

# PHILOSOPHY AND THEORY OF LAW



Article

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## Moral Foundations of Legal Communication

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**Abstract:** The article is founded on the position that social communication as an evolutionary option for the development of communication of all living beings must also include legal communication. In this existential context, legal communication is not reduced only to the transfer of symbolic (textual) information determining the behavior of subjects of law. It is also considered as a vital option for adapting to the environment, which allows both individuals and society to survive, develop and self-realize. Legal communication involves not just cooperation and interaction between legal subjects, but also the observance of the necessary conditions for the implicit and explicit goals of legal communication to be achieved and realized. Implicit (universal, transcendental, evolutionarily necessary) goals are reflected at the sociobiological level in the reciprocal altruism (ego-altruism) of communicants, at the philosophical (rational) level – in the principle of mutual legal and moral recognition, at the religious level – in the commandment “love your neighbor as yourself.” The authors reveal the connection between these concepts and the concept of communication by J. Habermas and the principle of mutual recognition by A. Honneth, on the one hand, and the idea of intuitive law by L.I. Petrażycki and the ideal of “free all-unity” by P.I. Novgorodtsev, on the other hand. It is shown that the findings of

these scholars lie at the heart of the communicative theory of law and are supported by neuroscience data. According to the position put forward in this research, the rejection of mutual recognition inevitably entails the assertion of parochial altruism, the ideology of tribalism, the ideological justification of authoritarianism, violence as a universal political method, the neglect of human rights and, as a result, the deformation and destruction of legal communication.

**Keywords:** legal communication; mutual legal recognition; egoism; altruism; neuroscience; L. Petrażycki; P. Novgorodtsev; J. Habermas; A. Honnet

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## I. Introduction

It is well known that the problem of identifying and justifying the universal value basis of law is one of the oldest problems and unresolved one even nowadays. This paper reviews whether there are values that underlie both law and morality and that can be consistently recognized by all as fundamental to our conceptions of the justice and morality of law. And if so, how can we identify and justify them?

As a rule, legal scholars conduct their research in almost complete isolation from the data of the natural sciences. The premise of this

methodological decision is usually the belief that human consciousness is a “blank slate” on which the family, society, and the state make entries.

Cognitive science meanwhile rejects the very possibility of unprecedented knowledge and its “pure” spirituality. According to evolutionary epistemology, which develops these questions, there are innate cognitive structures, innate mechanisms of learning, predispositions to behave in certain ways, “genetically programmed dispositions, prejudices, expectations... there is an innate preference of some cultural genes (cultural units) for others” (Knyazeva, 2012, p. 23).

Throughout many thousands of years of human history biological, cognitive and cultural evolution have been highly correlated and mutually reinforcing (Merkulov, 2000, p. 7). On this basis the modern theory of genetic and cultural co-evolution was formed. As noted in the literature, this theory has refocused from the biological, genetic level to the relatively autonomous cognitive level in solving the issue of the mechanisms of human culture generation. It directs science towards the study of the human cognitive system and evolutionary changes at the cognitive level (Merkulov, 2000, p. 10). Such an approach is based on the premise that all human knowledge is adaptive in nature and is meant to improve our ability to survive. This adaptive process involves the specialization of living organisms and the selection of content meaningful to them. This kind of specialization through cognition of the world is a demonstration of the ability to “survive in the environment” and “get along with others” (Merkulov, 2000, p. 30). In this article, the authors attempt to demonstrate the relationship between law and morality by analyzing the data presented by contemporary cognitive research, evolutionary epistemology, and neuroscience and communicative theory of law.

## **II. Neuroscience and Communicative Foundations of Law**

It seems that modern studies in the field of evolutionary theory, sociobiology, cognitive research, and neuroscience<sup>1</sup> in a certain sense

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<sup>1</sup> Among the scientists dealing with this problematic in the perspective we are interested in the works of J. Bauer, F. de Waal, M. Gazzaniga, A. Damasio, D. Dennett, R. Dawkins, D.I. Dubrowski, T. Insel, D. Kahneman, V. Klucharev, K. Lenman,

confirm both the existence of irrational foundations of law and the possibility of a rational approach to the universal value basis of law. Today it can be considered proven that the process of evolutionary development of human society has been associated with the formation of such adaptive and protective mechanisms, which are necessary for adaptation to external conditions and for survival in a changing environment. They include both moral intuition and moral grammar (Hauser, 2007; Mikhail, 2007, 2011, 2012), which in its basis also contains legal grammar close in its meaning to what L.I. Petrażycki called “the axioms of intuitive law” and P.I. Novgorodtsev – the ideal of “free all-unity,” as we will show below.

Modern neuroscience relies on special methods of human brain research, including neuroimaging methods, to explain the origin and interdependence of mental, emotional, and rational ideas about law and morality (Klyucharev, Schmits, and Shestakova, 2011). Neuroscientific research conducted all over the world leaves no doubt that the understanding of human behavior, and thus the understanding of law, depends among other things on our knowledge of the patterns of functioning of the human brain, which were formed in the course of evolutionary development. The meaning of all such studies from the point of view of the question of universal values that interests us can be revealed by referring to one of the works of the neurobiologist J. Bauer. According to his testimony, neurobiological studies conducted in recent years have shown a new vision of man and his social nature. A human being appears as a creature whose main motivations are aimed at communication and development of positive interpersonal relations (Bauer, 2006, p. 9). “We are social animals,” de Vaal writes, “who rely on each other, need each other – therefore, helping others and sharing with others, we get pleasure” (Vaal, 2014, p. 95).

According to Bauer these findings in recent decades have been staggering even to specialists. It turned out that the natural goal of biologically fixed human motivational systems turned out to be social community and positive, established relationships with other

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M. Lieberman, K. Lorenz, T. Metzinger, J. Mikail, S. Pinker, K. Popper, R. Wright, V.S. Ramachandran, D. Rizzolatti, R. Sapolski, D.F. Swaab, E. Wilson, J. Hyde, M. Hauser, N. Chomsky, D. Chalmers, P. Churchland, D. Edmonson, M. Iacoboni.

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individuals in all forms of social interaction. Thus, not only the goal, but also the essence of any human motivation is the establishment of mutual recognition, respect, affection, and sympathy. From a neurobiological point of view, Bauer argues, we are creatures made for social interaction and resonance. All the goals that we pursue within our daily lives regarding education, profession, finances, acquisitions, etc., according to Bauer have a deep, usually unrecognized “meaning” from our brain’s perspective, because focusing on these goals we ultimately seek interpersonal relationships, that is, we want to create or maintain them. Therefore, “the human desire to be recognized as a person is, according to popular opinion, even higher than the instinct for self-preservation” (Bauer, 2006, p. 25).<sup>2</sup>

### **III. Claims as the Basis of Law**

By virtue of its evolutionary programming for cognition of the surrounding world to adapt to the environment, man is a claiming being, because claims constitute an adaptation complex. But claims are fundamentally different not only from the appropriation of useful properties of the external world, but also from voluntaristic arbitrariness. A legal claim is always an invitation or even a demand for recognition of what a person is claiming. It is always an invitation to communication. The starting point of any legal claim is an implicit claim for recognition of the right to life and security of the claimant. Such a claim makes sense only when it is addressed to a person capable of understanding and recognizing the claim as just and necessary to fulfill it. It is based on the need for recognition of the bearer of the claim, recognition at the level of society.

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<sup>2</sup> A separate question that arises in this connection and requires reflection is the explanation of possible situations of non-recognition, aggression, war of all against all, etc. It seems that the answer can be given from different positions. J. Bauer, for example, sees the reasons for such behavior, first, in the deficit of the very relations of recognition (Bauer, 2006, pp. 45–56). K. Lorenz looks at it differently (Lorenz, 1966); E. Wilson sees the causes of asociality in the vestiges of the instinct of tribal consciousness (tribalism, clannishness) (Wilson, 2015). Each of them is right in his own way. But that is the subject of another article.

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But, starting from Hegelian philosophy, since such recognition is not the one-sided recognition by a slave of his master, it can only be the mutual recognition of equal and free people. Mutual recognition is therefore a peculiar result of the development of the individual, of his ability to transcend instinctive biologicalism and primitive egoism. It is also altruism, for it recognizes the Other with all his rights, dignity, and interests derived from them. There is a *moral* obligation to act in the interest of the Other in accordance with his entitlement. But it is also egoism, because both one's own rights and interests have the same meaning for the human self. O. Höffe called this symbiosis of altruism and egoism, understood as an exchange of initial obligations, without which legal communication is impossible, a transcendental exchange, giving to such an exchange the significance of a universal precondition for the very existence of society, law, and state (Höffe, 1993, pp. 99–102). Such an exchange can be viewed from an economic perspective as a primary and mutually beneficial transaction, which is the basis for the subsequent maximization of the well-being of each member of society and society as a whole.<sup>3</sup> But from the perspective of religious philosophy, this exchange is already a reflection of the involvement of both participants in existential legal communication in the unifying supreme principle, which is expressed in the commandment of love for God and for one's neighbor.

Without mutual legal recognition, law is impossible, because legal relations presuppose beings with the capacity to understand certain rules of conduct, to relate them to the value of their own person and the personalities of other subjects, and to be free to accept or not accept their significance depending on whether these rules are reckoned with their legal personality. Legal recognition is based on the moral capacity to perceive the Other as the same, but also different from myself (the other); the capacity to respect this Other as oneself and to assume a moral obligation not to harm this Other. This line of thought,

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<sup>3</sup> Such an exchange (obligations of recognition of the Other as a sovereign subject, a bearer of rights and obligations) guarantees participants in economic relations the most favorable starting positions, allowing participation in various, including market relations on an equal basis. On the maximization of welfare and rational choice from the position of the communicative approach *see* Polyakov, 2021, pp. 39–101.

formulated in the communicative philosophy of law, was tested in the Russian school of “revived natural law,” and it is supported in the communicative philosophy of law projects abroad, in particular, in the works of J. Habermas and A. Honneth.

#### **IV. Communication and Mutual Recognition in the Works of J. Habermas and A. Honneth**

In his philosophical constructions, Habermas also assumed that the subjectivity that “transforms human flesh into a spiritual vessel” is formed through an intersubjective relationship with the Other. The individual self emerges “exclusively on the social way of outward manifestation and can only stabilize itself in a network of mutually effective relations of mutual recognition” (Habermas, 2003, pp. 45–46). The philosopher finds interdependence between the autonomy of the individual and the principle of equal respect for everyone as the basis of both law and morality. He writes that the modern doctrine of “*morality of reason*” and “*law of reason*” is based on the basic notion of the autonomy of the individual and on the principle of equal respect for everyone (Habermas, 2010, p. 470). He sees the transition from morality to law, as does Klaus Günther, in replacing the “symmetrically restrictive perspective” of respect for the autonomy of someone else with a claim for recognition and respect for one’s own autonomy on the part of the Other. The morally sparing treatment of the “*vulnerable other*” is replaced by a conscious demand — a demand for legal recognition of him as a self-determining subject who “lives, feels and acts according to his (or her) own judgment” (Günther, 2009, pp. 275–276). Thus, Habermas recognizes the principle of mutual legal recognition as the moral basis of law. The thinker writes explicitly that the universal dignity due equally to all persons, the connotation of which is self-respect, rests on social recognition.

Therefore, the dignity of man also requires to be rooted in civic status, that is in belonging to a certain community organized in time and space. And such a status must be equal for all. The concept of human dignity, in Habermas’s thought, transfers the content of the morality of “equal respect” for everyone to the status order of state citizenship, and

the self-respect of each citizen arises from being recognized by others as a subject of an “*inter-all agreed right*” (Habermas, 2010, p. 471).

Axel Honneth, a disciple of Habermas, develops these insights by revealing the complementarity and interdependence of individual and collective autonomy. Honneth’s paradigm of the struggle for recognition shows how the egoistic and altruistic beginnings work in the development of individuals and social relations (institutions). Egoistic interests of individuals involved in the struggle, creating social conflicts, in A. Honneth act as an engine of moral progress of society, in which individuals reach a new understanding of the common good and realize it. As B. van den Brink testifies, “the struggle for recognition is not just one of the many forms of struggle in society, it is the engine of historical change, the transformation of social, political and moral attitudes throughout society” (Van den Brink, 2014, p. 7).<sup>4</sup>

Honneth understands the identity of the “I” as a product of sociality, i.e., identity emerges through the fact that everyone recognizes himself in the Other (and the Other does so in sync with me). It should be noted that the origins of this can be found as early as in Hegel, in whose philosophical views Honneth emphasizes points that were previously overshadowed. As I. Mikhailov puts it, Hegel himself finds recognition as early as in Fichte, who in the “Fundamentals of Natural Law” defines it as the interaction between individuals that underlies legal relations. Hegel further uses models of recognition to explain the reciprocal actions of individuals. “To the extent that a subject finds his special abilities and qualities “recognized” by another subject (and thus finds himself reconciled with it, in agreement), he learns to see his own unique identity, thereby finding himself opposed to the other as special” (Mikhailov, 2012, p. 71). Honneth also finds that this interpretation of Fichte helps Hegel to look afresh at Hobbes’ notion of struggle as well, whose meaning in the new interpretation is not limited to the struggle for physical existence but is a quality of an “*original-moral event.*” The social contract merely takes this struggle to a new level. Hegel calls such

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<sup>4</sup> As an example, the author cites the participants of labor movements that demanded fairer wages and decent working conditions. Their struggle for fair wages was accompanied by an awareness by all members of society of the common good (Van den Brink, 2014, p. 7).



elementary forms of mutual human recognition “*natural morality*” (Mikhailov, 2012, pp. 71–72).

Consequently, personal and collective identity, according to Honneth, can only be sustained together if there is a developed relationship of mutual recognition of personalities at all three basic levels: love (at the level of the individual as a bodily being), right (at the level of the abstract individuality) and solidarity (at the level of the concrete individual capable of realizing his subjective capacities in activity) (Honneth, 1995, pp. 93–95). And again, these elementary levels of recognition are found in Hegel in the form of the stages of natural morality. In the first stage, subjects mutually recognize themselves as loving in the parent-child relationship. Then, on the second level, subjects act as participants in ordered forms of exchange (e.g., commodity exchange). Further, on the third level, the subjects act as participants in legal relations based on universal, contractually fixed legal norms (Mikhailov, 2012, p. 72). This is how the moral foundations of legal communication are revealed.

The principle of mutual legal recognition allows a person to perceive himself as a subject, which means to recognize himself as capable of taking part in public life and having a voice, including in the process of making laws for society. The conflicts over political and participatory rights that have arisen on this basis have led the individual to define himself or herself as a citizen. Ignoring this right objectifies the individual, making him “invisible” to the state, destroying his legal personality.<sup>5</sup> Interestingly, recognition entails a limitation of egoism and a predominance of altruism. Honneth notes that recognition requires a conscious self-limitation of one’s egoistic impulses, requires overcoming the thirst to satisfy one’s inclinations at all costs. Social relations arise since the participants in the interactions see that the Other, under the influence of my activity, performs this act of moral self-limitation and responds by performing the same exact act. As a result, an entirely different content is introduced into the biological world that was absent there: moral self-restraint is the germ of sociality.

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<sup>5</sup> “Invisibility” is understood by A. Honneth as a way of humiliating the human person by ignoring him, “looking through,” recognizing the non-existence of the person in the social sense, and in the legal sense in particular (Honneth, 2001, p. 111).

Honneth defines recognition as the mutual restriction of one's own passionate egoistic desires in favor of the Other (Honneth, 2010, p. 20). It is the capacity from which the rest of the social qualities in human self-awareness emerge. Through mutual recognition, society becomes intelligent – one in which freedom and solidarity are organically related to each other.

### **V. The Communicative Foundations of Law in L. Petrażycki's and P. Novgorodtsev' Theories**

L. Petrażycki and P. Novgorodtsev come to similar conclusions. According to Petrażycki, there are such areas of law where there are “such general and strong intuitive legal convictions that the rules of social life, duties and rights that are subject to them cannot arouse doubts in anyone except for mentally insane people” (Petrażycki, 2000, p. 484). The scientist considers it possible to “*conditionally call*” such statements as “the axioms of intuitive law” (Petrażycki, 2000, p. 484).

Intuitive law, as Petrażycki puts it, is perceived by the experiencing subject as imposing a duty to abstain from all assaults on the personal, property and bodily integrity of “neighbors,” giving “neighbors” themselves the right to demand the omission of such acts and, eventually, the right to protection (individual or collective) in case of such assaults. In fact, this means recognizing essential rights of the “neighbor” that are not established by the state but correspond to human nature as it has evolved in the evolutionary development of society. It is also clear that these rights extend to all “neighbors” among civilized peoples and are the boundaries of their legal freedom. Thus, freedom and equality are also necessarily present in such a construction, and the recognition of such inalienable rights for each “neighbor” also means the mutual recognition of their legal personality (mutual legal recognition). Petrażycki's reservations about “neighbors” and “civilized peoples” are not accidental. The scholar understood the development of human society “*along the path of progress*” would be accompanied by a dialectical struggle of egoistic and altruistic principles, and that only gradually would “*civilized law, based on mutual recognition,*” embrace both broader strata of society and new nations and states,

gradually displacing egoistic emotions and replacing them with altruism (Petrażycki, 1913, pp. 587–593).

It is interesting to note that both L. Petrażycki, the head of the St. Petersburg School Philosophy of Law, and P. Novgorodtsev, the head of the Moscow one, were supporters of Darwin’s evolutionary theory, viewing it in close connection with philosophy and legal theory. P. Novgorodtsev’s central construction of the social ideal is associated with it. Describing Darwin’s discoveries as “*great*” (Novgorodtsev, 1991, p. 79), Novgorodtsev, in a communicative spirit, formulated a question that should still be at the center of attention of philosophers of law today: “under what conditions, derived from the laws of biological evolution, could the peaceful perfection of coordinated communication be preserved?” (Novgorodtsev, 1991, p. 82). In answering this question, the scholar relied on the main provisions of the Neo-Kantian school, trying to combine them with some of Hegel’s ideas, but without departing from the traditions of liberalism. Consequently, the thinker asserted the impossibility of full-fledged human communication without recognizing all people as subjects of communication. Entering communication with his fellow human beings, Novgorodtsev noted, “an individual cannot deny their rights except by denying his own self and his own rights. Hence, the duty of mutual recognition is born” (Novgorodtsev, 1991, p. 111).

It should be noted that in the pre-revolutionary period (a few years before the events of 1917), the philosopher derived this duty not from the dictates of some “*morally superior*” being – society or the state – but from “*the individual’s own law*” (his moral autonomy), from his inherent “*striving for the ideal norm*” (Novgorodtsev, 1991, p. 111).<sup>6</sup> It is this desire for the ideal norm, which is the norm of mutual recognition, that makes possible, according to Novgorodtsev, communication itself, and gives rise to the very possibility of both law and morality. “Law is inconceivable without elements of equality and freedom, albeit in their narrowest and most modest manifestation, just as it is inconceivable

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<sup>6</sup> In the last years of his life, Novgorodtsev’s position on this would undergo a radical change, which, however, is explained not so much by rational grounds as by his emotional reaction to the assertion of the Bolshevik power in Russia.

without mutual recognition of individuals, without the beginning of solidarity” (Novgorodtsev, 1991, p. 115).

“The ideal meaning of communication,” Novgorodtsev explains, “is not exhausted by the principles of formal law, which provides each his own: it is even more expressed in the requirements of a higher moral law, which unites people in the spirit of solidarity and love and binds their disparate forces into a common cultural aspiration. Thus, in the concept of the individual, both his claims to equality and liberty and his obligation of solidarity and unity with others have their origin in the same way” (Novgorodtsev, 1991, p. 115).

It appears that both the ideas of Petrażycki and Novgorodtsev, and the research of modern neuroscientists in general confirm the important thoughts of Darwin formulated by him in the second half of the 19th century. For example, in “The Origin of Man and Sexual Selection,” Darwin argued that human mental and moral capacities arise, improve, and develop under the influence of natural selection, including through inheritance (Darwin, 2012, p. 67). Morality and law, in this approach, are necessary means for the survival and development of man, for development along the path of progress. Such “social” moral feelings, according to Darwin, are akin to instinct. They arose with necessity in the ancient man to be able to live together with other kinsmen and perform social functions.

The English scholar also believed that, in addition to heredity, ancient people derived the necessary moral qualities from their own experience. As the “faculties of thought” and “prudence” of tribesmen improved, each of them, Darwin believed, could easily see that in helping others he usually received help in turn. From this self-loving motive man could acquire the habit of helping his fellowmen, and the habit of doing good, no doubt, must have increased the sense of sympathy which serves as the first impetus to good deeds (Darwin, 2012, pp. 68–69). An additional impetus for its formation and maintenance was the psychological influence of society itself. “It is evident,” stated the scholar, “that the members of one tribe approved of acts which, in their opinion, served the common good, and condemned those which seemed injurious to them. From this experience were formed not only emotional attitudes to each other’s actions, but also fundamental principles of

morality.” Darwin derives this “*cornerstone of morality*” in the form of the famous formula of the “golden rule:” one must “do good to others, to act towards others as we would have them do to us” (Darwin, 2012, p. 89).

In the post-classical theory of law, I. Chestnov reflects in this context. The scientist sees society as the basis of all social phenomena, which he calls “*transcendental*.” Like everything social, “it follows from a natural (maybe, biological) need of a person for cooperation, communication, interaction, and joint existence. Law together with other social phenomena ensures this co-existence, i.e., provides self-preservation, stability (ideally – development) of society as a totality of connections between certain, appeared as a result of social evolution, statuses” (Chestnov, 2002, p. 263). In his later work, I. Chestnov emphasizes that it is only through a legal dialogue as an interaction that presupposes the acceptance of the point of view of a socially significant Other (a bearer of a social status) that the self-reservation of society is possible (Chestnov, 2012, p. 633).

## **VI. Mutual Recognition as an Universal (Spiritual, Moral and Legal) Value**

If we look from the perspective of neuroscience at the views outlined above, we will see something in common, namely a value that unites them in some way different positions, clearly claiming a universal character and even an ontological status for law. This value is the value of the *mutual recognition of the human being as a human being*. Such recognition (in contrast to recognition among primates or other social animals) has a complex structure. It is formed initially (during the evolutionary development of man and society) at the subconscious (unconscious, intuitive), emotional level, but later also at the conscious, rational level. At the subconscious level, recognition manifests itself in the form of empathy. Empathy manifests itself through trust, friendship, and love. The highest degree of empathy is love (both social, agape love and erotic love). Acknowledgement at the highest level of social empathy can be seen as the practical realization of the Gospel commandment to love one’s neighbor as oneself (Matthew 22:37-39). Recognition

on a rational level operates through the awareness of the boundaries between the possible and the permissible in human relationships and involves reciprocity (the connection between the values of egoism and altruism). This recognition is the natural basis for the emergence of the concept of the rights and responsibilities of each person in relation to himself and others and for real interaction on this basis. The dominant idea here is equality in freedom<sup>7</sup> and the responsibility to preserve each other's dignity (solidarity).

As Habermas points out, "Animals... do not belong to the universe of members who address intersubjectively accepted rules and orders to one another. "Human dignity," as I would like to show, is in a strict moral and legal sense connected with this relational symmetry. It is not a property like intelligence or blue eyes, that one might "possess" by nature; it rather indicates the kind of "inviolability" which comes to have a significance only in interpersonal relations of mutual respect, in the egalitarian dealings among persons" (Habermas, 2003, p. 33). A. Honneth also understands the identity of the "I" as a product of sociality, i.e., identity arises through the fact that everyone recognizes himself in the Other and only in this way is "We" formed (Honneth, 2010). Consequently, personal, and collective identities can only be sustained together if a developed relationship of mutual recognition of personalities is formed (Honneth, 1995, p. 46, 211).

The very existence of two levels of recognition (intuitive and rational) and their known epistemological and practical competition are not accidental. This is how the human brain works. Its dualism corresponds to the two decision-making systems available in the human brain. As is known, the presence of two systems, formed during evolutionary development of the human brain, has been shown and explained by D. Kahneman. According to his concept, System 1 is fast, intuitive, automatic, unconscious; System 2 is slow, purposeful, rational. System 2 tries to control and manage System 1, but its ability to do so is limited (Kahneman, 2011, pp. 19–105, 377–418).

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<sup>7</sup> It is interesting that neurobiologists attribute freedom, which includes the absence of restrictions on movement and information, to the innate programs of the human brain (Dubynin, 2022, pp. 48–49).

Modern neuroscience researchers conclude that the ability to assess the fairness of social interaction is extremely important for ensuring long-term cooperation within a social group. Immediate involuntary reinforcement of fair suggestions and punishment of unfair behavior is an important evolutionary mechanism for the existence and cohesion of social groups. Therefore, the automatic involuntary response of System 1 often suppresses System 2. The “diffuse” nature of decision making... allows the weight contribution of the emotional and rational (cognitive) components to be adjusted depending on the context... which gives the decision-making system the necessary plasticity (Klyucharev, Schmits, and Shestakova, 2011, p. 22).<sup>8</sup> The systems thus complement each other, and this explains a kind of dualism of mutual recognition as the highest legal and moral value: after all, it can exist both as an initial legal intuition and as a conscious moral-legal principle that requires everyone to recognize equal freedom, dignity, responsibility, and solidarity in relations between people.<sup>9</sup> The possibility and necessity of combining both options as elements of legal communication is justified in the communicative theory of law (Polyakov, 2014, 2022).

## VII. Conclusion

Theory and practice do not always correlate. A human being is a limitedly rational being. Therefore, situations are quite possible when theoretical ideas about what the law should be, go against the dominant intuitive values, which, as already noted, for various reasons may differ from each other with considerable variability. One perceives the theory of law not only in terms of its consistency, probative value, and applicability in practice, but also in terms of whether it corresponds to one’s underlying, basic value intuitions. Mutual legal recognition is a balance of the value of the individual with the value of the super

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<sup>8</sup> On the connection between the theory of law, cognitive research and neuroscience see, for example: Malman, 2016.

<sup>9</sup> In this context, it is also appropriate to recall C.G. Jung’s warning: we should never forget that “the world exists only because of the balance of opposing forces: the rational is balanced by the irrational, and what is planned and set as a goal is what exists” (Jung, 1981, p. 216). *See also*: Hauser, 2007; Haidt, 2006.

personal — with the value of society and its possible modifications (nation, state, tradition, etc.). An imbalance in the direction of any of these principles creates an attitude of unilateral recognition (absolutization) of either the value of the individual (antisocial egoism) or the value of the super person (for example, anti-human tribalism, mixed with racial altruism). Such a skew in the value hierarchy may be caused both genetically (a predisposition to such a deformation may be inherited by individuals) and by specific socio-cultural circumstances (for example, total propaganda, civil war). In both cases, the connection between value orientation and genetic and sociocultural influences is not strictly deterministic, but only probabilistic. Consequently, rational reasoning and human free will remain the most important components of adopted behavioral attitudes (Markov, 2011, pp. 92–106, 125–136).

One example is the ideology of non-recognition of the equality of all people in rights, duties and dignity that dominated Nazi Germany in the 1930s. Only a small number of opponents of the regime could consciously resist the demand to be with their people and the Führer in these matters as well. Most Germans supported the new order in one form or another (halfheartedly or wholeheartedly). But even this support, linked to a situational reassessment of values under the hypnosis of authoritarian rule that stirred up tribal instincts, was only temporary. After the fall of the regime, its former supporters were left to wonder how quickly they could be recruited and values reoriented by Nazi ideologists.<sup>10</sup>

The denial or distortion of the principle of mutual legal recognition leads to the deformations of legal communication (Osvetinskaya, 2021), and even to outright arbitrariness. Therefore, the understanding that the recognition of the value of law and, accordingly, of human rights and obligations as a universal asset, as priority values that among other things have a moral sense, is essential. It is an indispensable condition for the survival of human society. But this understanding is sometimes gained at too great a price.

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<sup>10</sup> The problem of irrational obedience to authority is addressed in a famous study by S. Milgram (Milgram, 1974).



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