

Writing Russian History in Nazi Germany: The Case of Victor Vladimirovich Leontovitsch (Part One)

G. Hamburg

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The distinguished historian Victor Vladimirovich Leontovitsch (1902–1959) was little known before publication in 1957 of his classic book *Geschichte des Liberalismus in Russland* [A History of Liberalism in Russia]. Since then, Leontovitsch's capital work has been translated into major European languages: first, into Russian (in 1980), then into French (in 1987), and finally, into English (in 2012). Western historians widely reviewed Leontovitsch's history of liberalism on its initial publication, but few reviews mentioned Leontovitsch's previous scholarship, and none endeavored to explain the connections between the earlier work and his study of liberalism. This two-part article, drawing on printed and archival sources, explores Leontovitsch's intellectual roots, his life and his creative activity from 1902 to 1947. It examines his view of Russian history, particularly his conception of the interplay between law and politics in the reign of Ivan IV; his attitude towards Russian Orthodoxy; his attitude toward the French Revolution; his hostility to National Socialism and Nazi policy. This article also offers new material on the history of the post-1917 Russian emigration in Central Europe: it deals with Leontovitsch's teachers in the Russian Faculty of Law in Prague, and also discusses his ties in the 1930s and 1940s with important emigré intellectuals, such as Aleksandr Makarov, Dmitrii Chizhevskii, and Fedor Stepun.

Keywords: Leontovitsch, Russian History, Russian Faculty of Law in Prague, Russian Orthodoxy, Ivan the Terrible.

Написание русской истории в нацистской Германии: случай Виктора Владимировича Леонтовича (Часть первая)

Г. Гамбург

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Кто знал видного историка В. В. Леонтовича до издания в 1957 г. его знаменитой «Истории либерализма в России»? Впрочем, «знаменитой» книга стала гораздо позже, ведь на русский язык она была переведена только в 1980 г., а на английский и того позже — через 32 года! Но и тут возник своего рода казус, поскольку знаменитая книга, став таковой, не расширила знаний об авторе — ни в ученом мире, ни в широких кругах

Hamburg Gary — PhD, проф., колледж Клермонт Маккенна, США, 91711, Калифорния, Клермонт, 888, Коламбия авеню, 888; gary.hamburg@claremontmckenna.edu

Hamburg Gary — PhD, Professor, Claremont McKenna College, 888, Columbia Avenue, Claremont, California, 91711, USA; gary.hamburg@claremontmckenna.edu

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читающей публики. Никто не взялся проанализировать процесс становления Леонтовича как личности и ученого, никто не посвятил этому серьезных научных трудов. Это тем более обидно, что Леонтович — один из крупных мыслителей российского и украинского зарубежья, историк, правовед, создавший интересные и ценные труды по истории и истории права. Автор статьи, опираясь на широкий круг опубликованных и архивных источников, восполняет этот досадный пробел. Читатель узнает о детстве и юношестве ученого, его развитии в рамках российской гимназии и Русского юридического факультета в Праге, его учебе в Париже в Свято-Троицком православном теологическом институте и работе в этом же институте, переезде в Германию, об отношении к православной религии и нацизму. Леонтович не принял нацизм, критиковал его лозунги. В статье проанализированы работы ученого времени его пребывания в Германии, которые охватывали широчайший круг проблем: историю русского церковного права в сравнении с протестантизмом, французское право, становление современного государства. Значительное внимание уделено анализу интересной работы Леонтовича, посвященной правлению Ивана Грозного, а также взаимовлиянию Леонтовича и ряда других крупных ученых русского и украинского зарубежья, таких как Александр Макаров, Дмитрий Чижевский и Федор Степун. Портрет Леонтовича — это портрет целого поколения российской эмиграции, поколения, отвергшего диктатуру и в советской, и в нацистской форме, непонятого и обретшего лишь одиночество в ряду других поколений.

Ключевые слова: Леонтович, русская история, Русский юридический факультет, Русское православие, нацизм.

Victor Vladimirovich Leontovitsch (1902–1959) was a distinguished historian best known for his classic book, *Geschichte des Liberalismus in Russland* (A History of Liberalism in Russia). Since 1957, Leontovitsch's capital work has been translated into major European languages: first, into Russian (in 1980), then into French (in 1987), and finally, into English (in 2012)¹. Western historians widely reviewed Leontovitsch's history of liberalism on its initial publication², but few reviews mentioned Leontovitsch's previous scholarship, and

¹ For the original German edition, see: *Leontovitsch V. Geschichte des Liberalismus in Russland*. Frankfurt a. M., 1957 (Frankfurter wissenschaftliche Beiträge. Kulturwissenschaftliche Reihe, Bd. 10); the first Russian edition appeared as: *Leontovich V. Istoriia liberalizma v Rossii*. Paris, 1980; a second Russian edition was published as: *Leontovich V. V. Istoriia liberalizma v Rossii*. Moscow, 1995; for the French edition, see: *Leontovitch Victor. Histoire du libéralisme en Russie*. Paris, 1987; the English edition is *Leontovitsch Victor. A History of Liberalism in Russia / transl. by Parmen Leontovitsch with a foreword by Alexander Solzhenitsyn*. Pittsburg, Pa, 2012.

² For a sampling of the early reviews, see: *Raeff M. Geschichte des Liberalismus by Victor Leontovitsch; Russian Liberalism by George Fischer // Russian Review*. 1958. 17:4. October. P.307–310; and remarks in *Raeff's* essay (Some Reflections on Russian Liberalism // *Russian Review*. 1958. 18:3. July. P.218–230); *Karpovich M[ichael]*. Victor Leontovitsch. *Geschichte des Liberalismus in Russland, Russian Liberalism: From Gentry to Intelligentsia*. By George Fisher. Michael Speransky. Statesman of Russia. By Marc Raeff // *Novyi zhurnal*. 1957. Kniga LI. P.273–280; *Jablonski Horst*. *Geschichte des Liberalismus in Russland*. Von Victor Leontovitsch // *Historische Zeitschrift*. 1959. 187:3. June. S.661–664; *Treadgold D. W.* *Geschichte des Liberalismus by Victor Leontovitsch // American historical review*. 1959. 64:2. January. P.385–386; *Rhode G.* *Geschichte des Liberalismus by Victor Leontovitsch // Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte*. 1961. 48:4. S.564–566; *Scheibert Peter*. Über den Liberalismus in Russland // *Jahrbücher für Geschichte Osteuropas, Neue Folge*. *European Review*. 1958. 37:88, December. S.287–290. — See also the remarks by *Schapiro L.* *The Pre-Revolutionary Intelligentsia and the Legal Order // Daedalus*, 89:3, Summer, 1960, S.459–471, which classified Leontovitsch's book as “indispensable for the understanding of the intellectual development of the century” (here S.471, fn 6).

none endeavored to explain the connections between the earlier work and the classic study of liberalism. It was as if *Geschichte des Liberalismus in Russland* appeared out of nowhere.

This neglect of Leontovitsch's intellectual roots is unfortunate, and not only because knowing his background helps us to grasp the extraordinary 1957 book. Indeed, Leontovitsch's life offers us an unusual perspective on the consequences of the division of Europe that occurred as a result of the First World War, the Russian Revolution and civil war, and the rise of National Socialism in Germany. Leontovitsch's education was punctuated first by the splintering of the Russian Empire and then by revolutionary violence and civil war in Ukraine. He completed his academic training as an émigré in post-war Prague and France, before taking a series of low-level academic posts in Nazi Germany. Like so many other émigrés from the former Russian Empire, Leontovitsch struggled to find his way under new, increasingly terrifying conditions but to do so without violating his conscience.

This article draws on archival materials from Ukraine and Russia about Leontovitsch's family and education; on family reminiscences; on secondary publications about his education in Ukraine, Prague and Paris; on a wide variety of sources that help us contextualize his academic career in Nazi Germany; and on his articles in the 1930s and his book-length study of the mid-1940s on the "legal revolution" of Ivan IV.

I

Leontovitsch was born in Petersburg on 3 April 1902, into a propertied noble family from Poltava province³. He was initially educated at home by his father, the attorney and writer Vladimir Nikolaevich Leontovitsch; by his mother Iul'ia Vladimirovna (*née* Lesevich)⁴; by his grandfather, the philosopher-sociologist Vladimir Viktorovich Lesevich⁵; and by a series of

³ See: Curriculum Vitae Viktora Leontovicha // Gosudarstvennyi arkhiv rossiiskoi federatsii (GARF). F. 5764. Op. 2. Ed. khr. 526 "Lichnoe studencheskoe delo V.V. Leontovicha". L. 36–37, here l. 36. — According to this source, the Leontovitschs' estate in Lubna was roughly 650 desiatinas. According to archival records in Poltava, four Leontovitsch brothers possessed land in Lubenskii district: Ivan Nikolaevich (856 desiatins), Pavel Nikolaevich (356 desiatins), Konstantin Nikolaevich (677 desiatins), and Vladimir Nikolaevich (654 desiatins). See: Gosudarstvennyi arkhiv Poltavskoi oblasti (GAPO). F. 379. D. 6. "Spisok dvorian Poltavskoi gubernii opublikovannyi v "Poltavskikh gubernskikh vedomostiakh" v 1913 g." The same source listed Iul'ia Vladimirovna, Vladimir's wife, as owner of 150 desiatins. The land owned by Victor Vladimirovich's family (father's and mother's) there fore amounted to over 800 desiatins — a substantial estate. See: Genealogicheskii forum VGD "Dnevniky uchastnikov". Dnevnik Tasha 56, "Issledovaniia po familiiam drevn' Leontovich (Leontiévich). URL: forum.vgd.ru/post/604/47336/p1372085.htm. (accessed 19. 07. 2015)

⁴ Victor Leontovitsch's mother, Iul'ia Vladimirovna (*née* Lesevich) was an educated woman, the daughter of the philosopher-sociologist Vladimir Viktorovich Lesevich. In his philosophical orientation, Lesevich was a positivist; politically, he was a critic of the tsarist regime close, in the late 1870s, to the People's Will movement. In 1879, the government exiled him from Petersburg and Moscow to provincial cities (Kazan', Poltava, Tver'), only permitting him to return to Petersburg in the late 1880s. Lesevich's daughter Ul'ia, six years old at the moment of his exile, therefore relied on her parents and tutors for her education; in later years, she never mentioned to her family having participated in any formal, state-sponsored educational institution. After her marriage to Vladimir Leontovitsch, Ul'ia took over running of his estate (which raised sugar beets as a cash crop). Her children remembered her not for her intellectual leanings, but for her practical bent. According to Julia Oswald and Parmen Leontovitsch, grandmother Ul'ia "never showed any interest in the Ukrainian independence movement". Parmen Leontovitsch, personal communication with the author, 20 February 2015.

⁵ For Lesevich, see: *Alekseev P. V. LESEVICH, Vladimir Viktorovich // Filosofii Rossii XIX–XX stoletii. Biografii, idei, trudy, 3-e izd., pererabotannoe i dopolnennoe. Moscow, 1999. P. 458–459.* — For information on Leontovitsch's family, I am indebted to his son Parmen Leontovitsch, who alerted me to an essay by Victor's daughter (Parmen's elder sister), the historian Julia Oswald. See: *Oswald Ju. Zwischen den Welten 1934–1953 // Kriegskindheit und Nachkriegsjugend in zwei Welten / ed. by Bernd Bonwetsch. Essen, 2009.*

tutors. Leontovitsch *père* favored the development of Ukrainian culture and had become by 1917 a supporter of Ukrainian nationhood⁶; in 1918 he served the Skoropadskiy government as minister of agriculture. In spite of his father's Ukrainian activism, Victor Leontovitsch grew up a Russian speaker, but he read, in addition to Russian, Ukrainian, French, Italian, German, English, Greek and Latin. In an autobiographical fragment, Leontovitsch claimed to have read in early adulthood scholarly books "as if they were *belles lettres*."⁷ For example, he remembered reading Albert de Broglie's monograph on the Church and the Roman Empire to the fourth century, and Fustel de Coulanges' book on ancient cities⁸.

Leontovitsch's religious upbringing was conflicted, a fact not untypical for members of elite families in the empire at the dawn of the twentieth century. From early childhood, according to a brief autobiographical fragment, two contradictory influences left their traces on him — fascination with the multiple deities of the ancient Tibetan religious system (about which he read in his grandfather Lesevich's library), and the atheism preached by Lesevich. This confusion of values was scarcely allayed by Leontovitsch's parents: his father Vladimir and his mother Iul'ia were believers rather than atheists, but Leontovitsch *père* was an enthusiastic reader of John Stuart Mill and of Herbert Spencer. For some reason perhaps related to their own divided religious sensibilities, Leontovitsch's parents did not take him to church services until he was "ten or eleven years old", yet this belated exposure to Orthodoxy made a huge impression on him, accounting for his "life-long strong tie with the Orthodox Church and theological interests"⁹.

Leontovitsch received his middle school and secondary education in Kiev at the Naumenko School, a private *gimnaziia* founded in 1905 by the Ukrainian educator Volodimir Pavlovich Naumenko. The school's eight-year curriculum included state-mandated subjects¹⁰, but also intensive reading of Ukrainian literature, as a means of understanding historical, social and ethical issues¹¹. According to Leontovitsch's 1947 English-language curriculum vitae, a document probably written for the American occupation authorities, "in 1919 [he] passed the final examination at the Gymnasium Naumenko"¹². This assertion is difficult to verify. The Naumenko School remained open as a private institution only until 1916; it is not clear under what auspices Leontovitsch could have continued his education there for three additional years and not clear who might have administered his final examination in 1919.

S. 33–48 (Parmen Leontovitsch made available to me an unpublished English translation); *Oswalt Ju.* Between Two Worlds. P. 1, fn. 2.

⁶ Vladimir Leontovich was best known for his *Pani i liudi* (Lviv, 1893), and his *Per pedes apostolorum* (*Stopami apostoliv*): *Obrazki z zhittia dukhovenstva* (Lviv, 1896).

⁷ [Leontovitsch Victor]. Lebensbeschreibung (unpublished, undated document), p. 1. I am indebted to Parmen Leontovitsch and Julia Oswalt for a digital copy of this document.

⁸ *Broglie A. de.* L'église et l'Empire Romain au IV siècle 2-me édition, révisée et augmentée. Paris, 1857; *Coulanges F. de.* La cité antique; étude sur le culte, le droit, les institutions de la Grèce et de Rome. 4-me éd. Paris, 1874.

⁹ [Leontovitsch Victor]. Lebenbeschreibung. S. 1.

¹⁰ *Klassicheskie gimnazii* offered theology, Russian language, Latin and ancient Greek, modern languages (French and German), physics, mathematics, history and geography.

¹¹ On Volodimir Pavlovich Naumenko and his school, see: *Paikova E. V.* Volodimir Naumenko (1852–1919) // *Ukrains'kii istorichnii zhurnal.* 1998. N 6. P. 90–102.

¹² *Leontovitsch V.* Curriculum Vitae. P. 1. — This document was supplied to the author by Parmen Leontovitsch, Victor's son, by email on 11 January 2015.

In a 1929 curriculum vitae, Leontovitsch claimed to have joined General Denikin's army in 1919 and to have remained in it "up to the evacuation at Novorossiisk" — that is, till late March 1920¹³. According to this account, after leaving the Volunteer Army, he returned to Kiev and enrolled in the Kiev Commercial Institute. Leontovitsch then remained in Kiev until September 1921, when he left for Prague to join his father and mother, who had already emigrated¹⁴.

The family account of Vladimir and Victor Leontovitschs' activity during the civil war differs from the 1929 autobiography in a number of respects. According to Victor's children, Parmen Leontovitsch and Julia Oswald, their grandfather Vladimir, his wife Ul'ia and their daughter Ol'ga "left [Kiev] to go into exile via Crimea, Constantinople, Sophia and finally to Prague at the end of 1918". According to the same family account, "Victor had been drafted into the [Volunteer] army put together to defend Kiev [in 1919] and was taken prisoner by a Bolshevik unit — which started executing their prisoners. Father escaped by feigning death, and then making his way back to Kiev, by which time his parents had left. He went to the family's townhouse and was taken in by the housekeeper. He spent a couple of semesters in Kiev studying chemistry and working on the railroad to survive. After a time he began to feel that someone would denounce him, so he decided to leave [Ukraine] for Poland. He made the journey on foot — including a time when he attached himself to a group of what today would be called 'people smugglers' getting refugees across to Poland clandestinely. The reunion with his parents was facilitated through enquiries they made through the Red Cross"¹⁵.

In Prague in 1923, Leontovitsch enrolled in the Faculty of Russian Law, a small Russian émigré university whose faculty members initially consisted of thirteen professors, two docents, and three lecturers¹⁶. Leontovitsch studied there for ten years. In 1929, he received a candidate's degree, first class, and later, in 1932, a master's degree¹⁷. He wrote his candidate's thesis on the topic, "The Formation of Episcopal Authority in the First Three Centuries".

Over the decade following the foundation of the Faculty of Russian Law, the composition of the professorate changed, as some faculty members died or left Prague for other venues; however, during Leontovitsch's student years, he had the opportunity to meet some of the most remarkable figures in early twentieth-century Russian academic life. Among the experts on law were: David Davidovich Grimm, the historian of Roman law and former rector of Petersburg University who succeeded Pavel Ivanovich Novgorodstev as dean in 1924¹⁸; Mikhail Mefodievich Katkov, a historian of Roman law who had taught at Kiev

¹³ "Curriculum Vitae" Viktora Leontovicha // GARF.F.5764. Op. 2. Ed. khr. 526. L. 36–37.

¹⁴ Ibid. L. 36–37.

¹⁵ Parmen Leontovitsch, personal communication with the author, 20 February 2015.

¹⁶ See: *Ganin V. V. Professura i studenchestvo russkogo iuridicheskogo fakul'teta v Prage // Iuridicheskoi obrazovanie i nauka. 2005. N 3. P. 37–43.* The text of this article is printed, see: URL: www.cen-ter-bereg.ru/13373.html (accessed 08 and 09. 01. 2015).

¹⁷ On the Faculty of Russian Law, see: *Andreyev and Savitsky. Russia Abroad. P. 89–92.* Several details of the account below are drawn from this book. After his family arrived in the West, Leontovitsch studied chemistry "for some time", before enrolling in the Russian Faculty of Law. Leontovitsch's candidate's degree came after he passed the Czech state examination in law. See: *Leontovitsch V. Curriculum Vitae* (unpublished document). P. 1. I thank Parmen Leontovitsch and Julia Oswald for access to this material.

¹⁸ See: Vladimir Alekseevich Tomsinov, David Davidovich Grimm (1864–1941) // Tomsinov, Rossiiskie pravovedy XVIII — XX vekov: ocherki zhizni i tvorchestva, v dvukh tomakh. T. 2. Moscow, 2007. P. 222–252.

University and in the Women's Higher Courses in Kiev before emigrating in 1921¹⁹; Sergei Konstantinovich Gogel', an expert on criminal law who directed the Sevastopol' Juridical Institute²⁰; Aleksandr Vasil'evich Makletsov, an expert in Russian criminal law and former docent from Khar'kov University²¹; Evgenii Vasil'evich Spektorskii, a former professor and rector of Kiev University specializing in medieval and early modern Western law, the philosophy of law, and Enlightenment political theory²²; Nikolai Sergeevich Timashev, a specialist on criminal law and on the sociology of law²³; and Nikolai Nikolaevich Alekseev, a student of Novgorodtsev's, who had taught public law at Moscow University from 1912 to 1917²⁴. From them Leontovitsch acquired knowledge of the history of Western law and legal theory dating from the Justinian Code to the late eighteenth century, and a sense of the legal and philosophical foundations of citizenship as it was understood in the Roman world and in the modern West. From Grimm and Katkov, Leontovitsch may have had his first lessons on the history of property rights²⁵. Gogel' and Makletsov offered him insight into the practice of jurisprudence in criminal courts, while Spektorskii offered a juridical and philosophical framework for understand law in different societies, and a tragic interpretation of Russia's recent history²⁶. Timashev taught Leontovitsch Russian criminal law.

¹⁹ Two sons of Katkov subsequently played important roles in the Russian emigration: Georgii Mikhailovich, Leontovitsch's friend from the Naumenko School, who later taught at St. Anthony's College at Oxford and published an important political history of the February Revolution; and Kirill Mikhailovich, a noted iconographer and student of art history from the seminar of Nikodim Pavlovich Kondakov. For Katkov's work on Russian law, see below.

²⁰ Sergei Konstantinovich Gogel' was one of the Russian empire's leading experts on penal institutions, the theory of punishment, and the criminal bar. See his: *Kurs ugovolnoi politiki: v sviazi s ugovolnoi sotsiologii*. St. Petersburg, 1910; *Arestantskii trud v russkikh i inostrannykh tiur'makh*. St. Petersburg, 1897; *Znachenie tiuremnago zakliuchenii kak nakazaniia: v proshloe i nastoiashchee vremia*. St. Petersburg, 1904; *Sud prisiazhnykh: i ekspertiza v Rossii*. Kovna, 1894.

²¹ On Makletsov, see: *Pobegailo E. F., Maguza A. O.* O professore Aleksandre Vasil'eviche Makletsove: k 125-letiiu so dnia rozhdeniia // *Rossiiskii kriminologicheskii vzgliad*. 2009. N 3. P. 58–62.

²² See: *Mikhalchenko S. I., Tkachenko E. V.* Evgenii Vasil'evich Spektorskii // *Voprosy istorii*. 2013. N 1. P. 31–53.

²³ Nikolai Sergeevich Timashev finished his master's thesis at St. Petersburg University in 1914, on the subject of conditional verdicts. In 1916, he published a two-volume doctoral dissertation on incitement of crowds. See: *Timashev N. S.* Prestupnoe vobuzhdenie mass po deistvuiushchemu russkomu pravu: (sta'i 129–132 ugol[ovnago] ulozh[eniia]. In 2 vols. Petrograd, 1915–1916. In 1928, Timashev moved from Prague to Paris, where he worked at the Sorbonne. In 1936, Timashev came to the United States. He taught at Harvard, Fordham and the University of California. He was active in the emigration, as an editor of *Novyi zhurnal*.

²⁴ In May 1912, Nikolai Nikolaevich Alekseev defended his master's dissertation, published as *Nauki obshchestvennye i estestvennye v istoricheskom vzaimootnoshenii ikh metodov* (Moscow, 1912).

²⁵ Katkov published a book on the right of possession under Roman law. See: *Katkov M. M.* Poniatie prava uderzhaniia v rimskom prave. Kiev, 1910. Grimm wrote a standard book on contract law as a basis for civil law. See: *Grimm David Davidovich.* Osnovy ucheniia o iuridicheskoi sdelke v sovremennoi nemetskoii doctrine pandektnago prava: prologemeny k obshchei teorii grazhdanskago prava. St. Petersburg, 1900.

²⁶ For Spektorskii, the concept of "culture" could not be reduced to material or social relations, for culture has a metaphysical element: it may be built on human conceptions of God, or on human aspirations, such as the desire for freedom from oppression. In the post-Petrine age, Spektorskii contended, Russians had been caught between the temptation of power [*vlastoliubie*] and the pursuit of enlightened freedom [*svoboda prosveshchennaia*]. He saw the Russian revolution of 1917 as a tragic event that ended, at least temporarily, the search for enlightened freedom and threatened the very existence of Russian Orthodoxy. He held that Russian émigrés should take as their mission the preservation of liberal and religious values. For ruminations on the connection between Christianity and culture, see especially: *Spektorskii E.* Khristianstvo i kul'tura. Praga, 1925, where he asserted the positive contribution of Christianity for the ideal of human personhood. For the value he set on Pushkin as enlightener, see his essay: *Zavety Pushkina // Zavety*

He may have inspired Leontovitsch to think about the role of the crowd in the Russian revolution (one of Timashev's interests was "criminal incitation of the masses"). In the late 1910s, Alekseev wrote a series of books on the philosophy of law and on the theory of the state²⁷. Of particular importance for Leontovitsch was Alekseev's notion that the state should be understood not in terms of power or of the territory it controlled, but rather as a community or association of people [*obshchenie*]²⁸.

One of the distinguishing marks of the Faculty was its strong interest in Church law. Between 1922 and 1927, four professors taught courses in this area: Spektorskii, Georgii Vladimirovich Vernadskii (about whom, see the next paragraph), Iakov Nikolaevich Ktitarev, and Sergei Nikolaevich Bulgakov²⁹. Ktitarev was a systematic theologian, who before the revolution had served as chaplain at the Smol'nyi Institute for Young Women in Petersburg. He later became a well-known homilist and author of devotional works aimed at the Russian diaspora³⁰. By 1922, Bulgakov was a theologian of world renown, the author of a profound meditation on economic life as a venue of holiness³¹. That year the Soviet government forced him to emigrate in the "philosophy steamship". In the mid-1920s he founded the St. Sergius Orthodox Theological Institute in Paris [*Institut de Théologie orthodoxe Saint-Serge*], where he turned his attention to writing and teaching dogmatic theology. In emigration, he became a leader of the Russian ecumenical movement and also one of Orthodoxy's most controversial theologians for his teaching on the Divine Sophia.

Alongside these specialists in civil, public and ecclesiastical law, the Faculty employed several intellectuals involved in the Eurasianist current of thought³². Petr Nikolaevich Sav-

Pushkina. *Iz naslediiia pervoi emigratsii* / ed. by Mikhail Dmitrievich Filin. Moscow, 1998. P.203–225. For his contrast between moral and physical notions of society, see his master's and doctoral theses: *Problema sotsial'noi fiziki v XVII veka*. Vol. 1. Warsaw, 1910; vol.2. Kiev, 1917; reprinted under the same title (St. Petersburg, 2006, Seriiia "Slovo o suchchem", vol. 60–61).

²⁷ See: *Alekseev N.N.*: 1) *Vvedenie v uzuchenie prava*. Moscow, 1918; 2) *Obshchee uchenie o prave*. Simferopol', 1919; 3) *Ocherki po obshchei teorii gosudarstva*. Moscow, 1919.

²⁸ This was the main point of his *Ocherki po obshchei teorii gosudarstva*. On Alekseev's contribution to legal philosophy, see: *Tomsinov V.A. Nikolai Nikolaevich Alekseev (1879–1964) // Rossiiskie pravovedy XVIII–XX vekov. Ocherki zhizni i tvorchestva v dvukh tomakh*. Moscow, 2007. Vol. 2. P. 457–472.

²⁹ *Ganin V.V. Professura i studenchestvo russkogo iuridicheskogo fakul'teta v Prage*. P.39. Table 2. *Obespechennost' uchebnykh distsiplin prepodateliami v 1922 i 1927 gg.*

³⁰ For a short biography, see: Ktitarev Iakov Nikolaevich // *Rossiiskoe zarubezh'e vo Frantsii 1919 — 2000: biograficheskii slovar' v trekh tomakh* / eds L. A. Mnukhin, M. Avrii' and V. Losskaia. Vol. 1. Moscow, 2008. P.768–769. — For a pre-revolutionary meditation on literature and morality, see: *Ktitarev Ia.N. Voprosy religii i morali v russkoi khudozhestvennoi literature*. St. Petersburg, 1914. For a devotional work written later, see: *Ktitarev Ia.N. Sputnik pravoslavnago khristianina: molitvoslov s ob'iasneniiami*. 3rd ed. Paris, 1945–1953.

³¹ For a short but authoritative treatment of his pre-revolutionary philosophy, see: *Evtuhov Catherine. The Cross & the Sickle: Sergei Bulgakov and the Fate of Russian Religious Philosophy*. Ithaca, 1997; for his attack on the secular intelligentsia, see: *Bulgakov S.N.*: 1) *Intelligentsiia i religii: o protivorechivosti sovremennago bezreligioznago mirovozzreniia. Voskresenie Khrista i sovremennoe soznanie*. Moscow, 1908; 2) *Dva grada: izsledovaniia o prirode obshchestvennykh idealov*. Moscow, 1911; 2) *O religii Lva Tolstogo*. Moscow 1912; on his economic thought, see: 1) *Filosofiiia khoziastva*. Moscow, 1912, and the English translation; 2) *Philosophy of Economy: The World as Household* / transl., ed., and with an introduction by Catherine Evtuhov. New Haven, 2000; for a profound theological meditation, see: *Bulgakov S.N. Svet nevechernii*. Moscow, 1917.

³² To this list of Eurasianists at the Faculty of Law, one might add Nikolai Nikolaevich Alekseev, who, from roughly 1930 to the early 1950s, associated himself with the Eurasianists. Alekseev argued that political stability and social order could only be achieved in Russia under the aegis of a strong state, guided by educated elites dedicated to religious principles. He maintained that law in the sense of *Recht* [*pravo*] cannot be

itskii, one of Eurasianism's founders, developed the notion that Russia constitutes a peculiar geographical realm with its own geopolitical outlook, distinct from Western geopolitics, and possessing a history closer in some respects to the history of steppe peoples than to settled Western European societies³³. Georgii Vasilevich Florovskii, subsequently one of the twentieth-century's most important historians of Russian theology, elaborated in Prague a notion of Russian spirituality distinct from Latin spirituality³⁴. The historian Georgii Vladimirovich Vernadskii read a course on the history of Russian law to the Faculty's first students³⁵ and later worked out a comprehensive history of Russian culture from a Eurasianist perspective³⁶. Perhaps exposure to Eurasianism deepened Leontovitsch's awareness of the differences between Russia and the West without persuading him that Russia had always constituted an entirely "separate world" from the West. In his scholarly work, he acknowledged the importance for the West of Roman property law, of the independence of local elites from feudal kings, of freedom of commerce, and of the Church-state separation — all developments that had weak analogues or little impact in Muscovy; however, he did not concede that modern Russia was incapable of constructing a rule-of-law state similar to those that had appeared in the West during the nineteenth century.

From Leontovitsch's student file in the archive of the Faculty of Russian Law, we know that he presented the following research papers: in the first year, a paper for Professor Florovskii on "Religion's Influence on the Law"; in the second year, a paper for Professor Nikolai Nikolaevich Alekseev on "Lev Nikolaevich Tolstoy's Anarchism"; in the third year, a paper for Vernadskii on "St. Cyprian's View of the Episcopate"; and in the fourth year, a paper for Professor Nikolai Sergeevich Timashev on "Self-Defense [in Criminal Law]"³⁷.

In July 1929, after passing his candidate's examination, Leontovitsch formally proposed to write a master's thesis on the authority of bishops in the early Church. On 30 September the Faculty approved the proposal, giving him permission to conduct research in Paris under Sergei Bulgakov's general supervision³⁸. In Paris, Leontovitsch attended "a series of lectures in Church history and theology" at the St. Sergius Orthodox Theological Institute; he also studied at other Parisian schools, such as the Sorbonne. According

divided from moral norms [*nravstvennost'*]. He sought a state that would end the division of society into rich and poor, but without reliance on socialism. See: *Alekseev N. N. Religii, pravo i nravstvennost'*. Paris, 1930.

³³ For example, see: *Savitskii P. N.*: 1) *Geografskie osobennosti Rossii*. Prague, 1927; 2) *O zadachakh kochnikovedeniia: pochemu skify i gunny dolzhny byt' interesny dlia russkogo?* Prague, 1928.

³⁴ Florovskii was a contributor to the earliest manifesto of Eurasianism. See: *Florovskii G. V.*: 1) *Khistrost' razuma // Iskhod k vostoku. Predchuvstviia i sversheniia. Utverzhenie Evrasiitsev / ed. by P. N. Savitskii*. Sofia, 1921. P. 28–39; 2) *O narodakh ne-istoricheskikh (strana otsov i strana detei) // Ibid.* P. 52–70. — He contributed to the "second" Eurasian manifesto an article on patriotism. See: *Florovskii G. V. O patriotizme pravednom i grekhovnom // Na putiakh. Utverzhenie Evraziitsev / ed. by P. N. Savitskii. Kniga vtoraia*. Berlin, 1922. P. 230–293. — Florovskii also contributed to the 1923 Eurasianist statement on the differences between Russian and Western spiritual culture — a volume that strongly opposed the reunification of Eastern and Western churches. See: *Florovskii G. V. Dva zaveta // Rossiia i Latinstvo*. Berlin, 1923. P. 152–176. — Florovskii broke with the Eurasianists in 1928, announcing that their questions were just and truthful, but the answers they gave "led nowhere." See his article: *Florovskii G. V. Evrasiiskii soblazn // Sovremennye zapiski. Kniga 34*. Paris. 1928. P. 312–346, here 312.

³⁵ *Vernadskii G. V. Ocherki istorii prava Russkago gosudarstva*. Prague, 1924.

³⁶ *Vernadskii G. V.*: 1) *Nachertanie russkoi istorii*. Prague, 1927; 2) *Zven'ia russkoi kul'tury*. Berlin, 1938.

³⁷ Untitled document, dated 1 July 1929, with the heading: *Studentom V. V. Leontovichem byli predstavleni sleduiushchie raboty // GARF. F. 5765. Op. 2. Ed. khr. 525. L. 36–37.*

³⁸ See: *Protokol zasedaniia Russkogo iuridicheskogo fakul'teta v Prage (30.9.1929) // GARF. F. 5765. Op. 1. Ed. khr. 4. L. 373.* For materials from GARF, I thank Martin Beisswenger.

to Leontovitsch's short curriculum vitae, his Paris course work included Professor Robert Génestal's lectures and seminars at the University of Paris *Faculté de droit*³⁹. From a 1931 report Leontovitsch made to his professors in Prague, we know that he took Génestal's course on canon law called "Constitution of the Church" [*la constitution de l'Église*]⁴⁰. According to records of the Russian Faculty of Law, from July 1930 to May 1931, the actual director of Leontovitsch's master's research was not Father Bulgakov but rather Father Sergei Viktorovich Troitskii, an expert on canon law who, before the revolution, had taught at the Aleksandr Nevskii Seminary in Petersburg⁴¹. Leontovitsch took Troitskii's specialized courses on the canon law of marriage and on sources of canon law. Troitskii also arranged to send Leontovitsch to Switzerland, to study for a period under Pastor Adolf von Mettler, a recognized expert on the early Church and on monasticism⁴².

From Leontovitsch's 1931 report to the Prague Faculty, we know his reading in Paris and Switzerland concentrated on two related topics: the origins of canon law, focusing on the then raging polemic over whether canon law was from the beginning a feature of the Church's "constitution" or was rather a later-appearing development⁴³; and the appearance of distinctive Western and Eastern Church organizations. With respect to this second issue, Leontovitsch interested himself in differences among canon law codes of the various autocephalous Orthodox Churches; for example, he made special notes on the distinction between the Orthodox Church in Ukraine and in Muscovy⁴⁴. One has the general impression that he wanted to understand the relationship between the earliest Christian ecclesiastic authority structures (early codes of canon law, early ecclesiastic tribunals) and later forms of authority in the West, in Ukraine and in Muscovy: in other words, he was testing the hypothesis that Russian Orthodoxy was "closer" to the "authentic" practices of the ancient Church than were Western Churches⁴⁵.

³⁹ Robert Génestal was an expert on French law, feudal law and economy in Normandy, the law of marriage, Church canon law, and the role of monasteries in French life. For an assessment of his impact as historian, see: *Ganshof François-Louis*. Robert Génestal // *Revue belge de philologie et d'histoire*. 1931. 10, N 1–2. P. 453–454. — At the time Leontovitsch visited Paris, Génestal was finishing a book on the legal protection of minors in the middle ages. See: *Génestal R*. La tutelle. Caen, 1930. See Leontovitsch "CV" (unpublished document), p. 1. Courtesy of Parmen Leontovitsch and Julia Oswald.

⁴⁰ Otchet o rabote (s 1-go iul'ia 1930 g. po 1-oe maia 1931 g.) Viktoriia Vladimirovicha Leontovicha // GARE.F. 5765. Op. 1. Ed. khr. 4. L. 403–406, here 403.

⁴¹ Protokol zasedaniia Russkogo iuridicheskogo fakul'teta v Prage (13.6.1930) // *Ibid*. L. 377 verso, 383.

⁴² Otchet o rabote (s 1-go iul'ia 1930 g. po 1-oe maia 1931 g.) Viktoriia Vladimirovicha Leontovicha // GARE.F. 5765. Op. 1. Ed. khr. 4. L. 403–404. In the late 1920s, Mettler published a series of short books on monastery architecture, particularly on monastery church buildings. See for example: *Mettler A*. Mittelalterliche Kirchen und Klöster der Hirsauer und Zisterzienser in Würthemberg. Stuttgart, 1927.

⁴³ This was the debate between Adolf Harnack and Rudolf Sohm over the interpretation of the first surviving Church catechism, the so-called "Teaching" [Didache].

⁴⁴ Otchet o rabote. L. 404–405.

⁴⁵ He wrote: "In studying ecclesiastical organization, I have gathered rather a lot of material on various issues of diocesan administration, which has facilitated my understanding of the separate branches of Church administration". "I have continued to work on Church courts. At the moment, I am preparing a presentation for Professor A[nton]. V[ladimirovich]. Kartashev on [Muscovite] Church courts based on articles 67–69 of the Stoglav... Earlier I began a study of the canon law courts in the West from the moment that [judicial] officials appeared there to our time". See: Otchet o rabote. L. 404–406 passim. Kartashev lectured at the Petersburg Theological Academy before the Revolution; in 1917, he served briefly as Ober-Procurator of the Holy Synod just before that post was abolished. While Leontovitsch was in Paris, Kartashev was writing his book on Church and state in Russia. See: *Kartashev Anton Vladimirovich*. Tserkov' i gosudarstvo: chto bylo i chto dolzhno byt' v Rossii. Paris, 1932.

Leontovitsch's fascination with forms of ecclesiastic law and Church structure was part of a broader problematic posed in his student days at the Russian Law Faculty — the historical common ground and distinction between Russia and the West. At this stage, he seemed to understand Russia as a European polity and seemed disinclined to absolutize the distinctions between Russian Orthodoxy and Western Christianity. Perhaps, it was therefore not an accident that in a symposium on ecumenism at University of Bonn held in winter 1931–1932, Leontovitsch, who attended as part of the St. Sergius group, met his future wife, Hildegunt Helene Römheld, who attended as a Lutheran⁴⁶.

In the 1932–1933 academic year, Leontovitsch, then a docent, delivered lectures on Church law at the St. Sergius Institute. In 1933, after three years in France, Leontovitsch returned to Prague to sit for two additional state examinations, the first in public law (passed in March 1933) and the second in philosophy of law (passed in October 1933). He spent part of that academic year in Prague reading lectures in public law and Church law⁴⁷. According to the records of the Russian Faculty of Law, Leontovitsch also delivered two public lectures [so-called *probnye lektsii*] to win promotion to the status of docent there. He spoke on “Comparison of Diocesan Organization in Muscovy and Southwest Rus’ in the Sixteenth and Seventeenth Centuries”, and “The Concept of a Universal [Church] Council in Orthodoxy, Catholicism and Protestantism”⁴⁸.

II

Leontovitsch and his new wife moved to Berlin, a city of more than four million people into which well over two hundred thousand Russians had re-located after the Russian Revolution and civil war⁴⁹. Before 1933, Berlin was Europe's largest metropolitan haven for Russians abroad, exceeding Paris in this respect. With so many Russians concentrated in western Berlin in the area near the Kurfürstendamm, there developed something like a Russian-speaking “island” within Berlin — a city within the city. In the twenties, Russian Berlin supported hundreds of restaurants, over eighty publication houses, and several dozen Russian-language newspapers and journals. Berlin became the home, long-term or short-term, to dozens of Russian writers, including the novelist Vladimir Vladimirovich Nabokov and the poet Marina Ivanovna Tsvetaeva⁵⁰. After the Nazi seizure of power, however, the Russians' status in Berlin was less certain. In the first months of 1933, thousands of Russians left the city. In April and May 1933, the burning of “un-German” books, including novels by Russian and Soviet authors, shocked many of Berlin's remaining Russians.

Under these unpropitious circumstances in academic year 1933–1934, Leontovitsch joined the *Ukrainische Wissenschaftliches Institut* in Berlin⁵¹. In 1934, he became lecturer

⁴⁶ Oswald Ju.: 1) Between Two Worlds. P. 1; 2) Zwischen den Welten. 1934–1953.S. 33.

⁴⁷ See: *Leontovitsch V.* CV (unpublished document). P. 1.

⁴⁸ *Otchet o rabote*. L. 399–399 verso.

⁴⁹ *Raeff M.* Russia Abroad. P. 202, Table 1, which estimates that the number of unassimilated Russian refugees in Germany in 1922 was between 230,000 and 250,000; *Popov A. N.* Russkii Berlin. Moscow, 2010. P. 132, estimates the number of Russian refugees in Berlin in 1922 as 360,000.

⁵⁰ *Ibid.* P. 156–212.

⁵¹ See: “Leontovitsch, Victor”. *Hessische Biografie*, entry for 1933–1934 (Leontovitsch Victor. CV, p. 1), he failed to mention his connection with the Ukrainian Institute. The Institute was founded in 1926 under pressure from the Ukrainian diaspora, especially from Pavel Skoropadskyi and the historian Dmytro Doroshenko. Its goal was to spread knowledge of Ukrainian culture to Germans and to encourage Ukrainian-Ger-

at the *Institut für Auslandsrecht* at the University of Berlin. That same year, he received and accepted an invitation to teach Russian language as lecturer at the Berlin *Wirtschaftshochschule*.⁵² From 1934 to 1945 he maintained these connections at the *Institut für Auslandsrecht* and the *Wirtschaftshochschule*. In 1937, he also became a research scholar (*Dozent*) at the *Kaiser-Wilhelm-Institut für ausländisches und internationales Privatrecht*; there he gave lectures on the history of Russia, on its intellectual history, on the history of liberalism and of socialism in Russia, and on Soviet law⁵³.

Leontovitsch's decision to live in Berlin under the Nazis and to work in German institutions of higher education until 1945 raises the questions of his attitude toward National Socialism and his complicity (or lack thereof) with Nazi policy.

From everything we currently know about him, it seems clear that Leontovitsch rejected Nazism for both religious and political reasons. In Berlin, he practiced Russian Orthodoxy, attending services regularly at the Church of St. Vladimir on Nachodstrasse⁵⁴. To show respect for his wife's religious beliefs (she was Lutheran), he also celebrated Christmas according to the Gregorian calendar and sang hymns from the Protestant hymnbook⁵⁵. In one of Leontovitsch's post-1945 curricula vitae, he claimed that, since 1931, he "had enjoyed professional communications with German Protestant theologians"⁵⁶. He did not provide their names, but it is likely that several of them belonged to circles trained by Karl Barth. Leontovitsch's wife Hildegunt had studied German literature and language, theology and philosophy at Marburg, Bonn and Berlin. In Bonn, she had studied under Barth who, already in 1933, had broken with members of the German Christian move-

man friendship as a counterweight to the Czech and Polish nationalist view. For a history of the Institute, see: *Kumke C.* Das Ukrainische Wissenschaftliche Institut in Berlin zwischen Politik und Wissenschaft // *Jahrbücher für Geschichte Osteuropas. Neue Folge.* 1995. Bd. 43, Hft 2. S.218–253. — Kumke argues that, from the beginning, the Institute's scholarly goals were complicated by political pressures, particularly by the effort of Skoropadskyi to use the Institute as fulcrum of his political authority in the diaspora and by the German Foreign Office's desire to use the Institute as a vehicle for advancing its Eastern policy. The Institute's fate was further complicated in the late 1920s by financial pressures and by in-fighting amongst Ukrainian émigrés.

⁵² The *Wirtschaftshochschule* was founded in 1904 as the *Handelhochschule*; the name was changed in 1935.

⁵³ *Leontovitsch V.* CV.P.1.

⁵⁴ From 1925, many members of the Russian Orthodox community in Berlin met in the so-called "Mariannenhaus," a building on 10 Nachodstrasse in the Charlottenburg-Wilmersdorf district, where they established the German-Russian St. George High School (*Realgymnasium*) for Russians fleeing the revolution. Under Bishop Tikhon (Liashchenko), head of the Russian Church Abroad in Germany, one of the rooms in the St. George School was converted into a chapel, referred to as the St. Vladimir Church. This was the church that Leontovitsch attended. From the 1920s, the Russian Orthodox in Berlin laid plans for a three-naved cathedral, a project that took shape in 1936, when the community laid the cornerstone of the future Cathedral of Christ's Resurrection [*Christi-Auferstehungs-Kathedrale*], on the Hoffmann-von-Fallerleben-Platz at Hohenzollerndamm 166. The construction of the cathedral required the approval, and financial support, of the Prussian Ministry of Construction. The structure was completed in May 1938. In November 1945, the Orthodox arranged an inaugural concert at the Cathedral, in which congregants of the St. Vladimir Church and of the new cathedral participated. By then, Leontovitsch had left Berlin. On the cathedral, see "Neubau der Russisch-Orthodoxen Kathedrale in Berlin", *Zentralblatt der Bauverwaltung* 60, N 25/26 (22 June 1940). S. 371–374. See also: "Russisch-Orthodoxe Kathedrale Christi Auferstehung". URL: www.luise-berlin.de/lexikon/chawi/r/russisch_orthodoxe_kathedrale.htm (accessed 07. 03. 2017).

⁵⁵ *Oswalt Ju.* Between Two Worlds. P.2.

⁵⁶ *Leontovitsch V.* CV.P.1.

ment sympathetic with Nazism⁵⁷. In 1934, Barth had condemned all forms of natural theology, among which he included National Socialism. In 1935, he helped write the “Barmen Declaration” condemning Nazi racism as heretical⁵⁸.

Probably with Barth’s help, Leontovitsch saw the incompatibility between the Christianity he embraced and the *Ersatz* Christianity advocated by members of the so-called “German-Christian movement” who tried to reconcile Christian beliefs with National Socialism⁵⁹. In any case, as an ardent Orthodox Christian, Leontovitsch could never have accepted Alfred Rosenberg’s *Positives Christentum* — a bizarre attempt to merge aspects of Christianity with National Socialism⁶⁰. Neither did Leontovitsch sympathize with any form of nationalism, let alone National Socialism. His daughter Julia Oswalt has declared: “Both my parents were worlds away from any nationalism”⁶¹. Before the war, on the occasion of Hitler’s birthday, the Leontovitschs refused to display the German flag and swastika on their apartment balcony in Reinickendorf, whatever their neighbors did⁶². Even though he opposed and feared Soviet power, Leontovitsch never regarded the Nazi invasion of the Soviet Union as a realistic means to remove the Bolsheviks from power. When German media announced the Nazi attack on the Soviet Union in June 1941, Leontovitsch told his family: “The Russians will get to Berlin; we must leave”. Starting in 1943, he prepared to move his family and books from the capital to the small village of Lippoldsberg in Kassel, so that they would be safe from Soviet encroachment. In early 1945, he completed the move before the Red Army entered Berlin⁶³.

If Leontovitsch had no sympathy for the National Socialists, he still worked in an academic environment strongly affected by the Nazis. From 1933 onward, the Ukrainian Institute became more and more dependent on National Socialist support, partly because Ukrainian émigré’ politicians naively saw the Nazis as a means to advance their cause but also because the Institute relied on government funding⁶⁴. Inevitably, the party turned the organization into a service agency rather than into an independent enterprise prized for its expertise⁶⁵.

At the University of Berlin’s *Institut für Auslandsrecht*, the situation was more difficult. Anti-Semitism had been a factor in the daily life of Berlin University students since 1918 and had intensified as the Nazis moved toward power⁶⁶. In May 1933, the books

⁵⁷ For information on Hildegunt Leontovitsch, see Parmen Leontovitsch, personal communication with the author, 20 February 2015.

⁵⁸ On Barth, see: *Busch Eberhard*. Karl Barths Lebenslauf: nach seinen Briefen und Autobiograph. Texten. München, 1975; on the Barmen Declaration, see: *Busch E.* The Barmen Theses Then and Now: The 2004 Warfield Lectures at Princeton Theological Seminary. Grand Rapids (Michigan), 2010.

⁵⁹ On German Protestantism in the Nazi years, see: *Bergen D. L.* Twisted Cross: The German Christian Movement in the Third Reich. Chapel Hill, 1996.

⁶⁰ On Rosenberg’s Positive Christianity and other Nazi notions of Christianity, see: *Steigmann-Gall R.* The Holy Reich: Nazi Conceptions of Christianity. Cambridge, UK; New York, 2003. See also: Zerstrittene “Volksgemeinschaft”: Glaube, Konfession und Religion in Nazionalsozialismus / eds Manfred Gailus and Armin Nolzen. Göttingen, 2011, which suggests that so-called *Gottgläubigen* comprised a relatively small minority of German believers.

⁶¹ *Oswalt Ju.* Between Two Worlds. P.9.

⁶² *Ibid.* P.1.

⁶³ *Ibid.* P.4–6.

⁶⁴ *Kumke C.* Das Ukrainische wissenschaftliche Institut in Berlin. S.236–237.

⁶⁵ *Ibid.* S.249–251.

⁶⁶ See: *Saerendt Ch.* Anti-Semitismus und politische Gewalt an der Berliner Friedrich-Wilhelms Universität 1918–1933 // Zukunft braucht Erinnerung. Online-Portal zu den historischen Themen unserer

burned by the Nazis on the Berlin Opernplatz were taken from the university library — a symbol of the new regime's desire to purge scholarship of "undesirable" elements. University authorities fired Jewish professors in the academic year 1933–1934, roughly the same period when Leontovitsch accepted his position at the *Institut für Auslandsrecht*. From 1934 to 1945, the university paid Leontovitsch for lectures on law and political economy⁶⁷. Because law and political economy were ideologically charged disciplines, he had to exercise considerable care in the classroom.

Meanwhile, at the *Wirtschaftshochschule*, although the old faculty managed for some time to maintain relative independence from the state, Professor Heinrich Nicklisch collaborated with the National Socialists, and the Faculty Senate attempted to hire and promote Nazi party members⁶⁸. In 1935, the year after Leontovitsch joined the *Wirtschaftshochschule*, a member of the Nazi SA, Gerhard von Mende, entered the faculty. He was an expert on the Tatars and on Turkish-speakers in the southern Russia who, in 1942, participated in the shaping of Germany's occupation policy in the Soviet Union⁶⁹. Alfred Rosenberg, whose *Reichministerium für die besetzten Ostgebiete* helped plan the German occupation of the Soviet Union, valued the advice of Mende and other Russian experts in the *Wirtschaftshochschule*⁷⁰. Although Leontovitsch's assignment at the school was language instruction, he must have felt uncomfortable in the presence of colleagues like von Mende.

At the *Kaiser-Wilhelm-Institut für ausländisches und internationales Privatrecht*, Leontovitsch's situation was better, but not without problems. From 1926 to 1934, the Institute's director was Ernst Rabel, a professor at the University of Berlin, a distinguished historian of Roman law and also the well-respected editor of the journal, *Zeitschrift für ausländisches und internationales Privatrecht*. Unfortunately, in 1934, Rabel lost the editorship of his journal; in 1935, the Nazi dean of faculty Wenzeslaus von Gleispach fired Rabel from the university and engineered his ouster at the Institute⁷¹. Simultaneously, von Gleispach removed from the Institute Professor Martin Wolff, one of Europe's best-known experts on international private law⁷². In both cases, Gleispach's motivation was official

Zeit. URL: <http://www.zukunft-braucht-erinnerung.de/antisemitismus-und-politische-gewalt-an-der-berliner-friedrich-wilhelms-universitaet-1918-1933/> (accessed 14.01.2015).

⁶⁷ *Maus Ch.* Die ordentliche Professor und sein Gehalt: Die Rechtsstellung der juristischen Ordinarien an den Universitäten Berlin und Bonn zwischen 1810 und 1945 unter besonderer Berücksichtigung der Einkommensverhältnisse. Bonn, 2013. S. 396–397.

⁶⁸ See: *Mantel P.* Betriebswirtschaftslehre und Nationalsozialismus. Eine institutionen- und personengeschichtliche Studie. Wiesbaden, 2010. S. 212–224, here 212–213.

⁶⁹ *Mende G. von:* 1) Die nationale Kampf der Russlandtürken: ein Beitrag zur nationalen Frage in der Sovetunion. Berlin, 1936; 2) Die Völker der Sovetunion. [Berlin], [1939].

⁷⁰ See: *Loose I.* Berliner Wissenschaftler im 'Osteinsatz' 1939–1945 // Die Berliner Universität in der NS-Zeit. Bd. 1 / Hrsg. von Rüdiger von Bruch and Christoph Jahr. Stuttgart, 2005. S. 63–64.

⁷¹ On Rabel's career and the subsequent history of the Institute, see: *Kunze R.-Ul.* Ernst Rabel und das Kaiser-Wilhelm-Institut für ausländisches und internationales Privatrecht. Göttingen, 2004. For a short biography of Gleispach, see: Gleispach Wenzeslaus Graf // Österreichisches Biographisches Lexikon 1815–1950. Bd. 2. Vienna, 1959. S. 7–8. — Gleispach's field of research was German penal law and international criminal and penal law. In January 1938, Gleispach delivered a speech on law under National Socialism. See: *Gleispach W. G. von.* Nationalsozialistisches Recht: Rede zur Feier der 5 Wiederkehr des Tages der nationalen Erhebung am 29 Januar 1938. Berlin, 1938.

⁷² On Wolff, see: *Dannemann G.* Martin Wolff (1872–1953) // Jurists Uprooted. German-speaking Émigré Lawyers in Twentieth-Century Britain / eds Jack Beatson and Reinhard Zimmermann. Oxford, 2003. P. 441–462. See also: *Wolff M.* Internationales Privatrecht. Berlin, 1933.

anti-Semitism. As a non-German educated in foreign institutions and as a beginner in German academic life, Leontovitsch was also vulnerable to removal from the Institute at any moment, yet perhaps, his range of expertise in comparative law, and especially his knowledge of Soviet law, made him valuable enough for the Institute to retain.

In the decade between his move to Berlin and the war's end, Leontovitsch wrote five articles and the short, interpretive book on Ivan the Terrible that is the main subject of this essay.

In the mid-1930s, Leontovitsch published two articles on Soviet law. The first of these was a case study of the February 1935 "Model Statute on Soviet Agricultural Collectives"⁷³. In it Leontovitsch compared the 1935 statute to the law of 1 March 1930, which had set the initial organization of collective farms [*kolkhozy*]. He maintained that the new law made provisions of the older legislation "more precise" and "more orderly", yet it "had made no principled departure" from the earlier statute⁷⁴. Under the 1935 law, members of the *kolkhoz* had the possibility to exercise use-rights over their household and over small garden plots⁷⁵, of raising chickens and small domestic animals on the garden plots, of selling surplus produce to the state, and of creating food reserves for themselves and their livestock⁷⁶. The new statute also provided guarantees to each *kolkhoz* of a certain income, it prevented arbitrary collection of fees within the *kolkhoz*, and it mandated that members' salaries be proportionate to the number of days they had worked⁷⁷. The new law also established rules against arbitrary expulsion of *kolkhoz* members without monetary compensation⁷⁸. It set an upward limit of seventy on the size of work brigades, and provided that brigades be assigned either to field labor or to animal husbandry for three-year periods. Leontovitsch noted that the statute instructed *kolkhoz* administrators to "take account of members' desires" when exercising authority, and defined this administrative authority largely in "patriarchal" terms⁷⁹. In his opinion, the new law was designed "to boost incentives to work, to foster a certain stability in relationships within the *kolkhoz*, and to enhance control over the performance of labor"⁸⁰. However, the 1935 law did not alter the *kolkhoz*'s dependence on the state or change its duties under the five-year plan. For nonfeasance on the job, each *kolkhoznik* was still subject to disciplinary fines or even to punishment as an "enemy of the people". In short, Leontovitsch asserted, "the duty of each *kolkhoz* member still amounted to a requirement of state service". Leontovitsch cited testimony from Soviet authorities in various parts of the country that they knew nothing of the new law's provisions, and that "it is as if the new law does not exist at all"⁸¹.

Leontovitsch's article appeared in the new journal *Zeitschrift für osteuropäisches Recht*, edited at Breslau's *Osteuropa-Institut* by Reinhart Maurach, an expert on the legal status of foreigners in the Soviet Union, on Soviet criminal law, and Soviet constitutional law⁸², and

⁷³ *Leontovitsch V.* Das Musterstatut der landwirtschaftlichen Artels (Kollektive) der Sovetunion vom 17 February 1935 // *Zeitschrift für osteuropäisches Recht* 1934/35. Hft 11. May 1935. S. 551–560.

⁷⁴ *Ibid.* 552–553.

⁷⁵ *Ibid.* S. 553.

⁷⁶ *Ibid.* S. 557.

⁷⁷ *Ibid.* S. 554–556.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.* S. 558–559.

⁸⁰ *Ibid.* S. 559.

⁸¹ *Ibid.* S. 560.

⁸² See: *Maurach R.*: 1) *System des russischen Strafrechts*. Berlin, 1928; 2) *Grundlagen des rätusischen Strafrechts*. Berlin, 1933; and 3) *Das Rechtssystem der UdSSR. Allgemeine Rechtslehre, Zivil- Straf-*

by Gustav Adolf Walz, an expert on public law and constitutionalism but also a critic of Catholicism⁸³. Both Maurach and Walz played a role in promoting National Socialism in Breslau. The third member of the Breslau editorial board was Axel von Freytagh-Loringhoven, a Baltic-German who, before the Great War, had taught law in Iaroslavl and Tartu, and had fled from Soviet power in 1918. Freytagh-Loringhoven's early work focused on property law, specifically the Saxon roots of Baltic-German inheritance codes⁸⁴. After the war, he became a strident critic of the Weimar constitution and Weimar Republic, a member of the German *Reichstag*, and, after 1933, he championed an expansionist German foreign policy. Although he was an ultra-conservative nationalist, Freytagh-Loringhoven never joined the National Socialists⁸⁵. Leontovitsch's article therefore appeared in a publication of aggressively conservative character, whose editorial board had considerable expertise on Russian and Soviet law.

Leontovitsch's second article on Soviet law was an analysis of the 1936 Stalin constitution⁸⁶. In this article, he argued that the constitution's main domestic goal was "not the democratization of the realm" but "the strengthening, consolidation and centralization of state power"⁸⁷. The new constitution assumed the unity of the Soviet polity. Although, under article 17, it formally granted each Soviet republic the right to secede from the union, it deliberately failed to specify conditions under which secession could occur, thus rendering that "right" a dead letter. Furthermore, it exclusively vested army, security and police powers, along with control of communications, in the central government. The constitution created an all-union agency to supervise secondary education. It subordinated local representative bodies to all-union representative bodies⁸⁸, and made all-union governmental bodies independent from (in the sense of not responsible to) local gov-

und Verfahrensrecht. Münster, 1953. Before the war, Maurach wrote an analysis of imperial Russian policy toward the Jews, see: *Maurach R. Russische Judenpolitik*. Berlin, 1939. — For a criticism of Maurach as *Judenforscher* and as part of the German network of *Völkisch* scholarship, see: *Beyrau D. Eastern Europe as a 'Sub-Germanic Space. Scholarship on Eastern Europe under National Socialism // Kritika: Explorations in Russian and Eurasian History*. 2012. 13:3. Summer. P.685–723, especially 717–722. — On the general problem of German academic research on Jews in East Europe, see: *Volkmer G. F. Die deutsche Forschung zu Osteuropa und zum osteuropäischen Judentum in den Jahren 1933 bis 1945 // Forschungen zur osteuropäischen Geschichte*. 1989. 42. S. 109–214.

⁸³ From 1931, Walz was a member of the Nazi party. On his academic life, see: *Schmelz Ch. Der Völkerrechtler Gustav Adolf Walz: eine Wissenschaftskarriere im "Dritten Reich"*. Berlin, 2011. See also: *Ditt Th. Stosstruppfakultät Breslau. Rechtswissenschaft im "Grenzland Schlesien," 1933–1945 // Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung*. 2012. Bd. 129 (1). S. 842–844.

⁸⁴ See: *Freitag-Loringhoven A. Vstuplenie naslednika v obiazatel'stva i prava trebovaniia nasledovatelja po ostzeiskomu pravu*. Iur'ev, 1905.

⁸⁵ On his carrier see: *Sette O. von. Freytagh-Loringhoven, Alexander (Axel) August Gustav Johann Freiherr von // Neue Deutsche Biografie*. 1961. 5. S. 429–430; and *Ditt Th. "Stosstruppfakultät Breslau": Rechtswissenschaft im "Grenzland Schlesien" 1933–1945*. Tübingen, 2011, passim. — For his analysis of the Russian revolution, see: *Frhr A.: 1) Von Freitag-Loringhoven, Geschichte der russischen Revolution*. Teil 1. München, 1919; 2) *Die Entwicklung Bolshchewismus in seiner Gestzgebung*. Halle, 1921; on the Weimar constitution: *Frhr A. Die Weimarer Verfassung in Lehre und Wirklichkeit*. Berlin, 1929; his views on foreign policy, see: *Frhr A. Deutschlands Aussenpolitik 1933–1940*. Berlin, 1941.

⁸⁶ *Leontovitsch V. Die neue Verfassung der Sowjetunion // Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*. 1937. Bd. 7:2. S. 374–393.

⁸⁷ *Leontovitsch V. Die neue Verfassung der Sowjetunion*. S. 377.

⁸⁸ *Ibid.* S. 379–380.

ernments. Leontovitsch saw these changes as “the most important new element of state building contained in the new constitution”⁸⁹.

Leontovitsch criticized shortcomings of the constitution’s provisions on elections that mandated universal, equal, direct and secret balloting. The constitution gave the communist party the prerogative to compose electoral lists⁹⁰, a fact that further limited the autonomy of local republics⁹¹. Leontovitsch saw in equal suffrage an effort not to overcome class antagonism between proletariat and peasantry, but rather a mechanism to subordinate both classes to state control⁹². He noted that the 1936 constitution remained faithful to the Leninist premise of undivided political authority, and thus did nothing to divide governmental powers among legislative, executive and judicial branches. The constitution did preach the supremacy of Soviet law over all official agencies, the significance of constitutional law vis-à-vis other official acts⁹³, and the necessity of rectifying disagreements between all-union governmental bodies; however, under the constitution, the communist party remained the “guiding body” in guaranteeing the proper function of Soviet democracy⁹⁴.

From a theoretical perspective, Leontovitsch’s most significant contribution to understanding the Soviet constitution was in his commentary on citizens’ rights. He noted that, although the Soviet constitution granted citizens political liberty (the right to vote), it concentrated attention on material preconditions for the exercise of that freedom — such as the right to eat and the right to suitable shelter. Leontovitsch observed that the Soviet government controlled access to these material necessities and thus, given the abolition of private property, it monopolized distribution of food and living space⁹⁵. He contended that article 125 of the constitution, which linked political liberty to “conformity with the interests of working people”, “was not a proclamation of freedom and rights of citizens but rather a *Magna Carta* of [state] patronage, of state power over citizens”⁹⁶. Exaggerated state power over citizens was therefore a result of the abolition of the private sphere, a result of the constitution’s unfortunate equation of rights and duties, a result of the government’s jurisdiction under article 14 over citizens’ rights⁹⁷. Leontovitsch maintained that the hypertrophied statism under the Stalin constitution was therefore the consequence of concentrating political and economic power in the same hands, and this concentration of power was in turn a consequence of the “collectivist idea,” which relied on external coercion for its enforcement⁹⁸. On this concluding point, Leontovitsch quoted Maurice Hauriou’s book on constitutional law for the link between collectivism and coercion⁹⁹.

In fact, Leontovitsch’s criticism of the Soviet constitution rested heavily on Hauriou’s insights. Leontovitsch assumed that the Soviet government had an institutional personality bound to the “collectivist idea”, an idea that originated with an armed minority (the Bol-

⁸⁹ Ibid. S. 380.

⁹⁰ Ibid. S. 381.

⁹¹ Ibid. S. 382.

⁹² Ibid. S. 382.

⁹³ Ibid. S. 384–385.

⁹⁴ Ibid. S. 386–387.

⁹⁵ Ibid. S. 388.

⁹⁶ Ibid. S. 389.

⁹⁷ Ibid. S. 390.

⁹⁸ Ibid. S. 393.

⁹⁹ *Hauriou M. Précis de droit constitutionnel*. 2nd ed. Paris, 1929. P. 32.

shevik party) that had spread its credo to the workers, then affixed that credo in state laws. However, Leontovitsch broke from Hauriou when he noted that not all Soviet citizens accepted the abolition of private property or forced dependence on the state. For example, peasant families aspired to farm garden plots and to own two milkcows. Leontovitsch interpreted the hope for two milkcows as a future political banner, “a heretofore unrealized ideal” that might one day undermine the constitution’s “extreme collectivist character”¹⁰⁰.

Leontovitsch’s article on the Soviet constitution appeared in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, a publication of his work group, the *Kaiser-Wilhelm-Institut für ausländisches und internationales Privatrecht*. Although the well-respected Ernst Rabel had lost his editorship of the journal in 1934, it remained in 1937 a clearing-house for information on new legislation in Europe and a source of relatively straightforward legal analysis on certain problems of comparative law. However, the journal’s agenda increasingly reflected the external interests of the Nazi government. Alongside Leontovitsch’s article, for example, there appeared articles on the Versailles Treaty, the creation of Czechoslovakia at the Paris Peace Conference, the Abyssinian conflict, legal platforms of Sudeten German parties, and several articles on the legal status of colonies in Africa and the Near East¹⁰¹.

What was most remarkable about Leontovitsch’s two pre-war articles on Soviet law was the absence from them of any of the ideologically driven formulae current in National Socialist thinking about the Soviet Union. For example, by 1937, Nazi propagandists insisted on describing the Soviet government as a Jewish-Bolshevik regime. A pretext for Fedor Stepun’s 1937 dismissal from the faculty of the Dresden *Technische Hochschule* was his refusal to describe Bolshevism “as a Jewish yoke forced on the Russian people”¹⁰².

Leontovitsch’s major pre-war publication was a two-part analysis of the French jurist Maurice Hauriou’s theory of institutions¹⁰³. Hauriou’s early scholarship had explored the links between Roman and French law¹⁰⁴, but, in a four-decade career at the *Faculté de droit* in Toulouse, he had made himself into the foremost French expert on administrative law¹⁰⁵. Eventually, Hauriou became one of France’s leading theorists of constitutional law¹⁰⁶. Hauriou constructed his theory of institutions slowly, between 1906 and 1925. His basic insights were: institutions are enduring entities that cohere around an idea, or purpose, generated by a social group; institutions, like commercial exchange and the family, are phenomena that may exist before the state and therefore, as “pre-political” entities,

¹⁰⁰ *Leontovitsch V.* Die neue Verfassung der Sowjetunion. S. 393.

¹⁰¹ For contents of the journal in 1937, see the rubric *Völkerrecht*, URL: http://www.zaoerv.de/07_1937/vol7.cfm (accessed 01.03.2015).

¹⁰² See the statement by the Rector of the Technische Hochschule Wilhelm Jost on 31 May 1937, quoted in Hufen, *Fedor Stepun*, p. 494.

¹⁰³ *Leontovitsch V.* Die Theorie der Institution bei Maurice Hauriou // *Archiv für Rechts- und Sozialphilosophie*. Bd. XXIX (1935–1936). S. 363–405; Bd. XXX (1936–1937). S. 202–237.

¹⁰⁴ See, for example, his master’s thesis: *Hauriou M.* Étude sur la conditio. Des contrats à titre onéreux entre époux en droit française. Thèse, 1879.

¹⁰⁵ He wrote a comprehensive series of opinions on the law of public administration from 1892 to 1929. See: *Hauriou M.* La jurisprudence administrative de 1892 à 1929, d’après les “Notes d’arrêts” du Recueil Sirey reunies et classés par André Hauriou. En 3 vols. Paris, 1929. He wrote a guidebook for doctoral students analyzing administrative and public law; see: *Hauriou M.* Précis de droit administrative et de droit public général: à l’usage des étudiants en licence et en doctorat des sciences politiques. 4-me ed. Paris, 1900–1901.

¹⁰⁶ *Hauriou M.* Précis de droit constitutionnel. 2-me ed. Paris, 1929.

may play a role in social life that persists in the *longue durée*; institutions may have a “genetic” or “typological” identity traceable to the idea at their origin, but they may evolve over time and therefore can have a dynamic quality; to the degree that institutions are absorbed into the state, they may become elements in political pluralism rather than mere expressions of the state’s singular juridical “personality”¹⁰⁷.

By the mid-1920s, Hauriou had begun to concentrate his attention on the relationship between institutions and the state. While he still granted that the state might incorporate into itself various institutions, he recognized that the state itself might assume a distinctive institutional identity or “personality”. According to his theory, in modern representative systems, the executive branch is the repository of the state’s purpose or mission, so it must exercise the power to act that is necessary to realize this purpose or mission. The legislative branch is a deliberative body, charged with debating the proper application of the state’s mission and with encoding that mission in law. The role of the people standing outside the state apparatus, Hauriou thought, is to affirm or reject the government’s actions. Thus, Hauriou posited that to the small groups dominating the executive and legislative branches belongs the *active* dimension in political life; the people generally play a *passive* role in political life. Hauriou equivocated on the question of popular sovereignty: he conceded that the state’s original purpose or mission *might* come from the will of the people, or at least from the popular majority, but he maintained that, historically, the people’s role in establishing the state was not always central. Once the state had appeared, the people’s distant inspiration *might* stand behind the executive and legislative branches, but in most circumstances the people’s role in day-to-day government was *de minimis*¹⁰⁸.

Hauriou’s theory of the modern state was susceptible to two very different interpretations. On the one hand, his suggestion that the executive, as custodian of the state’s mission, is sole possessor of the power to put that idea into action could be read as a justification of authoritarianism. On the other hand, the provision allowing popular approval or disapproval of state action restored the popular role to politics, as did the insistence that the government’s original purpose might hinge on the popular will. Probably Hauriou wanted to hold in tension these two moments of modern politics: in his telling, the state as an institution was both authoritarian and popular. Once instituted by popular will, the executive branch behaves more or less heavy-handedly, and the people tacitly consent to this pattern of behavior.

Leontovitsch based his presentation of Hauriou’s institutional theory primarily on three sources: Hauriou’s *Principes de droit public* (1916 edition), *Précis de droit constitutionnel* (1923), and especially *Théorie de l’institution et de la fondation* (1925) — that is, on publications reflecting Hauriou’s thinking about institutional politics during and after the Great War when Hauriou’s ideas were both statist and relatively “conservative”. From Leontovitsch’s perspective, three key features of Hauriou’s political theory were: 1) Hauriou’s refusal to link good government to legally mandated elections; 2) Hauriou’s insistence that good government rests fundamentally on public trust and on guarantees of *civil* rights, rather than on political rights as such; and 3) Hauriou’s assertion that, because the

¹⁰⁷ See the important article by Eric Millard (Hauriou et la théorie de l’institution // Droit et société. 1995. N 30–31. URL: www.reds.msh-paris.fr/publications/revue/html/ds030031/ds030031-09.htm_edn0 (accessed January 2015)).

¹⁰⁸ See Millard’s discussion of “organized state authority” (*le pouvoir de gouvernement organisé*) in “Hauriou et la théorie de l’institution,” *passim*.

essence of an institution is the social idea animating the group around which the institution has cohered, the institution therefore “represents” both the group and its idea.

According to Leontovitsch’s rendition of Hauriou, because each institution has a moral personality representing a group’s identity, it automatically manifests in its distinctive rhythms and mode of operation a certain “autonomy” vis-à-vis other institutions. Hauriou noted that the institution’s mode of operation “is not always rational, but takes shape under the pressure of social relations and subject to the elaboration of the guiding idea being actualized through the exercise of power”¹⁰⁹. In defining an institution’s procedures, Hauriou claimed, individual initiatives matter, and the sovereign’s executive acts have an impact as legal precedents¹¹⁰. In fact, Hauriou suggested, sovereign authority may be decisive as an “autonomous source of objective right”; indeed, “the ultimate source of objective right may be the subjective will of the bearer of power”¹¹¹. In Hauriou’s account, an institution’s identity might even derive entirely from the idea of its founder¹¹².

Here, in Leontovitsch’s summary, Hauriou’s concept of representation merged dangerously with his notions of procedural irrationality, executive prerogative, and the willfulness of an individual “founder” or “legislator”. In accounting for these elements of Hauriou’s theory of institutions, Leontovitsch seemed to be describing not representative constitutional regimes but democratic Caesarism. If Hauriou had contemplated the place of institutions in three French republics, Leontovitsch’s implicit focus was executive action in the Bonapartist empires in France, in the new Bolshevik government in Russia, and in the National Socialist government in Germany.

Leontovitsch’s analysis of Hauriou appeared in the journal, *Archiv für Rechts- und Sozialphilosophie* at a moment when that journal was experiencing a transition from the variegated legal scholarship of the 1920s and early 1930s to univocal National Socialism. The journal’s editor-in-chief, Carl August Emge, was from late 1931 an active member of the Nazi party. In the same number of the *Archiv* in which Leontovitsch’s first essay on Hauriou appeared, Emge published an essay on the philosophy of government by a strong leader¹¹³. Four other members of the editorial board — Julius Binder, Ernst Heymann, Paul Ritterbusch and Rudolf Stammeler — were either active members of the Nazi party or academic collaborators¹¹⁴. Among international members of the editorial board, Roscoe

¹⁰⁹ *Leontovitsch V. Die Theorie der Institution bei Maurice Hauriou // Archiv für Rechts- und Sozialphilosophie. Bd. XXX. 1936–1937. S. 205.*

¹¹⁰ *Ibid. S. 205–207.*

¹¹¹ *Ibid. S. 208.*

¹¹² *Ibid. S. 209–210.*

¹¹³ *Emge C. A. Ideen zu einer Philosophie des Führerthums // Archiv für Rechts- und Sozialphilosophie. Bd. XXIX. 1935–1936. S. 175–194.*

¹¹⁴ Julius Binder was a professor of legal philosophy at Göttingen, an expert on Hegel and an opponent of legal positivism who joined the Nazi party in 1933 and who in 1934 became part of the *Ausschuss für Rechtsphilosophie* in Hans Frank’s *Akademie für deutsches Recht*. On Binder, see: *Dreier Ralf. Julius Binder (1870–1939): Ein Rechtsphilosoph zwischen Kaiserreich und Nationalsozialismus // Rechtswissenschaft in Göttingen: Göttiger Juristen aus 250 Jahren / Hrsg. von Fritz Loos. Göttingen, 1987. S. 435–455.* — Ernst Heymann was a professor at the Friedrich-Wilhelms-Universität in Berlin, an expert on Roman law who, with Binder, entered the *Ausschuss für Rechtsphilosophie* in 1934. From 1937 to 1946, he directed the *Institut für ausländisches und internationales Privatrecht* at the *Kaiser-Wilhelm-Gesellschaft zur Förderung der Wissenschaften*. On the activities of this institute under the Nazis, see: *Kunze R.-Ul. Ernst Rabel und das Kaiser-Wilhelm-Institut für ausländisches und internationales Privatrecht, 1926–1945. Göttingen, 2004. S. 63–228.* — Heymann was responsible for overseeing research on private law affecting the *Grossdeutsches Reich* in 1939 and subsequently. See also: *Rürup R. Schicksale und Karrieren: Gedenkbuch für die von den*

Pound, dean of the Harvard Law School from 1916 to 1936, received in 1934 an honorary degree from the University of Berlin — an act that, for a time, contributed to the political salience of Nazism in the United States¹¹⁵. Among members of the editorial board, only the Swiss scholar Hans Fehr, who studied the links between poetry and law, and the Austrian Leopold Wenger, who studied Roman and Byzantine law, stayed outside Nazi circles. Moreover, one has the impression that, by 1936, the *Archiv* had become in part an organ for fascist and Nazi ideologues like Guiseppe Lo Verde and Carl Schmitt¹¹⁶.

As we noted above, Leontovitsch sympathized neither with fascism nor Nazism. True, his hero Hauriou had fashioned a theory of institutions which, in Leontovitsch's reading, offered a way to understand the "personality" of the state and the role of the sovereign in shaping the ethos of mass political movements. But Hauriou and Leontovitsch still upheld a concept of personhood based on property ownership and on possession of civil rights. And whatever their conservative inclinations, they still believed in a rule-of-law state. Publication of an article in the *Archiv* circa 1935 — 1937 was therefore not necessarily an indication of affinity for National Socialism. In fact, at that time the journal was still a hybrid combining articles friendly to the nascent German regime and other articles from different legal-political perspectives¹¹⁷.

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Nationalsozialisten aus der Kaiser-Wilhelm-Gesellschaft Vertriebenen Forscherinnen und Forscher. Göttingen, 2008. — Paul Ritterbusch taught at Halle, Leipzig and Kiel Universities, specializing in the theory of state and popular sovereignty. He joined the Nazi party in 1932, and in 1941 took a chair at Friedrich-Wilhelms-Universität in Berlin. During the war, he organized contributions of five hundred German academics to twelve branches scholarship aimed at advancing German war goals. *Martin Otto* has described Ritterbusch as "one of the most prolific Nazi scholar-functionaries." See: *Otto M. Deutsche Geisteswissenschaft // Zweiten Weltkrieg. Die Aktion Ritterbusch 1941–1945* Dresden, 1998. — Rudolf Stammler was an expert in Roman law, who taught at universities in Marburg, Giessen, Halle and Berlin. He was a neo-Kantian who built his legal philosophy on the principle of property. He joined the Nazi party and, in 1934, the *Ausschuss für Rechtsphilosophie*.

¹¹⁵ See: *Norwood S.H. The Third Reich in the Ivory Tower. Complicity and Conflict on American Campuses*. Cambridge, 2009. P.36–74.

¹¹⁶ See for example: *Lo Verde G. Faschismus und Staat // Archiv für Rechts- und Sozialphilosophie*. Bd. XXX. 1936–1937. S.193–201; and *Schmitt C. Der Staat als Mechanismus bei Hobbes und Descartes // Ibid.* S. 622–632. — The degree of Schmitt's alliance with Nazism has been explored critically by *Gopal Baladrishnan* in "The Enemy: An Intellectual Portrait of Carl Schmitt" (London, 2009. P.176–200). However, David Dyzenhaus has made the case that Schmitt, an anti-liberal and anti-Semite, was also for a time an enthusiastic Nazi. See: *Dyzenhaus D. Legality and Legitimacy*. Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar. Oxford, 1997. P.85–101.

¹¹⁷ For example, the 1935–1936 issue carried a survey of Russian émigré philosophy. See: *S. F. [pseudonym, possibly Semen Frank]. Ethische, rechts- und sozialphilosophische Strömungen in der modernen russischen Philosophie ausserhalb USSR // Archiv für Rechts- und Sozialphilosophie*. Bd. XXIX. P.64–156. — The 1936–1937 issue featured ten articles on Descartes, one of which was George Katkov's analysis of Descartes in the thought of Franz Brentano. See: *Katkov G. Descartes and Brentano. Eine erkenntnistheoretische Gegenüberstellung // Archiv für Rechts- und Sozialphilosophie*. Bd. XXX. S. 580–615.

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