

## Ludzie i instytucje kryminologii

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**Sergiej Viktorovič Poznyšev**

### **Short reflections and recollection on the 70th anniversary of his death**

Siergiej Viktorovič Poznyšev, was one of the many prominent lawyers starting their scientific career path in Imperial Russia, who were destined to produce their work at the time of violent both political and social transformations during the second decade of the twentieth century. The culmination of these transformations, as it is widely known, was the seizure of state power by the Bolsheviks in the bloody October coup in 1917, now being euphemistically referred to as the Proletarian Revolution. The developments in that period were the peculiar test of attitudes, for that time jurists as well, who faced the choice of either „adjusting” their scientific activities in accordance with the new vision of the country and the law or staying outside the scientific sphere and being marginalized or political migration. Such was the choice of S. V. Poznyšev, professor of both The Imperial Moscow University Faculty of Law and the National Psycho-neurological Institute, already well- established authority on criminal law, criminal psychology, criminology and penology studies. *On the 70th anniversary of his death it is well worth recollecting such an eminent figure and his scientific oeuvre, whose contribution to the development of legal and criminal as well as criminology thought is deemed to be equal to the achievements of Cesare Baccaria, Franz Rittera von Liszt or Enrico*

He was born on 3<sup>rd</sup> May, 1870 in Moscow Province (Gubernija). He graduated from the Faculty of Law at Moscow University in 1894, however, he did not obtain the MA in international law until 1904<sup>1</sup> submitting his dissertation „The basic problems in teaching about penalty” („Основные вопросы учения о наказании”). Barely two years after graduating, he earned his PhD putting forth the dissertation „Criminal offences against religion from the point of view of religious freedom. Towards the reform of our legislation about criminal offences against religion.” („Религиозные преступления с точки зрения религиозной свободы. К реформе нашего законодательства о религиозных преступлениях”). As a Privat docent (приват-доцент, *privatim docens*) He worked at his home university since 1902 becoming its professor seven years later. Between 1915 – 1917 he functioned as the vicepresident (vice- rector).

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<sup>1</sup> Having graduated from Faculty of Law Moscow University Faculty, Poznyšev followed up at the Faculty Mathematics and Physics, which he continued until 1897.

In the pre- soviet era S. V. Poznyšev's scientific output was exceptionally productive. Not only did his writings at that time give evidence to his penetrating knowledge of the home country criminal law<sup>2</sup>, but also it witnessed his ability to employ his vast experience gained during the foreign research trips to France, Belgium, Austria, Switzerland and Hungary<sup>3</sup>. His keen interest in the penitentiary systems in European countries resulted in numerous publications in that time<sup>4</sup>. He seemed to have already been absorbed by studies on both the character and personality of lawbreakers and the nature of crime and criminality<sup>5</sup>, which, in the near future, bore fruit in the fundamental, from the criminological studies point of view, treatise: „Criminal Psychology. Criminal Types” first published in Moscow (1925) and then in Leningrad (1926)<sup>6</sup>.

S. V. Poznyšev's comparatively rich scientific output does not attest to the existence of favorable social and political climate in the Soviet country that would be conducive to scientific activities, the more so that by exposing his aversion to Marxism Poznyšev acceded to being marginalized and „scientifically ostracized”. Boris Samoylovich Utievskiy<sup>7</sup> in his „Lawyer's memoirs” writes: „All professors and privat docents who commenced their scientific activities before the October Revolution and stayed in their homeland became in due course soviet scientists, however, with the only exception of an undoubtedly great scientist, ex- professor at Moscow University S. V. Poznyšev. Until his death ( he died in 1942<sup>8</sup>) he had worked at neither any of the soviet universities nor any soviet research institute irrespective of

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<sup>2</sup> Apart from printed Poznyšev's dissertations that constituted the basis of granting him the MA and PhD degrees, the most important works of that time were as follows: С.В. Познышев, *Особенная часть русского уголовного права. Сравнительный очерк важнейших отделов особенной части старого и нового Уложений*, Москва 1905; Idem, *Основные начала науки уголовного права. Общая часть*, Университетская типография, Москва 1907; Idem, *Особенная часть русского уголовного права. Сравнительный очерк важнейших отделов особенной части старого и нового Уложений*. 2 изд., испр. и доп., Типография В.М. Саблина, Москва 1909; Idem, *Очерки тюремоведения*, Москва 1913.

<sup>3</sup> Cf. В.С. Овчинский, А.В. Федоров, *Предисловие составителей сборника трудов С В Познышева* (in:) С.В. Познышев, *Криминальная психология. Преступные типы. О психологическом исследовании личности как субъекта поведения вообще и об изучении личности преступника в частности*, Инфра-М, Москва 2007, p.V.

<sup>4</sup> Vide С.В.Познышев, *Бельгийские тюрьмы, колонии для нищих и бродяг и государственные исправительные школы для несовершеннолетних: Очерки их современного состояния*. Типография Императорского Московского Университета, Москва 1909; Idem, *Венгерские переходные тюрьмы*. Печатня А.И. Снегиревой, Москва 1910; Idem, *Новая тюрьма в Брюсселе*, Вопросы права. Журнал научной юриспруденции 1911, кн. V(1); Idem, *Швейцарские земледельческие колонии для безработных и швейцарские тюрьмы*, Herden и Le Devens, Москва 1911; Idem, *Бельгийский общий тюремный устав*, Тюремный вестник 1912, № 2; Idem, *Голландские тюрьмы и работные дома*, Тюремный вестник 1915, № 3.

<sup>5</sup> Vide С.В.Познышев, *Уголовное право. Учение о преступнике, о карательных мерах и о применении наказания к преступлению*, Москва 1910; Idem, *К вопросу о несовершеннолетних преступниках*. Вопросы права. Журнал научной юриспруденции, кн. IV Детская преступность и меры борьбы с нею 1910; Idem, *Об изучении преступника в науке уголовного права. Вопросы права*, Журнал научной юриспруденции 1911; Idem, *Алкоголизм как фактор преступности*, Москва 1915; Idem et al. *Экономические факторы преступности*, (Перевод с французского), Издательство Г.А. Лемана, Москва 1915.

<sup>6</sup> С.В.Познышев, *Криминальная психология. Преступные типы*, Гос. Издательство, Ленинград 1926; Polish edition: S. W. Poznyszew, *Psychologia kryminalna. Typy przestępne* (przełożył E. Wiśniewski), Księgarnia Powszechna, Łódź 1936.

<sup>7</sup> B.S. Utievskiy (1887-1970), a lawyer, counsellor, criminal law and criminology specialist, criminal law professor. During Soviet regime a high ranking NKVD officer. He kept a diary reporting key historical events, as well as meetings with scientists and artists.

<sup>8</sup> An electronic version of Moscow University Chronicle announces his date of death as 3rd Jan, 1943 (Vide <http://letopis.msu.ru/peoples/836>: dostęp 10.08.2013 r.)

all the factual records”<sup>9</sup>. W.S. Ovczinskiy and A.W. Fiodorov, however, claimed that since December, 1918, Poznyšev headed the Department of Social Science and National Law at Rumiancevskiy Museum in Moscow (the USSR and W.I. Lenin Public Library)<sup>10</sup>, but they did not name any sources of their findings.

Even assuming it is credible, the mere fact of removing the professor from the main stream of university activities was the act of repression against him for his open declaration that „I am not a Marxist, nor shall I ever be one.”<sup>11</sup>. It was precisely his consistent and hard line, though ridden of any aggression, denial of the ruling ideology and not his conservative and right wing views emerging in his numerous publications that troubled the ruling communist elite. On the other hand, Poznyšev’s „isolation” was not the expression of being ostracized as the veneration for Moscow University ex- professor scientific accomplishments and knowledge was indisputable. Even his „isolation” appears to have been a bit strange. Not only did the Soviet regime tolerate Poznyšev’s attitude in their own manner (at least he was not a political contestant), but also they made use of his experience and help. And help he did. He took part in the works of the committee appointed to prepare the project of the Russian Soviet Federated Socialist Republic penal code alongside its People’s Commissariat for Justice (НКЮ РСФСР) in 1922. That Commissariat „patronized” the publication of the penal code textbook prepared by Poznyšev in 1923<sup>12</sup>. He was also considered for the post of a Senior Associate Scientist at the National Institute of Studies on Crime (1925). This time, however, not only his „idealistic world view” but also his „negative attitude towards materialistic dialectics” stood in the way<sup>13</sup>. The curious thing is that his idealistic world view did not hamper him being appointed a member of the Institute Scientific Council.

The Soviet apparatus of power exhibitions of indecision, instability and lack of unequivocal attitude towards S. V. Poznyšev was even more evident by the fact of appointing him the chairman of the criminal psychology section within 1<sup>st</sup> All- Soviet Rally of Psycho neurology in 1923 where the policy for the development of native psychological and criminal research was adopted and where the foundations for a network of institutes of scientific and forensic expertise to further psychological aspects of crimes was put forth<sup>14</sup>.

Despite all the obstacles and adversities that had to be faced with after 1917, Siergiej Viktorovič Poznyšev’s perseverance in scientific work did not abate, as his most mature scientific output came out at that time. It goes without saying that any attempt at evaluating his works would be tainted by subjectivism, however, there are some objective criteria, e.g.

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<sup>9</sup> Б. С. Утевский, *Воспоминания юриста. Из неопубликованного*, Юрид. лит., Москва 1989, p. 285; It is well worth mentioning that Poznyšev was distinguished with the title of the professor of International Science Academy of Toulouse in 1930.

<sup>10</sup> В.С. Овчинский, А.В. Федоров, *op.cit.*, с. V-VI.; This fact, in some degree, is corroborated in a Rumiancevski Museum internet short note: “Poznyshev Sergey Viktorovich 1870—1943 (...) in RM since 24th December, 1918. The head of science department. Dismissed no earlier than April, 1920. (...) Архив РГБ. Оп. 41. Д. 56. Л. 238об.—239” (Vide <http://www.rmuseum.ru/data/authors/p/poznyshevsv.php>; access on 10.08.2013). We can also find there the confirmation of Poznyshev’s date of death in 1943.

<sup>11</sup> „I am not a Marxist. Nor shall I ever be one.” The scientist stayed true to his words until the end of his days. (Cf. С. Утевский, *op.cit.*, p. 286)

<sup>12</sup> С. В. Познышев, *Учебник уголовного права. Очерк основных начал общей и особенной части науки уголовного права*, ч. I: Общая часть. ч. II: Особенная часть, Юридическое издательство НКЮ РСФСР, Москва 1923.

<sup>13</sup> Утевский, *op.cit.*, p. 286

<sup>14</sup> Cf. О.Э. Петруня, *Юридическая психология*, Евразийский открытый институт, Москва 2007, pp. 17-18; Cf. М.И. Еникеев, *Юридическая психология*, издательство Питер, Санкт-Петербург 2006, p. 24 et seq.

their innovative, universal and timeless character, which might make it a bit easier. If one wanted to pinpoint his defining achievement, it would be impossible to bypass the fact that in science the name Siergiej Viktorovič Poznyšev is mainly associated with the issue of criminal typology whose heart of the matter is clearly laid out in the a/m main work „Criminal Psychology. Criminal Types.” This treatise, not any other, won him worldwide publicity, exerting influence over the development of world criminology and having strong impact on the works of other famous, including Polish, lawyers and criminologists<sup>15</sup>.

In no way can the concept of a criminal type put forth by him be ignored as its topicality has never been challenged and which still forms the underlying basis of all scientific elaborations in that particular field. „Principles that describe permanent phenomena in their course may not be undermined. Poznyšev only determined a natural regularity and normality of human behavior, including criminal behavior and its basic determinants whose regularity has never been, nor can be, questioned by psychology”<sup>16</sup>

Criminal psychology was dubbed by him as „psychology of fight with law- breaking” that examines crimes as a manifest of mental constitution of a person and determines different criminal types<sup>17</sup>. Therefore, a criminal type is of such mental constitution that develops and nurtures the drive to crime that has already been intended and in such circumstances that vast majority of people do not experience such drive or it does not grow to the sufficient level that would determine its implementation. It might also be defined as the complex of character properties and individual’s views that deviate (уклон) them towards crime. This deviation, according to the scientist, makes an individual select the path towards a crime at such circumstances in which other people, even if the mere thought of a crime occurs to them, they will refrain from perpetrating it<sup>18</sup>. Taking into account the character of factors and circumstances having an impact on taking a decision, Poznyšev identified two basic criminal types. The first type, in which the domination of the imagination of a crime and tendency to it in the consciousness tempore criminis is explained by particular personality traits was called an endogenous type<sup>19</sup>. The other, in which the a/m domination is explained by the pressure of outside circumstances and comparative weak inhibiting influence of a crime-repulsive part of the constitution was named an exogenous type<sup>20</sup>. Following his conception, Z. Papierkowski<sup>21</sup> rightly perceives there are no landmarks in human psyche, therefore, it is not possible to assert that for an endogenous type only inside factors are relevant and outside factors are insignificant whereas an exogenous type makes a decision to perpetrate a crime only as a result of outside factors. Only by determining the character of dominating and prevailing

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<sup>15</sup> Vide S. Batawia, *Wstęp do nauki o przestępcy. Zagadnienie skłonności przestępczych*, Zakład Narodowy im. Ossolińskich, Wrocław 1984; W. Świda (red.), *Kryminologia*, PWN, Warszawa 1977; J. Świtka, *Dynamizm przestępczości*. (Analiza kryminologiczna), UMCS, Lublin 1989; et al.

<sup>16</sup> M. Okulski, *Zabójstwa typu uprzywilejowanego w polskim i rosyjskim prawie karnym. (Studium kryminologiczne, prawnoporównawcze)*, unpublished doctoral dissertation, Lublin 2011, p. 88.

<sup>17</sup> С.В. Познышев, *Криминальная психология. Преступные типы. О психологическом исследовании личности как субъекта поведения вообще и об изучении личности преступника в частности*, Инфра-М, Москва 2007, p.10.

<sup>18</sup> Cf. Ibidem, pp. 30-31.

<sup>19</sup> Within a general endogenous type, Poznyšev distinguished three special subtypes: impulsive offenders, emotional offenders and deliberate offenders (mentor and idealists) (Ibidem. p. 126 et seq., 226 et seq., 242 et seq.).

<sup>20</sup> Cf. Ibidem pp. 34-35.

<sup>21</sup> Z. Papierkowski, *Psychologia w sądownictwie*, Zeszyty Naukowe KUL 1963, nr 2, p. 7.

factors responsible for triggering the crime mechanism can we classify an offender into proper criminal type.

Post- revolutionary editions of Poznyšev's writings, more often than not, were provided with critical introduction indicating their ideological incorrigibility. And so, Leningrad National Publishing House prefaced the 1926 edition of „Criminal Psychology” with a „warning” remark that the presented work was not based on „Marxist substantiation of criminal science and objective- Marxist understanding of psychology”. The editorial office did not fail to emphasize the fact they did not share the author's convictions about the immovability of the research presented in the work<sup>22</sup>.

Indeed, Poznyšev's writings could „jar” the then censors with its dissimilarity as not only did he avoid inserting the then fashionable revolutionary phraseology but also he did not interlace his thesis with the golden thoughts of the revolution leader, nor did he analyze the law from the perspective of the dominating political thought. He was gifted with a rare ability of conveying complicated matters using simple and brief language. On no occasion did clarity, at times even intended simplicity, mean abandoning the richness and flavor of scientific style, it was just the testimony of his erudition and highly skilled language<sup>23</sup>.

It seems easy to understand why S.V. Poznyšev became such a respected and valued author of textbooks for Law students, such „Outline of the fundamental principles of Criminal Law” of 1923 or „Basic of Penitentiary Science”<sup>24</sup> of 1924. The latter study, reissue of the textbook introducing penology that had been printed way back in Imperial Russia, discusses corrective and educational measures administered to convicted offenders as well as the principles of rational organization of imprisonment within the progressive system that takes into account the type of punishment and the sentence with the aim of correcting offenders both in moral and legal aspect. He perceived the corrective effects of punishment in two dimensions: legal and moral correction. He did not, of course, believe in the total moral transformation of offenders but only „a tiny transformation for the better of their mental constitution, their character so as to be enough to prevent recidivism. The legal aim of the punishment would be achieved by inculcating awareness of the indispensable relation between criminal behavior and the consequence of such behavior in the form of punishment upon offenders – “inescapable relation between criminal offence and punishment”<sup>25</sup>.

S.V. Poznyšev was also the editor of translations into Russian fundamental for both of that time and present time works in the field of law and criminology, such as „Sociologia criminale” by Enrico Ferri<sup>26</sup> or „Les causes économiques de la criminalité” by J. van Kan<sup>27</sup>. These and other dissertations probing the sources of the dynamics of crime exerted powerful influence on the final shape of the conception of the criminal type, the conception that the author of „Criminal Psychology” refused to regard the underlying basis of crime too one-

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<sup>22</sup> С.В.Познышев, *Криминальная психология ...* (1926), p. 3.

<sup>23</sup> B.S. Utiewskiy mentioned: “He (Poznyšev) had exceptionally deep and broad erudition. He wielded pen effectively and could easily write numerous books. However, he occupied second or third- tier positions and did not give soviet science even the tenth of what he could have”. (С. Утевский, *op.cit.*, p. 286).

<sup>24</sup> С.В. Познышев, *Основы пенитенциарной науки*, Юридическое издательство Наркомюста, Москва 1924.

<sup>25</sup> Ibidem, p. 35 et seq..

<sup>26</sup> Э.Ферри, *Уголовная социология*, Перевод с 5 французского издания 1905 г., С.В. Познышев et al., Издание В.М. Саблина, Москва 1908.

<sup>27</sup> Ван-Кан, *Экономические факторы преступности*, Перевод с французского издания, С.В. Познышев et al., издательство Г.А. Лемана, Москва 1915.

sidedly and narrowly, as did the followers of the anthropological criminology trend or adherents of sociological school of criminal law. Poznyšev himself, long time before the Revolution, so aptly delineated his research stance as a synthesis of classical, anthropological and sociological schools of criminal law<sup>28</sup>. The foundation for research in crime and criminality so construed resulted in the unchallengeable conception of criminal law, which, until the present day has constituted the basis of reliable and valid criminological research.

The commencing of the Great Patriotic War marked the time of forlornness and poverty for S.V. Poznyšev due to lack of work and him falling into oblivion<sup>29</sup>. He did not witness the end of the war, as he died in Moscow on 3<sup>rd</sup> January, 1943, leaving behind priceless scientific output, as passing time has revealed. His legacy had to wait until post-Soviet Russia before it was no longer classified as an ideologically adverse, bourgeois thought and, therefore, it could be fairly judged<sup>30</sup>.

Recollection about S.V. Poznyšev inspire to the following reflection that greatness and respect of even the most outstanding scientist might be eclipsed by the set of changing political, social and economic conditions where firm and unwavering moral attitude, political views, devotion to the truth, tradition, scientific honesty stand in clear opposition to the expectations of the new power. But even the inhuman and traumatic Bolshevik regime did not succeed in blurring the greatness of S.V. Poznyšev.

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<sup>28</sup> Cf. С.В. Познышев, *Основные начала науки уголовного права. Общая часть уголовного права*, 2 изд., Москва 1912, p. 31.

<sup>29</sup> According to Utiewskiy, witnessing Poznyšev's hardship due to being without any income, he pulled the strings and helped Poznyšev get a job of translating William Blackstone's criminal law textbook (probably he meant "British criminal law" vol.1, which was translated into Polish in 1786 ( Vide William Blackstone, *Prawo kryminalne angielskie*, t. 1, tłum. T. Ostrowski, w Drukarni J. K. Mci i Rzeczypospolitey u XX. Scholarum Piarum, Warszawa 1786). However, Poznyšev's death unabled him to finish the translation.(Por. С. Утевский, op.cit., p. 287).

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The name Siergiej Viktorovič Poznyšev became a „benchmark” of Russian criminal law, criminology and

criminal psychology. Today, no serious publication in a/m field can be envisaged without some references to his scientific legacy.

*психологическом исследовании личности как субъекта поведения вообще и об изучении личности преступника в частности*, Инфра-М, Москва 2007

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## **Abstract**

Niniejszy artykuł ukazuje sylwetkę Siergieja Wiktorowicza Poznyszewa (1870-1943), profesora prawa karnego Uniwersytetu Moskiewskiego, jako jednego z niewielu przedstawicieli rosyjskiej doktryny prawa, którzy po objęciu władzy w Rosji przez bolszewików jawnie odrzucili uprawianie nauki z pozycji marksistowskich. Taka postawa oznaczała dla niego utratę możliwości kontynuacji pracy jako profesora uniwersyteckiego oraz marginalizację w środowisku naukowym. Pomimo tych przeciwności Poznyszew kontynuował swoje prace badawcze skoncentrowane głównie na problemach penitencjarystyki oraz źródeł przestępstwa i przestępczości. Dociekanie uwarunkowań kryminogenezy doprowadziło do sformułowania przez niego aktualnej po dziś dzień koncepcji typu kryminalnego, którą wyłożył w dziele „Psychologia kryminalna. Typy przestępne”.