

UNDERSTANDING RUSSIAN LEGAL REALISM IN THE MODERN SCIENCE



E.N. TONKOV,
PhD in Law, Associate Professor,
Department of Law, North-West
Institute of Management –
branch of the Russian Presidential
Academy of National Economy
and Public Administration
(Saint Petersburg, Russia)
E-mail: e.tonkov@mail.ru



D.E. TONKOV,
PhD in Law, Lecturer, The branch of the
Moscow State Institute
of International Relations (University)
of the Ministry of Foreign Affairs
of the Russian Federation
in the city of Tashkent
(Tashkent, Uzbekistan)
E-mail: dmitrii.tonkov@gmail.com

This paper is devoted to modern researches on the Russian realistic jurisprudence. The relevance of the topic of this paper is determined by growing interest in legal realistic movements in general and Russian legal realism in particular. Current approaches to the analysis, reconstruction and criticism of legal realism are being developed by leading scholars that indicates the importance of the realistic paradigm in law. The approaches to understanding Russian legal realism considered in the paper especially in the context of classic American and Scandinavian realistic movements allow analyzing the trends in the further development of the theory and practice of legal realism in Russia. The subject of the study is the approaches of modern scholars to the phenomenon of Russian legal realism. The purpose of the work is to clarify the reasonableness of the identification of the Russian realistic movement in law. The novelty of the topic consists of the analysis of works that have appeared in the last decade on the subject of Russian legal realism including a comparison of the principal opinions available in science about the representatives of this movement and the prospects for its recognition as a “classic” realistic movement along with American and Scandinavian legal realism. Descriptive, formal logical and comparative legal methods were used as the key research methods including the analysis of the works of the authors of the English-language collective monograph “Russian Legal Realism” (2018, Springer) and

the comparison of American, Scandinavian and Russian realistic movements in jurisprudence. The main conclusions of the paper are the necessity for further research of Russian legal thought of the late 19th–early 20th centuries and its development in the 20th–21st centuries in order to distinguish more clearly the Russian version of legal realism among diverse psychological and sociological theories as well as to compare presumably realistic ideas in Russia with the already acknowledged classic movements of legal realism in the USA and Scandinavia. The significance of such a comparative analysis for justification of the existence of a specific Russian movement of legal realism is emphasized. Despite many methodological difficulties an understanding of Russian legal realism is provided that distinguishes the works of its predecessors at the end of the 19th century and supporters (theorists and practitioners) in the 20th century: the proposed understanding also actualizes their significant influence on Russian legal realities in the 21st century.

Keywords: Russian legal realism, realistic jurisprudence, philosophy of law, sociology of law, psychological theory of law, L. Petrażycki, modern Russian jurisprudence.

Introduction

“Realistic jurisprudence”, or “legal realism”, is currently an established concept of the *theory and philosophy of law*. It emphasizes the importance of law enforcement procedures, the psychological perception of the factuality of law and the denial of excessive metaphysics that contradicts the empirical observations of the researcher. Legal realists believe that law is not only a logical and restricted system of rules (“paper rules”), but is a complex phenomenon consisting of prevailing ideas about the essence and functions of law, texts about legal norms, as well as a combination of acts of human behavior (“real rules”)¹.

The term “legal realism” initially arose during the scientific polemics of the 1930s² in the United States and was used to refer to the *American legal movement* of the mid-20th century, which united various scholars led by such thinkers as Karl Llewellyn, Jerome Frank, Walter Cook, Herman Oliphant, Underhill Moore, Felix Cohen, etc. They condemned the formalism, abstract nature and conservatism of traditional jurisprudence (natural law theories and legal positivism of the legist model).

The worldwide popularity of the American realistic movement in the middle of the 20th century resulted in the fact that Swedish and other Scandinavian proponents of Axel Hagerström’s philosophy of law began to be designated as “*Scandinavian legal realists*”, uniting representatives of the Swedish “Uppsala school of philosophy of law” – mainly A. Hagerström, Vilhelm Lundstedt and Karl Olivecrona – with Alf Ross and others³. The four thinkers are recognized as the most outstanding representatives of the Scandinavian realistic movement in jurisprudence: it is considered that law should be based on actual experience, traditional legal concepts consist of metaphysical ideas devoid of practical meaning⁴ and these “illusory” concepts should be eliminated from jurisprudence.

Scandinavian variant of the realistic approach to law presumably found its designation due to frequent use by its representatives in their philosophical and legal studies of “realistic” terms borrowed from various humanitarian and natural sciences, and the prominence of the “American le-

¹See: Tonkov E.N., Tonkov D.E. *Legal Realism / Pax Britannica Series*. Saint-Petersburg, 2022. P. 15–16.

²See: Hull N.E.H. *Some Realism about the Llewellyn – Pound Exchange over Realism: the Newly Uncovered Private Correspondence, 1927–1931 // Wisconsin Law Review*. 1987. № 6. P. 921–969; Hull N.E.H. *Reconstructing the Origins of Realistic Jurisprudence: A Prequel to the Llewellyn – Pound Exchange over Legal Realism // Duke Law Review*. 1989. № 5. P. 1302–1334.

³See, e.g.: Strang J. *Two Generations of Scandinavian Legal Realists // Retfærd: Nordisk Juridisk Tidsskrift*. 2009. Bd. 32. Nr. 1/124. P. 62–82; Mindus P. *A Real Mind: the Life and Work of Axel Hägerström / Law and Philosophy Library*. Vol. 87. Dordrecht, Heidelberg, London, N.Y., 2009. P. xvii.

⁴See, e.g.: Lundstedt A.V. *Legal Thinking Revised: My Views on Law*. Stockholm, 1956. P. 16–17.

gal realism” at a time when the works of Scandinavian scholars became available for research by the world community⁵. Thus, certain common ideas of American and Scandinavian legal realism⁶ with a comparable period of their intellectual influence in the respective regions, predetermined the name of the movement with a “realistic” approach to law in Scandinavia.

Subsequently the concept of “legal realism”, or “realistic jurisprudence” began to be used to designate various movements in law, striving *inter alia* for greater empiricism, pragmatism, sociologism and psychologism in understanding legal phenomena to reduce the implication of abstraction and metaphysics in law, to explain the realities of judicial activity and emphasize the important role of legal actors (in particular, judges and subjects of executive power), to interpretative skepticism, as well as recognizing the mutual influence of law and a set of social and personal values. American and Scandinavian movements of legal realism, that arose between the two World Wars, have become ideological inspirers of many *realistic trends in world jurisprudence*, the most well-known of which are Italian (including Genoese and Bologna’s, or “normative legal realism”), French, German, Continental (Psychological), New (New American and European) Legal Realisms⁷. Attempts to reconstruct a realistic approach to law or to give an up-to-date analysis of realistic jurisprudence contain in the works of such scientists as Brian Bix, Hanoch Dagan, Brian Leiter, Patricia Mindus, Torben Spaak, Johan Strang, Brian Tamanaha⁸, etc.

American and Scandinavian legal realism are usually recognized as *two classic* movements of realistic jurisprudence. They are distinguished by undeniable innovation not only in content, but also in the style of presentation of research, persistence in defending their positions, eagerness to reform legal institutions. Chronologically classic American and Scandinavian legal realism had the utmost influence in the Interwar period, that conceptually distinguishes the thinking of their main representatives from the supporters of many subsequent “non-classical” movements of legal realism. The *origins of legal realism in Russia* is notable in this regard: the phenomenon Russian legal realism has been actively developing in modern science since the 2010s⁹ and claims to be a classic version of legal realism of the 20th century with its further development in the 21st century.

Main Provisions

In modern Russian and world science it is widely believed that as the representatives of Russian legal realism should be considered supporters of the St. Petersburg School of Philosophy of

⁵See: Hart H.L.A. Scandinavian Realism // The Cambridge Law Journal. 1959. Vol. 17. № 2. P. 233–240.

⁶See, e.g.: Martin M. Legal Realism: American and Scandinavian. N.Y., 1997; Tonkov D.E. Pravovoj realizm: amerikanskoe i skandinavskoe napravleniya [Legal realism: American and Scandinavian variants]. Moscow, 2021. (in Russ.).

⁷See the global context of the Russian realistic legal thought, e.g.: Tonkov D.E., Tonkov E.N. Legal Realism, Russian // Encyclopedia of the Philosophy of Law and Social Philosophy / ed. by M. Sellers, S. Kirste. 2023. P. 2–3. URL: https://link.springer.com/referenceworkentry/10.1007/978-94-007-6730-0_1100-1 (03.12.2023).

⁸See, e.g.: Tonkov E.N., Tonkov D.E. Legal Realism. P. 384–406.

⁹As a term it was introduced into world science in 2012 and is still successfully developing in various national non-English and international English works. See more: Tonkov D.E., Tonkov E.N. Legal Realism, Russian. P. 1; Tonkov E.N. Russian legal realism // Changing the Russian Law: legality and current challenges (17–19 October 2012, conference program). University of Helsinki. Helsinki, 2012; etc. Issues of Russian legal realism are more frequently becoming one of the topics of leading international scientific forums. See, e.g.: Legal Realism in Russia / Special Workshop 51. The XXX World Congress of the International Association for the Philosophy of Law and Social Philosophy (IVR). URL: <https://www.ivr2022.org/sw51/> (03.12.2023). See also, e.g.: Timoshina E.V., Lorini G., Żelaniec W. Other Russian or Polish Legal Realists // A Treatise of Legal Philosophy and General Jurisprudence Vol. 12. Legal Philosophy in the Twentieth Century: The Civil Law World. T. 2: Main Orientations and Topics. Chapter 20 / ed. by E. Pattaro, C. Roversi. Dordrecht, 2016. P. 527–557.

Law of the early 20th century, which is often equated with the psychological school of law of Leon Petrażycki, or adherents (all or the majority) of sociological and psychological approaches to law in Russia in the late 19th – early 20th centuries. In this regard, the most relevant and comprehensive English-language work on the subject of the realistic movement in Russia is the collective monograph “Russian Legal Realism” (2018)¹⁰, for the publication of which the scientific conferences of St. Petersburg State University in 2010s and the Polish-language book by Julia Stanek “Russian Legal Realism: psychological and sociological school of law” (2017)¹¹ served as constructive impulses. Polish editors Bartosz Brożek, J. Stanek and Jerzy Stelmach together with an international group of authors – A. Polyakov, A. N. Medushevsky, J. Stanek, E. Fittipaldi, E. Timoshina, M. Antonov, A. Zolkin and O. Merezhko – presented to the English-speaking world science the notions of Russian legal realists, their predecessors and followers, who combined psychological and sociological approaches to law: the authors consider that “the collection of ideas on law discussed in Russia at the beginning of the twentieth century can be understood as a unified school of legal thought – as *Russian legal realism*”¹².

The *criteria* for defining Russian legal realism in the collective monograph are four “fundamental elements” that “must be applied jointly, and none of them alone points to any specific attribute of the school”¹³: 1) conceptual apparatus developed by L. Petrażycki and his followers; 2) Russian scientific milieu as all of its representatives began their academic careers in Russia, mainly in St. Petersburg; 3) the period of the emergence of the school and its duration, a time spanning from the end of the 19th century to the 1930s (it is believed that works of Sergey Muromtsev and Nikolay Korkunov contain the foundations for legal realism in Russia, and the final phase is assumed to be the 1930s, when L. Petrażycki died and many representatives of the school changed their approach to law, as well as the subject of their research); 4) the commonality of the ideas. The authors note that the work of representatives of Russian legal realism contributed to new areas of research with special attention to the psychological and sociological aspects of legal phenomena.

The analysis of the collective monograph “Russian Legal Realism” in general shows a tendency to *meronymize* (sometimes even *synonymize*) the concepts of “St. Petersburg School of Law”, “L. Petrażycki’s psychological school of law”, “Russian legal thought of the late 19th–early 20th century” and “Russian legal realism” without clear specification of their correlation. It seems evident that representatives of the St. Petersburg School of Philosophy of Law, headed by L. Petrażycki, played an important role in the formation of Russian legal realism. However, it is necessary to emphasize that the Russian realistic movement in law should be viewed through the prism of a wider range of actors, whose theoretical and practical activities shaped the realities of Russian law in the 20th–21st centuries. This point of view is also supported by the history of classic American and Scandinavian realistic movements.

Materials and Research Methods

The research is based, inter alia, on descriptive, formal logical and comparative legal methods. The analysis of collective monograph “Russian Legal Realism” (2018) shows the necessity for more precise differentiation of such concepts as “St. Petersburg School of Law”, “L. Petrażycki’s psychological school of law”, “Russian legal thought of the late 19th– early 20th century”

¹⁰Russian Legal Realism / ed. by B. Brożek, J. Stanek, J. Stelmach. Law and Philosophy Library. Vol. 125. Cham, 2018. See also the review of the collective monograph, e.g.: Temirbekov Zh.R. «RUSSIAN LEGAL REALISM»: Maқалалар zhinaryna recenziya [Review of the collection of articles «RUSSIAN LEGAL REALISM»] // Law and State. 2019. № 4 (85). P. 122–134. (in Kaz.).

¹¹Stanek J. Rosyjski Realizm Prawny: psychologiczno-socjologiczna szkoła prawa [Russian Legal Realism: psychological and sociological school of law]. Warszawa, 2017. (in Pol.).

¹²Russian Legal Realism / ed. by B. Brożek, J. Stanek, J. Stelmach. P. v.

¹³See: Ibid. P. vi–viii.

and “Russian legal realism” in modern jurisprudence. The comparison of classic American and Scandinavian movements of legal realism is made while justifying the possibility of identification the Russian realistic jurisprudence in 20th–21st centuries.

Research Results

1. Different Approaches to Russian Legal Realism

The fundamental nature of the theoretical developments of L. Petrażycki and his followers often does not allow to distinguish the “psychological school of law” of the outstanding scholar (or the entire St. Petersburg School of Philosophy of Law) from “Russian legal realism” and leads to unjustified identity of these concepts. Furthermore, the whole range of sociological and psychological approaches in Russia of the late 19th–early 20th centuries is often named as “Russian legal realism”, that raises additional doubts about the correctness of its description as a “school”: arguments about the controversial nature of such a designation of a realistic approach to law, for example, in classic American and Scandinavian movements of the mid-20th century (mainly due to heterogeneity of the realistic ideas)¹⁴ are also applicable for the Russian legal realism. Some researchers make attempts to list the representatives of Russian realistic jurisprudence, however none of these suggestions can be recognized as completed. Nevertheless, the majority of attempts are united by the leading proponents of Russian legal realism and have many *intersecting provisions*. Some points of view from the collective monograph are the following.

Andrey Polyakov states that in the early 20th century Leon Petrażycki founded the psychological school of legal philosophy at the St. Petersburg Imperial University and that “this school can be considered as an independent, local version of legal realism (its adherents include, inter alia, G. Guins, G. Ivanov, A. Kruglevsky, M. Laserson, P. Mikhailov, G. Gurvitch, N. Timasheff, P. Sorokin, S. Hessen, M. Reisner)”¹⁵. The emergence of this school diversified the Russian philosophy of law, which by this time was striving to find a compromise between positivist and sociological approaches. Moreover, the “representatives of sociological school headed by Sergey Muromtsev, Nikolai Korkunov, and Maksim Kovalevsky... considered law as the reality of human interaction and paid considerable attention to its physiological aspect. This was, to some extent, a way of reconciling their views with those of the St. Petersburg school”¹⁶. A. Polyakov also notes, that “St. Petersburg school of legal philosophy... was heavily influenced by Korkunov’s works” and “Korkunov created a realistic conception of law, based on a synthesis of positivism, sociology and psychology”¹⁷.

According to A. Polyakov, the period “between two revolutions” (1905–1917) “saw the rise of Russian legal scholars who combined ideas of both ‘neo-idealists’ and ‘realists’ and were straightforward about setting and solving the task of creating a coherent, holistic and integrated theory of law which would reconcile various classic and non-classical understandings of it: statism and natural law, sociological and psychological theories”¹⁸ such as B. Kistiakowsky, P. Sorokin, A. Yashchenko, F. Taranovsky, S. Frank, G. Gurvitch, P. Vinogradov, etc. Academic traditions of legal thinking of imperial Russia were continued after 1917 in a number of research centers outside Russia (for example, in China, Germany, Czechoslovakia, France, Yugoslavia): “they were led by the representatives of two schools: Petrażycki’s St. Petersburg school (P. Sorokin, G. Gurvitch, N. Timasheff, G. Guins, S. Hessen) and Novgorodtsev’s Moscow School

¹⁴See, e.g.: Tonkov E.N., Tonkov D.E. Legal Realism. P. 25, 93.

¹⁵Polyakov A. The St. Petersburg School of Legal Philosophy and Russian Legal Thought // Russian Legal Realism / ed. by B. Brožek, J. Stanek, J. Stelmach. P. 1, 4–5.

¹⁶Ibid. P. 4.

¹⁷Polyakov A. The Theory of State and Law by Nikolay Korkunov // Russian Legal Realism / ed. by B. Brožek, J. Stanek, J. Stelmach. P. 67.

¹⁸Polyakov A. The St. Petersburg School of Legal Philosophy and Russian Legal Thought. P. 17.

(N. Alexeev, I. Ilyin, S. Frank)¹⁹. A. Polyakov points out that, in particular, P. Sorokin developed a plan for integrating the theory of law “in a realistic and communicative fashion”, G. Gurvich “developed Petrażycki’s theory towards a realistic concept of law but he did not share his teacher’s pan-psychologism”²⁰. Moreover, such Russian jurists as N. Berdyaev, B. Vysheslavtsev, I. Ilyin, B. Kistyakovskiy, S. Kotliarevskiy, K. Kuznetsov, I. Mikhailovskiy, P. Novgorodtsev, E. Spektorskij, E. Trubetskoy, A. Yashchenko, etc., who had similar opinions regarding the criticism of positivist theories of law for their formalism, dogmatism, relativism and statist tendencies, were representatives of Russian “sociological and psychological realism”²¹.

Andrey N. Medushevsky explores the nature of the Russian psychological school of law from the perspective of the “international realist movement”, defines the role of the psychological approach in the formation of a realist paradigm and its influence on the development of critical theory in early Soviet law²². The comparative analysis of the Russian psychological school of law and the international realist movement made by A. N. Medushevsky in order to identify their common characteristics, origins and influence on the philosophy of law, as well as to raise the question of the existence of a Russian version of legal realism along with the American and Scandinavian, deserves special attention.

Although it does not seem entirely correct to classify, for example, Roscoe Pound or Benjamin Cardozo as “realists” in the strict sense (when separating sociological and realistic thoughts in 20th-century American jurisprudence) or to distinguish the “schools” of realistic movements in the United States and Scandinavia, A. N. Medushevsky reasonably notes that legal realism “was not a systematic doctrine, representing rather a group of theories about the nature of law” associated with American and Scandinavian realism²³. According to the researcher, “despite the great variety of different branches of the realist movement (American, Scandinavian, Russian), all of them have one important common element – the commitment to the analysis of the cognitive factors determining the decision-making of a judge in a concrete case”²⁴.

A. N. Medushevsky listed many scholars as representatives of the “Russian school of legal realism”, emphasizing N. Korkunov, L. Petrażycki, G. Gurvich, P. Sorokin, N. Timashev as “part of international realism”: “the psychological theory of law elaborated in Russian pre-revolutionary legal sociology put forward the explanation of the social context of legal development as a complex and multi-faceted transformation from traditional to rationalized forms of legal regulation”²⁵. The main specific characteristics of the Russian approach in this sense are: “the strict separation of legal and axiological dimensions of social development...; the deep interest in the different forms of law...; the concentration on those aspects of legal order which were interpreted as unjustifiable...; the general pragmatic character of recommendations... This constructive impetus of realism is characteristic as well for critical theory in early Soviet jurisprudence”²⁶. As pointed out by the researcher, “if some Bolshevik authors (like Reisner and P. Stuchka) openly confirmed the fact of the reception of psychological theory of law, others did not do so, exploring this realist-like conceptual framework as a new class-based theory of law”²⁷. Considering L. Petrażycki-

¹⁹Ibid.

²⁰Ibid. P. 18–19.

²¹Ibid. P. 11–12.

²²See: Medushevsky A.N. Law and Social Constructivism: The Russian School of the Legal Realism Reexamined // Russian Legal Realism / ed. by B. Brożek, J. Stanek, J. Stelmach. P. 37.

²³Ibid. P. 38.

²⁴Ibid.

²⁵Ibid. P. 60.

²⁶Ibid.

²⁷A.N. Medushevsky notes, that “Petrażycki deeply criticized such interpretations of his theory”. Ibid. P. 51.

ki's psychological theory of law as the main part of Russian legal realism of the late 19th–early 20th centuries and describing many common characteristics for both realism and psychological theory²⁸, however, beyond the scope of A. N. Medushevsky's research in the abovementioned collective monograph remains his opinion on the difference between “Russian legal realism” (in general) from other movements of “legal realism”, especially “in its classic implications (United States, England²⁹ and Scandinavia)”³⁰.

Elena Timoshina observes that L. Petrażycki's understanding of the reality of law did not coincide with the traditional understanding of the positivist (which monopolized the empirical) and natural law approaches, since the scientist did not recognize law as either a phenomenon of the empirical or metaphysical world: the methodological foundations of L. Petrażycki's theory of law, which had a spiritual nature and an ethical sense, were beyond positivism and metaphysics³¹. The ambiguity of the methodological foundations of L. Petrażycki's theory of law, according to E. Timoshina, resulted, inter alia, “in the possibility of its subsequent development, not only in a *realist-sociological* direction (Jerzy Lande, Adam Podgórecki, Jacek Kurczewski, Nicholas Timasheff), but also in a *phenomenological* one (Georges Gurvitch, Pëtr E. Mikhailov, Georgij A. Nanejshvili)”³².

Mikhail Antonov clarifies that socio-psychological conception of L. Petrażycki, as well as Eugen Ehrlich, “was not initially recognized as ‘legal realism’, which is quite explicable given that the very notion of ‘realism’ became widely used only in the 1930s” and “these two authors refrained from identifying themselves with realist jurisprudence”³³. Although “both Petrażycki and Ehrlich pursued similar tasks: to draw attention to the social dimension of law and to the psychological mechanism that puts the machinery into gear”, M. Antonov highlights the lack of any consequent methodology of realist legal studies by that time and a large variety of contradictory approaches under the realist denomination³⁴. The scholar considers that “realism only remained a general program of reformation of legal science without any clear (methodological) plan of reforms”³⁵.

Edoardo Fittipaldi shows that Petrażycki “adopted a form of critical realism” and “his approach to legal phenomena can be regarded as a form of legal realism”³⁶. Moreover, E. Fittipaldi considers J. Lande to be the most consistent developer of Petrażycki's ideas³⁷. *Andrey Zolkin* states that

²⁸Ibid. P. 45–49, 51.

²⁹The notion of realist “classic implication” in England requires clarification as A.N. Medushevsky states, that legal realism was usually associated “with two schools – American and Scandinavian” without any notion of English school of legal realism. Ibid. P. 38.

³⁰Ibid. P. 45.

³¹See: Timoshina E. The Logical and Methodological Foundations of the Theory of Law of Leon Petrażycki in the Context of the Analytical-Phenomenological Tradition // *Russian Legal Realism* / ed. by B. Brożek, J. Stanek, J. Stelmach. P. 112–113.

³²Ibid. P. 124.

³³Antonov M. Eugen Ehrlich and Leon Petrażycki: Are Emotions a Viable Criterion to Distinguish Between Law and Morality? // *Russian Legal Realism* / ed. by B. Brożek, J. Stanek, J. Stelmach. P. 132.

³⁴See: Ibid. P. 132–133.

³⁵Ibid. P. 133. See also M. Antonov's notion, that particular character of Russian (Soviet) law can be explained by theoretical combination of conservative social philosophy, a Schmittean conception of exception, methods of legal positivism and the spirit of legal nihilism: Antonov M.V. Legal Realism in Soviet and Russian Jurisprudence // *Review of Central and East European Law*. 2018. Vol. 43. № 4. P. 483–518.

³⁶Fittipaldi E. On Leon Petrażycki's Critical Realism and Legal Realism // *Russian Legal Realism* / ed. by B. Brożek, J. Stanek, J. Stelmach. P. 93.

³⁷See: Ibid.

“the most famous followers of L. Petrażycki” were N. Alekseev and G. Gurvitch³⁸. *Oleksandr Merezhko* presented the socio-psychological theory of M. Reisner, which combined the psychological theory of L. Petrażycki and Marxism in a rather “eclectic way”: M. Reisner was even called “Red Petrażycki”³⁹.

Finally, *Julia Stanek* can be regarded as one of the main initiators of the unification of supporters of L. Petrażycki’s theory of law under the phenomenon of “Russian legal realism”. The key figures of the Russian legal realism, according to J. Stanek, are: L. Petrażycki, P. Sorokin, G. Gurvitch, N. Timasheff, M. Laserson, A. Kruglevsky, G. Gins, M. Reisner⁴⁰; other members of the “school” are: P. Lublinsky, G. Ivanov, G. Landau, M. Mikhailov, J. Magaziner⁴¹. Their predecessors are: M. Kovalevsky, S. Muromtsev and N. Korkunov⁴²; as the disciples of L. Petrażycki G. are mentioned following scholars: G. Nanejshvili, K. Sokolov, S. Gessen, A. L. Sacchetti, G. Brenev, V. Ivanovsky, I. Voitinsky and V. Voitinsky⁴³.

While including sociological jurisprudence (in Russia) into Russian realistic jurisprudence and considering, for example, S. Muromtsev to be the “predecessor of Russian legal realism” (its sociological direction)⁴⁴, J. Stanek connects the ideas of S. Muromtsev with the ideas of R. Pound, outlining the prospect of further research on the sources of American legal realism. However, the very identification of “American sociological legal realists”⁴⁵ by the author requires additional clarification, since the leaders of the American legal realism movement – Karl Llewellyn and Jerome Frank – recognized the importance, but reasonably separated their approaches from the ideas of R. Pound and the sociological jurisprudence of the USA. Nevertheless, J. Stanek clearly showed that the “psychological” (M. Laserson, A. Kruglevsky, etc.) and “sociological” (P. Sorokin, N. Timasheff, etc.) directions of the development of L. Petrażycki’s theory “were not as diverse as it might seem at first glance” and can be classified as a “united sociological and psychological school, as Russian legal realism”⁴⁶.

Hence a point of view that differs from the authors of the abovementioned collective monograph is also developing in modern science: it consists in the fact that the intellectual heritage of L. Petrażycki and his supporters is *part of the concept* of “Russian legal realism”, not replacing it, but being one of its most remarkable expressions in the 20th century, whereas sociological and psychological concepts at the end of the 19th century appear to be the *previous basis*, which is not included in realistic jurisprudence in strict sense. The Soviet approaches to law, which show the inconsistency of declarative norms of a just order with legal practice, despite all their diversity, are recognized as the *development* of the Russian realistic concept in theoretical and practice-oriented way with its significant influence on the legal order of the 21st century.

According to that alternative approach, the main figures (including theorists and practitioners) of the conceptualization of Russian legal realism in the 20th century are (in alphabetical order): A. Vyshinsky, F. Dzerzhinsky, V. Lenin (Ulyanov), Ya. Magaziner, E. Pashukanis, L. Petrażycki,

³⁸Zolkin A. Russian Naturalistic and Phenomenological Theory of Law and Contemporary Analytical Philosophy of Mind // *Russian Legal Realism* / ed. by B. Brożek, J. Stanek, J. Stelmach. P. 139.

³⁹Merezhko O. The Unrecognized Father of Freudo-Marxism: Mikhail Reisner’s Socio-Psychological Theory of State and Law // *Russian Legal Realism* / ed. by B. Brożek, J. Stanek, J. Stelmach. P. 149.

⁴⁰See: Stanek J. Rosyjski Realizm Prawny. S. 12, 15–16.

⁴¹See: Ibid. S. 23.

⁴²See: Ibid. S. 14.

⁴³See: Ibid. S. 24.

⁴⁴See: Stanek J. Sergey Muromtsev: The Founder of Russian Sociological Jurisprudence // *Russian Legal Realism* / ed. by B. Brożek, J. Stanek, J. Stelmach. P. 80–81, 90.

⁴⁵Ibid. P. 91.

⁴⁶Stanek J. Between Psychology and Sociology: The Continuers of Psychological Legal Theory // *Russian Legal Realism* / ed. by B. Brożek, J. Stanek, J. Stelmach. P. 159, 174–175.

M. Reisner, A. Sacchetti, I. Stalin (Dzhugashvili), P. Stuchka and many others⁴⁷. The term “Russian legal realism” should be used to analyze historical patterns and essential features of the rule of law that formed in the territories of the former Russian Empire after the October Revolution of 1917, based, inter alia, on a broad understanding of the sources of law, the concept of an individual normative system of a legal subject, the multiplicity and parallelism of normative systems, the psychological approach to law by L. Petrażycki and his followers⁴⁸. Russian legal realism implies radical methodological approaches and has such ontological foundations as the unity of the three branches of government that are obedient to the executive and party bodies, selectivity and relativism of judges and law enforcement officers, the lack of clear criteria of proof, unpredictability of court decisions, etc.⁴⁹

2. Comparison of “Classic” Legal Realisms

Regarding the historical prerequisites for the emergence of legal realism in North American, Scandinavian and, in particular, Soviet societies, its intensive development in the first half of the 20th century should be noted. It is possible to identify the following similarities between the legal cultures of the USA, Scandinavian countries and the USSR in the period between the First and Second World Wars: the significance of the dependence of jurisprudence on non-jurists and the degree of influence of legal doctrine, as well as the pragmatism of legal methods. The concept of legal realism as a struggle against formalism and understanding of law as a socio-psychological phenomenon turned out to be a convenient *policy tool* in the United States (Franklin Roosevelt’s “New Deal”), Sweden (the program of “Social Democratic Values”) and Soviet Russia (policy of the party). In all three legal cultures during this period a separate trial with specific results was ahead of scientific theory, not the other way around, and the legal realism movement sought, inter alia, to structure the influence of judicial subjectivism and make the decision-making process more predictable.

The defining socio-historical conditions for the formation of radical ideas of legal realism in the United States and Sweden were created by such characteristic for these countries circumstances as the absence of a large number of academically trained lawyers and the wide involvement of ordinary citizens in the judicial system, which predetermined the orientation of legal science to a skeptical and pragmatic approach to understanding of law⁵⁰. Similar trends can be traced in Soviet law. In particular, the Soviet judicial system in the period of the 20th century, similar to the heyday of American and Scandinavian legal realism, had experience in creating “people’s courts” and involving ordinary citizens in the administration of justice. The researchers note that at that time, “the court of the people could afford to be guided by its own discretion, and not by the nuances of laws and decisions of higher authorities”⁵¹.

American, Scandinavian, Russian and other variants of legal realism were a radical reaction to the formalism of outdated legal dogmas under the changed economic and political order. The ideological context of the formation of a new legal paradigm was most clearly emerged in the Russian movement of legal realism. Despite the differences between the three variants of legal

⁴⁷See: Tonkov E.N., Tonkov D.E. Legal Realism. P. 228–229.

⁴⁸See: Ibid. P. 191–362. See also, e.g.: Tonkov E. Individual Experience as a Source of Law // The Experience of Law: Collection of Articles and Essays / comp. by O. Stovba, N. Satokhina. The Library of the International Journal “Philosophy of Law Issues”. Kharkiv, 2019. P. 136–147.

⁴⁹See more: Tonkov D.E., Tonkov E.N. Legal Realism, Russian // Encyclopedia of the Philosophy of Law and Social Philosophy. P. 3–5.

⁵⁰See more: Pihlajamäki H. Against Metaphysics in Law: The Historical Background of American and Scandinavian Legal Realism Compared // The American Journal of Comparative Law. 2004. Vol. 52. № 2. P. 469–487.

⁵¹See: Rossijskie sud’i: sociologicheskoe issledovanie professii [Russian courts: sociological studies of the profession] / ed. by V. Volkov. Moscow, 2015. P. 15. (in Russ.).

realism in the main theoretical premises (pragmatism in the USA, anti-metaphysical philosophy in Scandinavia, party ideology in the Soviet Union) and areas of research (the activities of courts in the USA, normative texts in Scandinavia, the psychological impact of law in Russia), all these movements are united by an understanding of their role as intermediaries between “book law” and the practical human problems⁵².

Discussion and Conclusion

In modern science legal realism appears in various meanings: as a third way in law, different from natural law and positivist theories; as a variant of exclusive legal positivism; as an approach to analyzing judicial decisions or determining the ontological status of law; as a method of interpretation; as a strategy for judicial interpretation and application of law; as a theory of knowledge, etc. Thus, researches of American, Scandinavian, Russian and other variants of legal realism still encounter many *methodological difficulties* arising both from the different meanings of the term “realism” in the socio-humanitarian sciences, and from the presence of numerous and heterogeneous theoretical approaches of the realistic legal thought. It seems that the development of the Russian and other variants of “legal realism” and the tendency to emphasize the “realism” of approaches to law by individual jurists of the 19th–20th centuries confirms the consonance of many concepts of classic American and Scandinavian representatives of legal realism with the current world. At present the concept of “Russian legal realism” is still taking shape, based not only on modern studies of Russian legal thought in the late 19th–early 20th centuries, as well as its further development in the 20th–21st centuries (*the internal aspect*), but also by comparing it with classic American and Scandinavian realistic movements that are already established in science (*the external aspect*). Such a comparative analysis substantiates the identification of the “Russian” version of legal realism among the psychological and sociological theories in imperial, Soviet and modern Russia.

Е.Н. Тонков, Ресей Федерациясының Президенті жанындағы Ресей халық шаруашылығы және Мемлекеттік қызмет академиясының филиалы – Солтүстік-Батыс басқару институтының құқықтану кафедрасының доценті (Санкт-Петербург қ., Ресей); Д.Е. Тонков, құқық ғылымдарының кандидаты, Ташкенттік филиалы Мәскеу мемлекеттік халықаралық қатынастар институтының (Университетінің) оқытушысы, Ресей Федерациясы Сыртқы істер министрлігі (Ташкент қ., Өзбекстан): Қазіргі ғылымдағы Ресей құқықтық реализмінің түсінігі.

Бұл мақала Ресейдегі құқықтанудың реалистік бағытын заманауи зерттеуге арналған. Тақырыптың өзектілігі тұтастай алғанда құқықтық реалистік қозғалыстарға және атап айтқанда ресейлік құқықтық реализмге деген қызығушылықтың артуына байланысты. Құқықтық реализмді талдаудың, қайта құрудың және сынаудың соңғы тәсілдерін жетекші зерттеушілер әзірлейді, бұл құқықтағы реалистік парадигманың қажеттілігін көрсетеді. Мақалада қарастырылған ресейлік құқықтық реализмді түсіну тәсілдері, әсіресе классикалық американдық және скандинавиялық реалистік бағыттар аясында, Ресейдегі құқықтық реализм теориясы мен практикасының одан әрі даму тенденцияларын талдауға мүмкіндік береді. *Зерттеу пәні* қазіргі ғалымдардың ресейлік құқықтық реализм құбылысына көзқарастарынан тұрады. *Жұмыстың мақсаты* – құқықтанудағы ресейлік реалистік бағытты бөлудің негізділігін түсіндіру. *Тақырыптың жаңалығы* соңғы онжылдықта пайда болған ресейлік құқықтық реализм тақырыбындағы жұмыстарды талдауда, соның ішінде осы қозғалыстың өкілдері туралы ғылымда бар негізгі пікірлерді және оны американдық және скандинавиялық құқықтық реализммен қатар «классикалық» реалистік бағыт ретінде бекіту перспективаларын салыстыруда жатыр. *Зерттеудің негізгі әдістері* ретінде сипаттамалық, формальды-логикалық және салыстырмалы-құқықтық

⁵²See more: Tonkov D.E., Tonkov E.N. Legal Realism, Russian // Encyclopedia of the Philosophy of Law and Social Philosophy. P. 2.

әдістер, соның ішінде 2018 жылғы «Ресей құқықтық реализмі» ағылшын тілді ұжымдық монографиясы авторларының жұмысын талдау кезінде қолданылды. («Springer» баспасы) және құқықтану саласындағы американдық, скандинавиялық және ресейлік реалистік бағыттарды салыстыру. Мақаланың негізгі тұжырымдары ХІХ ғасырдың аяғы мен ХХ ғасырдың басындағы ресейлік құқықтық ойды одан әрі зерттеу қажеттілігі болып табылады. және оның ХХ – ХХІ ғасырларда дамуы жан – жақты психологиялық және әлеуметтанулық теориялар арасында құқықтық реализмнің ресейлік нұсқасын неғұрлым нақты бөліп көрсету үшін, сондай-ақ Ресейдегі болжамды реалистік идеяларды АҚШ пен Скандинавиядағы құқықтық реализмнің қалыптасқан классикалық бағыттарымен салыстыру. Ресейдің жеке құқықтық реализм қозғалысын негіздеу үшін мұндай салыстырмалы талдаудың маңыздылығы атап өтілді. Көптеген әдіснамалық қиындықтарға қарамастан, ХІХ ғасырдың аяғында оның ізашарлардың (одан бұрын болғандардың) және ХХ ғасырдағы ізбасарлардың (теоретиктер мен практиктердің) еңбектерін ажырататын ресейлік құқықтық реализм туралы түсінік ұсынылады.

Түйінді сөздер: ресейлік құқықтық реализм, реалистік құқықтану, құқық философиясы, Құқық әлеуметтануы, құқықтың психологиялық теориясы, Л.Петражицкий, қазіргі орыс Құқықтануы.

Е.Н. Тонков, к.ю.н., доцент кафедры правоведения Северо-Западного института управления – филиала Российской академии народного хозяйства и государственной службы при Президенте РФ (г. Санкт-Петербург, Россия); Д.Е. Тонков, к.ю.н., преподаватель Ташкентского филиала Московского государственного института международных отношений (Университет) Министерства иностранных дел Российской Федерации» (г. Ташкент, Узбекистан): Понимание российского правового реализма в современной науке.

Данная статья посвящена современным исследованиям реалистического направления юриспруденции в России. *Актуальность темы* обусловлена нарастающим интересом к юридическим реалистическим движениям в целом и российскому правовому реализму в частности. Новейшие подходы к анализу, реконструкции и критике правового реализма разрабатываются ведущими исследователями, что свидетельствует о востребованности реалистической парадигмы в праве. Рассматриваемые в статье подходы к пониманию российского правового реализма, особенно в контексте классических американского и скандинавского реалистических направлений, позволяют проанализировать тенденции дальнейшего развития теории и практики правового реализма в России. Предмет исследования составляют подходы современных ученых к феномену российского правового реализма. *Цель работы* состоит в прояснении обоснованности выделения российского реалистического направления в юриспруденции. *Новизна темы* заключается в анализе появившихся в последнее десятилетие работ по тематике российского правового реализма, в том числе сопоставления главных имеющихся в науке мнений о представителях данного движения и перспектив его закрепления в качестве «классического» реалистического направления, наряду с американским и скандинавским правовым реализмом. В качестве основных методов исследования применялись описательный, формально-логический и сравнительно-правовой методы, в том числе при анализе работ авторов англоязычной коллективной монографии «Российский правовой реализм» 2018 г. (издательство «Springer») и сравнении американского, скандинавского и российского реалистических направлений в юриспруденции. *Основными выводами* статьи являются необходимость дальнейшего исследования российской правовой мысли конца ХІХ – начала ХХ вв. и ее развития в ХХ – ХХІ вв. для более четкого выделения российского варианта правового реализма среди разносторонних психологических и социологических теорий, а также сопоставления предположительно реалистических идей в России с уже устоявшимися классическими направлениями правового реализма в США и Скандинавии. Подчеркивается важность подобного сравнительного анализа для обоснования отдельного российского движения

правового реализма. Несмотря на многие методологические трудности, предлагается понимание российского правового реализма, которое различает труды его предшественников в конце XIX в. и сторонников (теоретиков и практиков) в XX в. и которое актуализирует их значительное влияние на российские правовые реалии в XXI в.

Ключевые слова: российский правовой реализм, реалистическая юриспруденция, философия права, социология права, психологическая теория права, Л. Петражицкий, современная российская юриспруденция.

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Для цитирования и библиографии: Tonkov E.N., Tonkov D.E. Understanding Russian Legal Realism in the Modern Science // Право и государство. № 4 (101), 2023. – С. 6-18. DOI: 10.51634/2307-5201_2023_4_6

Материал поступил в редакцию 11.11.2023.