

LAWYERS AND REVOLUTION: LEGAL ETHOS IN THE HISTORY OF THE JURIDICAL COUNCIL IN 1917

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The following article considers the history of the Juridical Council of the Provisional Government from a biographical methodological perspective. The Juridical Council was established in March 1917 after the February Revolution in the system of the Provisional Government as a governmental body of legal expertise. The paper provides a summary of biographical information about lawyers of the Juridical Council (Vasily Maklakov, Fyodor Kokoshkin, Nikolay Lazarevsky, Vladimir Nabokov, Moisey Adzhemov and Baron Boris Nolde), their origin, education, political career, professional and academic interests. Most of lawyers in the Council were descendants of noble Moscow and St. Petersburg families and belonged to big city intelligentsia circles. They graduated from Moscow University and St. Petersburg University in 1890s during golden era of Russian legal university education and their views concerning law, government, liberalism, parliamentarism and public role of legal profession were formed under a great influence of liberal

professorate and in the atmosphere, when a university seemed to be the most liberal institute of the conservative era. The analysis of biographical information leads to a conclusion that lawyers of the Council developed a new legal ethos, the characteristic feature of which was the adherence to the ideology of rule of law and civil society.

KEYWORDS: liberal, lawyer, professorate, Constitutional Democratic Party, the Provisional Government, the Juridical Council, legal ethos.

НЕВЕРОВ Е. Д. ЮРИСТЫ И РЕВОЛЮЦИЯ: ПРАВОВОЙ ЭТОС В ИСТОРИИ ЮРИДИЧЕСКОГО СОВЕЩАНИЯ 1917 ГОДА

В статье с позиций биографического подхода рассматривается история Юридического совещания, которое было официально учреждено 22 марта 1917 г. актом Временного правительства в качестве экспертного совета для подготовки различных юридических заключений, прежде всего о тех нормативных правовых актах, которые требуется издать Временному правительству для надлежащего правового сопровождения мероприятий новой власти. Автор проанализировал биографии членов Юридического совещания (Василий Маклаков, Федор Кокоскин, Николай Лазаревский, Владимир Набоков, Михаил Аджемов и барон Борис Нольде), в том числе их проис-

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хождение, образование, политическую карьеру, профессиональные и академические интересы. Большинство юристов совещания были представителями знатных московских и петербургских фамилий, принадлежали к кругам столичной интеллигенции. Они получили университетское юридическое образование в 1890-х гг., в период расцвета русской юридической школы. Взгляды юристов совещания на парламентский строй, права и свободы личности, независимость судебной власти и бессловную правовую систему, а также воззрения на общественную роль юридической профессии сформировались под влиянием либеральной профессуры, в период, когда университет был пространством наибольшего свободомыслия на фоне консервативной эпохи. Анализ биографий юристов совещания позволяет сделать вывод, что они были носителями нового правового этоса, т. е. специфической системы воззрений о праве, государственном управлении и месте юристов в обществе. Его характерной чертой являлась приверженность идее верховенства права, идеологии правового государства и гражданского общества.

КЛЮЧЕВЫЕ СЛОВА: либерал, юрист, профессура, Конституционно-демократическая партия, Временное правительство, Юридическое совещание, правовой этос.

In the 20th century a new methodological approach to analysis of social processes appeared. The methodology was based on the idea that professional groups have their own unique moral identities. The theory that professional communities have specific moral recognition and collective consciousness was first proposed by French sociologist and philosopher Emil Durkheim in his "The Division of Labor in Society": "functional diversity entails a moral diversity that nothing can prevent, and it is inevitable that the one should grow at the same time as the other"¹.

In 1960s this idea had gained influence in different fields of social knowledge². In the sphere of Russian historical science and legal history the concept of specific moral identity of professional communities was introduced by American historian Richard Wortman in "The Development of Russian Legal Consciousness", first published in 1976³. This study focuses on the preconditions for the Great Reforms of Alexander II. R. Wortman makes an emphasis on the legal consciousness of top bureaucracy, which elaborated the strategy of the Reforms and conducted them. The author concludes that the real foundation for the Great Reforms was a unique legal ethos, i. e. specific views concerning law, government and place of profession in society, which was cultivated among leading officials of key ministries. A cradle for this ethos was the Imperial School of Jurisprudence (*Uchilishche Pravovedeniia*), which was the most prestigious school for boys in St. Petersburg and the best start for an excellent career in public service at the time. Lawyers who studied there in 1830s — 1840s absorbed special beliefs on how law and state should be organized: ideas of civil equity and freedoms, division of powers and independent judiciary, trial by jury and due process, etc. In the late 1850s these lawyers obtained senior positions in the administrative

¹ Durkheim E. The Division of Labor in Society. New York, 1964. P. 361.

² Keller S. Beyond the Ruling Class. New York, 1963. P. 135.

³ Уортман Р. С. Властители и судии: Развитие правового сознания в императорской России. М., 2004.

apparatus of Russian Empire and got an opportunity to implement liberal legal ethos on political practice. The research by R. Wortman was a turning point in understanding of the Great Reforms and theory of legal reforms in general.

The idea of specific professional identities in legal culture studies has proved its applicability to various epochs and historical conditions⁴. Nancy Kollmann analyzes legal culture and professional legal consciousness in early modern Russia⁵. David Wartenweiler studies the legal consciousness of liberal professorate in the early 20th century and concludes that in this social group the ideas of human rights and civil liberties were predominant⁶. William Pomeranz argues that a breakthrough in the level of trial defense and emergence of great Russian trial lawyers was related to the development of professional ethos in *advokatura* community⁷. Analyzing peasant legal culture and post-reform development of judicial system, Jane Burbank proves that the legal culture of lawyers, bureaucracy and elite was very separated from peasants' legal beliefs⁸. Burbank argues that ideas of non-estate court, unified citizenship and rule of law (*pravovoe gosudarstvo*) for all parts of empire prospered among lawyers and officials, while generally were not accepted in other social groups⁹. This led to subcultural nature of legal consciousness in late-imperial Russia.

Peter Holquist in his work, devoted to a prominent Russian lawyer Baron Boris Nolde (1876–1948), argues that in the early 20th century legal ethos and moral identity of lawyers under certain circumstances could be stronger than political self-determination. Holquist claims that “in Nolde’s case, I mean the homology that is often constructed between his outlook and the supposed liberalism (or, better, ‘liberalisms’) of the Constitutional Democratic Party. I do not mean to argue that party identity was irrelevant. But party affiliation is better understood as an *instrument* actors’ identity formation than as a clear-cut diagnostic tool for divining what people believed”¹⁰. In Russian political system of the early 20th century there was no strong linkage between adherence to a specific

⁴ For an overview, see: Туманова А. С. Правовая культура общества позднеимперской России в ракурсе историко-юридических исследований: подходы последних лет // Вестник Российского университета дружбы народов. Серия: Юридические науки. 2014. № 4. С. 33–40.

⁵ Kollmann N. *By Honor Bound: State and Society in Early Modern Russia*. Ithaca, London, 1999.

⁶ Wartenweiler D. *Civil Society and Academic Debate in Russia 1905–1914*. Oxford, 1999.

⁷ Pomeranz W. ‘Profession or Estate’? The Case of the Russian Pre-Revolutionary ‘Advokatura’ // *The Slavonic and East European Review*. 1999. Vol. 77. N 2. P. 240–268.

⁸ Burbank J. Discipline and Punish in Moscow Bar Association // *The Russian Review*. 1995. Vol. 54, N 1. P. 44–64.

⁹ Burbank J. 1) Legal Culture, Citizenship, and Peasant Jurisprudence: Perspectives from the Early Twentieth Century // *Reforming Justice in Russia, 1864–1996: Power, Culture and the Limits of Legal Order*. Armonk, New York, 1997. P. 82–106; 2) *Thinking Like an Empire: Estate, Law and Rights in the Early Twentieth Century* // *Russian Empire: Space, People, Power, 1700–1930*. Bloomington, Indianapolis, 2007. P. 196–217.

¹⁰ Holquist P. 1) Dilemmas of a Progressive Administrator: Baron Boris Nolde // *Kritika: Explorations in Russian and Eurasian History*. 2006. Vol. 7, N 2. P. 241, 243–244; 2) *Making war, Forging Revolution: Russia’s Continuum of Crisis, 1914–1921*. Cambridge, MA, 2002. P. 113–117.

party and political views of a politician or a functionary¹¹. Therefore, one of the strongest identities for people with legal education of Nolde's generation was a new legal ethos, which became a source for political programs and political agenda in 1900–1910s and finally a basis for executive decisions in 1917.

Legal ethos is used below as a methodological approach to analyze the history of the Juridical Council of the Provisional Government in 1917. After the February Revolution in Russia a new governmental system was built under the authority of the Provisional Government. The former imperial legislative process was deconstructed and the revolutionary power established a completely new hierarchy of legislative bodies, which included the Juridical Council as a stage of legal expertise of bills.

The Juridical Council was officially established on the 22nd of March 1917¹². The Provisional Government's Act stipulated that the sphere of competence for the Council would be limited to "the questions of public law, emerging along with the establishment of new public order. Additionally, the Council prepares legal opinions on the Provisional Government's measures, which require legislative acts, as well as other measures, which would require such legal opinion according to the Provisional Government's will"¹³. The Act of March 22 also described the structure of the Juridical Council: the president, six members and Secretary of the Provisional Government with rights of a member¹⁴. However, this initial structure underwent expansion for several times during 1917.

The Juridical Council became a key element of legislative process in the system of the Provisional Government and one of the major governmental bodies, conducting analytical, strategical and expert support of the newly built revolutionary authority. Therefore, legal ethos of the Juridical Council's lawyers was a crucial factor of legislation in 1917.

The Juridical Council consisted of leading lawyers of the generation, who were the face of legal profession at the turn of the 20th century. During first days of its existence the Juridical Council was presided by Vasily Maklakov¹⁵, famous trial lawyer, public figure and politician. He graduated from the faculty of law of Moscow University in 1893 and since 1896 was an assistant to the lawyer (*pomoshnik prisyazhnogo poverennogo*) A. P. Lednitskiy and worked with F. N. Plevako. Maklakov gained all-Russian fame as a trial lawyer during political trials: defending Savva Mamontov (1900), Mikhail Stakhovich (1904),

¹¹ Haimson L. *The Parties and the State: The Evolution of Political Attitudes // The Transformation of Russian Society*. Cambridge, MA, 1969.

¹² In fact, the Council started its activities on the 8th of March and initially did not have official status and particular name, was called 'legal commission' or 'constitutional bureau' (See: Вестник Временного Правительства. 1917. № 4. 9 марта), but only on the 22nd of March it was officially established and its practice was put into legal framework.

¹³ Государственный архив Российской Федерации (далее — ГА РФ). Ф. 1792. Оп. 1. Д. 1. Л. 2.

¹⁴ Неверов Е. Д., Туманова А. С. Юридическое совещание при Временном правительстве: правовые основания и содержание деятельности // Памятники права Временного правительства. Т. XXI. М., 2016. С. 41–50.

¹⁵ Шевырин В. М. Василий Алексеевич Маклаков: «Счастье и благо личности скажут нам, куда направить развитие общества» // Российский либерализм: идеи и люди. М., 2007. С. 699.

in bolshevik Nikolai Bauman's case (1905), in process of the Vyborg Manifesto (1906), notorious anti-semitic trial, known as "Beilis trial" or "Beilis affair" (1913), etc. Vasily Maklakov is one of the most prominent figures in the history of Russian *advokatura*¹⁶.

From the standpoint of political views, Maklakov was a moderate liberal and thought that society and authority should exist for the interests of separate individuals and not vice versa. The "idea of government" for Maklakov is equal to the "idea of liberty", only the mutual convergence of these two concepts would "make people's happiness"¹⁷. In 1904 Maklakov joined moderate liberal club 'Beseda' and became its secretary and archivist¹⁸. Together with his future colleagues from the Juridical Council V. Nabokov and F. Kokoshkin he was a member of the Union for Liberation. In 1906 Maklakov joined Constitutional Democratic Party, serving on its central committee. Maklakov's views from many perspectives were different from his comrades cadets: he denied radical ideas and argued that road to liberty was possible only in constructive dialogue with the existed government. The State Duma gave a tribune to Vasily Maklakov as a leading liberal parliamentary orator. He was elected to Russian parliament for three times and was a deputy in the II, III and IV Dumas from 1907 to 1917. In the Juridical Council Maklakov was the president during 5 sessions in March and an active member until September 1917.

Maklakov ceded the post of the Juridical Council's president to Fyodor Kokoshkin, another distinguished liberal and lawyer, member of the Constitutional Democratic Party and former Duma deputy¹⁹. He was a descendant of an ancient noble Moscow family. Kokoshkin graduated from Moscow University in 1893 and then continued studying abroad, listening to lectures and working in libraries in Strasbourg, Berlin, Paris and Heidelberg, where his supervisor was Georg Jellinek. This education allowed Kokoshkin to make fast and successful career at Moscow University, where he became an assistant professor (*privat-docent*) at the chair of constitutional law. Books and articles by Kokoshkin belong to classics of Russian legal thought. He developed the theory of parliamentarism, legal nature of the government, nation-state and its territorial organization, separation of powers, personal liberties, autonomy and federalism²⁰.

In July 1917 the post of the Juridical Council's president was passed to Nikolai Lazarevsky, another member of the Constitutional Democratic Party and a notable legal scholar²¹. Along with Fyodor Kokoshkin he belongs to the most influential theorists of constitutional law in Russia. After graduating from St.

¹⁶ Политические деятели России 1917. Биографический словарь. М., 1993. С. 201.

¹⁷ Cit. on: Шевырин В. М. Василий Алексеевич Маклаков: «Счастье и благо личности скажут нам, куда направить развитие общества» // Российский либерализм: идеи и люди. М., 2007. С. 700.

¹⁸ Соловьев К. А. Кружок «Беседа»: В поисках новой политической реальности, 1899–1905. М., 2009.

¹⁹ ГА РФ. Ф. 1792. Оп. 1. Д. 1. Л. 5.

²⁰ Шелохаев В. В. Кокошкин Федор Федорович // Российский либерализм середины XVIII — начала XX века. М., 2010. С. 432–435.

²¹ Соловьев К. А. Лазаревский Николай Иванович // Российский либерализм середины XVIII — начала XX века. М., 2010. С. 514–515; Неверов Е. Д. Николай Лазаревский

Petersburg University in 1892 he continued studies at the chair of constitutional law and in 1905 became an assistant professor (*private-docent*). In November 1898 Lazarevsky founded and became the chief-editor of liberal legal journal "Pravo" ('Law'). The most famous works by Lazarevsky were published in "Pravo" from 1898 to 1917 and in "Constitutional State" digest in 1905. His fundamental research "Liability for Material Losses, Caused by Officials" still remains relevant as a theoretical breakthrough in the theory of public officials liability.

As the Secretary to the Provisional Government a status of the Juridical Council's member had Vladimir Nabokov²². Nabokov was born in the family of Ministry of Justice in the imperial government Dmitry Nabokov. Nabokov graduated from St. Petersburg University in 1891, after which he studied in Galla, Germany. He started his career in 1894 in State Council as a public servant, but later became a professor in criminal law in the Imperial School of Jurisprudence and made a name for himself in doctrine of criminal law ("Subject and method of criminal law science", "Elementary handbook in the special part of criminal law", "Duel and criminal law", etc.).

In the Constitutional Democratic Party Nabokov was a member of central committee, director of the headquarter in St. Petersburg and a leader of parliamentary faction in the I State Duma. Nabokov was an editor of official cadets' newspapers "Rech" and "Vestnik of Party of Popular Freedom". On the 3rd of March Nabokov became the Secretary of the Provisional Government and worked at this post until the April crisis. In the Juridical Council his role was to provide technical interconnection between the Council and the Provisional Government. Nabokov was a member of the Council until September 1917. Baron Boris Nolde described Nabokov as a high-level professional and wrote that Nabokov along with Kokoshkin in 1917 was an author of "truly outstanding from the inner value point of view, legislative acts"²³.

Moisey Adzhemov was a member of the Juridical Council from the first days of its existence²⁴. He was born in Nakhichevan-on-Don and had Armenian (armenian-gregorian) roots. Adzhemov received his legal education in Moscow University, graduated in 1904 and continued as a post-graduate at the chair of criminal law and criminal procedure. He started as a lawyer's assistant in Moscow bar association, but did not manage to make a successful career in legal practice or theory of law and became a professional politician after joining the Constitutional Democratic Party in 1906. Adzhemov was a deputy from the Oblast of the Don Cossack Host in the II, III and IV State Dumas. Tense parliamentary work Adzhemov combined with publicist's and political writer's talent,

в 1917 г.: теоретик государственного права на службе Временного правительства // Гражданское общество в России и за рубежом. 2017. № 4. С. 33–36.

²² Соловьев К. А. Владимир Дмитриевич Набоков: «Исполнительная власть да покорится власти законодательной» // Российский либерализм: идеи и люди. М., 2007. С. 690.

²³ Нольде Б. Э. Далекое и близкое. Париж, 1930. С. 152.

²⁴ Братолобова М. В. М. С. Аджемов — представитель «второго эшелона либерального движения» // Армяне юга России: история, культура, общее будущее. Ростов-на-Дону, 2012. С. 324.

best articles being published in “Vestnik prava”, “Moskovskiyе Vedomosti”, “Rech”, “Rostovskaya rech” and other newspapers.

Baron Boris Nolde, the leading Russian scholar of international law also was a lawyer in the Juridical Council from March 1917²⁵. He was the oldest son of Emmanuil Nolde, a grandee of Alexander II and Alexander III era, descendant of ancient knight family, tracing its roots to the 15th century. Nolde graduated from St. Petersburg University and later was a post-graduate at the chair of international law. His supervisor was famous professor and diplomat Fyodor Martens, the main figure of Russian international law school. Nolde left a legacy in theory of international law, including a number of works with international acclaim. According to Mark Vishniak “Nolde was a scholar, as the saying goes, by God’s mercy. He was the first-rate lawyer, had sharp analytical mind, great knowledge, a keen interest and a ‘taste’ for the problems of law”²⁶.

Baron Boris Nolde was not only a theorist of all-European recognition, but also made a career in the Ministry of Foreign Affairs. In 1907 he together with his teacher F. Martens took part in the Second Hague Peace Conference, in 1908–1909 worked at London Naval Conference, in 1910–1912 at the Spitsbergen Question preliminary conferences, was a judge in Permanent Court of Arbitration.

Maklakov, Kokoshkin, Lazarevsky, Nabokov, Adzhemov and baron Nolde made the initial composition of the Juridical Council, formed in March 1917. In April 1917 the structure was expanded to 8 lawyers after Alexander Halpern and Vasily Vodovozov had joined the Council. In July 1917 David Grimm, Alexander Nolde and Gugo Blofeld were recruited. Finally, during the last days of the Provisional Government Valerian Grevs and Emmanuil Ginsberg were included into the Council, so that in September 1917 it had 13 members²⁷. The information from the Juridical Council members’ biographies leads to a number of conclusions on the legal ethos of its lawyers, its place and role in the history of the Provisional Government and February Revolution. However, V. Grevs and E. Ginsberg did not have time to make any impact on the legislative process in the Juridical Council, that is why they are not considered in our analysis below.

All 11 actual members of the Juridical Council, who took an active part in the lawmaking process, had university legal education: three were graduates of Moscow University, eight — St. Petersburg University. Most of them belonged to the generation of lawyers, who were students in the late 1880s — early 1890s. The university circles at the end of XIX century attracted a number of outstanding Russian jurists²⁸. In St. Petersburg University true classics of Russian legal thought read lectures during this period. Dean’s office was held by professor

²⁵ *Holquist P.* Dilemmas of a Progressive Administrator: Baron Boris Nolde // *Kritika: Explorations in Russian and Eurasian History*. 2006. Vol. 7, N 2. P. 241–273.

²⁶ *Вишняк М. В.* Б. Э. Нольде // *Новый журнал*. 1948. № 19. С. 279.

²⁷ On the personal composition of the Council, see: *Неверов Е. Д., Туманова А. С.* Юридическое совещание при Временном правительстве: правовые основания и содержание деятельности // *Памятники права Временного правительства*. Т. XXI. М., 2016. С. 41–50.

²⁸ *Томсинов В. А.* Российские правоведы XVIII–XX веков: очерки жизни и творчества. Т. 2. М., 2007. С. 226.

of canon law Mikhail Ivanovich Gorchakov (1938–1910). Professor in ordinary Vasilii Ivanovich Sergeevich (1832–1911) read lectures on the history of law. Alexander Dmitrievich Gradovskiy (1841–1889) was a professor in ordinary at the department of constitutional law. Ivan Yakovlevich Foyntskiy (1847–1913) was a professor in ordinary of criminal law and criminal procedure. The encyclopedia of law was taught by professor Nikolai Mikhailovich Korkunov (1853–1904), international law by Fyodor Fyodorovich Martens (1845–1909).

At the turn of the century Russian jurisprudence experienced its golden age. This time was the peak of public interest to law and legal theory, when legal doctrine had constantly grown in its influence. Trends that were set at the time determined the academic language of Russian and world legal doctrine in the first half of the 20th century, placing Russian jurisprudence on a par with such significant parts of Russian culture as literature, philosophy, music and arts²⁹. One of the best descriptions of this period in the history of Russian legal thought belongs to N. Korkunov: “Our relation to the western doctrine can be compared to position of glossators in relation to Roman jurisprudence. Both they and us had to start with assimilation of the fruits of work done before us, both they and us firstly had to rise to the level of foreign science...Nevertheless, in just a hundred and fifty years we nearly managed to reduce the difference of more than six centuries, which separated us from western lawyers”³⁰.

A significant part of the Juridical Council members had not only spent their youth in the leading Russian universities of their time, but also were professors and visiting professors: Kokoshkin, Adzhemov, Boris Nolde and Alexander Nolde had an experience of being university professors and lecturers as an additional occupation along with legal practice and political career, while for Lazarevsky and Grimm professorate was a lifework.

Writing about university circles in Russia in 1880s — 1890s, Vasily Maklakov stressed that it was a unique liberal atmosphere of the university, not special professional education, that attracted young and talented people: “universities, especially Moscow University seemed to be the promised land for my generation, an oasis among the dead desert...In the eyes of studying youth the university was surrounded with ‘charm’ like something different from the everyday prose”³¹.

The origin of the lawyers was also a crucial factor of collective consciousness. Most of the Juridical Council lawyers came from families, belonging to Moscow and St. Petersburg intelligentsia, at the same time all of them had aristocratic origins. For instance, Kokoshkin, Nabokov, Boris and Alexander Nolde traced their pedigree from ancient noble families (*dvoryanstvo*). Faculty of law attracted more noblemen than any other faculty in a university, making this education a unique channel of corporative support³². This university

²⁹ Голубева М. И. Правовая культура // Очерки русской культуры. Конец XIX — начало XX века. Т. 2. М., 2011. С. 207; Томсинов В. А. Правовая культура // Очерки русской культуры XIX века. Т. 2. М., 2000. С. 151.

³⁰ Коркунов Н. М. История философии права. СПб., 1908. С. 233.

³¹ Маклаков В. А. Из воспоминаний. Уроки жизни. М., 2011. С. 51–52.

³² Иванов А. Е. Студенчество России конца XIX — начала XX века: социально-историческая судьба. М., 1999. С. 35–36.

'legal' intelligentsia developed solid westernized ideals of liberalism, freedom and personal autonomy³³.

These factors shaped unique ideas and beliefs on social, political and legal matters among members of the Juridical Council. Most of them were the rule of law partisans and supported the ideas of individual liberties and human rights. They believed that the basis for legal status of every person should be civil equality (*grazhdanskoe ravenstvo*). According to their views government should have been rebuilt on the basis of parliamentarism and political representation. Legal ethos of the Juridical Council members predetermined their attitude to the role of lawyers and legal service in the era of new legal system formation after the February Revolution.

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