

ARTÍCULO DE INVESTIGACIÓN

EMOTION, MOTIVATION, AND LAW.
NEW INSIGHT INTO THE PSYCHOLOGICAL
THEORY OF LAW*

EMOCIÓN, MOTIVACIÓN Y DERECHO.
NUEVAS PERSPECTIVAS SOBRE LA TEORÍA
PSICOLÓGICA DEL DERECHO

EMOÇÃO, MOTIVAÇÃO E DIREITO.
NOVAS PERSPECTIVAS SOBRE A TEORIA
PSICOLÓGICA DO DIREITO

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Resumen

Las investigaciones que se vienen realizando en el campo de la psicología, la neurociencia y otras ciencias empíricas expanden significativamente nuestra comprensión de la relación entre las emociones, la motivación y el derecho. Sin embargo, la mayoría de los estudios se centran en cuestiones legales específicas y no presentan de manera coherente la importancia de las emociones y la motivación en la teoría legal. Por ello se considera necesario discutir un marco teórico más amplio que permita utilizar el conocimiento adquirido de manera integral y explicar la naturaleza del derecho. Con este fin, se sugiere recurrir a la teoría psicológica del derecho. Esta teoría desarrollada por Leon Petrażycki a principios del siglo XX todavía es poco conocida y reconocida por los teóricos legales de habla inglesa. Para ello se analizarán las ideas clave que constituyen la base de la teoría psicológica del derecho. Se presta especial atención al análisis de la naturaleza de la experiencia legal y sus elementos, es decir, las emociones, la representación, la asociación y la motivación. Se postula que es posible desarrollar una versión actualizada, basada en el conocimiento científico moderno, de la teoría psicológica del derecho de Petrażycki que explique de manera coherente y adecuada el carácter motivacional del derecho.

Palabras clave: realismo legal, motivación, emoción legal, psicología y derecho.

Abstract

The research being conducted in the field of psychology, neuroscience, and other empirical sciences significantly expands our understanding of the relationship between emotions, motivation, and law. However, most studies focus on specific legal issues and do not consistently present the importance of emotions and motivation in legal theory. Therefore, it is considered necessary to discuss a broader theoretical framework that allows us to use acquired knowledge comprehensively and explain the nature of the law. To this end, it is suggested to turn to the psychological theory of law. This theory, developed

by Leon Petrażycki at the beginning of the 20th century, is still little known and recognized by English-speaking legal theorists. Key ideas that form the foundation of the psychological theory of law will be analyzed. Special attention is given to the analysis of the nature of the legal experience and its elements, such as emotions, representation, association, and motivation. It is postulated that it is possible to develop an updated version of Petrażycki's psychological theory of law, based on modern scientific knowledge, which coherently and adequately explains the motivational character of law.

Keywords: legal realism, motivation, legal emotion, psychology and law

Resumo

As investigações realizadas no campo da psicologia, da neurociência e de outras ciências empíricas ampliam significativamente a nossa compreensão da relação entre emoções, motivação e direito. No entanto, a maioria dos estudos concentra-se em questões jurídicas específicas e não apresenta de forma consistente a importância das emoções e da motivação na teoria jurídica. Por este motivo, considera-se necessário discutir um quadro teórico mais amplo que permita utilizar os conhecimentos adquiridos de forma integral e explicar a natureza do direito. Para tanto, sugere-se recorrer à teoria psicológica do direito. Esta teoria desenvolvida por Leon Petrażycki no início do século XX ainda é pouco conhecida e reconhecida pelos teóricos jurídicos de língua inglesa. Para isso, serão analisadas as ideias-chave que constituem a base da teoria psicológica do direito. Especial atenção é dada à análise da natureza da experiência jurídica e dos seus elementos, ou seja, emoções, representação, associação e motivação. Postula-se que é possível desenvolver uma versão atualizada, baseada no conhecimento científico moderno, da teoria psicológica do direito de Petrażycki que explique de forma coerente e adequada o caráter motivacional do direito.

Palavras-chave: realismo jurídico, motivação, emoção jurídica, psicologia e direito.

INTRODUCTION

In legal theory and the philosophy of law, interest in the achievements of contemporary psychology, evolutionary and social psychology, and broadly understood neuroscience, as well as other empirical sciences, has been increasing for at least several years. Attempts have been made to use this knowledge in law, however, they seem insufficient, random and even eclectic. They often refer only to a specific legal problem or a narrow group of legal issues. They lack a broader theoretical framework and complexity. Despite the abundance of knowledge gained in the scope of empirical sciences, with legal theory we are still stuck at the same point; we have not yet found out how to use this knowledge in a more complex manner, or how to explain the phenomenon of law on the grounds of this knowledge.

Perhaps, we are mistaken. Perhaps, we are wasting our efforts on something that has existed since long ago. Perhaps, we already have a tool, a theoretical framework we can use. In this text, I will try to show how these assumptions might prove to be correct and, to this end, I propose referring to legal realism, and more specifically, to the psychological theory of law. This theory was developed at the beginning of the 20th century and currently seems to be almost forgotten. It was proposed by Leon Petrażycki, Professor of the St Petersburg University and the University of Warsaw, whose works are still little known or recognised in the English-speaking world of legal theory (Brożek, 2018). The approach proposed by Petrażycki and developed by his students emanates a freshness and brilliance of perspective on some eternal questions in legal theory and the philosophy of law: what is law? Why do we behave in compliance with the law or against legal norms? What is justice?

In this text, it is impossible to discuss the entire psychological theory of law, therefore, in the further part, only the key ideas that constitute the foundation of the psychological theory of law will be presented. With this in mind, the main elements of the psychological theory of law will be indicated: the nature of law, the correlation between law and morality, the idea of justice, legal norms, and a legal system. In fact, it is quite apparent that the aforementioned issues constitute the essence of each theory of law.

LEGAL EXPERIENCES AS LAW

The revolutionary character of the psychological theory of law primarily lies in the fact that at the most basic level, law is considered as a psychological experience (i.e., a legal experience). The change in the perspective consists not only in referring to psychology but also in the fact that it is in a way internal, i.e., it concerns an individual context (Stanek 2015, 2017). To put it simply, legal experience emerges as a result of a connection (association) of a representation of a certain behaviour with a legal emotion, in effect, an incentive, motivation for our behaviour is generated. Legal experiences play a significant role in our behaviour, because they act as ‘motives for behaviour, inducing one to undertake some actions and refrain from others (motivational impact of ethical experience)’ but also ‘cause some changes in the psyche (dispositional) of individuals and overall, developing and strengthening one’s habits and inclinations while weakening and uprooting others (pedagogical and educational impact of ethical experiences)’ (Petrażycki, 2000 [1909-1910], pp. 126-127). In the further sections, particular elements of this concept, i.e., emotions, representation, association, and motivation are discussed.

Emotions

In Petrażycki’s theory of law, emotions play the most important role¹. According to him: ‘actual impulses of our behaviour [...] consist in emotions’ (Petrażycki, 2000 [1909-1910], p. 26). Emotions become an impulse to take action and conduct various types of activities, directly causing physiological and mental processes in the body. Emotions constitute the foundation of the psychological theory of law. Nevertheless, identifying emotions with law would be an excessive simplification of this approach; what matters is, in fact, how emotions are understood in this approach.

1 Petrażycki indicates that we feel a lot of emotions which we often do not notice and are not aware of. They remain in a way hidden from us. Simultaneously, we feel certain emotions very clearly and we are able to observe them. The answer can consist in the fact that we are able to notice only emotions that differ from the norm. The ones that are especially intensive. The method that allows studying emotions is introspection, supported by the method of provocation and counteraction.

We should start with the fact that in Petrażycki's time, studying psychological phenomena was at an early stage, thus, using the psychological approach to law was a real challenge, made all the more demanding as it required establishing the basis of psychology. Therefore, Petrażycki started constructing his theory by creating strictly psychological concepts. He proposed his own classification of psychological phenomena in which emotions constitute a separate and basic part thereof (Woleźski, 2018). Petrażycki proposed distinguishing bilateral, passive-active experiences which he defines as emotions, and unilateral experiences, being active - will; passive – cognition and feeling.

Each of the emotions can have an off-putting (repulsive) or attractive (appulsive) effect. The repulsiveness of emotions can be demonstrated, on the one hand, by the fact that they restrain us from taking action (their source is internal), e.g., we can feel them as shame. On the other hand, we can feel repulsive emotions due to external factors; we experience this type of emotion as generated from the outside (e.g., off-putting emotions when we enter a dark cave). However, in fact, the differentiation of external and internal is not crucial what is important is that we experience it internally as off-putting. For some, an event causes shame and restrains them from taking action, and for others, the same might cause indifference or even be enticing. It is the same case with external factors: for some, entering a dark cave is off-putting, but for others, it may be exciting.

Two basic categories are distinguished among emotions. First of all, special emotions that cause (relatively) pre-defined and predictable behaviour, that is, in a way, a specific action. Taking action is understood as a combination of physiological and mental processes caused by emotions. In compliance with the psychological theory of law, 'special impulses have a tendency to transform a body (...) for some time into an apparatus specifically adjusted to perform a particular biological function and acting towards this aim' (Petrażycki, 2000 [1909-1910], p. 27). In such an understanding, the main aim of the existence of special emotions and actions thereof becomes adjusting to the environment and surviving. Nevertheless, it should not be concluded from the above that special emotions' actions are predestined, i.e., in each case, pre-defined and always the same. It is crucial that a special emotion does not always cause the same set and sequence of movements.

The nature of this type of determinacy is relative and not absolute². Therefore, determinacy of action mainly concerns the general direction of action. Similar to when we like or hate someone, our emotions will be demonstrated in a series of various actions, but their direction will be properly determined.

The other general category comprises abstract emotions. These are emotions whose actions are not defined in any manner. Abstract emotions do not even determine a general direction of actions undertaken by us. They are ‘an inducement for all types of behaviour, as they stimulate taking action, the representation of which is experienced as a result’ (Petrażycki, 2000 [1909-1910], p. 29). This type of emotion includes ethical emotions (also called emotions of obligation)³. They are caused by orders or bans directed at us.

In compliance with the above definition, ethical emotions stimulate us to undertake such activities (behaviours), the representation of which we experience jointly. They are characterised by the following:

1. They have a specific authoritative, and even mystical-authoritative, character. Ethical emotions effectively counteract other wants since they are understood as emotions of greater significance, higher power and authority. Additionally, in our perception, they appear in a way separately from our ‘I’ (Petrażycki, 2000 [1909-1910], p. 45). An indication of this feature of ethical emotions can be found in descriptions such as ‘voice of conscience’, and ‘listen to your conscience’. It is in a way a voice which we understand as something beyond our ‘I’. We conform to this voice, behave in accordance with its orders.
2. They are experienced as an internal restriction of freedom and choice, as a kind of ‘obstacle to free choice and satisfaction of

2 By comparing the way in which special emotions act in other animals, Petrażycki indicates that their actions are of a more absolute nature, they are to a significantly higher extent constant.

3 Max Laserson – a direct student of Petrażycki – who continued his theory primarily in the psychological direction, states that ‘special emotions could be called biological-adaptive, and blank ones – social-adaptive’ M. Laserson, *Obszczajna teoria...*, p. 82. Another well-known continuer of Petrażycki’s work – Georgij Gins, who proposes to separate biological and cultural emotions, was of a similar opinion. As biological emotions, he understands emotions which are connected to satisfying biological needs and which are specific for all living beings (e.g., hunger, sleep, fear). Cultural emotions occur only in people since they depend on functioning in a society (are generated under the influence of interactions and communication in the society). G. Gins, *Nowyje idiei...*, pp. 520–525; G. Gins, *Oczerki socjalnoj psichologii...*, p. 41.

our tendencies, wishes and goals, acting as an irresistible pressure towards behaviour, from which the emotions connect' (Petrażycki, 2000 [1909-1910], p. 46). This characteristic feature of ethical emotions is reflected in language. Norms of behaviour are defined not as requests or advice, but as a command (law, order, or ban). Moreover, the individual at whom norms of behaviour are directed remains bound by them (he or she is obliged).

One type of ethical emotion is legal emotion, which, on the one hand, is of an imperative nature, meaning it generates a sense of duty, obligation, while on the other hand, at the same time we feel that it gives others the right (the claim) to expect from us fulfilment of this obligation as a right vested in them. Legal emotions are imperative-attributive, in other words, they can be described as binding-entitling. Legal emotions correspond with more complex intellectual structures (i.e. due to their being bilaterally binding: subject of obligation - subject of law, etc.).

Due to the attributiveness of legal emotions, their impact is more important and more motivating than other ethical emotions. Attributiveness that is the existence of the entitlement (claim) gives additional motivating power; additional pressure in the direction of relevant behaviour.

Representations

Another obligatory element of legal experiences is representations. According to Petrażycki, 'it is impossible to experience an obligation without a representation of a behaviour to which a given individual is obliged' (Petrażycki, 2000 [1909-1910], p. 340).

He differentiates numerous types of representations. Among them, action representations, that is, representations of behaviour that occupy the key place. These are representations of 'a behaviour in the direction of which, or against which, given ethical emotions function' (Petrażycki, 2000 [1909-1910], p. 340). A representation of a certain action (even in the future or in the past) causes the occurrence of associative emotions.

Representations of normative facts are distinguished among the most important groups of representations. In this theory, normative facts are understood not as external phenomena, but as their representation (Petrażycki, 2000 [1909-1910], p. 367). Representations of normative facts are representa-

tions of facts, which indicate the contents and determine the validity of duty (e.g., one should behave in a specific manner, because this is customary). In such a depiction, normative facts can be represented as conditions of specific legal relationships, rights or obligations. We can also represent them as actually existing in the past or in the present and, in this case, they act as a psychological basis for attributing and reinforcing rights and obligations.

Additionally, we can distinguish the following types of representations: representations of ethically important facts (in other words, representations of ethical conditions), which can be categorical (i.e., unconditional, e.g., ‘do not kill’) and hypothetical (i.e., conditional); representations of the subject of the obligation and laws; subjective representations (e.g., representation of time, place) and others.

Association

A connection (association) of legal emotion with specific representations results in the occurrence of legal experience, which sets the direction and character of the undertaken actions.

Legal emotions can be associated with various types of action representations, including such mental phenomena as love or respect (Petrażycki, 2000 [1909-1910], p. 101). Simultaneously, there are no restrictions regarding representations, e.g., a representation of subjects of obligations and laws is not limited to people, these can be animals, objects, and even beings non-existent in reality.

Due to the fact that legal emotions belong to abstract emotions, they do not themselves determine the character and direction of a behaviour. Therefore, they can, depending on associated action representations, lead to an action which we will consider either socially harmful or useful. What does, therefore, define the character and direction of our behaviour? In compliance with the psychological theory, it is the social-psychological processes. Admittedly, we will find only an outline of these processes in this theory, nevertheless, these are processes strictly connected with the functioning of a given person in society. Under their influence, socially desirable behaviours are reinforced and socially harmful behaviours are eliminated⁴. As

4 In general, L. Petrażycki believed that law is of pedagogical significance – it educates and develops positive examples of behaviours.

an effect thereof, ethical emotional-intellectual associations occur, which determine the direction of our actions (Petrażycki, 2000 [1909-1910], p. 127). In the psychological theory, these processes are explained with the use of the evolutionary approach (primarily, treating law as a product of subconscious processes of adaptation). Among these processes, the shape of law is influenced by the following: social adaptation, emotional contagion, and social-psychological selection (Motyka, 1993, Mereżko, 2017).

Motivation

The motives of our actions are ethical experiences; legal or moral, based on emotions triggered by representations. In the process of motivation, a stimulus/impulse to undertake/desist an action occurs.

Several types of motivation are distinguished in the psychological theory of law. It is worth noting that the classification of the types of motivation adopted in this theory is highly developed and the criteria distinguishing consecutive subtypes are not strict. In the further part, the most important ones will be presented in brief.

In the case of feeling-emotional motivation, a decisive role is played by the feelings of pleasure or unpleasantness which cause emotional excitement and, in effect, inspire taking actions or restraining our activity. In the area of motivation, not only representations of existing pleasures or suffering but also representations of future pleasures and suffering have a motivational impact. The basic condition (for motivation) is that these types of representations stimulate emotions. In consequence, emotions related to the feeling of pleasure or suffering stimulate behaviour. In this context, pleasure usually results in attracting (appulsive) emotion, and suffering results in off-putting (repulsive) emotion.

In case the main role in the occurrence of motivation is played by more complex intellectual processes, such motivation is described as intellectual-emotional motivation. It is, at the same time, the most developed group of motivation among which the following are distinguished:

- Goal-oriented (teleological) motivations, which follow a motto 'in order to'. They consist of representing effects of our activities and, in consequence, cause emotions that are stimulating (or restraining) achievement thereof.
- Basic motivations, in short, defined as 'because'. They are connected to the representation of a situation from the past or existing at a specific moment.
- Subjective motivations, in which the representation of a specific subject alone causes a repulsive or appulsive emotion. For example, emotions which are responsible for an animal running away from a hunter – a repulsive emotion. In this case, the motivation process proceeds without goal-oriented representations. Subjective motivation occurs much more often in comparison to other types of motivation. From the perspective of protection, development, and evolution of life, subjective motivation has an advantage, since it allows quick adjustment to changing circumstances, especially in comparison with goal-oriented motivation, the process of which is much more complex and time-consuming. All basic survival functions follow subjective motivation.
- Action motivations, which connect the representation of a specific behaviour with appulsive or repulsive emotions. Motivational processes in which emotions stimulate us to act or refrain from acting under the influence of the same representations of actions, which should be taken, i.e. action representations (Petrażycki, 2000 [1909-1910], p. 35). The representation of behaviour itself is sufficient without other cognitive processes, e.g., goals. Types of motivations that join a representation of a given action with ethical emotions are of the highest importance and are defined as ethical motivations.
- Purely emotional motivation – the simplest type of motivation, in which intellectual processes do not take part, a prototype of motivation. Emotions are generated with regard to physical processes (motor stimuli) without the participation of mental processes such as feelings or perception. For example, after sleeping we wake up (motor stimuli are generated which make us get up).

LAW VERSUS MORALITY

The correlation between law and morality is another crucial subject matter for each theory of law. Therefore, what is the difference between law and morality in compliance with the psychological theory of law? The basic difference between law and morality is the attributive character of legal emotions. Both moral and legal emotions have an imperative character. Imperativeness is understood as the state of being bound by a certain type of duty, but at the same time, there is no sense that a specific action is expected from us. Moral emotions are unilaterally binding and are also defined as claimless. Examples of such emotions are emotions related to religious orders and bans.

The imperative-attributive essence of legal emotions corresponds with a more complex intellectual structure, in comparison to morality, the intellectual structure of which is simpler (only the subject and object of obligation). The attributive character results in the fact that, apart from the awareness of obligation, there is also awareness of the right (claim). Attributiveness is understood as a feeling related to the entitled person, awareness of the existence of an entitlement. Due to the attributiveness of legal emotions, their impact is more important and more motivating than other moral emotions. Attributiveness gives this awareness an additional motivating power; additional pressure in the direction of appropriate behaviour.

According to Petrażycki, one of the social progress mechanisms is desiring behaviour which was initially associated with imperative emotions (only an awareness of the obligation occurred) – moral emotions, and then, over time, they are associated with imperative-attributive emotions – legal emotions.

Ethical experiences, including representations of normative facts and relevant obligations and norms, are defined as positive in contrast to those without representations of normative facts and obligations and norms, which are defined as intuitive. If anyone undertakes any action (e.g., helps others) themselves, without any external authorities (God, law) then, relevant ethical experiences and projections thereof – duties and norms – are intuitive.

The schematic presentation of elements which may include legal and ethical experiences has been provided below. It is crucial that not always all of the elements indicated in the table below are present in ethical representations. Moreover, imperative-attributive experience is possible without

additional imperative and attributive elements (representations of subjects of obligations and laws) (Petrażycki, 2000 [1909-1910], p. 81).

Tabla 3.1 XXXXXXXXXX

		Moral experiences	Legal experiences
Ethical emotion		Moral (imperative) emotions	Legal (imperative-attributive) emotions
Action representations		Moral actions (subjects of moral obligations)	Legal actions (subjects of legal obligations)
Representations of obligation subjects		Representations of moral obligation subjects	Representations of legal obligation subjects
Representations of ethically significant facts		Moral hypothesis (e.g., if someone slaps you on the cheek...); moral disposition (e.g., turn the other cheek); moral facts (e.g., hitting, hurting)	Legal hypothesis (e.g., in the case of causing damage), legal disposition (e.g., the injured has the right to indemnity), legal facts (e.g., damage)
Representations of normative facts	Yes	Positive morality	Positive law
	No	Intuitive morality	Intuitive law
Representations of subjects and objects of laws		None	Has (an attributive character)

LAW VERSUS JUSTICE

Each theory of law is, in fact, based on the idea of justice. What is justice in psychological theory? In order to answer this question, one should explain the concept of intuitive law, since the idea of justice is identified with this concept.

To put it simply, in the psychological theory of law the most basic types of laws are positive law and intuitive law. Each of these laws is a set of legal experiences. The difference between them consists only in the type of experiences. In the case of positive law, legal experiences that make them

have representations of normative facts. That is, facts which determine the contents and condition validity of duty (e.g., binding legal provisions).

To sum up, in comparison to positive law, intuitive law does not include any representations of normative facts. The fact that it has an individually variable character is characteristic of intuitive law. It is flexible and has the possibility of adjusting to specific individual conditions as well as the possibility of adjusting to the development of society. In a sense, positive law remains antagonistic to intuitive law. Nevertheless, each of these laws, although they act differently, has a significant impact on our behaviour (Reisner, 1908, Timasheff, 1955).

Crucial features of each of these laws can be presented in a comparative manner by several criteria:

- **Universality.** Positive law provides templates of behaviour; we are able to determine its contents in the form of normative facts (e.g., legal provisions). Positive law unifies legal relationships. Intuitive law remains individual, dependent on individual life circumstances and characteristic features of an individual (among others: upbringing, education, held position). Variability of intuitive law, its individual character, results in the fact that it is not able to regulate social life independently. It is primarily caused by the fact that it is impossible to unify it and, consequently, it cannot ensure social order. On the one hand, it does not cover many areas of society's functioning which undoubtedly require legal regulations; however, on the other hand, there are also areas of social life which are impossible to cover with positive law. These are fields in which it is necessary to ensure quick adjustment and variability of regulation depending on circumstances. Therefore, in some situations, only positive law or only intuitive law applies, and there are also situations in which both of these laws act jointly (Gurvitch, 2004).
- **Flexibility.** Intuitive law freely adjusts to specific and individual circumstances, which is impossible in the case of positive law. Intuitive law changes and develops easier than positive law. It is a certain background against which positive law is vanishing gradually.

- **Variability.** Usually, positive law falls behind changes in society. It is, in a way, fixed by normative facts (e.g., legal provisions), whereas, intuitive law is constantly developing under the influence of changing social reality (Sorokin, 1919, pp. 569-571).
- **Authority.** From the individual's point of view, intuitive law is binding always, everywhere, and with regard to everyone (Petrzycki, 2000 [1909-1910], pp. 269-273). In our notion, intuitive law is not limited by territory or any binding period, whereas, positive law is limited by representation of normative facts.

Although differences between positive law and intuitive law are unavoidable, in principle, they are convergent with regard to general rules. Such compliance ensures mutual supplementation and reinforcement of the operation of the law. That is, when the contents of positive and intuitive laws are the same, positive law becomes real and holds a strong position in society. However, complete compliance between both types of law does not exist and cannot exist. Intuitive law is, in fact, constantly changing, developing in comparison with positive law. Therefore, it is unavoidable that at certain moments, positive and intuitive laws start becoming distant in terms of contents. In a situation when positive law differs from intuitive law, the universally binding positive law is considered unjust and out-of-date, the society either stops following its norms or continues to follow them but only 'out of fear, under duress and not in compliance with their conscience' (Sorokin, 1919, p. 571).

LEGAL NORMS AND OBLIGATIONS

If we adopt the psychological perspective, the significance of legal norms and obligations is derivative. They are considered to be projections of legal experiences. The process of emotional projection is responsible for causing them. This is defined in the psychological theory of law as the phenomenon of providing objects with apparent features. That which, under the influence of emotional projection, seems to objectively exist is defined as a projection. Both firm orders characterised by the highest authority (in the case of ethical experiences perceived as actual) as well as a specific state of binding, subordination, are products of emotional projection (Fittipaldi, 2012).

In the case of moral experiences, a projection refers to moral obligations and norms, which have only an imperative character. Moral norms authoritatively impose on their addressees obligations, certain rules of behaviour, but at the same time do not give rights to others to enforce behaviour compliant with a given norm, they are unilaterally binding, whereas, projections of legal experiences refer to legal obligations and norms with an imperative-attributive character⁵. Legal norms, apart from establishing an obligation to behave in a certain manner, at the same time shape others' right to demand behaviour compliant with this norm. In the case of legal norms, our legal obligation is reflected as the entitlement, right of other entity.

In consequence, there actually exist only experiences of ethical emotions, whereas orders and bans as well as obligations and duties related to experiencing given emotions are only projections of these experiences⁶.

Given the essence of the law, in compliance with L. Petrażycki's psychological theory of law, instead of concentrating on studying legal norms and legal relationships, which are only projections and not actual phenomena, one should study emotional and intellectual elements of legal experiences (Petrażycki, 2000 [1909-1910], p. 371). Without learning about actual phenomena, i.e., legal experiences, it is impossible to study legal norms.

CONCLUSION

In contemporary literature, the significance of the psychological theory of law has recently been re-discovered (Giario, 2020, Brožek, 2019, Polyakov 2016, Fittipaldi, 2012, Kojder, 2016). The statement that this theory was based on the psychology of that time, which we currently consider outdated and non-scientific, is a truism. However, is it possible to develop an updated psychological theory of law on the grounds of contemporary scientific knowledge, which would coherently and adequately explain the essence of law? I believe so, and we should conduct further research in this direction at the junction of contemporary psychology and other empirical sciences, and law.

5 The legal obligation is a specific reflection of dues, which we have the right to, from others.

6 It is worth noting that Petrażycki himself assumed that while studying law it is impossible to avoid adopting a projection approach, which consists of, e.g., considering obligations and rights as something existing in reality. Nevertheless, he underlined that we should be aware that these are emotional projections, which correspond with real mental phenomena.

REFERENCES

Brożek, Bartosz. 2019. *The Legal Mind: A New Introduction to Legal Epistemology*, Cambridge University Press.

Brożek, Bartosz, Stanek Julia and Stelmach Jerzy (eds.). 2018. *Russian Legal Realism, Law*. Dordrecht: Springer.

Fittipaldi, Edoardo. 2012. Everyday legal ontology. A psychological and linguistic investigation within the frame of Leon Petrazyski's theory of law, Milano.

Fittipaldi, Edoardo. 2016. *Leon Petrazyski's theory of law*. In E. Pattaro, & C. Roversi (eds.) *Legal Philosophy in the Twentieth Century: The Civil Law World. Tome 2: Main Orientations and Topics*. Dordrecht: Springer, Berlin.

Giaro, Tomasz (ed.). 2019. *Leon Petrazyski i współczesna nauka prawa*, Wolters Kluwer, Warszawa.

Gins, Georgij. 1931-1932. *Novye idei v prave i osnovnye problemy sovremennosti*. Xarbin. Tip. N.E. Činareva

Gins, Georgij. 1936. *Očerki social'noj psixologii: Vvedenie v izučenie prava i npravstvennosti*. Xarbin: Izd. Birževogo komiteta.

Gurvitch, Georgij. 2004. *Filosofiya i sotsiologiya prava: Izbrannye sochineniya* [Philosophy and sociology of law. Selected works]. Izdatel'skij Dom S.-Peterburgskogo gos. un-ta, St. Petersburg.

Kojder, Andrzej. 2016. Aktualność myśli naukowej Leona Petrazyskiego w XXI wieku, in: *Mysl' L.I. Petrazyskogo i sovremennaya nauka prava*, Krasnodar 2016.

Laserson, Max. 1930. *Obščaja teorija prava : Vvedenie v izučenie prava. Žizn' i kul'tura*, Riga.

Mereżko, Aleksander. 2017. *Psichologicheskaya teoriya prava i sovremennost'*, Feniks, Odessa.

Motyka, Krzysztof. 1993. Wpływ Leona Petrazyskiego na polską teorię i socjologię prawa, Wydawnictwo Katolickiego Uniwersytetu Lubelskiego, Lublin.

Petrazyski, Leon. 2000 [1909-10]. *Teorija prava i gosudarstva v svyazi s teoriej npravstvennosti*. [Theory of law and state as connected with the theory of morality]. Lan, St. Petersburg.

Polyakov, Andrey. 2016. *Obščaja teorija prava: problemy interpretacii v kontekste kommunikativnogo podxodada* [General theory of jurispru-

dence: interpretation in the context of communicative approach]. Prospekt, Moscow.

Reisner, Michail. 1908. Teorija L.I. Petražickogo, marksizm i social'naja ideologija. Tip. t-va "Obščestvennaja pol'za". St. Petersburg.

Sorokin, Pitirim. 1919. Ėlementarnyj učebnik obščej teorii prava v svjazi s teoriej gosudarstva. Jaroslavl Credit Union of Cooperative Presses, Jaroslavl'.

Stanek, Julia. 2015. Naturalizacja prawa a psychologia, in: Stelmach, J., Brożek, B., Kurek, Ł., Eliasz, K. (eds.), *Naturalizm prawniczy. Interpretacje*, Wolters Kluwer 2015, s. 266-278.

Stanek, Julia. 2017. Rosyjski realizm prawny, Wolters Kluwer, Warszawa.

Timasheff, Nicholas. 1955. Introduction. Law and Morality: Leon Petrażycki, Cambridge, Massachusetts 1955.

Timoshina, Elena. 2016. Max Lazerson's Psychological Theory of Law. In *A Treatise of legal philosophy and general jurisprudence*. In: Pataro E., Roversi, C. (eds.) Vol. 12: Legal Philosophy in the twentieth century: The Civil law world. T. 2: Main orientations and topics. (pp. 859). Springer Nature, pp. 527–542.

Woleński, Jan. 2018. O teorii i filozofii prawa Leona Petrażyckiego. *Studia Historiae Scientiarum* 17, ss. 365–389.



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