

Mikhail F. Kazantsev

Institute of Philosophy and Law,
Ural Branch of the Russian Academy of Sciences,

Ekaterinburg, Russia

E-mail: kazan.m@mail.ru

ORCID: 0000-0003-3492-2815

ResearcherID: AAQ-4861-2021

SPIN: 6652-0214

Sergei S. Alekseev: From Civil Law to Legal Theory and the Revival of Civil Law Scholarship

Abstract. The article explores the significant impact of Sergei S. Alekseev (1924–2013) – a distinguished scholar, legal expert, philosopher, publicist, writer, statesman, Doctor of Law, Professor, and Corresponding Member of the Russian Academy of Sciences – on the development of Russian jurisprudence. It focuses on two main areas of his work: civil law and the theory of law. Alekseev's intellectual journey is traced from his engagement with Soviet civil law and Marxist-Leninist legal theory to his pursuit of innovative approaches in understanding law and the revitalization of civil law. His most notable achievement during the Soviet era was the creation of a comprehensive, systematic, and detailed general theory of law, encapsulated in the two-volume *General Theory of Law* (1981–1982). The article highlights the scholarly importance of Alekseev's post-Soviet research, which introduced new perspectives on law as an objective reality governed by its own logic. This work emphasized individual freedom, the protection of inalienable rights, and the presentation of law as a manifestation of Reason and core human values. Alekseev's contributions to civil law are particularly noteworthy. He played a pivotal role in the revival of private and civil law in Russia, especially in the development of the Civil Code of the Russian Federation. He initiated the drafting of the new Civil Code, provided strategic and scholarly oversight throughout its preparation, actively contributed as a member of the working group, and took on the ideological and organizational leadership necessary to transform the draft into law.

Keywords: Sergei S. Alekseev; system of general theoretical legal knowledge; theory of law; analytical theory of law; instrumental theory of law; civil law; private law; civil law; property law

A Century of the Jurist. This year marks the centenary of Sergei S. Alekseev (1924–2013) – Doctor of Law, Professor, Corresponding Member of the Russian Academy of Sciences, Honorary Doctor (honoris causa) of Paris-XII Val-de-Marne University, Honored Scientist of the RSFSR, and veteran of the Great Patriotic War. This occasion seems fitting to reflect on his scholarly journey and the profound impact he had on Russian jurisprudence.

Sergei Alekseev's stature is defined by his achievements as an eminent legal scholar and leader of Russian legal science from the late 20th century through the early 21st century. Renowned globally, his groundbreaking work in legal theory, the philosophy of law, constitutionalism, and private law enriched the field and shaped the perspectives of countless lawyers. His contributions were crucial to the development of Russia's modern legal system and, through their legislative implementation, positively impacted many lives.

Sergei Alekseev played multiple influential roles throughout his career, serving as a pioneer in the scholarly community by founding the Institute of Philosophy and Law of the Russian Academy of Sciences and the Research Center for Private Law under the President of the Russian Federation. His impact extended into public service as Chairman of the Committee of the Supreme Soviet of the USSR on Legislation, Legality, and Law and Order, Chairman of the Constitutional Oversight Committee of the USSR, and member of the Presidential Council. Beyond these roles, Alekseev also made his mark as a publicist and writer¹.

Yet, above all, Alekseev was a jurist and philosopher. His scholarly output includes over 500 publications on topics spanning state and legal theory, civil and constitutional law, and the philosophy of law, with more than 80 books to his name (excluding collaborative textbooks and related works). His writings, recognized internationally, stand as a significant contribution to legal scholarship, with over 10 of his books published abroad.

In the realm of jurisprudence, Alekseev's primary focus was on civil law (private law and private law scholarship) and legal theory, branching into the philosophy of law. These areas were the focal points of more than 60 years of his life, from 1949 to 2013.

¹For more on Alekseev's biography and work, see: (Kazantsev, Rudenko 2024).

Alekseev's academic journey evolved from the study of Soviet civil law and Marxist-Leninist legal theory to pioneering new theoretical approaches and revitalizing civil law scholarship.

Civil Law – The Beginning. In May 1949, Sergei Alekseev, then a fourth-year student at the Sverdlovsk Law Institute, was recommended by the university's administration to enter the postgraduate program at the Moscow Institute of Law of the USSR Academy of Sciences (now known as the Institute of State and Law of the Russian Academy of Sciences) in the field of legal theory. However, circumstances² prevented him from studying in Moscow. What seemed like a setback turned out to be a significant opportunity. Sergei Alekseev himself recounted this many decades later: "... the setback related to the prospect of going to postgraduate studies in Moscow, as sometimes happens in life, turned into an incredible stroke of luck: I stayed at my alma mater, was immediately accepted into the postgraduate program in civil law, and joined a formidable group of civil law specialists under the guidance of Boris Borisovich Cherepakhin. This largely determined my subsequent career, or rather – my destiny" (Alekseev 2012: 15).

At the Department of Civil Law of the Sverdlovsk Law Institute, he defended his candidate's dissertation on the acceptance form of payments (Alekseev 1951) and his doctoral dissertation on the subject of civil law (Alekseev 1959b) in 1952 and 1960, respectively.

In addition to the monograph on the subject of civil law (which formed the basis of his doctoral dissertation), Alekseev, still a relatively young scholar, managed to publish two more civil law books in a short time, both in the country's premier legal publishing house: *Civil Liability for Failure to Meet the Plan for Railway Freight Transport* (Alekseev 1959a), his first published monograph, and *Civil Law during the Period of Expanded Construction of Communism* (Alekseev 1962), which was a response to the 21st Congress of the CPSU that declared the Soviet Union's entry into an era of expanded communist construction.

By the late 1950s and early 1960s, Alekseev had gained significant momentum in Soviet civil law scholarship. During this time,

² According to Alekseev himself, he did not have enough money for a ticket to Moscow (Alekseev 2012: 15).

he made a transition to legal theory, a move that was far from accidental.

Theory of Law – Continuation. Sergei Alekseev's passion for legal theory began during his student years. However, due to the circumstances previously mentioned, his academic journey initially focused on civil law. It was only after he took the helm of the Department of Theory of State and Law in 1961 that Alekseev was able to fully immerse himself in legal theory.

Alekseev demonstrated a unique approach to legal theory from the outset, with a strong emphasis on thorough and systematic analysis, along with a broad perspective. Alongside his deep monographic studies on specific theoretical legal issues (Alekseev 1961; Alekseev 1966; Alekseev 1971), Alekseev authored the comprehensive, detailed *General Theory of Socialist Law* in four volumes (Alekseev 1963–1966). Prior to this, no single author in the Soviet Union had published such an extensive (nearly 900 pages) general theory of law, as confirmed by the bibliography on the theory of state and law from 1917 to 1968 (Kulazhnikov 1969).

Five years later, Alekseev built on this achievement with the two-volume work *Problems of the Theory of Law* (Alekseev 1972–1973), which, in my estimation, became the most popular and frequently cited publication on general legal theory for many years, arguably among all legal publications.

Finally, another decade later, he published the two-volume *General Theory of Law* (Alekseev 1981–1982). This monumental work was the culmination of Alekseev's development of general legal theory over a twenty-year period³. As later became evident, it effectively summarized the progress of general legal theory throughout the entire Soviet era.

The Search for New Approaches to the Theoretical Understanding of Law. After the shift in political eras, and more specifically after his time in government, Alekseev returned to intense academic work, resuming his focus on the theoretical study of law, but now approaching it from a fresh perspective.

Starting in 1993, Alekseev began publishing a series of books in which he explored and developed new approaches to the gen-

³Due to space constraints, several monographs and numerous articles on legal theory had to be excluded.

eral theoretical understanding of law. These include *The Theory of Law* (Alekseev, 1993), *Philosophy of Law* (Alekseev, 1997), *The Holiest Thing God Has on Earth* (Alekseev, 1998), *Law: Alphabet, Theory, Philosophy* (Alekseev, 1999b), *Law at the Threshold of the New Millennium* (Alekseev, 2000a), and *The Theory of Law: The Search for New Approaches* (Alekseev, 2000b). The series culminated with the monograph *Ascent to Law* (Alekseev, 2001), which summarized his long-term work on the theoretical problems of law (this will be discussed further).

To assess Alekseev's contribution to legal theory, we must first examine his vision of the system of general theoretical legal knowledge. His views, which evolved most notably in the post-Soviet period, culminated in his monograph *Ascent to Law*. In summary, his vision is as follows.

The *comprehensive system of general theoretical legal knowledge* consists of two components: general theory of law and philosophy of law. The general theory of law includes two levels: analytical general theory of law and instrumental general theory of law. These two levels do not compete with each other or overlap; each occupies its own niche and rightful place within the system of general theory of law. Both are equally important, each in its own way, for addressing practical issues and understanding the law, its peculiarities, and "secrets". The philosophy of law represents the highest level of theoretical reflection on law, but it is not a part of the general theory of law. Thus, the theoretical study of law takes place at three sequential levels: first, at the level of analytical general theory of law; second, at the level of instrumental general theory of law; and third, at the level of philosophy of law.

The analytical general theory of law explores the fundamental elements of legal doctrine as a system of legal norms. It examines this system's internal structure, forms, and functioning of the norms, as well as the concepts that capture these "elementary particles" of law as a normative phenomenon. This theory uses common terms that apply across all legal disciplines. Positioned within the framework of legal positivism, the analytical general theory of law adheres to the principles of legal doctrine while avoiding the extremes found in some interpretations of positive law. For instance, it distances itself from claims that seek to elevate legal doctrine to the level of an ultimate "philosophy" of legal reality, as in Kelsen's theory of normativism.

The instrumental general theory of law uses an instrumental approach to uncover deeper aspects of legal matters, emphasizing legal certainty and utilizing a broad set of legal tools. It focuses on the relationships and dynamics among all elements of law, including its logic, structure, properties, mechanisms, and societal impact. This theory represents a new, advanced level of legal science, closely aligning with the philosophy of law.

The *philosophy of law* examines the role of law in human life, offering a worldview-based explanation of its meaning and purpose for individuals. It justifies law from the perspective of human existence and the underlying value system. As a key part of legal studies, the philosophy of law serves as the final link in the broader system of general theoretical legal knowledge. It builds upon and extends earlier insights, particularly regarding the logic of law, to address its own philosophical and legal questions (Alekseev 2010: 80-82, 309-310.)

If we look at Alekseev's scholarly work through the lens of his aforementioned ideas on the three-tiered theoretical understanding of law, we can identify two main *periods*: the Soviet period (1950–1991) was devoted to the development of the analytical general theory of law (which, in terms of time, corresponds to the Soviet theory of law⁴) while the post-Soviet period (1992–2013) included, among other things, the instrumental general theory of law and the philosophy of law.

Alekseev's *main achievement as a theorist of the Soviet period* was, arguably, the creation of a comprehensive, systematic, and intricately structured general theory of law in his four-volume *General Theory of Law* (Alekseev 1963–1966), followed by the two-volume *Problems of the Theory of Law* (Alekseev 1963–1966), and finally in the two-volume *General Theory of Law* (Alekseev 1981–1982). Alekseev's theory of law remains academically valuable today, extending its relevance beyond the Soviet era. Its final form – the two-volume *General Theory of Law* – represents the pinnacle of theoretical legal development in the Soviet period.

Alekseev's *contribution to theoretical and legal research in the post-Soviet period* lies mainly in his search for new approaches to understanding law. He achieved this by viewing law as an

⁴For more on Soviet theory of law, see: (Alekseev 2010: 38-42).

objective reality with an inherent logic that fosters human freedom, inalienable rights, and their protection. He regarded law in its highest form as the embodiment of human rights, describing it from a broad, philosophical perspective as a manifestation of Reason and the highest human values.

These findings are most thoroughly explored in his monograph *Ascent to Law*, which represents the culmination of over fifty years of scholarly work. It addresses theoretical legal issues and, according to Alekseev, reflects the peak of his academic, pedagogical, legislative, and literary-publicistic contributions. Following the first edition of the book (Alekseev 2001), a revised and expanded second edition was published in 2002, which was later included in the *Collected Works of S.S. Alekseev*, published in 2010 (Alekseev 2010). The main ideas of the monograph were presented in a concentrated and partly refined form in the author's 2011 lecture *Law and Its Purpose* (Alekseev 2011).

In his final book, Alekseev explores law through three consecutive levels of legal knowledge⁵. He begins with analytical general legal theory, or the dogma of law, progresses to instrumental general legal theory, and concludes with the philosophy of law.

At the level of instrumental general legal theory (we will focus here only on this level), Alekseev explores new approaches to law and, in implementing them, formulates new ideas in the scientific understanding of law. The most significant of these, in a summarized form (Alekseev 2010: 77, 91, 92, 99-101, 229, 232, 241, 281, 288; Alekseev 2011: pp. 5, 6, 9-11, 18, 23), are as follows.

The *key element of the new approaches to law* is the instrumental theory. The essence of the instrumental approach to law is that, first, the entire range of factual data in legal knowledge remains within the realm of law. The difference is that these data are not limited to legal norms alone but encompass the full diversity of legal (specifically legal!) phenomena that serve as tools of legal regulation. Second, this “instrumental” structure of law closely relies on the main characteristic of law – the quality of certainty. It has the ability to impose this certainty on all social life (mainly through legal constructs) and, perhaps even more importantly, to offer society an alternative to the state of “impending and, unfortunately,

⁵ Alekseev's ideas of these levels has already been outlined above.

inevitable anarchy”, which is expressed through violence and arbitrariness. Third, the instrumental interpretation of law serves as the foundation for characterizing the unique features of legal matter, its new essential characteristics, and, first and foremost, the distinctive logic of law. This logic gives profound social meaning to the above-mentioned qualities of law, based on its quality of certainty.

Law is an objective reality. The key to a scientific understanding of law is recognizing that positive law, or the law in force, is not merely an abstract concept. It is not just a collection of ideas, judgments about right and wrong, or arbitrary decisions by authorities about who is entitled to do what and how. Positive law is a concrete fact – an external, objective, and unchanging reality. It functions as a fundamental aspect of our lives, existing independently of individuals, social institutions, and society as a whole.

Legal matter. Law has its own distinct nature, with unique properties, life, and a logic of existence and development. This is not understood in a crude materialistic sense, meaning not as tangible or visible objects (though law does have such aspects – laws, legal sources, documents). Rather, law is seen as a social reality, largely “invisible”. At its core, due to its very nature, legal matter is centered around subjective rights.

Law as a form. Despite the exceptional importance of the economic, political, moral, and other substantive content of laws and legal norms in human society, in the field of jurisprudence, primary importance is given to form, particularly the internal form (which mainly constitutes the unique legal matter).

Logic of law. To describe law as a logical system, we need to go beyond the idea that it embodies the principles of formal logic and follows mathematical methods more than any other social phenomenon. Law also has its own unique logic – the logic of law. This logic of law consists of specific, mathematically oriented patterns inherent in law as a distinctive objective reality, relating to both legal norms and the entirety of legal matter.

Legal constructions. Legal constructions represent the most advanced level of legal matter. Arising from the standardization within the law, these constructions form the core content of the “body” of law in a well-developed legal system. The uniqueness of law as an objective reality is revealed through these constructions, particularly in their internal structure – the organization of their content.

Fundamental principle of science. Genuine legal science, which engages with real facts of the world around us, is only possible when we recognize that the subject of legal knowledge is not acts of power, ideological demands, or other illusions, but a solid, objective reality. In essence, it is a science similar to all other branches of knowledge. Furthermore, it is a science dedicated to both the practical and theoretical understanding of real facts that, to some extent, reflect certain ideal and humanitarian principles and values. This dual nature of jurisprudence – as both “natural-technical” and humanitarian – grants it a highly significant status in the field of knowledge.

Alekseev remained deeply convinced in the critical role of law in society. In the context of recent global events, this insight appears both timely and prescient. *To confront severe global challenges and avert catastrophic threats, humanity must prioritize modern law and uphold its authority. Only by placing the rule of law at the center of society can we prevent the dangers of growing anarchy, lawlessness, and rampant consumerism – even as we edge closer to what seems like universal prosperity* (Alekseev 2010: 522; Alekseev 2011: 66).

Return to Civil Law Scholarship. Alekseev returned to the subject of civil law in the 1990s – initially as a legislator, during his tenure as chairman of the legislative committee of the Supreme Soviet of the USSR, and later, after leaving government positions, as a scholar, though still closely connected to legislative work. During this period, he authored works such as *Civil Law in the Modern Era* (Alekseev 1999a), *Private Law* (Alekseev 1999c), and *Property Law: Problems of Theory* (Alekseev 2006, 2007, 2008). These works moved beyond Soviet civil law, aligning instead with contemporary developments in private law and its studies.

Alekseev regarded his book on the theory of property law as his most significant civilistic work of the post-Soviet period (it was published three times over three years with revisions and additions and was included in his collected works). In this book, Alekseev, in his own words, “attempted to base the examination of property issues on philosophical positions that *connect our worldview with the individual, with their reason and free will*, and from these standpoints, to substantiate a view of property (property law) as one of humanity’s greatest achievements and simultaneously as a tragedy of human existence that has sharply manifested in recent years” (Alekseev 2006, 2007, 2008: 5 – from the 2008 edition).

Alekseev's contributions to civil law were not limited to his scholarly works. He played a pivotal role in the revival of private law and its studies in Russia, approaching the field with remarkable thoroughness and precision. Here are his key contributions:

First, Alekseev led the program the "Formation and Development of Private Law in Russia". Approved by a presidential decree, this program not only set the stage for a reform but also reflected a national commitment to revitalizing and modernizing private law in the post-Soviet context;

Second, the creation of vital institutions like the Research Center for Private Law under the President of the Russian Federation, the Russian School of Private Law, and the Institute of Private Law in Yekaterinburg provided the necessary infrastructure to implement this broad initiative;

Third, the involvement of leading scholars such as Stanislav Khokhlov and Alexander Makovsky helped to bring academic rigor and intellectual depth to the program;

Fourth, the adoption of the new Civil Code was perhaps the most tangible outcome of these efforts.

Alekseev's contribution to the creation of Russia's Civil Code is colossal, unique, and multifaceted: he initiated the preparation of the new Civil Code draft; he also provided overall strategic and scholarly leadership in its development; in addition, he took an active part in the working group's preparation of the draft; and, finally, he took on the ideological and organizational responsibility for advancing the Code from a draft to a functioning law within government bodies.

Of course, Alekseev is better known as a legal theorist. He himself most likely saw himself primarily as a theorist. Nevertheless, he considered (and formally stated) the "revival of legal science, persecuted during the Stalin era – civil law theory" as the main work of his life.

Conclusion. Looking back on his life, Sergey Alekseev wrote in his unpublished notes:

"Perhaps – the main thing, in my understanding, of what I managed to achieve in life (maybe the most significant still being about property, 2006?). And this is not scientific titles and degrees, and even less so the positions and posts I held during the short and tumultuous period of my life in the capital. Nor even some real

actions from that time (although, in general, in the field of state affairs, I had the opportunity to stand at the origin of both parliamentary legislation itself – there is even a specific day and hour, July 31, 1989, when laws were created without the Politburo, to take the first steps toward constitutional justice – in the Constitutional Supervision Committee, and to be the initiator of creating the fundamental laws of the country – the Constitution, the Civil Code).

The main thing is that by the end of my life, I managed to reach an important, I believe – key – dimension of understanding the most important institution of society – law. And that this may, sooner or later, create an ‘explosive effect’ in science. And perhaps, I may assume, it will also affect the fate of people, the future of humanity. (And a little later, in 2006, another dimension – property law, where the concepts were only outlined” (Alekseev 1996–2007: 17).

Sergei S. Alekseev holds special significance for the Institute of Philosophy and Law of the Ural Branch of the Russian Academy of Sciences, as its founder and first director. The Institute also played a key role in his career. His rise in Moscow as a statesman, along with his prominent involvement in the creation of the Constitution and the Civil Code, was facilitated by his election as a people’s deputy of the USSR. Nominated by the USSR Academy of Sciences, Alekseev’s candidacy for the position of director was unanimously supported by his colleagues. The Institute remains grateful to him and honors his memory.

...History will issue its verdict later. But it seems that even now it is clear: Sergei Alekseev is the most monumental figure in Russian jurisprudence of the last century⁶. And therefore, without exaggeration, Alekseev can be called a great legal scholar (a recognition

⁶ The already extensive literature about the scholar serves as clear evidence of this (see, for example: Tarasov N.N. Serving the Law. S.S. Alekseev (Notes on the Margins of a Biography), *Civilistic Notes: Inter-University Collection of Scientific Papers*, Moscow, 2004, vol. 3, pp. 3–14; Lawyer, Philosopher, Citizen: Four Interviews for the 80th Anniversary of Corresponding Member of the RAS S.S. Alekseev (prepared and conducted by I. Fan), *Yearbook of the Institute of Philosophy and Law of the Ural Branch of the Russian Academy of Sciences*, 2004, Yekaterinburg, 2005, iss. 5, pp. 31–63. – Interviews with V.D. Perevalov, V.N. Rudenko, B.M. Gongalo, G.P. Orlov; Kazantsev M.F., Rudenko V.N., Surina E.M. *Sergei Sergeyevich Alekseev: Legal Scholar, Thinker, Publicist: Biobibliography: On the 85th Anniversary of the Scholar’s Birth*, Yekaterinburg, 2009, 466 p.; Lukyanin V.P.

that is already being made both verbally and in print), and the last century can be called the century of Alekseev.

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