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ABSTRACT- Modern Russian Philosophy of Law is under the great influence of Soviet Theory of State and Law. The article shows its development from the beginning of the XX century, dividing this period into 6 main stages according to the historical, political and scientific changes in the country. Most attention is paid to the modern trends and personalities.

KEYWORDS – Russia, Russian Philosophy of Law, Russian Theory of Law, Theory of State and Law, Russian law, Russian jurisprudence

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1. Introduction (about the terms).

Modern Russian Philosophy of Law is under the great influence of Soviet Theory of State and Law. That's why we need to make a brief preface and tell about the stages of its development.

The first terminological question is: Philosophy of law or Theory of law? During the 19th century Philosophy of Law was studied on all Russian law faculties. It included mainly the theory of natural law. Since the 1830's curricula of most universities included Encyclopedia of Law - brief introduction to all branches of law. The Theory of Law replaced it in 1870's when most scholars had recognized that jurisprudence needed some general concepts as a basis of legal practice.

In the Soviet Union, instead of Theory of Law came Theory of State and Law. Because according to official doctrine it couldn't be law without state and law meant nothing without state. So, during the Soviet period there was no such science as Philosophy of law. But philosophical problems as, for example, essence of law or methods of legal science were still discussed. For this reason, Soviet Theory of State and Law dealt with problems, which traditionally belonged to the area of legal philosophy. The term "Philosophy of Law" was used very seldom. In some books written in 80's you can read that Theory of Law consists of three parts: Philosophy of Law, Theory of

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Positive Law and Sociology of Law. Of course, now nobody in Russia considers Philosophy to be a part of Theory.

Today the term “Philosophy of Law” is widely used but those who want to defend a dissertation on some philosophical problem can’t find philosophy of law in Nomenclature of scientific specialties (the official list of scientific specialties established by the Ministry of Science and Education). According to this Nomenclature such thesis will pertain to Theory and History of Law and State (now “Law” is on the first place in the title of this branch). By the way some other post-Soviet states (e.g. Ukraine) have added scientific specialty “Philosophy of Law” to their nomenclature.

One more note. Saying “Russian” I don’t mean the Russian Federation as a state. I mean a significant part of the post-Soviet space united by using the Russian language. Only during the last year, I met at different conferences in Russia participants from Latvia, Moldova, Kazakhstan, Tajikistan. But, of course, the strongest scientific relations in the field of legal philosophy are between Russia, Ukraine and Belarus. For example, Vadim Pavlov from Minsk (Belarus), Sergey Maximov and Alexey Stovba from Kharkiv (Ukraine) are permanent participants of all theoretical discussions. We read each other, publish each other, and organize joint projects. Even now, in spite of the political contradictions, scientific communication is not interrupted.

This Russian-language legal philosophy exists because of many reasons. And one of them is a shared history. This history can be divided into some stages.

2. 20th century and Philosophy of Law in Russia: the main stages

1) First stage covers the beginning of the XX century. Before the Socialist revolution of 1917 all contemporary conceptions of law had their followers in Russia:

- the idea of natural law was developed by Bogdan Kistyakovsky, Eugeny Trubetskoy, Pavel Novgorodtsev (he is considered to be one of the authors of the theory of “Natural Law with Historically Changing Content” in parallel with Rudolf Stammler),
- legal positivism was very popular at that time and strongly connected with etatism (because law in Russia often comes off as a manifestation of state power): Evgeniy Vaskovsky, David Grimm and Gabriel Shershenevich (the main proponent of positivism),
- sociological view of law was followed by Sergey Muromtsev, Nikolay Korkunov, Maxim Kovalevsky (in some points those ideas predated the “living law” by Eugen Ehrlich),
- psychological theory of law was created in Russia by Leon Petrazhitsky.

2) The Socialist revolution of 1917 took place under the banner of Marxism. Marxist theory itself does not contain a detailed concept of law but according to its content it is close to Sociology of law (law is a product of class-divided society; essence of law and its development are determined by conditions of life in the society: social relations of production, dominant forms of ownership). That’s why the first Soviet definitions of law given by Petr Stuchka and Eugeny Pashukanis were sociological. For example, Stuchka defined law as a system of social relations corresponding to interests of dominant class and protected by its power.

Another researcher Mikhail Reysner tried to connect Marxism and Psychological theory by Petrazhitsky (his idea was about using revolutionary legal consciousness as a source of law instead of legal acts).

Many of the writings of that period were not scientific but ideological, some of them were utopian (for example the idea of withering away of state and law after the revolution), but the discussion between the proponents of different ideas resembled something like a scientific pluralism.

3) All discussions about law were stopped in 1938 during the 1st Conference of Scientific Workers of the Soviet State and Law. The principal speaker of that conference was Andrey Vyshinsky, USSR Procurator General, one of

the active organizers of Stalinist repression. He was also a professor of law, Rector of Moscow State University and then the Director of Law Institute of the USSR Academy of Sciences. (One of his "great" scientific achievements was presumption of guilt dominated in Soviet criminal procedure for many years.) In his main speech Vyshinsky gave his definition of law which became one and only for the Soviet theory of state and law. The definition was the following: "Law is a system of rules (norms) established by the state to express the will of the dominant class based on the force of the state in order to protect, maintain and develop social relations and orders that are acceptable and profitable for the dominant class".

This definition combined some points of Marxism and juridical positivism. From Marxism, the idea of class character of law was taken. But class character according to Marxist theory belongs not only to law but also to state and other social phenomena. So, this feature doesn't show any specific nature of law. That's why we can say that Marxism was used only pro forma, as a decoration.

The idea that Law is a system of norms was taken from positivism. The main meaning of the described definition was that legalization of state commands, of any state politics is the only function of law.

Traditionally in Russia this approach is called Normativism. But it had little in common with the classical normativism by Hans Kelsen. This was state positivism (or etatistic positivism) the most convenient and profitable for the totalitarian regime, which had been established in the country.

There is a famous statement by Lenin, which could be found in every Soviet book about law: "Law is nothing without an apparatus capable of enforcing the observance of legal norms». The first part of this statement ("Law is Nothing") can be called a slogan of that historical period.

After that conference, many of its participants were put to death. It was all over with pluralism. And maybe at that very time it was all over with Russian pre-revolutionary philosophy of law. Because all that people (Stuchka, Pashukanis, Reysner and even Vishinsky) had got their education and

become legal philosophes before the revolution. Now it was impossible to use even their style of discussion.

For many years the definition given by Vyshinsky had no alternatives in Soviet jurisprudence. And even now it keeps some influence on Russian jurisprudence.

4) Since the second half of 50-s we can see first attempts to improve the official definition of law. There appeared so-called “broad” understanding of law. Its followers (Stepan Kechekyan, Andrey Piontkovskiy, Lev Yavich, Gennadiy Maltsev and others) proved that law was not only norms and tried to add something to the definition: principles of law, legal relations, legal rights and so on. But that was not a new concept of law. The whole discussion revolved around the details of the official definition but no one dared to challenge its basic idea: law is primarily a system of norms and the only source of these norms is a state.

For example, there was a sociological trend in Soviet understanding of law represented by Vladimir Kasimirchuk and some others. But what is the difference between this approach and classical sociology of law? In the European sociology of law the question is “who creates law: the state or the whole society?” (in American case “what part of a state creates law: the legislator or the judge?”). For Soviet “sociologists” there were no such questions. No one could doubt that the legal norms were created exclusively by the state (by the legislature). But the point was that it’s not enough to study these norms in a text, it’s necessary to look how these norms established by the state function in practice (to analyze norms not only in statics but in dynamics). Of course, that was not sociology of law but it certainly expanded scientific area of the legal theory. As a result, Soviet theory of state and law began to explore many issues (such as effectiveness of legal rules, mechanism of legal impact and others).

There were a lot of other ideas but some of them could never be published in the Soviet Union, others were associated with a great risk for the authors. That's why they had to use some tricks to present their ideas.

Another example. Vladic Nersesyants is now known as an author of libertarian juristic theory. The main idea of this theory concerns the discrepancy between law and act of legislation. But during the Soviet period nobody could criticize socialist laws saying that they didn't comply with natural law. So prof. Nersesyants as a specialist in history of political and legal thought dedicated his books to the same problem (difference between law and statute) but according to the classic philosophical doctrines from ancient Greeks to Hegel.

It can be said that Soviet theory of state and law in 1980s was pregnant with new concepts and ideas, but a great part of them could not be born because of ideological and dogmatic reasons.

5) Dissolution of the Soviet Union led to an outburst of discussions in a field of law concepts. Firstly, everybody began to criticize traditional Soviet approach to law as a dogmatic, non-realistic and primitive. It doesn't mean that this approach has been forgotten now. Scientific traditions are very strong, and in modern textbooks we can often find old definitions. It does not always indicate the fact that the author has a principled position on this issue. Sometimes it means that one has no position at all but is simply lazy to change one's lectures written 50 years ago.

Those, who had a principled position and who didn't want to refuse all the ideas of the previous period had to improve the traditional definition. Perfect example is the concept of prof. Michail Baytin who (in the end of XX century) was considered to be the main Russian (post-Soviet) normativist. He retained all the characteristic features of law: 1) law derives from will of state 2) law functions through coercive power, 3) law consists of norms. Legal norm is a generating factor of the legal system and the central element of law. All these features are traditional. But Baytin added two points to his concept. First. He said that law has not only class essence but also panhuman, universal one. This dualistic essence of law means that state will express both the volition of dominant class and of the whole society. 2) The second idea is the unity of positive and natural law. After the Human rights

had been enshrined in the Constitution they became a part of positive law. And now, Baytin says, positive and natural law are two sides of the same coin. (It's not an original idea, but for post-Soviet theory it was new.)

Another important addition to the traditional concept was made by prof. Oleg Leyst who said that law is based not only on the force of the state. Law has its own authority, because it is known and accepted by the people. Law relies on people's conformism, habits, sense of responsibility and many other reasons, which can vary significantly in different political regimes. The authority of law depends on its justice, effectiveness, stability and social legitimacy.

Marxism had been an important part of Soviet understanding of law. No wonder that after the dissolution of the Soviet Union Marxism had lost its popularity in Russia. Many Marxist ideas have retained their value but there were only a few people who were interested in discussing them after those 70 years. One of them is prof. Vladimir Syrykh. He was one of the best Soviet specialists in Marxist theory. And now he develops a materialistic theory of law. Unlike the Soviet interpretation of Marxism, the conception of Syrykh is free of ideology. It is about economical relations as an objective basis of law, materialistic understanding of private and public law, equivalence as main principle of law and so on. Certainly, it is very useful to summarize the results of all the Soviet writings in this matter and it is very informative. But these ideas are not very popular among Russian scholars now.

This was the first point: what happened with traditional understanding of law. The second point is about new ideas.

At the beginning of 90s the Soviet "broad" understanding of law has divided into separate schools or conceptions. A number of former Soviet theorists turned into proponents of different ideas. First there were three basic conceptions: normative, natural law and sociological. Their supporters started an active discussion. And at the first stage (during the first half of the 90s) this discussion was very similar to the Soviet one. Everyone tried to demonstrate disadvantages of other ideas and prove that their theory is

the only true. Perhaps the idea that the science needs one, the only correct definition of law was a relic of the totalitarian mind. Some people still think so but most scholars now have grown out of this idea.

Since the second half of the 90s they have realized that there was no need to search for the absolute truth in a definition of law. Law is a very complicated phenomenon. Each theory itself has weak and strong points because it reflects only one of the many aspects of legal reality.

The idea of unity of positive and natural law was received by many researches. Vladimir Shafirov from Krasnoyarsk, for example, proposed his theory of natural-positive law.

At this time, integrative theory of law became popular. One of its developers, Valeriy Lazarev, considers that law exists in three forms: 1) ideas and concepts, 2) norms, established by state, 3) actions and relations, in which ideas and norms are realized. These elements he combines in one definition of law. An aspiration to overcome the conflict between law concepts is, certainly, productive. But integrative theory is often criticized for its eclecticism. Other researches argue that sometimes it is better to examine each element of law separately, than to join the unjoinable. In some sense, the integrative definition of law is a modern version of the Soviet effort to give the only one correct answer for all the questions. Many of Russian scholars now believe that it is impossible. That's why we have different views of law.

One of the most known and important for Russian legal science theories is libertarian juristic theory of Vladic Nersesyants. Its basic tenets started to develop in 70's but only in 90's the author got an opportunity to comprehensively present his ideas. As we've just said, this concept deals with critics of positive law. Nersesyants uses Latin terms "lex" and "jus". He says that an act of legislation (lex) can be called "law" only if it is in line with justice (jus). So, Law is not always equal to the legal act. (In Russian different words are also used for these meanings: "pravo" = "ius",

“zakon”=”lex”. Maybe because of this fact justice and morality in the mind of Russians are not always connected with legislative acts.)

This division is similar to theory of natural law. But according to prof. Nersesyants theory of natural law also has some weakness. It doesn't give an exact criterion of difference between law and morality or religion, which are non-juridical phenomena. So, we have to estimate positive law (which has a juridical nature) without any juridical criterion. In his books prof. Nersesyants offers such a criterion. It is formal equality, which includes three elements: 1) equality (law is an equal measure), 2) liberty (law is addressed to free subjects equally subordinated to a norm), 3) justice (exception of privileges).

The main goal of this theory is to prove that law is in contrast with tyranny, on the one hand, and with morality on the other.

The ideas of Nersesyants are very simple and based on well-known classical philosophical doctrines, but his works had a great importance for post-Soviet legal theory. It was maybe not the first but the loudest voice in defense of justice and the own value of law. Even after the author's death this theory had a serious influence to the contemporary legal discourse. The Institute of State and Law of Russian Academy of Sciences hold annual conferences in memory of Nersesyants. Permanent participants of these conferences are Vladimir Grafskiy, Leonid Mamut, Valentina Lapaeva, Nataliya Varlamova, Yuriy Permyakov, and other scholars, whose attention is focused on humanistic value of law.

3. A brief characteristic of modern ideas

At the turn of the century the main modern Russian conceptions of law acquire the final form. Before describing some of them we'll give a list of their common features.

1) New philosophical background. Soviet jurisprudence grew up behind the Iron Curtain. The main sources of information about contemporary foreign philosophy of law were books like “Critics of modern bourgeois ideology”. Some of them were very useful, because under the guise of criticism their authors (for example, Vladimir Tumanov) gave a broad picture of Western legal thought. And for many Soviet scholars it was the only window to the world. But, of course, it wasn’t enough. Now it is possible to find every book in the Internet and, most importantly, a new generation of law philosophers has grown up. They are fluent in English and other languages, can read the original texts and translate them into Russian. A number of scholars are now engaged in translation of fundamental philosophical texts. For example, Mikhail Antonov translated and commented writings by H. Kelsen, E. Ehrlich, G. Gurvitch, E. Bulygin, R. Alexy, W. Krawietz. There are also translations of H. Hart made by Sergey Kasatkin; of L. Fuller by Vladislav Arhipov; of J. Habermas, A. Kaufmann, E. Fechner by Sergey Maksimov.

Not only foreign texts attract the attention of the researches. Some of them turn to Russian philosophical heritage, which was understudied before. Elena Timoshina, for example, carried out a sophisticated analysis of all the writings by Leon Petrazhitsky.

The result is a great amount of texts, which were not widely available before. This trend is forming a new culture of reading and as a result – a new quality of writings. Figuratively speaking, we can say that here is the border between post-Soviet Russian theory of law and modern Russian legal philosophy.

2) According to all modern concepts law has a social nature. Law appears as a result of interaction of individual or collective subjects. It may be a linguistic communication (A. Polyakov) or dialog (I. Chestnov), a voluntary cooperation (V. Chetvernin), a legal order (A. Stovba).

3) All these concepts have humanistic orientation. A human person is in the center of each theory. The main attention is paid to individual consciousness

or individual abilities, individual needs, interests, individual mind and so on.

4) Anthropological approach is of great popularity. Law in most concepts is strongly connected with national culture, tradition and historical development of the society.

5) Three main elements of law are present in all concepts: consciousness, relations and norms. The authors give different answers about the priority of these elements. Most of the researches don't put norms at the first place, although they don't deny the value of norms.

6) Law has a compromise nature. In most of the modern concepts law is something with which the participants of the communication voluntarily agree. After 70 years of supremacy of such things like "will of the dominant class", "state compulsion", "organized violence", "force of the state" new definitions sound peacekeeping, avoiding conflicts and non-aggressive.

4. *Personalities*

Vladimir Chetvernin, the follower of Nersesyants, develops his libertarian-juridical theory, using the principle of social culture. He calls this institutional libertarian-juridical theory. His research methodology draws upon socio-anthropological paradigm. According to it the term "Law" has quite different meanings in different languages and different cultures. That's why a universal concept of law is impossible.

Chetvernin divides all the social cultures and all the institutions (as well as laws, legal rules, states, civilizations) into two types: jural and potestarian.

1) Jural type (jus) is based on a presumption that every person belongs solely to himself in accordance with the principle of personal autonomy or self-ownership. This implies a prohibition against aggressive violence. The libertarian concept of human rights can also be derived from this paradigm (everyone has the rights only for oneself and for one's ownership). Contract

is of primary importance in this type of culture, because people are not obliged to obey anybody's will without a voluntary agreement. In jural type the following definitions of law are appropriate: "Law is an institute, which provides unconstrained social interaction"; "Law is a system of formal and informal norms, based on a prohibition against aggressive violence".

2) Potestarian type (potestas), where one person belongs to another or to some institutions (including state). Such cultures are convinced that people belong to the Whole (something bigger than themselves). They believe in the existence of some Absolute like God, People, Society, State, Motherland. Law becomes a means of aggressive violence in the name of this Absolute.

The typology of social cultures enables the author to distinguish civilizational types dominated by the jural principle (e.g. Greco-Roman antiquity, capitalism) from those dominated by the potestarian principle, such as that of despotism and communism, and also to identify mixed civilizational types, in which the jural and the potestarian principles clash with each other (e.g. Western and Eastern types of feudalism, the Western and Eastern types of social capitalism). Such mixed civilizations still gravitate to either jural or potestarian cultural code. This prevents significant changes within a particular civilization: such changes can occur sooner or later but only if the civilization collapses. In its place, a new civilization may emerge, which may belong to the opposite type. Consequently, as long as the Russian civilization was historically based on the potestarian principle, every change occurred only within the limits of this particular socio-cultural type, and it is incapable of transforming into a civilization of the jural type.

Ilya Chestnov formulates the dialogical concept of law. He thinks that law is a dialog - the interaction of persons who accept points of view of each other. This implies that parties realize their individual expectations (mutual subjective rights and duties), which form the legal order.

However not every dialog is law, but only that, which provides normal functioning of society. Dialogue doesn't always mean a conflict-free

situation, but the perception of the Other as an equal opponent potentially contains the possibility of resolving conflicts.

Law is formed by an elite and legitimized by the people. The legitimacy of law is a function of its force and subordination to it. For this legitimacy law should meet the people's expectations and the minimum criteria of the functional significance.

To comprehend law it is not enough to study the juridical categories and match them with articles of a normative act. There is also a need to focus on a Human that constructs legal norms and institutions and reproduces them by the actions. In terms of the anthropological approach Human is the center of legal system, its creator and permanent actor. As an agent of law Human has many legal identities, which depend on the historical and cultural context.

Andrey Polyakov considers law as a communicative system of interactions between humans. These interactions are reflected in texts and it distinguishes law from other social phenomena. Legal interaction is institutional interaction between people, which is based on human rights and duties. ("Institutional" means 1) expressed in a text, 2) normative, 3) legitimate). The implicit grounds of law as communication are equality, freedom, responsibility, justice, order and stability.

As for the difference between natural and positive law, Polakov thinks that Law is essentially positivistic, because it exists through legal texts. But as a result of communicative interaction between human beings, the law implicitly includes values, which correspond to the nature of legal communication.

Legal norm is not the same that a rule placed in legal text. Legal norm is neither textual information, nor normative construction. It functions as a social fact, as a norm of behavior. Prof. Polyakov states that legislative rule becomes legal norm only when it constitutes law (that means: when it constitutes communicative interaction of legal agents, where everyone determines their behavior in accordance with rights and duties).

Person has to obey law because law is an institutionalized system of proper conduct. Due to the legitimation of the legal texts people recognize necessity of certain behavior as their duty towards themselves and other participants of legal interaction. Understanding of such necessity is a part of legal communication.

Polyakov approves as legal agents only beings capable of communication. The following is his line of argumentation. The legislator is able to legalize “rights” of animals as, for example, their “right” to certain property or “right” to good manner. But here no “new” subject of law appears, because animals are not legal actors, parties of legal communication. Animals don’t have necessary intellect in order to understand logical sense of norms and “tell” it to the Other, they are not able to recognize legal texts, to exercise legal will and they, consequently, couldn’t correspond their behavior with requirements and possibilities of legal norm. In this case it is possible to speak about new legal object only; towards which rights and duties of some legal agents are realized (legal communication appears).

To be a member of communication in human society means to possess freedom and autonomy. Dialogue requires recognition of others’ abilities to reasoning and free choice. Communication is possible if communicative means and codes of interpretation used by the parties are equal. Freedom and equality as foundations for legal communication are not human rights themselves, but they are able to transform into rights to free movement, to name, to participate in public matters, to dignity and so on. In such cases freedom and equality turn from implicit conditions of communication into its explicit purposes and tasks.

Alexey Ovchinnikov develops a hermeneutic theory of law, which is affected by sociocultural dependence of legal reality.

The author draws attention to mutual dependence between law and its interpretation, which is determined by person’s experience and style of thinking. Legal reality is not only reflected, but also constructed by a person in the process of interpretation. Legal norms can change their content in

contexts of different legal traditions and situations. In this way legal tradition determines the limits of juridical thinking.

Law is considered to be a product of national culture and language. Language forms our consciousness; therefore law is formed not only “like language and customs” (as the historical school of law suggests) but it is also formed by means of language and customs. That’s why lawmaker must keep in mind the legal tradition to avoid the growing distance between “law in books” and “law in life”. Juridical hermeneutics in the works of this author is close to sociological and historical conceptions of law and to the civilizational approach with its idea of sociocultural uniqueness of national legal history and tradition. This conception (according to its practical output) is similar to anthropological theory of Vadim Pavlov from Minsk, and resembles the old discussion between *Westernism* and *Slavophilism*. It is interesting that both these authors (Ovchinnikov and Pavlov) are highly educated, familiar with classical and contemporary philosophical concepts, use very complicated terminology and come across as modern philosophers. But both of them are very conservative, they prove the uniqueness of Russian historical way and come to the conclusion that the Western political and legal experience is unsuitable and useless for Russia. (Vladimir Chetvernin also says that it is impossible to change the cultural type from potestarian to jural and, as a result, that it is impossible for Russia to change to the European democracy. But he, as a Westernist, proves this idea with a contrary evaluation.) This discussion is 200 years old and now it is as relevant as ever.

5. Conclusion

As you’ve seen the eternal issue of Russian historical way is still a hot topic. Among modern Russian philosophers there are those who write about law in general (as a universal phenomenon) and those who write about law while thinking about Russia (its historical way, its dependence of the state power and its future).

Of course, there are a lot of other problems, which are popular in Russian legal philosophy now (juridical technique, lawmaking, sources of law, comparative jurisprudence, future of legal science, etc.). All of them together can give an overview of contemporary Russian philosophy of law.