

How Arbitrary Was Tsarist Administrative Justice? The Case of the Zemstvos Petitions to the Imperial Ruling Senate, 1866–1916

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One of the key principles of the modern legal state (*Rechtsstaat*) is the right of all citizens to seek judicial protection against unlawful acts of government officials. It stems from the fundamental principle of the rule of law that asserts that all citizens, including state officials, are equal before the law and have the right to a fair trial.¹ Within this legal framework a distinct field of law, “administrative justice,” governs public litigation against state

1. The classic account of the British doctrine of the rule of law is A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (London, New York: Macmillan, St. Martin’s Press, 1959).

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officials. Its domain of jurisdiction reflects complex philosophical and legal distinctions between the public and private spheres in the modern state.² As legal scholars and philosophers continuously redefine the boundary between the public and private spheres, the prerogatives of government officials over the rights of private citizens continue to evolve. The key questions in the debate are as follows. Should the state guarantee an undisputed precedence of citizens' rights over administration or should it protect its officials from widespread litigation and therefore grant them a certain degree of immunity? Should ordinary courts and laws decide disputes between government officials and private individuals, or should the state provide separate norms, judges, and procedures for administrative litigation? Should punishment for misuse of administrative power be equal to that of the breach of civil or criminal laws? Who and to what extent should be made liable for any damages incurred through misuse of administrative power?

At the root of the debate stands the eighteenth-century doctrine of the separation of powers that was widely adopted in Europe after the publication of Montesquieu's treatise, *De l'esprit des lois*.³ Although a student of British constitutional law, Montesquieu leaned toward stronger distinction of the executive power from the judiciary, and the inviolability of the former before the latter. This was a subtle theoretical departure from the British concept of the rule of law that provided for significant overlaps (known as a system of checks and balances) between the executive and the judicial powers and underscored universality and equality of all before the law. Perhaps contrary to Montesquieu's intentions, the doctrine of "separation of powers" was subsequently interpreted as a call for total separation of the executive from the judicial arm of government and their protection from mutual "infringements." Particularly in the early nineteenth century this interpretation gave rise to the concept of "executive immunity," i.e., a certain claim for exemptions of administrative authority from ordinary laws in the interests of a nation, community, or crown. In practice, however, "executive immunity" led to a steady augmentation of national administrative powers in the hands of the few and was used to justify growing bureaucratic intrusions into the public and private sphere.⁴

2. Basic sources for these distinctions are Jurgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Cambridge: MIT Press, 1989); Michael Oakeshott, *On Human Conduct* (Oxford: Clarendon Press, 1975); Frederick A. Hayek, *The Constitution of Liberty* (London and Henley: Routledge and Kegan Paul, 1976).

3. Montesquieu observed these principles in the workings of the British government and brought his ideas to pre-revolutionary France.

4. For an overview of the history and theory of the doctrine of separation of powers in Europe, see M. J. C. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press, 1967).

Widely spread protests against it compelled most European governments to adopt some form of judicial authority over executive decisions and establish national supreme administrative courts. By the end of the nineteenth century, Britain, France, Germany, Belgium, and Italy introduced different models and degrees of judicial intervention in administration. These ranged from a formal legal review (*ultra vires*) of the scope of administrative power afforded to a particular office, as was adapted in Britain,⁵ to the more thorough judicial examinations that, as in France, also assessed the social consequences of administrative acts.⁶ Despite these variations European supreme courts by the turn of the twentieth century enjoyed considerable autonomy from administrative exigencies or the political goals of popularly elected governments.⁷ By allowing citizens to contest decisions of government officials in the court of law, administrative litigation increased the transparency and legitimacy of the state and ultimately, despite the continuing theoretical controversies, helped to consolidate European nation-states by creating a definitive public sphere in which an individual could safely contest executive acts.⁸

Russian statesmen and members of the intelligentsia soon became acquainted with these ideas. After the Great Reforms of the 1860s, European constitutional treatises were widely translated into Russian, and they helped Russian students of law to understand the diversity of national approaches to relations between the administrative and judicial powers.⁹ To some this

5. For the discussion of the British doctrine of *ultra vires*, see Phillip O. Hood and Paul Jackson, *Constitutional and Administrative Law* (London: Sweet and Maxwell, 1987), 662.

6. A brief outline of the principles of the French Droit Administratif in English can be found in P. M. Gaudemet, "Droit Administratif in France," in Dicey, *Introduction*, 475–93.

7. For the adoption of the principles of administrative justice in the late nineteenth century by the British judicial system, see Joseph Jacob, *The Republican Crown: Lawyers and the Makings of the State in Twentieth-Century Britain* (Aldershot; Brookfield: Dartmouth, 1996); for British practices of administrative justice in the late twentieth century, see John Griffith, *The Politics of the Judiciary* (London: Fontana Press, 1997).

8. See, for example, the role of British courts in regulating government business practices in Ron Harris, *Industrializing English Law: Entrepreneurship and Business Organization, 1720–1844* (Cambridge, New York: Cambridge University Press, 2000).

9. Most of the juridical literature in this period consists of analyses of the European concepts and practices of administrative justice with implied significance for Russian politics and government: V. V. Ivanovskii, *Uchebnik nauki politseiskogo prava* (Moscow, 1891); N. Kuplevasskii, *Administrativnaia Iustitsiia vo Frantsii* (Khar'kov, 1879); N. I. Tarasov, *Kratkii ocherk nauki administrativnogo prava* (Iaroslavl', 1888); V. F. Deriuzhinskii, "Administrativnye sudy v gosudarstvakh Zapadnoi Evropy," *Zhurnal Ministerstva Iustitsii* (hereafter *ZhMlu*) 6 (1906): 85–122; A. Gussakovskii, "Administrativnaia Iustitsiia," *ZhMlu* 10 (1906): 69–123; N. I. Pavlienko, "Sushchnost administrativnoi iustitsii i osnovnye cherty ee organizatsii v evropeiskikh gosudarstvakh," *Kievskie Universitetskie Izvestiia* 12 (1898); N. I. Tarasov, "Organizatsiia administrativnoi iustitsii," *Iuridicheskii Vestnik* 9 (1887).

suggested that the difficulties that Russia faced in respect of state modernization were well within the general trends of institutional development in Europe, and that the country was on its way to establishing the *pravovoe gosudarstvo* (Rechtsstaat).¹⁰ For others it was an indication of the opportunities available to Russia to develop its own style of government that would preserve its national traditions and reflect the beliefs and culture of its people. Either way, many remained optimistic even after the adoption of the noticeably limited Court Statutes (*Sudebnye Ustavy*) of 1864 that excluded the tsarist bureaucracy from the legal purview of the courts.

Yet after almost fifty years of developing administrative-judicial practice there was no consensus on a definitive national model of administrative justice. Russian jurists continued to debate which one of the western models gradually took root in the Russian system of administrative justice. Some suggested that British-style procedure by which administrative-judicial decisions were reached *ultra vires*, i.e., through examining the “four corners” of power—its nature, objects, and the means of exercising authority as well as the general scheme of legislation—was what the courts, and especially the Imperial Ruling Senate tended to do.¹¹ Others maintained that a French-style examination of instances of circumvention of administrative laws (*detournement de pouvoir*), which established social consequences of administrative actions, prevailed in Russia’s administrative-judicial practice.¹² Although both forms of judicial discourse could be identified in the Senate’s verdicts, the problem facing Russian jurists went beyond mere legal technicalities. The confusion over the prevailing form of administrative adjudication arose primarily from the major difficulty of applying western legal concepts to the Russian system of justice. These concepts did not match the pattern of the tsarist government authority.¹³

To begin with, the executive power of tsarist ministries and departments of state traditionally enjoyed an undisputed pre-eminence before the courts. Despite thorough restructuring of tsarist government in the course of 1802–1811 ministerial reforms and proclamations of “the rule of law” (*zakonnost’*)

10. For an overview of the Russian ideas of Rechtsstaat, see Hiroshi Oda, “The Emergence of Pravovoe Gosudarstvo (*Rechtsstaat*) in Russia,” *Review of Central and East European Law* 3 (1999): 373–434. For this reference I am grateful to Geoffrey Hosking of the School of Slavonic and East European Studies at the University of London; see also his account of the general optimism surrounding Russian Great Reforms in Geoffrey Hosking, *Russia and the Russians: A History* (Cambridge: Harvard University Press, 2001): 287–89.

11. M. A. Lozina-Lozinskii, “Proverka diskreسیونnykh rasporiazhenii administrativnymi sudami,” *Pravo* 3 (1901): 126–35, and *Pravo* 4 (1901): 176–88.

12. N. I. Lazarevkii, “Pravovoi kontrol’ nad diskreسیونnymi rasporiazheniiami administratsii,” *Pravo* 12 (1901): 642–49; Lazarevkii, “Administrativnoe usmotrenie,” *Pravo* 41 (1900): 1903–11, and *Pravo* 42 (1900): 1957–64.

13. See, for example, S. A. Korf, *Administrativnaia iustitsiia v Rossii* (St. Peterburg, 1911), vol. 1.

passionately advocated by Michael Speransky,¹⁴ ministers and their subordinates continued to derive their allegiance to law not from the abstract notion of the legal state, but from the personal trust of the tsar. Any challenge to or limitation of ministerial authority was perceived as an infringement upon the tsar's personal confidence with the respective official.¹⁵

Second, and more significant, while European concepts of legality reflected social relations between individuals and corporations as "juridical persons" equal before the law, Russian legal practice often treated those as constituent parts of a hierarchy of social estates (*soslovnia*) or patronage clans that was crowned by the autocracy of the tsars. Thus the evolution of a legal culture and institutions of law in Russia was impeded by the power dynamics of the tsarist autocracy as a particularistic and clientelist state, where the exercise of state power rested on the personal connections to the Russian ruling class.¹⁶ In this context, the very survival of the tsarist patronage-state to a great extent involved the "fine-tuning" of the meaning and application of legal norms to suit the local or personal circumstances of each case, carried out traditionally by means of general administrative supervision (*nachal'stvennyi nadzor*) throughout the bureaucratic hierarchy. To affect the law "justly" (*spravedlivo*) meant not only to put into effect the abiding norms of law, but above all to ponder the expediency of the verdict and its practical implications for the state of affairs in each locality.¹⁷ Intent on preserving personal and clan loyalties, tsarist officialdom earned an unenviable reputation for corruption and the abuse of authority: "Everyone steals" ("Voruiut") was a phrase famously coined by Karamzin to capture the spirit of Russian government.¹⁸

14. Marc Raeff, *Michael Speransky, Statesman of Imperial Russia, 1772–1839*, 2d ed., (The Hague: Martinus Nijhoff, 1969); John Gooding, "The Liberalism of Michael Speransky," *Slavonic and East European Review* 64, no. 3 (1986): 401–24.

15. Daniel Orlovsky, *The Limits of Reform: The Ministry of Internal Affairs in Imperial Russia, 1802–1881* (Cambridge: Harvard University Press, 1981).

16. Geoffrey Hosking, "Patronage and the Russian State," *Slavonic and East European Review* 78, no. 2 (2000): 301–20; M. N. Afanas'ev, *Klientelizm i rossiiskaia gosudarstvennost'* (Moscow, 1997).

17. Peter B. Brown, "Neither Fish nor Fowl: Administrative Legality in Mid and Late Seventeenth-Century Russia," *Jahrbucher für Geschichte Osteuropas* 50, no. 1 (2002): 1–21; Peter B. Brown, "Guarding the Gate-Keepers: Punishing Errant Rank-and-File Officials in Seventeenth-Century Russia," *Jahrbucher für Geschichte Osteuropas* 50, no. 2 (2002): 224–45. Both articles demonstrate that formal justice, juxtaposed against informal justice based on culturally determined unwritten norms, militated against sanctioning Russian officials for administrative violations.

18. Quoted from Irina Davydova, "Bureaucracy on Trial: A Malaise in Official Life as Represented in Nineteenth-Century Russian Thought," in *Bribery and Blat in Russia: Negotiating Reciprocity from the Early Modern Period to the 1990s*, ed. Stephen Lovell, Alena Ledeneva, and Andrei Rogachevskii (New York: Macmillan Press, St. Martin's Press, 2001), 94–112.

Thus for a long time, the imperatives of autocracy and clientelism precluded the possibility of developing a “Weberian” bureaucracy,¹⁹ legal guilds or a representative public sphere that firmly underpinned the system of administrative justice in Europe. The absence of these institutions and practices led many historians and legal scholars to deny that Russia ever enjoyed any legal tradition or even had the potential for developing a legal state. The liberal intelligentsia group *Vekhi*, for example, proclaimed that Russia had never had any genuine legal tradition, and therefore profound cultural changes were needed before Russia could achieve the transition to the rule of law.²⁰ Only recently did historians seriously challenge this idea.²¹ My article is an attempt to unearth the achievements as well as to understand the road blocks in the development of the administrative justice as a part of the general efforts towards *pravovoe gosudarstvo* in Russia.

I should explain here that the paradox of Russian administrative justice as practiced by the Imperial Ruling Senate in the period between 1866 and 1916 was that it emerged from, but never fully replaced, the traditional Senate function of administrative supervision (*nachal'stvennyi nadzor*) deeply rooted in its origins and the general political culture of the tsarist state. After nearly half a century of administrative adjudication senators still deemed their power of *nadzor* essential if not pre-eminent for legitimizing, as they did in many of their verdicts, the onset of a broad social change. In order to uphold the progressive provisions of the Great Reforms the Senate strove to use new methods of legal reasoning, yet when the law proved prohibitive senators did not hesitate to abandon their formal judicial function and resort to their traditional power of *nadzor*, which proved effective in circumventing some of the most restrictive parts of state legislation.

The mixture of the two legal modes of operation—supervisory and adjudicative—was not new in the Russian experience of reforming the tsarist legal system. After the Great Reforms of the 1860s its legal institutions—from procuracy to jury, to peasant *volost* courts—constantly vacillated between legalistic and substantive forms of discourse.²² The problem

19. Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, trans. Ephraim Fischhoff et al. (Berkeley: University of California Press, 1978). Weber defined modern bureaucracy as a hierarchical structure based on rationalist and universal principles of law.

20. Nikolai Berdiaev, *Vekhi. Sbornik statei o russkoi intelligentsii* (Moscow, Frankfurt am Main: Posev, 1909).

21. Most noticeably William Wagner, *Marriage, Property and Law in Late Imperial Russia* (Oxford, New York: Clarendon Press, Oxford University Press, 1994).

22. See for example Peter Solomon Jr., “Courts and Their Reform in Russian History,” in *Reforming Justice in Russia, 1864–1996: Power, Culture and the Limits of Legal Order*, ed. Peter Solomon Jr. (New York: M. E. Sharpe, 1997), 5–10; Jane Burbank, “Legal Culture,

with this mode of operation was that its progressive usage largely depended on the membership of the Senate Departments and Assemblies and that, in the absence of judges' tenure, it could be equally effective in launching and enforcing counter-reforms.²³ In the circumstances the Senate's ambiguous stance toward its own practice proved to be a serious obstacle for the reform of administrative justice. By the beginning of the twentieth century when the reform was finally put on the government's agenda the Senate seemed to have revived its traditional role of a supreme mediator of tsarist authority and was unwilling to part with the discretionary supervisory power that it offered. It appeared now that the Senate strove not simply to uphold the tsarist law, as would be fitting for a supreme administrative court, but also to define in a quasi-legislative manner what the law should be in each case. This proved to be a treacherous path of political ambition that no tsarist ministry could agree to under the autocratic regime.

To probe my hypothesis I have chosen to concentrate upon the Senate's verdicts on local government (*zemstvos*) whose petitions to the Senate reflected the fundamental constitutional problem of the tsarist state—the devolution of political authority. It is also significant in that *zemstvos* despite all of their shortcomings were the voice of the progressive opinion of local professionals such as statisticians and physicians who represented the nascent public sphere of Russia. They struggled to improve *zemstvos*' most essential functions—local taxation and health care—by ensuring equitable distribution of benefits and costs of public services among social estates. As Charles Tilly argued, the progress of European societies from coercion and inequity to political consensus was accompanied by a transition from direct to income-based taxes establishing parity of individual contributions to public funds.²⁴ Hence the Senate practice on *zemstvos*' petitions on local tax and health care assumed a cardinal political quality that required an original, if not unprecedented by European standards, judicial approach. Yet, the Senate's tacit recognition of the pressing need for social change

Citizenship and Peasant Jurisprudence: Perspectives from the Early Twentieth Century," in *Reforming Justice in Russia*, 82–106; Cathy Frierson "Of Red Roosters, Revenge and the Search for Justice: Rural Arson in European Russia in the Late Imperial Era," in *Reforming Justice in Russia*, 107–30.

23. For example, during the conservative backlash in the Fourth Duma, Russian jurist A. F. Meyendorff wrote in the journal *Pravo* that one of the dangers of the Senate's continuous exercise of its quasi-legislative power was that it could be used by the forces of reaction to circumvent and curtail the power of the Duma. A. F. Meyendorff, "Vopros o tolkovanii zakonov i kompetentsii departamentov Pravitel'stviushchego Senata prezhnego ustroistva," *Pravo* 9 (1914): 644–55, and *Pravo* 12 (1914): 962–73.

24. Charles Tilly, *Coercion, Capital and European States, AD 990–1990* (Cambridge, Mass.: Blackwell, 1990).

as revealed in the zemstvos' petitions interfered significantly with the consistency of the Senate's legal methodology, which caused many observers to suspect the integrity of Senate judgments. I should argue therefore that it was not the proverbial judicial arbitrariness (*proizvol*) that could have been a cause for concern but the dead end that the autocracy reached in its refusal to legitimize far-reaching social change.

My main source was the collection of Senate verdicts on zemstvo petitions compiled and published by a Voronezh zemstvo activist N. I. Kuznetsov, *Sistematicheskii Svod Ukazov Pravitel'stvuiushchego Senata po Zemskim Delam 1866–1916, Voronezh, 1902–1916*, vols. 1–12. It contains several hundred of Senate verdicts on zemstvo petitions, yet having been published at the time of official secrecy surrounding Senate proceedings it includes mostly the brief summaries of the verdicts, not the debates of the Senate's First (Administrative) Department. In those cases where possible I have tried to recreate the debates between the petitioners and the defendants.²⁵

The Great Reforms and the Practice of Legal Supervision (Nadzor)

In the aftermath of the Great Reforms, the “Weberian” attributes of government and society finally began to emerge, when the intellectual ideas and the public demand for some sort of “administrative justice” became widely spread. Public expectations of the imminent emergence of the legal state (*pravovoe gosudarstvo*) aroused general enthusiasm for limiting the proverbial arbitrariness (*proizvol*) of tsarist officials. For a moment, it seemed that the autocracy was poised to provide guarantees of freedom of public life from political persecution and bureaucratic red tape.²⁶ And indeed quasi-judicial mediation in numerous administrative conflicts throughout the era of reforms became a vital if largely unacknowledged in this sense part of new government.

The practice of quasi-judicial mediation was particularly important in achieving the smooth transition of the peasants' status from that of serfs (*krepostnye*) to “temporarily obligated” (*vremenno obiazannye*) as they

25. I have endeavored to trace the original copies of the zemstvos petitions to the Senate, but at this point it appears that the entire collection is missing from the depositories of the RGIA (Russian State Historical Archive). According to archivists, it may have perished in the Leningrad Blockade, 1941–1944, or earlier during the 1930s. Provincial archives might contain the texts of local petitions and even copies of the Senate verdicts, but it would take further research to collect a sizeable sample of those.

26. Alfred J. Rieber, ed., *The Politics of Autocracy: Letters of Alexander II to Prince A. I. Bariatskii, 1857–1864* (Paris: Mouton, 1966).

were declared by the Emancipation Edict on 19 February 1861. The mediating duties were assigned to peace arbitrators (*mirovye posredniki*) who, in the wake of the Emancipation, were given the responsibility of deciding disputes between peasants and landowners concerning the value, quality, and size of redeemed land. Chosen from prominent local nobles and non-nobles, they set the example of high-minded impartiality and commitment to service that, despite all the controversies, earned them the true regard of society throughout the late nineteenth century.²⁷ In the 1890s, similar functions were given to land captains who adjudicated disputes between peasant communes (*mir*) and local and central authorities. Though much more authoritarian in their political make-up than peace arbitrators, land captains mediated between customary peasant law and the bureaucratic strictures of the tsarist state.²⁸ At local society level, a number of standing committees (*gubernskie prisutstviia*) were instituted to mediate disputes in specific areas of government, such as municipal and zemstvo committees, factory inspectorates, forestry and mining commissions, tax valuation committees, education councils, medical inspectorates, and others. Such committees were increasingly introduced to provide expertise and supplement the traditional power of provincial governors in resolving public petitions locally before they would clog up the chancelleries in St. Petersburg.²⁹ None of these organs, however, claimed to base its authority on judicial methods or principles, and each was content with applying itself as an extension of tsarist administration with mostly official membership and with only a few public figures such as zemstvo representatives or free professions being occasionally invited to give their opinions to various committees.

In this respect, the petition practice of the late nineteenth century was a continuation of a deeply seated native custom of public supplication to the

27. Terence Emmons, *The Russian Landed Gentry and the Peasant Emancipation of 1861* (London: Cambridge University Press, 1968); Thomas S. Pearson, "Russian Law and Rural Justice: Activity and Problems of the Russian Justices of the Peace, 1865–1889," *Jahrbücher für Geschichte Osteuropas* 32, no. 1 (1984): 52–71; N. F. Ust'iantseva, "Institut mirovykh posrednikov v otsenke sovremennikov (po materialam gazety 'Mirovoi Posrednik')," *Vestnik Moskovskogo Universiteta. Seriia 8, Istoriiia* 1 (1984): 64–76.

28. Frank Weislo, "The Land Captain Reform of the 1889 and the Re-Assertion of the Unrestricted Autocratic Authority," *Russian History* 15, nos. 2–4 (1988): 285–325; Thomas S. Pearson, "The Origins of Alexander III's Land Captains: A Re-Interpretation," *Slavic Review* 40, no. 3 (1981): 384–403; Larisa G. Zakharova, *Zemskaia kontrreforma 1890 goda* (Moscow, 1968).

29. For an overview of such quasi-judicial organs, see Korf, *Administrativnaia iustitsiia*, vol. 1; for the role of provincial governors in these committees, see Richard Robbins, *The Tsar's Viceroy: Provincial Governors in the Last Years of Empire* (Ithaca: Cornell University Press, 1987).

state that went back to the early imperial and even Muscovite periods.³⁰ Typically petitioners sought direct if somewhat crude administrative intervention of the center into local affairs, which was conducted as a part of legal supervision (*v poriadke nadzora*). In the course of a quasi-judicial hearing procedure general administration determined the extent of and the possible penalties for administrative crimes and misdemeanors.³¹ The problem with *nadzor* was of course that typically the accused officials or their proxy sat on the bench in their own cases, thus creating the root cause of what amounted to a continuous abuse of authority.

Until recently, historians usually explained this situation by pointing to Russia's asiatic backwardness and despotism. However, the remarkable political and institutional tenacity of the *nadzor* system indicates its significance for the power structures of the tsarist state. First, it reflected the persistence of the aristocratic patronage clans that, in return for their undivided control of the provinces, provided a power network that could ensure political stability and maintain the "absolute" image of the initially tenuous Romanov autocracy.³² Second, the tsars used the system of *nadzor* to maintain a high degree of government centralization to safeguard the pre-eminence of the autocracy over the élite oligarchy. In short, by maintaining the undivided function of *nadzor* the tsarist state simultaneously reconciled the interests of aristocratic oligarchies and gave substance to its own autocratic rule. By doing so they were able to hold back the

30. In recent years there has been a resurgence of scholarly interest in petitions practice from a variety of angles of Russian history. However, in most cases historians associate petitions with the lack of legality and rule of law in Russian political culture. For example, for a general appreciation of the tradition of supplication to the state, see Gregory Freeze, Introduction, *From Supplication to Revolution: A Documentary Social History of Imperial Russia* (New York: Oxford University Press, 1988); for use of petitions in patronage politics in the seventeenth century, see Valery Kivelson, *Autocracy in the Provinces: The Muscovite Gentry and the Political Culture in the Seventeenth Century* (Stanford: Stanford University Press, 1996); for peasants' use of petitions in the manipulation of the authorities in the eighteenth century, see Elise Kimerling Wirtschafter, "Legal Identity and the Possession of Serfs in Imperial Russia," *The Journal of Modern History* 70, no. 3 (1998): 561–87; for workers' use of petitions in Soviet Russia, see Sheila Fitzpatrick, "Supplicants and Citizens: Public Letter-Writing in Soviet Russia in the 1930s," *Slavic Review* 55, no. 1 (1996).

31. V. M. Gribovskii, *Vysshii sud i nadzor v Rossii v pervuiu polovinu tsarstvovaniia Ekateriny Vtoroi* (St. Petersburg, 1901); M. N. Korkunov, *Russkoe gosudarstvennoe pravo* (St. Petersburg, 1909); N. V. Murav'ev, *Prokurorskii nadzor v ego ustroistve i deiatel'nosti* (Moscow, 1889); S. Petrovskii, *O Senate v tsarstvovanie Petra Velikogo* (Moscow, 1875).

32. John LeDonne, "Ruling Families in the Russian Political Order, 1689–1825," *Cahiers du Monde Russe et Soviétique* 28, nos. 3–4 (1987): 233–322; for an account of the elaborate rituals designed to project the absolute power of the tsars, see Richard Wortman, *Scenarios of Power: Myth and Ceremony in Russian Monarchy*, vols. 1–2 (Princeton: Princeton University Press, 1995–2000).

dreaded factionalism of the nobility but also to avert the onset of institutional autonomy of the judicial organs of the state. Ultimately, this pattern of relations between the center and periphery of the empire came at the cost of curtailing the political basis for separation of the administrative and judicial functions of the tsarist state amply revealed in the eventual demise of Michael Speransky.

The crowning edifice of the joint system of justice and administration was the Imperial Ruling Senate (1711–1916), which from its inception to its demise acted as a “unifying,” or predominantly executive organ of the state, as opposed to an adjudicating or “dividing” one.³³ Having been established as a “supreme and independent” organ of the imperial government, the Senate enjoyed a certain institutional hegemony that enabled it through its decrees (*ukazy*) to thrust the autocratic will into the distant provinces of the empire. At the same time, as a supreme aristocratic council, it acted as an arena for the mediation and reconciliation of the interests of aristocratic clans.³⁴ Under the careful watch of procurator generals, whose task it was to check corruption and detect treason among the senators, the Senate fulfilled a supervisory role in all spheres of government. It was responsible for the promulgation and secure delivery of laws to the far-flung corners of the empire, interpreting technical details of laws to their recipients, reconciling jurisdictions and streamlining the performance of tsarist agencies, and, last but not least, addressing public and private grievances against potential abuses of authority.³⁵

In the early nineteenth century, the Senate was largely marginalized in the course of the ministerial reforms (1802–1811) that delegated its advisory role to the State Council and distributed its administrative functions among the new ministries. The procurator general assumed the role of minister of justice whose main task was to conciliate and if necessary cajole the senators into accommodating ministerial policies in the provinces.³⁶ Michael Derzhavin was the first and the last minister of justice to attempt to exercise the Senate’s authority as a legal counterweight to the ministries, an attempt that ended with his disgrace and resignation. By the time of the

33. The two-hundredth anniversary of the Senate warranted a magisterial four-volume history by E. N. Berendts et al., eds, *Istoriia Pravitel'stvuiushchego Senata*, vols. 1–4 (St. Petersburg, 1911).

34. John LeDonne, *Absolutism and the Ruling Class: The Formation of the Russian Political Order, 1700–1825* (New York: Oxford University Press, 1991), 69–74.

35. “Ustanovlenie Pravitel'stvuiushchego Senata,” *Svod Zakonov Rossiiskoi Imperii*, vol. 1 (St. Petersburg, 1892).

36. V. G. Shcheglov, *Gosudarstvennyi Sovet v Tsarstvovanie Aleksandra Pervogo*, (Iaroslavl', 1892); Richard Wortman, *The Development of Russian Legal Consciousness* (Chicago: University of Chicago Press, 1976).

1860s' Great Reforms the Senate had long been demoted to a chancellery of the ministry of justice concerned with minor civil, criminal, and administrative cases, which it resolved "*v poriadke nadzora*" as a part of its enduring duty of supervision. Nonetheless, it continued to enjoy the historic title of a "depository of laws" (*khranilishche zakonov*). This lingered on not so much because of the Senate's "impeccable" judicial reputation, but more so as a result of its legacy as a quasi-judicial mediator between the *realpolitik* of the provinces and the tyrannical "civilizing" urges of the tsars. Thus in the wake of the 1864 Judicial Reform, the eminent Russian jurist A. D. Gradovskii described the Senate as follows:

The Senate must remain an institution set at the head of all subordinate, i.e. sub-statutory (*podzakonnogo*) administration, a position which maintains the force of law, oversees the actions of local institutions and officials, is accountable for and dedicated to the protection of the rights of each and every one . . . Anyone who is committed to the success of our government should be concerned with *better coordination* between, and *not the separation* of, the administrative and judicial branches of the Senate. The division of the Senate into administrative and judicial organs will increase the antagonism between the executive and the judiciary, and we would not have among our organs that vital link, that impartial authority that alone is able to contain the [political] deviations (*uvlecheniia*) of different agencies and persons. On the contrary, if we preserve this institution intact we will have an organ that serves not the interests of particular agencies but the interests of the law and the [general political] cause. Finally, such a division would reduce the significance of each [Senate] Department, which now enjoys collective authority even though each and every one of them is dedicated to a specific task. In the absence of such unity the significance of separate Departments will be lost.³⁷

The obsession with the institutional unity of the government conveys a profound ideological difficulty on the part of the tsarist state, which seemed unwilling to part with the idea of governmental unity even when for all intents and purposes the government had been long divided into functional chancelleries, departments and ministries. However, in the 1860s, through the efforts of a handful of influential government officials who later became known as the "enlightened bureaucrats,"³⁸ the idea of the limited separation of powers gained partial acceptance in governmental circles and set in motion a deeper transformation of the state.

37. Emphasis added. A. D. Gradovskii, *Nachala russkogo gosudarstvennogo prava* (St. Petersburg, 1876) 2:328; for an analysis of Gradovski's political views, see Bernhard Dilger, "Die Politischen Anschauungen A. D. Gradovskj's," *Forschungen zur Osteuropaischen Geschichte* 15 (1970): 145–306.

38. W. Bruce Lincoln, *In the Vanguard of Reform: Russia's Enlightened Bureaucrats, 1825–1861* (DeKalb: Northern Illinois University Press, 1982).

The Organization of the Senate after the Great Reforms

The 1864 Judicial Reform adopted new civil and criminal court statutes that provided the procedural and methodological foundation of judicial due process and established the boundaries of judicial autonomy.³⁹ This brought Russian legal standards in line with the advanced European practices of the time, including the French-style appeal procedure (*cassation*) before the Senate. The new Civil and Criminal Cassation Departments of the Senate, staffed by professional lawyers, received an unprecedented right to elucidate imperial laws and thus override the decisions of lower courts and administrators purely on the basis of judicial interpretation of the case, a privilege previously reserved for the tsar himself. This gave the Cassation Departments wide-ranging powers to influence public opinion and on occasion to overhaul tsarist public policies in such areas as criminal justice and property and family law.⁴⁰

However, the inconsistent ideology of the Great Reforms and the government's lack of any commitment to guaranteeing the civil liberties of its subjects precluded the comprehensive overhaul of the judicial system.⁴¹ The reform was not only incomplete at the lower level of courts, but also at the highest level, where the Senate's Administrative Departments continued the practice of petition hearings in the old manner of administrative supervision (*v poriadke nadzora*).⁴² The so-called "unreformed" (*prezhnego ustroistva*) First (Administrative) Department, together with the Department of Heraldry and Second (Peasants) Department, did not receive proper judicial independence and continued to review administrative cases jointly with the administrators in question, or with their superiors.

Each of the departments consisted of several senators who were traditionally encouraged to vote unanimously in each case. To help them achieve unanimity, the departmental over-procurators responsible before the procurator general "negotiated" their opinions and encouraged a con-

39. For an overview of the 1864 Judicial Reform, see W. Bruce Lincoln, *The Great Reforms: Autocracy, Bureaucracy and the Politics of Change in Imperial Russia* (DeKalb: Northern Illinois University Press, 1990), 105–17; B. V. Vilenskii, *Sudebnaia reforma i kontr-reforma v Rossii* (Saratov, 1969); G. A. Dzhanshiev, *Osnovy sudebnoi reformy* (Moscow, 1891); N. V. Davydov and N. N. Polianskii, *Sudebnaia Reforma*, vols. 1–2 (Moscow, 1915); A. F. Koni, *Otsy i deti sudebnoi reformy* (Moscow, 1914).

40. Wagner, *Marriage, Property and Law*.

41. William G. Wagner, "Tsarist Legal Policies at the End of the Nineteenth Century: A Study in Inconsistencies," *Slavonic and East European Review* 54, no. 3 (1976): 371–94.

42. V. Nabokov, "Raboty po sostavleniiu sudebnykh ustavov: obshchaia kharakteristika sudebnoi reformy," in *Sudebnye Ustavy 20 Noiabria 1864 goda za piat'desiat let'*, ed. N. V. Davydov and N. N. Polianskii (Petrograd, 1914).

sensus amongst all senators.⁴³ If this failed, they could transfer the case to one of the Joint Assemblies that consisted of either the three administrative departments—First, Peasant, and Heraldry Departments, or the First and Cassation Departments, according to the nature of the case.⁴⁴ At this stage, the so-called supernumerary (*neprisutstvuiushchii*) senators could be added to the regular ones, a procedure that was often used to skew the decision in the desired direction. In any event, the required two-thirds majority vote was hard to achieve for such a numerous and diverse membership of the Senate Assemblies. Failing that, the procurator general could once again instigate hearings at the next level, this time outside the Senate chambers—in the State Council or at the Imperial Chancellery, which decided the most politically sensitive cases.⁴⁵ Apart from the obvious erosion of judicial autonomy, this procedure was also heavily complicated by the enormous delays and contradictions caused by the ministries. Each ministry could send either a written opinion or a representative to argue its side of the case. One vote of a ministry's official against the Senate chamber was enough to send the case up the ladder.⁴⁶ Believing that their authority was entrusted to them directly by the tsar, ministers intensely disliked to revoke their policies or prosecute their own officials and often failed to reconcile their opinions with the Senate. As a result, a minister's veto or no-show at senatorial hearings became common practice, and by the turn of the twentieth century the backlog of cases stretched more than a decade back. The paralysis of the Senate in the late nineteenth and early twentieth century indicated the impasse between the autocratic principles and the old patronage politics that the Senate continued to symbolize even at this late stage.

Nevertheless, despite the glaring lack of institutional and methodological autonomy, the Administrative Departments of the Senate, and particularly its First Department, endeavored to lay down some sort of legality in the exercise of administrative authority. These efforts became especially pronounced in the Senate's practice on zemstvos petitions, which became the battle ground between the two visions of the *zakonnost'*. One belonged to the early-modern cameralist tradition⁴⁷ of power sharing advocated by conservative Russian elites and officialdom and the other to the liberal principle

43. Article 9, *Ustanovlenie Pravitel'stvuishchego Senata* (hereafter UPS), in I. D. Mor-dukhai-Boltovskii, ed., *Svod Zakonov Rossiiskoi Imperii* (St. Petersburg, 1892), vol. 1.

44. Article 99 and 105, UPS.

45. Article 118, UPS. The case against Alexander Ul'ianov, Lenin's brother, executed for conspiracy in the tsar's assassination, was tried in this manner.

46. Article 120–133, UPS.

47. On the cameralist principles of the tsarist state, see Marc Raeff, *The Well-Ordered Police State: Social and Institutional Change Through Law in the Germanies and Russia, 1600–1800* (New Haven: Yale University Press, 1983); George Yaney, *The Systematization*

of separation of powers advocated by the new generation of Russian jurists. Both visions had their supporters in the Senate's First Department, which while continuing to exercise its supervisory authority (*nadzor*) over local government, gradually began to conceive of its petitions practice as a form of administrative justice. Such ideological transformation was engendered by rapid professionalization of the tsarist civil service⁴⁸ and particularly of the Senate Cassation Departments, which greatly influenced the outlook and the legal practice of the First (Administrative) Department.

The Composition and Professionalization of the Senate, 1864–1914

Despite the incomplete reorganization of the imperial system of justice, significant methodological and ideological changes took place in the upper echelons of the tsarist judiciary, changes that reflected and complemented a broad transformation of public legal consciousness. In particular, the First (Administrative) Department of the Senate, widely regarded as the “patriarch of administration,” became in its own judgment a de facto supreme administrative court. This transformation stemmed from several aspects of its growing legal culture.

First, the general and legal professionalization of the tsarist civil service, where most of the First Department's senators were recruited, contributed significantly to the development of legal methods in its administrative-judicial practice. Of the total of 83 senators appointed in this period,⁴⁹ 44 senators or 53 percent had previously worked in central government departments.⁵⁰ Most of the appointees to the Senate came from the key Ministries of Justice (11 senators or 13.3 percent), Finance (5 senators

of Russian Government: *Social Evolution in the Domestic Administration of Imperial Russia, 1711–1905* (London, 1973); Jörg Baberowski, *Autokratie und Justiz* (Frankfurt am Main: Vittorio Klostermann, 1996).

48. Dominic Lieven, *Russia's Rulers Under the Old Regime* (New Haven: Yale University Press, 1989); Walter Pintner and Don Karl Rowney, eds., *The Russian Officialdom: Bureaucratization of the Russian Society from the Seventeenth to the Twentieth Century* (Chapel Hill: University of North Carolina Press, 1980).

49. This data is derived from the following official and unofficial sources: *Spisok grazhdanskim chinam pervykh trekh classov*, St. Petersburg (esp. 1881, 1896, 1897, 1898, 1908, 1914); N. A. Murzanov, *Pravitel'stviushchii Senat 1711–1911. Spisok Senatorov*, St. Petersburg, 1911; P. Semenov, *Biograficheskie ocherki Senatorov*, Moscow, 1886; M. L. Levenson, *Pravitel'stviushchii Senat: kratkii istoricheskii ocherk biografii Senatorov*, St. Petersburg, 1912; *Al'manakh sovremennykh russkikh gosudarsvennykh deiatelei*, St. Petersburg, 1897.

50. N. V. Assa, “Authority, Society and Justice in Late Imperial Russia: The Case of the Zemstvos Petitions to the Senate, 1864–1914” (Ph.D. diss., School of Slavonic and East European Studies, University of London, 2001), 68.

or 6.0 percent) and Interior (5 senators or 6.0 percent), together with the Department of Laws of the State Council (5 senators or 6.0 percent) and Chancellery of the Committee of Ministers (3 senators or 3.6 percent). For many senators, their new careers in many ways complemented their previous legal training and administrative experience.

Second, the core of the senators appointed to the First Department had been educated in law and were experienced in legal and judicial procedures. Thirty-nine senators or nearly 46 percent received legal training, ten senators or 12 percent of the total received general education in the humanities, while only seven of them or only 8.4 percent were trained as military officers.⁵¹ Therefore for the majority of the Senate members (49 senators or 57.8 percent), appointment to the Senate meant the opportunity to implement their European-style legal learning mostly within the conditions of Russian administration and justice. This went hand in hand with the developing of private and civic sensibilities that the institutions of higher learning were able to provide.

Third, senators attended prestigious state and private institutions which provided the finest education for the landed and urban élites. They were predominantly educated in civilian establishments (56 senators or 67.5 percent) rather than in the military (7 senators or 8.4 percent) ones, a significant departure from the traditional pattern of recruitment.⁵² Not only did civilian institutions put greater value on learning and the humanities than their military counterparts, but they also encouraged a civic and private awareness that was beyond the ambitions of the traditional army and navy institutions. Even more indicative of the social change within the ranks of the First Department was the fact that majority of senators attended urban egalitarian universities (33 or 40 percent) rather than the leading élite schools (23 senators or 28 percent). The most prominent among those were St. Petersburg University (17 senators or 20.5 percent) and Moscow University (12 or 14.5 percent), the Imperial School of Jurisprudence (12 senators or 14.5 percent) and the Alexander Lyceum (8 senators or 9.6 percent), which in their own distinct ways imbued students with the sense of civic duty and adherence to *zakonnost'*. While universities catered to a more diverse mix of students and espoused service to the people, élite schools on the other hand prided themselves on exclusivity and service to the monarchy, and instilled a special sense of aristocratic camaraderie among their graduates.⁵³ These differences however more often complemented than contradicted each other in their future careers.

51. *Ibid.*, 69.

52. *Ibid.*, 70. Emphasis added.

53. For memoirs of their educational establishments, see A. Kizevter, "Iz vospominanii vos'midesiatnika," *Golos Minuvshego* 3 (1926): 123–52; V. O. Kliuchevskii, "Moskovskii

Fourth, many senators had previously worked in some legal or judicial capacity, which further enhanced their propensity to view their jobs not merely as an administrative or disciplinary intervention in the case but as an administrative adjudication.⁵⁴ Nearly 50 senators or 60.3 percent had previously held important judicial posts, of which 20 senators or 25 percent served in Criminal and Civil Cassation Departments of the Senate. The latter produced such prominent jurists as A. F. Koni, A. A. Knirim, N. S. Tagantsev, A. A. Saburov, and others who at different periods of their careers contributed to the work of the First Department.

The Civil and Criminal Cassation Departments of the Senate, which were set up in 1864 on the latest model of French jurisprudence as the final instance of appeal, provided an important source of new judicial methodology that was gradually adopted by the First Department.⁵⁵ The latter not only benefited from the influx of new members from the Cassation Departments, but also from becoming privy to the sophisticated judicial discourse that filled their Joint Assemblies. This created an atmosphere of fruitful exchange between those who can be called as senator-judges and senator-administrators of the First Department, an exchange that supplemented the traditional practice of administrative mediation (*nadzor*) with sophisticated legal discourse.

The senators' improved legal education, broader administrative and judicial experience, and heightened civic sensibilities provided a rich intellectual milieu for the evolution of the traditional petitions practice. Many senators continued to take pride in the historic legacy of their institution as a depository of laws (*khranilishche zakonov*) that used the imperial law as an instrument for reconciling conflicting interests across the empire. Yet others sharpened their sense of a new personal and institutional mission as judges of a supreme administrative court whose task it was to firmly uphold the letter of the law. Both visions of the Senate's mission, however, encountered significant methodological and practical problems when applied to the petitions practice of the newly created zemstvos. Yet, as we

Universitet v pis'makh i zapiskakh," reprinted in *Moskovskii Universitet v vospominaniakh sovremennikov, 1755–1917* (Moscow, 1989); M. M. Kovalevskii, "Moskovskii Universitet v kontse 70–kh—nachale 80kh godov proshlogo veka. Lichnye vospominaniia," in *Moskovskii Universitet v vospominaniakh, 275–93*; G. Syuzorn, *Ko dniu LXXV iubileia Imperatorskogo Uchilishcha Pravovedeniia 1835–1910. Istoricheskii Ocherk* (St. Petersburg, 1910); *Pamiatnaia knishka Imperatorskogo Aleksandrovskogo Litseia* (St. Petersburg, 1899).

54. Assa, "Authority," 68, 83.

55. William Wagner, "The Civil Cassation Department of the Senate as an Instrument of Progressive Reform in Post-Emancipation Russia: The Case of Property and Inheritance Law," *Slavic Review* 42, no. 1 (1983): 36–60.

shall see, the Senate achieved its best verdicts through careful application and mutual accommodation of both methodologies.

The Constitutional Problem of the Zemstvos

Particularly contested in this period was the nature and degree of devolution of government authority tentatively begun by the Great Reforms.⁵⁶ The Senate's task was to guide and regulate the disputes concerning overlapping spheres of jurisdiction between the central bureaucracy and local government, zemstvos. Fundamentally, the questions that were being asked by provincial petitioners sprang from the zemstvos' untenable position of a feeble public link between the mighty Imperial bureaucracy and the self-governing and in many ways autarkic peasant communes (*mir*). The tsarist government, fearful of the peasants' wholesale rejection of the gentry's right of landownership, but too hesitant and divided to genuinely integrate peasants into the civil society, secured gentry's domination of the zemstvos' assemblies to perpetuate peasant segregation. It also used gentry's ascendancy in the zemstvos in order to stem the tide of alternative gentry's politics for further liberalization and modernization of the state.

Hence, zemstvos were set up as a bargaining chip between the reluctantly modernizing autocracy and the conservative gentry and were mainly expected to guarantee continuous discharge of local obligations to the state. Not surprisingly, zemstvos were deprived of much of the fiscal and police power necessary to conduct local business, except in their traditional "mandatory" duties such as road maintenance, army provisioning, police upkeep, prisoners' transportation, imperial mail, and other "loose ends" of the empire's bill. The rest of the functions that truly mattered to the newly

56. For an overview of the principles of the Great Reforms, see Lincoln, *The Great Reforms*; S. Frederick Starr, *Decentralization and Self-Government in Russia, 1830–1870* (Princeton: Princeton University Press, 1972); for preparation of zemstvo reform specifically, see V. V. Garmiza, *Podgotovka zemskoi reformy* (Moscow, 1957); for the discussion of public (*obshchestvennaia*) and state (*gosudarstvennaia*) theories of zemstvo self-government, see P. P. Gronskii, "Teorii samoupravleniia v russkoi nauke," in *Iubileinyi zemskii sbornik*, ed. B. B. Veselovskii and Z. G. Frenkel' (St. Petersburg, 1914), 76–85; N. M. Korkunov, *Russkoe gosudarstvennoe pravo* (St. Petersburg, 1909), 2:488–501, 533–37; for the problems of zemstvo self-government, see *The Zemstvo in Russia: An Experiment in Local Self-Government*, ed. Terence Emmons and Wayne Vucinich (New York: Cambridge University Press, 1982); Charles E. Timberlake, "The Zemstvo and the Development of a Russian Middle Class," in *Between Tsar and People: The Educated Society and the Quest for Public Identity in Late Imperial Russia*, ed. Edith Clowes, Samuel Kassow, and James West (Princeton: Princeton University Press, 1991), 164–82; Thomas Pearson, *Russian Officialdom in Crisis: Autocracy and Local Self-Government, 1861–1900* (Cambridge: Cambridge University Press, 1989).

elected deputies and their constituencies, such as peasant education, community health care, local budgets, and progressive agronomy, were classed as “non-mandatory” and were therefore hardly defined in law.⁵⁷

For years, limited zemstvos’ franchise, constrained budgets, and lack of police authority prevented them from becoming a true local government that could potentially rival ministerial bureaucracy in the traditionally neglected social services. Nonetheless, despite their uncertain constitutional position within the structures of the autocratic state, zemstvos managed to raise and to some extent address the specifically public interests of the local communities, transcending the particularistic world of social estates (*sosloviia*), and protecting the communities against the unmitigated intrusion of the bureaucratic state. In this sense, zemstvos remain for historians the primary agency for the study of the emerging ethos of civil society in provincial Russia,⁵⁸ especially in its role of a champion of legality clearly discernible through their petitions to the Senate.⁵⁹ Here we will consider the two most important strands of zemstvos petitions concerning local taxation and health care.

The Senate Practice on Zemstvos Tax Petitions

The Zemstvo Statute of 1864 abolished the old *sosloviia*-based principles of taxation and proclaimed that all social estates represented in the zemstvo organs would be taxed solely on the basis of the value (*tseinnost’*) and income (*dokhodnost’*) of their property.⁶⁰ Although most zemstvo deputies understood this formula as a Russian equivalent of income tax,⁶¹ the reality of post-reform politics as well as the lack of a comprehensive national land registry to underpin such a transformation almost guaranteed the re-emergence of the old *soslovie*-based fiscal practices. Therefore, the main

57. *Zemskoe Polozhenie* (St. Petersburg, 1864).

58. For general problems of Russian civil society, see Alfred Rieber, “The Sedimentary Society,” in *Between Tsar and People*, 343–66; for the zemstvos’ contribution to the development of Russian civil society, see Thomas Earl Porter, *The Zemstvo and the Emergence of Civil Society in Late Imperial Russia, 1864–1917* (San Francisco: Mellon Research University Press, 1991).

59. Thomas Fallows, “The Zemstvo and the Bureaucracy, 1890–1914,” in Emmons and Vucinich, *Zemstvo in Russia*, 177–243.

60. Article 10, *Vremennye pravila o zemskikh povinnostiakh* (St. Petersburg, 1864). For more details on the enactment of the law, see “Trudy Komissii vysochaishe utverzhdennoi dlia peresmotra sistemy podatei i sborov,” *Zemskie povinnosti* (St. Petersburg, 1866), vol. 4.

61. Prince A. Vasil’chikov, *O samoupravlenii* (St. Petersburg, 1872), 2:411–16.

problem for the zemstvos was the legacy of disproportionate taxation of land compared to that of the trade outlets and factories owned by merchants and industrialists. Even in the best years, zemstvos received no more than 10 percent of their revenues from industry, as opposed to 80–90 percent from land.⁶²

This was the result of the early exemption of industrial capital and profits from zemstvo taxes issued by Minister P. A. Valuev in 1866 as a protectionist measure against the tax-seeking gentry which dominated zemstvos' assemblies.⁶³ Though initially it offered a certain restraint on the agrarian lobby in the provinces and provided encouragement for local industry, Valuev's legislation effectively reversed the theory of zemstvo taxation from the more advanced principles of universal income/value based tax proclaimed by the Great Reforms to the more archaic and economically restrictive direct taxes. The law reduced zemstvo taxes to levies upon industrial patents/licenses and *immovable property* in which income and value of the enterprises could only be assessed implicitly. In addition, the law did not stipulate the rates of taxation on industrial real estate but simply required zemstvos to insure *uniform tax rates* and "*even distribution*" (*ravnomernoe raspredelenie*) of taxes across all landed and industrial estates. Finally, the law insisted that zemstvos should carry out a strictly *individual appraisal* of each industrial outlet, a requirement that made the efficient assessment of rapidly-sprouting small and medium-size enterprises all but impossible.

The four requirements stood in glaring contradiction to each other. On the one hand the zemstvo industrial taxation based on the value/income of immovable property (mostly real estate and industrial assets) was supposed to even out the fiscal field between industry and land ownership where gentry with its superior quality land refused to bare the burden of income/value-oriented tax. This was consistent with the role of tsarist government as a mediator of all social estates and as long as zemstvos applied their *tax rates uniformly* to all properties in their jurisdiction, be it land, industry or urban real estate, these tax calculations were considered perfectly legitimate. Yet by the end of the 1880s despite the law's insistence on uniform tax rates, zemstvos rate of land taxation reached up to 9 percent of its *dokhodnost'*, while industrial and commercial taxation was only about 0.4 percent of the profitability of enterprises.⁶⁴

The difficulty of applying uniform rates to achieve "even distribution"

62. This article does not pertain to the problems of disproportionate taxation of peasant and gentry land as this was dealt with by the Second (Peasant) Department of the Senate and would have required a different type of study.

63. For zemstvo reaction to this measure, see S. A. Ol'khin, *Svod suzhdanii i postanovlenii zemskikh sobranii o zemskikh povinnostiakh* (St. Petersburg, 1868).

64. This was particularly obvious in the zemstvos taxation of cottage industries (*kustar*) where textile giants with millions of rubles of turnover dispersed their production of yarns,

of taxes can be illustrated by the widely used among zemstvos income capitalization procedure which converted presumed income of an enterprise into a hypothetical value of its immovable property and vice versa. For example, if the income-generating capacity of enterprise (*dokhodnost'*) was determined at 10,000 rubles per year, then with the 10 percent income capitalization rate, the value of its real estate (*tseinnost'*) would equal 100,000 rubles. With the tax rate set, for example, at 2.5 percent of the value the factory would be liable for 2,500 rubles of annual tax. Similarly if the overall value (*tseinnost'*) of the enterprise was known to be 100,000, with the income capitalization rate of 10 percent the profitability (*dokhodnost'*) of its real estate would be 10,000 rubles, and therefore the levy of 25 percent (i.e., ten times greater) would net 2,500 rubles of zemstvo tax. Therefore to raise 2,500 rubles of taxes zemstvos had to decide between levying tax at 2.5 percent of value or at 25 percent of income of the immovable property. These rules could not reflect the real economic value or profitability of large enterprises, while they certainly could cripple many a small establishment, where the cost of premises absorbed the largest part of their capital. As a result zemstvos' taxation looked to their constituents as nothing more than *proizvol*.

There were two potential solutions to this problem. One was for zemstvos to struggle to obtain legal access to companies' accounts and establish discretionary tax rates for those enterprises where the disproportion between value/income of the real estate and the industrial profits/turnover was highest. The other was to develop a technique by which individual differences could have been neutralized through statistical valuation of immovable property. Zemstvos tried both strategies and in both cases the Senate's judgments in their disputes with owners proved to be effective. What presented a substantial problem though from legal point of view was what powers the Senate was prepared to use to overcome these constraints on the zemstvos.

Although fully aware of the deep socio-political roots of zemstvo petitions, the Senate in its perceived role of a supreme administrative court tended to distance itself from the intense politics of zemstvo tax disputes and center its decisions on formal assessment of the scope of zemstvo authority, i.e., *ultra vires*.⁶⁵ Thus, on a number of occasions the Senate upheld the rule

leaving zemstvos with practically no real estate to tax. Thus in 1904 the Saratov zemstvo complained that a local textile firm with a half-million rubles' turnover operated via the network of *kustars* and, except for a dilapidated warehouse, had no property for the zemstvo to tax. See the editorial "Vnutrennee Obozrenie," *Vestnik Evropy* 4 (1888): 786; V. F. Karavaev, "Istoricheskii ocherk razvitiia zemskikh biudzhetrov," in *Iubileinyi zemskii sbornik*.

65. For convenience sake, I am borrowing the British term *ultra vires* even though it had never been used by the senate itself. For the definition, see above, 4.

of even distribution of tax (*ravnomernoe raspredelenie*) according to which zemstvos could not apply discretionary tax rates to industrial enterprises. For example, in 1893 the Senate rejected a discretionary tax rate set by the Sosnitsk district zemstvo for the local sugar refinery. The zemstvo argued that the factory's income had nearly trebled in the past decade, reaching 515,828 rubles, and that it required the reassessment of the value of the immovable property estimated to be around 1,534,776 rubles. This called for the increased income capitalization rate, which soared from 20 percent to 40 percent and raised tax revenues from 13,500 rubles in 1892 to 29,660 in 1893. The Senate, however, objected that the new capitalization rate was not being applied to other properties in the area, including land, and as a result the factory was being made to contribute a disproportionate share to the zemstvo budget—over 30 percent of the total zemstvo budget of 87,537 rubles. Thus it appeared that using its power *ultra vires* the Senate merely enforced the old principle of *soslovie* equality rather than relieved the pressing need for the growth of zemstvos budgets.⁶⁶

Similarly, the Senate continuously upheld tax exemptions of industrial capital by limiting the legal basis of zemstvo tax assessment. Thus, the Senate refused to acknowledge factory insurance as a basis for zemstvo tax valuation of industrial estates. In 1894 when Morshansk district increased valuation of a sugar refinery from 200,000 to 656,522 rubles its owner, a certain Countess D., was able to claim her taxes back. The zemstvo argued that in the period after 1875, when the original assessment was carried out, the factory had been significantly extended, reorganized, and much better equipped, which was reflected in the factory's insurance policy. Hence it was the latter that served the zemstvo as a basis for the factory's reassessment. The Senate, however, replied that the insurance policy protected the factory's total capital and therefore under the existing rule of capital tax exemption could not become a basis of the zemstvo's property tax.⁶⁷ On another occasion, in 1899 the Senate rejected the valuation of a water mill by the Kirsanovo district zemstvo, which used data supplied by the local revenue office. Again the Senate argued that the government data included the profits of the mill officially out of reach for the zemstvo and deemed the valuation illegal.⁶⁸

In most cases, therefore, the Senate decisions *ultra vires*, based on formal assessment of the scope of zemstvos' authority, led to significant adverse effects upon zemstvos' policies of equitable local taxation.

66. Ruling #8057, 18 July 1898, Kuznetsov, *Sistematicheskii svod ukazov Pravitelstviushchego Senata po zemskim delam s 1866 po 1910 g.g.* (St. Petersburg, 1912), 1:238.

67. Ukaz of the Ruling Senate #10715, 15 October 1896, *ibid.*, 233–34.

68. Ukaz of the Ruling Senate #6881, 19 August 1899, *ibid.*, 248–49.

Only on one occasion did this pattern of reasoning lead to the adoption of progressive taxation. In the 1890s Donbass mining entrepreneurs, who mistrusted the Ekaterinoslav zemstvo assessment methods for favoring landed gentry, insisted that coal mines should be exempt from tax just as every other non-arable land.⁶⁹ The Senate however argued that non-arable but income-producing land was subject to individual assessment just as any other real estate. It recognized therefore that the mineral output, i.e., business turnover, officially exempt from zemstvos' taxation, was an essential part of zemstvos' principle of individual tax assessment of land. In its decision of 31 August 1898, the Senate explained that not just the potential value of mineral deposits but also the actual mineral output should certainly be taken into account when assessing mines: "Since mines are classified as non-agricultural lands, they must be taxed according to *precise information on their mineral output*."⁷⁰ This method of mine valuation became a yardstick of zemstvos taxation and was widely adopted in South Russia in the 1890s. As a result of these rulings, the Donbass mining industry became the single most important contributor to zemstvos revenue in the region. Zemstvos taxes rose from 22,731 rubles in 1893 to 249,036 rubles in 1903, and to 434,271 rubles in 1904.⁷¹

However, more often than not the law's insistence on the individual assessment benefited large enterprises, whose complicated operations could provide endless reasons for appeals. Thus in 1899 an iron smelter from Olonets province belonging to the Putilov Group appealed to the Senate against the zemstvo's assessment. The Vidlitsk district zemstvo valued the plant's property at 292,039 rubles and estimated its income at a rate of 10 percent, i.e., 29,203 rubles a year, both figures initially accepted by the plant's management. Yet a huge 40 percent zemstvo tax levied on the income and netting 14,645 rubles prompted the director of the smelter to question the results of the valuation and to petition the Senate. The latter replied that both the income rate (10 percent of total property value) and the tax rate (40 percent of property income) were imposed without any "reality check" (*proverka deistvitel'nosti*), purely using the average profitability of local properties. The Senate therefore recommended that the zemstvo undertake a new valuation using more "concrete data" applicable to this enterprise.⁷²

69. *Zemstvo i gornaiia promyshlennost'* (Khar'kov, 1908), 29; G. Arandarenko, "Zemskii nalog i rudonosnye zemli," *Promyshlennost' i trgovlia* 19 (1908): 331–33.

70. Vl. Plandovskii, "Vopros o zemskom oblozhenii zemel' s mineral'nymi bogatstvami," *Vestnik finansov, promyshlennosti i trgovli* 2 (1909): 42.

71. Avdakov, "O nalogakh platimyykh gornymi promyslami," in *Trudy s'ezda 19-go gornopromyshlennikov*, 322–25; Fon Ditmar, "O zemskom oblozhenii gornopromyshlennykh predpriatii iuga Rossii," in *Trudy 29-go s'ezda*, vol. 1, report no.15, 38–45.

72. Ruling #7530 from 23 July 1899, Kuznetsov, *Sistematischeskii svod*, 1:243–46.

For the vast majority of small- and medium-sized factories, individual assessment was an excuse for delays, tricky negotiations, and plain evasion. Understaffed and overworked zemstvo tax assessors simply could not visit every workshop or water mill in the district. Frequently merchants produced fictitious lease agreements with equally fictitious owners of rented property and believed themselves to be in a position to challenge zemstvo taxes.⁷³ To counteract merchant evasion zemstvos had to find verifiable assessment data that would at once be credible and applicable to a range of similar enterprises. However their attempts at initiating legislative changes met with little success as numerous requests (*khodataistva*) to the State Council and the ministries⁷⁴ and investigations of government commissions bore little fruit.⁷⁵ Finally in 1893, the government issued a few basic zemstvo valuation procedures that were supposed to be administered not by the zemstvos themselves, but by highly bureaucratic provincial valuation committees (*otsenochnye komissii*), an unpopular measure that made little or no difference to local taxation practices.⁷⁶

Under the circumstances, many zemstvos attempted to gain their share of industrial revenues with the help of provincial statisticians whose task it was to help assess more carefully the existing local tax base.⁷⁷ In some cases, zemstvos' statisticians made direct attempts to use companies' profits or turnover as a basis for taxation, but more often than not local entrepreneurs effectively defended their tax privileges before the law. More successful were those zemstvos that managed to reinvent their taxation principles within the limits of the law. Thus, some of them reviewed the official method of a profit-blind and strictly individual assessment of immovable industrial property. They applied new principles of asset valuation that took into greater consideration the underlying value of businesses as well as their comparable features. For example, they used such standard units as machinery and equipment, construction types, labor units, and other measures in order to link, however indirectly, the value of industrial property to business profits.

73. Editorial, "Vnutrennee Obozrenie," *Vestnik Evropy* 4 (1888): 798.

74. N. A. Karyshev, *Zemskie khodataistva 1867–1882* (St. Petersburg, 1882), 146–48.

75. Particularly the work of the commission chaired by Minister of Finance Bunge; see B. B. Veselovskii, *Istoriia zemstva za sorok let* (St. Petersburg, 1914), 2:194.

76. For the full text of the *Instruktsia*, see M. A. Lozina-Lozinskii, ed., *Novaia instruktsiia ob otsenke nedvizhimykh imushchestv podlezhashchikh oblozheniiu zemskim sborom. Pravila raskhodovaniia kazennykh posobii na proizvodstvo zemskimi uchrezhdeniiami otsenochnykh rabot* (St. Petersburg, 1905).

77. For the review of zemstvo valuation surveys, see N. Annenskii, *Bibliograficheskii obzor statisticheskoi i otsenochnoi literatury so vremeni uchrezhdeniia zemstv, Vypusk I, za 1864–1903 god* (St. Petersburg, 1904); Annenskii, *Prodolzhenie za 1909–1911 god* (St. Petersburg, 1912).

This method became known as statistical or normative valuation (*normativnaia otsenka*) and it permitted zemstvos to assess indirectly the size of industrial capital and profits of local enterprises as well as to compare and cross-reference different businesses with regard to their revenues and taxes. This meant that small and medium-sized enterprises could be assessed without undertaking lengthy trips to their premises and without necessarily relying on the self-assessment of their owners as required by law. Under the circumstances, these statistical methods were a vast improvement upon the highly fragmented practices of zemstvo taxation, and they offered, within the limits of the law, effective and practical solutions to previously virtually insurmountable legal and practical problems. The main difficulty for the zemstvos now was to legitimize the statistical methods.

From the outset, however, the Senate largely complied with the law's requirements of *individual valuation of estates* and opposed normative assessment. Thus, in its ruling of 20 March 1869, the Senate rejected a zemstvos' practice of statistical assessment in favor of individual valuation:

The law requires that every estate should be assessed at its actual value and income, that the tax can only be levied following the *individual assessment* (*spetsial'naia otsenka*) of property, and that therefore similar estates cannot be valued using "normative" assessment. In view of these requirements the Ruling Senate cannot approve of zemstvo taxation levied upon values other than those established in the course of individual assessment.⁷⁸

Undertaking individual assessments was a tall order for most statistical bureaus.⁷⁹ Unable to fulfill the unrealistic requirements, many provincial zemstvos, including Tver', Novgorod, and Bessarabia, continued to use the gentry's own land assessments as the only basis for private land tax.⁸⁰ In most cases zemstvos could not easily verify these statements and prosecute nobles—tax offenders, and even when zemstvos did find landowners in breach of tax laws, provincial governors often prevented them from penalizing the offenders.⁸¹ Hence amidst this legal and jurisdictional confusion the gentry's tax evasion was rife. Thus in 1883 the Novgorod zemstvo reported 400,000 *desiatinas* of the gentry's land previously hidden from tax, in 1885 Poltava zemstvo reported 600,000 *desiatinas*, in Chernigov—140,000.⁸²

78. Emphasis added. Verkhovskii, *Sbornik reshenii Pravitel'stviuushchego Senata po delam zemstva* (St. Petersburg, 1889), 154.

79. For a depiction of dismal working conditions among zemstvo statisticians, see S. Bleklov, *Za faktami i tsiframi. Zapiski zemskogo statistika* (Moscow, 1894).

80. Veselovskii, *Istoriia zemstva*, 1:78.

81. Senate Ukaz of 8 February 1868, Senate Ukaz, of 6 September 1874, Kuznetsov, *Sistematicheskii svod*, 1:222–23.

82. Editorial "Vnutrennee Obozrenie," *Vestnik Evropy* (1888) 4:794; *Obozrenie deiatel'nosti zemskikh uchrezhdenii Novgorodskoi gubernii*, Novgorod, 1883; *Sistematicheskii svod*

In response to the escalating number of zemstvo tax petitions the Senate gradually began to acknowledge the zemstvo's fiscal predicament and its own inability as a supreme court to offer judicial protection *ultra vires*. Instead in the 1870s acting in its traditional mediating and social-reformist role the Senate issued a series of verdicts allowing zemstvos to use such "norms" as *average* soil fertility, income from crop yields, or market values of larger land parcels and apply them as economic indexes to the valuation of individual estates. Slowly the First Department began to approve the use of independent statistical surveys in verifying the information supplied by the landowners. Thus on 20 October 1871 the Senate in its supervisory capacity (*v poriadke nadzora*) ruled that the law did not at all require exact data on individual estates:

V poriadke nadzora . . . the Senate resolved that . . . zemstvos assemblies alone should establish the *normative assessment* of the landed estates since the law requires neither an individual assessment of each estate nor a precise record of the estate's income.⁸³

Similarly, the Senate corroborated the zemstvos' prerogative to levy taxes upon the whole groups of land holdings (parcels, *udely*) classified according to their statistical value and potential income from crops typically grown on them.⁸⁴ On 12 August 1885 the Senate in its supervisory role (*v poriadke nadzora*) declared:

V poriadke nadzora . . . the Senate resolved that . . . only the value and income of estates should serve as the legal basis for levying zemstvo tax. With regard to land its value can only be established using *local market prices* while its income can be inferred from the *normative assessment of agricultural income typical in this locality* or rent from land.⁸⁵

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

The alternative decision—the Senate verdict continued—would mean that until the official registry (*plan general'nogo mezhevaniia*) was updated his income would be tax-exempt, which contradicted the principle of zemstvo taxation of all income-generating estates.⁸⁶

postanovlenii i raspriazhenii poltavskogo gubernskogo zemstva za pervye shest' trekhletii, Poltava, 1885, Annenskii, *Bibliograficheskii*, 272.

83. Emphasis added. Verkhovskii, *Sbornik*, 71; Petrov, "Zemskii proizvod," 14.

84. Ukaz #7283 of 3 March 1915, Kuznetsov, *Sistemicheskii svod*, 12:189–93.

85. Emphasis added. *Sbornik Permskogo gubernskogo zemstva*, 1885, no 21.

86. Ruling #3092 from 16 March 1896, Kuznetsov, *Sistemicheskii svod*, 1:218–20.

These rulings legitimized objective statistical foundations for zemstvos' levies and helped to demystify the gentry's self-assessment and improve the overall distribution of taxes. Using these guidelines zemstvos were able to make considerable progress with the valuation of land. According to Veselovskii in the period between 1871 and 1901 zemstvo statistical surveys added 31 million *desiatinas* of the previously undeclared arable land, two thirds of which came from gentry estates.⁸⁷

Statistical assessment of industrial property was soon to follow. The Senate allowed zemstvos to use general data for industrial valuation practices, as it did earlier on with land. In this way its rulings began to provide relief from the unrealistic demands of the law and from the endless tax evasions by factories. Thus in 1901 the Koriukovsk sugar refinery petitioned the Senate against the Sosnitsk zemstvo, which used comparable data from a similar refinery in Chernigov province to assess the factory. The Senate ruled:

If for whatever reason the Sosnitsk zemstvo was prevented from conducting the individual assessment of Koriukov factory, it could, according to law, use the data available from a *similar enterprise* in Kholmy village as a sole basis for the valuation of the factory.⁸⁸

None of these rulings were based on statutory law, but resulted purely from the Senate's use of the discretionary power of *nadzor* with its enduring law-making component. From the beginning of the twentieth century, the Senate approved such valuation "norms" as rental prices,⁸⁹ costs of labor,⁹⁰ and costs of building materials.⁹¹ The Senate also confirmed that these "normative" assessments methods could be used to adjust⁹² and even replace⁹³ the value of industrial property declared by the factory owners. As with land tax these rulings made local industrial taxation more transparent and equitable. The use of rental prices became widespread in tax assessment practices of Bessarabia, Ekaterinoslav, Khar'kov, Kherson, and Chernigov provinces, and in certain districts of Perm', Poltava, Petrograd, Novgorod, Tula, and Iaroslavl' provinces. Building norms based on unit construction costs were frequently applied in Vladimir, Viatka, Moscow, and some districts of Kazan, Perm', Kostroma, and Iaroslavl' provinces.⁹⁴

87. Veselovskii, *Istoriia zemstva*, 1:79.

88. Ukaz #5242 from 28 May 1901; Kuznetsov, *Sistematicheskii svod*, 2:116–17.

89. Ruling #12244, 26 November 1904, *ibid.*, 3:149–50.

90. Ruling #2981, 7 March 1908, *ibid.*, 5:94–95.

91. Ruling #10715, 15 October 1896, *ibid.*, 1:233–34.

92. Ruling #7897, 18 June 1908, *ibid.*, 5:92–93.

93. Ruling #4838, 19 May 1907, *ibid.*, 95–96.

94. M. A. Sirinov, *Zemskie nalogi. Ocherki po khoziaistvu mestnykh samoupravlenii v Rossii* (Tur'ev, 1915), 319.

Although originally statistical methods were used to assess the multitude of small enterprises, eventually they also proved useful in the taxation of large conglomerates, whose increased profits were difficult to translate into larger property tax. The scale of the problem was conveyed by the Tavrida zemstvo board, which complained that in the period from 1894 to 1900 the number of enterprises in the province had fallen from 17,569 to 15,578, while industrial turnover increased from 1.643 million to 2,660 million rubles, yet none of these developments added anything to the zemstvos' revenue.⁹⁵ Despite intensified productivity many factories operated in inferior quality buildings purchased or hired at negligible costs. Hence the only way for zemstvos' statisticians to achieve fair valuation figures was by using a "normative" valuation of equipment and machinery for the assessment of factory premises. For example, the ingenious Vladimir zemstvo used the number of working spinning jennies to assess the commercial value of the dilapidated buildings at a local textile factory. Though in this case the zemstvo trod a fine line between "normative" property assessment and disguised taxation of the factories' turnover, officially exempt from local tax, the Senate ruled in favor of the zemstvo.⁹⁶ Subsequently, the Senate issued general guidelines that sanctioned equipment-based "norms" for the valuation of industrial property with standard equipment/machinery.⁹⁷

Thus, with the help of favorable senatorial rulings, the zemstvos' revenues increased in direct proportion to the growth of Russia's industrial assets. Given that Russian industrialization started primarily in the capital-intensive heavy industries,⁹⁸ where equipment and transportation bore most costs, the statistical assessment and taxation of immovable assets was an effective way to compensate for the constraints of the 1866 law prohibiting taxation of profits or turnover. The new methods provided an easily recognizable, yet economically viable means of assessing industrial revenue without directly referring to profit figures, which remained off limits to the zemstvos. As with land assessment, the Senate's approval of the valuation "norms" helped to verify merchants' tax statements and to simplify cumbersome procedures of assessing individual factories.

It may be argued, therefore, that the Senate's use of administrative adjudication *ultra vires* gave limited scope for the advancement of progressive zemstvo taxation techniques. The only exception to the rule was litigation with the Donbass coal mines where the individual assessment rule helped

95. Zak, "Tekushchie voprosy zemskogo samoupravleniia," *Vestnik Tavricheskogo zemstva* 1–2 (1905): 6–7.

96. Ruling #4635, 8 June 1905, Kuznetsov, *Sistematičeskii svod*, 4:67–68.

97. Ruling #12637, 4 December 1903, *ibid.*, 3:151–54.

98. Clive Trebilcock, *The Industrialisation of the Continental Powers, 1780–1914* (London: Longman, 1981).

to open up the mines' accounts to zemstvos tax assessment. Much more successful were the Senate verdicts based on its traditional function as the supreme organ of state *nadzor*, which promoted the adoption of statistical methods in the zemstvo taxation. From the legal perspective, the Senate activism was not only in stark contrast to the policies of tsarist bureaucrats towards the zemstvo statisticians⁹⁹ but also to the Senate's own growing conception of the First Department's role as a supreme administrative court. The reluctance of tsarist government to provide any legal relief for the fiscal needs of the provinces compelled the senate to use its traditional powers of *nadzor* to ease zemstvos problems of inadequate financing and limited scope of authority. Paradoxically, the Senate's resort to *nadzor* became one of the most effective means of promoting broad social change.

Yet, zemstvos were not always champions of fiscal equality, especially when it came to the taxation of small producers. The latter suffered partly from the fiscal inequality inherent in the profit-blind property tax that zemstvos passed on to them, but partly also because they were victims of the tax-seeking zeal of zemstvo authorities. In any case, at the turn of the century the Senate was inundated with appeals from the owners of small rural dairies and windmills, ironmongers, coopers, shoemakers, and others, who were virtually crippled by zemstvo taxes. Once again with these enterprises the Senate acted as a traditional social mediator, often leaving aside the formality of law. This was especially true in the treatment of low-income pleas, normally deemed irrelevant for reduction of or exemption from tax. For example, peasants G. and U. from Kobeliak district complained to the Senate that the district zemstvo had suddenly and arbitrarily raised the tax levies on their water mills, from 4 rubles in 1893 to 50 rubles in 1894 and then, following the protest of the provincial governor, "reduced" it to 20 rubles in 1895. They pleaded that the mills operated only seasonally from 15 April to 20 October and were a low-income enterprise, which would be completely ruined by the zemstvo tax. The Senate ruled that since the zemstvo had not carried out a formal reassessment of mills, it could not lawfully justify the tax rises. Hence the zemstvo taxation decision was overruled.¹⁰⁰

99. For an analysis of the zemstvos statisticians struggle with authorities, see David W. Darrow, "The Politics of Numbers: Zemstvo Land Assessment and the Conceptualization of Russia's Rural Economy," *Russian Review*, no. 59.1 (January 2000): 52–75. The author shows that fundamentally different conceptions of rural economy set zemstvo statisticians and St. Petersburg bureaucrats on a collision course. While zemstvos believed that the nature of the landowner should be defined (i.e., a peasant subsistence agriculture as opposed to the gentry's profit-motivated agriculture) and included in the land valuation procedure, the Ministry of the Interior and Ministry of Finance denied any meaningful distinctions between the two modes of production and its effect on taxable value of land.

100. Ruling from 2 September 1898, Kuznetsov, *Sistematicheskii svod*, 1:253.

Similarly, peasant *kustars* complained to the Senate that their workshops were often classed as “industrial property,” which made them liable for virtually ruinous taxes. For example, in 1904 peasant Dem’ian Priadein sued Irbit district zemstvo for exorbitant taxation of his iron forge. The Senate explained that although zemstvos were authorized to tax industrial property, only those factories that possessed industrial certificates (patents and licenses) were liable for zemstvo industrial tax. In this case Priadein’s forge was a family business operating without hired labor and therefore, according to the Industrial Tax Statute of the 1898, exempt from industrial licensing. Consequently, the Irbit zemstvo could not lawfully tax the plaintiff as the owner of industrial property, and so the levies were overruled.¹⁰¹

Zemstvos often double-taxed residential properties with minor commercial outlets occupying the ground floor, such as off-licences, convenience stores, pharmacies, tailors, or shoemakers. For example, in 1903 a certain merchant Egor Senin petitioned against the dual taxes levied on his property by the district zemstvo of Staryi Oskol. He argued that he already paid residential dues for the property in which an off-license operated and that in effect the zemstvo was taxing him twice for the same property. The Senate ruled that in those cases where a commercial outlet occupied only a minor part of the residential dwelling, zemstvos could tax properties once only and in this case only as a residential property.¹⁰² A similar case was raised and won in 1904 by the merchant Vasilii Gusev from Gorokhovets district.¹⁰³

Finally, zemstvos tried to levy taxes on the profits and turnover of small and medium-sized enterprises, where they were less likely to be challenged. Thus in 1895, a certain peasant Sh. from Biriuk district petitioned the Senate against the local zemstvo, which he believed had valued his warehouse not on the basis of its market value but on the basis of the business turnover of his leather manufacture. He argued that the zemstvo took into account the raw hides and peasants shoes stored in the warehouse rather than the real value and average *dokhodnost’* of the premises. As a result, the warehouse was valued at 10,000 rubles with a 10 percent income rate of 1,000 rubles, which netted the zemstvo a substantial sum of 69 rubles in annual dues. The Senate determined that the zemstvo had indeed included the business turnover in the valuation of the estate, thus encroaching on the profits of the warehouse, officially exempt from local taxation. The Senate therefore ordered the zemstvo to revise its figures.¹⁰⁴

101. Ukaz #9714, 2 October 1904, *ibid.*, 3:175–76.

102. Ruling #6632, 13 August 1903, *ibid.*, 170.

103. Ruling #8825, 24 September 1904, *ibid.*, 171.

104. Ukaz #7483, *ibid.*, 1:254.

The Political and Legal Effects of the Senate Practice on Zemstvo Tax Petitions

The success of zemstvos' tax petitions in the Senate had a profound effect on the zemstvos political positioning within the provincial society. The Senate's granting of more equitable terms of taxation to local society visibly connected individual and corporate wealth with the public sphere and expanded the zemstvos' presence in local affairs. No longer viewed as the gentry's safe haven, zemstvos provided an arena for the political engagement of previously isolated social estates, particularly merchants and industrialists. Such was the case of the South Russia Mining Association, which, as Susan McCaffray demonstrated, became the proponent of greater merchant representation based on fair local taxation in the prime coal mining region of Donbass.¹⁰⁵

Zemstvos' petitions to the Senate demonstrate that local government was acutely aware of the fiscal inequities between landed and merchant *sosloviia* and was committed to overcoming it. However, most zemstvos' attempts to levy taxes directly on growing industrial profits or turnover were unsuccessful. Following the law of 21 November 1866, the Senate consistently excluded business income from the purview of local government. Yet, through its direct experience of zemstvos inspections acquired through numerous senatorial inspections (*Senatskie revizii*),¹⁰⁶ the Senate remained sensitive to the zemstvos' plight and provided judicial assistance in many other ways. Through many of its rulings, the Senate assured that zemstvos taxed the full range of industrial properties, including equipment and machinery; subsidiary workshops, ancillary rails and factory-owned housing estates, which often remained undisclosed by merchants. This allowed zemstvos to step up the taxation of industrial assets and to keep abreast with rapid industrialization. The Senate also insisted that zemstvo

105. Susan McCaffray, *The Politics of Industrialization in Tsarist Russia: The Association of Southern Coal and Steel Producers, 1874–1914* (DeKalb: Northern Illinois University Press, 1996); for the relations between mining industrialists and local zemstvos, see also the memoirs of a Russian engineer, A. I. Fenin, *Coal and Politics in Late Imperial Russia* (DeKalb: Northern Illinois University Press, 1990).

106. For example, in the early 1880s Loris-Melikov appointed four Senators to inspect nine important provinces. They prepared memoranda containing critical views on local police and discussed the need to improve local government at the *volost* level, increase peasants' representation in the zemstvos, and improve cooperation between governors and zemstvos by creating collegiate bodies including representatives of the zemstvos. The memoranda also proposed extension of the franchise in the cities. These findings and recommendations were presented before Senator Kakhanov's commission and are discussed in detail in Pearson, *Russian Officialdom in Crisis*. The complete list of senatorial inspections in the provinces can be found in Berendts et al., *Istoriia Pravitel'stviuishego Senata*, vol. 5.

taxation strictly follow *precise information* and use concrete data in the assessment of value and profitability of industrial property. This legitimized the work of zemstvo statisticians, whose surveys verified merchants' claims and helped reduce tax evasion. In the case of the mining industry the Senate in effect approved zemstvos' access to companies' accounts, tying local taxation even closer to the underlying economic activity. Finally, the Senate also *protected* the interests of *small proprietors* by making sure that tax-seeking zemstvos could not impose ruinous levies. Thus, by simultaneously fostering and keeping a check on zemstvo industrial revenue, the Senate helped zemstvos to overcome *sosloviia* inequalities enshrined in the direct property taxation and to engage the merchant estate in the fiscal and other policies of local government.

Much less straightforward, however, was the effect of the Senate zemstvo practice on the Senate itself in its perceived role of a supreme administrative court. As we have seen earlier in the case of zemstvos statistics the Senate often chose to forego the established principle of individual assessment of estates in favor of the "normative" assessment of both land and industry, acting upon its instincts of a social mediator in the provinces. Yet in the case of mining enterprises in the Ukraine it fully enforced the principle of individual assessment acting on its more recently acquired function of proper administrative "adjudication" based on the legal norms set out in law. Even though in both cases the intent of the Senate judges was to alleviate the zemstvos' fiscal constraints and assist them in augmenting their budgets, this intent produced diametrically opposing results for the Senate's legal methodology. In the first case it was the tradition of "supervision" that prevailed, in the second instance—the more modern principle of formal law. Each time, however, as the senate vacillated between the two, the tension between the new judiciary and the tsarist bureaucracy was mounting. At times it was the bureaucrats who took advantage of the ambiguous position of the Senate and carried the day, at other times the plaintiffs and the Senate itself. This ambiguity of the Senate practice was to show itself even more clearly in the zemstvos' petitions concerning the distribution of their revenues and especially so in allocation of funds for local health care.

The Senate Practice in Zemstvos Health Care Petitions

Zemstvo tax revenues provided the key source of financing for their programs in rural and urban development where zemstvos often acted as the only public health care agency. One of the largest investments of the zemstvos were rural and semi-rural hospitals and sanitary programs that helped to provide peasants' and workers' medical needs. Here, as with taxation, the scale and spirit of zemstvos' commitment to public medical services

were often at loggerheads with the law, as authorities frequently victimized zemstvos' medical bureaus and physicians for their enthusiasm and professional initiative.¹⁰⁷ Again, in many cases the Senate was the instance of last resort in overcoming legal and bureaucratic barriers for zemstvos' medical enterprise.¹⁰⁸

The main health care agency that the zemstvos inherited from pre-reform local government was the Provincial Welfare Boards (*Prikaz Obshchestvennogo Prizreniia*) that were instituted by Catherine the Great as an organ of local charity and an instrument of the "well-ordered police state" (*Polizeistaat*). The boards' activities were regulated by the old Medical Statute,¹⁰⁹ which emphasized centralized supervision and the authority of the police over medical professionals and health care facilities. As a result the predominant ethos of tsarist pre-reform medicine was that of "public welfare" (*obshchestvennoe prizrenie*) aimed chiefly at sorting and isolating the sick from the healthy and the poor from the well-to-do. As a result, the old welfare institutions were places of segregation and confinement, rather than treatment of the sick or handicapped population. Not only did they deny any individual rights to the patients, but they also de-humanized the medical profession and instilled fear of doctors and clinics among the illiterate peasantry.¹¹⁰

In the new era after the Great Reforms, the welfare system came into a systemic conflict with the newly adopted institutions of the zemstvos and with the developing public aspirations for the universal health care based on legal authority of the state. The progressive zemstvos set out to transform this legacy and in doing so found the medical profession to be its natural ally. Both shared the urgent desire for upgrading the quality of medical personnel—physicians and nurses alike—and for restructuring old medical establishments. This contradicted the old principles of medical legislation and brought zemstvos initiatives into a permanent jurisdictional conflict with the authorities.¹¹¹

107. Nancy Frieden, *Russian Physicians in an Era of Reform and Revolution, 1856–1905* (Princeton: Princeton University Press, 1981); John Hutchinson, *Politics and Public Health in Revolutionary Russia, 1890–1918* (Baltimore: Johns Hopkins University Press, 1990).

108. Assa, "Authority," 133–61.

109. The Medical Statute became a part of the 1857 edition of the Digest of Laws; see *Ustav o narodnom prodovol'stvii, obshchestvennom prizrenii i vrachevanii, Svod Zakonov*, vol. 13 (St. Petersburg, 1857).

110. Frieden, *Russian Physicians*, 265–73; Adele Lindenmeyr, *Poverty Is Not a Vice: Charity, Society and the State in Late Imperial Russia* (Princeton: Princeton University Press, 1996): <http://www.h-net.org/review/hrev-a0a4i0-aa>.

111. The durability of the old practices can be demonstrated by the fact that The Medical Statute of 1892 repeated almost word for word many of the legal impositions of earlier decrees. *Vrachebnyi ustav* (1892) lists all the previous laws on which this edition was based. See *Svod Zakonov*, vol. 13.

Particularly pervasive was the zemstvos' disagreements over the role of provincial hospitals and the ways to balance the increasing demand for hospital beds with the effective treatment of the patients. The meager finances of provincial hospitals that came exclusively from provincial zemstvos' budgets prevented them from catching up with the needs of the population and caused persistent and dangerous overcrowding. Not infrequently, new patients would be infected by communicable diseases easily spreading through the overcrowded wards. Concerned with treatment rather than isolation and confinement of patients, zemstvos incessantly petitioned the government with pleas for medical reform, but very few effective measures were undertaken in response.¹¹² In most instances, zemstvos turned to the Senate with legal cases, officially asking to clarify the obsolete law, but in practice hoping that the Senate would overrule the old legal provisions and accommodate the more "objective" views of provincial medicine that were advocated by zemstvo physicians.¹¹³ In many cases, zemstvos achieved their goals.

Thus in 1873, the Voronezh provincial zemstvo petitioned the Senate to overrule the provincial governor's decision to veto its plan to reduce admissions to the over-subscribed provincial hospital. The hospital's physicians had long insisted that the overcrowded wards at the hospital threatened the minimal standards of hygiene and undermined the quality of patients' treatment. They warned the zemstvo that the provincial hospital, far from being a flagship of provincial health care, had become a hotbed of infectious disease that passed from one patient to the next and was rapidly carried back to provincial towns and villages. The physicians' opinion coincided with the zemstvo's concern with the hospital's dismal budget, which was regularly overdrawn by 5,000 rubles annually. The provincial zemstvo argued that although in law it was liable for the maintenance of the old *Prikaz* hospital, the extent of its liability should be limited by the hospital's *own* income, such as the interest earned by the hospital's funds and other directly relevant sources. The zemstvo believed that the shortfall of hospital beds could and should be made up by the Voronezh municipal council, whose residents were anyway the main patients of the provincial hospital.¹¹⁴ For many years, the provincial zemstvo leaders argued that the restructuring of the provincial hospital financing with a significant share

112. N. Karyshev, *Zemskie khodataistva, 1865–1885 g.g.* (Moscow, 1900), 22; Frieden, *Russian Physicians*, 89.

113. Physicians often provided and used the cloak of scientific objectivity to increase their participation in government. See, for example, Elisa M. Becker, "Judicial Reform and the Role of Medical Expertise in Late Imperial Russian Courts," *Law and History Review* 17 (1999): 1–26.

114. In 1871, out of the total 3,732 patients 1,243 were from the town of Voronezh.

of it being allocated to the city of Voronezh would relieve the provincial zemstvo of significant material burden and allow it to concentrate on rural health care and advanced medicine. Realizing that arguments alone would not be enough, the zemstvo decided to put pressure on the municipality. With the consent of the provincial zemstvo assembly, it announced a cut in the hospital's capacity from 550 to 386 patients in the following two years and put a complete stop on the admission of municipal patients for the next six months. Taken aback by this sharp turn of events, the municipal board turned to the provincial governor for mediation.

The provincial governor on the whole supported the idea of a new municipal hospital, but was adamantly opposed to cutting down the current bed capacity of the provincial hospital. Guided by the old concept of public welfare (*obshchestvennoe prizrenie*), he did not accept the zemstvo physicians' urgent recommendations and insisted that the zemstvo's decision was illegal:

It is the zemstvo's primary responsibility—wrote the governor to the senate—to offer public care (*obshchestvennoe prizrenie*) to the patients from the poorest parts of society . . . which under the proposed plan would be denied to them for many months, leaving them without protection before new beds become available.¹¹⁵

It was of no consequence to the governor that the admission of any more patients to the hospital would most likely result in a province-wide epidemic. To support his claim, the governor referred to Article 83 of the 1868 Temporary Rules on Zemstvo Obligations, which recognized the *Prikaz* Statute as the basic law governing zemstvo administration of the former *Prikaz* clinics.

This was a formidable legal challenge to the provincial zemstvo, which together with physicians believed, on the contrary, that sanitary standards and not the Catherinian idea of “public welfare” should be the prime concern of the local health care organization. It felt that in the circumstances reduced admission to the hospital was the only serious leverage that the province could bring against the reluctant municipality. Thus the zemstvo wrote to the Senate:

In the past the Voronezh municipality had grown accustomed to paying the hospital a nominal fee for its residents' treatment, while leaving the provincial zemstvo to foot the massive hospital maintenance bill. Knowing that the population was in dire need of medical services and that the provincial hospital was an indispensable facility, the city fathers hoped that they could continue stretching the provincial zemstvo's finances and good will, regard-

115. Ukaz #37087, 23 November 1873, Kuznetsov, *Sistematicheskii Svod*, 1:595–601.

less of deteriorating conditions in the hospital. Under the circumstances the province could no longer cope with the rising tide of patients and had no choice but to resort to the drastic measure of cutting down admissions.

This Gordian knot was resolved by the senate ruling given on 23 November 1873 issued in response to the zemstvo's petition. The senate pointed out that, although according to the Temporary Rules on Zemstvo Obligations of 1868, zemstvos were charged with the administration of former *Prikaz* hospitals and had to look after their maintenance, their *internal* rules concerning admissions were a matter of *discretionary* right for the zemstvos. Therefore, the decision to reduce the number of hospital beds was completely within the authority of the zemstvo, which had acted diligently on the advice of medical professionals. The verdict was a classic case of administrative adjudication *ultra vires* that defined the scope of public authority. By referring to the "*internal rules*" of the zemstvos health care policies, the senate upheld the provincial zemstvo's independent authority famously proclaimed by the Zemstvo Statute of 1864.

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

Second, provincial zemstvos were now authorized to transfer a large share of provincial hospital maintenance to towns and districts, which often commanded significant resources, but lacked the leadership and organization to commit them to public needs. In this way, the Senate's rulings provided a legal vehicle for the development of a local hospital network, which could not be obtained by any other means. The zemstvos could finally proceed with the decentralization and de-concentration of provincial medicine and thereby bring it closer to the village. This fostered horizontal cooperation between administrative units of the empire and cultivated the ethics of public self-reliance outside the close patronage of the state.

In the following years, according to Veselovskii, many zemstvos took advantage of the right that had been newly confirmed by the Senate: for instance in 1878, the Novgorod provincial zemstvo succeeded in transferring its provincial hospital to the jurisdiction of the Novgorod district (*uezd*) as its main user; in 1874, the Pskov provincial zemstvo obliged the Pskov district to maintain a share of fifty-three beds in the provincial hospital and

from 1878 began to demand a mandatory increase in district admissions to compensate for the corresponding reduction in the number of the provincial hospital's beds; in 1883, the Olonets provincial zemstvo began to charge Petrozavodsk district the annual sum of 5,000 rubles for the maintenance of the provincial hospital; in 1892, the Smolensk provincial zemstvo succeeded in transferring the treatment of common infections and venereal diseases to the district level.¹¹⁶ In the 1890s–1900s, the provincial zemstvo funds freed in this way were used to provide generous grants or low-interest loans for district zemstvos.¹¹⁷ For example, the Viatka provincial zemstvo allocated 306,000 rubles to the district hospital program, while the Pskov provincial zemstvo gave up to 5,000 rubles of credits to the districts with a low 5 percent interest for five years.¹¹⁸

Despite the existence of significant judicial activism in the zemstvo cases, the Senate was not always consistent in its rulings on zemstvo health care. Partly this inconsistency arose from continuing ministerial interventions in senatorial decision making either via their own dispatches to the First Department or through the Procurator General, but partly also it lay in the Senate's own vision of its authority as a supreme arbitrator of zemstvo disputes. Aware of the zemstvos' extremely limited jurisdiction and resources compared to the mammoth task of serving the provinces, the Senate sometimes put aside the formality of law and attempted to reconcile zemstvos and local bureaucrats and encourage their cooperation and sharing of resources. This was a classic case of the benevolent patronage and supervision of the provinces practiced by the Senate from the eighteenth century.

For example, in those cases when provincial (*gubernskoe*) zemstvo charges for provincial hospital financing were increased significantly, the Senate was more likely to back down from its own interpretations of law and to recommend vague mediating procedures in the old manner of *nachal'stvennyi nadzor*. For example, in 1900, Iaroslavl' district zemstvo filed a complaint against the new provincial zemstvo charges that had almost doubled the expected district expenditure. Originally the district zemstvo had allocated an annual sum of 8,000 rubles to support forty beds in the provincial hospital, yet the provincial hospital was treating many more patients from the district and charged its zemstvo accordingly. In ten months the charges soared from the expected 8,000 to 16,612 rubles and 88 kopeks, even though the charges per patient were quite reasonable. When the district refused to pay for the charges, the provincial zemstvo decided

116. Veselovskii, *Istoriia zemstva*, 1:278.

117. *Ibid.*, 276.

118. *Ibid.*, 275.

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

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

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

To this end—continued the Senate—they should have used the authority of the governor, who would have negotiated with the district on behalf of the provincial zemstvo and taken "measures for stimulating" (*mery pobuzhdeniia*) the district into action. The provincial zemstvo certainly had not had the right "to dictate" to the district how to meet these obligations. Therefore the provincial zemstvo's charges are overruled.¹¹⁹

Comparing the two cases, it is striking that the Senate was so easily persuaded to overrule its own interpretation of the law. When acting in its traditional role as a mediating authority, the Senate became entangled in local politics and succumbed to the pressure of political considerations in exercising the power of legal supervision (*nadzor*). Again, this can be explained by the institutional relations of the senate with tsarist ministries. None of the senators in the First Department enjoyed permanent tenure or freedom of judicial opinion as did senators of the Civil and Criminal Cassation Departments. Those senators who were originally trained and promoted through ministerial bureaucracy experienced serious misgivings about engaging in an open conflict with their former chiefs directly responsible to the tsar. The Senate assembly was inclined to back down before particularly charismatic ministers and could be made pliable quickly when the case obtained political significance. Consequently such politically sensitive issues as the right of provincial zemstvos to impose normative

119. Ruling #1903, 26 February 1900, Kuznetsov, *Sistematicheskii Svod*, 1:591–93.

taxation or to redistribute medical expenses among districts and municipalities became difficult to enforce if these were seriously contested. In the circumstances, the Senate advised zemstvos to seek the intervention of the provincial governors, whose position in the zemstvos' disputes was anyway discretionary.

To give another striking example of the Senate's inconsistency, let us take a look at the legal treatment of epidemics. Here, too, the discretionary element in the Senate's powers of *nadzor* made it harder for the zemstvos to overcome legal and political constraints in their struggle against epidemics. For example, in 1897 the Senate overruled a Simbirsk zemstvo decision to cut significantly the admissions of contagious district patients to the provincial hospital. The provincial zemstvo was compelled to reduce the number of hospital beds by as much as one-third of its capacity (from 315 to 200) in order to contain the sudden influx of typhoid patients from the unsanitary municipal night shelter (*nochlezhnyi dom*). The zemstvo physicians suspected that this outbreak was a result of the gross negligence of the municipal council and pleaded with the provincial zemstvo to exercise pressure on the council to set up its own hospital ward for contagious diseases. They feared that the overcrowded provincial hospital would become an ideal incubator for the spread of epidemic throughout the entire province. They realized that these measures were not ideal, but considered them necessary in the interests of the provincial population as a whole. To justify their actions, they referred to the Zemstvo Statute of 1890 and to the 1851 edition of the Medical Statute, which required zemstvos to provide treatment of patients strictly within the assigned budgets and limited capacity of provincial hospitals. However, the provincial *prisutstvie* (standing committee) argued that neither the current edition of the Medical Statute (1886) nor the new Zemstvo Statute (1890) authorized zemstvos to limit hospital bed capacity or to delegate medical policies to municipal councils. On the contrary, the *prisutstvie* was convinced that during epidemics zemstvos should increase their services to the population. It accused them of dereliction of duty. Caught between the rock and the hard place the Simbirsk zemstvo appealed to the Senate against the *prisutstvie*.

Once again, in this case when the law provided no real guidelines for dealing with epidemic patients, the Senate acted not so much as a court of cassation, but in a more traditional manner as an arbiter of conflicting local interests. It found both the zemstvo's and the *prisutstvie*'s interpretation of the law wrong and criticized them both for lack of cooperation. It reprimanded the zemstvo for limiting the use of reserve beds and also reproached the *prisutstvie* for making unreasonable demands on the provincial zemstvo and not supporting its efforts to get the municipal council involved in the anti-epidemic work. Clearly, the Senate found the

prisutstvie's accusations of dereliction of duty by the zemstvo far-fetched, and the zemstvo's strict measures against the influx of typhoid patients too rigid. In conclusion, the Senate, far from providing a clear legal solution to the deadlock, overruled both the zemstvo's measures and the *prisutstvie*'s memorandum, leaving the debate to the next round of provincial negotiations. In short, the Senate adjudicated on policy as well as law.

Conclusion: How Arbitrary Was Tsarist Justice?

Despite the political and practical limitations of its power, the Senate nonetheless rendered tremendously useful support to the zemstvos in low-key, routine cases such as local taxes and health care. The Senate often reasserted zemstvos' rights in their "non-mandatory" activities and by doing so promoted the devolution of authority from the tsarist ministries to local government, a process that effectively contributed to the emergence of an autonomous public sphere, the very antithesis of autocracy. It would be tempting therefore to conclude that the Senate was implicitly committed to the development and enforcement of a legal state based on the fundamental principles of the rule of law. However, as this research demonstrates, the Senate's progressive practice in zemstvos cases was guided less by a liberal doctrine of a *pravovoe gosudarstvo* and civil society as by its centuries' old tradition of *nadzor*, i.e., supervision over the central and provincial government of the empire.

It is true that the poor state of codification of tsarist laws—the constantly changing, obsolete, and missing pieces of legislation—have certainly contributed to an ambiguous stance that the Senate assumed in such cases. Often the Senate reached its verdicts with only a bare minimum of legal references and took its decisions with the keen eye on the social implications of each case. Senators had to address not only the lack of properly codified laws, but also to compensate for the initial inconsistencies and subsequent reversal of the political reforms. More often than not, the Senate's decisions were the only source of law in many of the zemstvos' problems, and in this sense the Senate was engaged in the process of judicial "law-making" far more extensively than any of its European counterparts.

Yet even more important was the persistence of the old senatorial view of its mediating and even conciliating authority. When it came to finer points of law, it was not unusual for the Senate to allow political considerations to prevail over the legal ones and practical concerns over formal. In this vicious circle of political versus legal considerations, the winners of the game changed accordingly. Contrary to the widely held preconceptions of rampant arbitrariness of tsarist justice, which supposedly favored

tsarist bureaucracy, we have established that zemstvos won and lost their cases just as often as did the tsarist ministries and their agencies in the provinces. Moreover, as time went on and the ideological link between the “enlightened bureaucrats” in the Senate and the liberal society in the provinces seemed to have strengthened, the resolution to favor low-key zemstvos cases became more compelling in the Senate.

Dealing with the ongoing flow of zemstvos’ petitions, the Senate developed a keen perception of the abiding social and legal reality of late nineteenth–early twentieth-century Russian society. It emerged as a highly politicized institution with many examples of Senators’ moral protestations against the recalcitrant and arbitrary tsarist bureaucracy. In the 1870s and 1880s the Senators doggedly defended the legal spirit of the Great Reforms and in doing so were compelled to use the means available to them. Being denied the institutional autonomy of a supreme administrative court the Senate resorted, though only implicitly, to the traditional rhetoric of a time-honored “depository of laws” (*khranilishche zakonov*). Being frequently entangled in the struggle with the worst excesses of autocratic government, Senators used the lingering reputation of their institution as an organ of alternative power to challenge the authority of the tsarist ministries.

Their claims to tradition as well as senatorial expertise in the law initially earned them a reputation of faithful but difficult servants of the tsar. But by the beginning of the twentieth century, the most prominent members of the Senate were perceived as part of the political opposition to the regime right at the heart of the state apparatus. Yet the intellectual, political, and practical confusion over the Senate’s role under the autocratic government did not help to promote the Senate’s reforms. While some Senators believed that the Administrative Departments of the Senate should enjoy judicial autonomy from the administration as was granted to their counter-parts in the Cassation Departments, others began advocating a new kind of “unity” of administrative and judicial roles of the Senate. They insisted that the broad scope of *nadzor* traditionally enjoyed by the old Senate was an indispensable facility especially in those cases when neither the obscure law nor self-serving Tsarist bureaucracy were willing or able to provide viable resolutions. In their view, the abolition of such senatorial powers would damage the fabric of social justice for which the Senate petition practice became an indispensable agency after the Great Reforms.

Thus the development of legal consciousness within the Senate and throughout Russian society took a considerably different course to that in European countries. While European governments saw administrative justice as a means to de-politicize public authority, in Russia the advancement of similar practices led to a head-on collision of the two worlds—the old regime with its insistence on the “unity” of government, and the emerging

forces of *pravovoe gosudarstvo* demanding the institutional and methodological separation of judicial and administrative powers. The trajectory of this confrontation was far from linear. On the one hand, the rising legal expertise of the Senate required its members to focus primarily on cassation procedure, i.e., the judicial interpretation of law and its relevance to the circumstances of the case. On the other hand, the Senate, facing as it did an inconclusive imperial legal code, a highly intrusive tsarist ministerial system, and above all the intractable problems of provincial zemstvos, began to augment and recast its traditional function of supervision, *nadzor*, as one including mediation of social problems and a protection of public welfare. Periodically the Senate resumed its broadly conceived social role and let its neo-traditional *nadzor* function supplement and even subsume the legal methodology of cassation.

The controversy between the tsarist bureaucratic and senatorial claims to expanded system of *nadzor* over the provinces came to the fore in 1905 during the work of the Senate Reform Commission under the chairmanship of Senator Saburov. He advocated the complete independence of the Senate and particularly of the First (Administrative) Department from the ministries, and particularly from the Ministry of Justice, which until then had enjoyed the right to veto Senate verdicts and transfer cases from the Senate to the State Council and the Imperial Chancellery.¹²⁰ Saburov and his supporters argued that an open and autonomous legal procedure in administrative disputes would endow the state with greater transparency and accountability and thereby strengthen the government against the liberal opposition. His project, however, was clearly based on a broadly conceived judicial power of the Senate as a supreme and independent supervisory organ of the state, fully authorized to override decisions of the ministries. As such, the proposal was not and could not be acceptable to the tsarist autocracy and was spectacularly defeated in the State Council in 1907 and in the Duma in 1914.

Nonetheless, the Senate's remarkable judicial activism, together with the zemstvos' tenacious insistence upon clear and concise laws defining their jurisdiction vis-à-vis the state and self-governing local communities, suggested a close correlation between the formation of the public sphere and the evolution, albeit reluctant, of the tsarist state towards *zakonnost'* (rule of law). The nascent system of administrative justice helped zemstvos to pursue the genuinely public interests of local communities that went beyond the confines of traditional social estates and patronage clans. In the process, it transformed the Senate from a supervisory instance to a de facto

120. *Osoboe Soveshchanie dlia peresmotra uchrezhdeniia Senata i vyrabotki zakonopolozhenii o mestnykh administrativnykh sudakh, 1905–1906*, RGIA, Fond 1243, delo 1.

supreme administrative court. The weakness of the tsarist legal system both at the local and central government level prevented the Senate from acting in a purely legalistic manner, and its activities often invoked its traditional function of a mediator of tsarist government agencies. In this respect, the Senate experienced a high degree of politicization of its functions, much more intense than that of the European administrative courts. To that extent the Senate's status proved unreformable within the autocratic order. Only under the Provisional Government did it receive its final recognition as a guardian of citizens' rights against the state.

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