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**THE CONCEPT OF LAW:
A BRIEF INTRODUCTION TO
JURAL ASPECTS OF
CLASSICAL EURASIANISM**

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**THE CONCEPT OF LAW:
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CLASSICAL EURASIANISM³**

Jurists and historians have rarely highlighted jural aspects of classical Russian Eurasianism. There have been several attempts to describe Eurasianist jural philosophy as a coherent system, but they were not fully relevant to the source material.

The paper focuses on problems in the background of the creation of holistic Eurasianist jurisprudence during 1920s and 1930s. It emphasizes that the complexity of this process depended on different institutional and especially conceptual terms. The Eurasianists displayed several different approaches to Law whose distinctions were based on metajuridical grounds – phenomenological ideas in the work of Nickolai Alekseev, who argued for legal individualism; the “Alleinheit” theory found in the writings of Lev Karsavin; and a positivist theory in paper by Nickolai Dunaev. Based on published works of Eurasianists and unpublished archival materials, this research concludes that these juridical views were contradictory. These contradictions meant it was impossible to create a coherent Eurasianist jural theory using the terms derived from the authors mentioned, despite the fact that Eurasianist views have some specific characteristics.

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Introduction

Classical Eurasianism was an intellectual movement initiated by Russian émigrés in the 1920s. Philologist Nickolai Trubetzkoy (1890-1938), geo-economist Piotr Savitzky (1895-1968), historian Georgii Florovsky (1893-1979), musicologist Piotr Suvchinsky (1892-1985) and theologian Andrey Liven (1884–1949) were the founding fathers of Eurasianism. They insisted that Russia was neither Europe, nor Asia, but a unique entity with its own boundaries and specific historical path.⁵

Why should we investigate the Eurasianist views in the context of contemporary Russian jurisprudence? Before answering this question, we should define two basic terms in order to distinguish between them: “Jural” – “pravovoi” (from the latin word “Jus” – “Law”); “Legal” – “zakonnyi” (from the latin word “Lex” – “Law” in the sense of “statute”). This distinction between the two English terms was particularly emphasized by Italian scholars.⁶

Nowadays, Dogmatic Jurisprudence (so-called Legal Positivism or even Legal Normativism) is the main jural school in Russian jurisprudence. However, this school of thought does not address fundamental questions about the nature of the Law. This type of étatic jurisprudence on display in Russia currently employs tautological definitions. Legal positivists reduce Law to Positive Law, Law in the acts of a parliament, Law as Laws. However, what is the Law as an act? The Russian version of Dogmatic Jurisprudence holds that Law (Lex) is a normative jural act enacted by representative authority in a specific way in order to regulate the most important social relationships: Law has the supreme jural force. In this definition, we should emphasize “jural” concepts, such as “jural act” and “jural” force. But “jural” phenomena refer to the Law in the sense of Statute. There is a tautological circle: “Law” is defined by “Laws”, and “Laws” are defined by “Law”.

Jural aspects of Classical Eurasianism

The Eurasianists provided their own way for justifying Law – especially the Russian geo-economist Piotr Savitzky. They grounded Law in the essence of religious and social-natural space (e.g., the space of Eurasia), justified Law spiritually and geopolitically. The Law as jural system reveals the principles of the higher system. They use the terms “Subordinate Law” and “Subordinate Economy” to highlight the dependency of the social systems on Orthodox

⁵ Piotr Savitzky was the first to describe Russia as unique “Eurasia”. This description appeared in the review of Nicholai Trubetzkoy’s writing “Europe and Mankind” (1920). Savitzky P.N. Evropa I Evrazia. (po povodu brosh’ury N.S. Trubetzkogo “Evropa i chelovechestvo”) // Russkaja mysl'. 1921. № 1-2. S. 119-138.

⁶ A Treatise of Legal Philosophy and General Jurisprudence. Volume 12: Legal Philosophy in the Twentieth Century: The Civil Law World. Pattaro, Enrico, Roversi, Corrado (Eds.). Dordrecht, 2016. P. 462.

Christianity⁷ and “place of development” (“mestorazvitie”) as a specific natural-social space corresponding to a particular geographical region.

According to Eurasianist views, Law is not ruled by itself (as in the “rule of law” doctrine) i.e. by Laws and rules, but by the Idea, or Eidos, i.e. the Idea of Eurasia. The Eurasianists insisted that “Ideocracy” is an ideal type of ruling in Eurasia.⁸ The term “Logocracy” was also suggested by Hanna Arendt towards the tradition of the Russian Eurasianist School, which had been previously identified by the German-American political scholar Waldemar Gurian.⁹

The jural system is included in the Eurasianist Macroscience project which covers such areas as Eurasianist history (Nickolai Trubetzkoy’s and Georgii Vernadsky’s (1887-1973) vision¹⁰), Eurasianist economics (Piotr Savitzky), Eurasianist philology (Trubetzkoy and Roman Jakobson), etc. This Macroscience project resembled the “*Naturphilosophie*” project¹¹. Although this ambitious project did not attain its general goals, it did succeed in formulating juridical views with some unique characteristics.

1. The Geopolitical roots of the Eurasianist jural doctrine. Eurasianism shares similarities with other theories: Carl Schmitt consequently wrote in “*Der Nomos der Erde*” (1950) that Law (Lex) is strictly determined by a concrete space e.g., a certain extent of Space of Land or Sea. He called Law (as a Statute) the *radical title*, title of *radius* (root)¹². Eurasianists did not argue for geographical determinism, but they explained the dependency of Law on the particular space of development (“mestorazvitie”) which included social, as well as natural, space¹³.

2. The Orthodox Christian roots of the Eurasianist Jurisprudence. According to the Eurasianists, Law and State have no foundations in their own existence, only in the higher spheres. In contrast to Hegel and the Roman jurists, the Eurasianists did not call the state *divine*, and rejected any sort of *étatistic* cult: in their view the Law and State are not unique, but exist only in relation to religion.¹⁴ The Eurasianists followed the Russian theological tradition and adopted St. Hilarion’s distinction between the Law and divine Grace, and Khomyakov’s line of critics of Europe for the legalization of ethical life. They insisted on the limitation of the status of State and Law by Orthodox spirituality. Therefore the Eurasianists neglected Legal Positivism and Kelsen’s “Pure Theory of Law”.

⁷ Alekseev N.N. K ucheniju ob ob’ektivnom prave // Tridcatye gody. Utverzhdienie evrazijscev. Kniga VII. Parizh, 1931. S. 251.

⁸ Trubetzkoy N.S. O gosudarstvennom stroe i forme pravlenija // Evrazijskaja hronika. Parizh, 1927. Vyp. VIII. S. 3-9.

⁹ Gurian W. Totalitarianism as Political Religion // Totalitarianism. New York, 1964. P. 123, 133-134.

¹⁰ See: Trubetzkoy, N.S. The Legacy of Genghis Khan and Other Essays on Russian Identity. Ann Arbor, 1991; Vernadskij G.V. Nachertanie russkoj istorii. Praga, 1927.

¹¹ Schelling F. W. J. Sochinenija v 2 t. T. 1. Moscow, 1987. S. 188-189.

¹² Schmitt C. Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum. Zweite Auflage. Berlin, 1974. S. 17.

¹³ Savitzky P.N. Geograficheskij obzor Rossii-Evrazii. // Savitzky P.N. Rossija – osobyj geograficheskij mir. Praga, 1927. S. 28-29

¹⁴ Berdjaev N.A. Utopicheskij etatizm evrazijscev // Rossija mezhdru Aziej i Evropoj: Evrazijskij soblazn. Moscow, 1993. S. 302-303. Karsavin L.P. Cerkov', lichnost' i gosudarstvo // Chelovek. 2005. № 2. S. 79.

3. The Rejection of the idea of the Individualistic Jural system and Individualistic rights: Khomyakov's idea of "Sobornost" ("Spiritual community of many jointly living people") influenced Eurasianist views, especially, those of Lev Karsavin.¹⁵ Eurasianists turned to collectivist Law and sought to refute mechanistic and individualistic thought in jurisprudence and in other social sciences: these scholars tried to operate with ultra-individualistic subjects of the law, such as a "real collective person" (Karsavin), or a "constructed collective person" (Alekseev).

But in this framework there could be different jural programs, which occurred in the Eurasianist Movement. A number of authors have emphasized the unity of Eurasianist jural views and avoided the problem of the plurality of those views.¹⁶ This plurality was based on different metajural premises, including phenomenological thought in the works of Alekseev, who argued for limited jural individualism, the "*Alleinheit*" theory in the writings of Lev Karsavin, and an approach by Nikolai Dunayev informed largely by positivism. We argue that members of the Eurasianist movement held jural views which were fundamentally contradictory.

There were several jural approaches in Eurasianism:

-*natural law views (Georgii Florovsky, Mstislav Shakhmatov and Vladimir Ilyin)*

-*the phenomenological approach (Nikolai Alekseev),*

-*legal positivist views (Nikolai Dunayev),*

-*the "Alleinheit" theory (Lev Karsavin).*

These views were all formulated during the 1920s. Historian and theologian Georgii Florovsky was the first to establish the problem of Law in the Eurasianist context in his paper "The Cunning of Ratio" ["Hitrost' Razyma"], published in the First Eurasianist Edition "Exodus to the East" ["Iskhod k Vostoku"] in 1921. Florovsky opposed the Idea of Ratio (Reason) with Faith (Intuition, etc.). The Law referred to the realm of Ratio and was disqualified for its European, in particular Judaic and Catholic, background. The only merit of European jural thought admitted by Florovsky was the existence of the German historical school of Jurisprudence with its "modest intuitionism".¹⁷

The mood of Eurasianism was inspired by the post-war atmosphere of crisis in European culture. This mood affected the Eurasianist approach to "Law" which was portrayed as a peculiarly European concept and phenomenon. European Law had been traditionally criticized by Russian

¹⁵ "Sobornyi" as a translation of the word "Catholic", which means, in A.S. Chomyakov's vision, "unity in plurality". See: Homjakov A.S. Pis'mo k redaktoru «L'Union Chretiënne» // Homjakov A.S. O cerkvi. Berlin, 1926. S. 59.

¹⁶ There were several attempts to describe Eurasianist jural philosophy as a coherent system. See: Böss, O. Die Lehre der Eurasier. Ein Beitrag zur russischen Ideengeschichte des 20. Jahrhunderts. Wiesbaden, 1961. S. 85-94; Isaev I.A. Politiko-pravovaja utopija v Rossii: Konec XIX - nach. XX v. Moscow, 1991. S. 203-233; Akhmatov A.V. Filosofija prava evrazijskva. Istoriko-filosofskij analiz. Diss. ... k. filos. n. Moscow, 2009.

¹⁷ Florovsky G.V. Hitrost' razuma // Ishod k Vostoku. Moscow, 2008. S. 80.

religious scholars for its formalism. The *Sermon on Law and Grace*,¹⁸ written by the Kievan Metropolitan Hilarion in the 11th century, explicitly influenced this line of thought. In his text, Hilarion distinguishes between law and grace, the Old Testament and the New, the Commandments of Moses and Jesus, and makes heavy use of the St. Paul's Epistle to the Romans. Florovsky followed this line of argument.

More dedicated attempts at jural analysis in the Eurasianist tradition started after 1923. This was a result of the politicization of the Eurasianist movement, inspired by its leaders Piotr Savitsky and Piotr Suvchinsky, a course that Florovsky opposed in favor of depoliticization. Politicization of the Eurasianism was also the result of external factors, such as the activity of Soviet secret services (the so-called "Trest" operation).¹⁹ Furthermore, the expatriot and stateless status of the Eurasianists influenced the utopian mood of Savitzky's article "Allegiance of Idea" ("Poddanstvo Idei"), where political problems particular to the Eurasianists' actual situation, such as the problem of citizenship, were emphasized.²⁰

The first article dedicated to the problem of Law was "The Glory of Power" ("Podvig Vlasti") by jurist Mstislav Shakhmatov (1888-1943). Shakhmatov endeavored to describe in plain language Russian political and jural ideals, and the objectives of the ideal Orthodox prince in Russian history. In this discourse, Law ("Pravo") was derived from religious Truth ("Pravda"): Law as form should be determined by Law as content. The goal of a prince was to realize Truth in his deeds and guard the Law.²¹ Leo Strauss called the tradition, focused on the ideal goals of ruling rather than on the actual structure of government, "classical natural law."²²

The second attempt was examined by two authors. The fourth Eurasianist Edition ("Evrazijskij vremennik", Kn. IV), published in 1925, contained two articles dedicated to the concept of Law. The first was "The State of Truth" ("Gosudarstvo Pravdy") by Mstislav Shakhmatov and the second was "Towards a Relationship between Law and Morality" ("K vzaimootnosheniju prava i npravstvennosti") by philosopher Vladimir Ilyin (1891-1974). Both authors' arguments were based on Christianity and connected with the religious concept of natural law ("Pravda").²³

While Florovsky disagreed with the rationality represented in modern concepts of natural law, Vladimir Ilyin stated that "the Eurasianists were not enemies of the doctrine of natural law, but they tried to base it [natural law] on the religious, concrete-ametaphysical grounds of Orthodox

¹⁸ "Slovo o Zakone i Blagodati" Ilariona, mitropolita Kievskogo // Bogoslovskie trudy. M., 1987. Vyp. 28. S. 306-338.

¹⁹ See: Fleishman L. V tiskah provokacii. Operacija "Trest" i russkaja zarubezhnaja pechat'. Moscow, 2003.

²⁰ Savitzky P.N. Poddanstvo idei // Savickij P.N. Izbrannoe. Moscow, 2010 S. 186.

²¹ Shakhmatov M.V. Podvig vlasti // Evrazijskij vremennik. 1923. Kn. 3. S. 78-79.

²² Shtraus L. Estestvennoe pravo i istoriia. Moscow, 2007. S. 186.

²³ Ilyin V.N. K vzaimootnosheniju prava i npravstvennosti // Evrazijskij vremennik. Berlin, 1925. Kn. 4. S. 305.

anthropology and opposed the “enlightening” form...of natural law.”²⁴ Shakhmatov insisted that ideas of Natural Law had appeared even in Ancient Russia (“Drevniaya Rus”): “We could identify some elements of a scheme of natural law in the *Tale of Bygone Years* [Povest’ Vremennykh Let].”²⁵

The jural views of Florovsky, Shakhmatov and Vladimir Ilyin could be also characterized as typical examples of Russian jural philosophy described by Russian scholar Pavel Novgorotsev, e.g., the idea of mostly internal evolution of the human being; the priority of internal Christian Law over external positive rule; the relation of Law and State to Christianity and Christian morality.²⁶ These ideas did in fact take on principal importance in Eurasianist jural views.

Some legal scholars at the time, such as Georgii Gurvitch, criticized the Eurasianist approach to Law for being too abstract. They insisted that any theory of Law should provide a practical jural model that could be realized. Responding to this challenge, the leaders of the Eurasianist Movement tried to find Russian jurists who would formulate the concrete foundations of a Eurasianist jurisprudence. Prominent Russian scholar Nikolai Alekseev (1879-1964), whose ideas were based on the phenomenological approach, joined the Movement in 1926.²⁷ Alekseev was a Neo-Kantian at the beginning of 20th century but by the 1910s had drifted towards Husserl’s and Scheler’s views. His ideas by the 1920s had begun to resemble those of the phenomenological thinker and jurist Adolf Reinach. Like Reinach, Alekseev tried to establish the core of the Law and the Jural System. He tried to describe this essence in the concept of “jural structure”. This structure, according to Alekseev, consists of:

- 1) a jural actor (“pravovoi sub’ekt”; “nositel’ soznaniya”);
- 2) values (“tsennosti”);
- 3) basic jural connections (“osnovnye pravovye opredeleniya”) between the actor and values, i.e., jural rights and duties.²⁸

Alekseev argued that the jural actor, as an individual conscience, is oriented towards values, and the actor’s value-oriented activity constitutes Morality and Law. Connections between the jural actor and values are expressed in jural rights and obligations: when somebody is entitled, they have a right to do something, because they have value in themselves; when somebody is obliged to do something, they incur this obligation because of the value in other people. Thus, for Alekseev, Law is intellectual activity of the jural actor according to values. The results of this activity manifest themselves in jural rights and duties.

²⁴ Ilyin V.N. Magnickij M. L. (Iz istorii evrazijskih idej) // Evrazijskaja hronika. Vyp. X. Parizh, 1928. S. 86.

²⁵ Gosudarstvennyj arhiv Rossijskoj Federacii. F.5765. Op. 2. D. 264. L. 194.

²⁶ Nowgorotzeff P. Über die eigentümlichen Elemente der russischen Rechtsphilosophie // Philosophie und Recht. 1922/1923. Heft 2. S. 53-54.

²⁷ Gosudarstvennyj arhiv Rossijskoj Federacii. F. 5783. Op. 1. D. 359. L. 172.

²⁸ Alekseev N.N. Osnovy filosofii prava. Saint-Petersburg, 1998. S. 73.

In contrast to Ilyin's approach, Alekseev's views are not formulated in the tradition of natural law, because according to Alekseev we do not definitely understand which norms constitute the substance of Law. Despite Ilyin and Shakhmatov's opinion to the contrary, Alekseev rejected the idea of the reduction of Law to religious "Pravda" and the close connection between Law and Morality.²⁹

There is also one historical point to consider. Alekseev's phenomenological views, which were expressed in "The Foundations of Jural Philosophy" (1924), were formulated before his turn to Eurasianism. After joining the Eurasianist movement he further developed his phenomenological ideas in "Property and Socialism" (1928). Unlike other Eurasianists, Alekseev rejected the idea of a real "symphonic" (collective) personality. He therefore dismissed the idea of Eurasia as a collective jural subject. However, Alekseev's ideas were not sufficiently individualistic: in his view, the jural actor is not the main jural value, but rather contains values. At the same time, the jural actor should be only an individual actor, not a collective entity. In contrast to Trubetzkoy and Karsavin, Alekseev rejected the idea of collective consciousness.

Nickolai Dunayev (1895-1931) was a student of Alekseev at the Russian Juridical Faculty in Prague in the 1920s. Unlike Alekseev's vision, Dunayev's approach to Law was positivistic. It was expressed in the article "The Jural Right and its Types" (1931), which was the published version of his dissertation. Following the famous Russian and Polish jurist Leon Petrazhitzky (1867-1931), Dunayev categorized all rights as either limited ("sluzhebnyye", official), or unlimited ("gospodskije", seigniorial). But Dunayev disagreed with Petrazhitzky's division of the jural system ("ob'ektivnoje pravo") into official and seigniorial parts. He explained the rejection as follows: the division of jural rights differs from the division of objective law: the jural system consists of private and public law.³⁰ Dunayev used the term "objective Law" ("ob'ektivnoje pravo") to describe the actual jural system, although Alekseev had rejected this term, because only the core (essence) of Law could be objective. According to the phenomenological approach, Positive Law, or the actual jural system, cannot be objective.³¹

Russian philosopher Lev Karsavin (1882-1952) joined the Eurasian Movement in 1925. He published his article "The Foundations of Politics" (1927) in the Fifth Eurasianist Edition ("Evrazijskij vremennik", Kn. V), in which he described his approach to law in terms of "ethical minimum" theory. This program was based on Georg Jellinek and Vladimir Solovyov's approaches. According to Karsavin, Law is a lower sphere of Morality, with the purpose of blocking and limiting human wrongdoings.³² Justice for Karsavin is a lower moral value, but for Alekseev it is a

²⁹ Ibid. S.114.

³⁰ Dunayev, N.A. Pravomochie i ego vidy // Tridtsatye gody... Parizh, 1931. S. 278.

³¹ Alekseev N.N. K ucheniju ob ob'ektivnom prave. S. 253.

³² Karsavin L.P. Osnovy politiki // Osnovy evrazijsstva. Moscow, 2002. S. 234.

basic jural value.³³ In contrast to Alekseev, Karsavin insisted that Eurasia be considered as a collective entity.³⁴

Conclusion

There were a number of jural approaches in the Eurasianist context, which do not together form a coherent jural theory. The contradictions between the several Eurasianist jural programs suggest that it was impossible to create a uniquely “Eurasianist” jural theory. Eurasianist ideology in the field of law was not a single phenomenon, and had different institutional and especially conceptual dimensions. The limited jural individualism, advocated by Alekseev, was the basic cause of these contradictions.

However, I should underline some similarities between the “protostructural” Eurasianist methodology and Alekseev’s idea of “jural structure”. The concept of “jural structure” is not Eurasianist *sensu stricto*. Meanwhile, for Alekseev the “jural structure” is a “place of an encounter” between the jural actor and values. The placeability of this “structure” is reminiscent of the views on the uniqueness of Eurasian “mestorazvitiye”. Eurasianists also favoured Alekseev’s refusal to reduce Law to other elements. In the same way that Eurasianists rejected attempts to reduce “Eurasia” to Europe or Asia, Alekseev denied that the law could be reduced to other elements: he refused to reduce Law to “the sovereign’s command”, “a form of freedom” or “social experience”. These similarities could be explained by the proximity of Eurasianist protostructuralism and Alekseev’s phenomenological method, in both of which discovering the structure of a phenomenon, and not its causes or effects, is of paramount importance. This proximity influenced the development of Alekseev’s views within the frame of the Eurasianist movement, but his ideas did not become a real platform for a Eurasianist jurisprudence.

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³³ Karsavin L.P. Op. cit. S. 407; Alekseev N.N. Osnovy filosofii prava. S.114.

³⁴ Karsavin L.P. Op. cit. S. 407.