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WHAT MAKES VIRTUAL CRIMES TO BE REAL

Abstract. Massively Multiplayer Online Role-playing Games (MMORPG), which represent artificial universes, in fact, modified «reflections» of the real world, simulators of life, were presented in the mid-1990s. In online worlds, people through their avatars (virtual characters) live and work, study and teach, organize parties and get married, engage in creativity and business, and of course commit crimes. An example is the «world» Second Life, accessible via the Internet and located on a large array of servers that are owned and maintained by Linden Lab. The Second Life's space consists of continents owned by the developer, and several thousand private islands.

In the Second Life environment, users have the ability to perform quite a variety of activities. To create commodity-money relations in the Second Life, the developers passed the function of creating 3D objects to users, and also established a virtual currency and made it convertible into real world money. This allows players and even entire companies to lead a successful business in the Second Life world and generate revenue.

To regulate virtual worlds, their developers and owners establish rules for their participants, which are typically contained in End-user license agreement or EULA, Terms of Service or Terms of Use and other documents.

The literature widely addresses the possibilities of applying the rules of the law of the real, physical world to objects created and existing in virtual worlds. It is, first of all, the legal regime of property, including intellectual property. The use of criminal law in cases of crimes committed by the inhabitants of virtual worlds is also discussed. But what is considered a crime if it is committed in a virtual world, and under what conditions can there be a real criminal liability? The authors offer their answers to these questions.

The article describes crimes within Massively Multiplayer Online Worlds (MMOW). The aim of the article is to draw attention to gaps in law regulating of MMOW's participants conduct. It is shown that experimental jurisprudence may be developed while virtual law is created. The authors also come to the conclusions that: 1) virtual worlds need internal rules and regulations; and 2) MMOW is appropriate platform for testing law of real world.

Keywords: massively multiplayer online role-playing games; Second Life; ava-tar; end-user license agreement; terms of service; terms of use; program code; virtual worlds; property; intellectual property; criminal law; virtual crimes

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THE LEGAL CAPACITY OF ELECTRONIC PERSONS: THEORETICAL AND METHODOLOGICAL APPROACHES

Abstract. The relevance of theoretical studies on the electronical persons as an innovation is due to the active use of digital technologies and robotics in virtually all spheres of public life, an increase in the number of related ethical and legal problems, and also a fairly high probability that artificial intelligence can make decisions, the logic of which is not always understood by humans.

The formation of a fundamentally new tool for legal regulation is determined by legal specifics of electronic persons, which complicates the understanding of legally significant behavior. An electronic person who has legal duties and subjective rights is, in fact, a set of duties and rights, and the content of legal rights and obligations are the actions of artificial intelligence. The latter can be interpreted as a complex set of communicative and technological interrelations, the result of human activity, able to think logically, manage its actions and correct its decisions in the event of a change in external conditions.

Rights and duties of electronic persons can be determined in accordance with the model, based on the theory of H. Kelsen. From the standpoint of his «pure doctrine of law», an electronic person can be treated as a personified unity of the rules of law, which oblige and authorize an artificial intelligence that has the criteria of «reasonableness». An electronic person can perform a number of functions that correspond to the goals of a particular AI developer. It appears acting, because it is charged with the duty that this person can perform or violate. In this regard, the question arises who will be responsible for the failure to perform this duty — the very electronic person or developer of artificial intelligence. So, at present in Russia responsibility for the illegal consequences of the operation of industrial robots are borne by their owners, producers or operators.

By analogy with legal entities, electronic ones are capable of realizing their legal personality provided they are recognized at the legislative level as subjects of law acting on an equal basis with other participants in public relations. Certain preconditions for the recognition of electronic persons were laid down in precedents relating to non-human subjects of law or to the protection of the rights of robots.

Keywords: information, digital reality, artificial intelligence, electronic person, robot, legal personality, objective liability, risk management

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RECENT APPLICATIONS OF FUNCTIONAL METHOD IN COMPARATIVE EUROPEAN LEGAL HISTORY

The article was prepared within the framework of the Academic Fund Program at the National Research University Higher School of Economics (HSE) in 2017- 2018 (grant No.17-01-0051) and by the Russian Academic Excellence Project "5-100".

Abstract. Profound changes in the contemporary world put almost all legal concepts and theories in European jurisdictions to the test. They require new research of the foundations of European legal tradition by united efforts of legal comparatists and legal historians. Comparative legal history transcends the limits of the national historiographies and brings to the front the functional method which focuses not on the black letter law but on the actual link between the societal needs and their legal solutions.

In this article the author examines the effectiveness of the functional method in the actual and potential research projects in comparative legal history. These projects are divided into two groups depending to their aim to discover similarities or differences. The first group comprises such popular research models as the 'common core' of private law across European jurisdictions, successful legal transplants and the restatement of unwritten customary law. The models of the second group aim to discover legal diversity and failed legal transplants in Europe.

The functional method can be applied in each group but it proves to be effective enough in the first group even being the main research method. Projects from the second group can not rely upon this approach as a basis and require combination of functional method with other methods of comparative law.

Keywords: comparative law, comparative legal history, functional method, history of private law in Europe, ius commune, common core of law, legal transplant

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THE IDEOLOGICAL ORIENTATION OF THE NON-CLASSICAL LEGAL DISCOURSE

Abstract. The question of the ideological orientation of nonclassical conceptions of law is very important for determining their place in the theory of law, but it is not often discussed in the legal literature, even in the works of authors who adhere to nonclassical approaches in the study of law. Meanwhile, nonclassical rationality can be presented as an ideological intellectual project, which for a number of reasons, due to its content, is associated with the denial of the science, culture and worldview of the modern era. The clearly ideological orientation of nonclassical rationality is manifested in critical theories of law, now very popular in the West, especially among the fighters for social justice.

The nature of nonclassical rationality, which asserts that the social world is contextual and can be constructed and, accordingly, perceived within the framework of the most diverse models, allows one to wage a struggle in the ideological sphere. Because of this, nonclassical rationality can claim the role of an effective force of social transformations aimed at legitimizing the alleged nonclassical rationality of the social order.

The very concept of ideology eventually acquired a «nonclassical» content. The struggle against ideology, conducted in the modern era, is a project of denouncement of the modern rationality, which includes doubt in the structure of rationality, challenging the objectivity of reality, exposing the foundations of scientific knowledge, criticizing positive science as an ideologically conditioned system. Special attention is paid to the problem of ideology by supporters of the «left» trend of intellectual thought. In this connection, the question arises whether the nonclassical rationality which affirms uncertainty, incompleteness, complementarity, decentralization and other relativistic principles, is itself an ideological phenomenon.

The ideological nature of law is one of the favorite themes of Western humanitarian science in general and Western legal theory, in particular. In the postmodern and critical Western conceptions of law, the influence of the ideological context is most distinctly traced. Russian authors do not perceive the picture of the world, formed by non-classical rationality as ideologically conditioned, rather, on the contrary, it seems for them as non-ideological as possible. However, it can be assumed that in the future in Russian jurisprudence, as well as, for example, in American doctrine, ideology will determine the content of scientific discussions.

Key words: non-classical rationality, epistemology, postmodern, ideology, theory of law, critical law school, neo-Marxism, discourse-analysis

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MEDIEVAL RUSSIAN THINKERS ON TRUTH, LAW, JUSTICE, VERITY AND GRACE

Abstract. Before the adoption of Christianity, social relations in Russia were regulated by custom and law, and these terms were used in the same meaning. The term "truth" ("*pravda*"), long known in Russia, denoted abstract concepts related to administrative and judicial activity: it could mean the right to judge; justification; absence of guilt (according to law and custom); code of laws.

After the acceptance of Christianity by Russia in 988, the term "law" received sacred meaning: the laws of God, the laws of the Old and New Testaments, the laws of Jesus Christ, the laws of the Ecumenical Councils. The word "law" was not taken out of its former connotation, but it received characteristics relating directly to God: verity, justice, eternity, and infinity. The concepts of "verity" and "justice", in turn, were interpreted according to the Orthodox doctrine: "Verity is the Christ", and justice is an immanently inherent attribute of God and all that is part of Him, therefore both of these concepts were eternal and unchanging. The "law" was now interpreted as the embodiment of God's commandments; "truth" was perceived as part of this law, intended to be implemented by God's representatives — earthly rulers. The content of the princely legislation — "Princely Truth" — was assessed by public opinion, depending on its conformity or inconsistency with Divine justice, i.e. the law is in its sacred meaning.

The Kiev Metropolitan Hillarion (11th century), in his treatise "Word on Law and Grace", theoretically formulated for the first time the basic concepts relating to regulating relations in the early Middle Ages: Law, Truth, Grace and Verity. Verity represented a special category; it is neither tantamount to truth nor to law, but is revealed to people as a Divine gift intended to «guide» their perception of faith in Jesus Christ and following Him in their behavior.

In the late Middle Ages, already in the Muscovy (XIV—XVI centuries), in connection with emergence of a large number of normative acts, the meaning of the terms "law" and "truth" was substantially rethought. The content of the term "law" was reduced to the designation of a specific legal norm adopted and protected by the state. The term "truth", on the contrary, significantly expands its semantics, becoming practically synonymous to the term "justice"; Corresponding to Divine justice, it begins to be used to attribute the quality of righteousness or fairness to the whole complex of political and legal relations in the state.

The term "law" was not included in the vocabulary of the entire Russian Middle Ages, its appearance is associated with the spread of the theory of "natural law" in Russia. The use of the term "law" in modern studies as applied to all periods of Russian history is nothing more than permissible modern designation of all means of regulating social relations.

Keywords: truth, law, justice, verity, grace, faith, understanding of law, justice, Russian Middle Ages

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ADAPTATION AND RESCISSION OF CONTRACT DUE TO THE FUNDAMENTAL CHANGE OF THE CIRCUMSTANCES: EUROPEAN CIVILIAN TRADITION AND MODERN TRENDS

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Abstract. A study of "*clausula rebus sic stantibus*" in the course of development of the notion of *causa contractus* is viewed as substantial element of the will (*substantialia*) in the European legal tradition. Decline of the doctrine of contractual cause in the Usus Modernus epoch was accompanied by the expulsion of the *rebus sic stantibus* clause from the Civil codifications of the 19th century. The present-day re-born of the institute seems coordinated with the restored role of the good faith concept in the civil law and the establishment of the objective and normative approach to the formation of individual will. The dogmatic foundations of the notion under study, easily recoverable from the works of Medieval jurists are seen in the recognition of the normative limitations of the will as a source of legal relationship due to the integration of the external circumstances in its content. The modern doctrine of the concrete cause of the contract is viewed as resulting dogmatic construction built on the general philosophical foundations of the European contract theory. The recent trend towards the adaptation of the long-term contracts (instead of rescission) observed in the last legislative reforms and *lex mercatoria* development is backed by a sensitive consolidation of the traditional legal notions and resulting deeper insight into the nature of the normative structure of the private law. Though German and French scholars keep treating the problem in subjective terms even after the codification of the *clausula rebus sic stantibus* doctrine, systemic approach reveals restoration of the objective demands of the legal principles within the civil legislation. General requirement of good faith does not permit to one party to the contract to profit from the hardship affecting the counter-party. The violation of the equivalence in bargain affects the very normative foundations of the legal system. To adjust the distorted contract to the new factual setting, to re-establish the previously contracted harmony means to pursue the general demand of the legal principle of equality. It is not economical, but legal issue at stake. The said conceptual foundation leads to the scientifically backed understanding of the external circumstances as a constituent element of the parties' coordinated will to the bargain and of the contract as a form of realization of the legal norm in the concrete legal relationship.

Keywords: contract, hardship, frustration, *causa*, contract adaptation, rescission, *clausula rebus sic stantibus*, mistake, European legal tradition

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THE ADMISSIBILITY OF THIRD PARTIES PARTICIPATION IN BANKRUPTCY PROCEEDINGS

Abstract. There is a mixed opinion on the admissibility of participation of third parties who do or do not declare independent claims regarding the subject of the dispute in insolvency court proceedings. Those who believe that third parties shall not participate in the arbitration procedure in bankruptcy cases ground themselves, first, on the fact that such participation is nowhere mentioned in the Arbitration Procedural Code of the Russian Federation and the Law on Bankruptcy and second, there is no title dispute in such proceedings. Adherents of the opposite point of view consider such participation permissible, since the list of persons participating in the arbitration proceeding in the bankruptcy case (established in the Federal Law "On Insolvency (Bankruptcy)") is open. Judicial practice also lacks uniformity in resolving this issue.

The participation of third parties who declare or do not declare independent claims in arbitration court insolvency proceedings is permissible, in the author's opinion, for the following reasons.

Within the framework of a bankruptcy case, separate title disputes can be considered (for example, collecting damages, bringing the manager to subsidiary responsibility, contesting transactions). When resolving such disputes, it is permissible to apply norms pertaining to regular claim proceedings. Consequently, the participation of third parties in the arbitration proceedings in the case of insolvency (bankruptcy) is possible in the manner provided for by Art. 50, 51 of the Arbitration Procedural Code of the Russian Federation. It is a mistake to exclude the participation of third parties in the arbitration court proceedings in cases of insolvency (bankruptcy) only on the grounds of the absence of direct indication in the laws. Uncertainty about the issue of the admissibility of third parties in the arbitration proceeding in the case of insolvency (bankruptcy) can be eliminated by completing Ch. III "The investigation of bankruptcy cases in arbitration court" of the Federal Law «On Insolvency (Bankruptcy)» with sections regarding resolution of separate disputes under the general procedure rules.

Keywords: arbitration proceeding, insolvency (bankruptcy), parties to the claim, separate disputes, title disputes, third parties filing independent claims regarding the dispute, third parties not filing independent claims regarding the dispute

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DIRECT AND PARTICIPATORY DEMOCRACY AS THE MEANS OF CITIZEN'S INVOLVEMENT INTO THE LOCAL DECISION-MAKING

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Abstract. In the conditions of the crisis of representative democracy, breakdown of former social relations and growing technocratization of municipal government the voters' turnout is falling down and the people are gradually loosing the interest in what is happening at the grass-roots level. The situation is aggravated by the crisis of local political parties. With consideration of the diminishing role of the class factor and increasing social mobility of individuals it's becoming harder for the parties to structure local politics and to mobilize electors. In this situation efforts are being taken to make the municipal system more attractive for citizens and to enlarge the forms of their participation in the local political life. The important role in this relation belongs to direct as well as to participatory democracy.

The institutes of direct democracy are interacting with the institutes of representative democracy in a peculiar way, sometimes complementing and cooperating and sometimes competing with them. A lot of connections are being made through political parties called upon to serve as a kind of a motor and a coordinator of the local democratic system. The forms of direct democracy sometimes are even used to stimulate the local electoral process and party mobilization. They offer additional institutional possibilities for different non-party groups as well.

Referendum is one of the most discussed institutes of direct democracy. There is a notion that with the help of referendum it's possible to regulate a particular matter in a more decisive way than by the representative process. But it's necessary that there should be clear referendum results, not rising any particular doubt. A narrow victory of supporters of a certain decision could only aggravate public contradictions and not facilitate their settlement. Besides, much less percentage of voters are taking part in referendums than in elections, and at referendums different segments of the population are represented in a less proportional way than at elections.

Representative democracy is often contrasted with participatory democracy. There are many different interests being active within modern local communities, and that's why it's already impossible to solve many problems confronted by these communities solely by way of elections. There is an understanding that the modern democracy should be interactive. So, government at the local level by way of traditional forms of representative democracy is increasingly supplemented by different mechanisms of consultations with the citizens.

Due to the mechanisms of participatory democracy the decision-making process at the municipal level is becoming more collegial, thus increasing the legitimacy of decisions taken. As a result a certain "social capital" is being accumulated. It's based on the trust appearing in relations between governmental bodies and civil society in the course of taking joint decisions at consensual basis. The volume of such social capital determines the free cooperation of different interest groups within the particular community. There is also a fear that participatory democracy could endanger the representative system and its basic principle of equality as well

as contribute to destabilization of local political parties.

Keywords: representative democracy, municipal government, local elections, political parties, referendum, citizen initiative, social capital, citizens' juries, participatory budgeting

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REVIEW

Cherepanov, V.E. *(2018). Problemy rossiiskoi gosudarstvennosti. Opyt sistemnogo issledovaniya [Problems of the Russian Statehood. Systematic Research Experience]. Moscow: NORMA; INFRA-M. 336 p.*

Abstract. The work of the Russian researcher V.A. Cherepanov is devoted to the creation of a paradigm for the systematic consideration of state and law, of the «constitutional and legal conceptual space». The author proceeds from the fact that some of the traditionally recognized elements of the state (territory, population, power) are only conditions for the existence of the state. The starting point of the study of statehood, in his opinion, should be the concept of the people. The author distinguishes between abstract and concrete people. Abstract people, according to V.A. Cherepanov, is a constitutional ideal in the structure of the Russian state, it is regarded as a legal personality, a legal entity, uniting the previous, current and future generations. In turn, concrete people as a socio-political community is the totality of citizens. Exploring the people as a structural unit of Russian statehood, the author, in solidarity with L.S. Mamut, considers the state as a publicly organized society, people organized in community provided with public authority, and not as a superstructure over society. Proceeding from the understanding of the people as a structural unit of the Russian statehood, the author singles out its two main subsystems: democracy and federal structure.

The development of statehood is rooted in contradictions, and the historical movement of our state appears as a process of emergence, deployment and removal of contradictions. The author outlines the following basic contradictions of the Russian statehood: between public authority and the people as its only source (this contradiction at times generates both the alienation of the people from power and the alienation of power from the people); between the Russian Federation and its subjects in the context of state unity and the separation of state power (at the present stage this leads to a super-centralization of power and the danger of turning a federal state into a unitary one).

The proposed understanding of the people and the state, as ideally constructed objects existing only in the constitutional and legal space, can be qualified as the maximum degree of abstraction. The world of proper and normative ideal is figuratively called by V.A. Cherepanov as “legal Idyllium” and is used to illustrate abstract legal constructs. Some elements of the author’s concept are clearly utopic. This applies both to the absolutizing of the unreal constructs of the “legal Idyllium” and to certain proposals that are not being implemented at the present stage of the development of our state, in particular, the transformation of the referendum into a permanent form of constituent power of the Russian people, and conclusion of a new Federal Treaty.

Keywords: state, people, public authority, democracy, federalism, representative democracy, direct democracy, electoral rights

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