

AUTHORITY, SOCIETY AND JUSTICE IN LATE IMPERIAL RUSSIA

**The Case of the Ruling
Senate and Zemstvos**

Natasha Assa

PhD Thesis

**School of Slavonic and East European
Studies, University College London**

31 March 2001

ProQuest Number: U643355

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



ProQuest U643355

Published by ProQuest LLC(2016). Copyright of the Dissertation is held by the Author.

All rights reserved.

This work is protected against unauthorized copying under Title 17, United States Code.
Microform Edition © ProQuest LLC.

ProQuest LLC
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106-1346

Authority, Society and Justice in Late Imperial Russia: The Case of the Ruling Senate and the Provincial Government (Zemstvo) 1864-1914

Thesis summary

The evolution of the Ruling Senate after the Great Reforms provides a particularly striking example of the difficult but not entirely unsuccessful convergence between the state and the emerging civil society in late Imperial Russia. In its role of a supreme arbitrator of public petitions against Tsarist bureaucracy the Senate became instrumental in revising and reinterpreting the constitutional status of the organs of provincial self-government (*zemstvo*) within the tsarist state. In the absence of reformist provincial legislation its judicial verdicts produced a piecemeal case-by-case reinterpretation of *zemstvo* authority from that of a semi-voluntary and virtually powerless community institution rooted in the politics of local social estates (*sosloviiia*) and clans, to an equal but independent partner of the autocratic state, a partner whose authority was firmly embedded in the new civic practices of provincial society.

The judicial activism of the Senate was deeply rooted in the legal professionalisation of Senators who came to believe that the Senate itself should be reformed as a Supreme Court. These aspirations of judicial independence were not dissimilar in nature to the *zemstvos'* desire for greater local autonomy, yet the relationship between the Senate and the Tsarist bureaucracy were of far greater constitutional significance. Whilst *zemstvo* activities were mainly confined to the economic needs of provincial society, the Senate represented a backbone of the Tsarist state.

The nature and the extent of this autonomy prompted a lively debate among the Senators and Russian jurists who believed that the Senate practice in administrative disputes could only be effective if it was rested upon the principle of systematic separation of powers, long enjoyed by the European administrative courts. Yet in the heat of the debate the liberal jurists of Russia failed to realise that the European ideal of separation of powers was also backed by a complex system of checks and balances that reflected and assured fundamental ideological and organisational cohesion between executive and judicial authority. Hence their quest for Senatorial independence was carried out in a confrontational, almost *zemstvo*-like manner, and in a

way failed to address the special status of the Senate. The reformers claimed that administrative justice dispensed by the Senate was an exclusive province of professional lawyers and judges and could not fathom the opposing views of tsarist officialdom. The latter however feared that thus construed authority of the Senate would lead to a sure deadlock in the workings of government machinery and would ultimately result in an alternative 'rule by the judiciary'. The stalemate between the Senatorial lobby and Tsarist officialdom ultimately failed the efforts at Senatorial reform.

Contents

Introduction.....	5
Part 1.	
1. The Ruling Senate Before and After the Great Reforms	15
2. Judging Judges: The Professionalisation of Senatorial Corps.....	51
Part 2.	
3. The Senate Practice on Zemstvo Taxation	79
4. The Senate Practice on Zemstvo Healthcare	116
Part 3.	
5. European Theories of Administrative Justice and the Jurists' Debate	143
6. The Senate Reform: Ministerial 'Justice' or 'Government' by Judiciary?..	166
Conclusion: Authority, Society and Justice in Late Imperial Russia	202
Bibliography	211

Introduction

THE purpose of this thesis is to explore the dynamics in the relationship between justice, authority and society in late Imperial Russia. It therefore has a dual task – firstly to investigate how the rising legal activism of provincial society helped to transform local authorities from an organ of community self-rule (*obshchestvenoe samoupravlenie*) to properly instituted local government, and secondly, to consider the legal professionalisation of the Ruling Senate and how it translated into the new relationships between Imperial administration and justice.

In the course of their fifty-year history (1864-1914), the reformed local authorities (*zemstvos*) fundamentally altered the provincial social order by taking it from the backwaters of the Empire into the centre stage of social modernisation.¹ *Zemstvos* undertook wide-ranging public initiatives, which typically benefited general (*vsesoslovnnye*) local and national needs, and ushered in new civic principles in provincial public life such as legality, public accountability and economic rationality.² Inevitably these proliferating initiatives and attendant changes in civic conduct confronted and undermined the rigid conditions and particularistic mentality of the old social hierarchies. They devalued the social conventions of local patronage clans,³ and reduced

-
1. For *zemstvo* activism see B.B. Veselovskii, *Istoriia zemstva za sorok let*, vol. 1-4, St. Petersburg, 1911; Eds. B.B. Veselovskii, Frank, *Iubileinyi zemskii sbornik*, St. Petersburg, 1914; eds., T. Emmons, W. Vucinich, *The Zemstvo in Russia: An Experiment in Local Self-Government*, Cambridge, 1983; Ch. E. Timberlake, 'The Zemstvo and the Development of a Russian Middle Class', Eds. Edith W. Clowes, Samuel D. Kassow and James L. West, *Between Tsar and People: the Educated Society and the quest for Public Identity in Late Imperial Russia*, Princeton, 1991, p.p. 164-182.
 2. For general problems of Russian civil society see Alfred Rieber, 'The Sedimentary Society', in Clowes, Kassow and West, *Between Tsar and People*, p.p. 343-366; for the *zemstvos*' contribution to the development of Russian civil society see Thomas Earl Porter, *The Zemstvo and the Civil Society in Late Imperial Russia, 1864-1917*, San Francisco, 1991; for philosophical definitions of civil society see Jurgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, London, 1989; Michael Oakeshott, *On Human Conduct*, Oxford, 1975; Frederick A. Hayek, *The Constitution of Liberty*, London, 1976; Ernest Gellner, *Conditions of Liberty: Civil Society and Its Rivals*, Penguin Books, 1996.
 3. Geoffrey Hosking, 'Patronage and the Russian State', *Slavonic and East European Review*, vol. 78, no 2, April 2000; Eds. Stephen Lovell, Alena Ledeneva and Andrei Rogachevskii, *Bribery and Blat in Russia: Negotiating Reciprocity from the Early Modern Period to the 1990s*, London, 2000.

the political standing of traditional estates (*soslovie*) organisation,⁴ which ultimately resulted in the provinces' growing independence and their moral resentment of direct Autocratic intervention and bureaucratic tutelage in local affairs.

These changes generated an escalating public pressure for 'more objective, rational and transparent formulas in the relationship between the state and local communities.'⁵ In the context of emerging civil society, the effectiveness of local authorities became increasingly dependent upon the guaranteed provision of a solid legal framework rather than upon Tsarist patrimonial control and bureaucratic instruction. Yet, despite numerous official inquiries and thoughtful recommendations for local reform drafted by Tsarist government Commissions, the Autocracy was reluctant to meet these expectations and rejected open political collaboration with *zemstvo* representatives.⁶

Despite its resistance to further reforms, the Autocracy could neither control nor reverse the fundamental social change set in motion by the Great Reforms, social and educational mobility, industrialisation and urbanisation, which affected not only all strata of Russian society, but also Tsarist officialdom. Individual administrators and, sometimes, whole institutions within the Tsarist bureaucracy supported liberal public opinion and often used their discretionary power to advance the progress of civic associations in the provinces. Recent studies of provincial governors and governors-general, the ministerial bureaucracy and the State Council have demonstrate how liberal offi-

-
4. Gregory Freeze, 'The Soslovie (Estate) Paradigm and Russian Social History', *American Historical Review* 91, no. 1 (1986), p.p. 11-36; Leopold Haimson, 'The Problem of Social Identities in Early Twentieth Century Russia', *Slavic Review*, 2 (Spring 1988), p.p. 1-21; Kimerling Wirtschafter, *Structures of Society: Imperial Russia's People of Various Ranks*, idem, *Social Identity in Late Imperial Russia*, DeKalb, 1997; Boris Mironov, *Sotsial'naia istoriia Rossii perioda Imperii: XVIII- nachalo XX veka: genesis lichnosti, demokraticheskoi sem'i, grazhdanskogo obshchestva i pravovogo gosudarstva*, vols. 1-2, St.Petersburg, 1999; Boris Mironov, Ben Eklof, *A Social History of Imperial Russia, 1700-1917*, Boulder, Colorado, 1999; Eds. E.H. Judge, James Y. Simms, *Modernisation and Revolution: Dilemmas of Progress in Late Imperial Russia*, New York, 1992.
 5. The literature describing the struggle of Russian *obshchestvennost'* with Autocracy is truly immense. To mention just a few: D. N. Shipov, *Vospominaniia i dumy o perezhitom*, Paris, 1936; V. A. Maklakov, *Vlast' i obshchestvennost' na zakate staroi Rossii*, Paris, 1936; V.V. Leontovich, *Istoriia liberlizma vRossii*, YMCA Press, 1980; S.Iu. Witte, *Samoderzhavie i zemstvo*, Stuttgart, 1903; Klaus Frohlich, *The Emergence of the Russian Constitutionalism 1900-1914: the Relationship between modernisation and Political Group Formation in pre-revolutionary Russia*.
 6. The most comprehensive of all was the Commission of Senator Kakhanov, analysed in detail in Thomas Pearson, *The Russian Officialdom in Crisis: Autocracy and Local Self-Government, 1861-1900*, Cambridge, 1989.

cials managed to contain the onslaught of reaction and preserve the initial public impetus of the Great Reforms.⁷

However, the case of the Ruling Senate, Russia's oldest Imperial institution, so far remains virtually ignored by historians.⁸ Yet its evolution after the Great Reforms provides a particularly striking example of the difficult but not entirely unsuccessful convergence between the state and the nascent civil society in late Imperial Russia. In its role as a supreme arbiter of public petitions, the Senate became instrumental in revising and reinterpreting zemstvos' status within the Tsarist state. In the absence of reformist provincial legislation its judicial verdicts produced a piecemeal case-by-case reinterpretation of zemstvo authority from that of a semi-voluntary and virtually powerless community enterprise rooted in the politics of local *sosloviia* and clans, to an equal but independent partner of the Autocratic state, a partner whose authority was firmly embedded in the new civic practices of provincial society.

This process was set in motion by a ceaseless flow of petitions raised by or against the zemstvos before the Ruling Senate, and more specifically its First (Administrative) Department, which after the Great Reforms was in charge of the legal supervision of local authorities. The nature of this historic institution determined the judges' approach and the quality of hearings that zemstvo petitioners received for their cases. A major part in this process was played by the Senate's traditional role as mediator between government agencies and private individuals that went back to the early eighteenth century. Hence the first point of discussion in chapter 1 of Part 1 is the nature of the distinct Russian custom of provincial supplication to the state.

The study begins with the exploration of petitions in the early Muscovite

-
7. The earliest generation of liberal officials belongs to the era of the Great Reforms and their contribution to the development of the Russian state was described in W. Bruce Lincoln, *In the Vanguard of Reform: Russia's Enlightened Bureaucrats, 1825-1861*, DeKalb, Ill., 1982; for later developments see also Daniel Orlovsky, *The Limits of Reform: the Ministry of Internal Affairs 1802-1882*. Cambridge, Mass., London, 1981; Heide Whelan, *Alexander III and the State Council: Bureaucracy and the Counter-Reform in Late Imperial Russia*, New Brunswick, New Jersey, 1982; Richard G. Robbins, *The Tsar's Viceroys: the Provincial Governors in the Last Years of Empire*, London, 1987; Dominic Lieven, *Russia's Rulers under the Old Regime*, New Haven and London, 1989.
 8. Peter Liessem, *Verwaltungsgerichtsbarkeit im Zarenreich: der Dirigierende Senat und seine Entscheidungen zur russischen Selbstverwaltung, 1864-1917*, Frankfurt, 1996; Ekaterina Pravilova, 'Legality and Human Rights: Administrative Justice in Russia 1862-1917', PhD, Institute of Russian History of the Russian Academy of Sciences, St.Petersburg, 1999; Thomas Fallows, 'The Zemstvo and the Bureaucracy', Eds., Emmons, Vucinich, *The Zemstvo in Russia*, p.p. 177-242; A.G. Zviagintsev, *Rossiiskie Prokurory*, Moscow, 1998.

period, recently studied by such historians as Valery Kivelson, Nancy Kollman and Brenda Meehan-Waters.⁹ These works show that in early modern Russia personal petitions that stood any chance of success were typically presented within the context of local clan politics. On the one hand, this gave the petitioners access to the influential patrons of local clans who supported their case before the Tsar, and on the other in the event of a favourable ruling this approach promised a token of general affirmation of the clan over its rivals. Hence the petitioners were seeking the Autocrat's intervention in local disputes not only as a legal remedy against a particular injustice, but also as a direct expression of the Tsar's favouritism for the clan. Monarchical discretion was therefore perceived not only as a divine interpretation of the natural law governing society, but above all as a political act fostering the Tsar's relationship with a particular local clan. Hence in early modern period petitions served as a form of both political discourse and legal appeal. The practice of petitions were so popular that even mass political movements often assumed the form of public petitions to the Tsar.¹⁰ The people's desire to maintain direct and highly personal connections with the ruler were matched by the Autocrats' views of their authority as a simultaneous dispensation of law and politics. Despite the popularity of petitions, which provided intimate connection between justice and political discourse, this practice deferred the development of objective judicial procedures and the institutionalisation of autonomous courts.

By the late seventeenth and early eighteenth centuries the Tsars found it virtually impossible to contain what had turned into a virtual deluge of public petitions, and with the accession of Peter the Great radical measures became imminent. He was determined to rationalise the practice of supplication to the state by further formalising the relationship between the Autocrat and his subjects.¹¹ The cornerstone of his government became the Ruling

9. Valery Kivelson, *Autocracy in the Provinces: the Muscovite Gentry and the Political Culture in the Seventeenth Century*, Stanford, 1996; Nancy Kollman, *By Honour Bound: State and Society in Early Modern Russia*, Ithaca, New York, 1999; idem, *Kinship and Politics: the Making of the Muscovite Political System, 1347-1547*, New Brunswick, New Jersey, 1982; Brenda Meehan-Waters, *Autocracy and Aristocracy: the Russian Service Elite of 1730*, New Brunswick, New Jersey, 1982.
10. Gregory Freeze, *From Supplication to Revolution, a Documentary Social History of Imperial Russia*, New York, Oxford, 1988, 'Introduction'. For an overview of the Soviet tradition of supplication to the state see Margareta Mommsen, *Hilf Mir, Mein Recht Zu Finden: Russische Bittschriften Von Iwan Dem Schrecklichen bis Gorbatschow*, Berlin, 1987; Sheila Fitzpatrick, 'Petitions and Denunciations in Russian and Soviet History', *Russian History*, 24, no 1-2 (Spring–Summer 1997), p.p. 1-9.
11. For general works on the reign of Peter the Great see Lindsey Hughes, *Russia in the Age of Peter the Great*, New Haven, 1998; Robert Massie, *Peter the Great: His Life and*

Senate (*Pravitel'stvoiushchii Senat*), which was established in 1711 and charged with over-arching responsibilities for the entire administration.¹² As part of his supervisory authority its major function was to conduct the arbitration of administrative disputes and personal grievances. Thus broadly conceived Senatorial power supplanted the complicated process of separation of administrative and judicial powers, which in this period was increasingly practiced by other European governments.¹³ Even after the addition of Colleges to the Senatorial hierarchy of offices in 1721 it remained a catchall administrative-supervisory body. Hence the dispensation of justice was conducted as a natural extension of the discretionary authority of the Senators.

This situation was partly due to the failure of Peter's judicial reform in the provinces, which encountered the impregnable public belief that the simple and direct authority of provincial administrators as viceroys of the Tsar superseded the alien formality and fanciful procedures of courts and judges. Partly too this was a direct result of Peter's own inclination to rule through the old elite clans and his reluctance to take politics outside of the administration. By the end of his reign he found much comfort in calling on the advice of various privy councils painfully reminiscent of their recently spurned Muscovite predecessors. This tendency of Peter the Great to fight against the traditional consciousness in his subordinates and yet practise it through his own conduct and views of government forestalled the process of the separation of powers and precluded the development of checks and balances associated with it. John LeDonne concluded therefore that notwithstanding the outward appearance of government rationalisation, Russian absolutism in the eighteenth century was not a properly institutionalised state in a Weberian sense, but rather the rule of ever more sophisticated patronage clans and elite kinships, which successfully influenced, manipulated and appropriated practically all government agencies.¹⁴

This tendency became especially pronounced in the reign of Catherine the Great, who instead of waging the all-out war against the 'tribute-collecting hierarchies' (Yaney) deeply embedded in Russian society, attempted to incorporate them into her government and direct their activities

World, London, 1980; Matthew S. Anderson, *Peter the Great*, New York, 1995; Ed. James Cracraft, *Peter the Great Transforms Russia*, Lexington, 1991, 3rd edition.

12. The only comprehensive survey of the Senate's history is the five volume jubilee collection Ed. E.N. Berendts, *Istoriia Pravitel'stvoiushchego Senata*, St.Petersburg, 1911; see also Ivan Blinov, *Senat i mestnoe samoupravlenie*, St.Petersburg, 1911.
13. M.J.C. Vile, *Constitutionalism and the Separation of Powers*, Oxford, 1967.
14. John LeDonne, *Absolutism and the Ruling Class: the Formation of the Russian Political Order, 1700-1825*, New York, Oxford, 1991, p.p.

into a more open public sphere. She tried to give them a broader consultative role, indeed a partnership in the 'well-ordered police state',¹⁵ perhaps hoping that with time their involvement in public life would teach them the need for, and the meaning of, law.¹⁶ Yet again despite much of the institutional polishing that went on during her reign in the centre and on the periphery of the Empire, the Senate and its agents became nothing less than the nerve centre of the highly personalised fabric of Catherinian government. The General Procurator of the Senate, Prince Viazemskii, became the mightiest ever dispenser of patronage, honours and bribes. In the provinces he was able to dictate his will through the network of provincial governors, who were added to the supervisory hierarchy of the Senate.¹⁷

Hence, seeing that legal consciousness did not penetrate beyond the surface of Russian society, the cautious Empress reserved for herself the right to interpret the Autocratic decrees for resolution of particular cases and reduced the judicial function of the Senate and lower courts to formal pronouncements having little or no relevance to individual circumstances. Once again the only way for petitioners to seek justice was through the discretionary powers of officials, who for a price and through the right connections could be surprisingly amenable to petitioners' pleas. So despite Catherine's lip service to the virtues of government based on the rule of law, the cohesiveness of ancient clans now firmly embedded in the government agencies precluded the Senate's natural evolution as a supreme court and turned it into a subdued government mediator passively reiterating laws to provincial administrators and private petitioners. By the end of the eighteenth century, the Senate had rightly acquired the reputation not of a supreme court but of a 'depository of laws' (*khranilishche zakonov*) and continued in this capacity till the beginning of the twentieth century.

The question of the separation of justice from clan-dominated politics and daily administration emerged once again fully in the early nineteenth century with the accession of Alexander I. Perhaps feeling that aristocratic clans that webbed around the Senate had accumulated enough power to challenge the Autocracy itself, Alexander I decided to delegate the bulk of Senatorial administrative authority to the ministerial bureaucracy. Staffed by lower rank officials, the ministries were safely placed at a level of administrative authority far below that of the Autocracy or its nominal political adviser,

15. Marc Raeff, *The Well-Ordered Police State: Social and Institutional Change through Law in the Germanies and Russia, 1600-1800*, New Haven, London, 1983, p.p.

16. Leontovich, *Istoriia liberalizma*, ch. 2.

17. Isabelle de Madariaga, *Russia under the Reign of Catherine the Great*, London, 1981, p.p.

the State Council and were better able to concentrate on the daily administrative tasks of running the country. Yet despite the visible streamlining of administrative functions, neither the Senate nor any other government body was assigned supreme judicial power outside the immediate purview of Autocracy and high officialdom. Alexander I and after him Nicholas I shared the Catherinian principle that no court could interpret Tsarist decrees and freely apply them to particular cases, and only the Autocrat himself could make such substantive pronouncements. Consequently the Senate was reduced to performing an assortment of sundry administrative functions that were not absorbed by the ministries, such as the transfers of land ownership and hereditary titles of nobility, and to mediating in the attendant conflicts of the parties involved. According to George Yaney, if anything, the systematisation of government in the early nineteenth century continued to play into the hands of local networks, which webbed themselves around provincial and Petersburg officials in pursuit of unashamedly private gains.¹⁸

The unimpressive record of Senatorial judicial history in the eighteenth and early nineteenth century was finally broken by the Great Reforms, which set up the Civil and Criminal Cassation Departments of the Senate to complete the system of independent provincial courts. They enjoyed full judicial autonomy over the interpretation of laws and judicial procedure. According to the study by William Wagner, this enabled the Senatorial judges to amend the effects of crude civil and criminal laws upon the lives and sensibilities of their contemporaries and to provide frustrated litigants with valuable legal remedies, otherwise unattainable through poorly qualified and disempowered lower courts.¹⁹

However, the creation of provincial self-government, *zemstvos*, did not result in a similar reconstitution of the system of administrative justice that could resolve the potential conflicts amongst *zemstvos*, the crown bureaucracy and private individuals. The First Department, which was put in charge of legal supervision of the *zemstvos*, remained an administrative arbiter of the old school. Its procedures were secretive, case reports were dominated by the chancellery, and its verdicts were subjected to thoroughgoing control by the relevant ministries.

However, its personnel, although appointed with the direct sanction of the Tsar, experienced an unprecedented degree of legal professionalisation that reflected the growth of legal education and the greater availability of le-

18. George Yaney, *The Systematisation of Russian Government: Social Evolution in Domestic Administration of Imperial Russia*, Urbana, London, 1973.

19. William Wagner, *Marriage, Property and Law in Late Imperial Russia*, Oxford, 1995.

gally qualified personnel within the government elites. The First Department Senators often previously worked in the Cassation Departments and brought with them the new legal methodology and skills. This new practice contrasted sharply with traditional Senatorial conduct, which usually tried to square the law with the interests of the parties involved. Such traditions were bolstered by the continuing practice of Senatorial revisions, when groups of Senators were periodically dispatched to the provinces in order to investigate local squabbles and corruption. In reinstating provincial order they often relied on their administrative skills, local considerations and political expediency. Hence the First Department experienced considerable ambiguity in its institutional role and methods of adjudication, which caused a certain crisis of institutional identity. This is the subject of chapter 2 of Part 1.

Thirdly, this study is concerned with the evolution of Senatorial verdicts and their effect on the authority of the zemstvos. Looking at the two main areas of zemstvo activities — local taxation and health care provision — the research provides the survey of a sample of Senatorial decisions, which demonstrates the development of the Senate's legal methodology as well as its general acceptance of responsibility for the protection of zemstvos' authority. Not all of the Senate's verdicts favoured progressive zemstvos' practices. This was partly so because it remained under the vigilant supervision of the ministerial apparatus, whose consent was mandatory for each verdict, but partly because as a developing judicial institution it was also concerned with the faithful application of the existing laws to zemstvo cases. The steadfast adherence to law, increasingly practised by progressive Senators, however, did not blind the Senate to the larger picture of the plight of the zemstvos. Seeing zemstvos' intractable ideological differences with Tsarist government the Senators gradually became adept at interpreting the original legislation of 1864 in favour of the zemstvos and at over-riding various bureaucratic circulars undermining zemstvo autonomy. Yet the affirmation of zemstvo authority had as much to do with the Senate's juridical consciousness and its pursuit of legality as with the liberal opinions of the Senators imbued with the spirit of the Great Reforms. To some extent they were also able to solicit the support of their more conservative colleagues, who traditionally believed in the 'cooptation' of society into partnership with the under-institutionalised state. The result of Senate rulings was mixed, but more often than not zemstvos were able to get at least partial legal relief from the inadequate laws and arbitrary administration. Hence, Part 2 deals with the effect of the Senate's administrative rulings on the nature and scope of the zemstvos' au-

thority. Chapter 1 delves into zemstvo taxation, while chapter 2 looks at rural health care provision. Both chapters rely extensively on existing studies of professions in Russia and their contribution to the growing public demand for the rule of law in the provincial administration.²⁰

Finally, the research focuses on the problem of the Senate's institutional identity and the jurists' debates on the new nature of Senate practice that seemed to have emerged from the Senate's legal pronouncements. In chapter 1 of Part 3 the discussion centres on various European models of administrative justice considered by the Russian jurists for the reform of the Senate and on the difficulties of translating them into the context of Senatorial practice. These difficulties reflected not only the philosophical problems of administrative law and justice but first and foremost the nature of authority in Russian political culture. While some jurists believed that the Senate should embrace the idea of judicial objectivity and distance itself from the politics of the day, others wanted to preserve its authentic powers of legal supervision (*nadzor*) as a traditional way for the Senate's discretionary intervention into administrative disputes. Yet while liberals tried to use *nadzor* in the interests of modernising society, conservatives desired to preserve the same practice in order to retain ideological control over the increasingly professionalised Senate. This struggle was fully demonstrated by the Senatorial experience of zemstvo petitions, when not only the Senate's judicial objectivity but also the its discretionary rulings helped to overcome the effects of restrictive legislation and in certain cases to uphold the autonomy of local self-government.

Chapter 2 of Part 3 brings to light the early twentieth century government plans for Senatorial reform, which historians often overlook as a part of the constitutional transformation of Russia. The projects for Senatorial reforms were rooted in the ideological changes among the Senators and members of the reformed State Council, which paralleled the jurists' theoretical debates on administrative justice. By the beginning of the twentieth century many Senators came to resent the institution's status as trusted Tsarist watchdog and wanted to transform it into a Supreme Administrative Court with full judicial autonomy. However, the political activism of the juridical circles in the stormy years of the revolution of 1905-1907 undermined their

20. Harley Balzer, *Russia's Missing Middle Class, the Professions in the Russian History*, London, 1996; Nancy Frieden, *Russian Physicians in an Era of Reform and Revolution, 1856-1905*, Princeton, 1981, Mary S. Conroy, *In Health and in Sickness: Pharmacy, Pharmacists, and the Pharmaceutical Industry in Late Imperial Russia, Early Soviet Russia*, Boulder, Colorado, 1994; V.R. Leikina-Svirskaja, *Intelligentsiia v Rossii vo vtoroi polovine XIX veka*, Moscow, 1971; David Wartenwiler, *Civil Society and the Academic Debate in Russia 1905-1914*, New York, 1999.

public standing as objective and dispassionate champions of legality. The chapter therefore analyses the paradoxical impact of legal professionalisation and of attendant political activism on the Senatorial reforms and the confrontation it caused between the liberal and conservative camps in the State Council and the Fourth Duma. It concludes with the thought that the triumphs and failures of the rule of law in post-reform Russia were intimately connected to the changing value system of both – Tsarist officialdom and governed society – and that their fatal inability to reconcile their differences was due to their fundamentally different views of public authority.

Chapter 1

The Ruling Senate Before and After the Great Reforms

THE concept of administrative justice was not known in Russia until well after the judicial reform of 1864. However the government was always conscious of persistent administrative lawlessness (*proizvol*) and tried to prevent fiscal fraud, corruption, patronage, criminal abuse of the population, and other administrative offences. This task, however, was inevitably subordinate to other political and economic concerns which stemmed from patterns of Russian government as much as from the nature of Russian society. In this chapter I will consider the impediments to the growth of law encountered by the Senate in the eighteenth and early nineteenth century and the effect of the 1864 Judicial Reform on its organisation and administrative-judicial practice.



In 1760 the Empress Elizabeth wrote to the Senate:

With what sorrow, we, with our love for our subjects, must see that many laws enacted for the happiness and well being of the state are not implemented due to the widespread internal enemies, who prefer their own illegal profit to their oath, duty and honour. What sorrow we must feel that such deeply rooted evil is not extirpated. The Senate, as our first governmental office, according to its obligations and vested powers, should long ago have eliminated the many disorders that are multiplying unhindered in subordinate offices to the great harm of the state. The insatiable greed for profit has grown to such an extent that some offices, established for legal justice, have turned into market places for bribery. Partiality has become the guide of judges and connivance and dereliction encouragements to outlaws. Many cases and people oppressed by injustice are in a truly pitiful condition; we sincerely lament this and also that our gentleness and moderation in the

punishment of criminals has brought so ungrateful a requital.¹

However, back in the fourteenth and fifteenth century, following the difficult and prolonged process of the 'gathering of the Russian lands', it was not so easy to draw clear distinction between law and lawlessness, between the exercise and abuse of power. In the early Muscovite period government was conducted through the loose alliance of vast and diverse domains, which were administered on the basis of tax farming (*kormlenie*). Crown officials the notorious *voevodas* were encouraged to appropriate a share of state taxes, which they raised through personal charisma and cunning vigil on behalf of the state. This made it almost impossible to distinguish between legally delegated and personally assumed authority. Hence an elaborate system of supervision was established both in Moscow and in the regions to assure the provinces' loyalty and to maintain some semblance of order. According to the 1497 Code of Laws (*Sudebnik*) both the Boyar Duma, the aristocratic assembly that was periodically convened in Moscow, and locally nominated 'best people' (*luchshie liudi*) were jointly responsible for the surveillance of the crown officials in the provinces — *voevodas*, *namestniks*, and *volostel's*.

However this was a system of close-knit patronage connections, which extended vertically from the boyar clans in the centre down to provincial kinships. Their code of mutual obligations took precedence over the task of legal surveillance.² The key problem—embezzlement of taxes—was so deeply entrenched in popular consciousness that no one could say for sure where the boundaries of law ended and crime began. Sergei Solov'ev vividly described the situation:

Happy was a noble to be posted as a town's *voevoda*—the honour was great and the reward (*korm*) was even greater. Happy was his wife: she could also expect gifts; happy were his children and nephews: after mother and tatter, uncle and aunt, the *zemstvo* elder would come to bow to them; happy were his servants: they would also be well fed; ecstatic were the lesser members of his clan: they would not be forgotten either; even the household's fool (*iurodivyi*) could rejoice: he would also receive bribes. Everyone rose for a sure bounty!³

In the sixteenth century corruption was so all-pervading that it threatened to undermine the unity of the Russian lands from within. Ivan IV strongly be-

1. Quoted in Richard Wortman, *The Development of a Russian Legal Consciousness*, London, 1976, p. 8.
2. Nancy Shields Kollman, *Kinship and Politics: the Making of the Muscovite Political System, 1345-1547*, Stanford, California, 1987, pp. 146-161.
3. S.M. Solov'ev, *Chteniia i rasskazy po istorii Rossii*, Moscow, 1989, p. 288.

lieved that tribute-collecting hierarchies that continued to entwine his subjects with his officials were a pernicious custom inherited from the former oppressors – the Tatar Yoke. To break these habits he decided to replace tax farmers with stronger local self-government (*guba* courts and *zemstvo* self-government) and to assume greater personal authority over and above the boyars. By combining his Autocratic rule with strong local representation he tried to foster the internal unity and legality of his administration. His patriotic desire to enforce the law was so strong that it turned into a systematic and ruthless repression combined with the elements of unrestricted terror (*oprichnina*). By the end of his rule these violent methods had fatefully diminished Russia's economic resources and external security, but they hardly altered the basic boyar mentality.

The Times of Troubles followed Ivan's rule.⁴ This was a protracted period of internal and external instability which ended with the inauguration of the new dynasty. From the start and one might say to the very end, the Romanovs pursued a highly centralised form of legal supervision of the provinces. As a result new forms of official crime such as extortion, unlawful judgements, forgery, refusal to dispense justice, became subject to administrative surveillance and prosecution. Increasingly this was carried out as an integral part of the centralised administration. Respective departments of the Prikaz system, Church authorities, or above those Land Assemblies (*Zemskie Sobory*), routinely dealt with petitions sent from the provinces against local offenders.⁵ In popular belief this route of petitioning, despite its protracted procedure, was deemed more effective than litigation in the corrupt and inefficient local courts.

Yet despite the mass of new regulations and quasi-judicial verdicts that were continuously issued in an attempt to outlaw the practice of tax farming and other offences associated with it, the Muscovite government did not really challenge the root cause of abuse – the praxis of a highly personalised authority. In fact an elaborate network of patronage clans, originating in the earlier principalities of Muscovy, remained very much the linchpin of the patrimonial state until the end of the seventeenth century. The boyars and lesser nobles, organised in kinship groups, shared and limited the authority of the Tsar by means of tradition, lineage and a precisely delineated system of office holding (*mestnichestvo*), restricting considerably the extent of the Tsar's personal authority and with it the emergence of a unified formal law

4. Geoffrey Hosking, *Russia: People and Empire, 1552-1917*, London, 1998, pp. 47-56.

5. Boris Mironov, *A Social History of Imperial Russia, 1700-1917*, vols. 1-2, Boulder, Colorado, 2000, vol. 2, pp. 3 - 13.

and objective public justice.

In this situation the outcome of private appeals against abuses of power depended directly upon the strength of patronage and on the number of favourable testimonies by client-witnesses at the disposal of the petitioner.⁶ The Tsar retained the ultimate decision as to which of the two (or more) warring clans to favour with his ruling, and often his affirmation of a personal petition brought a symbolic seal of royal approval to the whole clan. To bestow these favours of the supreme 'patron' it was essential for the Tsar to retain the claim to an unlimited authority well above and beyond the law. To this end the new Tsar Alexei Mikhailovich Romanov maintained his own *Prikaz of Secret Affairs (Prikaz Tainykh Del)*, which while conducting the overall supervision of legality could also exempt certain cases from the purview of formal law.⁷ Such a system of governance, based on fluid allegiances and personal favours, was thoroughly alien to formal norms and judicial discourse and impeded Russia's political development, economic growth and ultimately its external security. By the beginning of the eighteenth century the Muscovite system of rule, based on the consent of family clans represented in the Boyar Duma, was falling well behind the times.

It was at this point that Peter the Great, Russia's first successful moderniser, who was eager to emulate European administrative and technological advancement, repudiated the repugnant dormancy of Muscovite rule and began the process of the systematic rationalisation of the state. For him solid institutional foundations of government were the only realistic long-term solution for curbing the rampant official lawlessness which was undermined his country's progress.⁸ However the prevailing practices of governance could not readily support his sudden and urgent resolve to renounce the legitimate foundations of the old Muscovy. The traditions of personal loyalty, clan coherence and collective consensus came into an all-encompassing conflict with the abstract legal principles, dispassionate procedure, and strict hi-

6. Valery Kivelson, *Autocracy in the Provinces: Muscovite Gentry and Political Culture in the Seventeenth Century*, Stanford, 1996, pp. 1-21, 101-128.

7. For some historians the *Prikaz of Secret Affairs* signified the strengthening of the Autocratic principle of government, cp. I.Ia. Gurliand, *Prikaz Velikogo gosudaria Tainykh del*, Iaroslavl', 1902, p. 332, while for others it was an indication of the growing centralisation of legal supervision, as in V.I. Sergeevich, *Lektsii i issledovaniia po drevnei istorii russkogo prava*, St.Petersburg, 1910, pp. 290-291. Similar views were expressed by V.O. Kliuchevskii, *Boiarskaia Duma Drevnei Rusi*, Moscow, 1902; M.F. Vladimirskii-Budanov, *Obzor istorii russkogo prava*, St.Petersburg, 1898.

8. *Istoriia Pravitel'stviuushchego Senata za dvesti let 1711-1911*, (hereafter *IPS*) St.Petersburg, 1911, vol. 1, p. 55.

erarchy of institutions advocated by the ambitious Tsar.⁹

Oblivious to the lack of political consensus with the elites, Peter decided to commit himself to building efficient administration in order to set in motion his gigantic project of the technocratic modernisation of Russia. Rightfully blaming the Boyar Duma for its customary slackness of government, he refused to recognise and, perhaps, update its valuable role as a native political assembly.¹⁰ On the contrary, obsessed with his country's progress, he saw a representative assembly as a superfluous luxury and needless self-restriction, and chose to remove any such obstacles to his absolute rule. Hence, his new machinery of government was not built on social contract and political trust, but on a highly centralised government machinery and thorough legal surveillance instituted above it.

Consequently, whatever form it assumed, the system of supervision was firmly associated with the administrative apparatus and could only evolve as a bureaucratic undertaking. This was consistent with the political culture of the newly-born Petrine society, whose members were almost totally denied personal rights against the state. Moreover, accustomed to seeing government service as the only means of social advancement, the ruling elite could not in principle entertain the idea of equitable administrative justice, essential in more participatory political cultures. This culture validated the exemption of Tsarist administration from direct legal action and was responsible for the tradition of extra-judicial means of handling complaints against the government officials.¹¹

Nonetheless, Peter laid the foundations for curbing the rampant *proizvol*, when on 22 February 1711 he set up the Ruling Senate (*Pravitel'stvuiushchii Senat*), both as a supreme administrative authority and as the highest supervisory organ of state.¹² In this latter capacity the Senate had the power to

9. For the definition and different characteristics of authority see Peabody, 'Authority' in ed. David L. Sills, *International Encyclopedia of the Social Sciences*, New York, Macmillan, 1968, I, p. 474.

10. Historians differed on the issue of tradition and innovation in Peter's administration. Thus V.O. Kliuchevskii and V. Sergeevich believed that both the Senate and the Colleges owed much to their Muscovite predecessors (Boyar Duma and Boyar Council and the Prikazy), while A.D. Gradovskii and V.V. Ivanovskii viewed the Senate as a radical break with Muscovite tradition. The discussion of different historiographical views can be found in 'Vvedenie', *IPS*, vol. I. See also A.D. Gradovskii, *Nachala Russkogo gosudarstvennogo prava*, St. Petersburg, 1876, vol. II, p. 119; V.V. Ivanovskii, *Russkoe gosudarstvennoe pravo*, Kazan', 1896, vol. I, p. 218.

11. Ed. Peter H. Solomon Jr., *Reforming Justice in Russia, 1864-1996: Power, Culture and the Limits of Legal Order*, New York, 1997, p. 4.

12. The Senate was established on 22 February 1711, see *Polnoe Sobranie Zakonov Rossiiskoi Imperii* (hereafter PSZ), 1st st edition, vol. 3, Ukaz # 2321.

had the power to intervene directly, to prosecute, and to make good the operations of subordinate organs, a monumental task, emphatically named '*nadzor*'. To fulfil this mission the Senate applied a peculiar and complicated mixture of hierarchical surveillance and impartial adjudication.

Lindsey Hughes acutely observes that although in the first version of the Senate Statute Article 1 laid down its duty to look after state expenses – a primarily fiscal function – in the second and third versions this article was placed after the requirement 'to pass honest (*nelitsepriatnyi*) judgement and to punish unjust judges by depriving them of their honour and their property, the same to apply to false informers'.¹³ This indicates that on second thoughts Peter gave greater priority to *nadzor* than even to revenue collection, which he regarded as the life blood of his expansionist wars. Yet although Senatorial *nadzor* was elevated above the rest of its functions, it was inextricably linked to the Senate's administrative powers.

The Senate was conceived as an awe-inspiring plenipotentiary representative of the Tsar, which in the absence of the Emperor, frequently on military campaigns, dispatched its own unanimous decisions to the provinces, where they were expected to be unquestionably obeyed and fulfilled under fear of punishment and execution. The efficiency and effectiveness of the Senate's administration became crucial in the wake of the war-driven resource mobilisation. Daily the Senate performed a wide range of administrative tasks – supervising fiscal operations, appointing civil service officials, drafting soldiers, deciding disputes, promulgating laws as well as prosecuting subversion of the new system of law and order. Soon it emerged as a significantly regularised organ with legally stipulated jurisdiction, procedures and Senatorial responsibilities.

Yet, Senators never abandoned their own self-interest and that of their patronage clans.¹⁴ Though carefully chosen from among the most loyal and

13. The Senate's jurisdiction was determined on 2 March 1711 see PSZ, 1, vol. 4, Ukaz # 2330, p. 635; for later versions see A. Voskresenskii, *Zakonodatel'nye Akty Petra I*, vol. 1, Moscow and Leningrad, 1945, pp. 198-200; see also L. Hughes, *Russia in the Reign of Peter the Great*, New Haven, 1998, p. 101. On further evolution of Senatorial jurisdiction in the eighteenth century see: *IPS*, vols., I-II; Sergeevich, *Lektsii*, pp. 833-840; Gradvskii, *Nachala*, vol. II, pp. 258-260; S.Petrovskii, *O Senate v Tsarstvovanie Petra Velikogo*, Moscow, 1875.

14. First Senators were Count I.A. Musin-Pushkin, T.N. Streshnev, Prince P.A. Golitsyn, Prince M.V. Dolgorukov, G.A. Plemiannikov, Prince G.I. Volkonskii, M.M. Samarin, V.A. Opukhtin, and Melnitskii. These were members of the ruling families with some outsiders-favourites, who formed a loose group of advisers to the Tsar. They occupied second and third ranks as real privy councillor and privy councillor, but were never linked to the position by the Table of Ranks. They were not 'made' Senators, but appointed 'to attend' (*prisutstvovat'*) in the Senate. The highest ranking among them was

capable members of the ruling elite, Senators seldom refrained from violations of their supervisory duty and saw their new office in the traditional Muscovite manner, i.e. as a lucrative administrative position to be used first and foremost for one's own benefit. Thus, Peter's eminent favourite Senator Alexander Menshikov, who also served as a Governor of Saint Petersburg, was renowned for systematic bribery; Senator G.I. Volkonskii, in charge of military supplies, was notorious for appropriating the lion share's of revenues from the Tula Arsenal Works and Senator V.A. Opukhtin for forgery at the Mint.¹⁵ So traditional non-discrimination between public duties and private interests permeated the system from its heart.

Struggling unsuccessfully against kinship and clans inherited from Muscovy, Peter decided to supplement the Senate's *nadzor* through a large network of fiscals, recruited from the lower social strata. These were men who had previously distinguished themselves in denouncing official crime and who owed their social elevation to the Tsar's tyranny of aristocratic patronage. Hence they were exempt from responsibility for wrongful accusations, and were generously rewarded for disclosed offences (half of the penalty imposed on the offender was paid as a *fiscal's* fee). From 1715 the *Fiscalat* commanded comprehensive powers of legal supervision over Imperial administration.¹⁶ Dispatched to every province and town, *Prikaz* and chancellery, fiscals regularly and zealously exposed the unofficial power of 'tribute-collecting hierarchy', firmly entrenched in the civil service. However, plucked out of social obscurity, fiscals were instituted only as a parallel structure 'shadowing' the administration and thus were dependent on the executive authorities for prompt prosecution of offenders. In the event of an administrator's failure to take action a fiscal's only recourse was to report the case to his superior, who in turn would report it to a superior administrator, and so on all the way to the Chief Fiscal.

The combination of virtually unlimited powers of denunciation with the absolute lack of authority to prosecute the offenders earned the fiscals a poor reputation as guardians of law. Fiscals often interpreted their ambiguous situation as a license to pursue more vulnerable, rather than more corrupt but well-connected, officials. While the former were kept in awe of the

the post of *Pervoprisutstviushchii*. See John LeDonne, *Absolutism*, p. 48.

15. For these and other instances see V.M. Gribovskii, *Vysshii sud i nadzor v Rossii v pervuiu polovinu Tsarstvovaniia Ekateriny vtoroi*, St.Petersburg, 1901; Solov'ev, *Istoriia Rossii*, vol. XIV, pp. 177, 183, 185, 197; Petrovskii, *O Senate*, Moscow, 1876.
16. Peter introduced the fiscals after having observed the workings of the system in the bordering Finland see N.V. Murav'ev, *Prokurorskii nadzor v ego ustroistoe i deiatel'nosti*, Moscow, 1889, pp. 246-62.

fiscals' watchful eye, the latter could easily bribe their way through the elaborate network of the fiscals' surveillance. Hence common folk regarded the fiscals with disdain as nothing more than mercenary whistle blowers (*donoschiks*), while the ruling elite had ample opportunities to discredit them before Peter. This was made easier by Peter's refusal to allow fiscals to act on behalf of private petitioners in courts, which he feared would undermine the basic principle of the unity of government. One of Peter's ordinances decreed:

Petitions against corrupt judges presiding in a fraudulent court are to be sent directly to the Senate by the parties themselves, while the fiscals are to keep well away from these disputes.¹⁷

So the *fiscal's* reports, based purely on their own observations and opinions, were easily challenged by officials, who often commanded higher social status and wider patronage networks.

Furthermore the fiscals' dependence upon officials for prosecution of offenders, the structure of their remuneration which encouraged wrongful accusations, Peter's own tendency to use them more as an instrument of terror than of public justice, all of this undermined their reception by Russian society and impeded their evolution as an instrument of equitable public justice. As a result the legal '*oprichnina*' of the modernising Tsar ended in disgrace of its principal agent – in 1722 the Chief Fiscal A.Ia. Nesterov, who ardently pursued criminal networks leading to the privileged aristocrats (such as Governor of Siberia, Count M.P. Gagarin), was executed for a relatively minor offence reported by one of his subordinates. Unwilling to connect the work of fiscals with public testimonies against officials, Peter remained confined in his *nadzor* efforts to the approval of the ruling elite, which in this instance clearly refused to pursue his ideal of unrestrained legal surveillance.

In contrast to the unsuccessful judicialisation of the fiscals' work, political police protecting the monarchy against 'treason' flourished. The laws regulating political crimes, of course, existed earlier, in Muscovy but in the eighteenth century they acquired a systematic and institutionalised force. John LeDonne points out that throughout the eighteenth century, contrary to many historians' beliefs, it was not popular movements that preoccupied the political police, but aristocratic power struggles and potential challenges to the dynastic succession. Political surveillance of the masses mostly reflected these preoccupations of the elites and hence a shrewd petitioner could make

17. PSZ, 1, vol. 4, Ukaz # 2669, 24 April 1713.

a career by making political denunciations of his/her enemies based on secret knowledge of the offender's life. This way a commoner without the necessary patronage and connections could get redress against his or her enemies and also obtain prosecution of otherwise unassailable crime. This new streak of Petrine government added a permanent feature to the Russian culture of petitions, making denunciations a serious if not the only leverage of common people in their quest for justice against the despotic state.¹⁸

Hence the practice of legal supervision aptly named *nachal'stvennyi nadzor* became dependent upon strict bureaucratic subordination, patronage politics and ultimately upon the suspiciousness and political vulnerability of rulers. The interpretation of relevant laws was wide open to manipulation by leading officials, powerful clan patrons, political policemen and finally by the Autocrats themselves. This tendency to put one's office or political agenda before the law was already felt in the early Petrine Colleges (*Kollegii*) that were set up in 1718 in place of the Muscovite *Prikazy*.

Initially Peter believed that by appointing College Presidents to preside in the Senate, he would bring all branches of the administration under one roof and simultaneously simplify the task of Senatorial *nadzor*. To his dismay he soon discovered that College Presidents not only did not feel bound by the collective responsibility of Senatorial office, but, on the contrary, tried to defend the 'honour' of their office (*chest' mundira*) against the Senate's collective decisions and to out-manoeuvre each other before the Tsar. Peter was appalled by the apparent conflict of interests between administrative decision-making and court adjudication that transpired in these joint appointments, but he quickly learned from it. In 1722 he abolished the arrangement in order to restore the authority and objectivity of the Senate and to reinforce subordination of the Colleges to it.¹⁹ This was the first attempt to separate *nadzor* from collegiate 'unity', but it did not, however, abandon the principle of bureaucratic stratification between them.

As a result, although squabbles in the Senate subsided, Peter's administration fell victim to the duplication of functions. The proliferating lines of command confused provincial officials and soon the Senate was overwhelmed with petitions against the lack of clear lines of subordination. In 1718 Peter tried to contain the situation by diverting the stream of petitions

18. John LeDonne, *Absolutism*, pp. 158-181; for a comparison with the 17th century see G.G. Tel'berg., *Ocherki politicheskogo suda i politicheskikh prestuplenii v Moskovskom gosudarstve XVII veka*, Moscow, 1912; more recently: Evgenii Anisimov, *Dyba i knut: politicheskii sysk i russkoe obshchestvo v XVIII veke*, Moscow, 1999.

19. PSZ, 1, vol. 6, Ukaz # 3877, pp. 469-80; LeDonne, *Absolutism*, pp. 75-76.

to the College of Justice and leaving the Senate only to settle appeals. In 1719 he also attempted to introduce a network of independent lower courts, but his judicial reform failed, partly due to the low levels of literacy in the provinces, but also because of the lack of interest among the population, which was accustomed to hierarchical resolution of complaints. In 1720 Peter also introduced the post of Senate Chief Justice (*Reketmeister*) in order to handle petitions against government officials. The most numerous among these were complaints against case delays by the Colleges. The *Reketmeister* directly intervened to expedite such cases, but failing to achieve settlement, instigated hearings in the Senate. The disputes were considered settled when Senate verdicts received the endorsement of the Tsar. The procedure, however, did not so much strengthen the Senate as provoke ruling family clans and their clients to seek ways to overrule its decisions.

The official overlap of jurisdictions was made even more tangled by the omnipotence of the ruling family clans, who shared among themselves the full spectrum of authority. Thus, despite frequent feuds, Senators often acted in concert to rescue each other from tricky situations. For example, in 1723 Senators supported Moscow Governor Saltykov against Peter's disfavour, even though Naryshkin, the vice-governor, openly called him an 'embezzler' (*kaznokrad*). When Naryshkin replaced Saltykov they subjected him to relentless complaints and charges before Peter. To rescue Naryshkin from probable execution Men'shikov had to denounce these accusations before his august friend.²⁰ Hence the task of *nadzor* became ever more caught up in the antiquated structures of the patrimonial state.

Fully aware of the continuing intrigues among his closest confidants, Peter feverishly searched for a suitable system of supervision over the Colleges as well as over the Senate. On his visit to France in 1717 he was really impressed with the workings of the *Paris Parlement* and in particular with the role of the *Procureur-Général*, as a guardian of the interests of the Crown and of public petitioners. Peter also examined the analogous posts of the Swedish Ombudsman and German Fiscal, whose roles were less public and mostly limited to bureaucratic supervision. After thorough consideration, on 18 January 1722 Peter instituted the office of Procurator-General, which despite all the foreign influences bore an unmistakable Russian aspect.²¹ The Procurator-General's brief indicated that he was to take charge of the Senate's

20. LeDonne, 'Ruling Families in the Russian Political Order 1689-1825', *Cahiers du Monde Russe et Soviétique*, 28, no 3, 4, 1987, pp. 233-322.

21. S.M. Kazantsev, 'The Judicial Reform of 1864 and the Procuracy in Russia', Ed., Peter Solomon, *Reforming Justice*, pp. 44-61.

chancellery and participate in the Senate's sessions to ensure Senators' compliance with the Tsar's decrees. If the Procurator-General noticed any deviations, he was supposed to report them directly to the Tsar, as well as to deliver the Tsar's decrees to the Senators.²² This mediating responsibility gave the Procurator-General a degree of equality and independence from the Senate. He was even expected to put forward legislative proposals to the Tsar, when the Senate's work encountered incomplete or obsolete laws. The Procurator-General was only accountable to the Tsar and was not normally liable for wrongful accusations.

The immediate result was a visible reduction of the collective powers of the Senate's plenary sessions (*Prisutstvie*) and the emergence of a strong Senate procuracy and chancellery, which could control both the agenda and the content of the Senate's meetings. In contrast to the French *Procureur-Général*, who acted equally on behalf of the crown and public petitioners, the Russian Procurator General was a high state official, who himself oversaw the work of the entire civilian state machinery.²³ Under the first Procurator-General, the extremely able Count P.I. Iaguzhinskii (1683-1736), the business of Senatorial government acquired greater degree of flexibility and the office of Procurator-General became the embodiment of personal executive power.²⁴ His function of 'general supervision' was essentially designed to ensure that the Tsar's decrees were widely disseminated, properly executed and that any insubordination was prosecuted. In this capacity Iaguzhinskii added a much-needed personal touch to the Senate's relations with the monarch, which later became the basis of relations between the monarchy and ministerial bureaucracy.²⁵ V.O. Kliuchevskii wrote:

The General-Procurator, and not the Senate, becomes the steering wheel of the whole administration; without Senatorial title or vote in the Senate's decisions, the General Procurator was nonetheless its true President, who watched over its sessions, initiated legislative projects, judged Senators' conduct, and using his sand glass steered Senatorial activities, turning the Senate itself into nothing

22. PSZ, 1, vol. 6, Ukaz # 3979.

23. The first draft definition of Procurator-General as the 'heart of the whole state' i.e. the protector of the 'deprived' and 'muted' was subsequently omitted from the final draft of the Procurator-General Brief (*Dolzhnost'*), compare: PSZ, 1, vol. 3, Ukaz # 3581, # 3643, # 3900 # 3978; for commentaries see: V. Solov'ev, *Istoriia*, vol. XIV, pp. 138-139; V.I. Veretennikov, *Ocherki istorii general-prokuratury v Rossii*, Khar'kov, 1915, p. 12.

24. For biographical details see A.G. Zviagintsev, Iu. Orlov, *Rossiiskie Prokurory*, Moscow, 1999.

25. Veretennikov, *Ocherki*, p. 11; N.V. Murav'ev, *Prokurorskii*, pp. 325-362

more than a sand castle.²⁶

Thus from the start the mixture of administrative and supervisory roles within the Senate made an indelible mark on the nature of Senatorial justice. For the most part *nadzor* was a crude form of administrative coercion sealed by the Tsar's approval, rather than a form of equitable litigation. On the initiative of the Procurator-General the Senate intervened in the most flagrant cases of judicial misconduct (such as arrests without warrants and indefinite detention of suspects) and bureaucratic red tape (*volokita*). However, for all its rigour Senatorial *nadzor* could not reduce even gross violations of law and a staggering number of provincial petitions were steadily reaching the Senate. This strengthened the rulers in their belief that prosecution should be kept inseparable from administration in the form of *nadzor*. They hoped, perhaps justifiably, that the Senate's intimate knowledge of administrative policies would provide the best ground for prompt and equitable justice. However, the attempts to maintain the full spectrum of Senatorial functions so over-stretched its responsibilities that eventually its integral role became virtually untenable. In addition the dual nature of Senatorial functions also fostered the ruling elite's notions of law as a secondary and expandable tool of government. This sort of political 'education' in contrast to the academic one, which from the middle of the eighteenth century began to teach the Russian nobility the basic principles of European rule of law,²⁷ forestalled for a long time the development of legal doctrines and practices known in the West. Hence, the Tsar's desire to square the rule of law with the rule of aristocratic clans, of which he remained himself the supreme patron, became a leitmotif of numerous Senatorial reforms throughout the eighteenth century.

In the middle of the eighteenth century the Senate's status suffered considerable setbacks. Despite or perhaps because of the wide range of its quasi-legislative, executive and judicial functions, the Senate could not retain its supremacy in any one of them. Already in Peter's reign separate and informal privy councils (*tainye sovety*) began to meet outside the overburdened Senate to discuss domestic and foreign policy – in the manner very much reminiscent of their antecedent Privy Duma (*blizhniaia дума*). Peter's successors on the throne introduced new advisory organs – the Supreme Privy

26. Quoted in J. Cracraft, "Kliuchevskii on Peter the Great", *Canadian-American Slavic Studies*, 20, nos. 3-4, 1986, pp. 367-81.

27. As early as in the mid-eighteenth century Empress Elizabeth brought to Russia such jurists as Fredrich Strube de Piermont, a Belgian, and Philippe Henrich Dilthei, an Austrian, who began to teach Roman and Russian law at Moscow University when it was founded in 1755, see Wortman, *The Development*, p. 25

Council (under Anna Ioanovna), Cabinet and Conference (under Elizabeth) – to help conduct their personal rather than institutional rule. Yet without the institutional base the legitimacy of these organs was tenuous and they vanished almost as soon as they were set up.²⁸ The Empresses Anna Ioanovna, Catherine I, Elizabeth, were once again dependent upon the nobility almost in the same way as Peter's Muscovite predecessors.

In these circumstances the function of *nadzor* became virtually superfluous and in 1726 Procurator General Iaguzhinskii was sent to Poland as Ambassador, from where he returned only in 1730 on Empress Anna's accession to the throne. Although she restored the office of Procurator-General, the role of the Senate was reduced to the level of that of Colleges (1730-1741) and only Empress Elizabeth reinstated its former status of a supreme administrator (1742-1762). However the cause of the Senate's revival was not a change in supervisory policies, but the government's pressing need to handle the burdensome routine of administration, a function that eventually won the Senate universal recognition as a symbol of law and order. George Yaney commented on this as follows:

It was through inadvertent, but more or less consistent dependence on functional offices that the Senate, along with its colleges and chancelleries grew into a central position in domestic administration.²⁹

The office of Procurator-General, on the other hand, became increasingly politicised as the Empress Elizabeth used the successor of Iaguzhinskii, N.Iu.Trubetskoi, as a state prosecutor in the political trials and as an executive for confidential administrative jobs.³⁰

From the mid-eighteenth century the Senate became widely regarded as a 'depository of laws' (*khranilishche zakonov*), a status that recognised its legal expertise, but had little in common with objective justice. On the contrary, in this role the Senate faithfully served the needs of collegiate government adopted under the principles of cameralism, which above all emphasised collective power-sharing within the government structures. Cameralism attenuated the inner struggles of the ruling elite and concentrated on the mobilisation of economic and human resources for the benefit of the activist state. The union thus forged of the elites with the throne once again precluded the

28. *IPS*, vol. 2, pp. 1-329.

29. Yaney, *Systematisation*, p. 68.

30. N.Iu.Trubetskoi, for example, conducted political trial of ministers Minikh and Osterman in 1741; for biographical details see 'Nikita Iur'evich Trubetskoi (1699-1767)' in Zviagintsev, Orlov, *Rossiiskie Prokurory*, pp. 23-35.

emergence of equitable justice and the development of government based on the rule of law.³¹ When the accord within the ruling elite reached its apogee during the reign of Catherine the Great, the Senate's chief function became 'to settle disputes, to grant lucrative contracts, and to manage the civil service', i.e. to distribute the rewards of the system amongst the ruling family-clans.³²

Hence in the latter part of the eighteenth century the problem of law enforcement became secondary to the creation of a 'well-ordered police state' emanating directly from the Autocrat.³³ Catherine the Great believed that the regular dispatch of clear and concise instructions through the perfectly arranged executive hierarchy would in itself guarantee a well-functioning administration and gave little thought to the problem of law enforcement. She was also weary of the prospect of independent Senatorial authority, which, she felt, might give rise to the emergence of aristocratic oligarchy. Especially after Count Panin's project for a judicial reorganisation of the Senate and establishment of an Imperial Council as a supreme legislative organ limiting the monarchy, she naturally preferred to leave the function of legal supervision to the ultimate responsibility of the monarch.³⁴ Hence her Reform of 1763 turned the Senate into a primarily subordinate – *podzakonnyi* – organ of administration, rather than an independent law enforcement agency. In her Ukaz of 15 December 1763 she wrote:

-
31. On the European origins and nature of collegiate government (cameralism) and its adoption by Russian government practices see Yaney, *Systematisation*, pp. 85-90.
 32. John LeDonne, *Ruling Russia: Politics and Administration in the Age of Absolutism, 1762-1796*, Princeton, 1984, p. 34; IPS, vol. II, pp. 329-695; Gradovskii, *Nachala*, vol. II, pp. 277-284; Korf, *Administrativnaia Iustitsiia*, vol. I, pp. 15-25.
 33. Marc Raeff, *The Well-Ordered Police State: Social and Institutional Change through Law in the Germanies and Russia, 1600-1800*, New Haven, London, 1983, pp. 187, 206-207, 217, 219, 227.
 34. The project was a typical bureaucratic device used by the Panin 'party' to check the influence of the Orlovs favourites. Such bureaucratic reorganisation was often used in the eighteenth century struggles between patronage clans over access to the throne and privileges. For the full text of Panin's plan see "Bumagi kasaiushchiesia predpolozheniia ob uchrezhdenii Imperatorskogo Soveta i o razdelenii Senata na departamenty v pervyi god Tsarstvovaniia Ekateriny II", *Sbornik Imperatorskogo russkogo istoricheskogo obshchestva (SIRIO)* 7 (1871), pp. 200-221; David Ransel, *The Politics of Catherine's Russia: the Panin's Party*, New Haven, 1975, pp. 79-80; Walter J. Gleason, *Moral Idealists, Bureaucracy and Catherine the Great*, New Brunswick, Rutgers University Press, 1981, pp. 106-111; N. Chechulin, "Proekt Imperatorskogo Soveta v pervyi god Tsarstvovaniia Ekateriny II", *Zhurnal Ministerstva Narodnogo Prosveshcheniia* 292 (March 1894), pp. 68-87; idem., 'Otnoshenie Senata k vysshim organam vlasti v Tsarstvovanie Ekateriny II' in IPS, II, pp. 331-382; Korf, *Administrativnaia Iustitsiia*, vol. I, pp. 15-35.

The Senate has been established for the carrying out of laws prescribed to it. But it has often issued laws itself, granted ranks, honours, money and lands, in one word ... almost everything. Having once exceeded its limits the Senate now still finds it difficult to adapt itself to the new order within which it should confine itself.³⁵

Hence Catherine's attitude to law was shaped by her artful balancing act between the severity fitting the true Autocrat and 'motherly' forgiveness of her errant officials. This was particularly true of her relationship with Gavriil Derzhavin, who as court poet earned her trust and promotion from the ranks of a junior clerk in the Senate chancellery to the *stats-sekretar'*. Derzhavin came from the lesser nobility and in childhood witnessed the relentless official abuses that his mother endured trying to protect her property rights through appeals to various chancelleries. This early experience imbued him with extraordinary fervour that he applied in his future career to every case of administrative offence. Catherine was keen to use his passionate striving for law to bring culprits to justice, but on the whole his relationship with the Empress remained fragmentary. Though in 1791-1793 she entrusted him with such a serious task as inspecting the Senate itself, in other instances she was irritated when his actions in the name of law undermined the tranquillity of patronage relationships. Often she felt that if not restrained his legal fervour would become too tedious for officials to bear and might even undermine social tranquillity in the provinces. Thus Catherine seemed irritated by his reports of fiscal embezzlement and loan defaults by her favourites in Olonets and Tambov provinces where Derzhavin served as her envoy. She easily tired of his findings of administrative abuses and found his lectures on the virtues of law exceedingly boring. In turn he remarked that despite the lip service she paid to the rule of law her true motto always remained 'live and let live'.³⁶

Equally the measures she took to increase the Senate efficiency were mostly technical than political. The division of the Senate into six departments — four in St.Petersburg and two in Moscow — undertaken in 1763 had the air of quasi-ministerial reorganisation, aimed at improving its administrative efficiency, rather than at safeguarding independent Senatorial justice.³⁷ By far the most important of the six was the First Department, which handled 'state and political affairs', including those of the Holy Synod, the College of Economy, civil service issues sent there by the Herald Master,

35. Isabel de Madariaga, *Russia in the Age of Catherine the Great*, London, 1981, p. 44.

36. Wortman, *The Development*, pp. 109-111.

37. For details of the departments' jurisdiction see *IPS*, vol. II, pp. 383-411.

and above all financial matters from the College of Revenue and Audit, the Treasury, the Mint and the Colleges of Commerce and Mining. Its higher status was also emphasised in that the Procurator General served as its Senior Procurator and that the Joint Assembly of the Senate Departments met in the First Department's chambers. This elevated status of the First Department would allow it to become a protagonist of the rule of law in Russia in the late nineteenth century.

Despite this reorganisation, the Senate in those days was not a bureaucracy in the Weberian sense. Careful distribution of the ruling families throughout its Departments indicated its primary role as a supreme council, where the members of the elite met to achieve consensus on major issues of domestic policy.³⁸ This was strongly reflected in the procedures of the Senate which required unanimous vote in the Departments and a two thirds majority vote in the Joint Assemblies. The Empress discouraged disagreements and insisted on the consensual resolution of cases and application of laws. To facilitate this task departmental over-procurators were put in charge of 'negotiating' Senators' opinions and verdict drafting. At the same time, the stiff voting procedure served as a bargaining chip for Catherine's own arbitration between Senatorial factions.³⁹

The new Departments greatly speeded up the Senate's conduct of administrative affairs, but were strictly forbidden to give free judicial interpretations of obscure or obsolete laws in individual case adjudication. Influenced by the Italian penologist Beccaria, Catherine was extremely suspicious about judges and wrote in her 1767 Nakaz:

Nothing is so dangerous as the general axiom that the spirit of the law ought to be considered, not the letter... Where the laws are precise and clear, the office of a judge consists only in ascertaining the facts.⁴⁰

Clearly customary suspicion of the socially inferior judges and court clerks coincided with the desire to maintain the absolutist authority of the Empress unimpeded by the formality of law and litigation. The tendency of subordinating the Senate's judicial arm to the administration was further manifested in the new definition given to the office of Procurator-General. Prince Alexander Viazemskii, a prominent favourite of Catherine the Great, who was appointed to the post soon after the reform, concentrated in his hands all

38. Wortman, *The Development*, p. 11.

39. LeDonne, *Ruling Russia*, pp. 32-33.

40. Madariaga, *Russia in the Age*, p. 46.

three pillars of power: he became the key legislative advisor to the Empress, the head of the civil service, and the final interpreter of law (apart from the Empress). In this combination of roles he was a true prototype of a Prime Minister and his active involvement in politics and administration further undermined the Senate's significance as a supreme organ of justice. Commanding an immense discretion over the distribution of privileges throughout the elite patronage networks, Viazemskii and the Senate became a symbol of the throne's union with the ruling class in 'sharing the spoils' of the system.⁴¹

Yet the very range of the Senate's functions led to the gradual erosion of its authority. Numerous commissions and committees, summed up by the Empress to advise in respect of her legislation, undermined its law-giving power, while the discretionary authority of provincial governors and governor-generals, directly answerable to Her Majesty, limited the scope of the Senate's involvement in the administration and supervision of the Empire's periphery. The Procurator General and other confidants of the Empress, put in charge of the civil service, reduced the Senate's surveillance over the central government colleges and departments. Quite soon the Senate was in no position to disturb the highly personalised fabric of Catherinian officialdom and often had to turn a blind eye to provincial reports of persistent lawlessness.

In the early years of the reign of Alexander I the coherence of Senatorial powers again became a central controversy of government reforms. At the beginning of his reign he encouraged the Senate itself to outline the reasons for the decline of its authority⁴² – a move that instantly spread electrifying rumours in the salons of St.Petersburg. The ruling elite considered the Senate reform to be the most important goal of the new reign and clamoured for the return to the 'original omnipotence' of the Senate. Yet, in the next two years, Alexander successfully resisted both the transformation of the Senate into a Supreme Court or further consolidation of its legislative and administrative powers, which he feared would undermine the Autocracy. On the contrary, to break from the Catherinian legacy of personalised and largely ineffective Senatorial government he welcomed the idea of executive and consultative authority independent from the Senate, and soon inaugurated new ministries and the State Council. These left the Senate with only a handful of responsibilities and virtually no supreme authority. Such was the outcome of the bit-

41. John LeDonne, *Ruling Russia*, p. 34.

42. PSZ, 1 vol. XXVI, 19908, 5 June 1801.

ter struggle between the 'Senate party' and the Tsar's entourage in the Secret Committee (*Neglasnyi Komitet*) which is worth considering in some detail.

From the start the Senate's 'old guard' launched an indignant criticism of the Procurator General of the Senate whose virtual monopoly of power in their view reduced the Senate to a place where 'silence was disgraceful, free speech dangerous' (*molchat' tiazhko, govorit' bedstvenno*). Among others Senator Count Zavadovskii argued that the Senate was originally set up by Peter the Great as a supreme authority in the land, as the only organ that stood between the Tsar on the one hand and administration and the courts on the other.⁴³ In this supreme role the Senate should enjoy budgetary rights as well as supreme adjudication:

The Senate's decrees should be obeyed as if they were directly emanating from the Tsar. In the event of the state need the Senate should have the right to add levies to government taxes. Litigation and execution [of criminals] should also be [unconditionally] assigned to the Senate in all civil and criminal cases under its jurisdiction... For the Tsar it is neither possible to satisfy all government needs, nor desirable to use his sacred powers for criminal prosecution.⁴⁴

Consequently, Zavadovskii proposed, the Senate's judicial decisions would be final and irrevocable and not normally subject to appeal. Members of the Senate would be elected only amongst the highest *sannovniki* well known for their integrity and knowledge of laws. A Senator's vote should be counted even if he was absent, retired from service or deceased. Each Senator could issue personal decrees (*imennye ukazy*) against wrongdoings uncovered by him in any part of the Empire and present his findings directly to the Tsar. All administrative and judicial institutions would be subordinate to the Senate and only Senators' personal decrees or the Tsar himself could alter their orders. The Senate should appoint all officials, including college presidents and provincial governors, except for those in the first three ranks where appointments were reserved for the Tsar. Zavadovskii's opinion was unanimously approved by the Senators and presented to the Secret Committee (*Neglasnyi Komitet*).

In addition to Zavadovskii's opinion the Secret Committee received a memorandum written by Senator A.R.Vorontsov in which he also advocated the transformation of the Senate into a legislative assembly:

43. V.G. Shcheglov, *Gosudarstvennyi Sovet v Tsarstvovanie Aleksandra Pervogo*, Iaroslavl', 1892, p. 752; see also *Chteniia v obshchestve istorii i drevnostei rossiiskikh pri Moskovskom Universitete*, (hereafter O IDR), 1862, vol. II, pp. 94-101; 1864, vol. I, pp. 101-107.

44. Shcheglov, *Gosudarstvennyi Sovet*, p. 754.

If restored to its original glory the Senate will become not only the depository of laws but also an authority that would mediate between the Tsar and people and thus will ease the severity of government so characteristic of the previous rulers whose legacy so heavily lies on the conscience of our present reigning monarch.

Similarly to Zavadovskii, Count Vorontsov proposed that the Tsar's active role in government should consist mainly of appointments to the three highest service ranks, while the rest would be taken care of by the Senate. He also proposed to adopt British laws such as Habeas Corpus and the French La Grande Charter to protect the inviolability of persons.

To examine these proposals arriving in the Secret Committee Alexander asked his aide Count Novosil'tsev to provide a review. In his critique of the Zavadovskii-Vorontsov plan Novosil'tsev rejected the idea that the Senate should be transformed into a supreme legislative and administrative organ and instead tried to persuade the Emperor to grant the Senate the role of a supreme court of justice with strong powers of administrative supervision (*nadzor*) independent from the Procurator General. He feared that the Senate old-timers might thwart the Tsar's reforms and that their political qualities could not in any event enjoy the 'trust of the nation'. Hence it would be expedient for the time being to limit their powers to supreme justice, which in time might pave the way for the emergence of the future national assembly.

So while the old guard tried to strengthen the grip of aristocratic clans over the Senate, the younger members of Alexander's entourage expounded the idea on the judicial independence of the Senate. Neither of the options could be seriously entertained by the Tsar and only elderly Derzhavin seem to have understood Alexander's frustrations. He wanted to limit the requested authority of the Senate by defining clearly when the Senate's decisions could be appealed to the Tsar, which cases of criminal justice could be exempt from the Senate's purview and given exclusively to the Tsar, and which cases should await the Tsar's confirmation. He also insisted on personal participation of Senators in Departmental sessions, on clear rules of chancellery procedure, and on creating a broader pool of candidates for Senatorial positions.

For Derzhavin the reason for the Senate's 'humiliation' in the reign of Catherine the Great and especially Paul I was the 'split' between the supervisory authority (*oberegatel'naia vlast'*) of the Procurator General of the Senate and other institutions of the Empire. Hence he advocated better 'division of powers' in the Tsarist administration: legislative, judicial, executive and supervisory (*okhranitel'naia*). He proposed that the Senate be divided into two

parts: Governing Senate (*Pravitel'stviushchii Senat*) and Judicial Senate (*Sudnyi Senat*) with three Departments in each. The First or Administrative Department of the Governing Senate would be in charge of the police and administrative organs, the Second or Finance Department – responsible for state budget, the Third or Educational Department – answerable for public welfare similarly to the provincial Welfare Boards. On the other hand the Judicial Senate would have Civil, Criminal and Land (*Mezhevoi*) Departments. In the event of disagreements in the Departments their Joint Assembly would be convened to carry out unanimous decisions. Each Department would be supervised by a minister whose role in the Senate would be more advisory than executive. The jurisdiction of all ministers and Departments would be united in the post of the Procurator General, who would thus symbolise the much-desired ‘unity of government’ and protect it from an impasse. Undoubtedly Derzhavin was guided in his scheme by his desire to retain the Autocracy intact and so having started with dismantling of the post of the Procurator General he returned his authority over the Senate back to him.⁴⁵

Alexander was pleased with Derzhavin’s project and saw in him an official firmly devoted to law yet opposed to the extension of Senatorial independence. He appointed him Minister of Justice who according to new regulation assumed much of the Procurator General’s powers over the Senate.⁴⁶ However Alexander did not wish to allow the new Minister of Justice in his role of Procurator General of the Senate to arrogate to himself over-arching authority over the rest of the Tsarist government and thus to jeopardise the forthcoming reforms or to interfere in the affairs of other Ministries.

Derzhavin nonetheless began to intervene in the affairs of the newly created Committee of Ministers, whose members he believed behaved indulgently in fiscal and military matters. Quite bluntly he tried to rectify abuses committed by the Finance Ministry in the liquor concessions, to regulate the missionary activity permitted to Jesuits by the Ministry of the Interior, scorned the Foreign Ministry for petty frictions with Sweden, altogether offending the men who believed that their posts and actions were held in personal trust from the Tsar.⁴⁷ It was felt by many that Derzhavin’s interventions undermined the most important purpose of the reforms – the extension of ministerial authority into the provinces – something that particularly

45. ‘Mnenie Senatora Derzhavina o pravakh, preimushchestvakh i sushchestvennoi dolzhnosti Senata’, in *Chteniia OI DR*, 1858, vol. III, pp. 125-127; Shcheglov, *Gosudarstvennyi Sovet*, p. 756-757.

46. Wortman, *The Development*, pp. 111-112.

47. *Ibid.*, pp. 114-115.

irritated new Minister of the Interior Kochubei. For him the law was only necessary to ensure the hierarchical subordination of lesser officials to their superiors, but was completely redundant when it began to restrict the Minister's discretion. Seeing in Derzhavin's supervisory zeal nothing more than petty legalistic harassment he complained to the Emperor that Derzhavin stood in the way of the new system of government. Unlike Catherine the Great who tolerated the old man, Alexander did not hesitate to protect his wishes from Derzhavin's chancery-style wisdom and by the autumn of 1802 their relationship came to a halt. The final straw was Derzhavin's attempt to use Senatorial powers to forestall the enactment of the law for voluntary emancipation of the serfs. Initially he tried to persuade the Emperor to drop the proposal but faced with Alexander's resolution turned to the Senate, asking it to exercise the very same right of protest that he did so much to destroy. Senators who had learned their lesson earlier did not wish to participate in the showdown with the Committee of Ministers and the Tsar himself. The law was promulgated regardless of Senatorial opinion which led to Derzhavin's resignation. After only thirteen months in service Derzhavin retired from his post on 8 October 1803.

His successors were timid personalities drawn from the very same circles that Derzhavin had tried to oppose. Until the end of the Empire their role was to accommodate the interests of the Tsarist bureaucracy within the Senatorial milieu and to keep the 'lid' on Senators' opinions. Almost from the start a jurisdictional war erupted between the Ministry of Justice and the Ministry of the Interior which continued throughout the nineteenth century, contributing significantly to the government's inability to carry out comprehensive reforms.⁴⁸ At the heart of the matter stood lack of distinction between administration and justice in Russian government, which were fused almost imperceptibly in the old function of Senatorial *nadzor*.

The Senate's position vis-à-vis the new ministries and the State Council became even less certain. Its jurisdiction in secondary areas of administration undermined the Senate's historic claim to superiority over the administration, while its subsidiary functions within the government bureaucracy weakened its independence. Being neither a supreme administrative authority nor an independent judicial council, the Senate could perform periodic legal audit of the State Council's legislation or regular inspections of the ministerial circulars dispatched to the provinces. Hence the new arrangement

48. Daniel Orlovsky, *The Limits of Reform: Ministry of the Internal Affairs in Imperial Russia, 1802-1882*, Cambridge, Mass., London, 1981.

once again ruled out the Senate's evolution as an independent supreme court.⁴⁹ On the contrary, after the Ukaz of 8 September 1802 the Senate resumed its functions in a quasi-collegiate manner with the ministerial bureaucracy. Successive Ministers of Justice assumed the post of the Procurator-General and thus retained most of his controls over the Senate, including Senatorial verdicts, nominations and the chancellery's proceedings. They shared their powers over the Senate with other ministers, who often became judges in their own cases. Although undoubtedly the principle of administrative specialisation replaced the traditional collective rule of the aristocratic clans, the reformers' wish to separate and elevate the judicial authority of the Senate above the administration ended in an ambiguous settlement — leaving the spirit of the Senate as a Petrine-Catherinian collegiate institution essentially intact.

Under the reign of Nicholas I the attempt was made once again to tighten centralised controls over provincial administration and once again all attempts stumbled over the peculiar Russian system of bureaucratic surveillance. This time the government wanted to reconcile the workings of provincial administration set up in 1775 by Catherine the Great with the 1802 principles of new ministerial bureaucracy. The task had fallen to Count Bludov, who in the 1830-1850s served as Minister of the Interior and as Minister of Justice. His most famous decree was the General Instruction to Civil Governors of 1837, which handed over the role of provincial supervision to governors and transferred their executive authority back to the ministries. The result of this 'streamlining' however was even greater confusion among officials, whose constant inquiries and clarifications caused a veritable deluge of paperwork between the centre and localities. Provincial governors complained that they were required to supervise the most trivial chancellery procedures, which left them little time for more serious issues. Yet on the other hand the style of centralised administration remained casual and even accommodating as Bludov himself was reluctant to straighten out the actions of his immediate subordinates. This caused grief to the Chief of the Third Section of the Imperial Chancellery Count Benkendorff, who, ironically, accused Bludov of leniency and 'extreme liberalism'.⁵⁰ Hence while the lower levels of Tsarist administration were held accountable for every clerical triviality, at the top government officials remained as arbitrary and erratic as ever before. The hypocrisy of the system made an indelible mark on the whole era of

49. Shcheglov, *Gosudarstvennyi Sovet*, pp. 750-784.

50. Wortman, *The Development*, p. 155.

Nicholaevan reign and was immortalised in the satirical works of M.E. Saltykov-Shchedrin and A.P. Chekhov.

Yet Bludov was not entirely unaware of the weaknesses of his creation. From 1843 he undertook to improve the efficiency of Tsarist justice by designing a series of projects of court reforms. He thrust his emphasis upon the efficiency of civil and criminal courts in the protection of family and property rights of landed gentry. Hence he proposed to introduce a limited adversarial procedure and a state-sponsored *advocatura* independent from the police investigation. He refused to abolish the old inquisitorial procedure in the criminal courts and also opposed the introduction of trial by jury in either civil or criminal courts. He believed that lack of education, legal and even elementary, would quickly destabilise the system of Russian justice and allow peasant juries to vindicate criminals who were typically seen as mere unfortunates. Instead he insisted that the courts should remain under the supervision of provincial governors who would be ultimately responsible for verdicts, procedures and evidence gathered and presented in the court of law. Though far from suggesting any independence of the courts, Bludov wanted to raise the prestige of the legal profession and to attract university graduates to judicial posts. He hoped that noble judges with high intelligence, sensibility and wealth would guarantee the loyalty of the courts to the Tsarist government. He also advocated the establishment of the separate Cassation Department of the Senate where all cases including administrative disputes could be examined on the point of law. The Department was expected to include two representatives of each Department of the Senate, thus covering the entire range of Tsarist government jurisdiction. So in some way his idea could be considered a precursor of the future projects for the reform of the Senate as the Supreme Administrative Court.

Between 1857 and 1860 Bludov's proposals were discussed in the Joint Sessions of the Department of Law and Department of Civil Affairs of the State Council and received general acclaim except for his proposition to allow the Senate the authority to judge administrative cases. The difficulty of administrative adjudication was seen in the lack of distinction between statutory laws (*zakony*) and administrative ordinances (*podzakonnnye rasporiazheniia*). Thus the Memorandum presented by the Second Section of the Imperial Chancellery to the State Council read as follows:

Often the rules that might be called primary are so entwined with petty directives, which cannot have any impact on political affairs, that it is not surprising when some officials unable to distinguish one from the other think of them all as equally insignificant. There

are others too, who consider that their sole professional merit and service to the state consists of punctilious study of these trivialities.⁵¹

The key opponent to Bludov's proposal was Count V.N. Panin, the Head of the Second Section of the Imperial Chancellery, who saw in the proposed administrative justice a potential threat to the Tsarist bureaucracy and ultimately to Autocracy. However he did not openly object to Bludov's proposals, but pointed out instead that the expected diverse membership of Cassation Department could not provide a 'sufficient guarantee' of the 'uniform application of laws' that was the primary goal of the reform. Instead he proposed a smaller Cassation Department drawn from five Senators who would work under the auspices of the special Commission on Private Petitions, thus reducing the whole idea to a pitiful level. From these altercations it was clear that sixty years after Derzhavin Autocracy feared the expansion of Senatorial authority over ministries. Panin believed that the ministers' direct links with the Autocrat endowed their policies and accompanying legal documents with the force of law which was beyond formal adjudication of the Senate.

Hence Panin's rejection of the comprehensive authority of the Senate vis-à-vis the ministerial system was consistent with the principle of Autocratic rule. Thus for example while these discussions were under way the new Minister of the Interior P.A. Valuev obtained from the Tsar the right to issue circulars with the force of law that were deemed necessary to put out rural disorders sparked by the curtailed Emancipation Edict.⁵² The only practical consequence of this discussion was the Tsar's Ukaz of the 30 October 1858 which authorised the State Council to establish guidelines as to what rules can be considered laws and what mere ordinances.⁵³

Despite the criticism, Bludov's projects would have probably become the basis of the judicial reform since at the beginning of his reign Alexander II eagerly listened to Bludov's ideas which fitted well with his initial vision of the police state. However as the defeat of the Crimean War unveiled the irredeemable failings of the old system Alexander came to realise that more freedom should be given to public initiative without the menacing omnipresence of the state. The implementation of the judicial reform required two things: first, the relaxation of the Autocrat's attitudes towards the judiciary and secondly, the introduction of formal procedure that would allow judicial interpretation of the law.

51. *IPS*, vol. 4, p. 465.

52. Orlovsky, *The Limits*, p. 76.

53. *IPS*, vol. 4, p. 464.

Initially the public discussion of the forthcoming reform seemed to confirm the Autocrat's fear that an independent judiciary might one day become an alternative source of authority. Thus in 1857 the nobility of Tver' province led by A.M. Unkovskii, himself a law graduate of Moscow University, appealed to the government with a request for public trials and prosecution of administrative officials. These calls were followed by Riazan' and Khar'kov province in 1859 and Vladimir province in 1860, all of whom insisted on strict accountability of officials before the courts. In the next two years all noble assemblies participated in the campaign.⁵⁴

Such unanimous demand for administrative justice could not be met by the Autocracy and re-awoke its apprehension that the courts would eclipse Tsarist administration and eventually impose limits on the Autocrat's rule. In 1858 Tsar Alexander II banned all discussions of independent courts in the State Council.

However as the nobility's moral 'emancipation' from serfdom continued in the course of preparation of reforms they felt less dependent on officialdom for the enforcement of law and order and began to seek private safeguards of contractual relations and landed property. The attention of the provincial public and of the St.Petersburg reformers turned back to the initial point of reform – civil and criminal litigation. This new wave of interest in courts as primary defences of property and credit institutions helped to convince the Tsar in the suitability of adversarial public trials and an independent judiciary for Russia. Hence the issue of administrative litigation, was for a time over-shadowed by these concerns and was soon forgotten as a mere episode in the broad national movement for public justice.

With this change of attitude, the government needed a pool of professional jurists to draft the highly technical reform of the courts and legal procedure. An alternative centre of the reform emerged in the Naval Ministry under the aegis of Grand Duke Constantine Nikolaevich, who recruited graduates of the Imperial School of Jurisprudence (*Pravovedy*) and encouraged ideas different from Bludov's. The group of officials who inspired and conceived the reform became known as the new generation of the 'enlightened bureaucrats'.⁵⁵ The first proposal that the legal experts of the Ministry circulated among the high ranking government officials was written by Dmitrii Obolenskii, who promoted full adversarial procedure and public

54. Terence Emmons, *The Russian Landed Gentry and the Peasant Emancipation of 1861*, Cambridge, 1968, pp. 255-257

55. W. Bruce Lincoln, *In the Vanguard of Reform: Russia's Enlightened Bureaucrats*, DeKalb, Illinois, 1990, pp. 102-138.

courts largely based on foreign, particularly French models.

To this the Bludov's camp replied with surprising mildness. Bludov's subordinate, assistant state secretary S.I. Zarudnyi, who wrote the reply, merely pointed to the 'lack of practical conclusions', but did not repudiate the whole idea. Secretly he sympathised with Obolenskii's proposal and decided to use his position within the conservative camp to promote the reformers' ideas. He began to make contacts with aristocrats in the State Council and in the Second Department of the Imperial Chancellery and tried to explain to them in technical terms the validity of the reformers' criticism of the Bludov projects. Soon he persuaded them that in order to facilitate the work on the highly technical procedural issues the drafting of the reform should be transferred from the Second Section of the Imperial Chancellery – that beacon of Nicholaevan conservatism – to the State Chancellery, of the State Council where existing expertise on this matter could be put to use. From 1861 to 1864 the State Chancellery played an analogous role to that of the Editing Commission that prepared the Emancipation Edict. It was an auxiliary function for the period of drafting and enactment of the reform, a function which was performed by officials who could be dispersed thereafter. Alexander II did not set out to institutionalise the legal expertise which these officials acquired or the progressive opinion which intended to retain the ultimate say in the future, but merely to increase the courts' efficiency in the post-Emancipation Russia.

In 1860, when Bludov released his project on criminal courts reform, the Naval Ministry produced a counter-project demanding more radical reform. Its author Pavel Glebov – one of the *Pravovedy* recruited by Grand Duke Constantine Nikolaevich – rejected the doctrine of official nationality and proclaimed the superiority of principle (of judicial independence) over tradition. Taking his cue from the French courts he was careful to dispel the Autocrat's apprehension of lawyers as a product of the French Revolution and insisted that judicial institutions were apolitical in nature and that individual lawyers could be of any political conviction. On the contrary, he went on to assert, the courts as an independent institution were ideally suited to serve the purpose of moral education of the people. Open courts would dispel the prevailing belief in government arbitrariness; they prosecute unreformable individuals, and instil repugnance to crime in the national psyche. He advocated similar procedure for civil and criminal courts.

Under the policy of 'artificial publicity' adopted by Grand Duke Constantine Nikolaevich these ideas were presented to two hundred govern-

ment officials, who accepted the more radical course of reform. This helped to achieve the swift shift in the Tsar's attitude to the reform. Almost immediately greater funds were assigned to the Ministry of Justice and changes of leadership made possible further reform. From 1858 the task of drafting the reform legislation was assigned to D.N. Zamiatnin who as an assistant minister helped to advance the reform. Endowed with a humane approach to his subordinates and a desire to learn from others, he obtained the right to publish the Senate's rulings in the Ministry's legal journal (*Zhurnal Ministerstva Iustitsii*) and encouraged expert debate on theoretical and practical aspects of law.⁵⁶

The Statutes on Civil and Criminal Procedure⁵⁷ issued in 1864 provided for the establishment of independent courts with oral adversarial procedure, tenured judges, professional lawyers, and a jury system.⁵⁸ To underscore judicial independence the government introduced Court Circuits (*okrug*), which did not coincide with administrative territorial divisions. Each Circuit had six to ten circuit courts and a Judicial Chamber that received appeals from district courts. Smaller cases were decided by justices of the peace elected by provincial zemstvos. The reformed Civil and Criminal Cassation Departments of the Senate considered appeals on points of law. These measures aimed to distance the judiciary from the administration in the hope that the courts' independence would reflect the greater social equity achieved after the Emancipation.⁵⁹ The reform was enthusiastically received by all strata of society and many public donations to the construction of new court buildings and Judicial Chambers poured in. Government officials also demanded transfers to the new positions as circuit judges, prosecutors and advocates, seeing new assignments as a personal calling and a patriotic contribution to the reform.

However, the extension of equitable justice into administrative litigation became a much more protracted and controversial process. In the new Judicial Statutes a special provision was made by the reformers that government officials could not be tried in civil or criminal court without consent of

56. Wortman, *The Development*, p. 252.

57. *Sudebnye Ustavy 20 Noiabria 1864 goda s izlozheniem rassuzhdenii na koikh oni osnovany*, izdannye Gosudarstvennoi Kantseliarii, St. Petersburg, 1864.

58. Wortman, *The Development*, p. 254-255.

59. For the overview of the 1864 Judicial Reform in the context of Great Reforms see W. Bruce Lincoln, *The Great Reforms: Autocracy, Bureaucracy and the Politics of Change in Imperial Russia*, DeKalb, Illinois, 1990, pp. 105-117; B.V. Vilenskii, *Sudebnaia reforma i kontrreforma v Rossii*, Saratov, 1969, pp. 163-198; G.A. Dzhanshiev, *Osnovy sudebnoi reformy*, Moscow, 1891.

their superiors, thus re-affirming the old principle of executive immunity for the new era. The reform also transformed provincial procurators into court prosecutors and thus abolished their broad supervisory authority over local administration.⁶⁰ For a while only provincial governors could dispense judgements in administrative disputes and they did so in a purely discretionary manner. The vacuum of supervisory authority was so great that even A.F. Koni, that thoroughly modern Russian jurist, lamented the loss of Cath-
erinian procurators' authority over provincial administration, which he compared with the mythical old oak that safeguarded the forest.⁶¹

At the outset of the judicial reform the authorities were reluctant to introduce judicial procedure in the resolution of administrative petitions. They regarded these as a part of administrative process that was now strictly 'separated' from the judiciary. As before they understood the 'separation of powers' as a separation of functions within a government ultimately united by the Autocracy. The Senate symbolised and effected this sacred 'unity of government' (*edinstvo upravleniia*) sworn by the officials ever since Peter the Great and could not therefore be divided into two different institutions – administrative and judicial. Ten years after the reform A.D. Gradovskii, eminent student of Russian law, expressed their views as follows:

Differing in their particular tasks, the Departments of the Senate should be connected in one whole institution with common purpose and significance. The Senate must remain an institution set at the head of all subordinate, i.e. sub-statutory (*podzakonnogo*) administration, a position, which maintains the force of law, oversees the actions of local institutions and officials, is accountable for and dedicated to the protection of the rights of each and every one... Anyone who is committed to the success of our government should be concerned with the **better coordination** and not the separation of the administrative and judicial branches of the Senate. The division of the Senate into administrative and judicial organs will increase the antagonism between the executive and the judiciary, and we would not have among our organs that vital link, that impartial authority that alone is able to contain the [political] deviations (*uvlecheniia*) of different agencies and persons. On the contrary if we preserve this institution intact we will have an organ that can serve not the interests of particular agencies but

60. S.M. Kazantsev, *Istoriia Tsarskoi prokuratury*, St. Petersburg, 1993, pp. 125-145; Vilen-skii, *Sudebnaia reforma*, pp. 174-175.

61. To some extent the balance was redressed in the 1890s when as a result of the so-called *zemstvo* 'counter-reform' administrative disputes were transferred from governors to the 'standing committees' – *prisutstviia*. However, being composed of the key provincial officials subordinate to the provincial governors, they did not possess the necessary objectivity and were generally regarded as committees for rubber-stamping governors' opinions.

the interests of law and the [general political] cause. Finally such division would reduce the significance of each Department, which now enjoys collective authority even though each and every one of them is dedicated to a specific task. In the absence of such unity the significance of separate Departments will be lost.⁶²

This view was particularly well captured in the project of the Senate's reform submitted to the State Council by K.P. Pobedonostsev, who upheld the notion of the unity of the Senate. He argued that 'separation of powers' was now complete and that judicial authority belonged exclusively to courts and judges endowed with this prerogative by the sovereign will of the Autocrat as supreme judge of the realm. He proposed that the Senate should perform basic surveillance of rules and procedures of adjudication in the lower courts. To facilitate this process, a District Judge would be appointed to each circuit (*sudebnyi okrug*) and would also perform supervisory function outside the control of administration. In this way the separation of judicial and administrative powers from top to bottom of administrative hierarchy would be complete. The judge would also assume some functions that were previously given to the Senate: appointments to some judicial posts, supervision of case investigation, inspection of courts, complaints about delays of case resolution, disciplinary prosecution (*distsiplinarnaia otvetstvennost'*) of officials, unwarranted arrests and imprisonment. District Judges would also chair meetings of district judicial chambers concerning the disciplinary prosecution of officials, disputes of authority between courts and administration and cases of unlawful imprisonment.

The Senate according to Pobedonostsev's proposal, would have two Departments – First (Administrative) and Second (Judicial). It would cease functioning as an appellate court and would consider cases on the points of law as a court of cassation. The Judicial Department would be divided into three Sections, whose procedures would be open to the public. The first section would conduct preliminary investigations of petitions to establish whether they were subject to Senate adjudication, the second would conduct Senatorial investigations in civil cases and the third – in criminal. Senators of each section would elect a Chairman who would also control the chancellery. Periodically all three Sections would conduct General Meetings with a Chairman appointed by the Autocrat. He would write and present the Senate's humble report to the Tsar. His direct access to the Tsar would endow the Senate with supreme authority. General Meetings would first consider jurisdictional disputes between civil, criminal, ecclesiastical and military

62. Gradovskii, *Nachala*, vol. II, p. 328.

courts, on the one hand and administrative authorities on the other, and secondly, would issue proceedings against judicial personnel.

Once a month, continued Pobedonostsev, both Departments — Judicial and Administrative — would convene Joint Assemblies to consider private petitions against officials in any administrative organs of the state except judicial. The cases would be presented to the Assembly by the Procurator General, who would become independent from the Minister of Justice. In the Departments his authority would be upheld by Assistant Procurators (*Tovarishch General Prokurora*) and together they would be responsible for the correct and true interpretation of the law. The Minister of Justice would be ultimately responsible for the 'rule of law' in the Empire.⁶³

The project avoided strict definitions of the jurisdiction of the First (Administrative) Department and the relationship between the Senate, the Procurator General and District Judges on the one hand and the Ministry of Justice on the other. Pobedonostsev complained about the 'lack of an institution that would consider petitions from the general public against government officials' and proposed that this function should be given to the Joint Assemblies of the Senate. In his vision the Assemblies would determine the judicial domain (*podsudnost'*) of these petitions and allow private plaintiffs to pursue the offenders through civil or criminal procedure. He lamented that the old system of justice did not educate Russian judges and officials in the faithful execution of laws and in the protection of the rights of Russian subjects, but he was not prepared to entrust the prosecution of the offenders to the specific administrative-judicial authority of the Senate.

Clearly, the thrust of the project was to preserve the unity of the Senate and consequently the decision was taken that 'temporarily' the brand new Cassation Departments would simply be left to co-exist with the unreformed First (Administrative) Department. This was an awkward match of the latest model of French jurisprudence with a few legal relics scattered about in the Imperial Code of Laws. As before the Minister of Justice was considered a **guardian** of the Senate (*opekun*) and could personally intervene in the Sessions and Joint Assemblies of the Administrative Departments (First, Heraldry and later Second Peasant).⁶⁴ He could also summon Senators' meetings

63. *IPS*, vol. 4, pp. 470-473; Pobedonostsev's Memorandum on the reform of the Senate was published in the collection of *Materialy po preobrazovaniu sudebnoi chasti 1864*, vol. XVII, which was circulated among the government officials according to the policy of 'artificial publicity'. The full list of materials included there was published in Dzhanshiev, *Osnovy sudebnoi reformy*, St. Petersburg, Moscow, 1891.

64. Article 41, *Ustanovlenie Pravitel'stviushchego Senata* (hereafter *UPS*), Ed. Mordukhai-Boltovskii, *Svod Zakonov Rossiiskoi Imperii*, St. Petersburg, 1892.

for high priority cases needing Emperor's approval,⁶⁵ delegate cases for resolution to the Senate,⁶⁶ monitor Senators' attendance of meetings,⁶⁷ examine and confirm Senate verdicts,⁶⁸ recall cases to the Ministry of Justice for reconciliation of Senators' opinions with those of the Ministry's own legal experts,⁶⁹ make representations to the Monarch if differences of opinion persisted,⁷⁰ examine the Senate's ukases for provincial administration and reassign Senators from one Department to the next⁷¹.

The two-tier structure of the Senate — Departmental Sessions at the bottom and Joint Assemblies of the Departments at the top — allowed the transfer of cases from the initial judges to the others with lesser expertise, time and interests in a particular case. The majority of cases went through this procedure as the law accepted only unanimous vote for final verdicts. From the Joint Assemblies the case could be transferred again to the State Council and to the Imperial Chancellery⁷² to seek judgement outside the Senate's walls. In this way the Minister of Justice was said to have retained his role of intermediary between the Senate and the State Council and the Crown.

The Minister of Justice also remained Procurator General of the Senate and was therefore in charge of the Senate's over-procurators and chancellery.⁷³ With lack of legal expertise among Senators, over-procurators and chancellery clerks were instrumental in making case presentations and drafting verdicts for the Senate and could substantially influence the course of the Senators' deliberations. Over-procurators were also expected to 'negotiate' Senators' opinions and help them achieve the required unanimous vote. They could also challenge Senators when the latter's unanimous vote differed with their opinions and transfer cases from Departmental Sessions to Joint Assemblies where their role was taken over by the Procurator General.

74

Other ministries also had the right to participate in the Senate's hearings under the so called 'special procedure', which required the Senate to so-

65. Article 47, UPS.

66. Article 76, UPS.

67. Article 157 and 156, UPS.

68. Article 111, 113-117, UPS.

69. Article 118, UPS.

70. Article 172, UPS.

71. Article 247, UPS.

72. Article 118, UPS.

73. Article 9, UPS.

74. Article 99 and 105, UPS.

licit their opinions in order to establish the 'appropriateness' (*tselesobraznost'*) of the actions of a particular *chinovnik* in their jurisdiction.⁷⁵ The procedure became a well-known device for delaying of the Senate's proceedings, which was used for technical as well as for political reasons. Together with the interventions of the Minister of Justice these ministerial delays of the Senate's verdicts leave us with the image of the Senate as an institution that had been virtually torn apart by the bureaucratic tug-of-war. It was a far cry from the supposed role of the Senate as a balanced, objective and dignified centre of the Imperial administration. The temperament of different Ministers of Justice and their relationship with Senators and over-procurators could to some extent alleviate the burden of the Senate's profound dependency on the vicissitudes of ministerial politics, but they did not alter the fact that the judicial reform of 1864 did little to change the Senate's role as a traditional institution for the collective bargaining of the latest elite clans.

The struggle for the reform of the First Department renewed in March 1865 when less than six months after the promulgation of the Judicial Statutes Dmitrii Zamiatnin submitted to the Tsar his own project of Senate reform. Despite all the intricate legal debates that went on in the State Chancellery prior to the enactment of the Judicial Statutes, Zamiatnin still approached the Senate in its eighteenth century role of a quasi-legislative as well as judicial institution and planned to change the structure and the role of the Administrative Departments of the Senate, accordingly. He saw no contradiction between the objectivity and impartiality required of the Senate as the supreme organ of justice, and political expediency and bias of legislative process; and he believed that unless the Senate could gain direct and active participation in law-making it could not properly perform its judicial role. To be effective, he argued, the judges should know first-hand the original intentions of the legislators. He therefore requested that all legislative proposals should be submitted in the first instance to the Senate and then be sent to the State Council with the Senate's accompanying opinion. Zamiatnin also insisted that the Senate should take over from the Committee of Ministers those issues that needed the Tsar's approval and that concerned more general aspects of Imperial government. He also maintained that all ministerial circulars should be submitted to the Senate for promulgation.

Zamiatnin avoided direct references to the early nineteenth-century debates on the Senate's role, but effectively he tried to return to the Senate its ancient right to legislate and also to make representations about ministerial

75. Article 120-133, UPS.

decrees (*pravo predstavleniia*) before the Tsar. The head of the Second Section of the Imperial Chancellery Count, V.N. Panin, clearly understood Zamiatnin's designs and vehemently objected to the proposal. P.A. Valuev, too, argued that Zamiatnin touched upon basic constitutional issues of Tsarist government, which could not be changed in haste, particularly now that the new Judicial Statutes separated judicial from administrative authority. In addition Panin and other members of the Committee of Ministers worried that Senate dominated by the Ministry of Justice would in the end pave the way for the domination of the Minister of Justice over other ministries. Minister of War D.A. Miliutin also grasped the fundamental character of the questions raised in Zamiatnin's proposal and argued that in order to reform the Senate's Administrative Departments it would not be enough to refer to the old Petrine laws. What was really necessary was to review the entire structure of Tsarist government and examine the relationship of the Senate with all its institutions. This would require much more than one session of the State Council and much more than the special Judicial Commission of the State Chancellery that had worked on the current reform.

With this provision in mind Zamiatnin agreed to 'postpone' the Senate's reform. Deep down he hoped that recent discussions in the Second Section of the Imperial Chancellery on the forthcoming legislation concerning the distinctions of statutory law and administrative ordinances might provide additional momentum for the Senate reform.⁷⁶

So as a result of these inconclusive debates and legislation, Russia received in 1864 a strange hybrid of a Senate consisting of the ultra-modern Cassation Departments operating on the basis of French law, and Administrative Departments, based on primitive indigenous 'laws' hardly distinguishable from the Petrine-style *nakazy* – guides to good behaviour for officials. While the former exercised the right of sophisticated judicial interpretation of law, the latter continued to rely on the hierarchical surveillance of local administration, which dealt with citizens' petitions as a part of the internal enforcement of bureaucratic discipline. The First Department remained dependent on the Ministry of Justice in its procedures, appointments and verdicts.

In addition to existing responsibilities which encompassed the entire spectrum of Tsarist administration – except peasant and *sosloviia* legislation – the First Department was given authority to supervise the new organs of local self-government – *zemstvos*. Nobody expected anything new to come

76. IPS, vol. 4, pp. 476-478; Wortman, *The Development*, pp. 271-272.

out of this responsibility, yet the Senate seemed to overcome its own limitations in the way that it dealt with zemstvo petitions. Drawing on its contacts with the Cassation Departments, the First Department seemed to have absorbed many of the principles of legal interpretation and procedure and thus helped zemstvos to navigate through the maze of the most confusing legislation.

The Senate's traditional role as a 'patriarch of administration', i.e. as a quasi-supreme organ of government, continued to define administrative litigation and consequently hindered the Senate's evolution into a properly established administrative court. In the meantime the transformation of Russian society from the old 'command structure'⁷⁷ to a more open public domain urgently required new institutions and procedures for the settlement of public disputes with the state. Lack of progress in this direction significantly impeded Russia's political development and undermined its internal stability.

Conclusion

Thus it appears that over more than 150 years (1711-1864) the Senate's function of *nadzor* was more of an aspiration to law and order than an effective law enforcement mechanism. Conceived as a supreme 'regency' of the Tsar, the Senate struggled with the internal contradictions inherent in the lack of distinction between its powers — legislative, administrative and judicial. In the eighteenth century while the government was preoccupied with the expansion and security of the Empire, the spread and consolidation of the power of Russian administrators over indigenous nationalities came to the forefront of the Senate's functions. The experiment with fiscals in the early eighteenth century seemed to confirm that the Senate was primarily a political and administrative institution unconcerned with legal formalities.

The Senate's direct law enforcement by means of *nadzor* was justified by the structural weakness of the lower courts, feeble public notions of individual civil rights, the rudimentary state of public legal consciousness, and the relative simplicity of the administration. For the state bureaucratic *nadzor* had the perceived benefit of firm and immediate correction of lawlessness whether caused by intent, negligence or outright ignorance. In addition, since the Senate was also a 'guardian of laws' (*khranitel' zakonov*), its direct intervention by means of *nadzor* conveyed an additional impression of the inevitability of prosecution. In practice, however, administrative prosecution

77. I borrow this term from John LeDonne, *Absolutism*, pp. 15-22.

was hardly inevitable. The Senate's provincial informants – procurators, provincial governors and governor-generals – grew attached to provincial clans and were rarely inclined to stir up trouble for their patrons and clients.

After a period of decline in the mid-eighteenth century the Senate re-emerged in the reign of Catherine the Great as a symbol of unity of the ruling elites with the throne. It became a true hub of patronage clans who used their positions in the Senate to dispense benefits, honours and promotions between the centre and the provinces. Above all, as John LeDonne conclusively shown, the Senate performed the role of a council where heads of aristocratic patronage clans negotiated the terms of sharing the proceeds received from the dependent population. The post of the Procurator General became a personification of collective bargaining that took place in the Senate.

Strengthening the Senate's administrative arm impeded the objectivity and independence required for impartial adjudication. The reliance of the Senate's *nadzor* on the administrative system itself, as was the case with early fiscals, procurators and later with provincial governors and governor-generals, laid it open to the pressures and temptations of those under its supervision. Senators were patrons of their own patronage clans extending into the far-flung corners of the Empire. The Procurator General of the Senate was in this respect a true *primus inter pares*. His elevation to the status of the first executive officer, a quasi-premier, made the function of *nadzor* infinitely secondary to administration.

In the early nineteenth century the inability of the Senate to exercise effective supervision over provincial government prompted a series of reforms, whose preparation uncovered lingering ambitions among Senatorial oligarchs to re-instate the primacy of the Senate's rule. Alexander I successfully navigated between the calls for Senatorial supremacy and proper judicialisation of the Senate's power, and completed the demise of the Senate's authority. After the 1802 its status and jurisdiction were clearly subordinate to the newly-inaugurated ministerial bureaucracy and the State Council. The Minister of Justice filled the post of the Procurator-General, who became the centre of thorough bureaucratic scrutiny of the Senate's activities. Its elevated status was derived more from its historic legacy than from its real power. The great Speranskii gave little thought to the separate system of justice and lumped it together under the heading of 'constitutional laws'. From now on nothing was left to chance: from nominations and Senatorial verdicts to chancellery proceedings, the bureaucracy had the final say.

The Decembrists' abortive coup signalled the rift between Western and

indigenous political traditions and during the reign of Nicholas I the doctrine of official nationality proclaimed the return to the native forms of government. In the new schema of Official Nationality the authorities continued to regard the law as a redundant formality standing in the way of its political designs. Thus to reconcile local and central jurisdictions and to tackle the lack of cultural preparation and legal awareness of its officials the government used administrative rather than judicial forms of law enforcement. Yet numerous attempts to introduce order ended up in a virtual deluge of official correspondence with little or no practical effect on Tsarist executive. Hence the Senate was called upon to perform an additional corrective function of periodic provincial inspections in order to ensure the uniformity⁷⁸ and regularity of local administration. Although Senatorial inspections (*Senatskie revizii*) often disclosed serious failings of local and central government and even occasioned reforms,⁷⁹ on the whole they lacked durable and geographically consistent results. The thin veneer of legal order periodically re-established by Senators in the examined provinces would often quickly evaporate.

However, this was also a period of gestation for future legal reforms and for gradual growth of education among the highest ranks of the Tsarist administration. Count Bludov's projects attempted to ingrain more effective procedure into the existing legal practices and paved the way for legal debates in the early years of the next reign. Yet the memory of the all-mighty Senate lingered on among the Tsarist *sanovniks* and caused much trepidation to the Autocrat. Tsar Alexander II believed that the ministerial system that he inherited from his predecessors was an obedient instrument of Autocratic will and could not be subjected to judicial formalities. Hence the judicial reform of 1864 was inaugurated with a limited goal of protection of the property rights and personal security of the nobility, leaving the sphere of administrative justice virtually intact.

As a result Russia received a Senate endowed on the one hand with autonomous rights of complex legal interpretation in civil and criminal cases,

78. For the quest for uniformity of the Russian government see Marc Raeff, "Uniformity, Diversity and the Imperial Administration in the Reign of Catherine II" in idem., *Political Ideas and Institutions in Imperial Russia*, Oxford, 1994, pp. 141-155.

79. I. Blinov *Otnoshenie Senata k mestnym uchrezhdeniam v XIX veke*, St.Petersburg, 1911, pp. 160-163. See the list of Senatorial revisions in *IPS*, vol. IV, St.Petersburg, 1911. The findings of Senatorial revisions preceding Kakhanov Commission in the 1880s for example, are discussed in detail in T. Pearson, *Russian Officialdom in Crisis. Autocracy and Local Self-Government 1861-1900*, Cambridge University Press, 1989; also 'Senatorskie revizii 1880 goda' in *Russkii Arkhiv*, 1912, no 11, pp. 417-429.

and on the other, plagued by ministerial intervention in its administrative-judicial practice. This institutional paradox reflected poorly on the professional identity of the Senators, many of whom found it hard to reconcile the two mutually exclusive roles. Zamiatnin sought the solution in reinstating the Senate's old legislative authority, but instead gave new reasons for ministerial bureaucracy to continue to dilute the Senate's emerging judicial identity. Hence in the late nineteenth century the Senate's only defence was its own standards of judicial objectivity and expertise which, as we shall see in the next chapter, steadily risen as a result of the education reforms.

Chapter 2

Judging Judges: The Professionalisation of Senatorial Corps

DESPITE the curtailed nature of the 1864 Judicial Reform the transformation of the Senate's institutional culture was fully under way from the late 1860s. A number of factors were at play here – the emergence of the legal profession, greater delineation of ministerial bureaucracy from the judiciary, and ultimately the increased public demand for clear judicial rulings in the disputed areas of authority. Within the Senate itself the judicial practice of the Cassation Departments became the centre to which other Departments, and above all the First (Administrative) Department, gravitated in search of better legal standards of judgement, continuity of judicial practice, compatibility of judicial opinions with public sensibilities, and other related issues. In this chapter, therefore we will explore the extent to which legal professionalisation affected the First Department of the Senate and how it changed the institutional culture and methods of Senatorial adjudication. All data used here are based on the statistical analysis of 83 Senators' biographies, which were either full (*prisutstvuiushchii*) or supernumerary (*neprisutstvuiushchii*) members of the First Department and the First Joint Assembly between 1864 and 1914.¹



Traditionally only a great circumstance of provincial politics, mainly when personal or group interests could not be reconciled with local authorities,

1. I consulted the official Rank Records: *Spisok grazhdanskim chinam pervykh trekh klassov*, St.Petersburg, especially years 1881, 1896, 1897, 1898, 1908, 1914, as well as a number of unofficial collections of biographies: N.A. Murzanov, *Pravitel'stvoiushchii Senat 1711-1911*. *Spisok Senatorov*, St.Petersburg, 1911; P. Semenov, *Biograficheskie ocherki senatorov*, Moscow, 1886; M.L. Levenson, *Pravitelstvoiushchii Senat: kratkii istoricheskii ocherk i biografii senatorov*, St.Petersburg, 1912; *Al'manakh sovremennykh russkikh gosudarstvennykh deiatelei*, St.Petersburg, 1897.

could give rise to an appeal to the Senate. This was a very protracted and costly route of resolving a conflict and often involved prolonged trips to St. Petersburg and neglect of private duties. Yet, most petitioners believed that in the end they would obtain an objective interpretation of law that would finally define their mutual rights and obligations with the authorities. In practice, however, despite this elevated view of Senatorial justice, most petitioners sought their own private channels to influence the outcome of their litigation. This difficult process often started with gathering information about the composition of the respective Department and establishing the political and professional reputation of the participating Senators. In contrast to the official secrecy surrounding Senatorial proceedings, Senators' personal information was widely available to the public, presumably to satisfy the insatiable appetite of the keen market of petitioners. Thus the official Rank Record was published annually and contained vital career information, including Senators' names, ranks and previous posts in the civil service. This source could help petitioners to track down Senators' former colleagues, military associates, co-patrons of philanthropic societies, friends and family, all of whom could render useful services in advising Senators in favour of a particular plaintiff. In addition, petitioners could also use widely available court calendars to approach Senators personally at court functions and public ceremonies which they were obliged to attend.² Finally, if the plaintiffs could not gain access to the inner sanctum of elite society, where Senators circulated by virtue of their rank and orders, they could consult the address books of Senators³ and perhaps support their case by private correspondence. However, as time went on, it became harder and harder for provincial petitioners to rely on the Senators' personal intervention as their sense of obligation to a particular clan increasingly yielded to what they saw as their judicial responsibility before universal and equitable law. The practice of dispensing benevolent verdicts in response to petitioners' private lobbying gradually gave way to more impersonal but also more impartial judicial re-

2. See annual editions of *Pridvornyi kalendar'*, St.Petersburg; *Sankt Peterburgskii Velikosoetskii Ezhegodnik*, St.Petersburg; for a good description of civic privileges and social obligations ensuing from the officials' ranks and orders see H.A. Bennett 'Chiny, Ordena and Officialdom' in eds. W.M. Pintner D.K. Rowney, *Russian Officialdom: the Bureaucratisation of Russian Society from the Seventeenth to the Twentieth Century*, Chapell Hill, 1980, pp. 162-189.
3. *Adresnaia kniga g.g. senatorov, ober-prokurorov, tovarischei ober-prokurorov i chinov kant-seliarii Peroogo Departamenta Pravitel'stviushchego Senata*, St.Petersburg., Annual editions; *Adresnaia knizhka chinov kant-seliarii Peroogo Departamenta Pravitel'stviushchego Senata*, 1907, 1910, 1912, 1915, 1916, St.Petersburg.

view of administrative petitions. Gradually disengaging from the pressures of patronage clans rising from the provinces to the centre, Senators began to strive for objective judgement and strict adherence to the law. The emerging professional integrity and ethics also encouraged Senators to assert greater professional autonomy from the bureaucratic dictates of the St.Petersburg government machinery.

Although the Russian judiciary owed its early professionalisation entirely to the cultural and educational changes initiated by the Autocracy during 1840-1860⁴, Senators, as the supreme agents of Tsarist justice, appear to have taken the law more seriously than did the regime which bestowed this role on them. Whilst the Tsarist government continued to rely on the direct rule and discretionary power of its viceroys in upholding state authority, Senators began to see their mission in the consistent application of laws to administrative disputes between citizens and the state. In so doing, they imparted new qualities to Senatorial petitions practice, gradually shifting the emphasis from hierarchical surveillance (*nadzor*) riddled with subjective judgements and political considerations, to the more objective judicial examination of the rights and liabilities of the parties in administrative conflicts. This deeply contradicted the long-standing Tsarist presumption of the supremacy of administration over justice and signalled the twilight of the ancient power of the patriarchal state. New social realities, shaped by the Emancipation, invoked new attitudes towards the law and emerging citizenship, and raised new conceptions of Senators' duty in upholding Imperial legality.

The pattern of recruitment to the First Department accounts for these ideological changes. Although no specific career route existed for nominations to the Senate, large number of Senators came to the First Department well steeped in the judicial process. Nearly 54 (65%) out of 72 previously worked in other Senate Departments, of which by far the biggest source of recruitment were the Criminal and Civil Cassation Departments, which brought respectively 12 (14.5%) and 8 (9.6%) Senators to the First Department, thus creating a solid core of 20 (24.1%) experienced judges (Table 1.1).⁵ The rich pool of legal expertise in the Cassation Departments was the single

4. Wortman, *The Development*, chapters 1-3.

5. The list of senators appointed from Civil and Criminal Cassation Departments is extensive — from Criminal Cassation Department: A.F. Koni, A.A. Artsimovich, E.Ia. Fuks, F.F. Ivanov, D.A. Kapnist, M.F. Lutse, I.N. Orlov, P.G. Ostrovskii and V.N. Varvarin; from Civil Cassation Department: N.P. Garin, A.G. Gasman, A.A. Knirim, K.O. Mal'kovskii, A.N. Mitskevich, E.K. Pribylskii, N.G. Prints and P.A. Urenev.

greatest factor in the growing judicial culture of the First Department.⁶ Among the most outstanding Senators transferred in this way to the First Department were Senator A.F. Koni, who held a joint appointment as State Procurator of the Criminal Cassation Department and Senator A.A. Knirim, who came from the Civil Cassation Department, where he chaired the Civil Codification Commission. Both names represented an epoch in the development of civil and criminal justice in Russia.

Koni served as a State Prosecutor of the Criminal Cassation Department from 1892 after a meteoric career as a State Prosecutor in Moscow and then St.Petersburg's Regional Judicial Chambers (*Okruzhnaia Sudebnaia Palata*). An internationally renowned jurist, Koni possessed very broad academic interests in criminal justice, as attested by his membership in 148 Russian and foreign Legal Societies and honorary membership of the Imperial Academy. He was also an outstanding practising attorney, whose two-volume *Court Speeches* were probably as widely read throughout Russia as F.M.Dostoevskii's and L.N.Tolstoi's criminal novels, which were originally inspired by Koni's masterful penetration of criminal consciousness.⁷ Koni served as a member of the First Joint Assembly between 1898 and 1900.

-
6. The nomination criteria to the Cassation Departments were set in the Article 208 of the 1864 Judicial Statutes; for the full list of Senators appointed to the Cassation Departments in the period of 1866-1906 see 'K sorokaletiiu deiatel'nosti kassatsionnykh departamentov Pravitel'stvuii-shchego Senata', in *Zhurnal Ministerstva Iustitsii*, May, 1906, p. 22; for the role of Civil Cassation Department in the advancement of progressive reforms see W. Wagner 'The Civil Cassation Department of the Senate as an Instrument of Progressive Reform in Post-Emancipation Russia: The Case of Property and Inheritance Law', in *Slavic Review*, vol. 42, no 1, Spring 1983, pp. 36-60.
 7. A.F. Koni, *Sobranie Sochinenii v 8-mi tomakh*, Moscow, 1967, idem., *Otsy i deti sudebnoi reformy*, Moscow, 1914; idem., *Na zhiznennom puti*, vols. 1-5, Moscow, 1913-1929; idem., *Izbrannoe*, Moscow, 1989; V.I. Smoliarchuk, *A.F.Koni i ego okruzhenie: ocherki*, Moscow, 1990; Mark G. Pomar, *Anatolii Fedorovich Koni: Liberal Jurist as Moralist*, Pittsburg, 1996; also his short biographies in the *Al'manakh sovremennykh russkikh gosudarstvennykh deiatelei*, St.Petersburg, 1897, pp. 278-279; unofficial biography in ed. N.I. Afanasiev, *Sovremenniki. Al'bom biografii*, vols.1-2, St.Petersburg, 1909-1910;

Table 1.1. Senators' Experience in Other Departments of the Senate.

Senate Departments	Number	Percent
Second (Peasant) Dept	16	19.3
Criminal Cassation Dept	12	14.5
Civil Cassation Dept	8	9.6
Fourth Dept	5	6.0
Heraldry Dept	4	4.8
Fifth Dept	3	3.6
Sixth Dept	2	2.4
Third Dept	2	2.4
Moscow and Warsaw Dept	1	1.2
Min Justice Consultation	1	1.2
Total	54	65.0
No Senate Experience	18	21.7
No available data	11	13.3
Total	83	100.0

The name of Senator Knirim was less known to the general public, perhaps, because of the lack of sensation – and even the pessimism – surrounding the work of the Codification Commission of the Civil Code (1882-1902), of which he was vice-chair and then chair. In this capacity, he was a key figure in the reform of family law, central in this period to the emerging identity of civil society. Senator Knirim's exceptional legal skills, persistence and unlimited commitment ensured successful completion of the Commission's monumental task: the new Civil Code project enacted in 1914. Struggling against the threat of fund cutting, government pessimism about the eventual success of the Commission, and sometimes even public suspicion about the effectiveness of the Commission's work, Knirim provided necessary leadership to accomplish the gargantuan task.⁸ He used his personal connections with one of the fathers of the 1864 Judicial Reform, Senator N.I.Stoianovskii, who continuously shielded the Commission from the political storms of St.Petersburg.⁹ To Knirim's credit, it can be said that the task was accomplished on a shoestring budget barely withstanding a comparison with, for example, the German codification of the civil code, which took place at the same time. While the German codification was supported by state funding counting millions of marks, the Russian reform of Civil Code 'enjoyed' meagre tens of thousands of rubles. So it may be said that Knirim's personal

8. See A.A. Knirim's biography in A.I. Lykoshin, 'Pamiati A.A. Knirima', *Zhurnal Ministerstva Iustitsii*, 1905, X, pp. 1-28.

9. N.I. Stoianovskii's contribution discussed in A.F. Koni 'Pamiati N.I. Stoianovskogo', *Pravo*, no 2, 1901, col.: 110-121

leadership truly compensated for the lack of government support. Knirim spent the last two years of his life as a Senator of the First Department.

The careers of these two prominent Senators, who served in both the First and Cassation Departments, suggest that the increasing complexity of administrative practice in the First Department demanded the input of Senators with sophisticated legal skills and formal judicial experience. This tendency is also confirmed by the educational patterns of the First Department Senators, where as many as 39 (47%) Senators had received formal legal training (Table 1.2). Second to law was education in the humanities – 10 (12%) which also points to the importance of literature, philosophy and history in the Senators' background. In contrast, military (7 Senators (8.4%)) and theological (1 Senator (1.2%)) education, which dominated the Senate in the pre-reform years, was clearly declining as the administration of justice moved away from military methods and canon law.¹⁰ However, it is worth noting that despite technological restructuring of the economy rapidly begun in this period, technical education among Senators remained marginal, reflecting the delayed development of administrative expertise in the running of industries. Only two Senators had engineering degrees (or 2.4%) and one Senator had a degree in Finance and Economics. This contrasts sharply to educational pattern of future Soviet administrators, who were predominantly technical experts and engineers.¹¹

Table 1.2. Academic Qualification of the First Department.

Education	Number	Percentages
Law	39	47.8
Humanities	10	12.0
Military	7	8.4
General	4	4.8
Engineering	2	2.4
Theological	1	1.2
Finance and Economic	1	1.2
Total	68	81.9
No available data	15	18.0
Total	83	100.0

So, in general, the Senators' education can be described as civilian, secular and legal, broadly orientated towards an understanding of the role of law in the organisation of society and the advancement of social change. These fea-

10. For relationships between military command and civil administration in this period see W.C. Fuller, *Civil-Military Conflict in Imperial Russia, 1881-1914*, Princeton, 1985.

11. For comparisons of legal education in Tsarist Russia and in the USSR see S. Kucherov, *The Organs of Soviet Administration of Justice*, Leiden, 1970, pp. 251-313.

tures are well supported by the character of the educational institutions that most Senators attended. Again, the list of educational establishments (Table 1.3) shows the overwhelming predominance of civilian over military schooling. Leading educational establishments were St.Petersburg and Moscow Universities, which brought respectively 17 (20.5%) and 12 (14.5%) of the Senators. Together with provincial universities, these contributed to the total of 33 (39.8%) university educated Senators. Both of the leading universities attracted a large number of students and catered to the most able sons of *raznochintsy* for whom they served as a springboard to the top of the civil service ladder. Therefore, their leading role in the educational pattern of the First Department signifies the success of the professional middle strata in making their way into the ranks of the establishment.

Most Senators in this period were educated between the 1860s and 1880s, in the era which began with the liberating impact of the 1863 University Statute.

Table 1.3. Imperial Schools and Universities Attended by Senators.

Names of Establishments	Numbers	Percentages
Civilian		
St Petersburg University	17	20.5
Moscow University	12	14.5
Imperial School of Jurisprudence	12	14.5
Alexander Lyceum	8	9.6
Other Universities	4	4.8
Other Civilian Schools	3	3.6
Total	56	67.5
Military		
General Staff Academy	1	1.2
Corps de Pages	1	1.2
Nicholas Cavalry S/S Guards	1	1.2
Artillery and Engineering	1	1.2
Other Cadet Corps	2	2.4
Military-Judicial Academy	1	1.2
Total	7	8.4
No Available Data	20	24.1
Total	83	100.00

During the twenty year period between 1864 and 1884 universities enjoyed significant autonomy which allowed the appointment of academic staff solely on the basis of intellectual merit. As a result they soon became places of high concentration of academic talent and laid emphasis as much on the development of the students' critical thinking as on thorough knowledge of

courses. The Departments of Law and Humanities began replacing old didactical methods of teaching with new scientific teaching and research methods that encouraged analytical rigour and multifaceted exploration of their subjects. Teaching at the Law Faculties in Moscow and St.Petersburg became increasingly analytical, comparative, and European-oriented – in sharp contrast to the teaching methods of the 1840s and 1850s, when Russian law was studied mainly dogmatically, without historical or sociological context.¹² In the 1860s, such eminent Professors of Law as P.G. Redkin, I.E. Andreevskii, A.D. Gradovskii and later N.M. Korkunov and V.I. Sergeevich at St. Petersburg University gave their students clearer understanding of the law as a powerful instrument of social order and social change, as well as of the complex connections between the letter and the spirit of law.¹³

This connection between law and social change made explicit by university courses tempered the positivistic denial of individuality, emotions, family and historical tradition fashionable among the young generation of students who shared the scholarly discourse. Positivistic consciousness, immortalised by Turgenev's hero Bazarov, was, perhaps, a natural reaction of young professionals against a society traditionally suspicious of intellectual pursuits and only beginning to break through religious proscriptions and medieval obscurantism.¹⁴ Yet, the scientific precision applied to law was a mixed blessing as it emphasised the letter of law at the expense of its social context. In the atmosphere of delays and even partial revocation of reforms during the later years of Alexander II, and the reinstatement of cultural censorship during the reign of Alexander III, many Senators experienced moral dilemma. They felt torn between the professional duty of upholding the law and the humanistic impulse to remedy the injustices inflicted on weaker members of society by outdated laws and an inadequate system of justice.¹⁵

In those difficult years, they could fall back on the inspirational teach-

-
12. A. Kizevetter 'Iz vospominanii vos'midesiatnika', *Golos Minuvshego*, 1926, no 3, pp. 123-152.
 13. See annual editions of *Obozrenie prepodavania na iuridicheskom fakultete Imperatorskogo Sankt-Peterburgskogo universiteta*; also annual editions of *Obozrenie prepodavaniia na iuridichaskom fakul'tete Imperatorskogo Moskovskogo universiteta*, St.Petersburg.
 14. V.V. Leontovich, *Istoriia liberalizma v Rossii*, chapter 2.
 15. On this problem see Wagner, "Ideology, Identity and the Emergence of a Middle Class", in Clowes, Kassow and West, *Between Tsar and People*, pp. 149-163. On the other hand, there were incidents when professors' calls to students to adhere to legality and abstain from anarchy provoked loud disagreement. For example, V.O. Kliuchevskii recalls that B. Chicherin was virtually hissed off the podium while teaching students the virtues of law and order in his lecture on state law on 9 December 1861. See V.O. Kliuchevskii, 'Moskovskii Universitet v pis'makh i zapiskakh', reprint in: *Moskovskii Universitet v vospominaniakh sovremennikov, 1755-1917*, Moscow, 1989, p. 432.

ings of their University professors in the liberal arts and humanities, that had greatly enhanced their social sensitivities as future members of the Tsarist judiciary. Both at St.Petersburg and Moscow University courses in history, literature and philosophy were a strong counterbalance to the blatant radicalism of Bazarov-style nihilists. High attendance at lectures in literature, history, philosophy and the arts was a vivid testimony to the civic and intellectual value for the students of all disciplines, including law. Strong cross-disciplinary ties, maintained by the Departments of Humanities at both universities, encouraged the students' interests in the humanities. M.M. Kovalevskii recalls that the journal *Kriticheskoe Obozrenie* (1879-1880) in Moscow University was a focal point for the close circle of professors of law, history, economics, statistics and literature.¹⁶ This circle provided a forum for intellectual exchange between such diverse scholars as the historians S.M. Solov'ev, N.I. Kareev, V.O. Kliuchevskii and I.V. Tsvetaev, the philosopher M.M. Troitskii, the philologists F.E. Korsh and A. Veselovskii, legal scholars V.F. Miller and S.A. Muromtsev. They were not simply the finest intellectuals of the time, but also a readily available source of political views, policy ideas and civic consciousness for their students and contemporaries.

History played a prominent role in the education of future Senators at both St.Petersburg and Moscow Universities. Lectures on the Russian peasantry, for instance, given by Professor V.I.Semevskii, certainly struck a deep chord among the many graduates of St.Petersburg University. Despite the fact that the Ministry of Education never lifted its watchful eye, his lectures were always allocated the most spacious auditoriums in the University.¹⁷ Similarly, A.Kizevetter recalls overcrowded lecture halls at Moscow University, where the eminent Russian historian V.O.Kliuchevskii taught in the 1880s. His multi-layered exposition of the institutional, social and economic history of Russia, which gave no simple solutions to the controversies of the past, entered deeply into the psyche of his students. Delivered with a critical wit and imaginative metaphors, these lecture courses were undoubtedly a fine school of social thought for future statesmen and judges.¹⁸

A significant percentage of Senators were educated in aristocratic institutions. Among these the Imperial School of Jurisprudence played a particu-

16. However, M.M. Kovalevskii notes that it was somewhat more characteristic of Moscow University than St.Petersburg. See *idem.*, 'Moskovskii Universitet v kontse 70-kh – nachale 80-kh godov proshlogo veka. Lichnye vospominaniia,' reprint in *Moskovskii universitet v vospominaniakh*, pp. 325.

17. V.I. Semevskii, *Krestiane pri Ekaterine II*, St.Petersburg, 1901; *idem.*, *Krestianskii vopros v XVIII i pervoi polovine XIX veka*, St.Petersburg, 1899.

18. Kizevetter, 'Iz vospominanii', pp. 130-135.

larly prominent role — 12 (14.5%) and the Alexander Lyceum — 8 (9.6%), a total of 20 (24.1%) of Senators. The study by Dominic Lieven¹⁹ has shown that although these schools could not compete academically with universities, their idealistic aura of enlightenment provided, on the one hand, a refuge from the gloom of Dmitrii Tolstoy's classical gymnasia, and, on the other, a shield against the unruly radicalism of the universities. Although the intellectual demands of university courses could not have been imposed on the students of younger age, they were still taught here in a simplified form, giving all the necessary foundations for the future statesmen. Both schools inculcated considerable respect for scholarship, literature and the arts, as well as emotional sensitivity and social awareness. These qualities stood in stark contrast to the conscious anti-intellectualism and brutality of military education in the aristocratic Corps de Pages. Consequently the Tsarist administration benefited from the pool of well-trained, socially conscious and loyal civil servants which the Lycee and the School of Jurisprudence turned out steadily for a century.

The graduates of the School of Jurisprudence and the Lycee differed sharply from those who attended Imperial Universities. They were raised with an acute sense of elitism that was embodied in their manners, knowledge of French and their uniforms with tricorne hats and swords. Their ideas of *noblesse oblige* associated with patriotic unselfishness, personal integrity and loyalty to the Imperial dynasty saturated their distinctly aristocratic *esprit de corps*. The outward expression of their corporate spirit was a lifelong old-boy solidarity fostered by their continual participation in the schools' festivities, such as the Lyceum's annual graduation date of the 19th of October. Many of them dedicated their poetry to this date in emulation of Pushkin's celebrated ode. Even though on occasion this group solidarity may have taken on somewhat oppressive forms, overall the student camaraderie was maintained in the best traditions of the Lyceum's official 'saints' Alexander Pushkin and Prince Gorchakov.²⁰ Old boys from both schools firmly penetrated the upper echelons of the State Council, the Senate and the ministries.

Indeed the old school tie was a powerful factor in their later careers. Not only did Lyceens and *Pravovedy* (students of the School of Jurisprudence)

19. Lieven, *Russia's Rulers*, pp. 108-116; G. Syuzorn, *Ko dnu LXXV iubileia Imperatorskogo Uchilishcha Pravovedenia 1835-1910. Istoricheskii Ocherk*, St.Petersburg, 1910, pp. 168-183; also on staff changes at Alexander Lycee see *Pamiatnaia Knizhka Imperatorskogo Aleksandrovskego Litseia*, St.Petersburg, 1899, pp. 39-41; for personal characteristics of the tutors see *ibid.*, pp. 321-326; also see V.L. Meshcherskii, *Moi Vospominania*, Part 1, 1850-1865, St.Petersburg, 1897, pp. 45-57.

20. Lieven, *Russia's Rulers*, p. 115.

won promotion over other university-educated candidates, but they also frequently decided important policy matters on an informal old school-tie basis. It was often possible to check a spurt of individual caprice in high offices by using school solidarity. For instance, Koni recollects that in the 1880s Minister of Justice N.A. Manasein used to reproach the Procurator of the Holy Synod K.P. Pobedonostsev on questions of religious tolerance as an old boy from the School of Law. Not without bitterness, Koni comments that when N.V. Muraviev replaced Manasein, all possibilities of restraining Pobedonostsev from his bursts of authoritarian zeal were lost, as the new Minister was not a *Pravoved* old boy himself.²¹

Despite their similarity, the Lycee and the School of Jurisprudence had their own distinct features, which coexisted somewhat uneasily throughout the nineteenth century. While the School's graduates were well geared towards service in the judicial organs of the Empire, the Lycee held on to its generalist concept of education, successfully resisting attempts to turn it into a preparatory class for the Ministry of the Interior, on the model of the School of Jurisprudence, whose graduates routinely staffed the Ministry of Justice. Contemporaries criticised both approaches: the *Pravovedys'* narrow technical training in jurisprudence, their lack of broad political vision and humanistic interests, and the Lyceens' insufficient training in administrative skills, which caused them bewilderment and confusion on entering government chancelleries. Still, the skills and social ideals of the *Pravovedy* and the Lyceens put them on a par with their university-educated colleagues. Moreover, their aristocratic connections often helped to protect the professional judiciary against the continuing attacks of the old political lobby which clung on to the authoritarian traditions of justice and strove to revoke the new practice of judicial autonomy. So gradually, education in law and humanities was taking the lead in Senators' background as the complexity of administrative litigation in the First Department was becoming unintelligible without special preparation. Senators' intellectual abilities, technical qualifications (primarily legal), service ethos and loyalty to the monarchy, together with personal resilience and good connections, ranked high as primary ingredients of their future careers. Clearly the widely held belief of Russian officials that lawyers and judges could not be entrusted with decisions over the 'sacred' matters of administrative policy was gradually being rebuffed.

Another widely accepted stereotype about Senatorial service was that it was a sinecure, where politically undesirable or personally unwanted offi-

21. Kliuchevskii, 'Moskovskii Universitet v pismakh i zapiskakh', p. 269.

cials were sent off to enjoy prestige of rank, but no real political power. In other words, appointment to the Senate was sometimes seen as synonymous to 'political death'.²² Presumably, this would mean that the Senate was either a sort of 'clearing house' for the transfer of personnel between ministries and departments, or a dumping ground for retirees. The former would signify a high turnover in the First Department, while the latter perhaps would be revealed in a stagnant composition of the Senatorial corps.

However the assessment of Senators' length of service presents a different picture (Table 1.4). Clearly, the Senate suffered neither from high turnover nor from overly stagnant membership. The core of Senators served between 4 and 10 years, amounting to a total of 46 (32 Senators served between 4 and 7 years, and 14 Senators between 8 and 10 years). There was also a substantial pool of Senators who served as long as 10 to 16 years (13 Senators). So 59 of 83 Senators served long enough to accumulate the knowledge and skills that Senatorial justice required and to consider Senatorial service their profession. This dispels the amateur reputation of Senatorial practice and conveys an image of stability and continuity in judicial culture.

Table 1.4. Length of Service in the First Department

Number of Years	Numbers	Percentages
1 year	10	12.0
1 to 3 years	14	16.9
4 to 7 years	32	38.6
8 to 10 years	14	16.9
10 to 16 years	13	15.7
Total	83	100.0

Still it can be argued that an element of short-termism had a role to play in the First Department since about 24 (28.9%) Senators served only up to three years (10 served only one year and 14 (16.9%) served up to three years). Indeed political 'high-fliers' used the Senate as a brief stop-over on the way to the State Council or other elite departments such as the Foreign Ministry or His Imperial Majesty's Own Chancellery. This category could be most likely found among the younger Senators (in their 40s) as shown in Table 1.5 (6 of 8 left in the first seven years).

Typical in this respect was the career of P.N.Durnovo, whose appointment was a very telling example of the disposal of embarrassing government officials to the Senate. V.I.Gurko recounts that

22. Lieven, *Russia's Rulers*, pp. 137-139.

Table 1.5. Senators' Age by Length of Service in the First Department.

Age/Year	1 yr	1-3 yr	4-7 yr	8-10 yr	10-16 yr	Total/%
40s	-	1	5	1	1	8 (9.6)
50s	3	3	5	6	5	22(26.5)
60s	3	6	12	4	6	31(37.3)
70s	3	2	8	3	-	16(19.3)
Total	9	12	30	14	12	77(92.7)
No available data	1	2	3	6	0	12 (7.3)
Total	10	14	33	14	12	83(100.0)
Per cent	12.0	16.9	39.8	16.9	14.5	100.0

Durnovo, serving as Director of the Police Department, used his position to place a secret police agent as a domestic servant of the Brazilian Charge d'Affaires, to establish his link with Madame Dolivo-Dobrovolsky, an intimate friend of Durnovo. When the unsuspecting Brazilian diplomat reported a burglary to the St.Petersburg police – an eternal rival of the MVD Police Department – the incident was immediately investigated and Durnovo was relieved of his post as Director of the Police Department and appointed to the Senate, much to the indignation of the members of that body.

But as time went on – comments Gurko – Durnovo's outstanding talents were made evident in the Senate and Sipiagin [Minister of the Interior – N.A.] recalled him to administrative work by selecting him as his assistant and again making him director of the Police Department.²³

Another factor of short-termism was the advanced age of Senators. Those who were appointed to the Senate at the age of seventy or over tended to retire or indeed die after a short period of service – 12 (75%) out of the total of 16 Senators in their seventies left the Senate in the first seven years. Yet truly 'geriatric' cases were not so numerous (only 5 Senators left in the first three years according to Table 1.4). So in practice their contribution to the working of the First Department was negligible, which dispels its image as a sort of retirement home.

The core of the First Department were Senators in their fifties and sixties. Columns 3,4 and 5 of table 1.5 represent those who served between four and sixteen years – a total of 38 (45.8%) Senators. This was the pool of Senators, whose professional skills and personal qualities contributed to the formation, continuity and stability of Senatorial practice. Their age was also an

23. V.I Gurko, *Features and Figures of the Past: Government and Opinion in the Reign of Nicholas II*, New York, 1981, p. 336.

indication of the energy that they readily threw into their work to defend their own prospects as Senate judges and to secure the future of the Russian judiciary.

A good example of this is the career of Senator G.A.Evreinov, who rose from the lowest clerical ranks in the Senate to the post of Senator in the First Department, from where he was poised for a promising political future. Evreinov, a product of the Emancipation era, eagerly absorbed the liberalism of the time, which both gained him respect and caused political friction with officialdom in his later years. From the early stages of his career, when he was a member of Senator Kapger's revision team for Kaluga and Vladimir provinces (1861-63), he acquired familiarity with peasant economic problems and became convinced that the solution lay in granting peasants civil equality and rights of land ownership. Later, while serving as a Regional Procurator in the Odessa Judicial Chamber, Evreinov expressed the opinion that the revolutionary movement was caused by the separation of the political police (gendarmierie) from the ordinary police. A.F.Koni notes in his memoirs that among the many regional 'wolf-hounds' prosecutors who made their careers through the political trials of those days Evreinov's integrity and humanity visibly stood out.²⁴

The year 1879 was a high point in his career. As a trusted official, Evreinov was invited to an audience with the Minister of the Interior, M.T.Loris-Melikov, and the Minister of Justice, D.N.Nabokov, for a confidential discussion of his views on the principles of popular representation in Russia.²⁵ Following the discussion Loris-Melikov acquainted him with the secret memorandum prepared by Grand Duke Konstantin Nikolaevich, which became the basis of the constitutional Manifesto not signed by Alexander II on the fatal day of his assassination. In 1880 Evreinov was appointed State Procurator of the First Department and remained in this position till 1889, during which time the First Department enjoyed an impeccable reputation. However, his career was rudely interrupted by the change of political direction in the early years of Alexander III's reign. As a result of increasing right-wing assertiveness against the progressive judiciary he was transferred from the Senate to the Ministry of Transportation as an Aide to the mediocre and corrupt Minis-

24. A.F. Koni, 'Vospominaniia o dele Very Zasulich', in idem, *Sobranie sochinenni*, vol. 2, pp. 37-38.

25. For a taste of his views see G.A. Evreinov, *Reforma vyshchikh gosudarstvennykh uchrezhdenii v Rossii i narodnoe predstavitel'stvo*, St.Petersburg, 1881; idem, *Proshloe i nastoiashchee znachenie russkogo dvorianstva*, St.Petersburg, 1898; idem., *Krest'ianskii vopros v ego sovremennoi postanovke*, St.Petersburg, 1904; idem, *Natsional'nyi voprosy na okrainakh Rossii*, St.Petersburg, 1908.

ter K. von Giubbenett. Still, his brief service in the Ministry was marked by a bold petition to Alexander III requesting him to expedite the building of the Trans-Siberian Railway, deemed 'premature' by ministerial circles of those days. The Emperor's approval of Evreinov's petition was a major step forward for getting work started at the railway. His vision and courage brought talk of his prospective appointment as Minister of Transportation. But a minor conflict with the inspector of railways blocked his promotion. When the railways became the key area of economic development, it took the much shrewder character of Sergei Witte to emerge as a premier Russian politician.²⁶

After this incident Evreinov was transferred back to the Senate as a supernumerary Senator at the First Joint Assembly, where he served for the next fifteen years. There is no doubt that Evreinov possessed the personal qualities necessary for a Senator – independence, breadth of political views, dedication to service, and immense capacity for hard work. At the same time his liberal views and forthright manner precluded a high profile career in either the Senate or the administration.

A different example of senatorial appointment as a form of bureaucratic conflict-resolution was the career of Senator D.B.Neidgardt. After a number of years of service as vice-governor of Kaluga and governor of Plotsk, he was appointed the Odessa city governor. His work won Nicholas II's grateful acknowledgment after the Imperial visit there in 1904. However, shortly after that, a senatorial revision team arrived to inspect the Odessa governorship and Neidgardt was removed from office until the completion of the inquiry. Although the Senate subsequently rejected the inquiry's incriminating conclusions, Neidgardt was not reinstated in Odessa, but 'promoted' to the First Department of the Senate.²⁷ As a graduate of the supremely elitist Corps de Pages and a hereditary nobleman, Neidgardt belonged to the summit of the Russian nobility and – despite the intrigue – probably could not have been demoted to a lower position or a less prestigious location. In this case the Senate was a safe haven to which high officials could be appointed to give them the privilege of rank and status compensating for the loss of face experienced elsewhere in government departments or provincial administration.

Like Neidgardt a large number of Senators were propelled to a Senatorial career from administrative posts in central and provincial organs. As ta-

26. For more details see Levenson, *Pravitel'stviuushchii Senat*, pp. 32-33.

27. *Ibid.*, pp. 67-68.

ble 1.6 shows, the most important gateway to a senatorial career was service in the Ministry of Justice – 11 (13.3%), (especially in its Consultation with the Senate), followed by the Ministry of the Interior, 5 (6%), (especially Obshchii Otdel, Zemskii Otdel and Department of Police); Ministry of Finance, 5 (6%), (especially the Auditing Office; and the State Council, 5 (6%)), especially the Chancellery and Department of Laws – a total of 26 (31.3%).

Table 1.6. Previous Work Experience in Central Government.

Departments and Ministries	Numbers	Percent
Ministry of Justice	11	13.3
Ministry of the Interior	5	6.0
Ministry of Finance	5	6.0
State Council/Dept Laws	5	6.0
Committee of Ministers/Chancellery	3	3.6
Police Department	3	3.6
Ministry of Foreign Affairs	2	2.4
Ministry of Education	2	2.4
Ministry of Transport	2	2.4
State Controller Office	2	2.4
Ministry of Crown Lands	1	1.2
Ministry of Trade and Industry	1	1.2
Naval Ministry	1	1.2
State Chancellery	1	1.2
Total	44	53.0
No experience in central government	31	37.3
No available data	8	9.6
Total	83	100.0

The pattern of promotion from these ministries and departments to the Senate varied – it is almost impossible to make broad generalisations. However, it is now well established that the Ministry of Justice exceeded other departments in matching rigorously the background and qualifications of its officials with their level of responsibilities. So it may be safely assumed that most of the Senators from the Ministry of Justice possessed a legal education. Similarly the State Council's Department of Laws, the Chancellery of the Committee of Ministers, the Police Department, the Naval Ministry and the State Controller's office were all strongholds of the legal profession. So even if Senators had not previously worked in a judicial capacity they were all well equipped with positive knowledge of the Imperial law. On the other hand, the careers of officials in the Ministries of the Interior, Education, Transport and Crown Lands, were less legally professionalised and more susceptible to political pressures in this period. Their officials attached greater value to ideological convictions and accepted more readily personal

patronage in lieu of the professional qualifications of officials. Dominic Lieven recounts that the primary quality of von Pleve, the Minister of the Interior, was his ability to make use of the 'evasiveness of anyone with pretensions to a service career in St.Petersburg', making him in the words of Polovtsov, St Petersburg's unparalleled 'smoothy'.²⁸

Those Senators, who had spent most of their careers in Tsarist administration, naturally carried the imprint of its culture to the Senate. Undoubtedly they brought valuable administrative experience of various branches of government to the First Department, although they were certainly less schooled in judicial methods than their counterparts from the Cassation Departments. In their previous administrative capacity, they were used to giving practical rather than formal legal judgements as a part of the hierarchical enforcement of the legal order, and they rarely understood the nature of judicial discourse. However, as they became more closely acquainted with prominent jurists among their Senate colleagues, they were able to master the legal methodology and catch up with new Senatorial practices. Many of them also came to share the ideals and civic values of the professional judiciary, which considered itself the most appropriate arbiter of administrative disputes.

However, a deep ideological chasm between the Tsarist administration and the judiciary perpetuated the differences in professional orientation between 'Senator-lawyers' and 'Senator-administrators'. While the former felt accountable only to universal principles of law, the latter continued to interpret the law to suit the interests of 'real' authority. In this situation handing down of authoritative Senate rulings often required strength of conviction and even civic courage on the part of the Senators and State Prosecutors, who often faced the almost irrational zeal of the ministries. Sometimes Senatorial rulings based on legal reasoning would be taken as an invitation for administrative opposition to judge-made law. Thus, Koni describes an incident which was a typical example of clashes between Senate rulings and administrative policies. The Civil Cassation Department passed a ruling reaffirming the classic principle of acquisition of land by ascription (length of tenure – *davnost'*). On submission of the case to the State Council the ruling won the support of the overwhelming majority, causing grave dissatisfaction to the Director of the Department of Laws, Count Pahlen, who found himself in a minority of three. In revenge, he decided to send a circular countermanding

28. Lieven, *Russia's Rulers*, pp. 121-155, 143; A.A. Polovtsov, *Dnevnik Gosudarstvennogo Sekretaria Polovtsova*, (ed. P.A. Zaionchkovskii), Moscow, 1966.

the ruling to all of the five Regional Judicial Chambers in the country. No amount of persuasion on the part of Koni as the vice-director of the Department of Laws, who enjoyed a reputation as its 'judicial conscience', could change his mind.²⁹

Finally, a total of 45 (54.2%) Senators had previously served in provincial offices, of which 31 (37.3%) Senators (see Table 1.6) had no previous experience in central government offices and were recruited directly from provincial posts to the First Department. Certainly, provincial appointees to the Senate brought a distinct ethos to their Senatorial careers which differed sharply from that of the central government. However, despite their traditionally greater reliance on personal influence and patronage compared to the officials of the central bureaucracy, this was not a typical set of provincial bureaucrats.³⁰ Of the 45 Senators as Table 1.7 demonstrates, 30 were professional jurists – 16 (19.3%) served as Regional State Prosecutors, 13 (15.7%) as Chairman of the Judicial Chambers, and 1 (1.2%) as Chairman of the Court Martial.

Table 1.7. Senators' Service Experience in Provincial Offices.

Post	Number	Percent
Judicial		
Regional State Prosecutor	16	19.3
Chairman of Judicial Chamber	13	15.7
Chairman of Court Martial	1	1.2
Non-Judicial		
Provincial Governor	13	15.7
Chairman of Fiscal Chamber	1	1.2
District School Inspectorate	1	1.2
Total	45	54.2
No experience in the provin	21	25.2
No available data	17	20.4
Total	83	100.0

So even among provincial nominees, professional lawyers and judges claimed much greater numbers of the Senatorial appointments, than did provincial administrators. This of course does not mean that all legal personnel shared the same views of law and administrative authority. While Chairmen of Judicial Chambers enjoyed a pro-liberal reputation, many State Prosecutors continued to treat justice as yet another guise of the direct au-

29. A.F. Koni, *Sobranie Sochinenii*, vol. 2, pp. 256-258.

30. As John Armstrong showed in his study of European administrative elites, there were major distinctions between the centrally 'grown' bureaucracy and that in the provinces. See J. Armstrong, *The European Administrative Elite*, Princeton, 1973, pp. 10, 73-103.

thority of the state.³¹ Nonetheless, these numbers show the government's awareness of the need for legal expertise in the First (Administrative) Department and a certain commitment to quality of legal judgement in the Senate.

Among the non-judicial provincial posts the office of provincial governor was far ahead of other agencies, such as the Fiscal Chambers or District School Inspectorates, which each produced only one (1.2%) Senator. Of course part of the reason was that few people from these agencies could reach the required third rank for Senatorial appointment. So almost invariably provincial governors supplied the candidates of the first three rank. As many as 13 (15.7%) Senators had previously held the office of provincial governor.

However, Richard Robbins' study of Russian provincial governors showed that although as 'viceroys of the Tsar' they were above all people with a certain political agenda, which they frequently realised through charismatic personalities, by the end of the century they were increasingly required to possess professional skills and concrete 'field' experience in provincial administration. Indeed, as the biographies of the Senators reveal, prior to their appointment to the office of provincial governor many of them worked in such demanding roles as permanent members (*nepremennyi chlen*) of provincial standing committees (e.g. on peasant affairs), justices of the peace (*mirovoi sud'ia*), chairmen of JP congresses, as well as special envoys on various urgent affairs (such as those on peasants affairs in the Polish provinces in 1863) and even as land captains (*zemskii nachal'nik*). So in the latter part of the nineteenth century the older Senators with a more generalist background in chancellery work were replaced with professional administrators.³² Their experience was as varied as the provinces in which they served in and the tasks with which they were confronted. Their careers can roughly be described as either 'developmental' – focused on economic development of provinces, or 'protectionist' (*okhranitelnyi*) – where they served primarily to enforce law and order.

An example of a 'governor-developer' is the career of Senator A.S.Dembovetskoi, who served as governor of Mogilev for twenty years

31. See recent study of public prosecutors in late Imperial Russia by A.G. Zviagintsev, *Pod sen'iu russkogo orla: prokurory vtoraiia polovina XIX-nachalo XX v.*, Moscow, 1996; idem., *V epokhu potriaseniia i reform: rossiiskie prokurory: 1906-1917*, Moscow 1996; See briefly biography of Rovinskii as Moscow provincial procurator in A.F.Koni 'Rovinskii' in idem., *Za poslednie gody*, St.Petersburg., 1896 pp. 261-263.

32. Richard G.Robbins, *The Tsar's Viceroys: the Provincial Governors in the Last Years of Empire*, London, 1987, ch. 2.

(1872-1892).³³ During this period, he turned the province from a hopelessly indebted and poverty-stricken region into a prosperous one. His policies of soil improvement, horse breeding, promotion of small credit and other measures greatly assisted peasant agriculture. As a result the province's grain reserves rose from zero to 420,000 quarters of grain. This made it possible to reduce the fiscal debt of the province from 4.6 m rubles to 150,000 rubles and food provision debt from 1.4 m to 25,000 rubles. At the same time local government capital rose to 438,000 rubles making it possible to begin the development of basic rural services. Under Dembovetskoi the local administration built a number of rural hospitals and expanded the network of doctors, opened up two medical schools, one for male paramedics (*feldsher*) and one for nurses with 100 and 50 students respectively. Numerous schools were built during his tenure: 120 primary (*narodnye*) schools, 7 craft (*remeslennye*) schools and 1400 parish church and literacy schools. All these efforts undoubtedly earned him a well-deserved appointment to the First Department in 1894.

In some sense, an opposite example was set by Senator N.D. Golitsyn as governor of Tver', a province known for its highly vocal and active zemstvo organisation. Golitsyn was among the first governors to combat the growing budgets of provincial zemstvos in the 1890s.³⁴ This policy was affected by a conservative reassessment of zemstvo fiscal foundations, whose strength was now perceived as an underpinning of claims for greater political autonomy. No longer confident in noble self-interest in regulating zemstvo taxation, the government began preparing measures against 'wasteful' zemstvo finances. However, the investigations of the Kakhanov Commission (1880-1885) showed that the burden of zemstvo tax varied greatly across districts and provinces and recommended revenue redistribution at the local and national zemstvo levels. Following these recommendations the work of valuation committees began in 1893 to establish property values according to standard criteria. However by 1899 these efforts were no longer relied upon as the conservative pressure to cap zemstvos' budgets became increasingly urgent. The law of 12 January 1900 limited the annual growth of zemstvos' budgets to 3% thus taking away a significant part of the zemstvos' autonomy in this area. From then on the zemstvos had to apply to the ministries and the State

33. For Dembovetskoi's biography see *Almanakh sovremennykh russkikh gosudarstvennykh deiatelei*, St. Petersburg, 1897, pp. 252-254; for description of the Mogilev province see *Opisanie Mogilevskoi gubernii 1882-1884*, kniga 1; *Pamiatnaia Kniga Mogilevskoi gubernii*, Mogilev, 1893.

34. For Golitsyn's biography see Levenson, *Pravitel'stviushchii Senat*, pp. 23-24.

Council if the projected revenue was higher than the target expenditure. Veselovskii's study of the effects of this law on zemstvo incomes and expenditure showed that it did nothing to eliminate the arbitrariness of local levies and regional discrepancies between zemstvo services. He concluded that if this law had been applied from 1868 the total zemstvo revenue would have reached only 74-75 million rubles instead of the 89 million achieved in 1901.³⁵ So even by the standards of 1868 zemstvo tax legislation this policy was deeply conservative. Therefore although the anti-zemstvo actions of governors like Golitsyn enjoyed some popular support, in the long run this policy ran against the interests of local economic development and perpetuated the uneven development of provincial infrastructure.

Another form of distinction that some Senators earned as governors was their contribution to a vigorous campaign of 'liquidation' of the revolutionary disorders in the provinces in 1905. The career of A.A. Rimskii-Korsakov is a good example of this.³⁶ After a number of years of service as a member of Regional Judicial Chambers (Vilna, Perm, Warsaw, Kiev and St.Petersburg) he was appointed as Vitebsk provincial marshal of nobility (1903) and in 1905 – at the peak of the revolution – as Iaroslavl' provincial governor. He carried out a harshly repressive policy against revolutionaries, which earned him an unparalleled reputation and the gratitude of the Iaroslavl' nobility. On his departure from Iaroslavl' in 1909 when he was appointed to the Senate First Department, the Iaroslavl nobility awarded him honorary citizenship of the town and presented him with a gift of land in the province to keep his ties with Iaroslavl' society.

From these three mini-portraits of former governors one can draw a few key characteristics of Senators promoted from provincial government – thorough knowledge of provincial society from the summit of provincial government, dedication to upholding law and order in the wake of revolution, good economic acumen and deep concern with the welfare of the local population, and, last but not least, the ability to organise and lead diverse groups of provincial officials. However in this mixture of officials there were plenty of conservative elements who felt uneasy at the growth of pluralism in society and exercised their authority to contain both liberal and revolutionary movements.

However, a small group of Senators distinguished themselves as enlightened bureaucrats working, for example, in provincial education. For

35. Veselovskii, *Istoriia zemstva za sorok let*, vols. 1-4, St.Petersburg, 1914, vol. 1, p. 94.

36. For details of Rimskii-Korsakov's biography see Levenson, *Pravitel'stviuushchii Senat*, p. 94.

instance Senator P.A.Kapnist (1840-1904) worked as District Curator (Popechitel) of the Moscow School Region. Part of his duty was to keep an eye on Moscow University professors. Contrary to popular expectations of such an office, as M.M.Kovalevskii recollects in his memoirs, Kapnist's integrity played an important role in shielding him from the persecution campaign of 1887. Largely due to Kapnist's efforts it came to an end, although even his intervention could not save Kovalevskii's tenure at Moscow University.³⁷

Even more limited than in provincial administration was the Senators' experience in elective posts – either in zemstvos, municipalities, or in noble self-government. As table 1.8 shows, only 2 (2.4%) were elected zemstvo deputies, 2 (2.4%) as provincial or district zemstvo board chairs, and slightly more – 3 (3.6%) – as marshals of nobility. Again, as Dominic Lieven commented on a similar situation in his study of the State Council, this was largely due to the rank (chin) system, which prevented entry of elected officials into the service system.³⁸ Taken in the European perspective, this situation is strikingly different from that in England, for instance, where attaining an elective post in local government (e.g. Justices of the Peace) was often a direct route to Parliament and Whitehall. Nonetheless, such limited experience of Senators in elective government (67.5 percent held no elective offices at all) stands in sharp contrast to the generally favourable Senate rulings in zemstvo and municipal cases, and is a testimony to the Senators' impartiality and adherence to law.³⁹

37. M.M. Kovalevskii, 'Moskovskii Universitet v kontse 70-kh i nachale 80-kh godov proshlogo veka. Lichnye vospominania' (reprint) in *Moskovskii universitet v vospominaniakh*, pp. 503-504.

38. Lieven, *Russia's Rulers*, p. 128.

39. According to Thomas Fallows' figures zemstvo cases received favourable judgements in more than 55% of the cases in the period of 1890-1904, see T. Fallows 'The Zemstvo and the Bureaucracy' in eds. T.Emmons and W.Vucinich, *The Zemstvo in Russia: an Experiment in Local Self-Government*, Cambridge, 1982, pp. 177-243.

Table 1.8 Provincial Elective Offices Held by Senators.

Offices	Numbers	Percent
Marshal of Nobility	3	3.6
Provincial Zemstvo Board	2	2.4
District Zemstvo Board	2	2.4
Zemstvo Deputy	2	2.4
Total	9	10.8
No elective posts held	56	67.5
No available data	18	21.7
Total	83	100.0

One notable exception was the career of Senator Count Alexander Alekseevich Bobrinskii, an eminent leader of the Russian nobility after 1905.⁴⁰ He began his career as the Marshal of the St.Petersburg district nobility in 1875 at the age of 33, and the Marshal of St.Petersburg provincial nobility in 1878 and was continuously re-elected for the next twenty years. From 1876 until 1893 he also chaired St.Petersburg's provincial zemstvo assemblies. In the period of 1894-1896 he was the President of the Free Economic Society, and from 1896 he was appointed Senator of the First Department. In 1906 he became the Chairman of the Permanent Council of the United Nobility and Russia's uncontested leader of conservative gentry politics. In the Third Duma he became an undisputed leader of the right-wing fraction. The Rights were a peculiar group of politician, who held coherent views, but did not commit themselves to any of the formally constituted parties. As Robert Edelman has noted, their main characteristic was a striking similarity to the independently-minded English country squires of the late eighteenth century who aligned their politics not with political factions in the House or administration, but with the 'free choice' of country gentlemen. Similarly their Russian counterparts of the early twentieth century were politicians of 'sense and sensibility' amidst the boiling waters of revolution and reaction. More than anything else, the main pillars of their political philosophy were adherence to tradition, national identity and the historical continuity of the Russian state.⁴¹ Bobrinskii's scholarly interests were a manifest expression of

40. See a short biography of A.A. Bobrinskii in *Almanakh sovremennykh*, p. 887 and in Levenson, *Pravitelstvennyi Senat*, pp. 137-138; on the problem of aristocracy in Russian politics see D. Lieven, *The Aristocracy in Europe 1815-1914*, New York, 1992 and Arno Mayer, *The Persistence of the Old Regime: Europe to the Great War*, New York, 1981;

41. For the role of the Right-wing deputies in the Third Duma see N. Edelman, *Gentry Politics on the Eve of the Russian Revolution*, New Brunswick, 1980, pp. 33-43; on the nature of gentry politics in this period see R. Manning, *The Crises of the Old Order in Russia: Gentry and Government*, Princeton, 1982; G. Hosking and R. Manning 'What Was the United Nobility?', ed. L. Haimson, *The Politics of Rural Russia, 1905-1914*, Bloomington, 1979, pp. 142-183.

these political and philosophical values – his classic scholarly work on the geneology of the Russian nobility *Dvorianskie rody vnesennye v obshchii gerbovnik Vserossiiskoi Imperii* published in St.Petersburg in 1890, up to this day continues to be an invaluable reference source. Such ‘apolitical’ politics were certainly the right standing for a Senator, whose judicial independence was not only his institutional right but also his moral duty.

Yet at the opposite end of the political spectrum stands the Senator A.A. Rimskii-Korsakov, whom we already met and who subsequently (when a member of the State Council) became one of the leaders of the notorious Union of the Russian People. In January 1917 in a letter addressed to the Minister of the Interior he outlined a series of repressive measures against progressive *obshchestvennost'* including the strengthening of the right-wing majority of the State Council, convocation of the nobility dominated Duma, military restoration of ‘law and order’ in the provinces, strengthening of the extraordinary powers of local administration, prosecution of the liberal press, etc.⁴²

These are two examples of Senators’ direct involvement in the politics of the day, which they considered an integral part of their privileged position in the ruling elite. However, more common for Senators was involvement in ‘back-stage’ politics, using their highly-placed associates to promote or block important policy decisions and the careers of key officials. Thus, V.I. Gurko recounts how a close-knit circle of Goremykin’s cronies helped to bring down Witte’s Special Conference on Agriculture. They acted through Senator V.F. Trepov, a good friend of Goremykin’s, who was a department director in the Ministry of the Interior during Goremykin’s Ministry. This enabled the circle to approach his brother D.F. Trepov, who served as a Governor-General of St. Petersburg in 1905, and who helped them to win the Tsar’s confidence.

V.F.Trepov... was little better educated than his brother, but he was a man of innate common sense. In addition he had an acute business sense, a strong will and an amazing persistence of purpose. His conservative and monarchist sympathies were as strong as those of his brother; yet to him the monarchy was not an end in itself but a means of developing the welfare of the country. He realised also that it was impossible to preserve the Autocratic regime if the basis upon which it was founded was undermined. This basis in his opinion was the class structure of society... Consequently, when Witte vociferously criticised the order of things in the Empire and proclaimed the necessity of equalising the peas-

42. On A.A. Rimskii-Korsakov’s involvement in Black Hundreds see ‘Programma ‘Souza Russkogo Naroda’ pered Fevral’skoi Revoliutsiei’ *Krasnyi Arkhiv*, 1927, 1 (20) pp. 242-244; including a letter of A.A. Rimskii-Korsakov.

ants with other [landowning — N.A.] classes, V.F.Trepov joined forces with Goremykin to break Witte, and, if possible, to take the solution of the peasant problem into his own hands.⁴³

Later on, when Witte was Chairman of the Council of Ministers and D.F. Trepov was Palace Commandant, the latter influenced the Tsar against Witte. The culmination of this anti-Witte campaign came in the spring of 1906 when Witte was dismissed as Chairman of the Council of Ministers and Goremykin was appointed his successor. So, as we can see, for some Senators their judicial position was no impediment to back-stage court intrigues, which were considered part and parcel of the way of life of the ruling elite.

Of course, the 'political correctness' of the day was never completely irrelevant to Senators' judgements and occasionally special Senate Boards were hand-picked to decide individual cases. One of them was that of Gurko-Lidval, which was brought by agricultural and merchant lobbyists who felt threatened by the influx of low-priced grain targeted at famine-stricken areas. Gurko, who at the time was in charge of the relief campaign, was accused of undermining the grain market through speculations. In his defence, he argued, perhaps justifiably, that achieving low grain prices was the primary goal of the relief campaign even though it may have undermined some domestic suppliers. Nonetheless, during the trial by the Special Senate Board which included five Senators he was found guilty of violating administrative norms, much to the dismay of N.I.Guchkov, the then Mayor of Moscow, who was also one of the members of the Board. He later commented:

This unusual firmness of the Senators and especially the fact that they opposed certain corrections, which I tried to introduce into discussion to facilitate the verdict non-guilty, brought me to the painful conclusion that their conduct was inspired by directions from above.⁴⁴

Witte recounted in his memoirs that the endorsement of Gurko's trial by Senator Varvarin cost him his appointment to the State Council. I.G. Shcheglovitov, then Minister of Justice, intimated to Witte that to rehabilitate Varvarin he was looking for a strong enough case for him to prosecute. The opportunity came later, when Lopukhin, the former director of the Department of Police, was tried for revealing to the revolutionaries the true identity of the double agent Azef. The law was not clear about such offences.

43. V.I. Gurko, *Features and Figures of the Past: Government and Opinion in the Reign of Nicholas II*, New York, 1981, p. 336.

44. *Ibid*, p. 509.

In my opinion — wrote Witte — as well as that of competent jurists, Lopukhin should have been sentenced to a few months of imprisonment at most, but Varvarin, to whom the case was entrusted, in an effort to distinguish himself, was able to have the defendant sentenced to a long term of hard labour, a sentence later commuted to exile in Siberia. It is not because I approve of Lopukhin that I say this, but what is right is right. Incidentally I recently learned from a member of the Council of the Ministry of Interior, a person who had been close to Stolypin, that after the sentence had been pronounced the Premier gave Varvarin 5,000 rubles from the Interior Ministry's funds.⁴⁵

Such incidents gave many contemporaries reason to believe in the subservient role of the Senate, especially after the revolution of 1905. Thus Witte himself commented that on the 200th anniversary of the Senate on 2 March 1911:

His Majesty was good enough to take note of the excellent behaviour of the Senate in recent years (excellent in the sense of paying more attention to the wishes of those in high places than to the law) by attending the official celebration in the Senate itself and then giving Senators a state dinner in the Winter Palace.⁴⁶

Yet, on the whole Senators rarely engaged in high politics, preferring to remain within the close-knit network of family patronages. Above all they valued their position of independence as judges of Russia's highest judicial organ. Their personal dedication to the objectivity of Senate practice was the single strongest factor restraining the deeply entrenched culture to subject judicial authority to the administration.

Conclusion

After the Great Reforms, although the Autocrat wished to retain administrative control over justice, appointments to the First Department became increasingly determined by the legal qualifications of candidates, reflecting the growing complexity and diversity of administrative law. The majority of Senators had previous legal and judicial experience either in the Senate Cassation Departments or in the provincial Judicial Chambers. These Senator-jurists represented the judicial core of the First Department and were responsible for the development of the distinct legal practice in Senatorial petitions. This introduced a new factor in the dynamic of the Autocratic government — a further diffusion of authority from the Tsarist bureaucracy to the new judiciary.

However Senators-jurists did not hold a monopoly over legal expertise

45. Witte, *Memoirs*, vol. III, Part II, p. 661

46. *Ibid.*, p. 717.

in the First Department. A large number of Senators who rose through the administrative ranks also studied law in the premier Imperial colleges and universities. With them, they brought positive knowledge of law and practical experience in Imperial administration as well as certain concepts of the meaning of law and justice in the context of the Tsarist government. Often the humanistic ideals and respect for law inculcated in the more educated and cultured officials provided that all-important common ideological denominator which permitted them to adapt the more advanced judicial practice of cassation in administrative cases. Hence in part the ideological and professional boundaries between the two categories of Senator-jurists and Senator-administrators became increasingly porous. An unimpeded exchange of views and legal opinions allowed the emergence of a distinct body of professional judges, who devoted a lifetime to their Senatorial careers. The momentum of change grew exponentially from one decade to the next, as the Senators were able to transmit a new institutional culture to the next generations of judges.

Nonetheless, there remained a sizeable minority of Senators who put Autocratic rule above consistency of law and independence of justice, and who served as a beacon of Autocracy within the ranks of the First Department. Hence the more professionalised core of Senators felt its vulnerability not only from without but also from within its own ranks. Although they altered considerably the principles of administrative litigation, their lack of connection with the Tsarist government as a whole marked their fragile *esprit de corps* by profound insecurity. One can say that they were the alienated 'step-children' of the Great Reforms, struggling in the midst of bureaucratic suspicion and the threat of betrayal from their own colleagues.

Senators worked within the confines of the traditional procedures and functions of the First Department stemming from the Senate's legacy as a 'patriarch of administration'. On a daily basis they had to confront procedural limitations, vague laws and obsolete institutional doctrines, thus adding more uncertainty to the dubious status of the Senate. But as we have seen, the individual beliefs of Senators and their collective identity clearly sustained the central role of the Senate in upholding legality of administrative practice, continuously reinforcing the rule of law and ultimately strengthening the stability of Russian government and society. So the Senate was neither a mouthpiece of liberal public opinion in the way many post-1864 courts were, nor was it necessarily a vehicle of bureaucratic intrusion

and subjugation of justice.⁴⁷ Unless a case was instigated 'from above', it is fair to say that routine case hearings at the First Department Sessions and Joint Assemblies were conducted without political bias and with thorough attention to the material issues as well as the legal framework of the case. This was particularly evident in the Senate's rulings on zemstvo petitions, which became the bulk of the First Department activities after 1864.

47. For a description of Russian courts as a form of social 'carnival' see Harriet Murav, *Russia's Legal Fiction*, Ann Arbor, 1998, chapter 2.

Chapter 3

Senate Practice on Zemstvo Taxation

THE most important part of the Senate's practice were petitions against local government tax. The taxation powers of the zemstvos were a critical foundation for its constitutional role of an independent local authority. This was well understood by both zemstvo activists and government officials. Both sides attempted to make the most of the inconclusive and fragmented local tax legislation which accompanied the 1864 Zemstvo Reform. The government was well aware of the *soslovie* divisions in local taxation and hoped that provincial discord over zemstvo levies would provide ample opportunity for bureaucratic intervention and, ultimately the justification for direct Autocratic rule much needed in the new era. Zemstvos, at least in their progressive part, hoped, on the other hand, to achieve socially equitable taxation that would balance local tax levies with the personal wealth of taxpayers. They believed that only fiscal equality could give them the chance to attain sustainable growth of local revenues and to realise greater coherence in rural investment. In this chapter I will therefore discuss how with the help of Senate rulings the zemstvos conquered the traditional public reluctance to contribute to local revenues and how at the same time they curbed the tide of official intervention into zemstvo taxation policies. This analysis will add to our understanding of the gradual emergence of Russian civil society and the role of law and legal consciousness borne by the Senate's practices on zemstvo petitions.



In 1864 the announcement of the new law on zemstvo taxation aroused great enthusiasm among the newly elected deputies. For the first time ever taxation was proclaimed dependent on the value and income of estates rather than *sosloviia* privileges. Thus Prince A.Vasil'chikov, the governor of Kiev, wrote of their first reaction:

Zemstvo deputies understood that obligations should only be lev-

ied upon immovable property, while [peasant] souls and labourers should be exempt, that the 1851 Zemstvo Obligations Charter and all other *sosloviia* tax privileges and exemptions were cancelled out automatically, since the new organs were required to levy tax depending purely on the income (*dokhodnost'*) and value (*tsennost'*) of the estates. Undoubtedly the words '*tsennost'*' and '*dokhodnost'*' meant [to them] that the new basis of taxation was what in all European languages was called 'income tax' (Einkommensteuer), and it was in this sense that all deputies including those who did not know any European languages [reference to peasants — N.A.] adopted the law.¹

In a sweeping provision the law stipulated that provincial and district assemblies could impose tax levies upon all incomes (*dokhody*) from district and urban lands, commerce and industry, as well as any other objects according to the zemstvos' discretion.² Throughout the zemstvos' history, the broad definition of their fiscal authority allowed them to enjoy an impressive growth of revenues and to finance many pioneering initiatives in local health care, education, provisioning and other previously neglected public fields. The total zemstvo income grew from 14.6 million rubles in 1868 to 336.4 million rubles in 1914³, thus on the whole reflecting the growing public consensus on local taxation. However zemstvos had a long way to go to realise the ideal of equitable taxation proclaimed by the 1864 Zemstvo Statute. Almost fifty years later the British journalist Maurice Baring, whose *Russian Essays* appeared in London in 1908, confided to the British public that despite the tremendous advances of zemstvo activities in civilising the countryside, both gentry and peasants were still reluctant to pay their taxes. He described a typical predicament of one of the district zemstvos:

The Morshansk district zemstvo for the past year is in want of funds, owing to the fact that the taxes due both from peasants and landowners by which the zemstvo is supported are no longer forthcoming. ... Neither the peasants nor landowners are willing to pay them, this unwillingness being in some cases a matter of principle and in others the result of the peculiar psychology of the Russian landed class at the present time... During the Agrarian Agitation... the idea was spread among the peasants that the zemstvo of the present day is an aristocratic institution, which draws on the resources of the peasant without giving him anything in return. [As a result]... doubt and confusion have been instilled into

-
1. Prince A. Vasil'chikov, *O samoupravlenii*, St.Petersburg, 1872, vol. II, pp. 411-416.
 2. Article 10, *Vremennye pravila o zemskikh povinnostiakh*, St.Petersburg, 1864. For more details on the enactment of the law see *Trudy Komissii vysochaishe utverzhdennoi dlia peresmotra sistemy podatei i sborov*, vol. IV, *Zemskie povinnosti*, St.Petersburg, 1866.
 3. V.F. Karavaev, 'Istoricheskii ocherk razvitiia zemskikh biudzhetrov' B.B.Veselovskii, ed., *Iubileinyi zemskii sbornik*, St Petersburg, 1914, pp. 168, 172, 176.

peasants as to whether... [the zemstvo taxes] are simply a 'squeeze' or a matter of public necessity and local interest. [On the other hand]... the landowner... said to himself: 'What is the use of paying taxes if my house is on fire, and I am lucky if I get off with my life?'⁴

So even to an external observer it was obvious that despite the all-estate (*veseslovnyi*) rhetoric of the original legislation, *sosloviia* privileges and prejudices remained at the heart of zemstvo revenue collection up until the last decade of the Tsarist Empire. The conservative landowners, who dominated some zemstvos, found it hard to give substance to the proclaimed all-estate spirit of zemstvo organisation, and continued to hold on to their privileges, or what remained of them, after the Emancipation. Exemption from state and local tax was a potent symbol of their elevated status and gave the nobility the distinct collective consciousness of the elite. They viewed tax duties as an onerous and degrading obligation associated with personal bondage rather than with the rights and obligations of citizenship.

At the root of this mentality stood the fact that local taxes traditionally had little to do with the basic needs of the communities, and the government used them as a free resource to meet the loose ends of the Empire's bills. The so-called 'taxation schedule' (*raskladka*) outlining strenuous mandatory obligations (*obiazatel'nye povinnosti*) to the state was regularly sent from the centre to the provinces in order to meet the escalating costs of roads, prisons, police, mail, army provisioning, public sanitation, etc. Hence the role of *sosloviia* representatives in local assemblies was not that of the spokesmen of their constituencies but rather of diligent government informers on the sources of local taxable wealth. The hypocrisy of the system engendered the deep-seated reluctance of the local taxpayers, who grew accustomed to 'negotiating' their way through the corruption of local tax collectors or persistent tax arrears. Both parties therefore tried to keep tax related records at a minimum and so a comprehensive land registry never emerged.

In the absence of reliable data, the new law on zemstvo taxation had little immediate effect for achieving the announced 'equality' of local taxes. It was adopted as an integral part of the government's doctrine of 'public self-rule' (*obshchestvennoe samoupravlenie*), which conceived of the zemstvo itself as an autonomous community venture, more akin to a charitable association than to a properly instituted system of local government.⁵ Although

4. Maurice Baring, 'A Zemstvo Report', *Russian Essays and Stories*, London, 1908, pp. 170-179.

5. For public theory of local government see B.N. Chicherin, *Kurs gosudarstvennoi nauki*, Moscow, 1894; idem., *O narodnom predstavitel'stve*, idem., *Izbrannye trudy*, ed. E.V. Po-

zemstvos were expected to use local revenues in order to perform administrative services to the state, the government relied on the loyalist instincts of the nobility, rather than on clearly defined fiscal structures and laws. During the legislative debates in the Taxation Commission (*Podatnaia Kommissiia*) Baron M.A.Korf, the Head of the Second Section of the Imperial Chancellery, was the only tsarist official who tried to alert the State Council to the detrimental effects of such vague legislation on local taxes. In vain he tried to persuade the chamber to elaborate further the regulatory principles of local taxation and so to guarantee the provincial public against the emergence of new types of fiscal abuse.⁶ However, even his propositions, such as soliciting the ideas of the provincial noble assemblies and uniformly implementing them across the board, were highly abstract and as a result zemstvo tax collectors emerged, so to speak, more as a people's militia than a professional army. To the taxpayers local taxes appeared not so much as mandatory obligations to the zemstvos, firmly backed by government authority, but more or less as voluntary contributions (*samooblozhenie*) determined, as in the old days, by the collective wealth and political weight of the estates (*sosloviia*).

Predictably in the very first term of their activities, zemstvo deputies, almost invariably dominated by the local nobles, voted for taxes that heavily favoured private land at the expense of peasant allotments, urban real estate and industrial enterprises. Particularly notorious was the over-taxation of manufacturing industries, distilleries and timber merchants where zemstvo surtax on licenses and patents equalled or exceeded the state dues. To investigate the widespread rumours of zemstvo *proizvol* the government dispatched numerous inspectors to the provinces, yet invariably it was confirmed that in many districts zemstvo taxation doubled or tripled the state taxes.⁷ Similarly the taxation of peasant allotments far exceeded that of gentry estates. This over-taxation was made easier by the fact that industrial assets and land allotments were carefully documented by the local Treasuries for the purpose of industrial taxation and redemption payments. Yet the no-

samoupravlenie v Rossii, Petrograd, 1917; V.Iu. Skalon, *Po zemskim voprosam*, St. Petersburg, 1905, Prince A.Vasil'chikov, *O samoupravlenii*, St.Petersburg, 1872.

6. B.B. Veselovskii, *Istoriia zemstva za sorok let*, vols. 1-2, St.Petersburg, 1911, vol. 1, pp. 10-11; M.A. Korf, 'O krughe deistvii i stepeni vlasti zemskikh uchrezhdenii', *Materialy po zemskomy obshchestvennomu ustroistvu*, vols. 1-2; St.Petersburg, 1886, vol. I, p. 444.
7. For example, Krasnoslobodskii district zemstvo levied up to 50% of the value of state licenses on the I guild merchants (106 rubles each) and up to 100% on the II guild (25 rubles). Kerensk district zemstvo of Penza province charged I guild merchants up to 250% of the value of both state licenses and provincial surtaxes (165.41 rubles), and II guild – up to 27% above the state licenses (31.86 rubles).

bility's privilege of fiscal self-assessment which served initially as the only source of zemstvo information about their estates disguised much of the landed wealth.⁸ Zemstvos' attempts at a rational assessment and equitable distribution of tax was often met with open hostility as a direct encroachment upon traditional noble privileges.

Most tsarist officials believed that in these circumstances zemstvos could not as yet be trusted with taxation of critical parts of the national economy, and that the paternalistic monitoring of zemstvo revenues was the best assurance of order. Wary that zemstvo tax policies could undermine the development of native industries in the long term, or even worse curtail Treasury receipts from industry, the government exempted industrial profits from local levies. According to Valuev's Ukaz of 21 November 1866 only industrial and commercial licences/patents and real estate could be subject of zemstvo taxation and each factory should be carefully and individually assessed. The government believed that, given the predominantly noble composition of zemstvo assemblies this measure was politically justified and that it would protect the merchant minority from the tax-seeking noble majority. Thirty years later on 6 June 1894 the government with similar goals in mind introduced state monopoly on the alcohol trade, which also deprived zemstvos of one of the most lucrative sources of revenue. Finally, in the 1900 at the height of zemstvos' economic expansion the law of 12 June 1900 limited the overall growth of zemstvo revenue to a mere 3 per cent a year.

While these measures may have served a cautionary notice to the over-zealous zemstvos, they did not help to overcome the basic dilettantism and fragmentation of zemstvo taxation practices that emerged from this peculiar view of local government as a community enterprise. On the contrary, these measures increased the fragmentation of local revenues along the lines of *soslovie* boundaries as they favoured industry and trade at the expense of land and urban real estate. In these circumstances any increase in zemstvo expenditure was bound to cause an intensified taxation of land, in many cases beyond economically sustainable levels, as it was already over-taxed by peasant redemption dues and the growing indebtedness of gentry estates.

Hence, partly out of self-interest but partly also out of genuine concern for the success of the zemstvo project of civilising the countryside, the liberal nobility began to lobby the tsarist government for the enactment of new legislation on local taxation. They believed that the goal of reform was to establish firmly the principle of universal local taxation (*nachalo vseobshchnosti*) re-

8. Editorial 'Vnutrennee Obozrenie', *Vestnik Evropy*, 1888, IV, p. 795.

ardless of social status and rank. The zemstvos actively petitioned the MVD and the State Council with proposals of local tax reform. NA Karyshev, an expert on zemstvo legislative initiatives, indicated that between 1867 and 1882 zemstvos submitted 34 appeals requesting the abolition of the law of 21 November 1866. For example, as early as 1867 Chernigov zemstvo launched an appeal where it wrote to the Ministry of the Interior:

We [the Chernigov zemstvo assembly] firmly believe that the government should not give preference to the exclusive interests of any class of population, but must guard all the people from unjust fiscal burdens. Hence we ardently appeal against the law of 21 November 1866 on industrial tax.⁹

Most zemstvos wished either to increase significantly taxation of patents and licenses (up to 50 per cent) or to allow local government to tax the actual profits of industrial enterprises. The latter request was voiced by Kostroma in 1869, Samara in 1878, Pskov in 1880, Ekaterinoslav and Kherson in 1881, Poltava and Ufa in 1885, Penza, Chernigov, Khar'kov, Ekaterinoslav zemstvos in 1887, etc.¹⁰ Zemstvos also proposed to tax new economic objects such as railways, banks, credit institutions, inheritance of landed estates, etc., as well as to initiating various schemes for sharing government revenue.

However none of these requests were answered positively, except that in 1885 the Ministry of Finance set up the Bunge Commission in order to investigate the problems of local finances. Although the Commission made sensible recommendations pointing to the need for further legislation allowing increased local taxation of industry and greater sharing of government revenues with zemstvos, it failed to instigate legislative initiatives in favour of zemstvos. On the contrary, the main result of its work was the transfer in 1893 of assessment activity from zemstvo tax organs to heavily bureaucratized valuation committees, a move that reflected the general drive in the 1890s towards re-centralisation. Valuation committees, which included local officials from both the Ministry of the Interior and the Ministry of Finances, were strangled by rigid valuation rules and bureaucratic procedures.¹¹ They were quite unpopular with zemstvos, which felt that they usurped the estab-

9. Ibid, p. 787.

10. N.A. Karyshev, *Zemskie khodataistva 1867-1882*, St. Petersburg, 1882, pp. 146-148; V.I. Golovanov, 'Zemstvo i promyslovyy nalog', *Saratovskaia zemskaiia nedelia*, 1904, no 6, p. 136; B.B. Veselovskii, 'Zemstva o novykh istochnikakh zemskogo oblozheniia (1866-1910)', *Zemskoe Delo*, 1911, no 3, pp. 211-219.

11. For details see M.A. Lozina-Lozinskii, *Novaiia instruktsiia ob otsenke nedvizhimykh imushchestv podlezhashchikh oblozheniiu zemskim sborom. Pravila raskhodovaniia kazennykh posobii na proizvodstvo zemskimi uchrezhdeniiami otsenochnykh rabot*, St. Petersburg, 1905.

lished autonomy of local self-government. This lack of a workable partnership between government agencies and zemstvos considerably delayed the progress of valuation work, with only about 50 per cent of immovable property being uniformly assessed by 1914.¹²

The government's failure to reform the local taxation system became the root cause of many political setbacks and of the ultimate demise of the tsarist regime. Unwilling to endorse the zemstvos' initiatives for carrying out a comprehensive property assessment campaign, the government also denied itself a realistic prospect for the transition to a system of national income tax.¹³ Yet without solid fiscal foundations the Finance Ministry under Vyshnegradskii (1886-1892) and later Witte (1892-1903) was forced to support Russia's industrialisation by highly controversial consumer taxes on basic goods, thus turning peasants into the reluctant 'financiers' of rapid industrialisation.¹⁴ The unpopularity of this policy contributed largely to the massive political radicalisation of the peasants.¹⁵

Equally the issue of the national income tax became a central rallying point of the zemstvo constitutional movement, whose leaders beginning from the early 1870s believed that the government's projects for income tax should be directly linked to the introduction of political representation at the national level. Thus in 1870-71, in the course of consultations with Valuev's government, zemstvos put forward the idea of a national assembly as a basic condition for the introduction of universal income tax. In Moscow such prominent zemstvo leaders as V.A. Cherkasskii, Iu.F. Samarin, B.N. Chicherin, P.D. Golokhvastov, A.A. Shcherbatov and D.A. Naumov insisted that if the gentry was to forego its traditional exemption from the state tax, zemstvos should be given the right to convene a national assembly and to discuss the state budget.¹⁶

12. Veselovskii, *Istoriia zemstva*, vol. p. 194.

13. M. Petrov, 'Zemskii proizvol: k reforme zemskogo oblozheniia', *Severnyi Vestnik*, 1894, no 9, p. 22.

14. For a reflection of this view in modern historiography see Alexander Gerschenkron, *Economic Backwardness in Historic Perspective: a Book of Essays*, Harvard University Press, Oxford University Press, 1962.

15. For the reassessment of the fiscal burden on peasants see Stefan Plaggenborg, 'Tax Policy and the Question of Peasant Poverty in Russia 1881-1905', *Cahiers du Monde Russe*, XXXVI 1-2, Janvier-Juin 1995, pp. 53-70.

16. D.A. Sukhotin, 'Iz pamiatnykh tetradei', *Russkii arkhiv*, 1894, no 2, pp. 255, 444; for a detailed discussion of early attempts to introduce national income tax see V.G. Cherenukha, 'Podokhodnyi nalog i ego sotsial'no-politicheskaia sushchnost', idem., *Vnutrenniaia politika tsarizma s serediny 50-kh do nachala 80kh gg. XIX veka*, Leningrad, 1978, pp. 199-243; for the later attempts to introduce income tax see P.A. Shtorkh, *Podokhodnyi nalog*, St.Petersburg, 1883; A.R. Svirishchevskii, *Podokhodnyi nalog*, Moscow, 1886;

Hence the progressive reform of local taxation was vital for the overhaul of the entire fiscal system and had wide implications for the whole political order.

Zemstvo Land Taxation

After 1864 many of the zemstvos simply continued pre-reform taxation practices. As before some of them levied a blanket *desiatina* tax regardless of the quality of land; others applied as a rule of thumb the 1861 peasant redemption dues; yet others divided land into inhabited and uninhabited and assessed it according to the old 1853 rules.¹⁷ All three methods heavily favoured the privileged nobility and caused flagrant inequality in the distribution of taxes between the gentry estates and peasant allotments. Provincial governors often protested against such zemstvo tax schedules.

Thus the *desiatina* method of taxation, which some zemstvos claimed to be truly equitable, disregarded the productivity of land and as a result low-yield peasant allotments were charged consistently higher than properly-cultivated gentry estates. Veselovskii provides the following data to illustrate this for 1885:

A.A. Isaev, *Nashi finansy i podokhodnyi nalog*, St.Petersburg, 1887; V.A. Lebedev, *K vo-
prosu o podokhodnom naloge*, St.Petersburg, 1891; M.E. Terekhov, *Podokhodnaia podat i re-
sultaty primeneniia eio*, Varshava, 1892; I.Kh. Ozerov, *Vozmozhno li vvedenie podokhod-
nogo naloga v Rossii?*, St.Petersburg, 1900; V. Samofalov, *Kosvennye nalogi i podokhodnyi
nalog*, St.Petersburg, 1907.

17. Veselovskii, *Istoriia zemstva*, vol. I, pp. 43-52.

Table 1. Zemstvo Taxation Relative to Land Productivity

Provinces	% of gentry yields above allotments	% of gentry land tax above or below allotments
Ekaterinoslavskaia	48.1	-4.1
Khersonskaia	31.0	-2.1
Tavricheskaia	26.7	-32.3
Orlovskaia	24.3	-20.6
Khar'kovskaia	21.6	+2.3
Voronezhskaia	20.7	+10.1
Tambovskaiia	19.1	-14.5
Kurskaia	18.7	-0.8
Samarskaia	17.2	-4.6
Ufimskaia	16.7	-13.4
Tul'skaia	14.0	-1.5
Riazanskaia	13.6	-11.3
Simbirskaia	12.8	-31.8
Saratovskaia	12.5	+1.2
Poltavskaia	10.0	-1.2
Penzenskaia	9.5	-7.0
Chernigovskaia	7.1	-12.0
Average: high	48.1	-32.3
Average: low	7.1	+10.1

Source: Veselovskii, *Istoriia zemstva*, I:48.

Clearly the evidence presented in this table shows that with rare exceptions, under the *desiatina* tax gentry lands, whose productivity exceeded that of allotments by as much as 48% (Ekaterinoslav), were taxed by as much as 32% less (Tavrida) than the peasants. In some provinces, approximately 20% according to Veselovskii, this practice survived until the beginning of the twentieth century.

The similar situation arose in those provinces where zemstvos used redemption dues set under the 1861 Emancipation Act to ascertain the taxable value of land. Essentially under this method zemstvos valued the first few *desiatinas* of land higher than the subsequent ones. Some zemstvos applied this only to a mandatory minimum of redemption land, while others also included voluntary redemption land, and yet others set their own categories of

taxable land. Thus the Kremenchug district zemstvo divided land into as many as 25 categories starting from 2 *desiatinas* and up to 5,000 with the rate of taxation in inverse proportion to the size of land holding. So one *desiatina* of land in a 2 *desiatina* estate was taxed at 25 kopeks a year, while one *desiatina* in a 5,000 *desiatina* estate was taxed at 0.52 kopeks, i.e. 48 times less. These intricate systems essentially disguised the traditional taxation of peasant 'souls' and continued until mid-1880s, when they began to wane partly due to continual protests by governors and partly as a result of the new land assessment methods increasingly introduced by zemstvos.¹⁸

Finally, some zemstvos taxed land as inhabited or uninhabited following the old 1853 rules. Thus Novouzensk district zemstvo considered all peasant allotments and towns as inhabited land and the gentry land as uninhabited. The tax from the former was 2.78 kopeks per *desiatina*, and from the latter — 1.94 kopeks per *desiatina*. Different zemstvos adopted different variations of the principle, but the effect of it remained the same — it was once again a disguised taxation of peasant 'souls', and also survived until the end of the 1880s.¹⁹

Not much different was the situation in those districts and provinces where zemstvos followed new criteria of *tsennost'* and *dokhodnost'*. To start with, approximately 45 per cent of the zemstvos levied tax upon income from land, while 55 per cent upon its value. Secondly, provincial zemstvos vehemently disagreed with districts on the economic meaning of both value and income from land.²⁰ As a result, districts valued similar parcels of land completely arbitrarily, which led to disparities illustrated by the following data:

18. Ibid., vol. I, pp. 49-50.

19. Ibid., vol. I, pp. 50-51.

20. Ibid., vol. I, pp. 52-55, 62-74; A. Polenov, *K voprosu o podatnoi reforme. Obzor sistem zemskogo pozemel'nogo oblozheniia, 1865-1879*, St.Petersburg, 1880.

Table 2: Fluctuation of Zemstvo Land Assessments in Districts

Land value variations	Low – high	Land income variations	Low – high
Vladimirskaia	1.73 – 35 rubles	Viatskaia	28 – 120 kopeks
Voronezhskaia	33 – 42 r	Kazanskaia	75 – 189 k
Ekaterinoslavskaia	15 – 33 r	Kaluzhskaia	82 – 152 k
Kazanskaia	6 – 19 r	Moskovskaia	123 – 338 k
Kaluzhskaia	7.5 – 61 r	Novgorodskaia	16 – 110 k
Kostromskaia	4 – 28 r	Orlovskiaia	189 – 300 k
Kurskaia	19 – 40 r	Poltavskiaia	123 – 150 k
Nizhegorodkaia	2.28 – 20.6 r	Samarskaia	30 – 100 k
Orlovskiaia	42 – 50 r	Saratovskaia	45 – 180 k
Poltavskiaia	20 – 33 r	Simbirskiaia	86 – 150 k
Riazanskaia	15 – 44 r	Smolenskaia	66 – 70 k
Samarskaia	7.6 – 25 r	Tavricheskaia	33 – 171 k
Saratovskaia	10.82 – 14.6 r	Tambovskiaia	14 – 300 k
Smolenskaia	12.5 – 20 r	Tverskaia	25 – 100 k
Tverskaia	8 – 25 r	Tul'skaia	121 – 182 k
Khersonskaia	8.5 – 13 r	Khar'kovskaia	74 – 200 k
Iaroslavskiaia	10 – 22 r	Chernigovskaia	71 – 224 k

Source: Veselovskii, *Istoriia Zemstva*, I:53.

The net result of these practices was the redistribution of land tax from the gentry estates onto peasant allotments. According to Veselovskii in 1885 peasant land was assessed on average 37% above gentry land. In addition often the second purpose of these glaring discrepancies was to minimise the provincial surtax on the districts, which in turn was levied with even greater arbitrariness and virtually no regard for the underlying land economy. Thus the St. Petersburg provincial zemstvo divided districts in two tax bands purely according to their distance from the capital, Orel provincial zemstvo levied tax according to the number of zemstvo deputies from each district, Vladimir zemstvo made a combined valuation of districts' territory and population and then divided the total in half, etc.²¹

21. For details of relations between provincial and district zemstvos see D.N. Shipov, *K voprosu o vzaimnykh otnosheniiakh gubernskikh i uezdnykh zemstv*, Moscow, 1899; *Materialy po razreshenii v Moskovskom gubernskom zemstve voprosa o vyiasnenii otnoshenii gubernskikh i uezdnykh zemstv*. Izdatel'stvo Moskovskogo gubernskogo zemstva.

The liberal press criticised the absurd fiscal practices of zemstvos as a deliberate ploy by the gentry striving to preserve its economic predominance in the countryside.²² Yet it seems that the lack of proper assessment techniques rather than any pure gentry conspiracy contributed to the situation. The task of land assessment in Russia was truly unprecedented. European practices of land valuation were simply impractical on the vast expanses of Russian territory. The creation of a detailed land registry (cadastre) such as had been undertaken in France would have been infinitely protracted, expensive and prone to rapid obsolescence.²³ New pioneering techniques were necessary and new solutions had to be found. Many zemstvos, hard pressed by the fragmentation of the local tax base and a consequent scarcity of local resources, were forced to consider more sophisticated methods of assessing landed, industrial and urban estates. The development of zemstvo statistics from the 1870s was largely a response to this situation. From only 4 zemstvo statistical bureaux in the 1870s their number quickly grew to 17 in the 1880s. The most prominent among these were Moscow and Chernigov statistical bureaux, which (respectively) used population density and soil fertility to assess the value of agricultural land.²⁴ Using these techniques they refined the *tsennost'* and *dokhodnost'* criteria to reflect in their taxes the different productivity of peasant allotments and gentry estates. Thus just two years of statistical studies (1876-1878) in Chernigov shifted the distribution of zemstvo tax from the inferior to the more productive lands and allowed them to raise the average value of taxable land in the province by as much as 90 per cent. Similarly by 1890 the work of Moscow's statistical bureau contributed to an overall reduction of the peasants' fiscal burden in all of 13 districts.²⁵

Following their example most zemstvos began to apply progressive methods of statistical property assessment, which grouped individual estates into larger land parcels and by using sampling techniques quickly and accurately established the underlying economic characteristics of the land. Zemstvo statisticians conducted first-hand studies of soils, forests, factories, urban housing, peasant households, etc., and produced impressive studies for the valuation of zemstvo estates (*Materialy dlia otsenki zemskikh ugodii*), whose sophisticated economic analysis and careful computations eventually gained

22. Veselovskii, *Istoriia zemstva*, vol. I, pp. 66.

23. P. Firsov, *Metody otsenki zemel' kak predmeta zemskogo oblozheniia*, Moscow, 1896; A. Rusov, *Kratkii obzor razvitiia russkoi otsenочноi statistiki*, Kiev, 1909.

24. N. Annenskii, 'Zemskii kadastr i zemskaia statistika', *Russkoe Bogatstvo*, no 5, 1894, pp. 48-79.

25. Veselovskii, *Istoriia zemstva*, vol. I, pp. 73, 81.

credibility with the Ministry of Finances and many Land Banks.²⁶ According to V.N.Grigor'ev, who compiled the most comprehensive bibliography of their works, zemstvo statisticians published about 3,500 surveys, some of which were more than 1,000 pages long. During this period an estimated 4.5 million peasant families were interviewed in 34 provinces in an attempt to assess the economic capacity of their households, causes of poverty, health hazards, demographic trends, etc.²⁷

These far-reaching studies of local communities graphically showed the economic, social and even cultural interdependence of their constituencies and challenged the time-worn divisions between social estates and patronage clans. Their studies often invoked the distrust and even hostility of local land and factory owners, who feared embarrassing disclosures of peasant poverty or the exploitation of workers on their estates but above all the imminent rise of their taxes. Not infrequently local nobility and industrialists felt threatened by the statisticians' egalitarian views of society, and challenged the results of their social surveys and valuation procedures before the provincial governors. The latter could and often did veto the statisticians' work on the grounds of law or local expediency, and ordered zemstvo assemblies to reconsider the results of their surveys.²⁸ For example in 1886 the indignant Kursk provincial zemstvo closed its statistical bureau, blaming the 'irrespon-

-
26. Starting from the late 1890s the tsarist Department of Revenue (Departament Okladnykh Sborov) regularly published bibliographical surveys of zemstvo valuation works: *Bibliograficheskii ukazatel' zemskoi otsenochnoi literatury*, Vyp. I: Moscow Province; Vyp. II: Chernigov Province; Vyp. III: Tver' Province; Vyp. IV: Tambov and Riazan' Province; Vyp., V: Viatka Province; Izdatel'stvo Departamenta Okladnykh Sborov, St.Petersburg, 1899-1904; for the previous period see also: ed. V.F. Karavaev, *Bibliograficheskii obzor zemskoi statisticheskoi i otsenochnoi literatury za vremia s 1864 po 1 ianvaria 1911*, Izdanie Departamenta Okladnykh Sborov, St.Petersburg, 1911; similar publication was issued by the Free Economic Society: idem., *Bibliograficheskii obzor zemskoi statisticheskoi i otsenochnoi literatury so vremeni uchrezhdeniia zemsto, vyp. I za 1864-1903*, St.Petersburg, 1904; *Prodolzhenie za 1909-1911*, St.Petersburg, 1912; for a brief survey of the statistical materials see V.V. (pseudonym for V.P.Vorontsov), 'Statistiko-ekonomicheskie trudy zemstva', *Vestnik Evropy*, 1885, vol. IV, pp. 353-389; Dm. Rikhter, 'Zemskaia statistika i ee raboty', *Vestnik Evropy*, 1904, IV, pp. 315-342.
 27. Robert E. Johnson, 'Liberal Professionals and Professional Liberals: the Zemstvo Statisticians and their work', Terence Emmons and Wayne S. Vucinich, eds., *The Zemstvo in Russia: an Experiment in Local Self-Government*, Cambridge, 1982, pp. 343-364; V.N. Grigor'ev, *Predmetnyi ukazatel' materialov o zemsko-statisticheskikh trudakh s 1860-kh po 1917 g.*, vols. 1-2, Moscow, 1926-7.
 28. On governors' authority over zemstvo decisions see the article by Kermit McKenzie, 'Zemstvo Organisation and Role within the Administrative Structure', eds. Terence Emmons and Wayne S. Vucinich, *The Zemstvo in Russia*, pp. 31-79; on instances of political prosecution of statisticians see V.M. Khizhniakov, *Vospominaniia zemskogo deiatelia*, Petrograd 1916, pp. 150-151;

sible' publication of I.A. Verner's survey *Kurskaia guberniia. Statisticheskie itogi*. Similarly the Saratov zemstvo shut down its statistical bureau complaining that the researchers did not take into account the landowners' instructions, but instead collected one-sided information from *volost'* elders and peasants. The Riazan' zemstvo, fearful of public disclosures of fiscal fraud, completely destroyed the statistical surveys of Dankovsk and Rannenbourg districts.²⁹

This situation was not helped by the flurry of official 'clarifications' that followed the original 1864 zemstvo tax law. Not only did they not provide the exact meaning of *tsennost'* and *dokhodnost'* upon which zemstvo taxes should be levied, but they also seemed to waver as to how to combine the two. Thus the Official Opinion of the State Council issued on 18 November 1880 instructed district zemstvos to levy tax upon either the value or income of estates, while leaving provincial zemstvos to levy tax on both value and income of taxable estates. These ambivalent interpretations virtually set districts and provincial zemstvos on a collision course, and provided ample opportunities for continuous interference by provincial governors. Yet when these disputes were reported to the Senate it could not always offer further clarifications. As a judicial institution the Senate was bound by official guidelines and consequently also vacillated as to whether the value or income, or a combination of both, should be applied to assess the land. For example, in its decision issued on 27 November 1872 the Senate implicitly acknowledged that although in general zemstvos should tax immovable property on the basis of value and income, in the case of fisheries and ferries in particular it could levy tax on the basis of income alone.³⁰

Equally the Senate complied with the law's requirements of individual valuation of estates. Thus in its ruling of 20 March 1869 the Senate rejected a zemstvos' practice of statistical assessment in favour of individual valuation:

The law requires that every estate should be assessed at its actual value and income, that the tax can only be levied following the individual assessment (*spetsial'naia otsenka*) of property, and that therefore similar estates cannot be valued using 'normative' assessment. In view of these requirements the Ruling Senate cannot approve of zemstvo taxation levied upon values other than those established in the course of individual assessment.³¹

29. Ibid., vol. I, pp. 82-83; for the Kursk incident see G.P. Sazonov, *Obzor deiatel'nosti zemsto po sel'skomu khoziaistvu, 1865-1895*, St.Petersburg, 1896, vols. 1-2, vol. 1, p. 74, 82; for Riazan' see S.N. Veletskii, *Zemskaia statistika*, 2 vols., Moscow, 1899, vol. I, p. 66.

30. M. Petrov, 'Zemskii proizvol', pp. 11-12.

31. Ibid., p. 13; Verkhovskii, *Sbornik reshenii Pravitel'stviushchego Senata po delam zemstoa*,

Undoubtedly undertaking individual assessments was a tall order for most statistical bureaus.³² Unable to comply with such unrealistic requirements many provincial zemstvos, including Tver', Novgorod and Bessarabia, continued to use the gentry's own land assessments as the only basis for private land tax.³³ In most cases zemstvos could not easily verify these statements and prosecute noble tax offenders, and even when zemstvos did find noble landowners in breach of tax laws, provincial governors often prevented them from penalising the offenders.³⁴ Hence amidst this legal and jurisdictional confusion the gentry's tax evasion was rife. Thus in 1883 the Novgorod zemstvo reported 400,000 *desiatinas* of the gentry's land previously hidden from tax, in 1885 Poltava zemstvo reported 600,000 *desiatinas*, in Chernigov – 140,000.³⁵

In response to the escalating number of zemstvo tax petitions the Senate gradually began to acknowledge the zemstvo's fiscal predicament. In these circumstances the only way for the Senate to help zemstvos improve their property valuation and distribution of taxes was to legitimise a statistical property assessment based on a 'normative' valuation. Zemstvos could use such 'norms' as average soil fertility, crop yields or market values of larger land parcels, and apply them as economic indices to the valuation of individual estates. Slowly the First Department began to approve the use of independent statistical surveys in verifying the information supplied by the landowners. Thus on 20 October 1871 the Senate ruled that the law did not at all require exact data on individual estates:

Zemstvo assemblies alone should establish the normative assessment of the landed estates since the law requires neither an individual assessment of each estate nor a precise record of the estate's income.³⁶

Similarly, the Senate corroborated the zemstvos' prerogative to levy taxes

-
- p. 154.
32. For a depiction of hard working conditions among zemstvo statisticians see S. Bleklov, *Za faktami i tsiframi. zapiski zemskogo statistika*, 1878.
 33. Veselovskii, *Istoriia zemstva*, vol. I, p. 78.
 34. Senate Ukaz of 8 February 1868, Senate Ukaz, of 6 September 1874, Kuznetsov, *Sistematicheskii sood ukazov Pravitel'stviushchego Senata po zemskim delam s 1866 po 1910 g.g.*, St. Petersburg, 1912, vols. 1-12; vol. 1, pp. 222-223.
 35. Editorial 'Vnutrennee Obozrenie', *Vestnik Evropy*, 1888, vol. IV, p. 794; *Obozrenie deiatel'nosti zemskikh uchrezhdenii Novgorodskoi gubernii*, Novgorod, 1883; *Sistematicheskii sood postanovlenii i rasporyazhenii poltavskogo gubernskogo zemstva za peroye shest' trekhletii*, Poltava, 1885, Vypusk I, p. 272.
 36. Verkhovskii, *Sbornik reshenii Pravitel'stviushchego Senata po zemskim delam*, St. Petersburg 1889, p. 71; Petrov, 'Zemskii proizvol', p. 14.

upon the whole groups of land holdings (parcels) classified according to their statistical value and potential income from crops typically grown on them.³⁷ On 12 August 1885 the Senate declared:

Only the value and income of estates serve as the legal basis for levying zemstvo tax. With regard to land its value can only be established using local market prices while its income can be inferred from the normative assessment of agricultural income typical in this locality or rent from land.³⁸

On 16 March 1896 the Senate refused the petition of a Novgorod landowner who requested that his land be exempt from taxation as it was officially registered as non-profitable (*neudobnyi*). The Senate argued in this case that if an independent zemstvo survey showed that despite the official records his land generated income, he would be liable to pay local tax:

The alternative decision — went on the Senate verdict — would mean that until the official registry (*plan general'nogo mezhevaniia*) was updated his income would be tax-exempt, which contradicted the principle of zemstvo taxation of all income-generating estates.³⁹

Hence in this case independent zemstvo surveys performed an additional role of keeping official records up to date. Thus these rulings legitimised objective statistical foundations for zemstvo levies and helped to demystify the gentry's self-assessment and improve the overall distribution of tax.

Using these guidelines zemstvos were able to make a considerable progress with the valuation of land. According to Veselovskii in the period between 1871 and 1901 zemstvo statistical surveys added 31 million *desiatinas* of the previously undeclared arable land, two thirds of which came from gentry estates.⁴⁰ Furthermore, according to Veselovskii the gap between the valuation and taxation of peasant and gentry land began to diminish (see table).

Table 3: Valuation of Peasant Land Relative to Gentry Estates

Allotments valuation of peasants land	Number of Dis- tricts			Per cent		
	1879	1885	1890	1879	1885	1890

37. Ukaz # 7283 of 3 March 1915, Kuznetsov, *Sistematicheskii svod*, vol. XII, pp. 189-193.

38. *Sbornik Permskogo gubernskogo zemstva*, 1885, no 21.

39. Ruling #3092 from 16 March, 1896, Kuznetsov, *Sistematicheskii svod*, vol. I, pp. 218-220.

40. Veselovskii, *Istoriia zemstva*, vol. I, p. 79.

Higher than gentry estates	142	187	229	61%	52%	64%
Equal to gentry estates	65	142	75	28%	40%	21%
Lower than gentry estates	26	30	55	11%	8%	15%
Total	233	359	359	100%	100%	100%

Source: Veselovskii, *Istoriia*, 1:72.

This table clearly shows that the rise of zemstvo statistics between 1879 and 1885 helped to improve peasant land valuation relative to gentry's estates. In 1885 approximately 50 per cent of peasant land holdings were valued at the same rate or lower than gentry estates, compared to 37 per cent in 1878. Hence the reverse pattern of the late 1880s shown here (only 36 per cent equal or lower than gentry) can only be explained by the onset of government protectionism towards the gentry, which artificially buttressed its economic and administrative predominance in the countryside. A large part in this progressive adoption of statistics was played by the Senate's verdicts on zemstvo appeals.

Zemstvo Industrial Taxation

The exemption of industrial profits from zemstvo taxation after the Ukaz of 21 November 1866 meant that zemstvo taxation effectively became a form of direct property tax. Zemstvos had the authority to tax only commercial and industrial patents/licenses and real estate, and both taxes had to be levied without reference to the profitability of enterprises. In socio-political and economic terms this was a step backwards from the originally intended taxation of *tsennost'* and *dokhodnost'* of whole estates. This caused widespread concern in the zemstvos not only about their future income, but also about merchants' involvement in local affairs. Zemstvos rightly feared that artificially diminished charges protecting merchants from potential over-taxation also insulated them from local politics. For example, in 1866 the Tula zemstvo assembly opined:

The rise of land taxes should be followed by a corresponding rise in industrial levies; the limitation of merchants' contribution to 25 per cent license/patent surtax will inevitably make this estate passive in zemstvo affairs; unconcerned by either the rise of zemstvo taxes or their expenditure, it will turn its back on Tula zemstvo affairs.⁴¹

41. *Zhurnal Tul'skogo zemskogo sobraniia*, 1866, no 23; for more zemstvo reactions to the

The first item, the surtax on state patents and licenses, was fairly straightforward and left little room for ambiguities. Every year merchants applied for government patents and licenses which confirmed their *soslovie* status in one of the two merchant guilds. The first guild included merchants with a capital of at least 15,000 rubles, and the second – with capital of at least 5,000 rubles. Certificates were valued at 265 rubles for the first guild and 25 to 65 rubles for the second guild, and were subject to zemstvo taxation of up to a maximum rate of 25% (reduced to 15% for large and 10% for small enterprises after the Ukaz of 5 June 1884). On average, taxation of patents and licenses represented about 10% of zemstvo revenue, or in absolute terms 2.1 million rubles in 1871, rising to 4 million rubles in 1901.⁴²

Being unrelated to the underlying capital value, this system of licensing was flawed in two respects. On the one hand, large conglomerates with multi-million ruble turnover obtained first guild certificates for a symbolic sum, while on the other hand a large number of enterprises, especially peasants' cottage industries, escaped zemstvo taxation as they often could not qualify for a guild certificate.⁴³ So zemstvos in this respect were missing out on both sides – they could not properly tax the industrial giants, nor could they lay hands on the cottage industries (*kustari*) and seasonal enterprises (*otkhodnye promysly*) that were abundant in the provinces. In any case by the 1880s most zemstvos had achieved the legal maximum of license and patent taxation and could squeeze no more revenue out of it.

Far more complicated was the issue of industrial property tax. Unlike with patents and licenses the law did not determine the rates of industrial property tax and so zemstvos enjoyed considerable independence in establishing industrial levies. This, however, did not offset the problem of fiscal inequality in local taxation resulting from the inaccessibility of financial data and lack of connection between zemstvo taxes and underlying business activity. As a result, while the taxation of land reached up to 9% of its *dokhodnost'*, industrial and commercial taxation was only about 0.4% of the profitability of enterprises.⁴⁴ In addition, the law on zemstvo industrial and commercial tax heavily favoured large enterprises at the expense of small, and so fiscal disparities between them were even greater than between peasant and

1866 law see S.A. Ol'khin, *Svod suzhdenii i postanovlenii zemskikh sobranii o zemskikh povinnostiakh*, St.Petersburg, 1868.

42. Veselovskii, *Istoriia zemstva*, vol. I, p. 643, Prilozhenie V.

43. For a discussion of the merchant guild system see Alfred Rieber, *Merchants and Entrepreneurs in Imperial Russia*, Chapel Hill, 1982, p. 82.

44. Editorial 'Vnutrennee Obozrenie', *Vestnik Evropy*, 1888, no IV, p. 786.

gentry land.

To start with, some zemstvos levied tax on the market value (*tsennost'*) of industrial properties, while others taxed their potential income. The relationships between the two were established arbitrarily by using so-called income capitalisation rates. For example, if the income-generating capacity of enterprise (*dokhodnost'*) was determined at 10,000 rubles per year, then with the 10% income capitalisation rate, the value of its real estate (*tsennost'*) would equal 100,000 rubles. With the tax rate set, for example, at 2.5 per cent of the value the factory would be liable for 2,500 rubles of annual tax. Similarly if the overall value (*tsennost'*) of the enterprise was known to be for example 60,000 rubles, with the income capitalisation rate of 10 per cent the profitability (*dokhodnost'*) of its real estate would be 6,000 rubles, and therefore the levy of 25 per cent would make it liable for 1500 rubles of annual tax. Clearly, these rules could not reflect the real economic value or profitability of enterprises, yet in the eyes of the law as long as zemstvos applied these rates uniformly to all properties in their jurisdiction, be it land, industry or urban real estate, these tax calculations were considered perfectly legitimate.

However, with the advance of industrialisation and concentration of industry into large enterprises, this method of achieving fiscal equality was becoming highly questionable. The ratio of property value to the profitability or turnover of enterprises began steadily to decline. For example, in such industries as textile and leather manufacture, companies could disperse production between *kustar* sub-contractors and carry out multi-million operations with hardly any premises at all. Thus the Saratov zemstvo complained that a local textile firm with a half-million rubles' turnover operated via the network of *kustars*, and except for a dilapidated warehouse had no property for the zemstvo to tax.⁴⁵ On the other hand, many small establishments, where the cost of premises absorbed the largest part of their capital, complained to the Senate that zemstvo taxes virtually crippled their businesses.

Sometimes to overcome the problem, zemstvos conducted close individual assessments of enterprises and set discretionary tax rates, only to find themselves embattled by taxpayers who believed in the formal equality of their respective *sosloviia* and demanded standard tax rates. For example, in 1893 the Sosnitsk district zemstvo set a discretionary tax rate that doubled the tax dues of the local sugar refinery (from 13,500 rubles in 1892 to 29,660

45. L.V. Zaikovskii, 'K voprosu ob istochnikakh zemskikh dokhodov' *Saratovskaia zemskaia nedelia*, 1904, no 9, p. 70; for a more detailed discussion of *kustar* integration into factory economy see O. Crisp, 'The Pattern of Industrialisation in Russia' in eadem., *Studies in the Russian Economy before 1914*, London, 1976, pp. 5-54.

in 1893). The zemstvo argued that the rise in taxation was a result of the increased income capitalisation rate, from 20% to 40% (with the estimated income reaching 515,828 rubles), which followed from the recent reassessment of the factory's assets, which had nearly trebling in the previous decade (reaching 1,534,776 rubles). The Senate, however, objected that the new capitalisation rate was not being applied to other properties in the area, including land, and as a result the factory was being made to contribute a disproportionate share to the zemstvo budget – over 30% of the total of 87,537 rubles. Thus once again it appeared that the zemstvo was violating the basic principle of even distribution of tax (*ravnomernoe raspredelenie*) amongst the social estates.⁴⁶

The law's emphasis on formal *soslovie* equality rather than underlying wealth also appeared in the Senate's rulings. Thus on a number of occasions the Senate overruled zemstvo attempts to reassess industrial property using increased business profits or turnover of enterprise. For example, in 1894 the Senate considered a petition from a certain countess D., who owned a sugar refinery in Morshansk district. She complained that the district zemstvo had increased the valuation of the factory from 200,000 to 656,522 rubles. The zemstvo replied that in the period after 1875, when the original assessment was carried out, the factory had been significantly extended, reorganised and much better equipped, which was reflected in the factory's insurance policy. Hence it was the latter that served the zemstvo as a basis for the factory's reassessment. The Senate, however, found that the insurance policy protected the factory's total capital and therefore under existing exemption of industrial capital from tax could not become a basis of zemstvo property tax.⁴⁷ Similarly, in 1899 the Senate rejected the valuation of a water mill by Kirsanovo district zemstvo, which used data supplied by the local revenue office. Again the Senate argued that the government data included the profits of the mill and deemed the valuation illegal.⁴⁸

However, the Senate rigorously protected zemstvos from continuing evasion by large industrial establishments. Thus the Senate favoured zemstvo taxation of state enterprises which enjoyed preferential tariffs from the Treasury. Many of these enterprises were leased out to private companies who derived a significant income. Among them were iron smelters and shipyards in St. Petersburg and mining enterprises in Siberia, which using their

46. Ruling #8057, 18 July 1898, Kuznetsov, *Sistematicheskii svod*, vol. I, p. 238.

47. Ukaz of the Ruling Senate #10715, 15 October 1896, Kuznetsov, vol. I, pp. 233-234.

48. Ukaz of the Ruling Senate #6881, 19 August 1899, Kuznetsov, vol. I, pp. 248-249.

privileged status insisted on tax concessions.⁴⁹ To resolve their pleas, the Senate applied the same principle of profit-blind assessment and so rebuffed a number of insolvency claims raised by their management. For example, in 1894 the Senate approved the taxation of the state-owned iron smelter Goroblagodat' in Verkhotursk district. The director of the plant, a mining engineer by the name of von Lezedov, petitioned the Senate against zemstvo taxes arguing that the smelter worked exclusively on government orders and not for profit. A few private contracts that earned some profit were more than offset by the depreciation of machinery, costs of labour and the price of ore. The Senate, however, ruled that the law took into account not the turnover of the enterprise, but the market value and potential income from its assets. Thus the iron smelter was deemed liable for the value of 220,230 rubles in favour of zemstvo tax.⁵⁰ Similarly in 1896 and 1897, the Senate approved zemstvo taxation of the state-owned gold mines in Zlatoust, Satkinsk and Kusinsk. Despite the management's plea of insolvency, the Senate was firmly behind the zemstvo. In a familiar fashion the mines' directors argued that occasional private contracts could hardly compensate for the costs of state orders and therefore gold mines should be exempt from the local tax. In its Ukaz the Senate emphatically declared that income-generating state enterprises which were taking up private orders allegedly not for profit, but solely in order to relieve running expenses accountable to the government, were certainly subject of local tax.⁵¹

Secondly, the Senate made sure that zemstvos were able to tax the full range of industrial properties found on the factories' territory. Typically merchants tried to minimise zemstvo taxation by reducing their factory property list only to core premises. Thus in 1898 the trustee of a merchant's estate in Gaivoron' district appealed to the Senate for exemption of the miscellaneous buildings adjacent to the factory, such as blacksmith's shop, brickworks, cooperage, ice-house, cattle-yard and manager's office. These added 13,629 rubles of taxable value to the main manufacturing facilities valued at 60,080 rubles, an increase of 22.7 per cent. He argued that these premises did not represent essential parts of the factory and therefore should be exempt from zemstvo tax. Trying to meet him half-way, the district zemstvo reduced the valuation of the contested property to 7,200 rubles, but the trustee continued to insist that these objects should be completely tax-exempt. The conflict was resolved only when the Senate confirmed that according to law all income-

49. Editorial 'Vnutrennee Obozrenie', *Vestnik Evropy*, 1888, vol. IV, p. 788.

50. Ukaz of the Ruling Senate #14497, 17 December 1897, Kuznetsov, vol. I, pp. 250-251.

51. Ukaz of the Ruling Senate #7530, 23 July 1899, Kuznetsov, vol. I, pp. 246-248.

generating properties, including subsidiary ones, were subject to zemstvo taxation and therefore the Gaivoron' zemstvo was acting perfectly within its rights.⁵²

In the early 1900s, with the Senate's approval, zemstvos gradually began to levy tax not only upon real estate, but increasingly directly upon costly machinery and equipment,⁵³ branches of railways connecting factories with state-owned main lines,⁵⁴ maintenance workshops⁵⁵ and workers' and managers' housing.⁵⁶

The Senate's rulings also helped to resolve another difficult issue between zemstvos and factory owners – taxation during periods of idleness. Since many Russian factories operated seasonally (*otkhodnye promysly*), as for example in sugar beet processing, this was certainly a frequent problem. Often merchants insisted on tax concessions, asserting that factories were either purchased for demolition, or had not begun production since construction, had temporarily suspended production for lack of supply or demand, or were affected by work stoppages. In most of these cases the Senate maintained that the lack of turnover at the factory was not a sufficient reason for relief from zemstvo taxation. Only those factories that were completely closed down and had ceased to be industrial premises would be exempt from zemstvo tax.⁵⁷ Thus in a landmark case brought by the Moscow merchant Makarov, the Senate declined the tax exemption appeal for a paper mill in Klin district raised by the Moscow governor on behalf of the proprietor. The latter argued that the district zemstvo should grant him tax exemption since the mill was purchased for demolition. The Senate replied that an enterprise in good working condition would still be subject to zemstvo taxation even if temporarily idle.⁵⁸ The only exemption to this rule was when a factory suffered terminal damage to its equipment due to for instance, arson.⁵⁹ Later in 1908 the Senate argued even more forcefully that it was not the actual income, but the potential for generating it, that made industrial and commercial property liable for zemstvo tax.⁶⁰

52. Ukaz of the Ruling Senate #432, 23 March 1898, Kuznetsov, vol. I, pp. 242-243.

53. Ruling # 11095, 30 October 1903, Kuznetsov, vol. III, pp. 147-148.

54. Ruling #509, 17 January 1903, Kuznetsov, vol. II, p. 86; Ruling #3297 24 April 1903, Kuznetsov, vol. II, p. 125.

55. Ruling #10561, 4 October 1906, Kuznetsov, vol. III, pp. 164-167.

56. Ruling # 8549, 5 June 1886, Kuznetsov, vol. III, p. 152.

57. Ruling #4294, 22 April 1906, Kuznetsov, vol. III, pp. 162-164.

58. Ukaz #10252, 29 September 1907, Kuznetsov, vol. IV, pp. 52-53.

59. Ruling #7035, 14 July 1906, Kuznetsov, vol. IV, pp. 67-68.

60. Ruling #6184, 23 May 1908, Kuznetsov, vol. V, pp. 101-102.

These rulings, however significant, did not address the real issue, that is, zemstvos' access to companies' accounts, which would help to link property appreciation with growing business turnover. The breakthrough came in the early 1890s when after a long period of litigation the Senate allowed taxation of the mineral output of Donbass coalmines, formidable opponent of the zemstvo. In the 1860s and 1870s, when local gentry landowners dominated the Donbass mining industry, some of the mines' proprietors were extremely reluctant to contribute mining tax to the zemstvo budgets.⁶¹ They argued in their petitions that mines should be classified as land unsuitable for agriculture (*neudobnye zemli*) and as such should be completely exempt from zemstvo taxation. The Senate replied firmly that although mining lands were undoubtedly non-agricultural, they could not be automatically tax-exempt. On the contrary, the law required that industrial enterprises such as Donbass coal mines be individually assessed. In its landmark Ukaz of 12 February 1871, following this rule the Senate declared:

The law requires that zemstvo assessment should be based on the real value and income of the estates, and that this can only be established in the course of individual valuation of properties...⁶²

In the 1880s when many nobles sold their mines to mining entrepreneurs, the new industrialists still loathed zemstvo tax. They felt that zemstvo tax assessors relentlessly exploited mines, leaving landed gentry estates persistently under-valued. So they tried to bend the argument further and insisted that if mines were to be taxed as immovable property, then extracted coal and iron ore should be considered as a movable capital and therefore exempt from zemstvo taxation.⁶³ Again the Senate overruled their reasoning, arguing that not only the underground deposits *per se*, but also the mineral output should be an essential part of the mines' tax assessment. In its decision of 31 August 1898, the Senate explained that the value of mineral deposits should certainly be taken into account when assessing mines:

Since mines are classified as non-agricultural lands, they must be taxed according to precise information on their output.⁶⁴

This method of mine valuation became a yardstick of zemstvo taxation and

61. A.I. Fenin, *Coal and Politics in Late Imperial Russia*, DeKalb, Ill., 1990, p. 104.

62. Ukaz of the Ruling Senate # 5154, 12 February 1871, Kuznetsov, vol. I, p. 229.

63. *Zemstvo i gornaiia promyshlennost'*, Khar'kov, 1908, p. 29; G. Arandarenko, 'Zemskii nalog i rudonosnye zemli', *Promyshlennost' i torgovlia*, 1908, no 19, pp. 331-333.

64. Vl. Plandovskii, 'Vopros o zemskom oblozhenii zemel' s mineral'nymi bogatstvami', *Vestnik finansov, promyshlennosti i torgovli*, 1909, no 2, p. 42.

was widely adopted in South Russia in the 1890s. As a result of these rulings the Donbass mining industry became single most important contributor to zemstvo revenue (see Table 4). From 22,731 rubles in 1893 zemstvo taxes rose to 249,036 rubles in 1903, and to 434,271 rubles in 1904.

Table 4: The Growth of Zemstvo Taxes Paid by Donbass Mines

Mines	1893	1903	1904
Petro-Marevka	5,775	7,085	7,340
Golubov Berestovo-Bogodukhov	5,766	9,754	10,084
Aleksei	6,710	37,300	38,629
Petro-Nikolaev	2,180	14,926	NA
Bakmut Ascension	2,300	6,777	9,215
New Russian	NA	96,879	119,272
Russian-Belgian	NA	NA	84,025
Dnepr	NA	NA	165,706
Briansk Ironworks	NA	76,315	NA
Total	22,731	249,036	434,271

Source: Avdakov, 'O nalogakh platimyykh gornymi promyslami' in: *Trudy s'ezda 19-go gornopromyshlennikov*, pp. 322-325; Fon Ditmar 'O zemskom oblozhenii gornopromyshlennykh predpriatii Iuga Rossii' in: *Trudy 29-go s'ezda*, vol. 1, report no.15, pp.38- 45.

The political effect of the new zemstvo tax practice on the local community was nothing short of profound. Facing enormous fiscal liabilities arising from this method of taxation, the industrialists of the 1890s were forced to take zemstvo tax seriously, and began to petition the Senate and the ministries for the adoption of proper techniques in mine valuation. Thus South Russia Mining Association regularly appealed to the government to refine the assessment of annual output taking into consideration its annual fluctuation, to perfect the calculation of average sale prices for extracted minerals, and to obtain tax deductions for depreciated machinery and business liabilities. Essentially these enterprises, which frequently employed British and German management, wanted zemstvos to adopt modern Western accounting techniques in calculating their local dues. Many of these requests were granted by the resulting Senate decisions. Following Senatorial rulings the Ministry of Finances recommended that zemstvos should levy taxes on the annual output, but discount operating costs and depreciation of mine values reflecting diminishing mineral deposits.⁶⁵ So clearly the Senate's intervention gave zemstvos access to the mines' accounts and moved from the principle of direct taxes to that of income tax.

65. Plandovskii, 'Vopros o zemskom oblozhenii', p. 43-44.

However, more often than not the law's insistence on the individual assessment of enterprises benefited large enterprises, whose complicated operations could provide endless reasons for appeals. Thus in 1899 an iron smelter from Olonets province belonging to the Putilov Group appealed to the Senate against the zemstvo's assessment. The Vidlitsk district zemstvo valued the plant's property at 292,039 rubles and estimated its income at a rate of 10% , i.e. 29,203 rubles a year, both figures initially accepted by the plant's management. Yet a huge 40% zemstvo tax levied on the income and netting 14,645 rubles tax prompted the director of the smelter to question the results of the valuation and to petition the Senate. The latter replied that both the income rate (10% of total property value) and the tax rate (40% of property income) were imposed without any 'reality check' (*proverki deistvitel'nosti*), purely using the average profitability of local properties. The Senate therefore recommended that the zemstvo undertake a new valuation using more 'concrete data' applicable to this enterprise.⁶⁶

For the vast majority of small- and medium-size factories, individual assessment was an excuse for delays, tricky negotiations and plain evasion. Understaffed and overworked zemstvo tax assessors simply could not visit every workshop or water mill in the district. Frequently merchants produced fictitious lease agreements with equally fictitious owners of rented property and believed themselves to be in a position to challenge zemstvo taxes.⁶⁷ To counteract merchant evasion zemstvos had to find verifiable assessment data that would at once be credible and applicable to a range of similar enterprises. Factory owners and provincial governors resisted the 'normative' assessment methods provided by zemstvo 'third element' statisticians and often petitioned the Senate. Initially cautious towards statistical generalisations, the Senate, nevertheless, gradually allowed zemstvos to use general data for industrial valuation practices, as it did earlier on with land. In this way its rulings began to provide relief from the unrealistic demands of the law and from the endless tax evasions by factories. Thus in 1901 the Koriukovsk sugar refinery petitioned the Senate against the Sosnitsk zemstvo, which used comparable data from a similar refinery in Chernigov province to assess the factory. The Senate ruled:

If for whatever reason the Sosnitsk zemstvo was prevented from conducting the individual assessment of Koriukov factory, it could, according to law, use the data available from a similar enterprise in Kholmy village as a sole basis for the valuation of the

66. Ruling #7530 from 23 July 1899, Kuznetsov, vol. I, pp. 243-246.

67. Editorial 'Vnutrennee Obozrenie', *Vestnik Evropy*, 1888, no IV, p. 798.

factory.⁶⁸

From the beginning of the twentieth century, the Senate approved such valuation 'norms' as rental prices,⁶⁹ costs of labour,⁷⁰ and costs of building materials.⁷¹ The Senate also confirmed that these 'normative' assessments methods could be used to adjust⁷² and even replace⁷³ the value of industrial property declared by the factory owners. As with land tax these rulings made local industrial taxation more transparent and equitable. The use of rental prices became widespread in tax assessment practices of Bessarabia, Ekaterinoslav, Khar'kov, Kherson and Chernigov provinces, and in certain districts of Perm', Poltava, Petrograd, Novgorod, Tula and Iaroslavl' provinces. Building norms based on unit construction costs were frequently applied in Vladimir, Viatka, Moscow, and some districts of Kazan, Perm', Kostroma and Iaroslavl' provinces.⁷⁴

Although originally statistical methods were used to assess the multitude of small enterprises, eventually they also proved useful in the taxation of large conglomerates, whose increased profits were difficult to translate into larger property tax. The scale of the problem was conveyed by the Tavrida zemstvo board, which complained that in the period from 1894 to 1900 the number of enterprises in the province had fallen from 17,569 to 15,578, while industrial turnover increased from 1.643 million to 2,660 million rubles, yet none of these developments added anything to the zemstvos' revenue.⁷⁵ Despite intensified productivity many factories operated in inferior quality buildings purchased or hired at negligible costs. Hence the only way for zemstvo statisticians to achieve fair valuation figures was by using a 'normative' valuation of equipment and machinery for the assessment of factory premises. For example, the ingenious Vladimir zemstvo used the number of working spinning jennies to assess the value of the dilapidated buildings at a local textile factory. Though in this case the zemstvo trod a fine line between 'normative' property assessment and disguised taxation of the factories' turnover, officially exempt from local tax, the Senate ruled in favour of

68. Ukaz of the Ruling Senate #5242 from 28 May 1901; Kuznetsov, vol. II, pp. 116-117.

69. Ruling #12244, 26 November 1904, Kuznetsov, vol. III, pp. 149-150.

70. Ruling #2981, 7 March 1908, Kuznetsov, vol. V, pp. 94-95.

71. Ruling #10715, 15 October 1896, Kuznetsov, vol. I, pp. 233-234.

72. Ruling #7897, 18 June 1908, Kuznetsov, vol. V, pp. 92-93.

73. Ruling #4838, 19 May 1907, Kuznetsov, vol. V, pp. 95-96.

74. M.A. Sirinov, *Zemskie nalogi. ocherki po khoziaistvu mestnykh samoupravlenii v Rossii*, Iur'ev, 1915, p. 319.

75. Zak, 'Tekushchie voprosy zemskogo samoupravleniia', *Vestnik Tavricheskogo zemstva*, 1905, kn. I-II, pp. 6-7.

the zemstvo.⁷⁶ Subsequently, the Senate issued general guidelines which sanctioned equipment-based 'norms' for the valuation of industrial property with standard equipment/machinery.⁷⁷

Thus with the help of favourable Senatorial rulings the zemstvos' revenues increased in direct proportion to the growth of Russia's industrial assets. Given that Russian industrialisation started primarily in the heavy industries, where equipment and transportation bore most costs, it was an effective way to compensate for the constraints of the law of 1866 prohibiting taxation of profits or turnover.⁷⁸ The new methods provided an easily recognisable, yet economically viable means of assessing industrial revenue without directly referring to profit figures, which were off limits to the zemstvos. As with land assessment, Senate's approval of the valuation 'norms' helped to verify merchants' tax statements and to simplify cumbersome procedures of assessing individual factories.

However, zemstvos were not always champions of fiscal equality, especially when it came to the taxation of small producers. The latter, they suffered partly from the fiscal inequality inherent in the profit-blind property tax that zemstvos passed on to them, but partly also they were victims of the tax-seeking ardour of zemstvo authorities. In any case, at the turn of the century the Senate was inundated with appeals from the owners of small rural dairies and windmills, ironmongers, coopers, shoemakers, and others, who were virtually crippled by zemstvo taxes. It was with these enterprises that the Senate acted as a traditional social mediator, often leaving aside the formality of law. This was especially true in the treatment of low-income pleas, normally deemed irrelevant for reduction of or exemption from tax (see the above mentioned examples of state-owned enterprises). For example, peasants G. and U. from Kobeliak district complained to the Senate that the district zemstvo had suddenly and arbitrarily raised the tax levies on their water mills, from 4 rubles in 1893 to 50 rubles in 1894 and then, following the protest of the provincial governor, reduced it to 20 rubles in 1895. They pleaded that the mills operated only seasonally from 15 April to 20 October and were a low-income enterprise, which would be completely undermined by the zemstvo tax. The Senate ruled that since the zemstvo had not carried out a formal reassessment of mills, it could not lawfully justify the tax rises. Hence

76. Ruling # 4635, 8 June 1905, Kuznetsov, vol. IV, pp. 67-68.

77. Ruling #12637, 4 December 1903, Kuznetsov, vol. III, pp. 151-154.

78. Clive Trebilcock, *The Industrialisation of the Continental Powers, 1780-1914*, London, 1981.

the zemstvo taxation decisions was overruled.⁷⁹

Similarly, peasant *kustars* complained to the Senate that their workshops were often classed as 'industrial property' which made them liable for virtually ruinous taxes. For example, in 1904 peasant Dem'ian Priadein sued Irbit district zemstvo for exorbitant taxation of his iron forge. The Senate explained that although zemstvos were authorised to tax industrial property, only those factories which possessed industrial certificates (patents and licenses) were liable for zemstvo industrial tax. In this case Priadein's forge was a family business operating without hired labour and therefore, according to the Industrial Tax Statute of the 1898 exempt from industrial licensing. Consequently, the Irbit zemstvo could not lawfully tax the plaintiff as the owner of industrial property, and so the levies were overruled.⁸⁰

Zemstvos often double-taxed residential properties with minor commercial outlets occupying the ground floor, such as off-licences, convenience stores, pharmacies, tailors, or shoemakers. For example, in 1903 a certain merchant Egor Senin petitioned against the dual taxes levied on his property by the district zemstvo of Staryi Oskol. He argued that he already paid residential dues for the property in which the off license operated, and that in effect the zemstvo was taxing him twice for the same property. The Senate ruled that in those cases where a commercial outlet occupied only a minor part of the residential dwelling, zemstvos could tax properties once only and in this case only as a residential property.⁸¹ Similar case was raised and won in 1904 by the merchant Vasilii Gusev from Gorokhovets district.⁸²

Finally, zemstvos tried to levy taxes on the profits and turnover of small and medium-size enterprises, where they were less likely to be challenged. Thus in 1895, a certain peasant Sh. from Biriuk district petitioned the Senate against the local zemstvo, which he believed had valued his warehouse not on the basis of its market value but on the basis of the business turnover of his leather manufacture. He argued that the zemstvo took into account the raw hides and peasants shoes stored in the warehouse rather than the real value and average *dokhodnost'* of the premises. As a result, the warehouse was valued at 10,000 rubles with a 10% income rate of 1,000 rubles, which netted the zemstvo annual dues of 69 rubles. The Senate determined that the zemstvo had indeed included the business turnover in the valuation of the estate, thus encroaching on the profits of the warehouse, officially exempt

79. Ruling from 2 September 1898; Kuznetsov, vol. I, pp. 253.

80. Ukaz of the Ruling Senate #9714, 2 October 1904, Kuznetsov, vol. III, pp. 175-176.

81. Ruling #6632, 13 August 1903, Kuznetsov, vol. III, pp. 170.

82. Ruling #8825, 24 September 1904, Kuznetsov, vol. III, pp. 171.

from local taxation. The Senate therefore ordered the zemstvo to revise its figures.⁸³

Thus, zemstvo petitions to the Senate demonstrate that local government was acutely aware of the fiscal inequities between landed and merchant *sosloviia* and, was committed to overcoming it. However, most zemstvos attempts to levy taxes directly on growing industrial profits or turnover were unsuccessful. Following the law of 1866, the Senate consistently excluded business income from the purview of local government. Yet, the Senate remained sensitive to the zemstvos' plight, and provided judicial assistance in many other ways. Through many of its rulings, the Senate assured that zemstvos taxed the full range of industrial properties, including equipment and machinery, subsidiary workshops, ancillary rails and factory-owned housing estates, which often remained undisclosed by merchants. This allowed zemstvos to step up the taxation of industrial assets and to keep abreast with rapid industrialisation. The Senate also insisted that zemstvo taxation strictly follow precise information and use concrete data in the assessment of value and profitability of industrial property. This legitimised the work of zemstvo statisticians, whose surveys verified merchants' claims and helped reduce tax evasion. In the case of the mining industry the Senate in effect approved zemstvos' access to companies' accounts, tying local taxation even closer to the underlying economic activity. Finally, the Senate also protected the interests of small proprietors by making sure that tax-seeking zemstvos could not impose ruinous levies. Thus, by simultaneously fostering and keeping a check on zemstvo industrial revenue, the Senate helped zemstvos to overcome *sosloviia* inequalities enshrined in the direct property taxation, and to engage the merchant estate in the fiscal and other policies of local government.

Urban Property Taxation

Although zemstvo litigation with towns and cities was far less common than with industry, the difficulties of urban zemstvo taxation clearly reflected the social and ideological differences between rural and urban communities. In different provinces and different districts the ratio between urban and landed taxes was extremely varied. For example in St.Petersburg taxation of urban property was only 1.5 times less than the land tax, in Poltava – 13 times less, and in Tambov – 48 times less. Partly this was so because of relative value of urban poverty, but partly also because of the traditionally low

83. Ukaz of the Ruling Senate #7483, 11 July, 1895, Kuznetsov, vol. I, pp. 254,

tax valuation of urban estates.⁸⁴

By law towns were held in the same status as any other district within a province, and municipal boards had no greater authority than district zemstvo boards. This meant that towns were subordinate to provincial zemstvos, a situation which could be a double-edged sword. On the one hand, it afforded the town-dwellers the use of public facilities financed by the rural constituencies of the zemstvos (see more on this in chapter 4 on provincial hospitals), but on the other hand it made them liable for taxation over which they had no control and that was only vaguely related to urban needs. Consequently, municipalities dominated by local merchants were not interested in maximising their revenues and saw this as a burdensome obligation imposed from above. Municipal deputies from socially inferior commercial classes (*kupechestvo* and *meshchanstvo*) preferred to minimise the declared value of urban estates and levy minimal taxes on their constituencies. Zemstvos, on the other hand, dominated by the privileged nobility with little or no professional skills, were unable to ascertain the exact value of urban estates and often had to rely on municipal assessments. With the advent of statistical methods, however, zemstvos began to use sampling techniques to assess urban properties – usually examining about 10% of the buildings in order to verify the value of the whole. Different zemstvos applied different methods of assessing value and income. Some of them used rental income, others assessed building costs, yet others relied on mechanical evidence such as the number of doors and windows in each house.⁸⁵ The results of these assessments were higher than the municipal rates and zemstvo levies frequently caused public resentment. The Chernigov city Mayor V.M Khizhniakov wrote about the atmosphere in the city in the late 1870s – early 1880s:

The municipal board had put great efforts into tax reassessment of urban residential property. But the proposal of the city's дума to invite zemstvo statisticians to the municipal assembly caused a storm. Great city landlords, who declared negligible property values for local taxes, saw that the suggested method of statistical valuation would yield significantly higher levies from their estates and mounted fierce resistance. The дума was forced to take the issue off the agenda and only after the new elections the following year was it able to raise it again, taking advantage of a new favourable дума composition.⁸⁶

84. Editorial 'Vnutrennee Obozrenie', *Vestnik Evropy*, 1889, vol. II, p. 805.

85. Sirinov, *Zemskie nalogi*, pp. 17-91.

86. V.M. Khizhniakov, *Vospominaniia zemskogo deiatelia*, Petograd, 1916, p. 83; for more details on zemstvo taxation of urban properties see A. Zhuravlev, 'Literatura po oblozheniiu nedvizhimykh imushchestv v gorodakh', *Gorodskoe Delo*, 1909, no 10; idem.,

However, at the beginning of the period the Senate was very cautious in allowing zemstvos to raise taxes at the expense of the urban population. For example, in 1878 the Senate sided with a provincial governor who protested against the sudden increase of zemstvo urban tax from 4% to 6% a year. In its Ukaz the Senate ruled:

Considering that neither the zemstvo schedule nor the zemstvo assembly resolution provided any explanation of the valuation method used by the zemstvo in reassessing urban estates, the current increase of urban tax appears completely arbitrary and is leading to the inequitable taxation of properties in the district.⁸⁷

Nonetheless, towards the end of the century, Senatorial decisions became more favourable to the zemstvo. For example, in 1900 the Kherson municipal board (*gorodskaiia дума*) appealed to the Senate against the taxation levied by the provincial zemstvo. They explained their grievance as follows:

While raising the valuation of urban commercial and industrial properties and increasing the tax rates of urban residential estates, the provincial zemstvo assembly is attempting to do the same for the rural property in the district. Moreover, this practice is carried out without clear explanation of the reasons for such an increase and leads to the undue over-taxation of towns compared to country. Obviously, this policy is quite burdensome for the urban dwellers (*gorodskie obyvateli*), on whose behalf we [the municipal board] appeal to the Ruling Senate.⁸⁸

In this case the Senate ruled that the increased valuation of commercial and industrial property was caused by the burgeoning *dokhodnost'* of these establishments, as ascertained by the zemstvo, and that similarly the rise of tax rates applied to urban properties (from 0.6% to 1%) was entirely within the zemstvo's discretion. Moreover, the Senate concluded that such increases could be appealed against by individual property owners, but not by the municipal board, and therefore dismissed the petition altogether.⁸⁹ The change of style in the Senatorial rulings in favour of the zemstvos demonstrates that by the end of the century the growth of urban life relative to the

'Uchastie gorozhan v zemskom predstavitel'stve i oblozhenie zemskim sborom nedvizhimykh imushchestv v gorodakh', *Pravo*, 1901, pp. 1699-1704; G. Sodovskii, *Sbory s nedvizhimykh imushchestv na zemskie potrebnosti v Rossii*, St.Petersburg, 1911; idem., *Gorodskoi otsenochnyi sbor v Rossii i v Prussii*, St.Petersburg, 1911; for zemstvo-towns relations in general see B.B. Veselovskii, 'Literatura po voprosu o vzaimootnosheniakh gorodov i zemstva', *Penzenskii Gorodskoi Vestnik*, 1911, no 22; N.F. Stradomskii, *Goroda i zemstvo: k voprosu ob uregulirovanii ikh vzaimnykh otnoshenii*, Kiev, 1905.

87. Ukaz of the Ruling Senate #25971, 4 July 1878, Kuznetsov, vol. I, pp. 171.

88. Kuznetsov, vol. I, pp. 271.

89. Ruling #729, 25 January 1900, Kuznetsov, vol. I, pp. 271.

declining countryside had become common knowledge, and that the Senate was quite willing to accept the shift of taxable wealth in the zemstvo constituencies.

The idea of the taxpayers' right to petition the Senate individually rather than as a social group was far less common. This new emphasis seems to have underscored the Senate's new confidence in general literacy and legal consciousness among the urban population, which it considered sufficient for filing a petition. It also appears that unless the taxpayers voiced their own complaints against the burden of zemstvo taxation, the Senate saw little evidence of how the local tax really affected them. In other words, the Senate was no longer prepared to base its rulings purely on *soslovie* arguments of equality, but rather on the basis of individual claims. Hence this new assertiveness of the rights of individual taxpayers reflected the erosion of local *soslovie* and patronage clans, who were no longer in a position, legally or otherwise, to launch collective action on behalf of their perceived members. By promoting individual rather than collective litigation by urban taxpayers against the predominantly rural zemstvos the Senate helped to reduce the age-old separation of the urban and rural populations, and provided a basic matrix of social interaction and integration into a larger and more coherent community.

Next, municipalities objected to zemstvos' unequal taxation of urban commercial and residential properties. For example, in 1891 the Moscow municipal board petitioned the Senate against the taxation levied by the Moscow provincial zemstvo on the city's commercial and industrial properties. The board complained that while taxing trade and industry the zemstvo was leaving aside residential and other non-commercial estates, whose unpaid share of taxes laid an additional burden on the city's industry and commerce. The municipality saw in this exemption a breach of fiscal equality between different *soslovii* groups, and requested Senatorial intervention. The Moscow provincial governor sided with the board, and vetoed the provincial zemstvo decision. He argued that the exemption of residential property from provincial zemstvo taxation created flagrant inequality in respect of industrial and commercial property, which would have to shoulder the total burden of the city's fiscal obligations. However, the provincial zemstvo rejected the governor's veto, arguing that the decision to tax some properties and to exempt others was totally within the zemstvo discretion. In this case the zemstvo felt that it would be best to tax only those properties that yielded commercial or industrial profits and exempt residential. In any event, this

decision, insisted the zemstvo, was merely consistent with the established practice of customary exemption of residential properties in the city of Moscow. The Senate explained that although the law did not require zemstvos to tax all municipal properties, in practice this created a patchwork of exemptions that reflected nothing more than the distribution of votes in the zemstvo assembly. Hence, in order to preclude fiscal inequality between Moscow taxpayers the Senate ordered the provincial zemstvo to adopt universal taxation of all properties.⁹⁰ Clearly, this ruling significantly augmented provincial zemstvo revenue and served as a means of integrating the interests of all categories of urban population.

However, the Senate was less generous in equalising urban residential property tax with that of rural properties. Municipalities often complained to the Senate that zemstvos typically chose to tax urban residential properties, while continuing to exempt rural manor houses from a similar tax. For example, in 1897 Saratov municipal board petitioned the Senate against provincial zemstvo taxation, which assessed the *dokhodnost'* of urban residential properties at a massive total of 30,000 rubles, while valuing all rural houses, mainly the gentry manor houses, at a pitiful sum of 471 rubles. The board argued that this was done in breach of the principle of fiscal equality and was certainly economically burdensome to the town dwellers. The Senate replied, however, that rural property was not an income-generating asset, but purely a place of personal residence, while urban property, at least in theory, could earn its proprietors a commercial rent and therefore should be subject to zemstvo tax.⁹¹ This decision shows favourable treatment of the nobility which was aiming to protect its eroding wealth and social supremacy vis-à-vis urban citizens.

So although the Senate was less keen on the absolute levelling of rural and urban contributions to the zemstvo budget, on the whole it did assist zemstvos in asserting their fiscal authority over major cities and in reassessing urban property to reflect growing urbanisation and industrialisation. In addition the Senate encouraged individual claims against fiscal inequality, which provided greater scope for the exercise of individual rights against public authorities. The Senate's equalisation of fiscal obligations across different social estates and its emphasis on individual rather than collective relationship with local authorities contributed to the ideological and social transformation of the old *soslovie* order into an increasingly egalitarian and

90. Ukaz of the Ruling Senate #10308, 16 August 1891, Kuznetsov, vol. I, pp. 167-169.

91. Ukaz of the Ruling Senate 4 September 1897; Kuznetsov, vol. I, pp. 174-175.

legally bound public realm.

Governors' Power of Veto

The Senate clearly backed the zemstvos' policies of industrial, land and urban taxation set up on rational, consistent and universal fiscal principles. These rulings in effect eroded the traditions of *soslovie* taxation and directly affected the interests of local industrial and landed clans, whose privilege and exclusivity was frequently buttressed by the provincial governors. This was a part of the governors' political mandate, which required them to protect the ancient *soslovie* foundations of Autocracy.⁹² The Senate however often found such actions illegal and overruled the governors' veto over zemstvo taxation. Thomas Fallow's analysis of zemstvo litigation demonstrates that in the period between 1895 and 1904 up to 49 per cent of zemstvo litigation against governors in the Senate was settled in favour of the zemstvos.⁹³

Over time, however, the zemstvos began to use the Senate's cassation rulings not only to augment their tax revenues, but also to hold governors accountable for the illegal use of their veto powers. Thus the Nizhnii Novgorod governor granted a tax exemption to a local merchant who claimed that his mill had been purchased for demolition. This decision cost the Balakhninskoe district zemstvo 3,000 rubles in revenue, and prompted it to petition the Senate. The cassation ruling overturned the provincial governor's decision, and on the basis of it the zemstvo filed a civil suit against the governor to recover the cost of sustained damages. Commenting on the case the prominent Russian jurist V.M. Gessen wrote that this was a radically new vision of the limits of governors' authority vis-à-vis zemstvos and indicated the legal skill of local government in matters of administrative justice.⁹⁴ In effect, zemstvos began to treat their disputes with governors as legal cases between equal juridical persons who were first and foremost bound by law rather than by hierarchical legal supervision. Hence, judicial protection offered by the Senate to the zemstvos brought zemstvo-bureaucracy relations to a new level, where the zemstvos acted as a responsible but independent

92. On the changing roles of provincial governors see John LeDonne, *Absolutism and Ruling Class: The Formation of the Russian Political Order, 1770-1825*, Oxford University Press, 1991; Richard G. Robbins, *The Tsars Viceroy: Russian Provincial Government in the Last Years of Empire*, Ithaca, London, Cornell University Press, 1987; Daniel Orlovsky, *The Limits of Reform: The Ministry of Internal Affairs in Imperial Russia, 1802-1881*, Cambridge, Mass., Harvard University Press, 1981.

93. Thomas Fallows, 'The Zemstvo and the Bureaucracy, 1890-1914', T. Emmons and W. Vucinich, *The Zemstvo in Russia*, p. 189.

94. V.M. Gessen, 'Iz zemskikh voprosov', *Pravo*, no 18, 1900.

government agency, rather than as a voluntary public association with no real authority.

Conclusion

Overall the Senate's decisions in industrial, land and urban taxation helped zemstvos to rationalise tax assessment criteria, increase the scope of taxable objects and secure consistency of local levies. In those instances when zemstvos could demonstrate an economic rationale behind their assessment methods and collection procedures, the Senate consistently upheld their decisions. Thus statistical assessment of land and urban property using sample techniques raised zemstvo revenue above the values declared by the gentry's self-assessments and by municipal valuation. Similarly 'normative' assessment of industrial assets and new accounting techniques employed by industrial enterprises helped zemstvos and the Senate to adjust local industrial taxation to industrial profits. According to Veselovskii, the relative share of land tax in zemstvo budgets declined as the zemstvos were better able to raise revenue from industry and urban real estate:

Table 5. Relative Share of Land Taxes in Zemstvo Revenue

Year	No of provinces	Total income (mr)	Income from land	%
1868	18	14.6	9.6	66
1871	34	20.1	13.5	67
1880	34	35.1	22.4	64
1890	34	47.0	29.4	62
1901	34	88.9	47.2	53
1906	34	124.2	64.5	52
1912	34	220.2	102.1	46
1913	34	253.8	112.3	44
1913	40	290.6	130.4	45
1914	40	336.4	142.5	42

Figures are given in millions of rubles. Source: D. Atkinson, 'The Zemstvo and the Peasantry', in: Emmons, Vucinich, *Zemstvo*, p. 103.

Thus without major legislative changes the share of land taxation came down from 66 per cent in 1868 to 42 per cent in 1914. This was achieved by the zemstvos' tacit adoption of statistical property assessment methods, which were made legitimate through zemstvo petitions to the Senate. Hence the Senatorial backing of the new local fiscal policies was an important legal vehicle in this basic area of social change. The improved practices resulted in better social distribution of taxes and served to strengthen horizontal links in the local communities. This paved the way for the transformation of the *soslovie* system into a more coherent social entity.

More specifically, the Senate's judicial protection of zemstvo taxation practices improved the public image of zemstvo tax assessors as a professional body of skilled experts operating within a set of clearly defined rules. Armed with statistical methods and the Senate's judicial rulings, they no longer represented in the public eye a clandestine group of zemstvo recruits or advocates of the narrowly conceived interests of the dominant nobility, but delivered their judgement with professional integrity and skill.⁹⁵

The new expertise in zemstvo taxation practices backed by Senatorial rulings also served to achieve greater fiscal consensus among the different local groups and *sosloviia*. Provincial society could now rely on more transparent and equitable principles of taxation, which made tax evasion not only harder to contemplate, but also less acceptable in the public domain. In an age of increasing publicity and mass advertising by commercial firms local tax evasion was certainly not worth the risk. In addition the Senate's guidelines on zemstvo taxation had the capacity to unlock the traditionally narrow confines of the merchants' and urban dwellers' world and to re-connect them with a broader public sphere.⁹⁶ Their adherence to the immediate family or religious community, as with Old Believers or Jews, gradually expanded to include the larger community of provincial society bound together by shared fiscal obligations to the zemstvo. Susan McCaffray's study of the South Russia Mining Association, which sought multifaceted cooperation with local government, clearly illustrates the point. Contributing the lion's share to the local zemstvo revenue, mine owners saw the zemstvo as a key organ in the improvement of local workers' welfare and tried to increase their representation and influence on zemstvo boards.⁹⁷

Not only did zemstvo practice require an ideological overhaul of provincial attitudes to taxation, but it also limited the extent of bureaucratic interference in local affairs. Zemstvos used Senatorial rulings to redefine their relationship with provincial governors, whom they saw as nothing more than equal parties to the 'administrative contract'. They believed that governors who illegally used their veto powers against zemstvo decisions should be held personally responsible for any potential damage to zemstvo revenue.

95. See the discussion of zemstvo statisticians in Robert E. Johnson, 'Liberal Professionals', pp. 343-364.

96. For an overview of changes in merchants' social identity see Elise Kimerling Wirtschafter, *Social Identity in Imperial Russia*, DeKalb, Ill., 1997, pp. 71-86; Alfred Rieber, *Merchants and Entrepreneurs in Imperial Russia*, Chapel Hill, University of North Carolina Press, 1982.

97. Susan McCaffray, *The Politics of Industrialisation in Tsarist Russia: The Association of Southern Coal and Steel Producers, 1874-1914*, DeKalb, Ill., 1996.

This reflected the zemstvos' new vision of the tsarist administrative hierarchy as a public authority bound by law rather than by personal or political considerations. In legal terms, this reflected their desire to assume greater responsibility in local affairs without, however, abrogating their traditional independence.

Thus the judicial protection offered to zemstvos by the Senate served a dual purpose. On the one hand, it helped to reduce the local communities' dependence on the patronage of respective *sosloviia* and clans in protecting their fiscal interests. On the other hand, it limited the effectiveness of the Autocracy's unrestricted administrative and, by implication, political tutelage over local communities. Greater transparency of local taxation practices endorsed by the Senate helped to reconcile the interests of the traditionally divided social groups – rural gentry, urban *meshchanstvo* and industrialists, who now enjoyed greater consensus over the increasingly professionalised collection of zemstvo revenues. They were also safe in the knowledge that in the event of conflict they could now seek legal protection outside of their traditional framework of social contact – through the Senate and civil courts. Thus the expansion of the public domain brought a renewed emphasis on the role of law and justice in the Autocracy's relations with its subjects. In effect, while the public sphere expanded, the Autocracy's mediating role contracted, thus realising the prospect, much feared by Autocracy, of society's transition to legal statehood (*pravovoe gosudarstvo*).

Chapter 4

Senate Practice on Zemstvo Medicine

BY far the largest share of zemstvos' funds was invested into rural medicine. However, this was one area where the legal constraints on zemstvo activities were particularly strongly felt. Russian physicians, whose early professional identity emerged in the relief operations of the Crimean War, became dedicated spokesmen for the poor health care of the deprived rural population.¹ In this chapter I will examine how their relentless campaign for public health surfaced in the zemstvos' petitions to the Senate and how the Senate's rulings promoted their goals in the development of rural medicine. I will also pay attention to the nature of Senatorial rulings and the attitudes to law prevailing in the First Department as shown in its verdicts.



Zemstvos inherited their first medical establishments and capital funds from the old Welfare Boards (*Prikazy Obshchestvennogo Prizreniia*) set up by Catherine the Great as a part of her 'well-ordered police state'.² In the late eighteenth century, the *Prikaz* was intended to supplement public provision of rural needs by giving the local elites an institutional outlet for local healthcare and charity. However, this 'partnership' of the state with provincial society largely disregarded traditional Russian views on poverty and ill health, and conflicted with Orthodox attitudes to charity. Whilst Russians conventionally accepted misfortune as a part of Christian life and treated the poor as full members of the community, Catherine's government, on the contrary, shared the European disdain for urban and rural decay, and attempted to clear beggars, vagabonds and the sick from the streets of towns and villages. Hence, *Prikazy* became auxiliary police institutions, where the task of medical treatment and social care were subordinated, in principle and in methods, to the police enforcement of law and order. This cultural dissonance between gov-

1. For the account of Russian physicians in the Crimean War see N.I. Pirogov, *Sochineniia*, St Petersburg, 1887.
2. Marc Raeff, *The Well-Ordered Police State: Social and Institutional Change Through Law in Germanies and Russia, 1600-1800*, New Haven, 1983, pp. 234-237.

ernment and society largely explains why the *Prikazy*, in spite of their substantial government endowments, did not take root in provincial public life and earned a reputation for dismal medical practices and mediocre personnel.³ The bureaucratic drudgery of the *Prikazy* and the treatment of physicians as government officials contributed to the de-humanisation of their work and a public image. Government doctors were poorly qualified to diagnose diseases, and rarely attempted to deal with them in practice. The population mostly knew them for their forensic duties and in connection with epidemics. *Prikaz* hospitals dotted around the Empire's provincial capitals did not provide outpatient services crucial for residents of the remote towns and villages, while mental health care and sanitary inspections remained in their infancy.⁴

After the Great Reforms the organisation of provincial healthcare radically changed. The introduction of provincial self-government meant the dissolution of the society-state 'partnership' in a 'well-ordered police state' and greater scope for provinces to exercise public initiative. Although the government still expected the zemstvos to continue rendering various mandatory services in combating rural poverty and disease, zemstvos were authorised to raise their own funds — through taxation and enterprise — to cover the costs of provincial healthcare. They were also given a choice in the employment of physicians and nurses who now flocked in their numbers into the zemstvo service from the newly-opened medical faculties and schools. Finally, zemstvos were relatively free to decide on the overall structure of medical facilities in the countryside and on measures for combating epidemics.

These changes significantly altered the social, economic and political dimensions of provincial healthcare, and clearly rendered obsolete the old idea of 'public care' (*obshchestvennoe prizrenie*). With the advancement of medical science and treatment techniques, the tasks of public healthcare could no longer be subordinated to the police enforcement of law and order. The provincial hospitals, those centrepieces of the Catherinian legacy of government, had to be transformed from ill-reputed 'houses of death' into modern and humane medical facilities. In their place a dense local infrastructure of medi-

3. Adele Lindenmeyr, *Poverty is Not a Vice: Charity in the Late Imperial Russia*, Princeton, New Jersey, 1996.

4. Veselovskii, *Istoriia*, vol. 1, pp. 267-74; Nancy M. Frieden, *Russian Physicians in the Era of Reform and Revolution, 1856-1905*, Princeton, New Jersey, 1981, p. 85; John T. Alexander, *Bubonic Plague in Early Modern Russia: Public Health and Urban Disaster*, Baltimore, 1980.

cal facilities such as hospitals, outpatient clinics, dispensaries and mental asylums, had to be created to ensure the progress of rural medicine. Their personnel, usually consisting of a handful of physicians, had to be supplemented with a greater number of specialists, general practitioners and nurses.⁵ The doctors themselves had to be given greater authority in emergency procedures during epidemics and in long-term planning of health care.

Yet the law, mainly the old Medical Statute, favoured highly centralised and often medically unsound hospitals structures that facilitated political control over zemstvo physicians but impeded public health and sanitation. The law also mistrusted the judgement of physicians and denied them the opportunity to convene professional meetings and issue recommendations for zemstvo medical policy. Finally, the existing *Prikaz* legislation that formed the foundation of zemstvo sanitary practices circumscribed the physicians' intervention during epidemics and retained rigid yet incompetent surveillance by the police over affected areas. Hence many zemstvos sought Senatorial judgements that would cut through the legal tangle in local health-care and promote effective decentralisation and professionalisation of community medicine.⁶ The zemstvo petitions were particularly outspoken on the issues of hospital restructuring, the development of a sanitary inspectorate and public hygiene and regulation of zemstvos' employment of medical personnel. These they were comprehensively dealt with by the Senate is the focus of our discussion.

Zemstvos had no shortage of candidates for medical jobs. For many young idealistic physicians, zemstvo service provided a unique opportunity to foster cultural bonds between the peasants and the intelligentsia. They were prepared to endure primitive housing, remote locations, and peasant ignorance and even suspicion, but they did strive for excellence among their own ranks.⁷ However, on assuming office the first problem they frequently encountered was a lack of cooperation and professionalism among their older colleagues, previously employed by *Prikazy*. Feeling better rooted in the local public and government structures than their younger counterparts,

5. Adele Lindenmeyr, PhD, *Origins of Collective Charity in Russia*, University of Princeton, 1979.

6. For the public debate on decentralisation of medicine, see John F. Hutchinson, *Politics and Public Health in Revolutionary Russia, 1890-1918*, Baltimore and London, 1990, pp. 4-18.

7. For a vivid description of young physicians' commitment to learning and their pangs at the sufferings and death of patients see N. Rudinskii, *Zapiski zemskogo vracha*, St.Petersburg, 1910.

the older men typically refused to adopt new medical techniques, and relied instead on their lifelong acquaintance with government service and the privileges derived from it. Their somewhat ambiguous status as former *Prikaz* employees made it difficult for the zemstvos to pension them off gradually and to promote better-qualified doctors.

The Ministry of the Interior frequently issued circulars confirming their entitlement to lifelong employment. Numerous zemstvo inquiries in the early years of zemstvo work compelled the Senate to consider one of these circulars and to examine its validity in the light of zemstvo legislation. In 1867 the Senate ruled that if the employees of former *Prikaz* were laid off due to the closure of hospitals they would remain within the service ranks and would be entitled to receive appropriate benefits. However, in the case of zemstvo employment, argued the Senate, the extension of contracts with former *Prikaz* medical personnel was purely based on merit and therefore lay within local government discretion. Consequently zemstvo ordered lay-offs of *Prikaz* officials could not be considered as official redundancies and if zemstvos decided against the further service of former *Prikaz* doctors, they would not be able to claim any prerogatives or heavy compensation.⁸

In a similar way the Senate reaffirmed the zemstvos' authority to dismiss corrupt hospital supervisors, who also claimed their official immunity against zemstvo discretion. Thus in 1873 the Senate considered a petition from a provincial hospital steward, who argued that as a state official he should not have been laid off from service other than with the consent of the provincial administration. The Senate found that the official immunity applied only to his actions in official capacity, while the actual term of his office was purely a matter of zemstvo discretion.⁹

These and similar decisions assisted zemstvos in finding the best available medical personnel and also in tightening the financial accountability of hospital management. They also promoted better standards in medical practice and fostered the meritocratic ethics of the medical profession. As a result of these rulings, zemstvos gradually became a major employer of medical and other professions. A study by Charles Timberlake shows that in the period between 1866 and 1882 in Tver' province, for instance, the total zemstvo employment of professional people increased from 17 to 773, with the largest increase in the employment of *fel'dshers* (from 6 to 153), doctors (from 2 to 38) and hospital supervisors (from 1 to 12).¹⁰

8. Ukaz of 4 September 1867, Kuznetsov, *Sistematicheskii Svod*, vol. I, p. 629.

9. Ruling #9802, 6 March 1873, Kuznetsov, *Sistematicheskii Svod*, vol. I, p. 631.

10. Charles E. Timberlake, 'The Zemstvo and the Development of a Russian Middle

However, things changed again after the promulgation of the Medical Statute of 1893. The government was anxious to regain control over the increasingly outspoken medical profession headed by the populist-minded Pirogov Society in Moscow. Tsarist officials felt that physicians could significantly damage public opinion at home and abroad as they disseminated the embarrassing facts of the state of public health throughout the Empire. But most of all officials feared the consequences of potential collaboration between the medical intelligentsia and the peasantry. Yet the government could not afford all-round war with physicians whose services in the provinces and public image abroad were indispensable political assets. To silence the most forthright critics the Minister of the Interior, P.N.Durnovo, thought up an ingenious plan of escalating disciplinary pressures on individual physicians that would, as he hoped, assure greater loyalty from the medical profession whilst preserving the outward appearance of free medical associations.

Hence according to the new Medical Statute all zemstvo physicians became state officials and the zemstvos' authority over the conditions of their employment appeared reduced. Article 62 of the Statute gave the Ministry of the Interior legal grounds to claim ultimate authority over the terms of their employment. This enabled provincial governors to intervene in zemstvo employment disputes with physicians, as was the case in 1906, when the governor of Bessarabia vetoed the zemstvo's decision to dismiss a local physician. The zemstvo complained to the Senate that the governor had instructed all district zemstvos in the province not to discharge zemstvo physicians without the consent of the Ministry of the Interior, which according to law ultimately supervised their appointments as state officials. Undaunted, the Senate considered the Medical Statute in the context of primary zemstvo legislation, the 1890 Zemstvo Statute, and gave the zemstvo an over-riding authority in this highly sensitive area. The Senate ruled that according to Article 105 of the Zemstvo Statute (1892 edition) zemstvos were allowed to hire personnel with specialised skills and qualifications. The fact that some of these employees, such as physicians were also state officials did not in any way diminish zemstvos' autonomy in this field. The Senate argued that by their nature zemstvo employment contracts were entirely voluntary for both parties and, should a zemstvo decide to discontinue their employment, the other party could not claim any official prerogative against zemstvo discretion. From this point of view the governor's veto was deemed illegal and the MVD

function was reduced to the mere ratification of zemstvo decisions.¹¹

The Senate also indicated clearly that zemstvos had the autonomous power to reprimand their physicians in cases of medical negligence. Thus, in 1906 the Senate overruled the disciplinary judgement of the Tver' standing committee (*prisutstvoie*) on zemstvo affairs issued against a local physician. According to facts presented in the petition, the *prisutstvoie* acted on the directive of the provincial governor, who attributed a convict's escape from a local mental asylum to the negligence of the zemstvo physician. The Senate argued that even though the physician was a state official subject to the governor's supervisory authority, all matters concerning his conduct should have been dealt with exclusively by the zemstvos. The governor therefore should have done no more than to recommend to the zemstvo board to take an appropriate action and not dictate his judgement to them through the *prisutstvoie*. Hence the statement by the *prisutstvoie* was deemed illegal, and the zemstvo was allowed to proceed on its own accord.¹²

Yet the lack of official recognition of the medical profession caused great unease among the conservative elites in the provinces, who read into doctors' campaign for better public health a suspicious tendency towards socialism. Clearly despite the apparent zemstvo enthusiasm and even new funds for health care available through local taxation, old attitudes died hard in status-conscious provincial society.¹³ The atmosphere of mistrust often led to unfair dismissals of physicians which were difficult to contest before provincial officialdom and virtually impossible to refer to courts. Hence not infrequently physicians turned to the Senate for the legal protection of their welfare.

Thus in 1877 a certain zemstvo board dismissed a public health physician (*sanitarnyi vrach*), who subsequently appealed to the zemstvo assembly and obtained a counter-decision. The provincial governor contested the intervention by the assembly, arguing that according to the Statute on Public Care (*Ustav Obshchestvennogo Prizreniia*) it was the zemstvo board and not the assembly which had the ultimate power to appoint and dismiss physicians. The Senate however ruled that the assembly had a general authority (*raspori-*

11. Ukaz of the Ruling Senate #13059, 28 November 1906, Kuznetsov, *Sistematicheskii Svod*, vol. III, pp. 368-369.

12. Ukaz of the Ruling Senate #8211, 21 August 1906; Kuznetsov, *Sistematicheskii Svod*, vol. III, pp. 372-373.

13. For a discussion of privileged mentality among the provincial nobles see Seymour Becker, *Nobility and Privilege in Late Imperial Russia*, Northern Illinois, 1985; for the ideological role of marshals of nobility see S.A. Korf, "Predvoditel' dvorianstva kak organ soslovnogo i zemskogo samoupravleniia", *Zhurnal Ministerstva Iustitsii*, no 3, 1902.

aditel'naia vlast') over zemstvo activities and resources, which included the appointment of salaried professionals. Referring to Article 59 of the Zemstvo Statute of 1864, (equivalent to Article 105 of the Zemstvo Statute of 1890 mentioned above), which outlined the principle of zemstvos' autonomy, the Senate emphasised that this Article took precedence over the Statute on Public Care quoted by the governor. Therefore the governor's veto was deemed illegal and the zemstvo assembly's decision was reinstated.

In practical terms the Senate's admission of public hearings of zemstvo employees' appeals was, perhaps, the only way to safeguard the physicians' careers against the possibility of arbitrary dismissal. Remarkably, too, the Senate resolved this issue by upholding once again the primacy of zemstvo law, the Zemstvo Statute, over old statutes such as the public welfare (*obshchestvennoe prizrenie*) legislation. This and similar rulings, consistently provided by the Senate, gave the initial principles of zemstvo reform the necessary pre-eminence over conflicting laws governing various aspects of zemstvo authority.¹⁴

In a similar spirit the Senate confirmed the zemstvos' obligations to fund mutually agreed research trips undertaken by physicians on the zemstvo's behalf. For example, in 1905 the Senate considered a petition from a certain physician Arcadius Nefedovich, raised against Menzelinsk district zemstvo. The physician complained that the zemstvo had refused to pay him the promised sum of 200 rubles for a previously agreed research trip. He had set out on the trip in December 1901, but as early as February 1902 informed the zemstvo that he had become too ill to perform his duties. The zemstvo immediately pensioned him off and refused to pay the travel expenses previously agreed. The physician petitioned the Senate and it ruled that the zemstvo owed him the full amount of his maintenance until the completion of his duties. In its verdict the Senate pointed out that the physician had fulfilled the two zemstvo conditions necessary to claim his research allowance – he had worked in his position for more than three years and had obtained the zemstvo's consent to undertake the trip – and therefore was entitled to compensation.¹⁵

All of these cases demonstrate that the Senate's rulings improved the conditions of doctors' employment and guaranteed a minimum security of their tenure in the zemstvos. The settlement of these basic material consid-

14. Ukaz of the Ruling Senate #21644, 25 May 1877, Kuznetsov, *Sistematicheskii Svod*, vol. I, pp. 630-631.

15. Ruling #3828, 17 May 1905, Kuznetsov, *Sistematicheskii Svod*, vol. III, pp. 370-371.

erations allowed them to concentrate on their pressing professional needs.¹⁶ The most important issue for physicians was the right to conduct regular working meetings and even occasionally to convene enlarged professional congresses. Here they hoped to exchange daily experiences and routine observations of peasant conditions and to discuss public measures against epidemics. Regional medical societies became a forum of exchange between zemstvo practitioners across the country. They offered their members an opportunity to compare local conditions and reconcile policies across districts and provinces as well as to keep up to date with the latest scientific discoveries and disease prevention techniques.¹⁷

Soon despite their narrowly defined status and tightly regulated activities, these associations became the transmission belts between the practical needs of public health in the provinces and larger issues of medical politics. They demanded further devolution of authority to the zemstvos and to the medical professionals themselves in order to achieve better coordination of public health and rapid reaction to the outbreaks of disease. In doing so they inevitably encroached on the jurisdiction of the police and ultimately of the Medical Department of the MVD, which felt that their exclusive authority in the provinces was being gradually undermined. Hence the government kept a vigilant eye on their meetings and minutely regulated their discussions. They pursued physicians with bureaucratic drudgery, which made it impossible to deal with urgent daily issues. Not infrequently in order to obtain permission to convene zemstvo doctors were forced to keep a low profile and to prove to the authorities that their meetings were of a purely technical nature.

In 1899 case the Riazan' provincial zemstvo board petitioned the Senate against the decision of the provincial *prisutstvie* on zemstvo affairs which had prohibited a meeting of zemstvo physicians. The petitioners explained that in January 1893 the provincial zemstvo assembly approved periodic meetings of zemstvo physicians in order to provide them with a working forum under the aegis of the zemstvo medical bureau. At the time the provincial governor did not contest the idea and subsequently it became a legal basis for the physicians' proceedings. However, in 1896 when the provincial zemstvo went one step further and delegated the annual formulation of health policies to the local medical bureau, the provincial governor decided that they should obtain permission from the MVD before they convene a meeting of local

16. Frieden, *Russian Physicians*, pp. 128-129.

17. *Ibid*, pp. 115.

physicians. He was certainly perturbed by the fact that neither the provincial health inspector nor his assistant was invited to attend. The provincial zemstvo board, which supervised the medical bureau, flatly refused to go to such lengths and the governor promptly referred the case to the arbitration of the provincial *prisutstvie* on zemstvo affairs. The *prisutstvie* in turn requested the zemstvo board to present a detailed agenda of the meeting for the approval of the governor. The *prisutstvie* reasoned that if the agenda and the list of participants were similar to that of the previous congress of physicians two years ago, the meeting might not be necessary at all. Outraged at these tactics the zemstvo board forwarded the case to the Senate. It argued before the Senate that the meeting it planned to convene was a small gathering of zemstvo representatives and physicians, who intended to discuss purely internal issues involving little or no publicity. They felt that the governor's request for the MVD's permission was issued in breach of his authority and was tantamount to repugnant tutelage and open distrust of the zemstvo's loyalty.

The Senate gave a thorough review of the relevant laws regulating the meetings of zemstvo professionals, and found the *prisutstvie* in breach of both procedure and substance of law. Firstly, the Senate found that the governor had wrongly applied his authority to intervene in zemstvo affairs authorised by Article 103 of the Zemstvo Statute of 1890. He could not under any circumstances impose his will on the zemstvo board via the *prisutstvie* and could only make a recommendation to the zemstvo assembly. Secondly, the Senate drew a distinction between large professional congresses and more compact working meetings, and concluded that while congresses had a greater public resonance and could invite public figures, disseminate their proceedings and above all make professional recommendations to the zemstvos, the working meetings did not have such far-reaching goals and therefore did not require the sanction of the MVD. The meeting in question was deemed to be a typical working meeting, and was allowed to go ahead without the formalities requested by the *prisutstvie*.¹⁸

Hence by narrowly defining the governors' powers and by closely calibrating the degrees of publicity allowed to zemstvo physicians' meetings, the Senate endorsed the exercise of the physicians' professional autonomy. Reading between the lines, it is worth noting that perhaps the convocation of a low-profile meeting was the best way to avoid the otherwise mandatory attendance of the provincial medical inspector and his assistants, which, as the physicians felt, was not conducive to a frank professional exchange. Re-

18. Ruling #23, 4 January 1899, Kuznetsov, *Sistematicheskii Svod*, vol. I, pp. 631-633.

markably, the Senate remained undisturbed by the obvious double standard of these meetings and proceeded to endorse them by means of a judicial re-interpretation of the law.

This and similar rulings gave a strong boost to the medical profession and cautioned over-zealous local bureaucrats. Thus protected by the First Department, the associational culture of zemstvo physicians began to develop rapidly, and the number of medical congresses grew exponentially by the end of the century.¹⁹ Over the years, the improved welfare and status of zemstvo physicians enabled them to concentrate upon larger issues of zemstvo health policies. The two key questions which preoccupied physicians in the run up to the 1905 revolution were zemstvo hospitals and preventative sanitation and hygiene.

In the 1860s and 1870s the prevailing view of zemstvo physicians and activists was that the old *Prikaz* hospitals dotted around the Empire's provincial capitals would become the flagships of the rural health care system and that therefore their extended capacity had to be preserved and increased in the interests of the advancement of local medicine. However, in practice provincial hospitals primarily benefited the residents of the surrounding districts and towns, giving little or no relief to the population of the outlying regions. For example, a typical report from Tula provincial hospital in 1907 revealed that out of the total 736 patients treated for contagious diseases there were as many as 321 (43.6%) Tula town residents and only 318 (44.8%) residents from other districts.²⁰

This situation posed serious questions about the optimal locations of the zemstvo clinics and about the distribution of taxes that paid for the provincial hospitals' maintenance. The districts felt that their contributions should be linked to the real health benefits derived by their residents from provincial hospitals, otherwise they did not have any real interest in keeping them up to date. Not infrequently they bluntly refused the provinces' calls for co-operation. In these circumstances the growing demand for provincial hospital care became a considerable drain on provincial zemstvos' resources, causing over-crowding and ultimately increased mortality. So despite their earlier centralising views, zemstvos began to favour the de-centralisation and de-concentration of rural health care and to reach out to the remote villages and towns away from the swelling, expensive and ineffective ex-*Prikaz* provincial

19. Frieden, pp. 109-122.

20. "Vedomost' po infektsionnym barakam", *Otchet deiatel'nosti bol'nitsy tul'skogo gubernskogo zemstva*, September 1906-Sept 1907, Tula provincial government board publications, 1907, pp. 79-80.

hospitals. Such beginnings of zemstvo policies were aided by the increasingly preventative orientation of health care adopted by community physicians, who put proximity, accessibility and low cost of zemstvo clinics as a top priority for zemstvo medicine.²¹

However, the legal rules regulating the zemstvo authority in this area remained vague and inconclusive. The un-revised *Prikaz* Statute, which became the zemstvos' rulebook on provincial medicine, offered little or no practical guidance on the jurisdictional boundaries between provincial and district zemstvos. Under the existing laws, provincial zemstvos assumed the responsibility for provincial hospitals, mental asylums, training schools for medical orderlies, and congresses of physicians, while district zemstvos administered smaller hospitals, the sanitary inspectorate and rural medicine. This arrangement was based on the district zemstvos' perception of their own independent authority and their feeling of being a loose network of self-governing administrative units. Consequently the system lacked the necessary coherence and clear chain of command necessary in implementing large-scale health projects. On the whole districts were less effective in providing comprehensive medical services, and many doctors felt that they would do better without the districts' autonomy. They thought that district independence contributed to disparities and waste of resources. Many of them sought to incorporate district health policies into provincial ones and to exempt rural doctors from district jurisdiction.

Many provincial zemstvos saw the solution in transferring existing provincial hospitals to the municipal jurisdiction of provincial capitals, and thus diverting freed funds towards the establishment of new hospitals, outpatient services and smaller leeching centres (*lechebnitsy*) in the remote regions. In either case provincial zemstvos needed the cooperation of both municipalities and district zemstvos. By the beginning of the 1880s it was clear to most zemstvos that only a dense network of clinics accessible to peasants and undertaking not only therapeutic treatments, but also sanitary inspection, immunisation and anti-epidemic and other measures would deliver effective solutions to rural health care problems.

Yet the restructuring of the system of provincial hospitals was difficult to carry out because districts and municipalities showed considerable reluctance to assume such responsibilities. They often appealed to provincial governors, who challenged the provincial zemstvos' right to delegate medical policies or to reduce the existing bed capacity of the old *Prikaz* hospitals. In

21. Frieden, pp. 78-84.

many instances as a result of their interventions the enforcement of agreements between provincial and district zemstvos became problematic, and district zemstvos often could get away with not making proper use of provincial grants for the development of district and rural hospitals.

The continuing obstruction of a wider network of rural hospitals indefinitely tied up the provincial zemstvos' funds in the old *Prikaz* hospitals and created increasingly overcrowded conditions. Unable to resolve the disputes locally, zemstvo boards turned to the central government with numerous petitions and appeals, desperately seeking relief from the financial burdens of swelling hospital budgets and increasing mortality. Yet the central government continued to expect the provincial zemstvos to shoulder at all costs the financial responsibility for the provincial hospitals.²² As a result, the Senate was inundated with zemstvo petitions requesting the re-interpretation of laws regulating relations between the districts and the provinces and redefining zemstvo liabilities for the former *Prikaz* hospitals.

Thus in 1873 the Voronezh provincial zemstvo petitioned the Senate against the provincial governor's decision to veto its plan to reduce admissions to the over-subscribed provincial hospital. The hospital's physicians had long insisted that the number of patients treated at any one time threatened the minimal standards of hygiene and undermined the quality of their treatment. They warned the zemstvo that far from being a flagship of provincial health care the hospital had become a hotbed of infectious disease, which passed from one patient to the next, and was rapidly carried back to provincial towns and villages. In addition they felt that the expected annual deficit of 5,000 rubles resulting from the increased maintenance costs of the provincial hospital made a drastic cut in hospital's admissions that much more urgent. The provincial zemstvo argued that although in law it was liable for the maintenance of the old *Prikaz* hospital, the extent of its liability should be limited by the hospital's own income, such as the interest earned by the hospital's funds and other directly relevant sources. The zemstvo believed that the shortfall of hospital beds could be made up by the Voronezh municipal council if it responded quickly enough by either assuming responsibility for the provincial hospital, or by setting up a new municipal hospital for the exclusive use of the town's residents. The zemstvo assembly authorised the provincial zemstvo board to conduct negotiations with the municipal дума.

The zemstvo in its discussions with the municipal council was emphatic

22. N. Karyshev, *Zemskie khodataistvo, 1865-1885 gg.*, Moscow, 1900, pp. 228-39; Frieden, *Russian Physicians*, p. 89.

that the town's residents were the main beneficiaries of the hospital treatment – in 1871 out of the total 3,732 patients 1,243 were from Voronezh and 455 from the Voronezh district, or 46% of the total number of patients. The zemstvo argued that the restructuring of provincial hospital financing would relieve the provincial zemstvo of significant material burden, and allow it to concentrate on rural health care and advanced medicine. Sensing that arguments alone would not be enough, the zemstvo decided to put pressure on the municipality and obtained the consent of the zemstvo assembly to cut down the hospital's capacity from 550 to 386 patients in the next two years, and to stop admission of municipal patients within the next six months. Taken aback by this sharp turn of events, the municipal board turned to the provincial governor for mediation.

The provincial governor on the whole supported the idea of a new municipal hospital, but was adamantly opposed to cutting down the current bed capacity of the provincial hospital. He did not accept the zemstvo physicians' recommendations and was mainly concerned with the hospital's duty of public care (*obshchestvennoe prizrenie*), that old concept of 'medical policing' inherited from the *Prikaz*:

It is the zemstvo's primary responsibility – wrote the governor to the Senate – to offer public care (*obshchestvennoe prizrenie*) to the patients from the poorest parts of society... which under the proposed plan would be denied to them for many months, leaving them without protection before new beds become available.²³

To support his claim the governor referred to the *Prikaz* Statute regulating the zemstvos' administration of its former institutions, pointing out that it did not contain any provisions for reduction of hospital beds. In addition to that he quoted the MVD circular from 2 December 1865 which stressed that the provisions of the old *Prikaz* Statute remained in force for the zemstvos until further notice. This was also confirmed by Article 83 of the 1868 Temporary Rules on Zemstvo Obligations which recognised the *Prikaz* Statute as the basic law governing zemstvo administration of the former *Prikaz* clinics.

This was a formidable legal challenge to the provincial zemstvo, which believed on the contrary that sanitary standards and not Catherinian-style "public care" should be the prime concern of local health care organisation. It felt that in the circumstances reduced admission to the hospital was the only serious leverage which the province could bring to bear against the reluctant municipality. In the past the Voronezh municipality had grown accustomed

23. Ukaz #37087, 23 November 1873, Kuznetsov, *Sistematicheskii Svod*, vol. I, pp. 595-601.

to paying the hospital a nominal fee for its residents' treatment, while leaving the provincial zemstvo to foot the massive hospital maintenance bill. Knowing that the population was in dire need of medical services and that the provincial hospital was an indispensable facility, the city fathers hoped that they could continue stretching the provincial zemstvo's finances and good will, regardless of deteriorating conditions in the hospital. Under the circumstances the province could no longer cope with the rising tide of patients, and had no choice but to resort to the drastic measure of cutting down admissions.

This Gordian knot was resolved by the Senate ruling given on 23 November 1873 in response to the zemstvo petition. The Senate pointed out that, although according to the Temporary Rules on Zemstvo Obligations of 1868, zemstvos were charged with the administration of former *Prikaz* hospitals and had to look after their maintenance, their internal rules and regulations including admissions were a matter of discretionary right for the zemstvos. Therefore the decision to cut down hospital beds was completely within the authority of the zemstvo, which had acted diligently on the advice of medical professionals. Thus the Senate upheld the provincial zemstvo's independent authority famously proclaimed by Article 6 of the Zemstvo Statute of 1864.

The ruling rendered two major benefits to the zemstvo. Firstly, the Senate's permission to regulate admissions to provincial hospitals enabled the provincial zemstvo to maintain standards of hospital hygiene and medical care endangered by the existing legal environment. Significantly, it also validated the professionalism of zemstvo physicians, who sought to overturn the old *Prikaz* practice from merely sheltering the sick and to actually treat them under the necessary sanitary conditions. This radically challenged the old practice of *obshchestvennoe prizrenie* and enabled zemstvos to turn hospitals from decaying asylums into proper medical institutions.

Secondly, provincial zemstvos were now authorised to transfer a large share of provincial hospital maintenance to towns and districts, which often commanded significant resources, but lacked leadership and organisation to commit them to public needs. In this way the Senate rulings provided a legal vehicle for the development of a local hospital network, which could not be obtained by any other means. The zemstvos could finally proceed with decentralisation and deconcentration of provincial medicine and bring it closer to the village. This fostered horizontal cooperation between administrative units of the Empire and cultivated the ethics of public self-reliance outside of

the close patronage of the state.

In the following years, according to Veselovskii, many zemstvos took advantage of the right newly confirmed by the Senate: for instance in 1878 Novgorod provincial zemstvo succeeded in transferring their provincial hospital to the jurisdiction of the Novgorod district as its main user; in 1874 Pskov provincial zemstvo obliged Pskov district to maintain a share of 53 beds in the provincial hospital and from 1878 began to demand a mandatory increase in district admissions to compensate for the corresponding reduction in the number of the provincial hospital's beds; in 1883 Olonets provincial zemstvo began to charge Petrozavodsk district the annual sum of 5,000 rubles for the maintenance of the provincial hospital; in 1892 Smolensk provincial zemstvo succeeded in transferring the treatment of common infections and venereal diseases to the district level.²⁴ In the 1890s-1900s the provincial zemstvo funds freed in this way were used to provide generous grants or low-interest loans for district zemstvos.²⁵ For example, Viatka provincial zemstvo allocated 306,000 rubles to the district hospital programme while Pskov provincial zemstvo gave up to 5,000 rubles of credits to the districts with a low 5% interest for five years.²⁶

This was by no means the only way in which the provincial network of healthcare was gradually set up. Other zemstvos struggled to solicit regular contributions from relevant towns and districts for the joint support of their hospitals. In most cases the provincial zemstvos were happy to meet the hospitals' maintenance costs, but required the respective districts and municipalities to pay daily charges for the treatment of their residents at the provincial hospitals. The zemstvo rates were generously set up at the level used for the lowest military personnel established by the MVD. But even then many district zemstvos contested their liability for provincial hospital charges, referring to their autonomy from the provinces set out by the 1864 Zemstvo Statute. In 1889, for example, Iaroslavl' district zemstvo refused to meet the charges imposed on it by the Iaroslavl' provincial zemstvo. The district appealed to the Iaroslavl' governor, who promptly overruled the provincial zemstvo charges, contending that the imposition of levies on district zemstvos exceeded the provincial zemstvo's authority and therefore was illegal. The Senate however replied that while levying hospital charges on the district the provincial zemstvo did not determine how exactly these charges were to be met and therefore did not impinge on the district autonomy:

24. Veselovskii, *Istoriia zemstva*, vol. I, p. 278.

25. Ibid, vol. I, p. 276.

26. Ibid, vol. I, p. 275.

The provincial zemstvo — argued the Senate — in its attempt to solicit funds from the district did not establish any special obligation and so it did not exceed its jurisdiction.²⁷

A similar case occurred in 1897 in Poltava where the provincial zemstvo introduced a new tax schedule (*raskladka*) for two districts in an attempt to secure funds for hospital treatment for their residents. The Poltava governor found that such a taxation schedule would result in an illegal inequality in land taxation in those districts, and promptly vetoed the zemstvo decision. The Senate, however, replied that these charges were based on 'strict equity of access' to the provincial hospital by different districts, and that those districts whose patients were treated in greater numbers should pay a greater share of hospital expenses:

Taking into account — argued the Senate judges — that inequality of land taxation essentially reflects inequality of needs, the Senate upholds the provincial zemstvo's decision.²⁸

It was remarkable how the Senate's emphasis on patients' needs rather than on the hospitals' obligations coincided with the zemstvos' views on public equality of benefits and liabilities for provincial hospitals. This simple and transparent criterion was, in the circumstances, perhaps the only rational footing for financing the provincial health care bill. The two cases gave provincial zemstvos legal grounds for supplementing the provincial hospital budgets by imposing compulsory charges to reflect the ratio of district patients.

However, the Senate was not always consistent in its rulings. In those cases when provincial zemstvo charges were increased significantly, the Senate was willing to back down from its own interpretations of law and to recommend vague mediating procedures. For example, in the following year of 1900, the Iaroslavl' district zemstvo, which had adopted the previous Senate ruling, filed another complaint against the new provincial zemstvo charges which almost doubled the expected district expenditure. Originally the district zemstvo had allocated an annual sum of 8,000 rubles to support 40 beds in the provincial hospital, yet the provincial hospital was treating many more patients from the district and charged its zemstvo accordingly. In ten months the charges soared from the expected 8,000 to 16,612 rubles and 88 kopeks, even though that the charges per patient were quite reasonable (see comparable charges in Moscow province below).

27. Ruling #9229, 18 July 1889, Kuznetsov, *Sistematicheskii Svod*, vol. I, pp. 589-590.

28. Ruling #19789, 24 March 1897, Kuznetsov, *Sistematicheskii Svod*, vol. I, pp. 587- 588.

Table 1. Daily Treatment Costs per Patient in Moscow Province (in rubles)

Hospitals	1866	1867	1868	1869
Bogorodskaia	0.38	0.41	0.51	0.56
Bronnitskaia	0.34	0.34	0.43	0.38
Vereiskaia	0.18	0.41	0.43	0.38
Volokolamskaia	0.48	0.46	0.45	0.45
Dmitrovskaia	0.41	0.33	0.28	0.58
Zvenigorodskaia	0.16	0.42	0.42	0.41
Klinskaia	0.40	0.37	0.38	0.33
Kolomenskaia	0.40	0.36	0.38	0.36
Mozhaiskaia	0.41	0.49	0.43	0.54
Podolskaia	0.47	0.49	0.64	0.64
Ruzskaia	0.37	0.30	0.32	0.43
Serpukhovskaia	0.45	0.43	0.36	0.35
Provincial average	0.37	0.40	0.42	0.45

Source: *Sbornik statisticheskikh svedenii po Moskovskoi gubernii an 1869 g* (compiled by the Moscow provincial zemstvo board), Moscow, 1869.

When the district refused to pay for the charges the provincial zemstvo decided to convert the arrears into a loan and order the district to include the loan in its tax schedule (*raskladka*). In the event of further disagreement, the provincial zemstvo also decided to order the provincial treasury to withhold 20 per cent of district zemstvo deposits on account of this debt.

The governor overruled the decision, arguing that, although hospital charges were a district zemstvo obligation, it was still free to determine how it would meet them. Accordingly he vetoed the provincial zemstvo's payment schedule. The province replied that since the district had failed to meet its obligation to provide hospital maintenance for all of the district's residents, a large number of them had been admitted to the provincial hospital at the province's expense. In this sense it was clearly the district's debt to the province and had to be repaid. The governor appealed to the Senate.

Unlike in the previous case, the Senate ruled that the province could not treat more patients than the number that the district was prepared to pay for, i.e. forty in this case. If as a result of epidemics there was a shortage of beds, then the provincial zemstvo's duty was 'to enter into negotiations' with the district as to possible increase of their contribution:

To this end — continued the Senate — they should have used the

authority of the governor, who would have negotiated with the district on behalf of the provincial zemstvo and taken 'measures for stimulating' (*mery pobuzhdeniia*) the district into action. The provincial zemstvo certainly had not had the right 'to dictate' to the district how to meet these obligations. Therefore the provincial zemstvo's charges are overruled.²⁹

Comparing the two Iaroslavl' cases, it is striking that the Senate was so easily persuaded to overrule its own interpretation of the law. Partly this inconsistency arose from continuing ministerial interventions in the Senate's deliberations, but partly also it lay in the Senate's own vision of its authority as a supreme arbitrator of zemstvo disputes. Assuming its historic role as a mediating authority, the Senate became entangled in local circumstances and succumbed to the pressure of political considerations in exercising the power of legal supervision (*nadzor*). Consequently the newly confirmed right of provincial zemstvos to redistribute medical expenses became difficult to enforce if a hospital's charges were contested. The Senate advised zemstvos to seek the intervention of the provincial governors, whose position in the zemstvos' disputes was anyway discretionary.

Equally, the discretionary element in the Senate's powers of *nadzor* made it harder for the zemstvos to overcome legal and political constraints in their struggle against epidemics. For example, in 1897 the Senate overruled a Simbirsk zemstvo decision to cut dramatically the admissions of contagious district patients to the provincial hospital. The provincial zemstvo was compelled to reduce the number of hospital beds by as much as one third of its capacity (from 315 to 200) in order to contain the sudden influx of typhoid patients from the insanitary municipal night shelter (*nochlezhnyi dom*). The zemstvo physicians suspected that this outbreak could only be attributed to the gross negligence of the municipal council, and pleaded with the provincial zemstvo to exercise pressure on the council to set up its own hospital ward for contagious diseases. They feared that the overcrowded provincial hospital would become an ideal incubator for the spread of epidemic throughout the entire province. They realised that these measures were not ideal, but considered them necessary in the interests of the provincial population as a whole. To justify their actions they referred to the Zemstvo Statute of 1890 and to the 1851 edition of the Medical Statute, which required zemstvos to provide treatment of patients strictly within the assigned budgets and limited capacity of provincial hospitals. However, the provincial *prisutstvie* argued that neither the current edition of the Medical Statute

29. Ruling # 1903, 26 February 1900, Kuznetsov, *Sistematicheskii Svod*, vol. I, pp. 591-593.

(1886) nor the new Zemstvo Statute of 1890 authorised zemstvos to limit hospital bed capacity or to delegate medical policies to municipal councils. On the contrary, the *prisutstvie* was convinced that during epidemics zemstvos should increase their services to the population, and accused them of contriving to shun their responsibility. Caught between a rock and a hard place the Simbirsk zemstvo appealed to the Senate against the *prisutstvie*.

Once again, in this case, however, the Senate acted not so much as a court of cassation, but in a more traditional manner as an arbiter of conflicting local interests. It found both the zemstvo's and the *prisutstvie*'s interpretation of the law wrong and criticised both of them for lack of cooperation. It reprimanded the zemstvo for limiting the use of reserve beds, and also reproached the *prisutstvie* for making unreasonable demands on the provincial zemstvo and not supporting its efforts to get the municipal council involved in the anti-epidemic work. Clearly, the Senate found the *prisutstvie*'s accusations that the zemstvo had avoided its responsibilities far fetched and the zemstvo's strict measures against the influx of typhoid patients too rigid. In conclusion, the Senate, far from providing a clear legal solution to the deadlock, overruled both the zemstvo's measures and the *prisutstvie*'s memorandum, leaving the debate to the next round of provincial negotiations.³⁰

In the 1890s, following the zemstvo counter-reform, the Senate continued, albeit not always consistently, to uphold the provincial zemstvos' policies in hospital restructuring. This was mostly achieved by preventing arbitrary interventions by the local bureaucracy, which watered down the standards of health care ardently fought for by zemstvo physicians. Quite often in the 1890s the provincial governors and provincial *prisutstviia* on zemstvo and municipal affairs disregarded the complex procedural regulation of their newly granted veto powers and intervened directly in zemstvos' decisions.³¹ The Senate's rulings in this respect helped considerably to restrain such arbitrary conduct by introducing a precise legal delineation of authority. In effect, the Senate limited the threat of bureaucratic controls over zemstvos, and protected zemstvo deputies from becoming mere rubber stamps of the MVD.³²

For example, in 1896 the Senate overruled the decision of a provincial

30. Senate Ukaz 9 October 1897, Kuznetsov, *Sistematicheskii Svod*, vol. I, pp. 603-605.

31. For the comparison between 1864 and 1890 Zemstvo Statutes see Kermit McKenzie 'Zemstvo Organisation and the Role within the Administrative Structure', Eds. Emmons, Vucinich, *The Zemstvo in Russia*, pp. 31-79.

32. For the effects of 1890 Zemstvo Statute on zemstvo medicine see Frieden, *Russian Physicians*, pp. 166-167.

prisutstvie, which had vetoed a Vol'sk district zemstvo's decision to restrict the number of local hospital beds. The Senate ruled that under the Zemstvo Statute of 1890 hospital capacity became subject of MVD approval if contested by a provincial governor. In this case, however, the Ministry did not receive any representation from the governor, and so the Senate deemed the *prisutstvie*'s direct authority to overrule the zemstvo's decision invalid.³³ By rigorously enforcing the procedural rules governing *prisutstvie* veto powers, the Senate continued to uphold the provincial zemstvo's autonomy in spite of the restricting nature of the counter-reform of 1890.

Undoubtedly the Senate rulings supporting growing zemstvo authority and the professionalisation of medicine contributed to the overall increase of hospital capacity in the final decade of the nineteenth century. According to Veselovskii the total number of hospital beds assumed by zemstvos from the *Prikazy* (11,400) rose to 26,571 in 1890 and 30,122 in 1898. Their regional distribution also changed – between 1890 and 1898 the number of beds in provincial hospitals was reduced from 6,284 to 5,504, while the number of village hospital beds grew from 8,470 to 12,883, or by about 52%. The number of hospital beds more than doubled in Vologda, Kursk, Smolensk and Pskov provinces, tripled in Moscow province, and increased five-fold in Iaroslavl'.³⁴

The growing network of hospitals and outpatient clinics enabled the development of zemstvo sanitary statistics – a vast databank documenting rural and urban epidemics. It was pioneered by Professor EA Osipov, the chairman of the Moscow sanitary bureau³⁵, which worked under the generous auspices of the Moscow provincial zemstvo. Between 1875 and 1897, the bureau gathered as many as half-million patients' cards, and published a comprehensive sanitary survey of the province.³⁶ The patients' records re-

33. Senate Ukaz 12 February 1896, Kuznetsov, *Sistematicheskii Svod*, vol. I, p. 602.

34. Veselovskii, *Istoriia zemstva*, vol. I, pp. 386–388.

35. For the history of Moscow zemstvo sanitary statistics see E.A. Osipov, I.V. Popov, P.I. Kutkin, *Russkaia zemskaiia meditsina*, Moscow, 1899; A.P. Zhuk, *Razvitie obshchestvenno-meditsinskoi mysli v Rossii v 60-70kh godakh XIX veka*, Moscow, 1963; For histories of other regional societies of physicians see Ed. S.N. Igumnov, *Khar'kovskoe meditsinskoe obshchestvo v 1861-1911*, Khar'kov, 1913; A.V. Petrov, *Zapiska o deiatel'nosti obshchestva vrachei Kazani*, Kazan, 1873; V.I. Radulovich, *Ocherk istorii meditsinskikh obshchestv, ikh tsel', znachenie i vzaimnaia sviaz'*, Orel, 1890.

36. The first rudimentary format of patient's record cards were introduced in 1872 by the Kazan' Society of Physicians and then subsequently improved upon by the Moscow zemstvo in 1876. For card formats see F.D. Markuzon, 'Ocherk po istorii statistiki zaboлеваemosti v Rossii', in idem, *Ocherki po sanitarnoi statistike v dorevoliutsionnoi Rossii*, SSSR, Moscow, 1961; see also Ed. E.A. Osipov, *Sbornik Statisticheskikh svedenii o Moskovskoi gubernii. Otdel sanitarnyi*, vol. V, vyp. I; idem, *Statistika bolezennosti naseleniia Moskovskoi gubernii za 1878-1882*, Moscow, 1890.

flected the social and occupational profiles of their families and households, and therefore made it possible to link diseases to particular environmental factors and to the hygienic habits of the population.

Other cities emulated Moscow's practice, and also began to conduct comprehensive surveys and publish their findings. First to appear were detailed sanitary maps of St.Petersburg (1872), Viatka (1873), Odessa (1874), Kiev (1876), Kronshtadt (1878) and Astrakhan' (1879).³⁷ They disclosed hazardous sanitary conditions and particularly the vulnerability of the underprivileged classes, which suffered astronomical mortality rates in the congested urban areas. They pointed unmistakably to the sanitary negligence of private landlords, factory owners, innkeepers, railway supervisors and to the complicity of public authorities, which effectively aided the spread of mortal diseases. Similarly, the surveys of remote and sparsely-populated rural Russia revealed terrifying ignorance, poverty and medieval peasants customs creating a fertile ground for devastating outbreaks of mass epidemics.³⁸ They contained vital information on local hygiene habits, seasonal migrations and regional customs, and helped zemstvos to establish patterns of epidemic diseases.

Armed with this information, zemstvos were thirsting to take action against the spread of disease and against prevailing public attitudes. Many zemstvos established sanitary bureaux, committees and commissions, which regularly held public and semi-public discussions of the underlying causes of and preventative measures against disease transmission. As the sanitary statistical work began to diversify from general area surveys to particular objects, such as soil, water, streets, squares, courtyards, railways, educational

-
37. Iu. Gubner, 'Ocherk sanitarnogo sostoianiiia St.Peterburga', *Sbornik Sochinenii po sudebnoi meditsine, psikhiatrii, meditsinskoi politzii, obshchestvennoi gigiene, epidemiologii, meditsinskoi geografii, i meditsinskoi statistike Ministerstva Vnutrennikh Del*, (hereafter SSSM), 1872, vol. I, pp. 82-234. I. Mikhailov, 'Gorod Viatka v sanitarnom otnoshenii', SSSM, 1873, vol. II, pp. 24-28; 1874, vol. II, pp. 70-73; D. Levenson, 'Mediko-topograficheskii ocherk Odessy', SSSM, 1874, vol. III, pp. 1-25; 1876, vol. I, pp. 52-91; 1877, vol. III, pp. 1-18; 1878, I: 1-23; M.N. Shmelev, 'Statisticheskie i sanitarnye ocherki Kieva', SSSM, 1875, vol. II, pp. 20-25; 1877, vol. III, pp. 1-40; Dobroslavin, 'O resultatakh issledovaniia sanitarnogo sostoianiiia Astrakhani', SSSM, 1879, vol. III, pp. 119-155.
38. For districts and village surveys see N. Chertkov, 'Ocherk Podol'skogo uezda (Moskovskoi gubernii) v sanitarnom otnoshenii', SSSM, 1874, vol. I, pp. 7-21; 1875, vol. I, pp. 1-16; N.M. Medintsev 'Obzor sanitarnogo sostoianiiia Pavlovskogo uezda 1869-1874', SSSM, 1876, vol. II, pp. 4-21; I. Bukhovtsev, 'Mediko-topograficheskoe opisanie prigorodnogo uchastka Usmanskogo uezda', SSSM, 1877, vol. I pp. 1-21; vol. III, pp. 18-48; P. Dobychin, 'Sanitarnoe opisanie sela Cherdaki Stavropolskogo uezda Samarskoi gubernii', SSSM 1880, vol. I, pp. 1-57; F. Shperk, 'Mediko-topograficheskii ocherk Amurskogo kraia', SSSM, 1880, vol. II, pp. 1-58; vol. II, pp. 1-66; 1881, vol. III, pp. 87-98.

institutions and above all factories and workers' housing³⁹, it revealed with even greater detail public ignorance, official negligence and unabated spread of contagious diseases. Now more than ever the zemstvos knew how to devise sanitary controls and who to hold responsible for their implementation.

Yet to translate the zemstvos' findings into tangible sanitary measures was a formidable task in the face of the competing ministerial and police jurisdictions. Traditionally the overarching authority in sanitary policies belonged to the Medical Department of the MVD. It distributed circulars to the local police and published annual national health surveys in the *Sbornik sochinenii po meditsinskoi statistike*. However, different sections of government remained in charge of sanitation in their own domains: for example, the Ministry of Finance was responsible for railway sanitation, the Ministry of State Domains for state peasants' health, etc. This meant that the authority of the MVD was diffused by a multitude of local ministerial agencies, which pursued their own objectives and were accountable only to their own central offices. This fragmentation of sanitary policies slowed down the government's response to the outbreaks of epidemics, and caused lethal delays in implementing quarantine measures. In times of national emergency, the government turned to the zemstvos, which rendered invaluable service and probably saved thousands of lives.⁴⁰ However, outside national emergencies, the law, that is mainly the Medical Police Statute, a relic of the Nicholaevan era, stressed the pre-eminence of the police in anti-epidemic measures, and relegated zemstvos to a consultative position without any real power of decision-making or enforcement. In the absence of their own sanitary police force, zemstvos had to rely on the efforts of their own public health physicians to contain diseases. Yet in the course of their work they encountered public indifference and official resistance to their efforts. Hence the sanitation of public amenities remained highly political, but very ineffectual in the face of the dangers of epidemic contamination.

Provincial governors and *prisutstviia* on zemstvo affairs often advocated

39. D. Levenson, 'K voprosu ob issledovanii vody i uluchshenii mostovykh v Sankt-Peterburge', *SSSM*, 1873, vol. II, pp. 28-34; I. Zubkovskii, 'Sanitarnoe sostoianie polotskoi voennoi gimnazii i ee gigenicheskaiia obstanovka', *SSSM*, 1878, vol. II, pp. 59-125; 1879, vol. I, pp. 1-89; 1879, vol. II; 1879, vol. III; Vyrubov, 'Materialy dlia izucheniiia vrachebno-sanitarnoi sluzhby na zheleznykh dorogakh', *SSSM*, 1880, vol. III, pp. 66-94; 1881, vol. I, pp. 1-42; F.F. Erisman 'Sanitarnye issledovaniia fabrichnykh zavedenii Klinskogo Uezda', *SSSM*, 1881, vol. I, pp. 1-16.

40. For a description of zemstvo medical assistance during the Japanese War (1904-1905) and during the Great War (1914-1917) see Thomas Earl Porter, *The Zemstvo and Civil Society in Late Imperial Russia 1864-1917*, San Francisco, 1991, pp. 72-128, 235-290.

placing a limit on zemstvo authority in this highly sensitive sphere, and so played into the hands of negligent proprietors of public amenities, instead of fostering the interests of public hygiene. They particularly contested the zemstvos' right to issue so-called 'mandatory guidelines' (*obiazatel'nye postanovleniia*) on local sanitation. In 1903, for example, the Ekaterinoslav provincial zemstvo filed a Senate petition against the local *prisutstvie*, which had vetoed the zemstvo's mandatory sanitary guidelines that outlined a number of preventive measures. This document contained four provisions. First, it called on factory owners, mining entrepreneurs, inn keepers, owners of night shelters, landlords, farming estates, heads of educational establishments and railway station supervisors to report to the zemstvo all cases of contagious diseases found on their premises. Secondly, it required all medical establishments to account for contagious diseases before the zemstvo medical bureau. Thirdly, it forbade infected children or children from infected homes to attend school. Fourthly, it ordered the municipalities to pave and fit proper drainage on all waterlogged streets.

The provincial council which reviewed the guidelines believed that by issuing this document the zemstvo significantly had exceeded its authority. To start with, stressed the council, factory owners, railway managers and heads of educational establishments, to whom the guidelines addressed the zemstvo's instructions, were subject to the respective supervision of the Ministry of Finance, Ministry of Transportation and Ministry of Education. Secondly, only zemstvo's own physicians should have reported cases of infectious diseases to the zemstvo. Finally, even the sewage from the city streets should be drained not just anywhere into the rivers and lakes as decided by the zemstvo, but only where the provincial sanitary inspectorate would find appropriate. Following this review, the provincial governor referred the zemstvo guidelines to the arbitration of the provincial *prisutstvie* on zemstvo affairs, which subsequently vetoed their enactment.

The Senate ruled that according to Article 2 of the Zemstvo Statute and Article 605 of the Medical Statute zemstvos were empowered to take care of 'local needs and necessities' (*mestnye pol'zy i nuzhdy*) and were therefore authorised to issue mandatory guidelines (*obiazatel'nye postanovleniia*).⁴¹ Neither of these statutes, argued the Senate, mentioned any exemptions from mandatory guidelines according to the occupation or trade of local residents:

Pursuing its legal obligation to protect the health of the provincial population, the provincial zemstvo is obviously interested in obtain-

41. Article 108, Zemstvo Statute of 1890.

ing complete information on outbreaks of diseases. This information can only be obtained from those responsible individuals in the province whose cooperation and assistance it deems necessary to solicit. Only in this way could the zemstvo fulfil its legal duty to fight epidemic diseases. Therefore any restrictions on zemstvo actions based on the occupation or trade of such individuals would violate the exact meaning of the Article 108 of the Zemstvo Statute.⁴²

This was a remarkable ruling given the very narrow legal definition of the zemstvos' authority and the prevailing culture of subordination of the zemstvos to the police. Not only did it reinterpret the original law but it also overruled the Senate's own rulings, which had previously denied quarantine powers to zemstvo physicians⁴³ and refused to grant independent authority to zemstvos' sanitary supervisors (*uchastkovye popechitel'*)⁴⁴. By the end of the 1890s, however, the Senators' thinking was clearly set on expanding the zemstvos' sanitary authority, which tacitly over-rode outdated statutory limitations. Confirming the zemstvos' right to issue mandatory regulations on public hygiene irrespective of the competing jurisdictions of the ministries, the Senate implicitly acknowledged the significance of professional public opinion and the strength of zemstvos' sanitary organisation in the countryside.

As in the case of the hospital cases, the Senate very often was the only governmental institution which provided a legal framework for the expansion of the zemstvos' activities and *defacto* helped to authorise the conduct of large-scale sanitary programmes under the aegis of local government. This and similar rulings compelled the provincial public to acknowledge basic sanitary rules and to comply with zemstvo regulations. This translated then into a greater civic cohesion among the previously distant clusters of provincial society. Hence in the long run the Senate's rulings signalled the beginnings of a self-reliant provincial civil society autonomous from official tutelage, and resistant to fragmentation by the politics of patronage clans. The Senate's practice of fostering the zemstvos' authority over public hygiene provided an alternative focus of public life and new avenues for remedying the rifts in Russian civic structures.

Indeed, partly as a result of the Senate's backing of the zemstvos' initiatives, the traditional public perception of the role of state and local self-

42. Ruling #8255, 18 September 1903, Kuznetsov, *Sistematicheskii Svod*, vol. III, pp. 357-360.

43. Senate Ruling #9510, 4 December 1889, appended to Article 602, 'Ustav Meditsinskoi Politsii', *Svod uzakonenii i rasporiazhenii pravitel'stva po vrachebnoi i sanitarnoi chasti v Imperii*, St.Petersburg, 1896-1897.

44. Senate Ruling #5757, 27 August 1884, appended to Article 113, Ustav Meditsinskoi Politsii.

government in sanitary policies began to change, especially so during the famine and cholera relief campaign of 1891-1892.⁴⁵ While tsarist officialdom, hard pressed by lack of state resources for medical aid, began to accept the zemstvos' medical initiatives, the zemstvo sanitary professionals began to seek partnership with centralised administration for the long-term development of preventative medicine. They came to realise that without a state-sponsored sanitary infrastructure it was impossible for them to tackle health problems solely by relying on fragmented network of local health education and hygiene propaganda. They needed government-sponsored intervention in order to overcome regional variations in sanitary practices and to provide sufficient resources for rural and urban sanitation. After the revolution of 1905 the public health professionals expected the state to act as a partner of local government and to advance original zemstvo public health initiatives through complementary large-scale investment and coherent legislation.

To many leading Russian hygiene scientists, who saw the extent of Russia's sanitary backwardness during the cholera epidemics of the early 1890s, it became clear that the solution lay in sanitary engineering and massive state investment in sanitation technology, which had been already adopted by the more advanced European states.⁴⁶ The leading exponent of sanitary engineering A.N. Sysin contended that now the most challenging task for zemstvo physicians was not just education and statistics, but also dependable piped water supply and sewerage. This plan held out the prospect of tangible improvements in public health, which no amount of education or popular discussion could guarantee.

This technical aspect of sanitary engineering seemed to defy the traditional ethics and populist politics of the eminent Pirogov Society of Russian Physicians, which regarded physicians as public healers, teachers, advisors and government critics. To the dismay of *pirogovtsy*, such hygiene experts as N.A. Kost', A.A. Tsvetaev, N.I. Teziakov appealed to the government with a plea for centralised administration of public health.⁴⁷ Professor N.F. Gamaleia, Russia's brightest mind in bacteriology, who spent his formative years in the Pasteur Institute in France, directly appealed to the Ministry of the Interior to support the establishment of the Ministry of Health. His views

45. Richard G. Robbins Jr., *Famine in Russia 1891-1892*, New York and London, 1975, Frieden, pp. 135-158.

46. The works of the German hygienist Pettenkorf, the founder of sanitary engineering, were translated into Russian in the 1880s. For more details see also John F. Hutchinson, *Politics and Public Health in Revolutionary Russia, 1890-1918*, Baltimore and London, 1990.

47. Hutchinson, *Politics and Public Health*, pp. 70-71.

were based on a thorough review of the central state institutions of public health in Britain, Germany, the USA and Japan. Gamaleia urged the government to adopt the principle of creative alliance between central and local authorities that was particularly successful in the healthcare provision in Britain and Germany. He was convinced that an autonomous government agency charged with legal powers and provided with ample government funds would be a suitable organ for the task of sanitary reform. Remarkably too he thought that it would work through the network of sanitary districts and bureaux staffed by sanitary physicians from the existing zemstvo sanitary commissions and committees.⁴⁸

It seems therefore that by the beginning of the twentieth century the new confidence of both zemstvos and medical professionals in their organisational strength and institutional autonomy allowed the emergence of the more accommodating tone with the state. This undoubtedly reflected that was over the years protected by the Senate.

Conclusion.

The story of zemstvo medical revolution is a complex one — it demonstrates how the initial inferiority of the zemstvos before the state welfare system was overcome by professionalisation of zemstvos' medical ranks and then how the zemstvo medical professionals became more inclined to share their newly-gained authority in public hygiene with the state. In this remarkable saga, the Senate's rulings played a crucial role by helping to legitimise professional medical opinions in zemstvo projects and to protect the autonomy of zemstvos' powers.

The Senate helped to achieve two major advances of zemstvo medicine — the expansion of rural hospitals and the spread of sanitary education and control — a compelling testimony to the success of zemstvos' medical petitions to the Senate. The Senate rulings fostered zemstvos' administrative skill in using scarce provincial resources to expand the rural hospitals network and encouraged zemstvos' efforts at increasing sanitary awareness and improving hygiene practices by upholding zemstvos' mandatory regulations.

In their strenuous efforts to provide leadership in anti-epidemic work in the countryside, zemstvo physicians and activists often faced the intractable problems presented by 'sedimentary society' as Alfred Rieber put it, torn apart by long-established private vested interests, *soslovie* consciousness and allegiance to patronage clans often entwined with local and central official-

48. Ibid., pp. 73-77.

dom. These qualities of public life inevitably surfaced in zemstvo assemblies and perpetuated administrative disparities and regional strife between zemstvos, ultimately hindering the steady rise of hospitals' capacity and their accessibility to the rural population. The cleavages of civic structures and zemstvos' own foibles were compounded by bureaucratic ambitions to maintain the pre-eminence of state directives over public initiatives and gave rise again and again to zemstvo litigation in the Senate. Nonetheless, on the whole Russian physicians and the zemstvos succeeded in defending their professional and administrative autonomy and in the years before the First World War moved on from confrontation to seeking long-term cooperation with the state.

In this extraordinary story the Senate's rulings helped to sustain zemstvo authority and to encourage the zemstvo initiative, without which, perhaps, no projects of zemstvos' partnership with the state would have been conceivable in the aftermath of the revolution of 1905. This is not to say that the Senate had some kind of magic wand which could dispel the decades of mistrust between the zemstvos and the government, but it certainly could re-connect the zemstvos' work to the constitutional structures of state and thus satisfy the zemstvos' sense of legitimate mission, which was often lost on ministerial bureaucracy.

Chapter 5

European Theories of Administrative Justice and the Jurists' Debate

ALTHOUGH Senate's practice on zemstvo petitions deeply influenced provincial politics, its most significant effect was upon the Imperial justice system itself. Increasingly, under the surface of Catherinian-style procedures, the First Department adopted the legal methodology practised by the more advanced Civil and Criminal Cassation Departments. In turn this led to a certain 'crisis of identity' among the Senators of the First Department, who felt that the discrepancies between proceedings in administrative and cassation cases reflected the basic contradiction in the Senate's institutional status. On the one hand the First Department was no longer directly participating in ministerial politics, yet, on the other, it was expected to make verdicts consistent with the will of the Tsarist bureaucracy. Having to present such verdicts under the guise of judicial objectivity was a task increasingly at odds with Senators growing professional consciousness as high court judges.

Hence many leading Russian jurists recognised the pressing need for Senate reform and attempted to work out a concise constitutional doctrine delimiting the Senate's authority in relation to the Imperial bureaucracy and the Crown. They scrutinised the Senate's rulings and tried to explain the Senate's evolution in the light of European theories and history of administrative justice. This chapter will therefore give an outline of contemporary European ideas of administrative justice and analyse the Russian jurists' debate over particular models of Senatorial reform.



A brief look at the Senate Statute, which dated back to the 1800s, was sufficient for any one concerned to see that the definition it gave to the Senate's authority carried the indelible mark of the preceding century. The law required Senators

...to honour their Fatherland with noble origin, to reward integrity

with friendship, to respect opinions, correct misconceptions, prosecute corrupt judges, and above all find means of protecting the truth, and not the tenure of their office.¹

Furthermore, the law still described the Senate as the supreme executive authority with the power of legal supervision (*nadzor*) over the entire government machinery. Yet in reality by the end of the nineteenth century the Senate was neither 'supreme', nor 'executive' nor even a 'supervisory' power in the original sense. By the mid-nineteenth century it had long given way to the hegemony of ministerial bureaucracy in the execution of Imperial policies, and by the turn of the century it had almost given up its prominent tradition of periodic provincial inspections. What took the place of the old traditions was a steady stream of administrative petitions requiring careful judicial consideration.

Yet despite the glaring inconsistency between the derelict law and *fin de siècle* social reality, both the official world and private individuals regarded the Senate highly as a legitimate place of dispute arbitration across the entire spectrum of government activities. Certainly a major role in its continuing popularity as a seat of public justice was played by its perceived adaptation of the Imperial Law Code to new social sensitivities and ability to work through the patchwork of the obsolete, obscure and for some cases non-existent legal provisions. The improved quality of Senate rulings was a result of the successful adjustment of the new methods of dispute arbitration that ensured its widely held reputation and led it into the twentieth century. The Senate petitions practice was no longer carried out as a patriarchal mediation emanating from top to bottom of the administrative hierarchy and from the centre to the periphery of the Empire, but as a proper adjudication process rooted in the emerging culture of judicial interpretation of the Imperial laws.

This transformation posed serious practical and theoretical questions concerning the nature of Senate jurisdiction and engaged the critical attention of many leading Russian jurists and statesmen. They asked such basic questions as: if the Senate was indeed developing as Russia's Supreme Administrative Court, what role if any could its traditional power of *nadzor* play? Was *nadzor* a meaningful feature of the Senate's power for the future or just a relic of its administrative history, surviving partly out of habit and partly out of the necessity to offset the legal and structural inadequacies of

1. Article 437, *UPS*; for discussion of the inadequacy of the Senate Statute see S.A. Korf, *Administratsionnaia Iustitsiia*, St.Petersburg, 1911, pp. ; M.A. Lozina-Lozinskii, 'Administrativnaia iustitsiia i preobrazovanie Pravitel'stviushchego Senata', *Pravo*, 1907, no. 1, 2.

central and provincial government? And if the latter, would it not be logical to abolish this bureaucratic institution, whose discretionary nature stood in the way of more impartial justice? And consequently would it not be best for the Senate to disengage completely from its archaic executive functions and assume the full autonomy of a Supreme Administrative Court?

What was really at stake here was the question of the legitimacy and scope of judicial authority over executive discretion. If the Senate's petitions practice was increasingly judicialised this raised the question of how suitable judicial procedures were for judging administrative decisions. And even more fundamentally, could discretionary executive authority directly or indirectly sanctioned by the Tsar be at all the subject of judicial review? Did judges have the necessary qualifications to decide on the merits of administrative decisions, which were divinely entrusted by the Tsars to the autonomous will of a particular office? Would not judicial intervention undermine the efficiency of executive power and the sanctity of the Autocracy itself? Would not independent judicial decisions be even more arbitrary than those of the administrators concerned? And most importantly, what kind of law should they follow in regulating relations between the state, local government and private individuals?

All these questions implied serious change in the relationships between the Tsarist administration and the Senate. They also pointed to the potential conflict between the reform-minded Senate and the ministerial bureaucracy, a conflict which had deep roots in the early nineteenth century. Back in 1802 when Alexander I undertook a thorough government reform, it seemed to many that while the newly established ministries would assume executive authority, the Senate would be a judicial eye for the Tsar and report on any administrative breaches of law in their daily activities. Soon it became clear that the ministries were by far the most favoured institutions of Alexander I and that the Senate was in no position to hold back their activities.² On the contrary the Senate found itself locked in a triangular power struggle between the Committee of Ministers and the State Council. According to the Alexander's Ukaz of 21 March 1803 while the State Council enacted new laws that legitimised new ministerial policies personally approved by the Tsar, the Senate was denied the authority to review new statutory legislation and could only legally sanction ministerial circulars falling within the enacted statutes (*podzakonnnye rasporiazheniia*).

2. Thus according to the law of 23 September 1802 the Senate could only challenge already existing laws and not new ones, Wortman, *The Development*, pp. 113.

This contradicted the Senate's responsibility to carry out independent investigations and report to the Tsar any breaches of law found in the ministerial activities. Much to their dismay Senators found that their detection of administrative irregularities could not over-ride the ministers' references to previously enacted laws, which although contradicted each other, but were sufficient to justify separate ministerial activities.

As could be expected, the Senate's reports received only limited consideration, and the Tsars continued to check the Senate in its exercise of statutory power. Thus an Imperial Ukaz of 1832 cautioned the Senate that even partial repeal of laws could be requested only in exceptional circumstances and so the Senate had gradually given way to ministerial leadership in active administration, while its powers of hierarchical supervision assumed an increasingly indirect and ad-hoc manner. In the absence of effective legal supervision bitter struggle ensued between the ministries whereby individual ministers sought to set up their ministries as a 'state within a state' and protect their respective jurisdictions from any intervention by their counterparts. In the highly personalised world of Autocratic politics the only true power over them remained in the hands of the Tsars, who preferred intimate and linear relations with their favoured ministers to the construction of a coherent Code of Laws and integrated government. This was particularly evident in the scramble for power that ensued later in the century between the Ministry of the Interior and the Ministry of Finances, and that ultimately precluded basic reforms before the revolution of 1905.

Despite these modest beginnings, the Senate emerged as a new-style supreme judicial institution after the 1864 Judicial Reform. It was increasingly conscious of its constitutional status and scope of authority, of the professional qualities of the appointed Senators, and of the independence of its judgments. Such evolution of an administrative arbitrator into a supreme law court was not without precedent in European constitutional history, which Russian jurists constantly referred to in their debates. To better understand these debates, it is fitting to examine here, inevitably in the most general terms, the contemporary European systems of administrative justice and to consider the intellectual and practical challenges that stood behind the European experience, from which Russian jurists had much to learn.

The problem of the scope of judicial review over executive rule was and still remains one of the most complex issues of government, and for a long time it pre-occupied the best legal and philosophical minds of Europe. Central to this debate were British constitutional practices with their principles of

relative independence of the executive, judicial and legislative powers. These principles were widely emulated in continental Europe and in the United States, yet the “secret” of a balanced constitution seemed to have escaped most Western governments. Having evolved over a long period of time, British constitution was rooted equally in its structural divisions as in the values and codes of conduct practised by British government officials.

It can be said that the constitutional history in Britain started from the faithful belief of its medieval rulers that the law was an integral part of the divine order and that it could not be promulgated or altered by men, but only interpreted and applied to particular cases. This belief was so strong that in fact the early kings and queens of Britain understood the government’s role not so much as promulgation of new laws, as meticulous dispensation of justice under the existing laws. This view of law gave rise to powerful judiciary, which from early on possessed significant authority, to be reckoned with even by King. British judges saw their role in over-riding any acts of the Crown which encroached upon civil liberties of the people. This idea of inviolability of people’s rights by the state became known as the principle of the Rule of Law, and put the judiciary in a position not only of independence from the executive, but in some sense of positive superiority to it. According to British legal tradition every official from the Prime Minister to the collector of taxes could be put under the same scrutiny for every act of power exercised in excess of its lawful authority. Hence some scholars believe that it can be said that the British government gradually grew around the powerful British judiciary, which saw its role in the affirmation of rights of British subjects against the infringements of state.³

In the late seventeenth century, following the Civil War, independent courts became particularly effective in safeguarding the rights of British subjects against the Crown’s attempts to assume executive prerogatives which were contrary to the decisions of judges, or to make the tenure of judges dependent on its will. The case of John Wilkes, who in 1763 was awarded £1,000 compensation for unlawful arrest following his critique of the King’s Speech, established beyond any dispute that even when civil servants acted in the interests of the Crown they could not be exempt from the process of ordinary law.⁴

At the turn of the nineteenth century British jurists developed the doctrine of *ultra vires*, which further elaborated the extent of judicial review of

3. C.F. Strong, *Modern Political Constitutions*, London, 1972, pp. 25-29.

4. M.J.C. Vile, *Constitutionalism and the Separation of Powers*, Oxford, 1967, pp. 62.

administrative decisions. According to this doctrine the courts could outlaw those administrative acts which exceeded the statutory power of a particular office or official. The courts could ascertain this by considering the 'four corners' of powers given to officials by the legislature: the nature of power, the objects and the means of authority, and the general scheme of legislation. Under common law British judicial system also developed the concept of abuse of power, which included among other things a clause on the use of power for unauthorised purposes or disregarding relevant considerations. So in fact although British courts had extensive powers to overturn administrative decisions, they did not concern themselves with the wisdom of particular administrative decisions, nor did they examine their social merits, but ruled on the basis of strict compliance with the law and circumstances relevant to it.⁵ Such approach was long admired by the continental jurists, who sought to emulate the workings of the British constitution.

The French philosopher Montesquieu made the most distinguished attempt, developing a comprehensive doctrine of the separation of powers which was subsequently adopted in revolutionary France.⁶ However, while rightly pointing to the autonomy of the three branches of power fundamental to the British constitution, Montesquieu and his continental disciples gave a completely different meaning to the principle of the independence of judges from the executive. They put the main emphasis not on the principle of the Rule of Law, i.e. universality of judicial procedure in all disputes of law, but on what became known as executive immunity, or the protection of officials on duty from examination by judges. For them the idea of separation of powers meant that administrators would in fact become exempt from any form of judicial review and the common courts would be considered incompetent to resolve disputes between French citizens and the state.

As a result, in France there appeared a separate body of laws, called *Droit Administratif*, Administrative Law. Here under separate procedures officials could participate in the resolution of cases raised against them, sitting on the bench virtually as arbitrary judges of their own conduct. Thus France became an archetype of the states with executive prerogatives, embodied by *Droit Administratif*, a body of laws that occupied the middle ground between

5. Philip O'Hood, Paul Jackson, *Constitutional and Administrative Law*, London, 1987, p. 662.

6. Montesquieu observed these principles in the workings of the British government and brought these ideas to pre-revolutionary France in his work, *De L'Esprit des Loix*; Vile, *Constitutionalism*, pp. 65-75.

proper civil litigation and complete executive discretion.⁷

This unexpected transformation, indeed reversal, of the British principle of the Rule of Law into the French system of *Droit Administratif* originated perhaps in the history of French society, which harboured a certain distrust of the courts because of the abuses committed by them before the French Revolution.⁸ Yet, although their powers were perhaps rightly circumscribed by the famous revolutionary Act of 16-24 August 1790, this prohibition of the courts from invading the executive field undermined the French system of justice, and adversely affected the protection of civil rights for most of the nineteenth century. After the Revolution the jurisdiction of the common courts was limited to civil and criminal cases, while specially created administrative courts adjudicated disputes between the government and citizens.⁹ At the apex of the system stood the powerful *Conseil d'Etat*, the Council of State, established by the Directory in 1799. Its separate jurisdiction was subsequently confirmed by Napoleon, whose Constitution justified the appointment of his political supporters to the *Conseil d'Etat* and sanctioned its authority to withdraw any litigation against government officials from the purview of common courts. Yet despite this virtually despotic authority, the *Conseil d'Etat* prosecuted only those officials who acted out of incompetence (*par incompétence*) or exceeded the authority vested in them (*excès de pouvoir*), thus leaving the majority of administrative petitions to the discretionary judgment of the officials themselves.

In the late nineteenth century the development of legal consciousness among the members of the *Conseil d'Etat* helped it to attain a high degree of judicial independence and gradually, by means of judicial precedent, to work out an original doctrine of administrative adjudication (*contentieux administratif*). The sphere of administrative justice dispensed by the *Conseil d'Etat* was significantly extended to include a whole new range of administrative offences: violation of procedure (*vice de forme*), circumvention of the meaning of law (*vice de loi*), abuse of vested powers (*abus de pouvoir*), and by-passing the law (*détournement de loi*). To a degree this helped to disentangle the system of administrative justice from the administration and to make it less susceptible to executive will.

7. A brief outline of modern French *Droit Administratif* in English can be found in P.M. Gaudemet, "Droit Administratif in France", Dicey, *Introduction to Law and the Constitution*, 10th edition, London, 1959, 10th edition, pp. 475-493.

8. Strong, *Modern*, pp. 253- 254.

9. To this day there are many administrative tribunals in France: *Cours des Comptes*, *Conseil des Prises*, *Cour de Discipline Budgétaire*, *Conseil de Révision*, *Conseil Supérieur de l'Education Nationale*, etc.

Remarkably, the judicial conception of the *Conseil d'Etat* that emerged in the late nineteenth century did not shed its original function of public arbiter and clearly bore its revolutionary birth marks: the *Conseil d'Etat* was heavily engaged in matters of 'social justice' and became an important regulator of social policies. Although these functions were clearly alien to British judicial practice, some British jurists including A.V. Dicey did not fail to notice the growing popularity of *contentieux administratif* in France. Dicey believed that Frenchmen's faith in the decisions of administrative courts and the *Conseil d'Etat* was partly founded on their extensive use of expert opinion, which many litigants preferred to trial by jury. In addition the administrative courts' apparent concern with 'social justice' also meant that although the accused could rarely be fully acquitted, possible punishments were more balanced than those in the ordinary courts. And above all the idea of executive immunity from the interference of the courts meant that government officials could not easily be pursued for the execution of state orders — an important consideration for the efficiency of a modern state.¹⁰

Still, even by the end of the nineteenth century the overwhelming majority of administrative cases remained exclusively under the government's purview¹¹ and very rarely was the nature of executive power (*l'activité de puissance publique*) itself questioned in an administrative court.¹² Also if doubts arose over the jurisdictional province of the dispute — whether it was subject to administrative or civil litigation — again the executive authorities retained the power to stop further proceedings, until the *Conseil d'Etat* resolved the jurisdictional conflict (*conflit d'attribution*).¹³ Finally, the composition and procedure of administrative courts and the *Conseil d'Etat* itself did not guarantee objective examination of cases. Many officials were appointed

10. A.V. Dicey, *Introduction*, pp. 493-500.

11. These included actions of government agencies financed by the Treasury, all government contracts and sub-contracts, and all actions of government officials in charge of state expenditure.

12. The only time when administrative courts held the state responsible was in cases covered by civil and contract law. Such cases included employment disputes, liability for postal delivery of goods, disputes between local authorities as to finances of local institutions, etc.

13. Some progress was made in 1872 when an independent Conflict Court (*Tribunal de Conflit*) was introduced to decide whether the case was to come under administrative or judicial courts. To secure impartiality the Conflict Court was composed of nine members — three chosen from the highest judicial court (*Cour de Cassation*), three by the highest administrative court (*Conseil d'Etat*), and two more chosen by these six and the Minister of Justice, who acted as President. The eight members were elected for three years but were usually re-elected. The term of the Minister of Justice coincided with that of the Cabinet.

to participate in the adjudication of cases that were raised against them, the procedure remained cumbersome and secretive, and judges had to make do with a written statement from the plaintiffs instead of oral cross-examination.

So the narrow scope of authority and the vague procedure attributed to administrative courts in France attracted continuous juridical criticism right from the beginning of the nineteenth century. Many prominent jurists clearly perceived the difference between the British principle of the Rule of Law and the French system of *Droit Administratif*, but drew different conclusions from it. In the early nineteenth century European jurists began to revise the late-eighteenth century orthodoxies on the inviolability of administrative discretion, which they thought stemmed from the somewhat extreme French interpretations of the old British practice of separation of powers. They believed that the excessive separation of powers adopted during the course of the French Revolution often served to insulate the administrative sphere from judicial review and in effect deprived citizens of legal protection of their rights against the executive. Each European state had its own constitutional traditions to draw from, but all of them could be described as emphasising either judicial or executive prerogatives.

Some jurists such as Cormein (1818) and Macarel (1828) recognised administrative justice as just another sphere of litigation and proposed to establish complete independence of lower administrative courts and of the *Conseil d'Etat* from the administration. Others such as Berenger (1818), Duvergier (1824) and the Duc de Broglie (1828) feared that separate jurisdiction of administrative courts such as existed in France, and whose further expansion Macarel and Cormein advocated, might encourage the development of a form of alternative government and their members might become "judge-administrators" even more arbitrary than "administrator-judges".¹⁴ Hence the Duc de Broglie raised the cardinal question of any Supreme Court reform, including that of the Russian Senate: how can we allow the independence of a Supreme Court and at the same time ensure its political neutrality?

His solution was to abolish administrative courts altogether, and to transfer most of their functions to civil courts, which would decide cases concerning personal damages incurred through official negligence or misconduct. Other cases contesting the grounds for particular administrative policies should be entrusted to administrators themselves as they involved political considerations and should therefore be decided on the basis of and in the interests of the public good. Such judgments, argued de Broglie, were

14. Vile, *Constitutionalism*, pp. 53-76.

open only to government officials and had nothing to do with regularity of law and court procedure.

Since de Broglie did not recognise the judicial status of administrative courts and thought that civil courts alone could cope with questions of law, his theory became known as 'singular jurisprudence' and was adopted for example in Belgium in 1831 and in Italy in 1865. As a result, significant number of cases previously adjudicated by administrative tribunals now fell under full jurisdiction of the civil courts, which as he predicted gave far better protection of individual property rights. On the other hand, a whole range of cases previously adjudicated by the mixed administrative courts under judicial procedure now came under the exclusive jurisdiction of the administration, which decided them in the old discretionary manner, clearly a step backward from previous practice. In a way this was so because the founders of singular jurisprudence saw the rights arising from administrative orders as somehow inferior to primary civil and political rights, for example property rights and electoral rights, and therefore exempted them from the courts' purview. This particularly affected jurisdictional disputes between local and central authorities which were now considered solely by the administration. So many important areas of administration such as law and order, sanitary police, food supply, roads maintenance, water, forests and mines management, control over local authorities and charities, which did not appear directly connected to individual rights, remained outside the purview of ordinary courts. In a word, the paradox of united jurisprudence was that although de Broglie advocated the British model of broad authority of the courts over legality of administration, he also kept the French practice of denying them intervention into what he had seen as "purely" administrative decisions.

The "secret" of the British system, which was so difficult to come to terms with on the continent, was that apparent independence of judges and courts there did not threaten executive or legislative powers, a problem which constantly worried the founders both of the French *contentieux administratif* and of the theory of united jurisprudence.

This was so because in Britain the separation of powers was also underpinned by a balanced constitution of the two houses of Parliament and the Crown. This ancient structure permitted not only separation, but also partial overlaps and reciprocal checks and balances, between different branches of power. Thus the House of Lords was not only a supreme judicial authority independent of the law-making Commons and the executive Crown, but also

shared with them the supreme legislative function. This complex mechanism of power-sharing saved all the three powers from political stagnation and potential deadlock. In fact neither the scope of authority, nor the organisational structures, nor the personnel of the three branches of power in Britain were ever completely separate.¹⁵

These basic questions of government theory did not escape the attention of Russian critics of continental theories, who also pointed out that judicial power should not be conceived of as a threat to the executive because in many ways it was derivative from legislative and executive power. For example M. Lozina-Lozinskii argued that first, the courts did not impose a uniform will, but dispensed decisions only on particular cases; secondly, the legality of judicial decisions depended on law and on procedure recognised by law; and finally, judicial precedents could be over-ruled by legislative acts.¹⁶

The denial of separate jurisdiction to the administrative courts gave rise to intense criticism of the doctrine of united jurisprudence by German legal scholars Stahl¹⁷ and Bluntschli¹⁸ who argued that common courts were not competent to resolve disputes concerning public law. This was so because the protection of individual rights and public interests were fundamentally different tasks and were subject to separate jurisdictions of judicial and administrative courts. So they insisted that private rights and public interests should be reconciled in separate institutions and by separate means of administrative justice.

R. von Gneist adopted his colleagues' distinction of individual rights and common interests and further developed the idea of separate administrative courts; he thus became the driving force of the 1872 administrative-judicial reform in Prussia.¹⁹ As De Broglie was earlier concerned with politicisation of the courts, Gneist believed that recently introduced in Prussia ministerial bureaucracy was not immune to it either. He proposed to reinstate the judi-

15. This point is carefully considered in John Griffith, *The Politics of the Judiciary*, London, 1997, pp. 13-24; Griffith maintains that most High Court judges and Law Lords in Britain not only serve in the Inns of Courts, but also spend a good deal of their careers as Members of Parliament, and even of the Cabinet, a practice that would unlikely lead to a judicial deadlock with government. This is not to say that British judiciary never defied government policies in their verdicts, but rather that in Britain the possibility of an outright deadlock between the government and the courts is far less pronounced than on the continent.

16. M.A. Lozina-Lozinskii 'Administrativnaia iustitsiia i preobrazovanie Senata', *Zhurnal Ministerstva Iustitsii*, January, 1907, no 1, p. 20.

17. Stahl, *Rechts-und Staatslehre*, Berlin, 1830.

18. Bluntschli, *Allgemeines Staatsrecht*, Berlin, 1852.

19. *Verhandlungen des 12-ten Deutschen Juristentages*, Bd. 3, Stenographische Berichte, Berlin, 1875.

~~reaucracy was not immune to it either. He proposed to reinstate the judicial~~ functions of the old German collegiate institutions of government and to establish administrative-judicial chambers as impartial guardians of regular administrative process, which would ensure the legal obedience of the officials. Leaving policy decisions to the authority of the current administration, administrative courts would concentrate on the protection of public interests in the sphere of discretionary administrative powers.

Gneist was clearly influenced by the British system of Justices of the Peace, who combined judicial and administrative functions in one office. However, his attempt at such a combination in Germany was based on a different theoretical approach and institutional culture, and not surprisingly produced a very different result. Gneist proposed to introduce a three-tier system of administrative justice. The first two levels would include heads of different branches of administration and representatives of local government, who at the same time would design and conduct policies as well as decide disputes over the expediency of such policies. The ultimate authority in these disputes would be a high court of cassation, which would consider only formal aspects of law without regard to material circumstances.

So Gneist established German administrative courts as administrative and not judicial organs, and expected them to observe and enforce the 'objective government order' rather than protect individual rights. Gneist envisaged them as a revival of the old collegiate chambers, and their functions as a part of an administrative and not a judicial process. This meant that he put a far more ambitious task before administrative courts — not just to give rulings in particular cases, but to take care of the overall flow of administrative process. Hence it was the executive order rather than individual rights that were at the centre of their activity. Ultimately, however, such a view narrowed the scope of the administrative courts' power. Only certain types of administrative decisions could come under the purview of administrative courts, while the remaining petitions had to be decided in the same benevolent hierarchical manner as in bureaucratic France.

However the Prussian system of administrative justice was undoubtedly a step forward compared to the French *contentieux administratif* and to the Belgian singular jurisprudence. Similar to the Belgian model, Prussian administrative courts did not interfere in the jurisdiction of common courts, which alone could provide a comprehensive defence of plaintiffs' private rights, and in addition they also adjudicated over a significantly expanded area of public policies. However, the major drawback of the Prussian system

was that while defending the plaintiffs' public rights and interests, it often treated these as somehow inferior to the rights enshrined in private law and frequently sacrificed them in the face of the 'common good' and public order. Consequently instead of properly autonomous administrative courts Prussia had administrative-judicial chambers, which, although they observed certain judicial procedures, nonetheless decided public law cases in the context of a well-ordered administration.²⁰

In reaction to these debates Austria appeared to have rejected both the French notion of *contentieux administratif* and the dualistic Prussian administrative-judicial order. At least in theory it went much further than Prussia in emulating the unified British model of justice. Austrian administrative justice became a part of the general justice system and claimed to defend the 'individual public rights' of Austrian subjects. According to the eminent Austrian jurist Lemayer, no administrative act could be exempt from judicial review if it infringed upon the rights of Austrian subjects. Constitutional provisions of 1867 guaranteed petitioners' access to judicial redress against all cases of administrative breach of individual rights. So the Imperial administrative court – the *Reichsgericht* – established in 1875 on the basis of oral, public and competitive procedure was charged with the task of deciding all disputes between private individuals and government officials concerning the alleged breaches of individual public rights. This meant that the supreme court's authority was not limited to a hand-picked list of cases, as was the case in Prussia, but was determined by its singular task of a comprehensive defence of individual public rights against executive rule. Conversely, all disputes regarding the particular merits of administrative policies were exempt from the court's jurisdiction, as it was deemed incompetent to judge policy issues outside the context of particular claims of rights. In other words, administrative courts could discuss administrative decisions only if and when these were challenged by a particular plaintiff, seeking to be reinstated in his rights.²¹

Yet, despite its high proclamations, the Austrian system had a number of serious flaws. Most importantly, it required a highly abstract distinction between private rights and the public sphere, which was practically unattainable in a court of law. From this came a number of procedural limitations. Firstly, the system continued to rely heavily on the administrative hierarchy

20. For a description of their proceedings, for example, in cases of outlawed occult practices see David Blackburn, *The Marpingen Visions: Rationalism, Religion, and the Rise of Modern Germany*, London, 1995.

21. Deriuzhinskii, 'Administrativnye sudy', pp. 112-115.

and required every plaintiff to obtain a top executive decision before submitting a claim to the Supreme Court. Secondly, the impossibly abstract judicial doctrine made it difficult to establish lower administrative courts, and consequently limited the Supreme Court's jurisdiction to the legal formalities (cassation). Thirdly, the Supreme Court was made subordinate to the Minister-President and not to the Ministry of Justice, which on some level implied that it was not entirely independent from the administration. Consequently, some administrative authorities received exemptions from the jurisdiction of the Supreme Court: police, mixed administrative-judicial commissions, tax valuation committees and central government organs in some discretionary areas of administration. So, attractive as it may have been, the Austrian idea of individual public rights as a sole concern of administrative justice was not particularly successful.

Hence, the intellectual and practical challenge posed by the European experience to the Russian jurists could be summed up in one question: how to find the balance between public interests and private rights in courts of law? Should the courts make pronouncements on specific administrative policies or should they treat government officials as private individuals subject to ordinary civil and criminal laws? None of the European countries (except at least in theory Austria) seemed to have created an integral system of administrative justice whereby individual rights received protection equal to the executive immunity of government officials. Some governments that followed the British model took what can be called a 'reductionist' approach and adopted the view that ordinary courts could deal with any administrative offence as they did with civil and criminal ones (Belgium, Italy). Others that followed the French system emphasised that government officials on duty cannot readily be challenged in court if the efficiency of executive power is to be preserved. Hence in such countries as Germany individual rights received protection only in so far as they were coincided with the general task of implementing regular administrative process.

Some participants of the debates in Russia emphasised new judicial qualities of Senate practice and the need to uphold its full autonomy as a Supreme Court, while others recoiled from such a radical scheme and proposed to retain the Senate's traditional administrative status. The former hoped that the judicial autonomy of the Senate would give it the necessary leverage against Tsarist officialdom, while the latter believed that the Senate's residual administrative status could be revived for the benefit of more thoroughgoing public mediation that the Senate traditionally conducted. Either way the re-

formers were going to encounter intractable problems of Russian judicial and administrative systems, that would eventually frustrate their attempts at Senate reform. The following pages offer a sampling of the Russian jurists' debates.



Different European theories of administrative justice gained different degrees of popularity in Russia, but all of them were closely studied by Russian jurists. From the late 1870 following reforms of administrative justice taking place across Europe, in France, Prussia, Austria and Italy, translations of European treatises of Administrative Law filled the shelves of university libraries and legal bookstores. Thus in 1879, N. Kuplevasskii published the first volume of his survey of Western European systems, which opened with analysis of French administrative justice.²² In the following year, N.M. Korkunov published a detailed study of administrative courts in Prussia, and in 1885 an overview of European systems of administrative justice.²³ In 1887, I.T. Tarasov developed the subject with his organisational study of administrative justice in Europe,²⁴ which was published a year later as a digest, and four years later as a legal textbook.²⁵ In the following decade, E. Berendts examined the history of administrative justice in France,²⁶ while N.I. Pavlienکو's essay discussed German and Russian principles of administrative justice,²⁷ and M.A. Lozina-Lozinskii – Austrian.²⁸ In the early 1900s Russian jurists turned to the study of the Ruling Senate's jurisdiction, which they examined in the light of the judicial practice of its European counterparts.

Firstly, the Russian jurists attempted to interpret the Senate's own views of its authority as revealed in its verdicts, and secondly, they tried to suggest appropriate models of administrative justice that might fit existing Senatorial practices. This was no simple task, either practically or theoretically. To begin with, the Senate's rulings, particularly those of the First Department, were

-
22. N. Kuplevasskii, *Administrativnaia iustitsiia na zapade*, vol. I, *Administrativnaia iustitsiia vo Frantsii*, Khar'kov 1879.
 23. M.N. Korkunov, 'Administrativnye sudy v Prussii', *Zhurnal Grazhdanskogo i Ugolovnogo Prava*, 1880, no. 5, 6; 'Ocherk teorii administrativnoi iustitsii', *Zhurnal Grazhdanskogo i Ugolovnogo Prava*, 1885, no. 1,8,9.
 24. N.I. Tarasov, 'Organizatsiia administrativnoi iustitsii', *Iuridicheskii Vestnik*, 1887, no. 9.
 25. N.I. Tarasov, *Kratkii ocherk nauki administrativnogo prava*, Iaroslavl', 1888; idem., *Uchebnyk nauki politseiskogo prava*, Moscow, 1891.
 26. E. Berendts, *Opyt sistemy administrativnogo prava*, Iaroslavl', 1898.
 27. N.I. Pavlienکو, 'Sushchnost administrativnoi iustitsii i osnovnye cherty ee organizatsii v Evropeiskikh gosudarstvakh' in: *Kievskie Universitetskie Izvestiia*, December, 1898.
 28. M.A. Lozina-Lozinskii, 'Administrativnyi sud v Avstrii', *Vestnik Prava*, 1899, no. 10, pp. 1-58

not available for regular public dissemination and only occasionally did the information spill over into juridical journals. In addition, the rulings which were nevertheless released into the public domain, often contradicted each other, and created an air of confusion in juridical circles. Finally, the so-called Emergency Rule (*chrezvychainoe polozhenie*), which was introduced in many parts of the Empire from 1887 in order to quell escalating revolutionary terrorism, excluded the population of these areas from the Senate's intervention. Hence the jurists could not speak of a coherent judicial practice of the Senate and inevitably based most of their arguments on partial evidence. Nonetheless, many legal experts felt that the Senate's rulings increasingly displayed a pattern or rather a range of patterns of judicial reasoning and provided sufficient material to speak of a certain Senate legal methodology. In their commentaries they sought to link Senate decisions with theoretical models of the day and thus to pave the way for comprehensive reform of the Senate.

Particularly instructive in this respect was a heated polemic between the two leading jurists in this field, N.I. Lazarevskii and M.A. Lozina-Lozinskii, published in the leading legal journal *Pravo* in the early 1900s.²⁹ Both jurists agreed that the main danger to legality in Russia was the expansion of the discretionary powers of central and especially provincial administration through the system of extraordinary rule. This distorted the relationship of the Tsarist bureaucracy with local self-government and other public organisations and undermined the normal course of public life. They felt that the atmosphere of secrecy surrounding discretionary authority of Tsarist officials helped to conceal the real motives of government decisions and hindered the dialogue that had barely begun between the government and provincial public opinion. This lack of confidence between the government and the *zemstvos'* men led to political extremes on both sides and threatened many good initiatives of *zemstvos'* work.

In this situation the jurists believed that an impartial system of independent judicial review would help to resolve objectively the frequent disputes between government officials and the *zemstvos* and thus to forestall the looming public crisis. The impartiality of judicial opinion would take the edge out of the confrontation between the state and society and curb the most flagrant cases of official arbitrariness. It would give Russian subjects the assurance of redress against violations of their rights and a place where they

29. N.I. Lazarevskii, 'Administrativnoe usmotrenie', *Pravo*, 1900, no. 41, col.: 1903-1911; no. 42 col.: 1957-1964; M.A. Lozina-Lozinskii, 'Proverka diskretnykh rasporiazhenii administrativnymi sudami', *Pravo*, 1901, no. 3, col.: 126-135; no. 4, col.: 176-188.

could argue their cases. The jurists also believed that contemporary Senate's practice could provide clues as to what kind of justice would best fit the current needs of plaintiffs and the existing legal conditions of provincial administration. However, they hotly disagreed on the qualities of Senatorial verdicts and consequently advocated two opposing programmes of the Senate's reform.

Lazarevskii viewed the Senate's authority as the power to stop administrative decisions if they were undertaken in circumvention of law, that is to do so in a way that closely resembled the French practice of *detournement de pouvoir*. To illustrate this practice Lazarevskii referred to a famous case of a French merchant who won his case against a provincial prefect's order to shut down his match-manufacturing factory. The defendant argued that his order followed a ministerial circular which announced the impending nationalisation of the match-manufacturing industry and requested provincial prefects to shut down all those factories which did not satisfy sanitary standards. However, as the *Conseil d'Etat* established, in this case by ordering the factory's closure the prefect pursued fiscal rather than sanitary goals. He hoped that once the factory had been closed down it could be purchased by the state for less. Hence, the *Conseil d'Etat* determined that in the eyes of the French Administrative law the prefect's decision constituted a circumvention of the discretionary authority vested in him and over-ruled.

This, argued Lazarevskii, was a classic mode of reasoning for the *Conseil d'Etat*, which allowed French justice to annul administrative acts if and when the court found discrepancies between the motives of the administrators concerned and the public goals pursued by the directives of their superiors. Lazarevskii believed that the evidence of similar reasoning could be found in the Senate's rulings against provincial administrators. The Senate's rulings, he continued, often appeared to consider the extent to which the discretionary decisions of administrators followed or contradicted particular intentions of legislators enshrined in laws. For example, argued Lazarevskii, the Russian Senate over-ruled in a similar way a number of decisions by provincial governors to restrict printing trade in their provinces on the grounds other than 'good reputation of proprietors' required by the Censorship Statute. On many occasions the provincial governors referred to such considerations as 'lack of police personnel' to supervise the shops, or 'lack of local need' for new publications, or even 'intense competition' with existing printing shops, all of which the Senate found irrelevant and over-ruled as incompatible with the original intentions of the law. These verdicts led Lazarevskii to conclude

that the French model of Administrative Law would be a suitable basis for the future reform of the Senate as it had already been adopted in the Senate's practice.

On the other hand, Lozina-Lozinskii completely rejected this interpretation of the Senate's legal methodology and pointed to the inherent weakness in Lazarevskii's arguments derived from the Senate's reasoning. He stressed that if the Senate were to make decisions by examining the motives of Tsarist officials, the latter would be encouraged to seek ever more ingenious ways of misrepresenting or disguising the true nature of their actions. Neither, said Lozina-Lozinskii, given glaring discrepancies in the Imperial Law Code would it be easy for the judges to establish true public goals of the original legislation and to compare them with their implementation. Finally, insisted Lozina-Lozinskii, the court of law in principle could not be concerned with correctness or incorrectness of implementation of laws, but only with the protection of civil rights enshrined in those laws or deduced from them by rigorous judicial interpretation. So if indeed it was true that the Senate ruled on a basis similar to the French concept of *detournement de pouvoir*, it was more a result of the old tradition of hierarchical *nadzor* than of the legal strictures required of a modern Supreme Administrative Court.

Lozina-Lozinskii proposed to put the Senate's authority on a more solid legal foundation, which would strictly exclude any non-legal components from its rulings. In this respect Lozina-Lozinskii highly recommended the Austrian model of administrative justice, which under the Constitution of 22 October 1875 guaranteed protection by the Supreme Administrative Court of all individual public rights affected by unlawful decisions of the administration.³⁰ The Austrian Court, he argued, was not concerned with individual interests, social sensitivities or the expediency of administrative decisions, but purely with the civil rights of Austrian subjects as enshrined in public law. In this sense the key interest of the courts should be the extent to which government officials observe these rights of individuals while making their discretionary decisions.

In this context, argued Lozina-Lozinskii, in Lazarevskii's example of Russian printing licenses the provincial governors were duty bound to obtain references for the applicants in order to establish their political loyalty prior to granting or refusing licences. So the Senate's authority in such cases could be construed as the responsibility to establish whether the governors

30. More detailed overview of the Austrian administrative justice is given in his article 'Administrativnyi sud v Avstrii', *Vestnik Prava*, 1899, no. 10, pp. 1-58.

who refused licences had correctly understood their duty and diligently carried it out. Here, in fact, Lozina-Lozinskii made an implicit reference to a similar concept of 'reasonable care' adopted in British jurisprudence, which as mentioned above meant precisely that: a responsible exercise of discretionary authority. In this context the concept of official duty could provide tangible limits for judicial control over discretionary administration and clearly delineate the Senate's authority in administrative justice. Such an approach according to Lozina-Lozinskii cleared the way for reforming the Senate as a Supreme Court charged with the power of judicial cassation over administrative cases. In any case the consistency of the officials' motives with those of their superiors or of legislators should be irrelevant to the Senate.

In response to Lozina-Lozinskii's criticism, Lazarevskii asserted that Lozina-Lozinskii's proposal that the Senate should establish that the governors' had correctly understood and diligently implemented their duty differed little from his own idea of comparing their motives to those of their superiors.³¹ In this sense, he argued, Lozina-Lozinskii's position was hardly dissimilar to that of the French concept of *detournement de pouvoir*. However, it is difficult to agree with Lazarevskii because establishing official duty and official motives in court required completely different modes of judicial investigation: while the motives followed from the governors' own representation of the case and could be potentially distorted and falsified, their duties were enshrined in laws or could be objectively deduced from the law by means of judicial interpretation. This was the weakness of the French system and the strength of the British one that was pointed to by Lozina-Lozinskii and before him by Dicey.

However the next point made by Lazarevskii against Lozina-Lozinskii bears much greater relevance to the Senate's evolution. He questioned Lozina-Lozinskii's rejection of the Senate's tradition of addressing not only formal law but also the subject matter of the case (*rassmotrenie po sushchestvu dela*). Lazarevskii argued that the proposal to turn the Senate into a court of cassation defending 'individual public rights' at the apex of Imperial justice in a manner similar to the Austrian Court, would, on the one hand, raise excessive expectations of the Senate, and on the other, offer too little practical guidance to it. In practice public and private aspects of administrative law were so intimately entwined that to engage in their precise delimitation would be a sheer pedantic exercise. Apart from that, many cases did not di-

31. N.I. Lazarevskii, "Pravovoi kontrol' nad diskretsionnymi rasporiazheniiami administratsii, *Pravo*, 1901, no. 12, col.: 642-649; idem, "Pravitel'stvuiushchii Senat kak organ nadzora", *Pravo*, no. 15, col.: 765-776.

rectly affect individuals yet presented significant violations of administrative authority and potential risk for administrative conflict. Zemstvo petitions which contested provincial governors' actions against community self-government could hardly be described in terms of individual rights, yet they touched upon basic issues of zemstvo autonomy and its relations with Tsarist bureaucracy.

Hence, argued Lazarevskii, the theoretical difficulties presented by the abstract concept of 'individual public rights' (*sub'ektivnye obshchestvennye prava*) prompted many distinguished European jurists to look elsewhere for the definition of administrative justice.³² In most countries therefore administrative courts did not at all require the plaintiffs to claim particular rights in order to instigate legal proceedings against administration, and indeed French and Prussian courts were equally concerned with social appropriateness, balance and expediency of official decisions.³³ In Russia, as we have seen in Part 2, this certainly applied to zemstvo petitions which often raised problems of social equity (as in local taxation) and effective delivery of local public policy (as in health care, education, or road construction) along with individual public rights such as local representation or professional freedom. The Senate's long-standing attention to these issues, argued Lazarevskii, helped to resolve the legal problems associated with the zemstvos' activities and was certainly not to be disregarded by reformers.

It was important, argued Lazarevskii, that Russian legal scholars did not lose sight of the supervisory tradition (*nadzor*) which inclined the Senate to consider the complex social fabric of its cases. Concise judicial investigations were more likely to meet the needs of Russia's rapidly modernising society and provide better adjustment of the Imperial legal system to the public expectations of justice. In this situation to restrict the Senate practice to cassation, i.e. formal consideration of law, would significantly limit the social and legal impact of the Senate's practice. On the contrary, argued Lazarevskii, Russian jurists had to take into account the Senate's position in the overall structure of the Russian state. So far the Senate enjoyed none of the corporate

32. Lazarevskii points out that the theory of 'subjective public rights' was advocated by the French jurist Aucoc, *Conferences sur le droit administratif*, Paris, 1885, who was subsequently criticised by such German jurists as Laband, *Saatsrecht des deutschen Reichs*, vol. II, p. 343; Meyer, *Verwaltungsrecht*, vol. I, pp. 163-164; Zorn, *Kritische Studientzur Verwaltungsrecht barkeit. Verwaltungsarchiv*, 1894, vol. II, pp. 108; Stengel, *Worterbuch des deutschen Verwaltungsrechts*, vol. II, p. 714. They did not regard the right of associations, trade unions, freedom of press, freedom of religious conscience, etc. as subjective rights.

33. Lazarevskii, 'Pravovoi kontrol', p. 645.

autonomy that the French *Conseil d'Etat* or the Austrian Supreme Court had acquired in the course of the nineteenth century. Yet its subordinate institutional status was somewhat compensated by the broad authority invested in it over the administrative decisions. So it would be unwise, to say the least, to abolish the system of *nadzor* at a time when secretive discretionary powers of administration continued to expand at the cost of civil liberties and a public sense of social justice. In any case, it would be totally inappropriate to limit the Senate's authority in any way before it had been granted full judicial status.

So on the whole we can agree with Lazarevskii that although Lozina-Lozinskii correctly emphasised civil rights as a prime concern of the courts, his proposed model did not fit well with either current Senate's practice or with the latest European theories of administrative justice. Yet Lozina-Lozinskii should be credited with introducing to this debate the concept of official duty in carrying out discretionary decisions. The doctrine of '*ultra-vires*' adopted by British judges at the turn of the century was a successful example of how the courts could exercise legal control over the administration without indulging in political deliberations alien to them. Given the urgent need for the Russian judiciary to prove its credibility as a safeguard of the rule of law and to distance itself from the political agendas of both the Autocracy and the revolutionary intelligentsia, this was perhaps a route of reform worth considering.

The polemic illustrated both the theoretical and practical problems of accurately interpreting and sensibly reforming the Senate's powers. Yet it also demonstrated the intense urgency of doing so that was felt by Russian jurists and society. Certainly, the public consciousness of civil rights to which Lozina-Lozinskii referred, greatly strengthened after the Great Reforms, and it was the first time that educated Russian subjects addressed key areas of state activism such as education, religion, press, voluntary associations, local government, and even food supply, industrial labour policies, public transport and sanitation as spheres of public rights.³⁴ Both petitioners and judges needed to know whether the Senate was prepared to consider public goals pursued by administrators and position itself as a mediator of social policies in the manner of the French *Conseil d'Etat*, or it was supposed to act purely as a guardian of individual civil rights, indifferent to the particular ambitions of central and provincial government officials.

The former role was of course more akin to the Senate's traditional *nad-*

34. Eds. Olga Crisp Linda Edmondson, *Civil Rights in Imperial Russia*, Oxford, 1989.

zor function, but undoubtedly carried greater risk of confrontation with the Tsarist bureaucracy. Indicative of these dangers were the following remarks of the Minister of Internal Affairs Peter Durnovo on administrative legality:

In the sphere of administration official discretion ought to be exempt from control by any 'administrative justice' [because] the discretionary power implements such administrative tasks that conform to the demands of [political] expediency and in this area no one should hinder it. ...Governors, who allowed themselves a certain excess of authority for the sake of urgent preservation of law and order, should be credited with thorough commitment to their duty, while those who searched for appropriate articles of law or awaited appropriate circulars from their superiors, instead of taking urgent action, lacked such commitment.³⁵

In other words, Tsarist officials did not see the need for any judicial organ to determine the extent of administrative legality and were prepared to endorse violations of administrative authority in the interests of political repression. This was no secret to Senators and Russian jurists, many of who began to advocate the revival of Senatorial *nadzor* in the interests of the emerging liberties of Russian civil society. For example S.A. Korf, the author of a magisterial history of administrative justice in Russia in the eighteenth and nineteenth century, an ardent advocate of the Senate's *nadzor*, believed that the traditionally enlarged scope of authority, which allowed direct interference into administrative decisions, enabled the Senate to consider such questions of administrative policies that far exceeded the jurisdiction of properly judicialised European courts. Hence he saw this as a serious advantage of Senatorial status within the Tsarist state and hoped that liberal judges could take full advantage of this tradition.³⁶

Conclusion

Undoubtedly European theories and practice of administrative justice were a rich reference source for Russian jurists and offered a variety of options for the reform of the Senate. Certainly, Russian jurists were adequately acquainted with the cardinal problems of separation of powers and understood the dangers of exempting the government bureaucracy from judicial review. Examining the Senate rulings, they identified the tendency to search for a reliable judicial method not dissimilar to the European Administrative Courts and strove to inculcate a precise judicial methodology into Senate practice

35. *Stenograficheskie Otchety Gosudarstvennogo Soveta*, session 2, (19 May 1907), cols.: 404, 410, 413-15. Referred to by D.Lieven, *Russia's Rulers*, p. 219.

36. See S.A.Korf, *Administrativnaia Iustitsiia*, St.Petersburg, vols. 1-2, 1911.

over administrative cases. On the other hand, they also appreciated that the Senate's history and its current constitutional position continuously inclined it to expand its activism beyond pure judicial process. They understood both positive and negative implications of this practice. Russian jurists valued the traditionally broad authority of the Senate and saw in it the promise of a rich judicial culture. On the other hand they were concerned at government attempts to perpetuate the Senate's quasi-administrative status in order to justify administrative interference in Senatorial verdicts.

Their theoretical efforts were therefore aimed at finding a judicial doctrine, which could simultaneously enhance the judicial discourse and neatly extricate the Senate from the orbit of Imperial bureaucracy. In this respect the successful example of the British doctrine of *ultra vires* and the French concept of *detournement de pouvoir* pointed to the two possible routes of reform. While the British doctrine based on the Rule of Law would have required reconciling the principles of administrative justice with those of civil law and made the Senate an integral part of the Imperial justice system, the French doctrine of *Droit Administratif* would have built upon the more traditional form of the Senate's supervisory authority, *nadzor*, and put the Senate somewhere between the Imperial administration and justice.

Though the former scenario more clearly would have distanced Senatorial justice from law and policy making, it also would have required eventually the gradual inclusion of the lower courts into the administrative-judicial process and so relied heavily on their attainment of political and jurisdictional independence. The latter route of reform would have better preserved the traditional Senate standing between justice and administration, but would have opened the way for the Senate to exercise active and ongoing judicial assessment of ministerial policies. Clearly Russian lower courts could not deliver the impeccable judicial impartiality essential to the Rule of Law model, nor could the ministries promise unconditional acceptance of the Senate's authority of the kind that underlay the system of *Droit Administratif*. To put it another way, the Senate reform ran into a bitter ideological struggle between Russia's ruling elites and Russian society over the meaning of law and the organisation of justice. That this ideological conflict obstructed the natural growth of the Senate's judicial culture was clearly demonstrated in the struggle over the Senate reform spanning eleven years between 1905 and 1916.

Chapter 6

The Senate Reform: Ministerial 'Justice' or 'Government' by Judiciary?

BY the end of the nineteenth century archaic procedural rules and heavy handed bureaucratic control brought Senatorial justice to a virtual standstill. Even the substantial increase of the First Department's membership to 24 Senators could not relieve the backlog of cases with some outstanding from as far back as the 1890s. The problems behind the rapid decline of the Senate's efficiency were two-fold – firstly, cases were perpetually delayed by ministerial interventions, and, secondly, the Senate's resources were continuously diverted from its core petitions practice to its residual duties in Imperial administration and legislation. Both problems – obstruction of Senatorial autonomy and erosion of judicial culture – pointed to the deeper issue of the Senate's constitutional status in the Imperial state. Hence in this chapter we will examine the three attempts at Senate reform undertaken in 1905, 1907 and 1914.



The Senate's decline was directly linked to ministerial domination, reflected in its organisation, judicial proceedings, and nominations of judges. The nerve centre of bureaucratic control was the Minister of Justice who in his role of General Procurator of the Senate could extend the hierarchy of appeal from the Senate Departments to its Joint Assemblies and from there to the State Council and to the Imperial Chancellery. This multi-level hierarchy of appeals provided ministers with the means of effective control of Senatorial verdicts, which they could single-handedly veto at the first hearing. Secondly, the Minister of Justice also made Senatorial nominations and not infrequently ~~the~~ he used this authority in order to put candidates' political and personal loyalty above their legal qualifications. In turn, lack of judicial ex-

pertise among Senators caused growing dependency upon Departmental over-procurators and chancellery clerks, who as functionaries of the Ministry of Justice could delay and manipulate hearings by means of case presentations, verdict drafting and bargaining with Senators' opinions in order to attain the unanimous vote required by law.

The Senate was also burdened by its numerous extrajudicial duties, which included continuous promulgations (*raspechatka*) and commentaries (*raz'iasneniia*) of new laws. This practice was established by Catherine the Great, who in the wake of provincial reform allowed local authorities to submit inquiries to the Senate if new laws dispatched to the provinces seemed to have internal contradictions, or were too difficult to implement. The Senate was expected to clarify such inquiries and then 'promulgate' the law by publishing it in *Senatskie Vedomosti*. These duties lost much of their validity in 1802 when collegiate rule was replaced by ministerial government, which at least in theory was based on rationally devised laws and 'perfect' centre-to-provinces hierarchies, presumably leaving no place for such irregularities. In reality though, the protracted codification of the obscure and contradictory Imperial Law Code, which was not completed until the very end of the Tsarist Empire, compelled both the central and provincial authorities to continue submitting inquiries and expecting Senatorial commentaries and promulgations in addition to ministerial directives. This residual duty consumed the bulk of Senatorial sessions, which were spent in the most tedious rubber-stamping of a legion of decrees, circulars and ordinances pouring out of the ministries. However, after 1905, what seemed a somewhat abnormal but harmless outgrowth of Senatorial past became a potentially dangerous weapon of the ministerial bureaucracy. United in the new Council of Ministers, technically unaccountable to the Senate, the ministerial bureaucracy was, as we shall see, poised to challenge the national assembly, the Duma, using these very same obscure Senatorial functions.

Despite the pitfalls in the Senate's proceedings, and for want of better means of redress, the public demand for Senatorial justice by the turn of the century visibly intensified. Thus routine economic claims of the population were now compounded by the multi-million industrial suits against the Treasury and the Ministry of Finances, that indicated the basic clash between rapid modernisation of industries and rudimentary property and tax laws.¹

1. In 1907 a member of the State Council, Avalov, testified to this problem as follows: 'There is not one land title that cannot be contested in our [key] mining areas in the South East, and there is not one case that does not rise to the Senate. Millions of rubles and huge investments are dependent upon the slow and cumbersome Senatorial jus-

In addition, old provincial squabbles grew into all-encompassing legal confrontation between the increasingly vocal organs of local self-government with provincial officials. Furthermore, growing academic and professional communities, which ardently opposed Tsarist restriction of intellectual freedom, further challenged the organs of censorship and cultural surveillance. Finally, workers and peasants continuously petitioned against the repressive authority of the Autocracy's institutions of *soslovie* patronage such as rural land captains and the urban factory inspectorate. Hence by the beginning of the twentieth century the backlog of cases in the Senate amounted (in 1905) to the shocking number of 11,000.² Thus the systemic institutional breakdown engulfed society with an overwhelming sense of legal insecurity and put Senate reform at the centre of the widely expected constitutional change.

For many public leaders and for society at large the demand for Senate reform appeared as a logical continuation of the Great Reforms, which promised but never fully delivered the rule of law and public freedoms against the *proizvol* of the Tsarist bureaucracy. Throughout 1904 a series of public campaigns was launched by liberal *obshchestvennost'* demanding firm constitutional guarantees from the monarchy.³ Along with the convocation of a national assembly, the Duma, these included the establishment of a Supreme Court overseeing in broad terms the bureaucracy's compliance with constitutional provisions.

In 1905 the Union of Liberation which embraced a broad spectrum of reformers on the left and on the right, issued its own project of a new constitution which advocated the ideas of people's sovereignty and natural law according to which the Supreme Court was expected to implement the people's will against their oppressors.⁴ A year later more moderate reformers issued another constitutional project, the so-called Muromtsev Constitution, which

tice. Similarly, tax cases in which the Treasury is usually culprit lie around the Senate's chancelleries for years. The same can be said of the railway charges, etc. The Senate's inefficiency in handling these cases frustrates our economic development. In this sense the reform of the Senate is not just necessary but urgent.' see Avalov, SOGD, 1907, Session II, col.: 575; for a detailed discussion of the legal aspects of industrialisation see T. Owen, *The Corporation Under the Russian Law*, Oxford, 1993.

2. The figure was released by the Senate audit in 1903 and 1904. Quote from *Stenograficheskie Otchety Gosudarstvennogo Soveta*, (hereafter SOGD), 1907, session 2.
3. Frochlich, K., *The Emergence of the Russian Constitutionalism:: the Relationship Between Social Mobilisation and Political Group Formation in Pre-revolutionary Russia, 1900-1904*, London, 1981; Eds. L. Martov, P. Maslov, A. Potresov, *Obshchestvennoe dvizhenie v Rossii v nachale XX veka*, vols. 1-4, St. Petersburg, 1909-1914; D. Shipov, *Vospominaniia i dumy of perezhitom*, Paris, 1936.
4. *Proekt Osnovnogo Zakona Rossiiskoi Imperii, vyrobotan kommissiei biuro obshchezemskoiikh s'ezdov*, Izdanie redaktsii Osvobozhdenie, Paris, 1905

emphasised the supremacy of law above popular opinion and thus permitted greater autonomy to the future Supreme Court.⁵ And although no specific model of administrative justice emerged at that stage, it was clear that the liberal opposition, familiar with European experience in developing administrative justice, had its mind firmly fixed on the reform of the Senate.

By the end of 1904, Nicholas II, still resentful at the idea of a national assembly, but nonetheless inclined to accept a tame version of reform, chose the Senate as a convenient showpiece of his 'benevolent' consent to the reforms. Among his early directives in this respect was an Ukaz issued on 12 December 1904 announcing, among other things, the august wish to enhance the Senate's judicial status and even to foster its independence from the ministerial bureaucracy.⁶ On 17 January 1905, following the Ukaz, the Committee of Ministers issued its guidelines for the reform of the system of administrative justice. It proclaimed that the purpose of the reform was to extend the principles of the Judicial Statutes of 1864 to the Administrative Departments of the Senate, in order to assure independence of Senatorial practice from the Ministry of Justice and other Ministries, to improve the efficiency of the Senate's proceedings and case resolution, to guarantee plaintiffs' easy access to the Senate, and to file a direct report of the Senate to the Tsar.⁷

On the same day, the task of drafting the reform proposal was entrusted to a Special Commission under the charismatic leadership of Senator Andrei Saburov,⁸ who truly embodied the tradition of Russian liberalism and Imperial legality among the progressive members of the State Council. A fine judge with a talent for 'remarkable, compressed and clear summings-up',⁹ he enjoyed an impeccable reputation even among the most conservative politicians. V.P.Meshcherskii described Saburov as a man of an 'outstandingly

-
5. V.E. Iakushkin, *Gosudarstvennaia vlast' i proekty gosudarstvennoi reformy v Rossii (s prilozheniem konstitutsii Nikity Murav'eva)*, St.Petersburg, 1906. For commentaries see V.V. Shelokhaev, *Liberal'naia model' pereustroistva Rossii*, Moscow, 1996, pp. 20-26, 27-29.
 6. On the origins of the Ukaz see further W.E. Mosse, *Perestroika under the Tsars*, London, 1992; Iu. Witte, *Memoirs*, vols. 1-3, Moscow, 1960.
 7. *Osobyi zhurnal Komiteta Ministrov ot 21 i 24 dekabria 1904 goda i 4 ianvaria 1905 goda, Zhurnaly Komiteta Ministrov po ispolneniiu Ukaza 12 Dekabria 1904*, Komitet Ministrov, Kantseliaria, St.Petersburg, 1905.
 8. The full title of the Saburov Commission was Special Commission for the Revision of the Ruling Senate Statute and for the reform of the lower administrative courts (*Osoboe Soveshchanie dlia peresmotra deistvuiushchego Uchrezhdeniia pravitel'stviushchego Senata i vyrabotki zakonopolozhenii o mestnykh administratsionnykh sudakh.*).
 9. A.F. Koni, 'Pamiati Andreia Aleksandrovicha Saburova' in: idem, *Na zhiznennom puti*, Berlin, n.d., vols. 1-5, vol. 4, p. 399.

good nature, completely indifferent to his personal needs'.¹⁰ His high-minded idealism in juridical work and involvement in a range of charitable activities set him far apart from the more pragmatic and down-to-earth members of the ruling elite. His fellow jurist A.F.Koni portrayed Saburov as a man 'constantly submerged in his inner thoughts and removed from the trifling conventions of everyday life'.¹¹

Summarising Saburov's career, the British historian Dominic Lieven wrote:

His appointment as the Chairman of the Special Commission on Senatorial Reform was the culmination of a lifetime devoted to either implementing the 1864 Statutes as a judge, or to defending their content in countless inter-departmental skirmishes. Demoted to the Senate from a ministerial post in 1881, Saburov did not hesitate to use his senatorial position to check the arbitrary actions of Alexander III's government, in the process courting and suffering further demotion. Consequently the principles established by Saburov's Special Commission were in line with the beliefs that guided the whole of his career, namely that politically inspired disturbances only 'deepened the need to create an authoritative institution which would firmly and undeviatingly preserve legality in administration and would re-establish the people's weakened conception of the need to obey authority acting on the basis and within the limits of law'.¹²

Among the members of the Commission were such prominent Senators as I.I. Shamshin, N.V. Shidlovskii, N.S. Tagantsev, S.S. Manuchin, N.F. Deruzhinskii and V.F. Deruzhinskii, who for many years served in the First and Cassation Department.¹³ Convened a whole year ahead of the First Duma, the Commission was working on the basis of the old Fundamental Laws.¹⁴ Conscious of the immense political and practical complexity of reforming Imperial administrative justice during time of constitutional uncertainty, they

-
10. Meshchersky, in *Grazhdanin*, no 43 (6 Nov., 1911), p. 1. Similarly Polovtsov called Saburov a 'very decent man in all respects, a very noble character', entry on 26 May 1906: 'Dnevnik', *Krasnyi Arkhiv*, 4 (1923), p. 113.
 11. Koni, 'Pamiati Saburova', p. 410.
 12. Lieven, *Russia's Rulers*, p. 179.
 13. For the exact composition of the Commission see Peter Liessem *Verwaltungsgerichtsbarkeit im späten Zarenreich: Der Dirigierende Senat und seine Entscheidungen zur russischen Selbstverwaltung (1864-1917)*, Frankfurt, 1996, note 7, 8, p. 148.
 14. For comparison of the old and new Fundamental Laws see the legal analysis given in Marc Szeftel, 'The Form of Government of the Russian Empire prior to the Constitutional Reforms 1905- 1906', Ed.J.Curtiss, *Essays in Russian and Soviet History*, 1963; idem., *The Russian Constitution of 1906*. Commentaries, Brussels, 1973; contemporary Russian treatment of the 1906 Fundamental Laws can be found in N.I. Lazarevskii, *Russkoe gosudarstvennoe pravo*, vol.1, *Konstitutsionnoe pravo*, Petrograd, 1917.

tried to give a concise solution to the problem of Imperial administrative justice, while avoiding at the same time being trapped by political controversies or legal minutiae. The Commission therefore decided to proceed in two distinct stages – firstly, the Senate and secondly, the lower administrative courts. But first and foremost they grasped the unique opportunity to implement far-reaching institutional changes within the Administrative Departments of the Senate.

The Commission therefore proposed a range of measures to guarantee the Senate's institutional autonomy and independence of verdicts. First, it recommended the abolition of the post of Procurator-General of the Senate presently filled by the Minister of Justice, and the strengthening instead of the elective post of Senior Judge (*Pervoprisutstviushchii*), who was to enjoy the privilege of reporting directly to the Tsar on behalf of the Senate. In this report the Senior Judge was expected to communicate directly the Senators' opinions of new candidates selected by them for nomination to the Senate, thus precluding the possibility of ministerial interference in Senatorial appointments. The institutional independence of the Senate thus secured was complemented by a range of safeguards of the judicial process: the Senate's decisions were deemed final and ministers were stripped of their right to veto Departmental decisions and transfer cases to Joint Assemblies and from there to the State Council and Imperial Chancellery. The Departments were to pronounce their verdicts by simple majority vote, while Senators were expected to get more closely involved in the preparation of case hearings and to open Departmental meetings to the public.¹⁵

Clearly, the judicialisation of the administrative practice of the Senate and the professionalisation of the Senatorial corps was the central concern of the Commission, yet the Commission seems to have been in two minds regarding the nature of the institution which they envisaged the Senate to be after the reform. Thus drawing on the Senate's traditional role in imperial administration and legislation, the Commission envisioned a considerable expansion of the Senate's extra-judicial authority. The Senate was expected not only to review the legality of government circulars prior to their promulgation, but also to instigate disciplinary hearings against high officials and

15. In its own words the Saburov Commission's project aimed to reform the Senate as follows: (1) to secure the Senate's independence by eliminating the intermediation of the Minister of Justice between the Senate and the Crown and by allowing the Senior Judge to present the Senate's opinions and nominations directly to the Crown; (2) to invest the Senate with broad supervisory authority over central and local administration; (3) to establish a professional composition for the Senatorial corps by means of internal nominations by the current members of the Senate.

even to initiate its own legislative projects. In the words of Senator Tagantsev the Commission envisioned the Senate as an 'independent institution, whose mission it was to protect the law in all spheres of state activity'.¹⁶

It is possible that in the uncertain atmosphere before the convocation of the First Duma, when nobody yet knew whether or not the national assembly would have ultimate power over the executive, the Commission sought additional means of restraining the bureaucracy. It must have seemed to them that the Senate, with its symbolic supremacy in legislative, executive and judicial authorities, was ideally suited for the purpose. So it was not entirely illogical in this respect to try and strengthen the very same extra-judicial powers that had caused the Senate's decline.

Yet, although juridical circles praised the Commission's efforts to implement the basic principles of the Senate's judicial autonomy,¹⁷ its grand designs in the extra-judicial sphere of the Senate's activity failed to impress government officials, who were concerned at the proposed sweeping measures against the executive. Clearly, this powerful proposition reawakened the eighteenth-century image of Senatorial authority and pointed to the reformers' desire to create a kind of judicial administration that would provide a successful counterweight to the ministries. Understandably, Saburov's proposal did not receive monarchical approval, and following the decree of 25 April 1906 it was referred to the Ministry of Justice for 'further revision'.

After the aborted 'first round' of Senate reform, the issue remained dormant until 1907, when a group of 39 members of the State Council (the Centre Group) headed by Senators Andrei Saburov and Nikolai Tagantsev¹⁸ put new proposal to the State Council.¹⁹ At this stage the Autocracy had suc-

16. *Stenograficheskie Otchety Gosudarstvennogo Soveta*, (hereafter SOGS), St.Petersburg, 1907, Session II, col.: 560.

17. S.A. Korf's paper on the Saburov Commission 'Reforma Senata', was well received by the Juridical Society of St.Petersburg University, in: *Iuridicheskii Vestnik*, November, 1911, pp. 365-411.

18. For biographical details see N.I. Zagorodnikov, *Nikolai Ivanovich Tagantsev*, Moscow, 1994.

19. The general characteristics of the Centre Group are given in A.N. Naumov, *Iz utselevshikh vospominanii*, vols. 1-2, New York, 1954-1955; more recently: Alexandra Korros, 'Nationalist Politics in the Russian Imperial State Council: Forming a New Majority, 1909-1910', Eds., Mary Conroy, *Emerging Democracy in Imperial Russia: Case Studies in Local Self-Government (the Zemstvos), State Duma Elections, the Tsarist Government and the State Council Before and During World War I*, Niwot, Colorado, 1998, pp. 198-227; eadem., 'Activist Politics in a Conservative Institution: The Formation of Factions in the Russian Imperial State Council, 1906-1907', *Russian Review*, January 1993, 52 (1), pp. 1-19; eadem., 'Zemstvo Representatives in the State Council: Treating their New 'Space' in St.Petersburg as Their Own, 1906-1907.' Paper delivered at the 2000 Annual Convention of the American Association for the Advancement of Slavic Studies, Den-

ceeded in re-establishing its control over the shaken old regime, and silenced any liberal talk of sweeping judicial powers over the government bureaucracy. During the revolutionary years of 1905–07 Emergency Rule had enabled the authorities to carry out ruthless political repressions and had further aggravated customary administrative lawlessness. Pure political discretion was enough for the Tsarist military tribunals to condemn suspects to capital punishment. Most victims were unable to obtain redress in the courts or, indeed, in the Senate and turned to the Duma, using their newly elected deputies. Here, according to the Kadet leader V.A. Maklakov, the revelations of ‘unlawful imprisonment, searches without warrants, exile without cause, insecurity of jobs and dismissal—flowed like a torrent, [showing] all the defencelessness of the citizen in the face of state authority.’²⁰

However the Duma’s authority was limited in this respect to periodic interpellations against particularly grave administrative offences. To make matters worse, the manner in which the First Duma conducted its interpellations (*zaprosy*) prevented it from exercising effective pressure on the government to pursue serious investigations and prosecution of offenders. Maklakov complained that in most cases the interpellations were raised not as straightforward legal inquiries, but as means of asserting the Duma’s supremacy as a sovereign voice of the people. This caused nothing but grave resentment among government officials, who dismissed the Duma’s constitutional pretences and cynically referred to Imperial laws in covering up the political crimes of their subordinates. In the meantime the Duma was getting hopelessly behind with the all-important legislative work.²¹

Hence, the failure of the Duma’s interpellations to achieve a desirable degree of control over the ministerial bureaucracy led the progressive minority of the State Council to believe that the Senate reform would provide a solution to the twin problem of Imperial system of justice and the Duma deadlock, and that the task ‘would certainly merit a legislative initiative of the State Council’.²² The members of the Group were profoundly concerned with strengthening the Senate as a Supreme Court, and giving it a new lease of life to fulfil its historical mission as a pillar of Imperial law and order. Realising the urgency of Senatorial reform, they set disagreements aside, and in an un-

ver, Colorado; compare her findings to A.P. Borodin, *Gosudarstvennyi Sovet v Rossii, 1906–1917*, Kirov, 1999, pp. 115–117.

20. V.A. Maklakov, *The First State Duma: Contemporary Reminiscences*, (Translated by Mary Belkin), Bloomington, 1964, pp. 150–171.

21. *Ibid.*, pp. 152.

22. SOGS, col.: 530.

precedented appeal to the State Council requested it to by-pass the Duma and adopt the law of its own accord.

The Group's proposal was an abridged version of the Saburov's Commission's recommendations, and concentrated purely on the reform of the First (Administrative) Department. This time, the grand design to expand the Senate's quasi-executive and quasi-legislative authority was formally abandoned, and the emphasis was now placed on strengthening the guarantees of judicial independence and the procedural efficiency of the Senate. As before the core propositions of the document included abolition of the Ministry of Justice's supervision over the First Department, and the reinforcement of the position of the Senior Judge (*Pervoprisutstviushchii*) in place of the Procurator-General, the adjunct post of the Minister of Justice. The Senior Judge was expected to take over the key functions of the Procurator-General, and present Senatorial nominations and, when necessary, Senatorial judgements directly to the Tsar. The First Department's rulings would be decided by a simple majority vote and would not be subject to plaintiffs' appeal elsewhere. Consequently, the First Joint Assembly (including the First, Second (on peasant jurisdiction) and Heraldry Departments) would be abolished, and with it would cease the pernicious practice of bureaucratic case transfers to the State Council and the Imperial Chancellery. These measures, it was hoped, would secure sufficient independence for the Senate from the bureaucracy, and make it solely accountable to the crown. Senator Saburov urged the State Council to adopt the reform in these prophetic words:

The success of the reform would enable the Senate to deal effectively with even minor administrative offences; it would restore the public's faith in Imperial justice, and reduce the general propensity of our administration to gross breaches of law and violations of the civil rights of Russian subjects... Delay [with reform], on the other hand, would amount to denying Russians the very foundations of law and order. [In the event of our failure]... future historians would no doubt label our indecisiveness as 'Unforgivable Procrastination with Reforms'.²³

However, the ideological unity of the Centre Group on this issue was far from certain.²⁴ As the successor of the Saburov Commission, the Group contained widely diverging views in respect of the scope of the Senate's author-

23. Saburov, *ibid.*, col.: 520.

24. For analysis of organisational and ideological disunity of the Centre Group see: Alexandra Korros, 'Zemstvo Representatives in the State Council: Treating their New 'Space' in St.Petersburg as Their Own, 1906-1907.' Paper delivered at the 2000 Annual Convention of the American Association for the Advancement of Slavic Studies, Denver, Colorado.

ity: some of its members strictly adhered to a judicial model, whilst others continued to invoke the traditional supervisory authority of the Senate over the entire Tsarist government machinery. This was a reflection of broader ideological differences and party affiliations among the members of the State Council, some of who were intimately connected with the Liberation Movement and its off-shoot the Kadet Party, while others were of more moderate persuasion and had joined the Octobrists.²⁵ Although there were no explicit disagreements during the State Council debate, the Group's opponents could easily detect tension, if not contradictions, between various definitions given by its members to the Senate's role in the new Russian constitution. This led them to treat the bill with utmost caution, and to resist determinedly what seemed to be the most straightforward propositions.

Despite the reformers' desire to complete the reform of the edifice of Imperial Justice, the conservative wing of the State Council remained unconvinced at the very least about the timing of the reform.²⁶ The opposition believed that the Group's initiative was nothing but an amateurish attempt to fix a roof over a burning house. In their speeches, they tried to deflect the thrust of the reform from the Senate to the lower levels of administrative justice. Thus in his opening speech, I.G. Shcheglovitov, the Minister of Justice, proposed postponing the reform of the Senate until a comprehensive provincial reform would transform current Provincial Standing Committees on Zemstvo Affairs (*gubernskie prisutstviia po zemskim delam*) into proper lower administrative courts.²⁷ The Senate's workload, composition and scope of authority, he argued, could not be established before these factors were decided in respect of the lower administrative courts. Echoing him, member of the State Council Ia.A. Ushakov added that the majority of petitions entering the Senate were provincial trivialities, and that the excessive flood of complaints originated in the undue limits imposed on the initiative of local authorities:

Working as a mandatory member of a provincial standing committee, I remember [the absurd situation] when we had to ask Senate permission to endorse the sale of 15 rubles' worth of prop-

-
- 25. Korros points out that among zemstvo-elected representatives of the Centre Group there had been at least six Kadets who were joined by the six Kadets from the Academic Group. Their political programme advocated cooperation between the two legislative chambers, the Duma and the State Council, with the aim of passing the reformist legislation on land and workers questions and granting amnesty to political prisoners. The Octobrist membership in the Centre Group amounted to 21.
 - 26. The leaders of the conservative group included P.N. Durnovo, former Minister of the Interior, A.A. Naryshkin from Orel, F.D. Samarin from Moscow, and N.F. Kasatkin-Rostovskii from Kursk.
 - 27. Shcheglovitov, SOGS, Session 2, 19 May 1907, col.: 384-385.

erty by some trustee of an estate. I also recall how easily urban property owners could appeal against local tax valuations and get a reduction from the Senate.'²⁸

So according to this view, the real problem lay not so much in Senatorial procedure as in the origins of petitions at the lower levels of administrative justice. And it was here, and not in the Senate, where the reform was most urgent.

On a deeper level, argued P.N.Durnovo, the former Minister of the Interior, the idea of strengthening the 'irresponsible judiciary' against the single remaining bastion of law and order – the administration and the police – revealed lack of respect on the part of the reformers for the idea of strong government. There had been a great many misconceptions, continued Durnovo, about the Senate as a 'custodian of law'. Undoubtedly in the early eighteenth century this had meant that the Senate acted as a senior manager of Imperial administration, ensuring the subordination and compliance with law of lowest ranks to the highest. Over time, however, this function was taken over by other organs of government, and at present it was performed by the ministries. However, throughout the Senate's history, all administrative institutions had deferred to the Senate in matters of justice and individual case resolution. This was where it fulfilled its mission best, and this was how it should be reformed – as a supreme judicial organ of state. The Senate should provide judicial remedies for individual cases and protect individual rights, but without becoming a judicial quasi-government parallel to the existing Cabinet. To attempt to restore its extra-judicial activities as was proposed by the Saburov Commission would be a dangerous utopia. If this theoretical premise still remained, albeit implicitly, the ideological cornerstone of the Centre Group, alongside their proposal to entrust the selection of judges to the Senate itself, it would amount to nothing less than the creation of an insular judicial corporation endowed with vast authority over the entire executive. No doubt the First Department, in the way it had been designed, would soon lead to a stalemate amongst the Ministers, the Senate and the Duma. The most important issues of government policy would be neglected and consumed in this war of nerves. The ministers would be wedged between the Duma and the Senate, trying to placate the one and fight the other.²⁹ In the words of Dominic Lieven:

Durnovo would have certainly agreed with the opinion of his fel-

28. Ushakov, *ibid.*, Session 2, 2 June 1907, col.: 586-587.

29. Durnovo, *ibid.*, Session 2, 19 May 1907, col.: 400-419.

low member of State Council A.N. Kulomzin who, referring to the former government of Loris-Melikov (1880-1881), remarked that 'by his constant demands that it [the police] should always act legally in all its undertakings, one can with truth say that he caused its collapse; this is a strange statement, but it is true; our police never knew anything about laws and when threatened with responsibility for infringing the law it becomes lost and prefers to sit and do nothing'.³⁰

Similarly, the now demoted Prime Minister Iulii Witte reinforced Durnovo's opinion while insisting that at present the government's foremost concern should be to contain and repress the raging passions of the population instead of indulging in juridical dreams. As to the two Ukazes (12 December 1904 and 17 January 1905) that he himself had endorsed at the time as the Chairman of the Committee of Ministers, and that had prompted the juridical 'soul searching', they were, he now believed, the product of a bygone era, with little relevance to present-day Russia in the throes of revolution.³¹

Reformers, on the other hand, denied Durnovo's accusations that they were pursuing their own political ambitions under the guise of the Senate's judicial independence. They brushed off the conservatives' suggestion of an antithesis between a strong government and a strong Senate. In the words of a State Councillor Krassovskii:

We do not consider lack of accountability (*beznakazannost'*) and abuse of power to be a sign of strong government, [or] the possibility of a swift appeal against government actions to be the fall of its authority... We believe that the prestige of authority on the contrary rises when the general public knows that its actions can be contested. We believe, that the current uncertainty in the area of officials' liability for wrongful conduct, delays in judicial resolutions, and protracted Senate proceedings causes considerable damage [to the prestige of government authority]... This is why we believe that the proposition to expedite Senate proceedings would strengthen the government's authority, and not undermine it.³²

The reformers also believed that the collegiate authority of the Senate would temper the personal policies of individual ministers. Thus Senator Korvin-Milevskii argued:

I do not believe that strong government would be weakened if the authority of the Minister of Justice over the Senate were reduced. To say so would mean to equate the authority of the Russian government to the personae of the twelve ministers. Ministries are

30. Kulomzin's remarks quoted from Lieven, *Russia's Rulers*, p. 220.

31. Witte, SOGS, 1907, Session 2, 2 June 1907, col.: 580.

32. Krassovskii, *ibid.*, col.: 549-561.

only a part of the government, albeit very powerful. The Senate is another. The excessive strengthening of one organ leads to the atrophy of another and weakens the organism as a whole. The government requires energy, decisiveness and initiative — none of which are lacking in our ministers. But it also requires consideration, consistency and balanced judgement more typical of collegiate institutions whose traditions are established by decades of practice... Whilst in separate instances the crisis of authority may be triggered by individual administrative decisions, the revolutionary malaise can be attributed to the poor 'administrative hygiene' of the government machinery as a whole... The reformed Senate would be ideally suited to prevent any revolutionary epidemics by maintaining the 'hygienic environment' in our administration.³³

Hence it is clear that the reformers retained a very strong concept of Senatorial authority embracing a whole range of Senatorial responsibilities as a 'custodian of Imperial laws, sovereign guardian of the legality of state, the watchdog over the civil service, and the supreme warden of the civil rights of Russian subjects'.³⁴ As we can see, despite the Group's retreat from the Saburov Commission's ideas of the complete overhaul of the Senate, many of its members still remained committed to the principle of broad Senatorial authority. This powerful formula caused great unease even among those conservatives, such as Durnovo, who supported a narrower judicial model of the Senate. The right-wing faction of the State Council unanimously decided to oppose the bill, called up its absent members, and united the votes of all other opponents of the ambiguous reform.³⁵

The apparent duality in the reformers' views of the Senate perhaps originated in its history as a supreme legislative and executive authority, but probably even more so in their realisation that outside the Senate there was little hope for finding qualified and impartial legal opinion in matters of administrative justice. Provincial *prisutstviia* were decades away from practising the maturity of judgement required of courts, while ministries and their provincial agents were too deeply involved in internal juridical wars and bureaucratic 'empire-building' to take on such functions. Hence the State Council reformers believed that they were trying to salvage what was not yet consumed by the revolutionary flames in Russia — public trust in the authority of the Senate as the oldest and most impartial Imperial institution of supreme justice. To the conservatives' theory that one does not repair a burning building, they responded that a good fireman knows not only how to extinguish

33. Korvin-Milevskii, *ibid.*, col.: 575-583.

34. Tagantsev, *ibid.*, col.: 540.

35. A.P. Borodin, *Gosudarstvennyi Sovet Rossii, 1906-1917*, Kirov, 1999, p. 116.

the fire, but also how to prevent one in the first place.

These broad views of Senate authority were also linked to the more fundamental problems of constitutional reform in Russia. The key idea of the national Liberation Movement was to establish a sovereign parliament, the Duma, with the ministry responsible to it. However, Nicholas II firmly rejected the possibility of subjecting his ministers to the control of the Duma, and, unable to solicit its cooperation, did not hesitate to disband the First and Second Dumas. Hence it is not unreasonable to assume that it was at that point that the leaders of the liberal opposition began to look for alternative seats of power within the Tsarist state. Prominent jurists resurrected Saburov's idea of the Senate as a champion of law and order in the Empire and sought the expansion of its authority. In a way the broadly conceived Senate role was expected to compensate for the lack of parliamentary sovereignty of the Duma. Thus Senator Tagantsev emphasised the Group's position in the following words:

We consider that the real strength of the Senate would be realised if it had the right to prevent any ministerial circular exceeding its authority. The Senate would become a truly supervisory institution, which would veto any illegal action, and whose decisions would be presented directly to the Monarch.³⁶

The renewed interest in broad Senate authority was not unique to the liberal opposition. Tsarist bureaucrats, who perceived prolonged Duma debates if not as an effective shield at least as a filter against their policies, increasingly resorted to the Senate's ancient powers to 'promulgate' (*raspechatka*) and 'comment' upon (*raz'iasnenie*) the laws. On a number of occasions ministers tried to present Senatorial Ukases as unequivocal and irrevocable pronouncements on laws and used them to circumvent the Duma's legislation. Baron Meyendorff, a prominent jurist and leader of the Octobrist party, wrote that this tendency potentially presented a real danger to the legislative process.³⁷ Hence the reformers were anxious to transform the Senate before its Ukases could restrict the powers of the Duma and other newly attained liberties. The echo of this anxiety could be heard in Guchkov's speech in November 1913 when he commented upon the general decline of the Duma's legislative authority. He wondered:

36. Tagantsev, SOGS, 1907, Session 2, 2 June 1907, col.: 530.

37. A.F. Meyendorff, 'Vopros o tolkovanii zakonov i kompetentsii departamentov Pravitel'stvuiushchego Senata prezhnego ustroistva', *Pravo*, 1914, no 9, col. 644-655, no 12, 962-973.

... would the Autocratic reaction proceed by an open and abrupt overturn of the popular representative assembly and entirely change its character, or would it assume the more timid but also more cautious form of partial [Senatorial] interpretations which would set precedents, leading bit by bit to narrowing down of the rights of people's deputies?³⁸

Hence throughout the debate both sides returned many times to the historical themes in order to assess the true meaning of old Senatorial practices. Conservatives argued that Peter the Great had conceived the Senate as a direct emanation of Imperial justice, and that no reform should undermine the Senate's authority, which sprang directly from the Tsar. The Senate for them was a key pillar of the monarchy, and they believed that the unity of its power should remain intact. In practice, this meant four things: that it should continue exercising integral Senatorial authority over Tsarist legislation, administration and justice; that Joint Assemblies should assure an overall balance of collegiate opinions; that Senatorial appointments should be a free expression of the Sovereign's will; and that ultimately the Senate's decisions would be subject to direct appeal to the Tsar. For the reformers, on the other hand, undivided Senatorial authority was no more than a fiction, the Joint Assemblies were a concealed political filter for Departmental decisions, nominations to the Senate were another means of bureaucratic manipulation of justice, and the appeals transferring cases above the Senate to the State Council and the Imperial Chancellery made a mockery of Senatorial justice. Thus while conservatives believed in direct Autocratic rule in public justice, the reformers tried to connect it to ideas of the *Rechtstaat* (*pravovoe gosudarstvo*).

Firstly, the reformers rejected the archaic view of the Senate's constitutional position as an overarching authority in all matters of state legislation, administration and justice, and swiftly rebutted the accusations of trying to undermine this 'historic legacy'. State Councillor Platonov pointed out that although the Senate was the oldest Imperial state institution, its Statute contained only 12 of 311 articles that belonged to the Petrine era – clear evidence of the profound changes that had taken place in its 200-year history.³⁹ Saburov emphatically argued:

We do not intend to treat the Senate as a Moscow Kremlin or as Tsar Peter's boots, but as a living institution that has survived to this day only because it was constantly adapting to the changing

38. Eds., D.B. Pavlov, V.V. Shelokhaev, *Rossiiskie liberaly, kadety i oktiabristy: dokumenty, vospominaniia, publitsistika*, Moscow, 1996, p. 171.

39. Platonov, SOGS, 1907, Session 2, 2 June 1907, col.: 570.

circumstances of Russian history.⁴⁰

Secondly, they effortlessly dismissed the myth of the unity of the Senate's Departments represented in its Joint Assemblies. Saburov insisted that at present the Senate's Departments acted according to completely different jurisdictions, reflecting the complexity and diversity of current Imperial administration. In this sense, he argued, the reform of the First Department leading to abolition of the First Joint Assembly would not in any way disrupt the practice of the other two Departments (Second and Heraldry). In addition, Saburov pointed out that the history of government reforms in Russia testified consistently that partial reforms always brought better and quicker results than long protracted projects such as the infamous reforms of the Civil Code, the Code of Trustees (*Opekunskii Ustav*) and the Land Survey Statute (*Mezhevoi Ustav*).

Finally, Korvin-Milevskii spurned the idea that plaintiffs' appeals to the monarch against the Senate's rulings remained a precious privilege of Russian subjects:

We should remember — he stressed before the assembly — that the government of Peter the Great had as much in common with today's as his sailing boats with modern battleships. The total number of the population under Peter's rule was 15 million, out of which 14.5 million were slaves who 'enjoyed' the Tsar's benevolence in the taverns. In reality the Senate had no more than half a million subjects, while now it has 150 million. To call monarchical intervention a 'precious privilege' of Russian subjects is a pure and simple fiction. It can be precious for a privileged few who can really benefit from it, but it cannot be precious to those of us who believe in the equality of all before the law. In fact, these privileges are precious only to our Minister of Justice.⁴¹

Much greater difficulty for the Group was presented by the subject of Senatorial nominations, which they proposed should be made by the current members of the Senate. They believed that this measure would fully assure Senators' much-needed independence from the Ministry of Justice, which they saw as a natural progression of the growing judicial culture of the First Department. Senator Korvin-Milevskii put it as follows:

In the decades after the Great Reforms the Senate's prominent role was attained due to the professionalism and personal courage of its Senators. In this unique situation people turned out to be better than the law, which conveniently delegated all Senatorial responsibilities of case investigation and verdict drafting to the Senate's

40. Saburov, *ibid.*, col.: 575.

41. Korvin-Milevskii, *ibid.*, col.: 579.

chancellery and Ministry of Justice.⁴²

If in the past decades the Senate was of any service to Russia, continued Korvin-Milevskii, it was only because

Senators did bother to go to the chancellery and did take a passionate interest in the law and subject matter of cases, and persisted in their opinions despite the multi-channelled and multi-faceted pressure put on them by various ministries and officials.⁴³

The new judicial culture of the Senate should therefore be enshrined in law. Echoing Korvin-Milevskii, State Councillor M.M. Kovalevskii, the eminent Professor from St.Petersburg University, stressed that as long as Senators remained subordinate to the Ministry of Justice, the public perception of their servility to the administration would remain unchanged. Therefore for the prestige of the Senators' status, their judicial independence should become a legal norm.

Yet although in theory hardly anyone would have disagreed with this idea, in practice the proposition for a complete separation of Senatorial and Ministerial personnel betrayed a rather simplified view on the part of our reformers as to the constitutional nature of administrative justice. The Senate was not simply a professional association such as the Pirogov Society or a University Board. It was a supreme governmental institution which by virtue of its power could significantly affect the implementation of current administrative policies and the prestige and personal reputation of government officials. Hence it was of paramount importance that the cooperation between the Senate and the Ministries be based on implicit trust. The Tsarist bureaucrats seized upon this point and launched a vigorous critique of the proposed reform. The reformers' defence that ultimately the Tsar alone could approve the nominations could hardly save the day.

Thus State Councillor Stishinskii, a seasoned courtier knowledgeable in the workings of the Autocracy, stressed that it would be very difficult for the Tsar to refuse the nominations and that gradually this procedure would turn into a routine appointment of the Senators by the Senate itself.

As for rejecting the Senate's nominations — argued Stishinskii — he [the Tsar] might just get away with it once, he would have a hard job doing it twice, and no chance at all the third time around. No Committee of Ministers would recommend using such a veto frequently. This means that eventually recommendation would turn into cooptation, and the Senate into a highly partial and po-

42. Korvin-Milevskii, *ibid.*, col.: 580

43. Korvin-Milevskii, *ibid.*, col.: 581.

litically homogeneous lobby.⁴⁴

Durnovo best expressed the conservatives' anxiety over the future political bent of the Senatorial corps when he contended that the primary goal of the proposed procedure of Senatorial nominations was to select candidates who would never get through the doors of the Senate under the existing methods of nomination.⁴⁵

The beliefs of the experienced Tsarist bureaucrats resonated even with some members of the Centre Group. Thus Olizarov felt compelled to register a special opinion on the issue, highlighting the problem as follows:

The proposed procedure might be suitable for the appointment of university professors or even of district judges, but to use it in the Senate is a gross oversimplification and underestimation of its role in the constitutional structure of the state.⁴⁶

To save the day Senator Platonov, who clearly grasped the issue, proposed to stipulate in law the exact criteria for Senatorial nominations so as to provide some minimal transparency for Senatorial nominations to the First Department.⁴⁷ Yet even such compromise could not encourage cooperation between factions. Unlike their European counterparts, Russian jurists such as Saburov and Tagantsev, who headed the Group found it hard to establish common ground with Russian bureaucrats. Their personal, theoretical and political beliefs were a world apart. Their professional and academic origins and fragmented experience of the higher levels of government prevented them from fully appreciating the value of smooth running government machinery, the key concern of the moderately conservative officials. Although Saburov and other members of the Group showed some pragmatism in their attempt to reform the First Department, on the whole they suffered from what can be called the syndrome of an abstract mind. They understood the independence of the judiciary in a corporate sense, as of an autonomous professional body entirely divorced from the other branches of power. Considering themselves to be disciples of Montesquieu, they clung to the doctrinal principles of the separation of powers, and underestimated the significance of mutual checks and balances amongst the legislature, the executive and the judiciary. As a result, the only state institution which our reformers felt that the Senate could cooperate with was—of all things—the ageing monarchy.

44. Stishinskii, *ibid.*, col.: 496-544.

45. Durnovo, *ibid.*, col.: 602-606.

46. Olizarov, *ibid.*, col.: 505.

47. Platonov, *ibid.*, col.: 571.

The personal political choices of many prominent jurists in those days also deeply contradicted their public mission as guardians of law and order. Many of them participated in the 1906 Vyborg protest and signed the illegal Vyborg Appeal of the disbanded deputies of the First Duma. Among the latter was the towering figure of Russian juridical thought Leon Petrazycki, the creator of an influential psychological theory of law, and perhaps a personal friend of the Saburov circle, who later became a Senator under the Provisional Government. Despite brief imprisonment he rejected the government's offer to him as Chair of the Faculty of Social Sciences at St. Petersburg University to abstain from political actions contrary to the penal law, the civil regulations, and his oath to the crown. He wrote to the Ministry of Education that the acceptance of such demands would be contrary to his political ethics and personal dignity.⁴⁸ Understandably, even those conservatives who realised the urgency of Senatorial reform found it hard to endorse the prospect of such radicals becoming one day Senators. Having witnessed the outcome of the first two Dumas, they could hardly underwrite what seemed to be a sure recipe for deadlock between the state and the judiciary.

The reform proposal was defeated with the small margin of 75 votes against 71, and again returned to the Ministry of Justice for further revision. The key to the defeat was not only the proposed corporate autonomy of Senators and their greater freedom from the ministries, but also the reformers' secret hope of extending one day the Senate's authority way beyond judicial boundaries. Seizing upon this criticism, the Ministry of Justice introduced its own bill to the Third Duma in December 1907. Like many of its legislative projects, the Senate reform never saw the light of day, until it was finally resurrected from the vaults by the Fourth Duma's Commission on Judicial Reform in February 1914.

In the meantime, the political strategy of the regime changed from grudging recognition of fundamental reforms to, firstly, a political stalemate in the Third Duma, which culminated in Stolypin's tragic political and physical death, and then to open attempts to reduce the Fourth Duma to the status of a purely consultative body.⁴⁹ The government's lack of vision and leader-

48. Andrzej Walicki, *Legal Philosophies of Russian Liberalism*, Oxford, Clarendon Press, 1987, p. 223.

49. A detailed analysis of the politics of the Third Duma is given in: G. Hosking, *The Russian Constitutional Experiment: Government and Duma, 1907-1914*, Cambridge, 1973; A. Ia. Avrekh, *Raspad Tretieiu'skoi sistemy*, Moscow, 1985; A. Ia. Avrekh, *Stolypin i sud'by reformy v Rossii*, Moscow, 1991; for the politics of the Fourth Duma see A. Ia. Avrekh, *Tsarism and the Fourth Duma, 1912-1914*, Moscow, 1981; A. F. Smirnov, *Gosudarstvennaia Duma Rossiiskoi Imperii 1906-1917*, Moscow, 1998; Edward Vishnevskii,

ship in fundamental reforms was amply proven by its result – the Senate reform bill – a product of a compromise between the Ministry of Justice and the Duma's Commission on Judicial Reforms, dominated by the Octobrists.

Concentrating primarily on minor technicalities, Shcheglovitov, the Minister of Justice, hoped to trade them off for the retention of the Senate's constitutional status as a vital organ of the ministerial bureaucracy. Even the title of the bill was nauseatingly bureaucratic: 'Some Procedural Changes in the Previously Unreformed Senate Departments.'⁵⁰ The Introductory Note to the project rejected the Saburov Commission's proposals outright as 'premature and unfounded' and redefined the Senate from 'supreme guardian of legality' to 'powerful instrument of internal politics'. The project discarded Saburov's brave attempt to foster the Senate's judicial independence, to extend its supervisory powers and to raise the professional standards of the Senatorial corps. Shcheglovitov, himself a fine lawyer, whom Stolypin had once co-opted into the 'ministry of public trust' (*ministerstvo obshchestvennogo doveriia*) along with representatives of the liberal opposition, now, spelled out a strictly monarchical concept of the Senatorial power. He believed that the Senate should be securely fastened to the historic 'carriage' of the Tsarist bureaucracy, which alone could ensure the faithful realisation of the monarch's sovereign will. To turn the Senate into an independent supreme court, as was unanimously proposed by the Duma's liberals, including Kadets, Progressists and to some extent by the Octobrists, would mean to cut off a vital part of Tsarist government and to jeopardise the integrity of the ministerial system. He believed that an independent Senate authorised to overrule ministerial policies would gamble away the stability of Autocratic order.

The rule of law in Russia – boasted the Minister – is a direct emanation of our monarchs' free will. The Senate therefore should remain, as it has always been, the omnipresent 'Eye of the Tsar'... the bulwark of legality enjoying the royal backing... thus far superior to the tenuous European models of supreme courts.⁵¹

The idea of turning the Senate into an independent authority, expounded by the Russian liberal reformers, continued Shcheglovitov,

Liberal'naia oppositsiia v Rossii nakanune pervoi mirovoi voiny, Moscow, 1993; V.V. Shelokhaev, *Liberal'naia model' pereustroistva Rossii*, Moscow, 1996.

50. 'O nekotorykh izmeneniiakh v poriadke proizvodstva i resheniia del v departamentakh Pravitel'stvuiushchego Senata prezhnego ustroistva', 8 December 1907', in: *Prilozheniia k Stenograficheskim Otchetam Gosudarstvennoi Dumy*, (SOGD) IV sozyv, Session 2, 1913-1914, no 197. For detailed critique of the Ministry of Justice project see: F.O. Kokoshkin, *K voprosu o reforme Senata*, Moscow, 1908.

51. Shcheglovitov, *SOGD*, IV sozyv, session 41, col.: 809

... is a reincarnation of their old dream of subjecting the Russian executive to the Duma legislature. But, as the executive authority cannot be reduced to the 'execution of orders' signed by the ephemeral parliamentary majority, so too the Senate's role in administrative justice cannot be performed in isolation from the administration.⁵²

Hence unmistakably the guiding principles of Senate reform should be the subordination of the Senate's authority to the sovereign will of the monarch, the appointment of Senatorial personnel strictly according to the monarch's free choice and investment of the Senate with the power of executive supervision over all administrative institutions in the land.⁵³ In a word, the proposed reform was neither a demolition nor an adoption of anything radical in the age-old Senate.

The only thing that the Minister was willing to concede was some procedural restructuring that would eliminate the worst internal deficiencies stemming from the Senate's most outdated practices. Thus the Minister intended to end customary ministerial delays of Senatorial proceedings, to replace the unanimous vote with a two-thirds majority vote in the Departments and simple majority in the Joint Assemblies, and to increase *glasnost* in the Senate hearings. To this end he proposed to make it optional for ministers to take part in Senatorial sessions, to relieve over-procurators from their duty to 'negotiate' Senators' opinions, and finally to allow access of litigants to Senatorial hearings.

Undoubtedly, these were useful measures in expediting Senatorial practices, but they did not even begin to address the basic problems facing public justice in an age of rising legal consciousness and increasingly complex government administration. Thus the bill retained ministers' crucial privilege to veto Departmental decisions and to transfer cases from Departments to Joint Assemblies and from there to the State Council and the Imperial Chancellery. The over-procurators continued to be in charge of the Senate's chancellery and carry out case preparations for Senate hearings and verdict drafting. Furthermore, the ministerial version of the bill left completely intact the Senators' nomination procedure. According to the Ministry, the Tsar would continue to appoint Senatorial candidates presented to him by the Minister of Justice in his role as the Procurator-General. Finally, the Senate would remain a supreme administrative rather than a judicial institution, and Senatorial supervision would be carried out as a part of continuing

52. Shcheglovitov, *ibid.*, col.: 810.

53. Shcheglovitov, *ibid.*, col.: 811.

ministerial activities and not as an independent judicial review. Hence, despite the Minister's claims before the Duma, these measures failed to extend to the Senate's Administrative Departments those principles of judicial autonomy which were granted to Civil and Criminal Cassation Departments under the 1864 Judicial Acts.

The Duma's Commission on Judicial Reforms in principle agreed with the Ministry's view that procedural improvements rather than radical changes were presently in order for the Senate. However, the Commission adopted a few important amendments put forward by the Octobrist faction, which was dominant amongst its members. Firstly, the Commission significantly curbed ministerial powers in the Senate's proceedings. Although the ministers were allowed to participate in Senatorial hearings, they could no longer enjoy the right of veto over Senatorial verdicts and were limited to contributing their consultative opinions to Departmental sessions. The Commission also abolished Joint Assemblies and introduced a simple majority vote in the Departments, thus precluding the pernicious ministerial practice of multiple case transfers. Secondly, the Commission partially adopted Saburov's idea of nominations by the Senate itself and proposed to include them among the list of candidates presented to the Tsar by the Minister of Justice. Yet the Commission limited the eligibility criteria to only one requirement i.e. that of higher education, and refused both the Kadets' insistence on legal qualifications and the Progressists' civil service list of eligible persons. Thirdly, the Commission envisaged that the Senators and not the chancellery would undertake verbal presentations of cases in the Departmental hearings and thus gradually reduce the Senate's dependency upon the chancellery's clerks. Finally, the Commission proposed to make Senatorial hearings open to the general public, and not just to the litigants as suggested by the Minister of Justice. Among the lesser issues that the Commission proposed was firm Departmental affiliation of Senators which was supposed to protect them against arbitrary re-assignments, a more adequate budget for remunerations of Senators, and an independent disciplinary section within the Senate dealing with Senators' personal conduct. In all, the Commission's proposals undoubtedly improved the Senators' personal status, and brought the principle of judicial independence closer to the Senate.⁵⁴

Yet neither the Ministry's bill, nor the Commission's amendments addressed the fundamental political issues of Senate reform. Thus although the bill restricted ministerial interference in the Senate's proceedings, it nonethe-

54. Bennigsen, *ibid.*, col.: 785-804.

less retained its position within the province of the ministerial bureaucracy. As a result, the bill continued the old practice of Senatorial nominations by the Ministry of Justice, giving the latter a critical leverage over the Senate's personnel, exactly as the Minister of Justice desired. The Commission also passed over in silence the key questions of Senatorial jurisdiction, leaving the Senate's practice open to mixing justice with 'promulgations' and 'commentaries' of laws. The admission of these practices not only potentially undermined the legislative power of the Duma, but also, as we shall see, eroded the judicial process within the Senate.

After the opening speech of Shcheglovitov, the debate began with the intensely pessimistic speech of the Kadet leader V.A. Maklakov. His speech so clearly captured the essence of the unfolding historic drama of the Senate, that it is worth our while to follow it in detail.⁵⁵ Maklakov judged the Ministry's bill as so trivial in quality and so apolitical in nature that no one could disagree with any one word of it. However, the very shallowness of the bill, asserted Maklakov, pointed to the essence of the problem, i.e. the virtual impossibility of reforming Russian administrative justice without directly touching upon the constitutional cornerstones of the Russian state. It was these that both the Ministry of Justice and the Duma's Commission were trying so hard to evade. They refused to consider the political dimensions of the reform so long as the transient political arrangement of the Third Duma system prevailed. However, proclaimed Maklakov, the Senate's political status was the key question of the reform, and it depended entirely upon the Tsarist government's commitment to the constitutional premises of the Manifesto of 17 October 1905. Until this issue could be clearly settled, maintained the Kadet speaker, the current political stagnation would continue restricting fundamental reforms such as this one to dull and meaningless technicalities.

Further, Maklakov ridiculed Shcheglovitov's unwarranted statement that the Russian variety of the rule of law allegedly emanating from the free will of the Tsars was far superior to the European forms of legality. He reminded the Minister that the two Ukazes of 12 December 1904 and 17 January 1905, which initiated the Senate reform, were conceded to the country under the crushing wave of the revolutionary protest. Following that, recalled Maklakov, in the Second Duma the government had thumped its chest over its commitment to uphold the rule of law (*pravovoe gosudarstvo*) in Russia. In those days serious promises were made about the fundamental reform of administrative justice and everyone was eagerly awaiting the Senate re-

55. Maklakov, *ibid.*, col.: 818-837.

form.

Yet seven years later when revolutionary pressure subsided the government felt uncomfortable with the constitutional guarantees conceded back then, and would prefer to erase them from public life. For years the bill had gathered dust in government ministries and departments, and when it was finally introduced, nobody had even mentioned its crucial role for Russian statehood. Quite on the contrary, the government was now saying that administrative justice was a dubious concept, and that instead of trespassing in this uncharted territory, the Senate should better remain within those principles on which it was founded two hundred years ago!

Yes, of course — continued Maklakov — the Duma will debate the amendments, but these amendments, no matter how good they are, cannot but fill liberal public opinion with profound scepticism, which once again illustrates the dead end, the paralysis of the state in which we live. The only way to escape it is for the two powers — legislative and executive — to come to a compromise, to conclude an agreement on the future course of action. The legislative power is not just the Duma, as the Minister of Justice tried to suggest, it is also the State Council and the Crown, and together they must devise a mechanism of control over the executive, so to ensure that the Russian bureaucracy will not undermine the constitutional foundations of the Russian state established with their assent.

Unfortunately, the prevailing thinking in the highest circles is far from concluding a compromise with the Duma, but is aiming to out-manoeuvre the Duma by manipulating the votes of its factions. Instead of agreeing with each other, we stand against each other and wait until a catastrophe comes upon all of us and clears the air.

It is ironic therefore that in this atmosphere of mutual mistrust we should discuss the Senate reform, which so intimately connects and clearly demands the cooperation of all branches of the state power. What will become of these otherwise sensible suggestions to preclude case transfers or to reshape Senatorial nominations, or to let Senators take over case presentations from the chancellery, when the political intrigues and ambitions of the Tsarist authorities constantly undermine the law?

Turning to the Kadet's amendments of the bill, Maklakov began by discussing the procedure of Senatorial nominations. The power of the Senate chancellery, he said, was a result of poor appointments made by the Ministry of Justice to the Senate in the past two decades. There were no qualified Senators to deal with case investigations and verdict drafting. Senatorial judgements fully reflected the political qualities of the ministerial appointees. These were retiring high officials with nowhere else to go, and bureaucrats who had made a career out of violating the law and disregarding public

opinion. They lacked juridical skill, but possessed the desirable political instinct. So the Ministry divided the labour between them and the chancellery: the former determined the political bent of the verdicts, and the latter their suitable wording. Hence it was not accidental that the Duma faction of People's Freedom [Kadets – N.A.] insisted that Senatorial nominations should reflect not only the candidates' professional qualifications, but also personal political qualities and commitment to the rule of law as demonstrated throughout their careers.

There is no question – continued Maklakov – that given the Senate's current composition, the Senate's own nominations would be a far cry from a perfect solution – yet this is one of the means, a first step, perhaps, to ensuring that this would gradually strengthen Senatorial independence and Senators' sense of duty to uphold the law.

He then went on to consider the scope of the Senate's authority and the proposed reform:

Furthermore, the current Senate bill does not at all recognise the Senate as an organ of administrative justice. Yet it is time to state explicitly in the new Senate Statute, that the Senate would repeal all the unlawful actions of subordinate government organs and officials. This function of the Senate should be enshrined in law so that the Senate's judges could get on with formal justice undisturbed by political issues and sympathies, and once and for all put the law above the corrupt wishes of the bureaucracy... But instead the government continues to engage the Senate in politics under the guise of legal supervision (*nadzor*). Hence at present the Senate is nothing more than a facade of an unlawful government.

The detrimental effect of mixing judicial and administrative functions Maklakov illustrated with two examples:

When the Western Zemstvo Bill was adopted through the illegal use of Article 87 of the Fundamental Laws, its promulgation by the Senate was a simple matter of an over-procurator's order sanctioning its official publication. The Senate did not even know what had happened. Another example is that when the Khar'kov provincial authorities illegally prorogued a local medical assembly they also managed to convince this highly articulate local society not to appeal to the Senate, arguing before its members that the result was extremely uncertain. So instead of pressing legal charges, the medical society accepted the deal offered by their oppressors! This shows that nobody believes in Senatorial justice simply because nobody believes in the government's good will.

His conclusion was pessimistic, as he did not believe in the efficiency of jus-

tice at a time when the entire government machinery seemed to be at war with society and its political demands:

Hence, despite my regard for the Duma factions' attempts to improve the bill, to me it remains a vacuous symbol while the current political stagnation is allowed to continue, while Russia is ruled by people who despise the political order in which they are now called upon to act.⁵⁶

So Maklakov clearly indicated that effective Senate's reform was once again dependent on the government's commitment to constitutional guarantees granted under the Fundamental Laws of 1906, and that without them the Senate would remain a pawn in the power struggle between the Tsarist bureaucracy and the Duma. He believed that without the government's sense of duty to uphold the rule of law Senatorial justice would be manipulated just as much as the Duma's legislation, and that no amount of amendments would prevent the bureaucracy from using the Senate's authority to its own advantage. He also pointed out that the Ministry of Justice fully intended to use the Senate as an instrument of power politics against the Duma, paying not the faintest regard to the supremacy of law or the independence of the Senate judges. According to Maklakov this was clear from the Ministry's hypocritical elevation of minor procedural improvements into a full-scale Senatorial reform, from jealous ministerial striving for control over Senatorial appointments, from the refusal to proclaim administrative justice as the only true function of the Senate. In his view it was the lack of government sincerity in the reforms being undertaken that undermined any attempt at reforming the Senate. Hence he was pessimistic about the outcome of the reform even if all of the Kadet amendments were accepted.

Maklakov never really addressed the role of society in the reforms and, ironically, as if to underscore Maklakov's one-sidedness, the very next speaker a Social Democrat Chkhenkeli, went on to say that there could be no parliamentary compromise between the government and the Duma and that all reformist Duma factions had to raise the banner of an imminent revolution if they were to create a united front for the reforms. Further, he declared that his fellow members of the Social-Democratic faction were altogether against the reform of the Senate as a supreme interpreter of laws because the only interpreter of laws recognised by social democracy was a unicameral parliament. Hence they were also against the concept of *droit administratif* derived from French law, which granted executive immunities to officials and

56. Chkhenkeli, *ibid.*, col.: 840-847.

instead they believed in universal justice for all Russian subjects.

Certainly neither invocation of the ghost of revolution nor outright denial of the constitutional role of administrative justice could do much to conjure parliamentary compromises on Senate reform. On the contrary, this played rather well into the hands of those bureaucrats who believed that only the time-tested Tsarist ministerial system could face up to the revolutionary menace, and that the legal ignorance of the Russian masses would make an independent Senate at best a superfluous and at worst a dangerous element in the government machinery. Hence the right-wing factions of the Duma continued to rally around the old view of the Senate as a monarchical institution designed to exercise executive supervision within the framework of the Tsarist administration. One after the other, nationalist and right-wing deputies rose to deny any validity to the liberal amendments regarding the judicial autonomy of the Senate, independent professional nominations, or *glasnost* of judicial hearings.⁵⁷

It was between these two extremes that the liberal opposition of Kadets, Progressists and Octobrists tried to modify Senate's status and jurisdiction by introducing their detailed amendments. Yet, as we shall see, they failed to achieve parliamentary unity on crucial issues of Senatorial reform necessary to topple the monarchists. The Progressists and Octobrists were mindful of the principle of Autocracy as a beacon of Senatorial justice, and tried to bridge the political gaps with the right-wing deputies by careful wording of amendments and frequent references to the opinions of the progressive Tsarist officials. The Kadets, on the contrary, were more concerned in a somewhat doctrinaire way with the coherence of Senatorial reform and on occasion sided with the radical opposition of social democrats.

Thus the first Progressist speaker Grodzitskii confirmed Maklakov's diagnosis of the Senate's malaise – the bureaucratic invasion of the judicial process by means of Senatorial nominations, case transfers from Departments to Joint Assemblies, over-procurators' 'negotiations' of Senatorial verdicts, and the chancellery's control over paperwork, all of which were carefully orchestrated by the Ministry of Justice. These manipulations, continued Grodzitskii, recently resulted in the disgraceful Senate rulings on Duma elections, deputies' immunity, municipal policies, parents' committees, Universities' autonomy and others. To combat this malaise, announced the deputy, the Progressist faction was trying to expand the Senate bill so to incorporate the liberal ideas of the Saburov Commission.

57. Oznobishin, *ibid.*, col.: 856.

The central problem of the Senatorial reform for the Progressists was therefore its relationship with the administration. They agreed with the Ministry of Justice's belief that the Senate should not compete with the Council of Ministers in its executive functions. Yet they also believed that this could only be achieved by relieving the Senate of all administrative functions and by directing its evolution towards administrative justice, towards safeguarding the rule of law as a supreme court. If one could succeed in this, hoped the speaker, then the Senate would take over the Duma's interpellations, which had become a serious burden on the Lower House. In turn, the Senate's judicial independence could be assured only if it was set up as an extra-ministerial authority, a position that would fit well with its present status as a supreme supervisory organ. The independent status of the Senate would enable it to put limits on administrative discretion and in this sense it was essential to separate the Senate's authority from the bureaucracy. This was not achieved in the Commission and so the Progressist faction, promised Grodzitskii, would continue to battle on during the debates.⁵⁸

Following Grodzitskii, another member of the Duma's Commission on Judicial Reform, the Polish deputy Dymsha, also accused the Judicial Commission of not fulfilling its historic mission of setting up the Senate as a supreme institution of administrative justice. However, continued the deputy, it was the Tsarist ministerial government that was ultimately responsible for the Senate's decline. Ever since the establishment of ministries in 1802, there remained behind the facade of ministerial responsibility before the Senate a thoroughly disguised private relationship of ministers with the Tsars, which in reality freed them from any responsibility before the Senate. Yet on the other hand, the reciprocal ministerial control over the Senate had a very real meaning and resulted in verdict delays, endless appeals, politically motivated appointments, and continuous political pressure on the Senate.

The Ruling Senate, continued Dymsha, was a supreme organ of legal interpretation and supervision, completely independent from the Council of Ministers. Hence the Senate's power of supervision should be extended to include criminal liability of ministers for unlawful actions, invalidation of all illegal administrative acts and refusal to promulgate ministerial decrees issued in violation of Fundamental Laws of 1906.

Secondly, Dymsha insisted, Senators should be nominated from a list of people in a certain positions in government service. Moreover the Senate

58. Grodzitskii, *ibid.*, col.: 848-856.

should make its own nominations directly to the Tsar. The alternative route proposed by the Duma Commission, of presenting the Senate's candidates via the Minister of Justice, was a legal sham. The Minister could not be trusted with an adequate presentation of the candidates and would certainly attempt to promote his own people in his secretive oral report to the Tsar. Finally the Senate's chancellery should be completely independent from the Ministry of Justice and gradually eliminated from the Senate's proceedings.⁵⁹

The Kadets, on the other hand, took on a much more radical stance, and following Dymsha the Kadet deputy Chernosvitov launched a sharp critique of the Commission's proposal, which, as he saw it, not only did not extend the principles of the 1864 Judicial Statutes to the Senate, but brutally violated them in a number of ways. Among these violations Chernosvitov listed the Minister of Justice's recommendations of Senatorial candidates to the Tsar; the introduction by the Duma Commission of some obscure disciplinary panel authorised to dismiss Senators on the basis of a secretive disciplinary procedure, the admission by both – the Ministry and the Commission – of the chancellery's involvement in case preparations and verdict drafting. Hence, contrary to popular belief, maintained Chernosvitov, only the Kadet proposal that included direct Senatorial nominations before the Tsar, abolished any closed disciplinary hearings against Senators and upheld Senators' responsibility for case investigations and verdict drafting, could put Senate practice back in touch with the basic principles of the Judicial Statutes.

So in total, concluded Chernosvitov, to a storm of applause on the left:

... under the current bill the Senate, rather than becoming what the Minister once called a 'granite rock of justice', would turn into an amorphous clay pit constantly eroded by the political waters which would be gradually filled with the miasmas spreading endemic disease throughout the state organism.⁶⁰

The most heated debate between the reformers and the right-wing deputies ensued on the issue of Senatorial qualifications and appointments. The right-wing deputies believed that in forming their opinions Senators would have to rely primarily on their practical experience and political gut feeling. Hence their educational qualifications, upon which the reformers insisted, would hardly have any significance, and in fact might impede the selection of the best-qualified personnel to the Senate. Thus the right-wing deputy Zamyslovskii asserted that military officers, who had not graduated from the Mili-

59. Dymsha, *ibid.*, col.: 856-870.

60. Chernosvitov, *ibid.*, col.: 881.

tary Academy but showed outstanding courage on the battlefield fighting the enemies of Russia, as true patriots should not be prevented from entering the Senate. He drew parallels between the Senatorial role in the interpretation of law with that of members of juries who were called upon 'to interpret the law', but did not possess any formal qualifications.⁶¹

Progressists and Kadets, on the other hand, saw higher education as an essential prerequisite for Senatorial nominations. For them it was a guarantee of Senators' ability to comprehend and carry out the increasingly complex administrative litigation. Thus in reply to Zamyslovskii's statement, Kadet deputy Chernosvitov caustically remarked that 'fighting the enemies of Russia, be they external or internal ones, is by no means the same as interpreting the law'.⁶²

Yet Kadets and Progressists held different opinions on the extent to which education should be the defining criterion for nominations. Kadets argued that nominations should be made exclusively from those candidates who had the highest degrees in jurisprudence and the best experience in legal work, while Progressists were inclined to accept a certain mix of professional credentials with practical experience of holding high office for a number of years. Thus the Progressists admitted that along with professional jurists, provincial governors and marshals of nobility could also be among those persons whose rich practical experience could enhance the collective judgement of the Senate.⁶³

This proposition, however, met with fierce criticism from the Kadets, for whom these representatives of the ruling elite were the very essence of lawlessness (*proizvol*) in provincial Russia. The prominent Kadet jurist Maklakov commented on the problem as follows:

If under the guise of interpreting the law we were to yield to the needs and demands of life, then inevitably there would follow an uncontrollable legal chaos and judicial anarchy. Instead of clearly invoking the meaning of law, these Senators, drawn from former officers and provincial governors, would interpret the law to suit themselves, because in their view the needs of life require something different from what we, the legislators, have decided, and so would completely invalidate all our legislative work. Interpretation of law particularly requires the application of juridical knowledge. As to the role of members of the jury, brought up by Zamyslovskii, the courts never ask them about the meaning of law, but only about the meaning of facts. To equate the role of the Senate

61. Zamyslovskii, *ibid.*, col.: 947-948.

62. Chernosvitov, *ibid.*, col.: 950.

63. Grodzitskii, *ibid.*, col.: 949.

with that of the jury... would inflict so much damage on the Senate's authority, that it would not be able to recover for a long time.'⁶⁴

So in the Kadets' view the only criterion that would satisfy Senatorial nomination was an expert knowledge of law. Since Russia at the time had very few experts with thorough legal background and practical knowledge of administration, this proposition significantly narrowed the Kadets' options. Trying to enlarge the pool of eligible persons, they proposed to include even such minor figures as the chairmen of the provincial jury councils, who normally dealt with minor administrative offences of members of the jury. Clearly this proposition took the Senate's 'democratisation' to the extreme, replacing the breadth of social vision and legal experience highly desirable criterion of Senators', with somewhat pedantic appreciation of technical qualifications.

The inability of the liberal factions to come to an agreement on the relatively simple question of Senators qualifications was to a large extent a result of the poor state of the Russian legal profession. Long-standing and deliberate government policies of obstructing the development of Bar Councils, which were restricted only to Moscow, St.Petersburg and Khar'kov, limited the scope of the legal professionalisation of lower courts and undermined professional self-regulation which the reformers could have relied upon to find the best qualified Senatorial personnel.⁶⁵

In addition, the Tsarist government was reluctant to appoint legal experts to higher administrative posts (except for the members of the ruling elite), and this precluded the natural growth of personnel knowledgeable in both spheres. Hence throughout the debates one feels a sharp divide between the political culture of the administrative elite and a more populist milieu of jurists and advocates, whose professional and public activities seemed to stand a world apart. Ambiguous in this respect, Tsarist policies after the Great Reforms, encouraged different political and administrative values among Tsarist administrators and the *advocatura*. While the legal profession grew to appreciate the formality of law and its universal validity for all members of society, the Russian administration continued to rely on its age-old qualities of personal discretions, hierarchies of service ranks and clan patronage. Hence the Kadets felt more assured if the balance of Senatorial nominations was tipped towards the legal profession, while Progressists,

64. Maklakov, *ibid.*, col.: 954-955.

65. William Pomeranz, *The Development of Russian Advocatura*, PhD Thesis, University of London, 1990.

who had a keener eye for what was realistically possible, attempted to link the two. As a result of these disagreements the Progressists and Kadets could not master the majority necessary to outvote the conservatives, and the Fourth Duma adopted a compromise, drafted by the Duma Commission. As before, candidates would be drawn from members of the ruling elite with any degree in higher education, and at least the third rank in the civil service.

The question of Senatorial qualifications was closely related to the nominations procedure, which was hotly debated immediately afterwards. Again both Kadets and Progressists and even left-wing Octobrists agreed that in the past the Minister of Justice in his role of General Procurator had cleverly manipulated Senatorial nominations to suit his political needs.⁶⁶ In the last few years, this had had a particularly harmful effect upon the quality of Senatorial judgements, which, for example, had upheld falsifications of the Duma elections, undermined Duma deputies' immunity, encroached upon Universities autonomy.⁶⁷ Hence all factions of the liberal opposition agreed that the Minister of Justice in his role of General Procurator of the Senate should be removed from the nominations procedure, and that the original principle of 'direct communication' between the Senate and the Tsar should be reinstated. Yet how to reconcile the Autocracy's claims to direct consultations with its servants (*neposredstvennaia sviaz'*) with an age of increasingly professionalised institutions was not clear to either of them.

Progressists saw the solution in allowing the Senate to put forward two alternative candidates directly for the approval of the Tsar, thus eliminating the role of the General Procurator. Clearly this also limited the 'sovereign choice' of the Tsar and gave grounds for right-wing deputies to accuse the Progressists of trying to reap yet another constitutional amendment by effectively introducing the system of Senatorial self-promotion (*samovospolnenie*).⁶⁸ Shcheglovitov argued that Senatorial self-promotion would be a return to the worst kind of nepotism and that the proposed post of *Pervooprísutstviushchii* in place of the General Procurator would be analogous to a Prikaz Judge, who in corrupt old Moscovy had had a free hand in all decisions.⁶⁹

In response to these accusations the Octobrists felt compelled to acknowledge the mediating role of the Autocracy in Senatorial appointments,

66. See the following speeches in *SOGD* IV, session 41: Kadet Adzhemov, col.: 966-968; Chernosvitov, col.: 1020-1024; Progressist Grodzitskii, col.: 995-997; Octobrists Meyendorff, col.: 978-987; Dymsha, col.: 973-978

67. Meyendorff, *ibid.*, col.: 985.

68. Zamyslovskii, *ibid.*, col.: 969-973.

69. Shcheglovitov, *ibid.*, col.: 987-995.

and agreed with the Duma Commission that the Senate's candidates would be only a part of a larger list of nominees. Yet this brought them back to the question as to who would choose these other candidates and ultimately who would personally present the enlarged list to the Tsar. In the Commission's view, accepted by the Octobrists, it would continue to be the Minister of Justice, who in the view of both the Progressists and the Kadets would invalidate the Senate's opinion. In response to this rift in the liberal opposition, the left wing Octobrist Baron A.F.Meyendorff⁷⁰ defected to the Kadets and Progressists on the issue. Meyendorff believed that Russia was so disillusioned with what he called the personal rule of the General Procurators that he could not envisage any better outcome with a *Pervoprisutstvuiushchii* either. Hence, the Octobrists simply decided to leave the law open to further interpretation.

Unable to come to an agreement, the Kadets and Progressists lost the vote and the joint proposal of the Commission and the Octobrists to retain the Minister of Justice in charge of nominations and to allow Senators purely symbolically to put their candidates forward, won the day. As in the case of Senators' qualifications this debate once again demonstrated the profound chasm between bureaucracy and liberal society, driven by the extreme notions of administrative justice – one believing in its subsidiary role to the bureaucratic rule, and the other seeing it as providing legal leverage against the regime.

This rift was further borne out by the debate over the scope of Senatorial authority – whether it should remain the old concoction of justice, administration and lawmaking, or whether it should become a proper form of adjudication as outlined in the 1864 Judicial Statutes. Both the Ministry of Justice and the Duma Commission, believed that the Senate's commentaries (*raz'iasnenia*) of laws represented a considerable advance of Russian justice from the eighteenth century. Previously, argued the ministry's spokesman, the courts were prohibited from any creative interpretations and were required to adhere strictly to the letter of law. However, since the Judicial Reform of 1864 Senate judicial activism had become commonplace and recently resulted in a number of judge-made laws. Hence the Senate should continue issuing 'general commentaries' for the benefit of lawmaking in Russia.⁷¹

70. After the October Revolution A.F.Meyendorff became an émigré historian at the London School of Slavonic Studies from 1926 to 1964. For biographical details see Michael Glenny and Norman Stone, eds., *The Other Russia: the Experience of Exile*, London, 1990, pp. 292.

71. Verevkin, Aide to the Minister of Justice, *SOGD*, 1914, session IV:44, col.: 1245-1251.

Reformers, on the contrary, believed that judicial interpretations of laws arising from the Senate's practice in administrative cases had little in common with the so-called 'commentaries'. This practice established new legal norms completely independently from Senatorial resolution of petitions, and effectively turned the Senate into another lawmaking body. In this respect, the Senate's jurisdiction was potentially competing with the new Duma legislature established in 1906.⁷² Baron Meyendorff emphasised that, despite the assertions made by the Ministry's spokesman, this idea ran completely contrary to the theoretical principles of administrative justice and the accepted practices of European supreme courts. In fact it had more in common with the archaic Senatorial functions originating in the collegiate government of Catherine the Great, when the Senate issued general clarifications and confirmations of law in response to legal queries from the provinces. Kadet deputy Adzhemov continuing Meyendorff's line of argument. Even then, he said, the old Fundamental Laws prohibited the Senate from issuing commentaries in place of new legislation, and limited the Senate's interpretations strictly to obscure or contradictory laws (*kazusnye dela*).⁷³ Yet now, one hundred years later, the Ministry was proposing to extend Senatorial commentaries over all laws, including ministerial circulars, effectively turning the Senate into a quasi-legislature operating outside of the Duma and the State Council.

Hence there emerged two possible courses for the reform — either to abolish the Senatorial practice of 'general commentaries' altogether, as was proposed by the Octobrists, or to limit Senatorial commentaries strictly to clarifications of legal obscurities or contradictions, as was proposed by zemstvo-Octobrists and accepted in the Duma Commission. For the first time in this exhaustive debate, the Octobrists' proposal won the day, and the Senate was given broad responsibility to interpret the law purely in the context of administrative cases. This guaranteed the Duma's legislative prerogatives, and also ensured that the Senate would not abstain from carrying out judgments in the event of legal uncertainty. The victory was secured by a parliamentary alliance of the Octobrists with the zemstvo-Octobrists which carried through this new version of the crucial article 200 of the Senate Statute.

Finally, the Fourth Duma dealt with the question of Senatorial promulgations of laws, the obscure Senate function which for some time disturbed

72. See speeches by Meyendorff, *ibid.*, col.: 1254-1266;

73. Adzhemov, *ibid.*, col.: 1266-1269

the Duma's liberal opposition. They believed that in those critical situations when ministries anticipated Duma opposition to proposed legislation they could use the Senatorial power of promulgations of laws to obtain a certain appearance of legality for ministerial acts. Such practice had the potential not only of undermining the legislature but also of prejudicing the Senate's ability to adjudicate cases raised against laws so promulgated.

Only confronting the real life and interests of people – argued the Kadet deputy Maklakov – these administrative acts would prove unjust, cruel and often illegal. Without personal appeals of litigants, promulgating them abstractly, the Senate would never be able to foresee or to check all the irregularities contained in them, no matter how many wise men might preside in it. Charging the Senate with such responsibility, we would prejudice the chances of plaintiffs to get justice from the Senate... because accepting such petitions would mean accepting the negligence of the Senate itself.⁷⁴

On the other hand, he recognised that the old practice of promulgations could be turned into a perfectly valid procedure of verifying the consistency of new laws with the Fundamental Laws. In a personal motion, Maklakov proposed to entrust the Senate with responsibility to scrutinise those laws which were not subject to petitions, such as Addresses (*Nakazy*) of the Duma and the State Council, as well as procedures accompanying the outcome of their legislation. Maklakov also insisted that the Tsar's Ukazes conferring rights and endorsing ministerial policies should equally be subject to a preliminary Senatorial legal audit. In this manner, insisted Maklakov, the Senate would put a check on those ministers who used their direct access to the Tsar in order to override the law. Reminding the audience of the Western Zemstvo Bill, which led to the political downfall of Stolypin and the collapse of the Third Duma system, he asserted that if the Senatorial audit had been exercised effectively, then, among other things, the Senate would have held back the unnecessary emergency legislation, and so in the future might have stabilised the Russian constitutional regime.

Opposing this view, the Duma Commission member Count Bennigsen reiterated that Senatorial promulgations at present were no more than a form of registering laws before their publication in the Complete Digest of Laws (*Polnyi Svod Zakonov*) and that the Senate itself was of the opinion that by countersigning ministerial decrees, it did not preclude the public from seeking justice against them. To this Maklakov replied that this was so only be-

74. Maklakov, *ibid.*, col.: 1281.

cause up until then the Senate was not required formally to corroborate ministerial decrees as was proposed by the new bill. However Maklakov's proposal did not get the vote of the Fourth Duma, which adopted the idea of the Senate's preliminary ratification of ministerial decrees.

Conclusion.

On the whole the liberal opposition in the Duma failed to achieve radical reform of the Senate. What came out of the complex Duma debates was a series of compromises between the Ministry of Justice and the more moderate opposition, mainly the Octobrists. The immediate result of the reform was an increased though slightly more subtle bureaucratic intervention in Senatorial practices. Paradoxically it was also combined with renewed prospects for further professionalisation of the Senate's membership. The Ministry of Justice was confirmed in its authority to nominate Senators, to use Senatorial 'promulgations' and 'commentaries' to approve ministerial decrees, and to manipulate hearings through control of the chancellery, and thus could be expected to bend the Senate's practice to suit bureaucratic rule. The Minister of Justice, who constantly invoked the crisis of parliamentarism in Europe, believed that extended Senatorial powers exercised by appropriately appointed Senators would see him through the 'shortcomings' of Duma legislation and the 'tenuous' parliamentary compromises that it was able to achieve. The likelihood of this scenario also increased because the newly reformed Council of Ministers was formally released from the direct supervision of the Senate. Devoid of control over the collective actions of ministers, the Senate could become an even easier target for ministerial manipulation.

On the positive side, however, the liberal opposition could be credited with removing the crudest forms of bureaucratic diktat over the Senate and abolishing the most antiquated procedures. The abolition of case transfers and ministerial veto transformed the Departments into the highest organs of administrative litigation, whose verdicts were final and irrevocable. This elevated the Senators' judicial status, and opened better prospects for the professionalisation of Senatorial practice. The new requirement of higher education for Senators brought the Senate into line with the overall professionalisation of the civil service already under way. Hence the Administrative Departments of the Senate could expect to experience the ever greater effect of rising expertise among its ranks. In addition, the anticipated involvement of Senators in the preparation of hearings and verdict drafting, along with the public exposure of Senatorial proceedings, envisaged by the reform, pointed

in the same direction. Thus although there were few radical improvements in Senatorial practices, the long-term prospects favoured the development of modern-style administrative justice.

Crucially, however, the reform did little to bring administrators and judges closer together in their common duty to uphold the law. Hence the decisive question after the reform was whether the interests of the bureaucracy and the culture of the reformed Senate were bound to meet in a head-on collision in the future. The possibility of installing a system of reciprocal checks and balances between the Senate, the ministries and the Duma was effectively wasted.

Certainly, the long-term prospects of administrative justice in Russia were critically dependent upon the future course of the Autocratic regime as a whole. As Maklakov emphatically stressed, under the Third Duma System the Senate became a pawn in the power struggle between the bureaucracy and the emerging civil society represented in the Duma. So if, after having strengthened both sides — the bureaucracy and the judges — the regime had continued to undermine its own constitutional foundations, it would almost certainly have precluded the emergence of judicial practices capable of resolving disputes between the state and the citizen. Lacking adequate mutual checks and balances, both sides would have persisted in what may be called the politicisation of justice and the judicialisation of administration. As it happened, the sudden eruption of violent conflict in World War I precluded the adoption of the controversial new law and further delayed the reform, leaving Senatorial justice practically intact to the very end of the regime.

Conclusion: Authority, Society and Justice in Late Imperial Russia

ANYONE who has ever dealt with Soviet or post-Soviet authorities knows how difficult it can be to obtain redress against arbitrary actions. Generally the Russian executive is exempt from direct litigation, so the only way to prosecute the culprits is for Russian citizens to write numerous petitions. They write to bureaucratic hierarchies, they write to the press and they even write to the secret service. Out of the three the secret service is probably the most effective, as it searches for indications of dissent or treason in the most mundane daily grievances. Failing that, however, the petitioners' only hope is to seek moral support through the press or to convince high-ranking officials to issue a flurry of reprimands which, one might add, rarely cause any serious consequences.

Strikingly, today the pattern of petitioning the state differs little from what it used to be in Imperial and even in Muscovite Russia. Almost invariably the pursuit of justice in Muscovy, in Imperial Russia or even in the Stalinist Party-State was a precarious venture which could easily cripple one's finances, destroy one's reputation, ruin one's health and even deprive one of personal freedom. So the question that this study has tried to address is why had the strong tradition of supplication to the state did not evolve into an institution, strong enough to provide Russian subjects with reliable means of redress. Why did no definite organs, rules and procedures evolve to deal with corruption and abuse of authority by Russian officials?

The usual answer given by historians is that the idea of 'administrative justice', as it became known in Western Europe, was not sufficiently embedded in the structures and practices of Russian society. In the public arena the Russian nobility saw themselves primarily as military servitors of the Autocracy, and in private life — as little 'potentates' in the image of the Tsar, ruling indulgently over their peasant serfs.¹ They therefore remained suspicious of

1. Wortman, *The Development*, p. 285; Paul Miljukov, *Očerki po istorii russkoi kul'tury*, St.Petersburg, 1900-1909, vols.1-3, vol. 1, pp.

formal legal institutions and grew accustomed to using patronage and personal authority for their protection as members of social estates and local communities. Hence in the absence of legal tradition Russian subjects relied on discretionary decisions of high-ranking officials and on the personal grace of the Autocrat in resolution of their disputes with authorities.

The history of the Senate before the Great Reforms seems to confirm this formula. Having been set up as Tsar Peter's 'regency' acting on behalf of the absentee monarch, the Senate became the arena for the collective bargaining of the elites. Here the heads of the aristocratic patronage clans came to 'negotiate' the terms for sharing between them the spoils of serfdom and Empire. Absolutism in the late eighteenth century put a certain brake on the power of Senatorial clans as Catherine the Great elevated the Procurator General of the Senate above the Senate assembly, making him her foremost legal advisor, premier executive officer and supreme judge. Consequently the Senate was reduced to a nominal gathering of *sanoyniks* conducting passive supervision of provincial administration, a role that was taken by many of its members as a breach of personal status. Their desire to restore the omnipotence of aristocratic patronage clans lingered on through the reign of Paul I and re-appeared in the early nineteenth century, when Alexander I announced cardinal restructuring of the Imperial government. Stirred by the forthcoming reforms, the Senate's 'old guard' claimed to represent the only true link between Tsar and people and requested the privilege of supreme legislative, administrative and judicial authority. The more moderate among them insisted that the Senate should be transformed into a supreme judicial organ with true autonomy from the administration, the State Council and the Court, a formula that claimed to align Russia with contemporary European doctrine of separation of powers. Alexander I, however, as a proper Autocrat, steered his policies away from both aspirations of Senatorial sovereignty and proper judicialisation. His new ministries absorbed most of the Senate's responsibilities and the loyalty of their low-ranking officials resolved much of the Tsar's anxiety before the competing aristocratic clans.

However the brief clash that took place between 1801 and 1802 left a deep imprint on the Autocracy's relations with the Senate. It was now perceived as a potential constitutional rival and for the most part of the early nineteenth century was deprived of any significant role in the affairs of the State. In the late 1850s – early 1860s, during the years of preparation of the judicial reform, virtually nothing was said about the role of the Senate in the resolution of administrative disputes. The purpose of the judicial reform, as

Alexander II saw it, was solely to protect the private property and family security of the gentry after the Emancipation.

The idea of transforming the Administrative Departments was put forward by the Minister of Justice, Zamiatnin, almost as an afterthought to the judicial reform. Once again he expounded the old vision of Senatorial supremacy over administration, this time without the support of the Senate's dignitaries. Yet even this solitary effort gravely displeased the Tsar and brought his swift downfall similar to that of Derzhavin sixty years before.

However the effect of the Great Reforms on the Senate was more far-reaching than Tsar Alexander II could foresee. Two major factors played a role in the transformation of its administrative practice – the introduction of cassation practice in civil and criminal cases and the establishment of Senate practice on zemstvo petitions. The two Cassation Departments of the Senate enjoyed full judicial procedure and true autonomy in the judicial interpretation of laws. The practice of cassation – i.e. appeals against lower courts on the points of law – set in motion an irrevocable process of professionalisation of the Senatorial corps. Senators from Civil and Criminal Cassation Departments freely exchanged their legal expertise with their colleagues in the First (Administrative) Department, who eagerly began to emulate their methodology and apply legal rather than political reasoning to administrative cases and particularly to zemstvo petitions.

Zemstvos were the chief agents and beneficiaries of the provincial transformation after the Great Reforms. They became major employers of the newly forged professions, which with zemstvo encouragement and funds undertook major national projects in education, health care, transportation, food provisioning, epidemic and famine relief, that the legislators of the Great Reforms off-handedly called 'non-mandatory'. Zemstvo professionals drew their main strength from the steady supply of qualified personnel that flocked into zemstvo employment from the newly opened schools, polytechnics and universities and that passionately believed in the power of knowledge and in the sheer public virtue of educating their lesser brethren. They were inspired by the populist theories of the zemstvos' civilising mission in the countryside and gave a new meaning to the local autonomy that was granted to them in 1864. The zemstvo intelligentsia saw zemstvo organs as equal partners to the state and in some measure even superior to Tsarist bureaucrats, since they were not bound up by hierarchies of ranks or benefits of patronage, but were motivated by a pure and untainted desire to raise citi-

zens from former peasant-serfs.²

However in fulfilling their mission they were strangled by miniscule resources and the inadequate scope of the authority conceded to zemstvos by the narrowly conceived legislation of the 1864 Zemstvo Reform. Many of them had a history of revolutionary associations in their student years³ and often mixed their professional passion with revolutionary fervour. Their yearning for bold social action independent from the directives of the Autocratic state gained them the suspicion of provincial officials who often felt that zemstvos infringed upon what they considered as their exclusive jurisdiction. Thus police officials complained against zemstvo physicians who as they saw it assumed 'too much' authority in combating famine and epidemics or treating venereal diseases,⁴ treasury officials worried that zemstvo 'over-taxation' of peasants might undermine Treasury receipts, schools inspectorate accused zemstvo teachers of radical propaganda,⁵ and, above all provincial governors felt that the zemstvo milieu had little respect for them as all-important 'viceroys' of the Tsar.

Caught up in this jurisdictional warfare, zemstvos soon began a legal campaign for proper recognition of their status in the structures of the Autocratic state, submitting as many as 10,000 cases a year to the First Department of the Senate. The first Department became the key player in legitimising the expansion of the zemstvos' 'non-mandatory' activities, which took place through the piecemeal case-by-case quasi-judicial reinterpretation of the original legislation. In respect of the zemstvos the First Department performed a function most ambiguously named '*pravovoi nadzor*'. This was a peculiar mixture of administrative mediation and legal adjudication whereby the First Department on the one hand adjudicated provincial petitions in a manner characteristic of the court of law, and on the other continued to engage in extra-judicial practices of issuing legal commentaries, promulgating laws and conducting periodic provincial inspections (*revizii*) of the provinces. These functions sometimes complemented but more often contradicted each

-
2. For a discussion of this theme see for example Joseph Bradley, *Muzhik and Muscovite: Urbanisation in Late Imperial Russia*, Berkeley, London, 1985, pp. 1-6, 345-358.
 3. Susan Morrissey, *Heralds of Revolution: Russian Students and the Mythologies of Radicalism*, New York, 1998.
 4. Richard Robbins, *Famine in Russia 1891-1892: the Imperial Government Responds to Crisis*, New York, London, 1975; Laura Engelstein, *The Keys to Happiness: Sex and Search for Modernity in fin-de-siècle Russia*, Ithaca, London, 1992.
 5. Scott Seregny, *Russian Teachers and peasant Revolution: the Politics of education in 1905*, Bloomington, 1989; Christine Ruane, *Gender, Class, Professionalisation of Russian City Teachers, 1860-1914*, Pittsburg, 1994.

other, thus contributing to the instability of Senatorial practice in zemstvo cases. Nonetheless not infrequently the Senate rulings were the only official source that authorized zemstvo projects otherwise deemed illegal by the provincial governors and ministerial bureaucracy. As a result of these rulings the zemstvos were able to expand their resources and to pursue pioneering projects in education, healthcare, agriculture, transportation and other fields often in defiance of the limiting legislation that was issued against them in the 1890s.

Particularly significant was the impact of the Senate verdicts in zemstvo taxation and healthcare provision. Senatorial decisions clarified the criteria of zemstvo taxation – value and income of estates – in respect of industrial, urban and landed property. They legitimised statistical methods of property assessment, which initially contradicted the adopted principle of individual assessment of estates. This helped zemstvos to achieve greater social equity and to increase their revenues on a sustainable basis. Similarly the Senate promoted greater autonomy of the medical profession in zemstvo services and upheld their numerous recommendations to de-concentrate provincial hospitals, to impose quarantine in times of epidemics, and generally improved working conditions of zemstvo physicians, feldshers and sanitary personnel.

These decisions reflected a basic ideological accord between the Senatorial ranks and zemstvo officials, who as it appears from this study shared a commitment to the principle of the rule of law and independent adjudication in administrative disputes. This is not entirely surprising given that many of the Senators and zemstvo leaders came from the same milieu of capital-city universities, which became the cultural hub of late nineteenth-century social science, philosophy, historiography, jurisprudence, and literary arts. Their new sensitivities to social injustice stemmed from the notions of universal humanity and equal rights for all. It seemed natural in this context that the ‘supply’ and ‘demand’ sides of administrative law and justice would soon transform the Senate’s institutional identity. By the 1890s the Senate became for many nothing other than the Supreme Administrative Court in gestation. Numerous disputes in juridical societies throughout the country seemed to confirm this view of the Senate’s status.

However the government, though equally concerned with the lack of legitimacy in zemstvo activities, upheld different political premises. It attempted to introduce greater precision in their activities and fiscal accountability by tightening bureaucratic controls and dictating zemstvo agendas,

budgets and even recruitment of zemstvo officials directly from ministerial chancelleries in St.Petersburg.⁶ Hence the so-called counter-reform of the zemstvos in 1890 was universally perceived as a direct assault on public liberties and an attempt to reverse the original 1864 Zemstvo Reform.⁷ In this heavy regimentation of zemstvo activities the central government strongly relied on the discretionary judgment of the provincial officials and the police, who were empowered to dispense with legal formalities especially in the provinces under the Emergency Rule.

The Senatorial interventions did not however bring the desired collaboration of zemstvos and provincial crown officials. On the contrary, favourable Senatorial verdicts given by the First Department purely on the basis of judicial interpretation of existing laws and issued to support zemstvos' plea for legality were perceived in the provinces as quasi-constitutional endorsements. They educated provincial public opinion in the virtues of local autonomy and independent public initiative embodied by the zemstvos. The increasing scope of authority conferred on the zemstvos by Senate's verdicts encouraged zemstvo leaders to form inter-regional links to discuss shared problems and report common grievances against provincial administration.

By the turn of the twentieth century zemstvos became the beacon of a constitutional movement that openly challenged the Autocracy to open a National Assembly with representatives drawn from the rank and file *zemtsy*. Yet, characteristically the Liberation Movement paid only perfunctory attention to problems of the rule of law and preferred to agitate for a National Assembly as the only source of sovereign authority in the land. In their constitutional projects they dedicated little space for outlining the future role of the Senate that was doing so much for the survival of zemstvos as an independent provincial agency.

Political interpretations of judicial verdicts were not an exclusive domain of the zemstvos. In the early 1900s Russian jurists who initially rallied under the banner of separation of the Senate power from ministerial bureaucracy began to harbour hopes of building up the Senate's authority to intervene in Tsarist policies and effectively control the Autocracy. They seem to have concluded that the extra-judicial authority of the Senate, previously condemned by them as a hazard to the Senate's judicial independence, might

6. Larisa Zakharova, *Zemskaiia kontr-reforma 1890 goda*, Moscow, 1968, compare with Thomas Pearson, *Russian Officialdom in Crisis: Autocracy and Local Self-government, 1861-1900*, Cambridge, 1989, pp. 210-244.

7. Robert Philippot, *Les Zemstvoos: société civile et Etat bureaucratique dans la Russie Tsariste*, Paris, 1991, pp. 64-80.

in the future serve as a way out of the deadlock between society and the intransigent Autocracy. Despite half a century of judicial practice in administrative cases, they repeated the same arguments advanced by Derzhavin to Kochubei at the beginning of the nineteenth century, and in the 1860s by Zamiatnin to Valuev. Derzhavin, Zamiatnin and after them Senator Saburov and his associates, who took part in the 1905 Commission on Senate Reform, all believed that the Senate should enjoy some sort of quasi-supremacy over Tsarist bureaucracy, a premise that greatly irritated the Autocrats they served and equally angered the ministerial officialdom.

These political uncertainties over the nature of Senatorial authority were well understood by their opponents and ultimately cost the reformers the possibility of transforming the Senate. Yet their problem was not only an ideological one. The system of 'administrative justice', as it became known in the reformers' shorthand, lacked any firm foundations at the lower levels of government. Civil and criminal courts with their peasant jury showed such crude opposition to the political authorities that they were rightly seen as a focus of popular opinion against the Autocracy than a reliable system of case adjudication. Hence they were systematically subjected to various limitations, in terms both of the status of legal officials and of the nature of the cases they were allowed to adjudicate. With such a track record they could not possibly have been entrusted with the additional authority to decide administrative disputes between what appeared as increasingly alienated bureaucracy and local self-government. On the other hand, provincial *prisutstviia* on zemstvo affairs, instituted under the 1890 Zemstvo Reform to mediate disputes at the provincial level, were so totally absorbed by the interests of Tsarist administration that they lacked any potential to emerge as judicial organs. Hence once again the Senate would have had to perform so many of the lower level functions that these would almost certainly have precluded its efficiency as a Supreme Court.

The story of the Ruling Senate in the late Imperial period is a complex one. Undoubtedly, it demonstrated the power of the judiciary to legitimise the expansion of the public domain by transforming it from the fragmented network of social estates and patronage clans into a more coherent social entity — an emerging civil society. At the same time the Senate's far-reaching involvement in administrative petitions contradicted its practice of legal supervision — *nadzor* — and forced the jurists and politicians to make choices about future Senatorial practice, composition and above all its status within the constitution of the state. It was then that the principles of the rule of law

came into head-on collision with the Autocracy, which continued to insist on its pre-eminence in mediating disputes between its subjects. Sensing that the political activism of juridical circles was stretching far beyond the courtroom, the Autocracy was reluctant to concede full judicial autonomy to the Senate in what it deemed to be the innermost sanctum of its power — disputes with authority. The jurists on the other hand, seeing little hope that the Autocracy would adopt the idea of the legal state (*pravovoe gosudarstvo*), began to regard the Senate as a beacon of liberalism within the old Tsarist state and wanted to appropriate this pivotal position in the interests of emerging democracy. In effect some of them seem to have engaged in their mind in institutional warfare with the Tsarist bureaucracy, not entirely dissimilar to that waged for five decades by the zemstvos.

In the debates of the last pre-war Duma session, the question therefore became whether Russian subjects would continue to enjoy a brand of ministerial 'justice' defended by the Ministry of Justice or whether they would be treated to an experiment in 'government' by the judiciary. The polarisation of political camps was therefore complete. The issue of Senatorial justice in a sense became a litmus test of both — the Tsarist state and the modernising society. Both failed to accept and adjust to the needs of the other. The government rejected the power of the courts to grant legal clarifications of the new civic practices, while the liberal public seemed to be unable to accept that litigation against authority, local or otherwise, could not be administered by an insular professional guild. If the Autocracy lacked political vision, Russian liberalism failed in statesmanship.

Bibliography

Bibliographies:

1. Annenskii, N., *Bibliograficheskii obzor zemskoi statisticheskoi i otsenochnoi literatury so vremeni uchrezhdeniia zemsto, vyp. I za 1864-1903, St.Petersburg, 1904; Prodolzhenie za 1909-1911, St.Petersburg, 1912.*
2. *Bibliograficheskii ukazatel' zemskoi otsenochnoi literatury, St.Petersburg, 1899-1904.*
3. Gessen, V.M., 'Nauka gosudarstvennogo prava v Rossii. Bibliografiia', *Trudy Iuridicheskogo Obshchestva Sankt Peterburgskogo Universiteta*, VII, 1913.
4. Grigor'ev, V.N., *Predmetnyi Ukazatel' materialov v zemsko-statisticheskikh trudakh s 1860-kh po 1917 g.g., vols. 1-2, Moscow, 1926-27.*
5. Hartley, J., *The Study of Russian History from the British Archival Sources*, London, and New York, 1988.
6. *Iurisicheskaiia bibliografiia Demidovskogo Iuridicheskogo Litseiia, St.Petersburg, 1892.*
7. Kalinychev, F., *Gosudarstvennaia Duma v Rossii. Sbornik dokumentov. Moscow, 1957.*
8. Karavaev, V.F., *Bibliograficheskii obzor zemskoi statisticheskoi i otsenochnoi literatury za vreamia s 1864 po 1 ianvaria 1911, Izdanie Departamenta Okladnykh Sborov, St.Petersburg, 1911.*
9. Leontovich, F.I., *Istoriia russkogo prava. Bibliografiia. Vypusk pervyi. Varshava, 1902.*
10. Povorinskii, A.F., *Sistematicheskii ukazatel' russkoi literatury po sudoustroistvu i sudoproizvodstvu, vols., 1-2, (1896- 1904), St.Petersburg, 1905.*
11. Szeftel, M., *Bibliographical Introduction to Legal History and Ethnology, Russia (before 1917), Brussels, 1966.*
12. Veselovskii, B.B., 'Bibliografiia', *Istoriia zemstva za sorok let, vol. 4, St.Petersburg, 1914.*
13. Veselovskii, B.B., 'Literatura po voprosu o vzaimootnosheniiakh gorodov i zemstva', *Penzenskii gorodskoi vestnik, 1911, no. 22.*
14. Zaionchkovskii, P.A., *Spravochniki po istorii dorevoliutsionnoi Rossii. Bibliografiia, Moscow, 1971.*
15. Zaionchkovskii, P.A., *Istoriia dorevoliutsionnoi Rossii v dnevnikh i vospominaniakh: annotirovannyi ukazatel' knig i publikatsii zhurnalakh, vols., 1-5, Moscow, 1976.*
15. Zhuravlev, A., 'Literatura po oblozheniiu nedvizhimykh imushchestv v gorodakh', *Gorodskoe Delo, 1909, no. 10.*

Periodicals:

American Historical Review
Cahiers du Monde Russe
Chteniia v obshchestve istorii i drevnostei rossiiskikh
Gorodskoe Delo
Istoricheskie Zapiski
Iuridicheskii Vestnik
Iuridicheskoe Obozrenie
Kievskie Universitetskie Izvestiia
Krasnyi Arkhiv
Penzenskii Gorodskoi Vestnik
Pravo
Promyshlennost' i torgovlia
Russkie Vedomosti
Ruskaia Mysl'
Russkoe Bogatstvo
Saratovskaia zemskaiia nedelia
Sbornik Permskogo gubernskogo zemstva
Sbornik Sochinenii po sudebnoi meditsine MVD
Severnyi Vestnik
Slavic Review
Slavonic and East European Review
Sudebnaia Gazeta
Vestnik Evropy
Vestnik finansov, promyshlennosti i torgovli
Vestnik Prava
Vestnik Tavricheskogo zemstva
Zhurnal Grazhdanskogo i Ugolovnogo Prava
Zhurnal Ministerstva Iustitsii
Zhurnal Tul'skogo zemskogo sobraniia
Zemskoe Delo

Primary Sources:

1. *Adresnaia kniga g.g. senatorov, ober-prokurorov, tovarischei ober-prokurorov i chinov kantseliarii Pervogo Departamenta Pravitel'stvoishchego. Senata, St.Petersburg, Annual editions.*
2. *Adresnaia knizhka chinov kantseliarii Pervogo Departamenta Pravitel'stvoishchego Senata, 1907, 1910, 1912, 1915, 1916, St.Petersburg.*
3. Afanas'ev, N.I., Ed., *Sovremenniki. Al'bom biografii, vols.1-2, St.Petersburg, 1909-1910.*
4. *Al'manakh sovremennykh russkikh gosudarstvennykh deiatelei, St.Petersburg, 1897.*
5. Annenskii, N., *'Zemski kadastr i zemskaiia statistika', Russkoe Bogatstvo,*

no.5, 1894, pp. 48-79.

6. Arandarenko, G., 'Zemskii nalog i rudonosnye zemli', *Promyshlennost' i torgovlia*, 1908, no. 19.
7. Berendts, E.N., Ed., *Istoriia pravitel'stviuiushchego Senata*, St.Petersburg, 1911.
8. Berendts, E.N., *Opyt sistemy administrativnogo prava*, Iaroslavl', 1898.
9. Blinov, I., *Otnoshenie Senata k mestnym uchrezhdeniam v XIX veke*, St.Petersburg, 1911.
10. Bukhovtsev, I., 'Mediko-topograficheskoe opisanie prigorodnogo uchastka Usmanskogo uezda', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1877, vol. I, pp. 1-21; vol. III, pp. 18-48.
11. Chertkov, N., 'Ocherk Podol'skogo uezda (Moskovskoi gubernii) v sanitarnom otnoshenii', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1874, vol. I, pp. 7-21; 1875, vol. I, pp. 1-16.
12. Chicherin, B.N., *Kurs gosudarstvennoi nauki*, vols. 1-3, Moscow, 1894.
13. Chicherin, B.N., *O narodnom predstavitel'stve*, idem., *Izbrannye trudy*, ed. E.V. Poliakov, St.Petersburg, 1998.
14. Davydov, N.V., and Polianskii, N.N., Eds., *Sudebnaia reforma*, vols.1-2, Moscow, 1915.
15. Deriuzhinskii, V.F., 'Administrativnye sudy v gosudarstvakh Zapadnoi Evropy', *Zhurnal Ministerstva Iustitsii*, 1906, no. 6, pp. 85-122.
16. Dobroslavin, 'O resultatakh issledovaniia sanitarnogo sostoianiia Astrakhani', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1879, vol. III, pp. 119-155.
17. Dobychin, P., 'Sanitarnoe opisanie sela Cherdaki Stavropol'skogo uezda Samarskoi gubernii', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1880, vol. I, pp. 1-57.
18. Erisman, F.F., 'Sanitarnye issledovaniia fabrichnykh zavedenii Klinskogo Uezda', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1881, vol. I, pp. 1-16.
19. Evreinov, G.A., *Reforma vyschikh gosudarstvennykh uchrezhdenii v Rossii i narodnoe predstavitel'stvo*, St.Petersburg, 1881.
20. Evreinov, G.A., *Zametki o mestnoi reforme*, St.Petersburg, 18?.
21. Evreinov, G.A., *Proshloe i nastoiashchee znachenie russkogo dvorianstva*, St.Petersburg, 1898.
22. Evreinov, G.A., *Krest'ianskii vopros v ego sovremennoi postanovke*, St.Petersburg, 1904.
23. Evreinov, G.A., *Predely zdravogo russkogo natsionalizma*, St.Petersburg, 1912.

24. Firsov, P., *Metody otsenki zemel' kak predmeta zemskogo oblozheniia*, Moscow, 1896.
25. Fenin, A.I., *Coal and Politics in Late Imperial Russia*, DeKalb, Ill, 1990.
26. Golovanov, V.I., 'Zemstvo i promyslovyy nalog', *Saratovskaia zemskaiia nedelia*, 1904, no. 6.
27. Got'e, Iu., 'Otdelenie sudebnoi vlasti ot administrativnoi', Davydov N.V., Polianskii, N.N., Eds., *Sudebnaia reforma*, vol.1, pp. 186-204.
28. Gradovskii, A.D., *Nachala Russkogo gosudarstvennogo prava*, St. Petersburg, 1876.
29. Gribovskii, V.M., *Vyssхий sud i nadzor v Rossii v pervuiu polovinu tsarstvovaniia Ekateriny Vtoroi*, St.Petersburg, 1901.
30. Gubner, Iu., 'Ocherk sanitarnogo sostoiianiia St.Peterburga', *Sbornik Sochinenii po sudebnoi meditsine Ministerstva Vnutrennikh Del*, 1872, vol. I, pp. 82-234.
31. Gurko, V.I., *Features and Figures of the Past: Government and Opinion in the Reign of Nicholas II*, New York, 1981.
32. Gurliand, I.Ia., *Prikaz Velikogo Gosudaria Tainikh del, Iaroslavl'*, 1902.
33. Gussakovskii, 'Administrativnaia iustitsiia', *Zhurnal Ministerstva Iustitsii*, 1906, no. 10, pp. 69-123.
34. Igumnov, S.N., Ed., *Khar'kovskoe meditsinskoe obshchestvo v 1861-1911*, Khar'kov, 1913.
35. Isaev, A.A., *Nashi finansy i podokhodnyi nalog*, St.Petersburg, 1887.
36. Ivanovskii, V.V., *Russkoe gosudarstvennoe pravo*, Kazan', 1896.
37. Ivanovskii, V.V. *Uchebnik nauki politseiskogo prava*, Moscow, 1891.
38. 'K sorokaletiiu deiatel'nosti kassatsionnykh departamentov Pravitel'stvuiushchego Senata', *Zhurnal Ministerstva Iustitsii*, May, 1906.
39. Karavaev, V.F., 'Istoricheskii ocherk razvitiia zemskikh biudzhetrov', Veselovskii, B.B., Ed., *Iubileinyi zemskii sbornik*, St Petersburg, 1914.
40. Karyshev, N.A., *Zemskie khodataistva 1867-1882*, St. Petersburg, 1882.
41. Khizhniakov, V.M., *Vospominaniia zemskogo deiatelia*, Petograd, 1916.
42. Kizevetter, A.A., 'Iz vospominanii vos'midesiatnika', *Golos Minuvshogo*, 1926, no. 3, pp. 123-152.
43. Kizevetter, A.A., *Mestnoe samoupravlenie v Rossii*, Petrograd, 1917.
44. Kliuchevskii, V.O., 'Moskovskii Universitet v pis'makh i zapiskakh', reprint, *Moskovskii Universitet v vospominaniakh, 1755-1917*, Moscow, 1989.
45. Kliuchevskii, V.O., *Boyarskaia Duma Drevnei Rusi*, 1902.

46. Kokoshkin, F.O., *K voprosu o reforme Senata*, Moscow, 1908.
47. Koni, A.F., *Sobranie Sochinenii v 8-mi tomakh*, Moscow, 1967.
48. Koni, A.F., *Otsy i deti sudebnoi reformy*, Moscow, 1914.
49. Koni, A.F., *Na zhiznennom puti*, vols. 1-4, Berlin, 1913-1929.
50. Koni, A.F., *Izbrannoe*, Moscow, 1989.
51. Koni, A.F., 'Pamiati N.I. Stoianovskogo', *Pravo*, no. 2, 1901, col.: 110-121.
52. Koni, A.F., 'Pamiati A.A. Saburova', *Na zhiznennom puti*, vol. 4, pp. 397-416.
53. Koni, A.F., 'Rovinskii', *Za poslednie gody*, St.Petersburg, 1896, pp. 261-263.
54. Koni, A.F., 'Vospominaniia o dele Very Zasulich', *Sobranie sochinenii*, vols. 1-8, Moscow, 1965, vol. 2, pp. 37-38.
55. Korf, S.A., *Administrativnaia iustitsiia v Rossii*, St.Petersburg, 1910.
56. Korf, S.A., 'Reforma Senata', *Iuridicheskii Vestnik*, November, 1911, pp. 365-411.
57. Korf, S.A. 'Predvoditel' dvorianstva kak organ soslovnogo i zemskogo samoupravleniia', *Zhurnal Ministerstva Iustitsii*, no. 3, 1902.
58. Korkunov, M.N., *Russkoe Gosudarstvennoe pravo*, St.Petersburg, 1909.
59. Korkunov M.N., 'Administrativnye sudy v Prussii', *Zhurnal Grazhdanskogo i Ugolovnogogo Prava*, 1880, no. 5.
60. Korkunov, M.N., 'Ochek teorii administrativnoi iustitsii', *Zhurnal Grazhdanskogo i Ugolovnogogo Prava*, 1885, kn. 1, pp. 1-48; kn. 8, pp. 95-121, kn. 9, pp. 1-21.
61. Kovalevskii, M.M., 'Moskovskii Universitet v kontse 70-kh – nachale 80-kh godov proshlogo veka. Lichnye vospominania.' reprint, *Moskovskii universitet v vospominaniakh sovremennikov 1755-1917*, Moscow, 1989, pp. 275-293.
62. Kuplevasskii, N., *Administrativnaia iustitsiia na zapade*, vol. I, *Administrativnaia iustitsiia vo Frantsii*, Khar'kov 1879.
63. Kuznetsov, N.I., *Sistematicheskii svod ukazov Pravitelstvuiushchego Senata po zemskim delam s 1866 po 1910 g.g.*, vols. 1-12, St.Petersburg, 1912.
64. Lazarevskii, N.I., 'Administrativnoe usmotrenie', *Pravo*, 1900, Nos. 41, col.: 1903-1911; 42, col.: 1957-1964.
65. Lazarevskii, N.I., 'Pravovoi kontrol' nad diskretnionnymi rasporiazheniiami administratsii', *Pravo*, 1901, no. 12, pp. 642-649.
66. Lazarevskii, N.I., *Russkoe gosudarstvennoe pravo*, vol.1, *Konstitutsionnoe pravo*, Petrograd, 1917.
67. Lebedev, V.A., *K voprosu o podokhodnom naloge*, St.Petersburg, 1891.

68. Levenson, D., 'Mediko-topograficheskii ocherk Odessy', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1874, vol. III, pp. 1-25; 1876, vol. I, pp. 52-91; 1877, vol. III, pp. 1-18; 1878, vol. I, pp. 1-23.
69. Levenson, D., 'K voprosu ob issledovanii vody i uluchshenii mostovykh v Sankt-Peterburge', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1873, vol. II, pp. 28-34.
70. Levenson, M.L., *Pravitel'stviushchii Senat: kratkii istoricheskii ocherk i biografii senatorov*, St.Petersburg, 1912.
71. Lozina-Lozinskii, M.A., 'Administrativnaia iustitsiia i preobrazovanie Pravitel'stviushchego Senata', *Zhurnal Ministerstva Iustitsii*, 1907, no. 1, pp. 1-48; no. 2, 122-169.
72. Lozina-Lozinskii, M.A., 'Ocherk teorii administrativnoi iustitsii', *Zhurnal Grazhdanskogo i Ugolovnogo Prava*, 1885, no. 1, 8.
73. Lozina-Lozinskii, M.A., 'Administrativnyi sud v Avstrii', *Vestnik Prava*, 1899, no. 10.
74. Lozina-Lozinskii, M.A., 'Proverka diskretnykh rasporyazhenii administrativnymi sudami', *Pravo*, 1901, no. 3, pp. 126-135; no. 4, pp. 176-188.
75. Lykoshin, A.I., 'Pamiati A.A.Knirima' *Zhurnal Ministerstva Iustitsii*, 1905, no. X, pp. 1-28.
76. Madariaga, Isabelle de, *Russia under the Reign of Catherine the Great*, London, 1981.
77. Maklakov, V.A., *Vlast' i obshchestvennost' na zakate staroi Rossii*, Paris, 1936.
78. Maklakov, V.A. *The First State Duma: Contemporary Reminiscences*, (Trans. Mary Belkin), Indiana University Press, 1964.
79. Markuzon, F.D., 'Ocherk po istorii statistiki zaboлеваemosti v Rossii', *idem., Ocherki po sanitarnoi statistike v dorevoliutsionnoi Rossii, SSSR*, Moscow, 1961.
80. *Materialy po zemskomy obshchestvennomu ustroistvu*, vols. 1-2; St.Petersburg, 1886.
81. Medintsev, N.M., 'Obzor sanitarnogo sostoiania Pavlovskogo uezda 1869-1874', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1876, vol. II, pp. 4-21.
82. Meshcherskii, V.L., *Moi Vospominania*, Part 1, 1850-1865, St.Petersburg, 1897.
83. Meyendorff, A.F., 'Vopros o tolkovanii zakona i kompetentsiia departamentov Pravitel'stviushchego Senata prezhnego ustroistva', *Pravo*, 1914, no. 9, col.: 644-655; no. 12, col.: 962-973.
84. Mikhailov, I., 'Gorod Viatka v sanitarnom otnoshenii', *Sbornik Sochinenii*

po Meditsine Ministerstva Vnutrennikh Del, 1873, vol. II, pp. 24-28; 1874, vol. II, pp. 70-73.

85. Murav'ev, N.V., *Prokurorskii nadzor v ego ustroistvo i deiatel'nosti*, Moscow, 1889.
86. Murzanov, N.A., *Pravitel'stviushchii Senat, 1711-1911. Spisok Senatorov*, St.Petersburg, 1911.
87. *Obozrenie deiatel'nosti zemskikh uchrezhdenii Novgorodskoi gubernii*, Novgorod, 1883.
88. *Obozrenie prepodavaniia na iuridichaskom fakul'tete Imperatorskogo Moskovskogo universiteta*, St.Petersburg, 1878.
89. Ol'khin, S.A., *Svod suzhdenii i postanovlenii zemskikh sobranii o zemskikh povinnostiakh*, St.Petersburg, 1868.
90. *Opisanie Mogilevskoi gubernii 1882-1884, Kniga 1; Pamiatnaia Kniga Mogilevskoi gubernii*, 1893.
91. Osipov, E.A., Popov, I.V., Kutkin, P.I., *Russkaia zemskaia meditsina*, Moscow, 1899.
92. Osipov, E.A., Ed., *Sbornik Statisticheskikh svedenii o Moskovskoi gubernii. Otdel sanitarnyi*, vol. V, vyp. I; Moscow, 1886.
93. Osipov, E.A., *Statistika bolezennosti naseleniia Moskovskoi gubernii za 1878-1882*, Moscow, 1890.
94. Ozerov, I.Kh., *Vozmozhno li vvedenie podokhodnogo naloga v Rossii?*, St.Petersburg, 1900.
95. *Pamiatnaia Knizhka Imperatorskogo Aleksandrovskego Litseia*, St.Petersburg, 1899.
96. Pavlienko, N.I., 'Sushchnost administrativnoi iustitsii i osnovnye cherty ee organizatsii v Evropeiskikh gosudarstvakh', *Kievskie Universitetskie Izvestiia*, 1898, December.
97. Petrov, A.V., *Zapiska o deiatel'nosti obshchestva vrachei Kazani*, Kazan, 1873.
98. Petrov, M., 'Zemskii proizvol: k reforme zemskogo oblozheniia', *Severnyi Vestnik*, 1894, no. 9; p.p. 1-24, *Oblastoi Otdel*.
99. Petrovskii, S., *O Senate v tsarstvovanie Petra Velikogo*, Moscow, 1875.
100. Pirogov, N.I., *Sochineniia*, St Petersburg, 1887.
101. Plandovskii, Vl., 'Vopros o zemskom oblozhenii zemel' s mineral'nymi bogatstvami', *Vestnik finansov, promyshlennosti i torgovli*, 1909, no. 2, p. 42.
102. Polenov, A., *K voprosu o podatnoi reforme. Obzor sistem zemskogo pozemel'nogo oblozheniia*, 1865-1879, St.Petersburg, 1880.
103. Polovtsov, A.A., *Dnevnik Gosudarstvennogo Sekretaria Polovtsova*, Ed. P.A.Zaionchkovskii, vols. 1-2, Moscow, 1966.

104. *Polnoe Sobranie Zakonov Rossiiskoi Imperii*, 1st edition, St.Petersburg, 1649-1830.
105. *Polnoe Sobranie Zakonov Rossiiskoi Imperii*, 2nd edition, St.Petersburg, 1830-1881.
106. *Polnoe Sobranie Zakonov Rossiiskoi Imperii*, 3rd edition, St.Petersburg, 1882-1917.
107. *Pridvornyi kalendar'*, St.Petersburg, Annual editions.
108. Radulovich, V.I., *Ocherk istorii meditsinskikh obshchestv, ikh tsel', znachenie i vzaimnaia sviaz'*, Orel, 1890.
109. Rikhter, Dm., 'Zemskaia statistika i ee raboty', *Vestnik Evropy*, 1904, vol. IV, pp. 315-342.
110. Rimskii-Korsakov, A.A., Programma 'Souza Russkogo Naroda' pered Fevral'skoi Revoliutsiei', *Krasnyi Arkhiv*, 1927, 1(20) pp. 242-244.
111. Rusov, A., *Kratkii obzor razvitiia russkoi otsenочноi statistiki*, Kiev, 1909.
112. Rudinskii, N., *Zapiski zemskogo vracha*, St.Petersburg, 1910.
113. Samofalov, V., *Kosvennye nalogi i podokhodnyi nalog*, St.Petersburg, 1907.
114. *Sankt Peterburgskii Velikosvetskii Ezhegodnik*, St.Petersburg, Annual Editions.
115. Sazonov, G.P., *Obzor deiatel'nosti zemstvo po sel'skomu khoziaistvu*, 1865-1895, St.Petersburg, 1896, vols. 1-2.
116. Semenov, P., *Biograficheskie ocherki senatorov*, Moscow, 1886.
117. Semevskii, V.I., 'Krestiane v tsarstvovanie Imperatritsy Ekateriny II', St.Petersburg, 1903.
118. Semevskii, V.I., 'Krestianskii vopros v XVIII i pervoi polovine XIX veka', St.Petersburg, 1899.
119. 'Senatorskie revizii 1880 goda', *Russkii Arkhiv*, 1912, No.11, pp. 417-429.
120. Sergeevich, V.I., *Lektsii i issledovaniia po drevnei istorii russkogo prava*, St.Petersburg, 1910.
121. Shcheglov, V.G., *Gosudarstvennyi Sovet v tsarstvovanie Aleksandra Pervogo*, Iaroslavl', 1895.
122. Shelokhaev, V.V., *Liberal'naia model' pereustroistva Rossii*, Moscow, 1996.
123. Shipov, D., *Vospominaniia i dumy of perezhitom*, Paris, 1936.
124. Shmelev, M.N., 'Statisticheskie i sanitarnye ocherki Kieva', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1875, vol. II, pp. 20-25; 1877, vol. III, pp. 1-40;
125. Shperk, F., 'Mediko-topograficheskii ocherk Amurskogo kraia', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1880, vol. II, 1-58; vol. II, pp. 1-66; 1881, vol. III, pp. 87-98.

126. Shtorkh, P.A., *Podokhodnyi nalog*, St.Petersburg, 1883.
127. Shur, S., 'Razgranichenie vlastei sudebnoi i administrativnoi v praktike Pravitel'stvuiushchego Senata', *Pravo*, 1912, nos, 27, 29, 30, 31, 33, col.: 1747-1759.
128. *Sistematicheskii svod postanovlenii i rasporiazhenii poltavskogo gubernskogo zemstva za pervye shest' trekhletii*, Poltava, 1885, Vyp. I.
129. Sirinov, M.A., *Zemskie nalogi: ocherki po khoziaistvu mestnykh samoupravlenii v Rossii*, Iur'ev, 1915.
130. Skalon, V.Iu., *Po zemskim voprosam*, St. Petersburg, 1905.
131. Solov'ev, S.M., *Chteniia i rasskazy po istorii Rossii*, Moscow, 1989.
132. Sodovskii, G., *Sbory s nedvizhimykh imishchestv na zemskie potrebnosti v Rossii*, St.Petersburg, 1911.
133. Sodovskii, G., *Gorodskoi otsenochnyi sbor v Rossii i v Prussii*, St.Petersburg, 1911.
134. *Spisok grazhdanskim chinam pervykh trekh klassov*, St.Petersburg, especially years 1881, 1896, 1897, 1898, 1908, 1914.
135. *Stenograficheskie Otchety Gosudarstvennogo Soveta*, Session 2, (19 May 1907), St.Petersburg, 1907.
136. Stradomskii, N.F., *Goroda i zemstvo: k voprosu ob uregulirovanii ikh vzaimnykh otnoshenii*, Kiev, 1905.
137. Syuzorn, G., *Ko dniu LXXV iubileia Imperatorskogo Uchilishcha Pravovedeniia 1835-1910. Istoricheskii Ocherk*, St.Petersburg, 1910.
138. Sukhotin, D.A., 'Iz pamiatnykh tetradei', *Russkii Arkhiv*, 1894, vol. II, pp. 255-444.
139. Svirishchevskii, A.R., *Podokhodnyi nalog*, Moscow, 1886.
140. Tel'berg, G.G., *Ocherki politicheskogo suda i politicheskikh prestuplenii v Moskovskom gosudarstve XVII veka*, Moscow, 1912.
141. Terekhov, M.E., *Podokhodnaia podat' i resul'taty primeneniia eio*, Warsaw, 1892.
142. *Trudy komissii vysochaishe utverzhdennoi dlia peresmotra podatei i sborov*, vol. IV, Part. 4, *Zemskie Povinnosti*, St.Petersburg, 1870.
143. Tarasov, N.I., *Kratkii ocherk nauki administrativnogo prava*, Iaroslavl', 1888.
144. Tarasov, N.I., 'Organizatsiia administrativnoi iustitsii', *Iuridicheskii Vestnik*, 1887, no. 9.
145. 'Ustav Meditsinskoi Politsii', *Svod uzakonenii i rasporiazhenii pravitel'stva po vrachebnoi i sanitarnoi chasti v Imperii*, St.Petersburg, 1896-1897.
146. *Ustanovlenie Pravitel'stvuiushchego Senata*, Mordukhai-Boltovskii, Ed., *Svod Zakonov Rossiiskoi Imperii*, 1892.

147. V.V. (pseudonym for V.P.Vorontsov), 'Statistiko-ekonomicheskie trudy zemstva', *Vestnik Evropy*, 1885, vol. IV, pp. 353-389.
148. Vasil'chikov, A., Prince, *O samoupravlenii*, St.Petersburg, 1872.
149. Veletskii, S.N., *Zemskaia statistika*, vols. 1-2, Moscow, 1899.
150. Veretennikov, V.I., *Ocherki istorii general-prokuratury v Rossii*, Khar'kov, 1915.
151. Verkhovskii, *Sbornik reshenii Pravitel'stviushchego Senata po delam zemstva*, St.Petersburg, 1891.
152. Veselovskii, B.B., *Istoriia zemstva za sorok let*, vols. 1-4, St. Petersburg, 1911.
153. Veselovskii, B.B., Frenkel', Z.G., Eds., *Iubileinyi zemskii sbornik*, St.Petersburg, 1914.
154. Veselovskii, B.B., 'Zemstva o novykh istochnikakh zemskogo oblozheniia (1866-1910)', *Zemskoe Delo*, 1911, No 3, pp. 211-219.
155. Vladimirskii-Budanov, M.F., *Obzor istorii russkogo prava*, St.Petersburg, 1898.
156. 'Vnutrennee Obozrenie', *Vestnik Evropy*, 1888, vol. IV.
157. *Vremennye pravila o zemskikh povinnostiakh*, St.Petersburg, 1864.
158. Vyrubov, 'Materialy dlia izucheniiia vrachebno-sanitarnoi sluzhby na zheleznykh dorogakh', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1880, vol. III, pp. 66-94; 1881, vol. I, pp. 1-42.
159. Witte, S.Iu., *The Memoirs of Count Witte*, (Translated and edited by Sydney Harcave), New York, 1990.
160. Witte, S.Iu., *Samoderzhavie i zemstvo*, Stuttgart, 1903.
153. Zaikovskii, L.V., 'K voprosu ob istochnikakh zemskikh dokhodov', *Saratovskaia zemskaia nedelia*, 1904, no. 9.
161. Zak, 'Tekushchie voprosy zemskogo samoupravleniia', *Vestnik Tavricheskogo zemstva*, 1905, kn. I-II.
162. *Zemstvo i gornaia promyshlennost'*, Khar'kov, 1908.
163. Zhuk, A.P., *Razvitie obshchestvenno-meditsinskoi mysli v Rossii v 60-70kh godakh XIX veka*, Moscow, 1963.
164. Zhuravlev, A., 'Uchastie gorozhan v zemskom predstavitel'stve i oblozhenie zemskim sborom nedvizhimykh imushchestv v gorodakh', *Pravo*, 1901, col.: 1699-1704.
165. *Zhurnaly Komiteta Ministrov po ispolneniiu Ukaza 12 Dekabria 1904*, 21 and 24 December 1904 and 4 January 1905, Komitet Ministrov, Kantseliariia, St.Petersburg, 1905.
166. Zubkovskii, I., 'Sanitarnoe sostoianie polotskoi voennoi gimnazii i ee

gigienicheskaiia obstanovka', *Sbornik Sochinenii po Meditsine Ministerstva Vnutrennikh Del*, 1878, vol. II, pp. 59-125; 1879, vol. I, pp. 1-89; 1879, vol. II, pp. 65-112; 1879, vol. III, pp. 16-87.

Secondary Sources:

167. Alexander, J. T., *Bubonic Plague in Early Modern Russia: Public Health and Urban Disaster*, Baltimore, Maryland, 1980.
168. Anderson, M. S., *Peter the Great*, New York, 1995.
169. Anisimov, E., *Dyba i knut: politicheskii sysk i russkoe obshchestvo v XVIII veke*, Moscow, 1999.
170. Armstrong, J., *The European Administrative Elite*, Princeton, New Jersey, 1973.
171. Avrekh, A.Ia., *Raspad Tretieiu'n'skoi sistemy*, Moscow, 1985.
172. Avrekh, A.Ia., *Stolypin i sud'by reformy v Rossii*, Moscow, 1991.
173. Avrekh, A.Ia., *Tsarism and the Fourth Duma, 1912-1914*, Moscow, 1981.
174. Balzer, H., *Russia's Missing Middle Class, the Professions in the Russian History*, London, 1996.
175. Baring, M., 'A Zemstvo Report', idem., *Russian Essays and Stories*, London, 1908, pp. 170-179.
176. Becker, S., *Nobility and Privilege in Late Imperial Russia*, DeKalb, Illinois, 1985.
177. Bennett, H.A., 'Chiny, Ordena and Officialdom', Eds. W.M.Pintner D.K.Rowney, *Russian Officialdom:: the Bureaucratisation of Russian Society from the seventeenth to the twentieth century*, Chapell Hill, Carolina, 1980, pp. 162-189.
178. Blackburn, D., *The Marpingen Visions: Rationalism, Religion, and the Rise of Modern Germany*, London, 1995.
179. Borodin, A.P., *Gosudarstvennyi Sovet Rossii 1906-1917 gg.*, Kirov, 1999.
180. Bradley, J., *Muzhik and Muscovite: Urbanisation in Late Imperial Russia*, Berkeley, London, 1985.
181. Chernukha, V.G. 'Podokhodnyi nalog i ego sotsial'no- politicheskaiia sushchnost', idem., *Vnutrenniaia politika tsarizma s serediny 50-kh do nachala 80kh gg. XIX veka*, Leningrad, 1978, pp. 199-243.
182. Clowes, E.W., Kassow S.D., West, J.L., Eds., *Between Tsar and People: the Educated Society and the quest for Public Identity in Late Imperial Russia*, Princeton, New Jersey, 1991.
183. Conroy, M.S., *In Health and in Sickness: Pharmacy, Pharmacists, and the Pharmaceutical Industry in Late Imperial Russia, Early Soviet Russia*,

Boulder, Colorado, 1994.

184. Cracraft, J., Ed., *Peter the Great Transforms Russia*, Lexington, 1991.
185. Crisp, O., 'The Pattern of Industrialisation in Russia', eadam., *Studies in the Russian Economy before 1914*, London, 1976, pp. 5-54.
186. Curtiss, J., Ed. *Essays in Russian and Soviet History*, Leiden, 1963.
187. Dicey, A.V., *Introduction to Law and the Constitution*, 10th edition, London, 1959.
188. Easter, G., *Reconstructing the State: Personal Networks and Elite Identity*, New York, 1999.
189. Edelman, N., *Gentry Politics on the Eve of the Russian Revolution*, New Brunswick, New Jersey, 1980.
190. Elias, N., *The Civilising Process*, (Translated by Edmund Jephcott), Oxford, 1982.
191. Emmons, T., Vucinich, W., Eds., *The Zemstvo in Russia: An Experiment in Local Self-Government*, Cambridge, 1983.
192. Engelstein, L., *The Keys to Happiness: Sex and Search for Modernity in fin-de-siècle Russia*, Ithaca, London, 1992.
193. Fallows, T., 'The Zemstvo and the Bureaucracy', T. Emmons and W. Vucinich, Eds., *The Zemstvo in Russia: an Experiment in Local Self-Government*, Cambridge, 1982, pp. 177-243.
194. Freeze, G., *From Supplication to Revolution, a Documentary Social History of Imperial Russia*, New York, Oxford, 1988.
195. Freeze, G., 'The Soslovie (Estate) Paradigm and Russian Social History', *American Historical Review* 91, no. 1 (1986), pp. 11-36.
196. Frieden, N., *Russian Physicians in an era of Reform and Revolution, 1856-1905*, Princeton, New Jersey, 1981.
197. Frochlich, K., *The Emergence of the Russian Constitutionalism: the Relationship Between Social Mobilisation and Political Group Formation in Pre-Revolutionary Russia, 1900-1904*, London, 1981.
198. Fuller, W.C., *Civil-Military Conflict in Imperial Russia, 1881-1914*, Princeton, New Jersey, 1985.
199. Gaudemet, P.M., 'Droit Administratif in France', Dicey, *Introduction*, 10th edition, pp. 475-493.
200. Gellner, E., *Conditions of Liberty: Civil Society and Its Rivals*, London, 1996.
201. Garmiza, V.V., *Podgotovka zemskoi reformy*, Moscow, 1957.
202. Gerschenkron, A., *Economic Backwardness in Historic Perspective: a Book of Essays*, Oxford, 1962.
203. Gleason, W.J., *Moral Idealists, Bureaucracy and Catherine the Great*, New

Brunswick, New Jersey, 1981.

204. Glenny, M. and Stone, N., Eds., *The Other Russia: the Experience of Exile*, London, 1990.
205. Griffith, J., *The Politics of the Judiciary*, London, 1997.
206. Habermas, J., *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, London, 1989.
207. Haimson, L., 'The Problem of Social Identities in Early Twentieth Century Russia', *Slavic Review*, 2 (Spring 1988), pp. 1-21.
208. Hayek, F.A., *The Constitution of Liberty*, London, 1976.
209. Hosking, G., 'Patronage and the Russian State', *Slavonic and East European Review*, vol. 78, No 2, April 2000.
210. Hosking, G., *Russia: People and Empire, 1552-1917*, London, 1998.
211. Hosking, G., *The Russian Constitutional Experiment: Government and Duma, 1907-1914*, Cambridge, 1973.
212. Hosking, G., Manning, R., 'What was the United Nobility?', Ed. L. Haimson, *The Politics of Rural Russia, 1905-1914*, Bloomington, Indiana, 1979, pp. 142-183.
213. Hughes, L., *Russia in the Age of Peter the Great*, New Haven, Connecticut, 1998.
214. Hutchinson, J.F., *Politics and Public Health in Revolutionary Russia, 1890-1918*, Baltimore and London, 1990.
215. Johnson, R.E., 'Liberal Professionals and Professional Liberals: the Zemstvo Statisticians and their work', Emmons, T. and Vucinich, W.S. Eds., *The Zemstvo in Russia: an Experiment in Local Self-Government*, Cambridge, 1982, pp. 343-364.
216. Judge, E.H. Eds., *Plekve: Repression and Reform in Imperial Russia, 1902-1904*, Syracuse, New York, 1983.
217. Judge, E.H. and Simms, J. Y., Eds., *Modernisation and Revolution: Dilemmas of Progress in Late Imperial Russia*, New York, 1992.
218. Kazantsev, S.M., 'The Judicial Reform of 1864 and the Procuracy in Russia', Ed., Peter Solomon, *Reforming Justice*, pp. 44-61.
219. Kivelson, V., *Autocracy in the Provinces: the Muscovite Gentry and the Political Culture in the Seventeenth Century*, Stanford, California, 1996.
220. Kollman, N., *By Honour Bound: State and Society in Early Modern Russia*, Ithaca, New York, 1999.
221. Kollman, N., *Kinship and Politics: the Making of the Muscovite Political System, 1345-1547*, Stanford, California, 1987.
222. Kucherov, S., *The Organs of Soviet Administration of Justice*, Leiden, 1970.

223. LeDonne, J., *Absolutism and the Ruling Class: the Formation of the Russian Political Order, 1700-1825*, New York, Oxford, 1991.
224. Leikina-Svirskaiia, V.R., *Intelligentsiia v Rossii vo vtoroi polovine XIX veka*, Moscow, 1971.
225. Leontovich, V.V., *Istoriia liberlizma v Rossii*, London, 1980.
226. Liessem, P., *Verwaltungsgerichtsbarkeit im Zarenreich: der Dirigierende Senat und seine Entscheidungen zur russischen Selbstverwaltung, 1864-1917*, Frankfurt, 1996.
227. Lieven, D., *Russia's Rulers under the Old Regime*, New Haven and London, 1989.
228. Lieven, D., *The Aristocracy in Europe 1815-1914*, New York, 1992.
229. Lincoln, B., *In the Vanguard of Reform: Russia's Enlightened Bureaucrats, 1825-1861*, DeKalb, Illinois, 1982.
230. Lindenmeyr, A., *Poverty is not a Vice: Charity in the Late Imperial Russia*, Princeton, New Jersey, 1996.
231. Lindenmeyr, A., PhD, *Origins of Collective Charity in Russia*, Princeton University, 1979.
232. Lovell, S., Ledeneva, A. and Rogachevskii, A., Eds., *Bribery and Blat in Russia: Negotiating Reciprocity from the Early Modern Period to the 1990s*, London, 2000.
233. Madariaga, I., *Russia in the Age of Catherine the Great*, London, 1981.
234. Manning, R. *The Crises of the Old Order in Russia: Gentry and Government*, Princeton, New Jersey, 1982.
235. Martov, L., Maslov, P., Potresov, A., Eds., *Obshchestvennoe dvizhenie v Rossii v nachale XX veka*, 4 vols., St.Petersburg, 1909-1914.
236. Massie, R., *Peter the Great: His Life and World*, London, 1980.
237. Mayer, A., *The Persistence of the Old Regime: Europe to the Great War*, New York, 1981.
238. McCaffray, S., *The Politics of Industrialisation in Tsarist Russia: The Association of Southern Coal and Steel Producers, 1874-1914*, DeKalb, Illinois, 1996.
239. McKenzie, K., 'Zemstvo Organisation and Role within the Administrative Structure', Terence Emmons and Wayne S. Vucinich, Eds. *The Zemstvo in Russia, an Experiment in Local Self-Government*, Cambridge, 1983, pp. 31-79.
240. Meehan-Waters, B., *Autocracy and Aristocracy: the Russian Service Elite of 1730*, New Brunswick, New Jersey, 1982.
241. Meshchersky, *Grazhdanin*, No.43, 6 November, 1911.
242. Meyendorff, A.F., 'Vopros o tolkovanii zakonov I kompetentsii

departamentov Pravitel'stvuiushchego Senata prezhnego ustroistva', *Pravo*, 1914, no. 9, col.: 644-655, no. 12, 962-973.

243. Mironov, B., *Sotsial'naia istoriia Rossii perioda Imperii: XVIII- nachalo XX veka: genesis lichnosti, demokraticeskoi sem'I, grazhdanskogo obshchestva I pravovogo gosudarstva*, vol. 1-2, St.Petersburg, 1999.
244. Mironov, B., Eklof, B., *A Social History of Imperial Russia, 1700-1917*, Boulder, Colorado, 1999.
245. Mommsen, M., *Hilf Mir, Mein Recht Zu Finden: Russische Bittschriften Von Iwan Dem Schrecklichen bis Gorbatschow*, Berlin, 1987.
246. Morrissey, S., *Heralds of Revolution: Russian Students and the Mythologies of Radicalism*, New York, 1998.
247. Mosse, W.E., *Perestroika under the Tsars*, London, 1992.
248. Murav, H., *Russia's Legal Fiction*, Ann Arbor, Michigan, 1998.
249. Naumov, N.A., *Iz utselevshikh vospominanii*, New York, 1954-1955.
250. 'O nekotorykh izmeneniiakh v poriadke proizvodstva i resheniia del v departamentakh Pravitel'stvuiushchego Senata prezhnego iustroistva, 8 December 1907', *Prilozheniia k Stenograficheskim Otchetam Gosudarstvennoi Dumy*, (SOGD) IV sozyv, session 2, 1913-1914, no. 197.
251. Oakeshott, M., *On Human Conduct*, Oxford, 1975.
252. Phillips, O. H., Jackson, P., *Constitutional and Administrative Law*, London, 1987.
253. Orlovsky, D., *The Limits of Reform: the Ministry of Internal Affairs 1802-1882*, Cambridge, Massachusetts, London, 1981.
254. Pearson, T., *Russian Officialdom in Crisis: Autocracy and Local Self-government, 1861-1900*, Cambridge, 1989.
255. Philippot, R., *Les Zemstvos: société civile et Etat bureaucratique dans la Russie Tsariste*, Paris, 1991.
256. Pintner W.M., Rowney, D.K., Eds., *The Russian Officialdom: the Bureaucratisation of Russian Society from the seventeenth to the twentieth century*, Chapell Hill, Carolina, 1980.
257. Plaggenborg, S., 'Tax Policy and the Question of Peasant Poverty in Russia 1881-1905', *Cahiers du Monde Russe*, XXXVI 1-2, Janvier-Juin 1995, pp. 53-70.
258. Pomar, M.G., *Anatolii Fedorovich Koni: Liberal Jurist as Moralist*, Pittsburg, Pennsylvania, 1996.
259. Pomeranz, W., *The Development of Russian Advocatura*, PhD Thesis, University of London, 1990.
260. Porter, T. E., *The Zemstvo and the Civil Society in Late Imperial Russia, 1864-1917*, San Francisco, California, 1991.

261. Pravilova, E., *Legality and Human Rights: Administrative Justice in Russia 1862-1917*, PhD, Institute of Russian History of the Russian Academy of Sciences, St.Petersburg, 1999.
262. Raeff, M., Ed., *Peter the Great Changes Russia*, Lexington, Massachusetts, 1972.
263. Raeff, M., *The Well-Ordered Police State: Social and Institutional Change through Law in the Germanies and Russia, 1600-1800*, New Haven, Connecticut, London, 1983.
264. Rieber, A., 'The Sedimentary Society', Clowes, E.W., Kassow, S.D. and West, J. L., *Between Tsar and People*, pp. 343-366.
265. Rieber, Alfred, *Merchants and Entrepreneurs in Imperial Russia*, Chapel Hill, Carolina, 1982.
266. Robbins, R., *Famine in Russia 1891-1892: the Imperial Government Responds to Crisis*, New York, London, 1975.
267. Robbins, R.G., *The Tsar's Viceroys: the Provincial Governors in the Last Years of Empire*, London, 1987.
268. Ruane, C., *Gender, Class, Professionalisation of Russian City Teachers, 1860-1914*, Pittsburg, Pennsylvania, 1994.
269. Seregny, S., *Russian Teachers and peasant Revolution: the Politics of education in 1905*, Bloomington, Indiana, 1989.
270. Shelokhaev, V.V., *Liberal'naia model pereustroistva Rossii*, Moscow, 1996.
271. Sills, D.L., Ed., *International Encyclopedia of the Social Sciences*, New York, 1968.
272. Smirnov, A.F., *Gosudarstvennaia Duma Rossiiskoi Imperii 1906-1917*, Moscow, 1998.
273. Smoliarchuk, V.I., *A.F.Koni i ego okruzhenie: ocherki*, Moscow, 1990.
274. Solomon Jr., P.H. Ed., *Reforming Justice in Russia, 1864-1996: Power, Culture and the Limits of Legal Order*, New York, 1997.
275. Stites, R., *Revolutionary Dreams: Utopian Vision and Experimental Life in the Russian Revolution*, New York, Oxford, 1989.
276. Strong, C.F., *Modern Political Constitutions*, London, 1972.
277. Szeftel, M., *The Russian Constitution of 1906. Commentaries*, Brussels, 1973.
278. Timberlake, C.E., 'The Zemstvo and the Development of a Russian Middle Class', Clowes, Edith W., Kassow, Samuel D., West, James L., Eds., *Between Tsar and People: Educated Society and the Quest for Public Identity in Late Imperial Russia*, Princeton, New Jersey, 1991, pp. 164-183.
279. Trebilcock, C., *The Industrialisation of Continental Powers, 1780-1914*, London, 1981.
280. 'Vedomost' po infektsionnym barakam', *Otchet deiatel'nosti bol'nitsy*

tul'skogo gubernskogo zemstva, September 1906-Sept 1907, Tula provincial government board publications, 1907, pp. 79-80.

281. Vile, M.J.C., *Constitutionalism and the Separation of Powers*, Oxford, 1967.
282. Vishnevskii, E., *Liberal'naia oppositsiia v Rossii nakanune pervoi mirovoi voiny*, Moscow, 1993.
283. Voskresenskii, A., *Zakonodatel'nye Akty Petra I*, vol. 1, Moscow and Leningrad, 1945.
284. Wagner, W., 'The Civil Cassation Department of the Senate as an Instrument of Progressive Reform in Post-Emancipation Russia: The Case of Property and Inheritance Law', *Slavic Review*, vol. 42, no. 1, Spring, 1983, pp. 36-60.
285. Wagner, W., *Marriage, Property and Law in Late Imperial Russia*, Oxford, 1995.
286. Walicki, A., *Legal Philosophies of Russian Liberalism*, Oxford, 1987.
287. Wartenwiler, D., *Civil Society and the Academic Debate in Russia 1905-1914*, New York, 1999.
288. Whelan, H., *Alexander III and the State Council: Bureaucracy and the Counter-Reform in Late Imperial Russia*, New Brunswick, New Jersey, 1982.
289. Wirtschafter, E.K., *Structures of Society: Imperial Russia's People of Various Ranks*, DeKalb, Illinois, 1994.
290. Wirtschafter, E.K., *Social Identity in Imperial Russia*, DeKalb, Illinois, 1997.
291. Wortman, R., *The Development of Russian Legal Consciousness*, Chicago, Illinois, 1976.
292. Yaney, G., *The Systematisation of Russian Government: Social Evolution in Domestic Administration of Imperial Russia*, London, 1973.
293. Zagorodnikov, N.I., *Nikolai Ivanovich Tagantsev*, Moscow, 1994.
294. Zakharova, L., *Zemskaia kontr-reforma 1890 goda*, Moscow, 1968.
295. Zviagintsev, A.G., *Rossiiskie Prokurory*, Moscow, 1998.
296. Zviagintsev, A.G., *Pod sen'iu russkogo orla: prokurory vtoraia polovina XIX-nachalo XX v.*, Moscow, 1996.
297. Zviagintsev, A.G., *V epokhu potriasenii i reform: rossiiskie prokurory: 1906-1917*, Moscow 1996.
298. Zviagintsev, A.G. and Orlov, Iu., *Rossiiskie Prokurory*, Moscow, 1999.