structure of labor relations, on the legal personality of workers, on certain types of labor contracts, in particular, with the heads of organizations. ,

Petrikova Svetlana Vasilievna

Issues of reforming legislation on exemption from criminal liability in connection with active repentance and reconciliation with the victim

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The article is devoted to individual problems of exemption from criminal liability in connection with active repentance and reconciliation with the victim. As a result of the analysis of criminal legislation and law enforcement practice, a proposal is made to improve a number of provisions of Art. 75 and 76 of the Criminal Code of the Russian Federation. The author defends the conclusion about the necessity of constructing these norms as imperative, proposing to replace the words “may be released” with “released”. In the course of considering the issue of the number of conditions necessary for release from criminal liability in connection with active repentance, it is concluded that release is admissible in the event of an objective impossibility of the perpetrator to perform some positive post - criminal actions. When characterizing the surrender, the discussion highlights the

need to appear in person, the period of time until which the surrender is possible, the circle of bodies to which the declaration of surrender is addressed. The article shows the relationship between the terms "compensation for damage caused" and "making amends for the harm caused by a crime." The author concludes that in relation to Art. 75 of the Criminal Code of the Russian Federation on compensation for damage, we can talk if material (property) damage has been caused as a result of the crime committed; if moral or physical harm is caused, then we can talk about redressing the harm in a different way. In relation to Art. 76 of the Criminal Code should be based on the fact that the term "redress for harm caused" is generic and includes both compensation for damage caused, and redress in another way of harm caused by a crime. The paper concludes about the possibility of exemption from criminal liability in case of impossibility of a one-time compensation for damage and drawing up an appropriate agreement on its stage-by-stage compensation. The author considers it appropriate to supplement Art. 75 of the Criminal Code of the Russian Federation such a condition for exemption from criminal liability, as the prevention of harmful consequences. This concept is not identical to compensation for damage caused and otherwise redressing harm caused by a crime, and characterizes the positive behavior of a person, indicates a desire to reduce the negative consequences of a crime, and sometimes prevents the onset of more serious consequences.

Sopilko Irina Nikolaevna

Features of information axiology in the conditions of the formation of an information civilization

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The subject of the research is such a phenomenon as information, which there is every reason to consider as a certain state resource. Information influences all processes of modern social development. Scientific research of the processes of

transformation of methodological knowledge of information is of great importance, which is intended to contribute to the formation of a balanced state information policy. Its basis should be considered scientifically and methodologically grounded principles that will allow it to be directed towards solving tactical and operational tasks in the information sphere. The formation of a methodological scientific school in the field of information law is associated, firstly, with further research of epistemological problems, and, secondly, with the liberation of information law from the methodological hegemony of administrative law. It is concluded that the state information policy should be considered in three dimensions: regulatory policy - ideas, principles, methods of implementation; real politics - state information policy as information processes occurring in real time and in real life; ideal policy is a reference model of state information policy based on information axiology.

Chernavin Yuri Alexandrovich

DEVELOPMENT OF THE INSTITUTE OF HUMAN RIGHTS IN RUSSIA: A PHILOSOPHICAL LEGAL VIEW OF THE PROBLEM

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The main problem associated with the establishment of the institution of human rights in Russia is not in the immediate provision of individual rights, the level of which is still low, but in the fundamental possibility of achieving its effectiveness in our country someday. The problem is created by the existing contradiction between the necessary - essentially Western - type of social practice and the Eastern type of personality that is dominant in Russia. The article is devoted to the understanding of this contradiction and the development of ways to resolve it. One of these paths is based on a deep connection between the values of individual rights and the characteristics of Russian culture and mentality. The worldview basis of the institution of human rights is the humanistic ideas that

originated in the depths of the centuries, their embodiment in the fight against the lack of rights of the individual, against violence and oppression. This kind of struggle is part of our history. The Russian and Russian people are freedom-loving. It is another matter that in modern Russia, consisting of a Westernized minority and a traditionalist majority, there is both a distortion of Western characteristics and a transformation of traditionalism into quasi - traditionalism . The author's position connects the problem not only and not so much with the dominance of the traditionalist type of personality in modern Russia, but with its weakening and distortion.

The theory of institutional matrices, which also served as a methodological basis for the analysis, made it possible to formulate a conclusion about the pattern of purposeful and active implementation of the human rights institution in Russia. Its modern European version reflects the values not of individualism, but of personocentrism ; it moves from the stage of liberalization and democratization to the stage of socialization. The rights of the third generation that arose in the post-war period — collective in nature — correspond to the spirit and mechanisms of social activity in Russia. As a result, the ways of institutionalizing human rights in our country can be specific - it is possible to pass the stage of liberalization of rights, firstly, "accelerated", and secondly, by means of not individualization, but cooperation, relying not on benefits, but on the basis of shared people of the goals of being. At the same time, the means for the development of this institution will be the evolutionary change of the Russian statehood, coupled with the revival and evolutionary change of Russian traditionalism.

Shesler Alexander Viktorovich

Prospects for improving criminal law provisions on complicity in a crime

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The article proposes and substantiates the editorial changes in the Criminal Code of the Russian Federation concerning Chapter 7 “Complicity in a crime”. From the concept of complicity in a crime, it is proposed to exclude an indication of the intentional nature of the participation of two or more persons in the commission of a crime, since the sign of compatibility is considered as objective and subjective, including not only the infliction of a single criminal result by the joint efforts of the accomplices, but also the joint intent of the accomplices. The concept of two or more persons is clarified, which means a plurality of subjects of a crime. When characterizing a mediocre perpetrator, a closed list of options for this type of perpetrator is offered. It is proposed not to include the organizers of a criminal community and an organized group in the concept of an organizer of a crime, since their actions are criminalized as the actions of the perpetrator of the crime. If the actions of the persons who created the organized group do not form an independent corpus delicti, then they are a kind of preparation for a crime. When defining incitement and complicity, it is proposed not to indicate specific methods of performing these actions due to the fact that the significance of the contribution to a joint crime should be assessed as a crime. The article substantiates the reference to complicity in facilitating the achievement or implementation of an agreement between the accomplices for the joint commission of a crime. In the definition of an organized group, it is proposed to leave only its specific characteristic - stability, in the definition of a criminal community - to abandon evaluative features, to use the concept of exact meaning (the action of two or more organized groups under a single leadership, the union of the leaders of organized groups). The article clarifies the criminal-legal assessment of the actions of several persons who participated in a crime with a special subject. The responsibility of persons who failed to complete the actions begun as organizational or aiding in cases of “unsuccessful complicity” is determined. More stringent conditions for the voluntary refusal of the organizers and instigators are substantiated. The general rule on the responsibility of accomplices in case of excess of one of them is specified in relation to the quantitative excess. It is

proposed that circumstances mitigating and aggravating punishment, or qualifying circumstances relating to the personality of one of the accomplices, should be taken into account when sentencing other accomplices if they increase or decrease the degree of public danger of a jointly committed crime and are covered by their intent.