

Pavel Novgorodtsev's Philosophy of Law: "New Liberalism" vs Christian Humanism¹

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The paper characterizes the contribution made by Pavel Novgorodtsev, the Russian philosopher of law, to the establishment of the moral and ethical tradition of law, which, in turn, is the philosophical foundation of the doctrine of new liberalism and human rights. This tradition was influential both in late-imperial Russia and in Europe, to which Novgorodtsev immigrated in 1920 and where he founded the Institute (Faculty) of Law at Charles University (Prague, Czech Republic).

The authors consider Novgorodtsev's legal philosophy as an integral ethical doctrine, taking into account its development in the last period of the scholar's life. For the first time in academic literature, it is argued that Novgorodtsev's views should be interpreted in the context of both the liberal and religious philosophical approaches to the understanding of law, and that these approaches complement each other and have played a significant role in the history of political and legal thought both in Russia and in 20th-century Europe. Novgorodtsev's contribution to intellectual thought in Russia and Europe was in his thoroughgoing criticism of social utopias, particularly, Bolshevism and Communism, which were characterized by their denial of law and legal tradition.

The research is based on a wide range of sources, including P. Novgorodtsev's papers and personal documents, in particular, his correspondence.

Keywords: Russian intellectual history, liberal philosophy, religious philosophy

Problem Setting

In the early 20th century, the Russian philosophy of law produced a constellation of talented scholars. Pavel Ivanovich Novgorodtsev was among the most prominent of them. The head of the Moscow school of legal philosophy and the founder of the Russian liberal tradition in jurisprudence, which was philosophically rich and unwavering in its antipositivist commitment, creator of the Russian neo-idealistic school of the "revival of natural law" and a bright representative of the Russian religious humanistic philosophy of law — all these titles are equally applicable to Novgorodtsev. They reflect different

1. The study was supported by the Basic Research Program at the National Research University Higher School of Economics (HSE University).

facets of the philosophical and legal heritage of the scholar who was notable for his broad and varied interests.

The philosophical and legal school led by Novgorodtsev was not a purely Russian phenomenon. It must be viewed within the context of the European legal thought in the first third of the 20th century, because “revived” natural law occurred not only in Russia, but in Germany and France as well. Novgorodtsev was deeply influenced by the ideas of prominent European thinkers in this field, mainly the professor at Berlin University, Rudolph Stammler, with his neo-Kantian interpretation of legal reality. The latter’s concept of the ideal mission of law, its connection to morality, and his criticism of Marxism were especially inspiring to the Russian scholar. Novgorodtsev also paid considerable attention to the doctrines developed by theorists from the German historical school, G. Hugo, F. C. von Savigny and G. F. Puchta, coming to the conclusion that, in their later works, they admitted the importance of personal creativity and the juxtaposition of legal ideals with imperfect reality. He referred to the German legal scholar Rudolph von Jhering as well, who had come a long way from being fascinated with the ideas of the historical school, to criticizing them and becoming convinced of the power of human action and the need to fight for the law. Novgorodtsev was inspired by Jhering’s conclusion that, in legal practice and when imposing sentences, one should be guided by the feeling of law, by the demands of a higher justice that is superior to the law (Novgorodtsev, 2010a: 127–128, 138, 162). Novgorodtsev makes multiple references to the theoretical heritage of Georg Jellinek, particularly his definition of law as the minimum of morality, the idea of the intrinsic value of the individual and the “positivization” of natural law in the process of law-making. Jellinek’s knowledge of rich European legal tradition inspired Novgorodtsev to synthesize different lines of the philosophy of law and to seek common ground between them. This ground for him was the interpretation of law from the standpoint of the moral ideal.

Within the context of a retrospective analysis of European political and legal history in the first half of the 20th century, Novgorodtsev’s doctrine appears to have been a predictor for the catastrophe of authoritarian regimes, which subjugated positive law to political will. It also appears to offer a means of resolving contradictions between politics and law. Novgorodtsev’s search for a moral criterion to assess positive establishments seems relevant when we consider the turn of German jurists, Gustav Radbruch in particular, towards the idea of supra-legal law and to legal principles that are more authoritative than purely juridical prescriptions, as well as the jurisprudence of values which emerged after the collapse of the Nazi regime in post-war Germany.

It is noteworthy that Novgorodtsev had a major impact on European legal thought through his Russian followers: Ivan Ilyin, Boris Vysheslavtsev, Georges Gourvitch, Nikolay Alekseev, Sergey Hessen and Georgiy Florovsky. They immigrated to Western Europe after 1917 and brought many of the scholar’s ideas to European soil, in particular his belief that liberal philosophy does not contradict the religious idealist tradition.

Novgorodtsev, who worked in the era of constitutional reforms, was not merely an armchair scholar. The lines of his academic and sociopolitical activities are closely inter-

twined. The creator of the philosophy of law of Russian liberalism was a prominent public figure: a member of the “Union for Liberation”, one of the founders of the Constitutional Democratic Party and a member of its Central Committee, a deputy of the State Duma First Convocation, the author of bills on personal immunity, civil equality and freedom of assembly. The scholar’s efforts when in emigration contributed to the establishment of the Russian Law Faculty at Charles University in Prague.

Although Novgorodtsev was born more than 150 years ago, his ideas are still the subject of intense debate. Philosophers, legal scholars, and historians are still trying to understand the phenomenon of Novgorodtsev and determine his place in the history of Russian legal thought. The subject of the greatest scholarly controversy is the continuity between his views in the earlier and later periods of his practice.

Novgorodtsev’s last works primarily focused on religious and philosophical issues. Many of them were reconsidered and seem to have been presented in a different light, which prompts the conclusion that the philosopher shifted away from liberalism towards religious philosophy. Did the 1917 Revolution cause Novgorodtsev to give up his views and how far did he move away from the ideas of the philosophical and legal school, which he had designed and established at the turn of the century? There are different, often conflicting, views on this subject.

For instance, philosopher Andrzej Walicki, acknowledging that Novgorodtsev’s idealization of Russian Orthodoxy during his exile was a new turn in the scholar’s mindset, believes that this turn “did not cause any change in his view of the public ideal” and was merely a reflection of his views in the religious form (Walicki, 2012: 412–413). A similar observation was made by Kirill Soloviev (Soloviev, 2010: 18) who wrote that it was natural for the scholar who elevated legal norms to the level of absolute truth to take the position of an Orthodox philosopher. Meanwhile, according to the legal scholar Andrei Poliakov, during the period of revolutionary upheavals, Novgorodtsev “reconsidered his values” and adopted the position of Orthodox legal philosophy that seemed unable to accommodate the idea of natural law in its classic West-European interpretation (Poliakov, 2018: 75). Philosopher Viacheslav Zhukov describes Novgorodtsev’s ideas from the later period of his life as “a conservative and religious utopia” (Zhukov, 2012: 68–77). This interpretation does not seem fair. Novgorodtsev’s philosophy of law has regularly proven its validity in the 20th century and does not meet the criteria for a utopian theory as proposed by the philosopher himself. The scholar deemed utopian those theories that were built on rational and non-spiritual foundations; in his opinion, they were doomed to failure.

It is obvious that Novgorodtsev’s ideas evolved in the direction of religious and humanistic philosophy, and exploring their origins reveals the connection between this philosophy and the secular liberal philosophy of law. Could the scholar work in both of these “fields”, support the values of anthropocentrism and the primacy of human rights, while keeping to the conviction that the enhancement of the individual and the progress of the state are impossible without a synthesis of law and morality, attainable through church and religious communication?

We do not pretend to be pioneers in setting this research agenda. It was set, among others, by the historian of public thought Randall Poole in his paper on Evgeniy Trubetskoi. Evgeniy Trubetskoi was a prominent Russian liberal and a religious philosopher. Poole shows how Trubetskoi construed the Russian national identity from the standpoint of a synthesis of religious philosophy (metaphysics of unity), Kantian transcendental idealism and philosophical liberalism (Poole, 2016: 196).

Of particular relevance to the setting of the issue were the 1920s debates on the philosophical grounding of human rights. Their active participant, professor of law and history of Harvard University Samuel Moyn attributed the origin of the universal human rights doctrine to the catholic thinker Jacques Maritain (Maritain, 2011: 63–138). In Moyn's theory, Maritain is presented not only among the founders of the philosophical movement in France known as personalism, but also as the intellectual architect of the 1948 Universal Declaration of Human Rights and the original version of Christian (or "integral") humanism (Moyn, 2010, 2011, 2015). Randall Poole went further than Moyn. He substantiated the claim that, several decades before Maritain, the status of the human rights theory had been given to another influential tradition of Christian personalism. It was the Russian neo-idealism of the late 19th-early 20th centuries that combined personalism in its Orthodox Christian version with Kantian idealism and the doctrine of human dignity. The leading figure of this movement was Vladimir Soloviev, a religious philosopher, whose intellectual legacy, together with that of other idealists, was brought to interwar France by Nikolai Berdyaev and other prominent Russian emigre philosophers, contributing to the emergence of an intellectual environment for Maritain's teaching. Soloviev's Christian humanism and Maritain's integral humanism share the same roots (Poole, 2019). According to Poole, Pavel Novgorodtsev can also be regarded as an ideological progenitor of Maritain: his idealistic theory of liberalism and personal rights is based on the political theology of individualism (Poole, 2013: 160).

It is important to mention the Russian philosophers A. A. Kara-Murza and O. A. Zhukova, who pointed out the consistency between the values of liberalism and Christian humanism in the Russian political culture of the late 19th — early 20th centuries. Their heroes were also public figures, such as Ivan Aksakov, Mikhail Stakhovich, Vasili Karaulov and Petr Struve. They presented a convincing intellectual project for the synthesis between liberal and Christian values, where the freedom of the individual was seen as the basis of law, while the law itself was based on the values of the Christian culture, both in the East and the West (Kara-Murza, Zhukova, 2011).

Laura Engelstein, an expert in Russian history, gave this discussion a more global turn by applying the categories of tradition and modernity, religious and secular foundations, often interpreted as the values of the East and West. She demonstrated that in late imperial Russia the educated public and bureaucratic elite viewed the mechanical juxtaposition of East and West as irrelevant. Despite the archaic nature of its legal tradition and political system, Russia has progressed in tandem with Europe. Its religious ethos evolved alongside the political and the legal, together with the emergence of the principles of human rights and the supremacy of law in legal culture (Engelstein, 2001).

The above-mentioned approaches enable us to conclude that the new liberalism and Christian humanism were not opposed to each other. The authors of the present paper aim to construe an integrated idea of the philosophical and legal views of Pavel Novgorodtsev and to overcome mythological statements, according to which the scholar's views in the final period of his life are conceptually different from his earlier views. To put an end to the protracted debates among specialists, the authors will reconstruct the scholar's views expressed during the period of over two decades of the 20th century. They will reveal the names of philosophers, legal scholars and historians, who had an impact on him, identify the journals in which the scholar had gotten his works published, describe the political, legal, and moral categories he pondered and show the social and historical grounding of his ideas. The logic of the paper is determined by the key stages of Pavel Novgorodtsev's life and work that shaped his legal ideas.

The authors achieve this goal by significantly expanding the source materials. The primary sources for the present research include not only P. Novgorodtsev's papers of different periods in which he formulated the ideas of the public ideal which are traditionally studied by historians. The authors also collected and analyzed private documents. The most significant among these are Novgorodtsev's hand-written letters to V. E. Grabar', a scholar in international law, dating 1890-1906, in which the former expounded upon his philosophical, legal, and moral views. The authors also relied on archival and published materials dealing with the thinker's activities in Russia and Prague.

Teachers and Colleagues from Novgorodtsev's Inner Circle

Pavel Novgorodtsev was greatly influenced by Vladimir Soloviev², the founding figure of Russian philosophical spiritualism. Soloviev's ideas about the crisis of legal consciousness and the need to overcome it, about the positive goals of law and state and the correlation between law and morality became guiding principles for Novgorodtsev. They constituted the philosophical outlook of new liberalism.

Novgorodtsev took the death of the prominent philosopher on June 31, 1900, as a bereavement. Attending Soloviev's funeral, he acknowledged his affinity to the deceased scholar "not only due to the appeal of his philosophy and talents", but out of personal liking as well³. Novgorodtsev also dedicated the work "The Idea of Law in the philosophy of V. S. Soloviev" to him. The paper formed the basis for his speech in memory of the philosopher during the ceremonial meeting of the Psychological Society on February 2, 1901. It was symbolic that this was Novgorodtsev's first public engagement. The scholar described the event in the following way: "On February 2 I was speaking in front of a large audience in Moscow for the first time. I should have got used to public speaking, as

2. Another person who was influenced by Soloviev's ideas was Evgenii Trubetskoi, mentioned above. The philosopher confessed that his philosophical and religious outlook "was full of Solovievian content and expressed in words close to Soloviev's". E. Trubetskoi was the author of a classic two-volume book on the philosopher, "The worldview of V. S. Soloviev". See: Poole, 2006: 195–240.

3. Otdel rukopisej Rossijskoj gosudarstvennoj biblioteki (OR RGB) f. 376 (Arhiv ya), K. 8 (P. I. Novgorodtsev, letters to V. E. Grabar), № 1 (1900), l. 18) (letter from P. I. Novgorodtsev to V. E. Grabar on August 9, 1900).

I did not feel the slightest anxiety before or after the speech... My speech at the Psychological Society was about Soloviev”⁴.

In this memorial speech Novgorodtsev calls Soloviev “the most prominent defender of the idea of law among the philosophers in the past century”. He argued that Soloviev saw the aim of law as the promotion of the moral principle among people. He presented the moral purpose of law as “suppressing evil inclinations..., fighting injustice and tyranny of those in power, ensuring equality and freedom”. According to the philosopher, Soloviev’s interpretation of the ideal content of law helped to revive the moral authority that had been lost by jurisprudence, and to affirm the value of law and the state within a religious outlook (Novgorodtsev, 1901: 1–2, 12).

Soloviev’s definition of law as the minimum of “publicly organized morality” held an appeal for Novgorodtsev. Another thing that he found appealing was the fact that Soloviev’s moral philosophy was not mere speculation. The thinker considered the idea of law as the basis not only for moral progress, but for the fair organization of legal institutions. Novgorodtsev gave a positive review of the transformation of Soloviev’s ideas in the 1880-90s, when the latter made a statement that true Christianity should go public, and alongside saving individual souls, it should demand social reforms. Reflecting on the conditions of moral progress he believed it necessary not only to improve oneself as an individual but also to make every effort to change the social order. The scholar argued for the significance of common prosperity for human freedom and safety, for attaining morality and curbing despotism. In Soloviev’s view, moral freedom must be guaranteed by law and by the state; without due guarantees on their part, it remains a fiction (Novgorodtsev, 1901: 7–9).

Novgorodtsev shared Soloviev’s conviction that legal institutions were indispensable for moral progress. He quoted the philosopher’s statement on the primacy of the moral principle, interpreted theologically: “All the human actions and relationships must ultimately be guided ... by the moral principle that we worship in churches and that we live by in our everyday life, i.e., the principle of love, free consent and brotherly unity.” According to Novgorodtsev, Soloviev found the features of this “true universal Christianity” in Dostoyevsky (Novgorodtsev, 1901: 10). Novgorodtsev himself highly appreciated Dostoyevsky’s works.

Another thing that Novgorodtsev valued was Vl. Soloviev’s respectful attitude towards the ideal of the rule of law as seen in Western Europe, expressed in the early 1890s during debates with Slavophiles. Meanwhile, Novgorodtsev pointed out that for Soloviev the rule of law was not the “ultimate manifestation of moral solidarity, but only a necessary step towards the ultimate form of theocratic communication” (Novgorodtsev, 1901: 8–9). This statement largely clarifies Novgorodtsev’s own views.

Thus, Novgorodtsev was close to Soloviev in his ideas about the ethical nature of legal relations, which laid the foundations for the definition of positive law as “the guaranteed minimum of morality” (Medushevskii, 2010: 175). In the traditional methodological de-

4. OR RGB, f. 376, k. 8, № 2, l. 5 (letter from P.I. Novgorodtsev to V.E. Grabar on February 8, 1901).

bate about what is primary, ideas or facts, both thinkers argued for the primacy of ideas, sharing the view that what *should* exist must take precedence over what *does* exist and believing in the “future good”, which was meant to transform the world.

Novgorodtsev considered Boris Chicherin to be his teacher and spiritual father. He acknowledged that Chicherin was the most outstanding representative of the older generation of Russian jurists, who was one of the first to speak about the crisis of legal consciousness, about lack of trust to the moral authority of the law, which was evident in the jurisprudence, and the benefits that the hard work of legal scholars brings solely for juridical practice. Instead of previous enthusiasm with sublime essence and ideal goals of law, it began to be regarded as a product of force and calculation (Chicherin, 1900: 24).

Like Vladimir Solovyev, Chicherin strove not only to grasp the abstract law of moral life, but also to study the practical forms of its implementation. Meanwhile, they had considerable disagreements, rooted in their differing views of human rights. As a representative of the “old”, classical liberalism, Chicherin supported the traditional liberal doctrine based on the idea of “negative freedom”, i.e., the sphere of individual self-expression free from state interference. In his work “The Justification of the Good” Vladimir Soloviev articulated his idea of the state’s intervention in the realization of the right for dignified human existence. This view became the foundation for the doctrine of social and economic human rights, which was based on the positive function of the state and undermined the classical liberal doctrine of “negative freedom” (Walicki, 2012: 256).

Novgorodtsev shared Soloviev’s views on this question, arguing that the fundamental legal value was the right to a decent life, formulated by Soloviev. Thus, as a prominent representative of neo-idealism in Russian philosophy, Novgorodtsev was a follower of Chicherin, and as a theorist of new liberalism he was influenced by the ideas of Soloviev.

In his personal correspondence with Vladimir Grabar’ Novgorodtsev described himself as belonging to the “Chicherin School”. He characterized this line of thought as something different from the “Russian sociological school” in legal science. In his opinion, the latter’s most prominent representative was Sergey Muromtsev — a scholar of “brilliant, exquisite mind, whose philosophical potential was considerably higher than that of his associates from the ‘positivist school’”⁵. The “Chicherin School”, though, was not in an antagonistic relationship with the “Russian sociological school”; its language of communication was “poetic” rather than sociological.

Novgorodtsev had a personal acquaintance with Chicherin. The young scholar paid visits to the renowned jurist, met him at the homes of his colleagues during Chicherin’s visits to Moscow in winter months, in particular, at the home of the historian Vladimir Gerie⁶. Novgorodtsev named his first son, born on January 14, 1904, shortly before Chicherin’s death, Boris, after his teacher⁷. Evaluating Chicherin’s role in developing philosophical thought in Russia, Novgorodtsev called him an outstanding philosopher-

5. OR RGB, f. 376, k. 7, № 16, l. 34. (letter from P.I. Novgorodtsev to V.E. Grabar on March 16, 1900).

6. OR RGB, f. 376, k. 7, № 16, l. 3 (letter from P.I. Novgorodtsev to V.E. Grabar on January 20, 1900), l. 15 (letter from P.I. Novgorodtsev to on February 4, 1900).

7. OR RGB, f. 376, k. 8, № 5, l. 1. (letter from P.I. Novgorodtsev to V.E. Grabar on January 22, 1904).

idealist who was one of the first in Russia to stand up against Anglo-French positivism and expose the flimsiness of its foundations. In describing Chicherin's success formula, his follower pointed not only to his exclusive talents and the depth of his scientific aspirations, but also to the moral enthusiasm that the scholar combined with his academic endeavors (Novgorodtsev, 2000: 575, 578).

In his 1901 speech in memory of Vladimir Soloviev Novgorodtsev awarded the title of the most outstanding Russian jurist to Lev Petrazhitskiy (Novgorodtsev, 1901: 23), who was the most consistent critic of juridical positivism and defender of the ethical function of law. Novgorodtsev credited him for recognizing a profound crisis of legal consciousness. He could also relate to Petrazhitskiy's theory of legal policy. In this theory, Novgorodtsev discerned a revival of the original meaning of the category of "duty" in legal science. He saw Petrazhitskiy's doctrine as a crucial step in the development of natural law. A dogmatic analysis of the normative content of positive law, i.e., legal positivism, was seen by Novgorodtsev as the first step in the cognition of law. This was followed by the scrutiny of the psychological content of the idea of law, proposed by Petrazhitskiy. The final step was an ethical theory of law based on philosophical idealism, advanced by Novgorodtsev himself (Walicki, 2012: 357, 386).

While in St. Petersburg, Novgorodtsev and Petrazhitskiy frequently dined together, they also shared their books. Meanwhile, he confessed to having a doubtful attitude towards Petrazhitskiy⁸. It was accounted for by the traditional rivalry between the Moscow and Saint-Petersburg schools of legal philosophy to which the scholars belonged, as well as by the differences in their interpretations of the legacy of German idealism and understanding of law: Petrazhitskiy understood it, for the most part, as a fact of individual and social psychology, while Novgorodtsev interpreted it from the positions of the meta-juridical concept of justice.

Novgorodtsev's circle also included the Trubetskoi brothers: Sergei and Evgenii. Novgorodtsev attended the doctoral dispute of Sergei Trubetskoi in March 1900 and gave a rapt review⁹. The scholar hoped Trubetskoi would support him with his own doctoral thesis¹⁰. He also had some of his papers published in the journal "Issues in Philosophy and Psychology", edited by Trubetskoi. Novgorodtsev's speech at the meeting in memory of Vladimir Soloviev in 1901 was also made on Sergei Trubetskoi's request¹¹. Novgorodtsev maintained a personal relationship with Evgenii Trubetskoi as well. He also paid close attention to the newspaper "Moscovskii Ezhenedel'nik" ("Moscow Weekly"), launched by Evgenii Trubetskoi in 1906, which focused on social and

8. OR RGB, f. 376, k. 7, № 16, l. 29 (letter from P.I. Novgorodtsev to V.E. Grabar on February 17, 1900), 47; 1902, k. 8, l. 32 (letter from P.I. Novgorodtsev to V.E. Grabar on March 16, 1900).

9. Sergei Trubetskoi's doctoral thesis was focused on the doctrine of Logos. After defending this thesis, he was awarded a doctorate and the position of an extraordinary professor at the Department of Philosophy of the Historical and Philosophical Faculty of Moscow University. According to Novgorodtsev, S. Trubetskoi's doctoral dispute "went brilliantly". Cited by: OR RGB, f. 376, k. 7, l. 37 (letter from P.I. Novgorodtsev to V.E. Grabar on March 30, 1900).

10. OR RGB, f. 376, k. 8, № 1, l. 3 (letter from P.I. Novgorodtsev to V.E. Grabar on June 4, 1900).

11. OR RGB, f. 376, k. 8, № 1, l. 1 (letter from P.I. Novgorodtsev to V.E. Grabar on January 12, 1901).

political issues and became a platform for philosophers of Russian spiritualism (E. Trubetskoi, S. Bulgakov, etc.), as well as liberal legal scholars and economists Alexander Alexeev, Pyotr Struve, etc. At the same time, Novgorodtsev was not in favor of the artistic circle that gathered around Evgeniy Trubetskoi and his friend Margarita Morozova, which included, among others, the poet Andrei Bely, the composer Alexander Scriabin, and the pianist Nikolai Metner. “Trubetskoi himself is pure, but there is a club behind him, which is useful, but not suitable for us¹²,” the scholar wrote in January 1906.

Novgorodtsev had a close relationship with V.E. Grabar', an expert in international law. They corresponded for over 15 years, discussing all the events that happened in their professional and personal lives.

Novgorodtsev was also on friendly terms with Pyotr Struve. The scholar gave a very favorable review of Vladimir Hessen's works, considering them important for substantiating the ideas of the revival of natural law in Russia. In 1904 Novgorodtsev met Iosiph Pokrovskii, an expert in civil law, who was the Head of the Roman Law Department at St. Petersburg University. They had previously corresponded, and Novgorodtsev admitted that Pokrovskii was part of his circle (or “young faculty”, as Novgorodtsev referred to his close circle in the winter of 1900-1901¹³).

To his “young faculty” Novgorodtsev assigned professors, experts in political economy, Alexander Manuilov and Ivan Ozerov, who lectured at Moscow University's Faculty of Law. He complained that among his colleagues and supporters there were no specialists in criminal law¹⁴. The most detailed description of Novgorodtsev's circle of friends can be found in his diary entry from November 1903. Inviting his colleagues and friends to Kiev to celebrate Christmas, the scholar listed the people who belonged to his circle. He wrote to Vladimir Grabar', then a Professor at the Department of International Law at Yuriev University: “From your side we are waiting for you and Diakonov (Mikhail Diakonov was a historian of law, who taught at Yuriev University — A. T., A. A.), from Petersburg — Pokrovskii and Grevs (Ivan Grevs was a specialist in medieval and Roman law, who also taught at St. Petersburg University — A. T., A. A.), Kareev (Nikolay Kareev was a professor of European history — A. T., A. A.) and Lappo-Danilevskii (Alexander Lappo-Danilevskii belonged to the St. Petersburg school of Russian historians and methodologists of history — A. T., A. A.), from Moscow — besides me, there are Trubetskoi and Manuilov, in Kiev — Evgeniy Trubetskoi and Bulgakov (Sergey Bulgakov was then a professor at Kiev Polytechnical Institute and Assistant Professor at Saint Vladimir Kiev University — A. T., A. A.)¹⁵.”

12. OR RGB, f. 376, k. 8, № 6, l. 17 (letter from P.I. Novgorodtsev to V.E. Grabar on January 4, 1906).

13. OR RGB, f. 376, k. 8, № 5, l. 8 (letter from P.I. Novgorodtsev to V.E. Grabar on April 9, 1904).

14. OR RGB, f. 376, k. 7, № 16, l. 6 (letter from P.I. Novgorodtsev to V.E. Grabar on January 16, 1900); l. 19 (letter from P.I. Novgorodtsev to V.E. Grabar on February 10, 1900).

15. OR RGB, f. 376, k. 8, № 4, l. 6 (letter from P.I. Novgorodtsev to V.E. Grabar on November 20, 1903).

“You can’t even imagine how burdened I am now with challenging and responsible work...”

The appeal to the moral ideal was the key idea of the philosophical volume “Problems of Idealism”, which Novgorodtsev prepared in October 1902 in collaboration with Sergey Bulgakov, Evgeniy Trubetskoi, Nikolay Berdyaev, Bogdan Kistiakovskii and others. This work was a tipping point in Russian social philosophy. It gave rise to the religious and philosophical renaissance of the early 20th century in Russia. Novgorodtsev was the scientific editor of the publication.

Novgorodtsev, as he himself admitted, devoted “all his summer leisure” of 1902 to the “Problems of Idealism”. On May 30, 1902, he moved to a country house, which was a two-hour journey from Moscow. In his own words, it was “a very pleasant location, where you could have a good time”. Alexander Chouprov and Fyodor Kokoshkin also had their summer residences there. Novgorodtsev noted that he was held up in Moscow by the publication of the philosophical volume, which was completely his responsibility: “Our co-workers are Berdyaev, Bulgakov, Struve, both of the Trubetskoi brothers, Frank, Kistiakovskiy, Sergey Ol’denburg (on Renan), Lappo-Danilveskii (on sociologist Auguste Comte) and I. I am writing, I feel as if I were as Gelon¹⁶. At that moment I ceased being quiet...”¹⁷. In late August 1902 he reported that he was “burdened with challenging and responsible work of an urgent character”¹⁸.

Novgorodtsev linked the publication of “Problems of Idealism” with the revival of public interest in idealist philosophy. In the introduction to the volume, he discusses “the eternal spiritual need” for moral consciousness, as well as the profound life journey towards moral regeneration. The problem of duty, formulated by the German philosopher I. Kant, was the central idea of the volume. Its key principle was the recognition of the unconditional value of the individual (Kolerov, 2018: 9–11).

In his essay “Moral Idealism in the Philosophy of Law” Novgorodtsev argued that legal scholars should considerably redesign the law. He described the condition of the current juridical science as a crisis, writing that “the critical spirit and high philosophical aspirations have been muted”. He urged legal scholars to create a new juridical discipline with a broad system of scientific notions reflecting new existential bases and future ideals. These goals implied the revival of natural law with its *a priori* method, ideal aspirations, and recognition of the moral basis as an independent value (Novgorodtsev, 2018: 288–290).

This new line differed from the classical doctrine of natural law in its idea of changeability of the legal ideal. It used the formula of “natural law with a changeable content” introduced by the German neo-Kantian scholar Rudolph Stammler to substantiate the social (legal) ideal. Novgorodtsev saw Stammler’s formula as the only possible solution

16. Gelon was a Greek tyrant of the 5th century B. C., a fierce and enterprising soldier, who was in command of cavalry and played a key role in a number of battles, including the conquest of Syracuse, as well as governing that city and turning it into a prosperous place.

17. OR RGB, f. 376, k. 8, № 3, l. 17 (letter from P.I. Novgorodtsev to V.E. Grabar on May 30, 1902).

18. OR RGB, f. 376, k. 8, № 3, l. 9 (letter from P.I. Novgorodtsev to V.E. Grabar on August 28, 1902).

to the problem of natural law. Novgorodtsev also referred to the young Russian scholar Vladimir Hessen, who called this school of thought “evolutionary natural law”, and to Boris Chicherin, who was among the founders of philosophical and legal individualism (Novgorodtsev, 2018: 294, 330).

The Central Issue of Natural Law is the Law of the Future

The new school in jurisprudence emerged out of the need to improve the law. This need was identified due to the imperfections of existing laws and institutions and, in Novgorodtsev’s words, “the anticipation of new forms of life”. The need for a new approach was most evident in times of crisis, when the old forms of life proved their decrepitude, and society was impatient for a new order. The doctrine of natural law rested upon the practical demand for a more perfect legal reality, where natural law would be superior to positive law and interpreted as the ideal norm and goal. The natural legal constructions were, in the scholar’s view, an intrinsic part of the human spirit and proof of humanity’s higher vocation, as well as a sign of a healthy society: “A society that has ceased to create ideal constructions would be a dead society; these constructions regularly demonstrate that there is spirit in it, that there is a movement of moral feeling and consciousness (Novgorodtsev, 2018: 291–292)”.

The idealist legal philosophy, promoted by Novgorodtsev, was supposed to reach the ambitious goal of creating the law of the future, understood as “the ideal and desirable legal reality, conforming to the moral law”. Shaping the future was also the evaluation of the present from the standpoint of the category of moral duty (Novgorodtsev, 2018: 296).

The idea of moral foundations of the law is the cornerstone of Pavel Novgorodtsev’s work “Moral Idealism in Legal Philosophy”, which became the manifesto of philosophical and legal idealism. For the scholar, morality was an “absolute value”. He believed that legal norms must reflect the moral condition of the society: “the quality of these norms, their conformity to the moral basis predetermine whether the individual finds ... a depressing lack of freedom or a happy opportunity to develop his potentialities”. The scholar saw the goal of jurisprudence as “... setting moral requirements, prescribing ideal ways of development” to law, society, and the state. He called this approach to law a normative and ethical consideration, shaped by the ongoing revival of metaphysics and moral philosophy (Novgorodtsev, 2018: 292, 296, 330, 336).

Substantiating the ideology of the new doctrine, Novgorodtsev dissociated himself from the existing legal schools: historical, sociological, and positivist. He proved that the moral issue was “irresolvable in terms of historicism and was inaccessible to the positive method”. Novgorodtsev denied a heuristic potential to the methodological apparatus of positive sociology, which did not exclude the variability of moral phenomena, but did not analyze the essence of morality, either. It appears quite natural that Novgorodtsev turned to the philosophy of Kant, which, as he said, “was the first to draw a line between existence and duty” and set “a dualism between these fields”. Establishing a link between these fields was described by Novgorodtsev as the goal of modernity. To over-

come their dualism, he urged philosophers to turn to metaphysics, aimed at serving the ultimate good and realizing the moral law (Novgorodtsev, 2018: 297, 309, 317, 341–342). While Kant's idea of the dualism of existence and duty can be defined from the dialectical standpoint as a thesis, the desire to harmonize them proclaimed by Novgorodtsev must be recognized as a dialectical synthesis.

The correlation between law and morality was the subject of Novgorodtsev's earlier work, written in 1899. It defined law as a phenomenon inseparably connected with morality. Delimiting these notions (law, according to the scholar, always aims at exact definitions, while morality demands freedom), Novgorodtsev pointed out their flexibility, explaining that as society developed and the principle of moral freedom won over legal enforcement, they would come closer to each other. As the scholar said, the moral element was inherent in law, otherwise it mechanically transformed into a "product of force". Law must be supported by moral consciousness which gives it landmarks and brings it closer to ideal requirements (Novgorodtsev, 1899: 297, 129–132).

It is highly symbolic that in his paper written on the eve of the new century the scholar was concerned with the future. He supposed that as time passed the interaction between law and morality would intensify and they would form a unity in the long-term perspective. The legal norms would more adequately reflect the demands of moral consciousness, and inner sense would more frequently and more fully inspire the external implementation of law (Novgorodtsev, 1899: 297, 133–136). At the same time, Novgorodtsev believed that the boundary between law and morality would remain intact. He corrects Soloviev's view of law as a "minimum of moral requirements" and defines it as an enforced minimum of social requirements which are not exclusively of a moral character (Walicki, 2012: 378).

Novgorodtsev's Philosophical and Legal Substantiation of the Constitutionalist Ideology in Russia

In the autumn of 1900 Novgorodtsev got a book by Nikolay Berdyaev about Nikolay Mikhailovsky with a foreword by Pyotr Struve, where the recent leader of legal Marxism and champion of the objective approach to the social sciences moved on towards metaphysics. "What a gratifying fact!" was Novgorodtsev's reaction to Struve's methodological evolution. Struve's turn to metaphysics was accompanied by his references to Kant in the foreword, as well as his active support of the liberal doctrine of human rights (Walicki, 2012: 373–374). In the summer of 1900 Struve got in touch with a constitutionally inclined group of Zemstvo liberals and began to consolidate the forces opposing autocracy and sharing the need for political freedom (Pipes, 1970).

Among legal scholars' aspiration to political and legal renovation, renewal also manifested itself in the emergence of the school of the revival of natural law. The call for the renewal of the legal theory was voiced in Vladimir Hessen's article in the newspaper "Pravo" ("Law") on February 4, 1901. Timed to the start of the new century, this publication analyzed the progressive and destructive tendencies of juridical development in the

19th century. The legal activities in the late 19th century, Hessen believed, were not of a constructive character, as they did not contribute anything new to Russian life due to a lack of trust in abstract principles and an excessively pragmatic attitude to lawmaking. Improvements in the legal sphere were related to the development of the idealistic philosophy of law, capable of inspiring people with “high and beautiful ideals of law” (Hessen, 1901: 297–298). In his paper “Revival of natural law” published a year later Hessen admitted that the main symptom of the progressive development of law was the philosophical idealism in the works of Novgorodtsev, Petrazhitskii and Struve. Going back to the moral criterion of law, they symbolized progressive changes in political and public life (Hessen, 1902).

1904 saw the creation of “The Union of Liberation”, a liberal organization which was the predecessor of the Party of People’s Freedom, a prominent liberal party in pre-revolutionary Russia. Pavel Novgorodtsev became a council member of this organization and participated in its congress in July 1903 in Switzerland, together with Pyotr Struve, Nikolay Berdyaev, Semyon Frank, Ivan Petrunkevich, Bogdan Kistiakovskiy and others. At the congress, it was decided that the newly established organization would fight for attaining political freedom. The political activities of the scholar were combined with his research into the theoretical and legal implementation of liberal reforms in Russia.

In 1904 Novgorodtsev was already a consistent supporter of the natural law revival doctrine. In the spring of 1904, he pointed out that he was preparing his own course on natural-law construction of the state. He also wrote articles about Immanuel Kant for the Moscow Psychological Society and the Petersburg Philosophical Society. Additionally, Novgorodtsev prepared a collection of papers for the new popular science journals “Nauchnoe slovo” (“Scientific Word”) and “Voprosy zhizni”¹⁹ (“Life Issues”). Active contributors of the former were Sergey Trubetskoi and Vasily Kliuchevskii, while the latter was favored by religious philosophers Sergiy Bulgakov and Nikolay Berdyaev.

Novgorodtsev acknowledged that 1904 had been a particularly productive year for scientific endeavour and that he had thoroughly enjoyed his work, despite there being more of the latter than he could cope with. In June 1904 the scholar confessed that he spent “most of the day among books writing a big paper, about 4-5 author’s sheets, for “Pravo I gosudarstvo” (“Law and the State”). One of his immediate plans was the preparation of papers on the legal ideal and the relationship between the individual and society. The scholar meant to prepare them for the book “On the Doctrine of the legal ideal”, which he was planning to complete soon²⁰.

In his paper “The Law and the State”, published in the journal “Voprosy Filosofii i Psikhologii” (“Issues of Philosophy and Psychology”) in the late 1904–early 1905 Novgorodtsev further substantiated his doctrine. This journal was of religious and philosophical character; it was edited by idealist philosopher Sergey Trubetskoi, among the contributors were Vladimir Soloviev, Boris Chicherin, Trubetskoi brothers, Vasily Rozanov, Nikolay Berdyaev, Gustav Shpet, Sergiy Bulgakov and others. The publication of

19. OR RGB, f. 376, k. 8, № 5, l. 8 (letter from P.I. Novgorodtsev to V.E. Grabar on April 9, 1904).

20. Op. cit., l. 11 (letter from P.I. Novgorodtsev to V.E. Grabar on July 29, 1904).

Novgorodtsev's paper in a journal of this kind was additional confirmation that the author belonged to the idealistic school, close to the religious thought.

Novgorodtsev's attention was primarily focused on the criticism of the formal juridical approach to the state. He argued that natural law was superior to the state and to positive law; it guided their activities. According to the scholar, the main factor of legal consciousness was the idea of the norm or the idea of duty; it was in this idea that law got its highest authorization. In order to conform to the main principles of contemporary legal consciousness, the theory of law must be developed in the direction of its natural bases. Novgorodtsev again argued that society had a demand for a developing law that would satisfy its needs. He suggested placing the idea of law above any particular legal system, substituting "that which has already been formed with what is newly forming", and seeing the history of law as a constant process of collisions and interactions between the idea of law and its temporary manifestations (Novgorodtsev, 1904a: 424, 442, 447-449).

It is noteworthy that in 1904 Novgorodtsev was not only a theorist, but also an advocate of constitutional changes, and sought to lay the theoretical foundations for them. He wrote about the relativity of formal legal constructions pertaining to the omnipotence of the state, which were acceptable in theory but collapsed as soon as they began to operate in social reality, where what is juridically possible does not coincide with what is morally possible and conflicts with it. Novgorodtsev argued that the restriction of state power by human rights, inviolable and inalienable, met the contemporary legal consciousness, which also demanded the same restrictions (Novgorodtsev, 1904: 405, 420).

Novgorodtsev's interpretation of human rights is natural, juridical and at the same time theological and philosophical. All human beings, the scholar believed, are granted inviolable rights that derive from human freedom and autonomy in relation to the state. He proposed that the idea of the rights of the individual should be at the foundation of social and legal orders. "We cannot provide a definition of the state without introducing the principle of freedom," Novgorodtsev wrote. The scholar saw the purpose and essence of law in defending personal freedom. He understood legal and political progress as the realization of the individual's natural rights, which did not require historical sanction due to being a direct manifestation of the moral law which was given before any experience. Such a neo-idealistic, Christian and personalist defense of human rights, as R. Poole points out, made Russian liberalism different from contemporary European liberalisms, for instance, British utilitarianism, which was more positivist in its philosophical foundations (Poole, 2019: 96).

Novgorodtsev paid considerable attention to the religious and theological interpretation of personal freedom. The individual, he believed, as well as the State, existed "through God's grace" and stood "before the trial of natural law". Personal consciousness was "the deepest root and source of the State's life". Human rights existed independently of their recognition by the State. The recognition of personal freedom by the state was, for the most part, negative, it meant no more than the official confirmation of a fact that demanded sanctioning with all the force of an unconditional phenomenon of life. The

self-restriction of the state had moral rather than juridical foundations and was dictated by the requirements of natural law (Novgorodtsev, 1904: 522, 527, 535, 537–538).

Novgorodtsev substantiated the primacy of human rights (natural law) over the law established by the State (positive law), and saw the realization of personal rights and freedoms as the ultimate goal in the development of both natural and positive law. This approach was an advance in the political and legal thought of Russian liberalism.

Along with the interpretation that denies the state's intrusion into the sphere of freedom, Novgorodtsev also justified an understanding of freedom linked to the active role of state power and its intervention into social relations. In formulating this principle the scholar referred to his contemporary new English liberalism, which aimed to provide people with a higher level of physical comfort and moral development. "Smith's and Bentham's old ideas about the all-healing effect of private interest, about the non-intervention of the state ... have been left behind," Novgorodtsev argued. "The State is expected not only to eradicate juridical obstacles for the development of freedom, but also to provide a material opportunity for the best manifestation of freedom." The patronizing function of the state was primarily concerned with the provision of right to a decent life. Novgorodtsev characterized this right as granting every individual an opportunity of human existence and liberating them from the burdens of life that were killing them physically and morally. The recipients of this right were people suffering from economic dependence, lack of funds, and unfavorable conditions (Novgorodtsev, 2010b: 301, 303). Novgorodtsev interpreted it very broadly, including in its context the recognition of the right to care in case of disease, disability and old age, the right to work and to apply for a job, the right to a certain standard of living, etc. (Novgorodtsev, 1993: 129–131).

Like Soloviev, Novgorodtsev saw no contradiction between classic human rights and new social rights. At the same time, Novgorodtsev argued that the struggle for new social rights that implied an active position of the State (in the scholar's interpretation, the empowerment of social rights presupposed "state assistance rather than state intervention" (Novgorodtsev, 2010b: 313)), should not generate dangerous illusions about establishing heaven on earth (Walicki, 2012: 399).

Arguing against utopias and various kinds of utopian consciousness, Novgorodtsev took on the idea of the individual, recognizing his unconditional and sacred rights, for the sake of which it was expedient to make legal demands to restrict the common will and the majority principle. For him, the idea of personal freedom was a measure of democracy under any given political regime or state. He quoted the religious philosopher Nikolay Berdyaev, who warned that every time the individual and their freedom were made dependent on the will of men, every time the sovereignty of any human authority was recognized, the individual lost their absolute character, and their right to freedom fell under the burden of human passions and desires. Berdyaev wrote prophetically that "... the subjective will of proletariat, the tzar or any other human power can deprive the individual of the freedom of consciousness, the right to life and any other right." Novgorodtsev supplemented Berdyaev's idea with the recognition of personal freedom not only as the limit, but as the norm, the basis of the common will. Even if the ma-

jury decided to make a statement contradicting the idea of inalienable human rights, the scholar thought, the general agreement of all humans with it would not make it fair (Novgorodtsev, 2010b: 234–235).

The First Russian Revolution of 1905–1907 helped to deepen Novgorodtsev's views on legal consciousness as a factor of legal reform. In 1905 he joined the Constitutional and Democratic Party, and in the spring of 1906, he became a deputy of the State Duma, where he participated in drafting the laws on personal inviolability, civil equality and freedom of assemblies. Involvement in the legislative process strengthened the scholar's conviction that Russia needed profound legal reforms.

The Constitutional Democratic Party, to which Novgorodtsev belonged, set the goal of reforming the legal system of the Russian Empire. As he approached its practical implementation, Novgorodtsev found it challenging to introduce new statements into the body of the archaic Code of Law, many parts of which were imperfect and could not be transformed immediately. "When we laid down the new principles, that stemmed from the general requirements of the rule of law", he wrote, "we immediately discovered that these principles cut into our old laws, which were built on absolutely different principles. We had to build on the soil that was littered with old, widespread roots. As we prepared to abolish some laws, we immediately discovered that we had to think of abolishing or changing many other laws connected to them. And in an insuppressible impulse of thought that carried us forward, we embarked on the path ... of hard work... the completion of which meant the reorganization of the entire Russian legal system" (Novgorodtsev, 1907: 2, 11).

The revolutionary period was characterized by a crisis of the public consciousness which manifested itself in a stark dissonance between positive law and the public ideal. In Novgorodtsev's opinion, the law could only be renewed if it abandoned its past; the scholar used the metaphor of "Saturn devouring his children". The resulting conflict gave rise to natural law, which urged people to change the existing order and proposed an ideal plan for social reorganization. In this logic, legal theories were presented as ideal projects of social reorganization (Novgorodtsev, 1904b: 36, 118).

Novgorodtsev saw the ideal of society in a rule of law characterized by legal equality, guarantees of individual rights and freedoms, opportunities for personal initiative, and the ability to resolve conflicts through reaching mutual consensus (Medushevskii, 2010: 177; Novgorodtsev, 2010b: 311). At the same time, for Novgorodtsev the category of the rule of law, as well as other political and legal categories, was based on the moral principle and interpreted as the "embodiment of the principles of justice". The rule of law was also presented as "the system of freedom", "an organization rising above the society and its members rather than absorbing them". The rule-of-law theory, as interpreted by the scholar, was incompatible with the "idea of a catastrophe that buries ... the foundations of the state's legal structure for the sake of ... creating of an absolutely new and previously unknown order, eliminating both the state and law". Demonstrating evolutionary thinking, Novgorodtsev believed that the "existing institutions and authorities should be transformed rather than abolished" (Novgorodtsev, 2010c: 718–719).

In his 1909 paper “Crisis of Modern Legal Consciousness” the scholar identified a crisis of the rule of law ideology based on classical liberalism. The paper was written within the paradigm of European new liberalism. According to the scholar, such foundations of the rule of law theory as public sovereignty and individualism were in acute crisis. The scholar saw the crisis of the idea of public sovereignty in the general disappointment with political democracy and representative government. The crisis of individualism manifested itself in the movement for positive freedom which was gaining momentum in the European society and in the tendency to extend the functions of the state in order to create mechanisms for the implementation of social rights (Walicki, 2012: 398).

What he was implying was a criticism of the classic ideas of rule of law because of the emerging need to extend its functions by regulating social life. Many theorists and advocates of the rule of law doubted its ability to resolve societal tensions, while its opponents spoke of its total unsuitability for ideal purposes. Admitting a crisis of individualism, the scholar still believed that the idea of the individual and their inalienable rights must be the basis of a morally acceptable social and legal order. For him, the symbol of progress in the historical development of the state was its ability to meet the needs of the individual (Novgorodtsev, 2010b: 235, 311, 365).

Thus, the rule of law was no longer seen by the scholar as “the pinnacle of history”. He saw in it only a subordinate means, which was just an element among other moral forces. Just the same way as the law was incapable of embodying all moral requirements, the rule of law no longer seemed to Novgorodtsev to be the ideal of social development (Novgorodtsev, 2010b: 49). His previously voiced idea that the state is subordinate to superior norms and has to draw its guiding principles from them is the key point of the aforementioned 1909 paper.

In his report on the public ideal made at the Moscow Psychological Society in 1911, the scholar most explicitly expressed this idea. He argued that the public ideal required a public organization based on the principles of equality and freedom. This made sense, not by itself but because it created conditions for free personal development. It was the joint aspiration of people towards the absolute ideal that gave contemporary society its moral meaning (Zasedanie Psihologicheskogo obshchestva, 1911).

In his 1917 paper “On the Public Ideal” Novgorodtsev defined this ideal as the principle of free universalism, which reflected equality, human freedom, and their universality combined in the idea of free solidarity for all. Drawing on Soloviev’s definition of the society as an internal free and universal agreement, Novgorodtsev supports the idea that when setting ideal goals of public progress, we should not disregard the dependency of the public principle on the unconditional idea of personality; it is in the fullness of individual consciousness that the philosopher saw the meaning and significance of public aspirations (Novgorodtsev, 2010c: 464).

As the influential theologian and philosopher Vasily Zen’kovskii later noted, the basis of this work was the religious and philosophical idea of the Absolute. According to him, Novgorodtsev’s idea of “natural law” was based on ethics, which, in turn, was based on the principle of “absolute value”, an absolute ideal (Zen’kovski, 1991: 127). Thus, on the

eve of the October Upheaval of 1917, Novgorodtsev, thinking in the spirit of the Christian Orthodox eschatological tradition, placed at the center of his public philosophy “the eternal ideal of the Good”, the idea that each human being is endowed with the desire for a relentless pursuit of truth and is accompanied by the process of creation throughout his life and after his death. “No public, modern or ideal, will ever satisfy this desire”, the scholar wrote prophetically, as if predicting the upcoming events. “In this relentless quest, man must be prepared not only for his ultimate hope, but also for his ultimate suffering” (Novgorodtsev, 2010c: 515).

Towards the Revival of the Sacred Values of Russian Life: the Transformation of Pavel Novgorodtsev’s Views in the Post-Revolutionary Period and the Transfer of his Ideas to the European Intellectual Tradition

After the February Revolution of 1917 Pavel Novgorodtsev returned to Moscow University and actively worked in the Constitutional Democratic (Kadet Party). He belonged to those politicians who considered the Bolshevik revolution dangerous and argued for extreme measures to prevent socialists from coming to power. In August 1917 at a meeting of the Central Committee of the Kadet Party the scholar argued for the establishment of a military dictatorship, as he believed that only this could save the rule of the Provisional Government (Records of the Central Committee of the Constitutional and Democratic Party, 1915–1920, 1998). In July 1917, the scholar called the Central Committee to take decisive action, explaining their importance by the fact that “... the destruction is going on so rapidly that soon we will be in an abyss where can be no natural activity, for what remains in the abyss is moaning and shooting”. Of particular note is the idea voiced by Novgorodtsev during his meeting with the Prime Minister Alexander Kerensky about Cadets joining the government: “When you have your own ideals, you always embed them into the framework of the state reality. The Church is not only a blessed realm and a community of the spirit. It also has its earthly forms. It is not the Church that asks from the State, but the State that gives. The duty of the State is to worship the sacredness of the souls of men”. It was at this time that he remarked that the Cadets never demanded that the Church and State be separated (Kanischeva, 2012: 201–202).

The scholar refused to accept the October Revolution and engaged in an active struggle against the Bolsheviks. The majority of the professors of law from Moscow condemned new Bolshevik order in the autumn of 1917. On November 30, 1917, in response to the publication of the Decree on Court, which abolished the judicial institutions of the old regime, representatives of the Moscow Juridical Society, the All-Russia Union of Jurists, the Bar and the Prosecutor’s Office assembled in Moscow University. Discussing current political events, the jurists characterized the Bolsheviks’ behavior as a desire to destroy the whole order of life and as a “blow to the Russian legal consciousness” which, in legal terms, was throwing the country back into the days of “*Russkaya Pravda*” (“Russian Justice”). According to Novgorodtsev’s colleague Iosiph Pokrovskii, the decree by the Soviet founder Vladimir Lenin abolishing the courts “basically destroyed any law

and justice, all public life was hung up in the air”, and the country followed “the path of economic poverty, spiritual savagery and public disgrace”. At that time, numerous lawyers saw their mission in defending the law and counteracting the new power as long as possible (Jurists’ voice, 1917).

Pavel Novgorodtsev considered the Bolshevik ideology, which denied law and the legal tradition, to be utopian. In his words, the main function of the state was not to suppress, as the Bolsheviks claimed, but to harmonize social relations by establishing a unified and equal law to unite class, group, and personal interests. In his work “On Paths and Goals of the Russian intelligentsia”, which was written for the papers collection “Iz glubiny” (“Out of the Depth”), illegally prepared in Moscow in the summer of 1918, he called the Bolshevik revolution the symbol of victory of the utopian consciousness. He saw its roots in the rationalist utopianism of the Russian intelligentsia, generated by socialist, anarchist and populist influences coming from Bakunin, Chernyshevskii, Lavrov and Mikhailovskii. These ideas led the Russian intelligentsia into non-religious apostasy from the idea of the state and to the collapse of intellectual consciousness. Novgorodtsev believed that the path followed by the intelligentsia at the time was disastrous and urged people to turn to the ideas of another school of thought popular among the Russian intellectuals and led by Chaadayev, Dostoevsky and Soloviev. It was rooted in the Old Russian culture and faith and Novgorodtsev felt it necessary to return to its values (Novgorodtsev, 2009: 823, 827, 835–839). The scholar started to deepen and develop these ideas in emigration.

When communicating with the Cadets who supported him in January 1918 the scholar admitted that the liberals had made mistakes: “We were too confident that the people could cope with the reform in its entirety. We were not conservative at all. It is not the people who are to blame, but we ourselves, because like youngsters we moved with the current. We thought that the idea of the state was enough, but we forgot about the required statecraft experience. And we did not have enough will for power. It should be taken into account that policy affairs do always have some ugly details” (Kanischeva, 2012: 215).

The year 1920 was fatal for many of Novgorodtsev’s colleagues who supported the revivalist school of natural law. 1920 took the lives of Iosiph Pokrovskii, Vladimir Hessen and Evgeny Trubetskoi. Since December 1917 Pokrovskii had been working as a tenured professor at Moscow University and in July 1918 he wrote an article entitled “Perun’s spell” for the anti-Bolshevik collection “Iz glubiny” (“Out of the Depths”), where he argued that the Russian revolutionary transition from monarchy to popular rule was turning into a dictatorship of the proletariat and the fall of the authority of law. He died of an asthma attack in April 1920. Vladimir Hessen was forced to leave Petersburg University after the revolution and went to the Social and Economic Faculty of the Ivano-Voznesensk Polytechnic Institute, where he worked only for a few months in 1919 and died of typhus in January 1920. Evgeny Trubetskoi was a member of anti-Bolshevik organizations in the south of Russia, but he also contracted typhus and died in January 1920.

Pavel Novgorodtsev survived the year 1920. Since the summer of 1918 he had been involved in the anti-Bolshevik movement in southern Russia. He tried to demonstrate to Western allies Bolshevism's global danger and the need for an immediate joint rejection of it. The scholar became an activist of the All-Russian National Center in the south of Russia, was the author of the main statements of this organization's program in 1919, as well as the draft declaration of the Volunteer Army on land and labor issues. The documents he wrote were full of the desire to overcome the tensions in the anti-Bolshevik movement. At the meetings of the Cadet Central Committee in Moscow in the spring and summer of 1918, he called for unity and saw the search for a "consolidated opinion" as an urgent task (Records of the Central Committee of the Constitutional and Democratic Party, 1915–1920, 1998: 445). The scholar contrasted the consolidation course aimed at "putting together power of the people" with the ideology of class division put into practice by the Bolsheviks. "There is no cadetism or democratism, but there is the national goal of unity," (Medushevskii, 2018: 406), the scholar argued.

Novgorodtsev taught at Simferopol University for a while, then immigrated first to Berlin and then, in 1921, to Prague. There he demonstrated his talents as a university manager, founding the Russian Law Institute (Faculty) at Charles University with the participation of the Czech government and becoming its first dean. In 1922, when filling in a personal questionnaire at the request of the Study Board of the Committee for the Education of Russian Students in the Czech Republic, the scholar wrote concisely and laconically: "Novgorodtsev Pavel Ivanovich... professor of public law, former professor at Moscow University and director of the Moscow Institute of Commerce. My special interest was legal philosophy and public law". When asked about his activity in Prague, the scholar answered, "I continue my research"²¹.

At the Russian Faculty of Law he delivered lectures on the history of legal philosophy. Novgorodtsev also gave a series of lectures on the crisis of Westernism. In 1923 he published the paper "Democracy at the Crossroads" in the Russian philosophical collection "Sophia" and wrote a report of the same title in the Society for Jurisprudence. Since 1922 he was also the founder and the first chairman of Soloviev's Religious and Philosophical Society. In it, he made the report "The essence of the Russian Orthodox consciousness", which became the basis for a publication in the collection of Vasily Zen'kovskii, and gave a cycle of public lectures titled "Democracy and Dictatorship in General and in Socialist Literature"²².

The papers written by the scholar during his emigration were full of religious and philosophical content and were prepared for the relevant collections. Among them were "The Orthodox Church and its Relation to the Spiritual Life of New Russia" (1922), published in "Russkaya Mysl" ("Russian Thought") edited by Pyotr Struve, "The Essence of the Russian Orthodox Consciousness" (1923) for the collection of religious and philo-

21. State Archive of the Russian Federation (GARF), f. 5776 (Uchebnaya kollegiya pri Komitete po obespecheniyu obrazovaniya russkih studentov v Chekhoslovackoj respublikе, Praga), op. 2, d. 110, l. 2.

22. GARF, f. 5776, op. 2, d. 110, l. 1.

sophical papers “Pravoslaviye i kul'tura” (“Orthodoxy and Culture”) prepared by Vasily Zen'kovskii.

In his later works Novgorodtsev lamented that his political activities had indirectly contributed to the collapse of the old Russia. In his new circumstances, he continued his search for the public ideal and developed the conception that moral ideals should guide the development of law. However, the ideal type of the rule of law that he had construed in the pre-revolutionary period receded into the background, along with other questions of the external organization of human life.

In his works of the emigration period, Novgorodtsev associated the public ideal with the Russian Orthodox Church and religious communication. According to the ideologist of Eurasianism Georgy Florovskii, it was revealed by Novgorodtsev in the ecclesiastical conciliarity and in the new interpretation of social utopianism: he saw it “in the very spiritual organization of the European West” in connection with “the peculiarities of the Western religious realm”. He understood that “... the crisis of public consciousness, of which he had spoken for so long, was essentially the crisis of the West” (Florovskii, 1924: 218).

The “spiritualization” of Novgorodtsev’s philosophy of law in his last years was also noted by the young legal sociologist and his colleague at the Russian Faculty of Law, Georgii (Georges) Gurvitch, who later acquired influence in French sociology and jurisprudence. The ideological change evident in Novgorodtsev’s position was seen by Gurvitch as a dialectical phase in the spiritual development of the scholar, who had initially belonged to the Westernist line of Russian public thought, but whose religious quest brought him closer to the Slavophiles. Gurvitch mentioned another change in Novgorodtsev’s philosophy in the last months of his life, when the scholar turned again to the question of the “external construction of the human life” and tried to reconcile his new ideas with his earlier liberal Westernism. Gurvitch explained this synthesis of ideas by a profound spiritual crisis that the scholar experienced as a result of the revolution and emigration (Gurvich, 1924: 389–393).

The contemporary Russian legal philosopher Vyacheslav Zhukov has convincingly demonstrated that the concept of the absolute social ideal advanced by Novgorodtsev in his last years is derived from such fundamental categories of his legal philosophy as natural law and the moral law of the individual. The triad “moral law — natural rights — absolute ideal” is presented as the moral idea in its development, the evolution of the individual’s ideas, which goes from the realization of one’s own moral nature to the moral claims pertaining to the organization of society (Zhukov, 2012: 75).

In his paper “Restoration of Sacred Values”, written in Prague in June 1923 (it was originally prepared as a speech in memory of Vladimir. D. Nabokov) Novgorodtsev set out his renewed idea of the Russian tradition in the philosophy of law. He saw its uniqueness in its decisive rejection of the foundations of the classic Western European legal tradition established in the 18th and 19th centuries and called for the development of the religious and ethical components of the public ideal (Novgorodtsev, 1926: 53–54).

Just like Iosiph Pokrovskii in his “Perun’s spell” before him, Novgorodtsev admitted that his associates’ “attempt to construct the rule of people” ended in failure and they “needed a new approach to life, a new attitude to reality”. Novgorodtsev noted the destructive power of the revolution in shattering his contemporaries’ faith in ideals. He placed the blame for it on the intelligentsia, whose worldview “was not shaped by Chicherin’s state liberalism but was formed under the influence of Bakunin’s populist anarchism”. The Russian intelligentsia believed in the constructive power of revolution and in the creativity of the masses and thought that “it was only necessary to smash and destroy the old power...”. The scholar saw this anarchical faith in many revolutionary activists: both in the leaders of the Provisional Government Grigory L’vov and Alexander Kerensky, and in the Bolsheviks.

Evaluating the events that happened in Russia after October 1917, Novgorodtsev argued that the revolutionary upheavals had enough potential to destroy Russia, but not to rebuild it. In his opinion, Russia’s revival lay in the “reconstruction of sacred values”, the first and foremost of them being the sacredness of the “people’s soul”, which was the key element of Russian statehood. “We must admit once and for all that the path of revolutionary ‘conquests’ has run its course, and that we must now take another path — that of gathering the Russian land and reconstructing the Russian state”, the scholar argued. He linked the revival of sacred values with a dramatic change in political consciousness, a drastic change in the attitude towards the Motherland. The reconstruction of Russia could only be achieved in a united impulse of national unity, in a spirit of solidarity with higher principles, in a sense of responsibility for the whole (Novgorodtsev, 1926: 62–64).

Novgorodtsev thus called for the reconstruction of religious and national forces. The pathos of nationalism for him meant that “Russia and the Russian culture are superior to parties and political dogmas”. The thinker noted that among young people “there was an unbeatable growth of national consciousness, strengthening natural attraction to their own, native things. A passionate love for their country and the Motherland was emerging. Long-forgotten words and feelings were in use again” (Novgorodtsev, 1926: 65). The religious revival was seen as a revival of the orthodox consciousness, based on the idea that each individual has a shared moral and religious responsibility for everyone else and vice versa. At the core of this conviction was the idea of a joint and conciliar salvation by the force of everybody’s feat of faith, prayer, and love (Novgorodtsev, 1923: 11).

By the reconstruction of the sacred values the scholar understood not the revival of the external forms and ways of life, but, first and foremost, the revival of souls, a religious and moral renewal. “To create new Russia, we need new spiritual powers, we need souls that aspire to new light,” wrote the philosopher. His search for support in the religious enlightenment of spirit was inspired by his conviction that the greatest crisis of legal consciousness is a global crisis, a “crisis of lack of faith, a crisis of culture divorced from religion, crisis of the State which rejects any connection with the Church, and a crisis of human law that renounces kinship with divine law” (Novgorodtsev, 1926: 67). Novgorodtsev predicted the difficulties of the religious revival in Soviet Russia, which was an authoritarian state.

Novgorodtsev pointed out that the Russian people would have to live and act “in a country that had been destroyed and thrown back several centuries”, amidst not only the greatest material destruction, but also the “terrible collapse of cultural, public and economic foundations”. The thinker concluded that “in the years ahead, the Russian people will have to make heroic and selfless efforts”, as sowers of “the reasonable, kind and eternal” will have to act under terrible and primitive conditions, because the revolution will leave major devastations behind it, not just in the external environment, but in human souls (Novgorodtsev, 1926: 70–71).

Analyzing the experience of the Russian Revolution, Novgorodtsev concluded that legal systems are not autonomous and are powerless without moral upbringing. He argued that, on its own, morality does not possess autonomy and is not the highest principle. Once again, just as at the turn of the century, Novgorodtsev speaks of the need for developing legal consciousness: “It is not the political parties that will save Russia, it will be revived by the people’s spirit that will aspire to the light of eternal sacred values!” “That is why”, concludes Novgorodtsev, “we are now replacing autonomous morality with theonomic morality, and replacing democracy, the rule of the people, with hagiocracy, the power of the sacred. It is not some universal forms that will save us, but the blessed enlightenment of the souls” (Novgorodtsev, 1926: 69, 71).

The goal of “restoring sacred values” shaped Novgorodtsev’s activities as dean of the Russian Law Faculty of Charles University in 1922–1924. In his speech at the opening of the faculty he said that it was a “bet on the future of Russia”. Referring to the national character of Russian science, Novgorodtsev explained that Russian law students studying abroad would be able to broaden and enrich their knowledge base and put it at the service of their fatherland (*Studencheskiye gody*, 1922: 23–25). This mission determined the scholar’s public activity in Prague, where he participated in the work of multiple scientific and pedagogical organizations of Russian immigrants. Trying to preserve the basics of Russian culture, Novgorodtsev took on the positions of creator and chair of Vladimir Soloviev Religious and Philosophical Society at the Russian Law Faculty, as well as member of the Board of the Union of Russian Academic Organizations Abroad. The scholar believed that the strongest spiritual bond between people raised within the context of Russian culture is a devotion to that culture.

* * *

To sum up, Pavel Novgorodtsev, the leader of the idealist line in legal philosophy, consistently supported the idea that moral ideals should guide the development of law. As the founder of the school of natural law revival in Russia, Novgorodtsev substantiated the ethical doctrine of law, which resonated with the ideas of the German legal scholars Georg Jellinek, Rudolph Stammler, Gustav Radbruch and others.

A prominent scholar and a political activist, Novgorodtsev skillfully brought his ideas into the context of contemporary law-making. In papers published at the time of the First Russian Revolution he sought to demonstrate the need for legal reforms aimed at ensur-

ing the natural and social rights of the individual. He drafted bills on personal inviolability, civil equality and freedom of assembly. Between 1907 and 1917, under the influence of the evolution of liberalism in European countries, the scholar advanced the ideas of the new liberal philosophy concerning the importance of expanding the functions of the state in controlling social life.

The scholar was one of the founders of the religious and philosophical movement in Russia at the beginning of the 20th century. He was one of the first Russian legal scholars to note the importance of Vladimir Soloviev's moral and legal ideas for the Russian legal tradition, and the editor of the 1902 iconic collection "Issues of Idealism". Under the influence of the Russian revolutions Novgorodtsev's philosophical views became increasingly religious. He turned to the criticism of utopian theories that subjugated the individual to society and equated law with power, admitting the relativity of the liberal ideal of the rule of law and searching for the absolute.

After 1917 Novgorodtsev became a full-fledged religious philosopher. His turn to Christianity as the source of justice and ethical norms was another attempt to search for the public ideal. It was the search for the ideal form in the internal organization of the society, in the individual, which was the only opportunity in conditions when any participation in transforming the external forms of life was no longer accessible to him. Novgorodtsev relied on the national spiritual tradition and advocated the preservation of its principles in the European cultural environment. This construction, in our opinion, did not contradict the idea of the rule of law, which was the core of the scholar's research in the previous period; the rule of law was the external form of social organization, but it was also necessary to find its internal foundations.

As the creator of the philosophy of law of "new liberalism" Novgorodtsev established the ethical doctrine which did not contradict liberal philosophy. In his creative work, new liberalism and Christian humanism relied on each other and laid the foundations for each other. At the heart of both approaches was the justification of individual autonomy in relation to the state, the idea of the ideal social order as the realization of the principles of legal freedom and justice, the view of law as the ultimate social and ethical value.

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Философия права Павла Новгородцева: «новый либерализм» vs христианский гуманизм²³

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Авторы статьи характеризуют вклад философа Павла Новгородцева в становление российской философии права, в развитие моральной и этической традиции права, являвшейся философским обоснованием доктрины «нового либерализма» и прав человека. Эта традиция была авторитетной как в позднеимперской России, так и в Европе, куда Новгородцев эмигрировал в 1920 г. и где он основал юридический институт (факультет) при Карловом университете (Чехословацкая республика).

Авторы впервые предприняли попытку рассмотреть философию права Новгородцева как целостную этическую концепцию с учетом ее развития в завершающий период его жизни. Статья является одной из первых в академической литературе аргументаций идеи, что воззрения Новгородцева необходимо интерпретировать в контексте как либерально-философского, так и религиозно-философского подходов к правопониманию, и оба этих

23. Исследование выполнено в рамках Программы фундаментальных исследований в НИУ ВШЭ в 2024 г.

подхода взаимодополняют друг друга, сыграв существенную роль в истории политико-правовой мысли России и Европы XX столетия. Вклад Новгородцева в интеллектуальную мысль России и Европы заключался также в обосновании содержания социальных утопий, в частности, большевизма и коммунизма, характеризовавшихся отказом от права и правовой традиции.

Исследование базируется на широком круге источников, включающих труды П. Новгородцева и документы личного происхождения, в частности, его переписку.

Ключевые слова: русская интеллектуальная история, философия права, религиозная философия