



Classificazione Decimale Dewey

— 340.092 (23.) DIRITTO. Persone

Thema

— Soggetto: LND. Diritto costituzionale e amministrativo: generale

— Qualificatori: 1DTA. Russia / 3MN. XIX secolo, 1800-1899

FRANCESCO GUARINO

**A HISTORICAL STUDY
OF NIKOLAI KORKUNOV'S
CONTRIBUTION
TO LEGAL THEORY**

**REVISED AND EXPANDED
SECOND EDITION**





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ISBN
979-12-218-2657-9

FIRST EDITION
ROMA 4 FEBRUARY 2026

SECOND EDITION
ROMA 10 APRIL 2026

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INTRODUCTION

Literature on legal history and theory has significantly expanded over the last century, but it is only in the last decades that the important contributions made by Nikolai Mikhailovich Korkunov (1853–1904) have become more widely recognised. A nineteenth-century legal thinker who applied an integrated social science approach to the study of law in late Imperial Russia, Korkunov's influence on this discipline and its evolution must be identified, examined, and traced in order to have a fuller picture of the field and its historical trajectory.

The central purpose of this book is to intervene in the existing scholarship by re-examining Korkunov's legal theory not as a settled position, but as one marked by unresolved conceptual tensions within Russian legal realism. In particular, it treats the persistent ambiguity in how Korkunov has been classified (a legal positivist, a sociological jurist, or a realist) as a productive tension that reveals the stakes of his theory of law. My hope is to add to scholars' ongoing efforts to further integrate the Saint Petersburg lawyer and his work into the relevant historiography. I also aim to examine how concurrent and subsequent academics engaged with Korkunov's ideas in order to fully understand the impact of his theories on the legal field in relation to Imperial, Soviet, and modern-day Russia, as well as foreign law.

In Part One, I begin by providing an extensive literature review, paying particular attention to points of tension and contradiction in existing

interpretations. A significant number of works related to Korkunov are covered in order to provide Russian legal scholarship with a key element that has thus far been missing. I outline how the lawyer was received among his contemporaries, his main arguments on the law, how he positioned his ideas among prevailing legal schools of thought, and his reception among Western thinkers. Korkunov's theories reflected the social turn in Russia before such ideas culminated in the Russian Revolution. He took his theory of law further than other thinkers of the time, and examples of how he did this are discussed, such as his emphasis on the importance of the history of law for understanding the law in the present. His integration of previously separate branches of study — sociology, psychology, and history — inspired other legal thinkers to justify their theories of law. In looking at these other legal thinkers, I discuss why they did or did not include these elements. In combination, these sections are organised not simply to trace Korkunov's influence, but to show how the tensions in his theory were variously emphasised, muted, or reinterpreted across different political and intellectual contexts.

The Soviet period is also considered to show how the characterising principles of this era shaped, and often obscured, Korkunov's ideas and legacies. I then highlight the resurgence of interest in Korkunov and his sociological conception of the law during the period after the fall of the Soviet Union up to the present day, as well as the potential reasons for this renewed attention.

Particular attention is paid to how scholars have come to understand Korkunov's ideas as a new method for studying the law, how they have examined his relationship to Western liberalism, and how his framework for the law has been used as a way to reconsider the structure of Russia's legal system, along with the history of its development. I argue that after 1917, Soviet academics largely overlooked Korkunov due to his notion of state power, which affords primacy to the state, as well as his desire to gradually transition Russia from an autocracy to constitutionalism.

For this reason, during the Soviet era, his ideas were often seen as a product of bourgeois thinking and a source of counter-revolutionary efforts. This contention greatly reduced Korkunov's academic and political weight and placed him in a position of obscurity until after the

fall of the Soviet Union. Ultimately, I show that, despite the novelty of his thought, the political upheaval of Russian society led to the underappreciation and undervaluation of Korkunov's work by legal historians and theorists until after the 1990s. Furthermore, in Part One, I analyse the reception of Korkunov's work in the United States and highlight how his sociological legal thinking predated and even helped spur on the historical and social turn in American legal thinking.⁽¹⁾

Following this, in Part Two, I focus on the English translation of Korkunov's major work, *General Theory of Law*, further examining its key concepts and definitions, studying his work in more detail in order to fully understand the influences behind Korkunov's conception of the law, his place in legal history, and his influence on modern-day legal theorists.

In Part Three, I continue to examine Korkunov's place in legal history, specifically looking at his connection to the American legal scholar Nathan Roscoe Pound (1870–1964). Like Korkunov, Pound was heavily influenced by the German jurists Friedrich Carl von Savigny (1779–1861) and Rudolf von Jhering (1818–1892). Despite their ideas being rooted in two separate social and political realities, they have similarities, with Pound even having read and cited Korkunov's *General Theory of Law*.⁽²⁾ Studying their conceptions in tandem is important as it demonstrates how both scholars' theories were constructed in response to the influence of liberalism in their respective societies, suggesting that the sociological turn in legal theory was part of a large historical process that defied borders and is tied to the modern social condition.

(1) While Korkunov's work was received in Europe, especially in Germany, I focus on the attention his work garnered in America. The reasoning behind this is that in Europe, and in Germany in particular, Korkunov's theory was often subsumed into the wider sociological legal debate that influenced him and was later viewed as a failed precursor to Kelsen's theory of law. In contrast, the consideration of law in America at the start of the twentieth century was relatively more modern, and therefore pre-existing European schools of thought were not as ingrained in the system of law. This therefore makes Korkunov's position much clearer to analyse in relation to a non-Russian society.

(2) For example, in Roscoe Pound, "The Scope and Purpose of Sociological Jurisprudence [Concluded], III" *Harvard Law Review*, 25 (6), 1912, pp. 489–516 (p. 491, p. 499). Other citations are discussed in Part Three. It should be noted that Pound was using the 1909 English translation by Hastings, which is the same translation I use in this work. Nikolai Mikhailovich Korkunov, *General Theory of Law*, trans. W.G. Hastings (Boston, MA: The Boston Book Company, 1909).

Moreover, it indicates that Korkunov's ideas, though undoubtedly shaped by the Russian imperial reality, were more broadly linked to the historical moment in which he lived, that is, a period which involved late imperial reform, intensified debates over state power and constitutionalism, and the emergence of sociological approaches to law across Europe and the United States.⁽³⁾ This highlights that Korkunov's work is not only relevant to the study of *Russian* legal theory and history but that it is also reflective of shifts in the field as a whole, underscoring the importance of studying and interpreting it nowadays.

Throughout this work, I propose a foundation for understanding the basis of Korkunov's theories, his position in legal scholarship, and the various linkages that can be made between his novel theory of law and broader sociological trends in the evolution of legal history.

(3) With the rise of industrialisation in Eastern and Western Europe and the United States, the question of the sociological role of law was not confined to Russia. Indeed, the rise of the common class in many countries during this period refocused monarchs' and governments' attention to better accommodate them and therefore attuned the law in their favour. This was evident in Russia with the emancipation of the serfs, the introduction of trials by jury, and the creation of *zemstva*. However, such a shift was also taking place in Austria, with the eventual dissolution of the monarchy in 1918, just one year after the end of the Russian monarchy. Germany was also reorganising its legal system in a bid to function more effectively and better serve the people it governed. One example of this is the unification of the courts, bringing them all into a single system across the states. Although the United States was not governed by a monarchy that required reform, there were major questions posed about the role of sociology at the time, which were brought about by the need for reform due to industrialisation and labour practices. Therefore, although each country was adapting its legal system in its own unique way, the overarching legal trend at the time was a general shift toward sociological law.

PART I

N.M. KORKUNOV'S LEGAL IDEAS AND THEORY A HISTORIOGRAPHICAL REVIEW

1.1. The Importance of Korkunov's Work

Korkunov's ideas have occupied a distinct position in both Eastern European and Western intellectual circles since their publication, rising and falling in popularity for over a century, often in conjunction with historical political moments, such as the implementation of communism in Russia, which brought his theories about the law and state to the fore of political thought.⁽¹⁾ Despite sustained scholarly attention to

(1) Ol'ga Viacheslavovna Shapoval, "Uchenie N.M. Korkunova o prave," PhD diss. (Krasnodar: Kubanskii gosudarstvennyi universitet, 2005). Russian-language sources are transliterated in the footnotes for legibility; in the bibliography, each reference is given in both transliteration and the original Cyrillic, with an English translation of the title. In her dissertation, Shapoval traced the interest in Korkunov's theories throughout the Soviet period, noting that the first mention of a study on Korkunov appeared in Svetlana Alekseevna Piatkina's article entitled "O pravovoi teorii russkogo iuridicheskogo pozitivizma," *Pravovedenie*, 4, 1964, pp. 116–120. However, Shapoval noted that the aim at the time was to relegate Korkunov's theories to the past due to their mention of a monarchy. Piatkina incorrectly defined Korkunov as a full legal positivist and provides a well-founded, but foundationally incorrect, critique of his theories. It should be noted that the key moments of the implementation and fall of communism also affected legal thought in numerous Eastern European countries, as well as Eastern Germany. In fact, the separation of Germany into Western and Eastern Germany had a profound effect on the legal systems, as each had to re-examine and redefine its laws according to the doctrine under which they now lived. However, there were other major events that caused the sociological school of law, and hence Korkunov's theory, to rise or fall in popularity. These included but were not limited to: the end of the German and Austro-Hungarian empires, both World Wars, and the Cold War. Each of these events

Korkunov's work, there remains contention over how his legal theory should be classified, particularly with respect to its relationship to legal positivism, liberalism, and sociological jurisprudence.

An innovative legal thinker, Korkunov has remained a subject of interest in the study and interpretation of legal theory in general and Russian legal theory in particular since the mid-to-late nineteenth century. Rather than introducing wholly new questions about the state and law, Korkunov can be read as reworking longstanding concerns (central to figures from Aristotle to Hobbes, Locke, and Comte) under the specific social, political, and scientific conditions of late Imperial Russia.⁽²⁾ His *General Theory of Law* represented a landmark contribution to jurisprudence when it was originally published in Russian in 1886 and later translated into English in the United States in 1909.⁽³⁾ Although they did not reach particular notoriety at the

caused political shock and required those in charge to reconsider the legal system, which, at the time, did not view sociological concepts of law in a favourable light.

(2) This trend is easily seen in the number of legal theorists who interacted with his theories, both positively and negatively, both in Russia and the West. The fact that Korkunov's theories overlapped several schools of thought meant that a large pool of jurists had a vested interest in his ideas. However, the notion of attempting to answer the question "what is a good government?" was not a novel idea, and therefore, Korkunov's work positions him in the nebulous web of legal thinkers who sought to answer this question. One major point to note here is that although the foundation of Korkunov's thought was not new, it was his multidisciplinary approach to the question that distinguished his work from those before him, such as Aristotle. In comparison to more modern thinkers whose work also heavily considered the role of the state, such as Thomas Hobbes (1588–1679) and John Locke (1632–1704), Korkunov's sociological grounding of law still sets his work apart. For Hobbes, the law originates in the will of the sovereign, while for Locke, the law originates in nature. Continuing this line of thought allows us to also consider Jean-Jacques Rousseau (1712–1778), whose social contract theory may at first appear to take a similar line to Korkunov due to its consideration of society but differs significantly in terms of will and freedom. Whereas Rousseau argued that the law is legitimate when it reflects a general will of the people, Korkunov argued that law is the delimitation of numerous conflicting interests. It is these thinkers, among a myriad of others over the centuries, who have contributed to the ongoing debate of the definition and purpose of law. Indeed, such reflections on the state eventually led to the opposition between the positivist school of law and the natural school of law, which were the two dominant schools at the time of Korkunov's writing.

(3) Korkunov, *General Theory of Law*. For the purposes of this work, the English translation of Hasting's translation of *General Theory of Law* is accompanied by the original Russian taken from Nikolai Mikhailovich Korkunov, *Lektsii po obshchei teorii prava* (Saint Petersburg: Izdanie Iuridicheskogo knizhnogo magazina N. K. Martynova, 1909). Where a cited author uses a different edition, this work indicates page references for both editions.

time, Korkunov's theories soon became a topic of popular interest among legal historians, legal theorists, and sociologists.⁽⁴⁾

Across numerous published works, Korkunov remained concrete on his definition of the law. At its most basic level, he defined the law as the delimitation of interests. He argued that people adhere to the delimitation of interests because the norms and relationships they operate within form the basis of their own power.⁽⁵⁾ Although he rejected metaphysics as an *a priori* requirement for positive sciences, Korkunov believed that abstract philosophy could be effectively combined with empirical knowledge as the foundation of legal philosophy. Therefore, he was not, strictly speaking, a legal positivist, but

(4) Examples include: Nina Eduardovna Pegova, "Printsip 'sub'ektivnogo realizma' v teoretiko-pravovoi metodologii N.M. Korkunova," *Gumanitarnye i sotsial'no-ekonomicheskie nauki*, 4 (83), 2015, pp. 82–86; George Yaney, "Bureaucracy and Freedom: N.M. Korkunov's Theory of the State," *The American Historical Review*, 71 (2), 1966, pp. 468–486 (pp. 483–485); Eric Lohr, "The Ideal Citizen and Real Subject in Late Imperial Russia," *Kritika: Explorations in Russian and Eurasian History*, 7 (2), 2006, pp. 173–194; Iuliia Poltorak, "To Bridge the Gulf: State, Society, and the Russian Bureaucratic Ideal at the Turn of the Twentieth Century," PhD diss. (University of Pennsylvania, 1996); Andrei Polyakov, "The Theory of State and Law by Nikolay Korkunov," in Brozek B., Stanek J., and Stelmach J. (eds.), *Russian Legal Realism* (New York: Springer, 2018), pp. 67–78; Iuliia Aleksandrovna Komnatnaia, "Istoriia otechestvennoi nauki kollizionnogo prava: teoriia osnovaniia iuridicheskogo fakta N.M. Korkunova (1853–1904)," *Istoricheskie, filosofskie, politicheskie i iuridicheskie nauki, kul'turologiia i iskusstvovedenie. Voprosy teorii i praktiki*, 7 (13), 2011, Part 2, pp. 122–124; Vera Ignat'evna Bochkareva, "'Iurist-sotsiolog' N.M. Korkunov," *Zhurnal sotsiologii i sotsial'noi antropologii*, 17 (2), 2014, pp. 88–100; Patrick Lally Michelson, "The First and Most Sacred Right: Religious Freedom and the Liberation of the Russian Nation, 1825–1905," PhD diss. (University of Wisconsin–Madison, 2007); Igor Andreevich Isaev, "Kontsepsiia vlasti N.M. Korkunova i ee psikhologicheskie paralleli (iz istorii iuridicheskoi psikhologii v Rossii)," *Pravovoe gosudarstvo: sviaz' vekov (istoriko-teoreticheskii aspekt)* (Moscow, 1991), pp. 35–46; Elena Nikolaevna En'shina, "Teoriia sovместnosti vlastvovaniia N.M. Korkunova," *Izvestiia Iugo-Zapadnogo gosudarstvennogo universiteta. Seriia: Istoriia i pravo*, 2 (19), 2016, pp. 35–40; Pavel Vladimirovich Galkin, "Problemy statusa i kompetentsii organov mestnogo samoupravleniia v trudakh M.I. Sveshnikova i N.M. Korkunova," *Istoriia gosudarstva i prava*, 13, 2011, pp. 36–39.

(5) Korkunov, *General Theory of Law*; Korkunov, *Lektsii po obshchei teorii prava*; Nikolai Mikhailovich Korkunov, *Russkoe gosudarstvennoe pravo*, 6th ed., 2 vols. (Saint Petersburg: Tip. M.M. Stasiulevicha, 1909); Nikolai Mikhailovich Korkunov, *Ukaz i zakon: Issledovanie N.M. Korkunova* (Saint Petersburg: Tip. M.M. Stasiulevicha, 1894); Nikolai Mikhailovich Korkunov, *Istoriia filosofii prava: Posobie k lektsiiam* (Saint Petersburg: Tip. M. Merkusheva, 1896); Nikolai Mikhailovich Korkunov, *Sbornik statei N.M. Korkunova, professora Peterburgskogo universiteta. 1877–1897* (Saint Petersburg: Izdanie Iuridicheskogo knizhnogo magazina N.K. Martynova, 1898).

rather preferred to employ an eclectic approach for a more comprehensive view of the issue he observed. Generally considered, Korkunov emphasised the importance of systematic knowledge when it comes to tackling such broad areas of life as legal theory.⁽⁶⁾

At the crux of his theory of the law is the notion that the individual and state power are reliant on and inseparable from one another through individuals' awareness of their dependence on the state.⁽⁷⁾ According to the imperial lawyer, state power develops out of individuals' regard for the law, which can be manipulated to suit their own needs. However, since independently acting individuals cannot maintain political power, this power is held at the state level and represents a unity of wills.⁽⁸⁾

Despite being a trailblazing legal thinker, Korkunov was neither the first nor the last scholar to take a sociological approach to the law.⁽⁹⁾ As I aim to show in this work, many of his ideas were inspired by the teachings of German legal thinkers, such as Jhering, but tenets of his work also featured prominently in the development of sociological jurisprudence in the United States.

Korkunov's seminal work was rooted in his criticism of society's stagnation, which he saw as a result of poor governance and a consequence of the peculiar features of the Russian autocracy.⁽¹⁰⁾ While criticising the school of natural law and the school of positive law, which represented the dominant legal schools of the time, for their

(6) Korkunov, *General Theory of Law*, pp. 29–30.

(7) Anastasiia Vasil'evna Petukhova, "Sotsiologicheskaia kontseptsia N.M. Korkunova," *Vestnik Nizhegorodskogo universiteta imeni N.I. Lobachevskogo. Seriya: Sotsial'nye nauki*, 3 (27), 2012, pp. 74–78 (p. 77).

(8) This idea is explored mostly fully in his *Leksii po obshchei teorii prava*.

(9) Indeed, the sociological approach was a nineteenth-century movement away from natural law. The shift from the natural law paradigm to positivism was gradual; here, we find Korkunov advancing positivism (with a sociological inflection). While Korkunov was not the first thinker to examine the law through a sociological lens, this was a major shift in Russian thinking, not only in terms of the move away from natural law, but now also seemingly away from positivism. It is for this reason that numerous scholars have been unable to categorically determine his position, given his adaptations to the beliefs of the dominant positive school of law in Russia in the nineteenth century.

(10) Due to the censorship and governance of legal studies at the time, Korkunov was not able to explicitly make any criticisms of the monarchy or government. However, he did say that there were certain inefficiencies in the way the state was run, such as with law and legislation.

abstract principles, he was influenced by the infusion of Western liberal principles into Russian intellectual circles.⁽¹¹⁾

Although he found such liberal ideas useful for Russian society, he was aware of the care that they would require when adapted to suit Imperial Russian society and law and feared that Western individualism could impede the development of his country. Regardless of his theoretical legal ideals, he approached the law and its problems from a practically informed, but predominantly theoretical, stance.

Despite Korkunov's theories finding their basis in issues unique to the Russian legal system, his work was reflected in the Western world, particularly in the United States, with thinkers such as Pound, who also approached legal thought through a sociological lens. Pound constructed his sociological view of the law from the very realities that Korkunov feared. Pound's notion of sociological legal thinking was developed in response to the hyper-individualism of American society and its legal system in the early twentieth century, which he claimed came at the detriment of the collective.

In this study, I aspire to analyse the similarities between both Korkunov's and Pound's legal thought in order to discuss Korkunov's place in the wider legal sphere, as well as highlight the importance that he placed on the issue of individualism. This question of the individual's place in relation to the state and legislation was a much-discussed topic in the nineteenth century, with competing arguments arising from the various schools of legal thought that dominated Russia's intellectual sphere during Korkunov's time. As is well known, the positive law school argued that laws arise from governing structures and the will of the legislator, whereas its opponent, the school of natural law, claimed that law should arise from ideal concepts such as justice.

Despite legal positivism and *jusnaturalism* being the main movements of legal thought in the Russian Empire, they were often challenged by the emergence of liberalism, which advocated for individual freedoms and the rule of law, along with the advent of sociological,

(11) Karina Kadzhikova Oganian, "Lichnost' i obshchestvo v sotsial'no-pravovoi kontseptsii N.M. Korkunova," *Mezhdunarodnyi nauchno-issledovatel'skii zhurnal*, 6-3 (13), 2013, pp. 91-93.

historical, and psychological approaches to the law.⁽¹²⁾ Such ideas often travelled to Russia via German academic texts or institutions, where many Russian theorists and lawyers were educated.⁽¹³⁾ Many scholars also combined these ideas to devise unconventional approaches to studying the law. It was these novel theories that greatly influenced Korkunov, functioning as the foundation for his own concept of law and fuelling his rejection of traditional theories.

As I aim to show, Korkunov had a complex relationship with legal positivism, a nuanced idea of state power, and an atypical understanding of liberalism. His ideas arose from the specific conditions of his country, which entered a period of instability and ultimately decline in the late nineteenth and early twentieth centuries, culminating in the Russian Revolution, but they were also part of a general shift in legal thinking that took place on both sides of the Atlantic at the turn of the twentieth century.⁽¹⁴⁾

Although his theories were conceived in response to the growth of liberalism in continental Europe, they were also designed to have a general

(12) For more information on the impact of legal positivism on Russian legal theory, in addition to an overview of Russian legal philosophy in the late nineteenth and early twentieth centuries, see: Elena Pribytkova, "Personality, Person, Subject in Russian Legal Philosophy at the Turn of the Twentieth Century," *Studies in East European Thought*, 61 (2–3), 2009, pp. 209–220.

(13) German culture had a significant impact on Russian society in the nineteenth century, influencing education and legal ideologies, on top of clothing, entertainment, and other cultural imports. For more on the relationship between Germany and Russia in the nineteenth century, including the controversy of this relationship, see: Terry Martin, "The German Question in Russia, 1848–1896," *Russian History*, 18 (4), 1991, pp. 373–434.

(14) Historians often attribute this destabilisation to the imperial regime's inability to adjust and address the needs of its complex and evolving society because it sought to maintain a degree of power. They also reference administrators' and scholars' contrasting political visions during the nineteenth century, which marked a period of transition across Modern Europe. See: Richard S. Wortman, *Scenarios of Power: Myth and Ceremony in Russian Monarchy* (Princeton, NJ: Princeton University Press, 2006), pp. 383–396; Richard Pipes, *The Formation of the Soviet Union: Communism and Nationalism* (Cambridge, MA: Harvard University Press, 1997); Michael A. Reynolds, *Shattering Empires: The Clash and Collapse of the Ottoman and Russian Empires 1908–1918* (London: Cambridge University Press, 2011); Theodore Weeks, *Nation and State in Late Imperial Russia: Nationalism and Russification on the Western Frontier, 1863–1914* (DeKalb, IL: Northern Illinois University Press, 1996); Eric Lohr, *Nationalizing the Russian Empire: The Campaign Against Enemy Aliens During World War I* (Cambridge, MA: Harvard University Press, 2003), see Chapter 1 in particular.

applicability.⁽¹⁵⁾ This meant that they could be debated and examined by both Western and Russian legal scholars due to their uniquely integrated conservative and liberal content. Despite Korkunov's limited popularity throughout his lifetime and the Soviet era (Soviet scholars rejected his works due to his seeming affinity for the monarchy), a new-found interest in his publications emerged in the 1990s with the fall of communism.

The first part of this work is composed of four sections, throughout which I follow the chronology of the discussion around Korkunov's legal theories in order to show the relevance of his work during different political shifts and ages.

This first section (1.1) provides a general overview of how Korkunov's work was perceived over time, addressing some of the main reasons why his theory of law has not often been examined in enough detail. I also briefly examine the reception of his ideas in both Russia and the West, specifically the United States, to highlight any comparisons between the two.

In Section 1.2, I address the period up until the Russian Revolution, when Korkunov was read and received by his contemporaries in the Russian Empire, the United States, and Europe. I pay particular attention to how they understood his ideas in relation to legal positivism, jusnaturalism, and liberalism in order to reconstruct the legal culture and atmosphere of the time and determine his position within it.

In Section 1.3, I examine how Korkunov's work was received and evaluated during the Soviet era in order to consider the impact of his teachings on legal scholars of the time and the differences in attitudes to his ideas, given the shift in legal thinking caused by the rise of communism in

(15) For more on the rise of liberalism and modernisation processes in Modern Europe see: Jonathan Sperber, *The European Revolutions, 1848–1851* (Cambridge: Cambridge University Press, 1994); Christopher Clark, *Revolutionary Spring: Europe Aflame and the Fight for a New World* (New York: Penguin Random House, 2023); Leonid Grinin, "The European Revolutions and Revolutionary Waves of the 19th Century: Their Causes and Consequences," in *Handbook of Revolutions in the 21st Century, Societies and Political Orders in Transition*, ed. J.A. Goldstone et al. (New York: Springer, 2022); Christopher Hobson, *The Rise of Democracy: Revolution, War and Transformations in International Politics Since 1776* (Edinburgh: Edinburgh University Press, 2015); William E. Pomeranz, *Law and the Russian State: Russia's Legal Evolution from Peter the Great to Vladimir Putin* (London: Bloomsbury Academic, 2019), see in particular Chapter 3, pp. 37–56.

Russia. Throughout these sections, I focus on Western scholars' reception and application of Korkunov's ideas, showing the disparity between the West's preconceived notion of Western and Eastern European thought and the actual integration of legal concepts into both.

Finally, in Section 1.4, I examine the renewed interest in Korkunov, which emerged in the post-Soviet period, both inside and outside of Russia. I analyse the elements of his work that continue to resonate with scholars as well as new interpretations and applications of his legal theories, his methodological intervention, the extent to which he was shaped by Western liberalism, his relationship to positivism, and the interconnected nature of his ideas.

I also pay special attention to how recent scholarship has used Korkunov's work to retrospectively interpret social and political developments in Imperial Russian society. Several scholarly works concerning the imperial lawyer are analysed that were written after the fall of the Soviet Union, when his ideas garnered peak interest among scholars, in order to examine why they were reintroduced into the circle of legal thought and the impact that they had on modern-day thinking.

Korkunov's works were read, dissected, and applied by numerous academics from a wide range of disciplines, including legal theory, legal history, and sociology. Their distinct approaches to his ideas and publications are a testament to their intellectual riches and originality. Legal theorists and sociologists have greatly explored his philosophy of the law, highlighting its relation to other legal ideas through comparative work and identifying the assumptions on which Korkunov based his theories. Legal historians have provided novel interpretations of the origins of the jurist's legal philosophy, reflecting on the image of imperial society and the legal system it presented. Together, these various approaches offer a multifaceted understanding and analysis of his works, life, and thought. However, throughout this work, I argue that Korkunov was not adequately known by legal historians and theorists until the 1990s, despite the relevance of his ideas.

Even though he did not obtain significant notoriety during his lifetime, partially due to the fact that many of his contemporaries were preoccupied with implementing liberalism or generally redesigning the Russian autocratic system, which they often used as a device to assess

ideas rather than critically engage with their content, the imperial lawyer was not entirely disregarded at the time.

Later, Korkunov's theories were most commonly dismissed in Russia due to the significant level of primacy that they gave to the state. His association with autocracy and the imperial period likely made him easy to reject in the Soviet era and early post-Soviet period, even though legal scholars of the time generated similar ideas, often covertly referencing his works.

Regarding Western legal thought, Korkunov's ideas did gain significant traction amongst legal theorists in the United States but flew under the radar of many prominent American scholars. Significantly, he was not credited with influencing sociological jurisprudence in the United States, which also aimed to balance individual welfare and the state, even though his ideas preceded the sociological turn in that country and numerous local lawyers also devised similar theories. More often, his ideas were explicitly linked to the historical conditions of Imperial Russia and the supremacy of the state.⁽¹⁶⁾

The collapse of the Soviet Union led to the emergence of a renewed interest in Korkunov, as scholars attempted to understand the causes and consequences of communist rule on Russian society.⁽¹⁷⁾ While his ideas were often used to confront contemporary political problems in the post-Soviet transition, lawyers paid significant attention to how he balanced the individual and society in his theoretical framework, his relationships with liberalism and legal positivism, and his critiques of late imperial legislation and governance, wondering how his legal theory could be used as a new method for studying the law. Collectively, the most recent literature has shown the distinctive configuration of his ideas and their complex relationship with liberalism.⁽¹⁸⁾ In addition, the

(16) The complicated relationship between Russia and Western countries in the twentieth century impacted studies of Russian law, including Korkunov's works. For more information on Russian autocracy and state power in this era (and why many Soviet scholars were associated with these ideas), see: Robert G. Wesson, "The Soviet State, Ideology and Patterns of Autocracy," *Soviet Studies*, 20 (2), 1968, pp. 179–186.

(17) This shift was part of a transition in Russian studies in institutions outside of Russia. After the Soviet era, there was a renewed interest in studying the period. Julie A. Buckler, "What Comes after 'Post-Soviet' in Russian Studies?," *PMLA*, 124 (1), 2009, pp. 251–263.

(18) As I highlight throughout this work, Korkunov's thought was original in its inclusion of sociology, and more specifically, his inclusion of liberal ideals, such as individual rights

interest shown in him by contemporary scholars suggests that these discussions remain ongoing.

By addressing Korkunov's sociological, historical, and psychological approach to the law, they have identified the challenges that characterised the later Russian Empire, highlighting the reasons for its instability and ultimate collapse. More importantly, they have drawn renewed attention to this social-based approach to the study of law, indirectly emphasising that the power to change the law rests not on political state structures, but on society itself.

1.2. Korkunov and his Contemporaries (Pre-1917)

1.2.1. *A Brief Biography of Nikolai Korkunov*

Born in Saint Petersburg on 14 April 1853, Korkunov came from hereditary nobility and was raised in the Orthodox faith.⁽¹⁹⁾ His father, Mikhail Andreevich Korkunov (1806–1858), held the rank of Active State Councillor, was an Ordinary Academician of the Imperial Academy of Sciences, and served in the Archaeographic Commission under the Ministry of Public Enlightenment.⁽²⁰⁾ Mikhail's contemporaries described him as diligent and selflessly devoted to scholarship.⁽²¹⁾

This scholarly discipline was clearly passed on to his son Nikolai, who distinguished himself already in secondary school. In 1870, he

and limitations on state power, without tying it to natural law and morality. He instead linked such ideas to a scientific notion of the law and viewed them as a result of social coordination and improved legal procedure.

(19) Tsentral'nyi gosudarstvennyi istoricheskii arkhiv Sankt-Peterburga (TSGIA SPb) [Central State Historical Archive of Saint Petersburg], coll. 14, aids 3, fol. 16571, p. 3.

(20) *Ibid.*, pp. 4–17. Active State Councillor (*deistvitel'nyi statskii sovetsnik*) was a fourth-class civil-service rank in the Russian Empire's Table of Ranks (*Tabel' o rangakh*, 1722) — the Russian Empire's formal hierarchy of civil, military, and court service, divided into fourteen classes. The Imperial Academy of Sciences (*Imperatorskaia Akademiia Nauk*) was the Russian Empire's principal state scholarly institution, coordinating research and scholarly publication. The Archaeographic Commission (*Arkheograficheskaiia komissiiia*) was an institution responsible for collecting, publishing, and studying historical documents and other materials on Russia's early past.

(21) Anisim Ivanovich Ekimov, *Korkunov* (Moscow: Iuridicheskaiia literatura, 1983), (*Iz istorii politicheskoi i pravovoi mysli*), p. 9.