

Nethercott, Frances: *Russian Legal Culture Before and After Communism. Criminal Justice, Politics and the Public Sphere*. London: Routledge 2007. ISBN: 978-0-415-31770-2; XIII, 198 S.

**Rezensioniert von:** Stefan Kirmse, SFB 640, Humboldt-Universität zu Berlin

Frances Nethercott's book is an innovative contribution to the study of Russian intellectual culture and the development of legal thought since the mid-nineteenth century. The book combines a review of the history of Russian criminal justice with an analysis of theories of crime and punishment in pre-Soviet and post-Soviet Russia. As it is concerned with both the history and philosophy of law, it is of interest to a range of academic disciplines. That said, while much can be gained from Nethercott's monograph, it may also be criticised on several grounds, as I discuss below.

The book begins with a discussion of Russian liberalism and its adversaries in the second half of the nineteenth century. In particular, it maps out the trajectory of the liberal journal 'Vestnik Evropy' (European Messenger) from its inception in 1866 and its battles with conservative publications. To show the differences and overlaps within Russian intellectual culture under late Tsarism, Nethercott then looks at the case of Vladimir Solov'ev (1853-1900), one of Russia's most important legal thinkers and moral philosophers who defected from the conservative nationalist journal 'Rus' to join the editorial board of the 'Vestnik'. Charting Solov'ev's position between liberalism and conservatism, the author shows that while the boundaries within Russian intellectual culture were blurred, debates were often polarised.

Moving into the sphere of legal reforms, the second chapter challenges the oft-claimed novelty of the Russian judicial system introduced in the 1860s: the Criminal Code of 1845 remained largely unchanged, and after a short spell of liberal experiments, 'counter-reforms' turned Russia once again into a 'police state' (p. 23). This position, however, is questionable. It is partly due to Nethercott's focus on political crimes. More importantly, it has

been influenced by her sources, for she largely adopts the positions of the liberal press (especially the 'Vestnik'). In fact, she does not seem to have considered any archival material whatsoever. Authors who have used a wider range of sources have shown that the legal reforms curtailed state powers.<sup>1</sup> Especially in the countryside, the Russian police were often absent and ineffective.<sup>2</sup> The chapter, however, raises the important question of morality in the Russian legal tradition, which develops into a central theme of the book. Discussing the moral dimension of the Criminal Code, on the one hand, and of customary law, on the other, Nethercott shows that codified law and village law coincided in that they both 'enforced traditionally sanctioned religious and public morals' (p. 31).

Chapters 3-5 form the most original part of the book. They address the development of Russian legal thought in the nineteenth century (Chapter 3), Vladimir Solov'ev's contribution to these debates (Chapter 4), and their evolution in the early twentieth century (Chapter 5). Nethercott first provides an outline of nineteenth century European thinking on crime and punishment, discussing the two main schools of thought: 'classicism' and 'positivism'. Most Russian thinkers, such as Tagantsev, Sergeevsky and Foinitsky, found themselves somewhere between these schools (p. 50). On the question of law and morality, many of them did not want moral judgement to intrude into juridical affairs. In this respect, however, they had to battle against the double inheritance of codified and customary law (pp. 60-63), both of which made little distinction between law and morality.

At first sight, the detailed discussion of Solov'ev in Chapter 4 is perplexing because the author repeatedly refers to him and his claims as 'naive' and 'far-fetched'. And yet, the inclusion of Solov'ev seems justified by his role as a catalyst of change in Russian liberalism. In particular, Nethercott attributes the increasing 'moralization' of the classicist and positivist legal schools after the turn of the

<sup>1</sup>Jörg Baberowski, *Autokratie und Justiz. Zum Verhältnis von Rechtsstaatlichkeit und Rückständigkeit im ausgehenden Zarenreich 1864-1914*, Frankfurt am Main 1996.

<sup>2</sup>Stephen P. Frank, *Crime, Cultural Conflict, and Justice in Rural Russia. 1856-1914*, Berkeley, CA 1999.

---

century to his work. Solov'ev defined 'law' as the balance of two moral interests: individual freedom and the common good (pp. 79, 84). While his idea of a morally-based legality was ridiculed by friends and foes during his lifetime, the religious renaissance and quest for spiritual values in early twentieth century Russia earned him posthumous acclaim. This is further elaborated in Chapter 5 which also offers a discussion of the death penalty and its excessive use after the 1905 revolution. On the basis of Solov'ev's rejection of capital punishment as 'absolute murder', liberal politicians, academics and journalists repeatedly campaigned against this form of punishment.

The final chapter is, in many respects, 'the odd one out'. It moves the discussion from the pre-Soviet into the post-Soviet period. Going back to themes from Chapters 2 and 5, it examines the debates around the death penalty and the introduction of a new Criminal Code (first proposed by Gorbachev in 1988 and finally passed under Yeltsin in 1996). With its narrow focus on these two themes, however, the chapter seems somewhat random. The task of highlighting the continuities in Russian legal debates before and after communism is left to a short 'afterword'. Among these continuities (the discontinuities are not explicitly addressed), Nethercott lists the fusion of classicist and positivist legal thought as elaborated by nineteenth century thinker Tagantsev. In particular, his view of crime and punishment as individual and dependent on circumstances (especially social conditions), and his insistence on the separation of law and morality have become influential in post-Soviet Russia. That said, a small number of thinkers have adopted Solov'evian motifs, proposing a morally-grounded approach to juridical theory.

Nethercott's book is successful on several fronts. It may be of equal interest to historians, philosophers of law and jurists. It provides a rich discussion of the reception and adaptation of theories of crime and punishment by several generations of Russian legal thinkers. And it tracks the changing relationship between law and morality in Russian legal thought and practice. Nonetheless, the book may be challenged in various respects. Firstly, the title is, quite frankly,

a misnomer. The post-Soviet section is limited in scope and depth. The greater part of the book is simply not about the relationship between pre-Soviet and post-Soviet legal thought. What is more, the notion of 'Russian legal culture' itself remains unexplored. Girish Bhat explains the specificity of nineteenth century Russian legal culture in terms of a distinctive relationship between 'guilt' [vinovnost'] and 'competence/responsibility' [vmeniaemost'] in the Russian Criminal Code of 1845, which changed only marginally thereafter.<sup>3</sup> Jane Burbank defines legal culture as 'people's engagement with law at the township courts'.<sup>4</sup> While Nethercott, by contrast, does not define her use of 'legal culture' anywhere, she clearly utilises the concept to refer to intellectual debates about crime and punishment. Still, if one chooses to include a contested concept into the title of a monograph, one should define it and acknowledge the fact that it is contested.

Nethercott's exaggeration of the Russian 'police state' – due to a somewhat unbalanced use of sources – has already been mentioned. The problem of methodology, however, is of a more general nature. The entire book is based on an examination of published sources, mainly Russian journals and legal textbooks. As the book is primarily a discussion of elite debates, this is not necessarily a problem. That said, the correspondence between individual thinkers may have provided additional insights. Sadly, Nethercott only refers to letters cited in the secondary literature. Finally, the book is not written in very accessible language. The text is often 'in code': not everyone will be familiar with terms such as 'neo-Kantianism', 'Silver Age' culture, and 'thick journals'.

HistLit 2009-2-200 / Stefan B. Kirmse über Nethercott, Frances: *Russian Legal Culture Before and After Communism. Criminal Justice, Politics and the Public Sphere*. London 2007, in: H-Soz-Kult 16.06.2009.

<sup>3</sup>Girish N. Bhat, The Moralization of Guilt in Late Imperial Russian Trial by Jury: The Early Reform Era, in: *Law and History Review* 15/1 (1997), pp. 77-113, esp. pp. 88-90.

<sup>4</sup>Jane Burbank, *Peasants Go to Court. Legal Culture in the Countryside, 1905-1917*, Bloomington/Indianapolis 2004, p. 5.