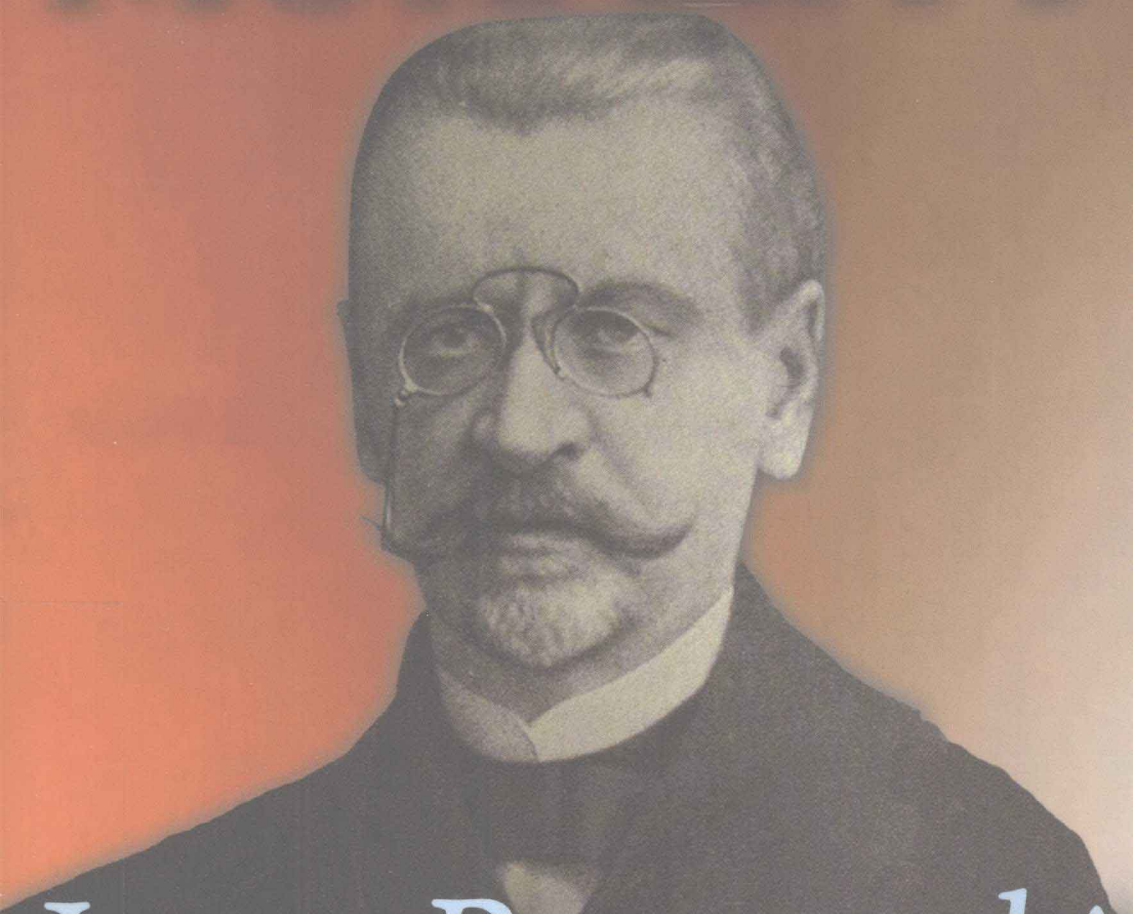
LAW and MORALITY



Leon Petrazycki

With a new introduction by A. Javier Treviño

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INTRODUCTION TO THE TRANSACTION EDITION

ALTHOUGH the works of Leon Petrazycki are today seldom read, particularly in the West, there is no disputing that he ranks as an important forerunner in the development of the sociology of law. To be sure Ziegert (1979, 1980: 75-77), Pódgorecki (1980-1981), and Scheuer (1965) have referred to Eugen Ehrlich, Petrazycki and Nicholas S. Timasheff, respectively, as the field's "founding fathers." Bierstedt (1970) identifies Roscoe Pound, Ehrlich, Timasheff, and Petrazycki as the "founders" of the sociology of law. While Rehbinder's (1977) list is somewhat different, he nonetheless names Petrazycki, along with Ehrlich, Emile Durkheim, Axel Hägerström, and Roscoe Pound as virtually contemporary founders of legal sociology (as cited in Rottleuthner 1987: 31 n.1). More pointedly, Skapska (1987) describes Petrazycki as "the undisputed indirect 'father and founder'" of the sociology of law. Thus, whatever the list of fathers or founders in the sociology of law, Petrazycki's name is certain to be on it.

Also significant is that the major Eastern European pioneers in the sociology of law (see Treviño 1998)—Ehrlich, Timasheff, and Georges Gurvitch—were all influenced, in one way or another, by Petrazycki. While it is not clear if Ehrlich and Petrazycki ever came into personal contact, they were doubtless familiar with each other's works. Indeed, one scholar goes so far as to claim that Ehrlich appropriated the notion of intuitive law from Petrazycki (see Podgórecki 1980-1981: 91, n. 10). We do know that Gurvitch (1931, 1937) wrote about him, that Timasheff (1937, [1939] 2002, 1955, 1981, 1942, 1957, 1967) commented extensively on his legal sociology and that both Timasheff and Gurvitch were students of his at the University of St. Petersburg (Bierstedt 1970: 290; Coser 1977: 500; Hunt 1979: 190; Swedberg 1982: 45; Kojder and Kwasniewski 1985: 263; Sorokin 1963: 88).

Biographical Sketch

The son of a Polish noble, Leon Petrazycki was born on April 29, 1867 near the city of Vitebsk in the province (in what is now Belarus) that formed the northeastern corner of the territory annexed by Russia from Poland in 1772. The fact that he was of Polish ancestry and that he belonged to the nobility seemed to have some bearing on the formation of his personality (Timasheff 1955: xxi).

In 1891 Petrazycki graduated, with honors, obtaining his master's degree in Roman Law from the University of Kiev. In 1883, while still a law student, he translated into Russian and published Baron's *Roman Pandects.* He later obtained a two-year grant to study at the University of Berlin under the great German scholar of Roman law, Heinrich Dernberg (Babb 1937: 794; Langrod and Vaughan 1970: 306ff). This was during the time that the new German Civil Code, the *Bürgerliches Gesetzbuch,* was in its final stages of completion and Petrazycki had a hand in its preparation. Laserson explains that in "the atmosphere of the creation of new civil law which surrounded young Petrazhitskii it was only natural that a decisive criticism of dogmatic jurisprudence should develop. Here the reshaping and remaking of law, the *de lege ferenda*, became more important than the perception and interpretations of what written law commands or means, than the *de lege lata*" (1951: 61).

In 1897 Petrazycki returned to Russia and was awarded the doctorate in law from the University in St. Petersburg. The following year, at the age of thirty-one, he was granted the chair of jurisprudence at that institution. Petrazycki was doubtless an accomplished orator given that a thousand students regularly filled the university's Great Hall to hear his lectures (Sadurska 1987: 63). During his last few years at the university Petrazycki taught a seminar on the sociology of law and morality (Sorokin 1956: 1154).

A constitutional democrat and active liberal Petrazycki joined the Constitutional Democratic (KD) party in 1906 and was elected as a deputy to the Russian First State Duma for St. Petersburg. Later that year the Duma was dissolved and Petrazycki, together with the other former deputies of the KD party, signed the Vyborg Manifesto in protest against the dissolution. As a consequence of signing the manifesto, which called for the population not to pay taxes to the tsarist government, to refuse conscription into the army and to refuse to comply with other public obligations until the election of a new parliament, Petrazycki was imprisoned for three months and barred

from all political activity (Laserson 1951; Langrod and Vaughan 1970; Górecki 1975; Timasheff 1981).

While clearly not a political revolutionary, Petrazycki nonetheless held progressive tendencies that can best be described as those of a "reform oriented right wing liberal" (Ziegert 1979: 227). This may be the reason why Petrazycki opted not to accept the post of Justice of the Supreme Court of Russia under the Kerensky provisional government. Then, highly disillusioned with the Bolshevik Revolution, he fled Russia in April 1919 and immigrated to Poland. Petrazycki was appointed the first chair of sociology at the Law Faculty of the University of Warsaw (Kojder 2006: 334).

Law and Morality

Those of Petrazycki's major writings in legal sociology that have been translated into English are contained in the largely ignored but important compilation: the matter-of-factly titled *Law and Morality.* First published in 1955, translated by Hugh W. Babb (from the Russian) and with an introduction by Nicholas S. Timasheff, the book "brought about a kind of breakthrough in the perception of Petrazycki's heritage abroad, particularly in America" (Kojder 2006: 347).

Law and Morality is an abridgment of two of Petrazycki's fundamental works: it consists of seven chapters taken from his *Introduction to the Study of Law and Morality,* published in 1905, and twenty-two chapters from his *Theory of Law and State in Connection With a Theory of Morality,* published in 1907.

We can safely say that, similar to the other Eastern European pioneers, Petrazycki, throughout *Law and Morality* has one basic objective: to analyze the interrelation between positive law and intuitive law. Since these two kinds of law are best understood vis-à-vis each other (the differences between the two types being relative rather than absolute), I will first briefly discuss positive law and then in somewhat greater detail turn to Petrazycki's notion of intuitive law.

Positive Law

Generally and simply, positive law, or formal law, consists of statutes enacted or sanctioned by an external authority: a political superior or a sovereign (monarch, parliament, congress, the state). Positive law, or "lawyers' law" as Ehrlich sometimes calls it, is enforced in the courts and

other tribunals ([1936] 2002: 493). It is created by legislative, judicial and administrative acts or by legal transactions. According to Kelsen, the positivity of law "lies in the fact that it is created and annulled by acts of human beings" ([1949] 2006: 114). In other words, positivity has to do with the extent to which it has been formally and logically manipulated—enacted, decided, ratified and/or repealed. Thus, we may say that the greater the amount of formal and authoritative interference in law, the greater its degree of positivity.

Before moving on to a discussion of intuitive law it is noteworthy at this point to briefly consider how Petrazycki and more recently Niklas Luhmann both assess law's maturity based on its degree of positivity, but from different points of view and with different conclusions. Taking a socio-psychic approach, Petrazycki contends that in the child's mind the law in operation is, for the most part, positive law. The legal experience of young children is positive—similar to statute law—in that it is restricted to external authority, namely, the directions of their elders. As children get older and mature intellectually they develop an intuitive-law mentality and only then are they able to consider a system of stable, independent, intuitive legal convictions. Luhmann (1985: 159f), by contrast, takes a strict sociological approach and posits that in societies where complexity is low, law is archaic in that the legal rules are not sophisticated and abstract. However, as societies evolve (i.e., develop toward greater complexity), their legal systems are characterized by greater positivity, which means that there is a more conscious and deliberate decision to make, select, validate and change the legal rules. In sum, for Luhmann legal evolution leads to positive law, while for Petrazycki it produces intuitive law.

Intuitive Law

Petrazycki's concept of *intuitive law* concerns "those legal experiences which contain no references to outside authorities and are independent thereof" (p. 57). As is typically the case with intuitive law, "there are neither commands emanating from authorities nor normative facts of any kind" (p. 155). Additionally, Petrazycki identifies four characteristics of intuitive law. First, it varies with each individual, its content being defined by each person's particular conditions and life experiences. Second, intuitive law's directives conform to the specific circumstances of the given legal case and are not constrained by a pre-established pattern of precepts. Third, intuitive law is characterized by free variability and adaptability as it develops gradually and symmetrically, neither subject to fixation and

fossilization nor dependent on arbitrary caprice. Finally, intuitive law has wide scope and broad applicability—it is universal—being present always and everywhere.

In the interest of demonstrating a conceptual correspondence among the Eastern European pioneers, it bears pointing out that the type of social law that most closely approximates Petrazycki's intuitive law—and Ehrlich's kindred concept of "living law"—is what Gurvitch calls "intuitive spontaneous" social law. Intuitive spontaneous social law is located in the most profound and dynamic—that is, at the deepest—level of juridical reality (or "consciousness," as Petrazycki would have it) and is based on the direct apprehension of unorganized normative facts (Gurvitch 1941: 208). Thus, while positive law consists of legal propositions that are decreed by an external organized authority, Petrazycki's intuitive law is spontaneous, experiential, customary, elastic, unwritten, latent and de facto.

In better understanding the contrast between the two types of law, it is important to note three features about them. To begin with, both types constantly influence each other (Sadurska 1987: 82). On the one hand, intuitive law influences the formation, change and termination of positive laws; this is why statutes, for example, "are to a significant degree merely products and manifestations of the intuitive law" (p. 235). Concomitantly, positive law also exerts an influence on the formation of intuitive law. This is illustrated by the fact that from a very early age our sense of intuitive law is much impacted by the rules of conduct and precepts derived from positive law.

The second thing to note is that in the case of conflict with positive law, intuitive law, which Petracyzki says is experienced as resulting from the just and universally valid nature of things, ultimately wins (Motyka 2006: 131). Finally, and related, in people's legal consciousness, intuitive law frequently takes precedence over positive law given that the former is typically used as a yardstick by which to appraise the latter.

Although positive law and intuitive law are ideal types, it is profitable to consider them as dichotomies that are frequently, but not always, in tension. As Chambliss and Seidman rightly contend, the "study of formal law and living law ... embodies the study of the interaction—the dialectic, if you please—between law and society" (1982: 69). I now turn to a discussion of Petrazycki's ideas about how intuitive law sometimes supplements but usually contradicts positive law, and I will do so in reference to five theoretical themes that run through *Law and Morality*.

Five Conceptual Themes

In analyzing the socio-psychic nature, and operations, of intuitive legal rules, Petrazycki formulates his theory of law around five conceptual themes: (1) antiformalism; (2) imperative-attributive legal relationships; (3) law's functional control; (4) law's subjective reality; and (5) morality. Although these themes are considered throughout *Law and Morality*, Petrazycki does not attribute to them equal time or importance. For example, he places far more emphasis on the significance of morality in understanding legal relations than he does on any of the other themes.

Antiformalism

Whatever other departures Pertazycki's legal sociology exhibited from the received legal doctrine of his time, one thing is certain: the theoretical orientation he takes in his work is decidedly in opposition to the legal positivism—or formalist jurisprudence—prevalent during the nineteenth and early twentieth centuries. One of the earliest rudimentary expressions of formalist legal thought is found in John Austin who defined law, very simply and without reference to social and experiential factors, as the command of a sovereign. At the time that Petrazycki was writing, legal formalism had created a system of law that was highly rational, autonomous and conceptualist. Indeed, it was believed that through the process of formalism judges could derive legal rules from abstract principles and then mechanically apply those rules through logical and deductive reasoning, in deciding the outcome of a case. By contrast, Petrazycki's legal sociology is *antiformalist* in that it focuses on law's free, spontaneous, intuitive and informal aspects.

Petrazycki flatly rejects the fundamental notion of formalist jurisprudence that law is a concrete, externally existing entity to be found in the legal codes, court opinions, law books and other objective sources. Indeed, he regards these external manifestations of the law as nothing more than "phantasmata," naive projections of individuals' states of consciousness. Petrazycki explains, "The content of traditional legal science is tantamount to an optical illusion: it does not see legal phenomena where they actually occur, but discerns them where there is absolutely naught of them—where they cannot be found, observed or known—that is to say, in a world external to the subject who is experiencing the legal phenomena" (p. 8).

According to Petrazycki, legal concepts like "obligation," "right," "property," and "contract" exist only in the human mind—or, to rely on Babb's

(1937: 806) translation, the human psyche (*psikhika*). Langrod and Vaughn express this idea as follows: "When a loan is contracted and its term comes, all that occurs is a series of mental pictures formed by the contracting parties and based on an anticipated assessment of their respective acts" (1970: 323). Thus, for Petrazycki all legal phenomena have their origins in people's subjective experiences and not, as formalist jurisprudence would have it, in the external world "out there" (viz., in the organs of state authority). Thus, for Petrazycki, law stands above, or has its origins conceptually prior to, the state, and not the other way around.

Petrazycki's antiformalism resurfaces when he distinguishes between positive and intuitive law. As we have seen, positive law refers to those written rules of a society that are enacted by the state and embodied in its constitutions, statutes or codes. Intuitive law, by contrast, emerges spontaneously from peoples' actions in a bilaterally imperative relationship and has no connection with external authority or coercion. For example, "if a husband experiences his duty and his wife's right to fidelity without even thinking about family code, religious command, or any other source establishing the obligation, his impulsion is intuitive" (Góreki 1975: 7-8). The notion of intuition—of deep spontaneous conviction—is at the center of Petrazycki's socio-psychic legal theory.[1]

According to Petrazycki, both positive and intuitive law may be either "official" or "unofficial." *Positive official law* consists of authoritative rules enacted by the legislature, recognized by the courts and sanctioned by the state. *Positive unofficial law* is composed of the informal but written rules that are acknowledged by the people in a group, organization or agency. An example of this latter type is found in the case of an arbitrator charged by a corporation to specifically settle a dispute between management and labor in accordance with the agreed-upon rules of arbitration. *Intuitive official law* is employed in an informal manner. The English Court of Chancery, for example, utilized it in its judicial decisions that were based on a fluid and adaptable social sense of justice—equity. *Intuitive unofficial law* arises from people's spontaneous behavior guided by their legal intuitions. Timasheff provides as an example of intuitive unofficial law a situation of frontier justice where "men take the law in their hands and hang a 'bad man' because 'he deserves it'" (1955: xxix). In reality, the relationship between intuitive and positive law, along with their variations, "oscillates between minimal and maximal accord. The greater the accord, the better the law functions" (Babb 1938: 569).

Imperative-Attributive Legal Relationships

One factor that gives Petrazycki's theoretical analysis a distinctive sociological bent is that he focuses his study of law on reciprocal social interactions—that is to say, on bilateral exchanges consisting of a set of four corresponding rights (claims) and duties (obligations) between individuals. Reciprocal relations are a core conceptualization of his legal theory. He contends that law introduces a bilateral relationship of rights and duties that is always explicitly or implicitly present. He refers to this dual set of mutual claims and obligations as the *imperative-attributive* emotional nature of law. In other words, in a legal relationship it is imperative that the interacting parties fulfill their duties; in the process they are attributed certain rights corresponding to those duties.

Rudzinski explains this reciprocal, bilateral relationship in behaviorist—Petrazyckian— terms:

> Legal "emotions" are complex psychological imperative-attributive experiences having a double passive (stimulus) and active (reaction) nature, where the image of an observed or imagined action releases an emotional repulsion or attraction and a conviction that actor A is obliged to behave in a certain manner (duty impulse) and that such behavior of A is due to person B as his right. (1976: 113)

For Petrazycki, all legal phenomena—whether of a civil, criminal, administrative or constitutional nature—are reducible to imperative-attributive (claim- and obligation-oriented) legal relationships. He identifies three types of such relationships:

> (1) The duty of the obligor may consist in doing something (paying a sum of money, delivering a merchandise, performing a service, or working) for the obligee; i.e., for the rightful claimant (*facere*). The corresponding right of the claimant consists in getting those goods or services (*accipere*). Or, on the contrary, (2) the duty of the obligor may consist in refraining from doing certain things; e.g., not to attack the life, health, liberty, property or civil rights of another person or persons (*non facere*) and the other person or persons have the right not to tolerate such attacks (*non pati*). Finally, (3) the duty of the obligor may consist in tolerating certain rightful activities of a person or persons entitled to them (*pad*). The latter person or persons have a right to do certain things, they have certain areas of freedom—freedom of speech, press, assembly and so forth (*facere*). (Rudzinski 1976: 117)

The most complete formulation of the imperative-attributive legal relationship is given by another of Petrazycki's students at St. Petersburg, the Russian-American sociologist, Pitirim Sorokin. Briefly, Sorokin identifies three classes of activities that exhaust all of the main forms of the objects

of right and duty insofar as they are expressed in behaviors. On the one hand, the subject of right is entitled to: (1) *accept* (objects or services), (2) *do* (issue a command, give his property, marry), (3) *not tolerate* (violence, attack, insults, any violation of his rights). On the other hand, the subject of duty is obliged to: (1) *do* (work, deliver goods), (2) *tolerate* (reprimand, imprisonment, taking from him his property), (3) *not do* (not to kill, not to steal, not to violate law-norms). This threefold classification aptly describes the actions-reactions of the subjects of right and duty and provides a clear-cut map of conduct to the parties in each case (Sorokin 1981: 672). Elsewhere, Sorokin (1962: 596-97) remarks that to the extent that imperative-attributive convictions are homogeneous among the members of a society, a strong network of social relationships and a strong system of cultural values are established in such a society.

Northrop (1956) critiques Petrazycki for failing to identify the means by which the imperative-attributive impulsions of the legal relationship are communicated between individuals. To be sure, Petrazycki fails to account for how individuals explicitly convey what their respective duties and rights are in relation to each other. His theory does, however, imply that a communicative process must occur otherwise legal and hence social, relations would be impossible. Without communication by means of symbols (body movements, facial expressions, language), neither law nor society can exist. At bottom, then, imperative-attributive legal relationships are possible through the process of communication.

Law's Functional Control

While Petrazycki clearly rejects the sanctions (coercion) theory of law (Rudzinski 1976: 114-15), the concept of functional control is readily apparent in his jurisprudence as he examines law's constraining influence on individual behavior and its functions for the social structure. Indeed, Johnson plainly states that, "Petrazycki was a kind of structural-functionalist theorist" (1975: 43).

According to Petrazycki, law's imperative-attributive emotional character allows it to regulate social relations and impact society in two significant ways. First, it acts as a motivating force stimulating the accomplishment of some actions. In this capacity, law "urges us to do our duty; it gives us the power to demand what we are entitled to by law; it makes us fight for our rights when they are transgressed and it urges a subject to a sense of obligation to do his duty" (Sorokin 1928: 702). Put

another way, without law individuals would do little to maintain or improve their social condition.

Second, law's motivating influence also encourages, inculcates, people to behave in a socially acceptable manner. This means that law plays an educational role in promoting conventional conduct through the process of socialization. Conduct violating conventional expectations is met by law's negative internal, or psychological, sanctions of guilt or shame (Johnson 1975: 41), as well as by the emotions of repulsion concerning such conduct. Through the various social institutions such as the family, church and courts, individuals learn to comport themselves in a manner that is socially necessary. In this way law's educational influence also promotes a uniform system of behavior, a common "pattern of conduct," which contributes to social order.

In Petrazycki's view, two ways by which law coordinates and regulates social conduct are through its distributive and organizing functions. Law's *distributive function*, which pertains particularly to the nature of property, distinguishes clearly between what is mine and what is yours. Thus, law distributes material goods (property) and ascribes the claims and obligations corresponding to those goods to everyone in society. The distributive legal function "results in the emergence of a coordinated system of behavior of group members with respect to goods on the market" (Lande 1975: 27). In this way, law produces the economic institution. What is more, law's distributive function draws a boundary between "mine" and "thine" not only in regard to material goods but also in regard to specific duties and roles among interacting individuals. As such, law distinguishes between what each person is entitled or obliged to do. Were this not the case, no obedience of the subordinate to the superior, no orderly discharge of duties, would be possible (Sorokin 1981: 677).

Once rights and duties are established, law coordinates them through its *organizational function*. Law requires an authoritative agency—such as the system of courts, judges, police, prisons, and so forth—with the power to create it and enforce sanctions in cases where rights and duties are violated. This leads to a differentiation of powers between those in authority and those who must obey the commands of those in authority. The outcome is the formation of the political institution. Moreover, by performing the organizational function, law brings into existence a government power capable of enforcing its distributive function and through that of maintaining an order in the group with a minimum of conflicts among its members (Sorokin 1981: 679).

In short, law's distributive and organizational functions produce and maintain a stable social order. Both functions, says Petrazycki, correspond to "tendencies of legal mentality and of the development of that mentality ... to produce a stable and coordinated system of social conduct evoked by law—a firm and precisely defined order—with which individuals and masses can and should conform and upon which there can be reliance and calculation as regards ... the organization of life in general" (p. 121).

Once again Sorokin provides a most eloquent articulation of Petrazycki's notion of legal functional control:

> Due to their precise and detailed definition of the actions of the subjects of right and of duty in each specific case and to the enormous emotional and volitional power with which a law-conviction is charged, the law-norms of every one of us constitute the main guide and the main motor-power of our conduct.... More than that, they are the essence—the skeleton, the heart and the soul—of any organized group or institution.... Without such norms none of these organized groups would be possible.... Without them no order, no structure, no smooth functioning of these groups, indeed no continuity of their existence would be possible. (1981: 676-77)

The Subjective Reality of Law

There has been an ongoing debate as to whether Petrazycki's theory of law is primarily psychological or sociological in outlook. Most commentators have sided with the sociological. For example, Northrop sees Petrazycki as shifting his disciplinary orientation and maintains that "after constructing his legal science primarily in terms of psychological factors, [Petrazycki] turns implicitly and secondarily to sociological jurisprudence" (1956: 660). Pódgorecki takes pains to underscore Petrazycki's sociological approach, arguing that "it is misleading to label Petrazycki as a psychological theorist, since his interest was predominantly in sociological questions." He further contends that referring to Petrazycki "as a psychologist neglects his shift to a more sociological expression of his thoughts and obscures his potential importance for the sociology of law" (1980-1981:185, 195-96). Skapska posits that "in spite of its assumed psychological one-sidedness, [Petrazycki's] theory is the starting point for the contemporary study of law in many aspects and on various planes: linguistic and logical, axiological, psychological and sociological" (1987: 355). Denzin (1975: 63) credits Petrazycki's theoretical perspective with anticipating and overlapping with the underlying notions of sociology's symbolic interactionism. Finally, Kojder puts it most plainly when he states that "Petrazycki's works were permeated with a sociological standpoint from beginning to end" (2006: 352).

It is, in fact, the case that to a greater extent than the other Eastern European pioneers (and perhaps far more than any other early sociologist, for that matter) Petrazycki created followers, successive generations of scholars, who devoted a significant part of their studies to the *sociological* approach to law, as his work greatly influenced further development in that field (Kojder and Kwasniewski 1985: 263; Skapska 1987: 353). This sociological approach is perhaps best exemplified in the work of Petrazycki's disciple M. A. Reisner who refashioned the concept of intuitive law and, by putting it on a Marxist foundation, developed "the most genuine class law which was worked out in the form of intuitive law (in the ranks of the oppressed and exploited mass)" (Reisner 1951: 85).

However, despite its substantially sociological dimension there is no denying that, "the quintessential feature of Petrazycki's theory of law in general, and his concept of law in particular, is psychologism" (Motyka 2006: 126). As previously indicated, for him law is a psychological phenomenon because its origins lie in people's subjective experiences. Therefore, it is in psychology that Petrazycki finds "the basic facts and concepts in terms of which law is to be understood and analyzed" (Northrop 1956: 652), and it is through psychology that the subjective reality of law is revealed.

At about the same time that Petrazycki was formulating his psychological theory of law in St. Petersburg, Ivan Pavlov, also in that city, was constructing his conditioned reflexes theory (Timasheff 1981: 743-44; Denzin 1975: 70). But whereas Pavlov's orientation toward psychology was strictly behaviorist, Petrazycki's drive-oriented model of human conduct was behavioristic *and* introspective. Thus, he was interested not only in people's responses to the external stimuli in their environment but also in the subjective meanings of their *psychical experiences.*

Petrazycki believes that people's subjective experiences are constituted of psychic drives or "impulsions." Impulsions are bilateral, passive-active (stimulus-response) behavior-tendencies that motivate a person to respond (*Aktsiya*), or to refrain from responding (abstain), in a given situation. They are of two kinds, specific and abstract. Specific (or "special") impulsions refer to those automatic and unconscious biological responses that are determined by a stimulus. These include such motoric drives as hunger, thirst, the sexual drive, fear and curiosity (Rudzinski 1976: 112). For example, a person experiences the stimulus of hunger pangs (passively) and reacts by going to the refrigerator to get food (actively). Abstract (or "blanket") impulsions, on the other hand, are products of culture. These include love, ambition, vanity, malice and hatred. They have to do with the person having an "action

idea"—a conscious awareness or mental image—that defines the character and direction of her behavior. Legal experiences belong in the category of abstract impulsions and, thus, we may speak of *legal impulsions*.

In analyzing people's psychical experiences, Petrazycki looks at the role that emotions play in the legal imperative-attributive relationship. According to him, it is emotions, not external sanctions that chiefly motivate people to realize their rights and fulfill their duties. Emotions as inner drives are what lead to the law's development. Further, emotional impulsions make the imperative-attributive legal relations "binding." That is to say, people obey the law because they feel committed to each other; they are bound by duty. As Babb puts it, "[a] legal phenomenon, a legal psychic act, may be an attributive norm or consciousness of 'ought' or of a legal claim, as belonging to another existing only in the mind of one man, with no acknowledgment or consent from social authority, court or anyone else at all, except the person experiencing these psychic conditions" (1938: 517). This idea is contrary to the explanation given by formalist jurisprudence that individuals obey the law because of some external command or constraint. For Petrazycki, the Austinian notion of law emanating from sovereign commands, or the power of the state, is only a metaphor, a projected symbol representing people's internal mental processes. In sum, "[t]he reality of law is in the mind of men *ascribing* rights and duties to others, not in the 'phantasmata' projected on persons and things with which the impulsions are concerned" (Olivecrona 1948: 173).

Morality

While Petrazycki comments extensively on morality, he treats the issue chiefly as a comparative index by which to delineate the sphere of legal phenomena. In his view, legal impulsions consist of the action ideas of right and duty that guide social relationships between people and it is on this basis that he distinguishes law from morality. Petrazycki defines morality as those norms that "establish obligations free in respect to others: these authoritatively prescribe certain conduct for us but give others no claim or rights of any kind to fulfillment by us" (p. 46). Thus, morality is one-sided; it is not attributive but only imperative—urging or recommending a given form of conduct. Morality stipulates the conduct that we should show toward others but does not recognize our entitlement to demand the same conduct from others. One example of a unilateral relationship is found in the imperative, the ethical principle, that one should come to the aid of a fellow human be-

ing who has been physically injured. Since there is no expectation that the victim should reciprocate, the individual's duty to help is here motivated only by *altruism* or good will. Another example of this kind of one-sided obligation is Jesus's injunction: "Whosoever shall smite thee on thy right cheek, turn to him the other also." In this case, the individual who is struck has a moral duty to refrain from retaliating. The injunction, however, does not give the assaulter the right to strike.

In contradistinction to morality, law, as we have already seen, is imperative *and* attributive (*pritiâzatel'nii*) and, thus, fundamentally based on the idea of quid pro quo. "Imperativeness" alone is a property specific to morality. Moral experiences are emotions of obligation––of duty—not of right.

Petrazycki's Realist Methodology

Since Petrazycki's socio-psychic orientation toward law is behavioristic as well as introspective, it is understandable that he would find the most suitable methods for obtaining knowledge about legal experiences to be internal and external observation. The *external observation* of people's "speech, facial expressions, body movements," as well as their "written records, such as diaries and biographies, and so on" (Sadurska 1987: 66) allows for the direct study of the concrete social behavior of people who are engaged in legal relationships. Internal observation, or *introspection,* on the other hand, helps us to arrive at an understanding of these people's inner or psychic world and of their specific experiences in the context of legal relationships.

Petrazycki's technique of introspection is similar to Max Weber's conceptual method of *Verstehen.* Weber argued that the logically formal type of legal thought, which he identified with the civilian codes of modern continental Europe, was especially rational because "the legally relevant characteristics of the facts are disclosed through the logical analysis of meaning" (Weber 1978: 657). In emphasizing *meaning*, Weber was alluding to the use of *Verstehen* as an "attitude-evaluation" or a "kind of interpretation [that] seeks to construct the relations of the parties to one another from the point of view of the 'inner' kernel of their behavior, from the point of view of their mental 'attitudes'" (1978: 884). Weber regarded *Verstehen* as a type of *interpretive understanding* of cultural phenomena (actions and activity). Much like Petrazycki, Weber distinguished between two kinds of interpretive understanding. Direct *observational understanding* (Petrazycki's external observation), he wrote, involves "deriving the meaning of an act or symbolic expression from immediate observation without reference to any broader