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Bocharov, Viktor V. Виктор В. Бочаров. *Nepisanyj zakon. Antropologiya prava: nauchnoe issledovanie* Неписанный закон. Антропология права: научное исследование [Unwritten Rules. The Anthropology of Law: A Scholarly Enquiry]. Sankt-Peterburg: Russkij khristianskij gumanitarnyj institut, 2012—386 pp. ISBN 978-5-88812-505-2.

Nikolay Samoylov

Viktor Bocharov's book *Unwritten Rules. The Anthropology of Law* is a broad analysis of the phenomenon of 'legal nihilism'. It means that the everyday life of the citizens is, to a high degree, in fact not regulated by state laws, but by 'unwritten rules' (or by 'customary law'). These 'rules' are in no way any 'relics' which we inherited from antiquity; they are formed in various areas of activities on the basis of customary law culture that reflects the ways in which people traditionally understand due, fair, and legitimate behavior in one situation or another. And the rules of this law very often come into conflict with what is written in statute law.

In particular, the author considers the phenomenon of 'legal fetishism', i.e. the deep belief of modern people in the miraculous power of law as the main tool of progressive socio-economic and political transformation. Bocharov thinks that this belief may be explained to a certain degree by Western culture where populations on the whole respect adopted laws and observes them. The Oriental world provides a different picture. After the former colonies gained independence, the Europeanized elites thought that by adopting Western laws they would very quickly resolve all problems and their countries will quickly become 'civilized'. But this did not happen, the reality did not succeed to fit into the new laws, and continued to exist separately from them. This may be said about Russians as well who time back during *perestroika* became sure that once corresponding laws would be adopted, rule of law would emerge, hence, life would be the same as in the West. However, new laws were adopted but everything remained as it had been before. And today, when war against corruption is declared, lots of anti-corruption laws are being promulgated, and yet corruption does not vanish, but on the contrary even increases.

'Legal nihilism' can be considered a characteristic feature of the Orient. Western laws do not 'work' here, and life goes on as usual. Moreover, the majority of the states of the former Soviet Union have immersed into the epoch of *coups-d'état* and 'revolution'. New authorities blame their predecessors, first

and foremost, of violating the laws, and this leads to tribalism, corruption, nepotism, cronyism, and so forth. However, with time it turns out that new elites proceed the same way, and a new revolution happens, thus everything comes full circle. In other words, failures in changing the life by way of changing the laws do not have any impact on next generations that continue to rely on the magical 'power of law'.

The issue of 'unwritten rules' (or 'unwritten law'), from Bocharov's point of view, is topical for societies at any stage of evolution. Unwritten laws regulated social life in traditional societies in which there was no written culture at all. And people, at that, strictly observed the settled norms of behaviour, and very rarely violated them. The author thinks that the study of this phenomenon in traditional societies should be aimed at reconstructing the process of common law norms' origin, as well as at the mechanisms of socio-psychological control.

'Unwritten laws' play a key role in non-Western states, which exceeds the role it plays in other states on Earth. Why then the adopted laws do not 'work' there?

Bocharov provides different viewpoints of various researchers in connection with this issue:

- 1) Due to low legal culture of the population that does not know the laws in force, and very often is even illiterate. Hence, the way out is seen in overcoming such lack of culture by way of education and outreach activities. But this scheme, as the author fairly points out, does not take into account the well-known fact, that laws are mainly violated by representatives of the educated classes, including members of the elite.
- 2) Due to 'bad laws'. This is the opinion of Hernando de Soto (*ca* 1496-1542) who studied the phenomenon of informal economy in Peru. In accordance with de Soto, 'shadow law' comes to life as a response to 'bad laws', adopted secretly by the bureaucratic Oriental elites to support their own interests, and thus slow down the economic progress. Hence, laws are to be adopted democratically.

But, as the author says, in non-Western countries with democratic rule (like Georgia, Ukraine and others), the situation is not much different from autocracy.

- 3) Due to differences of 'civilizations', e.g. Christian and Confucian, such as propagated by Samuel Huntington (1927-2008) and Francis Fukuyama (b1952). Fukuyama, for example, thinks that the latter is lacking transcendental law that is above public relations; in Christianity this would be God. And this, in the long run, secures the rule of law in the West, in contrast to Confucian culture that lacks such 'law'.

The author of the book thinks that Russia's example is counter-evidence to this idea, and Russia has over a thousand years' Christian culture, but still «unwritten laws» here are primary compared to the state ones.

Bocharov proposes his own concept. To his opinion, the reason why the East rejects the Western law is that the law as a phenomenon of 'culture' does not correspond to 'society' into which it is implanted. The author considers Society and Culture as content and form that play different roles in the process of social matter evolution. Two types of evolution are suggested on this basis. Western society as a subject of 'societal development', with its main feature of *competition* that gives rise to corresponding Culture (economic, political, legal, etc.); while Eastern society as a subject of *cultural* development attracts Western forms (Culture) and expects they would change its content (Society).

Traditional (Oriental) society is cemented not by competition, but by *hierarchy* ('vertical exertion of power'). In the result, borrowed Western legal norms in a strange public context acquire absolutely new meanings and functions. These functions instead of legal are of political meaning and strengthen the hierarchy ('vertical exertion of power'). Otherwise, borrowing Western legal norms, competitive in their essence, destroy hierarchy which is the corner stone of the Oriental society, and this inevitably leads to chaos (*smuta* смута, 'unrest', *luan* 亂). The author illustrates this provision using the example of various stages of Afro-Asian and Russian societies' development. In other words, Eastern (traditional society) adapts the borrowed Western legislation in accordance with its own priorities. Hence, it becomes decorative.

The author of the book pays attention to the fact that 'shadow practices' which in reality regulate public processes in Oriental countries cannot be called 'criminal', as politicians and scholars often do. 'Criminal' means a type of social pathology that in principle has an anti-public context. However, here, as it turns out, the majority of the population considers these settled informal practices ('criminal' ones) legitimate. The author refers to field studies conducted in Russia and in Oriental regions that provide evidence that huge masses of people take part in 'bandit' activities, from ordinary citizens to highly ranked government officials. The latter act as main 'advocates of the law', but at that do not hesitate to display their wealth to all (expensive cars; houses, other luxury goods), though their official incomes may be very modest. Public opinion does not blame them, but on the contrary even expresses praise and admiration. This is reflected in the city folklore of many Oriental countries, where 'honesty' is often considered as 'not knowing how to live', or even as foolish behaviour.

Moreover, as can be seen from Bocharov's book, 'criminal' practices often have positive social context. The results of field research conducted in Africa,

Pakistan and Russia are given, suggesting that if everything went in accordance with the law, the manufactured products would cost much more, hence would be inaccessible to the poor. A progressive development and advance of these countries is possible probably only under the conditions of a rule of 'unwritten laws', since if the situation developed in accordance with official law, their economic productivity would be significantly lower. In fact, 'unwritten laws' in quickly emerging Asian and Central and South American economies such as India, China, Indonesia, Brazil, Mexico occupy a position far from the last place.

Bocharov doubts a common hypothesis that a modern developed economy may only exist within a corresponding legal framework (independent legislative and judicial powers). He thinks that countries with developing economies will hardly move closer to a Western concept of Law. In any case, the studies conducted by the author confirm that emerging countries do not repeat the European way. First and foremost, this has to do with ethical and legal provisions identified by the researchers of emerging economies: 'unwritten laws' reflecting them are far from the ideals of 'Protestant ethics' as developed by Max Weber (1864-1920) which secured successful development of capitalism in Europe.

But even in the West, 'unwritten law' is steadily gaining weight. This is connected, first of all, to the influence of the Orient under the conditions of globalization. In particular, representatives of multiple oriental expat communities are not in a hurry to re-orientate themselves towards Western concepts of Law in their everyday activities, they prefer to live according to their own, unwritten laws. The same may be said about subcultures—youth, ethnic, religious, professional, etc.—, the adepts of which live in accordance with their own laws. The author presents the 'codes' of various subcultures collected by researchers in field work.

So, to the opinion of the author, we clearly see the discrepancy between theoretical tools used and the object of study. Hence, he proposes a new methodology and conceptual framework that may help bring to piece the views of lawyers and anthropologists concerning the essence of Law.

One of the important goals of this book is to analyze the issues connected with the origin and functioning of 'unwritten laws'. This attempt was taken within the framework of legal anthropology which today deviates from 'monojuridism', i. e. the idea of a strict matching between law and state legislation. The history of anthropology of law (or legal anthropology) formation is considered in the book as a discipline initially orientated onto the study of 'unwritten law' in traditional societies in which no other law existed. Contri-

butions from parental disciplines, *viz.* legal studies and anthropology, are also reviewed.

The object of study in the anthropology of law, in the opinion of Bocharov, is a *customary law system* (invariant of customary law) that emerges in the process of public self-organization and defines social order in traditional societies. Behavioural legal norms originating spontaneously here, are reflected in fantastic images of supernatural authorities: ancestors, spirits, gods, etc. They also provided psychological mechanisms of self-regulation and social control. To explain early ideological perceptions that defined customary law mentality like ancestorship, magic, witchery, the author also presents studies in the area of historical psychology. The mind of a modern person retains archaic mental layers, and this determines, from the author's point of view, stability of 'unwritten laws' that originated at the very beginning of human history. Accusations of witchcraft, for example, are common in legal practice of Oriental countries.

On the basis of cross-cultural analysis, the study provides a historical reconstruction to demonstrate which were the mechanisms of creating and enforcing basic norms inherent to a customary law system. They determined interaction between age, gender and kinship relations without the regulation of which there would have been no sociality whatsoever. In present-day societies, as compared to traditional ones, these norms continue to be effective, but alongside written (state) laws. This is illustrated by examples from Japan, China, and Russia (Northern Caucasus). Similar norms are richly represented in the dogmas of world religions, and the book therefore devotes a certain attention to them as well. Archaic 'unwritten laws' give rise today to the phenomena that are negatively assessed by Western legal consciousness, *viz.* gender or age inequality, corruption, nepotism, etc. Sometimes, when state legislation ignores common law norms, an acute social conflict may ensue, and the author demonstrates this using the example of the Chechen war.

'Unwritten laws' inherent to primary social environments are fixed not only in the East, but also in the West, in those public segments that came to life by way of self-organization. In particular, subcultures develop unwritten laws that are strangely similar to their archaic analogues. The author thinks that this is because both originate on the grounds of the same algorithm specific to the customary law system and based on the principles of survival in a hostile environment. If the initial social environment opposed Nature, subcultures oppose the mainstream Society.

The book makes the reader understand that targeted and comprehensive study of unwritten legislation is needed and that it has to be taken into account in lawmaking and court practices.

On the whole, we may say that this book by professor Viktor Bocharov of the Faculty of Oriental Studies, Department for the Theory of Social Development in Asian and African Countries, of St. Petersburg State University presents, beyond doubt, a contribution to take into consideration the role of the Orient in a global world, in the countries of which socio-cultural processes more and more demonstrate their uniqueness, and that they do not fit into supposedly universal sociological or legal theories formed on the basis of Western systems. The book certainly will be of interest not only to Orientalists, anthropologists, lawyers, and ethnographers, but to broader circles of social scientists as well.

Saint Petersburg State University, Faculty of Oriental Studies

Serebryakov, Evgenij; Speshnev, Nikolaj A. & al. (eds.). *Problemy literatur dal'nego vostoka*. Проблемы литературы Дальнего востока / *Problems of Far Eastern Literatures*, vol. 1 (Посвящается столетию Ба Цзиня / »Dedicated to Ba Jin's Centenary«). Sankt-Peterburg: Vostochnyj fakul'tet, 2004—279 pp. ISBN 5-85574-056-0.

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Marián Gálik

The two volumes under review are the proceedings of the first conference organized by the Faculty of Oriental Studies of Saint Petersburg State University in 2004. It followed the forty years old tradition of the conferences on Theoretical Problems of the Study of Far Eastern Literatures («Teoreticheskie problemy izucheniya literature Dal'nego vostoka») which started in 1964 as a joint project of the Institute of Oriental Studies of the Soviet Academy of Sciences, with its Leningrad branch, and the Faculty of Oriental Studies of A. A. Zhdanov Leningrad State University. There are great differences between them. The proceedings of the conferences of the Soviet epoch were mostly publishing short abstracts (short essays were only the exception), without including the literatures of South-East Asia. Not a single foreigner could be found among the contri-