

7 The civic religion of Anatolii Koni

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Anatolii Fedorovich Koni (1844–1927) was a brilliant and unusual figure in the history of Russian law. His name acquired notoriety in connection with the sensational trial of Vera Zasulich in 1878, where Koni was the presiding judge. The acquittal of the terrorist was perceived by many as Koni's doing—as an unforgivable and brazen escapade of the rising star of the capital's jurisprudence.

While in fact a splendid jurist, Koni was by nature more of an artist than an official. The art world surrounded him from childhood. Koni's father was a theater critic and man of letters. Koni's mother was a well-known actor and an activist in the emerging women's movement in Russia. Koni called himself “a child of the footlights.”¹ His godfather was the well-known writer Ivan Lazhechnikov, author of *The House of Ice*. As a youth, Koni already had a passion for reading, and as his personal archive attests, he wrote poetry throughout his life. However, Koni chose jurisprudence, not literature or art, as his life's work. In jurisprudence he occupied a special place, becoming a civic preacher. His eloquence was known far beyond St. Petersburg and Moscow. Representatives of all social strata turned to him for help, writing him letters from all over Russia. Koni's eloquence is attested by his innumerable civic homilies, delivered as public lectures or published in newspapers and journals.

Many studies of Koni have been written.² They convey the style of the author, who stands out first of all as a fighter. Sometimes Koni's fighting spirit so enthuses historians that they neglect his own statements. For example, in the Zasulich case, Koni underscored the central role of the jury and even indicated that he was not

1 This chapter is the product of a research project implemented as part of the Basic Research Program at the National Research University Higher School of Economics, Russian Federation.

R. M. Khin, “Pamiati starogo druga,” in *Pamiati A. F. Koni* (Leningrad: Trudy Pushkinskogo doma, 1929), 55–79.

2 Carla Cordin, *Anatolij F. Koni (1844–1927) zwischen Herrscher und Volk: ein liberaler Jurist und seine autobiografische Praxis in Zarenreich und Sowjetunion* (Cologne: Böhlau Verlag, 2019); V. N. Sashonko, *A. F. Koni v Peterburge-Petrograde-Leningrade* (Leningrad: Lenizdat, 1991); V. I. Smoliarchuk, *Anatolii Fedorovich Koni* (Moscow: Izdatel'stvo “Nauka,” 1981); Sergei Vysotskii, *Koni. Zhizn' zamechatel'nykh liudci* (Moscow: Molodaia gvardiia, 1988).

in agreement with their decision, but the historiography still ascribes the authorship of the acquittal specifically to him.³

Despite the abundance of publications on A. F. Koni's distinguished service to jurisprudence during the era of the Great Reforms, the question of his motivation has still not been thoroughly researched. The existing historiography is devoted mainly to the professional and political fronts of his struggle. His personal life has not been studied. He thought of himself as a sickly man. Unmarried, he often lamented that he had no family to give him emotional support. However, he was always surrounded by influential women who supported him, enhanced his moral authority in the upper ranks of society, and helped him in his professional work.⁴ In this chapter, we are concerned with the moral component of Koni's vocation and its religious underpinning.

Koni's moral authority is confirmed by the fact that he was one of the few prerevolutionary jurists to whom the Soviet regime gave due recognition, perhaps because he never openly criticized the Soviet regime. Moreover, from his starting point in jurisprudence, he worked on a topic of great interest to the Soviets—the ethics of communal living. Indirect evidence of Koni's special relationship to the Soviet state was the permission, after his death in 1927, for his burial in a cemetery of outstanding figures of Russian culture at the Alexander Nevsky Monastery in Leningrad. In 1929, at the height of the Soviet attack on religion, a massive wooden cross was erected on Koni's grave. After World War II, in 1946, Koni's friend E. A. Sadova called the attention of the authorities to the fact that the cross, “erected with such difficulty,” was badly tilted, which amounted to “black ingratitude” toward Koni, who, as Sadova reminded them, was “a remarkable man, a deep thinker and writer, the ‘leading judge’ of Russia, the friend of many outstanding people of our Homeland, a helper and teacher of his contemporaries.”⁵

This testimony raises the central question of this chapter: what understanding of the Christian religion did Koni, a baptized Orthodox Christian, profess in his social and professional activism?

Answers to this question can be found in Koni's numerous publications and memoirs, in official documents and correspondence, and in unpublished sources from Koni's personal archive. Relying on these sources, I will speak first about the prehistory of the “Koni phenomenon.” Then I will turn to the personages who figure in his notes and homilies. Here I will pay attention to Koni's use of religious language and other elements of his civic preaching. From Koni's preaching, I will turn to his legal cases, examining those in which his civic religion and

3 See discussion in Cordin, *Anatolij F. Koni*, 206–11; and A. M. Larin, “Anatolij Fedorovich Koni,” in A. F. Koni, *Izbrannye trudy i rechi* (Tula: Avtograf, 2000), 15–45, here at 32–33.

4 S. A. Domanova, “Perepiska Koni kak istoricheskii istochnik” (kand. diss., Rossiiskii gosudarstvennyi gumanitarnyi universitet, Moscow, 1999), 136–37, 141, 153.

5 Elena Aleksandrovna Sadova, Pis'mo v Litfond soiuza pisatelei (Otdel rukopisei, Rossiiskaia natsional'naia biblioteka [OR RNB], f. 666, op. 2, d. 219, l. 1 ob.).

his relationship to the state's ecclesiastical policies appear most clearly. In the concluding section, I will speak about the final years of Koni's life and the thick file in his archive—a file to which no attention has been paid—where his religious searchings are reflected.⁶ The file contains prayers written in Koni's hand (ll. 16, 25–27). For example:

Lord, your name is love: do not reject me, a man astray
Your name is strength: strengthen me, for I am fainting and falling
Your name is light: illuminate my soul, which worldly passions have darkened
Your name is peace: calm my rebellious soul
Your name is mercy: do not cease to have mercy on me (l. 25 ob.)⁷

The file also contains two particularly poignant pages responding to the question, “Is life worth living?” (ll. 43–44). Koni posed the question of suicide to himself in 1918, when the Russian Empire was collapsing before his eyes.⁸ Responding to his own question, he described schematically the conditions of life in Russia that induced him to wish for death. Religion was one of the rubrics of these sad reflections. Written in large letters, clearly and legibly, this document was a verdict upon imperial Russia, including the empire's religious policies. Yet, as the documents show, despite his disappointment in the Orthodox Church, Koni's personal faith led him to choose life. What sort of faith was it?

Koni's moral tuning fork

In his essay on “Pushkin's Moral Temper,” Koni wrote that, already as a young man, Pushkin became aware of the calling that made him the genius of Russian literature. Koni formulated this calling as “the search for truth in sincerity and justice.” The outcome of Pushkin's search was “mercy for the fallen,” when one “celebrates forgiveness as victory over the enemy.”⁹ Pushkin's example became Koni's moral “tuning fork.”

6 A. F. Koni, *Materialy o religii, 1890–1920* (Institut russkoi literatury [IRLI: Pushkinskii dom], f. 134, op. 1, d. 136).

7 “Mercy” is underlined in the document.

8 A letter from a friend of his later years, Mikhail Teodorovich, who arranged the posthumous publication of Koni's memoirs on the Zaslulich case, provides indirect evidence of Koni's contemplation of suicide. See Pis'mo M. Teodorovicha k Koni 1920g. (IRLI, f. 134, op. 3, d. 1692, l. 5 ob.): “The same thoughts you shared with me sometimes occur to me too, but like you, I try to drive them away.” See also the essay on suicide Koni published in 1923: “Samoubiistvo v zakone i zhizni,” in A. F. Koni, *Sobranie sochinenii v vos'mi tomakh*, ed. V. G. Bazanov et al. (Moscow: Izdatel'stvo “Iuridicheskaiia literatura,” 1966–69), 4:454–81.

9 A. F. Koni, “Nravstvennyi oblik Pushkina,” in A. F. Koni, *Ocherki i vospominaniia: publichnye chteniia, rechi, stat'i i zametki* (St. Petersburg: Tipografiia A. S. Suvorina, 1906), 1–35, here at 24–25. The quoted phrases are drawn, respectively, from Pushkin's “Ia pamiatnik sebe

I use this metaphor following Andrei Zorin, who has shown how the modernist agenda of a new type of personhood appeared in Russia in the late eighteenth and early nineteenth centuries.¹⁰ This agenda took the form of a specific cultural code of moral conduct. Reading and literary creativity were distinctive means of relating a personal moral tuning fork to the ideals, feelings, and mentality of the people of one's own circle. Such practices of affirming personhood were part of the repertoire of the Enlightenment, and, as Zorin shows, the Russian public quickly grasped this particular genre of epistolary self-affirmation and construction of a circle of kindred persons in letters, diaries, and memoirs.

In Russia, as in Western Europe, the modernist personality went through a definite evolution. At first it manifested itself through ethical and aesthetic experience in the private sphere: love, friendship, family relationships. The ethics of the new person were based on the daily choice of truth and justice in the face of conflict with the conventions of existing hierarchies. Beginning in the 1840s, modernist rhetoric of the new personhood became a mode for the development of the public sphere. Clear evidence of this was the appearance of the first literary weekly, *Literaturnaia gazeta* (Literary gazette), in 1840. The editor was Koni's father, Fedor Alekseevich Koni. As stated by the critic V. G. Belinskii, the famous promoter of the modernist agenda in Russian literature, the materials of this newspaper were expected first of all to answer to the criterion of "modernity," that is, "to have lively, contemporary interest."¹¹ Readers were not simply to receive information or moral instruction, but to be actively involved in the ethical evaluation of a fast-changing world.

Anatolii Koni was born when *Literaturnaia gazeta* was just four years old. The modernity of his father's views was solidified through conflicts with the censors. F. A. Koni was the writer who first made the *feuilleton* an indispensable rubric in a Russian newspaper.¹² His biting *feuilletons*, satirizing the stagnant moral norms of Russian life, eventually led to his departure from the newspaper.

The authorities' vengeance on F. A. Koni's boldness endangered the material situation of the Koni family. In the 1850s, F. A. Koni published the literary-theatrical journal *Panteon* (Pantheon), in which he printed sarcastic stanzas rumored to have elicited the anger of Nicholas I. During the Crimean War, *Panteon* was not permitted to reprint telegrams from the official military newspaper, *Russkii invalid* (The Russian invalid), something A. F. Koni subsequently viewed as an act of reprisal by the emperor. *Panteon* collapsed. One day, returning home from

vozdvig nerukotvornyi" ("I erected a monument for myself not made by human hands") and "Pir Petra pervogo" ("The Feast of Peter the First").

10 A. L. Zorin, *Poiavlenie geroia. Iz istorii russkoi emotsional'noi kul'tury kontsa XVIII–nachala XIX veka* (Moscow: Novoe literaturnoe obozrenie, 2016). On major trajectories of narratives of personhood in Russia, see D. Ia. Kalugin, *Proza zhizni: russkie biografii v XVIII–XIX vekakh* (St. Petersburg: Izdatel'stvo Evropeiskogo universiteta v Sankt-Peterburge, 2015).

11 V. G. Belinskii, *Polnoe sobranie sochinenii v trinadtsati tomakh* (Moscow: Izdatel'stvo AN SSSR, 1953–59), 3:380.

12 G. P. Talashov, *Literaturnaia gazeta 1840–1845 godov* (St. Petersburg: Roza mira, 2005).

school, young Koni discovered that his family's furniture had been sealed up to settle accounts with his father's creditors. He had to do his homework on the windowsill.¹³

Thus, Koni discovered early both the joy of acting in accordance with high principles and the burden of humiliating retribution for this joy. The vulnerability of his parents' vocation as artists influenced his choice of jurisprudence as his calling. In 1865, he finished his studies in the law faculty of Moscow University. Despite his great literary gifts and deep interest in literature, he came forward as a writer only after he had established himself professionally as a jurist. He was eventually elected to the Russian Academy of Sciences in two fields: law (1896) and literary criticism (1900).

Koni chose to pursue the legal profession in state service rather than private practice. He understood very early that the state was the most influential player in social and professional life. He believed that it was possible to put the state's resources to work in the service of justice and to attract others to this service. The Judicial Reform of 1864 and the liberationist agenda of the reforms of Emperor Alexander II opened all sorts of possibilities for this. As the first historians of the Judicial Reform wrote, new principles for the "liberation of persons" were built into its foundation.¹⁴ For Koni, the new judicial statutes were a landmark of liberation from social bondage and hierarchy. They created a foundation for *service* to the principles of justice.

Fathers and children of the Judicial Reform

Koni began his service in the field of jurisprudence the day after the opening of the St. Petersburg Judicial Chamber. On April 18, 1866, he was named assistant to the secretary of the chamber. His talents were recognized, and in late 1866 he began working in the procuracy of the Moscow Judicial Chamber. He quickly ascended the career ladder. Working in Moscow, Kharkov, and Samara, Koni got to know the people in his circle, those for whom the Judicial Reform provided an opportunity to "serve justice." I will show below how Koni took this rhetoric from the "fathers" of the Judicial Reform and reworked it in a new genre—the genre of civic preaching.

In the Koni archive one can find journal and newspaper clippings castigating the old court system. One can assume that it was with special love that Koni saved an article from the pen of one of the fathers of the Judicial Reform, Sergei Ivanovich Zarudnyi: "Letter of an experienced official of the 1840s to a young colleague entering state service."¹⁵ The editor claimed in a note that the letter had

13 Khin, "Pamiati starogo druga," in *Pamiati A. F. Koni*, 64.

14 P. I. Liublinskii, "Sud i prava lichnosti," in *Sudebnaia reforma*, ed. N. V. Davydov and N. N. Polianskii, 2 vols. (Moscow: "Ob"edinenie," 1915), 1–41, here at 3.

15 Sergei Ivanovich Zarudnyi, "Pis'mo opytnogo chinovnika sorokovykh godov mladshemu sobratu, postupaiushchemu na sluzhbu" (1850) (IRLI, f. 134, op. 5, d. 181). The clipping

been “passed along” to him by Zarudnyi. We will return to the fiction of indirect authorship later.

In his “Letter,” the “experienced official” advised the novice to avoid resolving even a single case, but to respond to all cases in purely formal terms. He went on to note that any ethical or moral conflict had to be suppressed:

Handling cases in this way, you will smother your inborn sense of justice, and compassion for the unfortunate will be unknown to you. Hence:

- never try to uphold the side of truth when falsehood armed against it is stronger and is sheltered by legal forms; by upholding the truth, you will only bring suspicion upon yourself; no: in such instances, always refuse, uphold the side of the strong, and you will enjoy the reputation of being a scrupulous official.
- never pay as much attention to the substance of a case as to the people involved.
- never do what ought to be done; do what the superior authority wishes.¹⁶

I have cited this satirical passage to demonstrate the existence of a new cultural code of *service* in a government job, a code which both the fathers and the children of the Judicial Reform shared. It was based on a sharp break with hypocrisy. Richard Wortman called this code “legal consciousness.”¹⁷ Legal consciousness implied that the recognition of human dignity, of the value of human life, and of the natural rights of human beings should be foundational. This consciousness was an important condition for the implementation of the Great Reforms of Alexander II in the 1860s and 1870s. Koni described the break between the old and the new with great clarity in the collection of essays he organized for the fiftieth anniversary of the judicial statutes, *Fathers and Children of the Judicial Reform*.¹⁸

The demand that one’s own and others’ actions should be moral, that they should correspond to “truth,” became an important paradigm in the demolition of the traditionalist model of hierarchical power. Zarudnyi satirized those who slavishly served their superiors rather than freely serving their principles. People of the new type should decide independently what should be done according to principles and notwithstanding the tastes of their superiors, and then they should be held accountable for their actions.

However, Zarudnyi’s “Letter” was written in a typically schematic way, without concrete details. The safely anonymous tone was typical of compositions of

is from *Russkaia starina*, 1899, vol. 100, no. 12: 543–46. See also “Sergei Ivanovich Zarudnyi,” in Koni, *Ocherki i vospominaniia*, 625–45.

16 *Russkaia starina*, 1899, vol. 100, no. 12: 545–46.

17 Richard S. Wortman, *The Development of a Russian Legal Consciousness* (Chicago: The University of Chicago Press, 1976, 2010).

18 A. F. Koni, *Ottsy i deti sudebnoi reformy (K piatidesiatiletiu Sudebnykh Ustavov). 1864–20 noiabria–1914* (Moscow: Izdanie Tovarishchestva I. D. Sytina, 1914).

this type published before the Great Reforms. Critical details often pointed to a personal acquaintance whom the author was castigating, but neither the author's name nor concrete hints as to the identity of the persons or place of the affair were indicated in such publications. Such a style was a safe means for state servants to criticize the work of other officials.¹⁹

Koni broke decisively with anonymous and indirect authorship, where the critic was an unnamed accomplice in the events he censured. As a "son" of the Judicial Reform, Koni wrote in a completely different way. In his many speeches, he provided numerous details of a personal kind when he celebrated his heroes, that is, those who implemented desired changes. He praised those who, on their professional path, performed acts of "civic heroism" (*grazhdanskii podvig*) in the service of humanity and homeland. If, in the earlier period, we find anonymous publications for one's own circle, now we have colorful speeches crammed with details of a personal sort and delivered in public venues such as an academic auditorium, an open lecture, or the meeting of a professional or civic society.

"Civic Hagiography": F. N. Plevako

Koni applied the term "civic heroism" to the activity of a far from simple figure among Russian lawyers, Fedor Nikiforovich Plevako. I will take a detailed look at Koni's portrait of him because the religious component of Koni's civic preaching appears there with great clarity. I call Koni's presentation "civic hagiography" (*grazhdanskoe zhitie*), a composition where the saintliness of the hero is disclosed through the courageous mastering of a thorny professional path.

Koni chose an interesting format for his account of Plevako by comparing and contrasting him with another son of the Judicial Reform, the well-known Moscow lawyer Prince A. I. Urusov. Koni compared the two in "Two Judicial Orators" (1910), a lecture he presented to the Society of Lovers of Oratory not long after Plevako's death.²⁰

Koni began by stating that both his heroes rejected the assumption that "new people will not be found for the new cause." Both Urusov and Plevako were new people, sons of the Judicial Reform, but they were very different sons. Urusov,

19 See Tatiana Borisova, "Legislation as a Source of Law in Late Imperial Russia," in *From the Judge's Arbitrium to the Legality Principle: Legislation as a Source of Law in Criminal Trials*, ed. George Martyn, Anthony Musson, and Heikki Pihlajamäki (Berlin: Duncker & Humblot, 2013), 295–315, here at 304–08. Also available as Chapter 3 of Tatiana Borisova, "The Emergence of the Legality Tradition in Russia, 1800–1918 (PhD diss., University of Turku, 2017) at www.utupub.fi/bitstream/handle/10024/129875/Borisova_DISS_2016.pdf.

20 A slightly revised version appears as "Kniaz' A. I. Urusov (um. 1900) i F. N. Plevako (um. 1908)," in Koni, *Sobranie sochinenii*, 5:123–37. An offprint of the original lecture is archived: A. F., "Dva sudebnykh oratora" (OR RNB, f. 423, d. 1020). On Plevako, see V. I. Smoliarchuk, *Advokat Fedor Plevako: ocherk o zhizni i deiatel'nosti advokata F. N. Plevako* (Cheliabinsk: Iuzhno-Ural'skoe knizhnoe izdatel'stvo, 1989). On Urusov, see A.V. Stepanova, "A. I. Urusov—iurist i sudebnyi orator" (kand. diss., Saratovskii gosudarstvennyi universitet, 2005).

the scion of an old Moscow family, symbolized the continuity of an earlier, traditional lineage of elite power. Plevako, born almost a thousand miles east of Moscow in Orenburg Province, was the illegitimate son of a Pole and a Kirghiz woman. As Koni saw it, the radically different backgrounds of these two men played a defining role in their differing conceptions of law and the judicial process. Koni used the comparison with Urusov to underscore all the more emphatically the novelty of Plevako, a “tribune” of the people in the Russian judicial system.²¹

Urusov and Plevako represented different cultures. Urusov bore the “stamp of the hereditary gentry and a centuries-old culture”; “in his movements and gestures, the refined upbringing of a man educated in the European manner shone through” (5:123). Plevako came from an indigenous Russian culture:

In contrast to the aristocratic Urusov, Plevako had the manner of a democratic plebeian, a person who knew native life in all strata of Russian society—someone who, without losing his dignity, could ascend to the top or descend to the “bottom”—someone who, on both levels, understood everything and was understood by all, always responsive and unaffected.

(5:124)

In Koni’s view, in the activity of the plebeian Plevako, “the element of service to society predominated” (5:133). This became apparent in the different ways in which Plevako and Urusov viewed the Judicial Reform of 1864:

For Urusov, a European to the bottom of his soul, the new statutes were a fragment and a manifestation of Western political life, a life he treasured in his dreams but which we had not yet experienced [in Russia].... In his speeches to juries, one could discern the broad education of a man ... who popularized his view of the case at hand in order to influence those who chanced to sit before him, people to whose low and various levels of development he artfully calibrated the exposition of his train of thought.

(5:129–30)

As Koni saw it, Urusov continued the old tradition of a Russian elite positioned above the people, whereas the “democrat” Plevako actually embodied the people. For Plevako, the new judicial laws “were the sacred gates through which newly awakened Russian thought and the legal consciousness of the people entered into the life of society.” For him, jury trial was “a venue for the spirit of the people, a spirit called to show itself in questions of conscience and in defense of the people’s worldview on fundamental principles of social structure” (5:129).

21 “Kniaz’ A. I. Urusov (um. 1900) i F. N. Plevako (um. 1908),” in Koni, *Sobranie sochinenii*, 5:123–24.

Koni thought it especially important to emphasize how differently Urusov and Plevako related to jurors. Plevako's relationship was "heartfelt":

For him, they were the chosen bearers of the people's wisdom and sense of justice. He refrained from trying to teach them or manage them. Without separating himself from them, he entered into their milieu with his powerful discourse and immersed himself along with them in the feelings he aroused and, at times, in their age-old worldview.

(5:130)

Koni used Plevako to underscore how the Judicial Reform signified a new direction in Russian social life. The reform produced heroes who opened the doors of the court not to educate the people, but to listen to them and to heed "the people's justice" (*narodnaia pravda*). For Plevako, the judicial statutes were not a copy of Western models as they were for Urusov, but a means of hearing his own people.

The civic hagiography devoted to Plevako is full of Christian rhetoric, including direct references to holy scripture, which Koni himself marked as quotations:

He [Plevako] often turned the weapons of his own powerful discourse to the defense of the "humiliated and abused," to representing the cause of poor, weak, and primitive people who broke the law as a result of confusion or because others, while treating them lawfully perhaps, did not treat them "in God's way."

(5:133-34)

Koni emphasized that the law in the codes was essentially an incarnation of Christian law. Thus, when a defendant, Abbess Mitrofaniia, tried to justify her fraudulent acts by saying that "as a woman" she did not know she was breaking the law, Plevako implacably reminded her, "From the summit of smoking Sinai it was stated, 'Thou shalt not steal.' ... You could not have been ignorant of this, so what are you up to?" (5:126-27).²²

Such a sense of justice was a help to Plevako when he was poorly prepared for a trial. Koni observed that, unlike the meticulous Urusov, Plevako did not always study the details of the case before him. But for Koni, such carelessness was not a critical factor: Plevako had a sense of justice and the ability to communicate it to others. To describe Plevako's talent in this regard, Koni again alluded to religious or mystical experience:

For the most part, his speeches were marked by unfeigned inspiration. It took possession of him, at times probably without his expecting it. At these

²² Abbess Mitrofaniia (Baroness Praskov'ia Grigor'evna Rozen) was convicted in 1874 of forging promissory notes to fund projects of the convent she supervised.

moments, he was like Russian sectarians, members of mystical denominations who, during their rituals, suddenly enter a state of ecstasy and explain it by saying that “the spirit descended upon them.” So, too, did it descend upon Plevako.

(5:127)

Koni went on to give an example of how Plevako experienced and communicated to others the transcendental experience of communion with a source of gracious truth that revealed itself to him when, in Koni’s words, “the spirit descended upon him.” On one occasion, in a closed session in the Senate, Plevako was defending the presiding judge of a major court who was accused of allowing his subordinates to embezzle funds designated for repair of the court. The prosecutor in the case recalled the words of holy scripture: “to whom much is given, much will be required” (Luke 12:48). Koni continues:

The factual side of Plevako’s speech [for the defense] was weak—he confused the witnesses and kept losing his train of thought. But, remembering the prosecutor’s words, Plevako pulled himself together and said in a voice that carried from one soul to another: “the prosecution tells you that [the defendant] once stood high but has now fallen low, and on these grounds strict punishment is being solicited because ‘much should be required’ of this man. But, gentlemen, here he is before you, the one who stood so high! Look at him, and think about his broken life. Has much not been required of him already? Just think of what he has had to suffer while awaiting his inevitable appearance on the court bench and even now while sitting on it. He stood high ... he has fallen low ... but note, this refers only to the beginning and the end of his story. What about everything he has experienced in between? Gentlemen, be merciful and just, and being mindful of his high position as well as of how low he has fallen, ponder the arc of his fall.” Pushkin said that “as soon as the divine word touches his heedful ear, the soul of the poet is roused like an awakening eagle.”²³ But the divine word speaks to the heart of a heedful person not only in words about beauty and love: it awakens in him also the feeling of forgiveness and mercy. Such a voice obviously sounded for Plevako, forcing him to wake up and rouse himself. One had to hear him at these moments, to see his gestures, to understand from the expression on his transfigured face—transfigured by an inner rapture—that “the spirit had descended upon him.”

(5:128–29)

As we have seen, the new court in which “tribunes” like Plevako could present themselves was for Koni a place where, alongside the letter of the law with which the legalist Urusov complied, the spirit of the people’s justice could thrive. The

23 Koni quotes from Pushkin’s poem “Poet” (“The Poet”).

spirit of truth “descended” through this man of the people. For him as for the jurors, bearers of “the people’s justice,” the essence of the laws was revealed as resting upon the Christian principles of forgiveness and mercy. The experience of such divine revelation in court was possible precisely because of the innovations in legal procedures springing from the Judicial Reform of 1864, which Koni never ceased to defend with ferocity.

The struggle for justice against the Pharisees: the acquittal of Zasulich

The authorities soon noticed the brilliant procurator Koni and transferred him to the capital, where, beginning in 1875, he headed up the work of the Department of the Ministry of Justice. In this position, he coordinated all cases under the command of the justice minister, Count K. I. Pahlen. At the beginning of 1878, Koni was named presiding judge of the St. Petersburg District Court. Here the greatest professional ordeal of his life awaited him: the trial of Vera Zasulich, a terrorist who had attempted to assassinate the governor of St. Petersburg in January of that year. From personal materials in the Koni archive and from his own memoirs, we know that he thought much about the meaning of life, religion, and his own faith during the severe personal crisis connected with the acquittal of Zasulich.

After the scandalous acquittal of the terrorist, Koni’s professional standing was shaken. The proposal of the minister of justice that Koni retire caused him great moral suffering and, as he himself wrote, “emotional pain.” The minister’s proposal, Koni lamented, “was directed at an irremovable judge because he [the judge] acted as a servant of the law under conditions outlined by the Judicial Statutes [of 1864], not as an obliging accomplice in the implementation of decisions made in advance.”²⁴

Koni became ill from the strain. Only two individuals among his fellow officials did not shrink from showing him friendly concern. These were the minister of internal affairs, Dmitrii Miliutin, in whose chancellery Koni worked shortly after graduation from the university, and Konstantin Pobedonostsev, a former professor who remembered Koni as one of his talented students.²⁵ Koni kept up a correspondence with Pobedonostsev throughout his life, despite the political friction between them. It is known that Pobedonostsev severely censured Koni for the Zasulich verdict and warned Emperor Alexander III that he should not trust Koni with the responsible post of chief procurator of the Senate.²⁶ Yet Pobedonostsev’s

24 “V doroge,” in A. F. Koni, *Na zhiznennom puti*, 2 vols. (Moscow: Tipografia I. D. Sytina, 1916), 2:340. Koni served four more years as president of the District Court, but, tired of the constant criticism, he was pleased at his transfer to the Civil Department of the Judicial Chamber, whence, in 1885, he was transferred to the Senate.

25 “V doroge,” in Koni, *Na zhiznennom puti*, 2:340.

26 *Pis'ma Pobedonostseva k Aleksandru III*, 2 vols. (Moscow: “Novaia Moskva,” 1925), 1:119.

letters to Koni always contained a Christian component. Their contents allow us to suppose that relations of spiritual closeness existed between them.²⁷

For Koni, the Zasulich affair was the moment when his professional and personal ethics crystallized, as did his faith in justice and human beings. It was precisely after the acquittal and the disgrace that resulted from it that Koni began his civic preaching. It is interesting that he started writing detailed memoirs about the Zasulich case in 1904, but he was not able to finish them before the end of his life.²⁸ The fact that Koni continued working on the memoirs during the 1920s and was still not ready to publish them testifies to the great significance the Zasulich case had for him.²⁹

The story of the Zasulich trial began with the sharpening of the conflict between old and new principles in Russian jurisprudence. The minister of justice asked Koni, the presiding judge, to use his good offices to incline the jurors to convict Zasulich. Koni replied that such an understanding of the role of the presiding judge was not admissible:

The president of the court is a judge, not one of the parties, and in conducting a criminal trial, he holds a veritable chalice containing the sacred gifts. He does not dare to tip it to one side or the other—otherwise, the gifts will be spilt.³⁰

Koni insisted that a court does not render services to anyone. In accordance with the ordinances of the fathers of the Judicial Reform, a court must serve justice, not individuals. The liturgical metaphor of the chalice with the holy gifts underscores the exalted institutional significance of the court as an institution in which high justice is accomplished, the same thing we saw in Koni's "hagiography" of Plevako.

So Pahlen tried to influence Koni in a different way. To remind him of his professional duty and the fact that the emperor was the supreme lawgiver in the Russian Empire, Pahlen organized an audience with Alexander II two weeks before the trial, on the occasion of Koni's inauguration as presiding judge of the St. Petersburg District Court. Such an audience was not stipulated by protocol. Koni understood that it had been organized because of the approaching trial, and, in agitation, he pondered how to share his feelings about the case with the Tsar-Liberator. At the reception following the Sunday liturgy, deep disappointment

27 In a letter of April 6, 1882, Pobedonostsev wrote Koni: "Christ is risen. Rejoice, and remember me" (IRLI, f. 134, op. 3, d. 1320, l. 1).

28 *Vospominaniia A. F. Koni o dele Very Zasulich*. August 15, 1904 (Gosudarstvennyi arkhiv Russkoi Federatsii [GARF], f. 564, op. 1, d. 200, 201), unfinished manuscript. The memoirs were published posthumously by Koni's friend and collaborator M. F. Teodorovich: A. F. Koni, *Vospominaniia o dele Very Zasulich*, ed. M. F. Teodorovich (Moscow and Leningrad: Academia, 1933).

29 See L. Uteveskii, "Poslednii etap zhiznennogo puti," *Pamiati A. F. Koni*, 79–101, here at 96.

30 *Vospominaniia o dele Very Zasulich*, in Koni, *Sobranie sochinenii*, 2:85–86.

awaited Koni. The emperor, a very weary man unacquainted with the details of the Zasulich case, shook his hand and inquired briefly about his previous government service.³¹

Thus, Koni had to decide for himself how to act in the case, and he chose the path that seemed to him the most congruent with seeing justice done. To this end, he made the principled decision for which he was subsequently censured. At the trial, he allowed the defense to rehearse the circumstances which provoked Zasulich to commit her crime. Zasulich testified that she was not personally acquainted with the student Bogoliubov but had read a newspaper account of the harsh suppression of disorders in a preliminary detention facility, disorders resulting from the shameful flogging of Bogoliubov for supposedly failing to remove his hat in the presence of D. F. Trepov, the governor-general of St. Petersburg. The humiliation of a man already deprived of his rights and the defenselessness of his fellow prisoners compelled Zasulich to take her desperate step. By her attempt on Trepov's life, she wanted to turn society's attention to this unconscionable state of affairs.

Koni's decision to allow the reading of the aforementioned newspaper article in open court and to permit the interrogation of eyewitnesses fundamentally altered the significance of the trial. Pahlen intended to present the trial as the adjudication of a criminal case in which the basic motive was Zasulich's desire for vengeance against Trepov for the humiliation of Bogoliubov, with whom it was rumored she was having an affair.³² Under Koni's presidency, the trial went from being a private case to being a social case: Zasulich's act was interpreted as an all but necessary step of self-defense by society against arbitrary state power.³³ This was the interpretation the trial received in a number of St. Petersburg newspapers. In the detailed reporting on the case in *Novoe vremia* (New times), for example, the reader is struck by the fact that most of the space was devoted to the defense's argument, while the prosecution's side was presented very laconically.³⁴

In the end, the case against Zasulich became a case against the unlawful exercise of power. In point of fact, Trepov's order to have Bogoliubov flogged exceeded the limits of the law. Punishment of this type could be applied to a convict only when he was serving his sentence, whereas the events in question took place in a preliminary detention facility.

In his memoirs, Koni paid attention to an interesting detail that bears on the role of religion in this story. He wrote that not long before the Bogoliubov affair,

31 Koni emphasized, however, that it was considered an honor to merit a question from the emperor.

32 Letters intercepted by the secret police testify to the existence of these rumors in St. Petersburg. See GARF, f. 93, op. 1, d. 5.

33 See Tatiana Borisova, "Public Meaning of the Zasulich Trial 1878: Law, Politics and Gender," *Russian History* 43, no. 3-4 (2016): 221-44; and T. Iu. Borisova, "Neobkhodimaia oborona obshchestva: iazyk suda nad Zasulich," in *Kembridzhskaiia shkola: teoriia i praktika intellektual'noi istorii*, ed. T. Atnashev and M. Velizhev (Moscow: Novoe literaturnoe obozrenie, 2018), 232-57.

34 *Novoe vremia*, 1878, no. 755.

in social circles and state institutions, people had begun talking about the need to reinstitute flogging as a patriarchal method of reasserting control over young people. Trepov's order to have Bogoliubov flogged was issued in this context. It was a response to the demand to "restore" peace and quiet by force.

Koni also highlighted the fact that Trepov once came to see him and, "crossing himself before the icon," tried to convince him that he did not know that his action violated the law. Trepov also kept insisting that, after the flogging, he had sent tea and sugar to Bogoliubov as a token of reconciliation. Amused by this supposedly Christian act on Trepov's part, Koni said he doubted that Bogoliubov drank Trepov's tea. As for Zasluch, Koni wrote that, already before her trial, Trepov went around saying he forgave Zasluch and did not wish her ill, although he did not appear in person at her trial. For Koni, Trepov's declarations amounted to nothing but Pharisaism, something he was well acquainted with in his milieu, and which he more than once denounced in his memoirs on the Zasluch case.

Public opinion eventually inclined to the view that Koni did not violate judicial procedure in the Zasluch trial.³⁵ The fact that the jury acquitted Zasluch indicated the presence of a moral conflict in society between "fathers" and "children." The fact that the defense of Trepov's right to life lost the argument in court indicated the victory of "mercy" for the children. As Koni saw it, this outcome was an important victory for the new court system as a social institution which might facilitate the reconciliation of the two sides.

The Multan case

The Multan case, like the Zasluch case, had great social resonance. Koni, who from 1885 was the chief procurator of the Criminal Cassation Department of the Senate, took a principled position in the case.

This case, which has not escaped the attention of researchers, is especially interesting to examine in contrast with the Zasluch case.³⁶ In both instances, a crime was committed against the right to life. In both instances, a jury examined the case. Newspapers showed great interest in the trials. As the archival materials demonstrate, Koni's participation was central in both instances.³⁷ Here, however, the similarities end. The greatest difference between the trials sprang from the contrast between the "civilized" urban center where jurors were able to under-

35 Koni's colleague and former professor Boris Chicherin, who attended the trial, wrote a short but very influential note in which he authoritatively confirmed the legality of the entire judicial procedure in the Zasluch trial. See B. N. Chicherin, "O dele Zasluch," in Koni, *Vospominaniia o dele Very Zasluch*, ed. Teodorovich, 376–84.

36 See the review of the historiography in I. V. Loginova, "Otnoshenie rossiiskoi obshchestvennosti i vlasti multanskomu delu v kontse XIX veka" (kand. diss., Nizhegorodskii gosudarstvennyi pedagogicheskii universitet, 2002).

37 Ugolovnogo kassatsionnogo Departamenta Pravitel'stvuiushchego Senata delo o multanskom zhertvoprinoshenii (Rossiiskii gosudarstvennyi istoricheskii arkhiv [RGIA], f. 1363, op. 2, d. 452).

stand and forgive Zasluch and the “backward” province where peasant-jurors twice convicted the innocent Votyaks.

In 1894, in the village of Staryi Multan, far from the capital, a peasant named Kanon Matunin was murdered. The murder took place in a ritual scenario, which immediately led investigators to seek suspects among the local Votyaks—an ethnic group Christianized early in the nineteenth century but still maintaining some of their traditional rituals. (In today’s Russia, the Votyak ethnos is called by its indigenous name: Udmurt.) At the first trial, the jurors convicted the Votyaks. Thanks to the vigilance of the defense, however, it was revealed that the criminal investigation suffered from serious breaches of procedure, including the flogging of the accused and of witnesses. A second trial ensued, but a fresh panel of jurors once again convicted the Votyaks.

The writer V. G. Korolenko, invited by the defense to attend the trial, became an important participant in the event. Thanks to his journalism, the public in the capitals came to learn of the sorry consequences to which the patriotic rhetoric of the defense of Christian values could lead.³⁸ The basis of the prosecution’s case was the assertion that the Votyaks were primitive, which was automatically taken to imply that they had engaged in human sacrifice. The Votyaks’ supposedly primitive state was established with the help of various experts. Besides ethnographers who confirmed “scientifically” the existence of rituals of human sacrifice among the Votyaks, Orthodox clergy played a role.³⁹

The first indictment was based on two witnesses for the prosecution—a ninety-five-year-old man, Iustin Danilov Ivantsev, whose nephew the Votyaks supposedly intended to offer as a sacrifice, and the priest Mikhail Yakimov, who claimed to have knowledge of two instances of human sacrifice by the Votyaks.⁴⁰ The counsel for the defense, Mikhail Deriagin, correctly protested that the charge was based on hearsay.⁴¹

As in the Zasluch case, newspapers played an important role.⁴² The Senate, upon receiving Deriagin’s appeal, demanded an explanation from the Kazan district procurator. Moreover, a clipping from *Russkie vedomosti* [Russian news] containing Korolenko’s reporting on the trial was dispatched to the procurator, whose response the Senate wished to receive.⁴³ The procurator was asked to respond to two serious charges by Deriagin and Korolenko concerning the

38 Korolenko wrote ten articles on the case. See V. G. Korolenko, *Polnoe sobranie sochinenii*, 9 vols. (St. Petersburg: Izdanie Tovarishchestva A. F. Marks, 1914), 4:303–464.

39 On the role of ethnographic expertise in the Multan case, see Robert Geraci, “Ethnic Minorities, Anthropology, and Russian National Identity on Trial: The Multan Case, 1892–96,” *The Russian Review* 59, no. 4 (2000): 530–54.

40 Ugolovnogo kassatsionnogo Departamenta Pravitel’stvuiushchego Senata delo o multanskom zhertvoprinoshenii (RGIA, f. 1363, op. 2, d. 452, l. 93).

41 Ugolovnogo kassatsionnogo Departamenta Pravitel’stvuiushchego Senata delo o multanskom zhertvoprinoshenii (RGIA, f. 1363, op. 96, d. 452, l. 3).

42 See Loginova, “Otnoshenie rossiiskoi obschchestvennosti i vlasti multanskomu delu.”

43 Clipping from *Russkie vedomosti*, October 18, 1895 (RGIA, f. 1363, op. 96, d. 452, ll. 95, 95 ob., 96).

quality of the judicial procedure: the intimidation and beating of Votyak witnesses, and the fact that the court bailiff, Shmelev, administered the oath to the witnesses not on a Bible (as should have been done because the Votyaks were baptized) but on a bearskin.

On October 20, 1895, the procurator of the Kazan Judicial Chamber, N. D. Chaplin, presented a detailed report to the minister of justice. "Aside from a certain tendentiousness and mode of exposition betraying the participation of the defense counsel in their compilation," he wrote, "I personally find that the factual material in these documents is laid out truthfully enough and accords with the factual material submitted to the ministry by me and the procurator of the Court of Sarapul" (ll. 99–99 ob.). Following this personal introduction, in which he tried to show that he was a modern man and did not object in principle to newspaper reports on judicial proceedings, the procurator went on the attack. As I will show below, he allied himself with the authority of local knowledge, the local administration, and the local church.

Rejecting reports of an oath "on a bearskin" and the beating of witnesses as "not at all plausible," the procurator stated his assurance that:

as he had learned from a fellow procurator who supervised the investigation, these reports were dreamt up by the witnesses Mikhail Tikhonov and Konstantin Moiseev with the aim of justifying their denial of the original depositions establishing the guilt of their relatives. The procurator suggested that the district police chief should quietly correct these details.

(l. 101)

Thus, while rejecting the plausibility of reports of beatings and a pagan oath, the procurator nevertheless ordered the removal of these details from the minutes of the session where they were recorded as a complaint on the part of the defense counsel.

What made the procurator so sure that he was right? First, he cited:

the impression made by the anxious, overwrought, and one-sided personal opinion of Mr. Korolenko and his colleagues, who are scarcely competent to judge an episode from the daily life of an ethnic group whose morals and customs are in many respects still hidden from the view of specialist ethnographers and, if you will allow me to say so, are better known to the population of the Vyatka region who have contact with the life of the Votyaks than to the specialists.

(l. 102)

Appealing to local knowledge, knowledge presumably inaccessible to visiting journalists, the procurator insisted that even among Votyaks "who have been enlightened by the Orthodox religion," pagan rituals continued to exist, a fact about which "there is no doubt, either in the general population or among the clergy or among the state authorities or among researchers" (l. 102 ob.).

Next came the procurator's weightiest argument:

The pagan rituals of the Cheremiss and the Votyaks, even those who have converted to Orthodoxy, long ago attracted the attention of the government and precipitated measures designed to uproot them. By order of Emperor Nicholas I, missionaries for this purpose were designated for Vyatka Province beginning in 1827; in some degree, the illustrious Metropolitan [of Moscow] Filaret supervised the missionary work. However, the successes recorded during the first period of the mission did not in the end produce favorable results and, as stated above, pagan rituals are still practiced, and not only among the Votyaks of Vyatka Province, but among other indigenous groups in neighboring provinces.

(l. 102 ob.)

As chief procurator of the Department of Criminal Cassation of the Senate, Koni did not find the explanation of the Kazan procurator convincing. He was indignant at how quickly representatives of the judiciary and the police, along with local priests, were prepared to present the Votyak peasants as savages and to exclude them from the operation of laws that provided for the defense of the rights of individuals under investigation. To vindicate justice, Koni used formal criteria. The decision of the Department of Cassation of the Senate, which he prepared, abounded with references to specific articles of criminal law that had been violated in the Multan case. Koni's position appeared on the pages of *Novoe vremia* (New times) and was incorporated into the collection of his speeches published in 1896.⁴⁴

Koni wrote that he explained to the minister of justice, N. V. Murav'ev, who had hinted at the emperor's displeasure, that if the accused Votyaks were going to be convicted of human sacrifice to pagan gods, this should be done formally:

by observing with complete accuracy all the forms and rituals of the legal system, because, through such a decision, not only would the existence of a frightful and bloody custom be confirmed by the authoritative word of a court, but the question would also inevitably arise as to whether Russia, which has governed the Vyatka region for several centuries, has taken sufficiently effective measures to fulfill its mission of Christian and cultural enlightenment.⁴⁵

In this way, Koni sought to reverse the argument about the allegedly primitive Votyaks. He tried to show that a verdict based on their primitive state cast doubt

44 "Po delu o Multanskom zhertvoprinoshenii," in A. F. Koni, *Za poslednie gody: Sudebnye rechi. Vospominaniia i soobshcheniia. Iuridicheskie zametki* (St. Petersburg: Tipografiia A. S. Suvorina, 1896), 243-59.

45 "V. G. Korolenko i sud," in A. F. Koni, *Izbrannoe* (Moscow: "Sovetskaia Rossiia," 1989), 217-22, here at 221.

on how civilized the government's mission of enlightenment actually was. A fair review of an unlawful investigation and flawed trial, along with the correction of all breaches of due process, could restore "civilization" to the government's own administrative procedures.

Summing up

Koni's position on the Multan case was a continuation of his position at the Zsulich trial. He spoke out unambiguously against the tendency to militant conservatism in the political discourse of the Russian Empire at the time. Koni understood that the discourse of war, punishment, and intransigent confrontation with external and internal enemies would lead to the diminishment of the rights of persons. He saw the task of the judicial system to lie in mercy, reconciliation, and the restoration of peace. As the eminent lawyer N. P. Karabchevskii wrote, Koni believed "in human beings."⁴⁶

Religious discourse played an important role in the moral confrontation between conservatives and innovators like Koni. Sergei Uvarov's triad—Orthodoxy, Autocracy, Nationality⁴⁷—inspired the patriotic rhetoric that lavished praise on M. N. Murav'ev, the pacifier and "hangman" of Poland, who put down the Polish rebellion of 1863. Newspapers called Murav'ev a "saint of the state" (*gosudarstvennyi podvizhnik*). After Karakozov's attempt on the life of Emperor Alexander II in 1866, Murav'ev's harsh but "just" policy was transferred from the rebellious western borderland to the heart of the empire: he was appointed to chair the Extraordinary Criminal Commission investigating the attempt. In his petitions to the emperor, Murav'ev never ceased to insist that the press was infecting the youth of the empire with the Polish "contagion," that is, harmful "social ideas" emanating from the West.⁴⁸ The infected individuals should be subjected to the harshest punishments and quarantined. This call for "hygiene" and discipline through punishment, censorship, and prosecution appeared very clearly during the 1860s.

Against such state-sponsored "saintliness," which sowed fear, dissension, and suspicion, stood Koni's "civic heroism" in the service of mercy, reconciliation, and justice. Koni preached forgiveness for the weak but retribution for persons in positions of authority who abused their power. New people like Plevako and Koni himself used judicial institutions to defend the humiliated and oppressed and to oppose injustice. As his copious correspondence and the memoirs of

46 N. P. Karabchevskii, *Piatidesiatiletie sudebnoi i obschestvennoi deiatel'nosti A. F. Koni* (September 30, 1915) (OR RNB, f. 423, d. 1057, l. 3). Karabchevskii mentions that when he was a young man, Koni extricated him from a group of defendants on trial for revolutionary activity.

47 Sergei Semenovich Uvarov (1786–1855) was a scholar and statesman who served as education minister (1833–49) under Nicholas I.

48 GARF, f. 95, op. 1, d. 439.1, d. 439.2. See Claudia Verhoeven, *The Odd Man Karakozov: Imperial Russia, Modernity, and the Birth of Terrorism* (Ithaca: Cornell University Press, 2009).

contemporaries prove, Koni used his position to do everything he could to help countless petitioners who sought him out to defend them against injustice.⁴⁹

In Koni's view, the new courts, along with the provision for jury trial, made it possible to realize the people's hopes for justice. Here Koni continued an established tradition in Russian philosophy of law, namely, an emphasis on the normative significance of law. It was this principled meaning of "justice" (*pravda*) in Russian law that Ivan Kireevskii underscored in his article "In Response to A. S. Khomiakov" (1839).⁵⁰ Kireevskii held that the procedural approach to law dominant in the West reduced law to a lifeless formula, whereas in Russia law ascended directly to justice and truth that could not be given or taken away. He developed this thought in his philosophical "Fragments": "Justice, morality, the spirit of the people, human dignity, and the sanctity of lawfulness [*sviatost' zakonnosti*] can all be felt only with an awareness of the eternal religious relations of humanity."⁵¹ In Koni's view, too, an unjust law could not be applied in court without negative consequences for civil peace.

However, as in the cases of Zasluch and the Votyaks, Koni was convinced that judicial procedures, namely *due process* in the Western sense, made it possible to contest the unjust actions of the police. The court became the arena for restoring justice in the conflict between justice and order. The order imposed by Trepov and the Vyatka investigators, based as it was on using force against people whose rights were already sorely impaired, could be contested on two grounds: its unlawfulness and its injustice. The court could expose and censure the unlawfulness of the flagrant violation of rights through procedural breaches of administrative rules, thereby giving voice to people who held those breaches to be not only unlawful but unjust.

In this sense, one can agree with Jörg Baberowski that the Judicial Reform of 1864 had constitutional significance for Russia.⁵² As a distant echo of the unwritten English constitution with its Act of Habeas Corpus, the Judicial Reform made the guarantee of the procedural rights of human beings an important criterion of legality. Koni's civic advocacy played a huge role in spreading precisely this understanding of the possibility and necessity of justice in Russian law during the reform period. The distinctiveness of Koni's view lay in how he linked guarantees of due process with popular ideas of justice. Rejecting the notion that judicial

49 A. F. Koni, Pis'mo N. S. Tagantsevu (December 5, 1878) (OR RNB, f. 760, no. 236, l. 2). "Perepiska s L. N. Tolstym," in Koni, *Sobranie sochinenii*, 8:103–05. See also Smoliarchuk, *Anatolii Fedorovich Koni*.

50 I. V. Kireevskii, "B otvet A. S. Khomiakovu" at http://az.lib.ru/k/kireevskij_i_w/text_0080.shtml.

51 Ivan Kireevskii, "Fragments," in *On Spiritual Unity: A Slavophile Reader*, ed. and trans. Boris Jakim and Robert Bird (Hudson, N.Y.: Lindisfarne Books, 1998), 275–91, here at 291.

52 Jörg Baberowski, "Law, the Judicial System and the Legal Profession," in *The Cambridge History of Russia*, vol. 2, *Imperial Russia, 1689–1917*, ed. Dominic Lieven (Cambridge: Cambridge University Press, 2006), 344–68.

procedures borrowed from the West ran ahead of the natural course of events and were not appropriate for the primitive population of the Russian Empire, Koni insisted that the people knew when justice was violated and were prepared to fight for justice in court.

As we know, Koni rejected Stolypin's invitation to become minister of justice after the Revolution of 1905.⁵³ He continued to work in the Senate. Disappointed in the capacity of state institutions to oppose the forces of conservatism, he retired from the judiciary but continued to take part in legislative activity and redoubled his preaching of faith "in human beings." Adding to his many portraits of saintly activists in Russia, he wrote a separately published biographical sketch of the famous saintly doctor F. P. Gaaz.⁵⁴ At Koni's request, the minister of justice, N. A. Manasein, gave a copy of this work to Emperor Alexander III on February 28, 1898, and the emperor expressed his gratitude to Koni.⁵⁵ Koni gave copies of his writings to all three of the last Romanov emperors with the aim of letting them, too, hear his preaching of mercy and forgiveness.

In 1903, promoting his idea of the need for civic reconciliation, Koni tried to realize the project of creating a special hospital for political prisoners on the Valaam Islands, where, with the help of the Orthodox monks of Valaam, prisoners could prepare themselves to reenter society. In this way, Christian love and mercy would overcome the injustice of the existing social order. It is clear from the documentation that Koni traveled to Valaam and attempted to implement his plan.⁵⁶ Notebooks preserved in his personal archive with extracts from the Gospels are clearly devoted to one overarching theme—mercy, Christian love, forgiveness (ll. 6–11 ob., 46–49).

Koni experienced the tragedy of 1917 in a deeply personal way. Giving serious thought to the question of suicide ("Is life worth living?"), he made a depressing reckoning of the fall of the Russian Empire, which he presented schematically under the following rubrics: "my personal situation, the spiritual aspect, the people, the intelligentsia, the homeland, the Russian person, general conclusion." He defined the spiritual aspect categorically in terms of two things he fought against throughout his life: "the profanation of ideals and principles" and "the subversion of public service by time-servers" (l. 44).

In the section on "homeland," there is separate subdivision for religion where Koni briefly summarized his verdict on the ever-submissive Orthodox Church:

Vague concepts of God and sin. In place [of God], obscure dogma. Relics. Distortion of the meaning of icons. Replacement of dogma by ritual. Elimination of the mystical character of ritual. Prayers for the tsar, the Holy

53 Petr Arkad'evich Stolypin was prime minister of Russia from 1906 until his assassination in 1911.

54 A. F. Koni, *Fedor Petrovich Gaaz: Biograficheskii ocherk* (St. Petersburg: Tipofgrafiia A. S. Suvorina, 1897). Also in Koni, *Sobranie sochinenii*, 5:288–422.

55 Koni, *Materialy o religii* (IRLI, f. 134, op. 4, d. 18, l. 8).

56 Koni, *Materialy o religii* (IRLI, f. 134, op. 1, d. 136, ll. 84–86 ob.).

Synod, for “Our Lord-Bishop-So-and-So,” for the Christ-loving army. Loss of respect for the church. The latrine, cigarettes.

(l. 85)

His point was that the Orthodox Church, subordinate to the state and put to the task of serving the police functions of the throne, had lost the confidence of the people, who were quick to make a “latrine” of it as soon as the political regime that protected it fell. But the need for justice and mercy did not vanish with the collapse of the empire. During the Civil War, Koni courageously chose life in response to the greatest challenge facing his fellow citizens at the time, namely, the reduction of life to mere survival, to the maxim: “Don’t survive in order to live, just live in order to survive” (l. 44).

In 1918, while Vera Zasluch was dying in hungry Petrograd in a small apartment crammed with baskets of rotting produce, Koni was giving lectures on ethics.⁵⁷ His contemporaries often mentioned that teaching—that is, systematic civic preaching—was a necessity for him. As an old acquaintance, the psychiatrist S. M. Lukianov, attested, even though Koni had no need for additional income, from 1876 to 1883 he taught the theory and practice of criminal procedure in the Imperial School of Jurisprudence.⁵⁸

Following the Russian Revolution, Koni was in great material need. Deeply ashamed that he was forced to live and work in such conditions, Mikhail Teodorovich asked Koni to accept the financial assistance that Teodorovich was able to give—two thousand rubles.⁵⁹ Lecturing became Koni’s chief means of support. In 1918–22, he devised a course on “The Ethics of Communal Living,” which he delivered in the Institute of Cooperators and the Institute of the Living Word at Petrograd University.

Continuing his civic preaching, Koni lectured on the contribution of the heroes of Russian literature (Tolstoy, Dostoevsky, Turgenev) to the understanding of human nature. Like Pushkin, he sought “to foster benevolent feelings,” even at the height of the Civil War.⁶⁰ Koni had already developed a keen interest in psychiatry, and now, besides his lectures on the ethics of communal living before wide audiences in the young Soviet republic, he lectured with increasing frequency to doctors on the subject of medical ethics.⁶¹ Perhaps he hoped in this way to make his own contribution to the understanding of human nature and its potential for improvement.

The last works of Koni’s life clearly illustrate how he understood the essence of jurisprudence. For him, serving society meant serving people’s needs, especially

57 Antonina Fedorovna Peshkhonova, *Byloe: Vospominaniia 1905–1919 (1949–1952)*, Tetrad’ 2 (OR RNB, f. 581, d. 70, ll. 138–39).

58 S. M. Luk’ianov, “Pamiati A. F. Koni,” *Zhurnal dlia usovershenstvovaniia vrachei*, 1927, no. 10: 733–38, here at 737.

59 Pis’mo M. F. Teodorovicha A. F. Koni 1919 (IRLI, f. 134, op. 3, no. 1692, l. 1).

60 The quotation is from Pushkin’s “Ia pamiatnik sebe vozdvig nerukotvornyi.”

61 Luk’ianov, “Pamiati A. F. Koni,” 738.

the needs of the oppressed: the more people stood in need of the restoration of justice, the more selflessly Koni devoted himself to their affairs. In the courts, in the procuracy, in the judicial institutions of the Russian Empire, and in his lectures to the hungry population of Petrograd during the revolutionary period, Koni promoted the view of the sociopolitical process that Karamzin had articulated almost a century earlier: "It's not forms that matter, but people."⁶²

62 N. M. Karamzin, *Zapiska o drevnei i novoi Rossii v ee politicheskom i grazhdanskom otnosheniiakh* (Moscow: "Nauka," 1991), 98.