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## Modern Western historiography and Russian legal and judicial practices of the 18-20<sup>th</sup> centuries: main research trends

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### Abstract

The article is devoted to the current trend of modern Western historiography: the study of the Russian Empire juridical relations. The analysis is made on the materials of the French historical periodicals. Historians try to identify the key principles feeding law practice in the context of a more general change in values of Russian society, overcoming the traditional dichotomy between the theory and practice of law. Key topics and priorities of this research direction show the close relationship between law principles and practices, because the logic of administration often provoke legislative changes, the officials of the Russian / Soviet Empire combine administrative and legal prerogatives and the historical specifics shows a close relationship between institutionally separated political, administrative and legal branches of authorities. Historical researches have also focused on the study of the interaction between institutions and their representatives, various groups of the population who have different objectives, mutual perception and communication.

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### 1. Introduction

The study of the Russian Empire juridical relations is the current trend of modern Western historiography. This statement can be illustrated by the thematic issues of the French historical journal "Cahiers du Monde Russe", which are called "Social dynamics and legal classification of the Russian Empire. From the XVII century to the Revolution of 1917" (Akelyev, Babkova, 2012, Brewer, 2012) and "Practice of law and justice in Russia of the 18-20<sup>th</sup> centuries" (Redin, 2010, Polskoy, 2010). Themes of these issues promise to study the legal status of the Russian population different groups, activities of legal institutions of Russia and of the Soviet Union in collaboration with the state administration, based on the analysis of the "fundamental dimensions of the legal order." The authors try to identify the key principles resending the law practice in the context of a more general change in values of Russian society, overcoming the traditional dichotomy between theory and practice of law. In fact, the article shows close

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relationship between law principles and practices, since the logic of administration often provokes legislative changes, the officials of the Russian / Soviet Empire combine administrative and legal prerogatives, and the historical specifics shows close relationship between institutionally separated political, administrative and legal branches of authorities. Historical researches have also focused on the study of the interaction between institutions and their representatives, various groups of the population who have different objectives, mutual perception and communication.

## 2. Scope and Methods of Research

The study assumed the use of the traditional tools of historical sciences, such as general logical (analysis, synthesis, induction, abstraction, idealization, analogy, modeling), general historical (genetic, comparative, typological, problem-chronological, ideographic) and special historical methods. With the help of these tools the historiographical research of western interpretations of Russia's legal and judicial practices in the XIII-XXth centuries will be held.

## 3. Results

Let us consider concrete historical perspectives of the research undertaken under the direction of Russian studies indicated above.

In this research line E.V. Akelyev and G.O. Babkova study procedures of investigation in Russia at the first half of the eighteenth century in terms of the bill, effective regulation, and application. Exploring the criminal practice of the main XIII century Moscow court they have come to the conclusion that torture was used in strict accordance with the law, thus, a new law came into force and, in some cases, law innovations came from professional practice. New law projects contained ideas about the need to limit the use of torture and doubt probative value of evidence obtained through violence. That daily practice of the criminal case, showing the low efficiency of torture, eventually contributed to the process of legal delegitimizing of violence in the Russian Empire (Akelyev, Babkova, 2012).

By examples of petitions written by peasants / factory workers at the second half of the 18th century A. Brewer considers traditional notions of power and social justice. The requirements of social justice lie at the heart of these applications. The views of the peasants were a mixture of utopian hopes for a "good king" and very pragmatic ways to interact with the law, which suggests that the Russian peasants were not inert with respect to the authorities (Brewer, 2012).

V. Efimova addresses the issue of the criminal offenses court, which Catherine II passed to the governors in 1775. The author challenges the dominant view in the historiography as this measure has exacerbated the shortcomings of forensic practices of the time. Based on the analysis of both the ideological assumptions and the evolution of the 18-19<sup>th</sup> century Russian law, she shows examples of the law implementation in the Russian Empire northern provinces. The author challenges the governors-generals' right to confirm heavy criminal penalties sometimes correcting the mistakes of other courts that rely on the theory of a crime formal evidence. In this case the Governor-general acted as a supporter of the Enlightenment humanistic ideals, which adhered to the Empress. According to the law, the local authorities were representatives of the sovereign as "defenders of the oppressed", which should have been a good example to demonstrate kindness and compassion to the society. In reality, however, this right of local authorities found a very rare manifestation (Efimova, 2012).

S. Dahlke, in the article «The trial against Mother Superior Mitrofaniia standing the Moscow district court (1874)», examines one of the most prominent criminal trials of the Russian Empire in the "post-reform" period. Mitrofaniia abbess, the prioress of the Serpukhov-Vladychny monastery, who had a significant personal connection at the royal court, was sentenced by the jury to the link with fraud and blackmail of wealthy merchants and philanthropists. The author shows the desire of the court to show the effectiveness of new legal forms to contemporaries. At the same time, the article demonstrates the inconsistency and different interests inherent to the main actors of this process (Dahlke, 2012).

M. Kogan analyzes public events aimed at elections to the People's Courts of 1948-1953. Placing high emphasis on the judges and lay judges local elections the author examines the reaction of the postwar period state to the problems in the judicial system and local authorities, first of all – to the general worsening of the crime situation and corruption scandals. The campaign had several objectives: to strengthen the "party line" in the regional departments

of justice, to teach Soviet citizens to use the judicial system, as well as get "feedback" from citizens in the form of a current system little criticism, as well as expressions of loyalty. It was profoundly significant for the regions previously occupied by the Nazis. The author argues that to a certain extent this campaign was successful in reducing crime and demonstrated that the state is interested in the success of the local justice system (Kogan, 2012).

S.V. Chernikov analyzes the features of the transfer of land ownership in the Moscow region at the first half of the eighteenth century. The main conclusion of the paper is that the land fund in the region remained very stable, concentrating mostly in the hands of the "old" Moscow elite, formed in 18-17 centuries. Transactions relating to the separation of purchase and sale of hereditary estates were rare. The article also traces the relationship between changes in the structure of the ruling elites of the two capitals - Moscow and St. Petersburg, as well as the land holdings (Chernikov, 2012).

The article of N.V. Surzhikova explores the theme of the Russian Empire national policy against the prisoners of the First World War. Religious and ethnic status of the war prisoners affected the conditions of their detention, continuing the general policy of the empire on the population. Nevertheless, the common national policy prescriptions of the state opposed by local administrators, who pursued their own goals of subordinate organs best performance (Surzhikova, 2012).

The theme of legal relationship in the Russian history had a little bit different circulation in the articles of the issue "Social dynamics and legal classification of the Russian Empire. From the XVII century to the Revolution of 1917". In the spotlight there was a discussion about the applicability of the concept "estates" in the Russian history, aroused by the historian M. Confino (Trubnikova, 2014). However, many of this issue articles brought up the topic of the legal relations evolution in the argument.

Already cited earlier S.V. Chernikov explores the Petrine era as a period of active legal transformation and new hierarchization of society. After analyzing the nominal composition of the ruling elite of Russia at the first quarter of the eighteenth century and the principles of its formation, the author concludes that the formation of the Petrine elite observed the existing relationship along with the relationships of the previous period, while the reforms were clearly innovative. Contrary to the opinion of a significant rationalization of the social order, the introduction of the mechanisms of social competition, initiative, professionalism, traditional values of the Moscow kingdom (origin, family, birth, services) proceeded to exist under the regime created by Peter I (Chernikov, 2010).

In his article, D.A. Redin presents the results of the research devoted to the large category of provincial bureaucracy considered as an influent part of the regional elite in the days of Peter the Great. The dominant interpretation of social history is to review the provincial bureaucracy as a part of the apparatus of power. It is opposing and alien to the local community and it is not captured by the relationship of close interdependence and complexity of the interaction between the two systems. In contrast, the author shows the example of two different traditions - Vyatka and Tyumen, how the bureaucracy, owing to Peter's reform movement, was born at the local level. It became a stable element of provincial communities and accumulated the attributes and symbols of the government and society in itself (Redin, 2010).

S.V. Polskoy considers the process of constructing a legal space by noble reformers of Legislative Committee (1754-1766) by the example of projects concerning the rights and privileges of the Russian nobility. On the basis of the Montesquieu's monarchy concept, they tried to present a draft of the regular state and to oppose the perception of the Russian Empire despotism through a detailed description of the rights and freedoms of the nobility and merchants. The proceedings of the Elizabethan Legislative Commission show how the awareness of the Russian elite was standing out relatively new Enlightenment concepts and clear understanding of their social interests (Polskoy, 2010).

A.M. Martin considers the correspondence between the identity of the legal status and everyday social realities in Moscow at the time of Nicholas I. On the basis of the Moscow church books of 1829 as well as literary sources, the author examines the distribution of the population by city quarters residence, prevalence of different classes under one roof, similarities or differences between the structures of households and families, preferences in the selection of names for children belonging to a particular class. The study leads to the conclusion about polarization of different estates to the middle and lower classes, but also about the process of assimilation, which affects all groups, spreading down the social ladder pulses of the elite culture (Martin, 2010).

In the article of A.K. Smith, on the basis of published laws and archive documents, the process of improving the

legal status of women in the Russian Empire is considered. The author shows that a woman's perception of the social order differed from that of the men's, and women played an active role in the reorganization of the social system, contributing to the evolution of the basic concepts of the individual debt to the community (or state) and the return of notion of the responsibility of society to its individual (Kaplan, 2010).

B. Kaplan is considering the formation of public organizations, considering the hard corporate world of the Russian Empire estates, whose role in the creating of a new collective identity is not defined by historiography. The author explores the practice of public associations, standards of interpersonal communication, ideological and moral principles of conformity to social norms by the example of the Russian Society of Historical Enlightenment Devotees, 1895-1918. Its unique archives have not yet been used by researchers (Werth Paul, 2010).

In the reflection of P.V. Werth the problem of the foreign (non-Orthodox) churches legal status is presented. The author shows that Christian employees, starting with the Orthodox clergy, gradually acquired the rights inherent to their estate, while the non-Christian servants, as a rule, were only able to acquire the sole right to perform their function. This state of affairs is a result of a practical and ideological interests combination associated with limited knowledge of the state and distrust toward non-Orthodox ministers, as well as the obligation of the state to promote Christianity (Orthodox) in the social order of Russia (Werth Paul, 2010).

#### 4. Conclusion

Thus, the study of legal and judicial practices in the Russian history allows analyzing the specificity of the interaction of legal statutes and ways to implement them, following the processes of transformation of social and legal categories in Russian history, assessing the measure of compliance with formal legal requirements and the daily state practices.

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