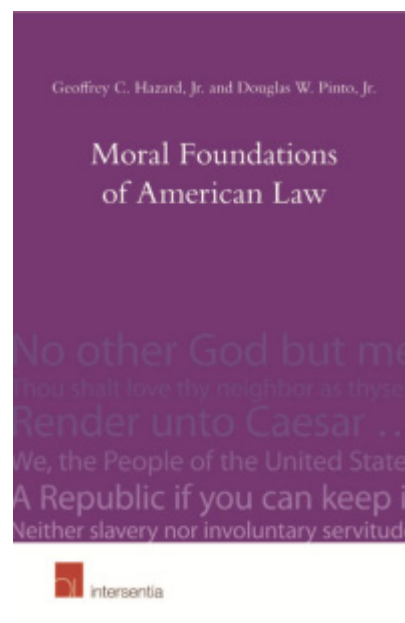


RECENZII

Geoffrey C. Hazard Jr., Douglas W. Pinto Jr. - Moral Foundation of American Law: Faith, Virtue and Mores, Intersentia, 2013 (book review by Evgeni Georgiev, Judge at Regional Court of Sofia)

[1] In the spring of 2013 Intersentia published a new book that legal community and general readers in Romania and Bulgaria might be interested in – Moral Foundation of American Law.¹ The title of the book is to some extent misleading, making us think that the book is mainly about U. S. law and the ethics behind it. To the contrary, a major portion of the book covers areas of human morality development common to most legal cultures presently existing. It is worth taking a glance at the book, therefore, to find out what is the book about and what it is relevant with for us – Romanian and Bulgarian lawyers and readers – and whether there is something for us in it to absorb. Before that it would be beneficial to know who the authors of the book are.

[2] Tribute for this wonderful book has to be paid to Professor Geoffrey C. Hazard, Jr. and Dr. Douglas W. Pinto, Jr. For those interested in comparative aspects of civil procedure and legal ethics, Professor Geoffrey Hazard does not need an introduction - he is the most cited American legal scholar in these fields and an internationally recognized expert. In the last 50-plus years he has taught thousands of law students at several of the best law schools in the



United States. He is also an Emeritus Director of the American Law Institute. Dr. Douglas Pinto holds a PhD in French literature. He is an Instructor in the humanities at University of California, San Diego.

[3] The short answer to the question about what are the Moral Foundations of American Law is in the title of the book itself – Faith, Virtue, and Mores. To address this question, however, the authors use a quite unique approach in

¹ See <<http://www.intersentia.com/search/Detail.aspx?bookid=102544>>.

only 180 pages. The book starts with clarifying what is morality; what it is for; and how it relates to law. Then, it gives us the practical example of how morality and law intermingle in the confirmation procedure for U.S. Associate Justices. Later, the book presents a very concise and precise anthology of ethical thought and its influence on law over the last 3,000 years, beginning with the Hebrew Bible, then leading us through Greek and Roman thought, Christianity, the Renaissance, and early American history to present moral issues in American society.

[4] The mastery of the authors in using historical, comparative, and interdisciplinary methods is remarkable in its simplicity, which makes the text easily understandable. This, on the one hand, inevitably helps the reader to grasp the origins and virtues of indispensable constitutional concepts of present democracies, such as secular government and the division of its branches, the relationship between law and judges, and citizens' rights as a guarantee against overreaching government. On the other hand the book reinforces moral concepts of equality and freedom which are supposed to be the fabrics of our democratic societies. In doing the latter the authors track how the lack or presence of equality reflects the structure of the society. They illustrate the contrast that societies without equality (authoritarian regimes) have vertical structure whereas in societies that regard people in principle as equal and equally competent the structure is horizontal.

[5] The book teaches us to be virtuous but at the same time pragmatic (e. g., the idea that transparency is valuable for our societies but full transparency is impossible simply because "in every

actor's subjective process, the vast system of his desires and interests does not fully rise to the level of consciousness"). To be virtuous and pragmatic at the same time is sometimes difficult for us Romanians and Bulgarians not only to achieve but also to consider as possible. We often consider those who are virtuous to be crazy² and those who are pragmatic to be selfish.

[6] In helping us to become pragmatic the authors skillfully identify for us, through the American experience, moral tensions in our present democratic societies. Some of those tensions are between free speech and free exercise of religion (is there tension between free speech and free exercise of religion?), the sanctity of life and the prevalent civic norm of individual responsibility, the belief in charity to others and the secular virtue of entrepreneurship and making money, and the ideal of human equality and the reality of differences in property. The authors further share with us that if two or more principles conflict there might be no principle or algorithm to make a choice, in which case resolution might depend on voting or casuistry based on sober intuition.

[7] Reviewing the recent confirmation procedures of Associate Justices Sonia Sotomayor and Elena Kagan and comparing them with the one of the 1987 President Reagan's nominee Robert Bork the authors raise an issue directly relevant to our society and legal community at present – what is needed to select the best people for high offices in the Judiciary. The authors identify that the procedures, more specifically the interviews of the nominees, are: (1) checks for *the technical competence* of the nominees and their "*awareness of the moral and political ingredients of the law*

² It would be enough to recall the ending of Ivan Vazov's *Pod igoto*.

as the law has been and as the law is becoming;" (2) *public and continue as long as it pleases the Senate Committee*, (3) *wide-open in subject-matter*, and (4) the nominee is *expected to respond and does*.³ The authors compare the confirmation procedures of Justices Sotomayor and Kagan to the one of Robert Bork, furthermore, to warn us that to have the best results not only the described procedure needs to be used but also those who apply it must be "faithful to their charge."⁴

[8] The authors further find a simple answer to the question of what a judge should be in the Hebrew Bible. There, Latter-day Jethroes shared that judges need to be "...able people such as fear

God, people of truth, hating covetousness..."⁵

[9] The last pages of the book tell us that democracy shall not be taken for granted. The authors identify the characteristics of early American democracy—individualism, localism, and suspicion about government—to ask the rhetorical question whether they are still present. Then, they make us aware of a present danger in American society—an existing bureaucracy making decisions on the nations' future in "obscure corridors." (Is that a danger in our democracy too?) The last pages of the book remind us that we will have a democracy only if we can keep it.⁶

³ Emphasis added.

⁴ Referring to St. Thomas More's imagined community in *Utopia* where political leaders were faithful to their charge and advisers honest in their advice.

⁵ Old Testament, Exodus, 18, 20-21, cited in the

book.

⁶ This is a paraphrase of the answer of Benjamin Franklin, cited earlier in the book, to the question of what had been accomplished at the close of the Constitutional Convention in 1787: "A Republic, if you can keep it."