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Σ Χ Ο Λ Η

ANCIENT PHILOSOPHY AND  
THE CLASSICAL TRADITION

VOLUME 4

ISSUE 1

2010

A SPECIAL ISSUE

HISTORY AND PHILOSOPHY OF LAW

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## ΣΧΟΛΗ

### A JOURNAL OF THE CENTRE FOR ANCIENT PHILOSOPHY AND THE CLASSICAL TRADITION

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*Established at*

Novosibirsk State University  
Institute of Philosophy and Law (Novosibirsk, Russia)

*The journal is published twice a year since March 2007*

*Preparation of this volume is supported by  
The “Open Society Institute” (Budapest)*

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*On-line version: [www.nsu.ru/classics/schole/](http://www.nsu.ru/classics/schole/)*

ISSN 1995-4328 (Print)  
ISSN 1995-4336 (Online)

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the Classical Tradition, 2010

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## EDITORIAL

The first issue of the fourth volume of the journal consists of eight articles, dedicated to various aspects of the history and philosophy of law, and a new Russian translation of the *Letters* by Iamblichus of Chalcis, in which the Neoplatonic philosopher expresses some of his thoughts concerning moral and political issues.

The majority of the papers included in the volume are resulted from two seminars,<sup>1</sup> organized in Novosibirsk State University by the Centre for Ancient Philosophy and the Classical Tradition, in collaboration with a recently established Novosibirsk division of the Centre for the Study of Ancient Law.<sup>2</sup> In March 2010 we discussed various aspects of the criminal law in Ancient and Medieval world. In my talk “Socrates in the Agora” I presented select archaeological and epigraphic evidences, which, along with narrative sources, would help to visualize the live habits of the Athenian philosopher and the circumstances of his trial. Gennagy Pikov gave a paper on the criminal law in the Bible, while Sergey Sannikov was talking about offences against royal power in Early Medieval German law (both of these papers are published in this volume).

The second seminar (May 2010) consisted of a round table discussion, dedicated to Analytic philosophy of law and a series of talks concerned Roman law and Late Antique political philosophy. Anton Didikin gave a paper on the formation of analytical tradition in contemporary legal philosophy, Vitaly Ogleznev was talking on ontological and epistemological bases of H. Hart’s legal philosophy, while Sergey Moiseev discussed the issue of moral and legal responsibility in the works by Michael S. Moore. Vera Dementieva presented her new study on the Μικτή πολιτεία and πολιτειῶν ἀνακύκλωσις in Polybius; Vadim Prozorov discussed the concept of *proprietas* in the *Letters* of Pope Gregory the Great; while Sergey Sannikov and the author of these lines focused on the concept of ideal government and the ideal ruler, respectively, in Early Medieval sources and in Late Antique popular philosophy, esp. in the *Letters* by Iamblichus (included in this volume).

I wish to express my gratitude to all my friend and colleagues for participation in our seminars and would like to remind that the journal is available on-line at the following addresses: [www.nsu.ru/classics/schole/](http://www.nsu.ru/classics/schole/) and [www.elibrary.ru](http://www.elibrary.ru).

E. A.

June 11, 2010

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<sup>1</sup> <http://www.nsu.ru/classics/news/law-round-table.pdf>;  
<http://www.nsu.ru/classics/news/law-conference-2010.pdf>

<sup>2</sup> <http://dirittoromano.narod.ru/index.htm>

## ABSTRACTS

SERGEY SHEVTSOV

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ROMAN LAW IN THE LIGHT OF THE HISTORY OF MENTALITY

LANGUAGE: Russian

ISSUE: ΣΧΟΛΗ 4.1 (2010) 9–31

KEYWORDS. law, mentality, legal consciousness, warfare

ABSTRACT. Correlation of changes in the mentality of a given society and its legal consciousness is counted among the most salient problems that legal history has been facing since at least the second part of the 20th century. There are however considerable theoretical and practical difficulties in these areas, which involve a shift of interpretative paradigm as well as a new approach to the lamentable sparse sources. In these circumstances certain possibilities for further research can be found, for instance, in studying classical forms of legal consciousness as they are reflected in such forms of activities, as these abundantly presented in Greek and Roman military literature, since, obviously, military organization and the ways of warfare involve the structures and mentality, often parallel to these in the realm of law.

ARINA BRAGOVA

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LAWS IN CICERO'S IDEAL STATE

LANGUAGE: Russian

ISSUE: ΣΧΟΛΗ 4.1 (2010) 32–41

KEYWORDS. Rome, natural law, legal rules, justice, equality

ABSTRACT. Formulating the juridical component of his ideal state in the dialogue *De legibus* Cicero combines Greek legal theory and Roman state activity. He sees the law as a supreme *ratio* inherent in the nature, which allows people to do what ought to be done and to refrain from the opposite. It is justice that can be found at the core of law, but (contrary to the sophistic tradition) – justice available to every citizen, not exclusively to the rulers, since only this sort of law guarantees equal treatment to all Roman citizens. Justice and equality are deeply rooted in civil virtues reflected in Roman tradition, an unwritten law of divine origin (that is why religious laws have to be most strictly observed). Examples given in the article show how Cicero uses these theoretical premises in his discussion of some legal acts related to the *imperium* of magistrates and the function of the *tribunate*.

VERA DEMENTIEVA

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EXECUTION OF THE HIGHEST POWER IN MILITARY SPHERE BY THE DICTATORS OF EARLY

ROMAN REPUBLIC

LANGUAGE: Russian

ISSUE: ΣΧΟΛΗ 4.1 (2010) 42–63

KEYWORDS. Roman Republic, public power, *imperium*, dictatorship

ABSTRACT. The Roman dictators regularly (invested with power by the Roman state in the 5th – 3rd BCE c. in the situations of serious military treats to the Republic) had to accomplish three legally regulated public acts. They closed the courts, declare, if necessary, a levy in mass (if the warriors already called up for military service by ordinary magistrates were not numerous enough for starting a campaign), and personally supervised recruitment and training of the troops. Their orders were published in the form of an *edictum* which, most probably, contained all these regulations. Regardless of the purpose of its declaration, the dictatorship transferred the civil life of the city in the state of *militiae*. The newly formed army swore fidelity (called *sacramentum*) to the commander and – from the time of the Second Punic war – made a formal declaration of loyalty, *ius iurandum*. Contrary to a widespread scholarly opinion the author argues that it is the applicable legal rules, rather than the sphere of their applicability that distinguishes the *imperium* of an ordinary magistrate from this of an extraordinary one. Therefore, talking (not quite correctly) about “military *imperium*” of an extraordinary magistrate, the historians of Roman law are in reality dealing with an application of his *imperium* in military sphere.

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ROMAN LAW IN SPAIN PRIOR TO THE *LEX WISIGOTHORUM*

LANGUAGE: Russian

ISSUE: ΣΧΟΛΗ 4.1 (2010) 64–77

KEYWORDS. Civil, public, municipal law, Roman provinces

ABSTRACT. In this analytical outline of the history of roman law in Spain from the 2nd c. B. C. E. to the 6th c. C. E., the author notices that even in the 2nd century B. C. E. Roman legal and political institutes exercised so great influence on the Republican's allies in Spain, that the emerging provincial government adopted almost all their characteristic elements, including the majority of public regulations, legal proceedings, and language. Narrative and epigraphic evidences leave no doubt that already by the beginning of the Common Era the municipal law in Spain had effectively copied and assimilated all public and private Roman legal institutes. The most active involvement of the Spanish in Roman politics (including the Roman emperors descending from this region) made the province an important propagator of Roman legal and political tradition to the rest of the western world, whilst the consequent assimilation of the Goths (Roman allies for more that a century) helped Spain to become the last outpost of roman law in Europe until the Arabian invasion, and the *Breviarium* of Alaric is a good evidence to this process.

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OFFENCES AGAINST ROYAL POWER IN EARLY MEDIEVAL GERMAN LAW: FROM CIVIL *DELICTUM* TO TREASON

LANGUAGE: Russian

ISSUE: ΣΧΟΛΗ 4.1 (2010) 78–100

KEYWORDS. royal authority, treason, *crimen laesae maiestatis*, medieval, Germanic law

ABSTRACT. Analyzing Early Medieval legal and historical sources, the author reconstructs the main stages of the historical evolution of notions concerning the essence of crimes against royal authority from civil *delictum* to treason. It is shown that the following four components form the basis of the idea of treason: a breach of king's peace, a breach of fidelity to the king as to a lord, *crimen laesae maiestatis*, and a breach of religious commandments. This set of components corrects and broadens the existent scholarly interpretations of the Early Medieval concept of treason.

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CRIMINAL LAW IN THE BIBLE

LANGUAGE: Russian

ISSUE: ΣΧΟΛΗ 4.1 (2010) 101–136

KEYWORDS. Judaism, Christianity, religion, criminal law, violence, trespass, sin, punishment

ABSTRACT. The Old Testament criminal law, especially its moralizing attitude to state and private violence, crime and punishment, can be ranked among the most important sources of Medieval and Modern jurisprudence. The article analyses basic cultural preconditions of the formation and evolution of Judeo-Christian legal theory, peculiarities of criminological thinking in Judaism and Christianity, causes and effects of the fundamental ties between religion and law in traditional societies, and possible convergence of Mosaic and Modern criminal law.

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ONTOLOGICAL AND EPISTEMOLOGICAL BASES OF H. HART'S LEGAL PHILOSOPHY

LANGUAGE: Russian

ISSUE: ΣΧΟΛΗ 4.1 (2010) 137–148

KEYWORDS. analytical legal philosophy, theory of speech acts, legal rules, ascriptions

ABSTRACT. The article seeks to instantiate the distinctive features and basic research strategies in legal ontology as they are presented in the early works by the famous Oxford philosopher of law Herbert Hart, published before his major book *The Concept of Law* (1961). The author tries to isolate the most salient aspects of the analytical legal tradition applicable to Russian legal theory, which can bridge the existing gap between these approaches despite considerable difference both in their background and methodology.

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THE FORMATION OF ANALYTIC TRADITION IN THE CONTEMPORARY PHILOSOPHY OF LAW

LANGUAGE: Russian

ISSUE: ΣΧΟΛΗ 4.1 (2010) 149–165

KEYWORDS. Hart, Kelsen, analytic philosophy, legal rules, concept of law

ABSTRACT. The paper attempts to analyze the historical aspects of the formation of analytic tradition in the 20th century philosophy of law. We consider the ongoing discussions about the concept of law and their influence on the so called “linguistic turn” in modern legal thought as well as the problems of the conceptual grounds and the methodology in legal theory. The author suggests a new approach to the historical analysis of the external and internal factors that influence the development of the contemporary legal ideas and the conceptions in the philosophy of law.

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IAMBlichus OF CHALCIS. THE *LETTERS*:

Introduction, Russian translation and notes

LANGUAGE: Russian

ISSUE: ΣΧΟΛΗ 4.1 (2010) 166–193

KEYWORDS. Political philosophy, Late Antiquity, Platonism, Fate, moral responsibility

ABSTRACT. The *Letters* by the Neoplatonic philosopher Iamblichus of Chalcis (c. 242–325 CE), preserved in a fragmentary form by John of Stobi in his *Antologia* are translated into Russian for the first time. The work is based on a new commented edition of the *Letters* by John Dillon and Wolfgang Polleichtner (SBL Press, Atlanta, 2009) and a partial French translation in O’Meara D., Schamp J., eds. (2006) *Miroirs de prince de l’Empire romain au IV<sup>e</sup> siècle* (Fribourg / Paris). In his introduction and notes to the translation the author mainly focuses on various aspects of political philosophy, advocated by Iamblichus.



## **ΣΧΟΛΗ**

ФИЛОСОФСКОЕ АНТИКОВЕДЕНИЕ И КЛАССИЧЕСКАЯ ТРАДИЦИЯ

2010. Том 4. Выпуск 1

Новосибирск: Ред.-изд. центр Новосиб. гос. ун-та, 2010. 202 с.

ISSN 1995-4328 (Print) ISSN 1995-4336 (Online)

## **ИСТОРИЯ И ФИЛОСОФИЯ ПРАВА**

ПОД ОБЩЕЙ РЕДАКЦИЕЙ Е. В. АФОНАСИНА

В данный выпуск журнала входит восемь статей, посвященных различным аспектам истории и философии права, и один новый перевод с древнегреческого – *Письма* философа-неоплатоника Ямвлиха, также по большей части касающиеся моральной и политической философии. Непосредственным поводом для подготовки этого выпуска оказались два небольших семинара, которые мы провели весной 2010 г. в Новосибирском госуниверситете. Первый из семинаров был посвящен преступлению в древнем и средневековом праве, второй включал в себя круглый стол по аналитической философии права и серию сообщений по истории древнего и средневекового права. Адреса электронной версии журнала: [www.nsu.ru/classics/schole/](http://www.nsu.ru/classics/schole/) и [www.elibrary.ru](http://www.elibrary.ru).

## **ΣΧΟΛΗ**

ANCIENT PHILOSOPHY AND THE CLASSICAL TRADITION

2010. Volume 4. Issue 1

Novosibirsk: State University Press, 2010. 202 p.

ISSN 1995-4328 (Print) ISSN 1995-4336 (Online)

## **HISTORY AND PHILOSOPHY OF LAW**

EDITED BY EUGENE AFONASIN

This issue of the journal consists of eight articles, dedicated to various aspects of the history and philosophy of law, and a new Russian translation of the *Letters* by Iamblichus of Chalcis, in which the Neoplatonic philosopher expresses some of his thoughts concerning moral and political issues. The majority of the papers published in the issue are resulted from two seminars, organized in Novosibirsk State University by the Centre for Ancient Philosophy and the Classical Tradition, in collaboration with a recently established Novosibirsk division of the Centre for the Study of Ancient Law. These and other relevant publications are available on-line at the addresses: [www.nsu.ru/classics/schole/](http://www.nsu.ru/classics/schole/) and [www.elibrary.ru](http://www.elibrary.ru).

*Компьютерная верстка* Е. В. Афонасина

*Корректурa* К. В. Шмугуровой

Подписано в печать 20.06.2010. Заказ №

Формат 70 x 108 1/16. Офсетная печать. Уч.-изд. л. 11,5

Редакционно-издательский центр НГУ,  
630090, Новосибирск-90, ул. Пирогова, 2