

EDITORIAL

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## LEON PETRAŻYCKI, PSYCHOLOGICAL THEORY OF LAW\*

### LEON PETRAŻYCKI, TEORÍA PSICOLÓGICA DEL DERECHO

### LEON PETRAŻYCKI, TEORIA PSICOLÓGICA DO DIREITO

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## Resumen

El presente documento se centra en la importancia de Leon Petrażycki, un autor polaco relativamente desconocido, tanto en América Latina como en Polonia, cuya obra se enfoca en la sociología y la psicología jurídicas. El objetivo principal es evaluar su legado y la aplicación que tiene en la resolución de problemas legales y sociales contemporáneos. Se busca comprender cómo las ideas de Petrażycki pueden influir en el desarrollo futuro de la teoría jurídica y la sociología del derecho, destacando su enfoque psicosocial. Para lograrlo, se contextualizan la vida y la obra de Petrażycki, se explora su teoría psicosocial del derecho y se analizan las implicaciones de su enfoque en la comprensión actual del derecho y la moral. La investigación se lleva a cabo con un enfoque cualitativo que permite comprender la realidad de una situación específica mediante el ejercicio hermenéutico. La pregunta central es ¿cuál es la relevancia actual de la teoría psicosocial del derecho de Leon Petrażycki para la sociología del derecho y la teoría jurídica contemporánea y cómo pueden aplicarse sus conceptos a cuestiones legales y sociales actuales?

**Palabras clave:** realismo jurídico, motivación, emoción legal, psicología y derecho, teoría psicosocial del derecho.

## Abstract

This document focuses on the importance of Leon Petrażycki, a relatively unknown author in Latin America and Poland, whose work centers on sociology and legal psychology. The main objective is to assess his legacy and its application in addressing contemporary legal and social issues. It seeks to understand how Petrażycki's ideas can influence the future development of legal theory and the sociology of law, emphasizing his psychosocial approach. To achieve this, the life and work of Petrażycki are contextualized, his psychosocial theory of

law is explored, and the implications of his approach for the current understanding of law and morality are analyzed. The research is based on a qualitative approach that aims to comprehend reality in a specific situation through hermeneutic interpretation. The central question is: What is the current relevance of Leon Petrażycki's psychosocial theory of law in contemporary legal sociology and legal theory, and how can his concepts be applied to current legal and social issues?

**Keywords:** legal realism, motivation, legal emotion: psychology and law, psychosocial theory of law.

## Resumo

Este documento centra-se na importância de Leon Petrażycki, um autor relativamente desconhecido na América Latina e na Polónia, cujo trabalho se centra na sociologia e na psicologia jurídica. O objetivo principal é avaliar seu legado e sua aplicação na solução de problemas jurídicos e sociais contemporâneos. Procura compreender como as ideias de Petrażycki podem influenciar o desenvolvimento futuro da teoria jurídica e da sociologia do direito, destacando a sua abordagem psicossocial. Para conseguir isso, a vida e a obra de Petrażycki são contextualizadas, sua teoria psicossocial do direito é explorada e são discutidas as implicações de sua abordagem para a compreensão atual do direito e da moralidade. A pesquisa baseia-se em uma abordagem qualitativa que busca compreender a realidade em uma situação específica por meio da interpretação hermenêutica. A questão central é: Qual é a relevância atual da teoria psicossocial do direito de Leon Petrażycki na sociologia do direito e na teoria jurídica contemporânea, e como podem os seus conceitos ser aplicados às questões jurídicas e sociais atuais?

**Palavras-chave:** realismo jurídico, motivação, emoção jurídica: psicologia e direito, teoria psicossocial do direito.

## INTRODUCTION

In recent years, there has been a growing interest in an almost unknown author in the American continent, particularly in Latin America and Colombia. It could even be said that he was relatively unknown among his Polish contemporaries, perhaps because his work centers on legal sociology and specifically on legal psychology. This focus stems from his concern regarding how the judicial and administrative apparatus makes decisions, as these decisions may be influenced by their own empirical perceptions, personal behavior models, or prejudices.

The primary objective of this document is to contribute to the understanding of Leon Petrażycki's legacy in the field of legal sociology and legal theory. It aims to provide a comprehensive assessment of his contributions and their application in resolving contemporary legal and social issues. Additionally, it explores how his psychological or behavioral perspective could influence the future development of legal theory and legal sociology. The evaluation encompasses Leon Petrażycki's contribution to legal sociology and legal theory, emphasizing its relevance today and exploring the implications of his psychosocial approach in the contemporary understanding of law and morality.

Firstly, the life and work of Leon Petrażycki are contextualized to comprehend his cultural, educational, and political background. Secondly, Petrażycki's psychosocial theory of law is explored to outline the ideas that have influenced contemporary theories.

The analysis aims to answer the question: What is the current relevance of Leon Petrażycki's psychosocial theory of law for the sociology of law and contemporary legal theory, and how can his concepts be applied to address current legal and social issues?

To achieve this, a qualitative research methodology is employed, utilizing a descriptive legal approach that allows for an understanding and account of reality as it presents itself in a specific situation. Additionally, hermeneutic interpretation is used, focusing on a profound understanding of texts and the deconstruction of meanings beyond mere quantification.

## LEON PETRAŻYCKI

Petrażycki comes from noble Polish families. His father, Józef Petrażycki, due to tradition, fought against the Russians, especially during the January Uprising, resulting in the confiscation of his property. His mother, Rozalia née Czarnocki, had noble lineage in the Liz family of arms. As Petrażycki grew up, his family background posed a dilemma, as he pursued higher studies and wrote in Russia, and his political activism led him to be part of the Russian Duma. He studied medicine at the University of Kiev and later earned a Ph.D. in Roman Law at the State University of St. Petersburg. However, a Russian scholarship took him to study in Berlin, Heidelberg, Paris, and London.

His studies abroad allowed him to participate in discussions of the Historical School of Law, which debated the supremacy of law in Germany, considering both its Germanic and Roman aspects. The conceptual differences within this school were framed in the growing nationalism of the country. The Historical School of Law emerged in the early 19th century in response to ideological disputes. Its proponents opposed both legal positivism and natural law theories, advocating instead for a legal philosophy rooted in historicism. The school had strong ties to conservative thought, the German National Movement, and the philosophy of Georg Wilhelm Hegel, who would be criticized by historians (Puchta and Rudorff, 1852; von Savigny, 1879; von Savigny et al., 1908).

The symbolic beginning of the school is attributed to the controversy between Anton Thibaut and Friedrich Carl von Savigny. Thibaut advocated for the need for a general civil code in Germany, inspired by the Napoleonic Code, while Savigny argued that legal proposals should be based on a deep understanding of the spirit and history of the nation. He rejected a one-size-fits-all approach. Representatives of the historical school believed that laws were expressions of a nation's development and could not be separated from it. They saw laws as a language deeply connected to the nation and unsuitable for transplantation elsewhere. Although most rejected the idea of universal law (such as natural law), some, like Georg Friedrich Puchta, believed in certain general legal principles that could be transferred between nations (Puchta and Rudorff, 1852; von Savigny, 1879; von Savigny et al., 1908).

According to these historians, law evolved irrationally and unconsciously, making them reluctant to codify it. They considered codification a calculated process that hindered the organic development of law within a nation. They opposed the legislative activity of the state, asserting that the role of the state was to recognize, strengthen, and refine existing laws. Custom played a crucial role, and legal scholars, as representatives of the people, had the responsibility to shape customary laws. A significant debate within the historical school focused on the role of Roman law. Romanists (such as Savigny and Puchta) believed in the compatibility of Roman and Germanic legal traditions, while Germanists (such as Eichhorn and Bluntschli) sought to purify German law by returning to ancient Germanic and medieval legal traditions, rejecting Roman influence. Although the school failed to prevent the codification of German law, it left a lasting legacy in legal research and the methodology of social sciences, contributing to the purification and reconstruction of legal history, especially in Roman and Germanic contexts (Puchta and Rudorff, 1852; von Savigny, 1879; von Savigny et al., 1908).

Regarding the historical school, Leon Petrażycki argued that historians seeking models in legal institutions of the past were mistaken. He maintained that Roman law was dynamic because it adapted to the challenges and needs of its time. Instead of copying ancient institutions, the law should adjust to the current social and economic situation. He believed that a civil code should start by diagnosing contemporary social needs. Furthermore, he criticized the Germanist tendency of the Historical School of Law, arguing that their praise of customary law had conservative political motivations. This trend aimed to counter the growing influence of socialists in the Reichstag, supporting the Junker party, which opposed social reforms, in addition to a rising nationalist view that was not grounded in any real historical fact that could surpass the influence of Roman law.

## LEON PETRAŻYCKI'S THOUGHT

What is known about Petrażycki is primarily based on a historical reconstruction of his manuscripts and the texts he published in Germany. These documents present his theory of law. Petrażycki argues that law is not merely a set of norms; rather, it is a psychological phenomenon, a special emotional production with two dimensions: an imperative one (the feeling of being obligated by a certain type of duty, obligation, order, or prohibi-

tion) and an attributive one (the individual's feeling related to the law, and the awareness of appropriation and recognition of their right and ability to enforce it). Thus, law is not merely a linguistic form that distinguishes between linguistic formulations of legal norms and the psychological states that truly impact human behavior. The author asserts that the law must adapt to the current social and economic situation, based on a diagnosis of contemporary social needs (Stanek, 2015; 2017; 2022; 2023).

Petrażycki distinguishes three types of law: intuitive, positive, and official. Intuitive law is subjective and volatile, based on individual experiences. Positive law combines individual judgments with external "normative facts," providing more stability and objectivity. Official law is closest to the traditional notion of law, applied by state authorities. Petrażycki also addresses the relationship between law and morality, arguing that both are emotions, but morality is unilateral, and law is bilateral, involving both duty and right. Additionally, he expands the concept of law to include phenomena often considered moral (Stanek, 2015; 2017; 2022; 2023).

Regarding social evolution, Petrażycki promotes an ideal of universal love and the universal socialization of humanity. He sees human evolution as a process of moral improvement through socialization, with law playing a crucial role in that process. Evolution is achieved by controlling positive and negative emotions to strengthen tendencies favoring the socialization of individuals, leading to better adaptation to collective life and the expansion of altruistic motivations. This process is known as the policy of law. Therefore, the author believes that societies can improve through moral evolution, as overcoming violence and increasing cooperation reduces crimes and their repression. To reach this point, norms that support the process, rather than impede it, must be in place (Stanek, 2015; 2017; 2022; 2023).

Furthermore, Petrażycki witnessed the moment when Pitirim Aleksándrovich Sorokin led one of the many debates on the relationship between the psychological and sociological schools in the field of social theory. Sorokin believes that, despite similarities, these schools mainly differ in their methodological approach. The sociological school tends to explain psychic phenomena based on social conditions, considering them derivatives of interaction processes and societal circumstances. In contrast, the psychological school starts with individual psychic characteristics as variables and seeks to interpret social phenomena as their derivatives or manifestations (Sorokin, 1928).

Sorokin emphasizes the historical importance of psychological interpretation in social thought, from primitive animistic beliefs to ancient philosophers like Confucius, Plato, Aristotle, the Stoics, and others who emphasized the influence of the mind and psychic characteristics on human condition and society. He mentions two historical psychological approaches: introspective and mechanistic or behavioral. The former focuses on exploring the individual mind, while the latter adopts a more materialistic approach. Additionally, he highlights that, despite the diversity of psychological approaches of that time, there was still no generally accepted psychology, and each psychological stream offered its interpretation of human behavior and social phenomena (Sorokin, 1928).

Petrażycki attempts to understand the norm from sociology and psychology, creating a division between intuitive law and positive law. Intuitive law refers to a broad concept of law that encompasses imperative-attributive experiences independent of the idea of authoritative normative facts, such as statutes or customs. Positive law refers to law originating from legislation or custom, with its content varying by nation and era. Modern jurisprudence relies on a narrow legal term that does not consider the possibility of a scientifically free classification of phenomena and does not recognize the existence of intuitive law. However, the term positive law is used in modern jurisprudence despite lacking a solid scientific and logical foundation (Timasheff, 1955).

The doctrine of natural law, developed in the 17th and 18th centuries, posits the existence of a universal and constant law, independent of legislation or custom, based on nature or divine reason. However, this doctrine was replaced by the historical school of jurisprudence in the 19th century, which denied the existence of natural law and argued that positive law gradually develops based on the national spirit and is not arbitrary (Timasheff, 1955).

Despite the rejection of natural law by historical jurisprudence, there was a resurgence of the idea of natural law in legal literature in the late 19th and early 20th centuries. Some propose a renaissance of natural law, arguing that it is possible and necessary to create a science of legal politics based on the psychological study of law and its motivating and cultural-educational action (Timasheff, 1955).

However, natural law should not be considered a separate law from positive law. Instead, ideas about desirable and reasonable law should be seen as normative projects. These ideas should not violate the principles of



classification or rules for forming class concepts in jurisprudence (Timasheff, 1955).

In other words, it is necessary to combine positive law (with its nationalist spirit) and natural law, which better explains jurisprudence because it allows understanding the psychological factor termed intuitive law and is adaptable, free from fixations, and gradual in its development, as required by judicial decisions. The relationship between intuitive law and positive law can be described as follows:

1. Intuitive law is based on the individual conditions and circumstances of each person, such as their character, upbringing, education, social status, occupation, personal relationships, etc., making it unique for each individual. In contrast, positive law is based on patterns of pre-established rules applied to broader groups of people (Timasheff, 1955).
2. Intuitive law freely adapts to the specific circumstances of each case and is not limited by patterns of pre-existing precepts, unlike positive law, which has pre-established rules and customs (Timasheff, 1955).
3. Intuitive law undergoes gradual and symmetrical development, not subject to fixation or fossilization. In contrast, positive law may lag behind the constant evolution of life or develop prematurely or inappropriately due to factors such as lack of cultural preparation or individual or group motivations (Timasheff, 1955).
4. Despite its flexibility and adaptability, intuitive law does not necessarily guarantee better quality or perfection in its content compared to positive law (Timasheff, 1955).
5. Intuitive law has a simpler and less abundant intellectual content compared to positive law. Additionally, it lacks ideas about normative facts in its structure (Timasheff, 1955).
6. Intuitive law has a much broader scope and wider applicability compared to positive law. Positive law relies on authoritative normative facts and is limited in time, place, and persons, while intuitive law seems to have universal and constant validity (Timasheff, 1955).

7. In the case of intuitive law, norms are considered intrinsically valid and true, regardless of local and temporal mandates or customs. In contrast, norms under positive law often depend on specific circumstances and are considered conditional (Timasheff, 1955).
8. Intuitive law tends to have a greater emotional and motivational impact compared to positive law. This can lead to a higher intensity in the application of intuitive law norms (Timasheff, 1955).

This leads to the practical observation that many social interactions are governed by intuitive law rather than positive law, especially in personal relationships and situations where positive law does not provide specific guidance. However, it is acknowledged that positive law remains necessary in many aspects of social and legal life (Timasheff, 1955).

In this way, the following questions arise:

1. Where does positive law exist and operate exclusively?
2. Where does intuitive law exist and operate exclusively?
3. Where do both positive and intuitive laws coexist and operate parallelly?

In general terms, intuitive law and positive law must coincide in fundamental content and direction in the third field, as this is essential for the existence of a stable legal and social order. However, inevitable differences are recognized in some details due to the diversity of society and the fact that intuitive law evolves gradually over time, while positive law may lag in its development (Timasheff, 1955).

Divergences between intuitive law and positive law can be classified into three main categories:

1. Class and individual conflicts: Due to differences in the structure of society and individual mentalities, positive law may not align with intuitive law for all groups and individuals, leading to conflicts (Timasheff, 1955).

2. Historical or evolutionary conflicts: Since intuitive law evolves gradually over time, there may be discrepancies with positive law, which has not followed the same pace of development (Timasheff, 1955).
3. Casuistic conflicts: In the application of law to specific cases, interpretations of positive law may clash with the conscience of intuitive law of the parties involved, resulting in discord (Timasheff, 1955).

That is why intuitive law influences the application and development of positive law through psychic pressure and the formation of norms in society. Intuitive law can affect the interpretation of legal sources and the creation of laws. Moreover, when conflicts arise between intuitive law and positive law, the pressure from the former can lead to the modification or abolition of the latter, even through revolutions (Timasheff, 1955).

However, the traditional explanation that revolutions arise due to class conflicts is not sufficient, as history demonstrates that for centuries, oppressed classes did not incite revolutions as long as they believed in the existing justice. Additionally, revolutions are not solely based on economic interests but also depend on psychological factors such as age, intelligence, and personality. In other words, it is necessary to combine ethical and moral aspects because morality and legal consciousness are significant drivers of revolutionary action. It is evident, then, that intuitive law and positive law influence each other. Intuitive law may be influenced by positive law through education and social environment, while positive law may change as intuitive law evolves (Timasheff, 1955).

Throughout history, the concept of justice has been a subject of reflection in philosophy, morality, and jurisprudence because justice is a manifestation of intuitive law, as its nature is ethical, based on imperative-attributive impulses. That is why justice is related to equality and is considered a combination of equality with other principles such as benevolence, freedom, and truth. Justice is not about utilitarian calculations or convenience but about a sense of what is due and right according to conscience. Although justice is closely related to law, it is not limited to positive law,

as it is part of intuitive law. Justice is projected into norms and obligations, and its application may vary depending on circumstances and individuals. Therefore, the nature of justice is a manifestation of intuitive law, based on ethical imperative-attributive impulses, which have a direct relationship with equality and their ability to influence the interpretation and evolution of positive law (Timasheff, 1955).

## CONCLUSIONS

Despite being a relatively unknown figure in Latin America and Poland, Leon Petrażycki has left a significant legacy in the field of sociology of law and legal theory. His focus on legal psychology and the influence of emotions on legal decision-making set him apart from other legal thinkers.

Petrażycki's work centers on the relationship between law and psychology, arguing that law is not merely a set of norms but a psychological phenomenon involving emotions such as the sense of duty and the recognition of rights. This psychosocial perspective on the law is relevant for understanding how individuals interpret and apply the law in practice.

Additionally, Petrażycki contributed to the discussion on the relationship between law and morality. He asserted that both are emotions, but the law involves both duty and right, whereas morality is unilateral. This distinction is crucial for understanding how legal and moral norms interact in society.

Petrażycki's theory on social evolution through socialization and the influence of law in this process underscores the importance of normativity in building a more just and cooperative society. His emphasis on strengthening altruistic tendencies through emotional control has significant implications for understanding morality and ethics in society.

Furthermore, Petrażycki addressed the relationship between intuitive law and positive law, arguing that both coexist and mutually influence each other in social and legal life. His analysis of how these two forms of law can conflict and how intuitive law can influence the interpretation and evolution of positive law is relevant for understanding challenges and changes in the legal system.

In conclusion, Leon Petrażycki was an influential thinker whose ideas on legal psychology, morality, justice, and the interaction between intuitive and positive law remain relevant in contemporary sociology of law and le-

gal theory. His focus on the psychosocial dimension of the law provides a unique perspective for addressing current and future legal and social issues. His legacy deserves more attention and recognition in academic and legal circles.

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**Leon Petrażycki, teoría psicológica del derecho \***

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