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Law and Morality: Leon Petrażycki

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GENERAL INTRODUCTION TO THE SERIES

By the Editorial Committee

This book is one of the 20th Century Legal Philosophy Series, published under the auspices of the Association of American Law Schools. At its annual meeting in December, 1939, the Association authorized the creation of a special committee "for the purpose of preparing and securing the publication of translations on the same general lines as the Modern Legal Philosophy Series, sponsored by this association at the annual meeting thirty years ago . . . the materials to represent as nearly as possible the progress of Continental Legal thought in all aspects of Philosophy and Jurisprudence in the last fifty years."

Whereas the earlier Series was a very daring venture, coming, as it did, at the beginning of the century when only a few legal scholars were much interested in legal philosophy, the present Series could be undertaken with considerable assurance. In 1909 only a few of the leading law schools in this country included Jurisprudence in their curricula, and it was usually restricted to the Analytical School. By 1939 Jurisprudence was being taught in many law schools, and the courses had been broadened to include not only Analytical Jurisprudence, but also the Philosophy and the Sociology of Law. The progress in logical theory, in ethics, and in social science between 1909 and 1939 was without doubt an important factor in the expansion of Jurisprudence. In 1939 there was not only the successful precedent of the earlier Series, now completely out of print, but also the known rise of a very substantial body of interested readers, including students and practicing lawyers as well as professional scholars. This thoroughly admirable change, especially in the English-speaking countries, has been widely recognized as productive of a great enrichment of Anglo-American law. The Modern Legal Philosophy Series has been justly credited with a major part of that influence by making readily available the Continental jurisprudence of the last century.

The primary task of the legal philosopher is to reveal and to maintain the dominant long-run influence of ideas over events, of the general over the particular. In discharging this task he may help his generation to understand the basic trends of the law from one generation to the next, and the common cultural ties of seemingly disparate national legal systems. He may, again, create from these common ideal goods of the

world's culture general theories, beliefs, and insights that will be accepted and used as guides by coming generations. The works of great legal philosophers serve not only the needs of the practitioner and other utilitarian ends; they also contribute abundantly to our theoretical knowledge. Indeed, in a deeper sense, we have come to understand the superficiality of setting utility against theory. The day is past when jurisprudence can defensibly be regarded as a curious hobby or as "merely cultural" in the sense that the fine arts contribute to the rounded education of a gentleman at the Bar. The issues are now correctly formulated in terms of whether one wishes to be a highly competent lawyer or a technician. Since the question, thus put, is obviously rhetorical, it is but another mode of asserting the considered judgment of those best qualified to pass on such matters, that the science and philosophy of law deal with the chief ideas that are common to the rules and methods of all positive law, and that a full understanding of any legal order therefore eludes those whose confining specialties keep them from these important disciplines.

The recent revival of interest in American history also reminds us emphatically that the great Fathers of the Republic, many of them lawyers, were men of universal intellectual outlook. They were as thoroughly grounded in French thought as in English. Grotius and Pufendorf were almost as widely read as the treatises on common law. Indeed, Jefferson and Wilson, to select two of the many great lawyers who come to mind, were able philosophers and social scientists. They apparently regarded it as essential to the best conduct of their professional careers to study philosophy and, especially, jurisprudence, Jefferson remarking that they are "as necessary as law to form an accomplished lawyer." The current movements in politics and economics have raised innumerable problems which, just as in the formative era of the Republic, require for their solution the sort of knowledge and skills that transcend specialization and technical proficiency. They call for a competence that is grounded in a wide perspective, one that represents an integration of the practitioner's technical skills with a knowledge of the various disciplines that bear directly on the wise solution of the present-day problems; and these are by no means confined to public affairs — they equally concern the daily practice of the private practitioner. With many such legal problems, with methods relevant to sound solutions, with the basic ideas and values involved, the eminent legal philosophers whose principal works appear in this Series have been particularly concerned. If it seems to some that the literature of jurisprudence is rather remote from the immediate practical problems that occupy the attention of most lawyers, it is necessary to reassert our

primary dependence for the solution of all such problems upon theory — a truth that has been demonstrated many times in the physical sciences but which holds, also, in the realm of social problems. The publication of such a Series as this rests on the premise that it is possible to discover better answers than are now given many problems, that a closer approximation to truth and a greater measure of justice are attainable by lawyers, and that in part, at least, this can be brought about through their greater sensitivity to the relevant ideals of justice and through a broader vision of the jurisprudential fundamentals.

In the General Introduction to the first Series, it was noted that "The value of the study of comparative law has only in recent years come to be recognized by us. Our juristic methods are still primitive, in that we seek to know only by our own experience, and pay no heed to the experience of others." As the nations are drawn closer together by forces not wholly in human control, it is inevitable that they should come to understand each other more fully. The legal institutions of any country are no less significant than its language, political ideals, and social organization. The two great legal systems of the world, the civilian and the common law, have for some years been moving toward what may become, in various fields of law, a common ground. The civilian system has come more and more to recognize actually, if not avowedly, the importance of case-law, whereas the common law system has been exhibiting an increasing reliance on legislation and even on codes. In a number of fields, e.g., commercial law, wills, and criminal law, there is such an agreement of substantive principles as to make uniformity a very practical objective. While economic interests will undoubtedly provide the chief stimulus to that end, in the long-range view the possibility of focusing the energies of leading scholars and lawyers, the whole world over, on the same problems is the most inviting ideal of all. The problems of terminology, legal methods, the role of precedent, statutory interpretation, underlying rationale, the use of different types of authority, the efficacy of various controls and their operation in diverse factual conditions, the basic issues concerning the values that are implemented — these and innumerable other fundamental problems of legal science and philosophy may and should receive collaboration on a scale never before attainable. The road to the attainment of these objectives is not an easy one, but if any such avenue exists it is surely that indicated by the best literature in jurisprudence.

These fundamentals are also invaluable aids to better understanding of one's own law. On the side of insight into legal methods and substantive doctrines alone, the gain is immeasurably great. The common lawyer, at least until very recent times, was wont to accept a rigorous

adherence to the rule of precedent as axiomatic in any modern system. He was apt to regard the common law through Blackstonian eyes; and he can hardly be said to have been even initiated into the criticism of statutes from other perspectives than those required by an unquestioning acceptance of the primacy of case-law. The gains should be no less great as regards organization of the substantive law. A century and a quarter ago John Austin remarked that the common law was a "mess." Although much progress in systematization has been made since that time, we still have a great deal to learn from our civilian friends — particularly from those who have attained wide recognition for their jurisprudential analyses of the common problems of modern legal systems. In addition, there is that vast illumination to be had from the discovery that other advanced legal systems, representing cultures of high achievement, sometimes apply to the solution of many problems different rules of law and even different basic doctrines than does our own. What better avenue to sound criticism of our legal system, what easier road to its early enrichment than by way of intimate knowledge of the innumerable ideas, some identical with our own but otherwise enunciated, some slightly divergent, others directly opposite, that are supplied so generously in the works of legal philosophers!

With the above objectives in view, the Editorial Committee, appointed early in 1940, immediately took up its task. For almost an entire year it engaged in active correspondence with practically all the legal philosophers in the United States, with many European, including English, legal philosophers; and, later on, when the Committee decided to include in the Series a volume devoted to Latin-American jurisprudence, there was much correspondence with legal philosophers of the various countries of Latin America. In addition, like activities centered on the engagement of translators qualified to translate correctly great works of jurisprudence into readable English. Anyone who has undertaken such translation will realize the difficulties involved, and the very high competence that is required. The Committee was able to set very rigorous standards in this regard because of the presence in the United States of an exceptionally able group of European legal scholars, some of whom had for many years been well versed in the English language.

In making its selection of works for inclusion in this Series, the Editorial Committee has been guided in part by the originality and intrinsic merit of the works chosen and in part by their being representative of leading schools of thought. The first Series, the Modern Legal Philosophy Series, had made available some of the work of nineteenth-century European legal philosophers — including Jhering, Stammler, del Vecchio, Korkunov, Kohler, and Gény. That Series and other publications had

brought Duguit to the English-reading public. In 1936 the Harvard University Press published a translation of Ehrlich's *Fundamental Principles of the Sociology of Law*. The present century has also seen the rise of a number of brilliant legal philosophers who have attained very wide recognition. Among those whose inclusion in this Series was clearly called for were Max Weber, Kelsen, Petrazycki, Radbruch, the French Institutionalists, chiefly Hauriou and Renard, the Interests-Jurisprudence School centering around Heck, and some others. The opinion of the Committee as to these men was abundantly confirmed by the numerous communications received from legal philosophers of many countries, and the chief problem was to decide which of their works should be translated. But distinction in jurisprudence is not confined to a few writers, and any choice solely on the basis of scholarly merit would be enormously difficult, if not impossible. The Committee, like its predecessors, sought "to present to Anglo-American readers, the views of the best modern representative writers in jurisprudence . . . but the selection has not centered on the notion of giving equal recognition to all countries. Primarily, the design has been to represent the various schools of thought." (General Introduction to the Modern Legal Philosophy Series.) Some schools of thought have been much more productive than others; especially has this been true of those of Legal Positivism and Sociology of Law, which number many very able representatives. Without further presentation of the numerous phases of this problem, it may be stated that the Committee, whose members represent various legal philosophies, has endeavored to make the best selection possible under the conditions of its appointment, the objectives set before it, and the rigorous restriction resulting from the size of the Series.

The success of such a project as this required considerable assistance of many kinds, and the Committee is pleased to acknowledge the abundant aid extended to it. Our greatest debt is to the late John H. Wigmore, whose broad experience as Chairman of the Editorial Committee of the Modern Legal Philosophy Series was placed at our disposal, and who advised us frequently on many problems that arose in the initial stages of the work. As Honorary Chairman of this Committee until his death on April 20, 1943, he participated in many of its conferences and took an active and highly important part in launching the project and assuring its success. It was Mr. Wigmore who, in the early uncertain days of the enterprise, interested his former student, a Trustee of Northwestern University, Mr. Bertram J. Cahn, and Mrs. Cahn to contribute a substantial sum to defray the expenses of translation. The publication of the Series involved the expenditure of a considerable sum

of money, and would have been impossible had not the Committee received a very substantial subsidy from Harvard Law School. No less a debt does the Committee acknowledge to the authors who contributed their work and, in some instances, their close personal collaboration. The translators have earned the Committee's admiration for their splendid achievements in the face of serious obstacles and with very little financial assistance to ease their task. We of the Committee wish, also, to give our very hearty thanks to the many legal philosophers, American, Continental, English, and Latin-American, who made many valuable suggestions and encouraged us greatly by their interest in the project. They are far too numerous to be named, as are those many persons in various positions, some of them rather humble ones, who lightened our tasks by their kindly aid. Finally the Committee acknowledges the special help given by Harvard Law School, the University of San Francisco Law School, Columbia University Law School, and Indiana University Law School. Each of the first two schools provided at its own cost a member of its faculty to serve as a translator, as well as stenographic assistance, and the other schools provided considerable stenographic, clerical, and other help. To each of the above persons and institutions the Committee gives its grateful thanks for assistance, without which the publication of this Series would not have been possible.

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The Committee also wish to express their appreciation of the very important contribution of Professor N. S. Timasheff who assisted in the selection of the materials for publication, in reading the proofs, compiling the Index, and in other ways.

INTRODUCTION

By Nicholas S. Timasheff *

I. Russian Jurisprudence before Petrazhitsky †

Leo J. Petrazhitsky was the most eminent of the Russian legal philosophers of the early twentieth century. At that time, Russian legal philosophy, although less than a hundred years old, was definitely going through a period of flowering characterized by the diversity of schools and the presence, in most of them, of outstanding jurists. But the schools reflected similar schools in German and French jurisprudence and legal philosophy, and the debate between them was conducted with great courtesy, by an exchange of arguments implying that, whereas the opponent was wrong, he still was contributing something of importance to the understanding of the elusive phenomenon which is law.

The situation changed entirely when Petrazhitsky joined the debate. He bluntly told his students and colleagues that all the existing theories on the nature and properties of law were essentially wrong because they ignored the nature of its reality. What they considered to be real were mere phantasmata, and what is real in the law — they did not even suspect.

Of course, this was a tremendous exaggeration, but an exaggeration which, as known from the history of science, often occurs when a truly creative mind achieves every scholar's dream — a novel and promising solution of a difficult problem. Petrazhitsky had that creative ability and actually offered a solution of the basic problems of legal philosophy along paths not yet tried.

The novelty of his approach could be only relative: it is common knowledge that every invention, technological or cultural, depends on the "cultural base," that is, on existing knowledge, and incorporates a number of suggestions made by the inventor's predecessors. To understand the sources of Petrazhitsky's inspiration, as well as the reaction met by his work, a brief survey of the state of Russian legal philosophy and jurisprudence, as of 1900, is necessary.[1]

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† Although the Polish spelling has been used in the title (see Translator's Note, p. xxxix), we have used the transliteration "Petrazhitsky" throughout the rest of the book as it most clearly indicates the pronunciation. Publisher's Note.

[1] On the history of Russian legal philosophy see articles by Novgorodtseff, Gurvitch, and others in 2 Philosophie und Recht (1922); and Laserson, *Russische*

As elsewhere in continental Europe, Russia's legal philosophy was divided between legal idealism and legal positivism. The idealists tried to locate the law in the world of ideas and took it for granted that, in one way or another, law as idea is reflected in the world of human actions. The positivists were further divided between sociological positivism emphasizing the place of the law among social phenomena, and legal positivism in the narrow meaning considering that law was a self-sufficient system of norms to be studied from within, not from "above" as alleged by the idealists, nor from "without" as done by the sociological jurists.

Historically, in Russia, idealism was older than positivism. It was expressed in the earliest work in Russian on the subject — *Natural Law* by Professor A. V. Kunitsin (1783–1841), a work in two volumes (1818–1820), well-written along the lines of Kantian philosophy. Later on, Russian philosophy received a more conservative Hegelian flavor. The first and, for quite a time, the most prominent among the Russian Hegelians in legal philosophy was K. N. Nevolin (1806–1855). His *opus magnum* was *Legal Encyclopedia* (2 vols., 1838–1840). The title reflected the official program of the Russian universities which required that first-year law students be given a survey (encyclopedia) of the main branches of positive law (civil, criminal, procedural, commercial, constitutional), preceded by brief discussions of law in general. But, instead of a dull encyclopedia, Nevolin offered a brilliant course of lectures on legal philosophy. This is to be noted because, many years later, Petrazhitsky used the same method.

Since the seventies, idealism had begun to recede before the vogue of positivism. Nevertheless, works of the idealistic type continued to appear, and the very end of the century saw the emergence of a new and brilliant idealistic school. One of its most renowned members was B. Chicherin (1828–1902) whose major works were *A History of Political Theories* (5 vols., 1877–1902) and *Legal Philosophy* (1902). Chicherin, a follower of Hegel, believed that the denial of metaphysics, common among the positivists, was tantamount to the denial of law. But, despite his Hegelianism, Chicherin was not inclined to grant to the state the top rank among the social values. In his view, the state must be subservient to the law, since it is an instrument for the materialization of the latter. Aversion to the state was typical of Russia's

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Rechtsphilosophie, 26 ARCHIV FÜR RECHTS-UND WIRTSCHFTSPHILOSOPHIE (1933). The present writer wishes hereby to acknowledge his indebtedness to the above authors as regards the first section of this Introduction.

social thought of the time; we shall meet it in Petrazhitsky's work, and shall also meet Chicherin among Petrazhitsky's critics.

Another late-nineteenth-century idealist, V. Soloviev (1853–1900), was a far more original thinker than Chicherin, and embodied in his work much of true Russian mysticism. Setting aside the rather theological aspects of his doctrine, his teaching on law, especially as expressed in his mature work, *The Vindication of Goodness* (1895), can be summarized as follows:

The central problem of the philosophy of law is that of the relationship of law and morals. The two cannot be separated. Law is a value because it makes possible the realization of the moral ideal. Between ideal goodness and the actuality of evil, law occupies an intermediate position, helping to actualize goodness and placing limits on evil. However, law and morals are not identical. The main difference revolves around the fact that morals are in the realm of freedom while law accepts coercion, although it does not demand it. At the same time, law is actually based on morals and is a "minimum" of morality. In its totality, morality is oriented towards an absolute object which is love. This is another important point to be remembered when studying the theories of Petrazhitsky.

The majority of the Russian idealists of the time were, however, neo-Kantians. Most prominent among them were P. I. Novgorodtseff (1868–1924), and Kistiakovsky (1920). Novgorodtseff was the first among Russian legal philosophers to advocate the revival of natural law. He proposed and defended this thesis in a series of works, among them *The Historical School in Jurisprudence* (1896) and the brilliant monograph on *Kant and Hegel* (1901). Kistiakovsky went much further along the lines of neo-Kantianism than did Novgorodtseff, as may be seen in his numerous articles collected under the title *The Social Sciences and the Law* (1916). We shall meet Novgorodtseff and Kistiakovsky as participants in the debate provoked by Petrazhitsky's revolution in legal philosophy.

Let us now turn to the positivist trends in Russian jurisprudence and legal philosophy. The rise of sociological positivism can be traced to one of Russia's greatest legal historians, V. I. Sergueyevich (1841–1910). In 1868, he published a work entitled *The Tasks and Methods of Political Science* which was conspicuously influenced by Comte, J. S. Mill, and Spencer. He denied as nonscientific the purely dogmatic study of law, and advocated the use of a positive or empiric method. Law should not be treated as a system of norms of a somewhat mysterious nature, but as part of social reality. Consequently, jurisprudence should

be coördinated with sociology which is the general science of social phenomena. Sergueyevich's emphasis on law as reality (and not a system of ideas) obviously influenced Petrazhitsky; but, when the latter's works appeared, nobody was so bitterly critical as Sergueyevich.

In general, the writings of Sergueyevich exerted a profound influence on many Russian jurists of the day. Two of them, S. Muromtseff (1850–1910) and N. Korkunoff (1833–1902), combined the sociological heritage of Comte and Spencer with the teaching of R. Jhering. They fully accepted that part of Jhering's theory which functionally connected law with interests, but tried to liberate law from reference to the state, an institution which, as has already been said, was greatly disliked by most Russian thinkers.

There never was any tangible mental interaction between Muromtseff and Petrazhitsky; but one of Korkunoff's ideas has become a source of inspiration in Petrazhitsky's creative work. Korkunoff is best known as the author of *Lectures on the General Theory of Law* (1888, English translation, by W. S. Hastings, Boston 1909). But, in this context, Korkunoff's *Russian Constitutional Law* (2 vols., 1883–1886) is more important. There, Korkunoff denied the reality of "the will of the state" which had been a basic assumption made by all his German and Russian contemporaries. Instead, he proclaimed the existence of a force engendered by the consciousness of dependency (subordination) on the part of the citizens or subjects. Thus, the state was asserted to be a psychological phenomenon, an important point to be kept in mind when considering the theory of law held by Petrazhitsky.

To a certain extent, Korkunoff's psychologism could be traced back to the work of K. D. Kavelin (1818–1885) who combined positivism with certain elements of idealism. His writings on law were strongly influenced by the subjective school in Russian sociology which emphasized the role of the individual in society, the duty of improving one's moral character, and the duty of promoting social progress. Petrazhitsky never made any statement which would classify him among the members of the school; but it is very probable that his endeavor to discover the reality of law on the level of psychology depended on his acquaintance with the doctrine of the "subjective" school in sociology.

Legal positivism in the narrow meaning of the word, a precursor of H. Kelsen's "pure theory of law," was well represented in the Russia of Petrazhitsky's days. The first representative of the trend in Russia was S. V. Pakhman (1825–1910) who, in a work entitled *The Modern Movement in the Science of Law* (1882), developed the idea that jurisprudence was an autonomous, formal, logical science to be unfolded

independently of philosophical or sociological considerations. A large number of Russian jurists, especially those teaching civil law, accepted Pakhman's lead. Among them one finds two outstanding jurists, G. F. Shershenevich (1863–1912) and D. D. Grimm, both bitter opponents of Petrazhitsky's novel views.

II. Petrazhitsky: The Man and His Work

Such was the situation in Russian legal philosophy when, around 1900, Leo J. Petrazhitsky engaged in his turbulent, almost revolutionary, activity with respect to the science of law.

Petrazhitsky was born in 1867 in the province of Vitebsk which formed the northeastern corner of the territory annexed by Russia from Poland in 1772. He belonged to the local gentry which in Vitebsk was predominantly Polish in its culture in contrast to the predominantly White Russian culture of the "people" of the province. The fact that he was of Polish ancestry and that he belonged to the nobility seemed to have had some bearing on the formation of Petrazhitsky's personality. He had to teach in Russian, but his accent was definitely Polish. In the beginning of his academic career this fact seems to have caused him some embarrassment, but in later years, after he had achieved fame, this was no longer important. The majority of his earlier works were published in German and signed "von" Petrazhitsky. In his Russian works, however, this prefix did not appear, because no article of nobility corresponding to the German "von" or the French "de" exists in the Russian language.

Leo Petrazhitsky studied at the University of Kiev where he was first enrolled in the School of Medicine. After two years, however, he transferred to the Law School, choosing Roman and civil law as his field of specialized study. As there was no good Russian textbook on Roman law, he translated, while still a student, Baron's famous *Pandects*, a work which was widely used for many years as a text in Russian law schools.

This unusual feat of having published a book while still a student, in combination with Petrazhitsky's brilliant performance in courses and his thesis (to graduate from a Russian University with a "first class diploma" one had to write a thesis approximately of the rank of an American Master's thesis), was the starting point of his academic career. The faculty of the Law School gave young Petrazhitsky the position of a "professorial aspirant," a high honor granted to only a few outstanding students. The "professorial aspirants" were required

to take two to three years of postgraduate study under the supervision of three professors, pass a very difficult comprehensive examination, and publish a substantial monograph which had to be defended at a public meeting of the faculty. On successful completion of this program, the "professorial aspirant" received a "Magister's degree"; however, in order to receive the Doctor's degree one had to publish another monograph and, in turn, defend this work successfully before another public meeting of the faculty of the school.

Petrazhitsky had the good fortune to start his preparation for the professorship at a time when the Ministry of Education, aware of the shortcomings of Russian legal science, created in Berlin a special seminar for Russian "professorial aspirants," headed by Professor Dernburg, at that time the greatest living expert in Roman law. Petrazhitsky was chosen to participate in this seminar.

Contact with Dernburg and other German scholars gave a new depth to Petrazhitsky's command of the field. However, his life work was probably determined and more deeply influenced by another event that coincided with his studies in Berlin. At this time German jurisprudence had been given the most important task of helping to draft a new Civil Code. Thus, young Petrazhitsky was directly immersed in the problem of scientifically treating law in-the-making. The German jurists sought to accomplish this task on the basis of the doctrines of the historical and legal positivistic schools. This precluded the use of philosophical, sociological, or psychological points of view and caused the draftsmen to concentrate on the technical perfection of their product.

Petrazhitsky was by no means pleased or impressed by the performance of the German scholars and came to the conclusion that to provide a scientific background for legislation a new science, that of legal policy, was necessary. This was the turning point in his scientific development. In addition to becoming an excellent "dogmatic" jurist, able to interpret the most complicated legal texts, he developed an empirical theory of law reflecting many elements then present in both Russian and German jurisprudence, but in its main aspect quite original, testifying to his superlative creative ability.

At this point a parallel may be drawn with Comte (with whose work Petrazhitsky was familiar). Comte was striving to place social reform on a scientific foundation. Being aware that no empiric science of society existed, he decided to create one. Similarly, Petrazhitsky concluded that improvement of the law required, first, an applied science, namely, legal policy; and second, as its foundation, a theoretical, empiric-causal science of law which, he asserted, was conspicuous by its

absence. Meditating on the empiric nature of law, he came to the conclusion that its reality was psychological. This idea had been anticipated by Bierling and Jellinek, Kavelin and Korkunoff, but it had never received adequate development. Petrazhitsky turned for assistance to psychology, but the psychology of his day was inadequate for the construction of the theory he needed. Boldly, he decided to create a new psychology, and in large measure he repeated the achievement of Spencer who, without previous training in psychology, wrote a remarkable treatise on the subject. While working on both his legal theory and his new psychology, Petrazhitsky saw that the teachings of contemporary logicians as to the formation and definition of concepts were insufficient, and he thereupon decided, also, to construct a new logic, at least with regard to concepts. This he succeeded in doing.

Of course, Petrazhitsky did not decide to take the steps outlined above at any one specific time. These ideas and plans developed gradually. When still studying in Berlin, he published two works primarily devoted to the dogmatic interpretation of civil law according to the best German models, namely, *Fruchtverteilung beim Wechsel des Nutzungsberechtigten* (1892) and *Die Lehre vom Einkommen* (2 vols., 1893–1895). The second of these contained an Appendix entitled "Civil Policy and Political Economy." It is in this Appendix that one finds the germ of Petrazhitsky's ideas on legal policy, especially, the principle of "active love." According to Petrazhitsky, "active love" must guide the efforts of the legislator in his search for better law. This was a truly Russian version of the doctrine of progress, as well as an original expression of the then incipient movement aiming at the revival of natural law. Strangely enough, it was so uniquely Russian that Novgorodtseff, himself an enthusiastic adept of the natural law movement, called Petrazhitsky's version fantastic, sentimental, and almost unintelligible to a Westerner.[2]

In a revised and expanded form Petrazhitsky published the Appendix in Russian under the title *Introduction to the Science of Legal Policy* (1896–97). For this work he was granted the Magister's degree and on the publication of his next monograph, *The Joint Stock Company* (in Russian, 1898), he received the Doctor's degree and the Chair of Legal Encyclopedia at the University of St. Petersburg. It was indeed fortunate that Petrazhitsky received this position rather than the Chair of Roman or civil law to which he was equally entitled. For had he been appointed to either the Roman or civil law posts, he could easily have developed

[2] *Über die eigentümlichen Elemente der russischen Rechtsphilosophie*, 2 PHILOSOPHIE UND RECHT 61.