

## A Revolutionary Feeling of Justice? Emotion and Legal Judgement in Late Imperial and Early Soviet Russia

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### Abstract

This article explores the intellectual history of the concept of “feeling of justice” and related concepts and the attempts to make them central to legal practice in the context of early 20<sup>th</sup> century Russia. It starts by tracing the emergence of new modes of thinking about judicial emotion in fin-de-siècle Russian Empire and accounts for both international and local influences on these ideas. It further examines the development of these theories after the 1917 Russian Revolution and notes both continuities and ruptures across this revolutionary divide. Finally, the article explores the attempts to put these radical ideas into practice by focusing on the experimental legal model of “revolutionary justice” that was employed in Soviet Russia between 1917 and 1922 which highlights the discrepancies between bold utopian projects and harsh material realities of the revolutionary period.

### Key words

Early Soviet Russia; feeling of justice; Free Law Movement; late Imperial Russia; revolutionary justice

### Resumen

Este artículo trata sobre la historia intelectual del concepto de “sentimiento de justicia” y conceptos relacionados, y los sitúa en el centro de la práctica del derecho en el contexto de la Rusia de principios del siglo XX. Comienza situando el surgimiento de nuevas formas de pensar sobre la emoción judicial en el imperio ruso de fin de siglo, y explica las influencias nacionales e internacionales en esas ideas. Además, examina el desarrollo de dichas teorías tras la Revolución Rusa de 1917, y hace notar continuidades y rupturas a lo largo de la fractura revolucionaria. Por último, el artículo

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analiza los intentos de llevar esas ideas radicales a la práctica, atendiendo al modelo jurídico experimental de "justicia revolucionaria" que se utilizó en la Rusia soviética entre 1917 y 1922 y que subraya las discrepancias entre los audaces proyectos utópicos y las duras realidades materiales del período revolucionario.

**Palabras clave**

Era soviética temprana; sentimiento de justicia; movimiento de Derecho Libre; Rusia tardo-imperial; justicia revolucionaria

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## 1. Introduction

In early 1914, a young attorney named Isaak Shteinberg delivered a speech entitled *What is the Free Law Movement? (Law and the Judge)* [*Chto takoe dvizhenie svobodnogo prava? (Zakon i sud'ia)*] at the Moscow Law Society. In this speech, he presented a brief overview of this emerging branch of legal thought and its growing popularity in German-speaking Central Europe. Shteinberg particularly noted that the Free Law Movement emphasized a much more “emotional” approach to the administration of justice and supported its creative application of legal norms (Shteinberg 1914). The speech might have sounded a bit radical for the conservative and legalistic context of the late Russian Empire, but it was, in fact, purely theoretical. Shteinberg himself was not a particularly important figure in the legal world at that time; he was only a junior attorney (*pomoshchnik prisiazhnogo poverennogo*).

Everything changed in 1917 when Russia was swept by revolutionary turmoil, and radical political, economic and societal transformations happened in a matter of just a few months. Because of his active involvement in left-wing politics, Isaak Shteinberg was able to secure the position of the People’s Commissar (equivalent to Minister) for Justice in the first Soviet government in the aftermath of the October Revolution. In this role, he oversaw the initial phase of the implementation of wide-ranging legal reforms that were indeed in part based on the radical ideas of the Free Law Movement.

This article explores the intellectual history of the concept of “feeling of justice” and related concepts and the attempts to make them central to legal practice in the context of early 20<sup>th</sup> century Russia. It starts by tracing the emergence of new modes of thinking about judicial emotion in fin-de-siècle Russian Empire and accounts for both international and local influences on these ideas. It examines the development of these theories after the 1917 Russian Revolution and notes both continuities and ruptures across this revolutionary divide. Finally, the article explores the attempts to put these radical ideas in to practice by focusing on the experimental legal model of “revolutionary justice” that was employed in Soviet Russia between 1917 and 1922. It highlights the discrepancies between bold utopian projects and harsh material realities of the revolutionary period. By examining both theoretical formulations and practical applications of the “feeling of justice” model and by using insights from the field of the history of emotions and law and emotions scholarship, the article provides a new perspective on the history of attitudes towards emotion in legal judgement and the history of legal reform.

As a number of recent historical studies suggest (Lemmings 2012, Frevert *et al.* 2014, Schnädelbach 2015, 2019 (this issue), Barclay 2017, Vasilyev 2017a), the topic of judicial emotion has been on the radar of legal scholars throughout the modern period – and possibly for a much longer time (Nussbaum 1996, Maroney and Ackerman-Lieberman 2014; see also Kahan and Nussbaum 1996). This strand of scholarship challenges the widespread stereotypical assumption that judges are devoid of emotions, carefully contextualizes judicial emotion and further shows how this topic was often entangled with social-class, gender and race anxieties.

In the Russian context, there is still rather limited scholarship on the history of law and emotions and the history of judicial emotions more specifically. One notable exception is Marianna Muravyeva’s (2017) exploration of “legal spaces” in the cultural and physical settings of the early modern Russian courtroom. In this article, the author follows an “environmental” approach and discusses how courtroom feelings emerged from an interplay between legal actors and their natural and social surroundings. The topic has also been recently approached by Abigail Bratcher (2017) who focused on the role of (gendered) emotions such as love and shame in the functioning of a Moscow “comrades’ court” under Nikita Khrushchev.

In the following, I build on these strands of law and emotion literature to reconstruct the legal debates about the role of emotion in legal judgement that took place in

early 20<sup>th</sup> century Russia. In doing so, I wish to emphasize that many of the key concepts discussed in this article (such as “feeling of justice” or “revolutionary justice”) evolved significantly over time and their meanings often depended on the context and framework of wider political and social debate. In addition, I would like to note that the term most often used by the contemporaries was “feeling” (*chuvstvo*) and not “emotion” (*emotsiia*).<sup>1</sup> For the purposes of this paper, I do not examine the distinctions between the two and treat them largely synonymously. A similar approach arguing against our current preoccupation with the contemporary categories of analysis such as “emotions” or “senses” has been recently proposed by Boddice (2019). Rather, I chart the history of the concept of “feeling of justice” (*Rechtsgefühl/chuvstvo (revoliutsionnoi) zakonnosti*) as it evolved between the 1900s and the 1920s and highlight the significant gaps between the writings of legal scholars and the messy judicial reality on the ground.

## 2. Translating the *Freirechtsbewegung*: “Psychological” Legal Theories and the Problem of Judicial Emotion in Late Imperial Russia

Discussions about judicial emotions took on a particularly intense character around the turn of the 20<sup>th</sup> century, which led to the creation of a number of legal schools that emphasized the role of emotion in legal judgement. In the American context, Legal Realism is particularly well-known, but in Europe, the Free Law Movement (*Freirechtsbewegung*) that gained momentum in Germany and Austria-Hungary around 1900, was perhaps the most relevant reference point (Riebschläger 1968, Herget and Wallace 1987). Associated with scholars such as Eugen Ehrlich, Ernst Fuchs and Hermann Kantorowicz, the Free Law Movement proposed a rather radical alternative to the conventional legal systems of continental Europe of the time (Gnaeus Flavius [Kantorowicz] 1906, Ehrlich 1913, Fuchs 1929).

As noted above, one of the key aspects of the *Freirechtsbewegung* was its emphasis on the role of emotion in legal judgment. In particular, it highlighted the idea of “free legal interpretation” (*freie Rechtsfindung*) and the ability of the individual judge to find and apply his<sup>2</sup> “feeling of law” (*Rechtsgefühl*) – as well as the forms of “living law” (*lebendes Recht*) that naturally evolve in human collectives (Silberg 2005, Hertogh 2008). This obviously resulted in a significant degree of judicial independence and even presupposed a certain law-making function of the judiciary, perhaps in some ways akin to the position of the judge in common-law systems (on the law-finding and law-making potential of common law judges, cf. Max Weber's (1967) discussion of the common law system in England, see also Dainow 1966-1967 and Depoorter and Rubin 2017).

The Free Law Movement was an influential, yet contested, movement that struggled to define itself and to achieve legitimacy throughout the early years of the 20<sup>th</sup> century. As scholars have already noted, however, it did become influential in other national contexts – such as North America or Central-Eastern Europe (Herget and Wallace 1987, Eppinger 2008, Likhnovski 2008). In the following, I would like to stress the impact that the radical ideas of the Free Law Movement had in the territories of the Russian Empire.

Already in the first decades of the 20<sup>th</sup> century, *Freirechtsbewegung* started to gain traction on the eastern borders of Europe (Vasilyev 2017a, pp. 280-281), and Russian legal scholars paid close attention to legal innovations in the West. Even though translations of legal texts into Russian were quite limited (see, e.g., Iering 1907), in their open lectures and publications lawyers such as Isaak Shteinberg actively promoted this new way of thinking about judicial decision-making and the role of emotion (Shteinberg 1913, 1914). Some scholars have even suggested that the

<sup>1</sup> The difference is somewhat less pronounced with the German term (*Gefühl*) which is used to incorporate both feeling and emotion.

<sup>2</sup> In this period, all judges in German-speaking Central Europe (as well as in the Russian Empire) were male (see Buchanan 2015).

Russian judges and the society at large could be in fact better prepared than their Western counterparts to accept the emphasis on emotion in legal judgment – due to the perceived “affection that is so peculiar to the Russian character” [*dushevnost’*, *kotoraiia tak svoistvenna russkoi nature*] (Shershenevich 1897, p. 3).

Perhaps even more significantly, scholars such as Lev Petrazhitskii, Iosif Pokrovskii and Pavel Novgorodtsev developed their own legal theories that emphasized moral and especially “psychological” origins of law. They even proposed to view the law as a kind of judicial emotion, instinct or intuition (Novgorodtsev 1900, Pokrovskii 1901, Petrazhitskii 1907-1910, Walicki 1987, Posnov 2006).

The development of these new legal theories in the context of late Imperial Russia can be illustrated by the example of Lev Petrazhitskii’s legal theory and his interpretations of the law as lying in the domain of “emotional psychology”. Petrazhitskii was an influential legal scholar who taught at the Faculty of Law at St. Petersburg University and was also active in liberal politics in the late Russian Empire. He was one of the key founding members of the Constitutional Democrats (Cadets) Party and promoted a progressive agenda in the State Duma (Russian Parliament) – albeit with little practical success.

In his youth, Petrazhitskii studied in Germany and was influenced by the new European legal ideas of the time. However, his theory is largely independent from them and provides a very original account on the origins and nature of law and the role of emotion in legal judgment. According to Petrazhitskii, every social phenomenon exists only subjectively, in the mind of a person who is studying it. This was the basis of both his scholarly method and the cornerstone of the all-encompassing discipline of “emotional psychology” that he proposed (Posnov 2006, pp. 88-89).

In the legal sphere, this led to the creation of the “psychological” theory of law that insisted on viewing the law as a kind of natural judicial instinct that is only obstructed by the bulky penal codes and the “positive law”. Instead, he proposed to return to “intuitive” law that would be much more individual, flexible and attentive towards the social and material circumstances of the particular case (Petrazhitskii 1905). Significantly, Petrazhitskii emphasized the emotional element of this new mode of legal judgement and rejected the long-standing tradition that prioritized rationality in judicial decision-making.

While the theories of Petrazhitskii and his colleagues were not universally adopted and ultimately failed to have a serious impact on the rather conservative legal practice of later Imperial Russia, they nevertheless acquired supporters (Dembskii 1909). Significantly, some of the ideas of the “psychological” legal school were also adopted by an emerging group of left-wing Russian legal scholars such as Shteinberg (1914) or Mikhail Reisner (1908; see also Khochoian 2008, Skibina 2013, Pratsko and Boldyrev 2015a, 2015b). These influences would prove to be quite influential in the aftermath of the Russian Revolution of 1917, to the discussion of which we now turn.

### 3. Revolution and the Feeling of Justice: Legal Theory After 1917

The Russian Revolution gave rise to a whole range of experimental theories, practices, and lifestyles (Stites 1989, Plaggenborg 1996, Kremmentsov 2014, Willimott 2017). It seemed to make some of the most unusual artistic, scientific and political projects thinkable and doable in a matter of just a few years. Importantly, as scholars have recently suggested (Beer 2008, Neumann and Willimott 2017), these projects were in many cases formulated already in the conservative context of late Imperial Russia, but only came to fruition in the more open cultural landscape of the first years of Soviet power.

In this section, I take the case of Soviet legal theory as an example of such utopian transformations and explore how the ideas about the “feeling of justice” and emotion

in judicial decision-making were developed after 1917. Legal treatises are usually perceived to be one of the most formalized type of texts, bound by the numerous conventions and restrictions of both legal jargon and academic writing. Although at first glance these assumptions might seem intuitive, they are not necessarily true. They are certainly not applicable to documents produced during the years immediately following the Russian Revolution, an era of social and political change and revolutionary upheaval that also witnessed one of the most radical legal reforms in the history of humankind. In revolutionary times the generic conventions that shape historical documents in general and legal documents in particular are also in a state of flux. Researching these shifts in convention provides a unique perspective for tracing and analyzing the construction of new social and professional norms.

To take one example, Grigorii M. Portugalov's<sup>3</sup> short book, *Revoliutsionnaia sovest' i sotsialisticheskoe pravosoznanie* [Revolutionary Conscience and Socialist Legal Consciousness], published in Petrograd in 1922 (Portugalov 1922), clearly appealed to the emotions of the judge by emphasizing the importance of conscience and "inner feeling" in the administration of justice. It deviated from the traditional view that held rationality to be the key element in judicial decision-making.<sup>4</sup> Portugalov's book was one of the first specialist treatises to approach the significance of conscience for jurisprudence and was thus widely discussed in Soviet legal circles throughout the 1920s (Maksimova 2014). Seeking to explore the meanings and roles that early Soviet scholars attributed to conscience and emotions in legal judgment, I focus here on Portugalov's treatise, while also drawing on other academic publications by legal scholars of the period and the examples from early Soviet legal practice that they discussed.

In his essay, Portugalov primarily engaged with these two key concepts of early Soviet law: "revolutionary conscience" and "socialist legal consciousness". I define "conscience" as the psychological aspect of moral judgment, and claim that it has a strong emotional component. This understanding of conscience finds confirmation in the oft-used Russian expression *chuvstvo sovesti*, literally, "the feeling of conscience" (Nazaretian 1994, Stefanskii 2008). For early Soviet legal scholars like Portugalov, conscience was irreducible to purely rational self-control, and was thus unimaginable without an emotional dimension. But the nature of these emotions was not always clearly defined. Following Portugalov, who did not differentiate between particular emotions in legal judgment (one might speculate that relevant emotions might include empathy, compassion or solidarity – but also disgust or anger), I use generalized categories such as "emotion" or "feeling".

In the opening section, Portugalov explored the history of conscience and its relevance for judicial decision-making by tracing its evolution out of the Roman idea of "good conscience" (*bona fides*), providing socio-economic (Marxist) explanations for shifts across stages of history, "social formations", and modes of production. In particular, Portugalov noted the odious legacy of the medieval idea of conscience in the legal context: in his view, the "good conscience" of the inquisitors was closely linked to witch trials, torture, arbitrariness, and fanatic religiosity that were obviously undesirable in early Soviet Russia (Portugalov 1922).

According to the Marxist view of history, shifts in the dominant "social formation" necessarily produce changes in both human subjectivity and the law. Thus, the new, "socialist" feeling of conscience was seen by early Soviet scholars as being fundamentally different from its ancient Roman, medieval, and capitalist

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<sup>3</sup> Relatively little is known about Portugalov himself, although there is some evidence of his engagement in Zionist journalism and politics in pre-revolutionary Russia. After the revolution, he was primarily active as a legal consultant for the local government in Petrograd. However, there is also mention of his subsequent troubles with the Soviet authorities that resulted in his untimely death due to poor health (Perel'man 2009).

<sup>4</sup> Modern Russian and Soviet definitions of emotion (including the use of the term in the legal setting) mostly followed the juxtaposition of *emotio* and *ratio*, as is well-documented for many Western cultural contexts (Plamper 2015).

predecessors. In the new socio-economic context after the Revolution, conscience was supposed to be “invented” anew, to be freed of all undesirable traits, and shaped to reflect the “correct” worldview, values, and affective dispositions of the victorious working class. Crucially, this new feeling was also supposed to operate differently in the legal context: “having been freed from the old standards of good and evil”, revolutionary conscience could “react immediately to the various manifestations of the human will [and] bring it under control of the emerging legal order (...) that is being created by the revolutionary will of the people” (Portugalov 1922, p. 40). Importantly, Portugalov explicitly connected this view of revolutionary conscience to Lev Petrazhitskii’s “psychological” or “intuitive” legal theory (Petrazhitskii 1907-1910). In particular, he related it to Petrazhitskii’s view that law was essentially an emotion, similar to anger, felt towards a “morally reprehensible deed” (Portugalov 1922, p. 18).

In the aftermath of the Revolution, the new, revolutionary law was indeed created through the improvisation of the masses, who were given significant freedom to administer justice and render sentences in the “people’s courts” (Frame 2013). The People’s Commissar for Enlightenment, Anatoly Lunacharsky, enthusiastically greeted this creative atmosphere in the courtroom, which he described as “boiling, fermenting young wine” (Lunacharsky 1917). Petr (Peteris) Stuchka, who succeeded Isaak Shteinberg as People’s Commissar for Justice, confessed he found particular enjoyment in reading the sentencing decisions of people’s courts. In his words, despite all the “wild, unreasonable decisions”, they were the examples of the “living deed” (*zhivoe delo*) that testified to the involvement of the working classes in the administration of the nascent socialist state (Stuchka 1918, pp. 6-7).

In his own analysis of this experimental legal system, however, Portugalov sought to draw distinctions between “revolutionary conscience” and “socialist legal consciousness”. On the one hand, he saw conscience as an emotion experienced individually, while viewing legal consciousness as a shared, social feeling (Portugalov 1922, p. 19). On the other hand, as was mentioned above, conscience had a history that tied it to feudalism and capitalism, while legal consciousness was perceived as being explicitly socialist and even “purifying” (Portugalov 1922, p. 21). It is important to note that as a collective feeling, legal consciousness was also linked closer to the Bolshevik political project and had significant ideological connotations. Moreover, the requirements Portugalov gives for judges associated the concept with the more educated and experienced party members (Portugalov 1922, see also Chel’tsov-Bebutov 1924).

In a sense, “revolutionary conscience” was an important emotional element in the tripartite structure of “revolutionary legal consciousness” described by Portugalov. First, the judge had to thoroughly examine all the circumstances of the cases. In this respect, Portugalov did not discourage judges from relying on rationality, logic, and expert scientific knowledge.<sup>5</sup> Then, the court had to conform to the decrees of the Soviet government, thus affirming its political loyalty. But the most important element was the “inner conviction” of the socialist court – its “revolutionary conscience”. In particular, it had to be used in the final stages of the trial and during sentencing (Portugalov 1922). In Portugalov’s words, the act of meting out a punishment should be *entirely* based on the “inner feeling” (*dushevnoe chut’e*) of the judge (Portugalov 1922, p. 47).<sup>6</sup> In making this claim, Portugalov and other early

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<sup>5</sup> Early Soviet law, however, did not give much weight to formal proof (for example, evidence taken on oath was previously required by the Imperial judicial system in many cases). Rather, they were perceived as an anachronism on the same level as religious oaths or medieval trials by combat, by ordeal, or by fire (Portugalov 1922, p. 28).

<sup>6</sup> The early Soviet “people’s courts” consisted of a judge and two assistants (*narodnye zasedateli*) who were supposed to exercise external control on the judge but in reality were given mostly administrative/technical tasks. The question of how their potentially divergent emotional attitudes could be mediated to arrive at a common decision is an interesting one, but it is not addressed in Portugalov’s treatise. There are, however, at least some indications that in practice the more educated (“bourgeois”)



Soviet jurists placed a very strong emphasis on emotion in legal judgment and argued that judges should enjoy a high degree of autonomy.

Portugalov perceived the evolution of early Soviet law as a move from a more restricted "revolutionary conscience" to a more overarching concept of "socialist legal consciousness". This view was reflected in government decrees that began prioritizing the latter concept in the early 1920s. Writing in the year when the first Soviet Penal Code was put into force, Portugalov enthusiastically viewed codification as a kind of "crystallization" and as a way of returning "socialist legal consciousness" back to the masses (Portugalov 1922, pp. 24, 38-59, 49). On the surface, the return of the Penal Code seemingly contradicted the Marxist-Leninist principle of the withering away of the state and the law (Lenin 1918).<sup>7</sup> However, Portugalov did not seem to perceive it as a problem, and firmly asserted that there was an almost transcendental unity of the codified law and "socialist legal consciousness". For him, this unity was a phenomenon of mass psychology, reflecting how the collective mind of the working class had acquired "scientific-socialist" laws of social development (Portugalov 1922, p. 46).

This unity of codified law and legal consciousness had to be achieved partly by means of legal reform, which sought to appoint judges primarily on the basis of their class origin and not their professional qualifications. At least in theory, most judges were not supposed to have any professional training, and the appointment of "bourgeois" judges with university degrees was discouraged. Portugalov noted that "the trial of the workers by the workers gives the best guarantee of mutual understanding in regard to the conditions of the everyday life, worldview, [and] customs" (Portugalov 1922, p. 31).

Significantly, the workers' ability to arrive independently at correct judicial decisions was perceived through the prism of the "class instinct" concept. By the very virtue of belonging to the lower classes, these new judges were believed to possess the "healthy class instinct" that should guide them. Here, the "feeling of justice" concept acquires an almost biological fashioning that also renders it much more reliable and appropriate for the Soviet legal system that explicitly acknowledged its class character and proclaimed preferential treatment of the members of many formerly marginalized (including economically marginalized) social groups (Ioffe 1957, p. 39). Other perceived qualities of the working class such as creativity or "individual initiative" (*samodeiatel'nost'*) were also emphasized repeatedly by different authors (Kozlovskii 1918, p. 27, Stuchka 1918, p. 3). Supposedly, these instincts and qualities were always buried within the working class soul, but could only be liberated after 1917, since, in Stuchka's words, "proletarian revolution necessitates creativity" (Stuchka 1918, p. 3).

Portugalov's scheme was later discussed and developed in other publications written by early Soviet legal scholars. Some of them openly criticized Portugalov and ridiculed the very idea that one can make judgements "about complex psychological states [of the criminal] simply on the basis of 'common sense' [or] reject the data of some biochemical expertise based on 'inner conviction'" (see Chel'tsov-Bebutov 1924, pp. 50, 63-64). Nevertheless, throughout the 1920s and the early 1930s, "feeling of revolutionary justice", the "revolutionary conscience" and related concepts remained part of the Soviet legal vocabulary. They even made a reverse influence on the evolution of Central and Western European legal theories as the developments in the Soviet Union were promptly reported in German-language literature (see, e.g., Rümelin 1925, p. 4). There was, however, a significant gap between the theoretical

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judges easily managed to persuade their lower-class assistants and thus trumped the "socialist legal consciousness" principle (see Stuchka 1918, p. 6)

<sup>7</sup> In *The State and Revolution*, Lenin acknowledged that there might be a transitional period needed after the revolution when the system of coercion (the state) and the law were still in place. However, it is the sudden shift of direction (from the absence of codified law "back" to codification) that I find contradictory here.

postulations of early Soviet legal scholars and the reality of judicial reform on the ground. This discrepancy will be explored in more detail in the following section.

#### 4. Mixed Feelings: Revolutionary Justice in Practice

The 1917 Russian Revolution radically transformed the political, economic and cultural landscape of the country. Among other changes of that turbulent period, legal reform was one of the most abrupt and significant (for an overview of the development of the (early) Soviet legal system, see Juviler 1976 and Retish 2018). Significantly, it created a new, *revolutionary*, type of law – a concept which is much understudied yet critically important for our understanding of the relationship between law and emotions in societies in states of transition. In Portugalov's opinion, early Soviet law was "totally isolated in the system of world laws" (Portugalov 1922, p. 23). It thus gave scholars a unique opportunity to study law-making and legal consciousness in a quasi-experimental setting.

A singular feature of the early Soviet period relevant for the history of law and emotions is the concept of "revolutionary justice", which was promoted by high-profile Soviet politicians and the decrees of the Council of People's Commissars (Soviet government). The idea is that judges should be guided by their revolutionary *feeling of justice*, and should not be confined by formal "bourgeois law". In fact, after the Revolution, all pre-revolutionary laws were abolished, and there was no penal code in Soviet Russia until June 1922. Contemporary historian Vadim I. Musaev noted that the absence of clear judicial norms in that period meant that in practice, "the authorities based their decisions on their own understanding of what can and cannot be tolerated in the new society" (Musaev 2001, p. 169). Since the decrees of the Soviet government (such as the 1919 Guiding Principles of Criminal Law) provided only brief and vague guidelines on the nature of the new legal system, law enforcement and judges had to cope with the difficult task of applying schematic classifications of crimes to real life crimes on an everyday basis. Needless to say, there were significant variations between individual courts. The early Soviet legal experiment was unprecedented in that it combined strict ideological control and political repression with blurry, constantly shifting legal definitions, giving almost unlimited freedom and extraordinary discretion in sentencing to the local courts and judges.

The role of emotions in the administration of justice is a growing issue in the literature on law and emotions (Maroney 2011, 2012, Roach Anleu and Mack 2005, Sanger 2013, Bergman Blix and Wettergren 2018), and historians are starting to explore the topic (Barclay 2017, Lemmings 2012, Schnädelbach 2015, 2019 – this issue –, Vasilyev 2017a). The "emotional" view of justice that defined early Soviet law differed from most conventional legal systems based on rational procedure. The very first decree *On Courts*, issued in November 1917, proclaimed that local courts should consider the laws of the "overthrown governments" only to the extent that they do not conflict with "revolutionary conscience" (*sovest'*) and "revolutionary legal consciousness" (*pravosoznanie*) (*O sude*, 1918, p. 404). Soviet legal scholars later stressed the importance of "revolutionary consciousness" (*soznanie*) and "revolutionary feeling" (*chuvstvo*) for the administration of law in the immediate aftermath of the Revolution of 1917 (Trainin 1922, Totskii 1922).

However, judicial practice proved to be much more complicated. On the one hand, many judges continued to rely on the old Tsarist law and in particular the 1845 Penal Code (*Ulozhenie o nakazaniakh ugolovnykh i ispravitel'nykh*) for a long time after October 1917. While this was indeed explicitly allowed by the instructions issued to the courts by the People's Commissariat for Justice (see, Gosudarstvennyi arkhiv Rossiiskoi Federatsii (GARF), *fond A-353, opis' 1, delo 1, ll. 24-27 rev.*), there is also evidence that in many localities the administration of justice continued "as usual" and the pre-revolutionary laws remained to be the only acknowledged basis of judicial reasoning (cf., for example, the continuities in the following criminal case across the

revolutionary divide: Tsentral'nyi gosudarstvennyi arkhiv Sankt-Peterburga (TsGA SPb), *fond 174, opis' 3, delo 1, ll. 4, 14 rev.*).

On the other hand, there was also a noticeable trend toward exceptional judicial leniency, especially toward members of the lower classes (workers and peasants) (Rendle 2014, Vasilyev 2017b, 2018). At the 1920 congress in Moscow, Soviet justice officials critiqued the perceived resulting inconsistency and disorder and started pushing for a new code (Shvekov 1970). In doing so (and not unlike Portugalov) they encouraged the judges to rely on collective experience (socialist legal consciousness) rather than on individual consciences and feelings (*Protokoly*, 1921).

Additionally, despite insisting on the introduction of working-class judges without any prior legal training, in reality the new state had to rely on the old legal specialists for a long time. This problem was even explicitly acknowledged by early Soviet legal scholars and practitioners who lamented the difficulties involved in involving "the working masses" in the state-building project of "proletarian democracy" (Portugalov 1922, pp. 31-32; see also Chel'tsov-Bebutov 1924, pp. 50, 54, Antonov-Saratovskii 1926, p. 2).

There were, however, other significant constraints that greatly hindered the introduction of the experimental legal model. Almost immediately after coming to power in October 1917, the Bolsheviks became involved in a large-scale Civil War and had to deal with increasing foreign military intervention as the First World War was coming to a close. In practice, this meant that the nascent socialist state was very short on all material, financial and human resources and had to resort to extraordinary measures just to ensure its survival, as well as the survival of its citizens. Political police, special courts for the counterrevolutionaries and other extrajudicial measures proliferated and interfered with the reform of the criminal law that was allegedly based the "feeling of law" principles.

In addition, hunger, cold, and diseases were constant factors of everyday life for the Russian population in 1917-1922 (see Frenkel 1923). Severe shortages of almost all consumer goods are reflected in the material practice of early Soviet courts that often had to operate for weeks without paper, pencils and quills (not to mention typewriters) and had to only issue oral decisions, including sentences, or had to postpone hearings altogether (Gosudarstvennyi arkhiv Pskovskoi oblasti (GAPO), *fond R-515, opis' 1, delo 4, l. 45, 63 rev.*). During a meeting of the "people's judges" in the city of Pskov in spring 1921, the head of the local department of justice, a certain Mr Florianskii, even warned 'that complete lack of stationery in the people's courts threatens the suspension of their operations' (Gosudarstvennyi arkhiv Pskovskoi oblasti (GAPO), *fond R-515, opis' 1, delo 4, l. 74 rev.*).

Moreover, in some locations at the height of the Russian Civil War there were no judges at all. In June 1919 a local judicial administrator in the Novorzhev region of Western Russia, I.F. Grigor'ev, decided to inspect the offices of his subordinates and found that *all* of them were absent from their workplaces during office hours and some were even out of town, not on official business. Some of the offices were completely empty – not even secretaries or janitors were to be seen. Despite Grigor'ev's harsh statement on the incident that promised "strict persecution" of what was seen as "negligence" or "sabotage" (Gosudarstvennyi arkhiv v gorode Velikie Luki (GAVL), *fond R-1315, opis' 1, delo 34, ll. 34-34 rev.*), similar reports were logged routinely by various judicial administrators throughout the revolutionary period (see, Gosudarstvennyi arkhiv Pskovskoi oblasti (GAPO), *fond R-515, opis' 1, delo 2, ll. 32-32 rev., 35-38, 63*). To an extent, this reflected a more general trend towards de-organization and de-centralization of administration during the Russian Civil War, but there are also indications that the profession of the judge was perceived as stressful and poorly-paid, and was thus avoided at all costs by the early Soviet citizens (Gosudarstvennyi arkhiv v gorode Velikie Luki (GAVL), *fond R-262, opis' 1, delo 4, l. 145*).

A combination of the factors outlined above, along with the more general reorientation of the Soviet state and the adoption of semi-capitalist “New Economic Policy” (NEP) in the early 1920s, resulted in the abandonment of the experimental legal model and a return to a much more conventional Continental legal system in 1922-1923. While the ongoing “normalization” of everyday life in the 1920s and the gradual codification of the law were meant to achieve a “solid foundation of the revolutionary legal order” (*O vvedenii v deistvie Ugolnogo Kodeksa RSFSR*, 1922, p. 1), they also led many people to experience nostalgia for the romantic and chaotic times of the Civil War, “war communism”, and, in fact, “revolutionary justice” (Brovkin 2004, Buldakov 2013). Indeed, one should not simply view codification as an inevitable stage in the chronological development of Soviet law (or any post-revolutionary law, for that matter). Expressing an alternative point of view, legal scholar Il’ia Slavin asserted in his commentary on the adoption of the first Soviet Penal Code in 1922 that “the revolution has not been relegated to the archives, and revolutionary legal consciousness should stand out in every verdict: it is restricted by the written norms, but it is not abolished” (Slavin 1922, p. 7, cf. also Vinnichenko and Filonova 2013). By the late 1920s, however, this “romantic” opinion was being increasingly rejected by both the members of the party apparatus and by mainstream legal scholars (cf. Totskii 1922, Trainin 1922, Antonov-Saratovskii 1926, Iakhontov 1926, Orlovskii 1927, Vasil’ev-luzhin 1927). In the long term, the principle of codification was fundamentally in conflict with the logic of the *feeling of justice* model.

Throughout modern Russian history, the relationship between living by law (*po zakonu*) and living by justice (*po spravedlivosti*) has been hotly debated, with some scholars suggesting that the two are not complementary (like in conventional conceptualizations of the rule of law / *Rechtsstaat*), but contradictory (see Baberowski 1991, Engelstein 1993, Solomon 1996, Burbank 2004, Plotnikov 2011, Haardt 2013, Sproede *et al.* 2013 and, most recently, Pomeranz 2018). Early Soviet legal experiments presented an ambitious (and in some ways successful) attempt to overcome this distinction by substituting professional “bourgeois judges” with the “ordinary people” as well as by prioritizing emotional and impromptu judge-made law over the cold rationality of the Penal Code and the state. To an extent, this attempt built on the already existing legal and emotional discourses and practices (cf. Borisova 2012, Borisova and Siro 2014, Newman 2014), but it also made extensive use of the fluidity and malleability of the revolutionary moment.

Analysis of early Soviet law shows, however, that there were substantial discrepancies between the writings of legal scholars and the actual implementation of the new legal model. While the role of emotions in jurisprudence was quickly legitimized over the course of a few months of revolutionary upheaval, they did not necessarily fall in line with the state’s political/ideological prescriptions, which led to the return of the primacy of codified law. As the analysis of Portugalov’s 1922 treatise has shown, after the revolutionary euphoria had calmed down in the early 1920s, jurists came to hold the view that the feeling of conscience and related emotions were undesirable in the legal context and that they should be harnessed and replaced by more overarching legal concepts were perceived as easier to control. While this move was skillfully disguised as a “return” of socialist legal consciousness back to the masses, it ultimately allowed for the control of the party bureaucrats over the court system and the emergence of Stalin’s repressive machine in the 1930s.

## 5. Conclusions

This article has discussed how the legal debates about “feeling of justice” and the role of emotion in legal judgement evolved in late Imperial and early Soviet Russia. It has suggested that the “psychological” theories that emerged around the turn of the 20<sup>th</sup> century both borrowed from novel continental legal developments and created new ways of thinking about judicial emotion specific to the Russian context. The Russian Revolution of 1917 was an important turning point for the development of these radical ideas that ultimately facilitated their practical application in the form

of the “revolutionary justice” system. Finally, the article highlighted the pragmatic difficulties and institutional constraints that flawed this bold utopian project and ultimately led to its demise within just a few years. As I have explored in an earlier publication (Vasilyev 2017a), there are, however, several important legacies of the early Soviet reform of judicial emotions (on the level of certain rulings, legal procedures and even specific argumentations) that survived the 1922 codification and indeed endure up to the present day.

In conclusion, I wish to emphasize the centrality of significant political shifts for any radical legal reform of judicial emotions to take place. Both intellectual and institutional frameworks must be in place to ensure that the judges can operate on the basis of their feelings and to exercise judicial discretion where necessary. This, however, almost necessarily leads to a very high degree of judicial independence that can perhaps even be perceived as opportunistic or outright dangerous on behalf of the authorities and population more generally. Of course, the brief and tumultuous history of the “feeling of justice” in the context of late Imperial and early Soviet Russia does not provide a ready solution for this problem. Neither does it offer a blueprint for a system of checks and balances that can enable the “feeling of justice” to operate freely yet at the same time safeguard against its potential dangers. Rather, it highlights the importance of institutional and material limitations for a comprehensive reform of judicial emotions and perhaps cautions us against overly optimistic perceptions of such a reform in the future.

## References

- Antonov-Saratovskii, V., 1926. O revoliutsionnoi zakonnosti [On Revolutionary Justice]. *Revoliutsionnaia zakonnost'*, 3-4, 1-3.
- Baberowski, J., 1991. Das Justizwesen im späten Zarenreich 1864-1914: Zum Problem von Rechtsstaatlichkeit, politischer Justiz und Rückständigkeit in Russland. *Zeitschrift für neuere Rechtsgeschichte*, 13(3-4), 156-172.
- Barclay, K., 2017. Performing Emotion and Reading the Male Body in the Irish Court, c. 1800–1845. *Journal of Social History* [online], 51(2), 293-312. Available from: <https://doi.org/10.1093/jsh/shx017> [Accessed 4 September 2019].
- Beer, D., 2008. *Renovating Russia: The Human Sciences and the Fate of Liberal Modernity, 1880-1930*. Ithaca, NY: Cornell University Press.
- Bergman Blix, S., and Wettergren, Å., 2018. *Professional Emotions in Court: A Sociological Perspective*. London: Routledge.
- Boddice, R., 2019. *A History of Feelings*. London: Reaktion Books.
- Borisova, T., and Siro, J., 2014. Law between Revolution and Tradition: Russian and Finnish Revolutionary Legal Acts, 1917-18. *Comparative Legal History* [online], 2(1), 84-113. Available from: <https://doi.org/10.5235/2049677X.2.1.84> [Accessed 4 September 2019].
- Borisova, T.lu., 2012. The Legitimacy of the Bolshevik Order, 1917-1918: Language Usage in Revolutionary Russian Law. *Review of Central and East European Law* [online], 37(4), 395-419. Available from: <http://dx.doi.org/10.1163/092598812X13274154887024> [Accessed 4 September 2019].
- Bratcher, A., 2017. *Community Building on the Shop Floor: Emotions, Families, and a Comrades Court in Khrushchev's Moscow* [online]. Thesis, Master of Arts in Critical Gender Studies. Budapest: Central European University, Department of Gender Studies. Available from: [http://www.etd.ceu.hu/2017/bratcher\\_abigail.pdf](http://www.etd.ceu.hu/2017/bratcher_abigail.pdf) [Accessed 21 July 2019].

- Brovkin, V.N., 2004. Kul'tura novoi elity, 1921-1925 [The Culture of the New Elite, 1921-1925]. *Voprosy istorii*, 8, 83-98.
- Buchanan, K., 2015. Women in History: Lawyers and Judges. *In Custodia Legis: Law Librarians of Congress* [online], 6 March. Available from: <https://blogs.loc.gov/law/2015/03/women-in-history-lawyers-and-judges/> [Accessed 21 July 2019].
- Buldakov, V.P., 2013. Destruktsiia lichnosti revoliutsionera v Rossii, 1920-e gg. [The Destruction of the Personality of the Revolutionary in Russia in the 1920s] *In*: N.V. Mikhailov *et al.*, eds. *Chelovek i lichnost' v istorii Rossii: konets XIX-XX vek* [History and Subjectivity in Russia, late 19<sup>th</sup> – 20<sup>th</sup> Centuries]. St. Petersburg: Nestor-Istoriia, 162-182.
- Burbank, J., 2004. *Russian Peasants Go To Court: Legal Culture in the Countryside, 1905-1917*. Bloomington / Indianapolis: Indiana University Press.
- Chel'tsov-Bebutov, M.A., 1924. *Sotsialisticheskoe pravosoznanie i ugolovnoe pravo revoliutsii* [Socialist Legal Consciousness and the Criminal Law of the Revolution]. Kharkiv: NKIU USSR.
- Dainow, J., 1966-1967. The Civil Law and the Common Law: Some Points of Comparison. *The American Journal of Comparative Law* [online], 15(3), 419-435. Available from: <https://doi.org/10.2307/838275> [Accessed 4 September 2019].
- Dembskii, D., 1909. "Filosofii prava i npravstvennosti" prof. L.I. Petrazhitskogo [Professor L.I. Petrazhitskii's "Philosophy of Law and Morality"]. Kharkiv: B. Bengis.
- Depoorter, B., and Rubin, P.H., 2017. Judge-Made Law and the Common Law Process. *In*: F. Parisi, ed., *The Oxford Handbook of Law and Economics: Volume 3: Public Law and Legal Institutions*. Oxford University Press, 129-142.
- Ehrlich, E., 1913. *Grundlegung der Soziologie des Rechtes* [online]. Munich / Leipzig: Duncker & Humblot. Available from: <https://archive.org/details/grundlegungsderso00ehrl> [Accessed 21 July 2019].
- Engelstein, L., 1993. Combined Underdevelopment: Discipline and the Law in Imperial and Soviet Russia. *The American Historical Review* [online], 98(2), 338-353. Available from: <https://doi.org/10.1086/ahr/98.2.338> [Accessed 4 September 2019].
- Eppinger, M., 2008. Governing in the Vernacular: Eugen Ehrlich and Late Habsburg Ethnography. *In*: M. Hertogh, ed., *Living Law: Reconsidering Eugen Ehrlich*. Oxford: Hart, 21-48.
- Frame, M., 2013. Crime, Society and "Revolutionary Conscience" during the Russian Civil War: Evidence from the Militia Files. *Crime, History & Societies* 17(1), 129-150.
- Frenkel, Z.G., 1923. *Petrograd perioda voyny i revoliutsii: Sanitarnye usloviia i kommunal'noe blagoustroistvo* [Petrograd in the Period of War and Revolution: Sanitary Conditions and Communal Improvement]. Petrograd: Petgubotkomkhoz.
- Frevert, U., *et al.*, 2014. *Emotional Lexicons: Continuity in the Vocabulary of Feeling 1700-2000*. Oxford University Press.
- Fuchs, E., 1929. *Was will die Freirechtsschule?* Rudolstadt: Greifenverlag.
- Gnaeus Flavius (H. Kantorowicz), 1906. *Der Kampf um die Rechtswissenschaft*. Heidelberg: C. Winter.

- Gosudarstvennyi arkhiv Pskovskoi oblasti (GAPO) [State Archive of Pskov Region]. *Fond R-515, opis' 1, dela 2, 4.*
- Gosudarstvennyi arkhiv Rossiiskoi Federatsii (GARF) [State Archive of the Russian Federation]. *Fond A-353, opis' 1, delo 1.*
- Gosudarstvennyi arkhiv v gorode Velikie Luki (GAVL) [State Archive in the City of Velikie Luki]. *Fond R-262, opis' 1, delo 4; fond R-1315, opis' 1, delo 34.*
- Haardt, A., 2013. *Gerechtigkeit in Russland: Sprachen, Konzepten, Praktiken.* Paderborn: Fink.
- Herget, J.E., and Wallace, S., 1987. The German Free Law Movement as the Source of American Legal Realism. *Virginia Law Review* [online], 73(2), 399–455. Available from: <https://doi.org/10.2307/1073069> [Accessed 4 September 2019].
- Hertogh, M., ed., 2008. *Living Law: Reconsidering Eugen Ehrlich.* Oxford: Hart Publishing.
- Iakhontov, V., 1926. O revoliutsionnoi zakonnosti [On Revolutionary Justice]. *Sovetskoe pravo* 1, 3-12.
- Iering, R., 1907. *Bor'ba za pravo* [The Struggle for the Law]. Moscow: M. N. Prokopovich.
- Ioffe, O.S., ed., 1957. *Sorok let sovetskogo prava, 1917-1957: Period stroitel'stva sotsializma* [Forty Years of Soviet Law, 1917-1957: The Period of Socialism-Building]. Leningradskii universitet.
- Juviler, P.H., 1976. *Revolutionary Law and Order: Politics and Social Change in the USSR.* New York: The Free Press.
- Kahan, D.M., and Nussbaum, M.C., 1996. Two Conceptions of Emotion in Criminal Law. *Columbia Law Review* [online], 96(2), 269-374. Available from: <https://doi.org/10.2307/1123166> [Accessed 21 July 2019].
- Khochoian, A.G., 2008. Razvitie idei psikhologicheskoi shkoly prava v trudakh M. A. Reisnera i IA. M. Magazinera [The Development of the Ideas of the Psychological School of Law in the Works of M. A. Reisner and IA. M. Magazinera]. *Pravo i gosudarstvo*, 9, 132-135.
- Kozlovskii, M., 1918. Proletarskaia revoliutsiia i ugovnoe pravo [Proletarian Revolution and Criminal Law]. *Proletarskaia revoliutsiia i pravo*, 1, 21-28.
- Krementsov, N., 2014. *Revolutionary Experiments: The Quest for Immortality in Bolshevik Science and Fiction.* New York: Oxford University Press.
- Lemmings, D., ed., 2012. *Crime, Courtrooms and the Public Sphere in Britain, 1700-1850.* Farnham: Ashgate.
- Lenin, V.I., 1918. *Gosudarstvo i revoliutsiia* [The State and Revolution]. Petrograd: Zhizn' i znanie.
- Likhnovski, A., 2008. Venus in Czernowitz: Sacher-Masoch, Ehrlich and the Fin-de-Siècle Crisis of Legal Reason. In: M. Hertogh, ed., *Living Law: Reconsidering Eugen Ehrlich.* Oxford: Hart, 49-72.
- Lunacharsky, A.V., 1917. Revoliutsiia i sud [Revolution and the Court]. *Pravda*, 1 December.
- Maksimova, O.D., 2014. Revoliutsionnoe pravosoznanie kak istochnik sovetskogo prava i zakonotvorchestva [Revolutionary Consciousness as a Source of Soviet Law and Law-making]. *Istoricheskie, filosofskie, politicheskie i iuridicheskie nauki, kul'turologiia i iskusstvovedenie. Voprosy teorii i praktiki* [online], 9,



- 88-94. Available from: [http://scjournal.ru/articles/issn\\_1997-292X\\_2014\\_9-2\\_21.pdf](http://scjournal.ru/articles/issn_1997-292X_2014_9-2_21.pdf) [Accessed 21 July 2019].
- Maroney, T.A., 2011. The Persistent Cultural Script of Judicial Dispassion. *California Law Review* [online], 99(2), 629-681. Available from: <https://doi.org/10.15779/Z38K98M> [Accessed 9 January 2019].
- Maroney, T.A., 2012. Angry Judges. *Vanderbilt Law Review* [online], 65(5), 1207-86. Available from: <https://www.vanderbiltlawreview.org/2012/10/angry-judges/> [Accessed 2 April 2019].
- Maroney, T.A., and Ackerman-Lieberman, P., 2014. "As a Father Shows Compassion for His Children": Ancient and Contemporary Perspectives on Judicial Empathy. *Journal of Law, Religion and State* [online], 3(3), 240-275. Available from: <https://doi.org/10.1163/22124810-00303002> [Accessed 21 July 2019].
- Muravyeva, M., 2017. Emotional Environments and Legal Spaces in Early Modern Russia. *Journal of Social History* [online], 51(2), 255-271. Available from: <https://doi.org/10.1093/jsh/shx022> [Accessed 4 September 2019].
- Musaev, V.I., 2001. *Prestupnost' v Petrograde v 1917-1921 gg. i bor'ba s nei* [Crime and the Struggle Against It in Petrograd, 1917-1921]. St. Petersburg: Dmitrii Bulanin.
- Nazaretian, A.P., 1994. Sovest' v prostranstve kul'turno-istoricheskogo bytiia: (Polemicheskie zametki) [Conscience in the Space of Cultural-Historical Existence: Polemical Notes]. *Obshchestvennye nauki i sovremennost'* [online], 5, 152-160. Available from: <http://ecsocman.hse.ru/data/529/300/1218/016Nazaretyan.pdf> [Accessed 21 July 2019].
- Neumann, M., and Willimott, A., eds., 2017. *Rethinking the Russian Revolution as Historical Divide*. Abingdon: Routledge.
- Newman, D., 2014. Cassation of Criminal Cases from Moscow Province Courts and Tribunals, 1921-1928. *The Soviet and Post-Soviet Review* [online], 41(2), 146-168. Available from: <https://doi.org/10.1163/18763324-04102001> [Accessed 4 September 2019].
- Novgorodtsev, P.I., 1900. *Istoriia novoi filosofii prava: Kurs lektsii* [The History of the New Philosophy of Law: Lecture Course]. Moscow: Obshchestvo rasprostraneniia poleznykh knig.
- Nussbaum, M.C., 1996. Emotion in the Language of Judging. *St. John's Law Review* [online], 70(1), 23-30. Available from: <https://scholarship.law.stjohns.edu/lawreview/vol70/iss1/4> [Accessed 21 July 2019].
- O sude [On Courts], 1918. *Sobranie zakonov i rasporiazhenii rabochego i krest'ianskogo pravitel'stva*, 26, 401-404.
- O vvedenii v deistvie Ugolovnogo Kodeksa RSFSR [On the Enactment of the Penal Code of the RSFSR], 1922. *Sobranie zakonov i rasporiazhenii rabochego i krest'ianskogo pravitel'stva*, 15, 1.
- Orlovskii, S.N., 1927. Revoliutsionnaia zakonnost' v periody voennogo kommunizma i NEPa [Revolutionary Justice in the War Communism and NEP Periods]. *Vestnik Verkhovnogo Suda SSSR i Prokuratury Verkhovnogo Suda SSSR*, 2, 22-27.
- Perel'man, A., 2009. *Vospominaniia* [Memoirs] (online). St. Petersburg: Evropeiskii dom. Available from: <http://berkovich-zametki.com/2009/Starina/Nomer4/APerelman1.php> [Accessed 21 July 2019].



- Petrzhitskii, L.I., 1905. *Vvedenie v izuchenie prava i npravstvennosti. Emotsional'naia psikhologiya* [Introduction to the Study of Law and Morality. Emotional Psychology]. St. Petersburg: Iu.N. Erlikh.
- Petrzhitskii, L.I., 1907-1910. *Teoriia prava i gosudarstva v sviazi s teoriei npravstvennosti* [Theory of Law and the State in Relation with the Theory of Morality], vols. 1-2. St. Petersburg: Slovo: M. Merkushev.
- Plaggenborg, S., 1996. *Revolutionskultur: Menschenbilder und kulturelle Praxis in Sowjetrusland zwischen Oktoberrevolution und Stalinismus*. Cologne: Böhlau.
- Plamper, J., 2015. *The History of Emotions: An Introduction*. New York: Oxford University Press.
- Plotnikov, N.S., ed., 2011. *Pravda: Diskursy spravedlivosti v russkoi intellektual'noi istorii* [Pravda: Discourses of Justice in Russian Intellectual History]. Moscow: Spravedlivyi mir.
- Pokrovskii, I.A., 1901. *Spravedlivost', usmotrenie sud'i i sudebnaia opeka. Dilemmy sovremennogo grazhdanskogo prava v oblasti dogovorov* [Justice, Judicial Discretion and Dependency. The Dilemmas of Contemporary Civil Law in the Area of Contracts]. Kyiv: Universitet sviatogo Vladimira.
- Pomeranz, W., 2018. *Law and the Russian State: Russia's Legal Evolution from Peter the Great to Vladimir Putin*. London: Bloomsbury Academic.
- Portugalov, G.M., 1922. *Revoliutsionnaia sovest' i sotsialisticheskoe pravosoznanie* [Revolutionary Conscience and Socialist Legal Consciousness]. Petrograd: Gosizdat.
- Posnov, I.V., 2006. Sootnoshenie prava i npravstvennosti v psikhologicheskoi teorii prava L. I. Petrzhitskogo [The Correlation of Law and Morality in the Psychological Theory of Law by L. I. Petrzhitskii]. *Vestnik MGTU* [online], 9(1), 96-105. Available from: <https://cyberleninka.ru/article/v/sootnoshenie-prava-i-npravstvennosti-v-psihologicheskoy-teorii-prava-l-i-petrzhitskogo> [Accessed 21 July 2019].
- Pratsko, G.S., and Boldyrev, O.N., 2015a. Razvitie psikhologicheskoi teorii prava v rabotakh M. A. Reysnera [The Development of the Psychological Theory of Law in the Works of M. A. Reysner]. *Filosofia prava* [online], n° 1, 16-20. Available from: <https://cyberleninka.ru/article/v/razvitie-psihologicheskoy-teorii-prava-v-rabotah-m-a-reysnera> [Accessed 21 July 2019].
- Pratsko, G.S., and Boldyrev, O.N., 2015b. Vliianie idei L. I. Petrzhitskogo na razvitie psikhologicheskogo obosnovaniia prava v trudakh M. I. Reysnera [The Influence of L. I. Petrzhitskii's Ideas on the Development of Psychological Explanations of Law in the Works of M. I. Reysner]. *Iurist-Pravoved* [online], n° 2, 10-13. Available from: <https://cyberleninka.ru/article/v/vliyanie-idey-l-i-petrzhitskogo-na-razvitie-psihologicheskogo-obosnovaniya-prava-v-trudah-m-a-reysnera> [Accessed 21 July 2019].
- Protokoly III vserossiiskogo s'ezda deiatelei sovetskii iustitsii, s prilozheniem rezoliutsii s'ezda [Protocols of the III All-Russian Congress of Soviet Justice Workers, Accompanied by the Resolutions of the Congress], 1921. *Materialy Narodnogo komissariata iustitsii* [online], n° XI-XII. Moscow: Narodnyi komissariat iustitsii. Available from: <http://elib.shpl.ru/ru/nodes/51718-vyp-11-12-protokoly-iii-vserossiyskogo-sezda-deyateley-sovetskoy-yustitsii-s-prilozheniem-rezolyutsiy-sezda-pg-1921> [Accessed 21 July 2019].
- Reisner, M.A., 1908. *Teoriia L. I. Petrzhitskogo, marksizm i sotsial'naia ideologiya* [L. I. Petrzhitskii's Theory, Marxism and Social Ideology]. St. Petersburg: Obshchestvennaia pol'za.

- Rendle, M., 2014. Mercy Amid Terror? The Role of Amnesties during Russia's Civil War. *Slavonic and East European Review* [online], 92(3), 449-478. Available from: <https://doi.org/10.5699/slaveasteurorev2.92.3.0449> [Accessed 4 September 2019].
- Retish, A., 2018. Judicial Reforms and Revolutionary Justice: The Establishment of the Court System in Soviet Russia, 1917-22. In: A. Lindenmeyr, C. Read and P. Waldron, eds., *Russia's Home Front in War and Revolution, 1914-22. Book 4: The Struggle for the State*. Bloomington, IN: Slavica, 371-402.
- Riebschläger, K., 1968. *Die Freirechtsbewegung: Zur Entwicklung einer soziologischen Rechtsschule*. Berlin: Duncker & Humblot.
- Roach Anleu, S., and Mack, K., 2005. Magistrates' Everyday Work and Emotional Labour. *Journal of Law and Society* [online], 32(4), 590-614. <https://doi.org/10.1111/j.1467-6478.2005.00339.x> [Accessed 9 January 2019].
- Rümelin, M., 1925. *Rechtsgefühl and Rechtsbewusstsein: Rede gehalten bei der akademischen Preisverteilung am 6. November 1925*. Tübingen: J.C.B. Mohr (Paul Siebeck).
- Sanger, C., 2013. Legislating With Affect: Emotion and Legislative Law Making. In: J.E. Fleming, ed., *Passions and Emotions*. New York / London: New York University Press, 38-76.
- Schnädelbach, S., 2015. The Jurist as Manager of Emotions: German Debates on Rechtsgefühl in the Late 19<sup>th</sup> and Early 20<sup>th</sup> Century as Sites of Negotiating the Juristic Treatment of Emotions. [Trans.: A. Bresnahan]. *InterDisciplines: Journal of History and Sociology* [online], 6(2), 47-73. Available from: <http://www.inter-disciplines.org/index.php/indi/article/view/1015/1123> [Accessed 21 July 2019].
- Schnädelbach, S., 2019. The Voice is the Message: Emotional Practices and Court Rhetoric in Early Twentieth Century Germany. *Oñati Socio-Legal Series* [online], 9(5-this issue). Available from: <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1030> [Accessed 4 September 2019].
- Shershenevich, G.F., 1897. *O chuvstve zakonnosti: Publichnaia lektsiia, chitannaia 10 marta 1897 g.* [On the Feeling of Justice: Public Lecture Given on 10 March, 1897]. Kazan: Imperatorskii Universitet.
- Shteinberg, I.Z., 1913. Dvizhenie v pol'zu svobodnogo prava (Zakon i sud'ia) [Movement in Favor of the Free Law (The Law and the Judge)]. *Iuridicheskie zapiski, izdavaemye Demidovskim Iuridicheskim Litseem, XVI-XVII (I-II)*, 223-253.
- Shteinberg, I.Z., 1914. *Chto takoe dvizhenie svobodnogo prava? (Zakon i sud'ia): Doklad, chitannyi v Moskovskom Iuridicheskom Obshchestve* [What is the Free Law Movement? (The Law and the Judge): Lecture Given at the Moscow Law Society]. Moscow: Pomanskii and Zapolskii.
- Shvekov, G.V., 1970. *Pervyi sovetskii ugolovnyi kodeks* [The First Soviet Criminal Code]. Moscow: Vysshiaia shkola.
- Silberg, S., 2005. *Hermann Kantorowicz und die Freirechtsbewegung*. Berlin: Logos.
- Skibina, O.S., 2013. Psikhologicheskaia teoriia prava L. I. Petrazhitskogo i marksizm v uchenii M.A. Reisnera [L. I. Petrazhitskii's Psychological Theory of Law and Marxism in the Teaching of M. A. Reisner]. *Istoricheskie, filosofskie, politicheskoe o iuridicheskie nauki, kul'turologiia i iskusstvovedenie. Voprosy teorii i praktiki* [online], 9-1, 163-167. Available from:

- [http://scjournal.ru/articles/issn\\_1997-292X\\_2013\\_9-1\\_42.pdf](http://scjournal.ru/articles/issn_1997-292X_2013_9-1_42.pdf) [Accessed 21 July 2019].
- Slavin, I.V., 1922. Sud i novaia ekonomicheskaia politika [The Courts and the New Economic Policy]. *Ezhenedel'nik sovetskoi iustitsii*, 1, 6-7.
- Solomon, P.H., ed., 1996. *Reforming Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order*. Armonk, NY / London: M.E. Sharpe.
- Sproede, A., Schomacher, G., and Zabirko, O., eds. 2013. *Osteuropäische Rechtskultur: Studien zu Literatur und Recht in Russland und der Ukraine von der Frühen Neuzeit bis zur Gegenwart*. Paderborn: Fink.
- Stefanskii, E.E., 2008. Kontsept 'sovest' v russkoi, pol'skoi i cheshskoi lingvokul'turakh [The Concept of "Conscience" in Russian, Polish and Czech Linguistic Cultures]. *Izvestiia Rossiiskogo gosudarstvennogo pedagogicheskogo universiteta im. A. I. Gerzena* [online], 72, 124-131. Available from: [https://lib.herzen.spb.ru/text/stefanski\\_11\\_71\\_88\\_96.pdf](https://lib.herzen.spb.ru/text/stefanski_11_71_88_96.pdf) [Accessed 21 July 2019].
- Stites, R., 1989. *Revolutionary Dreams: Utopian Vision and Experimental Life in the Russian Revolution*. New York: Oxford University Press.
- Stuchka, P., 1918. Proletarskaia revoliutsiia i sud [Proletarian Revolution and the Courts]. *Proletarskaia revoliutsiia i pravo* 1, 21-28.
- Totskii, N., 1922. Pravo i revoliutsiia [Law and the Revolution]. *Pravo i zhizn'*, 1, 9-11.
- Trainin, A., 1922. O revoliutsionnoi zakonnosti [On Revolutionary Justice]. *Pravo i zhizn'*, 1, 5-8.
- Tsentrāl'nyi gosudarstvennyi arkhiv Sankt-Peterburga (TsGA SPb) [Central State Archive of St. Petersburg]. *Fond 174, opis' 3, delo 1*.
- Vasil'ev-luzhin, M.I., 1927. Proletarskaia revoliutsiia i sud [Proletarian Revolution and the Courts]. *Vestnik Verkhovnogo Suda SSSR i Prokuratury Verkhovnogo Suda SSSR*, 4, 3-11.
- Vasilyev, P., 2017a. Beyond Dispassion: Emotions and Judicial Decision-Making in Modern Europe. *Rechtsgeschichte – Legal History* [online], 25, 277-285. Available from: <http://dx.doi.org/10.12946/rg25/277-285> [Accessed 21 July 2019].
- Vasilyev, P., 2017b. Revolutionary Conscience, Remorse and Resentment: Emotions and Early Soviet Criminal Law, 1917-1922. *Historical Research* [online], 90(247), 117-133. Available from: <https://doi.org/10.1111/1468-2281.12173> [Accessed 4 September 2019].
- Vasilyev, P., 2018. Sex and Drugs and Revolutionary Justice: Negotiating 'Female Criminality' in the Early Soviet Courtroom. *The Journal of Social Policy Studies* [online], 16(2), 341-354. Available from: <https://doi.org/10.17323/727-0634-2018-16-2-341-354> [Accessed 21 July 2019].
- Vinnichenko, O.Iu., and Filonova, O.V., 2013. *Modernizatsiia sudebnoi sistemy v period NEPa* [Modernization of the Court System During NEP]. Kurgan: Kurganskii gosudarstvennyi universitet.
- Walicki, A., 1987. *The Legal Philosophies of Russian Liberalism*. Oxford University Press.
- Weber, M. (with M. Rheinstein, ed.), 1967. *Max Weber on Law in Economy and Society*. New York: Simon and Schuster.
- Willimott, A., 2017. *Living the Revolution: Urban Communes & Soviet Socialism, 1917-1932*. New York: Oxford University Press.