

**UNRECOGNIZED FATHER OF SOCIOLOGY
OF LAW: LEON PETRAŻYCKI**
*Reflections based on Jan Gorecki's
Sociology and Jurisprudence of Leon
Petrażycki**

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I. THE PERSON

Leon Petrażycki (1861-1931), a legal theorist and sociologist, came from the Polish gentry of the Witebsk area, a territory historically Polish, but then—and now—a part of Russia. After preliminary studies as a medical student, he turned to the study of law at the universities in Kiev, St. Petersburg, Heidelberg, Berlin, Paris, and London. He received a master's degree in Roman Law from the University of Kiev and a doctorate in Law from the University of St. Petersburg. In 1897 Petrażycki became a professor at the University of St. Petersburg; he was quickly promoted to the rank of full professor and subsequently appointed Dean of the Faculty of Law—the first, in Russia, to be democratically elected to that position. He became a Member of the Russian Parliament (DUMA) and later spent some time in prison as a result of his political activities. During his twenty years in St. Petersburg, Petrażycki published several books on such subjects as political economy, private international law, civil law, psychology, and matters dealing with the relation between law, morals, and the state. Many of these books (written in Russian) were controversial and stimulated much discussion and response in Russia. A brief bibliography is contained in Appendix A.

After 1918 Petrażycki fled to Poland and, as a professor at the University of Warsaw, lectured on contemporary

* Jan Gorecki (ed.), *Sociology and Jurisprudence of Leon Petrażycki*. Urbana: University of Illinois Press, 1975.

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philosophy and sociology. Petrażycki was a member of the Polish Academy of Science from 1912 until his death in 1931, a member and sometime Vice-President of the International Institute of Sociology, and a member of the International Academy of Comparative Law.

Despite his achievements and earlier prominence, Petrażycki is now relatively unknown, and his work is not well understood.¹ Groups of students and scholars formed around him in Berlin, St. Petersburg, and Warsaw, but these were short-lived because of his constant mobility and disruptive political events. He attracted much attention early in his career in Berlin because of his brilliant critique of the *Bürgerliches Gesetzbuch* (German Civil Code) when its drafting was nearing completion. His critique was utilized during the final stage of the preparation of the Code. He published several books in German in which he was able to demonstrate the hidden links between economy and law, using what is now called the functional school. But in that period of abstract philosophical deliberations, “legal minds” were apparently still not ready for this type of approach. When he decided to leave Germany—not an easy country for a scholar “thinking in Polish, speaking Russian and translating his ideas into German,” the group which had germinated around him in Berlin lost its momentum.

In St. Petersburg, where he moved from Berlin, Petrażycki immediately became a prominent figure, but the scientific school which he created there, in the years 1897-1917, was destroyed by the Bolshevik Revolution. He escaped through Finland to Warsaw where he was offered in 1921 a chair of sociology (the first in Poland) especially created for him in the law faculty of the University of Warsaw. There again he was able to gather around himself a group of outstanding scholars. After his suicide in 1931, a special scientific association center was set up in Warsaw to continue Petrażycki's work; the center was completely destroyed during the Second World War, through the annihilation of its most prominent members.²

¹ “In noting . . . areas of broad convergence between Petrażycki, Durkheim, and Weber, it should not be assumed that there were no methodological or substantive differences among their respective sociological projects. At a minimum, this comparison is intended to show that an ‘official’ history of sociology, in neglecting to study Petrażycki, fails to capture the extent to which the formation of questions crucial to modern sociology has had unsuspected origins. Yet such a conclusion can only stand as an invitation for more extensive researches into the affiliation between Petrażycki's ideas and those of his contemporaries” (Bazowski, 1980: n.21).

² S. Hemmelin died in 1941; W. Wedegis, the defender of Gdynia, died as a result of wounds in a prisoner-of-war camp in 1940; G. Skowron perished in

Thus, three or four times the scientific schools which could have had a chance to develop and spread Petrażycki's ideas were destroyed before they became fully recognized.

Petrażycki was a prolific author early in his career, but many of the ideas which he developed after leaving St. Petersburg were preserved only in the lecture notes of his students (a manuscript of his theory of sociology was apparently lost in Finland). Most of his essential works were published in German and Russian, but his last writings were printed in Polish.³ Petrażycki's students were scattered among many universities in the western world and sometimes, inevitably, their own interpretations took precedence over his original thoughts.⁴

Because Petrażycki's ideas were couched in the psychological language of the beginning of the century, they are regarded today as products of an introspective, psychological methodology. Consequently the sociologists, generally unaware of this "language generation" gap, have not been responsive to his work. However, it is misleading to label Petrażycki as a psychological theorist, since his interest was predominantly in sociological questions. His language and utilization of the methods of psychology were dictated by contemporary practice and by the philosophical idiom within which those questions were framed. His later ideas were expressed in more recognizably sociological terms. Unfortunately these ideas are recorded only in lecture notes of his students (the typed "Notes" of Professor H. Piętka are deposited in the Archives of the Polish Academy of Sciences), and therefore have never been adequately investigated.⁵

the Warsaw uprising in 1944; J. Ossowski was shot during the Warsaw uprising in 1944; S. Kachan perished during the war; J. Stawiarski perished in the Sachsenhausen concentration camp; A. Eckstein was shot at Palmiry, a Nazi place of execution near Warsaw. Only J. Finkelkraut (now J. Licki), his personal assistant, survived; he is now a member of the Board on the Section of Sociology of Law of the Polish Sociological Association.

³ The English-speaking student has to rely on *Law and Morality: Leon Petrażycki*, published in 1955. This book is an abridgement and translation of his two major works published in Russian in 1905 and 1907. Until the appearance of *Sociology and Jurisprudence of Leon Petrażycki* in 1975, the only other source for English-speaking students was a small number of articles by scholars who attempted to introduce some of Petrażycki's main ideas.

⁴ One explanation of this tendency may be that in their attempts to establish themselves in foreign environments they gave first priority to presenting their own original ideas. For some additional information on that matter see Langrod and Vaughan, 1970; Licki, 1976; Meyendorff, 1947; Podgórecki, 1979; Timasheff, 1955; Rudziński, 1976.

⁵ J. Lande, one of the most competent students of Petrażycki, says in the contribution published in Gorecki, 1975 (p. 37): "From now on I shall present the contents of Ch. IV of *the Theory of Law and State* and supplement it on the grounds of other works of Petrażycki and with my notes on his lectures which I

Attempts to understand Petrażycki's work were substantially but unintentionally clouded during the post-World War II period. The use of his respected name in Poland was often regarded as more politically "safe" than independent lines of thought. It provided a suitable camouflage for politically independent sociolegal empirical research. Petrażycki's work could be used in such a way because several of his innovative concepts were indeed the logical forerunners of these studies.

Before the publication of Gorecki's book, the rediscovery, interpretation, and evaluation of Petrażycki's ideas were practically impossible for English-speaking readers.⁶ The book *Law and Morality: Leon Petrażycki* was available, but it did not represent the final stage of development of his sociology of law; it is not representative of his life's work. Thus the lack of a reliable text in English, and the very restricted availability of his texts in other languages, precluded an appreciation of his unique philosophy, one which should have risen to international prominence: "His theory was clearly superior to that of Marx in some respects, though not in others" (Johnson, in Gorecki, 1975: 60).

II. BASIC CONCEPTS OF PETRAŻYCKI'S WORK

Petrażycki's intention was to build a science of legal policy which would give a democratic society a new comprehensive and systematic understanding of law necessary for solving conflicts and avoiding disruptive tensions. He hoped that such a tool would promote social justice and lead to a society based on "rational and neighborly active love." But he realized that the contemporary premises of social science were not conducive to achieving his goal, and sought instead to develop a set of assumptions with which to construct a discipline of legal policy.

attended in 1906-1910 at the University of St. Petersburg." Piętka's notes cover Petrażycki's lectures at Warsaw University from 1921-1930. These "Notes" were typed in 1951; the article was written in 1948, in Polish. It was not published until 1958 because the sociological magazine to which it was submitted was suspended for political reasons. Lande died in 1954.

⁶ Campbell and Wiles write: "In Europe as one might expect, we find a direct continuance of issues raised by the classical writers [among them: Weber and Durkheim - A.P.] . . . this continuity is represented . . . by the work of Karl Reuner, Eugen Ehrlich and Leon Petrażycki," (Campbell and Wiles, 1979: 92). This is a symptomatic mistake. The delayed discovery of Petrażycki in the West is responsible for this perspective; in fact, Petrażycki lived exactly in the same period. It is equally possible to maintain that Weber and Durkheim relied on the works of Petrażycki.

The first step was to challenge the existing methodology of the social sciences. Petrażycki extended the idea of adequacy, suggested earlier by Aristotle and Bacon, into a methodological scheme. He argued that the social sciences should be based on theories in which the explanatory variable is appropriate to that which is being explained. (The *explanadum* should target all objects of the designated class and only those objects.) To achieve this, it is necessary to propose an *explanadum* which accounts for the proper class of objects. A theory is “lame” if it points only to some objects of a homogeneous class to which it could be applied. Petrażycki’s favorite example was to state that “pencils produced by the Makowski firm” attract every other object with a force that is proportional to the product of their masses and inversely proportional to the square of the distance between their centers. Obviously not only the pencils of Makowski’s firm but all material objects do comply with this law. On the other hand, theories are “jumping” if they claim to explain a broader class of objects than they actually do. For example the classic Marxist theory is “jumping,” because it pretends to account for a whole range of heterogeneous phenomena with a single *explanadum*. Petrażycki’s rule of adequacy cannot be used as a magic tool to find a “proper” theory, but it can be utilized as a sharp methodological instrument to eliminate some theories and to analyze the limitations of others.

The practical consequences of “laming” and “jumping” theories could be far reaching. To rely on a lame theory is a relatively safe endeavor. As a guide to concrete practical action (based on the lame theory) additional objects might later be incorporated by such theory and treated in the same way as the initial ones. A medicine applicable generally to human beings does not suit only university professors. Then it is possible to gradually generalize about the applicability of the theoretical statement in such a way that it would eventually cover all human beings. On the other hand, it may be rather risky to utilize a jumping theory as a basis for policy implementation since it might also suggest the existence of some crucial relationships where they do not in fact occur. A medicine appropriate for a liver disease may be inappropriate (if not harmful) in a heart illness.

In connection with the idea of adequacy, Petrażycki also developed a so-called “positional logic”—an idea which even now is neither fully explored nor comprehended. The essential feature of this idea is that logical thinking does not consist of

“sentences” (treated as true or false), but rather of their elements (positions). (Wittgenstein’s famous concept of the truth, developed later, echoes clearly these ideas of Petrzycki.)

Another of Petrzycki’s methodological contributions was his classification of sciences—a classification intended to locate the “proper” place for the theory of law, sociology, and especially legal policy.

The basic assumption of this classification was the fundamental division between the theoretical and practical sciences. The former deal with what *is*, the latter with what *ought* to be done. The theoretical disciplines are divided into general sciences, covering all the objects which bear the given characteristics studied by the given science, and individual sciences, those which deal with a subclass of objects bearing more specific characteristics. The individual disciplines are further subdivided into descriptive sciences, describing their objects as they are at the moment when a description is made, and historical disciplines, presenting their objects in chronological order. On the other hand, the practical sciences are subdivided into normative sciences, i.e., those which recommend or reject some types of action as proper or improper means to the assumed ends.

The most significant features of this classification can be summarized as follows. The practical disciplines made use of methods different from those of the theoretical disciplines. Science in general (and social science in particular) is more and more concerned not only with elucidation of reality, but with analysis of how to change it. Therefore the need arises for a methodological analysis of the limits of change. The practical sciences take account of value judgments, which are a significant part of social life, while the theoretical sciences neither approve nor disapprove of phenomena. Finally, the practical sciences have their own peculiar problems which they have to apprehend and elucidate (Podgórecki, 1975: 2).

Within this general framework, the general sciences include such subjects as physics, psychology, sociology, and economics. Individual sciences which are primarily descriptive include geography, zoology, and demography; those which are primarily historical include the history of geography, medicine, and law. The teleological sciences include such fields as medicine, technology, legal policy, and social engineering.

The Concept of Legal Impulsions

A second step which Petrażycki took towards developing legal policy into a scientific discipline was to revise contemporary psychology. According to Petrażycki, the most central position in the human psyche is occupied by impulsions (emotions)—phenomena which are different from feelings, as well as from cognitive or volitional elements. The latter are, however, usually but not necessarily connected with impulsions. If someone tries to cross the street and suddenly realizes that a car is very close to him he jumps away—guided not by an anticipation of an anguish of a possible injury, nor by a proper cognition of the speed of the car, his own location, or the distance from the car. He does not make a conscious decision to withdraw. Instead, he is impelled to move by an autonomous element of psychic life—by an impulsion.

Some impulsions can be only “relic impulsions.” If somebody hunts, picks mushrooms, or fishes, he or she is not guided by the impulsions useful in modern everyday life, for it is usually easier to purchase such products at the market, but by “relic impulsions” which had been enormously important for our predecessors. They still “live” in the psyche of a modern man as its hidden, dormant elements.⁷

New impulsions, whether they have clear targets (like hunger or thirst) or potentially blank (like legal) ones, are generated by several types of adaptation: egocentric, sociocentric, and philocentric ones. Outlining these types of adaptation was the third important step taken by Petrażycki in attempting to build the foundations of his sociology. It is easy to notice that, from one point of view, these ideas offer a form of a translation of Darwin’s biological concepts into the fabric of social life. But from another, they are surprisingly close to the fundamental ideas of sociobiology. The egocentric adaptation focuses on the needs, capacities, and life situations of the given individual. Through trial and error individuals attempt to adjust to an existential situation. Some special types of egocentric attitudes are located between “strictly egotic drives” and an “extended egoism.” This is represented by a father who identifies himself with the interests of the whole family.⁸

⁷ Relic impulsions may be regarded as a “social burden” (as in medicine the lasting influence of some medicaments is called a “biological burden”).

⁸ It is interesting to note that both Durkheim and Petrażycki, independently, found the Roman legal concept of “*Pater Familias*” as a more adequate notion for the sociology of law and mobility: it differs essentially from the “lame”: “*Homo Economicus*.”

Egocentric adaptations are a form of the sociocentric adaptation through which different groups of people, and even societies, seek a functional balance between physical, environmental, demographic, economic, technical, and organizational conditions. Specific components, such as morality, law, and religion, are manifestations of sociocentric adaptations which contribute to the division between “we” and “others.” Finally, the philocentric adaptation creates conditions conducive to altruistic behavior and feelings, which allow human beings to cross the boundaries between “we” and “others.” When people are motivated to protect others (like a parent who risks his or her life to defend a child), they are guided by this type of philocentric impulsion.

According to Petrażycki, negative and positive rewards continually condition an individual in a way resembling “logical induction” but without the necessity of reasoning. (It should be noted that he made these statements before Pavlov.) Thus, conditioning reinforces those impulsions which are functional for the individual, through “unconscious purposefulness.” Since each individual shares his experience with others (being existentially sentenced to live with them) and since the same process of selection takes place in various social groups, some impulsions resulting from these cumulative processes—which eliminate individual deviations of values and reasons—receive a status of the “voice from outside.” They speak “categorically” and disregard any individual purpose or rationale giving them, in effect, the quality of ethical principles. Ethical impulsions may appear as moral (obligation-oriented) or legal (claim- and obligation-oriented) ones. This conception of moral and legal impulsions resembles in some aspects Weber’s differentiation between goal- and value-oriented social behavior and, also, Durkheim’s perception of morality. Durkheim never gave a systematic outline of his theory of morals, but his essential idea was that society is “the end and the source of morality” (Durkheim, 1953: 59).

All these types of adaptation are guided by the “unconsciously ingenious adaptation”: an enormous number of events leads to a selection of those patterns of behavior which seem to solve existing problems and which are, in one way or another, accepted by the given group or society. Of course such adaptation does not necessarily progress in a linear fashion; there may occur many types of recessions on the level of small groups (cliques), subcultures (secret societies), or even whole societies (totalitarian ones). Nevertheless, the

phenomena which take place inside of the individual psyche and the way in which they are perceived by the individual are the results of complicated and interdependent social processes, without being recognized as such; they then appear as autonomous psychic phenomena.

Different Types of Legal Phenomena

A subsequent step towards building a science of legal policy was the development of a theory of law. According to Petrazycki, law is an impulsion connected with the perception of a duty and a corresponding claim constituting the elementary "atom" of the psychosocial life. For example, if somebody considers himself the owner of Warsaw University and tries to impose on all other people a duty to observe his right, this person is indeed "possessed" by a legal impulsion. Of course such a claim would be regarded, at the very least, as controversial. Nevertheless, it is this convergence of a duty and a claim that was singled out by Petrazycki as a crucial factor of legal phenomena. The role of the society as a "constant social laboratory" consists in giving its members a chance to select and strengthen those attitudes which are functional for them and to reject those which are dysfunctional. If a specific pattern of behavior is accepted in a given society, and if it regulates important social processes, then it shapes the essence of social life. This tenet was later accepted and developed by Malinowski, Homans, Gouldner, and the "exchange theorists".⁹

Petrazycki also distinguished between "living law" (in his language "intuitive law") and "law in books," (in his language, "positive law" or "official law"). "Law in books" (binding law) is located in abstract reality as a normative phenomenon, whereas "living law" is spread among the people and influences their behavior directly. This distinction is similar to that later made by Ehrlich and adopted by American legal realists.¹⁰ But Petrazycki went further than either Ehrlich or the "Realists." He distinguished among *positive official law* (e.g., law used by the courts and upheld by the state); *positive unofficial law*

⁹ It would be interesting to trace the "travel" of this idea of Petrazycki's, later popularized through the work of his compatriot Malinowski.

¹⁰ It could be a subject of independent study to find to what extent the claim of J. Licki that Ehrlich took over the idea of intuitive law from Petrazycki is correct. In this context it is worthwhile to note that the concept of intuitive law, transmitted to Japan through the writings of Ehrlich, was sought as a political instrument by the Japanese Communists who intended, in the thirties, to intercept power through parliamentary, not revolutionary, means.

(e.g., a mediator or unofficial agency resolving a conflict with reference to positive law or normative facts); *intuitive official law* (e.g., the decision by an English court in a case on the foundation of equity); and *intuitive unofficial law* (e.g., people's spontaneous behavior guided by their legal intuitions rather than by statutes or other normative facts).

Educational and Motivational Functions of the Law

Intuitive law and official law play different roles in various social situations. According to Petrażycki they perform two basic functions: educational and motivational. The educational function of law consists of a process of socialization in which the rules established by the institution such as family, church, neighborhood organization, work place, and legislature are internalized and result in accepted patterns of behavior. On the other hand, the motivational function of law consists in providing information and a stimulus to behave in a socially accepted way. Usually, the motivational and educational functions are interlinked. Helping a terminally ill person to commit suicide is usually punished even if the person who is giving the help behaves according to the expressed wishes of the sick person. This is because the "accumulated genius of the law" wants to counteract and prevent possible attempts to commit murder under the cover of help of this type.

Petrażycki's critique of the problem of investments made in a *bona fide* situation, a problem endlessly discussed by generations of German civil law professors, is another example. Scholars tried to find a solution that was (a) consistent with the normative sense of the legal system, (b) "just," (c) in accordance with the "spirit of the nation," and (d) not contradictory to the solutions proposed by other legal institutions. A simplified example of the problem is: person A buys an object from person B, who is not the owner. Person A makes several investments in the object which increase its value. Person C, who has an authentic and valid claim to the object in question, emerges and through the legal process takes possession of the object. The question then arises whether A has any claims toward person C for reimbursement of his investments. The German professors had been unable to solve this problem. According to Petrażycki, the Roman legal institution which awards such a claim (with certain restrictions) to person A is a reasonable one and is based on a "hidden rational wisdom" of the law. Let us suppose that person A does not have such a right, then everyone who

obtains any object would be reluctant to improve it because of the danger of losing his investment. Therefore from the point of view of the interest of the whole social system, to deny A a right to the claim would not be a “healthy” solution, since it would hamper the general process of social and economic development. The motivational function of the law is not to inform those governed by it about the wisdom of a particular legal rule, but to channel social behavior into a pre-designed pattern.

Law and Morality

Petrażycki also provided a precise criterion by which to distinguish the concept of the law from that of morality. The basic idea is that law is structured in a bilateral way, in which a recognition of someone’s claim is associated with a feeling of duty; while morality is unilateral, and consists only of a perception of one’s duty. Using a parable, Petrażycki regards law as “water” and morality as “champagne”: law exists everywhere, plays the major role in relationships among people and social groups, and is the main ingredient in the fabric which makes up the social structure, whereas morality appears only in those situations which demand a special type of nonconformist and altruistic motivation. Law produces an active feeling toward one’s rights, whereas morality generates a rather passive expectation. The awareness of a possible legal claim produces a stronger pressure to comply with the social pattern than does the optional, moral recommendation, but morality creates a path for future human behavior which, although not yet obligatory, may eventually become so.

Tendencies of Legal Development

According to Petrażycki, law is not static. He identified several tendencies in accordance with which the law of a society usually evolves. First, there is a tendency towards increasing demands. It is possible to demonstrate historically that people have become surrounded by more and more detailed regulations and duties to the point that the modern citizen is completely caught up in an elaborate network. As time passes, both the number of obligations and the quality of what is required from members of a society increase constantly. The second tendency is to change the motivational stimuli of the law. Law offers increasingly more elaborate and subtle motives for the same kinds of behavior. In a sketchy way, one can say that in early stages of economic development,

people were compelled to work by very cruel mechanisms of oppression. Eventually, the same effect was secured by creating favorable economic inducements. This tendency of development can lead one to expect that in the future people will engage in productive work on the basis of idealistic, unselfish, task-oriented motives. The third tendency identified by Petrazycki is that of diminishing pressure toward legal behavior. Again in a very sketchy manner, one can say that the enormous burden of pressure exerted by the *Law of the Twelve Tables*, according to which a debtor could be cut into pieces, was later reduced to imprisonment; presently, however, a frivolous debtor can even deride the creditor who sits next to him in a coffee shop. Some commentators on Petrazycki's ideas interpret the above tendencies as a pronouncement on general societal and legal progress—but in fact he did not claim that these tendencies work in a strictly linear way, or that they appear simultaneously at different social levels.

It should be noted that there are some similarities between these ideas and Durkheim's "two laws of evolution of punishment": (1) that the "intensity" of punishment or its quantity "is greater insofar as societies belong to a less advanced type—insofar as the central power has a more absolute character," and (2) that "deprivation of liberty and liberty alone, for periods of time varying according to the gravity of the crime, tends increasingly to become the normal type of repression" (Durkheim, 1901: 65, n.78). Was it the "spirit of the time," Mertonian multiple-discovery or, unconscious or conscious borrowing which produced these very similar ideas?

III. GORECKI'S CONTRIBUTION

The publication of *Sociology and Jurisprudence of Leon Petrazycki* in the United States is of great importance, since the few existing articles about Petrazycki previously published in English are fragmentary, and not as comprehensive and interdisciplinary as Gorecki's volume. Contributors to this book included outstanding Polish and non-Polish scholars who were able to deal with the complicated problems of Petrazycki's heritage. Their articles covered, to use Peczeńnik's enumeration, topics such as jurisprudence, psychology, legal theory, official and intuitive law, Social Darwinism, a theory of social and legal progress, legal policy, and a theory of the dogmatic study of law. Concepts of importance to Petrazycki's work, such as normativeness, obligation, legal culture,

sanctions, sources of law, and specialization within the legal system, are also addressed.

What is especially important about this book is that it departs from Petrażycki's own complicated language and attempts to translate his concepts into the language of modern social science. Petrażycki's ideas are compared with other sociological theories, especially structural functionalism and symbolic interactionism. Denzin observes the "remarkable degree [to which] his perspective anticipated and overlaps with the uniquely American school of thought known as pragmatism and symbolic interactionism" (Denzin in Gorecki, 1975: 63).

Denzin also notes that Petrażycki's "treatment of introspection, conceptually at least, moves beyond Mead and Cooley, and converges with Weber's two conceptions of scientific understanding: direct observational and explanatory understanding. In these senses, Petrażycki should be judged as a heretofore unrecognized contributor to the pragmatist-interactionist school of thought" (in Gorecki, 1975: 70). Johnson's sound sociological "intuition" manifests itself when he writes: "Despite a certain psychological bias (not strong enough perhaps to be called reductionism), Petrażycki did recognize the fact that social structure exists and has important consequences for motivation" (Johnson in Gorecki, 1975: 59).

Notwithstanding the importance of this book, it does perpetuate some misconceptions of Petrażycki's work found in the Polish literature on the subject. Gorecki (1975: 13), as well as several of the contributors, apply the label of "introspective psychology" to Petrażycki's work. Peczenik, for example, notes, "Personally I believe that Petrażycki was right only to a limited extent" and "his theory, based on introspection, is a private theory of Leon Petrażycki reporting his own legal impulses. . . ." He also refers to a peculiar type of reference to allegedly "higher authorities . . ." (Peczenik in Gorecki, 1975: 86-88). Had Peczenik been more familiar with Piętka's "Notes," or at least with this author's book *"Przedmiot Metoda Sociologii Prawa (The Subject and Method for the Sociology of Law)*, he might wish to reassess this persistently misleading opinion.¹¹ But even so prestigious and competent a scholar as Ossowska held a similar view (Gorecki, 1975: 112). This labeling of Petrażycki as a psychologist neglects his shift to a more

¹¹ Paradoxically, Lenin somewhere in his writings also labeled Petrażycki as a psychologist who did not understand the reality of social life.

sociological expression of his thoughts and obscures his potential importance for the sociology of law.

Gorecki's book fails to deal with Petrzycki's approach to the problem of what constitutes the social order. According to Petrzycki the social order is based on an elaborated network of interrelations between official and intuitive law. He argued against the idea that the economic factor shapes the basic structure of a given society. Instead, he maintained that the contrary was true: different networks of official laws—especially intuitive “contracts,” “gentlemanly agreements,” and accepted “rules of the game”—shape the existing pattern of the economic establishment, since they constitute the very core of existing social order. Denzin did not grasp this essential idea when he stated, “that is, if law is imperative and attributive in character, then, as Petrzycki's examples show, nearly everything and anything is law or law-like” (Denzin in Gorecki, 1975: 78). Petrzycki's understanding of social order is additionally elaborated in his work: *Aktienwesen und Spekulation: Eine Okonomische und Rechtspsychologische Untersuchung*, and: *O Dopelniających Prądach Kulturalnych i Prawach Rozwoju Handlu* (On Complementary Cultural Currents and Laws of the Development of Commerce), where he tried to provide empirical evidence for the concept of the distributive function of the law. Incidentally, these forgotten works would probably shed light on and perhaps suggest some viable explanations of such present problems as the spiral of inflation and currency fluctuations, which are often affected by “psychology.” It might also be interesting to compare Petrzycki's work on the stock market with Weber's ideas on the same matter (Weber, 1894).

Another significant omission in this book is not elaborating sufficiently the concept of legal policy. Though it was among Petrzycki's principal and earliest concerns, he succeeded only in preparing what he considered the necessary methodological and theoretical background for such a science. Later development of the science of legal policy, by Roscoe Pound,¹² Karl Popper, Gunnar Myrdal, Karl Mannheim, and others showed quite clearly that law is only one of the possible instruments of potential social engineering. Managerial techniques, religion, education, the mass media, and other

¹² Pound wrote: “the relation of . . . Petrzycki's investigation of the process of motivation to recent new-realist theories of law is manifest. But American realists do not seem to have read him” (Pound, 1959: 344). Pound told this author (in 1960) that he himself “learned a lot from Petrzycki.”

“devices” play a complementary, and sometimes even more important, role than does obligatory law. Additionally, the techniques and effects of social engineering (sociotechnics) on the macro, mezzo, and micro levels were further elaborated. Sociotechnics tries to link socially accepted goals with instrumentally proper means on the basis of verified propositions and consistent methodological patterns. Consequently, the development of sociotechnics could be regarded as a next step towards the fulfillment of Petrazycki’s ideas of the final establishment of legal policy. A book edited by Cherns (1974) advances these ideas substantially.

There is one additional problem connected with Petrazycki’s humanistic heritage which still awaits careful analysis. As mentioned earlier, Petrazycki was “used” in Poland after 1945 as a camouflage for the development of an independent (from Marxism) sociology of law. Paradoxically, through this type of instrumental use of his name Petrazycki received some new scientific recognition; however, this was not the recognition which he deserved for his creative ideas but one which should be attributed rather to the dynamics of the development of Polish sociology of law. (In this context, it may be interesting to note that Petrazycki himself never used the term “sociology of law.”)

His concept of intuitive law is strongly related to the current empirical research in the area of public attitudes toward the law.¹³ The results of these empirical studies suggest some theoretical reflections about Petrazycki’s work. One can say that the social system tends to save its energy and, therefore, to fulfill its goals with the aid of a “cheaper” energy—i.e., moral values which appeal to the sense of obligation. Unnecessary, complicated, and costly systems of formal legal social control are reserved. However, where stronger vested interests are involved, the social system inculcates perceptions of mutual claims and obligations (intuitive law) reinforced by binding legal norms. If a social system exists in a state of relative equilibrium and is not oppressive, the norms of obligation and claim (which compose two sides of the same legal phenomenon) bind that system and support the official law by the intuitive one. In the case of an

¹³ In Poland at least five nationwide studies (on samples of around 3000 persons) conducted in the 1960s inquired into this area; similar work had been done in Scandinavia and some other European countries (e.g., Podgórecki *et al.*, 1973). All these inquiries, often comparative in nature, tried to find links between legal phenomena and moral attitudes in different societies, as well as to elucidate the different types of legal subcultures within various societies.

advanced conflict between these types of law, the social system may approach a critical point of disruption. Since that kind of conflict existed in the social laboratory of the Polish political-social system after 1945, it gave an ample opportunity to carry on a panel of studies of the real (not proclaimed as such) attitudes of the Polish population towards the law. Indeed, in an indirect way these inquiries helped to reveal malfunctions of the Polish legal system and to elucidate the gap between this legal system and social reality.¹⁴ Reflections on the links between these studies and Petrażycki's ideas are unfortunately omitted in this volume.

Still there are in this book some cosmetic flaws. It is incorrect to understand gangsters or children's impulsions as an official law (although they may be regarded as a positive when they refer to normative facts) as it is implied in Peczenik's vague interpretation (Gorecki, 1975: 85). It is also questionable whether Peczenik should use the book's too limited space to include his own rather questionable ideas on so-called legal dogmatics instead of making an effort to present more fully the ideas of Petrażycki (Gorecki, 1975: 95-103).

IV. CONCLUSIONS

Even in the modernized version presented in Gorecki's book, the ideas of Petrażycki will be criticized. Some critics (on the basis of those works of Petrażycki available in English) may say that his work is old-fashioned in its resemblance to the nineteenth-century Social Darwinist style; that it is comprehensive only in its intentions; and that it is not in touch with modern contemporary problems. But critics cannot deny that Petrażycki's theory is the most synthetic ever presented in the sociology of law. A comparison between Petrażycki's sociology of law and morality and those of Durkheim and Weber shows quite clearly that despite the prominence of these later scholars, Petrażycki's contribution is more elaborated and consistent. Too often the translation of

¹⁴ The law which systematically corrupts the society in which it operates contributes to the emergence of a sort of "dirty togetherness." Dirty togetherness is a unity of "fishy" interests interlinked on the basis of principle; *do ut des*. It binds together various partners of illegal actions by the mutual awareness of their activities, by their mutual involvement in them, by the possibility of reciprocal blackmail, and so forth. Paradoxically, accumulated vested interests put into the framework of dirty togetherness may "legitimize" the existing legal system, since it gives a stable matrix for mutually tested modes of secure operations. From Petrażycki's point of view, this situation may be regarded as an ideal example of the network of officially negative but socially binding intuitive law.

Petrażycki's concepts has pandered to the needs of research sponsorship and thus missed his unique world of meaning.

Future interpretations of Petrażycki's works should concentrate on the issue of social order and those forces which shape its structure and substance. The comprehensive and maieutic reading of Petrażycki's texts should elucidate more clearly his concept that law is the decisive factor structuring the fabric of the whole society.

The prevalent understanding of the law which restricts its images only to the official, positive ones leads to many errors. One of them is the Marxist fallacy: law in such an understanding is treated as an element of the "superstructure" which is predominantly shaped by the given "base." But an adequate understanding of the law, which takes into consideration its intuitive forms, alters this picture drastically.

The intuitive and official law, through its distributive function, allocates basic types of "rewards" (including material ones) to various segments of society, thus creating an elaborate network of official and unofficial economic and social networks. The allocation of existing socially productive skills, by the distribution of rights to use these skills, constitutes the core of this system. The law, in some societies, coordinates additionally all processes connected with the acquisition, amelioration, transfer, and withdrawal of these capacities—and consequently, commodities produced by them. The following passage gives a closer look at Petrażycki's classification of these skills and their interwoven relations:

If elements belonging to various economic levels come into contact, such an economic selection and such an adjustment occur (which is but natural and unavoidable) that the representatives of the higher virtue and economic culture perform the appropriately higher economic functions, requiring most qualifications and being the most valuable, demanding more of industrious intelligence and of virtue in general. If we divide the economically useful deeds and the expressions of economic activity into two classes: physical-technological (agriculture, husbandry, crafts, etc.) and psycho-judicial (legal contracts, buying and selling, provision of credit, etc. and their respective activities), then it is *a priori* obvious and it can be foreseen that the activity of the representative of the higher economic culture must be directed towards, and focused upon, mainly the latter psychojudicial fields of trade, credit, etc. If, as a further step, we divide the deeds and functions of the former kind, i.e., the physical-technological into two classes: (1) the repeated and routine, such as the perpetuation of the existing, inherited types of the explorative industries, the traditional crafts, etc., with the application of the inherited habits, patterns and routines, and (2) the innovative—such as the introductions of new kinds and varieties of industry, or of new types of enterprises in general, or of enterprises which carry out the old functions, but by means of the new, progressive organization or technology—then, if it is at all possible for the representatives of the higher economic culture to participate in the physical-technological section (permitted, e.g., by their continuous residence in appropriate

sites, etc.) their activity in this field ought to be focused in the sphere of innovation, within the functions of economic progress¹⁵ (Petrazycki, 1936: 6-7).

As the distributive function of the intuitive and official law designs the social and economic system of the society, so its organizational function shapes the administrative and constitutional fabric of the social whole. The system of the official law allocates different types and volumes of power (through distribution of rights and duties) to various social agencies. The organizational function of the law is consistently engaged in the law creation process. The organizational function of the law also “reifies” and “petrifies” its crucial institutions, and thus defends the whole system against its internal conflicts. The law is, nevertheless, able to survive its own total destruction when new intuitive law (based on changed perceptions of the allocation of rights and duties), contradictory to the old, breaks through the binding “Grund Norm” to turn itself subsequently into official law.

If distributive and organizational functions of intuitive and official law put into operation the entire social system, then the law indeed constitutes the dominant element of basic social changes of the whole social structure.

The articulation of this crucial idea of Petrazycki does not solve all of the persisting enigmas of his heritage. Some have a general character, and some are specific to the transmission of Petrazycki’s ideas. A partial list of questions would include the following:

(a) To what extent are the external circumstances of a scholar’s life (e.g., his or her deep roots in a given society and culture, academic continuity of work, scientific recognition) linked to the spread of certain ideas without reference to the inherent values of these ideas?

(b) To what extent do Petrazycki’s ideas on positional logic, classification of sciences, and a concept of adequate theories (ideas certainly more elaborated methodologically than Weber’s “ideal model”) provide sophisticated cognitive tools to penetrate social reality?

¹⁵ A possible utilization of these ideas should take into consideration another concept of Petrazycki. If societies are of “disparate” character (incompatible levels of economic development; historically antagonized; religiously, ideologically hostile, etc.) then transmission of certain capabilities (skills) from one to another and *vice versa* could be dangerously disruptive for one or both of them. This transmission may on the other hand enhance interventions regarded as beneficial in case of “compatible” (supplementing each other) social systems.

(c) What is the relationship between Petrażycki's value-free descriptive and explanatory approach to social behavior and his normative orientation (the emphasis on building a science of legal policy in order to implement "active neighborly love" among people)?

(d) Did Petrażycki alter his position from psychologically oriented to sociologically oriented, or, toward the end of his career, did he merely re-emphasize previously dormant sociological assumptions?

(e) What are the qualities of law which, according to Petrażycki, give it the decisive force to shape the fabric of an entire society?

APPENDIX A

Major Works of Leon Petrażycki

Die Lehre vom Einkommen, Vol. 1-2, Berlin 1893-1895; *Predislovie i vvedenie v nauku politiki prava* (Introduction to legal policy), "Universitetskije Izvestija," Kijev 1896, No. 8, 10; *Bona Fides v grazdanskom prave* (Bona fides in civil law), Petersburg 1897; *Vvedenie v izucenie prava i npravstvennosti* (Introduction to the study of law and morality), Petersburg 1905. Polish edition: *Wstep do nauki prawa i moralnosci*, Warszawa 1930; *Atkienwesen und Spekulation: Eine Okonomische und Rechtspsychologische Untesuchung* (The stock market and speculation: an economic and socio-legal study), Berlin 1906; *Teorija prava i gosudarstva v svjazi s teoriej npravstvennosti* (The theory of law and state in connection with theory of morality), Vol. 1-2, Petersburg 1907. Polish edition: *Teoria prawa i państwa w związku a teorią moralności*, Vol. 1-2, Warszawa 1959-1960. *Law and morality: Leon Petrażycki* (with introduction by T. Timascheff), Cambridge, Mass.: Harvard University Press, 1955; *Über die Motive des Handelns und über das Wesen der Moral und des Rechts*, Berlin 1907. Polish edition: *O pobudkach postępowania i o istocie moalności i prawa*, Warszawa 1924 (On the motives of action and on the essence of morals and law); *Uniwersitet i nauka* (Science and University), Vol. 1-2, Petersburg 1907; *O ideale społecznym i odrodzeniu prawa naturalnego* (On social ideal and revival of the natural law), Warszawa 1925; *O dopełniających prądach kulturalnych i prawach rozwoju handlu* (On complementary cultural currents and laws of the

development of commerce), Warszawa 1936; *Zagadnienia prawa zwyczajowego* (Problems of customary law), Warszawa 1938; *Nauka o kategoriach* (On categories), Warszawa 1939; *Nowe podstawy logiki i klasyfikacja umiejętności* (New foundations of logic and a classification of sciences), Warszawa 1939; *O filozofii* (On philosophy), Warszawa 1939; *Szkice filozoficzne* (Philosophical essays), Vol. 1 Warszawa, 1939.

REFERENCES

- BAZOWSKI, R. (1980) "Sociology and Law," Unpublished seminar paper, Carleton University.
- CAMPBELL, Colin and Paul WILES (1979) *Law and Society*. London: Martin Robertson.
- CHERNS, Albert (1975) *Sociotechnics*. London: Malaby Press.
- DURKHEIM, Emile (1901) Deux lois de l'évolution penale," in *L'annee Sociologique* Vol. IV.
- EHRlich, Eugen (1936) *Fundamental Principles of the Sociology of Law*. Cambridge, Mass.: Harvard University Press.
- GORECKI, Jan, ed. (1975) *Sociology and Jurisprudence of Leon Petrzycki*. Urbana, Ill.: University of Illinois Press.
- LANGROD, Georges and Michalina VAUGHAN (1970) "The Polish Psychological Theory of Law," in W. J. Wagner (ed.), *Polish Law Throughout the Ages*. Stanford: Hoover Institution Press.
- LICKI, J. (1976) "The Life and Work of Leon Petrzycki," Report delivered at the Scientific Session on Petrzycki of the Polish Sociological Association, November 11, 1976.
- LUKES, Steven (1977) *Emile Durkheim*. Harmondsworth: Penguin.
- MEYENDORFF, A. (1947) "The Tragedy of Modern Jurisprudence," in P. Sayre (ed.), *Interpretation of Modern Legal Philosophies*. New York: Oxford University Press.
- PETRAZYCKI, Leon: See Appendix A for abbreviated bibliography.
- PIĘTKA, H. (1933) *Przedmiot i Metoda Socjologii Prawa* (Subject and Method of Sociology of Law). Warsaw.
- (1952) *Notatki* (Notes). Archives of the Polish Academy of Sciences.
- PODGÓRECKI, Adam, Wolfgang KAUPER, Jean VAN HOUTTE, Beryl KUTCHINSKY, and Pieter VINKE (1973) *Knowledge and Opinion about the Law*. London: Martin Robertson.
- PODGÓRECKI, Adam (1974) *Law and Society*. London: Routledge and Kegan Paul.
- (1979) *Multidimensional Sociology*. London: Routledge and Kegan Paul.
- (1975) *Practical Social Sciences*. London: Routledge and Kegan Paul.
- POUND, Roscoe (1959) *Jurisprudence*. St. Paul: West Publishing.
- RUDZINSKI, Alexander (1976) "Petryzcki's Significance for Contemporary Legal and Moral Theory," 21 *The American Journal of Jurisprudence* 107.
- TIMASHEFF, N. (1955) "Introduction," to L. Petrzycki, *Law and Morality: Leon Petrzycki* (transl. H. W. Babb). Cambridge, Mass.: Harvard University Press.
- WEBER, Max (1924) "Die Borse," in *Gesammelte Aufsätze sur Sociologie und Sozial-politik*. Tubingen: J.C.B. Mohr.