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Evolution of the judicial system in 19th century Imperial Russia

Richard Casson

Colby College

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The Evolution of the Judicial System
in 19th Century Imperial Russia

by

Richard F. Casson

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APPROVED BY

John W. Strong
Tutor

Harold B. Raymond
Major Advisor

[Signature]
Major Department Chairman

[Signature]
Senior Scholar Committee, Chairman
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Introduction

There is a common misconception that only a very primitive judicial system ever existed in Imperial Russia. This paper shall demonstrate that this belief is quite false. Chapter I will present a cross-sectional analysis of the legal and court system in Russia during the reign of Nicholas I, exemplifying the condition of the courts during the entire first half of the 19th century. The analysis will show that a judicial system definitely existed, but that it was in a corrupt, complex, and confused state. It will be demonstrated that the structure of the system consisted of an over-abundance of courts with no distinct jurisdiction or duties, and that the judges, prosecutors, and attorneys, as well as civil servants at all levels, were depraved and ignorant. An investigation of the procedure will prove that it was inquisitorial by nature, lengthy, and expensive. The progress made during the reign of Nicholas I to improve this state of affairs will be traced in the latter part of Chapter I. Sperensky's work to codify the laws will be emphasized. During the early years of the reign of Alexander II, definite steps were taken to completely revamp the judicial system. These steps, which will be described in some detail, culminated in the Reform of 1864.
Since this reform created a completely new legal structure, Chapters II and III shall be concerned with a detailed description of this new system as ordered in 1864. Chapter II shall discuss the total structure of the courts. It will be stressed that a great simplification of the old system was brought about, reducing the number of courts and instances of appeal. Every court involved will be analyzed carefully. Chapter III shall include a description of the individual parts essential to the functioning of the courts, as well as a discussion of the procedure involved. It will be demonstrated that a new and independent judiciary was created; that legitimate attorneys and bar associations were instituted. An analysis of the procedure will show that people accused of crimes were protected in court through the institution of publicity, oral testimony, and trial by jury.

Chapter IV will be concerned with the workings of the new judicial system as it was put into effect. It will trace the growing reactionary attitude of the government beginning as early as 1870 and the resulting deterioration of the judicial system until 1917 when the revolution fundamentally altered this system.

It will thus be shown that before 1864 the condition of the legal and court system in Russia was at a low ebb; during 1864 and the years immediately following it, it reached its peak. After 1870, the system began to deteriorate, though it never again declined to the level that existed before the Reform of Alexander II.
CHAPTER I

The Old Courts

Your courts are black with black untruth,
You are branded with the yoke of slavery,
Filled with godless flattery, putrifying lies,
With dead and shameful laziness,
And lowly filth of every kind.¹

This poetic description of the courts in Russia prior to 1864 was written by the slavophile, Alexis Khomiakov. It serves to introduce this chapter which contains a cross-sectional analysis of the courts during the reign of Nicholas I. This poem, though a bit overemphatic, is a fairly accurate description of the deplorable condition of the courts under Nicholas I. Much of the same sentiment can be seen sometime after the reform had been inaugurated in a remark made by Ivan Aksakov who had, himself, served on many pre-reform judiciary institutions: "The old courts! At the very memory of it my hair stands up on end, a frost raps my skin!"²

The entire court system was very complex. It included a great many instances, or levels of appeal, designed to serve as a check and counter-check system, but which merely hindered the procedure that was already too slow and inefficient. The complexity of the judicial system was also caused by the great variety of courts at each level of appeal,
which in turn, was the result of a system based on class
distinction. Lastly, the courts were so dependent upon the
administration, that they were referred to as the "appendi­
dices of the administration." 3

There existed, basically, only three levels of appeal.
The courts of first instance were courts of original juris­
diction. At this level, criminal cases, after a preliminary
investigation, as well as civil suits were tried for the
first time. Among the courts of first instance there were
district courts, consisting of a president and four asses­sors, two elected by the nobility, and two elected by the
state peasants. 4 In addition to these there were municipal
courts and aulic courts, both of which, consisted of a bur­
gomaster, and two elders; guildhalls; boundary offices;
commercial courts; and, arbitration courts. 5 Both civil and
criminal cases originated in all of these various courts de­
pending upon the issue involved, but the jurisdiction of
these courts often overlapped.

In the second instance, or appellate instance, the civil
and criminal tribunals were called Palaty and were, in smaller
towns, combined into one court. The civil and the criminal
courts of second instance consisted of the President,
who was elected by the district nobility, the President's
Deputy, who was appointed by the Minister of Justice, and
four assessors, two of whom were also elected by the nobility
of the district and two by the merchants (burghers). 6
The third instance was the Ruling (or Governing) Senate consisting of Senators appointed by the Government. In reality, however, there were as many as eight steps through which a case could conceivably pass before finally being settled. A. F. Kon I, one of Russia's better known jurists during the era of the reformed courts, gave an excellent description of these eight possible steps:

A suit or criminal case which started in a district or aulic court could be submitted to the appellate instance of the civil or criminal Palata; then to the corresponding department of the Senate; further, in case of divergence of opinions among the Senators, to the General Assembly of the Senate; from the General Assembly, in case a majority of two thirds of voices had not been reached, to the Advisory Board of the Ministry of Justice. From there, the case or suit had to be sent back to the General Assembly of the Senate together with a conciliatory order from the Minister of Justice to the Chief Prosecutor. If again the majority of two thirds required for a decision had not been obtained in the General Assembly of the Senate, the procedure was taken over by the Department of Clerical and Civil Affairs of the State Council. Furthermore, the decision of the General Assembly of the State Council had to be confirmed by the Emperor.

In addition to these many instances, each with their various courts, and all of which were included in the grouping of "regular" courts, there existed numerous "special" courts for every class of society. The state peasants had village district administrations known as volostnye sudy. In some civil suits the jurisdiction of

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*The Senate, which had been founded by Tsar Peter the Great in 1711, was suffered to be the chief administrative and legislative organ as well. The supremacy of the Senate, however, was largely theoretical. Its activities, other than judicial, were insignificant.*
this court was shared by the provincial board. To the police
were assigned the collection of money where the debtor did
not deny his obligation, but would not pay; and, inquiries
into criminal cases. The "special" courts which would have
affected the largest part of the population, had they been
used extensively, were the manorial courts. These courts
were merely an informal session conducted by the manor lord
in his home. This informality did not limit the lord's
rather extensive powers. His jurisdiction covered all cases
involving his serfs except for the crimes of brigandage and
murder. As punishment, he could have had his serfs beaten,
sent into military service, or sent to Siberia. According
to the Code of 1833, the manor lord could employ any means
of punishment which would not endanger the serf's life or
result in mutilation. A whole arsenal of flogging instru­
ments were developed such as rods, staffs, whips, and bundles
of leather thongs twisted with wire. Robinson, an authority
on peasant life in Russia under the old regime, points out
that, despite the Code of 1833, these instruments were occasion­
ally used so zealously, that the serfs were beaten to
death. The manorial lord, however, could, and often did,
surrender his serf to public justice rather than exercise
the prerogative of his own jurisdiction. Under the law of
1845, the manor lord was compelled to surrender his serfs
to public justice in cases where the offence was against
himself or his family, or another of his serfs, or where the
injured party was an outsider who preferred to carry his
complaint to the public authorities. 9

The procedure in the public courts was very slow and inefficient, mainly because it was inquisitorial in design and was based on the "doctrine of formal evidence."* This inefficiency contributed to the overall chaotic condition of the courts.

The preliminary investigation was entrusted to the police, organized into the zemsky sud, a type of police court. It consisted of a zemsky ispravnik (a local police officer); a chief permanent assessor, elected by the nobility; two other assessors elected by the peasants belonging to the state; and several stanoviy pristavi or district police officers who were appointed by the government and who functioned also as assessors. In important cases, a division of this police court carried on the preliminary investigation, while in less important ones, a police officer alone conducted it. 10 The major fault of the preliminary examination was in the way witnesses were treated by the police. It was required that as soon as the police learned or suspected that a crime had been committed, they had to arrest anyone who had any knowledge of the crime. These people were not released until the inquest was concluded. Indeed, witnesses were arrested on the spot and held as suspects until their innocence was

*Both of these terms will be explained below. "Inquisitorial" will be found on p. 6. "Doctrine of formal evidence" will be found on p. 11.
proved. The result was that a theft or even a murder could occur in broad daylight and there would never be an eye­witness.11

The procedure, as a whole, was plagued by its inquisitori­
torial form. The procedure was secret, that is, it was held
to behind closed doors, the judge appearing publicly only to pass 
sentence. Secret procedure helped to make venality greater 
among the judges. Leroy-Beaulieu, a French historian who 
wrote of Russia at the end of the 19th century, stated:
"...: the symbolic scales of justice serve to weigh not so 
much rights and titles as offers and presents."12 There was
no oral procedure; thus, witnesses did not appear on the
stand and testify, subject to examination and cross-examina-
tion. Rather, every scrap of evidence as well as every legal 
ground upon which the decision was finally based had to be 
put in writing. The complicated process of coming to a
decision also had to be documented, and all together, these 
things had to be entered into the proper register. Every
document and register had to be signed and countersigned by 
various officials. This process had then to be repeated at 
every level of appeal.13 Although this system was intended
as a check against venality and corruption, it only tended to 
further these abuses. This written procedure made the clerks
and minor officials more powerful; and, they were often less 
moral than the judges. Wallace, a British historian who
visited Russia in the 1870's, described the powers held by 
the secretary of the court under the old system. He illus­
trated what happened in a typical criminal case:

The secretary examined the written evidence – all evidence was taken down in writing – extracted what he considered the essential points, arranged them as he thought proper, quoted the laws which were in his opinion applicable to the case, put all this into a report, and read the report to the judges. Of course, the judges, if they had no personal interest in the decision, accepted the secretary's view of the case. If they did not, all the preliminary work had to be done anew by themselves – a task that few judges were able, and still fewer willing to perform. 14

Other aspects of inquisitorial procedure were the lack of any real separation of judge and prosecutor, of trained counsel for the defense, and of a jury system. 15

The procedure was very slow, complex, and costly. This slowness was the result of many aspects of the system, both good and bad. The state, theoretically, took endless precautions to prevent the condemnation of the innocent. The result of all of this careful checking was that an innocent person often remained in jail until the authorities were convinced of his innocence, while a guilty party could put off his actual condemnation endlessly. 16 The system was so slow that at the beginning of the reign of Nicholas I, there were 2,000,000 cases awaiting decisions, and 127,000 persons in jail who were expecting sentences. 17 Irresponsibility of the judges was still another cause for this slowness of procedure, especially at the appellate level. Judges would often wait so long, and let cases pile up to the point where the police often had to go to the courts and force the judges to pass upon the accumulated cases. The results were comic, and at the same time tragic. N. M. Kolmakov, who had served
in the courts and in the Ministry of Justice before 1664, related such an incident; the place was a small provincial town where a Palata (court of second instance) was located:

The President of the court thought for a moment, then ordered the files of all pending cases to be brought from his office. Taking the first file, he pronounced the sentence: "The decision of the first instance is upheld," and put the file to the right side of his desk. Then he took the next file and announced: "The decision of the first instance is reversed," and put the file on the left side of his desk. Then he grasped quickly the remaining files one after the other exclaiming "Upheld," "Reversed," "Upheld," "Reversed," and so on until all the cases were decided upon in this manner. After this "procedure" was finished, the gendarme left with the report that all the pending sentences in the Palata had been pronounced.

This procrastination was summed up in the Russian proverb: "Every man gets his rights - who lives long enough." The complex structure which was set up to act as a system of checks and counter-checks, not only complicated the entire procedure, but made it more expensive as well. For, rather than fulfilling its purpose, it only served to increase delays and abuses. The courts, especially in criminal actions, were so costly for the victim that people who were robbed, beaten, or molested in any other manner, not only neglected to report the occurrence and then press charges, but completely denied what had happened if questioned. There were even cases where victims of crimes bribed the police so that they would not molest the criminal. The person who issued the complaint usually had to pay for the cost of the inquest, for the support of the witnesses, the cost of summons to get witnesses, and for the cost of the
various steps of appeal. In the end, bringing a criminal to justice often cost more than the value of what was lost to begin with.\textsuperscript{21}

What complicated the procedure and tied the hands of the judges most of all, was the requirement that they follow the "doctrine of formal evidence." All evidence was strictly evaluated, with the result that a judge could not, in theory at least, acquit or condemn according to his conviction, but only in conformity with the scale of value as set forth by the law. The scale was as follows: "The best evidence in the whole world" was considered to be the confession of the accused; also, evidence was considered to be perfect when testified to by two witnesses congruously. If the testimony of two witnesses differed, the law prescribed that preference should be given: (1) to the testimony of a man over that of a woman; (2) to the testimony of a nobleman over that of a non-nobleman; (3) to the testimony of an educated man over that of an uneducated man; (4) to the testimony of a clergyman over that of a layman.\textsuperscript{22} As was stated above, the police went to great lengths to prove a man either guilty or innocent. Nevertheless, people were often brought to trial without sufficient evidence presented for either conviction or acquittal. According to the "doctrine of formal evidence" these people had to be left under "suspicion."

The procedure, therefore, was one of the basic faults in the old judicial system. There could not be a better summary of the various evils in the procedure than that
presented by Ivan Aksakov in his highly emotional but accurate description:

Reminiscence, one more revolting than the other, appear involuntarily before us.... There, at the bottom, the old chicaner charged with the preliminary examination is preparing the false basis for the future sentence according to all the formal rules of law. Then, in the district instance, a bribe-taking secretary, with the venal corroboration of the judges elected among the nobility, or with the help of their no less criminal indifference, manufactures a "memorandum" prompting the judges to pronounce a sentence which is hideous not in its form but in its meaning. Thus, after a delay lasting sometimes many years, the case is, finally, reported to the criminal court, Palata, where a similar fate awaits it. In this higher instance sit this time jurists, also noblemen, but appointed by the crown. They will not, of course, content themselves with a report, but will examine the authentic documents. But in vain does a member of an appellate court read the records from beginning to end, examining the handwriting, questioning the paper persistently, searching for a vivid indication, "vivid" in a human sense. The paper is silent, soulless, and dead is the official record of the testimony of the accused. It is necessary to hear him, to enter into all the psychological aspects and details of the crime. Yes, this is necessary! But the old courts did not give either the right or the possibility to do so. If all the evidence required by the law at that time were presented, and in accordance with the form, was unimpeachable, in spite of the reproaches of your conscience, nothing remains except to pronounce a sentence which is an iniquity.

The failings of the personnel in the courts, a subject which is closely related to both the structure and procedure, can be summarized into two categories: inadequacy of training and education; and, venality and corruption. The term

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*This opinion was in accord with Slavophile thought. The Slavophiles were not completely conservative as many people thought. They desired reform as much as Westernizers. They differed from this latter group in that they wanted the reformed institutions to keep their basic Russian character, while Westernizers wanted to replace the Russian institutions with Western ones.
"personnel of the courts" was used to include both the judges and the appointed subordinate officials found at every level of the system, including the Senate.

The judges, who were usually members of the lower nobility, were, in some courts, elected by other nobles. They were usually of a very low caliber because the position of judge offered neither prestige nor a good salary. N. M. Kolmakov, related an interesting occurrence which supports this view concerning the caliber of the judges:

Once Count V. N. Panin, Minister of Justice, came into the court in Petersburg. Entering the courtroom, he found there only a man in underwear with a broom in his hands. To the Minister's question of where the judge was, he answered that the judge was absent, and to the question: "Where is the assessor?" he replied: "I am the assessor." The Count looked at him, gasped in amazement: "You?...Thou?...." and without uttering another word, left the room.24

The judges were often utterly devoid of juridical training and frequently, of any other kind of education.25 N. I. Stoyanovsky, a Russian authority on the old courts, asserted that the majority of the judges, not only in the magistrate and aulic courts, but also in district courts, were illiterate. Even Senators were often found to be almost illiterate.26

It has been previously mentioned that the judges in many of the courts were elected by the nobility, usually through the district assemblies of the nobility. The institution of elected judges was not beneficial at this time because the caliber of the judges could not be evalu-
ated when procedure was conducted behind closed doors. The elections really had a bad outcome. Because they were held every three years, the magistrates were often removed from office before they became accustomed to their jobs and before they became familiar with the laws. Since judges were thus in office for only short periods of time, the power of the already too powerful clerks and minor officials of the courts was increased. 27

Bribe-taking was widespread among the judges, but it was almost a necessity because of their extremely low salaries. The people considered it a normal part of the procedure. They felt that "the righteous judge was one who took with both hands and from both sides, but in the end did not sell his decision to either." 28

Indications that the people were definitely aware of what was happening in the courts can be found in some of their proverbs. Three such proverbs were: "No greasing - no motion." 29 "Before the courts all are equal: without ransom, all are wrong." "The horse sued the wolf: a tail and mane were left over." 30

The bulk of this bribery and other forms of corruption was found, not among the judges, who had little to do, but rather among the clerks and other subordinate officials at all levels of importance. Bribery became so well organized that lower officials had to pay their superiors or expect every kind of chicanery, including administrative punishments, or even an indictment at the first possible occasion. 31
The actual methods used to extract bribes from people trying to sue in the courts followed a set pattern. Jerrman, an historian writing during the pre-reform period, described this pattern:

At the very first step taken by the plaintiff in a cause, the clerk or secretary finds that the paper handed in is totally incorrect in its form, and politely requests that it may be drawn up a second time in a more regular manner. This is neither more nor less than an indirect demand for twenty rubles banco. The uninitiated in such matters, who finds his petition (in Russia everything is a "petition") perfectly regular, and insists upon its reception, may rest assured that it will be duly shelved and so remain; on the other hand, persons initiated in the mysteries of Russian justice, rectify the imperfection of their "petition" by handing in the twenty rubles, by virtue of which they may rest assured that no exception will be taken to its form, and that their suit will be advanced one stage. But it unfortunately happens that twenty or more such "petitions," each one of which must be weighed with the stimulative douceur of twenty rubles, need filing before the end of a suit, so that, although exempt from legal charges, the gainer of a suit often finds himself out of pocket to twice the amount he has recovered. 32

Thus far, the judicial structure, procedure, and personnel have been studied. It is now necessary to examine another side of the legal system, namely, the lawyers. Here the picture was just as black. There were no lawyers as such; but anyone, with a few exceptions, could act as representative for the plaintiff or defendant in civil suits, or of the defendant in criminal actions. These representatives, in either case were called stryepchye. Those who could not be included in this category were: (1) underaged persons; (2) peasants belonging to the Crown when litigation concerned the Crown; (3) members of the clergy; (4) persons who had
been involved in some form of criminal activity; (5) former officials who had been dismissed for criminal activity; (6) and those who were then under police supervision.33 These stryapchiye merely wrote out the necessary papers and forms, since there was no oral procedure. They were generally a pretty corrupt lot. N. A. Potenkhin, a distinguished lawyer who joined the bar after the Reform of 1864, described these court representatives, the so-called advocates, by dividing them into three categories:

To the first group belonged advocates who were at the same time court officials, i.e., secretaries, chief clerks, assistants to the sheriff, registrars and other employees of the courts. They were not bribees in the direct sense of the word; they merely assumed the carrying on of lawsuits in the courts where they were employed, and directed these suits towards a just decision according to their understanding. The second group of advocates, a very numerous one, included the professionals. It consisted of retired officials who in the majority of cases had retired because of some "trouble in the service". Their juridical knowledge, acquired mainly during their service, was very poor. The third group cannot be generally defined: it was merely a mixed crowd, such a mish-mash of positions, qualities and conditions that it is impossible to find common traits, to give a general description. These were noblemen, ruined landowners and merchants, retired military men, even bartenders from houses of prostitution and beer houses, officials expelled from the service, etc. Such advocates were called yabadniki, blood-suckers and ink-souls. But the best name for them was krapivnoye semya (nettle seed). Indeed, nettle grows on every rubbish, close to hedges; it does not need fertile soil; it is very branchy; it has rather a nice greenness but contact with it is dangerous. It burns so strongly, and causes such pricks, that the comparison of "advocates" of old times with nettle seed is quite correct.34

Most of these advocates had no formal training in law, but what education was available was faulty. The ancient laws of Russia were not studied, merely the latest code. Roman
Law and European laws of the early 19th century were also completely neglected.\textsuperscript{35}

The evils inherent within the old judicial system have been examined. These evils appeared in the court structure, the procedure, the personnel of the courts, and the lawyers. There were at least three theories advanced to explain why such a system existed. At first glance these theories appear to be quite different. Jerrman felt that the laws, themselves, were good, but that the good intentions of the law givers were neutralized by those appointed to administer them. He claimed that the laws were adapted to the spirit and character of the people. He pointed out that while corporal punishment existed, it was not as barbaric as one might have thought, as it replaced capital punishment in many instances.\textsuperscript{36} Leroy-Beaulieu felt that no system could ever be effective which had such a great number of laws which were contradictory and confusing. He further claimed that this state of the laws was caused by the existence of an autocratic government, since the Tsar could and did, change laws at will by issuing a counter-law through an imperial ukase (order). He then concluded that a good system of laws could never exist under an autocratic regime.\textsuperscript{37} Kornilov felt that these laws and this system, both of which were based on class division, were inevitable as long as serfdom lasted. He felt that only when serfdom was destroyed, could a new system be successfully created.\textsuperscript{38}

Careful examination of these statements shows that
they all pointed to the same answer. Jerrman, when condemning the administrators of the laws, was condemning the entire bureaucratic system, found under an autocratic regime. This was also the position of Leroy-Beaulieu. The latter, furthermore, did not contradict Jerrman when he stated that the laws, on the whole, were bad. Jerrman merely stated that the laws individually were good, but admitted the system was bad. Kornilov placed the blame on serfdom for both bad laws and bad administration.

The answer appears to be that this complicated and confusing system was the result of an autocratic regime, which, functioning as most regimes of this type did, created a mass of confusing laws based on class distinction. It also created a bureaucratic machine to carry out these laws; this bureaucratic system bred disorder and corruption.

It should be recognized that the entire period of Nicholas' reign was not completely lacking attempts to better the judicial system. An investigation of the Decembrist Revolt by Nicholas I, brought home to him the glaring disorders, inadequacies and injustices of Russia's administration.* These investigations indicated that one of the most serious deficiencies lay with the court system. The Tsar

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*On the morning of December 14, 1825, the troops in the capital were paraded in the Senate Square to take an oath of allegiance to Nicholas I. The soldiers, most of whom belonged to the Northern Society (a revolutionary society), when called upon to take the oath, fired upon the Tsar and other officials. Cannon fire from loyal regiments that had been ordered to stand by for just such a situation, put down the mutiny quickly but with much bloodshed. All members of the Northern Society were seized. It was then that full testimony concerning the reasons for the uprising was recorded.
felt that some of these failings had to be rectified. He was, however, afraid of bringing any radically new elements into Russia's political organization. His aims were quite modest and limited: "He wanted to preserve all that was good and useful in the existing system, making only minor 'mechanical' improvements and adjustments where they were needed for the good functioning of the machinery of government." 39

Nicholas, on January 31, 1826, added a special section to his private chancery, which he called the Second Section of His Majesty's Own Chancery. This Section was given the task of completing the codification of Russian law. The official chairman was Balugiansky, but the person who was really responsible for completing this task was Michael Sperensky. 40 Unlike his previous attempt at codification in 1808, 41 Sperensky now realized that the code could not be based upon foreign legislation, but rather on his own nation's history and tradition. 41 The first goal was the collection and publication of all legislation issued since the Code (Ulezhenie) of Tsar Alexis in 1649. The second goal was to compose a Digest (Svod) using the collection just mentioned as a basis. The Digest was to include all of the legislation still in force, eliminating all of the laws which had been revoked or amended. 42 The Second Section, under Sperensky's efficient direction, set to work on the

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40 In 1808, Sperensky began a codification of the laws. In doing so, he tried to rewrite the laws, basing them on western legislation. Alexander I became angry upon learning of this and put an end to the project.
first task; all the legislation since 1649 was gathered, its textual accuracy established, the laws arranged chronologically, and the documents prepared for publication. Sperensky supervised all the details of the work personally. He set schedules, made plans, and had the entire material presented to him at every stage. In 1826, the Complete Collection of the Laws of the Russian Empire was completed. It contained 1500 chapters, with 45,000 articles in 45 volumes and several volumes of appendices. It was not issued until 1832. The second task, the Digest, was completed in 1833, and, after being submitted for comment and review to various government bodies, it came into force on January 1, 1835 as the sole authoritative source of Russian law.43

The Digest was based on all laws in force as of January 1, 1832. Another important aspect of the Digest was that it disregarded the various classes of people in the country (no differentiation between serfs and non-serfs).44 It simply listed four categories: Nobility, clergy, inhabitants of towns, and inhabitants of the countryside.44

There were four overall results of the Complete Collection and the Digest. Education in law became possible. Judges, if they wished, were able to make uniform decisions. The foundation for the Reform of 1861 was laid by clearly defining the laws. With the establishment of regular codes, the necessity for honest judges, competent tribunals, and

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43 This aspect served merely as a base for the new judicial system. Class distinction remained a foundation of the old system.
efficient administration of the law became obvious. In 1861, Alexander II, realizing this, completely changed the social structure of the country by emancipating the serfs. This one act liberated 22 million humans. It was not enough. Once the social structure of the country underwent a change, it became necessary for the political structure, or part of it, to undergo a similar transformation. The Judicial Reform of 1864 thoroughly changed the legal and courts system; a major part of the political structure. Kucherov, one of the few authorities on the new courts, said the following in regard to the interrelation of the emancipation of the serfs and the court reform:

All the reforms of the reign of Alexander II, and especially the liberation of the serfs in 1861 and the Judicial Reform of 1864 are undoubtedly interrelated. The Judicial Reform would have been impossible without the liberation of the serfs, and an emancipated people could not have lived under the old administration of justice. The proper functioning of the judicial system is impossible where the majority of the people are deprived of liberty and are merely the object of rights of other people degraded almost to the level of things. On the other hand, free people need an adequate judicial system.

This war, which was fought primarily in the Crimea and Roumania, was waged from 1853-1856. Though Nicholas had mobilized a million men, most of them never saw action. The supply lines broke down completely. Money which was supposed to have been spent to secure new weapons had been pocketed by officials, so the Russian armies fought with antiquated weapons. The feelings of the people towards the existing government was expressed in the popular disinterest in the invasion of Russian territory.
The actual process of the formulation of the 1864 Reform began in 1850 and 1852 when two separate committees were set up for drafting codes of criminal and civil procedure, respectively. S. I. Zarudney became secretary of the committee on civil procedure, and was the driving force behind the actual Reform of 1864. Part of the task of drawing up the codes was to investigate the machinery of justice as organized in foreign countries, particularly England and France. From these investigations, a set of Basic Principles was formulated by January 30, 1862. The Emperor ordered a statement, in general terms, of the deliberations of the State Chancellory on these Basic Principles. In April, 1862, the Basic Principles were discussed in the Department of the State Council. The Emperor, on September 29, 1863, approved the Basic Principles which were then published in the Collection of Ordinances and Decrees of the Government in order to allow the public to discuss them. A month and a half was then given to the people to present suggestions. A total of 466 suggestions were received and then published in six volumes. These suggestions, however, were barely used in shaping the reform. A special commission attached to the State Chancellory was set up to draft the various codes. In the fall of 1863, this commission submitted the drafts of the Judicial Institutions and the Codes of Civil and Criminal Procedures to the Second Division of His Majesty's Own Chancellory, and to Minister of Justice Zamayatin. Accompanying these drafts were explanatory notes.
covering 1,758 pages. In December, 1863, the State council approved of the drafts. On November 20, 1864, an imperial ukaze announced the Reform to the Russian people.\(^4\)

This reform was of the greatest importance both ideologically and politically. The Reform of 1864 was an expression of humanitarian and intellectual thought in Russia. Politically, it meant a restriction of autocracy.\(^4\)

Leroy-Beaulieu said the following of the Reform:

> Of all the reforms Russia owes to Alexander II, the judiciary reform is, in this sense, the most important, that which was necessarily to exercise the greatest influence on social life and national morals. It is indeed scarcely inferior in importance to the liberation of the serfs, for it equally concerns all classes of the nation. Without this reform, all the others, beginning with emancipation, might have ended in disappointment and remained a vain and useless show, with no real bearing on the people.\(^5\)

It has been mentioned that the commission that drafted the new codes investigated other European court systems. The result was that the Codes were strongly influenced by various other systems. Both Leroy-Beaulieu and Wallace emphasized this when they stated: "In the general plan and details of the judiciary system, Russia imitated France and England, taking a paragraph from one, a line from the other,..."\(^5\) "It is not, however, a servile copy of any older edifice; and it may be fairly said that, though every individual part had been fashioned according to a foreign model, the whole had a certain originality."\(^5\)

Because Russia based her new court system on the practices of the most advanced states of that day, as well as on the general
ideas and abstract notions of these states, she created, in theory, one of the most efficient judicial systems existing at that time in the Western world.

Thus, out of the chaos and confusion of the old judicial system, there sprung up what appeared to be a new and enlightened system. A detailed study of this system and how it worked constitutes the remainder of this paper.
CHAPTER II

The Overall Structure of the New Courts

On November 20, 1864, Tsar Alexander II approved the Judicial Reform Act. In accordance with this act the greater part of the court system was divided into two mutually independent sections which were not superimposed one over the other, but rather, were parallel to each other. They met only at the summit, the Senate, which acted as court of cassation. One section consisted of what were known as the "inferior courts." The court of first instance was made up of Justices of the Peace who heard petty affairs, the adjustments of which did not demand much judicial knowledge. Cases heard by the Justices of the Peace were appealed to Sessions of the Peace, where all the Justices of the Peace of several judicial districts sat together. From there, cases heard in the inferior courts were sent on points of law or procedure to the Senate.¹

The other section consisted of what were termed the "ordinary courts." These courts were entrusted with the important cases. Here also there were three instances, the first two of which were completely different and separate from those of the inferior courts. The circuit courts, covering several judicial districts, were most often the
courts of first instance. Here both civil and criminal cases were tried for the first time, the latter being tried usually with a jury, while the former never employed a jury. Civil cases were appealed to the Sudebnaya Palata on points of fact, but there was no level of appeal for criminal cases. All cases, however, could be pleaded in the Senate on points of law or procedure. A diagram is presented here to clarify the overall picture of the major courts:

The Reform of 1864 created a set of extraordinary courts as well as the ordinary and inferior courts just mentioned. These included the peasant courts, the ecclesiastical courts, *The Senate also acted as a court of first instance for the trial of important officials.*
and the military courts-martial. They were of considerable importance because their jurisdiction covered a large segment of the population.

The Justices of the Peace were an essential part of the court system. They tried the huge mass of minor cases that would otherwise have jammed up the ordinary courts. Their jurisdiction in criminal cases covered misdemeanors punishable by reprimand, rebuke, fines not exceeding 300 roubles, or imprisonment up to one year. In civil cases, their jurisdiction covered claims based on personal obligations and on property not exceeding 500 roubles in value, claims for damages not exceeding 500 roubles in value, actions for insults and outrages, and suits for transgressions of rights of possession, if the transgression occurred not more than six months before the case was brought to court. The cases handled by the Justices of the Peace, in short, were petty cases involving no abstract principles of law. They were merely conflicts and disputes which arose naturally in the relations of everyday life. The procedure was very informal. Decisions were made mainly on equity, often taking local customs into account. The initial duty of the Justices was to attempt to conciliate the two opposing parties. The Justice of the Peace courts were for that reason called "conscience

*The rouble in 1864 was approximately equivalent to $.50 in American currency.
The procedure, being informal, the Justices wore no robes or uniforms, but merely plain coats with an insignia hung around their necks on a chain of gilt brass. In these courts, the procedure was oral and public, showing no vestige of the old inquisitorial procedure which had been practiced before 1864. The actual workings and practices of these courts were described by Wallace, a British historian writing on Russia in the 19th century:

When anyone has a complaint to make, he may go to the Justice of the Peace (Mirovoi Sudya) and explain the affair orally, or in writing without observing any formalities; and, if the complaint seems well founded, the Justice at once fixes a day for hearing the case, and gives the other party notice to appear at the appointed time. When the time appointed arrives, the affair is discussed publicly and orally, either by the parties themselves, or by any representative whom they may appoint. If it is a civil suit, the Justice begins by proposing to the parties to terminate it at once by a compromise, and indicates what he considers a fair arrangement. If, however, either of the parties refuses to consent to a compromise, the matter is fully discussed, and the Justice gives a formal written decision, containing the grounds on which it is based. In criminal cases, the amount of punishment is always determined by reference to a special Criminal Code.

The Justices of the Peace were elected by the Zemstvos*

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*The Zemstvo were assemblies composed mainly of the landed proprietary class. It was the chief organ of local self-government. The Zemstvo existed on district and provincial levels, the members of the district Zemstvo electing the members of the provincial Zemstvo. The members of both were elected for three years and met once a year. They were concerned primarily with local economic needs, such as upkeep of roads and bridges, maintenance of prisons and hospitals, and prevention of famine. They had no executive power. They depended upon the cooperation of the police and other Crown officials, over whom they had no control, for the carrying out of their decisions.
in most places and by the Town Dumas in Moscow and St. Petersburg. The magistrates were elected rather than appointed for two reasons. They had to decide cases involving various classes of people, so they needed the esteem and confidence of those people. They allegedly gained this esteem by being elected to the office, although this was hardly valid reasoning. The fact that there were too many Justices for the administration to have appointed without leading to intrigue and favoritism was, however, a valid reason for elections. The law conferred on the governor of each province the right to present his remarks on the candidates proposed for election to this office of Justice of the Peace, and to order a list of the elected judges to be sent to the First Department of the Senate for ratification. The power of the electorate was thus limited, but it helped to insure the possibility of better qualified candidates being elected. 9

There were monetary and educational requirements for these magistrates. It was necessary, in the rural districts, for the Justice of Peace, his parents, or his wife, to own 900 down to 400 dessiatinas* of land, depending upon the province in which he lived. In the absence of land, the law required that those in the country have buildings worth 15,000 roubles. In St. Petersburg and Moscow, one only had to have real estate which was valued at 6,000 roubles.

*One dessiatinas of land was equivalent to 2.7 acres.
In other cities the qualifications went as low as 3,000 roubles. All of these various qualifications appeared extremely low for that period of time. The law, furthermore, made no provision for the fact that land or buildings could be mortgaged to their full value and bring in no income. The educational requirements were also lenient. Neither special knowledge nor an university degree were required. It was sufficient to have graduated from a gymnasium or equivalent institution.

The Justices of the Peace in Russia, unlike England, where similar magistrates performed administrative functions, were limited to strictly judicial duties. The salaries of the Russian Justices of the Peace, were decided by the assemblies that elected them. These salaries were often not too high, the amounts varying with the locality. A salary was often about 2,000 roubles, though in some provinces it fell to 1,500 roubles, and in the large cities it rose to 4,000 or 5,000 roubles. The Justices had to defray all their expenses such as the furnishings and heating for their offices and courtroom and the salary for their clerk. These qualifications might have been considered as insufficient to insure honesty in this court. Leroy-Beaulieu made a statement to the contrary:

Indeed if I may venture to decide the question from my personal experiences, I must confess that, as far as culture goes, if not professional capacity, this elective magistracy seemed to me much superior to that which bears the same name in France. If the
double qualification of property and education is not sufficiently high to insure the justices against all error or temptation, their own morality and character, in most cases, place them above attempts at corruption, and their upright intentions make up for any deficiency in juridical love. Among these elected justices bribe-taking is almost unknown. Already the man of the people, the peasant, who used at first to prostrate himself in supplicant guise at the feet of the magistrate, is learning to take his stand on his right and to confide in justice.

Besides the regular Justices of the Peace, there were Honorary Justices of the Peace. The duties of these magistrates were optional. They were able to sit merely on civil cases and then only with the express invitation of both parties involved. The office of Honorary Justice of the Peace was given to the most prominent men of the locality; usually, the greatest landed proprietors or the highest officials. These magistrates existed in order to raise the position of the Justices of the Peace in the public estimation.14

Appeals were not made to the ordinary courts, as in other countries, but rather to the Sessions of Peace (also known as the Assizes of Peace). Appeals could be made to these Sessions if the sum at issue, in civil cases, exceeded thirty roubles, or if in criminal cases, the punishment exceeded a fine of fifteen roubles or three days' arrest. The Assizes of Peace met at a monthly session, lasting two or three days at a time. They consisted of all the Justices of the Peace of the district. All of the Justices did not have to be present; three Justices, one of whom presided,
were sufficient. They considered appeals against decisions of the individual Justices. The magistrate whose decision was being discussed, took no part in the proceedings. The cases were public but relatively informal. In this instance the case was completely reopened. An assistant of the Procurator had always to be present at these Sessions. He gave his opinions, as legal advisor, in some and all criminal cases immediately after the debate, and the court took his opinion into consideration in forming its decisions.

These Assizes of Justice had the power, after reopening the case, to annul the sentences of the Justices on the ground of lack of jurisdiction, as well as of violation of the prescribed forms. In the latter case, they referred the case to another justice. The decisions of the Assizes could only be attacked in the Senate. This supreme court could annul the decisions on points of law or procedure and would then have to refer the case to the Assize of Justice of a neighboring district.

Litigants in the inferior courts could be represented and defended by anyone whom they wished. The representative did not have to be a lawyer. The attorneys who were employed in these courts, however, usually limited their practice to this level. They often had little knowledge and doubtful morality.

The ordinary courts contained three major branches: the circuit courts, the Sudebniye Palaty, and the Senate.
The circuit courts acted as courts of first instance for both civil and criminal cases. Civil suits were tried merely before the bench. Criminal cases were tried before the judges and a jury. In the circuit courts, whether a jury was employed or not, three judges sat on the bench, one of them presiding. It was required by law that these judges be trained lawyers. For sometime after the passage of the Codes of 1864, it was difficult to fulfill this last requirement since there had been few trained lawyers in Russia before that date. It was therefore required that an attorney appointed by the Crown be present at all trials. It was his duty to give his legal judgements which could then be considered by the judges, if they wished, in forming their opinions of the case. Knox, a critic of the Russian court system, gave an interesting account of a courtroom situated in a typical circuit court:

At mid-day of the second day after their arrival the judges opened court. The hall of justice is a large room, at one end a dais, on which are the judges, clad in scarlet and ermine, in large arm-chairs. Behind them hangs a life size painting of Christ on the cross, and on the table in front of the judges' chair is a gilded crucifix.... Mounting the dais the prosecutor follows and takes a seat in a rostrum at their right. The gendarmes then enter with the prisoners, escorting them to a dock opposite the prosecutor.

The second branch of the ordinary courts was the Sudebniye Palaty, or Law Chambers, with or without class representatives. The most common of the two was the Sudebnaya Palata without representatives. This court acted as the appellate instance for civil cases tried in the circuit courts.
There was no jury employed, but rather, five judges sat on the bench. As far as it was possible, these judges were also trained lawyers. They heard appeals on points of fact and could modify the sentences of the circuit courts. The decisions of these courts were final; from there cases could only be sent to the Senate for cassation (appeal on points of law or procedure). There were only eight Law Chambers in Russia; all within a limited area. The eight courts were located at St. Petersburg, Moscow, Kasan, Saratov, Odessa, Kiev, Smolensk, and Vilna.

The Sudebnaya Palata with class representatives consisted of the five judges of that court plus four class representatives. The four representatives were: the province and district Marshalls of the Nobility, the mayor of the town in which the court was located, and the elder of the local canton. Together with the professional judges, these four men decided both questions of guilt and punishment of the accused. Courts with class representatives had jurisdiction over crimes against the state, such as treason. These courts, being less equitable than the others because of their composition, did not appear to fit into the pattern of the new judicial system as a whole.

The Senate stood at the summit of the court system. It was divided into two departments. The first department heard appeals from the Sessions of Peace (the inferior tribunals). The second had authority over the ordinary tribunals, and was
therefore itself divided into two sections. The first section heard appeals in civil suits from the Sudebnaya Palata, while the second section heard appeals in criminal cases from the circuit courts. The appeals were examined by all members of the department. All appeals from inferior or regular courts, civil or criminal, were heard merely on points of law or procedure, not on the material facts of the case. The Senate was called, therefore, the cassation instance. If it decided that there were some grounds for invalidating the earlier decisions, it did not decide the case, but merely handed it down to another court on the same level from which it came to be tried anew. The Senate also acted as a court of first instance to try high officials accused of the gravest offenses committed against the State, such as high treason. A special "Presence" of the Senate was created for such cases. While the death penalty was abolished for all other courts except courts-martial, the Senate did have the power to sentence a person to death for crimes committed against the person of the Tsar or his family. The Joint General Assemblies of both Departments of Cassation also acted as a court of second instance for cases judged by this special "Presence" of the Senate. Leroy-Beaulieu summed up the juridical duties of the Senate when he stated:

It is at one and the same time, supreme court of appeal, the court that tries accused members of the administration, and the court for the auditing of accounts; it had a heraldic department; it does duty
The Peasant Courts were the most significant of the extraordinary courts found in Russia after the Reform of 1864. They were also referred to as the Cantonal or Volost Courts. Three judges who were peasants and who were elected by peasants sat on the bench of these courts. The jurisdiction of the Volost Courts covered civil actions where both litigants were peasants and where claims did not exceed 100 roubles. More important civil cases involving peasants were also tried in these courts rather than by a Justice of the Peace or in the ordinary courts if the consent of both parties was obtained. Peasant Courts for civil suits were necessary because in peasant villages collective property prevailed. The rights of families belonging to the same village and those of members of the same family were frequently very insufficiently defined and too vaguely established to serve as a basis for civil action in regular courts. The Peasant Courts also heard criminal cases, including all cases where "offences against sound police regulations" were committed. This consisted of all misdemeanors and petty offenses committed within the precincts of the volost by peasants.

*By the Emancipating Act of 1861, land was allotted to the commune and not to the individual households. Furthermore, a new territorial administrative subdivision, the volost, was superimposed on the village commune. One volost comprised one or several village communes with a total male population of from 300 to 2,000.
against other peasants. Fights, brawls, disorderly conduct of any kind, drunkenness, and begging were also tried in the Volost Courts. Offenses against property such as swindling, breach of trust, and petty larceny up to the value of thirty roubles were within the jurisdiction of these Peasant Courts. Offenses against persons, including abusive language, threats, blows, and assault and battery of the lighter kind, were likewise tried in the Volost Courts. Domestic suits, as well as other civil suits, often led to quaint decisions. Leroy-Beaulieu gave an amusing example of a decision concerning a domestic quarrel:

I know of a village where the peasant judges had to try the case of husband who had beaten his wife, who, in consequence, refused to live with him any longer. They did not like to pronounce in favor of either; so they sentenced both to a few days' imprisonment, and as there was only one room that could be used as a prison, the two were shut up in it together.

The penalties which the Peasant Courts could inflict in criminal cases were varied. They could levy fines up to three roubles, order a person into prison for up to seven days, sentence him to six days' work for the commune, or sentence him to as many as twenty strokes with the rod. The peasant courts, in this instance, went outside of common law which suppressed corporal punishment. Leroy-Beaulieu explained this exception on the following grounds:

The reason lies in this special nature of this rustic code. Custom and tradition triumph in this case in criminal justice and in penal law as well as in civil law. The quondam serf has grown used to patriarchal corrections and is not very sensitive to the
ignominy of them. His turn of mind is too realistic not to appreciate their practical advantages, and he looks at the rod without any prejudice: it does not take either his money or his time; "after a whipping a man works better and sleeps better" is an old saying.

The communes could vote compensation for the judges of the Peasant Courts, but they rarely did so.

Cases which were within the competence of the Peasant Courts could be transferred to a Justice of the Peace or to one of the ordinary courts, with the consent of both parties involved. Appeals from Peasant Courts went on points of fact to District Tribunals of Peasant Judges. Judges from each Volost Court within the judicial district were present in the District Tribunals. Final appeal on questions of procedure or law went to a special "Presence" of the Governor of the province. The special "Presence" was a board consisting of the Governor of the province, members of the divisional court, and some higher civil servants of the province. 29

The ecclesiastical courts were also an important segment of the extraordinary courts. The court of first instance in this system was the diocesan consistory. There was a court in each diocese. All members of the diocesan consistory were clergy appointed by the Holy Synod* on the Bishop's

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*The Holy Synod was the highest organ of church government. The members of this body were appointed by the civil administration. In reality, it was just another government department subordinate to the Senate.
presentation. Attached to these courts were secretaries who were also appointed by the Holy Synod on the presentation of the High Procurator.* The secretaries were the legal advisors and thus wielded a great deal of influence in the decisions of this court. There were no courts of the second instance, but the Holy Synod, itself, acted as the ecclesiastical Senate. It sometimes heard appeals on points of fact, and sometimes acted as a court of cassation.

The jurisdiction of the ecclesiastical courts was broad. They had jurisdiction over all clergy. They also tried all cases involving matrimony and the annulment of marriages.** Those cases which involved bigamy and marriage through coercion, however, concerned the regular courts as well and had thus to be tried twice. 31

The ecclesiastical courts were not part of the Reform as such. They were really a carry-over from the old judicial system which the Reform allowed to continue. The procedure was secret and written and the accused rarely had the opportunity to speak. The ecclesiastical courts existed mainly

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*The High Procurator was a layman attached to the Holy Synod and whose duties were similar to those of the Procurator-General in the Senate. The Holy Synod was completely under the supervision of this High Procurator.

**The ecclesiastical courts granted annulment of marriages on four grounds only: adultery; insanity if it began before marriage and had been concealed; incurable diseases contracted under such conditions as to make it a new factor of which the other party could not have been cognizant; and absence of the husband or wife without any news for five years, or if known to be outside of Russia, for ten years.
because the imperial government did not want to rob the national church of a privilege it had enjoyed for many centuries.

Military courts-martial constituted still another extraordinary court system. As in many other countries, they had jurisdiction only over military personnel. The various instances of the military courts can best be seen in the following chart:

<table>
<thead>
<tr>
<th>First Instance</th>
<th>Second Instance</th>
<th>Third Instance</th>
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<tbody>
<tr>
<td>Regiment Court</td>
<td>Circuit Court-martial (appeal</td>
<td></td>
</tr>
<tr>
<td>(Circuit Court-martial (appellate instance)</td>
<td>Main Court-martial (Cassation instance)</td>
<td></td>
</tr>
<tr>
<td>Circuit Court-martial</td>
<td>NONE</td>
<td>Main Court-martial (Cassation instance)</td>
</tr>
</tbody>
</table>

The members of the Main Court-martial and the Circuit Court-martial were military jurists, usually graduates of the Military Academy. The Regiment Court was often composed of military personnel who were not necessarily trained for the bench. The preliminary investigation was entrusted to military judicial investigators, and the prosecution was represented by military personnel. The defense was also in the hands of military men.33

A fourth set of extraordinary courts was the commercial courts. These courts concerned themselves with civil cases
between members of the trading class or with any pecuniary cases when the money involved exceeded fifty roubles. These courts were particularly concerned with the bankruptcies of people who lived on commercial credit. They distinguished between three kinds of bankruptcy: "chance bankruptcy" for which there was no punishment; "unlucky bankruptcy" for which there was a comparatively small fine with arrest until the fine was paid; and "malicious bankruptcy" which was considered as breaking the peace and could be punished with imprisonment. These commercial courts were located only in St. Petersburg, Moscow, and Kiev.34

The courts as set up by the Reform of 1864, therefore, fell into three categories: the inferior, the ordinary, and the extraordinary courts. The importance of the ordinary courts should not be disregarded even though the others had jurisdiction covering a huge segment of the population. Leroy-Beaulieu asserted the importance of the ordinary courts (which he referred to as the "new courts") in the following passage:

Of the five great classes into which the nation is officially divided, three are thus more or less exempted from the jurisdiction of the new courts, in whose presence all differences of birth or profession seemed about to be obliterated. The noble and the townsman alone are entirely subject to these courts, which are nominally common to all classes; their jurisdiction is nevertheless very extensive. It is under their cognizance that all civil and criminal cases of any importance are placed; by them, too, are settled all differences arising between persons of different conditions. In this way is restored, at least where civilians and laymen are concerned, the
equality before justice which appeared to be indirectly violated by the continued existence of special courts of law for the different classes.

While the courts appeared to be still somewhat complex, they had really been simplified greatly. There were basically two forms of courts: extraordinary and regular. The former consisted of only four different courts of specialized nature. The latter was broken down into two major groups: the inferior and ordinary. Each of these was based on a single chain of courts consisting of three levels at which a case could be pleaded; the third instance was the same for both. In the regular courts equality was gained by allowing all people to plead in them.
CHAPTER III

Individual Parts and Procedure in the New Courts

Having viewed the general structure of the new judicial system, it is necessary to examine the procedure in the ordinary courts and the more specific parts of the court structure. The preliminary examiner (the inquisitor), the judge, the procurator, the attorneys, and the jury need to be investigated. The Judicial Reform of 1864 destroyed inquisitorial method and incorporated the principles of modern procedure. Oral testimony was a corner stone of the new system. If adopted literally, this meant that only evidence which was orally presented in court would have been taken into consideration. A mixed principle, however, was introduced; oral proceedings as well as briefs and other papers were considered. In civil cases, parties could appear in court or give a written explanation; either was acceptable. A person could not lose a case by default (by not arriving as ordered in court), as in the United States today. In criminal cases, oral procedure was strictly followed. The testimony of the witnesses and the deposition of the experts, as well as the presentation of all evidence, had to take place orally in open court. The testimony of witnesses could not be read except in cases where the witness did not arrive in court due to death, illness, complete
senility, or remoteness of residence. If a witness did appear in court, the testimony given by him in the preliminary investigation could be read only to establish a discrepancy between his testimony in the preliminary investigation and in open court.¹

Publicity of procedure was also initiated. Publicity referred to the extent to which the accused in criminal action was permitted to participate in various phases of the proceedings. The 1864 Reform allowed the public to be present at the trials, but not at the preliminary investigation. Criminal trials were conducted in the presence of the prosecutor, the accused and his attorney, and the public. During civil suits, the public, the parties involved, and their attorneys were present.² Article 325 of the Code of Civil Procedure, however, stated that the public was to be excluded "if, according to the special features of the case, it might prove to be prejudicial to religion, morals, and public order."³ The public was also excluded from civil cases under certain other conditions. If both parties in the suit wished the exclusion of the public, it was so ordered. When a challenged judge gave his explanation to the court, the public was likewise excluded. Cases involving judicial magistrates being sued for damages due to wrongs committed in their official capacity also were held behind closed doors.⁴

The controversial and accusatory principles were adopted. The controversial principle, based on controversy between two
Opposing parties, was found in civil procedure. It included the rights of the parties, alone, to initiate presentation of evidence, to insist that lawful claims be met, and to give up claims already made. This principle guaranteed that the courts would base their decisions only upon evidence presented by the parties involved. The courts could not decide matters regarding which no claims were presented, nor could they pass sentence in excess of the claimant's demands. The judges could ask questions of the witnesses in order to bring a complete clarification of the case. They could also conclude a settlement between the parties, if they were able, before or during the proceedings. In criminal actions, the accusatory principle was employed. Kucherov explained this principle in its pure form:

Here, likewise two parties confront each other: the prosecutor and the accused. The producing of evidence and its interpretation is the business of the prosecutor and the defense counsel, who have, in principle, equal rights, and not that of the bench, which must restrict itself to the role of an impartial umpire between prosecutor and defense. 5

The accusatory principle was not employed in this theoretical form in Russia. With public interests at stake, the judge could not be given a completely impassive role and thus he received a greater degree of initiative. The prosecutor for the same reason was given more rights than the accused. 6

The Reform of 1864 divided the judiciary functions into three separate and mutually independent branches: the inquest or preliminary investigation which sought evidence, the pro-
ion which indicted, and the court which tried the cases. The inquest was the initial or first step in criminal procedure. The inquest was directed by an inquisitor, an official corresponding to the French Juge d'Instruction.

The inquisitor began his investigation at the request of either the police or a private individual. Counsel for the defense was excluded from inquests because it was believed that he might slyly hinder the search for evidence. The inquisitor, therefore, had to serve as defense counsel as well as counsel for prosecution. It was his duty to investigate with complete impartiality; to find evidence which might help the accused as well as evidence which might hurt him. The inquisitor had also to act as judge. In order to insure this completely neutral role, they were to be appointed for life, able only if they committed a criminal offense. The general government, however, conceived of a plan whereby preliminary investigators were placed in office "temporarily" as a stepping-stone to the office of procurator (public prosecutor). They could thus be removed at any time due to a lack of specific concern concerning this tentative office in the Reform. The law prohibited the preliminary investigators from extorting confessions from the accused by promises, subterfuges, threats, or other means. They could refuse bail to the accused. Preliminary detention pending trial often lasted as long as two years, the threat of no bail was a powerful weapon in the hands of the inquisitor.
At the end of the preliminary examination, the inquisitor sent his findings to the procurator with either a recommendation for immediate release or for indictment. Upon indictment by the procurator, complaints against the inquest could be sent to a circuit court or to a Sudebnaya Palata (appellate court). The complaints were heard in so-called administrative meetings of these courts; in other words, the judges met behind closed doors. The prosecutor's presence was required for these meetings, but the defense counsel was again excluded. The defendant could be there to plead personally, but he was not under summons, and thus if he was held in "preliminary detention" by the inquisitor, he too could not be present at these meetings. If the judges decided that the inquest had been legal, the trial then began in open court. After the trial, if the defendant had been convicted and if he still felt that the errors of the inquest "had not been corrected in the course of the trial and that these errors had exerted a positive influence upon the verdict of the jury," he could then appeal to the Senate. If the defendant was acquitted, he could then sue the inquisitor or the prosecutor for damages. The law concerning this was so narrow that it really made this right of action almost illusory. It read:

The acquitted defendant is not deprived of the right to bring suit for damages against the officers of justice, the judicial inquisitor and the procurator included, provided that he can prove that they have acted with a bias of oppression, without lawful ground, or reason, or generally in bad faith.

The inquest was the weakest point of the Reform of 1864.
While it set up some protection for the accused, particularly by completely separating the office of inquisitor from the police, it followed the pattern of the old courts too closely. It completely lacked the main benefits bestowed upon the new courts by this reform, and might thus be considered the link between the old and new judicial systems.

The second independent branch of the judiciary as set up by the Judicial Reform was the office of Procurator. These officials were attached to the circuit courts, the Sudebnaya Palaty, and the Senate. They were appointed by, and subordinate to, the Minister of Justice who held the title of Procurator General. This office was not irremovable as was the office of Inquisitor. In civil cases, procurators took a passive role, attending the trials and acting as neutral observer. They detected and repaired all infractions of judicial order, and defended the interests of the State and of those persons involved in the cases. The procurator's primary job was as the public prosecutor in criminal cases. As prosecutor, he had a major role in the trial; for, after indicting the accused (upon recommendation of the inquisitor), it was his job to prove the defendant guilty. He strove, naturally, to get as many convictions as possible. His official zeal was stimulated further by a circular issued slightly after the Reform by the Ministry of Justice. This circular informed the prosecutors that whenever the number of acquittals in any single Session should exceed twenty per cent of the
cases tried, they were required to report to the Minister of Justice upon each case and state the reason for the verdict. This was not an uncommon practice in the judicial procedure of western nations; it is natural to expect that incapable prosecutors would be replaced.

In the trial, the public prosecutor was granted by law one great advantage over the defense. He had absolute power to summons new witnesses at any time prior to the day of trial and was not bound to produce any reason for it. If the defendant desired to summons witnesses who were not examined in the course of the inquest, he had to petition the court to this effect. The court could refuse the request if it was satisfied that the reasons were not valid. If the defendant asked to have the witnesses summoned at his own expense, the court had to withdraw its refusal. The prosecutor could also, upon the acquittal of the defendant, appeal the case to the higher court (the Senate). These appeals were on grounds of procedure, not evidence.

The role of the procurator in criminal cases did not vary much from that in our own courts today. The main differences were his absolute rights of summons, his mutual right of appeal with the defendant to the cassation instance, and his role in civil cases.

The judges formed the third branch of the judiciary, (where the inquisitors and procurators formed the first two branches). Judges to the circuit courts and to the Sudebniye
Palaty, and Senators were appointed by the Tsar on recommendation of the Minister of Justice. He, in turn, made these recommendations upon the "presentation" of the courts, themselves. This recommendation of the courts was so limited that it became a mere formality. It was limited to the regular members of the circuit and appellate courts and did not apply to the appointments of presidents or vice-presidents of these courts. The "presentation" had to have the approval of the procurator, and the Minister of Justice could set it aside if he wished. Several steps were taken to guarantee the independence of the judges. They were granted much higher salaries than prior to the Reform of 1864. The position of judge was irremovable for life. This latter provision was not too effective, for while they were irremovable, they could be transferred to a court of the same level anywhere in Russia. Sending a judge to a Siberian court or to any other distant place was equivalent to exile. As further security, the law stated that the judges were not to be supervised by any higher authority other than the judicial. The Departments of Cassation of the Senate were to exercise supervision over all the judges of the empire, especially those in the Sudebnaya Palaty, and the latter courts had direct supervision over the judges in the circuit courts. The Judicial Reform also adopted the multiple judge system. Three judges sat on the bench of the circuit courts, and five on the bench of a Sudebanya Palata. In each case, one of the judges was appointed President and presiding officer.
of the court, and one was appointed Vice-President of the Court. 17

The educational requirements for judges and procurators were identical and were very exacting. A person who had graduated from a course of law in an university could become a "juror candidate," attached to a circuit court of a Sudabnaya Palata for eighteen months without salary. At the end of this period, he was examined by the judges of the court to which he was attached. He then became a senior candidate for eighteen months with a small salary. He was next eligible to be appointed an inquisitor or an assistant procurator. After two years in this position, he was appointed judge or procurator, and was eligible for all higher posts. A judge could be made a procurator, and a procurator could be made a judge if he wished. None of these appointments took place until the candidate was at least twenty-five years old. 18

The duties of the justices lay mainly in the hands of the one who had been elected President of the Court. He could stop the examination of a witness on grounds that the subject had been exhausted or that the question of the party had nothing to do with the case. He had the right to grant or refuse the re-examination of the witness as a result of contradictory evidence by other witnesses. He could allow or refuse questions to be put to the witnesses which might discredit their moral character and the truthfulness of their testimony. If the trial was conducted before a jury, it was also the duty
of the President of the Court to give a summation to the jury. In this summation he had to make clear both the factual and legal aspects of the case and to give general instructions to them concerning the rules of evidence. He was explicitly forbidden by law either to express his own opinion concerning the guilt or innocence of the accused, or to introduce facts which had not been the object of examination during the trial. In civil cases, where the jury was not employed, the judges collectively decided upon a verdict in which they found for one or neither of the parties involved. In criminal cases, the judges decided upon the sentence if the jury found the accused guilty. 19

The judges, therefore, took a new and active part after 1864 in the trial procedure; this role did not differ greatly from that played by similar officials in most western nations. According to several authors on this subject, including Julius Eckardt and Samuel Kucherev, the judges acted honestly and without venality.*

In drawing up the Reform of 1864, one of the most heated debates concerned the institution of attorneys. From the time

*Julius Eckardt in his book, Russia Before and After the War, stated: "But these judges are for the most part honorable men, who act according to their conscience and to the best of their knowledge; who publically administer justice, and who will know nothing of bribery and unlawful usages." p. 134 Kucherev, in Courts, Lawyers and Trials under the Last Three Tsars, stated: "And as a matter of fact bribery disappeared from the field of administration of justice. During the fifty years that the new courts existed in Russia, there was not one important case, not one scandal related to venal action of a judicial magistrate."
of Peter the Great through Nicholas I, the Russian administration and monarchy had a great aversion for lawyers. This was due to the revolutionary role played by attorneys in other countries, especially in France. Even the "reforming Tsar," Alexander II, had qualms as to the wisdom of creating officially accredited lawyers. His opinion on the matter finally changed so that the Statute of Judicial Institutions of November 20, 1864 determined the functions of the lawyer, gave the requirements for admission to the profession, and regulated the structure, the functioning of, and the admission to the bar.20

Attorneys were not given a monopoly on criminal cases. The law stated that any acceptable private person could act for the defendant, and that the defendant could act for himself if he wished. In civil cases, attorneys were given nearly a monopoly position. Due to a fear that there would not be a sufficient number of accredited lawyers at first, Article 387 of the Statutes of Judicial Institutions read as follows: "In those cities where there is a sufficient number of resident lawyers, the litigants may give power of attorney for carrying on lawsuits in the courts of those cities to lawyers only."21

There were many people who were excluded from becoming lawyers. They were as follows: (1) those under twenty-five years of age; (2) non-Russian citizens; (3) those who were declared insolvent debtors; (4) persons in government service
or elected officials, with the exception of those who occupied
honorary or public positions without remuneration; (5) those
condemned to deprivation or restriction of rights, as well as
priests unfrocked by sentence of an ecclesiastical court;
(6) persons who were under preliminary investigation for
crimes involving a possible sentence of deprivation or restric-
tion of rights; (7) those dismissed from state service by a
court sentence, or from ecclesiastical service for vices, or
from community assemblies; (8) those whom a court prohibited
from soliciting for other persons, or those already excluded
from the bar; and (9) women, although by no direct provision
to that effect. 22

The process involved in becoming a lawyer was as exac-
ting as that required to become a judge or procurator. A
candidate had first to present a diploma or certificate of
graduation from the faculty of law of an university. In this
school the student was supplied with a wealth of theoretical
knowledge, but he was not trained to use it. Practical train-
ing had to be acquired by working under the supervision of a
patron. Obtaining a patron was a difficult task as he not
only had to have the desire and time to supervise and instruct
a candidate, but also had to have need of an assistant. 23
If the candidate was fortunate enough to find a patron, he
had to remain in this probational stage for five years,
during which time he served merely as a clerk in the office
of his supervisor. He could practice criminal law, but
merely in his status as a private citizen and not in any official capacity. Nor could he engage in any civil cases. After this five-year period, the candidate could then file an application with the local council of the bar for admission to that bar. The council of the bar decided upon the admission of the candidate. If they decided in his favor, he was given a certificate which he filed with the Sudebnaya Palata, with which he was registered. He was then required to take an oath of loyalty to the government. When his name was entered into the register of lawyers for that district by the Sudebnaya Palata, he was officially a lawyer and a member of the bar.24

Attorneys, in their official capacity, had many duties to fulfill and ethical standards to observe, as do lawyers in this country today. Their first duty was to carry out the lawsuits entrusted to them. In cases where a lawyer was appointed by a council of the bar or by a President of a Court, the lawyer could not decline the appointment without adequate reason. In trying cases, the lawyers had to fight for the rights of their clients as best as they could. This often involved speaking against the government. The courtroom was, in fact, the only place in Russia at this time where complete freedom of speech existed.25 Legal ethics of that time revolved around five major acts forbidden to a lawyer. They could not acquire litigation for people under a false name. They could not sue their parents, children,
brothers, sisters, uncles, and cousins. They could not serve as counsel for both parties in a suit nor go over to the other party during a suit. They could not divulge secrets of their clients during the lawsuit or at any time after the lawsuit ended. They could not allow legal deadlines to elapse or fail to observe other prescribed rules or forms. In such case, the clients had a right to sue the lawyer for damages. For premeditated action of this sort, the attorney was liable to a criminal action.\textsuperscript{26}

The remuneration of the attorneys varied with the type of case they tried. In civil cases, the remuneration was fixed by the court on a percentage basis against the amount won. The fee was 10\% of the amount won up to 2,000 roubles, 8\% to 5,000 roubles, and so forth; the higher the sum, the lower the percentage. All legal fees in civil cases were paid by the losing side.\textsuperscript{27} In criminal cases, the fee was agreed upon by the client and his attorney beforehand. It was usually stipulated that the fee would be in the reverse ratio of the severity of the sentence; for instance: 10,000 roubles if the defendant was acquitted, 5,000 roubles if he was condemned to a year of imprisonment, and 1,000 roubles if he received fifteen years of penal servitude.\textsuperscript{28}

The structure and duties of the bar associations were long and complex. All the attorneys practicing within the jurisdiction of a Sudebnaya Palata formed one corporate body known as the bar. Once a year they met in a general assembly
and if a majority was present, they elected (if there were more than twenty lawyers in this jurisdiction) the executive officers who then formed a council. The council of the bar had to consist of no less than five and no more than fifteen members, including the president and assistant president of the bar. The number of members in the council of the bar depended upon the number of lawyers in that bar. The council had to be elected every year. If there were more than ten lawyers residing in a city which did not have a Sudebnaya Palata, they could, with the consent of the nearest council of the bar, elect a branch of that council, attached to the nearest circuit court.

The rights and duties of the council of the bar gave it an administrative and disciplinary character. It had to consider applications of persons desiring to be admitted to the bar or resigning their membership, and had to notify the Sudebnaya Palata of their decisions. They considered complaints against lawyers and supervised the strictest fulfillment by the attorneys of the regulations, existing rules, and obligations towards the clients. They had to appoint lawyers to serve their turn as counsel for those who could not afford regular counsel or for those who for other reasons requested the council of the bar to appoint a lawyer for them. In the absence of a written agreement concerning the remuneration of the attorney, the council had to fix the amount of the legal fee where disputes arose between the attorney and his
client over the amount. The most important function of the
council of the bar was its right to bring disciplinary action
against a lawyer. The council could, when a lawyer violated
his duties, issue warnings, rebukes, and temporary suspension
for a certain period of time, not exceeding one year; they
could also disbar the attorney, or they could bring him to
trial before a criminal court. An appeal against the decision
of a council of the bar could be filed with the Sudebnaya
Palata within two weeks, with the exception of decisions of
warnings or rebukes, against which there was no appeal. The
procurator could also lodge a protest against the decisions
of a council of the bar. The lawyer could appeal the decisions
of the Sudebnaya Palata to the Senate. This disciplinary ac-
tion of the councils also covered the actions of lawyers-in-
training. The competence of the councils of the bar, furthermore, extended not only to the sphere of the professional
actions of the lawyer and his trainees, but also to actions
committed outside the capacity of lawyer. The one exception
to this case was in the field of an attorney's private family
life. Where there were no councils of the bar, lawyer-
regulated by the circuit courts.30 Councils
established in St. Petersburg on May
September 16, 1866. On May 6, 1874, o
Kharkov. There were no others set up u
another was established in Novocherkassk
1904 one was founded in Kazan, one in Ode
Saratov; on November 24, 1904 one each was formed in Irkutsk and Omsk.31

Under the new system, therefore, a real institution of lawyers who required rigorous training was set up to protect people in the courts. Bar associations were established so that the attorneys could regulate their own activities without necessitating interference from the administration; thus insuring the independence of the attorney in defending his client while protecting the accused from possible unethical practices of lawyers.

One of the outstanding features of the Reform of 1864 was the introduction of the jury system. This was the institution that brought the classes together by having them sit, discuss, and decide together. It was also the most direct means through which the people could participate in the dispensing of justice. There were certain limitations on jury membership, which were not particularly unreasonable. The duty of serving as a member of a jury was limited to the inhabitants of the district in which the court was located provided they were Russian citizens between the ages of twenty-five and seventy years old, and provided they had resided in that district for no less than two years. The law explicitly excluded from election to the jury those under investigation or indictment for a felony or misdemeanor, and those condemned to prison or heavier punishment. It also excluded persons expelled from official positions, from the
clergy, or from community organizations; those declared to be insolvent debtors; those under guardianship because of extravagance; those who were blind, deaf, dumb, or insane; and people who did not know the Russian language. There was a monetary requirement placed upon membership on a jury. One could not serve on a jury unless he had landed property extending over no less than 100 dessiantanes (270 acres) or other movable property worth 2,000 roubles in the capital, 1,000 roubles in province centers, and 500 roubles in other towns. Those having an income of 500 roubles per annum in the capital and 200 roubles in other places could also serve on a jury. There were still other categories of people who were excluded from jury service. Members of the judiciary, district justices of the peace, chief secretaries and secretaries of the law courts, marshalls of courts, notaries public, procurators, lieutenant-governors, treasurers and foresters of state forests, members of the police and all other civil servants who were considered "above the fifth rank" were excluded from juries.* Lastly, members of the clergy and monks, members of the armed forces, teachers at public schools, and servants of private persons could not be members of a jury. A general list of jurors for the coming year was prepared by a commission elected by the district assemblies of the zemstva. They also drew up an alternate list of jurors, con-

*Civil servants were arraigned in twelve ranks.
taining the names of those who were to be placed on the general list for the following year. The lists were then presented to the governor of the province for confirmation. From the general list, a specific list of thirty members of the jury was prepared for every one of the four sessions. The right of pre-emptory challenge for the prosecutor was limited to six members of the jury. The accused and his attorney then had the right to challenge, without explanation, as many members of the jury as was possible without reducing the list to less than eighteen members.* From these remaining eighteen members, twelve were elected acting jurors, and two, alternate jurors. This last step was done by the President of the Court, who put folded pieces of paper, with the names of the jurors on them, into a vase and took them out one at a time; the first twelve were the acting members of the jury and the last two, the alternate members.35

Noblemen, peasants, and merchants were often placed on one jury. An example of this can be seen in a list of the jury in the Beilis Case of 1913.** It must be pointed out that this particular jury was somewhat below the average educational level of juries at this time. The Beilis jury, in reference to their class status and occupation, was as

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*The cross-examination of jurors and the "challenge for cause" which is common in the United States were unknown in Russia.

**This important case will be discussed in detail in the next chapter.
follows:

(1) Peasant, agricultural laborer.
(2) Peasant, cab-driver.
(3) Minor public servant employed in postal service.
(4) Peasant, agricultural laborer.
(5) Peasant, employed in a mine.
(6) Peasant, agricultural laborer.
(7) Townsman, employed at railroad station.
(8) Peasant, agricultural laborer.
(9) Secretary at governor's office, assistant of the revisor in the auditor's office.
(10) Peasant, agricultural laborer.
(11) Peasant, controller in town tramway.
(12) Burgher, small householder.

The jurors had to elect a foreman from among the literate members. They were obliged to keep secret their deliberations and the number of votes given for or against the accused. The jurors had the right to participate in every action of the court in the same manner as judges, and to ask for any explanation they desired. Their main duty was to pronounce the verdict. To facilitate the pronouncement of the verdict, the bench submitted questions to the jury. The questions referred to the guilt or innocence of the accused and to the evidence presented. The verdict required merely a plurality of vote. In case of an even vote, the verdict was to the benefit of the accused. The answer to each question which had been put to the jury by the bench was either "yes, guilty," "no, not guilty," or "yes, but deserves indulgence." The verdict was pronounced in the presence of the accused. If the bench was unanimously of the opinion that the jury had condemned an innocent person, it had the right to transfer the case to
another jury, whose decision was final. In case of conviction, the bench then passed sentence.\textsuperscript{37}

It should be remembered that juries were used only for trials of criminal cases. While there was no appeal on fact from a jury case, either the prosecutor or the defendant could appeal the case on technical grounds to the Criminal Department of Cassation of the Senate.\textsuperscript{38}

There were often verdicts handed down by juries which appeared in conflict with logic and obvious facts. Russia adopted the continental system whereby the jury was not bound to prove a verdict of guilty if it came to the conclusion that the accused did not commit a crime even if the accused had confessed to the crime. Nor were they bound to find him guilty even if they were convinced that he was the perpetrator of the act of which he was accused. In the former case, the jury might have felt that the accused had confessed merely to shield another person or that he confessed due to deeper psychological problems. In the latter case, the jury might have felt that the law which he was accused of breaking was an unjust one. The jury also often passed down a verdict containing the denial of obvious facts with the purpose of reducing the punishment of the accused. The jury was thus the flexible part of the law, interpreting it as it saw fit, and in accordance with its sense of justice.\textsuperscript{39} It could be compared to the Supreme Court of the United States which interprets laws and "legislates" new ones through the deci-
Juries turned in various types of weird verdicts. The most common one was a case where a person who was known to be bad came before a jury; the evidence against him was not conclusive, but the jury still found him guilty. These peculiar verdicts were thought of as defects in the system and often blamed on the predominance of peasants on the juries. Wallace felt this was unfounded. While the peasants did have little education, they seemed to have had a large fund of common sense that made up for this lack of education. Wallace claimed to have been informed by many judges and public prosecutors that as a general rule, the peasant juries were to be relied upon more than those drawn from the educated classes.

Definite attitudes toward certain types of crime could be plainly seen in the verdicts of juries drawn mainly from the peasant or merchant classes. Peasants were often very severe with regard to crimes against property, but lenient in cases involving fraud or personal assaults. The reason for this was that peasants were constantly at the mercy of thieves, but found it difficult to draw the line between honest and dishonest dealings in commercial affairs. Many of them felt

*Leroy-Beaulieu looked for the answer to these unusual decisions in the psychological make-up of the people themselves. He said that their tendency to be lenient stemmed from their native kindness and gentleness. He also felt that it was partially a reaction against the iniquities of old-time justice.
that trade could not be carried on successfully without a little clever cheating. A refined sensitiveness, furthermore, and a keen sympathy with physical sufferings are the result of a certain amount of material well-being, together with a certain degree of intellectual and moral culture; neither of which were possessed by the peasantry.¹¹ Merchants tended not to be as severe with crimes against property, for if they suffered a theft their fortunes would not bear as heavy a loss as would the peasant's. They were very sensitive against crimes such as assault, for while their moral and intellectual culture was no more developed than the peasant's, they were accustomed to comfort and well-being, which develops sensitiveness towards physical pain.¹²

The percentage of those found guilty by a jury was slightly lower than in cases where no jury was employed. The total percentage of convictions, however, was not terribly low. The following chart, taken from Kucherov's Courts, Lawyers, and Trials under the Last Three Tsars, demonstrates this by listing the percentage of those tried by a jury and those tried without a jury and convicted between the years 1901 and 1912:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage of verdicts of guilty in courts with jury</th>
<th>Percentage of guilty in courts without jury</th>
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<tbody>
<tr>
<td>1901</td>
<td>63</td>
<td>71</td>
</tr>
<tr>
<td>02</td>
<td>63</td>
<td>71</td>
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<td>04</td>
<td>63</td>
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<tr>
<td>05</td>
<td>61</td>
<td>68</td>
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<tr>
<td>Year</td>
<td>Percentage of verdicts of guilty in courts with jury</td>
<td>Percentage of sentences of guilty in courts without jury</td>
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<td>1906</td>
<td>63</td>
<td>70</td>
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<td>74</td>
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<tr>
<td>12</td>
<td>60</td>
<td>75</td>
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Before evaluating the system, a brief description of the procedure in the trial itself is required to tie in the various elements in the system examined in this chapter. After the jury was picked, each witness was called and each told his story consecutively. He was cross-examined by the prosecutor and then by the defense attorney. Cross-examination was not as rigorous as in the United States, as counsel for the defense could interpose questions at any time during the examination by the prosecutor, and the prosecutor could interrupt the defense's examination with his own questions. After all the witnesses were heard, the prosecution summed up, followed by the defense summation. This was followed by the rebuttal of the prosecutor and the defense's rebuttal. The President of the Court summed up and put to the jury the questions on which they were to give their verdict.

It has been debated at length whether the new courts as set up by the Reform of 1864 were really of value. On the negative side it can be pointed out that the new judicial system was confined to European Russia and did not extend
into Poland, the Caucasus, parts of Siberia, or Central Asia. 44

On the positive side, it could be said, on the basis of information available, that the Reform set up, on paper at least, as equitable a judicial system as existed at that time in any other country. There existed: full advantages of oral and public procedure; the separation of the judges, prosecutors, and inquisitors; the presence of a procurator at civil trials to protect both sides; requirements for strenuous training of lawyers, prosecutors and judges; and bar associations established to grant lawyers more independence. All of these things helped to build a solid and fair system of justice. Finally, the introduction of the jury system gave to the people full right of participation in the judicial power of the state. It was the most efficient guarantee of equity in the administration of justice. This judicial system, however, was created within a monarchy. A monarchial government, particularly one which was being threatened constantly by terrorist activities, could never permit the continuation of such an equitable system. Over a period of time, therefore, this court system was limited and restricted in practice. What exactly was done and to what extent the original system was destroyed is another long topic and one which shall be discussed in the next chapter.
CHAPTER IV

The Decline of the New Judicial System

The court system as set up by the Reform of 1864 was really never completely in operation. Until two major problems were solved, there was a delay in opening the new courts. These problems were a lack of funds and a lack of experienced and qualified personnel. The problem was solved by Minister of Justice Zamiatin who ordered that the new courts be opened only in the St. Petersburg and Moscow areas. These new courts were then to be spread out slowly into new areas. On April 17, 1866, the courts opened in the two designated cities. The opening of the courts came at the beginning of a period of prolonged reaction, so that as the system spread out, its effectiveness was restricted by the edicts of the Tsars.¹

There were many laws and edicts which helped to destroy the new judicial system. They dated from June 10, 1877 to August 22, 1906. These acts replaced elective Justices of the Peace with Land Captains; extended the jurisdiction of the courts of class representation at the cost of the jury courts; and instituted private attorneys to compete with the regular sworn attorneys. They limited publicity and oral procedure in the courts; made the death penalty legal through
the extensive use of courts-martial; and brought about punishments of suspects without benefit of a trial (through so-called "administrative punishments"). They limited the duties and jurisdiction of the juries; rendered the bar associations impotent; and barred Jews and other minorities from most positions in the legal profession. While most of these attacks were aimed at political offenses, when the government collapsed in 1917, a good part of the original system as established by the Judicial Reform was reduced to a bare skeleton of its total structure.

The overall structure remained the same from 1864 to 1917. Peasant courts continued to exist and the inferior and regular courts continued to function side by side. It was the shape of the individual parts which changed to a great extent.

One of the most radical transformations occurred in the inferior courts. The institution of elective Justices of the Peace was abolished by the Law of July 12, 1889. Most of the cases which would have gone before the Justices were referred to Land Captains (zemskiy nachalniki). Land Captains had jurisdiction only in the country. The Honorary Justices of the Peace were retained. The regular Justices of the Peace were continued in the three cities of St. Petersburg, Moscow, and Odessa, while in other cities they were replaced by Urban Judges. The Land Captains exercised executive as well as judicial authority over the villages in their districts.
They were nominated for the office by the Governor of the province and appointed by the Minister of Justice. Both of these offices could only be held by nobles. The jurisdiction of the Urban Justices and the Land Captains was the same as that previously delegated to the elected Justices of the Peace.* They had the additional duties of appointing the members of the peasant courts, and of deciding whether cases from the regular peasant courts warranted appeal to the volost courts of second instance.²

Appeals from Land Captains were made to Sessions of the District. The Marshall of the Nobility of the district was the ex-officio chairman of this session. Also included in this appeal court were all the Land Captains and Town Judges of the district (with the exception of the one against whose verdict the appeal was being made) as well as the Honorary Justices of the district. The Sessions of the District also acted as administrative boards. When they met in this capacity, the Marshall of the Nobility of the district sat as chairman, and the chief of the local police as well as the chairman of the Provincial Board were members.***

The composition of the inferior courts took an unusual turn for the better on June 12, 1912 when the Law of the

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*See Chapter II, page 27.

**The Provincial Board was the regular administrative board for the entire province.
Local Courts was passed. This law stripped the Land Captains and Urban Judges of their judicial power, leaving them only their administrative duties. The judicial powers on this level were returned to elective Justices of the Peace, as of January 1, 1914. The Justices were organized similarly to the way they were before 1889. Their jurisdiction, moreover, was increased to include all civil cases up to 1,000 roubles, and all criminal offenses carrying a sentence of simple imprisonment without any loss of civil rights. Regular appeal to Assizes of the Peace followed by further appeal in cassation to the Senate was reinstated. There was no appeal for cassation if the sentence consisted of a fine of less than 100 roubles. This return to the original law was so unique, that it did not occur in any other part of the judicial system that was damaged by the reaction.4

A major reactionary move was the elimination of publicity for trials, primarily those involving political crimes.* This action was taken because defendants frequently used the courtroom as a platform from which they could expound their political doctrines. Feeling that they had nothing to lose, they boldly denounced the government when asked to defend their actions. The government, not wanting to outwardly abolish publicity at first, resorted to subterfuges. The newspapers were forbidden to reproduce debates and only the official

"Publicity" was explained in detail in Chapter III, page 44.
daily could publish descriptions of the trials. The proceedings were held in rooms too small to hold a large audience. Returning to direct action, the government, on September 4, 1881, promulgated a law which proclaimed that in all trials 'the public pleading of which, might excite public opinion,' the defendant could have only three friends or relatives present. Whether or not a case fell into this category was decided not by the magistrates, but by the administration. On November 14, 1881, attendance at a trial was further restricted in such cases to one person who was either a blood relative, husband, or wife of the defendant.

Oral procedure was restricted to some extent. In 1869, an ukaze of the Tsar relieved the highest dignitaries of the state from the duty of appearing before the courts as witnesses. It was further decreed that the judges and other parties involved, upon the request of any such witnesses, should appear for the interrogation at the witnesses' homes. These dignitaries included members of the Council of State, ministers, secretaries of the state, senators, governors-general, bishops, and chiefs of police. Oral procedure was certainly not guaranteed if there existed a class of people who were exempted from appearing in court.

Albert F. Heard, the author of a rather pro-Tsarist article on justice and law in Russia, partially justified these reactionary steps. In this article, written in 1887, the reader is given an insight into the feelings of the authorities
at the time. He stated:

The terrible severity of the measures adopted in self-defense is due to the rancorous hostility and savage violence of the nihilist party blindly butting against a stone wall. It has no affiliation with the people whose cause it pretends to espouse; it presents no comprehensive plan, no scheme for the regeneration of the nation, to rally in its support the partisans of wise reform. Destruction is its motto, and chaos is its millenium. Arbitrary and tyrannical as the ukazes of the Tsar appear, they are directed against political offences, and their action, abrogating all law, is restricted to them.¹

Restrictions were also placed upon the specific parts of the regular courts. The use of inquisitors in political cases was dropped completely by an ukaze of 1871. The preliminary investigations for such cases were then conducted by the police and a procurator. The results of these investigations were sent through the Minister of Justice to the Tsar. He could order the case to be dropped, to be tried regularly, or he could order the suspect to be punished administratively.² A major protection, the separation of inquisitor from the police and procurator, as well as from the higher administration, was thus totally denied to political suspects.⁸

The jury was limited in its flexibility of decision-making and in its jurisdiction. The attack on the jury was one of the greatest blows to the judicial system. It was pointed out earlier that the jury was not compelled to bring

²This meant that the suspect was punished without benefit of any trial or other semblance of legal procedure.
in a verdict of guilty if it felt even obvious evidence was not conclusive. In 1884, the Senate denied the right of the jurors to impute an act which, according to its own opinion, had been committed by the accused, for reasons other than defined by law. In 1894, the Senate imposed upon the presiding judge of the trial court the duty to explain to the jury that if it came to the conclusion that the accused was the perpetrator of the crime, it had no right to answer negatively to the question of guilt according to the duty imposed upon it by law. This limitation of the jury affected more than just political cases; it involved all criminal trials.\(^9\)

One of the most famous cases in late 19th century Russian history, the Vera Zasulich case, precipitated the greatest limitation of the jury. On January 24, 1878, Vera Ivanovna Zasulich, twenty-eight year old daughter of an army captain, while allegedly presenting a petition to Governor-General Fyodor Trepov of St. Petersburg, shot and wounded the general. She claimed to have perpetrated this crime due to a strong feeling of sympathy which she felt towards a political prisoner, Arkhip Bogolyubov, whom she did not even know personally. General Trepov was reported to have ordered this prisoner whipped for refusing to remove his hat when the governor passed him in the prison yard. Vera was tried by a jury in the St. Petersburg Circuit Court on March 31, 1878. The President of the Court, Anatole Fyodorovich Koni, allowed Vera's lawyer, P. A. Alexandrov, great latitude in presenting
the evidence. Ken! gave this latitude to Alexandrov in spite of pressure applied to him by the Minister of Justice to strictly limit the sphere of evidence. Alexandrov related the long, miserable life history of Vera Zassulich which was spent primarily in political exile. He showed that because of her background of political persecution, she was deeply affected by the whipping of another political prisoner. He turned what the Minister of Justice wished to be a simple criminal case into a major political one. Vera Zasulich was acquitted amid the cheering and celebrating of the spectators. She was swept from the courtroom and hidden from the authorities to avoid her inevitable retrial. Ken!, the President of the Court, after refusing to retire, was transferred to the civil section of the Sudebnaya Palata. The most important result of this trial was in the field of the administration of justice. All cases of violence against officials were exempted from the jurisdiction of the jury by a law passed on May 9, 1878. These cases were now all to be tried in courts with class representatives.

The courts of class representatives, being easier to control by the administration, were enhanced by the reaction. The Law of July 7, 1889 reduced the number of judges in these courts from five to four, and the number of class representatives from four to three, discarding one member of the Palata, and the District Marshall of the Nobility. It extended the jurisdiction of these courts. They now tried all cases of
violence against all officials when performing their official duties (thus making legal what had been going on for two years), as well as contempt of officials and official agencies. 11

The Senate was altered. It had previously been divided into two departments, one for cassation of civil cases, and one for cassation of criminal cases. Decisions were made in the General Assemblies of these two departments, or in Joint General Assemblies. By the Law of June 10, 1877, the two departments were each subdivided into Divisional Benches composed of three Senators, and Departmental Benches occupied by seven Senators apiece. If all that was involved was the application of a law in compliance with existing precedent, an appeal in cassation was examined merely by a Divisional Bench of the appropriate Department of Cassation. When a new interpretation of the law or a deviation from the existing opinion of the Senate became necessary, or if one of the Senators so demanded, the case was referred to a Departmental Bench. This law also created Joint Benches of the Senate. These consisted of six Senators (two from the First Department and two from each Department of Cassation) and a President, all appointed by the Tsar. The Joint Benches had the power to supervise all judicial institutions in the country, to indict members of the judiciary (with the exception of procurators), and to transfer cases from one judicial district to another. 12

The Judicial Reform stated that all decisions of the
Departments of Cassation were "to be made known to the public to serve as leading cases for the uniform interpretation and application of the laws." The Law of June 10, 1877 changed this by leaving it to the discretion of the Senate itself as to whether any particular case involved such an interpretation of the general law as to constitute a leading case. It provided that only the cases which the Senate so designated should be published. In all other cases, the Senate was empowered to render its decisions in a form of a resolution without any statement as to the grounds of the decision. \(^{13}\)

The final innovation concerning the Senate was the creation of the Highest Disciplinary Bench of the Senate by the Law of May 20, 1885. This Bench consisted of the Presidents of both Departments of Cassation, the Senators of the Joint Bench, and four Senators of the Departments of Cassation; all were appointed by the Tsar for one year. It served as the highest disciplinary court for members of the judiciary. \(^{14}\)

The courts of cassation were thus reduced to smaller segments which might be more easily controlled by the administration. In order to conceal the injustices that could then be perpetrated, decisions were kept secret from the public. The justices in the lower courts could be made to comply with administrative requests now that they were tried by a small group of senators. As these senators were appointed directly by the Tsar, they were themselves closely regulated by higher authorities.
Two of the most radical actions carried out by the government to cripple the judicial institutions were the legalization of courts-martial for the trying of civilians and the creation of administrative punishments. While some political crimes after 1878 were tried in courts with class representatives, there were many exceptions to the case, even before the assassination of Alexander II. The first move to set up courts-martial to try civilians was made following an attempt on the life of the Tsar in 1878. Julius Eckardt, writing of this incident, said:

A few days after that attempt, when the Emperor returned pale and terrified to the Winter Palace from his customary morning walk, a decree was issued placing the greater part of European Russia under the authority, ad interim, of six military governors-general, armed with full powers to suspend the ordinary functions of the police and the courts of law, and to substitute a state of siege in the broadest meaning of the term. In an area where a "state of siege" was declared, all civil law was suspended. Military governors-general were invested with the power to arraign before courts-martial persons coming under the jurisdiction of the regular courts. On August 5, 1879, an ukaze of the Tsar declared that it was lawful to bring accused persons to trial (military courts-martial) without preliminary inquests, to pronounce sentence on them without taking the oral testimony of witnesses, and to execute them without examining their appeals for a reversal of the sentence.

Following the assassination of Alexander II in 1881, the reaction set in with a vengeance. On August 14, 1881,
Alexander III confirmed a law, drawn up by a committee of ministers concerning "Measures for the Preservation of State Order and Public Tranquility."* It was the first major law to set up courts-martial. It was the one law that instituted administrative punishment. The conditions of a minor and major state of siege were established. The power of the governors were extended so they could:

1. transfer criminal cases to courts-martial;
2. order trials of criminal cases to be held in closed sessions;
3. arrest persons on suspicion of having committed a crime against the state, of having been involved in such a crime, or of belonging to an unlawful association;
4. search dwellings even without definite suspicions;
5. banish persons to various localities of the Empire under police supervision for a term not exceeding five years.17

The Law of 1881 was supposed to be an "extraordinary but temporary measure" and was limited to three years. In reality it functioned until 1917. This law successfully and completely destroyed the separation existing between judicial and administrative organs.18

Since courts-martial were used only to inflict the death penalty, all political cases in which the government did not wish the death penalty were tried in the courts with

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*Pliave, Minister of the Interior, Pobedonostsev, the Minister of Justice, and Muravyov, the future Minister of Justice, were members of this committee.
class representatives.* In 1901, nevertheless, a state of siege, giving the governor extraordinary powers, existed in St. Petersburg, Moscow, Kharkov, Ekaterinoslav, Kiev, and nineteen other areas in Russia. 19

The Law of August 19-22, 1906, one of the so-called "Stolypin Reforms," made courts-martial the dominant judicial institution for several years.** This law created Military Field Courts-martial. The benches of these consisted each of a military officer serving as President and four other army or navy officers. On September 11, 1906, instructions (from Stolypin) on the procedure to be followed in field courts-martial were issued. It was directed that the accused could not have counsel; nor could prosecutors be admitted to these trials. There was no appeal against the sentence, and no cassation. The sentence came into force immediately and had to be carried out not later than twenty-four hours after pronouncement. In the first six months of the functioning of these courts, 960 death sentences were pronounced. 20

J. W. Buel, in his book, A Nemesis of Misgovernment,

*The Reform of 1864 abolished the death penalty in Russia except in military courts-martial and in cases of harm inflicted upon the person of the Tsar.

**Peter Stolypin, Minister of the Interior at this time, passed several drastic acts to solve the agrarian problem following the Revolution of 1905. Acts of terrorism and revolt were breaking out and the government felt that they had to be put down quickly.
described the court-martial trial of the assassins of Prince Kropotkin. Because no account of a later court-martial case could be obtained, this trial which took place in 1880 in the St. Petersburg military court will serve as an example of the procedure in these courts, and of the inevitable outcome of such cases:

The sixteen prisoners entered the court each escorted by two gendarmes, and took their places in a calm and dignified manner. In spite of their great differences in their social rank, education, even race and religion, one characteristic feature was common to all - they were very young; all, with one exception, under thirty, one-half under twenty-five. 21

The first day of the trial was almost entirely spent in the reading of the Act of Accusation. When asked whether they pleaded guilty or not, all but one pleaded guilty to the main parts of the accusation, but qualified their plea (some claimed that they were socialists but not terrorists). The actual murderer of Prince Kropotkin, a man named Goldenberg, did not appear in court. It was announced that he "died in the fortress on the 29th of July, 1880." 22

The course of the trial brought about no unusual occurrences. The sentences were death by hanging for five persons, and for the eleven remaining, it was banishment to Siberia for terms varying from fifteen to twenty years. Buel conceded, however:

It is but fair to state that, throughout this long and fatiguing judicial procedure, the treatment

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21 Prince Kropotkin was the Governor-General of Kharkov. He was assassinated in February, 1879.
used towards the prisoners was uniformly considerate and polite, the mode of addressing and questioning them scrupulously courteous; also, the counsel for the prosecution in their speeches not only strove to remain within the strict bounds of impartial justice, but repeatedly showed a leaning towards leniency.

It thus appears that the accused were tried as fairly as they might have been in a regular court in Russia; but it must be remembered that this was a case tried before the assassination of Alexander II. It can be assumed that cases which were tried later, especially those brought before field courts-martial, were not as politely conducted. Suffice it to say that there are no known transcripts of these trials, at least in English; there are, however, reports showing that thousands of people were hanged by these courts, and often within a matter of hours after their arrest.*

The number of persons deported to Siberia, without any recourse to trial, increased steadily. In 1894, there were only about 95 persons so deported, that came to the attention of the Minister of Justice. In 1903, the number had risen to 64,000 persons deported for that year alone. 24

While the courts-martial and administrative punishments thoroughly destroyed the new judicial system, at least in the field of political criminal cases, one should realize that some people felt that there was justification for these actions. Maurice Baring, in his book, the Mainspring of

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*Kucherov related that S. Usherovich, in his book on capital punishment, gave a list of 3,014 names of persons executed in the period 1905-1917. (Courts, Lawyers, & Trials..., pp. 210-11.)
Russia pointed out what he felt to be the reasons for these reactionary institutions in the latter half of the 19th century:

... the country was in a state of anarchy. Acts of terrorism were being committed almost daily by the social-revolutionary party, and acts of hooliganism and robbery under arms of the criminal classes, who imitated and adopted the methods of the revolutionaries. A vicious circle of lawless crime and indiscriminate retaliation seemed to have closed around Russian life, so that during all this period the executions were to the crimes in a proportion of about one to three. It should also be remembered that during certain phases of this epoch many parts of the country were virtually in a state of civil war.

An outstanding feature about the institution of lawyers (between 1864 and 1914) was that although it became dangerous to carry on a defense in political trials, political prisoners never ceased to find counsel to defend them. The lawyers pleaded the cases, usually, not because they shared the political convictions of the accused, but because it was their duty to defend the individual against the state, regardless of the crime he had committed.

Although freedom of speech in the courts had been allowed during the first few years of the reform courts, once the reaction set in, the bold speeches of the attorneys in political trials became intolerable to the government. Lawyers were often tried for what they said or were simply banished.

*In reference to this, Heard stated: "... it must be acknowledged that the Russian bar has given ample proof of courage and independence. No political criminal, even in the late years of conspiracy and rebellion, has been left without an advocate, although to speak boldly in his defense, might mean a broken career and exile." Heard, p. 926.
to Siberia without any trial.* Before these actions were taken, the government administration attempted to weaken the position of the bar by introducing a competitor for the lawyer on all levels of court procedure. On May 25, 1874, the "Rules Concerning Persons Having the Rights to Become Attorneys" were confirmed by the Tsar and published. A new type of lawyer, the "private attorney" (as distinct from the "sworn attorney") was created. There were no educational requirements for these attorneys. Persons desiring to enter this profession had to file an application with the law courts in which they intended to practice. They then had to declare that they did not fall under the prohibitory categories listed in Article 246 of the Code of Civil Procedure.** The certificate of private attorney could be granted by an assembly of Justices of the Peace, a circuit court, or a Sudebnaya Palata. The right to practice was limited to the court which delivered the certificate. There were two exceptions to the case. A certificate issued by an assembly of Justices entitled one to plead before individual Justices of the Peace. A

*Examples of this will be given below.

**According to Article 246, the following were excluded: (1) illiterates; (2) those not of age; (3) monks; (4) priests; (5) those declared insolvent debtors; (6) pupils or students of any kind; (7) those under tutelage; (8) members of judicial institutions; (9) those excommunicated by order of an ecclesiastical court; (10) those deprived of all civil rights; (11) those indicted for crimes punishable by loss of all civil rights; (12) those dismissed from governmental service by virtue of a court decision; and (13) those to whom the carrying on of cases was prohibited by court decisions.
certificate issued by an ordinary court at the circuit court or appellate court level conferred the right to carry on suits in the Senate if the suit had first been examined in one of the lower courts. The law permitted the possession of several certificates issued by various courts. A private attorney, therefore, could represent his client in all instances and courts in a manner similar to that of a sworn attorney. 27

The government gained in advantage by the existence of these private attorneys. The low requirements to join this profession attracted a less moralistic and idealistic competitor for the regular lawyers. Private attorneys were also more easily controlled; for, rather than being responsible to an association consisting of one’s compatriots, they were checked by the court which issued their certificates. On their own initiative, or on a request of a procurator of a circuit court or Sudebnaya Palata, these courts investigated irregular acts by the private attorneys. The courts could inflict warnings or rebukes, temporary suspension from practicing in that court for a period not exceeding one year, or expulsion from the list of private attorneys in that court. The same Law of May 25, 1874 allowed lawyers-in-training to become private attorneys and still keep their position as lawyers-in-training. The government was thus discouraging prospective lawyers from ever becoming regular attorneys by providing them with a "short cut." 28

In December, 1874, the Tsar issued an ukaze postponing
the establishment of councils of the bar in judicial districts other than in those three in which they already functioned. In all other districts, circuit courts were invested with the prerogatives of the council of the bar. Where an attorney could at any time be suspended or disbarred at the discretion of the courts, independence of the defense was rendered extremely unlikely; and, the attitude of the courts towards the defense grew steadily more intolerant.

The last step taken to limit the legal profession was the decree of March 3, 1890, which made it more difficult to become a lawyer-in-training. In addition to the earlier requirements, one had to have reached the age of twenty-one, to have served his time in the army or been released from military service, to have received permission from a judicial institution, and not to have had previously practiced law.

After 1900, local authorities often took various actions against lawyers to hinder them. In 1905, the lawyers Savitsky and Plaksin, who were to defend workers in Ufa, were arrested by the police and banished to Archangel Province on the eve of the trial. A similar incident occurred on December 23, 1905. S. E. Kolmonovich was defending the murderers of General Bognanovich at a court-martial. Before the trial was over, he was put under arrest. The court allowed this to happen

*They already functioned in the districts of Moscow, St. Petersburg, and Kharkov.

**Previous requirements can be found above in Chapter III, pages 53-54.
after deliberating on his point that he must first finish the defense. The murderers, then lacking counsel, were sentenced to death, refused the right of complaint in cassation, and executed that same night. The lawyer was released a month later on the excuse that it had been a "mistake." Both of these incidents were legal under the local authorities' rights to banish people "administratively," although the last case was certainly dubious. While acts such as these were harmful, the final blow was struck by the Gillerson Case. On October 2, 1908, an attorney, A. I. Gillerson, was arrested for a speech he had given in 1906 when defending persons accused of taking part in a pogrom. In spite of the protests of the General Assembly of the Bar, he was tried on October 26-27, 1909, by a special session of the Sudebnaya Palata in Grodno. He was sentenced to one year's imprisonment. The case was brought before the Criminal Department of Cassation of the Senate on January 14, 1910. There the decision of the lower court was upheld. While most of the danger to the lawyers had previously been from local administrators, a national precedent was then set. Lawyers could be tried for speeches they made in court. 31

In the process of extending their anti-semetic policy, the government further damaged the court system by denying Jews the privilege of participating in the legal or judicial professions. On November 8, 1889, the following ukaze of the Tsar was promulgated:
Although this ukaze did not mention lawyers-in-training, a decision handed down by the Joint Departments of Cassation of the Senate on March 12, 1912, also closed this door to the Jews. In answer to a question of Minister of Justice, Shcheglovitov, it stated that a person of non-Christian faith had first to obtain a permit from the Minister of Justice before he could become a lawyer-in-training. 33

The anti-semitic campaign affected the courts in another way. The courts were used as means of persecution and propaganda. Jews were tried and often convicted of serious crimes which they did not commit. If the crime was one such as "ritualistic murder," it not only served the purpose of killing another Jew, but of further discrediting all other Jewish people. This practice was exemplified by the famous Beilis Case of 1913. Beilis, a janitor in a brick factory, a father of five children, and a man with a spotless reputation, was arrested for the murder of a thirteen year old boy, Andrei Yushchinsky. Investigation by the police revealed that the boy had really been killed by thieves whom he had overheard while visiting at his friend's home. The Minister of Justice, however, was determined to convict Beilis so that the case could further the anti-semitic campaign. Beilis, awaiting
trial, was kept in jail for two and one-half years. He was finally tried on September 25 - October 28, 1913, in the circuit court in Kiev. The prosecution was led by O. Yu. Vipper, the assistant-procurator of the St. Petersburg Sudebnaya Palata. He was assisted by three other lawyers who were well known for specializing in anti-Semitic affairs. The defense was in the hands of Russia's most famous lawyers: Gruzenberg, Grigorovich-Barsky, Maklakov, Karabchevsky, and Zarudny. The trial was a farce. The evidence against Beilis was so poor that the witnesses for the prosecution told conflicting stories. In spite of the pressure which was placed on the judges, prosecutors, and even the jurors involved, Beilis was found not-guilty. Those responsible for the loss of the case were duly punished.34

The Beilis case was a failure for the government. The significance of the case, however, was that the courts had degenerated to the point where the government attempted and expected to win such a farce. In so doing, they tried to use the court as an instrument of oppression.

In the final analysis, it can be seen that a legitimate judicial system was designed in 1864 and that an attempt to set it up was made, but that it never functioned completely as planned. While the system was slowly put into effect, the government grew more reactionary as a result of the increasing terrorist activities within the state. The reaction manifested itself in a constant deterioration of much
of the judicial system. This was done through limitations set on the judicial and legal professions, as well as on the institution of the jury, and by the counter-emphasis on less liberal types of courts. The courts of class representatives received greater power and military courts-martial were constantly expanded. Most of these changes, however, were aimed at greater government control over political trials in the hope of curtailing the prevailing terrorism. The fields of civil and regular criminal law were damaged to a far lesser extent. When the government was overthrown in 1917, there still existed the base for a solid court system. What was left was far superior to what had passed for a judicial system in Russia before 1864.
Conclusion

It has been demonstrated that the judicial system of 19th century Imperial Russia went through three fairly distinct stages. The first stage, which existed prior to 1864, witnessed a complicated and corrupt legal and court system. This condition was in complete harmony with other aspects of Russian life at the time. There existed an autocratic regime which was harsh and despotic; the courts were severe and arbitrary. Society was completely based on class distinction; different courts were created for each class. The government was run by a bureaucracy; the courts were overwhelmed by bureaucratic red tape and inefficiency. There was an overabundance of conflicting laws because there was no proper legislation; there was merely the will of the autocrat. George H. Perris, in describing this period of Russian history, exclaimed: "There are thousands of laws in Russia, but there is no law."¹

As a result of the Crimean War, the government realized that it could no longer continue with the existing political and social structure. Alexander II initiated several great reforms; among them was the Judicial Reform of 1864. The second stage thus saw the creation of an equitable and democratic judicial system. The laws, which had been codified earlier by Sperensky, in an abortive attempt at reform,
were reduced in number. The structure was simplified and the corruption lessened. Freedom of speech in the courtroom was introduced along with public and oral procedure to help protect people accused of crimes. The institution of the jury was also initiated to help guarantee fair trials. The courts were no longer based on class distinction. Educated judges and prosecutors, independent from the administration and from each other, were required. Attorneys were also given rigorous educational requirements in order to be able to better protect their clients. Bar associations were set up to insure ethical practice by the attorneys as well as to protect the lawyers from the government administration.

This structure during the second stage, unlike the first, was not at all in harmony with the existing government. While the judicial system was based on democratic principles, the executive and legislative powers remained autocratic. As Kucherov stated:

There is no doubt that the ideas embodied in the reforms could have served as a basis for the administration of justice in a really democratic state; in Russia they were destined from the beginning to come into conflict with other branches of the administration and their representatives.2

The third stage involved a period of reactionary breakdown of the judicial system. The transition from the second to the third stage began almost immediately; for, not only did the new courts conflict ideologically with the autocracy, but they inadvertently aided the rising revolutionary movement. When anarchists were captured and brought to trial,
they took advantage of the privileges of freedom of speech and public procedure to further their revolutionary campaign. The government reacted by making a distinction between political and ordinary criminal cases. In so doing, the use of courts-martial and administrative punishment came into effect, damaging the regular criminal procedure indirectly. Juries lost a great deal of power, and judges and prosecutors were put under greater control. Lawyers, having proven themselves too liberal, were restricted in various ways, and the growth of the bar associations was stunted. In short, the entire judicial system was disrupted by the government's efforts to stamp out the increasing revolutionary spirit.

By the time of the Russian Revolution of 1917, the structure of the new judicial system, at least that part concerned with political crimes, nearly resembled the condition of the legal and court structure during the first stage. It did not fully return to its old condition, however, for the basis of the civil and regular criminal procedure was intact, and the bureaucratic inefficiency and corruption of old had not been particularly revived. The skeleton of what was intended in the 1864 Reform still remained, and proved to be one of the few vestiges of democracy to exist in Imperial Russia.
Footnotes for Chapter I


3 Kucherov, "Administration of Justice ...," p. 137.

4 Kucherov, Samuel, Courts, Lawyers, & Trials under the Last Three Tsars (New York: Frederick A. Praeger, 1953), p. 3.

5 Ibid., p. 1.

6 Ibid., p. 1.


7 Kucherov, "Administration of Justice ...," pp. 135-36.

8 Ibid., p. 127.


10 Kucherov, Courts, Lawyers, & Trials ..., p. 2.

11 Leroy-Beaulieu, pp. 341-42.

12 Ibid., p. 260.


14 Ibid., p. 559.


16 Wallace, p. 563.

17 Kucherov, Courts, Lawyers, & Trials ..., p. 3.


24. Ibid., p. 129.


26. Kucherov, Courts, Lawyers, & Trials ..., p. 3.

27. Wallace, p. 559.


32. Jerrmann, pp. 97-98.

33. Kucherov, Courts, Lawyers, & Trials ..., p. 108.

34. Ibid., p. 111.


36. Jerrmann, pp. 96-100.

37. Leroy-Beaulieu, pp. 253 & 258.


40. Ibid., p. 320

42 Raeff, p. 323.
43 Ibid., pp. 325-26.
44 Ibid., p. 336.
45 Heard, p. 921.
46 Kucherov, Courts, Lawyers, & Trials ..., p. 21.
47 Leroy-Beaulieu, p. 264.
50 Leroy-Beaulieu, p. 253.
51 Ibid., p. 266.
52 Wallace, p. 561.
Footnotes for Chapter II

1 Leroy-Beaulieu, Antole, The Empire or the Tsars and the Russians (3 vols.; New York, London: G. P. Putnam's Sons, 1903) II, p. 269
4 Pares, p. 351.
7 Leroy-Beaulieu, p. 316.
8 Kucherov, pp. 88-89.
9 Leroy-Beaulieu, pp. 316-17.
11 Kucherov, pp. 87-88.
13 Leroy-Beaulieu, p. 300.
14 Leroy-Beaulieu, p. 313.
15 Wallace, p. 562.
16 Ibid., pp. 310-11.
17 Ibid., p. 314.
18 Kornilov, pp. 298 & 313.
19 Ibid., pp. 315-16.
20 Ibid., pp. 307-08.
21 Kucherov, pp. 87-88.
22 "The Judicial System of Russia," The Law (I, June, 1890), p. 244.
16 Leroy-Beaulieu, p. 320.
17 Ibid., p. 318.
18 Pares, pp. 352-53.
   Heard, p. 925.
20 Kucherov, p. 43.
   Pares, p. 354.
   Heard, p. 925.
21 Kucherov, Courts, Lawyers, & Trials ..., pp. 86-87.
   Baring, p. 294.
22 Wallace, p. 564.
23 Pares, pp. 354-55.
24 Leroy-Beaulieu, p. 326.
26 Leroy-Beaulieu, p. 275.
27 Ibid., pp. 276-77.
28 Ibid., p. 278.
29 Baring, p. 275.
30 Leroy-Beaulieu, pp. 288-91.
31 Pares, p. 351.
32 Kucherov, Courts, Lawyers, & Trials ..., p. 50.
33 Ibid., p. 50.
34 Pares, pp. 350-51.
35 Leroy-Beaulieu, pp. 297-98.
Footnotes for Chapter III


2. Ibid., p. 38.


4. Ibid., p. 39.

5. Ibid., p. 41.

6. Ibid., p. 41.


10. Ibid., p. 687.


15. Ibid., pp. 689-90.


21. Ibid., p. 93.

19Hourwich, pp. 693-94.
Kucherov, pp. 60-63.

20Kucherov, pp. 113-122.

21Ibid., p. 155.

22Kucherov, p. 124.

23Ibid., pp. 132 & 139.

24Ibid., pp. 123-24 & 133.

25Ibid., pp. 125 & 307-08.


Wallace, p. 569.

29Hourwich, p. 696.
Kucherov, p. 127.

30Kucherov, pp. 128-33, 152, & 161.

31Ibid., p. 130.

32Ibid., p. 58.

33Ibid., p. 58.

34Ibid., pp. 58-59.
Leroy-Beaulieu, pp. 352-53.


36Baring, pp. 281-82.
Leroy-Beaulieu, p. 351.

38. Kucherov, Courts, Lawyers, & Trials ..., pp. 64 & 89.

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41. Ibid., pp. 574-75.

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44. Hourwich, p. 705.
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Abstract

An analysis of the judicial system which existed during the reign of Nicholas I (1825-1855) serves as an example of the detestable condition of the legal and court system for several centuries prior to the 1864 Reform. The structure of the courts was complex and confusing; there was an overabundance of tribunals with ill-defined jurisdiction. The procedure was lengthy, expensive, and inquisitorial by nature. The personnel, both judges and clerks, were ignorant and corrupt. The few attorneys that existed were as inadequately trained and as prone to bribery as the personnel in the courts. There was also a mass of conflicting, arbitrary laws.

This judicial system reflected the structure and condition of the state as a whole. The government was autocratic and was operated by a complicated and somewhat corrupt bureaucratic machine. The laws were therefore arbitrary and the courts disorderly and venal.

After an investigation of the Decembrist Revolt in 1825, Nicholas I realized how disorganized and inadequate the administration of the country was. He determined to improve the system to a limited extent. The result was Sperensky's codification of the laws in 1832. This, however, was very inadequate.
When Russia lost the Crimean War in 1856, primarily due to the inherent corruption and disorder in the social and political structure of the country, the need for radical reform became ostensible. Alexander II inaugurated several new reforms. The Serf Reform of 1861 and the Judicial Reform of 1864 were two of the most important. The Judicial Reform completely revamped the structure and procedure in the courts; it appeared to have created an enlightened and equitable judicial system.

The general structure of the courts was simplified. The procedure was made oral and public to help protect the accused. The preliminary investigators, the prosecutors, and the judges were all made independent of each other and theoretically of the government administration above them. Attorneys, as well as judges and prosecutors were required to have considerable legal education. Bar associations were established to make it possible for attorneys to regulate their own activities independent of the administration, and at the same time to protect people against possible unethical practices of their lawyers. Finally, the institution of the jury was introduced in criminal cases. The jury system gave the people full participation in the administration of justice.

The new judicial system, unfortunately, began to function during a period of growing rebellion and terrorism. As a result, many laws and 

ukazi were issued which helped to partially destroy the work of the 1864 Reform. "Private
attorneys, persons whose duties resembled the ordinary lawyers but who were more easily controlled by the administration, were instituted to compete with the regular attorneys who were proving to be too idealistic and liberal. Public and oral procedure in the court was limited. The death penalty, which had been abolished for most cases, was inflicted frequently through the extensive use of courts-martial. The duties and jurisdiction of the juries were restricted. Bar associations were rendered impotent. Overall, one might feel that the judicial system had been transformed nearly to its pre-reform condition.

More careful observation, however, would indicate that most of these restrictions were aimed only at political crimes. Civil procedure was barely altered. "Regular" criminal procedure did not suffer. The overall structure remained the same. It was only in cases of political crimes that the trial procedure took on the old inquisitorial form. The major ideals embodied in the 1864 Reform lived on long enough to die with the entire regime in the Revolution of 1917.

Richard F. Casson