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Jurij Fedynskyj

Indiana University School of Law

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WESTERN LEGAL TREATISES IN RUSSIAN TRANSLATIONS

Jurij Fedynskyj*

Very few Western legal treatises were translated into Russian before World War II, at the time of strict political and economic isolation of the Soviet Union.¹ According to official Soviet teaching the socialist legal system and the capitalist legal system were so far apart as to be almost incomparable.²

Western legal works translated in the 1920's and 1930's were either practical German handbooks dealing with the technique of criminal investigation³ or with practical issues of maritime law.⁴ The only international law textbook translated at this period, Franz von Liszt's *Völkerrecht*, was a new, revised Russian edition prepared for Russian students by V. E. Grabar. Grabar stated in the foreword that he omitted all political views of German scholars contained in the original work. Omitted also was everything which was only of interest to German readers before World War I; instead, Soviet legislation in the field of international law and relations was added.

Worth mentioning are three short booklets dealing with theoretical foundations of law, translated very early in the period: Duguit, Hedemann and Karner.⁵ The earliest one, done before the formation of the Soviet Union, was Duguit's *Les transformations générales du droit privé* (1919). Duguit's theory of social functions of law presented in favorable light by Professor A. G. Goikhbarg⁶ was later condemned as anti-marxist.⁷ Hedemann's *Grundzüge des Wirtschaftsrechts* attracted the attention of Soviet lawyers by the mere concept of economic law. Promoters of this concept and authors of Soviet textbooks on economic law, Goikhbarg and Pashukanis, were later declared enemies of the people.⁸ Translation of Karner's book did not have such damaging effects. The last translation of this period, Sagnac's *Legislation civile de la Revolution française, 1789-1804*, had more

* Associate Professor of Law and Associate Law Librarian, Indiana University; member, Board of Editors.

1. Translations published before the October Revolution are beyond the scope of this comment.

2. More about this in the article by Loeber, "Rechtsvergleichung zwischen Ländern mit verschiedener Wirtschaftsordnung," 26 *RabelsZ.* 201 (1961).

3. Hellwig, Schweickert, Stieber, Heindl. A full list of works translated, arranged by languages and dates of publication, is to be found at the end of this comment.

4. Rudolf, *York-Antwerp Rules*.

5. For full citations see the attached list.

6. The author of the foreword to the translation was born in 1865 and perished in 1930's.

7. E.g. *Grazhdanskoe pravo, uchebnik dlia iuridicheskikh vuzov*, (Moscow 1938) v. 1, p. 38.

8. *Id.*

historical significance. P. I. Stuchka explained in the foreword the differences between the bourgeois French Revolution and the October Revolution.

After a full decade of almost complete absence of any legal translations⁹ an unexpected surprise was the appearance of Beccaria's translation in late 1939.¹⁰ The present writer well remembers the sense of pride with which the director of the Publishing House of the People's Commissariat for Justice in Moscow¹¹ presented him with a copy of this book, explaining that the translation was approved personally by Vyshinskii.¹²

The conclusion of World War II opened a new period. Translations of Western legal literature became numerous. They comprised leading Western textbooks (civil law and common law) in latest editions expanding into a wide variety of subjects like: civil law (Enneccerus, Julliot de la Morandière), especially the law of contracts (Anson, Salmond, Gaudemet, Savatier), criminal law (Das ausländische Strafrecht der Gegenwart, Kenny), criminal procedure (Wilshere), constitutional law (Jenks, Wade, Brecht, Maunz, Prélot), administrative law (Vedel), local administration (Detton), commercial law (Charlesworth, Lusk), copyright (Sidjanski), international law (Oppenheim, O'Connell, Anzilotti, Hyde, Verdross, Serres, Satow), conflict of laws (Wolff, Raape), maritime and air law (Higgins-Colombos, Shawcross-Beaumont), court organization and administration (Archer, Karlen), comparative law (David).

Some classics of legal literature were also translated in this period: Grotius, *De jure belli et pacis*, Vattel's *Le droit des gens*. And from the French revolutionary legal writings: Marat's *Plan de législation criminelle*, and Robespierre's articles and speeches *La legalité révolutionnaire et l'administration de justice* were translated.

Translations were prepared, generally, very carefully. In cases of abridged translations, some lengthy cases included in original editions were eliminated. A tendency to omit "just" decisions but to translate controversial ones was not established. The titles of books translated were in some cases changed to make them more understandable to Russian readers.¹³ Most of the translations listed here were published by the State Publishing House for Foreign Literature without indication of the number of copies printed. Translations published by other institutions included this detail. From the data available we can conclude that the number of copies was not small.

All translations are preceded by substantial forewords written by the best Russian subject specialists: for international law:

9. The only exception was Rudolf's book.

10. *O prestupleniakh i nakazaniakh* (*Dei delitti e delle pene*).

11. *Iuridicheskoe izdatel'stvo NKIu SSSR*.

12. 1883-1954, at that time Procurator General of the Soviet Union.

13. E.g. Archer's *Queen's Courts* appeared in translation as *English Judicial System*; Julliot de la Morandière's *Droit civil* was translated as *Civil Law of France*.

Durdenevskii (1889-1963), Krylov (1888-1958), Grabar (1865-1956), Tunkin (b.1898)); for civil and commercial law: Fleishits (1888-1968)¹⁴; for criminal law: Golunskii (1895-1962), Piontkovskii (1898-1973); for criminal procedure: Strogovich (b.1894); for conflict of laws: Lunts (b.1892).

Fleishits justified the translation of Lusk's *Business Law* in these words:

The book will be of interest for those working with the foreign commerce of the USSR, with Soviet transport organizations, with state insurance and with banks, which encounter in their activities problems of the civil law of the United States. Besides features indicated above it contains also short informations about the historic development of a number of institutions of the civil law in the United States, and, written by a professor of an American University, it presents a clear picture of ideological foundations on which the teaching of law is based at American universities, where not only practitioners are trained but also theoretical studies in the field of civil law are pursued.¹⁵

Reading more forewords, one finds a certain pattern. Authors of forewords seemingly do not trust Russian readers who might form their own opinions of capitalist law as presented in translations. Forewords serve as a kind of insulation from the influence of foreign ideas. The superiority of Soviet law as the law of the highest historical type is placed beyond any discussion. Shortcomings of the capitalist legal system are pointed out again and again. The language of forewords is often intemperate. Fleishits demonstrates her extreme hostility towards the Uniform Commercial Code.¹⁶ But there are exceptions. Tunkin does not degrade all of Verdross's views on international law and agrees with some. He describes Verdross as one of the greatest contemporary bourgeois specialists in international law, widely known not only in Austria, but also in other countries.¹⁷ Lunts maintains also a well balanced, learned style in prefacing the books by Wolff and Raape.

The question remains to be raised about the rationale for Soviet interest in foreign law demonstrated by the numerous translations

14. Fleishits was the first woman admitted to the Tsarist Russian bar, in 1909.

15. Lusk, *Grazhdanskoe pravo SShA* (Abridged translation). Under the editorship and with a foreword by E. A. Fleishits (Moscow, 1961) p. 6. The whole foreword, translated by the author of this comment, is published in 2 *American Business Law Journal* 31-40 (1964).

16. "Hitler's bloody regime is an example of the accomplishment of the fullest subordination of the interest of the ruling clique. The Code comments clearly indicate that the Uniform Commercial Code through judicial arbitrariness can accomplish a like result." Foreword to Lusk's *Grazhdanskoe pravo SShA*, p. 12.

17. Verdross, A. *Mezhdunarodnoe pravo*. Translated and with a foreword by G. I. Tunkin (Moscow, 1959) p. 5.

after World War II. The answer can be found in the book *Civil and Commercial Law of Capitalist States*¹⁸ published in 1966 in Moscow by the Institute of International Relations. Its first chapter starts with the explanation why the study of bourgeois law is indispensable. The principle of peaceful coexistence is stressed.

The principle of legal coexistence is demonstrated in the legal field by the mutual recognition and respect of legal systems prevailing in various countries. As generally known, law is a juridical superstructure over a certain basis. It is created by the sum of production relations constituting the economic structure of the society. Therefore, without familiarity of the society, in our case capitalist society, without knowledge of its legal system, it is not possible to adhere effectively to the principle of peaceful coexistence in the area of economic and cultural cooperation with capitalist countries. Economic and cultural cooperation is not possible without familiarity with the legal status of the participants of the legal life in these countries, with the legal regime of property and other relations, with the system of legal protection of scientific, literary, and technical creativity and other legal institutions.¹⁹

Practical considerations are named by the authors of this book as a second reason for the indispensability of knowledge of foreign law. With the increase of international business relations, cases are not uncommon when foreign law must be applied by Soviet courts. Books in Russian on foreign law help courts in making correct decisions.²⁰

Relatively heavy translating activity was conducted at the time when foreign authors' rights were not protected in the Soviet Union.²¹ The author of this comment "discovered" in 1963 the Russian translation of Professor Lusk's *Business Law*. It came as a real surprise to Lusk who had not been asked permission or paid any royalties.

Translations listed on the following pages were published by the State Publishing House for Foreign Literature in Moscow²² unless otherwise indicated.

German

Hedemann, Justus Wilhelm. *Osnovnye cherty khoziaistvennogo prava; transformatsiia poniatiia sobstvennosti (Grundzüge des Wirtschaftsrechts)*. Translated by S. N. Landkof. Foreword and notes

18. *Grazhdanskoe i torgovoe pravo kapitalisticheskikh gosudarstv*, ed. K. K. Iaichkov.

19. *Id.* p. 4.

20. *Id.* p. 5.

21. The Soviet Union joined the International Copyright Convention in May 1973.

22. Gosudarstvennoe izdatel'stvo inostrannoi literatury.

- by A. L. Malitskii. Kharkov, Iurizdat NKIU UkrSSR, 1924. 30 p.
- Karner, J. Sotsialnye funktsii prava (*Die sozialen Funktionen des Rechts*). Transl. by J. Berman, Gosizdat, 1923. 133 p.
- Hellwig, Albert. Sovremennaia kriminalistika (*Moderne Kriminalistik*). Editor: P. I. Liublinskii. Izd. Pravo i zhizn', 1925. 100 p. 5000.
- Liszt, Franz von. Mezhdunarodnoe pravo v sistematicheskom izlozhenii (*Das Völkerrecht, systematisch dargestellt*). Abridged translation. Edited and updated by V.E. Grabar. Leningrad, Gosud. izd-vo, 1926. 242 p. 7000.
- Schweickert, G. Vvedenie v ugolovnuu tekhniku (*Einführung in die kriminalistische Technik*). Edited by S. M. Potapov. Foreword by N. A. Nikolaevskii. Gosud. tekhn. izd-vo, 1926. 184 p. 7000.
- Stieber, Wilhelm. Prakticheskoe rukovodstvo dlia rabotnikov ugolovnogo roziska (*Praktisches Lehrbuch der Kriminalpolizei*). Gosud. tekhn. izd-vo, 1926. 190 p. 7000.
- Heindl, Robert. Daktiloskopiia i drugie metody ugolovnoi tekhniki v dele rassledovaniia prestuplenii (*System und Praxis der Daktyloskopie und der sonstigen Methoden der Kriminalpolizei*). Translated from the second German edition by V. V. Shpeer. Editor: A. I. Kriukov. Gosud. tekhn. izd-vo, 1927. 332 p. 3100.
- Enneccerus, Ludwig. Kurs germanskogo grazhdanskogo prava (*Lehrbuch des bürgerlichen Rechts*). Translated from the 13th ed. by K. A. Grave and others. Foreword and notes by D. M. Genkin and I.B. Novitskii. V.1, pts. 1-2, 1949-50. (No more translated).
- Sovremennoe zarubezhnoe ugolovnoe pravo (*Das ausländische Strafrecht der Gegenwart*). Translated by S. L. Liberman. Under editorship and with foreword by A. A. Piontkovskii. V.1, 1952; v.2, 1958; v. 3, 1961.
- Maunz, Theodor. Gosudarstvennoe pravo Germanii (*Deutsches Staatsrecht*). Transl. and with foreword by G. S. Gurvich. 1959. 596 p.
- Verdoss, Alfred. Mezhdunarodnoe pravo (*Völkerrecht*). Transl. and with foreword by G. I. Tunkin. 1959. 652 p.
- Raape, Leo. Mezhdunarodnoe chastnoe pravo (*Internationales Privatrecht*). Abridged transl. from the 4th ed. Foreword by L. A. Lunts. 1960. 608 p.

English

- Rudolf, George Rupert. York-antverpskie pravila, ikh istoriia i razvitie, s kommentariami pravil v red. 1924 g. (*The York-Antwerp Rules, their History and Development*, 1926). Transl. by P. P. Vinogradov, K. K. Gun and M. I. Levin. Under editorship and with foreword by I. S. Rabinovich. Gosud. finans. izd-vo, 1935. 155 p. 2000.

- Wolff, Martin. *Mezhdunarodnoe chastnoe pravo (Private International Law)*. Translated by S. M. Rappoport. Foreword by L. A. Lunts. 1947. 703 p.
- Jenks, Edward. *Angliiskoe pravo (The Book of English Law)*. Translated by L. A. Lunts. Foreword by M. M. Isaev and L. A. Lunts. Iurizdat, 1947. 378 p. 5000.
- Anson, William Reynell. *Osnovy dogovornogo prava (Principles of the Law of Contract)*. Translated from the 6th English ed. by A.S. Aleksandrovskii, A. S. Akhmanov and S. M. Rappoport. *Mezhdunarodnaia kniga*, 1947. 456 p. 3000.
- Brecht, Arnold. *O gosudarstvennom ustroistve Germanii; federalizm i regionalizm v Germanii; razdelenie Prussii (Federalism and Regionalism in Germany; the Division of Prussia)*. Transl. by B. Ia. Zhukovetskii. Foreword by I. P. Trainin. 1947. 216 p.
- Wilshere, Alured Nathaniel Myddleton, ed. *Ugolovnyi protsess (Criminal Procedure)*. Transl. by O. F. Levina. Foreword by M. S. Strogovich. 1947. 604 p.
- Oppenheim, Lassa Francis Lawrence. *Mezhdunarodnoe pravo (International Law)*. Translated from the 6th Engl. edition. Foreword by S. B. Krylov. Notes by S. B. Krylov and S. A. Golunskii. 1948-50. 2 v. in 4.
- Kenny, Courtney Stanhope. *Osnovy ugolovnogo prava (Outlines of Criminal Law)*. Transl. by V. I. Kaminskaia. Foreword by B.S. Nikiforov. 1949. 657 p.
- Wade, Emlyn Capel and Phillips, G. Godfrey. *Konstitutsionnoe pravo (Constitutional Law)*. Transl by A. S. Nikiforov. Foreword by Z. I. Moldavskaia. 1949. 588 p.
- Higgins and Colombos. *Mezhdunarodnoe morskoe pravo (International Law of the Sea)*. Foreword by S. B. Krylov. 1953. 714 p.
- Salmond, John William. *Osnovy dogovornogo prava, Angliiskoe grazhdanskoe pravo (Principles of the Law of Contracts. 2d ed. with James Williams)*. Foreword by E. A. Fleishits. 1955. 704 p.
- Shawcross and Beaumont. *Vozdushnoe pravo (Air Law)*. Abridged transl. Foreword by S. B. Krylov and A. K. Kislov. 1957. 400 p.
- O'Connell, Daniel Patrick. *Pravopreemstvo gosudarstv (Law of State Succession)*. Foreword by Iu. G. Barassov. 1957. 589 p.
- Archer, Peter. *Angliiskaia sudebnaia sistema (The Queen's Courts)*. Foreword by B. S. Nikiforov. 1959. 268 p.
- Charlesworth, John. *Osnovy zakonodatel'stva o kompaniakh (Company Law)*. Under editorship and with foreword by E.A. Fleishits. 1958. 495 p.
- Harvey, James (pseud.). *Britanskoe gosudarstvo (The British State)*. Transl. by L. A. Vetvinskii and T. L. Vetvinskaia. 1961. 388 p.
- Satow, Ernest Mason. *Rukovodstvo po diplomaticheskoi praktike (A Guide to Diplomatic Practice)*. Editor: F. F. Molochkov. Izd. I.M.O., 1961. 496 p. 8500.

United States

- Hyde, Charles Cheney. *Mezhdunarodnoe pravo, ego ponimanie i primeneniye Soedinennykh Shtatami Ameriki (International Law, chiefly as interpreted and applied by the United States)*. Transl. by I. S. Shokhor. 1950-54. 6 vols. Foreword to first volume by L. A. Modzhorian, and with notes by V. N. Durdenevskii; foreword and notes to second, fourth and sixth volume by B. A. Dranov; to third volume by L. A. Modzhorian; to fifth volume by S. B. Krylov.
- Lusk, Harold F. *Grazhdanskoe pravo SShA, Pravo torgovogo oborota (Business Law, Principles and cases, 5th ed)*. Abridged transl. by Iu. E. Militareva and V. A. Dozortsev. Under editorship and with foreword by E. A. Fleishits. 1961. 774 p.
- Karlen, Delmar. *Amerikanskii sud: sistema i personel; organizatsiia pravosudiia v SShA. (Judicial Administration)*. Progress, 1972. 124 p.

French

- Duguit, Leon. *Obshchee preobrazovanie grazhdanskogo prava so vremeni kodeksa Napoleona (Les transformations générales du droit privé depuis le code Napoleon)*. Transl. by M. M. Sivers. Under editorship and with pref. by A. G. Goikhbarg. Gosizdat, 1919. 110 p.
- Sagnac, Phillippe. *Grazhdanskoe zakonodatel'stvo Frantsuzskoi Revoliutsii (1789-1804) (La législation civile de la révolution française)*. Transl. by O. A. Staroselskaia-Nikitina. Foreword by P. I. Stuchka. Izd. Kommunisticheskoi Akademii, 1928. 374 p.
- Gaudemet, Eugène. *Obshchaia teoriia ob'iazatel'stv (Théorie générale des obligations)*. Transl. by I. B. Novitskii. Iurizdat, 1948. 512 p. 5000.
- Marat, Jean Paul. *Plan ugolovnogo zakonodatel'stva (Plan de législation criminelle)*. Foreword by A. A. Gertsenzon. 1951. 152 p.
- Labeyrie, C. (Menahem) *Spetsializirovannye uchrezhdeniia OON (Des institutions spécialisées)*. Foreword by V. N. Durdenevskii. 1955. 236 p.
- Voltaire, F. M. *Izbrany proizvedeniia po ugolovnomu pravu i protsessu (Oeuvres choisies de droit et procédure criminelles)*. Foreword by A. A. Gertsenzon. Gosiurizdat, 1956. 152 p.
- Prélot, Marcel. *Konstitutsionnoe pravo Frantsii (Précis de droit constitutionnel)*. Foreword by A. Z. Manfred. 1957. 671 p.
- Detton, Hervé. *Mestnaia administratsiia Frantsii (L'administration régionale et locale en France)*. Gosiurizdat, 1957. 123 p. 3000.
- Sidjanski, Dusan. *Mezhdunarodnaia okhrana avtorskogo prava (Droit d'auteur ou copyright)*. Transl. by F. A. Kulitskii. Under editorship and with foreword by E. A. Fleishits. 1958. 200 p.

- Robespierre, Maximilien. *Revolutsionnaia zakonnost' i pravosudie (La légalité révolutionnaire et l'administration de justice)*. Stat'i i rechi. Foreword by A. A. Gertsenzon. Gosiurizdat, 1959. 275 p. 6000.
- Vattel, Emerich de. *Pravo narodov ili printsipy estestvennogo prava primeniaemye k povedeniu i delam natsii i soverenov (Le droit des gens, ou, Principes de droit naturelle)*. Foreword by V. N. Durdenevskii. Gosiurizdat, 1960. 719 p. 1500.
- Julliot de la Morandière, Leon Frances. *Grazhdanskoe pravo Frantsii (Droit civil)*. Foreword by E. A. Fleishits. 1958-61. 3 v.
- Serres, Jean Charles. *Diplomaticheskii protokol (Manuel pratique de protocole)*. Transl. by Iu. P. Viktorov. Under editorship and with pref. by D. F. Molochkov. Izd-vo I. M. O., 1961. 111 p. 26000.
- David, René. *Osnovnye pravovye sistemy sovremennosti, sravnitel'noe pravo (Les grands systèmes de droit contemporains; droit comparé)*. Foreword by V. Tumanov. Progress, 1967. 496 p.
- Savatier, René. *Teoriia ob'iazatel'stv; iuridicheskii i ekonomicheskii ocherk (Théorie des obligations)*. Progress, 1972. 440 p.
- Vedel, George. *Administrativnoe pravo Frantsii (Droit administratif)*. Transl. by L. M. Enshin. Editor: M. A. Krutogolov. Foreword by M. A. Krutogolov and A. Lunev. Progress, 1973. 512 p.

Italian

- Beccaria, Cesare Bonesana. *O prestupleniakh i nakazaniakh (Dei delitti e delle pene)*. Biographical outline and translation by M. M. Isaev. Iurizdat, 1939. 464 p. 5000.
- Anzilotti, Dionisio. *Kurs mezhdunarodnogo prava (Corso di diritto internazionale)*. Transl. from the 4th Italian edition by A. L. Saketti and E. M. Fabrikov. Under editorship and with foreword by D. B. Levin. V.1. 1961. 447 p. (No more translated).

Latin

- Grotius, Hugo. *O prave voyny i mira (De iure belli et pacis)*. Transl. by A. L. Saketti. Foreword by A. Zheludkov. Iurizdat, 1948-56. 5000.

Translations of Foreign Legal Codes

As a by-product of compiling this bibliographical list a few data about foreign legal codes in Russian translations are added here.

A Russian translation of the German *Bürgerliches Gesetzbuch* was published as early as 1898. The Swiss *Zivilgesetzbuch* was translated in 1915. The (incomplete) French *Code civil* was known in Russian translation as Civil Statutes of the Provinces of the Polish Kingdom, edited by Stavski, Sandler, and others.

Except for the Swiss code of obligations, translated in 1930 by S. I. Raevich, the most important translations appeared during and after World War II. Among these are several old codes of only historical significance like *Constitutio Criminalis Carolina*, the Laws of Gortyn, Ekloga, the Laws of Manu. Of Western laws in force we name here the excellent translation by I. Pereterskii of the French *Code civil*,²³ the translations by N. S. Lapshina of the French *Code penal*,²⁴ the French code of criminal procedure,²⁵ French Constitution with the most important constitutional statutes²⁶ and the Swiss *Strafgesetzbuch*.²⁷

There are three volumes of patent legislation of Western countries, including the U.S.A., in Russian translation.²⁸

U.S. legislation in Russian translation is represented by the Uniform Commercial Code²⁹ and by the Model Penal Code.³⁰

23. *Frantsuzskii grazhdanskii kodeks 1804 goda, s posdneishimi izmeneniami do 1939 goda* (Moskva, Iurizdat, 1941) 471 p.

24. *Frantsuzskii ugovnyi kodeks 1810 goda. So vstup. stat'ei* (Moskva, Iurizdat, 1947) 372 p. 3000 copies.

25. *Ugovno-protsessualnyi kodeks Frantsii 1958 goda*. Foreword by S. V. Bobotov and V. I. Kaminskaia (Moskva, Progress, 1967). 323 p.

26. *Konstitutsiia i zakonodatel'nye akty Frantsuzskoi Respubliki* (Moskva, Iurizdat, 1958). 527 p. 5000 copies.

27. *Shveitsrskii ugovnyi kodeks 1937 goda*. Transl. N.S. Lapshina (Moskva, Iurizdat, 1947). 128 p. 1000 copies.

28. *Patentnoe zakonodatel'stvo kapitalisticheskikh stran*. Transl. V. A. Dozortsev, T. B. Maltsman, A. A. Rubanov, edited and with a foreword by E. A. Fleishits (Moskva, 1959). 340 p.; *Patentnoe zakonodatel'stvo zarubezhnykh stran*. Translated, edited and with a foreword by E. A. Fleishits (Moskva, Progress, 1962-64) 2 vols.

29. *Edinoobraznyi torgovyi kodeks SShA* (Moskva, Progress, 1969). 431 p.

30. *Primernyi ugovnyi kodeks (SShA)*. *Ofits. proekt Instituta amerikanskogo prava*. Edit. and with a foreword by B. S. Nikiforov (Moskva, Progress, 1969). 303 p.