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BLOCKCHAINS, SMART CONTRACTS, AND COPYRIGHT LAW

Abstract. In October 2018, the European Parliament passed a resolution on distributed ledger technologies that recognized blockchains' potential to disrupt copyright and creative industries. The aim of this article is to examine blockchain technologies and provide an assessment of their disruptive potential upon the legal sphere of intellectual property, and in particular copyright in the music industry. In order to do so, this article will start off by clarifying that the blockchain does not exist, because there are several different types of blockchains and, accordingly, different legal and regulatory issues are involved. After identifying the type of permissionless blockchain that is analysed in this article – that is permissionless, turing complete, open, distributed, peer-to-peer, transparent, tamper resistant and censorship resistant –, we move on to identify the definitional and non-definitional features of blockchain technologies. For the blockchain to unleash its disruptive potential, it must be clarified whether it complies with existing laws and whether new regulations are needed. Should existing regulations be found insufficient, only then a serious discussion around new regulations could be started and this should take into account the necessity not to stifle innovation, the level of development of the relevant technologies, the importance of involving all the stakeholders and to place the discussion at a supranational level. The focus of this aricle is to critically assess whether public permissionless blockchains can be used to disrupt intellectual property law by resolving some of the problems in copyright law, with particular regard to the issues of copyright registration, infringement, and transactions. It will be shown how the blockchains can resolve the registration issues by allowing forms of tamper-resistant, censorship-resistant, user-friendly, and privacy-friendly copyright registration. As to infringement, the blockchains can prevent it by making it easier for copyright owners to track the use of their works and for music consumers and new intermediaries such as Spotify and iTunes to identify the owners, seek a license, and pay the royalties. Finally, smart contracts could be used to automate licensing and as forms of digital rights management, but this could be criticised from an efficient breach perspective, as well as by pointing out the difficulties of this technology in coping with copyright exceptions or defences. It is perhaps too soon to conclude that a 10-year-old technology will ultimately disrupt copyright, but there are already some indications that the Ethereum-type blockchains' features will radically change copyright by fixing some of its most urgent problems.

Keywords: copyright, blockchain, smart contracts, copyright registration, copyright infringement

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CARL SCHMITT'S POLITICAL THEOLOGY: DISCOURSE AND METHODOLOGICAL APPROACH

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Abstract. Political theology is a complex multi-valued concept, the use of which is often associated with the discrediting of certain ideologies, beliefs or value systems. Meanwhile, this concept has a serious theoretical and methodological potential, which due to numerous inversions is almost forgotten. Political theology in the legal sense, from the point of view of C. Schmitt, is a methodological approach, implying a historically changeable analogous similarity between the two systems of concepts – metaphysical (theological) and state-legal, which form corresponding visions of the world of a particular era. The content of this approach consists of three interrelated theses: 1) political theology is a kind of sociology of legal concepts ("sociological" thesis); 2) political theology assumes an analogy between the concepts of the doctrine of state and law and theological concepts (the thesis of the conceptual analogy); 3) political theology implies an analogy between the metaphysical and state-legal visions of the world of a particular epoch, in the structure of which these concepts exist (the thesis of structural analogy).

The heuristic significance of political theology as a methodological approach remains hidden. It is perceived as a kind of conservative ideology or even rhetorical practice. In fact, political theology, by contrast, can be a useful tool for discovering the hidden rhetorical potential of various political and legal arguments. In addition, with its help, new aspects of such classical problems of the theory and philosophy of law as validity of legal order and its grounds, the concept of sovereign, the essence and limits of justice, strategies of judicial argumentation, etc., are revealed.

Being the core of C. Schmitt's theoretical and legal thinking, political theology appears to be connected not only with the German lawyer's direct application of its basic theses (for example, to study the concept of sovereign or the neutralization and depoliticization movement), but it also appears in the Schmitt's basis of the validity of legal order, which German lawyer interprets as common ideas about the "normal" for a specific community, including the "normal" state-legal system, which are similar, according to the political theology, to the metaphysical vision of the world.

Political theology as a methodological approach reveals itself in Schmitt's criticism of the axiological foundations of constitutional justice. In the essay "Tyranny of Values" the practice of direct application of values by the courts, which is the content of a realistic strategy of judicial argumentation, is interpreted by a lawyer as a special case of the manifestation of a political and theological neutralization and depoliticization movement.

Keywords: political theology, legal methodology, Carl Schmitt, the validity of law, constitutional justice, sovereign, institutionalism, axiology, realistic strategy of legal argumentation

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DELIBERATIVE MODEL OF DEMOCRACY: BASIC PRICIPLES AND PRACTICAL DIFFICULTIES

The paper was prepared within the framework of the scientific project № 19-011-00796 "Deliberacy as the principle of making public decisions: the legal dimension", supported by the Russian Foundation for Basic Research.

Abstract: There are various decision-making models in politics, and each model is closely related to some principle. If this principle is abandoned, the model will collapse. But one principle is not enough for the good functioning model, more requires a relationship that ensures its implementation. If such relationships do not develop, the basic idea remains unreal. If the principles discussed above are built into the system, a classification of political regimes will be obtained. Scientists designate two kinds of models of democracy: the first ones are aggregative, the second ones are deliberative. The sign on which they differ is a way to legitimize decisions. In the aggregative model, the solution is legitimate, if it has the support of the majority. In the deliberative model, the decision is legitimate if it is a consensus. If there is progress in society, the models of democracy also change. From a less developed model, a transition to a more developed one occurs. Suppose that in each model there are formal and informal elements. Informal elements give more freedom to citizens, but at the same time give less guarantees. A large number of informal elements is a sign of progress. Therefore, deliberative democracy is the most developed. Development is necessary and contingent. If the community is interested in the necessary development, such requirements should be voiced. The ability to talk about their needs in political life is very important. This ability should not depend on the specific type of political regime. Bureaucracy should not interfere with free political expression, but the political communication is an independent phenomenon. This communication can be described by a category of substance. It is an independent force in developed societies. It has the inherent freedom of participation and rationality of actors, both properties are expressed to some extent, but not absolutely. There are many reasons for imperfect communication, however they can be compensated for using specific procedures. These procedures aim at political consensus, but its achievement is difficult in any political environment. The law cannot generate new social objects and properties on its own. But the law can play a very significant secondary role. For example, the law may block the actions of some subjects, if these subjects impede political development. You can achieve a holistic view of the impact of rights on policy. For this you need to examine carefully the ratio of formal and informal political practices. In addition, it is necessary to clarify the legal status of all political actors (in particular, potential, emerging and excluded from communication, but to be included).

Keywords: politics, power, law, political regime, democracy, aggregative model of democracy, deliberative model of democracy, communication

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RIGHT WING SOCIALIST CONSTITUTIONALISM: FAILED ALTERNATIVE (1917–1918)

Abstract. The elections to the All-Russian Constituent Assembly in 1917 showed that a new Russian statehood would be built upon the basics of socialist ideology that should be reflected in the concept of constitutionalism. However, the aims of socialism could be achieved by different ways, thus socialist constitutionalism acquired several directions.

The Bolsheviks were advocates of left wing socialist constitutionalism. The right wing socialist constitutionalism was developed by representatives of a wider political spectrum – right wing of Socialist revolutionaries, Mensheviks, Popular socialists, and socialist national movements. Socialists of both wings did not attribute conventional liberal democratic characteristics to constitutionalism such as limitation of the state power, commitment to rule of law, protection of fundamental rights. Simultaneously, they, taken together, shared the ideas of socialization of land, expansion of the rights of workers, acknowledgment of the citizens' right to participation in state governance. However, the distinctions between the right and left wing approaches towards socialist constitutionalism were vivid. The idea of right wing socialist constitutionalism manifested itself in such categories as "people's will" and "pluralism of representation", while the basic categories of left wing socialist constitutionalism were "class approach" and "one-party system".

As contrasted with the Bolsheviks, the right wing socialists did not seek to force constitutional development of the country; they planned to adopt the Constitution only in follow-up of the completion of the Civil war. Probably, that was the reason why the program documents of almost all non-Bolshevistic parties did not draw serious attention to the matters of constitutionalism. The fundamental developments of constitutionalism theory based upon social-democratic ideology were lacking. Various anti-Bolshevistic regional governments in their statutory acts dwelled upon land, worker-related and national issues, local self-government, however, they failed to embark on constitutional execution of the new Russian statehood. Neither of the parties presented in the Chelyabinsk State Conference did not aim to actualize the constitutional principles rooted in the "Act on Establishment of the All-Russian Supreme Power" of 23 September 1918 ("Constitution of the Ufa Directory").

The right wing socialist (social democratic) constitutionalism has survived from June 1918 (establishment of the Committee of the members of All-Russian Constituent Assembly) through November 18, 1918 (arrest by the officers of Omsk military post of representatives of social democratic wing of the Directory and transfer of single supreme power to A.V. Kolchak). The left wing socialist (Soviet) constitutionalism has survived from January 1918 (dispersal of the All-Russian Constituent Assembly and seizure of power by the Bolsheviks) through December 1991 (adoption of the Declaration on the dissolution of the USSR by the Council of the Republic of the USSR Supreme Soviet (Parliament). Over this quite a prolonged period a theory of Soviet constitutionalism that gained regulatory consolidation in the Soviet Constitutions was elaborated. However, the narrow limits of the communist ideology, complete withdrawal from pluralism of opinions have ideologically depleted the Soviet regime the fact that resulted in the collapse of the socialist constitutionalism, at large.

Keywords: constitutionalism, socialist constitutionalism, right wing socialist constitutionalism, left wing socialist constitutionalism, social democracy, Russian revolution of 1917, Soviets, Constituent Assembly, Civil war, Soviet constitutions

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EVOLUTION OF HUMAN RIGHTS IN DIGITAL ERA

The article was prepared within the framework of the scientific project № 18-011-00406 "Human rights in the Internet Era: Public Law aspect", supported by the Russian Foundation for Basic Research.

Abstract. The digitalization produces a dramatic impact on fundamental human rights and their legal regulation. Regardless public & legal origin, human rights are associated with private law, primarily, via a concept of subjective public rights. The process of constitutionalization of private law is based upon the concept of universality and supremacy of human rights which should be realized both in public and private law. At the same time, it is the very digitalization that gives a certain prospect to withdraw from the concept of subjective public rights in some spheres while, for instance, ensuring openness and accessibility of information owned by the state irrespective of active measures (requests) from private individuals.

The system of human rights will be changing subject to the conditions of their realization. With the advent of digital technologies, the so called digital rights arise – right to access to Internet, right to oblivion, right to protection from unwanted information that have already gained legal recognition in different countries. Across the globe digital rights are interpreted as specific human rights of public law origin. However, in Russia this term was introduced into the Civil Code to denote property rights realized in the information systems.

As a way out of the arisen terminology discrepancy it is proposed to use the term "binary rights" for public & legal identification of digital rights that underlines a link with digital data transmission (binary) and also through word games conveys the duality of existence of these rights both online and offline.

The implementation of digital technologies weakens the protection of private life at mass level. Simultaneously, at individual level the right to protection of personal data has increasingly gained attention and regulation. The analysis of practice of international courts shows that the problem of human rights realization amidst the development of digital technologies should be regarded in a wider context, with due regard to the emerging social and moral issues.

The concept of universality of human rights harmoniously blends with neutrality and universality of digital technologies. In the era of digitalization the essence of a human being and the related values does not change and those are precisely the human rights that can become a unified dedicated perspective in defining attitude towards different new technologies.

Keywords: human rights, digital technologies, universality of human rights, digital rights, personal data, Internet, private life

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COURT OF INTEGRATIVE ORGANIZATION AS INTERNATIONAL JUDICIAL BODY

Abstract. International justice is one of the most dynamically developing domain of the international law. The doctrine understands international court as an independent authority operating on a permanent basis or established *ad hoc*, authorized to adopt decisions on the basis of the international law which are binding upon the parties or enjoy an interpretational authority.

All kinds of international courts operate in the contemporary world. The nature of relationships between them does not enable to talk about the consistency of the international justice. Different international courts operate on the basis of own procedural rules in the absence of institutional structure of interaction, with the exclusively voluntary use of practices from each other, possibility of adopting opposing decisions on similar issues and lack of rules for resolving a conflict of jurisdictions. Along with this, the authorities of international justice do not exist as separated, closed structures; they actively interact and under mutual influence of each other, in aggregate actualizing a common function of administration of international justice on the basis of the governing international law.

In general, international courts can be divided into classical international courts, regional courts on human rights, international criminal courts and courts of regional integrative organizations. The emergence of the latter is conditioned by the establishment of integrative organizations in a number of regions and formation of special supranational law and order within their framework. Courts of integrative organizations are substantially different from national courts and from classical international courts.

It is obvious that the tasks and functions of international criminal courts and regional courts of human rights are fundamentally different as compared to those that are imposed on the courts of integrative organizations. From classical cross-border courts the courts of integrative organizations are distinguishable for their specific competence – issues referred by the states parties to supranational level, possibility of participating in the proceedings of private individuals as well as tendency towards constitutionalization of justice.

The constitutionalization of justice of courts of integrative organizations means that the constituent treaties of the respective organizations play the same role for their courts as the national constitutions for constitutional courts of member states, since all other acts adopted within the framework of integrative organizations as well as acts (inertia) of the related authorities are verified against compliance to constitutive treaties. At this, the function of ensuring the supremacy of law of integrative organizations and protection of its values is entrusted to the court. And general values of integrative organizations, being borrowed, as a rule, from national constitutions, are transformed by the court into general principles of integrative organizations and becoming a basis for adoption of the judicial acts.

All the denoted indications of courts of integrative organizations are vividly manifesting themselves in the status and practice of the Court of the Eurasian Economic Union (EAEU).

Keywords: international justice, international court, court of integrative organization, constitutionalization of international justice, independence of judges, supremacy of law of integrative organization, Court of EAEU

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CONSTITUTIONAL RATIONALES FOR THE UNITED KINGDOM'S EXIT FROM THE EUROPEAN UNION

Abstract. The Treaty of the European Union stipulates that a Member State is entitled to take a decision to exit the European Union pursuant to the national constitutional regulations, however, neither of the Constitutions of the Union Member States provides for such a procedure.

In course of the 2015 election campaign in the United Kingdom, the Conservative Party promised its electors to hold a public referendum regarding the stay within membership in the European Union. This Party won the elections, and on June 23, 2016 a referendum took place where 51.4% of the ones participating in voting expressed support for exiting the European Union. Following the referendum, the objections against Brexit were perceived as a move to reverse the will of the majority of electors; however, the Government could not consider the outcome of the referendum as a sufficient legal basis for adopting a decision on exit.

As the implications of Brexit have become clear, the concerns of the community in respect of the admissibility of using prerogative powers, enabling the Government to act without the Parliament's approval and court supervision, to exit the Union have amplified.

In the judgment rendered on the Miller's case dated January 24, 2017, the Supreme Court of the United Kingdom ascertained that the Constitution prevents any exit of the country from the European Union and termination of treaties with the Union based upon prerogative powers of the Government in the international domain. To notify EU of the intention to exit the Union, the Parliament shall submit a relevant mandate to the Government by virtue of the law adopted by both houses of Parliament. Along with this, the Constitution of the United Kingdom does not require the legislatures or the governments of the regions to consent to exit of the country from the European Union.

On March 13, 2017, a parliamentary enactment, legally empowering the Prime Minister to launch Brexit and notify the European Union of the intention of the United Kingdom to exit the Union, was adopted. The statement of the United Kingdom on exit from EU dated March 29, 2017 meant that the country entered the path of radical transformations linked to cessation of effect of the European law and jurisdiction of EU Court across the territory of the country.

Keywords: European Union, exit from EU, Brexit, Constitution of the United Kingdom, referendum, prerogative powers of the Government, regions

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CRIMINAL RESPONSIBILITY FOR ENVIRONMENTAL OFFENCES AS A TOOL FOR PREVENTION OF ENVIRONMENTAL HARM IN CHINA

Abstract. In 2015 a special paragraph dealing with crimes against environmental protection was incorporated into Chapter 6 of the Criminal Code of China. Over the last years the criminal proceedings have been increasingly brought for environmental crimes. It is conditioned by the fact that at the XIX Congress of the Communist Party of China the environmental protection was recognized as a strategic task. The Supreme People's Procurator Office and the Supreme People's Court adopted the Instruction on application of the law in this area in 2016; the environmental courts for duly qualified trial of cases related to environmental protection were established in May 2017.

Though the definition of environmental crime has not been formulated at the legislative level, different options for its interpretation are proposed in the legal doctrine. Some of them are based upon the concepts of anthropocentrism and do not address the environmental value, others consider natural resources or environmental system as an object of a crime.

The Criminal Code of China is based upon the principle of "double punishment". If the environmental crime is committed by an organization, then along with the prosecution of the offender a fine shall be imposed on the organization.

According to Article 15 of the Criminal Code of China the criminal responsibility for the crime committed by negligence arises only in cases stipulated by the Code. The articles on environmental crimes do not refer to negligent guilt. Accordingly, it is presumed that environmental crimes can be committed only intentionally. However, the harm inflicted to environment by criminal negligence can be substantial.

Punishments in the form of a fine, arrest, supervision and imprisonment for a certain term are provided for the environmental crimes. However, the growing number of such crimes points out to the inefficiency of the criminal sanctions. Since the articles of the Criminal Code of China dedicated to environmental crimes do not establish a certain fines, there is a wide variation in really imposed penalties for the same crimes. Usually the fine is not big.

It should be assumed that China has attained certain success in environmental protection by criminal law. Twice, in 2002 and in 2011, the Criminal Code of China was supplemented by the amendments concerning environmental crimes; the number of the respective crimes in the law was increased. However, a whole set of provisions still needs corrections. Many problems are conditioned by the fact that the Criminal Code of China is based upon anthropocentrism, natural-resource legislation is of departmental nature and primarily aimed at protection of ownership title to natural resources rather than interests of their rational and comprehensive usage. All these facts result in impairment of the preventive effect of the sanctions provided by the Code.

Keywords: criminal responsibility, the Criminal Code of China, environmental crime, environmental harm, specialized courts on environmental matters, criminal responsibility without establishing guilt, principle of double punishment

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REVIEW

Feldbrugge, F. (2018). *A History of Russian Law. From Ancient Times to the Council Code (Ulozhenie) of Tsar Aleksei Mikhailovich of 1649.* **Boston; Leiden: Brill. 1097 pp.**

Abstract. This paper is a review of the 2018 book by Professor F. Feldbrugge "A History of Russian Law. From Ancient Times to the Council Code (Ulozhenie) of Tsar Aleksei Mikhailovich of 1649". The book features for its investigative profoundness and methodological correctness. It's necessary to draw attention to the examination of the key concepts of legal language undertaken by Professor Feldbrugge for better understanding the medieval Russian law. The book also takes into consideration the differences that exist between medieval and contemporary legal thinking. It draws historical examples which illustrate that the work of medieval law in Russia is not understandable without considering the totality of normative mechanisms of Russian medieval society. Also, law cannot be detached from syncretic mentality of medieval men. Professor Feldbrugge relies on functional method, according to which law's main hallmark is presence of established procedures of dispute resolution, and focuses his attention on legal documents. These procedures can be fixed in documents and be guaranteed by the centralized political power, but this is not crucial for definition of law. This explains legal status of norms and institutions which were developed within the church, land communities, trade associations without being explicitly supported by the state. Such sociological approach allows to go beyond artificial conceptual borderlines that impede a full-fledged examination of medieval law in Russia. Professor Feldbrugge has the astonishing level of knowledge of the relevant Russian literature, including the debates among contemporary Russian historians. The book by Professor Feldbrugge is, perhaps, the most authoritative and comprehensive Western work on Russian medieval law and can therefore serve as a valuable source of information for all those who work at this topic.

Keywords: history of law, medieval law, sources of law, legal normativity, discretion in law, norms of competence, Russia

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THE TEACHER HAS PASSED AWAY… IN MEMORY OF TAMARA E. ABOVA

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