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Conducted by Jorge Cerdio and Germán Sucar

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INTRODUCTION. *DERECHO Y VERDAD*. VOLS. II Y IV

*Jorge Cerdio y Germán Sucar*

ABSTRACT

In this paper we offer an account of the structure and content of the international and collaborative editorial project Law and Truth. We highlight the creative proposal and novelty content of the project. The main objective of the paper is to provide a common background for the reader that makes intelligible the papers that discussed our work, and that appear in this special issue of *Teoría & Derecho*.

KEYWORDS

Law and Truth, norms and Legal System, Jurisprudence, Trial, Legal Theory, Evidence, Legal History.

# THE COURAGE OF TRUTH

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## ABSTRACT

The paper argues that in *Law and Truth II. Genealogy(ies)* we find the theoretical premises that constitute an instrument for the historical analysis of Law. Specifically, it is emphasized that the philosophical categories that are used in the project emerge as a source of interpretation. On the one hand, to single out the different perspectives that have approached the study of truth in the law from the perspective of the History of the Law; and, on the other hand, to account for the methodological variants that such perspectives display. In this sense, it is suggested that the book has two directions of fit, from Legal Theory to the History of Law and vice versa. On, either way, the relevance of Foucault's ideas is highlighted.

## KEYWORDS

Law, truth, history of Law, legal theory, Foucault.

## LAW AND TRUTH. GENEALOGY(IES). SOME COMMENTS

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### ABSTRACT

The following text is a little commentary to the Introduction to the professors Jorge Cerdio and German Sucar's work called «Derecho y verdad: genealogía(s)». The levels of approach to the link between the Law and truth are three: the truth of the Law, the truth in the Law and the truth on the Law. For this, it is used some ideas of the contemporary Theory of Law and the methodology of Social Sciences. It is also a coincidence with the authors of the Introduction with the importance that History has for a right elaboration of the Jurisprudence. In the second part of the commentaries it is analysed three interdependent and closely linked with the general topic on «Law and truth» issues: truth and lie in politics, the legitimising role of the political and legal fictions and History and political manipulation abuse. Finally, as practical example, there are some ethical and theoretical thoughts on the discussed topic of the Spanish democracy political Transition fruits and loopholes.

### KEYWORDS

Law, truth, politics, justice, History abuse.

# ON THE PROBLEM OF LEGAL INTERPRETATION AND THE TRUTH IN THE LAW AND ON THE LAW

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## ABSTRACT

This paper aims to expose the central aspects of a certain conception on the interpretative phenomenon and the explanation of the meaning of the legal statements on which it is based, in dialogue with the contributions included in the volume IV of the book *Law and Truth*. Some reflections are also made on the consequences that this solution to the problem of legal interpretation has in relation to the general problems of truth in the law and the truth about the Law.

## KEYWORDS

Truth, legal interpretation, literal meaning, judge, legal science.

## LIQUID CRIMINAL JUSTICE (FROM THE VIEWPOINT OF BAUMAN)

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### ABSTRACT

The social reality of the XXI Century is liquid (in the Baumanian sense of the term), plenty of fear—even panic—and risks of any kind. Complex and rapidly evolving modern societies have directly favoured the «liquefaction» of the classic Criminal Justice. Globalization and the presence of new supranational and international actors, the loss of State sovereignty, the growing role awarded to Police in the prevention of «crime» as well as in criminal process, the international criminality (terrorism, drugs and human trafficking...), the control of the political power by the market, the discourse of fear and the subsequent quest for security and order present in many places of the world underline the process of securitization that many societies are suffering and have an enormous impact in the understanding and practice of criminal justice. The tiny balance between «individual freedom» and security has broken in favour of the second one. Criminal Law is becoming omnipresent nowadays and this has a direct impact on criminal procedure and forces its reshaping. New values are in the public arena: the search for more efficiency, reduction of proceedings, support to extrajudicial agreements and the growing exploration of a criminal procedure model with two faces: soft and comfortable for «us», harsh and rough for «the other».

### KEYWORDS

Control, security-securitization, guarantees, rights, friends-enemies, criminal justice.

# THE STATE'S DUTIES IN THE PROTECTION OF THE RIGHTS OF VICTIMS OF GENDER VIOLENCE AND THE GUARANTEE OF ACCESS TO JUSTICE

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## ABSTRACT

CEDAW, DEDAW and the Istanbul Convention establish a catalog of obligations related to the protection of victims of gender violence, which achieve public policies, legislation and actions to prevent, detect, protect and punish acts of violence against women. This set of benefit obligations generates rights in favor of the victims, and also it has been integrated the right of access to justice for women. That is, this panoply of national and international standards create the objective and subjective contents of women's right to life free of violence and their consequent right of access to justice. Among them, the duty of due diligence of States adopts a double dimension of responsibility, namely a systemic dimension and an individual dimension, which in turn is related to social and individual rights, respectively. The concept of «due diligence» is of great importance in terms of State responsibility.

## KEYWORDS

Gender violence, right to access to justice, due diligence.

# LEGAL POSITIVISM AND ANALYTIC PHILOSOPHY

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## ABSTRACT

In this paper the relationship between two very influential trends of thinking are analyzed: legal positivism and logical positivism. Even though it is defended that the origin of legal positivism does not arise from philosophical positivism, it is showed how the ideas of Vienna Circle affect the theoretical reflection about the law. Firstly, the influence which exercises on Kelsen's Pure Theory of Law, who coincided in Vienna with the members of the Circle, without counting as a member. Secondly, how the evolution of analytical philosophy is projected to legal philosophy: from the rejection of metaphysics and practical reason, focusing on the problems of logical structure and analysis of language, to the rehabilitation of practical and metaphysical issues in the present days.

## KEYWORDS

Legal positivism, logical positivism, analytical philosophy, practical reason, metaphysics.

# SOME CONFLICTIVE ASPECTS ON THE EXECUTION OF THE EUROPEAN PROTECTION ORDER WITH OTHER INSTRUMENTS OF MUTUAL RECOGNITION

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## ABSTRACT

Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order was enacted in order to protect European citizens on the exercise of their legitimate rights to free movement and to choose their residence within the Member States. Spain transposed the Directive by Law 23/2014 of 20 November, on mutual recognition of judicial decisions in criminal matters within the European Union. This paper analyzes the major problems related to conflicts of jurisdiction when the European Protection order is executed. In particular, this paper focuses on conflicts of jurisdiction between the enforcement of the European Protection Order and other mutual recognition instruments such as probation decisions or alternative measures to deprivation of liberty resolutions.

## KEYWORDS

Criminal enforcement, European Protection Order, criminal judicial cooperation, victim, victimization.

# DNA TEST IN CRIMINAL PROCEEDINGS: ITS HIDDEN DETAILS FROM THE PERSPECTIVE OF THE PRACTICING LAW

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## ABSTRACT

In this paper, with a critical perspective, we examine the existing Spanish rules about the DNA tests in the criminal proceedings and those minor interventions in the body with the aim of genetic identification, stressing the last reforms of the Criminal code and the Criminal Prosecution Act 2015 in this regard. Here we highlight the current basic problems to be improved *de lege ferenda*. Moreover, adding a practical bias, we will explain the principal aspects related to the DNA test, which should be addressed by lawyers in order to design the best procedural.

## KEYWORDS

DNA test, criminal proceedings, right to defence, right to informative self-determination, practice problems.

# CRITICAL REVIEW AND PRESENT OF *TÓPICA Y JURISPRUDENCIA* FOR LEGAL RESEARCH

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## ABSTRACT

The present paper offers a critical review of the book *Topics and Law*, the most remarkable work of the philosopher Theodor VIEHWEB. In the first part, the outline of this monograph is dissected, a clear exposition of the topics as a legal technique, its evolution within the History of Legal Thought, through selected examples of the most important works of the great thinkers, and its application to the jurisprudence. In the second part, the most relevant methodological contributions are analyzed both in the field of legal research and in the field of current forensic practice.

## KEYWORDS

Topics, jurisprudence, research in law, legal arguments.