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**TÍTULO:** Modelado teórico de P.A. Sorokin acerca del comportamiento positivo y la modernidad.

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**RESUMEN:** El artículo analiza las opiniones de Pitirim Sorokin sobre el concepto y el contenido del comportamiento positivo. Como parte del análisis de este concepto, el autor revela las características de un hecho positivo, la teoría del derecho de adjudicación.

**PALABRAS CLAVES:** crimen, castigo, hazaña, premio, ley de adjudicación.

**TITLE:** Theoretical modeling by P.A. Sorokin`s positive behavior and modernity.

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**ABSTRACT:** The article analyzes Pitirim Sorokin's opinions about the concept and content of positive behavior. As part of the analysis of this concept, the author reveals the characteristics of a positive fact, the theory of the right of adjudication.

**KEY WORDS:** crime, punishment, feat, award, responsibility, award law.

## **INTRODUCTION.**

P. A. Sorokin holds the primacy in the theoretical understanding of a number of scientific categories of jurisprudence, which in the modern conditions of the XXI century remain in demand by the science of the theory of state and law.

There are all grounds, – writes O. Yu. Kokurina, – to consider P. A. Sorokin as the first researcher who attracted attention of jurists to "award law" (the term introduced by him), reflecting the social face of the state in the past era. Pitirim Sorokin for the first time (as in Russia and in the world) has thoroughly studied different sides of legal incentives – communication behavior deserved ("service act") with the award, the ratio of the feat with the crime and award-winning with punishment, the terms "imputation" crime and the elements of service criminal acts, the classification of deeds and rewards, the influence of punishment and rewards on the behavior of human, social role of punishment and awards [Kokurina (2012), p. 103].

## **DEVELOPMENT.**

### **Research methodology.**

Dialectical method of cognition allowed to ensure the objectivity and comprehensiveness of the researched phenomena. General scientific methods were used as systemic, structural-functional, concrete-historical, comparative-legal; general methods of theoretical analysis as analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc., and private-science methods as comparative law, technical and legal analysis, concretization, interpretation, etc.) [Komarov (2019), p. 32-40].

### **Study results.**

Scientific contribution P.A. Sorokin's theory of state and law can be considered his methodology for the analysis of paired categories, when he, using a dichotomy, after understanding the concept

of “crime”, goes on to clarify the concept of “punishment”, rightly considering it to be correlated with respect to awards, suggests studying them in parallel, stopping specifically on the analysis of “service” acts (service) or “feats”, based on the synonymy of these categories.

Exploring the issue of exploits and awards in the modern science of law, he notes a rather curious position, a peculiar illustration of the "curiosities" of scientific thought. “This curiosity”, in this case, lies in the fact, that while one category of facts of social life (crime - punishment) attracted the exclusive attention of scientific thought, - another category of facts, no less important and playing no less social role is almost completely ignored by the same scientific thought. We are talking about "exploits and rewards". Crimes and punishments have served until now as the only object of study for representatives of the social sciences and theorists of criminal law. The feats and awards - as a completely equal category, as a huge category of social phenomena - are not even known to the vast majority of lawyers and sociologists [Sorokin (1914), p. 161].

If the science of crime and punishment - criminal law - has grown to enormous proportions and has become hypertrophic, writes P.A. Sorokin, the science of exploits and awards, or if pleasing, award law, is not even listed among scientific disciplines [Sorokin (1914, p. 161; Sorokin (1992), p. 77].

At the beginning of the XXI century, we can say with confidence that award law as a sub-branch of constitutional law has a place to be. It is enough to refer to the doctoral dissertation of Professor Vinokurov V.A. “Constitutional and legal framework for the regulation of state awards in the Russian Federation”, defended in 2011, his textbook “Award law” [Vinokurov (2015)].

Recall that back in 1995, A.V. Malko, in his doctoral dissertation, “Incentives and Limitations in Law: An Information-Theoretical Aspect” wrote that it is important to “consider incentives and limitations in unity, in pairs, in interconnection and interdependence. Indeed, in practice, both of these tools are largely intertwined, used together.

Legal incentives should be reasonably combined with legal restrictions, because for the legislator it is important not only to encourage socially useful behavior (emphasized by me - N.Z.), but also to restrain socially harmful behavior that can harm the interests of the individual, collective, state, society” [Malko (1995)].

The position of E.V. Trofimova lies in the fact, that in Russian law, award law has not yet taken a universally recognized niche; however, it has a substantive unity due to the general managerial nature of all award legal relations, which makes it possible to include award law in the system of administrative law. In official awards and in award law, an encouraging method of public administration is characteristic of administrative law [Trofimov E.V. (2012), p. 24-89].

E.V. Trofimov defines “award law” as “a large interdisciplinary public law institution, uniting the legal institutions of state awards (constitutional law), awards of state bodies (administrative law), awards of a municipal nature (municipal law), similar in subject and uniform in the encouraging nature and method of influence ) and award proceedings (administrative procedural law)”. On the other hand, his assertion that “the legal regulation of relations on the establishment and application of official awards in its significance does not reach the constitutional and legal level and finds expression, mainly, in by-laws of administrative legislation. Award law is an administrative legal institution ...”, to a certain extent, is controversial [Trofimov E.V. (2013), p. 10].

P.A. Sorokin writes that earlier attempts have been made to create the science of “award law”. Not talking about the policemen of the XVIII century (Wolf, Justy, Joch, etc.), who assigned the award an equal role with punishment, it is enough to point to the whole treatise of I. Bentham's Theory of Awards [Bentham J. (1840)]. “And in an era, closer to us, from time to time voices were heard about the need for such a science. But these voices were heard and lost, not finding a response in the broad spheres of the representatives of science. So, these individual attempts ended in failure” [Sorokin (1914), p. 161].

And further: “And meanwhile, it was said a long time ago, along with the saying”, the beginning of wisdom is the fear of punishment”, the saying “do not accept gifts”, for “gifts make the blind see”. If in ancient codes, such as in the Bible, in the laws of Manu, in the laws of Hammurabi, in the “Book of the Dead”, etc., we find punishments abundant for committing criminal acts, then no less abundant we find rewards there, too. Therefore, it would seem that such ignoring them should not take place. But the fact remains: ignoring is evident, and it has to be ascertained” [Sorokin (1914), p. 161].

“What is the matter of lawyer before remuneration? - R. Yehring is quite ironically ironic. - In our time, no; in our time, only punishment has been entrusted to its development!” [Yehring (1881), p. 140].

P.A. Sorokin, referring to the positions of a number of scientists, including R. Yehring, I. Bentham, defends his point of view on positive behavior, noting that “fortunately, lately more and more voices have been heard in favor of the enormous importance of services and awards and in favor of substantiating a special scientific discipline that studies these phenomena. The same R. Yehring already outlined, and, in general, quite successfully, the category of the phenomena of a feat or service and reward, which mainly coincides with the definition of I. Bentham, which we cited above” [Sorokin (1914), p. 161 and others].

“Remuneration,” says R. Yehring, “in a broader sense seems to be the opposite of punishment; society punishes the one who is guilty before him; it rewards the one who has merit before him. The middle between the course of action of one and the other is occupied by the activity of a person who no more and no less than once meets the requirements of the law. So, we get concepts corresponding to each other about crime and punishment, about merit and remuneration, about legal and legal protection” [Yehring (1881), p. 127].

De la Grasserie also considers social relations in a similar way, devoting in his book “On the Sociological Principles of Criminology” three pages to a sketch of award or “premium” law. Another right, he says, is symmetrical with the penal right and unknown to both forensic scientists and criminologists (*inconnu des criminalistes a la fois et des criminologistes*), this is a premium right. “Crime or violation of the law must be opposed to heroism or an optional virtue that goes beyond the boundaries of (normal or mandatory) virtue”. “This is already the surabondance of altruism, while crime is nothing more than the abundance of egoism” [Grassery (1901), p. 28-32].

P.A. Sorokin writes that in Russia there are a number of people who have long been talking about the need for award law. As examples, you can specify, for example, prof. L.I. Petrazhitsky and prof. ON THE. Gredescule. In particular, L.I. Petrazhitsky in a number of his lectures more than once dealt with issues of encouragement and sketched the main features of this future discipline. Gredescule in his book “On the Doctrine of the Exercise of Law” quite sharply emphasized the impact of the right to life not only through coercion and punishment, but also through promises of benefits and rewards [Gredescule (1901)].

We can continue this list and name a number of contemporary Russian authors. Back in 2002, V.A. Grigoryev wrote that award law should be considered a “sub-branch of constitutional law” [Grigoryev ((2002), p. 118], and in 2004 V.M. Duel and A.V. Malko believe that award law is a subsector of law at the junction of constitutional, administrative and labor law [Duel, Malko (2004), p. 165].

Other researchers approach this issue much more broadly, for example, V.V. Volkova believes that “the complex of incentive norms existing in the legal system of the Russian Federation forms an interdisciplinary legal institution. Among them are the norms of constitutional, administrative, labor, criminal and other branches of law” [Volkova (2011), p. eleven]. A.V. does not fully associate with her in full measure. Malko, who previously believed that “we are only talking about the formation of

such a sub-sector, emerging at the junction of constitutional, administrative, labor law” [Malko (2010), p. 29-33].

The position of the constitutionality of the legal institution of awards is supported by E.V. Serdobintseva, who believes that relations in the field of state awards are an object of constitutional legal regulation, their rationing is a constitutional legal institution; relations in the field of awards of state bodies - primarily, the object of administrative regulation based on constitutional regulation [Serdobintseva (2009), c. 114]. She is convinced that “A guideline for the further study of relations in the field of state awards as an object of constitutional legal regulation proper, to distinguish between the latter from administrative law and other public law regulation in the field of awards can be the provision that “Constitutional law regulates the relations of the supreme state power, not only by means of general regulation (values, goals, principles), as it does in relation to other public relations, but also using the methods of detailed regulation without transferring this task to other branches of law” [Kokotov (2007), p. 4-5].

V.A. Vinokurov believes that award law should be considered “as a set of legal rules governing the state’s obligation to special encouragement of the individual (collective) for services to him in accordance with a specific procedure, and the individual’s right to demand such incentives in cases established by law. These norms constitute in aggregate an interdisciplinary institution with a priority of constitutional law norms” [Vinokurov (2014), p. 36].

Tarakanov P.V. rightly notes that “in this way, researchers give a similar definition of “award law” either as the “legal construction of law” (the interdisciplinary institute of law) or the “legal construction of legislation” (the interdisciplinary institute of law)” [Tarakanov (2017); 146].

For P.A. Sorokin remains true to the methodological device that he uses when analyzing the psychic nature of the crime. He writes: “Defining exploits or services, it should be noted that everything said above about the psychic nature of the crime is applicable here. A feat, or a service act, is not due to its

material nature, but due to the fact that each person has a certain number of acts, both his own and those of others, accompanied by a psychic experience *sui generis* (of a kind) that does not coincide with the experience "Obligation" (powers and duties), nor with the experience of "prohibition" or "crime".

Therefore, one also has to look for *differentia specifica* (characteristic feature) of "service" acts in the character of the corresponding mental experience.

This peculiar mental process, known to almost everyone by their own experiences, can be characterized by the following signs: for each of us, those acts (both ours and others) that are; firstly, not about to contradict our "proper" patterns; secondly, they go beyond the limits of "duty" by virtue of their "virtue", because of this they are voluntary and no one can claim them, nor does the one who performs them recognize himself "obligated" to fulfill them (in the form of *facere*, or *pati*, or *abstinere*) [Sorokin (1992), p. 115-116].

As we already wrote in our work [Zotova (2017), p. 18], P.A. Sorokin divides the entire aggregate of human behavior into a series of acts (acts), which are, firstly, either doing something (*facere*), and secondly, or non-doing (*non-facere*) something. Non-doing can be divided into acts of abstinence (*abstinere*) and acts of patience (*pati*). If the first variant of behavior is abstinence from any action (passive behavior), then the second variant of behavior is behavior that implies patience of influences emanating from other people [Sorokin (2006), p. 116].

In each of the categories of social actions (acts) - *facere*, *abstinere* and *pati*, according to P.A. Sorokin, there are a number of acts that are accompanied by specific mental processes that give the subjects certain rights and obligations. In turn, all acts - *facere*, *abstinere* and *pati* - by the nature of their psychic experiences fall into three main categories:



1. Acts "permissible - due", which are acts that correspond to representations of "proper" behavior, attributive-imperative experiences. In accordance with the concept of P.A. Sorokina is acts of the exercise of rights or acts of the exercise of duties.

2. Acts "recommended". Such acts for each person will be acts that do not contradict his ideas of permissible and proper behavior, but represent, according to P.A. Sorokin, "supernormal luxury," an excess of the necessary minimum of "good" behavior, which is permissible and proper behavior.

3. Acts of "prohibited" or "unauthorized". Such acts are acts that contradict a person's perception of "proper" behavior [Sorokin (2006), p. 122-123].

Having established three categories of acts, P.A. Sorokin outlined their character in terms of socially significant assessment. Based on the ideas of I. Bentham, he proposed calling the recommended acts a feat or service, and the reaction to them from the other, who sees them precisely as recommended acts, is an award; acts prohibited by crime, and reaction to them by punishment; acts must-permissible and the reaction they provoke - simply must-permissible. So, three pairs of reactions are obtained: crime - punishment, feat - reward, "permitted" act - "due" reaction [Sorokin (2006), p. 127].

Therefore, three traits characterize a service act, - writes P.A. Sorokin:

"1) His disagreement with the experience of "duty" ... By virtue of this, he is always regarded as morally positive, in contrast to criminal acts, always qualified as morally negative acts. This is due to the fact that "due" patterns of behavior due to "must" are always the norm and measure of "justice". Duty is synonymous with justice. And therefore, since the service acts (feats) do not contradict the proper ones, but so to speak, represent the highest supernormal degrees of justice - then, understandably, they cannot qualify as morally negative. Crimes that contradict due acts must always be experienced as unjust and morally negative acts.

2) His "excess" or excess of "virtue." In the language of G. Jellinek, "due" acts can be characterized as acts representing a "minimum of morality", but acts that go beyond that minimum will be feats or recommended acts" [Jellinek (1910), p. 48]. This feature is expressed in the fact that it is impossible to claim these acts or impose them on duty.

3) And this feature, in turn, points to the third sign - the sign of "voluntariness" of these acts. If the subject of service performs his act - his good will; if he doesn't, it's also his good will. I can't claim it".

Hence the conclusion to which P.A. Sorokin, that "for each individual or for the totality of individuals, "acts" will be all those acts, one's own and those of others, which are endowed or experienced by them as acts possessing the above-mentioned properties".

These are the main signs of auspicious acts, which we will henceforth simply call "feats"... [Sorokin (2006), p. 127 and others].

P.A. Sorokin's conclusion is quite fair, since "it goes without saying that different people can attribute to the list of feats concrete different acts (depending on what behavior and which acts they consider proper), but every act that they qualify as a service is feasible (feat), will possess the indicated features. Because of this, in every social group and in all social relations, we must meet the distinction between these three categories: due, criminal and "useful" acts" [Sorokin (2006), p. 127 and others].

That these three categories are given in modern society is undoubtedly: for this, it is enough to indicate, on the one hand, the code of laws establishing the rights and obligations of each member; on the other hand, on criminal codes that list prohibited acts, and on the third, a series of privileged "rights" that can be obtained only through a series of actions that are not binding on anyone and are not imposed on anyone, but recommended an individual with a promise of awards and privileges for their implementation [Sorokin (2006), p. 128-129].

**CONCLUSIONS.**

So, more than a century after the publication of the quoted work by P.A. Sorokina “Crime and punishment, feat and reward: a sociological study of the main forms of social behavior and morality”, it should be noted that punishment and reward have not lost their significance, people are still inclined to public recognition, privileges, honors and awards . These legal means are used in incentive norms of law and remain the most important levers ensuring the conscientious performance by people of their duties [Zotova (2017), p. 20].

In conclusion, I would like to refer to the point of view of O.Yu. Kokurina in that “Science and discipline of award law will contribute to the gradual formation and development in the Russian Federation of an independent branch (sub-branch) of the legislation of the Russian Federation in the field of legal incentives based on constitutional, administrative, labor and other branches of law. A fundamental step in the development of award legislation may be its codification and adoption of the Prize Code of the Russian Federation, which systematizes the regulations in this area. Such innovations in the legal field will make it possible not only to streamline and improve the regulatory framework and legal regulation, but also to establish systemic ties in the award sphere at the federal, regional and municipal levels” [Kokurina O.Yu. (2012), p. 105].

**Conflict of interest.**

The authors confirm the absence of a conflict of interest.

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