

DOI: <https://doi.org/10.32353/acfs.6.2022.03>
UDK 343.93

Oleksii Stovba,

Doctor of Law, Associate Professor at the Department of Law at National Aerospace University
H.E. Zhukovsky «Kharkiv Aviation Institute»
Web of Science Researcher ID AAQ-9493-2021
ORCID: 0000-0002-8154-8929



Oleksii Stovba

Law, War And Peace: are the Laws Silent During the War?

Abstract: *The research paper is devoted to understanding the way of existence of law during the war. This is done by referring to theoretical and methodological foundations of philosophical thought. The author examines the classical ways of the existence of law: normative legal act, the idea of law, custom, and comes to the conclusion that the law, in conditions of war, cannot exist in this form. Conversely, the reduction of classical forms of the existence of law results in a “remainder” of law in the form of person’s bodily existence, which sets a limit to the actions of other people. This limit is specified with the help of three factors: locality, modality, subjectivity. Therefore, it should be concluded that under the conditions of war, law can exist only in the form of living bodily presence, and the experience of law from the sphere of ideas and norms moves to the plane of corporeality, when the offence is initially interpreted not as a violation of natural or positive norm, but as causing bodily harm to a person.*

Keywords: corporeality, locality, modality, subjectivity, experience of law.

Introduction: The Russian invasion of Ukraine has become the biggest European crisis since the Second World War. In addition to political, economic, humanitarian, and other aspects, this event is a crisis of law. Russia’s actions and counter-actions of the international community should accurately show whether any international law still exists, or whether the aggressor country, having nuclear weapons, can take any action without risking legal sanctions.

At the same time, Russia’s war crimes: shelling of peaceful cities, numerous victims among peaceful residents, the forced deportation of the population of the occupied territories to Russia – reveal the foundations of not only international but also national legal order. Such actions force us to think about how and in what way the law exists from within the country, within national borders. After all, in peacetime the law exists as if “automatically” to the extent that it is guaranteed both by coercion and by the validity of the legal order as such. However, it is impossible to notice that, despite the fact that the national laws and judicial system retain their formal validity, the way in which the law exists in war conditions is undergoing radical changes.

It can be assumed that such changes can be understood to the greatest extent at the level of the experience of law, which is tested in the conditions of war. Previously, we, together with colleagues from around the world, have already made attempts to localize law at the level of human experience.¹ In the course of such studies, the hypothesis was put forward and substantiated that the original mode of existence of law is not law, precedent or custom, but a living experience of mutual existence, in which there is mutual recognition of people, and law, in which there is mutual recognition of people, and the law

Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Disclaimer

The funder had no role in the study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Contributors

The author contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.

Declaration of Competing Interest

The author declare that they have no conflict of interest.

О. Стовба

ПРАВО, ВІЙНА ТА МИР: ЧИ МОВЧАТЬ ЗАКОНИ ПІД ЧАС ВІЙНИ?

Анотація: Стаття присвячена осмисленню способу існування права під час війни. Це робиться шляхом звернення до теоретико-методологічних засад філософської думки: правового позитивізму, ідей природного права та соціологічної школи права. При цьому зазначені підходи розглядаються на матеріалі найновіших філософсько-правових досліджень. Спираючись на погляди Є. Булігіна, Р. Алексі та інших видатних представників сучасної правової думки, автор розглядає класичні способи існування права: нормативно-правовий акт, ідею права, звичай та доходить висновку, що право в умовах війни не може

¹ The Experience of Law. Collection of articles and Essays/Oleksiy Stovba, Natalia Satokhina, Ricardo Evandro Santos Martins. Kharkiv, IVR Library, 2019. 164 p.

існувати в такому вигляді. Відтак існує об'єктивна необхідність переосмислити зазначену проблему у координатах неklasичної філософії права, насамперед, правової феноменології. Одним із найбільш вдалих феноменологічних стратегій є феноменологічна редукція. Сутність цієї операції полягає у тому, щоб редукувати усі випадкові емпіричні властивості предмету задля виявлення його сутності. На противагу традиційному поняттєвому аналізу редукція класичних форм існування права дає у підсумку «залишок» права у вигляді тілесного існування людини, яке ставить межу вчинкам інших людей. Ця межа конкретизується за допомогою трьох факторів: локальності, модальності та суб'єктності. Локальність означає, що тілесність людини за умов війни втілює норму права не будь-де, а тільки на певній території. У свою чергу, модальність як фактор існування права під час війни вказує на те, що людська тілесність як модус існування права може бути порушена тільки певними способами. Третя з названих ознак, суб'єктність означає, що тілесність є втіленням норми права лише стосовно певних суб'єктів (наприклад, некомбатантів). Таким чином, людська тілесність стає живим втіленням права і в цій якості заміщає класичну норму, яка міститься у нормативно-правовому акті чи прецеденті, суб'єктивній чи об'єктивній ідеї права, а також правовому звичаї як традиційно сформованому шаблону суспільних відносин.

Відтак слід дійти висновку, що за умов війни право може існувати тільки у вигляді живої тілесної присутності людини, а досвід права із сфери ідей і норм переміщується у площину тілесності, коли правопорушення первісно тлумачиться не як порушення природної чи позитивної норми, а спричинення людині тілесної шкоди. Це, в свою чергу, дозволяє створити більш реалістичну картину функціонування права під час військових дій, коли замість статичного та однорідного правового поля, яке повсякчас порушується, ми маємо справу з гетерогенним та динамічним славом конкуруючих нормативних порядків.

Ключові слова: тілесність, локальність, модальність, суб'єктність, досвід права.

O. Stovba

LAW, WAR AND PEACE: ARE THE LAWS SILENT DURING THE WAR?

Abstract: The research paper is devoted to understanding the way of existence of law during the war. This is done by referring to

appears as a way of openness not only to other people, but also to the world as a whole.²

It should be noted here that such an experience is not just an intellectual exercise, but is originally localized at the level of *corporeality*.³ It is the body of the Other that initially determines the measure of behavior that serves as the limit, modality, and direction of both our behavior in relation to Others and these Others in relation to us. At the same time, specific normative prescriptions are embodied not only through the body as such or its physical characteristics (gender, age, size), but also with the help of external attributes – clothing (form), weapons, identification marks, special means (e.g., a police baton, a priest's cross or teacher's instructions in the classroom). Therefore, in our opinion, it is the *corporeality* of a person and his attributes mentioned above that are the coordinates in which the legal experience of a person unfolds as the primary dimension of law.⁴

Purpose. *At the same time, it is obvious that both the meaning and significance of certain ways of existence of law, as well as the normativity of law as a whole in the conditions of war, must be rethought. The reason for this is both the constant threat to the existence of a person, which constantly threatens to wipe their corporeality off the face of the earth, and the problematization of mutual recognition. Is such recognition possible at the level of the warring parties: between combatants/non-combatants, as well as individuals in conditions of destruction of law and order, famine, humanitarian disasters and shelling of the civilian population? Accordingly, this research paper purpose will be to comprehend whether law is possible during the war and if so, how does the experience of law change under similar conditions? In order to achieve this goal, we will first try to consider how the traditional ways of the existence of law – law, precedent, custom, change during the war. After all, we will try look at what remains after the horizon of war reduces the possibilities of classical sources of law. Then, finally, we will try to respond the question, do any norms remain valid during the war, and if so, can they be called law?*

Analysis of Publications, where the problem solution is proposed. *As is known, one of the most influential approaches to comprehension of law is legal positivism. According to this doctrine, the law is a norm that is sanctioned or recognized by the state and enforced. Meanwhile, such a norm has no necessary connection with morality.⁵ Along with that, shortcomings of such legal comprehension are exposed by the possibility (actuality) of any offense, starting from failure to fulfill a civil legal obligation and ending with mass actions of civil disobedience, revolution or civil war. Certainly, positivists themselves, recognizing such a danger, specifically emphasize that the law from a positivist point of view is not the exist, but for granted. As noted by the most prominent representative of legal positivism, H. Kelsen, “the pure doctrine of law destroys this image, according to which, when committing a crime, people “destroy” the law or “violate” it. This doctrine demonstrates that an offense cannot destroy or violate a law, since the law itself begins to perform its essential function only after someone has committed an offence.*

² Stovba O. Experience of Law and Legal Experience\\ The Experience of Law. Collection of articles and Essays/Oleksiy Stovba, Natalia Satokhina, Ricardo Evandro Santos Martins. Kharkiv, IVR Library, 2019. P. 12; Satokhina N. Experience of law and Experience of Lawlessness: Hermeneutic Perspective. *The Experience of Law. Collection of articles and Essays/Oleksiy Stovba, Natalia Satokhina, Ricardo Evandro Santos Martins. Kharkiv, IVR Library, 2019. P. 19, 21.*

³ Stovba O. Experience of Law and Legal Experience\\ The Experience of Law. Collection of articles and Essays/Oleksiy Stovba, Natalia Satokhina, Ricardo Evandro Santos Martins. Kharkiv, IVR Library, 2019. P. 9.

⁴ Stovba O. Experience of Law and Legal Experience. *The Experience of Law. Collection of articles and Essays/Oleksiy Stovba, Natalia Satokhina, Ricardo Evandro Santos Martins. Kharkiv, IVR Library, 2019. P. 16.*

⁵ Булыгин Е. Что такое правовой позитивизм. Избранные работы по теории и философии права. СПб.: Алф-пресс, 2016. С. 38.

Contrary to traditional views, an offence does not mean a break in the existence of law. Just the opposite, the law retains its existence through the offense, because the existence of law lies in its validity, in the property of the act of coercion as a consequence of the offense.⁶

At the same time, such an approach does not provide a reply to the question, does the right exist, even as an ideal prescription of what is proper, when its non-fulfillment is not individual, but mass in nature? Tenfold, this objection becomes stronger during the war, when the state is deprived of the opportunity to guarantee the enforcement of the legal norm throughout the entire territory of the country. Similarly, the positivist approach to law is unable to reply the question on the competition of legal norms, when the legal order of the occupied territory is “imposed” on the legal order of the occupying country, when the very fact of their ontological coexistence mutually cancels their validity logically. In the conditions of war, even “ultra-realistic” comprehension of the norm of positive law as a command of a legislator to the body of executive or judicial power is not able to “*breath life*” into the legislative framework to the extent that any possible addressee of the norm is in a changing situation, when their duty to obey the law can always come into conflict with the drive for self-preservation. Thus, we can come to the conclusion that in the conditions the war positive law as such does not exist, losing the guarantees of its existence and execution.

The existence of natural law was problematized to no small extent during the war. As you know, the modern comprehension of natural law is based on the fact that it exists as a certain implicit “*claim to correctness*” that exists in any “material” carrier of law – the Constitution, law, court decision.⁷ In turn, a kind of “*existential*” reason for this comprehension of law is “mutual recognition” of people as subjects of law. Such a provision allows the law to be rooted in social reality by establishing mutual recognition as a minimum standard for determining the legal nature of the relevant relationship. Thus, if the first of the mentioned criteria can be called the “*criterion of essence*”, then the second one is the “*criterion of existence*” of the law.

At the same time, this war clearly calls into question both the claim of law to correctness (“*essence*”) and the possibility of mutual recognition of people (“*existence*”). As it is not difficult to note, the very fact of an armed conflict does arise from the mutual claim of its parties to the correctness of their positions, actions, and their normative justification. In this case, such claims are so absolute and mutually exclusive that they cause an armed conflict. Thereby, the place of law is replaced by the war, the victory in which is precisely the reply to the question on the “*correctness*” of this or that action, norm or order of relations as a whole. As the German jurist C. Schmitt emphasizes, “in enmity, what is done illegally seeks its right. In it, it finds the meaning of the case and the meaning of law, when the shell of protection and obedience, where it lived until now, is destroyed, or the fabric of the norms of legality, from which it could still expect the right and legal protection, is torn. Then the conventional, traditional game stops.”⁸ Similarly, in the conditions of legalized mutual destruction of people, their mutual recognition is also problematic to the extent that the possibility of physical destruction of the opponent renders absurd those mutual guarantees of dialogue, to which recognition belongs.⁹

theoretical and methodological foundations of philosophical thought: legal positivism, ideas of natural law and the sociological school of law. At the same time, these approaches are considered on the basis of the latest philosophical and legal studies. Based on the views of E. Bulgin, R. Alexy and other outstanding representatives of modern legal thought, the author examines the classical ways of the existence of law: normative legal act, the idea of law, custom, and comes to the conclusion that law can't exist in the named modes. Therefore, there is an objective need to rethink the mentioned problem in the coordinates of non-classical philosophy of law, first of all, legal phenomenology. One of the most successful phenomenological strategies is phenomenological reduction. The essence of such operation is to reduce all random empirical properties of the object in order to reveal its essence. In contrast to the traditional conceptual analysis, the reduction of the classical forms of the existence of law results in a “remainder” of law in the form of a person's bodily existence, which sets a limit to the actions of other people. This limit is specified with the help of three factors: locality, modality and subjectivity. Locality means that the corporeality of a person under conditions of war embodies the rule of law not anywhere, but only in a certain territory. In turn, modality as a factor in the existence of law during the war indicates that human corporeality as a mode of existence of law can be violated only in certain ways. The third of the mentioned features, subjectivity, means that corporeality is the embodiment of the norm of the law only in relation to certain subjects (e.g., non-combatants). Thus, human corporeality becomes a living embodiment of law and in this capacity replaces the classical norm contained in a normative legal act or precedent, a subjective or objective idea of law, as well as legal custom as a traditionally formed template of social relations.

Therefore, it should be concluded that under the conditions of war, the law can exist only in the form of the living bodily presence of a person, and the experience of law from the sphere of ideas and norms moves to the plane of corporeality, when the offense is initially interpreted not as a violation of a natural or positive norm, but as causing bodily harm to a person. This, in turn, allows us to create a more realistic picture of functioning of the law during military operations, when instead of a static and uniform legal field that is constantly violated, we are dealing with a heterogeneous and dynamic mix of competing normative orders.

Keywords: corporeality, locality, modality, subjectivity, experience of law.

⁶ Кельзен Г. Чистое учение о праве: введение в проблематику науки о праве. *Российский ежегодник теории права*. № 4. 2011. С. 434.

⁷ Алексин Р. Дуальная природа права. *Российский ежегодник теории права*. № 2. 2009. С. 19.

⁸ Шмитт К. Теория партизана. Промежуточное замечание к понятию политического. Москва, Праксис, 2007. С. 138.

⁹ Satokhina N. Experience of law and Experience of Lawlessness: Hermeneutic Perspective. *The Experience of Law. Collection of articles and Essays/Oleksiy Stovba, Natalia Satokhina, Ricardo Evandro Santos Martins*. Kharkiv, IVR Library, 2019. P. 24.

O. Stovba

**LOI, GUERRE ET PAIX :
LES LOIS SONT-ELLES
SILENCIEUSES EN TEMPS DE
GUERRE ?**

L'article est consacré à la compréhension du mode d'existence du droit pendant la guerre. Cela se fait en se référant aux fondements théoriques et méthodologiques de la pensée philosophique. L'auteur examine les voies classiques de l'existence du droit : acte juridique normatif, idée de droit, coutume et arrive à la conclusion que le droit en temps de guerre ne peut exister sous cette forme. Au contraire, la réduction des formes classiques de l'existence du droit aboutit à un « résidu » du droit sous la forme de l'existence corporelle d'une personne, qui fixe une limite aux actions d'autrui. Cette limite est précisée à l'aide de trois facteurs : la localité, la modalité et la subjectivité. Par conséquent, il faut conclure que dans les conditions de la guerre, le droit ne peut exister que sous la forme de la présence corporelle vivante d'une personne, et l'expérience du droit de la sphère des idées et des normes se déplace vers le plan de la corporeité, lorsque le l'infraction est initialement interprétée non pas comme une violation d'une norme naturelle ou positive, mais comme causant des lésions corporelles à une personne. Objectif. En même temps, il est évident que tant le sens et la signification de certains modes d'existence du droit que la normativité du droit dans son ensemble dans les conditions de la guerre doit être repensés. La raison en est à la fois la menace constante pour l'existence d'une personne, qui menace constamment d'effacer sa physicalité de la surface de la terre, et la problématisation de la reconnaissance mutuelle. Une telle reconnaissance est-elle possible au niveau des parties belligérantes : entre combattants/non-combattants, ainsi qu'entre individus dans des conditions de destruction de l'ordre public,

The event of war calls into question the existence of law as a social custom or institution. As is known, with this approach, the law is perceived as a certain order of social relations, actually formed in society and legitimized by its repetition and systematicity. Thus, during this interpretation of law, it is aimed at regulating typical relations. Simultaneously, such legal regulation is carried out by means that are established in social practice and are stable. However, during the war, that destroys the usual world of social relations, any situation is by definition “atypical”, one that has no analogues and a traditional way of solving it. Due to this circumstance, people involved in a legal situation during the war are forced to look for solutions every time anew, since their experience and the established order of social relations are not able to provide them with any models. Due to these circumstances, people involved in a legal situation during the war are forced to look for solutions every time anew, since their experience and established order of social relations are not able to provide them with any models.

Results and discussion. Thus, it can be stated that the traditional forms of the existence of law: law, idea, custom, lose their effectiveness in the course of war to the extent that the existing state of social relations makes it impossible to realize the consequences of the committed act or the world of social norms laid down in a positive or natural law norm and institutions turns out to be destroyed or, at the very least, called into question. In this way, if we reduce the effectiveness (and sometimes the validity) of classical ways of the existence of law, what remains then as a real limiter of human behavior?

Of course, if all the classical forms of the existence of law are reduced, what remains will be the living bodily presence of another person, which, although systematically subjected to violence and attempts at destruction, remains the only possible limiter of human behavior in the conditions of war. Similar restrictions can be established in three aspects, which can be conventionally called locality, modality and subjectivity.

Locality as a characteristic of law under wartime conditions means that corporeality finds the property of being the limit of actions of combatants to the extent that a person's body is in a certain territory. It is, of course, about the distinction between the territory where hostilities are conducted and the territory where they are not. The territory where the corporeality of a person embodies the norm, the limit of behavior of warring parties should also include places where there are no military equipment or structures, there are no combatants, military facilities, etc. It is also a space where various humanitarian missions, the Red Cross, hospitals, etc. are located. Metaphorically speaking, such areas have a kind of “extraterritoriality” in relation to the space of conducting military operations, as if “falling out” of the war. Accordingly, encroachment on the corporeality of a person in a

similar territory is illegal regardless of the conduct of hostilities.

In turn, another characteristic feature of law in the conditions of war is the modality of inflicting damage or, in other words, the method of encroachment on corporeality. As we know, in peacetime, an attack on the bodily integrity of a person was allowed with a number of reservations (e.g., in the case of necessary defense, performance of a special task, etc.). In war, similar restrictions are embodied in the prohibition of those methods of waging war that exclude differentiated damage (e.g., weapons of mass destruction), irreversibly pollute the





environment (e.g., phosphorous ammunition), and also create a significant risk of harming the civilian population (e.g., cluster shells). Therefore, we can assume that in the conditions of war, the living bodily presence of a person sets certain limits, even if it is assumed that it is physically destroyed by establishing the appropriate modality of the latter.

Finally, subjectivity means that corporeality as a limit for actions is differentiated depending on its so-called “carrier”. It is primarily about combatants and non-combatants. The latter, in turn, can be divided into civilians, representatives of international missions, medical workers, etc. The living bodily presence of a non-combatant has a kind of “extraterritoriality” in relation to a military conflict, when their body is able to set a limit to the actions of the warring parties.

So, we see that in the conditions of war, the center of law's normativity shifts from the sphere of the requirements of what is proper, localized in a positive or natural law norm, in the direction of corporeality, which existentially and ontologically embodies a limit for the actions of the warring parties. At the same time, the actual lack of coercion for non-fulfillment of such norms and requirements forces us to raise the question of whether normative and legal regulation during war does not turn into an ethical one in its essence, when the combatant's legal obligation to follow certain norms is not supported by anything other than his personal discretion, therefore, in essence – conscience?

However, if we turn to the mechanism of action of the so-called “classical sources of law” such as legislation, precedent or custom, one can see that individual choice and ethical adherence to norms of positive or natural law are equally relevant here. After all, the strict sanctions of the Criminal Code are often powerless to prevent legal subjects from committing serious crimes, while upbringing, individual legal awareness or conscience are sometimes a much more effective obstacle to committing illegal acts. H. Kelsen also drew attention to this circumstance, according to whom *“it is difficult to determine whether the behavior of people in accordance with law and order is actually the result of the action of an idea that refers to the possible use of an act of coercion. Obviously, most often the state sought by the law is achieved with the help of completely different motives. Not fear of punishment or seizure of property, but religious or moral beliefs, respect for social virtues, concern for one's prestige in society, and most often simply the absence of incentives to illegal behavior lead to agreement between law and reality. As we will see below, this connection, which is significant for the validity of the legal order, is not conditioned by the requirement that the actual behavior of people corresponds to the legal order. Such compliance is not necessarily related to the effectiveness of the legal order and can rather be reduced to an ideology whose function is to ensure compliance or call for such compliance.”*¹⁰

Conclusions. So, we can conclude that the classic variants of legal understanding – legal positivism, natural-law approach, and even sociological or institutional theories of law are unable to reply the question on how law exists under wartime conditions. Traditional sources of law, such as law, precedent or custom in the case of war, most often lose their effectiveness, not being able to establish the measure of people's actions, which would not be in conflict with the logic of their behavior in certain situations. Therefore, it is necessary to rethink the way of existence of law and its explanation in the appropriate modality of human experience. Of course, under the conditions of armed conflict and the actual reduction of traditional sources of law caused by it, the latter exists as embodied in the living bodily presence of a person. Accordingly, the experience of law initially moves from the sphere of intellectual speculations and considerations about what is proper to the sphere of corporeality, where the

de famine, de catastrophes humanitaires et de bombardement de la population civile ? Dès lors, l'objet de cet article sera de comprendre si le droit est possible en temps de guerre et si oui, comment évolue l'expérience du droit dans de telles conditions ? Pour atteindre cet objectif, nous tenterons d'abord d'examiner comment les modes traditionnels d'existence du pouvoir ? droit, précédent, coutume changent pendant la guerre. Après cela, nous essaierons de regarder ce qui reste après que l'horizon de guerre réduit les possibilités des sources classiques du droit. Puis, enfin, nous essaierons de répondre à la question, est-ce que des normes restent valables pendant la guerre, et si oui, peuvent-elles être qualifiées de loi ?

Mots clés : physicalité, localité, modalité, subjectivité, expérience du droit.

O. Stovba

PRAWO, WOJNA I POKÓJ: CZY PRAWA MILCZĄ PODCZAS WOJNY?

Artykuł poświęcony jest zrozumieniu sposobu istnienia prawa w czasie wojny. Odbywa się to poprzez odwołanie się do teoretycznych i metodologicznych podstaw myśli filozoficznej. Autor bada klasyczne sposoby istnienia prawa: normatywny akt prawny, ideę prawa, zwyczaj i dochodzi do wniosku, że prawo w warunkach wojny nie może istnieć w tej postaci. I odwrotnie, redukcja klasycznych form istnienia prawa skutkuje „resztką” prawa w postaci cielesnej egzystencji osoby, która wyznacza granice działań innych ludzi. Granica ta jest określona za pomocą trzech czynników: lokalności, modalności, podmiotowości.

Należy zatem stwierdzić, że w warunkach wojny prawo może istnieć tylko w postaci żywej cielesnej obecności, a doświadczenie prawa ze sfery idei i norm przenosi się na płaszczyznę cielesności, gdy przestępstwo jest wstępnie interpretowane nie jako naruszenie normy naturalnej lub pozytywnej, ale jako spowodowanie uszczerbku na zdrowiu.

Słowa kluczowe: cielesność, lokalność, modalność, podmiotowość, doświadczenie prawa.

¹⁰ Кельзен Г. Чистое учение о праве: введение в проблематику науки о праве // Российский ежегодник теории права. - № 4. - 2011. - С.436

O. Stovba

**RECHT, KRIEG UND FRIEDEN:
SCHWEIGEN DIE GESETZE
WÄHREND DES KRIEGES?**

Die Forschungsarbeit widmet sich dem Verständnis der Existenzweise des Rechts während des Krieges. Dies geschieht unter Bezugnahme auf theoretische und methodologische Grundlagen des philosophischen Denkens. Der Autor untersucht die klassischen Existenzweisen des Rechts: normativer Rechtsakt, Rechtsidee, Sitte und kommt zu dem Schluss, dass das Recht unter Kriegsbedingungen in dieser Form nicht existieren kann. Umgekehrt ergibt sich aus der Reduktion klassischer Formen der Rechtsexistenz ein „Rest“ von Recht in Form der körperlichen Existenz einer Person, der dem Handeln anderer Menschen eine Grenze setzt. Diese Grenze wird mit Hilfe von drei Faktoren festgelegt: Lokalität, Modalität, Subjektivität. Daraus ist zu schließen, dass Recht unter den Bedingungen des Krieges nur in Form lebendiger körperlicher Präsenz existieren kann und die Rechtserfahrung aus der Sphäre der Ideen und Normen in die Ebene der Körperlichkeit übergeht, wenn das Delikt zunächst interpretiert wird nicht als Verletzung einer natürlichen oder positiven Norm, sondern als Verletzung einer Person.

Schlüsselwörter: Körperlichkeit, Lokalität, Modalität, Subjektivität, Rechtserfahrung.

primary marker of an offense will no longer be a violation of the norm of natural or positive law, but physical damage to the subject's body.¹¹ Thus, the balance between law and lawlessness turns out to be localized not in the value, but in the material and physical sphere. Therefore, it can be assumed that rethinking the fundamental foundations of the comprehension of law is not an abstract theoretical activity, but gives us the key to understanding how law can exist in conditions of war between people.

References

- The Experience of Law (2019). Collection of articles and Essays/Oleksiy Stovba, Natalia Satokhina, Ricardo Evandro Santos Martins. Kharkiv, IVR Library. 164 p. [in Ukrainian].
- Stovba, O. (2019). Experience of Law and Legal Experience. *The Experience of Law. Collection of articles and Essays/Oleksiy Stovba, Natalia Satokhina, Ricardo Evandro Santos Martins*. Kharkiv, IVR Library. P. 5-17. [in Ukrainian]
- Satokhina, N. (2019). Experience of law and Experience of Lawlessness: Hermeneutic Perspective. *The Experience of Law. Collection of articles and Essays/Oleksiy Stovba, Natalia Satokhina, Ricardo Evandro Santos Martins*. Kharkiv, IVR Library. P. 18-30 [in Ukrainian].
- Bulygin, E. (2016). Chto takoe pravovoy pozitivizm? (Eng. What is Legal Positivism?). Bulygin E. *Izbrannye raboty po teorii y filosofii prava* (Eng. Collection of Chosen Works in Theory of Law and Legal Philosophy). Saint-Petersburg: Press. P. 28-41.
- Kelsen, G. (2011). Chistoe uschenie o prave: vvedenie v problematiku nauki o prave (Eng. The Pure Study of law: Introduction in Issue of Legal Science). *Rossiyskiy Ejegodnik Teorii Prava* (Eng. Russian Yearbook of Legal Theory). Vol.4, №4. P.432-453.
- Alexy, R. (2009) Dual'naya priroda prava (Eng. Dual Nature of Law). *Rossiyskiy Ejegodnik Teorii Prava* (Eng. Russian Yearbook of Legal Theory). Vol.2, №2. P.19-33
- Schmitt, C. (2007) Teoriya Partizana. Promejutochnoe zamechanie k ponyatiyu politicheskogo (Eng. Theory of Partizan. Casual Remarks to the Concept of Political). Moscow, Praxis, 301 p.
- Cohn, G. (1967). Existentialism and Legal Science. New-York: Occana publications inc., 148 p.

Received by Editorial Board: 26.11.2022

Suggested Citation:

Stovba, O. (2022). Law, War And Peace: Are The Laws Silent During The War?. *Archives of Criminology and Forensic Sciences*. 2 (6). 53-58.DOI: <https://doi.org/10.32353/acfs.6.2022.03>.



¹¹ Cohn G. Existentialism and Legal Science / George Cohn. New-York: Occana publications inc., 1967. P.67