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Herausgegeben von

Richard Helmholz, Knut Wolfgang Nörr
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TATIANA BORISOVA

Legislation as a Source of Law in Late Imperial Russia

I. Introduction*

In addition to shared moral logic and intercultural exchange, legal traditions are also based on regional tendencies, so that in order to understand a legal event, a researcher should study its local character. As the classic anthropologist Clifford Geertz fairly emphasized, 'law and ethnography are crafts of place: they work by light of local knowledge'.[1] It is well known from the general history of law that the European legal theories and legislation in the 19th century abided by the legality principle. The Russian empire was not an exception. However, local features of political and administrative culture and legal professionalism determined the specific practical application of this principle. This article investigates an important aspect of the legality principle: the problem of the publication of law.

Compulsory access to all potential legal sources is one of the main components of the legality principle. All European codifications of the 19th century declared this objective, but in a system of more advancing social relations, the result was often quite the opposite. Legal knowledge became more specific, more technical, and thus, inaccessible to the lay population. As a result, a legal historian should study the legality principle in a particular context, as a deviation from an 'ideal type', a relevant instrument of social phenomena research suggested by Max Weber at the end of 19th century.

I will approach the problem of the publication of legislation in late imperial Russia to show how the legality principle functioned there. Russian legal literature offers a descriptive approach to this issue: the publication of laws has been frequently described with minimal attention to the context; the juridical procedure with regard to publication is studied only to the extent as it is described in other written laws.[2] This account reflects the general tendency of

* The author is thankful to Irina Borisova and John King for their kind assistance on language issues.

[1] *Geertz*, Clifford: Local Knowledge: Further Essays in Interpretive Anthropology, New York: Basic Books, 1983, p. 167.

the Soviet approach, its inclination toward positivism, as opposed to the law in action approach. Foreign legal specialists have viewed publication of legislation in Russia as a sociopolitical event, defined by political power and the weakness of the legal profession.[3] The problem with this approach is that the political component is easily exaggerated: this is another extreme, which frequently leads to the amplification of political rationality and subjectivity of a state as the main actor in the legal field.

In this essay, I aim to present the problem of publishing legislation through two questions: for whom were laws published; and how and why was the concept of recipient of legislation changed in view of the development of law and the juridical profession in late imperial Russia. The research of concepts is the first step for understanding historical reality or nonfunctioning of positive law. It allows us to imagine interests of different groups of historical actors and to show legal history as history of turf wars, which reflect the essence of the transformation of the sociopolitical system in general.

II. For whom laws were published?

The Fundamental Laws of 1906 introduced the compulsory publication of *all* laws in the Russian Empire. Article 91 declared:

> 'Laws are proclaimed for general attention by the Governing Senate in the prescribed manner and before proclamation are not into effect.'[4]

It should be noticed that article 91, as well as article 95, which claimed that 'no one can 'shelter himself' behind unfamiliarity with a law if it has been proclaimed in the prescribed manner', was borrowed from the 1892 edition of the General Laws. However, the 1892 edition included a rule that adjusted significantly the necessity of publishing the *entire* corpus of legislation. According to article 57 note 3, acts that 'did not change or supplement general laws but defined only the manner of their actual execution' and that 'did not require overall attention and awareness' could remain unpublished. These acts had to

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[2] See, e.g.: *Kolesnikov*, A.N.: Khronologicheskoe sobranie kak forma inkorporatsii zakonodatel'stva. Avtoref. dis. kand. iurid. nauk. Vsesoiuznyi nauchno issledovatel'skii institut sovetskogo zakonodatel'stva, Moscow, 1967, Zakonodatel'stvo zarubezhnykh stran: Opublikovanie normativnykh aktov v evropeiskikh sotsialisticheskikh stranakh i formy ih sistematizacii, *Nikolaeva*, M.N. / *Pigolkin*, A.S. (eds.) Moscow, 1976, Opublikovanie normativnykh aktov, *Pigolkin*, A.S. (ed.), Moscow, 1978.

[3] See e.g.: *Buxbaum*, Richard / *Berman*, Harold (eds.): The Soviet Sobranie of Laws. Problems of Codification and Non-Publication, Berkeley, 1991, especially *Berman*, Harold: Some Jurisprudential Implications of Codification, in: Ibidem, p. 173–83.

[4] Osnovnye gosudarsvennye zakony, in: Svod zakonov Rossiiskoi imperii (hereafter SZ), Vol. 1,1906.

be 'addressed only to those places and persons to which they belong by their matter'.[5]

As we can see, the general requirement of publishing legislation was supplemented by the aforementioned important note, which relied on realms of the imperial state with autocratic-bureaucratic rule. On the one hand, the typically imperial, flexible approach in regulating law for different territories and social classes inhibited the development of a basic, practical procedure for the publication of imperial legislation.[6] The existence of various legal regimes, depending on the region and social group,[7] cannot be ultimately viewed as the politics of central power only, but there are signs of it in sources from the 18th and 19th centuries, as Vitaly Voropanov shows.[8] Special regulations were frequently created within a dialogue between interested parties; local authorities in particular initiated negotiations and requested specific guidelines from the central authority due to their unprofessionalism or fear of responsibility.[9] Konstantin Pobedonosstev, a noted jurist and statesman of the last third of the 19th century, wrote:

> 'The notion of law itself has not been developed in a straight and clear way. Administrative institutions, especially at the lower branches, do not have yet a clear view of the limits of their power and the sphere of their activity. They have to call constantly for the authority of the higher power, so that almost every action of the lower authorities echoes in the higher spheres of power and the most trivial issue of local administration might be decided by central authorities.'[10]

On the other hand, the autocratic-bureaucratic rule was itself not aware of the separation of executive, legislative and court powers. Legislative politics was theoretically and practically based on unified governance of supreme power of

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[5] Osnovnye gosudarsvennye zakony, in: SZ, Vol. 1, 1892.

[6] *Bergel*, Jean-Louis: Principal Features and Methods of Codification, in: Louisiana Law Review, 48, 1988, p. 1073.

[7] On the diversity of the legal rights of different social groups in Imperial Russia, see: *Wirtshafter*, E.K.: Structures of Society. Imperial Russia's "People of Various Ranks", Illinois, 1994; and *Rieber*, Alfred: The Sedimentary Society, in: Clowes, Edith et al. (eds.), Between Tsar and People. Educated Society and the Quest for Public Identity in Late Imperial Russia, Princeton, 1991, p. 343–67.

[8] *Voropanov*, V.A.: Regional'nyi faktor stanovleniia sudebnoi sistemy Rossiiskoi imperii na Urale i v Zapadnoi Sibiri (posledniaia tret' XVIII – pervaia polovina XIX vv.). Istoriko-iuridicheskoe issledovanie, Cheliabinsk, 2011.

[9] See e.g. the case study on penal politics in Siberia: *Gentes*, Andrew: No Kind of Liberal: Alexander II and the Sakhalin Penal Colony, in: Jahrbücher für Geschichte Osteuropas, 3, 2006, p. 321–44.

[10] *Pobedonostsev*, K.P.: O zhalobakh na deistviia dolzhnostnykh lits administrativnogo vedomstva in Materialy po sudebnoi reforme. Vol. 45, p. 2. Pagination 25, p. 5. Quoted in: *Pravilova*, E.A.: Zakonnost' i prava lichnosti: administrativnaia iusticiia v Rossii (vtoraia polovina XIX v. – oktiabr' 1917 g.). SPb, 2000, p. 60.

the autocrat over every sphere of imperial life, thus the separation of laws from executive acts did not appear to be realistic.[11] In this respect, the absence of the 'notion of law itself', as Pobedonosstev complained, was a natural consequence of the political system of state power, which created a deficiency of clear, unified rules in lawmaking and enforcement; the multiple attempts of regulators in St. Petersburg to offer a uniform legal system were more exercises of imagined state-building and assertion of authority than anything actual meaningful or productive.[12]

This feature of legal development, or lack thereof, in imperial Russia, could be analyzed using the concept of 'representative publicness' (*representative öffentlichkeit*) by Jürgen Habermas, the classic social theorist. He argued that the ethos of power structure which had dominated in European culture prior to the 18th century, and even persisted until the beginning of the 19th century, was to 'display the inherent spiritual power or dignity before the audience'.[13]

The legislative initiatives of Peter I (r.1682–1725) clearly illustrate the political direction of representative supremacy. The succession law of 1722 is probably the most impressive example: it stipulated that 'the ruling tsar always has the freedom (*volia*) to designate (…) whom he wishes and to remove the one who has been designated'.[14] Richard Wortman who recently researched the tradition of legal dynastic succession underlined that in doing so, Peter and his later successors represented themselves as mythical heroes and defenders of the state.[15]

Wortman draws attention to a simple fact: the public presentation of the mythical image of the monarch and the exercise of absolute power were reciprocal processes. Absolute rule sustained an image of the transcendent monarch, which in turn warranted the exercise of his unlimited power. This clear observation is very important in order to estimate correctly the legislative politics of Russian monarchs and the 'representative', or theatrical, essence of their actions towards strengthening legality in the state. Peter I introduced compulsory publication of legislation by the Senate, but this reform was no success.[16] He also initiated

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[11] *Kazanskii*, P.E.: Vlast' Vserossiiskogo imperatora. Odessa, 1911.

[12] *Burbank*, J. / *von Hagen*, M.P., Coming into the Territory: Uncertainty and Empire, in: Burbank, J. et al. (ed.), Russian Empire: Space, People, Power, 1700–1930, Bloomington, 2007, p. 4.

[13] *Habermas*, Jürgen: The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society, Boston, 1991, p. 5.

[14] Polnoe Sobranie zakonov Rossiiskoi imperii (hereafter PSZ) [the Complete Collection of the Laws of the Russian Empire], Sobranie pervoe [1649–1825], February 5, 1722, No. 3893. The collection is available at http://www.nlr.ru/e-res/law_r.

[15] *Wortman*, Richard: The Representation of Dynasty and "Fundamental Laws" in the Evolution of Russian Monarchy, in: Kritika: Explorations in Russian and Eurasian History, 13(2), 2012, p. 265–300.

many attempts to codify the Russian law and so to create a new codification instead of the Council Code (*Sobornoe ulozhenie*) of 1649. Each of his successors continued these attempts to different extents.[17] Even though this project of codification was clearly beneficial, and even necessary given the antiquity of the existing law, its continuing lack of success was caused by the emphasis on presentation and re-presentation – codification as a display of authority – as shown simply by the dates of the beginning of this project (early 17th century) and its completion (in 1835).

In this perspective, important questions are: what were the changes that made a new, proper codification project the main priority of Nicholas I (r. 1825–1855), and who completed it with the publication of the Digest of Laws of the Russian Empire in 1832?[18] Previous codification efforts – with 'representation' as their main purpose – have in the past been explained as unsuccessful due to the immaturity of domestic jurisprudence (i.e., there was no real juridical profession or study). While this was important in stalling the development of the legal system, in my opinion, this was not the main reason. After all, foreign codes were translated before the 19th century, foreign experts were invited, and if there was an imperial will, borrowed laws or parts of codes could have been accepted.

I suggest that the key source of change was the rise of public discussion and a growing demand for legality. The Decembrist Uprising at the Senate Square on December 14, 1825, which took place in the interregnum after Alexander I's death (r. 1801–1825), signaled no return to the previous exclusively representative models. The uprising clearly defined a change in the elite's concepts of power, justice and legality: many rebels stood up with arms and demanded the change of the autocratic regime. The open demonstration of these intentions changed the representative mode of authority in Russia: it finely drafted a new axis of 'legal autocracy'. We can find it in the Coronation Manifesto of Nicholas I prepared by the future architect of the Digest, Mikhail Speransky:

> 'It is not from daring dreams, which are always destructive, but from somewhere above that state institutions are gradually refined, deficiencies improved, abuses corrected. Through gradual improvement, any modest wish for the better, any idea aimed at affirming the force of law, at broadening true education and industry, which We [the Emperor] have achieved in a lawful, open way for everyone, will always be accepted by Us with reverence.'[19]

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[16] *Petrovskii*, S.O.: Senate v tsarstvovanie Petra Velikogo. Istoriko-iuridicheskoe issledovanie, Moscow, 1875, p. 224–30.

[17] See further in: *Borisova*, Tatiana: Russian National Legal Tradition: Svod versus Ulozhenie in Nineteenth-Century Russia, in: Review of Central and Eastern European Law, 3, 2008, p. 295–342.

[18] Svod zakonov Rossiiskoi Imperii: poveleniem Gosudaria Imperatora Nikolaia Pavlovicha sostavlennyi (The Digest of Laws of the Russian Empire, compiled at the Command of Emperor Nicholas the First), St. Petersburg, 1832.

The quote directly presents legislation and legality as concepts existing only under the supervision of the tsar and his designated persons: they functioned as active creators and defenders of legality. In this light, the Manifesto placed an interesting stress on the disorder in the beginning of Nicholas' rule, which could be described as a consequence of the new monarch's commitment to legal order and to the procedure of publishing legislation in particular. This should be discussed in more details.

The interregnum lasted due to the rules of precedence: the throne should be passed to Constantine Pavlovich, the next brother in turn. But in 1822 he informed Alexander I about his decision to renounce his right to inherit the throne. Alexander signed a manifesto declaring that Constantine had renounced the throne and named the next in line, the young Nicholas Pavlovich, as heir to the throne. The manifesto was to be announced after his death – before that it was secreted in the State Council and the Assumption Cathedral.[20] Since only very few people knew about it, after Alexander's death on November 19, 1825 officials, clerics, and officers in St-Petersburg, including a guards' commander Nicholas Pavlovich took the oath of fealty to Emperor Constantine Pavlovich.

Some members of the State Council hesitated if the will of a dead Alexander should be promulgated. Nicholas asked Constantine to confirm his declaration of abdication, and only after Nicolas received this, on December 12, 1825, was Nicholas's accession manifesto, dating his ascension to the throne on November 19, drafted and presented to the State Council, on December 13. In the manifesto Nicholas I found it appropriate to describe the chaos in the beginning of his rule in the categories of 'right' and 'law':

> 'In these acts, we saw the renouncement of His Highness, which occured during the Emperor's life and was confirmed by His Majesty. But we did not want and did not have the right to accept this renouncement that had not been publicly announced and turned into a law, as ever irreversible.'[21]

As we can see, Nicholas I explained his confusion by his commitment to legality and to the inappropriateness of non-public legislation in particular. There was a certain political motivation for doing so: after Peter's law of the succession to the throne, Nicholas' ancestors acceded to the throne with active support of the Guard and sometimes through the assassination of the ruling monarch, as was the case with Nicholas' grandmother Catherine the Great and his father Alexander I. The circumstances of the rebellion and the confusion caused by Alexander's secret manifesto on passing the throne to Nicholas showed a definite advantage of following legislative formalities of making and promulgating law.

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[19] PSZ. Sobranie vtoroe [1826–1880], 31 January 1833, No. 5947.

[20] *Wortman*, The Representation of Dynasty, op. cit. note 15, p. 282.

[21] PSZ. Sobranie vtoroe [1826–1880], 31 January 1833, No. 5947.

The Decembrists's rebellion on the Senate square, which called for a constitution, clearly indicated the need for a change toward formal legality. For however intensely the Russian monarchs made codices to show their ability to create and defend the law, they were, as the ultimate demonstration of their authority, above it. The basic idea of the autocratic legal doctrine was formulated by historian Nikolai Karamzin in 1811:

> 'The monarch is the living law – merciful for the kind and castigating evildoers, the love of the former is obtained by the fear of the latter. If people aren't afraid of the tsar they aren't afraid of the law!'[22]

Nicholas I tried to enforce the formalities of legal procedure that actually existed before. The eighteenth century decrees of Peter the Great and his descendants required legislation to be published by the Senate.[23] In the first half of the nineteenth century, legislation was to be officially published in two Senate periodicals: the *Senate Bulletin* (from 1808) and the *Senate Announcements on State, Governmental and Court Affairs* (from 1822). In addition to the periodicals, special editions and collections of legal acts were published as well. However, the procedure of law publication by the Senate was not necessary followed: the power relied on the principles of expediency and discretion. State actors dominated in legislation and law enforcement; their responsibilities were not clearly divided and included legislative, executive, court and supervisory functions. These circumstances definitely affected the quality of legislation and legal drafting. In practice, officials from different ministries or departments were informed about new legislative acts 'by affiliation', that is, by the sphere of their expertise, not necessarily by publication. As for publication, ministries also published their regulatory acts in various departmental periodicals bearing official status. We will come back to the issue of ministerial publication of law later.

As for the population, according to Peter's decree of 1720 it had to be necessarily acquainted with laws on collections of money or property.[24] The decree required the distribution of information in a printed and not rewritten form. Peter's choice to have these acquisitions published was possibly made in order to stop abusive additions from local authorities. The procedure compelled priests to read out the acquisitions on Sundays – this draws our attention to the very important issue of illiteracy. Without going into details, it must be noted

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[22] *Karamzin*, N.M.: Zapiska o drevnei i novoi Rossii v ee politicheskom i grazhdanskom otnosheniiakh, Moscow, 1991, p. 102.

[23] *Petrovskii*, Senate, op. cit. note 16, p. 224–30.

[24] PSZ. Sobranie pervoe [1649–1825], 10 February 1720, No. 3515. The author is thankful to Dr. Galina Babkova, who kindly shared information on the eighteenth century legislation on law publication.

that the low level of literacy and education in general in Russia slowed down, probably to a large extent, the development of law and legal culture.

Articles 51 and 52 of the Police Statute of Catherine II of 1782 slightly widened this policy, deciding to publish other legislation to regional authorities (governors), who would pass the new law to police institutions for actual publication and announcement.[25] In line with the Statute, a district attorney – a prosecutor assistant who supervised legality (Article of from the Statute on Provincial Administration)[26] – had to decide whether received legislation should be published. As we see, the discretion of local authorities in the issue of publication of legislation was stipulated by the law.

Nicholas I expected the Digest of Laws of the Russian Empire to be the official and final collection of law in force and so reduce abuse among officials, which was frequently based on deficient or fragmental knowledge of legislation. The Second Section of His Majesty's Own Chancellery (*Vtoroe otdelenie sobstvennoi ego imperatorskogo velichestva kantseliarii*) was created directly for this purpose. A subject plan was created, and employees collected legislative material from the whole body of the Russian legislation according to its categories. The corresponding parts of the code were then developed on this basis.[27] Law-drafting techniques used in the Digest were essential: old laws were transformed into new laws, the technique later called 'codification recycling' in Russian legal literature.

The issue of coordination of the original legislation and its codified version in the Digest was inevitable. During the discussion on 'the power of the Digest' its chief editor Mikhail Speranskii insisted on the necessity of applying the original law in case of a doubt, as showed in a pre-revolutionary legal historical research by Alexander Pakharnaev.[28] However, the attendees of this discussion saw clearly that many parts of the Digest, for example, The Fundamental Laws of the Russian Empire, originated during the codification process, that is, were compiled from a body of detached legislative materials. This explains why Nicholas I did not support Mikhail Speranskii and the Digest was put into force as a positive law that cancelled all legislation prior to it.[29]

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[25] *Ibidem*, 8 April 1782, No. 15379.

[26] *Ibidem*, 7 November 1775, No.14392.

[27] On the procedure of codification see *Raeff*, Marc: Michael Speransky: Statesman of Imperial Russia, The Hague, 1969, p. 320–46 and *Borisova*, Russian National Legal Tradition, op. cit. note 17.

[28] *Pakharnaev*, Alexander: Obzor deistvuiushchego Svoda zakonov Rossiiskoi imperii, SPb., 1909, p. 75–8.

[29] The legislation on army and on some provinces – e.g. Finland and Poland – was placed separately and was not included in the Digest of laws.

It was considered inappropriate for addressees of the law to consult the original legislation if they wanted to clarify, for example the Fundamental Laws of the Russian Empire that were placed in the first volume of the Digest. Finally, the Digest was prepared with the monarch's direct participation[30] by the organ that was extremely close to him (the Second Section of His Majesty's Own Chancellery), so its legitimacy could not be questioned in the 1830s.[31] The State Council statement 'On the Application and Use of the Digest of Laws of the Russian Empire' explained that, from this time on, the articles of the Digest were the only source of actual law and substituted previously applied 'excerpts from decrees and resolutions'.[32]

This statement further described in detail how the Digest was to be implemented by appropriate personnel. In order to solve a case, first of all, a chancellery of an institution – e.g. a court chancellery – had to prepare a list of the Digest's articles that were relevant for the case. The format of references to the Digest was also defined (volume, name of the law, number of the article). Next, a secretary had to check the articles and bind the list. Amid the discussion on the case the listed articles 'had to be read out during the meeting from the Digest's volumes'. Finally, the statement required to 'include in definition' word by word those articles that would found the decision. In the case of an ambiguity in a law from the Digest one had to address a higher institution for clarification.

The analysis of the codification process in the Digest and the assigned procedure of its use demonstrate the paternal administrative approach the state had towards law.[33] In this perspective, the compulsory publication of new legislation for public awareness obviously was not of the highest priority. Another aspect of legislative practice was even more important: the codification department would add a new law to the Supplements of the Digest or new editions of its particular parts. While the new legislation was undergoing codification work, the information about it was sent by affiliation to the specifically assigned organs and authorities that had to know about the changes.

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[30] *Telberg*, G.G.: Uchastie imperatora Nikolaia I v kodifikatsionnoi rabote ego tsarstvovania (po povodu 80-letia deistvia SZRI), in: Zhurnal Ministerstva iustitsii (hereafter ZhMIu), 1, 1916, p. 233–44.

[31] The situation with the legitimacy of the Digest's new editions and Supplements changed radically after the abolition of His Own Majesty's Chancellery in 1882. Since that time, the participation of the emperor in the codification process was purely nominal. The task of editing the Digest was passed on to the State Council; in 1893, in view of the growing bureaucratization of the codification process, it was transferred to the Department of the Digest of the Laws at the State Chancellery.

[32] PSZ. Sobranie vtoroe [1826–1880], 12 December 1834, No 7654.

[33] See further in: *Borisova*, Tatiana: The Digest of Laws of the Russian Empire: The Phenomenon of Autocratic Legality, in: Law and History Review, 30(3), 2012, p. 901–925.

Regardless of the changes from the original text (and sometimes meaning) of a legal act that were caused by adding new legislation in the Digest and the Supplements, the advantage was given to the codified law: the citizens and institutions had to refer to the codified version. The respective rule was confirmed in the Statute of the Governing Senate[34] and stayed in force until the Bolshevik October Revolution of 1917.[35]

Referring to my initial question – for whom laws were published – we should consider the aforementioned realms of the Digest's functioning. Obviously non-governmental domain was not addressed in the governmental practice of drafting laws. Legislation was published and codified first of all (if not exclusively) for the bureaucrats. This can be illustrated by the absence of any non-governmental projects in this field – law clubs, societies and journals. The only exception is *Juridical writings* (*Iuridicheskie zapiski*), an open ended periodical that was published by Pyotr Redkin, a famous law professor of the Moscow University (and from 1863 the St. Petersburg University) since 1841. However, the content of this periodical did not have a single doubt in the exclusive competence of governmental institutions in legislative and judicial power. The absence of criticism was largely a consequence of a general political direction undertaken after the victory over Napoleon and the growing reaction in the whole of continental Europe. In Russia, it resulted into severe censure that suppressed attempts of dissent, especially in the affairs of national importance, legislation obviously among them.

III. Emergence of a legal community and a change in the procedure of law publication

Several aspects of the social life of the first half of the 19th century led to the changes in the understanding of legality. The public sphere was developing, state politics were focused on systematization of legislation, legal education was expanding, and the practice of administrative work was progressing. Culture in 1850s offered the prerequisites for the emergence among the elite of a 'legal consciousness' and even a 'jurisprudential enthusiasm',[36] initiated by the 'new people', i.e. the officials from the central administration organs who obtained special legal education, jurists whose influence started spreading across the Empire because of the educational development.[37] Public attention to the problems

[34] Uchrezhdenie Pravitel'stvuiushchego Senata. Art.66, in: SZ, Vol. 2., SPb, 1906.

[35] Uchrezhdenie Pravitel'stvuiushchego Senata, izdaniia 1915 goda, i ego izmenenie zakonom 16 dekabria 1916, in: Sobranie uzakonenii i rasporiazsenii pravitel'stva, No.11, 1917, Item. 68.

[36] *Wortman*, Richard: The Development of a Russian Legal Consciousness, Chicago, 1976.

of legislation initially produced a severe resistance of the government. One of the examples of this reaction is the story with the anonymous article 'On the oral proceedings in Russia', published in the *Russian Messenger* (*Russkij Vestnik*), a literary journal of Mikhail Katkov, in 1857.[38] It evoked a tart disapproval of Viktor Panin, the Minister of Justice, and, as a result of his special report to the emperor, further discussion of subject in press was prohibited.[39] What in this article made the Minister so scared?

The article was devoted to the problem of the implementation of oral proceedings that was prescribed in a number of court regulations in Volumes 10 and 11 of the Digest. The regulations allowed oral proceedings in commercial and trade courts, special oral proceedings for civil processes, and particular cases of regional courts. The article criticized how court clerks abandoned oral proceedings that had been prescribed by law in favor of written legal proceedings, which the author ironically called a bureaucratic law 'improvement'. As a result of this preference for written documents, in the commercial courts against law 'several registration books started by inspectors-bureaucrats, passionate for clerical order, lie constantly on a registration desk [whereas internal paperwork had to be written in one 'court book', according to the law]. In the corner of the court room there is a small table and a permanent secretary is writing behind it … Don't know whether it is everywhere, but everything aforementioned is present in some 'improved' courts.'[40]

Available research literature confirms that the practices of legal proceedings in the chancellery described in the article were common in various regions of the Empire.[41] The author's attitude to such circumstances, and in particular his appeal to the legal order that was familiar to him and his outcry against its nonobservance are primarily important for us.

The author emphasized that the clerical deformation might finally discredit the authorities. In his opinion, the existing justice system made people ask for the services of private 'attorneys, aides, lawyers and rest of the crowd that rub shoulders in chancelleries'.[42] The competence of this 'crowd' was not in their familiarity with law but in 'the ability to sneak into so-called 'secret of chancellery'. They should be changed by properly educated people among

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[37] *Voropanov,* Regional'nyi faktor stanovleniia, op. cit. note 8, p. 322–93.

[38] O slovesnom deloproizvodstve v Rossii, in: Russkii vestnik, 1857, September,11, p. 153–73.

[39] *Pobedonoscev*, K. P., Graf V.N. Panin, in: Golosa iz Rossii. Sborniki A.I. Gertsena i N.P. Ogareva. Vyp. 3. Kn. VII, Moscow, 1976.

[40] O slovesnom deloproizvodstve v Rossii, p. 156.

[41] *Voropanov*, Regional'nyi faktor stanovleniia, op. cit. note 8, p. 284–99.

[42] O slovesnom deloproizvodstve v Rossii, op. cit. note 38, p. 160.

university, lyceum and law school graduates, who would form the national advocacy.

The analysis of this article shows that the key author's violation was that his article became *a private attempt for public discussion on the disregard of the law* concerning legal proceedings that were prescribed by the law. Thus, it was a threat to the stable official notion of legality as a field defined and controlled by the state only. Minister of justice Panin might found particularly inappropriate the fact that the anonymous author posed himself as a person who is involved in the legal process. He demonstrated a perfect awareness of the legislation in force and, with support of his practical experience, showed how the bureaucratic approach angled the lawmaker's will. In conclusion the author formulated a sentence about the existing bureaucratic system of legal proceedings with a colloquial expression: 'Where the hand is, there the head is!'.[43]

The author's solution for the situation was essentially new for the traditional understanding of law and legality as the sphere of the Emperor's expertise and appointed persons or institutions. The leading power of the change should become not the wise power and its new laws, but the private element – the advocates enforced by the knowledge of legislation in force and the acknowledgement of its public value. Therefore, in 1857 on the pages of the *Russian Messenger*, Panin discovered a new claim, dangerous to the declaration of power, from an individual who claimed his right to participate in the state sphere of law by *his knowledge of legislation*.

The discussed article and Panin's repressive reaction to it (sanctioned by the Emperor) signaled a clash between the 'former / state' and 'new / public' understandings of legality. Familiarity with legislation played a key role as a ground for a professional opinion on the matter of legal order and the problems of its distortion. Very soon the authorities had to cooperate with public expectations and reject the politics of repressions and suppression of legality issues. The Crimean war (1853 – 1856) was the reason: it unmasked all of the imperfections of the state administration. Russia's shattering defeat in the war, at the very end of Nicholas I's rule, with the coalition of Great Britain, France, the Ottoman Empire and the Sardinian Kingdom, signaled sharply a need for modernization of the whole state system.

In these circumstances, the government of Alexander II (r. 1855 – 1881) started developing the reformations, which figure in history as The Great Reforms of 1860 – 1870's. They concerned all sides of social life, starting from the liquidation of serfdom to reforms of the army, the education, the local administration and the court. For the sake of efficiency, drafters were determined to abandon the prior paternalist model of the secret preparation of reforms. For instance, in

[43] *Ibidem*, p. 172.

1862 the major details of the later court reform (1864) were published with a deadline for feedback. It should be noticed that, in accordance with the former concept of legality, and possibly for the sake of time, public discussion was not initiated: the community was offered to address their private comments directly to the commission preparing the reform. Nevertheless, the event of a governmental call for such a public initiative through reports was unprecedented in Russian history. Work in the legal field started to require not just professional expertise of invited specialists or experienced managers, as it used to be, but reports from social representatives. The novelty of this approach is clear from the reaction expressed in the reports. For example, Alexander Chebyshev-Dmitriev, a criminal law professor at the Kazan University, supplemented his report with the following comment:

> 'We are certainly more or less familiar with scientific demands, but the conditions and demands of Russian life, as well as actions of our courts, are wrapped in mystery. We know extremely little about Russia, and those facts which literature tells us, require a close check … But the commission doubtlessly possesses all necessary information and means that are unavailable for individuals, in order to collect essential materials and to check the facts from the Russian literature.'[44]

As it was mentioned in prior research,[45] this quote explains very well the reasons why only two reports out of 448 were received from the representatives of legal science.[46] In line with the official state paternalist concept of legality, jurists considered teaching and research studies as the sphere of their competence, and legislation and its application as the exclusive sphere of state appointed individuals.

Another innovation was the coverage of the court reform preparation in the *Journal of the Ministry of Justice*, founded in 1860 before the reforms for distribution of legal information. The December 1863 volume of the journal published 'Materials on the condition of the work on the court reform in Russia', which described in detail who participated in drafting new court statutes and in which parts.[47]

It was no coincidence that the reforms in legislation publication through the new legislation bulletin – *The Collection of Legislation and Resolutions of the Government, Published by the Ruling Senate (Sobranie uzakonenii i rasporiazhenii pravitel'stva, izdavaemoe pri Pravitel'stvuiushchem senate)* – was

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[44] Quoted in: *Nabokov*, V.D.: Raboty po sostavleniiu sudebnkh ustavov, in: Davydov, N.V./Poljanskij, N.N. (eds), Sudebnaia reforma, Vol. 1, Moscow, 1915, p. 311.

[45] *Ibidem*.

[46] See further in: *Tel'berg*, G.G.: Vliianie sudebnoi reformy na nauku prava, in: Davydov/Poljanskij (eds), Sudebnaia reforma, Vol. 1, p. 357.

[47] Svedeniia o polozhenii rabot po preobrazovaniiu sudebnoi chasti v Rossii, in: ZhMIu, 12, 1863, p. 655–64.

initiated at the end of 1862, during intensive work on court reform, although at present there are no ostensible documents proving a direct connection between these events. It is indicative that the implementation of the new legislation bulletin on December 24th, 1862 was introduced as an exclusively technical reform that was suggested by the Ministry of Justice. 'All manifestos, tsar's and Senate's decrees, treaties and regulations that have *the force of law* [italics TB]' were required to be placed in the *Collection of Legislation*. *The Senate Bulletin* was assigned to publish subordinate legislation.[48]

There were no clear conventions in theory, doctrine or legislation on which subjects regulated only by the law in a true sense of this notion, were compulsory to everyone;[49] thus legislation publication was gaining special significance. As a result, a normative act received the status of an obligatory act through its publication in the *Collection of Legislation*. Therefore, the use of a legal technique solved the relevant questions of administration and law enforcement and allowed to postpone a political decision on the issue of non-division of legislative and executive power in imperial Russia.

The practice of publishing the most important acts in a special bulletin and the fact that publication itself brought them the 'power of law' were very illustrative for the legal system in Russia. The law on the *Collection of Legislation* mentioned indirectly that legal force was attributed by a legislating institute, but not exclusively. The Emperor's manifestos and decrees, for example, were defined as potentially having the 'significance of law', but the Emperor's edicts and the State Council's opinions approved by the Emperor (the law on the *Collection of Legislation* was published this way) were not mentioned at all, because they were possibly included as 'regulations'. Since there was no convention on the relations between the form of a regulatory legal act and its meaning, these relations had to be declared every time in an ad hoc manner through publishing or not publishing it in the *Collection of Legislation*.

The Ministry of Justice's offer to publish an official bulletin for legislation of general importance was motivated by the lack of clarity in legislative publishing.[50] Even though the Fundamental Laws required laws to be published by the Senate in order to be in force,[51] ministries frequently ignored this regulation, preferring to inform the subordinate institutions and officials first, for the sake of expediency. For this purpose, the mechanisms of departmental publishing were functional.

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[48] Sobranie uzakonenii i rasporiazsenii pravitel'stva, No.1, 1863, Item 3.

[49] *Ibidem*.

[50] See further in: *Korkunov*, N.M.: Ukaz i zakon, In: SPb., 1894; *Kochakov*, B.M.: Russkii zakonodatel'nyi dokument XIX- nach. XX vekov, in: Vspomogatel'nye istoricheskie discipliny, Moscow, 1937, p. 319–73.

[51] Osnovnye gosudarsvennye zakony, Art. 57–58, in: SZ, Vol. 1, SPb., 1857.

Thus, for example, since 1829 the Ministry of Home Affairs published a periodical, the *Journal of the Ministry of Home Affairs*. Although its name and the style of publications changed over time,[52] the official part remained very important: laws developed in the Ministry were published there. As it will be discussed below, despite the clear requirement for compulsory publication of legislation in the Senate's bulletins, after 1863 the practice of departmental publishing was still relevant, and in certain periods it was even increasing. This increase is proved by the publication of a special index of legislation in the departmental periodical of the Ministry of Home Affairs during the First World War – *The Index of the most important legislation, governmental regulations and reports, placed in the official part of the newspaper the Governmental Newsletter in 1915–16.*

Summing up, the systematical publication of important legislation in the widely available bulletin[53] in the *Collection of Legislation* was expected to solve the mess in the new legislation. Henceforth, this bulletin had to present the full system of the new legislation with an important distinction of compulsory for all and not compulsory for all. This step was definitely necessary for the better efficiency of legislative politics in times of reforms. Of course, the citizens were potentially interested in this. To which extent did they feel legal indefiniteness as an important problem?

One case described in the press in the beginning of 1863 illustrates the importance of publishing legislation for lay people. It attracted the attention of contemporary lawyers: the reprinting in the Journal of the Ministry of Justice of the original article, from the popular newspaper 'Russian Bulletin', demonstrates this interest.[54] The article described a case with a merchant in St. Petersburg in 1862. On December 20th, several newspapers distributed information about a newly accepted law that significantly extended the group of people who had a right to take a loan in the form of *veksel*, promissory notes that were much more strictly protected by the state than normal loans. According to the 1832Statute on promissory notes, this right was the prerogative of tradesmen: nobility, honorary citizens, *raznochintsy* (people of miscellaneous ranks) and peasants could not bind themselves with promissory notes unless they were registered in a guild or in a trade association; foreigners had to participate in special corporations of capital, craft or trade.[55]

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[52] *Dement'ev*, A.G. et al (eds): Russkaia periodicheskaia pechat', 1702 – 1894, Moscow, 1959, p. 206, 430 and 524.

[53] Unfortunately we do not have information on the exact number of copies of the Collection of Legislation. The *Collection* was provided to all state organs on all levels for free; for non-state individuals and organizations, the *Collection* was available at a very low price.

[54] *Bartenev*, V.: Zametka ob obnarodovanii zakonov, in: Russkii listok, 9, 18 February 1863, reprinted in: ZhMIu, 3, 1863, p. 739–42.

The announcement of the new law, reprinted in many newspapers on December 20th, was written in such a language that the merchant got an impression that the law was in force:

> 'On giving a right to all classes to take loans as *veksel*. After discussing a report of the Minister of Finance on giving a right to all nobility to bind themselves to agreements of *veksel* loans, the State Council announced an address approved by His Majesty. In supplement of Articles 2260 and 2261 of the law on civil legal proceedings from the Digest of Code of 1857, vol. 10 p. 2 and Articles 546, 653, 655, 656 of the trade statute from the Digest of Code of 1857 Vol. 11 P. 2 and in cancellation of Article 2243 of the law on civil legal proceedings from the Digest of Code of 1857 Vol. 10 P. 2, all individuals are allowed to bind themselves to agreements of *veksel* loans, both regular and transferrable. Only clergy of all religions, peasants without immobile property and if they don't have any trade certificates, and lower ranks of all departments are exceptions to this general rule.'[56]

As we can see, the law was approved by the tsar on December 3rd, however, it was not published in the Senate periodicals, so the announcement in the newspapers was not official, as the article's author explained. The Senate sent an announcement about this law on January 16th, 1863 in a form of special printed decrees that were sold in the Senate bookstore from the same day, and on January 17th the law was added to the *Collection of Legislation*. This is why the official declaration was only on January 16th.[57] The merchant who accepted a promissory note from a nobleman on December 20th, faced the fact that the nobleman simply rejected to pay, which was just a debt obligation and not so strictly protected as promissory note, according to the old law. The court refused to protect the merchant's right, since the right had not yet emerged: the accepted law had not yet been officially published.

The article's author emphasized the insufficient accessibility of legal knowledge for lay people. Furthermore, his text could give the impression that the nobleman used the merchant's knowledge against him, as the latter was aware of the legal order of publishing laws by the Senate, declared in the 1857 edition of the Fundamental Laws (Articles 57 and 58):

> 'The nobleman rejected simply from the payment. This already surprised the merchant. But what was his surprise when a notary refused to protest the *veksel* note, and the public office found that it was not a *veksel* note but a simple obligation.'

The author concluded with a complaint:

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[55] On the history of legislation on exchange of loans in Russia, see: *Fedorov*, A.F.: Veksel'noe pravo, Odessa, 1906; *Zholobova*, G.A.: Ustav o vekseliakh 1902 goda. K 100-letiu so dnia priniatia, in: Zhurnal rossiiskogo prava, 5, 2000, p. 7–19.

[56] Russkii listok. No. 50, 20 December 1862.

[57] PSZ (Sobranie tretie 1856–1881), 16 January 1863, No. 38993.

> 'The understanding of a legal order, even in publishing laws, is not greatly spread among the audience. Especially lay people believe every printed word, especially if this word is in an official newspaper of some ministry – e.g. the *Stock Journal* of the official department is the organ of the Ministry of Finance – and if something is printed on behalf of the legislative power.'

The end of the article stressed that when publishers 'publish a new general law [they] should specify every time, from which number of the *Collection of Legislation* it is taken, and if it is not yet there, then, that according to the Fundamental Laws, it is not yet an official publication.'[58]

The case discussed reflects the specificity of the critical time of the 1860s reforms, which, as commentators underlined later, defined an important accomplishment in changing the mode of relations between the state power and the citizens. As Pavel Lyublinsky, a famous jurist of the beginning of the twentieth century and a professor of St. Petersburg University, wrote, the accomplishment was in the rejection of 'enlightened care of the state'.[59] The choice for the change of political direction was perceived as necessary both for the state and society.

On the one hand, a necessity to modernize the country economically and technologically made the state power reject the paternalist models in legislative politics. This rejection is reflected in the very essence of the *veksel* reform that was described above: nobility and representatives of other classes, previously protected by the state from the strict punishments of defaulting on *veksel* loans, were acknowledged as responsible subjects who are ready to realize the consequences of their legal decisions.

On the other hand, as it is seen from the example of the article in the *Russian Messenger*, society persistently rejected ineffective governmental paternalism which was reduced in the legal field to the domination of clerical principles. In the circumstances of isolation of the state practices from control and participation in society, the power controlled itself, and this favored corruption and general ineffectiveness of governmental institutions.

Leading jurists believed that in the legal field paternalist governance of the letter of the law and administrative discretion ought to be changed by a rational formal regulating system that would be defined by law. This system would recognize citizens as capable individuals who are ready to apply formal rules and respond for their actions. This understanding of the court reforms can be found in the work of Ivan Foinitskii, a famous specialist of criminal legal proceedings: 'Court statutes, along with liquidation of serfdom, have a general liberating basis, defined in the personality principle. It carried new content to the

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[58] *Bartenev*, Zametka, op. cit. note 54.

[59] *Liublinskii*, P.I.: Sud i prava lichnosti, in: Davydov, N.V./Polianskii, N.N. (eds): Sudebnaia reforma, Vol. 2, Moscow, 1915, p. 1–41, at p. 3.

legality principle'.[60] That said, Foinitskii asserted that the personality principles and state principles do not contradict one another: "The state principle is reached best of all through recognition of the personality principle, through allowance of personal initiative and energy given the responsibility for them".[61]

What was the representation of the new individual principle in the legal field and understanding of legality, described by Foinitskii? There are three key improvements in 1864 Court statutes that are typically mentioned: abandonment of written legal proceedings in favor of oral argument, participation of criminal defense lawyers in trials, and addition of a jury. As to our topic – legislation as a legal source – more specific aspects should be noted:

1. The formal proof theory was cancelled: henceforth a judge was freer to estimate a crime.
2. Inevitable in legal proceedings, interpretation of a law by the judge could be made with more freedom, without referring to a specific rule for every point of the court's decision. Notions such as 'according to inner belief' and 'in good conscience' started to play an important role in the formulation of the court's decision.
3. Revision control of judges was cancelled.

As we can see, judges were viewed not as merely state personnel acting according to the letter of the law, as it followed from the previous model from the Digest, but as full participants of a vivid judicial process. Within the framework of Kantian 'Metaphysics of Morals', they transformed from objects – means of execution of another's will – to subjects who made decisions in line with their own will, and carrying responsibility for them.

A Kantian understanding of subjectivity as freedom and responsibility was not developed in late imperial Russia.[62] The institutional support of the idea of an independent and responsible individual-subject was problematic in the legal field. Citizens were not trusted to estimate the legal meaning of newly published laws – there was a special codification organ for it, which included new legislation in the legal system. Along with the compulsory publication of generally important legislation and freedom of judges to interpret it (from the 1860s), the law still required the use of codified legislation in court and not its originally published form in the *Collection*.

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[60] *Foinitskii*, I. Ia.: Ideia lichnosti v Sudebnykh ustavakh i kodifikatsionnoe ikh znachenie, in: Pravo, 1899, p. 2280–1.

[61] *Ibidem,* p. 2281.

[62] *Plotnikov*, N.: Ot "individual'nosti" k "identichnosti" (istoriia poniatii personal'nosti v russkoi kul'ture), in: Novoe literaturnoe obozrenie, 91, 2008, p. 64–83.

It has to be emphasized that although jurists heavily criticized this requirement to apply the codified rather than the original legislation,[63] in reality, deviations from this rule were regarded as unacceptable. 'Administrative interpretation' through codification was still much preferred to a judge's and other legal practitioner's freedom of interpretation and his independent definition of legal consequences of new legislation.

As it was discussed above, codification in Russia assumed the definition of legal consequences of new legislative acts through adding changes to the Digest of laws, made by a specially appointed organ. To refer to legislation in force, it was necessary to first check the last edition of this part of the Digest, where it was placed in the first edition of 1832, and, second, check the last Digest's Supplement, where the latest changes were included. A famous jurist, Nikolai Lazarevskii, analyzed this system of compulsory 'administrative interpretation' and wrote that state officials considered it most effective since they had information about all valid and repeatedly published regulatory legal acts and the specificity of their application.[64] This explanation of keeping priority of the codified legislation over the original clarifies why the governmental actors did not follow well the requirement of compulsory publishing. The expediency principle continued to dominate over the legality principle despite outcry of jurists.[65]

Moreover, there were cases of laws being made simply out of old laws by the codifying body – not by the legislators – when the latter took too long or were unable to come to a decision about a necessary piece of legislation. As an example, consider a case with the statute of the Ministry of Trade and Industry. Founded on October 27, 1905, the Ministry existed without a statute: discussion on a statute to create it was delayed on the legislative level.[66] Eventually, the codifiers of the Department of the Digest in the State Chancellery prepared a document that regulated the Ministry as a combination of regulations of those departments that constituted the new Ministry. It was published in the 1906 Sup-

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[63] See, e.g.,: *Korkunov*, N.M.: Znachenie Svoda zakonov, in: Zhurnal ministerstva narodnogo prosveshcheniia, 9, 1894, p. 77–102; *Lazarevskii*, N.I.: 1. Svod i zakon, St-Petersburg, 1899, p. 2; Lektsii po russkomu gosudarstvennomu pravu, Vol.1, Konstitutsionnoe pravo, St-Petersburg, 1908; *Lozina-Lozinskii*, M.A.: Kodifikatsia zakonov po russkomu gosudarstvennomu pravu, in: ZhMIu, 4–5, 1897; *Pobedina*, E.K.: K voprosu o iuridicheskoi sile Svoda, in: Ibidem, 4, 1909.

[64] *Lazarevskii*, N.I.: Administativnoe tolkovanie zakona, in: Vestnik grazhdanskogo prava, 1, 1916, p. 104–29.

[65] *Shershenevich*, G.F.: Primenenie norm prava, in: ZhMJu, 1903, January, p. 34–82; *Pergament*, M.Ia.: Pamiati dvukh russkikh tsivilistov, in: Vestnik grazhdanskogo prava, 1, 1913, p. 11.

[66] *Gorfein*, G.M.: Osnovnye istochniki po istorii vysshikh i tsentral'nykh uchrezhdenii XIX-nachala XX v., in: Nekotorye voprosy izucheniia istoricheskikh dokumentov XIX – nachala XX vv, Leningrad, 1967, p. 79.

plement of the Digest of Code (supplement to part 2 volume 1) as 'Content and Subjects of the Ministry of Trade and Industry' in the absence of new legislative acts on the matter. This caused a tart criticism in the legislating organ – the State Duma, founded in 1906 for the participation of people representatives in legislative work. Despite the criticism, the document remained in force.

This example shows that the lawmaking practices in Russia were transforming extremely slowly. It seems that what was possible at the end of the 1820s – a special codifying organ under the Russian Emperor that created new legislation for the Digest from old laws – was also possible in the beginning of the twentieth century. A single distinction was important: the expression of doubts on the legality of such methods of lawmaking politics. These doubts appeared as a result of a serious development in education and legal consciousness in Russian society and, above all, the emergence of the legal profession. Representatives of the legal community, with their professional knowledge of formal legislative institutions, played a crucial role in promoting the legality principle, against the unlimited discretion of 'a fair administrator' (tsar, governor or simply chief).

The conflict of conceptions of legality between state and civil actors was indicated in the middle of nineteenth century and sharpened as time passed. According to the archive materials of the codifying organ from the beginning of the twentieth century, editors of the Digest – high-rank officials – expressed concerns on the legality of the codification. However, the opinions of two editors were not supported by their colleagues.[67] Still, this case shows clearly the seriousness of the problem of seeing a law as 'illegal', and this problem definitely affected the usage of written law as a legal source.

IV. Conclusion

Having discussed certain aspects of the usage of legislation as a legal source in the Russian Empire, we can conclude that during the whole imperial period, the central legislative power considered law as *a means of governing* above anything else. The emergence of the legal profession and the growth of social activity in the nineteenth and twentieth centuries brought new actors in the legality field, but did not change the overall notion of an official as a primary addressee of legislation. Sociopolitical features of the Russian Empire formed certain constant characteristics of the Russian legislation that remained very stable regardless of political changes. Based on the research on publishing legislation, the following characteristics can be listed:

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[67] *Borisova,* T.: Zakon i zakonnost' v russkom kodekse 1906–1917 gg., in: Istochnik. Istorik. Istorija, SPb., 2001, p. 11–41.

1. Imperial component. The flexible approach of the central legislative power toward the local character of certain regions undermined the validity of legal definiteness and consequently the legality principle in the empire.

2. Representation of the monarch's power as unlimited by law. Here the term 'representation' is used according to Habermas' conception, which demonstrated a theatrical element of power, a display of its absorbing and irrational spiritual nature. The Russian Empire's legislation embodied this conception through an emphasis on the unrestricted power of Russian autocrats, above the law

3. Domination of a paternalist basis of state institutions toward citizens, fixed in legislation. This appeared especially in the procedure of the compulsory inclusion of new legislation in the Digest of Code of the Russian Empire by a special state organ. Since the Digest was created as a 'codification' of the Russian law, its updating was called 'codifying recycling of law' ('кодификационной переработкой закона'). State officials, judges, as well as citizens and their advocates were rejected in their ability to interpret independently new legislation.

4. The aforementioned characteristics questioned the necessity of a compulsory proclamation of legislation for general awareness, which weakened the actual observance of the legality principle.

5. The conflict between administrative and legal understandings of legality started in the middle of nineteenth century because of the emergence of the legal profession. This conflict escalated into the beginning of the twentieth century, at which point, for the elite, questions of law became purely political, and law itself was in a way discredited.

The legality principle, which requires full accessibility to legislation, existed in Russia, but only with very serious restrictions. This aspect of the legality principle was, however, achieved in 1906, at least in terms of written law: *all* legislation had to be published. In reality, though, the five aspects listed above significantly narrowed the meaning and action of this legal requirement.