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978-1-107-02513-4 - Crime and Punishment in Early Modern Russia

Nancy Shields Kollmann

Excerpt

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Introduction

This book analyzes the criminal law in Russia in the context of early modern state-building in Europe and Eurasia. It focuses primarily on the seventeenth and early eighteenth centuries (for which case law exists) but begins in the “long” sixteenth century (starting from the late fifteenth) when Russia’s laws and judicial institutions were founded. It analyzes how courts handled serious crime (felony theft, robbery and murder; state crime), pursuing various themes: how written law compared to practice, how the courts were structured and staffed, how trials progressed, how evidence was gathered, how judges reached verdicts, how communities and individuals participated in the judicial system. Particular attention is given to punishment – exile, corporal and capital sanctions – not only as evidence of judicial practice but also as a reflection of the state’s legitimizing ideology. Such a study of legal practice is warranted in Russian historiography because most previous work on Russian legal history has focused on the letter of the law, not practice. More boldly, the study provides historians of other early modern states a case study of law and adjudication in a centralizing empire. Russia has often been regarded as a peripheral outsider employing unique forms of governance and development; this book shows that its state-building experience was part of a broader early modern continuum of change.

Since about the 1970s, historians and philosophers have explored how the early modern state came into being across Europe and in the Ottoman Empire, analyzing strategies of governance, of centralization and empire, and of the formation of sovereignty from roughly 1500 to 1800. Those strategies in turn are applicable to the Russian experience. One avenue of research has chronicled the “sinews of power” – states’ creation of infrastructure to support military reform and territorial expansion. “Sinews” embodied new taxes and bureaucratic institutions to administer territory, collect revenues and mobilize human and material resources; they took the form of colonial administration for expanding multi-ethnic empires.

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“Sinews of power” were represented by new codifications of the law and new centralized judicial systems, particularly criminal venues. Another fruitful avenue of research explores how confessionalization in post-Reformation Europe – movements in Catholicism and Protestant denominations to define the faith and discipline members – complemented states’ efforts to consolidate society around state and church; to some extent, toleration of religious diversity worked to that effect in the Ottoman and Russian empires. Yet another approach examines the use of ideology and visual symbolism based on dominant religious discourses to legitimize power.¹ Russia paralleled its contemporaries in all these strategies.

At the same time scholars of early modern Europe caution against exaggerating the power of the centralizing state, a point particularly useful for Russian historians. Several tacks complicate the picture described above, one analyzing local governance. R. W. Scribner, for example, in a study of local policing in early modern Germany, cautioned against concentrating “on the observable structures of the state and its prescriptive legislation at the expense of close examination of the practical difficulties the state encountered in the pursuit of its own goals.” He showed that “at the grass-roots, where policing really mattered,” the early modern state was “far more fragile.”² John Brewer and Eckhart Hellmuth echo such a conclusion where it seems least expected, that is, in reassessing the early modern English and Prussian states. They suggest that an overly Weberian focus on what Michael Mann called the “despotic” (formal and legal) power of early modern states has obscured the problems that such states encountered in creating “infrastructural” power, that is, building administrative institutions and relationships with society to execute state demands. Early modern states regularly relied on intermediary bodies including nobles, bureaucrats, municipal guilds and town councils to execute policy. Thus, like Scribner, Brewer and Hellmuth recommend an approach that “looks neither from the top down, nor from the bottom up, but at the points of contact . . . Negotiation not coercion is the key concept.” Similarly, Michael Breen declares that in early modern France the law was neither “autonomous in the modern, Weberian sense” nor “façade,” but was “one part of a much larger legal system of dispute resolution that incorporated mediators, arbitrators and other parties who

¹ Europe: Tilly and Ardant, *Formation*; Brewer, *Sinews*; Weisser, *Crime and Punishment*, ch. 6. Ottoman Empire: Imber, *Ottoman Empire*.

² Scribner, “Police and the Territorial State,” 103, 116. Jason Coy also contrasts official displays of power in sixteenth-century German towns with officials’ “negotiation and compromise with their communities”: *Strangers and Misfits*, 97–128.

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brokered, negotiated, or otherwise helped to bring about informal settlements.”³ Early modern states became modern, in other words, by seamlessly integrating what in social theory have often been seen as opposing categories: centralized/decentralized, personal/public, legal/customary. Exposing the misguidedness of those theoretical binaries, early modern legal cultures took their strength from a rich bricolage of social and political interaction.

Looking at state organization complicates the implicit narrative that early modern state-building leads to the nation state. It might have eventually, but in these centuries, states were pluralistic. European states ran a continuum from fairly unitary monarchies in which kings still had to cooperate with parliamentary, noble and other social institutions (England and France), to what Charles Tilly calls states with “fragmented sovereignty” (Switzerland, northern Italy and some of the Holy Roman Empire), where power was shared among loose confederations of city states, principalities and the like. Many others were land-bound empires: the Ottomans in an arc to the south, Poland–Lithuania, Russia from the Baltic to Siberia, the Habsburgs from Spain to the Netherlands to Hungary. As in their heartlands, rulers of multi-religious, multi-ethnic empires were forced, according to Karen Barkey, to “share control with a variety of intermediary organizations and with local elites, religious and local governing bodies, and numerous other privileged institutions.” They unified their empires primarily around a supranational religious ideology; they controlled by strategies from toleration of difference, to co-optation of elites, to measures to prevent regional elites from building local power, to coercion. So implicated were imperial governments in negotiating with local communities to accomplish extraction and control that scholars call imperial sovereignty “layered,” “divided” or “delegated”: “Sovereignty is often more myth than reality, more a story that politics tell about their own power than a definite quality they possess.”⁴

A further perspective on early modern state-building explores the relationship of power to violence. Michel Foucault argued that early modern European rulers governed by terror through “spectacles of suffering” – mass public executions and punishments – until in the seventeenth and eighteenth centuries they were able gradually to substitute discourses of conformity internalized by individuals, inculcated with

³ Brewer and Hellmuth, “Introduction,” 11–12. Breen, “Patronage, Politics.”

⁴ Tilly, *Coercion, Capital*, 20–31; Barkey, *Empire of Difference*, 9–15, quote on 10; Benton, *Search for Sovereignty*, 30–3, “myth” quote on 279. Burbank and Cooper on empire and nation: *Empires*, 1–3.

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better means of communication and institutions such as the prison, the asylum and public schools. But, Foucault contended, such discourses were no less violent. A parallel school inspired by the work of Norbert Elias countered with a bottom-up vision of these processes: Pieter Spierenburg, Richard van Dülmen, Richard Evans and others contrasted spectacles of execution to the emergence of “civilizing” trends that gradually obviated the need for rule by terror. Etiquette, learning and court culture became standards for aspiring individuals and groups, societal violence decreased and society stabilized from within.⁵

Lest the emphasis of these theories on internalized discourses lull one into seeing state power as progressively more subtle, philosophers and theorists such as René Girard and Giorgio Agamben, among many others, draw attention back to the foundational role of violence in maintaining sovereignty in any state. Paralleling Max Weber’s comment that sovereignty is the monopolization of the means of violence, this philosophical approach contends that all human groups create society and state power by coalescing around a ritualized, controlled use of violence. The sovereign exists in an “exceptional” space, permitted to kill for the greater good of the community, whether by leading armies against foreign enemies or domestically by executing traitors and criminals. Scholars develop this argument from different angles: Girard drew on literature and social anthropology to develop a theory of mimetic violence and scapegoating as the essence of sovereignty; Walter Burkert drew on the study of ancient religions; Giorgio Agamben traced such ideas to classical Greek political philosophy.⁶ These theories suggest that all governance involves violence, no society escapes it, no state does without it. The challenge for rulers was how to control and use violence – how to deploy it symbolically, how to legitimize it, how to avoid destabilizing excess and how to balance it with less coercive strategies of power.

These approaches to early modern state-building provide the theoretical context for this study of the practice of the criminal law in Russia. Even more than its European and Ottoman counterparts, early modern Russia exhibited a striking tension between claims of centralization and

⁵ Foucault, *Discipline and Punish*; Evans, *Rituals*; Spierenburg, *Spectacle*; van Dülmen, *Theatre of Horror*; Briggs et al., *Crime and Punishment*; Schrader, *Languages*, 18, 188–9; Rousseau, “Crime, Justice and Society”; Muchembled and Birrell, *History of Violence*. Elias wrote in the 1930s but was not popularly known until the 1960s.

⁶ Weber, “Politics as a Vocation,” 78; Girard, *Violence and the Sacred*, ch. 1; Burkert, *Homo Necans*; Agamben, *Homo Sacer*. Reflections in this vein regarding Russia: Geyer, “Some Hesitant Observations.”

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the challenges of governance. Russia from 1500 to 1800 was certainly building the “sinews of power”: it was pursuing military reform to expand empire from Eastern Europe to the Pacific and building the bureaucratic apparatus and social institutions (such as serfdom) to administer and pay for that expansion. It was broadcasting its legitimacy through an ideological discourse of autocracy, disseminated in league with the Orthodox Church through imagery, architecture, ritual, proclamations and the formulas of official documents.

But, as in other early modern empires, Moscow’s claims to central power were “more myth than reality.” Moscow as imperial center deployed what Jane Burbank and Frederick Cooper have called a Eurasian approach to empire, a “politics of difference,”⁷ one that allowed broad swaths of social and political life to be managed by local communities, except for key powers claimed by rulers. In Russia, those were criminal justice, resource mobilization (human and material), and military recruitment and control, and even in the criminal law, the center’s power to enforce the law as written was informally limited by the local situation. As in Europe, governance united formalized law and institutions with flexible practice and popular concepts of justice. On the ground, European “rationalizing” states look less rational and Muscovy’s proclaimed “autocracy” looks less autocratic.

Clearly this approach is intended to counter a historiography that draws sharp distinctions between Europe’s “rule of law” and rationality and Russia’s “despotism” and brutality.⁸ Such a normative approach goes back to sixteenth- through eighteenth-century European visitors to Russia who arrived attuned to markers of European change. Members of Europe’s elite, they embodied new standards in education, civility and political engagement; many had deeply felt religious convictions, honed in confessional struggles. Their classical educations gave them categories of freedom and despotism with which to process Russian reality. Comparing Muscovy (a term emanating from foreigners’ accounts now used to refer to Russia before 1700) to the phenomena they were experiencing at home – waxing state power, enfranchised elites and emerging middle classes, rising literacy and civility, confessionalization – they declared Russia less civilized, less religiously sophisticated, more despotic

⁷ Burbank and Cooper, *Empires*, ch. 1.

⁸ See this clash of categories in Richard Pipes’ Weberian focus on Russia’s lack of “rule by law” versus George Weickhardt’s lawyerly view of Russia’s legal complexity: Pipes, *Russia under the Old Regime*, xxi–xxii; Weickhardt, “Due Process and Equal Justice”; their polemic on property: Weickhardt, “Pre-Petrine Law of Property”; Pipes, “Was There Private Property?”; Weickhardt, “Response.”

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and more violent than a proper European state. These travelers were not necessarily wrong about what they described: Muscovy was indeed less socially and economically developed, less culturally diverse and certainly less politically pluralistic than the leading states of contemporary Europe. But these travelers established tropes that reified Russia's differences as they exaggerated what came to be seen as "modern" elements of their own societies.⁹

By the nineteenth century, when Europe had developed greater political pluralism, bureaucratic transparency and even some civil rights, Russian historians themselves advanced this binary opposition in a "statist" paradigm that focused on Muscovite tsars' claims to unlimited power unbalanced by any social or institutional legal rights. Regarding the law, they applied what would become Weberian "ideal types," condemning Russia's legal system as lacking predictability and rationality, riddled with corruption and inefficiency.¹⁰ While twentieth-century Soviet historians rejected these polarities and rewrote Russian history around class struggle, their approach also affirmed "centralization" and "absolutism" and in spite of themselves perpetuated an image of Russia as unique and different from the West.¹¹

More recent historiography in Europe, America and Russia on early modern Russian law and governance has both echoed and contested old tropes: Horace Dewey and Ann Kleimola undermined a monolithic, despotic model with studies of Muscovite law in the late fifteenth and sixteenth centuries; George Weickhardt argued that Muscovite law de facto provided "due process." V. A. Rogov presented Muscovy's legal system as rational and not despotic. Others offered less positive interpretations: Evgenii Anisimov pronounced the Russian legal system endemically ridden with brutality and a culture of denunciation; Georg Michels and Chester Dunning have argued that state and society were brutal and violent; Richard Hellie alternately asserted that Muscovite law was orderly and enforced in practice and that its society was more brutal and violent than what he considered the European standard.¹² But a binary opposition

⁹ Poe, 'A People Born to Slavery'; Wolff, *Inventing Eastern Europe*. Debate on these tropes: Poe, "Truth about Muscovy"; Kivelson, "On Words, Sources."

¹⁰ Bogoslovskii, "Zemskoe samoupravlenie"; Chicherin, *Oblastnye uchrezhdeniia*; Got'e, *Istoriia oblastnogo upravleniia*; Sergeevich, *Lektsii i issledovaniia*.

¹¹ They did, meanwhile, produce excellent source publications and studies of legal codes. A few examples: PRP; RZ; ZA; Man'kov, *Ulozhenie and Zakonodatel' stvo*; Nersesiants (ed.), *Razvitie*; Skripilev (ed.), *Razvitie*.

¹² Rogov, *Istoriia*. Representative of Dewey's work are "1550 *Sudebnik*" and "Muscovite *Guba* Charters"; Kleimola, *Justice in Medieval Russia*. Weickhardt, "Due Process." Anisimov, *Dyba i*

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of rational/despotic whether applied to law or society is being complicated by micro-historical works. Studies on law and administration across the empire – in the north, on the southern steppe frontier and in Siberia – and on such social groups as townsmen, gentry and bureaucrats demonstrate the pluralism of early modern governance described above. Among them, major monographs on the practice of the criminal law in the eighteenth century (by Christoph Schmidt) and on litigations about lese-majesty (by Angela Rustemeyer) are particularly valuable complements to this book.¹³

Following this lead, this book takes as “bottom-up” an approach as possible. Echoing early modern European and Ottoman practice, it shows how the formal procedures and strictures of law were shaped by such factors as community and individual interests, extra-legal procedures such as settlement and flexible interpretations of the law in judicial pardon. It argues that Russia’s practice of the criminal law should be seen as an integration of “public” and “private,” and that, indeed, these oppositions are irrelevant. Russia in these centuries was not moving from a personalized judicial system to a more rational one; the formalized legislative and institutional reforms that are tracked here into the eighteenth century did not undermine the system’s flexibility in process and adjudication.

While laws asserted the primacy of the tsar’s justice, adjudication and judicial practice responded to local concepts of justice that were oriented towards preserving the integrity and stability of communities. For their part, communities respected the tsar’s legitimacy, acquiesced in the authority of courts and officials, adhered to the moral authority of their oaths to the tsar and accepted the judiciary’s monopoly on prosecuting serious crime. They did so with the expectation that courts and officials would provide them with security and protection from crime, would punish evil and would not be excessively corrupt, arbitrary or brutal. When the balance tilted towards too much corruption or too little responsiveness, people complained, petitioned, even revolted. Thus, judges had and used significant leeway in sentencing, balancing their

knu; Michels, “Violent Old Belief” and “Ruling without Mercy”; Dunning, “Terror.” Compare Hellie, “*Ulozhenie*: Preamble,” 185 with “Late Medieval and Early Modern Russian Civilization.”

¹³ North: Shveikovskaia, *Gosudarstvo i krestiane*. Steppe frontier: Glaz’ev, *Vlast’ i obschestvennost’*; Davies, *State Power*. Siberia: Anan’ev, “Voevodskoe upravlenie”; Redin, *Administrativnye struktury*. Vershinin, *Voevodskoe upravlenie*. Townsmen: Bulgakov, *Gosudarstvennye sluzhby*. Gentry: Kivelson, *Cartographies*; Lapteva, *Provintsial’noe dvorianstvo*. Bureaucrats: Rybalko, *Rossiiskaia prikaznaia biurokratiia*; Pissar’kova, *Gosudarstvennoe upravlenie*. Schmidt, *Sozialkontrolle*; Rustemeyer, *Dissens und Ehre*.

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obligations to the law with their personal judgment. Communities cooperated with courts and manipulated them. That sentences varied from the written law was not, in other words, evidence of an arbitrary or “illegal” judicial culture, but indication that a balanced judicial culture was functioning well. Such local governance practices were typical in early modern governance across the board.

These conclusions emerge through study of several themes. One is Muscovy’s efforts to construct and maintain a centralized bureaucratic and judicial apparatus with limited finances, manpower and judicial expertise. A related concern is how the center depended upon local communities: how judicial institutions were staffed, how communities cooperated with, manipulated and resisted the tsar’s judicial power. A third is the development of judicial expertise: lacking law schools and universities, lacking a legal profession, Muscovy had to inculcate judicial expertise somehow. This work explores where that knowledge resided. A fourth theme is the use of violence – in judicial torture, in executions and punishments. Here Muscovy’s practice of state-sanctioned violence is compared to the paradigm of “spectacles of suffering.” The symbolic use of violence is explored, particularly the violence at the heart of sovereignty revealed by the profound interactions of tsar and people in moments of state crisis. This study extends to the reign of the reforming Tsar Peter I “the Great” (ruled 1682–1725) in order to problematize claims of a radical break in Russian history by this admittedly radical ruler.

SOURCES OF POSITIVE LAW AND LEGAL PRACTICE

For the non-specialist reader, a brief chronological sketch. This book begins in the late fifteenth century with the reign of Ivan III (ruled 1462–1505), who accomplished significant territorial expansion, founded the bureaucracy (military, land and foreign affairs chanceries, treasury), expanded the gentry-based army and issued a short law code in 1497. Thereafter, under his son Vasilii III (1505–33), grandson Ivan IV (“the Terrible,” 1533–84) and great-grandson Fedor Ivanovich (1584–98), these processes of state-building and imperial expansion progressed, marked by high points in the conquests of the Volga trading emporia, Kazan (1552) and Astrakhan (1556). Two eras of political turmoil – Ivan IV’s Oprichnina (1564–72) and the “Time of Troubles” (1598–1613) (discussed in Chapter 14) – interrupted but did not divert these trends. The new Romanov dynasty (Mikhail Fedorovich, ruled 1613–45; Aleksei Mikhailovich 1645–76; Fedor Alekseevich, 1676–82) accomplished

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immense expansion to Siberia and some movement into the Black Sea steppe and modern-day Ukraine and Belarus. Peter I (ruled 1682–1725) accelerated all these state-building processes with aggressive military reform, territorial expansion and administrative-judicial changes.¹⁴

The criminal law system grew in response not only to rulers' ideological claims to power over the whole realm, but also to the social instability caused by their actions. As Moscow raised old taxes and invented new ones, people suffered, culminating in Russia's most important non-cash fiscal strategy of state-building, enserfment (gradually fixing to their social status tax-paying urban and rural populations from the sixteenth century to 1649). Geographical (let alone social) mobility was frozen for the majority of the population, in legal theory; in practice, thousands fled into Siberian forests or to the steppe where paradoxically local governors, desperate for manpower to defend the borders, often recruited into service. Declaring flight a crime, Muscovy's rulers multiplied the burden on criminal courts. Crippling tax rates also spurred crime; from the mid sixteenth century robbery and brigandage were endemic on the few major highways of Muscovy's huge empire.¹⁵ Theft and robbery were banes of town and village life, even though Muscovy had far less wealth, consumer goods and social inequality than had Europe to attract property crime. Spontaneous violence, in Muscovy as in Europe, was also common: strangers in a tavern get into a brawl; knives, ubiquitous in a peasant society, quickly appear; dead bodies fall on the barroom floor. Occasionally social unrest erupted into peasant or urban rebellion. All this created demand for an effective criminal law apparatus.

That apparatus was documented by the state in codes, decrees and cases, and this study builds up from those sources. It should be noted, however, that looking for state–society interaction in early modern Russian legal practice is difficult, since virtually all indigenous sources were produced by government offices. Even direct address by litigants in petitions to the court or in testimony was filtered through formulaic prose, scribal expertise and litigants' need to speak to the law's standards. Nevertheless, court records open up a rich canvas of governance in action.

¹⁴ Until this point, scholars often call early modern Russia "Muscovy," but "Russia" is also accurate; starting with Peter, who declared himself "Emperor of *Rossia*," "Muscovy" is not used.

¹⁵ Keep, "Bandits and the Law"; Got 'e, *Istoriia oblastnogo upravleniia*, 1: 334–45; Michels, *At War*, 130; Eeckaute, "Les brigands en Russie"; Dewey, "Muscovite *Guba* Charters."

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Positive law starts with codes that asserted the state's authority and regulated officialdom. A fifteenth-century Writ on Homicide, two regional administrative charters and the 1497 Law Code (*sudebnik*) demonstrate a transition from the "dyadic" law of earlier centuries (embodied in the Rus' Law [*Ruskaia pravda*]) to a triadic model wherein law not only provided compensation to victims of injury but also recognized the state's interest. The 1497 code was primarily a handbook for judges, defining fees for services, describing procedure, establishing capital punishment for highest crime (theft of church property, treason, arson, kidnapping and recidivist theft) and corporal punishment for lesser crime, as well as compensatory fines for injury.¹⁶ In 1550 a slightly longer law code developed the law in sanctions, procedures and punishment for official corruption. Charters from the 1530s for brigandage felony boards (*guba* institutions) heightened corporal and capital punishment and the use of torture.¹⁷ A regionally specific 1589 Law Code supplemented the 1550 code with some harsher sanctions, decrees of the second half of the sixteenth century intensified social control, and a 1606 code that softened norms on encroaching enserfment was not adopted into use.¹⁸

As bureaucracy grew with empire into the seventeenth century, the Felony Chancery encoded the criminal law in handbooks, much of which content was integrated into the 1649 *Ulozhenie*. This massive compendium developed judicial procedure, introduced Russia's first formal treatment of state crime and greatly expanded the use of corporal and capital punishment.¹⁹ The 1669 Criminal Articles intensified some sanctions and shifted administrative authority among rival officials and chanceries, but their influence was never as great as that of the *Ulozhenie* in procedure and sentencing because the latter was printed and widely disseminated, while the 1669 Articles were not. Tellingly, a 1714 decree required that the *Ulozhenie* be preferred to all intervening legislation until a new code was completed (it never was). While the Military Articles of 1715 were not

¹⁶ Writ: RZ II: 187–9. 1397–8 Dvina Charter: RZ II: 181–2. 1488 Beloozero: RZ II: 192–5. 1423 immunity charter: PRP III: 98–9. Dyadic and triadic: Kaiser, *Growth*, ch. 1. Early Muscovite criminal decree: Alekseev, "Zapis' chto tianet."

¹⁷ 1550 Law Code: RZ II: 97–120. 1539 Beloozero Charter: RZ II: 213–15. 1555 Medyn Charter, RZ II: 218–23. 1555–6 Felony Handbook: PRP IV: 356–70. Regional brigandage charters: Iakovlev (ed.), *Namestnichie*; RZ II: 227–34.

¹⁸ 1589 Law Code: PRP IV: 413–43. Late sixteenth-century decrees: ZA. 1606 Law Code: PRP IV: 482–542; Weickhardt, "Composite Law Code."

¹⁹ Felony Handbook 1616–36; PRP V: 188–220; Felony Handbook 1635–48: PRP V: 221–39. *Ulozhenie*: RZ III: 83–257. English translation of *Ulozhenie*: Hellie (trans. and ed.), *Muscovite Law Code*. 1669 Criminal Articles: PRP VII: 396–434.