

BOOK REVIEW NOTES

ON CONSTITUTIONAL REFORM IN IMPERIAL RUSSIA¹

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Most foreign students of Russian history are aware that the 1860–70^s witnessed the emancipation of the serfs (1861) and judicial reforms (1864) in the Russian Empire. In fact the processes of reform extended much further to include University, police, zemstvo, city, military, and financial spheres of Russian life. The present volume is one in a series devoted to the ‘Great Reforms;’ other titles address the peasant reform of 1861, the legislative acts of the 1864 judicial reform, the 1863 University reform, with additional titles contemplated. Each volume blends documentary and analytical materials difficult to access and long neglected. The hope and expectation is that these volumes will inform the contemporary reform processes underway in Russia by offering insight into reformation schemes of the past, how the reformers drafted their methods and work plans, and the legal means utilized to formalize economic, social, and political transformations.

Professor Vladimir Alekseevich Tomsinov, Head of the Chair of the History and Theory of Law at Lomonosov Moscow State University and among the pre-eminent Russian legal historians, reminds the reader first and foremost that the constitutional reforms advanced during the 1860–80^s did not appear magically out of thin air. There were antecedents dating from the eighteenth century which usually took the form of efforts to impose limitations on the monarchy through the enactment of laws having constitutional significance or of a fully-fledged constitution. Occasions especially appropriate for this discussion proved to be the ascension to the Russian throne of individuals whose rights to inherit the throne were less than undoubted. The first such instance occurred in 1725 after the death of Peter the Great.

¹ Reviewed book: *Томсинов В.А. Конституционный вопрос в России в 60-х – начале 80-х годов XIX века* [Tomsinov V.A. *Konstitutsionnyi vopros v 60-kh – nachale 80-kh godov XIX veka* [Vladimir A. Tomsinov, *The Constitutional Question in Russia in the 1860^s to the Early 1880^s*] (Zertsalo 2013).

During the reign of Peter the Great, the succession issue had been addressed by the issuance of a Statute 'On the Right of Inheriting the Throne' of February 5, 1722, pursuant to which the determination of the successor to the Russian Imperial throne was left to the discretion of the 'governing sovereign.' The Emperor Peter died, however, without leaving a will designating who should succeed to the throne. His close advisors and courtiers were divided in their preferences; ultimately a choice was made to the advantage of those around him who pursued their personal mercenary interests rather than concern for the Russian State at large. In Tomsinov's view, Peter the Great could not have failed to foresee this scenario and probably accepted this outcome because he did not see anyone around him on whom power might be plausibly conferred. Because the ultimate choice was perceived by all to be a weak ruler (Catherine I), there was no need to try to limit her powers. She was an autocrat in name only. The accession of Peter II to the throne in 1727 likewise transpired without any efforts on the part of the Russian aristocracy to restrict the powers of the monarchy and was, in Tomsinov's view, the outcome of a political compromise.

The death of Peter II in 1730 at the age of 14 meant that he too had expressed no view in a will or testament as to who should succeed him on the throne. Nothing in the aforesaid 1722 Statute established the procedure for succession to the throne: 'Therefore, from the legal point of view, the death of Peter II, in the absence of his own testamentary disposition concerning an heir, made the Imperial throne *free* [emphasis in original]' (p. 11). Peter II was the last male representative of the House of Romanov; the direct male line of this dynasty was extinguished with his demise. The ensuing discussion amongst the senior nobility required a compromise consensus for a suitable candidate, and that in turn, Tomsinov argues, required an 'understanding' among the contending forces as to what the new monarch should or might do. Thus emerged a document called 'Conditions,' to be signed by the new monarch, setting out what would be done and what would not. The 'Conditions,' in other words, were viewed as a document limiting, or conditioning, the exercise of Imperial power and, in doing so, performing the role of a constitution.

From a legal perspective it matters less whether the 'Conditions' were observed or not by the monarch; over time the idea itself percolated and gradually re-emerged in the expectation that a Russian ruler should reign in accordance with laws (themselves a form of 'conditions') and formally undertake to do so. During the reign of Catherine the Great, N.I. Panin was among those close to the Empress who prepared documents that would underscore the 'Discourse on Immutable State Laws.' During the tenure of Emperor Alexander I in the first quarter of the nineteenth century, several schemes were pursued along these lines, including the constitutional plans of the 'Secret Committee,' M.M. Speransky's 'Introduction to a Statute on State Laws,' and a draft State Instrument of the Russian Empire.

The forces of constitutionalism were reinforced during the 1860–70^s by extensive discussions of the pros and cons in the Russian popular and academic press and

pursued in governmental circles – all of which are taken up in detail by Tomsinov. The remainder of the volume is devoted to several specific proposals advanced in 1880–81. These have not been explored extensively by foreign legal historians, although they are reasonably well-known to civilian historians. Pursuing Tomsinov's original observation above, it happened that these specific proposals emerged during the transition from the reign of Alexander II to that of Alexander III. Particular attention is given to memoranda, reports, and proposals advanced by the Minister of Internal Affairs, M.T. Loris-Melikov addressing, *inter alia*, issues of popular representation and how that might be achieved.

The reaction opposed these efforts, endorsing something considerably less than a constitutional or limited monarchy, came from K.P. Pobedonostsev, whose role in this respect is explored in impressive detail by the author (also a biographer of this Russian statesman).

Appended to the volume are the texts of nine documents, two from 1863 and the rest from January 1880 to April 1881. These form the main official core for the discussions held on this issue as part of the Great Reforms. Tomsinov eloquently describes the antithetical outcomes of the reforms: in some respects the Great Reforms liberated and liberalized Russia, made all estates free, enhanced the principle of universal civil freedom to a fair trial, the independence of the courts, the birth of the *advokatura*, the introduction of adversariality in legal processes, the emergence of universities and other institutions of higher education as autonomous corporations. Zemstvo and urban reforms enabled larger elements of society to be represented directly in local government. Freedom of the press and speech, although hardly unlimited, nonetheless was expanded. Russian statehood in a sense operated within a new framework, a new context – except at the very top, where the adoption of major State decisions, issuance of laws, and appointment of officials all remained the exclusive prerogative of the Emperor.

To be sure, not a single new representative organ emerged in Russia during these years, although the need for such had been acknowledged in Russian senior circles from the reign of Emperor Alexander I onwards. Even though the systematization and codifications of Russian legislation had consolidated such matters as the powers of the Emperor, the procedure for his exercise of legislative and governmental power, rules for succession to the throne, status of members of the Imperial family, and the like in so-called 'Basic Laws,' this term was not understood to be a synonym for 'constitutional.' These enactments were called 'basic' laws, as Tomsinov observes, only because they addressed supreme State power, not because they purported to limit the State or to superimpose the rule of law on the State itself.

Nonetheless, the overriding message of Tomsinov's work is that from at least the eighteenth century onwards, for whatever reasons, serious thought was given by experienced Russian statesmen and civil servants to one or another form of constitutional rule, a limited monarchy, possibly even a monarchy that would accept