Историко-философский ежегодник
2022. Т. 37. С. 84–123
УДК 1(091)

History of Philosophy Yearbook
2022, vol. 37, pp. 84–123
DOI: https://doi.org/10.21146/0134-8655-2022-37-84-123

Pavel Novgorodtsev and the Concept of Legal Consciousness in Russian Philosophy of Law

Randall A. Poole
The College of St. Scholastica, 55805, 1200 Kenwood Ave, Duluth, Minnesota, USA
rpoole@css.edu

Abstract. This article explores the main contributions of Pavel Novgorodtsev (1866–1924) to Russian philosophy of law, focusing on his central idea that the rule of law depends on a neo-idealist conception of legal consciousness based on natural law and fundamentally on human dignity, or respect for the intrinsic and absolute worth of the human person. The article examines Novgorodtsev's critique of the historical school of jurisprudence, which was the subject of his first book, as well as his understanding of natural law as a moral ideal, of personhood as the highest moral purpose of and justification for law, and of law as the basic condition of society and therefore of human perfectibility or progress. It shows that his concept of "individualism" had both a methodological meaning and a more broadly philosophical meaning coinciding with the meaning of personalism (the defense of the absolute worth of personhood). Novgorodtsev based his own personalist metaphysics on an idealist theory of human nature. He held that the "absolute ideal," one of his main philosophical concepts, entailed the metaphysical reality of the Absolute. The second half of the article details the ways Novgorodtsev applied his theory of natural law and his conception of legal consciousness to the modern state, especially in his 1909 book, *The Crisis of Modern Legal Consciousness*, which presents a rich intellectual history of the concept of the *Rechtstaat* or *правовое государство*. The article concludes that Novgorodtsev's neo-idealist conception of legal

consciousness deeply shaped the thought of other philosophers associated with the Moscow school of Russian legal philosophy.

Keywords: Pavel Novgorodtsev, Russian philosophy of law, Russian idealism, rule of law, legal consciousness, historical school of jurisprudence, natural law, personhood, human dignity, personalism

For citation: Poole, Randall A. "Pavel Novgorodtsev and the Concept of Legal Consciousness in Russian Philosophy of Law." *History of Philosophy Yearbook / Istoriko-filosofskii ezhegodnik* 37 (2022): 84–123.

Павел Новгородцев и понятие правосознания в русской философии права

Рэндел А. Пул
Колледж Св. Схоластики, 55805, 1200 Кенвуд Авеню, г. Дулут, Миннесота, США.
rpoole@css.edu

Аннотация. В этой статье исследуется вклад Павла Ивановича Новгородцева (1866–1924) в русскую философию права с особенным акцентом на его центральной идее о том, что верховенство права неразрывно связано с неоидеалистической концепцией правосознания, основывающейся на естественном праве и в конечном счете на человеческом достоинстве, или уважении к абсолютной внутренней ценности каждой личности. Рассматривается критика Новгородцевым исторической школы права, которая была темой его первой книги, а также его понимание естественного права как морального идеала, личности как наивысшей моральной цели и обоснования права, а права как базового условия существования общества и, таким образом, человеческого совершенствования, или прогресса. Демонстрируется, что его понятие «индивидуализма» имело как методологический смысл, так и более широкий философский смысл, совпадающий со смыслом персонализма (защиты абсолютной ценности личности). Новгородцев основывал свою персоналистскую метафизику на идеалистической теории человеческой природы. Он полагал, что из понятия «абсолютного идеала» – одного из его главных метафизических понятий – следовала метафизическая реальность Абсолюта. Во второй части статьи подробно показывается, как Новгородцев применял

свою теорию естественного права и свою концепцию правосознания к современному государству, особенно в своей книге 1909 г., «Кризис современного правосознания», в которой представлена богатая традиция понятия *Rechtstaat*, «правового государства». В статье заключается, что неоидеалистическая концепция правосознания Новгородцева серьезно повлияла на мысль других философов, связанных с Московской школой русской философии права.

Ключевый слова: Павел Новгородцев, русская философия права, русский идеализм, верховенство права, правосознание, историческая школа права, естественное право, личность, человеческое достоинство, персонализм

Для цитирования: Пул, Рэндел А. «Павел Новгородцев и понятие правосознания в русской философии права». *Историко-философский ежегодник* 37 (2022): 84–123.

Поступила в редакцию / Received: 06.07.22
Поступила после рецензирования / Revised: 12.07.22
Принята к публикации / Accepted: 20.07.22

Pavel Novgorodtsev (1866–1924) was arguably the most significant social philosopher of twentieth-century Russia.[1] He was a student of Boris Chicherin (1828–1904) and was also greatly influenced by Vladimir Soloviev (1853–1900). Drawing on their ideas, he founded the "Moscow school" of Russian legal philosophy. Other members of the school were Evgenii Trubetskoi (1863–1920), Sergei Kotliarevskii (1873–1939), Nikolai Alekseev (1879–1964), and Ivan

[1] The classic account of him in English is Andrzej Walicki, "Pavel Novgorodtsev: Neo-Idealism and the Revival of Natural Law," in Walicki, *Legal Philosophies of Russian Liberalism* (Oxford: Oxford University Press, 1987), 291–341. More recently, see the fine portrait by Konstantin Antonov, "Pavel Novgorodtsev: Natural Law and its Religious Justification," in *Law and the Christian Tradition in Modern Russia*, ed. Paul Valliere and Randall A. Poole (Abingdon: Routledge, 2022), 243–65. See also Vanessa Rampton, *Liberal Ideas in Tsarist Russia: From Catherine the Great to the Russian Revolution* (Cambridge: Cambridge University Press, 2020), 146–60. The literature in Russian is now large. There is a valuable bibliography by I.A. Katsapova (И.А. Кацапова) in *Философия права. П.И. Новгородцев, Л.И. Петражицкий, Б.А. Кистяковский,* ред. Е.А. Прибыткова (М.: РОССПЭН, 2018), 108–23.

Ilyin (1883–1954). The school's central idea was that the rule of law depends on a neo-idealist conception of legal consciousness based on natural law and fundamentally on human dignity, or respect for the intrinsic and absolute worth of the human person. The present article is an exposition of that idea, as it was developed by Novgorodtsev. The Moscow school's philosophical orientation was "neo-idealist" because it revived and revised classic German idealism (especially Kant and Hegel). It could be described as a type of "religious idealism" because it drew metaphysical and specifically theistic conclusions from its basic idealist conception of human nature.[2]

Together with the German neo-Kantian philosopher Rudolf Stammler (1856–1938) and the Polish-Russian legal theorist Leon Petrażycki (1867–1931), Novgorodtsev was one of the main figures associated with the revival of natural law, a movement that began in the 1890s and was centered in Germany and Russia. Novgorodtsev found much to admire in Stammler, including his idea of "natural law with changing content." He was also indebted to his concept of the "social ideal," which Stammler developed in his *Die Lehre von dem richtigen Rechte* (1902) and which he formulated in Kantian terms as a "community of free-willing persons."

Petrażycki, who headed the "St. Petersburg school" of Russian legal philosophy, developed a psychological theory of law and conception of legal consciousness rooted in individual and social psychology.[3] His overall philosophical outlook might be described as a type of "soft positivism," but he firmly opposed legal positivism, which held that the state was the source of law. Petrażycki believed that law had its origins not in the state but in the human psyche; it was a basic psychic phenomenon and its source was the individual

[2] Randall A. Poole, "The Liberalism of Russian Religious Idealism," in *The Oxford Handbook of Russian Religious Thought*, ed. Caryl Emerson, George Pattison, and Randall A. Poole (Oxford: Oxford University Press, 2020), 255–76.

[3] On Petrażycki, see Walicki, *Legal Philosophies of Russian Liberalism*, 213–90. See also the good and brief account by P.T. Grier and W.E. Butler, "The Concept of Legal Consciousness: Origin and Transformations," in Ivan Aleksandrovich Il'in, *On the Essence of Legal Consciousness*, ed., intro., and trans. William E. Butler, Philip T. Grier, and Vladimir A. Tomsinov (London: Wildy, Simmonds and Hill, 2014), 15–50, esp. 38–41.

psyche. His idea of natural law was rather general. He used the term to embellish his project for a new science of legal policy, which he imagined would guide the future development of law. The ultimate goal of legal development was his "social ideal" of universal love that would eventually result in the complete socialization of human relations and elimination of the need for legal regulation of human conduct – the "withering away of law." Because the social ideal of universal love was "axiomatic" rather than empirically or positively given, Petrażycki interpreted his science of legal policy as a revival of natural law.

Pavel Novgorodtsev, the son of a Russian merchant, came from Bakhmut, a town in Ekaterinoslav province (now Donetsk oblast, Ukraine).[4] After graduating from Moscow University's Faculty of Law in 1888, he pursued graduate training there in the history of the philosophy of law. He studied in Berlin and Paris for several years, and in 1897 was awarded the *magister* degree for his first book, *Историческая школа юристов, ее происхождение и судьба (The Historical School of Jurists: Its Genesis and Fate)* (published in 1896). For his next book, *Кант и Гегель в их учениях о праве и государстве (Kant and Hegel in Their Theories of Law and the State)* (1901), he received the doctorate from St. Petersburg University. In 1902 he edited *Problems of Idealism*, a project he planned with Peter Struve. The volume was published by the Moscow Psychological Society, which, despite its name, was the first and main center of the growth of Russian philosophy in the three decades before the Russian Revolution. Novgorodtsev was a prominent member of the society. In 1903, he was appointed associate professor, and in 1904 full professor, at Moscow University, in the history and philosophy of law.

By this time he had a prominent role in liberal politics. From 1901 to 1905 he helped organize and lead the Liberation Movement, serving on the Council of the Union of Liberation. He also served on the bureau of the Academic Union, formed in early 1905 as the corporate voice of the Russian professoriate in the Liberation

[4] The following biographical sketch follows the one I prepared for *Problems of Idealism: Essays in Russian Social Philosophy*, trans., ed., intro. Randall A. Poole (New Haven, CT: Yale University Press, 2003), 451–52.

Movement. He was an influential member of the Constitutional Democratic (Kadet) Party from its beginning in 1905. In 1906 his native province of Ekaterinoslav elected him to the First State Duma. By signing the Vyborg Appeal (1906), Novgorodtsev forfeited membership in future Dumas, as well his professorship at Moscow University, although he continued to teach there as a lecturer. In 1909 he published *Кризис современного правосознания (The Crisis in Modern Legal Consciousness)*. In 1911, he resigned altogether (with 100 of his colleagues) from Moscow University in protest over government violation of university autonomy. From 1906 to 1918, he was professor and director of the Moscow Higher Commerce Institute, which he organized along broad educational lines and made into one of the most popular institutions of higher education in Russia. After the February Revolution he was reinstated in his professorship at Moscow University. In 1917 he published the first edition of *Об общественном идеале (On the Social Ideal)* (1917). In May 1917 he was elected to the Central Committee of the Kadet Party, and by January 1918 was its acting chairman. He led Kadet efforts, such as the formation of the National Center in May 1918, to coordinate effective resistance against the Bolsheviks. Novgorodtsev left Moscow at the end of 1918 for Ukraine and southern Russia, and in 1919 headed the Ekaterinodar Kadet party office. After the defeat of General Anton Denikin, he went to Berlin, where he helped edit the Kadet émigré newspaper *Руль* (1920). Finally settling in Prague, in May 1922 he founded the Russian Faculty of Law at the Charles University. He died in Prague in April 1924.

* * *

Recent scholarship has established that the concept of legal consciousness (*Rechtsbewußtsein*) in European intellectual history can be traced to Friedrich Carl von Savigny (1779–1861) and his historical school of jurisprudence.[5] In its historicist conception,

[5] Grier and Butler, "The Concept of Legal Consciousness: Origin and Transformations," 15–35, on which I rely for this section. In their history of the concept of legal consciousness, they include Petrażycki and developments in the Soviet period, but not Novgorodtsev.

legal consciousness was closely related to the broader Romantic notion of *Volksgeist*, advanced by Johann Gottlieb Herder (1744–1803). For Savigny, each cultural nation or people had its own legal consciousness, a sense of law and justice that developed organically from its whole way of life. Law was a cultural phenomenon and every legal consciousness was specific to the particular culture in which it emerged. Savigny opposed traditional doctrines of natural law because they were, he believed, rationalistic, abstract, universalistic (if only in their pretensions) and ultimately subjective because they reflected the arbitrary judgment and will of individual jurists and legislators.[6] But he also rejected positivistic accounts of law as the command of the sovereign – though his historicism was itself a form of positivism because it maintained that law was positively given in necessary historical development.

Savigny held that the source of law was not pure reason or arbitrary political power but a people's *Rechtsbewußtsein*, its organic legal tradition formed by the inner force of historical necessity. He believed that jurists and legal scholars should rely on it in elaborating a system or code of law and in arriving at *Recht*: the highest, most authoritative form of law for a particular cultural community. Savigny distinguished between *Recht* and *Gesetzen*, or laws as legislated and enacted. In a famous phrase, he maintained that the latter might become a "baleful corruption" of the former or, in other words, a violation of *Rechtsbewußtsein*.[7] Recht, as a type of higher norm for evaluation of Gesetzen, played a role in Savigny's theory perhaps not unlike that of natural law, but without the claim to universal validity: its objectivity was limited to the particular legal culture of which it was the highest expression. Such objectivity presupposed that the *Rechtsbewußtsein* of the cultural community (nation) in question was sufficiently coherent, organized, and developed that

[6] For him the system of Christian von Wolff (1679–1754) perhaps best epitomized the old school of natural law.

[7] F.C. von Savigny, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* (1814; 2nd ed. 1828; 3rd ed. 1840). See *Of the Vocation of our Age for Legislation and Jurisprudence*, trans. Abraham Hayward (London: Littlewood and Co., 1831), 32. Quoted by P.T. Grier, "I.A. Il'in and the Rule of Law," in Il'in, *On the Essence of Legal Consciousness*, ed. Butler, Grier, and Tomsinov, 4.

it could be systematized and codified by jurists, that is, expressed in the form of Recht.

* * *

The historical school of jurisprudence was the subject of Novgorodtsev's first book, *The Historical School of Jurists: Its Genesis and Fate*. The historical school developed in reaction against what it took to be the doctrine of natural law, and its reaction shaped the school's entire outlook.[8] Novgorodtsev set himself the task of understanding both the philosophy of natural law and the historicist critique of it. He returned to this connection in his programmatic essay, "Ethical Idealism in the Philosophy of Law (On the Question of the Revival of Natural Law)," published in *Problems of Idealism*. His consideration of natural law in his 1896 book is prescient and justifies his subsequent remark, in 1902, that this book, together with Leon Petrażycki's contemporaneous work, helped to galvanize the revival of natural law.[9]

Novgorodtsev argues that the historical school based its criticism of natural law and "easy victory" over it on a narrow, one-sided understanding of it. According to that understanding, natural law is prescribed by nature itself: its dictates are immutable and valid for all peoples and times; they can be found in their purest form in a putative original-natural state of humanity but have left some trace in existing bodies of law. This version of natural law can be traced to Ulpian's bald formula: *jus, quod natura omnia animalia docuit*. In the historicist account, the school of natural law invoked "nature" to create systems of allegedly universal, eternal norms, but in reality such systems could only be subjective, arbitrary, and scornful of the authentic and valuable diversity found among different peoples.[10]

---

[8] П.И. Новгородцев, *Историческая школа юристов, ее происхождение и судьба: опыт характеристики основ школы Савиньи в их последовательном развитии* (М.: Университетская типография, 1896), предисловие, 82.

[9] P.I. Novgorodtsev, "Ethical Idealism in the Philosophy of Law (On the Question of the Revival of Natural Law)," *Problems of Idealism*, ed. Poole, 315n2.

[10] Новгородцев, *Историческая школа юристов*, 2, 14–5; Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 284–85.

Despite the efforts of the historical school to relegate it to the past with other discarded doctrines, Novgorodtsev points out that the school of natural law actually has lost none of its relevance. This is because the historical school based its criticism of natural law on only one of its meanings (that it is prescribed by nature) while largely ignoring the other, which is far more important and to which Novgorodtsev would devote many pages of various works, beginning with the introduction to *The Historical School of Jurists*. There, he defines natural law as "the totality of ideal, ethical ideas about law."[11] The source of these ideas (or principles and norms) is "the inner consciousness of individual persons (or social groups)," or, in other words, moral consciousness and reason.[12] He quotes Hugo Grotius (1583–1645), the founder of the modern doctrine of natural law:

> The law of nature is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that, in consequence, such an act is either forbidden or enjoined by the author of nature, God.[13]

Novgorodtsev indicates that the point of designating the source of natural law as God, nature, reason, or a higher moral order is to contrast its "purely moral" demands to positive law, "which relies on the authority of power."[14] As he often puts it in these pages, natural law is the moral critique of existing positive law. It strives to bring positive law into closer conformity with our moral ideals.

Novgorodtsev presents the demands of natural law as inevitably arising from human nature, specifically from moral consciousness: Human beings, he writes, constantly aspire to "moral perfectibility" and when their aspirations confront the imperfections of a given legal order they are driven to "the ideal constructs known

---

[11] Новгородцев, *Историческая школа юристов*, 3.

[12] Новгородцев, *Историческая школа юристов*, 3.

[13] Новгородцев, *Историческая школа юристов*, 3; Grotius, *De iure belli ac pacis* (I.1.10.1).

[14] Новгородцев, *Историческая школа юристов*, 4.

under the name of natural law."[15] Law, he continues, may serve expedient purposes but also higher moral ones. It is subject to the moral critique of natural law when it fails at those higher purposes but also to moral justification by natural law when it meets them. Law is not just for the mechanical organization of society, but also for "the moral delimitation of social forces" and for the governing of social relations by general norms that create a firm foundation for the resolution of conflict and for peace and progress – all moral purposes.[16]

In a remarkable anticipation of his neo-idealist conception of legal consciousness, Novgorodtsev writes that the success of law depends on the extent to which "it penetrates into the consciousness of members of society and finds there moral sympathy and support."[17] Though he is rather circumspect, he suggests that such moral sympathy and support rest ultimately on the recognition that law can create the social conditions necessary for "the freedom for the moral development of the person" and for "spiritual perfectibility."[18] Here, already in 1896, he identifies personhood as the highest moral purpose of and justification for law, the point where it most comes under the purview of natural law and moral consciousness. This is the nexus of the neo-idealist conception of legal consciousness that he would develop in one way or another in much of his subsequent work. He credits his teacher Boris Chicherin with taking the contemporary point of view on natural law, namely, that it is an ideal concept but one that also develops according to changing historical and cultural circumstances, rather than being given once and for all.[19] Novgorodtsev suggests that it is a type of historical rationalism, "uniting the concepts of reason and history in the idea of rational development."[20]

The rejection of natural law was programmatic for the historical school of jurisprudence. This rejection was most explicit

[15] Новгородцев, *Историческая школа юристов*, 5.
[16] Новгородцев, *Историческая школа юристов*, 7–8.
[17] Новгородцев, *Историческая школа юристов*, 8.
[18] Новгородцев, *Историческая школа юристов*, 7–8.
[19] Новгородцев, *Историческая школа юристов*, 20.
[20] Новгородцев, *Историческая школа юристов*, 12.

in the case of what the historicists actually took to be the school of natural law, but it also applied to natural law as moral critique and ideal demand. As Novgorodtsev wrote in 1902, "Savigny thought that the point of view he advanced, historical inevitability and necessity, excluded the very possibility of evaluation and critique of law: if all law is formed by the action of inevitable historical forces, then it would seem that any attempt to critique the historical process is no more justified than an attempt to critique elemental processes of nature."[21] Yet Novgorodtsev recognized that Savigny's approach to natural law was complex and paradoxical. It is true that Savigny wanted to maintain a deterministic view of historical development. "In his desire to emphasize the organic character of history," Novgorodtsev writes, "he arrived at an extreme conclusion rejecting any part for human will in the historical process."[22] He held that the mysterious source of historical development was the impersonal national consciousness (*Volksgeist*), which was the common property of everyone. Developing within it, positive law acquired supreme authority and became inviolable for state and society alike. Thus in its origins (as the organic product of national life) Savigny tried to find the moral justification of law and implicitly gave it a role similar to that of natural law. "Such was the meaning of his theory of the organic development of juridical norms from the national consciousness," Novgorodtsev concludes.[23]

Novgorodtsev remarks that were historical determinism true, it would completely undermine the idea of natural law as moral critique, a point he repeats in *Problems of Idealism* (see above), and render impossible "the dualism of moral consciousness and positive law."[24] But of course he does not think that it is true and finds that

> its best refutation and the best confirmation of the ineradicability of moral evaluation is that Savigny himself made his historical

[21] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 288.
[22] Новгородцев, *Историческая школа юристов*, 84.
[23] Новгородцев, *Историческая школа юристов*, 85.
[24] Новгородцев, *Историческая школа юристов*, 86.

> point of view into a category of evaluation and the basis for conclusions about 'what ought to be.' <…> Unaware of it himself, he reintroduced the same concept he rejected. He reintroduced it under the cover of the historical view."[25]

In his 1896 book, he explained that for Savigny, positive law acquired moral justification merely by the circumstances of its origins. (As he might have said, Savigny committed a genetic fallacy.) "The national legal consciousness [*общенародное правосознание*], according to Savigny's view, is in itself law," because he thought its ideals were already historically realized in the juridical rules or norms of positive law.[26] Thus it became *its own type of natural law*, as Novgorodtsev puts it.[27] In an incisive analysis, he judges that, "Savigny repeats here the mistake of the old natural-law systems, which failed to demarcate between the demands of *ideal legal consciousness* and formally juridical norms."[28] In both cases, positive law (with its juridical rules or norms) is conflated with ideals, which by their nature are not positively given and can never be fully realized. The result of such conflation is that positive law is given an ideal, moral significance that it does not have. The juridical norms of positive law are immanent to it and relative, while "the demands of ideal legal consciousness" are ultimately moral ones and therefore absolute. The neo-idealist conception of natural law, of which Novgorodtsev was the leading Russian theorist, sought to restore these essential distinctions.

---

[25] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 288. This is a good example of the "contraband" critique of positivism advanced by Novgorodtsev and other Russian neo-idealists. They believed that ethical, religious, and metaphysical suppositions were inevitable in human thought and needed to be acknowledged and justified. "Contraband" refers to the unconscious smuggling of these suppositions into areas of thought claimed by positivism as its own, and to the resulting intellectual distortion and muddling of concepts. The contraband critique of positivism was widely used in Problems of Idealism. See Poole, "Editor's Introduction: Philosophy and Politics in the Russian Liberation Movement," in *Problems of Idealism*, ed. Poole, 1–78, esp. 35–42.

[26] Новгородцев, *Историческая школа юристов*, 99.

[27] Новгородцев, *Историческая школа юристов*, 101.

[28] Новгородцев, *Историческая школа юристов*, 99 (italics added).

Savigny's basic motivation, according to Novgorodtsev, was to raise the moral significance of the historical order.[29] This took the form of his paradoxical combination of historicism and natural law and meant that "his conservatism came into contact with liberal theories of the juridical state."[30] Novgorodtsev argues that with time Savigny came to realize that historical necessity, his theory of organic historical development, could not account for every existing positive law. Admitting the possibility of "historical anomalies," of exceptions to necessary historical development, opened up for him a more critical approach to history and a more explicit recognition of natural-law concepts, such as might be used by legislators to correct observed anomalies.[31]

According to Novgorodtsev, the most significant change in Savigny's views came with his *System des heutigen römischen Rechts* (1840). There, he no longer rejected the idea that philosophical principles having universal human significance could legitimately influence the development of law, indicating only that the concrete sphere of their manifestation was individual peoples.[32] He even attempted a philosophical formulation of the general purpose of the development of law, appreciating that it amounted to the moral calling of human nature as understood by the Christian religion. He expressed it as follows: "universal recognition of the equal moral dignity and freedom of man and the juridical defense of this freedom with the help of corresponding institutes."[33] Savigny seems to have recognized that this higher, universal ideal could broaden the narrower, national limits of the development of law. Novgorodtsev remarks that this was a "curious completion" of his historicist ideas and that it did not comport well with his original hope to find an immanent moral justification of positive law in the conditions of its historical origins.[34] In contrast to Savigny, the Russian philosopher of law recognized that the moral justification of law

[29] Новгородцев, *Историческая школа юристов*, 102.
[30] Новгородцев, *Историческая школа юристов*, 103.
[31] Новгородцев, *Историческая школа юристов*, 90.
[32] Новгородцев, *Историческая школа юристов*, 96.
[33] Новгородцев, *Историческая школа юристов*, 97.
[34] Новгородцев, *Историческая школа юристов*, 98.

was not historical or immanent but transcendental – and ultimately transcendent and metaphysical.

The Historical School of Jurists: Its Origins and Fate revealed Pavel Novgorodtsev to be a major Russian social philosopher. It announced many of his most important themes: the critique of historicism (and of positivism more generally), the irreducibility of moral consciousness as a constituent aspect of human nature, natural law as a moral ideal (or set of moral demands), personhood as the highest moral purpose of and justification for law, law as the basic condition of human perfectibility or progress, and an idealist (or neo-idealist) conception of legal consciousness.

* * *

In his first book Novgorodtsev referred, as we have seen, to the "demands of ideal legal consciousness." Clearly this is a key concept for him and it figures prominently in his subsequent work. Its core is natural law as a moral ideal, not as an already historically realized or existing part of positive law. Novgorodtsev's emphasis is on consciousness: not on historical, collective, national, or social consciousness, as with the historical school of jurisprudence and other historicist and sociological approaches, but on individual or personal moral consciousness. In his seminal essay, "Ethical Idealism in the Philosophy of Law" – to which I now turn in more detail – he wrote that "morality (like law) can and must be studied not only as a historical or social phenomenon, but also as an inner-psychic individual experience."[35] Positivism proclaimed that only historical and sociological inquiry was valid. Novgorodtsev aimed to restore the legitimacy of "individual-psychological and normative-ethical inquiry," which alone can penetrate to the depths of human consciousness "from which all norms draw their force."[36]

The focus on individual consciousness was a fundamental methodological (and more broadly philosophical) point for Novgorodtsev, which he explains as follows: Ethics, which includes natural law as a moral ideal, is concerned first of all with the idea

[35] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 299.

[36] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 302.

of conscious duty, "and such duty can have meaning only in relation to the person, as the one source of conscious decisions. Moral determinations acquire their meaning, their reality, only as the individual experiences of a person."[37] The study of history or society apart from individual persons cannot grasp the inner essence of morality or law: "The so-called social organism does not have an independent existence: it exists only in persons." It is no more than an abstraction, by which is understood the sum total of individual persons. This is why, although only life shared in common, and the resulting community of feelings and experiences, give content and reinforcement to the moral consciousness of persons, these experiences and feelings acquire a moral character for each member of the community only when they pass through his personal consciousness: there is no other consciousness in which they could take on the significance of autonomous responsibilities.[38]

Novgorodtsev uses the term "individualism" to capture this methodological premise, but his use of the term had nothing in common with relativism. Indeed he combines the term with "absolutism" to indicate that the highest moral principles (including natural law) recognized by individual consciousness are absolute and universal.[39]

Novgorodtsev characterizes his neo-idealist philosophy of law as *normative*. He refers to the inner essence of law as "a norm and principle of personhood."[40] As an ideal, it belongs (as we have just seen) to the inner world of consciousness. He praises Leon Petrażycki's "psychological theory of law" as a brilliant model of the empirical analysis of law "as an inner-psychic individual experience." However, he notes that such psychological analysis remains within the sphere of "what is," of the "constitutive features of legal consciousness."[41] Novgorodtsev is interested in the "regulative principles" of legal consciousness, which can be found, he says, in ethical idealism, a theory of "what ought to be" that transcendentally

[37] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 304–05.
[38] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 306.
[39] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 304.
[40] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 299, 303.
[41] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 303.

grounds norms. "Only here," he writes, "is the necessary culmination of the normative understanding of law accomplished."[42] His argument is that the neo-idealist conception of legal consciousness is normative in a way that neither the historicist or psychological conception can be: it posits natural law as an ideal moral demand directed to the individual consciousness. It makes natural law (and therefore the very idea of law) a matter of inner moral conviction rather than of external coercive authority. In Kantian terms, it makes law "autonomous" rather than "heteronomous." Novgorodtsev believed this was the ultimate foundation for the rule of law.

For him, the "regulative principles" of legal consciousness are the moral law and respect for the intrinsic and infinite worth of the human person, or for human dignity. Ultimately these principles are the same, at least in Kant's moral philosophy, which Novgorodtsev closely followed. In his famous "formula of humanity" (the second formulation of the categorical imperative) Kant defines the moral law as respect for persons as ends-in-themselves: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."[43] Novgorodtsev calls Kant's great vision of the kingdom of ends "the supreme good of the moral world."[44] He makes the obvious connection to natural law in writing about "the absolute foundation of natural law that is revealed to us in the moral idea of personhood."[45] Natural law is the juridical form of the moral law; it is upheld by consciousness, by respect for the moral law and for personhood, not by coercion. Precisely that is what distinguished the neo-idealist conception of legal consciousness from legal positivism, which held that sovereign state power was the source of law. Novgorodtsev's idealist approach virtually committed him to this emphasis on moral consciousness as the source of natural law and therefore of law as such.

---

[42] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 304.

[43] Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. H.J. Paton (New York, NY: Harper and Row, 1964), 96 (italics omitted); in the *Academy edition of Kant's collected works*: IV, 429.

[44] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 305.

[45] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 313.

* * *

Novgorodtsev held that there are two ways that personhood entails moral respect for law, indeed two ways it gives law moral value: human dignity and human perfectibility. The first and most basic purpose of law is to defend human dignity and the natural rights associated with it by limiting the arbitrary power of one person over another, if necessary through coercive means. This role belongs to the lawful state (*правовое государство*), which in its modern constitutional forms should itself fall under the rule of law, a condition that depends ultimately on the quality of legal consciousness and on civil society. In *Problems of Idealism*, Novgorodtsev wrote of the way that the modern conception of natural law limits state power by "the idea of the inalienable rights of the person." According to this conception, "natural law is the expression of the autonomous, absolute significance of the person, a significance that must belong to it in any political system."[46] He thought that human dignity was the source of the natural rights that were given juridical form by natural law and that were upheld by legal consciousness.

If the first way that personhood gives moral value to law is "negative" (the defense of human dignity and rights), the second is more "positive." Law, by making possible civilized life and society, also makes possible the realization of all higher potentials of human nature. In short, law enables the social conditions for human perfectibility and progress. Novgorodtsev was especially indebted to Vladimir Soloviev for this idea. As Soloviev put it in *Justification of the Good*, society is necessary for people to "freely perfect themselves." But society, he says, cannot exist if anyone who wishes can rob, maim, and murder. Law forcibly prevents this and so "is a necessary condition of moral perfection; as such it is demanded by the moral principle itself, though it is not a direct expression of it."[47]

---

[46] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 313.

[47] Vladimir Solovyov, *The Justification of the Good: An Essay on Moral Philosophy*, trans. Natalie A. Duddington, ed. and annotated Boris Jakim (Grand Rapids, Mich.: William B. Eerdmans Publishing Company, 2005), 320, 322. See also Soloviev, "Law and Morality: Essays in Applied Ethics," in Soloviev, *Politics, Law, and Morality: Essays by V.S. Soloviev*, ed. and trans. Vladimir Wozniuk (New Haven, CT: Yale University Press, 2000), 131–212, esp. 148–50.

In his 1901 essay, "The Idea of Law in the Philosophy of V.S. Soloviev," Novgorodtsev praised Soloviev for his defense of the "ideal essence of law" and for making clear that the "supreme task of law" was "to serve the ends of moral progress."[48] This message could help overcome what Chicherin, Petrażycki, and Novgorodtsev himself diagnosed as the contemporary "dissolution of legal consciousness."[49] In contrast to "Slavophile illusions" that law is unimportant,[50] Novgorodtsev presents Soloviev as a Christian idealist who developed and deepened Westernizing ideas such as progress, cultural development, universal human values and rights, and law. They acquired profound philosophical justification in his ideal of the spiritual transformation of the world, in which all of nature and human life would be permeated by divine principles.[51] This, his great vision of *Богочеловечество*, is the culmination of human perfectibility. Its achievement rests on lower but indispensable stages of moral and social progress. What Novgorodtsev calls Soloviev's "trust in the idea of law" came from his faith in the final triumph of the good but also from his sober recognition that law was the condition of human progress that justified such faith.[52]

In his chapter in *Problems of Idealism*, Novgorodtsev's emphasis is on personhood itself, in order to counter historicist and more generally positivist reductionism and to make "the self-determining person" the basis for the neo-idealist revival of natural law.[53] Nonetheless, he does not neglect society as the necessary sphere for the development of moral consciousness (which is inconceivable without a community of people who can recognize each other and themselves as persons or ends-in-themselves), for the ever fuller realization of human potential, and for human flourishing. As he writes, "The foundation and goal of morality is personhood, but the development of the person takes place in social conditions <…> Society, by its

[48] П.И. Новгородцев, "Идея права в философии Вл.С. Соловьёва", в *Сочинения*, ред. М.А. Колеров и Н.С. Плотников (М.: Раритет, 1995), 286.

[49] Новгородцев, "Идея права в философии Вл.С. Соловьёва", 286.

[50] Новгородцев, "Идея права в философии Вл.С. Соловьёва", 287.

[51] Новгородцев, "Идея права в философии Вл.С. Соловьёва", 291–93.

[52] Новгородцев, "Идея права в философии Вл.С. Соловьёва", 296.

[53] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 305.

very essence, is not a limitation of personhood, but a broadening and deepening of it."[54] Again, the fact that law is the condition of the existence of society, and thus of human perfectibility, adds to its moral value and to the grounds for freely respecting it. But in this essay Novgorodtsev develops the connection between law and progress in a more specific way.

First, he explains that the moral law is absolute in form but variable in content, referring in this context to Rudolf Stammler's idea of natural law with changing content, which obviously was one of his sources.[55] As an infinite ideal driving human self-determination and perfectibility, as universal "ought," the moral law is an absolute form that can never be filled with an adequate content or satisfied by an achieved result.[56] Extolling the "profoundly important significance" of Kant's formulation of the problem, Novgorodtsev indicates that "the formal moral principle is the recognition of the idea of eternal development and improvement," or of infinite human perfectibility. It resists both "ethical conservatism and the ethical utopia of earthly perfection." The absolute ideal can never be fully realized in social reality, "but this must lead not to an utter denial of the achieved stage or to doubts in the possibility of progress, but to improvement of the present and to a search for the higher."[57] At both the personal and social level, the moral law drives perfectibility, either through inner self-determination according to the ideals of reason or through external progress to build societies ever more worthy of the persons who form them and who are their ends.

Second, Novgorodtsev indicates that this approach to social progress, while morally centered on personhood, is practically oriented to concrete problems and to the search for solutions ("content") that best fit the absolute form of the moral law in the specific circumstances of the day. This too underscores the great moral and social significance of law: "Raising the question of the organization of society necessarily takes us into the sphere of public policy and law, and

[54] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 312.
[55] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 310, 314.
[56] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 309.
[57] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 309.

this is the sphere of natural-law constructions. Natural law takes its starting points, its highest principles, from moral philosophy <…>. But this is only the first line: further it is necessary to study concrete conditions and to construct the ideal that most closely matches them," using all available resources of science and society.[58] Further, he writes that natural law, "if it is to be revived as a living idea <…> must advance fully armed with all the facts of human knowledge, in order to courageously struggle with social evil and clear the way for moral progress."[59] The whole problem of the "social ideal" is the subject of Novgorodtsev's last book, but it is clear that he understood it in terms of a profound personalist philosophy of progress.[60]

* * *

One of Novgorodtsev's deepest convictions was that legal consciousness, and therefore ultimately the rule of law, depended on respect for human dignity, for the intrinsic and absolute worth of the human person. The deeper the respect for personhood, he thought, the deeper the respect for law. For good reason, Konstantin Antonov has properly emphasized his *personalism*.[61] In both *Problems of Idealism* and in his 1909 book, *The Crisis of Modern Legal Consciousness*, Novgorodtsev uses the term "individualism." As we have seen, one of the meanings he gives it is methodological. Another is more broadly philosophical – ethical and metaphysical, according to his specification[62] – and coincides with the meaning of personalism (the defense of the absolute worth of personhood). Among the contemporary proponents of individualism he points to the "subtle and penetrating thinker" Charles Renouvier (1815–1903). Within a year, in 1903, Renouvier published a book under the title *Le Personnalisme*, which is credited with launching the twentieth-

[58] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 312–13.

[59] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 314.

[60] For lucid expositions of On the Social Ideal, see Walicki, "Pavel Novgorodtsev: Neo-Idealism and the Revival of Natural Law," 328–41, and Antonov, "Pavel Novgorodtsev: Natural Law and its Religious Justification," 254–61.

[61] Antonov, "Pavel Novgorodtsev: Natural Law and its Religious Justification," 252.

[62] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 307.

century philosophical movement of that name. In Russia he singles out B.N. Chicherin for his defense of individualism and observes that "the new idealist current, being affirmed now as predominant, is also leading in this direction."[63] Two years later he wrote, "Contemporary idealist philosophy <…> continuously emphasizes and advances the principle of the person, its absolute dignity, its natural and inalienable rights."[64]

Following Kant, Chicherin, and Soloviev, Novgorodtsev based his personalism on an idealist conception of human nature, according to which the quintessential human capacities are reason and free will.[65] Reason involves the ability to recognize and posit absolute ideals (such as truth and the moral law). Through free will human beings are capable of self-determination according to these ideals. Kant called this astonishing dual power "practical reason" and saw it as the source of human dignity and of personhood. He and the Russian idealist philosophers thought it refuted naturalism and had metaphysical implications. The idealist conception of human nature helped to substantiate the Christian theism of Chicherin, Soloviev, and their followers in the Russian religious-philosophical renaissance of the early 20th century.

Novgorodtsev's relation to this type of "religious idealism" is somewhat more complicated. The "absolute ideal" was one of his main philosophical concepts and he left little doubt that he believed it entailed the metaphysical reality of the Absolute, but he did not regularly use explicit religious language until the last years of his life, at the time

[63] Novgorodtsev, "Ethical Idealism in the Philosophy of Law," 307 (the first chapter of Chicherin's Философия права (1900) is titled "Личность").

[64] П.И. Новгородцев, "О философском движении наших дней", *Новый путь*, № 10 (1904): 66.

[65] For his understanding of Kant's conception of human nature, see П.И. Новгородцев, *Кант и Гегель в их учениях о праве и государстве. Два типических построения в области философии права* (М.: Университетская типография, 1901), 75–100. He writes, "Kant's philosophy is moral philosophy most of all; the primacy of practical reason is its last word" (89). Novgorodtsev appreciated very well that the entire purpose of Kant's theory of transcendental idealism was to make possible morality and its metaphysical postulates (personalism). See Randall A. Poole, "The Neo-Idealist Reception of Kant in the Moscow Psychological Society," *Journal of the History of Ideas*, vol. 60, no. 2 (April 1999): 319–43.

of the Russian Revolution and its aftermath.[66] Yet, according to his student, I.A. Ilyin, "Pavel Ivanovich did not 'become' in his last years a religious man, *he always was one*. The wise depths of Russian Orthodoxy, revealed to him in years of strife and suffering, imparted not the first, but a new and, I believe, definitive form to his religiosity."[67]

* * *

Novgorodtsev's next task was to apply his theory of natural law and his conception of legal consciousness to the modern state. He did so in his lengthy 1904 article, "The State and Law," and in his 1909 book, *The Crisis of Modern Legal Consciousness*. The article concentrates on the critique of legal positivism, which teaches that "all law is the product of the state."[68] Revisiting the "contraband" theme which he introduced in his 1896 book, Novgorodtsev argues that through, for example, Georg Jellinek's idea of the self-limitation of state power, legal positivism betrays the hidden influence of natural-law principles, which instead should be openly recognized and consistently developed.[69] Thus the need for an "integral legal consciousness," which does not limit itself to positivist formalism and to the world of factual juridical relations but bases itself on principles and on natural law.[70]

Though he does not develop it in detail, Novgorodtsev outlines a "natural-law theory [*конструкция*] of the state," which holds that above the state there are certain norms to which it must be subordinate and which find their higher sanction in moral consciousness.[71]

---

[66] Antonov, "Pavel Novgorodtsev: Natural Law and its Religious Justification," 261–65.

[67] Quoted by Дмитрий Левицкий, "П.И. Новгородцев", *Русская религиозно-философская мысль XX века*, ред. Николай П. Полторацкий (Питтсбург: Отдел славянских языков и литератур Питтсбургского университета, 1975), 304.

[68] П.И. Новгородцев, "Государство и право," *Вопросы философии и психологии* 15, № 4 (1904): 397–450, here at 438 (часть 1); № 5 (1904): 508–38 (часть 2). There is an extensive analysis of this article in Walicki, "Pavel Novgorodtsev: Neo-Idealism and the Revival of Natural Law," 312–18.

[69] Новгородцев, "Государство и право", 428, 430–36, 517.

[70] Новгородцев, "Государство и право", 440, 515.

[71] Новгородцев, "Государство и право", 510–11.

The natural-law theory of the state inevitably recognizes a basic dualism between the state and law, instead of the monistic constructions that follow from the legal positivist idea that the state is the source of law.[72] Most important, it proclaims the supremacy of law, in the name of which the state is compelled to recognize "the free human person" as the indisputable limit on its power and "the sacred sphere of inner thoughts and feelings, the sphere of personal self-determination, immune to state interference."[73]

* * *

Novgorodtsev's book, *The Crisis of Modern Legal Consciousness*, is of obvious importance to the theme of the present essay. Andrzej Walicki wrote that "it is truly unique, without equivalent or counterpart in the scholarly output of other legal philosophers, whether in Russia or elsewhere."[74] The book is a rich intellectual history of the concept of the *Rechtstaat* or *правовое государство*. I will translate these terms broadly as "lawful state," which encompasses two very different meanings of the concept: first, the positivistic "rule by law," in which the state itself is seen as the source of law, and, second, the normative "rule of law," in which state power is limited by higher norms of natural law and human rights. Novgorodtsev believed that the concept of the *правовое государство* had evolved by the beginning of the twentieth century to mean a state under the rule of law. This was his goal for Russia's long-term political evolution.

The title of Novgorodtsev's book indicates the great importance he attached to legal consciousness, as opposed to legal and political institutions alone. He believed that the rule of law rested precisely on the type of neo-idealist legal consciousness that he had elaborated in his previous works, as well as on a civil society animated by such consciousness. By "crisis of modern legal consciousness" Novgorodtsev meant the contemporary collapse (as he saw it) of the for-

[72] Новгородцев, "Государство и право", 511.

[73] Новгородцев, "Государство и право", 397.

[74] Walicki, "Pavel Novgorodtsev: Neo-Idealism and the Revival of Natural Law," 318.

mer boundless hopes in human perfectibility through legal and political institutions, the end of what might be called "juridical utopianism."[75] He hoped that the crisis could be surmounted by a deepening appreciation of the moral foundations of law and society and by a better understanding of the true nature of human progress.

Novgorodtsev observes that the political theory of the modern state took shape in the Enlightenment and was filled with hopes for human transformation through the rationalization of the political and legal order. Robespierre captured the spirit of the times when he spoke of "*tous les miracles de la république*."[76] The rights of man and citizen in the French Declaration of 1789 were presumed to lead naturally to the perfect society; they were valued not so much for the individual pursuit of happiness (self-realization) but for collective salvation. Novgorodtsev refers to the "genuine faith in the salvific force of political institutions" and writes that the new lawful state was seen as perfectly adequate "to secure freedom, equality and fraternity in society, to establish inner harmony and unity within it, and to create perfect moral relations among people."[77] This faith in the unlimited possibilities of the lawful state passed from the French Enlightenment and Revolution to German idealism, reaching its culmination in Hegel's idea that the modern state has achieved the moral perfection of humanity, the unity of "what is" (*das Sein*) and "what ought to be" (*das Sollen*). The "crisis of the modern legal consciousness" is the realization that the state had achieved no such thing and never could. "The former faith in the omnipotent power of legal principles, in their capacity to establish the translucent kingdom of reason on earth, has outlived its time," Novgorodtsev writes. "The experience of the nineteenth century has shown that law alone cannot bring about the total transformation of society."[78]

In general Novgorodtsev welcomed this process of de-utopianization – which in view of the subsequent history of the twentieth century he vastly overestimated – but he was also concerned that it

[75] П.И. Новгородцев, *Кризис современного правосознания* (М.: И.Н. Кушнерев, 1909), 8.

[76] Новгородцев, *Кризис современного правосознания*, 6.

[77] Новгородцев, *Кризис современного правосознания*, 8.

[78] Новгородцев, *Кризис современного правосознания*, 15.

was leading in some quarters to the rejection of the state and law as such. As an example of this danger he refers to Lev Tolstoy's "abstract moralism," which discounted law as a merely external and unnecessary form, a harmful distraction to the only thing that mattered, inner self-perfection through moral and religious regeneration. Despite this and other tendencies to devalue law as such, Novgorodtsev was confident that the crisis of the modern legal consciousness could be overcome. Indeed he thought that out of it a higher legal consciousness was emerging, one which valued law as an essential condition for the moral development and self-perfection of the person that Tolstoy and others sought.

Novgorodtsev does not offer, so far as I can tell, a succinct definition of the lawful state that would cover all of its modern history, but it is clear that he has in mind a state whose power is exercised lawfully rather than arbitrarily for the overall purpose of promoting justice, defined in general terms as freedom, equality and the realization of human potential. His overall view of how the lawful state, within that broad definition, had changed since the eighteenth century can be summarized as follows. In the earlier stages of its history, the lawful state itself was seen as the main agent in promoting justice and the realization of human potential; this, perhaps even more than popular support, was the justification of the state's power and the meaning of "lawful" in the exercise of that power. Later, by the end of the nineteenth century, the emphasis had shifted from the state to the person as the main agent. The "realization of human potential," which could justify the treatment of individual persons as means for the sake of the whole, was coming to be properly understood as the "*self-realization* of human potential," one person at a time, with no one rightfully subject to instrumentalization. Accordingly the state's role was increasingly understood as providing the conditions for self-realization, first of all freedom and equality, and "lawful" was increasingly defined in terms of an expansive conception of human rights. The new emphasis on self-realization and individual development went well beyond the classical liberal idea of negative liberty. The idea of equality in particular was expanding from equality before the law to the positive right to a dignified existence (championed by Vladimir Soloviev) and the guarantee of the minimal conditions necessary for self-realization (which expand with human progress).

The idea of personhood and the rights issuing from it – "the rights of man" – was present in the lawful state from its early modern beginnings. Novgorodtsev observes that the lawful state emerged in defense of the person against the arbitrary power, constraints, and inequalities of the *Polizeistaat* and vestiges of feudalism. In this its task was primarily negative, the clearing of "juridical anomalies."[79] The defense of the negative liberties of the person then expanded into the fuller idea of natural or human rights, as expressed, for example, in the United States Declaration of Independence and French Declaration of the Rights of Man and the Citizen. At the same time another element was introduced into the lawful state, the doctrine of popular sovereignty. These two ideas form the intellectual foundations of the modern lawful state, and the two sources of law within it. Although the potential for conflict between them became obvious with time (and is part of the "crisis of modern legal consciousness"), this was not widely appreciated at the time of the French Revolution, which advanced both ideas simultaneously and as natural complements to each other.

Novgorodtsev thinks that popular sovereignty was the more important of the two ideas in establishing the legitimacy and moral authority of the lawful state, and he devotes more than half of his book (the first part) to its history. Popular sovereignty is the idea that legitimate political authority resides in the people, that the state is responsible to the people, and that government must enjoy the "consent of the governed." It arose in opposition to ideas of divine right and was developed in contract theory, most notably by John Locke (1632–1704), whom, curiously, Novgorodtsev hardly mentions. For Locke, popular sovereignty consisted in the people's contracting with (or instituting) government for the purpose of protecting their natural rights, which limit all power (the state's and their own). Rousseau (1712–1778), whom Novgorodtsev discusses at great length, developed the doctrine of popular sovereignty in a very different direction. For him, it consisted in direct democracy (collective legislating by the citizenry), which expresses the "general will" of the people, whose power is unlimited.

[79] Новгородцев, *Кризис современного правосознания*, 280–81.

Rousseau's version of popular sovereignty had great influence on the French Revolution. Novgorodtsev is clear that Rousseau rejected in principle the idea of the inalienable rights of the person because it was incompatible with the unlimited power of the people.[80] But to the French revolutionaries, the main danger was the old regime, and the rights of man were directed against it, not the new power of the people. Moreover, once the state was reconstructed on the basis of popular sovereignty, full harmony was expected to ensue between it and the individual person. Following Rousseau, the prevailing assumption was that the citizen would find his highest satisfaction in the new state, his freedom being the other side of state power and realized only through it: authentic freedom was political freedom (integral participation in state power).[81] In Germany Hegel's political philosophy also supposed a basic affinity between personal freedom and state power. As Novgorodtsev puts it, "Hegel's *Philosophy of Right* is a translation of *The Social Contract* into the language of German absolute idealism."[82] The materialism of Feuerbach, Marx and Lassalle shared this same presumption of human perfectibility through complete identification with the state.[83]

In the course of the nineteenth century, it became clearer, at least to some, that Rousseau's idea of popular sovereignty – the manifestation of the general will through integral participation in state power (positive liberty, in one sense of the term) – could not but fail to meet the hopes placed on it. Indeed, as Novgorodtsev remarks, "the theory of popular sovereignty in the genuine sense of the word never passed from the pages of *The Social Contract* to real life."[84] However, it is misleading to suggest that Rousseau's is the genuine sense of popular sovereignty. The concept means that the people are the ultimate source and justification of political power, not that they directly exercise it. This is generally what popular sovereignty meant before and after Rousseau. It is a foundational principle of modern political theory that has lost none of its relevance, as Novgorodtsev himself

[80] Новгородцев, *Кризис современного правосознания*, 65–6.
[81] Новгородцев, *Кризис современного правосознания*, 250–54.
[82] Новгородцев, *Кризис современного правосознания*, 267.
[83] Новгородцев, *Кризис современного правосознания*, 268–73.
[84] Новгородцев, *Кризис современного правосознания*, 113.

clearly appreciates. He writes that "it gave the lawful state its moral-philosophical basis," and that the ethical principle behind it is the dependence of power on the people.[85]

Novgorodtsev acknowledges that since the French Revolution, popular sovereignty has generally been understood not as an operational code but as a higher moral sanction of power and law.[86] The key idea is that state power comes from the people and is to be used in their interests. In his formulation, "power is only an organ of the whole, outside of which it does not have any significance and in the interests of which it receives its authorization [*полномочие*]. In this view the concept of the popular will retains enormous significance as a symbol of the solidarity of power and the people and as an expression of state unity."[87] In other words, state power, if based on popular sovereignty, is public. Some theories, he notes, refer to the "delegation" or "emanation" of power from the people to the government.[88] Beginning with the French Revolution, popular sovereignty has been realized in practice as representative government, not direct democracy. In view of all these considerations, the long-term influence of Rousseau was not in changing the meaning of popular sovereignty, as Novgorodtsev implies, but in showing how much the exercise of the people's power, by themselves or in their name, needs to be limited by natural rights and the rule of law.

For all his criticism of Rousseau, Novgorodtsev is generous, sophisticated and nuanced in his analysis. In a shrewd interpretive strategy, he even aligns Rousseau with his own view that justice and the rule of law rest ultimately on a highly developed legal consciousness and civil society. For this purpose he focuses on the idea of the general will. According to Novgorodtsev, Rousseau proceeds from a fundamental question: "How is a just state possible?" Rousseau thought that the general will was the very source of justice, because, as a definite and constant element intrinsic to the will of individual persons, it realized the freedom and equality of all.

---

[85] Новгородцев, *Кризис современного правосознания*, 243.

[86] Новгородцев, *Кризис современного правосознания*, 111.

[87] Новгородцев, *Кризис современного правосознания*, 59.

[88] Новгородцев, *Кризис современного правосознания*, 112–13.

The general will was by definition "what ought to be"; therefore its expression through direct democratic law-making would automatically bring about justice. In other words, Rousseau pronounced the general will justice, and so could think that its expression would result in a just state.[89]

This was sheer utopianism, but Novgorodtsev saw something original and highly valuable in Rousseau's thought. Beginning with Plato, the traditional approach was to think that the just society could be realized from above, by philosopher-kings or other enlightened rulers.

> Rousseau overturns this view at its very foundation. He supposes that justice can be realized only through the general will of all citizens <…>. This statement contains a thought both profound and important <…>. The highest justice, realized against the will of persons subject to it, is coercion, and if the objective principles of justice do not become the general consciousness, they cannot master life to the end and in full. At a time when many were attracted to the ideals of enlightened absolutism and beneficent reform from above,

Rousseau proclaimed that a just society must be based on the general will, on general recognition. "This was a bold and brilliant idea."[90] Novgorodtsev has stripped the general will of its specific, rather metaphysical meaning in Rousseau and interpreted it as popular will (a term he uses often and somewhat inconsistently) or public consciousness. He can then turn Rousseau into an ally of his own legal philosophy, which held that justice and the rule of law depend not only on well-ordered political and legal institutions, but on the type of legal and civic consciousness that can uphold them. "To become a law of life," he says, "justice must permeate the consciousness of people."[91] That may not be Rousseau, but it is Novgorodtsev.

In fact, clearly it is not Rousseau because it involves too much work. Rousseau believed that the general will was a ready-made fact, constant and definite, that it did not develop, that it already

---

[89] Новгородцев, *Кризис современного правосознания*, 48–54, 61, 209–10.

[90] Новгородцев, *Кризис современного правосознания*, 50.

[91] Новгородцев, *Кризис современного правосознания*, 52.

was justice (or its source) and was waiting, as it were, to be revealed through the exercise of the people's power in integral democracy. Novgorodtsev argues, by contrast, "that the harmony of the general will and justice is not a fact, self-evident and predetermined, but a goal that must be achieved."[92] The general (or popular) will is not just by its very nature, but must be filled with the objective principles of justice that stand above it as its guiding norm. This is a difficult and continuously evolving process, involving the free organization and development of public opinion in the institutions, associations and processes of representative government and civil society.[93] The goal is to shape public opinion according to higher ideals, justice in particular. As Novgorodtsev remarks, every organ claiming to express public opinion "proceeds *not from what public opinion is, but from what it ought to be.*"[94] In this connection he now defines the "popular will" as the ideal that transcends its factual and imperfect expression in the form of public opinion.[95] In this usage it is the ideal that guides the shaping and development of real public opinion, the image of what public opinion "ought to be." It is clear that, for him, the content of this ideal is justice.

Novgorodtsev was aware, of course, that "popular will" ordinarily refers to simple "majority will," not an ideal guiding the development of public opinion toward justice. He was also very much aware of the dangers of majority rule and the "tyranny of the masses," discussing at some length the ideas of Alexis de Tocqueville (1805–1859) and John Stuart Mill (1806–1873). He quotes Tocqueville to the effect that "above popular will stands justice, limiting the rights of any people."[96] By justice, he and Tocqueville meant the same thing. In Novgorodtsev's words, the power of the majority must be limited in the name of a principle "that we must acknowledge as absolute and sacred – in the name of the human person."[97] The Russian philosopher defines the

[92] Новгородцев, *Кризис современного правосознания*, 57.
[93] Новгородцев, *Кризис современного правосознания*, 118–19, 205–09.
[94] Новгородцев, *Кризис современного правосознания*, 131.
[95] Новгородцев, *Кризис современного правосознания*, 208.
[96] Новгородцев, *Кризис современного правосознания*, 234.
[97] Новгородцев, *Кризис современного правосознания*, 237.

very concept of justice as the defense of human dignity and personhood. (According to Ulpian's classic formulation, "Justice is a fixed and abiding disposition to give every man his right,"[98] or, in other words, to treat every human being as a person.) As we know, this is the foundation of his entire moral and social philosophy, and it is also, he makes clear, the true basis of popular sovereignty. In the conclusion to the first part of his study, he writes, "If the theory of popular sovereignty demands recognition of the dependence of power on the people, then this demand receives its highest justification in the idea of the people as a union of free and equal persons, as a moral unity."[99] Novgorodtsev believed, as we have seen, that the security and flourishing of free and equal persons depends ultimately on justice being deeply rooted in the consciousness of people, in the "popular will." For this reason he is reluctant to simply say, with Tocqueville, that justice stands above the popular will. Were that the case, it could not become, as Novgorodtsev put it, "a law of life."

* * *

The second (and shorter) part of Novgorodtsev's book is devoted to "the crisis of the theory of individualism." By individualism, Novgorodtsev meant personalism, the idea of the person and human rights,[100] which he had just established as the core principle behind justice and the true basis of popular sovereignty. The crisis of individualism was part of the broader crisis of legal consciousness, and also the path toward its resolution, since it signified a greater appreciation that personhood was the absolute value of law and the state and could not be taken for granted or treated as a byproduct, as it was in earlier theories of the perfectibility of humanity. The crisis of individualism was the recognition that the idea of the person needed independent defense. For Novgorodtsev, the best philosophical defense was neo-idealism and natural law,[101] a claim he had advanced, as we

[98] *Dig*. 1.1.10 (Ulpian, *Regulae* 2).

[99] Новгородцев, *Кризис современного правосознания*, 244.

[100] Новгородцев, *Кризис современного правосознания*, 245.

[101] Новгородцев, *Кризис современного правосознания*, 246.

have seen, in the major essay he had written for *Problems of Idealism*. The philosophical shift from positivism to idealism at the end of the nineteenth century was thus one aspect of the crisis of individualism. It followed another, perhaps more basic aspect, the erosion of the supposition of natural harmony between personal freedom and state power. This idea was based, Novgorodtsev writes, "on inadequate analysis of the concept of the person, its ends and means."[102] Growing disillusionment with it resulted in greater attention to the person itself, in particular to the principles of freedom and equality and their meaning for individual development.

Freedom, in the course of the nineteenth century, came to be valued not primarily as political freedom, participation in the state, but as negative liberty, "the autonomous sphere of personal rights that the state is obliged to respect as it own necessary limit."[103] This conception found support in Kant's idea of the person, according to which one's sphere of individual freedom was determined by another's right to the same; equality meant everyone's right to equal freedom.[104] With time, however, understanding of the relationship between freedom and equality changed. In this connection Novgorodtsev considers the ideas of, among others, Benjamin Constant, Tocqueville, Wilhelm Humboldt, John Stuart Mill, Nietzsche, and Konstantin Leontiev.[105] In various ways these thinkers shifted the emphasis from Kant's universalistic idea of man to a more individualistic notion. They valued freedom from the perspective of the distinctive, unique, truly individual development of every human person (individuality or concrete personality), and they opposed it in varying degrees to equality, understood not as equality in rights but as democratic equalization, leveling, or homogenization (instead of individualization).

Novgorodtsev himself did not think that the equalizing tendencies of democratic culture posed a great threat to individuality, stressing rather that equality was a vital condition of individual self-development. He saw individuality as another expression of the infinite value of personhood (only persons are capable of self-

[102] Новгородцев, *Кризис современного правосознания*, 273.
[103] Новгородцев, *Кризис современного правосознания*, 255.
[104] Новгородцев, *Кризис современного правосознания*, 262–64, 310.
[105] Новгородцев, *Кризис современного правосознания*, 282–99.

realization in their own individual way), suggesting that it harbored a deeper meaning of the equality of persons.[106] He recognized, however, that there was a certain tension between the individual and modern democratic culture.

> Individuality is not and cannot be suppressed by equalizing norms. But at the same time nor can it find full satisfaction in the goods of equalizing culture and the lawful state. Between the person and the culture surrounding it there is not the concurrence, not the harmony, in which the eighteenth century so believed.[107]

The lawful state cannot remedy the inevitable discrepancy between individuality and culture; recognition of this is another facet of the crisis of the modern legal consciousness. "The state," Novgorodtsev writes, "does not have the power to struggle with culture, which at one and the same time raises the person and equalizes it with others, liberates it and ties it more firmly to its own 'objective impersonal spirit.'"[108]

Whatever its limits, Novgorodtsev believed that the modern lawful state ought to use its power to promote and realize the "new liberal" conception of equality: not only formal equality before the law but the positive right to a dignified human existence and "equality of possibilities or equality of the starting point."[109] The "new liberalism" (he followed its contemporary British development in some detail), the transition from a negative to a positive understanding of freedom, marked a new stage in the evolution of the lawful state, one that he embraced but also cautioned would be even more difficult to implement than the earlier, mainly formal or juridical stage.[110] No matter how much it achieved, the lawful state could not, however, realize justice on its own. As we have seen, for Novgorodtsev the rule of law and justice rested ultimately on a legal consciousness and civic culture that could sustain them.

---

[106] Новгородцев, *Кризис современного правосознания*, 301, 311.
[107] Новгородцев, *Кризис современного правосознания*, 307.
[108] Новгородцев, *Кризис современного правосознания*, 308.
[109] Новгородцев, *Кризис современного правосознания*, 317, 334.
[110] Новгородцев, *Кризис современного правосознания*, 340.

In his last chapter he relates these problems to recent French political thought, which, according to him, emphasized the importance of moral and cultural education for the future of liberal democracy. French politicians and social philosophers alike agreed that it was necessary to improve not only institutions, but also the people themselves. This was the goal of the contemporary French doctrine of "solidarity," which sought to inspire in people consciousness of the objective moral foundations of law and society. What were these moral foundations? Novgorodtsev argued that they were none other than the ideas of personhood and human dignity. For example, Léon Bourgeois (1851–1925), one of the main proponents of "solidarity," fully accepted Kant's imperative that people be treated always as ends, never as mere means, and he followed Kant in regarding the human person as the "foundation of any true society."[111] He stressed that the doctrine of solidarity was based not only on the rights but also the responsibilities of the person. "But this," Novgorodtsev writes, "discloses only another aspect of the same basic idea of personhood," since personal rights are secured in society by their mutual recognition, or by the responsibilities and duties persons have to each other. "In this sense," he continues, "the principle of solidarity easily and logically derives from the principle of personhood."[112] Solidarity suggests, in other words, a civil society (or community) united by respect for human dignity and by its willingness to defend that absolute value through law.

Novgorodtsev understood that the cultivation of a humane and liberal consciousness, capable of building and sustaining a democratic and just society, was a complex educational and formative process. To designate it he highlights the term *воспитание*, or moral and civic education and character formation.[113] In this context the term suggests *paideia*, *humanitas*, or *Bildung*. It is closely related to his conception of legal consciousness but is broader. He remarked that "as a result of complex political experience, in our days the center of gravity once again is shifting from transformation of

[111] Новгородцев, *Кризис современного правосознания*, 385.
[112] Новгородцев, *Кризис современного правосознания*, 385–86.
[113] Новгородцев, *Кризис современного правосознания*, 367–91.

institutions to the *воспитание* of man."[114] He was referring in part to the experience of the 1905 revolution and to Russia's halting liberal progress in the four years since. *Vekhi*, the famous collection of essays on the Russian intelligentsia and liberalism, came out the same year as Novgorodtsev's book.[115] Both pursued the theme of the moral and spiritual prerequisites of a liberal democracy. But Novgorodtsev reminds us that the question "What is more important, people or institutions?" is a perennial one in the history of moral and political thought. His own answer expresses his balanced wisdom: Institutions "grow together with people, and people improve themselves together with institutions. But in addition to this thought there is a new awareness that on their own juridical institutions are not capable of bringing about the real transformation of society and that they must enter into combination with moral forces to achieve their goals."[116] Throughout his work Novgorodtsev left no doubt that the main moral forces were a deep and abiding commitment to the sacredness of the person.

* * *

Novgorodtsev's neo-idealist conception of legal consciousness deeply shaped the thought of other philosophers associated with the Moscow school of Russian legal philosophy. Let me take three examples.

Evgenii Trubetskoi was a professor in the history and philosophy of law, first at St. Vladimir's University in Kiev (1892–1905) and then at Moscow University (1906–1918). Together with Novgorodtsev, he helped to spur the revival of natural law. Like Kant and Chicherin, Trubetskoi defined right (*право*) as reciprocally delimited external freedom or negative liberty, but he thought that identifying coercion as

[114] Новгородцев, *Кризис современного правосознания*, 253.

[115] Bogdan Kistiakovskii's *Vekhi* essay was closest to the specific topic of Novgorodtsev's book: Kistiakovskii, "In Defense of Law: The Intelligentsia and Legal Consciousness," *Vekhi/Landmarks: A Collection of Articles about the Russian Intelligentsia*, trans. and ed. Marshall S. Shatz and Judith E. Zimmerman (Armonk, NY: M.E. Sharpe, 1994), 91–113.

[116] Новгородцев, *Кризис современного правосознания*, 387.

the distinctive feature of law (as Chicherin did) was to mistake law for one of its instruments. The resort to force is a mark of the violation of right and is applied when law fails, not when it succeeds.[117] When law is upheld, it is because right is respected. For Trubetskoi this meant: "The primary source of right is always and everywhere our consciousness." It also meant that natural law "forms the ideal basis and criterion of the whole juridical order."[118] His claims on behalf of natural law and the ideal of justice (they were the same for him) could hardly have been stronger.[119]

Sergei Kotliarevskii was professor of state (constitutional) law at Moscow University from 1910 until the early 1930s. Like Novgorodtsev, he wrote a major work on the concept of the lawful state. In *Power and Law: The Problem of the Lawful State* (1915), he distinguished between two elements in the state: power (or coercion), which is intrinsic to it, and law, which is extrinsic. Power is the natural element, law the ideal one.[120] The institutions and practices of the lawful state, the various ways it seeks to realize the supremacy of law in practice, are all relative and subject to change, but the ideal itself – "like the human spirit creating it" – is absolute and permanent.[121] For this reason Kotliarevskii suggests that the concept of the lawful state is essentially "metajuridical": The principle of law "is inseparable in the final account from religious-moral foundations."[122]

Ivan Ilyin was Novgorodtsev's student and protégé. His most important work in legal philosophy is his treatise, *On the Essence of Legal Consciousness* (1956). For Ilyin, the essence of legal con-

---

[117] Е.Н. Трубецкой, *Лекции по энциклопедии права* (М.: А.И. Мамонтов, 1916), 3–17.

[118] Трубецкой, *Лекции по энциклопедии права,* 58–9.

[119] On Trubetskoi's legal theory, see Randall A. Poole, "Evgenii Trubetskoi: Icon of Russian Philosophy," in *Evgenii Trubetskoi: Icon and Philosophy*, ed. Teresa Obolevitch and Randall A. Poole (Eugene, OR: Pickwick/Wipf and Stock, 2021), 1–22, esp. 12–4.

[120] С.А. Котляревский, *Власть и право: Проблема правового государства* (М.: Мысль, 1915), 5–6.

[121] Котляревский, *Власть и право*, 22.

[122] Котляревский, *Власть и право*, 45. See also Randall A. Poole, "Sergei Kotliarevskii: The Rule of Law in Russian Liberal Theory," in *Law and the Christian Tradition in Modern Russia*, ed. Valliere and Poole, 266–85.

sciousness is natural law, and human awareness of it (as a moral ideal), together with our capacity for self-determination according to it, indicates that we are spiritual beings and that we belong to Spiritual Being.[123] This was the common insight of the philosophers of the Moscow school. As Novgorodtsev put it in *On the Social Ideal*, the person is "a reflection of absolute spirit" and "the image and way of the realization of the absolute ideal."[124]

Список литературы / References

Котляревский, С.А. *Власть и право: Проблема правового государства*. М.: Мысль, 1915.

(Kotliarevskii, S.A. [*Power and Law: The Problem of the Lawful State*]. Moscow: Mysl' Publ., 1915. (In Russian))

Левицкий, Дмитрий. "П.И. Новгородцев". В *Русская религиозно-философская мысль XX века*, под редакцией Николая П. Полторацкого. Питтсбург: Отдел славянских языков и литератур Питтсбургского университета, 1975.

(Levitskii, Dimitrii. "P.I. Novgorodtsev." In *Russian Religious-Philosophical Thought of the 20th Century*, edited by Nikolai P. Poltoratsky. Pittsburgh: Department of Slavic Languages and Literatures, Faculty of Arts and Sciences, University of Pittsburgh, 1975. (In Russian))

Новгородцев П.И. "Государство и право". *Вопросы философии и психологии* 15, № 4 (1904): 397–450 (часть 1); № 5 (1904): 508–38 (часть 2).

(Novgorodtsev, P.I. "[The State and Law]." *Voprosy filosofii i psikhologii* 15, no. 4 (1904): 397–450 (part 1); no. 5, (1904): 508–38 (part 2). (In Russian))

[123] Ivan Aleksandrovich Il'in, *On the Essence of Legal Consciousness*, ed. Butler, Grier, and Tomsinov, chs. 5, 9. See also P.T. Grier, "I.A. Il'in and the Rule of Law," in Il'in, *On the Essence of Legal Consciousness*, ed. Butler, Grier, and Tomsinov, 1–14; and Paul Valliere, "Ivan Ilyin: Philosopher of Law, Force, and Faith," in *Law and the Christian Tradition in Modern Russia*, ed. Valliere and Poole, 306–25, esp. 313–15.

[124] П.И. Новгородцев, *Об общественном идеале*, 3-е изд. (Берлин: Слово, 1921), 78.

Новгородцев, П.И. “Идея права в философии Вл.С. Соловьёва”. В *Сочинения*, под редакцией М.А. Колерова и Н.С. Плотникова. М.: Раритет, 1995.

(Novgorodtsev, P.I. “[The Idea of Law in Vl.S. Solovyov’s Philosophy].” In [*Works*], edited by M.A. Kolerov and N.S. Plotnikov. Moscow: Raritet Publ., 1995. (In Russian))

Новгородцев, П.И. *Историческая школа юристов, ее происхождение и судьба: опыт характеристики основ школы Савиньи в их последовательном развитии*. М.: Университетская типография, 1896.

(Novgorodtsev, P.I. [*The Historical School of Jurists, Its Genesis and Fate: An Essay Characterizing the Foundations of the School of Savigny in their Historical Development*]. Moscow: Universitetskaia tipografiia Publ., 1896. (In Russian))

Новгородцев, П.И. *Кант и Гегель в их учениях о праве и государстве. Два типических построения в области философии права*. М.: Университетская типография, 1901.

(Novgorodtsev, P.I. [*Kant and Hegel in Their Theories of Law and the State. Two Characteristic Theories in Philosophy of Law*]. Moscow: Universitetskaia tipografiia Publ., 1901. (In Russian))

Новгородцев, П.И. *Кризис современного правосознания* (М.: И.Н. Кушнерев, 1909).

(Novgorodtsev, P.I. [*The Crisis of the Modern Legal Consciousness*]. Moscow: I.N. Kushnerev Publ., 1909. (In Russian))

Новгородцев, П.И. *Об общественном идеале*, 3-е изд. Берлин: Слово, 1921.

(Novgorodtsev, P.I. [*On the Social Ideal*], 3rd ed. Berlin: Slovo Publ., 1921. (In Russian))

Новгородцев, П.И. “О философском движении наших дней.” *Новый путь*, № 10 (1904): 59–67.

(Novgorodtsev, P.I. “[On the Philosophical Movement of Our Days].” *Novy Put’*, no. 10 (1904): 59–67. (In Russian))

Прибыткова, Е.А., ред. *Философия права. П.И. Новгородцев, Л.И. Петражицкий, Б.А. Кистяковский*. М.: РОССПЭН, 2018.

(Pribytkova, E.A., ed. [*Philosophy of Law: P.I. Novgorodtsev, L.I. Petrazhitskii, B.A. Kistiakovskii*]. Moscow: ROSSPEN Publ., 2018. (In Russian))

Трубецкой, Е.Н. *Лекции по энциклопедии права*. М.: А.И. Мамонтов, 1916.

(Trubetskoi, E.N. [*Lectures on the Encyclopedia of Law*]. Moscow: A.I. Mamontov Publ., 1916. (In Russian))

Antonov, Konstantin. "Pavel Novgorodtsev: Natural Law and its Religious Justification." In *Law and the Christian Tradition in Modern Russia*, ed. Paul Valliere and Randall A. Poole, 243–65. Abingdon: Routledge, 2022.

Grier, P.T. "I.A. Il'in and the Rule of Law." In Ivan Aleksandrovich Il'in, *On the Essence of Legal Consciousness*, ed., intro., and trans. William E. Butler, Philip T. Grier, and Vladimir A. Tomsinov, 1–14. London: Wildy, Simmonds and Hill, 2014.

Grier, P.T. and W.E. Butler. "The Concept of Legal Consciousness: Origin and Transformations." In Ivan Aleksandrovich Il'in, *On the Essence of Legal Consciousness*, ed., intro., and trans. William E. Butler, Philip T. Grier, and Vladimir A. Tomsinov, 15–50. London: Wildy, Simmonds and Hill, 2014.

Il'in, Ivan Aleksandrovich. *On the Essence of Legal Consciousness*, ed., intro., and trans. William E. Butler, Philip T. Grier, and Vladimir A. Tomsinov. London: Wildy, Simmonds and Hill, 2014.

Kant, Immanuel. *Groundwork of the Metaphysics of Morals*, trans. H.J. Paton. New York, NY: Harper and Row, 1964.

Kistiakovskii, Bogdan. "In Defense of Law: The Intelligentsia and Legal Consciousness." In *Vekhi/Landmarks: A Collection of Articles about the Russian Intelligentsia*, translated and edited by Marshall S. Shatz and Judith E. Zimmerman, 91–113. (Armonk, NY: M.E. Sharpe, 1994).

Novgorodtsev, P.I. "Ethical Idealism in the Philosophy of Law (On the Question of the Revival of Natural Law)." In *Problems of Idealism: Essays in Russian Social Philosophy*, ed. and trans. Randall A. Poole, 274–324. New Haven, CT: Yale University Press, 2003.

Poole, Randall A. "Editor's Introduction: Philosophy and Politics in the Russian Liberation Movement." In *Problems of Idealism: Essays in Russian Social Philosophy*, ed. and trans. Poole, 1–78. New Haven, CT: Yale University Press, 2003.

Poole, Randall A. "Evgenii Trubetskoi: Icon of Russian Philosophy." In *Evgenii Trubetskoi: Icon and Philosophy*, ed. Teresa Obolevitch and Randall A. Poole, 1–22. Eugene, OR: Pickwick/Wipf and Stock, 2021.

Poole, Randall A. "The Liberalism of Russian Religious Idealism." In *The Oxford Handbook of Russian Religious Thought*, ed. Caryl Emerson, George Pattison, and Randall A. Poole, 255–76. Oxford: Oxford University Press, 2020.

Poole, Randall A. "The Neo-Idealist Reception of Kant in the Moscow Psychological Society," *Journal of the History of Ideas*, vol. 60, no. 2 (April 1999): 319–43.

Poole, Randall A., trans. and ed. *Problems of Idealism: Essays in Russian Social Philosophy*. New Haven, CT: Yale University Press, 2003.

Poole, Randall A. "Sergei Kotliarevskii: The Rule of Law in Russian Liberal Theory." In *Law and the Christian Tradition in Modern Russia*, ed. Paul Valliere and Randall A. Poole, 266–85. Abingdon: Routledge, 2022.

Rampton, Vanessa. *Liberal Ideas in Tsarist Russia: From Catherine the Great to the Russian Revolution*. Cambridge: Cambridge University Press, 2020.

von Savigny, F.C. *Of the Vocation of our Age for Legislation and Jurisprudence*, trans. Abraham Hayward. London: Littlewood and Co., 1831.

Soloviev, Vladimir. "Law and Morality: Essays in Applied Ethics." In Soloviev, *Politics, Law, and Morality: Essays by V.S. Soloviev*, ed. and trans. Vladimir Wozniuk, 131–212. New Haven, CT: Yale University Press, 2000.

Solovyov, Vladimir. *The Justification of the Good: An Essay on Moral Philosophy*, trans. Natalie A. Duddington, ed. and annotated Boris Jakim. Grand Rapids, MI: William B. Eerdmans Publishing Company, 2005.

Valliere, Paul. "Ivan Ilyin: Philosopher of Law, Force, and Faith." In *Law and the Christian Tradition in Modern Russia*, ed. Paul Valliere and Randall A. Poole, 306–25. Abingdon: Routledge, 2022.

Walicki, Andrzej. *Legal Philosophies of Russian Liberalism*. Oxford: Oxford University Press, 1987.