Law and Social Constructivism: The Russian School of the Legal Realism Reexamined

Andrey N. Medushevsky

Abstract The overarching goal of this chapter is to examine the nature of the Russian psychological school of law from the perspective of the international realist movement. This will allow us to define its most common characteristics, its original ideas and general influence on the development of legal philosophy. Discussing the crisis of legal thought at the beginning of the twentieth century, the author shows the impact of Russian legal philosophy on overcoming this impasse. Furthermore, the author emphasizes the role of the psychological approach in the formation of the realist paradigm and its influence on the development of critical theory in early Soviet law as well as its general influence on the legal sociology of the twentieth century.

1 Introduction

The current debate on law and justice in the social construction of reality makes it important to revise some traditional theoretical views of the legal thought and one of them is undoubtedly legal realism. Realism as a philosophical movement demonstrated a repudiation of the metaphysical theory of law and idealist vision of social reality in Europe before World War I, a reaction to formalism, mechanical and non-political approach to the law which regarded it as a logical and consistent system of rules and principles. As a theoretical movement in the international law of the twentieth century, it explicates itself in some fundamental ideas—legal positivism, the interest to psychological aspects of the legal constructivism, human behavior, the stress on court decisions as a source of law. The conceptual commitments of the realists were decidedly positivistic and their preoccupations empirical, i.e.

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A. N. Medushevsky (✉)
National Research University Higher School of Economics in Moscow, Moscow, Russia

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attempting to identify the psychological and sociological factors influencing judicial decision-making.

Legal realism was not a systematic doctrine, representing rather a group of theories about the nature of law usually associated with two schools—American legal realism and Scandinavian realism. The most well-known representatives of American realism were Justice Oliver Wendell Holmes (1991), Karl Llewellyn (1962), Roscoe Pound and Benjamin Cardozo (1991). Scandinavian realism was represented by the legal theorists of the Uppsala school (A. Hägerström), including such prominent figures in the theory of law as Alf Ross (1946). In this comparative context it is interesting to pose the question about the possibility of verifying the existence of a further branch of realism, namely the Russian one. On the one side, Russian philosophy and sociology of law was historically mainly based on mainstream French and German legal theories and was thus not influenced sufficiently by the realist ideas of the epoch. On the other side, it was Russia where the psychological theory of law and behaviorist sociology of law were formulated in the most precise manner and rooted deeply in all theoretical debates on the eve of Russian revolution of 1917. On the third side, the psychological theory of law became the cornerstone of a new communist critical theory of law after the revolution which created the basis for a somewhat original "socialist legal family" which predominated in many countries of the world in the twentieth century until the collapse of communism. Despite the great variety of different branches of the realist movement (American, Scandinavian, Russian), all of them have one important common element—the commitment to the analysis of the cognitive factors determining the decision-making of a judge in a concrete case. Could this observation be equally true for the interpretation of the early Soviet jurisprudence, which experimented with the idea of establishing a new type of law for the creation of a "new man"? The answer is far from simple. The odious reputation of Soviet law as a tool of repression framed the scientific inquiry into this problematic for a long time but the genesis and authentic nature of this intriguing phenomenon still remains a problem for comparative studies of legal concepts.

The idea of this article is to reexamine the place of the Russian psychological school of law in the comparative perspective of international realist movement in order to define its common characteristics, original traces and general impact on the development of legal philosophy. The structural priorities of the article are the following: (1) the crisis of law at the beginning of the twentieth century and the impact of the legal realism theory in overcoming it; (2) Russian legal philosophy: main trends at the beginning of the twentieth century; (3) psychological theory of law as a part of the realist movement: similarities and differences; (4) the critical theory: Marxist legal thought and realism in Russian revolution; (5) the realist ingredient in early Soviet law: the evolution of its basic principles; (6) the ideological turnover in Soviet jurisprudence of 1930s: why was realism overthrown by the normative approach? (7) the influence of Russian realism on legal sociology in the twentieth century; concluding remarks: the role of the realist paradigm in the construction of social reality.

The actual importance of the reexamination of realist theory consists in its general impact on the construction of a new public ethos and the growing role of cognitive legal studies in the context of globalization, information and comparative transformation of the legal behavior.

2 The Crisis of Law at the Beginning of the Twentieth Century and the Impact of Legal Realism Theory in Overcoming It

The crisis in law at the beginning of the twentieth century had three main implications—(1) theoretical relativism as reaction against formalist positivist legal constructions (the growing popularity of the so called "voluntarism" theories of law); (2) sociological criticism on classic model of parliamentary democracy as a reaction on the new phenomenon of the mass society (as a result of the universalization of electoral rights); (3) political transformation—the crisis of the legitimacy of existing constitutional monarchies and the installation of dictatorships in Europe of interwar period. The cultural condition was expressed by such notions as "the eclipse of Europe" (O. Spengler), "the revolution of masses" (J. Ortega y Gasset), "new Middle Ages" (N. Berdiaev), "the tragic sentiment of life" (M. Unamuno) which substituted the predominant optimist ideas of the nineteenth century such as evolution, progress, the idea of moral perfection and the imperative of the law-based state (Lieber 1991).

The crisis in law covered the following aspects—the conflicts in law, destruction of legal stability, the growing separation between legal and political instruments of social regulation, the break in the continuity in legal development. Indicators of this crisis included: the spread of extremist ideologies (like communism, fascism or extreme nationalism in different modifications), revolutionary changes of law, the erosion of the legitimacy of the established political system, the installation of dictatorships or authoritarian regimes in many European countries and the extensive use of unconstitutional methods of social regulation.

Various aspects of the crisis in law became the predominant subject of analysis for philosophers, jurists and political thinkers of the epoch. Thinkers such as G. Jellinek, P. Laband and later M. Weber, R. Smend and C. Schmitt in Germany, E. Erlich and H. Kelsen in Austria, A. Esmein, L. Duguit, M. Hauriou, R. Carré de Malberg in France, G. Mosca, V. Pareto, and Del Veccio in Italy, G. Laski in England, O.W. Holmes in USA, P. Novgorodcev, S. Muromtsev, L. Petrażycki, M. Ostrogorskiy in Russia and others tried to find a way out of the crisis. They elaborated sustainable concepts of crisis in law, placing the emphasis on the different prescriptions needed to overcome it (Bobbio 1977).[1] The crisis in law was interpreted as the permanent conflict between the "old law and a new one" (Jellinek 1905); standard "law on the

[1] Sociological theories of the crisis in law are exposed in: Medushevsky (2015b).

books" and "living law" (Ehrlich 1913, 1936), form and the substance of the legal regulation (Stammler 1911, 1914); norm and institutions (Hauriou 1929), positive law and legitimacy (Weber 1960); valid norms and their judicial or political interpretation (Kelsen 1934, 1979; Schmitt 2004; R. Carré de Malberg); legal rules and the ethical ideal (Novgorodtsev 1918; Del Veccio 1964). All of them more or less considered the traditional formal positivist approach as ineffective for the solution of problems such as the social context of legal development, the collision between norm and social order, the implementation of norms in changing society (Stolleis 1992; Friedrich 1997). In order to confront these new challenges, original theories of law were formulated—the natural law revival theory, the normative theory, institutional theory, the theory of the living law, etc.

In the framework of this international debate, a special place should be reserved for the realist school of law. Realism was the "revolt against formalism"—a reaction in favor of a more empirical way of doing human sciences. Legal realism was primarily a reaction to the legal formalism of the nineteenth and early twentieth century and became the dominant approach for much of the early twentieth century. Although the American legal realist movement first emerged as a cohesive intellectual force in the 1920s, and had its heyday from the 1920s to 1940s, it drew heavily upon a number of earlier thinkers and was influenced by broader cultural forces. What realists drew from Holmes was his famous prediction theory of law, his utilitarian approach to legal reasoning, and his 'realist' insistence that judges, in deciding cases, are not simply deducing legal conclusions with machine-like logic, but are influenced by ideas of fairness, public policy, and other personal and conventional values. The life of the law,—he said,—has not been logic, it has been experience (Holmes 1987; Pound 1931). Realists believed that the legal principles that legal formalism treats as uncontroversial actually hide contentious political and moral choices and argued that law should be seen as a practical instrument for advancing human welfare.

Some of the key principles of legal realism included the following ideas: realists interpreted empirical science as a model for legal thought; realists expressed a desire to divide the legal substrate from the moral elements in the law producing the belief that the law should be treated scientifically, and a clear distinction should be drawn between what the law is and what it should be; they criticized the formalist approach, deducing legal conclusions from abstract rules of law (as a system of rules that is clear, consistent, and complete); understood the interpretation of law as a spontaneously developing system (and thus riddled with ambiguities, contradictions, gaps, vague terms, and conflicting rules of interpretation); thought that there is often (perhaps always) no uniquely correct answer to any hard case that appellate judges decide upon; believed in the instrumental nature of law (law does and should serve social ends); realists believed that there is more to adjudication than the mechanical application of known legal principles to uncontroversial fact-finding as legal formalism believes; emphasized the role of courts and judges in the production of law, proposed a positive (or descriptive) theory of adjudication,

thinking that judges unavoidably take account of considerations of fairness and public policy.[2]

All these conclusions had an influence upon contemporary legal theory and the constructivist approach in legal development. The place of the realist school is important in the context of the current trends in legal theory, based on psychology, cognitive theory and neo-institutionalism as crucial for the legal construction of reality. Although realists were successful in their central ambition to refute the "formalist" notions of law and legal reasoning, many aspects of legal realism are now seen as actually having been exaggerated. It is thus important to clarify which are the constant criteria of legal realism as an international movement, which are the specific trends of this research method in different countries, and which should be prospects for the implementation of this methodology in the current social constructivism program.

3 Russian Legal Philosophy: Main Trends at the Beginning of the Twentieth Century

The Russian legal philosophy in the nineteenth and the beginning of the twentieth centuries evolved in the context of Western European thought and developed schematically through three main stages: (1) the deep influence of the metaphysical system of Hegel and the German historical school of law: on this basis the Russian judicial school was formed in works of B.N. Chicherin, K.D. Kavelin, A.D. Gradovskiy[3]; (2) the predominant influence of the classic positivism of A. Comte: the theories of law proposed by V.I. Sergeevich, N.M. Korkunov, S.A. Muromtsev and M.M. Kovalevskiy formed the basis for comparative legal studies and legal sociology in Russian thought; (3) the impact of neo-Kantian philosophy and ethics: this generation of legal thinkers was represented by sociologists and political thinkers of Russian liberalism on the eve of the Russian revolution of 1917 (Walicki 1987; Medushevsky 2015a). They criticized formal positivist jurisprudence and looked forward to finding a new methodological orientation in deontological, realist or critical theories of law in order to build civil society and law-based state (P.I. Novgorodtsev, L.I. Petrażycki, F.F. Kokoshkin, V.M. Gessen, M.Ya. Ostrogorskiy, P.N. Miliukov). The central problem of this period is the conflict between positive law and justice—the concept of the new social ideal, and its implementation through the program of liberal constitutional reforms, regional self-government, political parties, administrative justice (Medushevsky 2006).

To overcome legal formalism and solve the conflict between law and justice, three directions in legal philosophy are of importance in the Russian legal philosophy at the beginning of the twentieth century—ethical, sociological and

[2] More about the current debates on legal realism. Leiter (2010) and Green (2005, 1915–2000).

[3] Gosudarstvennaya shkola // Obshchestvennaya mysl' Rossii XVIII–XX veka. M., 2005. pp. 117–119.

psychological. The first was based on the neo-Kantian critique of formalism and introduced the deontological concept of public ethics. This concept, known as the "revival of the natural law" theory emphasized the necessity of dividing two legal notions—what the law is and what it should be, to separate positive law (interpreted as vingalid norms) and natural law (interpreted as ethics) in order to understand the moral ideal as a self-sustainable axiological component of legal philosophy. This group of legal philosophers (V.S. Soloviev, S.N. and E.N. Trubetskoy, P.I. Novgorodtsev, V.M. Gessen, I.A. Pokrovskiy) proposed rethinking the existing positive law from the perspective of its moral criticism and possible transformation on the basis of the moral ideal of humankind (Novgorodtsev 1902, 1918; Gessen 1902). Natural law as public ethics was interpreted as the basis for fundamental human rights—to life, property, guarantees of personal freedom, equity, justice, regarding the protection of the social dignity and religious freedom, indemnity from arbitrary police repression, guarantees of main political rights, and the abolition of capital punishment. All these demands became of acute importance in the epoch of the struggle against autocracy, and for the establishment of constitutional order in Russia. This deontological interpretation of jusnaturalism is similar to the concept which became dominant in Europe after World War II and was fixed in the Declaration of Human Rights (1948), other international conventions and contemporary European humanitarian law. This concept promoted the idea of the priority of human rights over all other values, rights and obligations and is realized in the practice of European constitutional justice.

The second theoretical direction in Russian thought was the sociological school of law, which concentrated mainly on the social functions of law and legal development. The essence of this approach, as formulated in Germany by Rudolph von Ihering, contained the balance of different social interests in the interpretation of law as a social phenomenon. Russian followers of Ihering (S.A. Muromtsev, G.F. Shershenevich) demonstrated the importance of this paradigm for the struggle for a fair social order—the installation of a liberal constitutional state.[4] A pupil of Ihering's—Muromtsev—formulated the fundamentals of the Russian sociological school of law: he proposed the definition of law as a form of "social protection" and instrument for the implementation of social interests, gave a new interpretation of the legal dogma and policy of law, clarified the role of the social aspects of law-making and the importance of judicial practice (Muromtsev 1879, 2004). In his public activity as advocate and chairman of the Russian parliament—the first State Duma—he promoted the ideal of the law-based state, a parliamentary system and an independent judiciary. The constitutional project created by S.A. Muromtsev and F.F. Kokoshkin could be interpreted as a human rights charter, the theoretical and practical basis for the liberal constitutional movement in the period of revolution in Russia (1905–1907).[5]

[4] Modeli obshchestvennogo pereustroystva Rossii. KHKH vek. M., 2004; Rossiyskiye liberaly. M., 2001.

[5] Proyekt Osnovnogo zakona Rossiyskoy imperii i Proyekt izbiratel'nogo zakona v redaktsii S.A.Muromtseva //Konstitutsionnyye proyekty v Rossii XVIII–XX vv. M., ROSSPEN, 2010.

The third direction—the psychological theory of law—proposed a solution to the conflict between law and justice by identifying the law with the human psyche. For this interpretation proposed by L. Petrażycki the nature of crisis in law is the destruction of the balance between positive law and intuitive law (collective or individual mental attitudes) which potentially could lead to the collapse of the legal system as a whole in the name of utopian ideal of abstract fairness (mechanic distributive "equality") (Petrażycki 2008b). But Petrażycki's world famous theory was not a unique psychological concept of law in Russian legal thought and should be interpreted in the context of the other sociological ideas of his time. It was not even the first attempt to use psychological instruments for the interpretation of the phenomenon of law. N. M. Korkunov, a forerunner of the psychological school and precursor of Petrażycki as the chair of Spb. University, not only deeply influenced his ideas but proposed an original theory of law which in many aspects appears similar to the later realist vision of the problem.

N. Korkunov was actually a positivist who denied the former metaphysical theories as "alchemy of law" and abstract "speculative systems" (of Hegel and B. Chicherin) and interpreted the philosophy of law not as an independent discipline but as a "generalization of positive knowledge". On this basis he elaborated a new classification of legal disciplines—encyclopedia of law (the systematization of juridical knowledge provided by different other disciplines); philosophy of law (the deductive logic of the construction of legal notions); and the general theory of law (principles of law formulated on the basis of empirical material) (Korkunov 1880, 11–14). He introduced the concept of ideal types for the construction of the principle legal institutions such as law, legal norm, juridical relations, etc. The essence of the demystification of legal phenomena for him consisted in revealing the different social interests (of groups and individuals) at play but without giving them an absolute character. Like the American legal realists, he emphasized the flexible and dynamic character of all legal constructions: one and the same social phenomenon could be legal or illegal, fair or unfair, have different implications in various epochs and take opposite treatment in accordance with subjective interpretations. This approach implies the separation of the objective and subjective sides of law, their conflicting relations in history and the role of individual struggle for law (this term of Ihering's was very important for Korkunov) (Korkunov 2010, 1894, 54).

Ihering's concept of law as a formal reflection of the balance of social interests was consequently developed by Russian liberal thinkers. Muromtsev interpreted law as a social (psychological) relation based on the protection of mutual interests in an organized form (Muromtsev 1879, 2004, 572–573, 2010). Korkunov criticized the reduction of law to the protection of interest as too static (because interests changes), proposing a broader explanation of law as a "distribution of interests", and saw the role of the state in guarantees of the right of individuals to make optimal choices between different forms of protection. Both thinkers interpreted the role of law as a guarantee of the plurality of interests in society against their possible absorption by any one dominant interest (and its protection) which tends to become absolute in any given period of time (Korkunov 1892, 19).

The central place in the sociological interpretation of law, and particularly in the evaluation of subjective personal legal attitudes, was given to psychology. Korkunov demonstrated an interest in organic theories of social development which used terminology taken from the natural sciences, biology and psychology. In his works on the theory of law he cited the writings of naturalists, specialists in physiology, anatomy and medicine, and especially in psychology (I.F. Herbart, E. von Hartmann, G. Lewis). Like representatives of the realist movement in jurisprudence, he was impressed by the new possibilities provided by the methods of empirical sciences (biology, physics and mathematics) for humanities, particularly for sociology and legal studies. He explored the sociological theories of H. Spencer, A. Scheffle, P.F. Lilienfeld, who treated society by analogy with the living organism and proposed a set of definitions which were later adopted by structural functionalism in the sociological theory of the twentieth century. The influence of this approach is apparent in his classification of legal disciplines, the treatment of such important constructions as the freedom of will (he rejected its existence) and the motivation of individual behavior.

At the same time, Korkunov criticized the organic (or biological) theory of society as too mechanistic (ignoring individual as well as social psychology). He thought that organic theory should be replaced by the psychological approach, which would adopt the role of ideals in the human relations. If the basis of society is a set of the spiritual interrelations of human beings, he argued, then the main criterion for society's development should be seen in the capacity to create ideals and fulfill their implementation. Thus, the dynamic of society is actually determined by a vision of the future and a concept of perpetual progress. The most important social mechanism for that is the social capacity to reproduce culture and one of the key elements of culture is law. Law is a "reciprocal psychical interrelation of people, based on understanding of the possibility provided by the common idea which is mutually shared by them" (Korkunov 1898, 31). This general approach was implemented by Korkunov in his seminal writings on the theory of law, comparative constitutional law, criminal and administrative law and the history of legal ideas.

In Korkunov's conception, we find some important elements of a realist approach to law and the psychological theory of judgment. Critics of Korkunov's theory of law accused him of the hybridization of law and ethics (Rennenkampf 1888),[6] scholasticism, giving priority to psychological methods over juridical ones (Sergeevich 1894), the rejection of the existence of the freedom of the will, the simplified interpretation of legal norms and institutes (Mikhaylovskiy 1914). But Korkunov was far removed from panpsychologism and the absolute identification of law and morality which Petrażycki proclaimed in his theory of law. This deep interest in the psychological component of legal reasoning was demonstrated at the same time by other Russian legal theorists. They interpreted law and the power of the state as a "phenomenon of collective or mass psychology"(Kokoshkin 1912, 63, 2010), debated the psychological aspects of subjective constitutional rights (Gessen 1917, 2010), analyzed the collision between legality and legitimacy as different forms of political

[6] See also Korkunov (1888) (iyun').

behavior (Kotlyarevskiy 1915), introduced the notion of legal nihilism as a special form of intellectual protest against violation of human rights by arbitrary power (Kistyakovskiy 1916, 2010), created sociology of political parties (Ostrogorskiy 1902, 2010). In sum it was a full-scaled program for the liberal transformation of the Russian national consciousness and political order (Medushevsky 2010).

4 Psychological Theory of Law as a Part of Realist Movement: Similarities and Differences

Some of the basic characteristics of legal realism in its classic implications (United States, England and Scandinavia) could be found in Russian jurisprudence at the beginning of the twentieth century. The most intriguing parallel within the global realist movement could be found in the Russian psychological theory of law which was proposed by professor Leon Petrażycki and his school in the period which encompassed the Russian revolutions (Petrażycki 1900, 1905, 2010).

The philosophical background of the psychological theory of law appear similar to those which were typical for the realist movement in general: the sharp criticism of positivist formalism and rejection of the formal-like classifications based on jus-normativist criteria; interest in natural science and the empirical testing of hypotheses (the emphasis on empirical study of the law as a social phenomenon); written rules-skepticism (the law consists of decisions, not of rules); induction versus deduction as the main logical method in legal construction of reality (social attitudes or judicial cases, not rules, are the dominant source of law); the strict separation of positive law and morality (the revival of natural law is only possible as a new set of ethical principles but not as a substantive legal regulation); the skepticism toward the idea of a stable and unchangeable law and belief in the indeterminacy of law (the law is not a coherent, complete system of rules and principles, nor can it be understood in terms of the orders of a sovereign power, rather the opposite is true—the living law is the source of rules and principles); the general interest in the legal transformation process, collisions in law and possibilities of overcoming them (the law as a dynamic system of valid norms which are not stable and are in a state of permanent change); the revelation of the psychological mechanisms of social and legal behavior (the analysis of social factors and reasons which determine the adoption of the legal norm, its interpretation or judicial decisions in past and present); commitment to the rationalization and modernization of society through a legal engineering program—the effective policy of law (in accordance with Justice Holmes' lapidary formula that the law is nothing more than past decisions plus predictions of what future judges will do).

The psychological theory understands law not as objective reality but the subjective emotional or intellectual projection of individual mental attitudes which fix stereotypes of social behavior and the reciprocal rights and obligations of individuals. In this theoretical debate two problems should be distinguished: on the one

hand, what is a legal system, and on the other, why we obey the rules of that system. Indeed, for the conventional legal philosophy the first question is a conceptual question, while the second one demands a causal answer. But for the psychological (or realist) theory of law this strict methodological delimitation is not obvious. The basic premise of both items—the legal system and legal behavior—is the psychological convention on the very possibility to respect them. From this angle the legal system means the bulk of formal norms (fixed norms elaborated and supported by the state) and the complex of informal norms (intuitive legal attitudes of different social groups) which theoretically could be the ground of positive norms legitimacy or the source of their revision. Each legal system is the organization of legal consciousness—formal or informal norms, the unstable balance between established rules and their intuitive interpretation (and correction) by social actors and judges. The main criteria for the interpretation of norms social validity thus is not only their place in officially fixed legal acts (as positivists thought), but rather their place in the dynamic system of intuitive legal attitudes (collective or individual) and adaptability to the changing social reality. This reality is of psychic character—attitudes and patterns of behavior which determines the historical evolution of positive law, selection of norms, progressive reinterpretation of their meaning, hierarchy and validity as well as all other fixed forms of crystallized legal experience.

Another part of debate is the question about the causes by which people obey a certain legal system which should be solved in the general context of the psychological (realist) approach to the nature of the legal phenomenon. If the positive legal norm is the officially fixed and protected form of behavior than it is rather difficult to identify the difference between conceptual and causal parameters of the legal regulation. Causal regulation forms the framework of the legal experience and the legal experience forms the ground of the established legal system in action. That is one of the main postulates of the legal realism as philosophic concept and practical solution. From this point of view we can better understand the problem of obedience and disobedience to law.

Individuals obey the existing rules of the game only because they adopt them and believe in such an adoption on behalf of other individuals. We obey legal norms not because they are fixed by a code of laws and protected by sanctions of the state power, but because to follow them means the implementation of our internal psychological convenience. Thus such legal institutes as property, social or state power are the implementation of emotional phantasm but not the real power or will (Petrażycki 1907b, 182, 191). As Petrażycki made no distinction between collective and individual psychology he interpreted such preoccupations as a moral obligation to pay card debts, to participate in a duel, to express love (a declaration of love from one side and its adoption from the other side means a “revolution in reciprocal relations”) or even the idea of individual to put their signature to a contract with devil in order to sell his soul as legal.

The legal system is not a stable and unchangeable monolith of rules, formally established in society by the state power but a flexible system of norm-selection via the mechanism of individual or collective psychological adaptation. Conflict in law is interpreted as a collision between established positive law and intuitive aspirations.

Petrażycki separated two kinds of law—positive law (legal emotions based on perceptions of normative facts), and intuitive law (based uniquely on intuitive personal attitudes). The essence of legal development consists in the changing dynamic of relations between two kinds of law: intuitive law (or legal consciousness according to current terminology) could be in a position of retardation when confronted by positive law (fixed in laws and thus more unchangeable), develop in parallel with it, or go beyond it. Intuitive law has a dynamic character while positive law enjoys a more stable and conservative character. Intuitive law is a driver of new legal norms: it breeds ideas on fairness and justice which could later be fixed in positive laws. If the gap between the two kinds of law becomes very broad and cannot be overcome by moderate reforms, then a revolutionary situation is inevitable. The social revolution rebuilt the balance between two kinds of law—the balancing of aspirations towards fairness and positive legislation. Petrażycki proposed the original idea of the necessary level of coordination between intuitive and positive law: a break in this coordination means a crisis in the established legal system and risks the danger of the illegal (or revolutionary) collapse of the whole legal system (Petrażycki 1907b, 488).

The important common characteristic for both realism and the psychological theory is the influence of behaviorism: realists advocated the study of judicial behavior, arguing that to understand the law it is necessary to focus on the patterns of decisions revealed in actual cases as those are the most reliable guides to the prediction of what future courts will do. Sociology, psychology and reflexology are used to understand the behavioral aspects of legal behavior in terms of person's beliefs and desires, particularly intuitive legal perceptions and attitudes. This approach relativized the importance of formal legislation in favor of spontaneous actions of civil protest. Conflicts in society were interpreted as conflicts between different visions of intuitive law i.e. different understandings of the social ideal (he wrote about the variety of legal ethical standards for different social groups in one society). From this point of view the phenomenon of legal dualism (the divorce of positive state law and peasant common law) was interpreted as the existence of different legal attitudes in one legal system. For Petrażycki, every social movement (even criminal or revolutionary organizations) aspiring to realize a new project of fairness (or social justice) could potentially be the creator of a new legal order if it came to power. This outlook could be exploited by opposing social forces in order to protect the existing system of law, transforming it by means of reforms or to overtake it by revolt. It is not surprising that this argumentation became the grounds for different radical theories legitimizing acts of deviance or even criminal behavior—revolutionary violence, sabotage, and acts of terror.

Petrażycki proposed a new interpretation of the balance between spontaneity and rationality in the development of law. The majority of Russian jurists shared Rudolph von Ihering's idea about the target-oriented development of law and saw this target in the creation of the law-based state. In contrast to that position, Petrażycki thought that this development had a spontaneous evolutionary character and was ruled by a mechanism of the long-term selection of norms and values to become patterns of consciousness and the mind which were fixed by religious or

moral sanctions of a positive or negative character. As the precursor of modern legal anthropology, he tried to investigate how this formation of legal institutes proceeds by the instinctive accusation of negative behavioral patterns and the approval of positive ones. His conclusion was based upon the idea that law is a crystallization of long-term, mass and spontaneous experience, and not a rational purpose-oriented construction made by some prominent individuals. This conclusion is informative for the explanation of his position in the principal debates of his time on Roman law which have importance for comparative studies and codification, forms of economic behavior, criminal code revision, national discrimination, the reform of the court system or the role of the suffragette movement (Petrażycki 1902, 1907a, 1911, 1913).

The concept of the conflict between intuitive and positive law as a driving force of legal development was skeptically appreciated by the dominant academic lawyers. Still, this concept provided the possibility to make sociological explanation of changes in law as well as the transition of formerly extra-legal or illegal relations into legal ones. For example, it could be used to understand the transformation of the moral principles and prohibitions of the world religions into elements of the regulation of positive law. The same is true for the phenomenon of political ideas—if used and protected by the state power, they become elements of positive law.

Among the common traces of different trends in the realist movement, some are of the most important importance: belief in an interdisciplinary approach to the law (legal realists were interested in sociological and anthropological approaches to the study of law and linguistic analysis of legal speech); emphasis on the functional analysis of law (traditional and modern law; formal and informal practices; legal interaction); effectiveness of law (rather than asking if we approve of the law, the legal realists focused on asking if the law is actually in effect); the commitment to the study of the social efficiency of law; the interpretation of law as a constructive force in the creation of social reality; legal instrumentalism (the law should be used as a tool to achieve social purposes and to balance competing social interests); judicial lawmaking (the law really exists in the courts and adjudication, judges make the law); the importance of stare decisis (precedent law); legal predictability (the retroactive nature of judicial decisions); the thesis about the pedagogical role of law and the role of legal education in the construction of civil society and law-based state in Russia, the activity in fulfillment of this target in various social conditions.

Three different reactions to the psychological theory in Russian legal thought reflected the parting of ways which was occurring within it at the time: the conservative formalist reaction, the sociological reaction and the critical theory reaction (the Marxist and other left-wing interpretations). The psychological theory became the object of sharp criticism on behalf of traditional positivist jurisprudence. The traditional critics of the psychological theory agreed that it formed an alternative to formalism. But they saw the solution in transcendental ethics and did not adopt the proposal to identify law with the "facts of individual psychology" (Trubetskoy 2001, 497–498). For traditional positivists (V.I. Sergeevich), the idea of interpreting individual mental attitudes as legal because individual perceptions are not representative for collective consciousness and could be a result of psychical dysfunctions

(dreams, illusions, hallucinations of crazy person or the result of any mental disease), was absurd (Petrażycki 1910). The psychological theory was interpreted as reductionism (B. Kistiakovskiy) because it resumed the complex legal phenomenon in narrower categories of psychology (Kistyakovskiy 1916, 289). The author of the psychological theory reportedly rejected the reality of objective law in favor of the subjective individual perception of norms and sanctions. But individual psychology is a result of inter-personal relations and thus cannot be separated from the collective consciousness (Khvostov 1911, 160–168). The fallacy of the theory consists in the dissolution of the borders between such fundamental notions as law, ethics and fairness which are equally interpreted as emotional perceptions of the individual (Khvostov 1908, 193–198).

Yet the psychological theory was very influential for the creation of contemporary sociology of law and legal anthropology, interpreting such a situation in legal development which could not be explained by traditional approaches—the transformation of an illegal phenomenon into a legal one, the coexistence of different types of legal consciousness in one society, the disclosure of the nature of legal dualism in the traditional society under modernization, the explication of the phenomenon of the "legal nihilism" of intellectuals, the revelation of social factors which stopped the reception of Roman or western law in Russia and the proposition of strategies and technologies for the legal modernization in societies of the transitional type (Gessen 1999; Timasheff 1961, 479–508).

5 Critical Theory: Marxist Legal Thought and Realism in the Russian Revolution

An important trend in the European thought of the twentieth century was the movement from legal realism to critical legal studies. Where the legal realists saw psychology or social policy as the empirically dominant motivator of judicial decisions, many representatives of the critical legal studies approach saw social interests, their conflicts and instruments of domination. This divergence from legal realism is more inclined towards the structural and institutional parameters of legal development and to see politics or ideology. Yet, the realist conceptual framework determined many of the conclusions of critical theory and from this point of view it is important to rethink the impact of psychological theory on early Soviet theories of law.

The Soviet version of legal theorizing should be taken into consideration in the context of the destiny of legal realism. Of course, the possibility of labelling Soviet law as authentic is a debatable question: this type of law demonstrated quite a nominal character at all stages in its development. Nominal law was just the epiphenomenon of ideology, human rights were not protected by courts, and evolution of norms has been predisposed by the interests of the one-party dictatorship and not by legal reasoning. At the same time, Soviet theoretical constructions are of importance in the general perspective of their influence on Marxist legal thought in the twentieth century. The general evolution of Soviet legal ideology passed through three main

schematic stages—the establishment of a new legal ideology in the period of the revolutionary seizure of power by the Bolsheviks, the corrections of this ideology in the process of a new state-building and the further transformation in the period of the Stalinist dictatorship.

The starting point of Bolshevist jurisprudence initially became the ideas of pre-revolutionary sociology of law. In Marxism, the treatment of law always had an instrumental character: it rejected the existence of unchangeable ethical and juridical principles (because juridical relations are different in different epochs and nations), enforced the concept of legal voluntarism based on the idea that legal relations are a variable element and could periodically be revised in the interests of different parties (Engels and Kautskiy 1923, 70). The Bolsheviks had no sustainable law-concept of their own, excluding their general presumption that law as a social phenomenon of the class-based society should be demolished in the process of a communist revolution. After the convulsive break with the Tsarist autocracy and the overthrow of the Provisional Government in October 1917, they were pressed to look for some general theory legitimizing their coup in quasi-legal categories. Like other revolutionary regimes in Europe of the interwar period, they exploited the concept of Leon Duguit on the social functions of law, those of Ihering and the Russian philosophers on law as social interest protection and a broad spectrum of Marxist or anarcho-syndicalist theories about direct worker democracy as the basis for the future state-less and law-less society. But it was rather difficult to combine all these theoretical sources and make a synthesis of these quite different principles in one unified, coherent and uncontroversial legal doctrine. The solution was found in a spontaneous way by appealing to the psychological theory of law and incorporating some realist principles into the Marxist critical theory of law.

As a matter of fact, the realist vision in general and the psychological theory of L. Petrażycki in particular, proposed a program for the fundamental revision of formalist jurisprudence, arguing the importance of the social and functional dimensions of norm evaluation, emphasized the ambiguity and psychological relativism of all legal constructions, enforced the idea about the disciplinary function of law for the human socialization, target-oriented transformation of collective and individual motivation and behavior orientation, insisted on the pedagogical role of legal regulation. The most important element of psychological theory—the idea of conflict between established positive law and intuitive law—was the real invention for critical theory providing the possibility to legitimize all kinds of social protest as a movement toward the legal implementation of the people's will. On the basis of this, M. Reisner proposed two kinds of law—a bourgeois and a proletarian one. The successful destruction of bourgeois law is only possible if the new proletarian laws become the driving force of social constructivism. Thus, the crucial point of the transitional period is the institutionalization of a new revolutionary consciousness—and the establishment of its dominance in judicial and administrative practices (Reisner 1917, 1920, 1925). The priority of a collectivist and class-based "solidarity" ideology over civil legal regulation was demonstrated by the new regime as soon as the first attempts were made to systematize legal relations in post-revolutionary Russia (Goykhbarg 1919; Askenazi 1920). The extreme manifestation

of these "intuitive legal assumptions" was reflected in the anarchic-communist ideal of total socialization, including not only the nationalization of private property but as well the "socialization" of women and children in the process of the abolition of the family unit under the presumptive coming of communism in the year 1918.[7]

The critical school in Russian law supported Petrażycki's criticism of formalist jurisprudence but reproached him for narrowing the borders of his conclusions. Denying the moral pathos of Petrażycki, Reisner tried to use his theory for the destruction of both established law and moral values. The contraposition of the intuitive law and positive law for him became the formula of the revolutionary ideal. Intuitive law was interpreted by him not as a moral imperative but as a new implicit "legal ideology" which would be capable of breaking the existing legal system and establishing a "new order". Psychological theory for him appeared to be a new conceptual instrument for the restoration of the historical sense of fairness—returning to the masses the lost idea of social justice inherent in their collective intuitive feelings. This idea, which was "falsified" by the capitalist establishment, should be the driving force of the revolutionary transformation of law and the embodiment of the growing "expression of the social demand for fairness" (Reisner 1908, 96–97). Thus, to "official law" (fixed in codices, constitutions and laws) he opposed the unofficial law—intuitive psychological perceptions and hopes of the primitive masses for a just social order, and to professional justice—the justice of the "revolutionary consciousness" which had much in common with the ordinary peasant community customary quasi-legal decision-making process.

In the conceptual framework of that prototype of critical theory, the legal nihilism demonstrated was cynically mixed with the Nietzschean-like disbelief in the capacity of the "dark masses of shortheaded" to formulate new legal principles (this should solely be the work of an intellectual minority), and an anarchic apology of revolutionary violence (Reisner 1908, 192–195). Thus, Reisner took the psychological theory to its opposite conclusion: the apology of intuitive moral behavior by its founder (Petrażycki) was substituted by an apology for amoral behavior and brute force. In this revised and oversimplified form, the realist concept of law and judicial process played a prominent role in early Bolshevik theories and institutional experiments. If some Bolshevik authors (like Reisner and P. Stuchka) openly confirmed the fact of the reception of psychological theory by them, others did not do so, exploring this realist-like conceptual framework as a new class-based theory of law. Petrażycki deeply criticized such interpretations of his theory, regarding them as a profanation of substantive legal discourse. He elaborated the liberal program for the restoration of the legal order which could be required after the overthrow of the Soviet dictatorship and believed in the future reestablishment of the independent court system and human rights protection after the end of the Bolshevik phase of the Russian Revolution.[8]

[7] Sotsializatsiya zhenshchin. Pg., 1918.

[8] Protokol zasedaniya TSK Konstitutsionno-Demokraticheskoy partii ot 26 aprelya 1918 g. // Protokoly Tsentral'nogo Komiteta Konstitutsionno-Demokraticheskoy partii. M.: ROSSPEN, 1998. T.3 (1915–1920 gg.). S. 429.

The sociological ideas of Petrażycki of the post-revolutionary period were based on a previous period of his work (Petrażycki 1985). But the revolutionary experience pressed him to deny the naive belief in the possibility of rapid positive social changes made by mass mobilization methods. The Russian Revolution, as well as the coming of the fascist era in Europe, revealed the extremely dangerous and destructive impact of intuitive perceptions of uncultivated, illiterate crowds on the values of European liberal culture. During his Polish period of activity (from 1918 until his suicide in 1931) he expressed a deep pessimism over the social consciousness of the so called "masses" in the social transformation debating such themes as degradation of law, ethics and the crisis of culture (Petrażycki 2008a, 259–263). An important correction of the theory was made by him in the context of a reevaluation of the revolutionary experiment: intuitive legal consciousness in the periods of social upheavals could go far beyond the borders of law and result not in the transformation of one legal system into another (as he had earlier thought) but in the demolition of the legal phenomenon as such. That triumph of nihilism means the destruction of the state, public ethics, and the progressive decadence of religious values and culture (Petrażycki 2008b, 266). This approach was implemented by P. Sorokin in his sociological analysis of revolution: revolutionary turmoil is the result of the social collapse of the stable rules of the game. The legal order can restrain the social instincts of mass behavior for a long time, but it cannot do so in periods of revolutionary violence. After the revolution, the spontaneous destruction of the legal system paralyzed the effective functioning of social institutions; revolution means the degradation of stable forms of culture—social, cultural and biological degradation of society, the triumph of marginalized elements. All of this made necessary the reestablishment of the legal system in the form of a Restoration (Sorokin 2005, 411).

Metamorphoses of psychological theory in twentieth century are quite typical for a society in transformation: firstly, they are represented by the key element of the legal theory, namely renovation—the rejection of the formalist approach in favor of a deeper reconstruction of the legal phenomenon; secondly, they reflect the intuitive prevision of the situation in which the so called people's consciousness could still be a more dangerous enemy of the legal order than the illegal arbitrary regime in action; thirdly, they show that the realist paradigm could play different social roles if used for different social purposes—to support the law-based state or destroy it.

6 The Realist Ingredient in Early Soviet Law: The Evolution of Basic Principles

The Bolshevist ideology, as represented in the concept of its leading official theorist P. Stuchka, proclaimed the annihilation of law as a background for the new culture and defined the "cultural law" as "simplified law" which should be understandable for an illiterate peasant population (Stuchka 1928, 20). The classic liberal science of

law was declared the "last hiding place for all idealistic and ideological survivals" (Stuchka 1923, 131). On the basis of the class theory of law, the moral basis of law was strictly reduced, and the law itself appeared to be the incarnation of class will, i.e. the "bourgeois phenomenon" (E. Pashukanis). This phenomenon could only have temporal importance in the revolutionary period and play an intermediary role in the process of the construction of a new social reality—the transition from a proletarian dictatorship to socialism or communism (Ya. Berman; Marx and Engels 1925; Pashukanis 1924; Gurvitch 1924; Stuchka 1924; Razumovskiy 1924; Adoratskiy 1923). The breaking of "ethical fetishism" is only possible if legal fetishism is overcome (Kolokolkin 1926, 240). Bolshevism rejected the "fetishism of bourgeois law" (Stuchka 1927, 3–26) denying the neutrality of the courts, legal adjudication and especially the existence of "untouchable private rights" (Pashukanis 1927, 5). As social existence predetermines legal consciousness, it is much easier for the uncultivated worker to understand a new social order properly than even the communist intellectual with a solid juridical background (Stuchka 1922, 151).

The legal realism ingredient in the Soviet theory of law as mentioned earlier concerned the reception of psychological theory as a conceptual framework for the interpretation of conflict between two types of law and the process of the transition from the old positive law to a new one based on intuitive legal aspirations. When viewed from this perspective, the evolution of Soviet legal doctrine involved three main successive ideological constructions—"revolutionary consciousness", "revolutionary legality" and the "socialist legality". They legitimized the different stages of the consolidation of the Communist regime and consequently fixed the changing balance between norms and psychological attitudes. "Revolutionary consciousness" was nothing more than the simple destruction of the historical legal order in the name of revolution. The concept of "revolutionary legality" became the instrument of the institutionalization of this vague, aggressive mood in the period of the consolidation of the dictatorship. The flexibility of the notion of "revolutionary legality" included the possibility of appeal if necessary to one part of this ambivalent formula or another, with the emphasis on rude violence or regulation by laws. This concept explained the dysfunctions in Soviet legislation—exclusions, which were made under the pretext of "extreme difficult conditions of Civil War and the struggle with counterrevolution",[9] or the enforcement of legal control in order to prevent corruption and other misdoings of administrative institutions of the new power.[10]

The intention to introduce the principle of "revolutionary legality" into the collective consciousness had nothing to do with the strengthening of the guarantees of human rights, but was proclaimed in order to create a special apparatus of power and control which was a necessary party instrument for the enforcement of "further movement ahead on the way to communism" (Brandenburgskiy 1922, 95). On the

[9] Постановление Чрезвычайного VI Всероссийского Съезда Советов «О революционной законности» (6–9 ноября 1918 г.) // Съезды Советов Союза ССР, союзных и автономных Советских Социалистических республик. Сб. документов в трех томах. М., 1959. Т. 1. С. 93.

[10] Постановление III Съезда Советов СССР по вопросам советского строительства (20 мая 1925 г.)// Съезды Советов… Т.III. С. 81.

one hand, it was declared that the "legal enlightenment of masses" is a precondition for the success of struggle with violations of valid laws and should serve for the establishment of the "revolutionary legality" (Rostovskiy 1926, 12). On the other hand, the ambiguity of this formula raised indiscreet questions: should Soviet laws be really considered "normal" laws or rather ideological declarations, perhaps the expression of the revolutionary "customary law"; should they be respected by all citizens or are some exceptions permissible for the leading revolutionary activists and so on (Lebedev 1926, 5–6). It was explained permanently that "revolutionary legality" cannot be interpreted as the pure supremacy of law because such an understanding has much in common with the formalist interpretation typical for bourgeois theories. Yet, the substance of new laws cannot be reduced to ethics or fairness principles while this notion has a very abstract character and apparently stands in sharp contrast with the Marxist concept of law (Razumovskiy 1926b, 20–22). The essence of the revolutionary legality principle was explained by V. Lenin in 1918 to his comrades in the following manner: if the violation of a decree brings success, you will not be punished; but if you violate a decree and do wrong you should be shot (Antonov-Saratovskiy 1926, 3).

The behaviorist component of legal regulation also became the subject of Soviet debates. It was initially presumed that any new law would be a spontaneous expression of a social practice: after the revolutionary break with the old system, a new one based on obedience would be formed in which unconditional stimulation (direct repression) should consequently be substituted by a new system of conditional stimulation (indirect repression) in order to create a general common rule of obedience irrelevant to one or another content of the order (Totskiy 1927, 3–8). Class justice was initially interpreted as the distribution of sanctions according to class criteria before later taking on another meaning—as the "protection of class as a whole unity" (Traynin 1926, 1–2). This modified interpretation of legality marked the legal order of the state and was adopted by the supreme organs of the proletarian dictatorship and, as such, was obligatory for citizens, organs and agents of power (Antonov-Saratovskiy 1926, 3).

7 The Ideological Turnover in Soviet Jurisprudence of 1930s: Why Was Realism Overthrown by Normative Theory?

The decisive doctrinal turn was manifested in a new concept of relationships between law and ideology which was finally established with the adoption of the 1936 Soviet Constitution. As shown earlier, in the period of the formation of the Soviet regime, law was rejected in favor of the so called "revolutionary consciousness" and later substituted by "revolutionary legality". This quasi-realist concept effectively legitimized the new class theory of law but could not overcome the immanent collision between law and the target-oriented political decision-making process.

The revision of revolutionary legal doctrines based on psychological or institutional theories of law started already at the end of 1920s. Soon "psychologist" and "dugist" (inspired by Leon Duguit ideas) theories were declared to be an "ideology of decadence" and the legal embodiment of counter-revolution, represented in the political ideas of the Russian émigré N. Ustrialov, who wrote about the inevitable Termidor-like restoration in Russia similar to the development of the French revolution after the fall of Robespierre (Razumovskiy 1927b, 51). The psychological theory of law was branded as a "reactionary, counter-revolutionary current of thought, which opens the way to the restoration of the outlived ideological principles of the liberal bourgeoisie" (Stal'gevich 1928, 41). Former Communist adopters of the theory, such as Reisner, were labeled as anti-Marxists who proposed a theoretical system of "academic formalism which leads to the pure opportunism" (Stal'gevich 1926, 129–134). Following M. Weber and H. Kelsen in their critique of natural law theory, the Soviet authors rejected morality as an eternal category and proclaimed historicism to be the key method of legal theory. The background of legal theory according to this scheme should be "class-motivated, materialistic, revolutionary-dialectic approach to questions of the theory of law" (Razumovskiy 1926a, 1927a, 109).

For Pashukanis and Berman, the conflict between dictatorship and "revolutionary legality" could only be overcome in a future communist society. For Stalinist jurisprudence, this conflict should be resolved immediately by the identification of state and law in a new type of social organization—the "socialist legal order". Dictatorship in this scheme is a fundamental precondition and unique source of legality. Thus, "socialist legality" appeared to be a definition with unstable content—its interpretation could be changed in the context of social transformation and was predetermined by those ideological frameworks in which the Communist party and state understood the construction of socialism. The official "socialist legal order" concept served two purposes of dictatorship: on the one hand, it declared the restoration of formal legality (which was the main object of criticism in the period of revolution and civil war); on the other, it nullified the role of law as a real instrument for the protection of human rights, introducing the concept of nominal law as an instrument of social regulation, repression and mass mobilization in the hands of the party leadership. This ideological innovation opened the way to Stalinist terror.

The official solution to the problem was found in the proclaimed concept of "socialist legality" which totally identified law and party policy. This new formula was introduced by the odious creator of the jurisprudence of terror—the General Procurator A. Vyshinskiy, and played important role in the long-term development of Soviet legal thought and judicial practice. According to this formula, the contraposition of the legal consciousness and positive law in the Soviet state is senseless as is the opposition of law to the political priorities of the Communist party. The triple unity of consciousness, legality and political power is monolithic in the Soviet state, this unity is guaranteed by ideology, and those who tries to destroy it should be treated as "enemies of people". "The socialist consciousness, -Vyshinskiy wrote, - is the key to understand laws, to enforce the practical use of these laws, to understand social and political situation in which crime has been committed as well

as to understand which judicial appreciation of the crime should be done" (Vyshinskiy 1937, 24). Legality and politically motivated decisions are equal notions: revolutionary impetus is the basis of all Soviet laws and the most recent ones are the only possible legal reflection of this impetus. That means, ipso facto, that the true source of socialist law in its legal and political aspects is the dictatorship. The idea of contravention of the unity of these two aspects (state and law) is ideologically unacceptable and lawyers who share this intention are traitors trying to "enfeeble the capacity of the Soviet power" (Golunskiy and Karev 1939, 58). This normative logic finally replaced elements of the realist approach: it had much in common with the ideas of H. Kelsen and especially C. Schmitt, who provided the apology for the Nazi-regime on the basis of the normative interpretation of law and saw in a dictator a super-arbiter for the solution of all collisions between positive law and the moral (or psychological) reality.

Formal normativism of the Kelsenian type finally overwhelmed the proto-realist trend in Soviet theory of law. The notion of law in this interpretation was consecutively reduced to a valid normative act. "The socialist consciousness means the right understanding of the socialist laws, i.e. those political purposes which should be fulfilled by them. The socialist consciousness of judges is a guarantee for the right interpretation of laws in accordance with their genuine sense and practical implementation in the spirit of socialism" (Golunskiy and Karev 1939, 5, 58–66). All these items were of acute importance in light of mass terror. They took a broader theoretical interpretation in the process of the elaboration of Stalin's Constitution of 1936, the establishment of a new organization of the court system and the formation of a new group of Soviet judges. The reconstruction of the judicial system under Stalinism contained the following main directions: the formal proclamation of the "socialist humanism" principle as opposed to the fascist concept of repressive jurisprudence; the reduction of this humanism via class-motivated judicial practice (in order to exclude "enemies" from legal protection); commitment to the use of pressure and torture to prove evidence in courts; the creation of a hyper-centralized system of judicial administration which excluded the independent and impartial behavior of judges from the bottom to the top of the system; the selection of judges by means of special filter programs; the new system of education and indoctrination of Soviet judges, who became a privileged group in the state and one which was consolidated by repressions and privileges.[11] This transformation included the system of purges, control, education, and career mobility patterns for lawyers at different levels of courts and the state procurator office administration which were fulfilled in the late 30's.[12] The new system of cognitive adaptation and professional training was combined with the mass-terror program which consolidated the basis for Stalinist and later Soviet jurisprudence and actually remained fundamentally

[11] Докладные записки, стенограммы, справки о работе НКЮ СССР (1938 г.)// ГА РФ. Ф.7523. Оп. 9. Д. 71. Лл. 233–234.

[12] Справка о состоянии юридического образования за подписью начальника управления учебными заведениями НКЮ СССР К.Горшенина// ГА РФ. Ф. 7523. Оп. 9. Д. 71. Лл. 20–25.

unchanged in its principle constructive elements until the collapse of Communist rule in 1991.

8 The Influence of Russian Realism on Legal Sociology in the Twentieth Century

The idea of conflict between positive and intuitive law as the driver of social changes became one of the main concepts in the philosophy of law in the twentieth century (Medushevsky 2008). The emphasis on the motives of human behavior in the psychological theory reveals the different social functions of law: they could be legal or extra-legal, and even include situations of fundamentally illegal behavior which pretend to be a legal one (Petrażycki 1904). In a long-term perspective, the influence of the psychological theory was much stronger on philosophers and sociologists of law than on lawyers. The direct influence of theory is represented by the Polish school of the sociology of law. For its representatives it was typical to consider law as a psychological phenomenon, to separate sociology of law and subjective legal constructions, to build classification of legal perceptions and elaborate the rational policy of law on this basis (Kojder 2001). The psychological theory of law deeply influenced Polish sociological and criminological thought in the second half of the twentieth century (Blyudina 2004; Timoshina 2008) but the influence of Petrażycki's theory was much broader in the world. This fact can be explained in the context of the direct reception of his ideas in Russian émigré juridical and sociological literature. Some of Petrażycki's followers (P.A. Sorokin, G.D. Gurvitch, N.S. Timasheff) came from his school, while others interpreted his ideas in the context of the "living law" theory (proposed by Ehrlich 1913), Anglo-Saxon school of legal realism or juridical anthropology (Carbonnier 1996). P.G. Vinogradoff, for example, differentiated between two types of change—spontaneous change of laws and system-changes—the transformation of norms and institutes in their doctrinal connection (Vinogradoff 1922, 1931).

Different comments about the role of psychological theory were made already by contemporaries of Petrażycki (Mikhaylov 1915). A pupil of Petrażycki's, P. Sorokin, founded his concept on the basis of the sociology of law of his teacher. His super-system of culture as a theoretical construction included five main systems: one of them (legal) contained two subsystems—the legal and the moral. In his typology of organized social groups, he divided them according to the criteria of attributive-normative regulation. But he disagreed with Petrażycki over the criteria of the genesis of legal norms, regarding sanctions as the important constructive element of the legal regulation (Sorokin 1992). Another perspective in the interpretation of Petrażycki's ideas was proposed by G.D. Gurvitch who defined law as a path for the realization of the idea of justice. In a given social context, this realization went through attributive-normative regulation which may (or may not) include sanctions. At the same time, Gurvitch agreed with Petrażycki that external pressure is not a

necessary attribute of law (Gurvitch 1942). The third representative of this group, the Russian émigré legal sociologist, N.S. Timasheff, accepted the statement that at the heart of his theory of law lay Petrażycki's idea that the functional dynamic of law and morality could be explained as a bio-mental mechanism which finds its greatest embodiment in ethics. It is only quite natural that in the American legal context, this set of ideas was considered a specific form of the realist concept or its further development.

Timasheff emphasized the parallelism of Petrażycki's ideas with such important legal philosophy movements as the Scandinavian school of legal realism (the Uppsala school) the founder of which—A. Hagerstram—outlined similar ideas about the nature of the law. These two thinkers indeed had much in common, denying the formalist school thesis on law as a system of normative ideas. The formalist approach, according their interpretation, leads to the oversimplification of the juridical phenomenon—its reduction to fixed norms and abstract value—and guided rather to study law as an empirical or factual reality. The reconstruction of the psychological substratum of legal relations provides the opportunity for them to delineate the borders between positive law and morality, rights and obligations, to predict potential conflicts in legal regulation and understand the possible methods of their solution in the courts and judicial practice (Timasheff 1938, 1961, 489–490). For both thinkers, as well as for other representatives of the Scandinavian school in the twentieth century, it was typical to reconstruct the logic of jurisprudence, including such items as the linguistic deconstruction of juridical notions; criticism of Roman law in its traditional (predominantly German) positivist interpretation; elaboration of the concept of codification as a construction of social reality, the analysis of social efficiency of law.

The substantial influence of Petrażycki's concept can be felt in the sociology of law and juridical anthropology—the study of legal (or quasi-legal) relations and norms in traditional (agrarian) society and in tribal societies which succeeded in closing themselves at a pre-state and pre-political stage of development until the twentieth century. The interest in this research strategy in contemporary literature is explained by the fact that in this societal organizations we can find only the special kind of rules which are not purely moral (because they should be strictly obeyed by all members of the social group) but at the same time cannot be labeled as legal in the contemporary sense of the word (because of the absence of such attributes of legal norms as sanctions for their violation).

The transition from positive state law to another type of quasi-moral regulation became the central item of the critical theory of law. In this context, as it was mentioned above, the influence of psychological and institutional theories on Marxist thought and anarchic ideas about the dissolution of law and the state in a future communist society could be explained. The retrospective character of the communist utopia presupposed that a future society would be able to reproduce the social situation which existed in primitive, state-free ancient societies. Thus, the debate about the nature of law and the possibility of substituting it in future with some kind of collectivist will or intuitive consciousness had practical importance for the builders of a new "socialist democracy". This experiment, as shown earlier, produced the

bulk of the theoretical constructions in the early Soviet legal thought (Reisner, Pashukanis, Stuchka) which integrated some realist ideas and intended to transform law into "revolutionary consciousness", "revolutionary legality" as a form of transition to a law-free communist society. The general inability of Soviet theories to combine legal phenomena with the reality of dictatorship on the basis of realism, resulted in the failure of this attempt and the establishment of a new form of Soviet legal normativism. Yet, this experiment, perhaps, could be explored as an original contribution to the realist and behaviorist movement in the international sociology of law of the twentieth century. The critical theory of law deeply influenced contemporary theories of ecological fundamentalism and anti-globalism.

The impulse given by realism to the philosophy of law flowed from the theories of interactionism, social change, functionalism and modernization theory with a special emphasis on the transformation process from the traditional to rationalized law. An important representative of interactionalism, the Polish sociologist F. Znanetskiy, formulated the bulk of his ideas in a similar manner to Petrażycki's—the theory of action, social role, socialization process via law. In an innovative book by Thomas and Znanetskiy's on the Polish peasant emigration to America, one of the leading issues became the transformation of traditional common law in the changing social reality (Thomas and Znanecki 1927). In anthropology, the founder of the functionalist approach B. Malinowski, formulated the idea about the existence of the law in tribal societies—not only in criminal prohibitions (taboo), but in rather developed system of common civil and family law prescriptions (Malinowski 1926). Later anthropologists following this set of ideas tried to reconstruct the codices of traditional law and debated the problem of the presumed existence of the aboriginal basic law—a sui generis prehistoric constitution which preceded the creation of the state (Pospisil 1971; Vanderlinden 1996).

The anthropological discoveries of the twentieth century permitted the formulation of the following "realist" hypotheses in the study of norms and sanctions: to show that it is not norms but behavioral mind-sets which construct the basis of the legal phenomenon; to interpret norms as a by-product of psychological or cognitive frames and patterns of behavior; to reconstruct the process of the formation of norms and sanctions in aboriginal societies; to presume the existence of various legal systems in one society; to adopt the possibility of law (norms) without sanctions as well as sanctions without norms, i.e. the formation of the legal norm as a result of the systematic implementation of sanctions to a certain type of behavioral acts; to clarify the availability of comparative and interdisciplinary studies for different historical combinations of legal, quasi-legal and political instruments of the social regulation. This approach formed the basis for the sociology of law of the twentieth century (Selznick 1968; Luhmann 1983; MacCormick and Weinberger 1986; Treves 1995) and for all debates on the nature of norm and legal system (Raz 1970; Alchourron and Bylygin 1971; Kalinowski 1979; Arnaud and Farinas Dulce 1996; Medushevsky 2015c).

9 Conclusions: The Role of the Realist Paradigm in the Construction of Social Reality

Three fundamental problems of legal philosophy formulated by the realist movement found innovative resolutions in the Russian sociology of law. The first innovation is the concept of the legal system as the discrete and dynamic unity of various legal subsystems based on the different empirical reality of psychological and behavioral patterns. This approach opened up the opportunity to overcome the traditional formalist concept of law as a unified, stable and immovable normative system, to recognize a plurality of legal regulators in one established legal system—formal (formalized in valid norms) or informal (unformulated legal attitudes) patterns, their functional role in the process of a legal transformation (legal, extra-legal and illegal practices), to interpret the legal norm as an expression of collective (or individual) consciousness, values and mind-sets of social behavior. The psychological theory of law elaborated in Russian pre-revolutionary legal sociology put forward the explanation of the social context of legal development as a complex and multi-faceted transformation from traditional to rationalized forms of legal regulation. This concept, as represented in the books of Korkunov, Petrażycki, Gurvich, Sorokin, Timashev, could be regarded as a genuine part of the international realism movement which formed the original research program for cross-cultural legal comparisons, the reconstruction of the structure and function of norms, institutions and behavioral practices in legal development.

The second innovation—the reliable concept of the crisis in law of the twentieth century as a conflict between formal positive law and legal consciousness—a spontaneous psychological reaction to the radical social transformation represented in new intuitive beliefs and myths of social justice. The problem of legal dynamics as a combination of spontaneous and rational target-oriented innovations moved to the heart of psychological theory and had many sociological implications: the structure and hierarchy of norms in a given society, the conflict between the tradition and legal transplants, the flexible relations of formal and informal practices. The main specific characteristics of the Russian approach—the strict separation of legal and axiological dimensions of social development (the revival of natural law theory as a new ethics); the deep interest in the different forms of law (the problem of the so-called "legal dualism" as a conflict between state law and the customary law of the peasant community); the concentration on those aspects of legal order which were interpreted as unjustifiable (social, national, gender inequality); the general pragmatic character of recommendations (program of legal reforms and proposals for their political, administrative and judicial implementation). This constructivist impetus of realism is characteristic as well for critical theory in early Soviet jurisprudence.

The third innovation is the original concept of law "without sanctions". The standard formalist approach insisted on the direct connection between law and state sovereignty: law is only possible if the state has a monopoly on the legitimate use of force (sanctions) for the protection of the integrity of established rules. But for the

realist approach, rules themselves are the embodiment of behavioral practices and should not necessarily be protected by formal sanctions. Rather, the protection of legal integrity could be realized without formally established sanctions and the use of physical violence—by the structured system of ethical norms or flexible quasi-moral instruments i.e. by the very specific kind of psychological regulation including magic rituals, the expulsion of the individual from the community, religious or ideological forms of pressure—from a collective laughing stock to the hard moral ostracism of individual behavior. To put it another way, the phenomenon of "law without sanctions" means a special kind of law in which the sanction does not have the form of physical violence (or the potential danger of its use by the state), but the form of moral pressure on the individual by society or social group. Thus, the phenomenon of the law is not a stable one: rules which were treated as law in one period of history could be treated as deviations or criminal in another and vice versa. The realist approach played a stimulating role in studies on legal deviations—the dysfunctions of legal norms in the changing social situation (the exaggerated role of social pathologies and their evaluation in judicial practices).

The notion of law in this interpretation appears to be very broad, covering all forms of social control and the protection of order—from standard norms to the cognitive mechanisms of quasi-moral regulation of behavior patterns. Hence it has much in common with the current European concept of the so-called soft law regulation. Soft law is not law in a strict sense, but a set of official or semi-official recommendations of good practices. Such recommendations formally have no binding force or obligatory character for social actors. But if adopted and practically implemented in similar situations, they could become "normal" law to be anchored in rules, norms, institutes and sanctions enforced by courts. In this manner, the intuitive provisions of potential legal forms could transform the validity of established rules and predispose society towards the prospective construction of reality.

References

Adoratskiy VO (1923) O gosudarstve. Moscow
Alchourron C, Bylygin E (1971) Normative systems. Springer, Wien-New York
Antonov-Saratovskiy V (1926) O revolyutsionnoy zakonnosti. Revolyutsionnaya zakonnost', № 1–2, p 3
Arnaud A-J, Farinas Dulce MJ (1996) Systemas juridicos: elementos para un analisis sociologico. Universidad Carlos III de Madrid, Boletin Oficial de Estado, Madrid
Askenazi S (1920) Ocherk sozdaniya zakonodatel'stva sovetskoy respubliki. Prague
Blyudina UA (2004) L.I. Petrazhitskiy i pol'skaya shkola sotsiologii prava. Sotsiologicheskiye issledovaniya, № 9
Bobbio N (1977) Giusnaturalismo e positivismo giuridico. Edizioni di Comunità, Milano
Brandenburgskiy YA. Sovetskaya yustitsiya posle III-yey sessii VTSIK (1922). Kommunisticheskaya revolyutsiya, № 8 (32), p 95
Carbonnier J (1996) Sociologie juridique. Dalloz, Paris
Cardozo B (1991) The nature of the judicial process. New Haven and London
Del Veccio G (1964) L'Etat et le Droit. Paris

Ehrlich E (1913) Grundlegung der Soziologie des Rechts. Duncker und Humblot, München/Leipzig
Ehrlich E (1936) Fundamental principles of the sociology of law. Harvard University Press, Cambridge
Engels F, Kautskiy K (1923) Yuridicheskiy sotsializm. Pod znamenem marksizma, № 1, p 70
Friedrich M (1997) Geschichte der deutschen Staatsrechtswissenschaft. Duncker und Humblot, Berlin
Gessen VM (1902) Vozrozhdeniye yestestvennogo prava. St. Petersburg
Gessen VM (1917) Osnovy konstitutsionnogo prava. Pravo, Prague
Gessen SI (1999) Izbrannyye sochineniya. ROSSPEN, Moscow
Gessen VM (2010) Osnovy konstitutsionnogo prava. ROSSPEN, Moscow
Golunskiy SA, Karev DS (1939) Uchebnik po sudoustroystvu. Yurizdat NKYU Soyuza SSR, Moscow, p 58
Goykhbarg AG (1919) Sotsial'noye zakonodatel'stvo sovetskoy respubliki. Prague
Green MS (2005) Legal realism as theory of law. William Mary Law Rev 46(6):1915–2000
Gurvitch GS (1924) Nravstvennost' i pravo. Moscow
Gurvitch GD (1942) Sociology of law. Philosophical Library, New York
Hauriou M (1929) Precis de Droit Constitutionnel. Sirey, Paris
Holmes OW (1987) The path of the law. Harv Law Rev 10
Holmes OW (1991) The common law. Dover Publications, New York
Jellinek G (1892/1905) System der subjektiven öffentlichen Rechte, 2., durchges. und vermehrte Aufl. Mohr Siebeck GmbH & Co. KG, Tübingen
Kalinowski G (1979) La logique des norms. PUF, Paris
Kelsen H (1934) Reine Rechtslehre. Einleitung in die Rechtswissenschaftliche Problematik. Leipzig; Wien
Kelsen H (1979) Allgemeine Theorie der Normen. Manz, Vienna
Khvostov VM (1908) Ucheniye professora Petrazhitskogo o prave i nravstvennosti. In: Khvostov VM (ed) Etyudy po sovremennoy etike. Sytin, Moscow, pp 193–198
Khvostov VM (1911) Nravstvennaya lichnost' i obshchestvo. Ocherki po etike i sotsiologii. N. N. Klochkova, Moscow, pp 160–168
Kistyakovskiy BA (1916) Sotsial'nyye nauki i pravo. Ocherki po metodologii sotsial'nykh nauk i obshchey teorii prava. Sabashnikovykh, Moscow
Kistyakovskiy BA (2010) Izbrannoye. T.1-2. ROSSPEN, Moscow
Kojder A (2001) Godność i siła prawa. Oficyna Naukowa, Warszawa
Kokoshkin FF (1912) Lektsii po obshchemu gosudarstvennomu pravu. Moscow, p 63
Kokoshkin FF (2010) Izbrannoye. ROSSPEN, Moscow
Kolokolkin V (1926) Rets.na kn.: Pashukanis Ye. Obshchaya teoriya prava i marksizm. № 9–10. PZM, Moscow, p 240
Korkunov NM (1880) Lektsii po entsiklopedii prava. St. Petersburg, pp 11–14
Korkunov NM (1888) Otvet prof. Rennenkampfu. Zhurnal ministerstva narodnogo prosveshcheniya
Korkunov NM (1892) Obshchestvennoye znacheniye prava. Lektsii v imp. Aleksandrovskom litseye. Tipogr. R. Golike, St. Petersburg, p 19
Korkunov NM (1894) Lektsii po obshchey teorii prava. N. K. Martynova, St. Petersburg, p 54
Korkunov NM (1898) O nauchnom izuchenii prava. Sbornik statey N. M. Korkunova, 1877–1897. N. K. Martynova, St. Petersburg, p 31
Korkunov NM (2010) Lektsii po obshchey teorii prava. ROSSPEN, Moscow
Kotlyarevskiy SA (1915) Vlast' i pravo. Problema pravovogo gosudarstva. Moscow
Lebedev P (1926) Revolyutsionnaya zakonnost'. Revolyutsionnaya zakonnost', № 1–2, pp 5–6
Leiter B (2010) Legal formalism and legal realism: what is the issue? University of Chicago Public Law & Legal Theory Working Paper, No. 320
Lieber HJ (ed) (1991) Politische Theorien von der Antike bis zur Gegenwart. Olzog, München
Llewellyn KN (1962) Jurisprudence realism in theory and practice. The University of Chicago Press, Chicago

Luhmann N (1983) Rechtssoziologie, vol 1–2. Westdeutscher Verlag, Opladen
MacCormick N, Weinberger O (1986) An institutional theory of law. New approach to legal positivism. D. Reidel, Dordrecht
Malinowski B (1926) Crime and custom in savage society. Kegan Paul, London
Marx K, Engels F (1925) O prave. Moscow
Medushevsky AN (2006) Russian constitutionalism. Historical and contemporary development. Routledge, New York, London
Medushevsky AN (2008) Krizis prava kak problema teoreticheskoy yurisprudentsii. Pravo i obshchestvo v epokhu peremen. IGP RAN, Moscow
Medushevsky AN (2010) Dialog so vremenem: rossiyskiye konstitutsionalisty kontsa XIX-nachala XX vv. Novyy khronograf, Moscow
Medushevsky AN (2015a) Istoriya russkoy sotsiologii. 2-ye izd. Direct-Media, Moscow-Berlin
Medushevsky AN (2015b) Politicheskiye sochineniya. Universititskaya kniga, Moscow-St. Petersburg
Medushevsky AN (2015c) Sotsiologiya prava. 2-ye izd. Direct-Media, Moscow-Berlin
Mikhaylov P (1915) Problema prava (S tochki zreniya psikhologicheskoy teorii prava). Novyye idei v pravovedenii. St. Petersburg Prague, № 4
Mikhaylovskiy IV (1914) Ocherki filosofii prava. V.M. Posokhina, Tomsk
Muromtsev SA (1879) Opredeleniye i osnovnoye razdeleniye prava. Tip. A.I. Mamontova i Ko, Moscow
Muromtsev SA (2004) Izbrannyye trudy po rimskomu i grazhdanskomu pravu. AO «Центр Юр ИнфоР», Moscow
Muromtsev SA (2010) Izbrannyye trudy. ROSSPEN, Moscow
Novgorodtsev PI (ed) (1902) Problemy idealizma: Sb. st. M. : Izd. Mosk. psikhol. o-va
Novgorodtsev PI (1918) Ob obshchestvennom ideale. Prague
Ostrogorskiy MYa (1902) Democracy and the organization of political parties, vol 1–2. London, New York
Ostrogorskiy MYa (2010) Demokratiya i politicheskiye partii. ROSSPEN, Moscow
Pashukanis Ye (1924) Obshchaya teoriya prava i marksizm (opyt kritiki osnovnykh yuridicheskikh ponyatiy). Moscow
Pashukanis Ye (1927) Marksistskaya teoriya prava i stroitel'stvo sotsializma. Revolyutsiya prava, № 3, p 5
Petrażycki L (1900) Ocherki filosofii prava. Izd-vo Universiteta, St. Petersburg
Petrażycki L (1902) Bona Fides v grazhdanskom prave. Prava dobrosovestnogo vladel'tsa na dokhody s tochek zreniya dogmy i politiki grazhdanskogo prava. Izd-vo Universiteta, St. Petersburg
Petrażycki L (1904) O motivakh chelovecheskikh postupkov, v osobennosti ob eticheskikh motivakh i ikh raznovidnostyakh. St. Petersburg
Petrażycki L (1905) Vvedeniye v izucheniye prava i nravstvennosti. Emotsional'naya psikhologiya. Izd-vo Universiteta, St. Petersburg
Petrażycki L (1907a) O pol'ze politicheskikh prav zhenshchin. Rech' deputata Pervoy Gosudarstvennoy Dumy ot Partii narodnoy svobody. Po stenograficheskomu otchetu (According to the verbatim report). St. Petersburg
Petrażycki L (1907b) Teoriya prava i gosudarstva v svyazi s teoriyey nravstvennosti.
Petrażycki L (1910) «Novoye ucheniye o prave i nravstvennosti» i kritika prof. V. I. Sergeyevicha. St. Petersburg
Petrażycki L (1911) Aktsii, birzhevaya igra i teoriya ekonomicheskikh krizisov. M. Merkusheva, St. Petersburg
Petrażycki L (1913) O ritual'nykh ubiystvakh i dele Beylisa. Obshchestvennaya pol'za, St. Petersburg
Petrażycki L (1985) O nauce, prawie i moralności. Pisma wybrane. The choice made by J. Licki & A. Kojder. Państwowe Wydawnictwo Naukowe, Warsaw
Petrażycki L (2008a) Krizis kul'tury. Pravo i obshchestvo v epokhu peremen. Moscow, pp 259–263

Petrażycki L (2008b) Sotsial'naya revolyutsiya. Pravo i obshchestvo v epokhu peremen. IGP RAN, Moscow
Petrażycki L (2010) Teoriya prava i gosudarstva v svyazi s teoriyey nravstvennosti. ROSSPEN, Moscow
Pospisil L (1971) Anthropology of law. A comparative theory. Harper & Row, New York-London
Pound R (1931) The call for a realist jurisprudence. Harv Law Rev 44(5)
Raz J (1970) The concept of a legal system. Clarendon Press, Oxford
Razumovskiy I (1924) Sotsiologiya i pravo. Moscow
Razumovskiy I (1926a) Filosofiya i yuridicheskaya teoriya. Pod znamenem marksizma, № 12
Razumovskiy I (1926b) Filosofskaya reviziya i voprosy prava. Pod znamenem marksizma, № 7–8, pp 20–22
Razumovskiy I (1927a) Oktyabr'skaya revolyutsiya i metodologiya prava. PZM, № 10–11, p 109
Razumovskiy I (1927b) Ustryalovshchina v prave. Revolyutsiya prava. Zhurnal sektsii teorii prava i gosudarstva Kom.Akademii, № 1, p 51
Reisner M (1908) Teoria L. I. Petrazhitskogo, marksizm i sotsial'naia ideologia. St. Petersburg, pp 96–97
Reisner M (1917) Pravo i revolyutsiya. Prague
Reisner M (1920) Osnovy Sovetskoy Konstitutsii. Lektsii, chitannyye na uskorennom kurse Akademii General'nogo Shtaba RKKA v 1918/19 uchebnom godu. Izd. Akademii Genshtaba RKKA, Moscow
Reisner M (1925) Pravo. Nashe pravo. Chuzhoe pravo. Obschee parvo. Gosizdat, Moscow
Rennenkampf NK (1888) Razbor kursa po obshchey teorii prava privat-dotsenta S.-Peterburgskogo universiteta N. Korkunova. St. Petersburg, 1887. Univ. Tipogr, Kiyev
Ross A (1946) Towards a realistic jurisprudence: a criticism of dualism in law. E. Munksgaard, Copenhague
Rostovskiy I (1926) Revolyutsionnaya zakonnost' i propaganda prava. Kommunisticheskaya revolyutsiya, № 15–16, p 12
Schmitt C (2004) Politische Theologie. Duncker und Humblot, Berlin
Selznick P (1968) The sociology of law. In: Sills DL (ed) International encyclopedia of the social sciences, vol 9. Macmillan Co. and Free Press, New York
Sergeevich VI (1894) Novyye ucheniya v oblasti gosudarstvennogo prava. Zhurnal Ministerstva Yustitsii
Sorokin PA (1992) Chelovek, tsivilizatsiya, obshchestvo. Politizdat, Moscow
Sorokin PA (2005) Sotsiologiya revolyutsii. Moscow, p 411
Stal'gevich AK Rets. na kn.: Reysner M. -«Pravo (Nashe pravo. Chuzhoye pravo. Obshcheye pravo)». (M., 1925). Bol'shevik, 1926, № 21–22. S. 129–134
Stal'gevich AK (1928) Puti razvitiya sovetskoy pravovoy mysli. Revolyutsiya prava, № 4, p 41
Stammler R (1911) Theorie der Rechtswissenschaft. Halle-Saale
Stammler R (1914) Wirtschaft und Recht nach der materialistischen Geschichtsauffassung. Eine sozialphilosophische Untersuchung, 3. Aufl. Verlag von Veit & Comp, Leipzig
Stolleis M (1992) Geschichte des öffentlichen Rechts in Detschland, Bd.2. C. H. Beck, München
Stuchka P (1922) Marksistskoye ponimaniye prava (Zametka ne tol'ko dlya yuristov). Kommunisticheskaya revolyutsiya, № 13–14 (37–38), p 151
Stuchka P (1923) Materialisticheskoye ili idealisticheskoye ponimaniye prava?. Pod znamenem marksizma, № 1, p 131
Stuchka P (1924) Revolyutsionnaya rol' prava i gosudarstva. Moscow
Stuchka P (1927) Gosudarstvo i pravo v period sotsialisticheskogo stroitel'stva. Revolyutsiya prava, № 2, pp 3–26
Stuchka P (1928) Kul'tura i parvo. Revolyutsiya prava, № 2, p 20
Thomas WI, Znanecki F (1927) The Polish Peasant in Europe and America, vol 1–2. Alfred A. Knopf, New York
Timasheff NS (1938) The sociological place of law. Am J Sociol 44(2)

Timasheff NS (1961) Razvitiye sotsiologii prava i yeye sfera. In: Bekker GB, Boskov A (eds) Sovremennaya sotsiologicheskaya teoriya. Inostrannaya literature, Moscow, pp 479–508
Timoshina EV (2008) Pravo i obshchestvo v epokhu kul'turnykh krizisov: predisloviye k publikatsii perevoda s pol'skogo rabot L. I. Petrazhitskogo. Pravo i obshchestvo v epokhu peremen. Mosow
Totskiy NM (1927) Mekhanizm deystviya normy. Pravo i zhizn', Kn. 2, pp 3–8
Traynin AK (1926) K voprosu o klassovom pravosudii. Revolyutsionnaya zakonnost', № 7–8, pp 1–2
Treves R (1995) Sociologie du droit. P.U.F., Paris
Trubetskoy YN (2001) Filosofiya prava professora L. I. Petrazhitskogo. In: Trubetskoy YN (ed) Trudy po filosofii prava. RKHGI, St. Petersburg, pp 497–498
Vanderlinden J (1996) Anthropologie juridique. Dalloz, Paris
Vinogradoff P (1922) Outlines of historical jurisprudence, vol 2. Oxford Univ. Press, Oxford, p 10
Vinogradoff P (1931) Common sense in law. Butterworth, London
Vyshinskiy AYa (1937) K polozheniyu na fronte pravovoy teorii. Moscow, p 24
Walicki A (1987) Legal philosophies of Russian Liberalism. Clarendon Press, Oxford
Weber M (1960) In: Winckelmann J (ed) Rechtssoziologie. Luchterhand, Neuwied