

## 24. A NOTE ON EUGENIO BULYGIN AND RUSSIAN LEGAL SCHOLARSHIP

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Most of Professor Eugenio BULYGIN's works are published in Spanish, English and in other Western languages. These are the languages through which Eugenio's work is known in the Western world. However, Eugenio has paid much attention also to the Russian legal scholarship and to the Russian culture in general. This aspect will be shortly elucidated in this note.

Russian culture and language have always been existentially vital to Eugenio – in our personal conversations he considered Russian as his mother tongue and identified himself as a «Russian living in Argentina», albeit he had lost the Soviet citizenship long ago. In 1943 his family was deported as *Zwangsarbeiter* by Nazis to Austria and in 1945 they decided not to return to the Soviet Union where most probably they would be placed in one of the concentration camps where the returning *Zwangsarbeiter* could wait years before their check and where they would be stigmatized as traitors. Eugenio was born on the territory of today's Ukraine, in the city of Kharkov, in a Russian-speaking family.

Even in the Soviet time Eugenio managed to travel to Russia, he made a tour of the Golden Ring (the Russian medieval cities around Moscow), visited Saint Petersburg (then Leningrad) and Moscow. Eugenio has not then made any contacts with Soviet scholars. Anyways, in these times he could travel to the USSR only as a tourist. Apart from the Iron curtain problems, his works were written for the Western audience and were oriented at the corresponding level of knowledge. Even supposing that he

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managed to make connections with Soviet legal scholars, hardly his ideas could be well received in that scholarly community.

Most of these scholars ignored the development of legal positivism in the 20<sup>th</sup> century, and the few who were admitted to have access to latest Western publications, had to criticize this development *ex officio*. Analytical jurisprudence in the style of Kelsen or Hart was considered as one of the patterns of bourgeois ideology which had as its task to veil the class nature of law<sup>1</sup>. Hans Kelsen's «Pure Theory of Law» has been first partly translated in the years of Perestroika (1987-1988), the Russian translation of H. L. A. Hart's «Concept of Law» appeared only in 2007. Lacking knowledge of foreign languages and being barred from consulting most of the Western publications made after 1917, Soviet legal scholars continued to orientate themselves to the old-style German *Rechtswissenschaft* of the 19<sup>th</sup> century, adapted to the Marxist-Leninist philosophy and to the corresponding ideology.

Because of this methodological difference, it was rare that in his writings, addressed to the Western academic audience, Eugenio referred to works or names of Soviet scholars, albeit he knew their works quite well. It was surprising to know about the extent to which Eugenio was informed about the debates between Soviet legal scholars on the matters concerning normativity of law. In his home library he even had several books of the leading Soviet legal theoreticians in this field (such as Professors Sergei Alekseev, Lev Javich, Nikolai Matuzov) – probably bought in Moscow or Leningrad bookstores during the Soviet travels.

His amazing knowledge of Russian literature is worth mentioning. Eugenio used to read a lot in Russian. He read every Russian piece of classical literature he could find. In his 2010 preface to the Russian edition of the «Normative Systems» Eugenio recognized that Russian literature was his preferred one<sup>2</sup>. He could cite many poems by heart. When it became possible to buy books from Russia, he ordered and abundantly read books by contemporary authors such as Boris Akunin or Victor Pelevin.

As a result, he spoke the beautiful and subtle Russian language in which the best pieces of literature were written. Eugenio had few chances to speak Russian (not spoken in his family), so he was trying to keep up his language knowledge mostly by reading. It was curious and astonishing for his Russian colleagues to listen to his presentations and lectures made in the pure and literary Russian, devoid of neologisms and omnipresent English colloquial words. The language that hardly anyone speaks today, unfortunately. Constantly refreshing his Russian language skills by reading, he was eager to use any chance to speak this language when he met persons able to communicate in Russian. For example, a large part of his oral communication with Professor von Wright (Eugenio visited him in Helsinki quite often) was conducted in Russian, they surely had the opportunity to share their admiration of Russian literature.

<sup>1</sup> Tumanov, 1974.

<sup>2</sup> Bulygin, 2010: 281.

On the Soviet side of the Iron Curtain, his work was hardly known. It was first in 1986 that the Soviet scholars went on his traces, when translating into Russian a volume of the selected works of Georg Henrik VON WRIGHT<sup>3</sup>. As Eugenio BULYGIN's and Carlos E. ALCHOURRÓN's writings were cited and discussed by VON WRIGHT, these mentions were also translated. Curiously, Eugenio's last name was transcribed into Cyrillic in the French manner as «Булиган» (this sounded in Russian as «hooligan») instead of «Булыгин»<sup>4</sup>.

In 2003, for the first time Eugenio visited one of the Russian-speaking countries as a scholar. Symbolically, it was his home city, Kharkov in Ukraine, where he was born in 1931 and lived the first twelve years of his life. After this, on many occasions, he visited Saint Petersburg and other Russian cities as a speaker at conferences, many of which dealt with his work.

In 2005, the first Russian translation of paper by Eugenio appeared. It was «The Objectivity of Law in the View of Legal Positivism» written in English shortly before<sup>5</sup>, followed by «Zum Problem der Begründung der Menschenrechte»<sup>6</sup> published in Russian in 2006. Both articles appeared in the Ukrainian journal «Problems of Legal Philosophy».

The choice of these two articles was symptomatic for the philosophical problems that haunted then the post-Soviet legal scholarship. After having condemned the Austin-style approach (law is a set of commands of the state) typical for Soviet law, the post-Soviet scholars went to another extremity believing that there is a set of invariable principles of law. However, they were confronted with the unending variety of interpretations of these principles and with clear ideological background of some of these interpretations. Being written very concisely and clearly, these two articles by Eugenio were taken by a number of post-Soviet scholars as a methodological antidote to the exaggerated legal idealism.

Upon the invitation of his Russian colleagues, in 2007 Eugenio submitted to one of the leading Russian law reviews («Jurisprudence») the first paper he wrote himself in Russian. The topic of this paper reveals what Eugenio considered to be one of the main misunderstandings about legal positivism: «Norms and Normative Propositions: The Difference between Them and the Danger of Their Confusion»<sup>7</sup>. Later on, Eugenio wrote his second paper in Russian, «What is Legal Positivism?» for the same law review<sup>8</sup>.

The publications of 2005-2006 drew attention to Eugenio's works among Russian scholars. It was in 2007 that the present author began the Russian translation of the «Normative Systems»<sup>9</sup>. Eugenio has many times

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<sup>3</sup> VON WRIGHT, 1986.

<sup>4</sup> *Ibid.*: 275, 298, 305-306.

<sup>5</sup> BULYGIN, 2004.

<sup>6</sup> BULYGIN, 2000.

<sup>7</sup> BULYGIN, 2008.

<sup>8</sup> BULYGIN, 2011.

<sup>9</sup> ALCHOURRÓN and BULYGIN, 1971.

carefully read the translation through, adding details and even sometimes correcting some errors (in formulas, etc.) in the original text. The project took two years and finally the Russian translation appeared in 2010<sup>10</sup>. Because of the acclaim this work received among Russian analytical philosophers and logicians, it was published in 2013 as a separate book<sup>11</sup>. Along with «Normative Systems», this book included also a number of articles by BULYGIN and ALCHOURRÓN in which they developed the initial ideas of their 1971 book.

This book was presented at a conference which took place in Saint Petersburg on the 13-14 May 2013<sup>12</sup>. Along with the Russian presenters and Eugenio himself, the conference included Eugenio's close friends and colleagues from Argentina (Professors Ricardo GUIBOURG, Juan Pablo ALONSO, Horacio SPECTOR, Hugo ZULETA), Professors Maria Cristina REDONDO from Genova and Juan RUIZ MANERO from Alicante, Professor Cesar SERBENA and around a dozen of other Ibero-American scholars. This conference is mentioned here, because it was the first encounter of the Russian legal scholarship with the Latin-American legal philosophy — a very fruitful encounter which had as its follow-up several joint projects and the cooperation that lasts until now. Needless to say, this event took place largely due to Eugenio's efforts.

In 2016, a book with the collected essays of Eugenio appeared in Russian<sup>13</sup>. This volume included most of the essays which appeared in the collection published in 2015 by Oxford University Press<sup>14</sup>, excluding the papers already published in Russian in 2013. Additionally, the volume contained the Russian works by Eugenio, the new paper «Kant and the Contemporary Philosophy of Law» written by him in Russian specially for the volume, his polemical note translated from Spanish<sup>15</sup>, and his methodological discussions with Professors Hans Kelsen, Robert Alexy, Manuel Atienza, and Susan Haack. As always, Eugenio vigilantly controlled the translation and made many important suggestions.

If «Normative Systems» were written in a particular style and with the specific vocabulary, hardly understandable to lawyers who do not have primary training in logics, the 2016 volume contained the works drafted in the language easily accessible to lawyers and legal philosophers. This volume contributed considerably to the growth of popularity of Eugenio's ideas in the Russian legal community. To the present author's estimation, now Eugenio is the fourth cited legal positivist scholar according to the Russian citation index (*www.elibrary.ru*), after Kelsen, Hart, and Austin. In connection with translating and discussing Eugenio's works, a community of scholars was consolidated who are attempting to introduce deontic logic into the province of jurisprudence. In the 2010s, several seminars and colloquia in-

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<sup>10</sup> ALCHOURRÓN and BULYGIN, 2010.

<sup>11</sup> ALCHOURRÓN and BULYGIN, 2013.

<sup>12</sup> See, about this conference, ANTONOV *et al.*, 2013.

<sup>13</sup> BULYGIN, 2016.

<sup>14</sup> BULYGIN, 2015.

<sup>15</sup> BULYGIN, 2013.

side of this community have been held in Russia, where Eugenio intervened with presentations. The last seminar with his presence took place in May 2017 in Saint Petersburg, where the 2016 Russian volume was presented and discussed. Unfortunately, it turned out that further travels to Russia were impossible to Eugenio because of his state of health.

For the 90<sup>th</sup> anniversary of Eugenio in 2021, his Russian friends decided to write a *liber amicorum*. This Russian volume of 450 pages included twenty-two contributions each of which dealt with one of the aspects of Eugenio's conception. Most of the contributions were written by the legal scholars who work on matters of legal theory. When the volume had already been sent to a typography, came the sad news about Eugenio's death. Several last-minute corrections being made in this connection, the volume was published<sup>16</sup>, reflecting the growing interest of Russian scholars for Eugenio's ideas.

One of the keys for explaining the impact of Eugenio's conception on the Russian legal scholarship is that this scholarship has been formed in the 18<sup>th</sup> and 19<sup>th</sup> centuries under the strongest influence of legal positivism. Surely, the first positivism of the 19<sup>th</sup> century looks now as obsolete. But its basic methodological ideas are traceable in the conceptions of Kelsen and other influential positivists of the 20<sup>th</sup> century.

The enthusiastic experiments undertaken in the Perestroika years by some Russian legal theoreticians who sought to replace positivism with non-positivist conceptions resulted in the disaster which brought about a profound cleavage between the lofty idealist constructions, on the one hand, and the legal practice and education, on the other. In the mid-2000s it became clear that a wholesale abandon of the positivist methodology is unrealistic for Russian law. Rather a revision and updating of this methodology was needed. And Eugenio's work came to the Russian «market» exactly at the moment when the necessity of such a revision became clear. His work and personal participation contributed a lot to the revival of legal positivism in Russia, to its methodological justification. Eugenio's books in Russian now are continuing to shape mindsets of Russian lawyers and law-students. Without doubts, the intellectual influence of this great legal philosopher will keep on influencing development of legal theory and philosophy in Russia.

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<sup>16</sup> ANTONOV et al., 2021.



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