

THE DEVELOPMENT OF REALISTIC JURISPRUDENCE. BOOK REVIEW: TONKOV E.N. RUSSIAN LEGAL REALISM (INTERPRETATION OF LEGAL SOURCES SERIES. ST. PETERSBURG, ALETHEIA PUBL., 2024. 454 P.).

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The *relevance* of the review of this book is due to the growing interest of the international scientific community in new variants of realistic jurisprudence, including Russian. The *subject of the research* in the review is the analysis of the structure and main themes of E.N. Tonkov's monograph "Russian Legal Realism" published in 2024. The *purpose of the work* is to present and evaluate the author's philosophical and legal concept of Russian legal realism, which emphasizes the importance of the actual experience and intentions of legal actors, and also seeks to reduce formalism and abstractness in jurisprudence. The *novelty of the topic* is due to the relatively recent emergence of the term included in the title of the book, because of E.N. Tonkov's research since 2012. Its comprehensive justification in the author's work based on a diachronic study of law and order on the territories of the former Russian Empire. The *research methods* used were descriptive, comparative-legal, formal-logical and other methods that contribute to the reconstruction and interpretation of the author's views. The *main conclusion* of the review of E.N. Tonkov's book is that Russian legal realism is an important part of the postclassical research program currently being developed, allows us to trace the evolution of the Russian law and order and provides answers to many theoretical and practical questions of modern jurisprudence.

Keywords: philosophy of law, realistic jurisprudence, law and order, interpretation of law, normative systems, postclassical research program, law in books, law in life, sources of law, Russian legal realism.

In 2024 the "Aletheia" Publishing House in St. Petersburg released a monograph by modern legal scholar Evgenii N. Tonkov "Russian Legal Realism" that considers historical and current legal culture, law and order, legal interpretation and education in Russia [5]. E.N. Tonkov (Ph.D. in Law) is Lecturer at St. Petersburg State University (SPbSU) and St. Petersburg Institute of the Bar, Associate Professor at North-West Institute of Management – Branch of the Russian Presidential Academy of National Economy and Public Administration (RANEPA St. Petersburg), barrister, *the founder and chief editor of the "Interpretation of Legal Sources" Series of "Aletheia" Publishing House*. Over thirty-five books on various aspects of law have been published over the past decade under that series label with more than fifty authors – leading Russian and CIS scholars – presenting their ideas in fundamental individual and collective monographs, such as: "Antropology of Law: Postclassical Research Program" (2025), "Law Interpretation: Classic and Postclassic" (2024), "Postclassical Studies of Law: Perspectives of the Scientific and Practical Program" (2023), "Sociological School of Law in the Context of Modern Jurisprudence" (2022), "In Search of Legal Theory" (2021), "Legal Thinking: Classic & Postclassic Paradigms" (2020), "Legitimacy of Law" (2019), "Cultural Researches of Law" (2018), "Paradigms of Legal Hermeneutics" (2017), "Legal Hermeneutics in the XXI century" (2016), "Law is the Language and Scale of Freedom" (2015), etc.

The author's research interest is focused on the basics of the concept of Russian Legal Realism (RLR), its origin and evolution [see also: 8]. In the context of a realistic approach to law E.N. Tonkov *actualizes the meaning of the factual experience and intentions of legal actors*, providing an answer to the excessive formalism and abstractness of normativity in legal systems, using and complementing well-known ideas of classic American and Scandinavian movements of legal realisms [3; 7, p. 21-190]. The

reviewed monograph contains an innovative approach to assessing the contribution of many theorists and practitioners of the Soviet period to the formation and development of Russian legal order. The author demonstrates Russia's special civilizational path, which requires further comprehensive philosophical and legal analysis in the methodological realities of the 21st century. Nevertheless, *E.N. Tonkov's realistic approach have already become a new direction of international legal theory and philosophy*: being introduced by the author in 2012 [6; 4, p. 1982] and tested at multiple conferences, such as World Congresses of the International Association for Philosophy of Law and Social Philosophy (IVR), the concept of RLR gained recognition by various scholars and was included in IVR Encyclopedia along with other classical and non-classical variants of legal realism (American, Scandinavian, French, Italian, etc.) [4].

A comprehensive monographic study of the foundations of Russian legal realism is *presented for the first time in Russian*. E.N. Tonkov suggests not to mix the processes of describing legal order and its assessment, and strives for a holistic understanding of the ontological features of legal reality. The book contains *answers to important theoretical and practical questions of our time*: what is included in the structure of the current law and order, how many branches of public authority are functioning today and how they interact with each other, whether judges are afraid to pass acquittals, whether the norms of criminal communities are a source of law, whether there is a corrupt model of interpretation, and many others.

In the *Preface*, the author provides a historical background on the development of the new concept. The important part of the monograph is a theoretical study of law and order of the Soviet period, an unreasonably forgotten and almost crossed out stage of the development of law from Russian historiography. *The main research is divided into three parts: "Section I. Methodological Aspects", "Section II. A Realistic Approach to Law and Order" and "Section III. Concept Development"*. The first section contains five chapters with the study of scientific nature of the legal concept, postclassical understanding of law, broad approach to the sources of law in a realistic paradigm, realism in different areas of science and brief analysis of classical and other movements of legal realism. The second section consists of two chapters about contingency of legal interpretation, law and order in realistic perspective. The third section has six chapters concerning genesis of the term and its research in modern science, analysis of proponents of legal realism in the Russian Empire and the USSR, history of legal realism in Russia, its ontological foundations and specific elements, biography and bibliography of Russian legal realists and their predecessors in 19th–20th centuries. After the *Conclusion*, the *E.N. Tonkov's List of Works* on the subject of legal realism is presented along with the *Bibliographical List* of the monograph and *Glossary* of thirty-seven words and phrases.

Being a large-scale objectification of Russian Legal Realism, the book provides its methodological framework and offers its sufficient justification. The validity of the *presented concept meets the criteria for innovative legal theories*: 1) it contains a critical approach; 2) it is included in the system of legal knowledge; 3) it is understandable for analysis; 4) it performs an explanatory function; 5) it has predictive capabilities; 6) it is verifiable; 7) it is praxeologically significant [5, p. 33-35]. The monograph contains theses on the *influence of Soviet law* on the legal consciousness of citizens: the revolutionary (socialist) legal consciousness was one of the sources of law at that time. According to the author, the historical experience of socialism has a significant impact on the current law and order. The individual regulatory systems of many heads of legislative, law enforcement, judicial and other departments were formed during the period of "developed socialism", today they strive to preserve the traditions of the Soviet legal doctrine and reconstruct certain managerial aspects of the last century. Legal scholars in the 21st century are faced with the task of revising outdated dogmas about the functioning of Russian law.

Generational continuity is characteristic of any society, and we need to pay attention to historical experience, the impact of which can be identified in the modern law and order. The author suggests the following *list of eleven trends* in the existence of law, which had a significant impact on the formation of the Russian law and order: 1) unity of the three branches of government that are obedient to the executive and party bodies; 2) the continuity of authoritarianism in various historical forms; 3) management of all branches of government manually proceeds from the single center; 4) development of the "good king" idea and belief in his exclusivity; 5) paternalism and social slavery; 6) dominance of two industries: raw materials (including the energy subindustry) and prison; 7) "minefield" legislative doctrine; 8) the formation of a judiciary that supports the interests of the executive power's "vertical", ready to fulfill the

will of the sovereigns in court proceedings; 9) selectivity and relativism of judges and law enforcement officers; 10) the inability of civil society to institutionalize the defense of their rights and freedoms; 11) independence of judges and law enforcement officers from the assessment of their activities by the population [5, p. 326-340; 4, p. 1984-1986].

Among the E.N. Tonkov's ideas the argumentation for the operation of a plurality of regulatory systems should be noted, including *eighteen sources of normativity*: customs and traditions, legal myths, religious norms, moral imperatives, individual normative systems, corporate norms, normative content agreements, acts of settlements, norms of political parties, norms of "liberation" movements, norms of criminal communities, legal practice, judicial precedents, interpretative precedents, norms of international law, science and law enforcement doctrines, forms of direct expression of the population will, normative legal acts of the state bodies [5, p.74-75]. Substantiating the abovementioned original classification of normative sources, the author emphasizes that not all social norms become legal, one should critically approach some non-classical sources of normativity, but underestimating the complexity of the sources of law distorts the understanding of the mechanism of functioning of law and order.

The cumulative effect of the normative grounds of law is based on an intentional approach to legal reality: in this sense E.N. Tonkov assigns a significant role in the formation of the St. Petersburg School of Philosophy of Law as part of RLR to the founder of the psychological theory of law – L.I. Petrażycki – and his followers [9]. The ontological determinism of the author's concept is confirmed by numerous works of pre-revolutionary and Soviet philosophers and legal theorists. Moreover, for the first time, the monograph offers a relevant *list of Russian legal realists and their predecessors* in 19th–20th centuries [5, p. 366-405].

The author suggests that law and order should be understood as a law implemented through institutions of public authority, recognized by the majority of the population. The *structure of law and order* includes: 1) a body of norms, textualized in various sources, mandatory for reference communities; 2) a set of law enforcement acts issued by authorized entities; 3) legal relations between all entities, which they recognize as normative facts; 4) educational programs of universities that reproduce new lawyers and improve the skills of existing ones, with professors that convey their types of legal understanding to students; 5) scientific doctrines produced and substantiated by scholars and schools of legal thought that form the semantic and substantive aspects of legal knowledge; 6) law enforcement doctrines; 7) legislative and law enforcement institutions, including regime facilities (e.x. prison), personnel, equipment, machinery, weapons, status authority, corporate methods and tools for the implementation of law [5, p. 224].

E.N. Tonkov strives to overcome the dogmatic division of public power into three branches, proposed many centuries ago in almost irrelevant for today's world historical conditions. The author substantiates the *division of public power into seven elements*, complementing the three classical branches – legislative, executive and judicial – with four modern ones: the dominant religious community, the (ruling) political party, the institution of a "strong" president and civil society structures along with non-governmental mass media [5, p. 327]. The author's idea of the seven branches of public authority is disputable, but it is supported by current research and state-legal practices.

Special attention is paid to the interaction of two sides of the legal reality: "*law in books*" (mainly as a set of normative acts) and "*law in life*" (mainly as a body of law enforcement decisions) [5, p. 53-57] based on provisions of traditional sociological jurisprudence with postclassical clarifications and additions. E.N. Tonkov states that excessive attention to "law in books", while ignoring law enforcement trends, disorients modern students and makes them unprepared for practical activities. Along with the textualized norms of law, it is necessary to take into account the "law in life", organizational features of public authorities, cultural dominants, religious traditions, political doctrines, legal practices, corporate norms of civil societies and law enforcement agencies, business habits of entrepreneurs and other factors that organize the social order. Law is presented as a multidimensional phenomenon consisting of rules of unequal importance; ignoring the full range of impacts on legal relations can lead to unpromising legal strategies and unpredictable results [5, p. 67]. "Law in life" may differ significantly from "law in books" for various reasons, which E.N. Tonkov analyzes in detail.

Currently, the process of convergence of legal positivism and theories of natural law is clearly expressed

in jurisprudence [2]: legal realism is one of the ways to combine them with an emphasis on sociology and psychology. Furthermore, consistency of realistic methods is gaining special attention in modern legal debates [1]. E.N. Tonkov's monograph "Russian Legal Realism" becomes an *integral part of the postclassical research program* developed in the 21st century by the St. Petersburg School of Philosophy of Law represented by D.I. Lukovskaya, A.V. Polyakov, I.L. Chestnov, R.A. Romashov, E.V. Timoshina, Ya.I. Gilinsky, M.V. Antonov, I.B. Lomakina, N.V. Razuvaev, S.L. Sergevnin, V.I. Pavlov, Yu.Yu. Vetyutnev, V.V. Denisenko, S.N. Kasatkin, M.A. Belyaev, I.I. Osvetinskaya, L.A. Kharitonov, A.E. Chernokov and others. The interdisciplinarity and polymethodology of the RLR concept postulated by the author makes it possible to comprehensively consider the ontological features of legal reality that have been formed over several centuries in Russia, during which fundamental behavioral patterns and state paradigms have been consolidated. The relevance of research on the problems of legal realism in the post-Soviet area determines a significant interest in the new book.

И.Ю. Козлихин, з. ф. д., профессор, Санкт-Петербург мемлекеттік университеті (Санкт-Петербург, Ресей): Реалистік құқықтануды дамыту. Е. Н. Тонковтың «Ресейлік құқықтық реализм» кітабына шолу (Серия: Құқық көздерін түсіндіру. Санкт-Петербург.: Алетей, 2024. 454 Б.).

Осы кітапқа шолу жасаудың өзектілігі халықаралық ғылыми қоғамдастықтың реалистік құқықтанудың жаңа бағыттарына, оның ішінде ресейлік бағыттарға қызығушылығының артуына байланысты. Рецензиядағы зерттеу пәні Е.Н. Тонковтың 2024 жылы шыққан "Ресейлік құқықтық реализм" монографиясының құрылымы мен негізгі тақырыбын талдау болып табылады. Жұмыстың мақсаты – ресейлік құқықтық реализмнің авторлық философиялық-құқықтық тұжырымдамасын ұсыну және бағалау, ол құқық актерлерінің нақты тәжірибесі мен ниетінің маңыздылығын атап көрсетеді, сонымен қатар заң ғылымындағы формализм мен абстрактылықты азайтуға тырысады. Тақырыптың жаңалығы Е. Н. Тонковтың 2012 жылдан бергі зерттеулерінің еңбегі болған кітаптың жақында пайда болуымен байланысты. Оның автордың еңбегіндегі кешенді негіздемесі бұрынғы Ресей империясының аумақтарындағы құқықтық тәртіпті диахрондық зерттеуге негізделген. Зерттеу әдістері ретінде автордың көзқарастарын қайта құруға және түсіндіруге ықпал ететін сипаттамалық, салыстырмалы-құқықтық, формальды-логикалық және басқа әдістер қолданылды. Е.Н. Тонковтың кітабына шолудың негізгі қорытындысы – ресейлік құқықтық реализм қазіргі уақытта дамып келе жатқан постклассикалық ғылыми-зерттеу бағдарламасының маңызды бөлігі болып табылады, ресейлік құқықтық тәртіптің эволюциясын бақылауға мүмкіндік береді және қазіргі заманғы құқықтанудың көптеген теориялық және практикалық сұрақтарына жауап береді.

Түйінді сөздер: құқық философиясы, реалистік құқықтану, құқықтық тәртіп, құқықты түсіндіру, нормативтік жүйелер, постклассикалық ғылыми-зерттеу бағдарламасы, кітаптардағы құқық, өмірдегі құқық, құқық көздері, ресейлік құқықтық реализм.

И.Ю. Козлихин, д.ю.н., профессор, Санкт-Петербургский государственный университет (Санкт-Петербург, Россия): Развитие реалистической юриспруденции. Рецензия на книгу Е.Н. Тонкова «Российский правовой реализм» (Серия: Толкование источников права. СПб.: Алетей, 2024. 454 с.).

Актуальность рецензии настоящей книги обусловлена возрастающим интересом международного научного сообщества к новым направлениям реалистической юриспруденции, в том числе российскому. Предмет исследования в рецензии заключается в анализе структуры и основной тематики изданной в 2024 г. монографии Е.Н. Тонкова «Российский правовой реализм». Цель работы состоит в изложении и оценке авторской философско-правовой концепции российского правового реализма, который подчеркивает значение фактического опыта и интенции акторов права, а также стремится к уменьшению формализма и абстрактности в юриспруденции. Новизна темы обусловлена относительно недавним возникновением вынесенного в название книги термина, что стало заслугой исследований Е.Н. Тонкова с 2012 г. Его комплексное обоснование в труде автора основано на диахронном изучении правопорядков на территориях бывшей Российской империи. В качестве методов исследования применялись описательный, сравнительно-правовой,

формально-логический и другие методы, способствующие реконструкции и интерпретации взглядов автора. Основной вывод рецензии на книгу Е.Н. Тонкова состоит в том, что российский правовой реализм является важной частью развиваемой в настоящее время постклассической научно-исследовательской программы, позволяет проследить эволюцию российского правопорядка и предоставляет ответы на многие теоретические и практические вопросы современной юриспруденции.

Ключевые слова: философия права, реалистическая юриспруденция, правопорядок, толкование права, нормативные системы, постклассическая научно-исследовательская программа, право в книгах, право в жизни, источники права, российский правовой реализм.

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