

## Artículo de investigación

## The problems of single legal field development in russia of the early modern times (the end of the XV - the beginning of the XVII century)

Los problemas del desarrollo del campo legal único en Rusia de los primeros tiempos modernos (finales de XV - el comienzo del siglo XVII)

Os problemas do desenvolvimento do campo legal na Rússia dos primeiros tempos recentes (finais de XV - o comienzo del siglo XVII)

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### Abstract

The article deals with the problems associated with the peculiarities of a single legal field development in the Russian state during the epoch of the early modern era (traditionally associated in Russian historiography with the times of a single centralized state formation and development and the emergence of autocracy as a kind of early absolutism). Using a number of provisions of modern concepts for the development of early modern states in Europe, the authors of the article put forward the thesis of a single legal field development in the Russian state during the period under consideration based on the analysis of Russian law monuments at the end of the XVth century (The Code of Law of Ivan III in 1497) and the 16th century (first of all, the code of law by Ivan IV, as well as a number of other legislative and legal acts) and judicial practice. In their opinion, this incompleteness was related with the following circumstances. First of all, the development of political and legal institutions in the early modern Russian state was of an evolutionary nature and, therefore, denied radical changes. Secondly, the poverty of the state caused the relative weakness and a slow development of "sinews of power" and,

### Resumen

El artículo trata los problemas asociados con las peculiaridades de un desarrollo de campo legal único en el estado ruso durante la época moderna temprana (tradicionalmente asociado en la historiografía rusa con los tiempos de una formación y desarrollo estatal centralizado único y el surgimiento de la autocracia como una especie de absolutismo temprano). Usando una serie de disposiciones de conceptos modernos para el desarrollo de los estados modernos tempranos en Europa, los autores del artículo presentaron la tesis de un desarrollo de campo legal único en el estado ruso durante el período bajo consideración basado en el análisis de monumentos de derecho rusos a fines del siglo XV (El Código de Derecho de Iván III en 1497) y el siglo XVI (ante todo, el código de leyes de Iván IV, así como una serie de otros actos legislativos y jurídicos) y la práctica judicial. En su opinión, este estado incompleto estaba relacionado con las siguientes circunstancias. En primer lugar, el desarrollo de las instituciones políticas y legales en el estado ruso moderno temprano fue de naturaleza evolutiva y, por lo tanto, negó los cambios radicales. En segundo lugar, la pobreza del estado causó la debilidad relativa y un lento

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therefore, prevented the establishment of a more stringent administrative and legal control by the supreme power over the actions of local authorities. Finally, the weakness of the mentioned "sinews of power" conditioned the need of cooperation mode establishment between the supreme authority and local elites, while retaining the access to the exercise of power functions on the ground - also through the preservation of the old legal customs and traditions. Naturally, all this contributed to the preservation and the reproduction of the legal "antiquity" and, consequently, the incompleteness of legal centralization process and the formation of a single legal field throughout the country. The legal field, in the opinion of the authors of the article, had at least 2-level character all this time, the fragmented nature and the dispersion at the low-rank level.

**Keywords:** Early New time, early-modern state, legal system, absolutism, Western Europe, Russian state, autocracy

desarrollo de "tendones de poder" y, por lo tanto, impidió el establecimiento de un control administrativo y legal más estricto por parte del poder supremo sobre las acciones de las autoridades locales. Finalmente, la debilidad de los mencionados "nervios de poder" condicionó la necesidad del establecimiento del modo de cooperación entre la autoridad suprema y las elites locales, mientras se mantiene el acceso al ejercicio de las funciones de poder sobre el terreno, también a través de la preservación de las viejas costumbres legales y tradiciones. Naturalmente, todo esto contribuyó a la preservación y reproducción de la "antigüedad" legal y, en consecuencia, a la incompletitud del proceso de centralización legal y la formación de un solo campo legal en todo el país. El campo legal, en opinión de los autores del artículo, tenía al menos un carácter de dos niveles todo este tiempo, la naturaleza fragmentada y la dispersión en el nivel de bajo rango.

**Palabras clave:** Nuevo tiempo temprano, estado moderno temprano, sistema legal, absolutismo, Europa occidental, estado ruso, autocracia.

## Resumo

O artigo trata os problemas associados com as peculiaridades de um curso de campo legal no estado russo durante a época moderna temático (tradicionalmente associado à historiografia rusa com os tempos de uma formação e desenvolvimento estatal centralizado único e o surgimento da autocracia como uma espécie de absolutismo temprano). Using una serie de disposiciones de conceptos modernos para o desenvolvimento dos estados modernos templos na Europa, os autores do artigo apresentando a tese de um curso de campo legal no estado do russo durante o período considerado de base na análise de pontos de vista ruses a fins del siglo XV (O código de direito de Iván III em 1497) e o século XVI (ante, o código de leyes de Iván IV, como uma série de atos legislativos e jurídicos) e a prática judicial. Em sua opinião, este estado incompleto está relacionado com as circunstâncias circunstanciadas. Em primeiro lugar, o desenvolvimento das instituições políticas e jurídicas no estado atual temprano naturalidade evolutiva e, por isso, os dois cambios radicais. Em segundo lugar, a pobreza do estado causou a debilidad relativa e um lento desenvolvimento de "tendões de poder" e, por que tanto, impiedoso o estabelecimento de um controle administrativo e jurídico mais estrito por parte do poder supremo sobre as ações das autoridades locais. Finalmente, a debilidad das perdas "nervos de poder" é a necessidade do estabelecimento do modo de cooperação entre a supremacia e as elites locais, mientras se mantém o acceso ao exercicio das funções de poder sobre o terreno, tambien a través de la preservación de las viejas costumbres legales y tradiciones. Naturalmente, todo esto contribuído a la preservación y reproducción de la "antigüedad" legal y, en consecuencia, a incompletitud del proceso de centralización legal y la formación de un solo campo legal en todo el país. O campo legal, na opinião dos autores do artigo, com o menos um carácter dos niveles todo este tempo, a natureza fragmentada e a dispersão no nivel de bajo rango.

**Palavras-chave:** Nuevo tiempo temprano, estado moderno temprano, sistema legal, absolutismo, Europa occidental, estado ruso, autocracia.

## Introduction

The English diplomat and memoirist J. Fletcher gave a curious description of the Moscow

legislation at the end of the 16th century in his polemical essay "Of the Russe Common Wealth" (let's recall that he visited Russia shortly after the death of Ivan the Terrible, and among his





informers was the merchant and the adventurer J. Gorsay, who spent a lot of time in Moscow). According to him, "they (i.e. Muscovites - Auth.) have no written law, save onely a small booke, that conteineth the time and manner of their sitting, order in proceeding, and such other judicial forms and circumstances." At the same time, Fletcher continued, the Muscovites had "nothing to direct them (i.e., judges - Auth.) to give a sentence on right or wrong." And the diplomat concluded his description by saying that as an undoubted shortcoming and a sign of the tyrannical government adopted by the Muscovites is the lack of a written right and the reliance on oral law: «Their onely law is their speaking law, that is, the pleasure of the prince, and his magistrates and officers». Thus, according to Fletcher, the position of ordinary Muscovites is completely hopeless, for they are forced to rely on the will of their oppressors, without "many good and strong laws" as a weapon and a counterweight to their evil will (Fletcher G. 1591, p. 53).

This excerpt from the work of a British diplomat is very curious as a rare example of a bizarre intertwining of reality and virtuality, of the things that really took place and the things which had to be to match the ultimate goal of the treatise. Fletcher, relying on his informants, noted correctly that there is no written law in Russia, and the existing codes (those "codes of law") had a pronounced procedural nature, primarily determining the order and the nature of the proceedings, preserving quite a wide "autonomy" for the judges during sentencing (Aleksandrovna Maximova and Aleksandrovich Belyaev, 2017).

At the same time, he pointed out that the main law of the Muscovites is "speaking law", and again he was not mistaken in this - indeed, the oral, customary law was the foundation on which the legal system of the Russian state was built during the early modern era. But Fletcher was wrong in the following: he interpreted this "speaking law" as a manifestation of the tsar's will, which is the only law, because "speaking law" was not such due to a number of reasons and peculiarities of Russian statehood and law development of that era (but this will be described in detail later).

The question is whether this error was unintentional, due to the fact that Fletcher, like his informants could not understand its peculiarities without the access to Moscow proceedings. Or is it related with the fact that it is not a diplomat's report, but, most likely, a

public treatise used to emphasize the difference between the Muscovites and the British? However, even if we analyze this passage, did the Muscovites differ from the English greatly? Even Fletcher's words that judges do not have direct instructions strictly recorded by the law concerning a verdict in this or that case can be treated as a kind of variation on the topic of English equity (it is strange that the identical phenomenon in England is the norm for Fletcher, but in Muscovy it seems barbarous for him and he considers it as a sign of tyranny) (Antón Chávez, 2017). Therefore, responding to the above-mentioned question, we are inclined, nevertheless, to proceed from the fact that the work by J. Fletcher is a monument of journalism, and his description of the Russian legal system state in early New time should be treated with caution, bearing in mind its ambiguity and complex structure.

#### Methodology.

Developing the problem of a single legal framework development in Russia during the early modern era, we proceeded from the premise that the concept of a "centralized state", which was finally formed in Russian historiography in the middle of the last century, is a historiographical mirage largely. We agree with the opinion of the American researcher N. Kollmann, who noted in one of her recent works that "scholars of early modern Europe caution against exaggerating the power of the centralizing state", especially if it concerns Russia (Keshtkar and Talebizadeh, (2018)). The problem is, as was noted by R.V. Scribner, that historians traditionally focus their attention on the study of the external side of political and legal processes, on "observable structures of state and its prescriptive legislation." (Scribner R.W., 1987, p. 103), actually substituting by this the content analysis by form study, giving an exaggerated attention and importance to the declarations of the supreme authority, but not to their actual filling. Meanwhile, it is obvious actually today that the law during early New Times differed in its internal content from the law in the modern sense of this term understanding, as well as the procedures connected with the realization of the potencies inherent in it, these are several different things now and then. M. Brin, describing the situation with the law and the implementation of its norms, pointed out that the law and the court acted as "one part of a much larger system of dispute resolution that incorporated mediators, arbitrators, and other

parties who brokered, negotiated, or otherwise helped to bring about informal settlements" (Keshtkar, 2018, p. 104-105).

Of course, one can argue that the picture described by M. Brin or R. Scribner refers to European states and is more or less homogeneous (as far as can be said with the reference to early modern states), but the Russian state evolved initially as multinational, multicultural and polyconfessional one - in other words as an "empire". Are the provisions introduced from Western European experience applicable to Russia of the early modern period? We believe that they are applicable. Moreover, the principles on which the early monarchies of Western Europe were built were applicable to Russia of that period in the highest degree. Similarly, the tasks that the supreme authority had to solve were much more difficult. This was primarily related to the fact that, as K. Borki pointed out, that the supreme power was forced to "share control with a variety of intermediary organizations and with local elites, religious and local governing bodies. other privileged institutions "(Keshtkar and Dadkhodazadeh, 2018, p.10) during the "imperial" version of the early modern states, the number of which was greater than in the "non-imperial" states due to a more complex internal structure of the imperial society.

Thus, summarizing all mentioned above, we proceed from the following: the Russia of early modern times is characterized by a certain distance between the external manifestations of power and law and their internal content. Therefore, when they study these most important state and public institutions, the attention should be paid not only and not so much to form, but to their content, to their actual filling. Secondly, characterizing the development of political, administrative and legal institutions, "sinews of power", it is necessary to take into account a special nature of power and law in the early modern states - they were founded and could successfully realize the potencies that were built in them only on the condition of cooperation between the authorities and society (society is considered as the most influential and authoritative part of it, its elite). This cooperation was directly conditioned by the "patchwork", "composite" character of the internal structure of early monarchies, as was written, for example, by G. Koenigsberger and J. Elliott (Keshtkar (2017). 48-71; Koenigsberger, H. G. (1978), p. 191-217).

## Discussion and results.

So, characterizing the development of the Russian state during the early modern period, we emphasize the fact that this state was formed and developed in the future as a "composite" state or as a "patchwork" one, which characterizes its internal essence even better in our view. This "patchwork" was associated with the peculiarities of "land gathering" around Moscow. The Moscow Grand Dukes without an overwhelming superiority over their opponents and bound by moral obligations to a certain extent (imposed by the dominant ideology dictated by the Orthodox Church) - like Orthodox princes, they should not shed the blood of Orthodox, their potential subjects in waste - in this issue they should use not only and not so much force as diplomacy and the ability to find a compromise, to negotiate with the ruling elites of neighboring principalities. In fact, it was about bringing to the appropriate steps to "incorporate" new territories into the composition of the growing Russian state that both from the point of view of Moscow and from the point of view of the population would look as legitimate (again, we are not talking about the population at all, but about the "political people", the elite of the society that can influence the policy of power in relation to this particular society).

The desire to take legitimate grounds for the "incorporation" actions, to confirm their actions by the references to the law (in any form) was not in the least related to the mentioned "patchiness" of the Russian state. As Elliott pointed out, one of the characteristic features of such a "composite state" was that the supreme power, having obtained the recognition of its sovereignty over new territories (no matter by mine route or through a conquest), built up (highlighted by us - Auth.) its structures over traditional administrative and legal institutions formed during centuries. At the same time, it is important that new structures and institutions did not replace, but only supplemented existing ones, carrying out supervisory and control functions in relation to them. Traditional administrative structures continued to function, ensuring the fulfillment of the tasks set by the supreme authority, within the framework of the previous legal field created by the local legal "antiquity".

A typical example of this is the conquest of Novgorod by Ivan III. While undertaking an





offense against Novgorod, Ivan III motivated his steps by the fact that he did not perform any kind of violence against the Novgorodians and imposed no burdens on them, except for those that existed long ago and were fixed in the former agreements between the Novgorodians and his predecessors, the great princes of Vladimir. At the same time, Ivan III reminded Novgorodians that he is free to set them free, and to execute them if Novgorodians violated the customs (Moscow Chronicle of the late XV century. Complete collection of Russian chronicles, 2004, p. 285). As the consequence of the appeal to the "old days", which served as a legal basis for Novgorod accession to Moscow, Ivan III could not bring his new subjects to court according to customs, meant the preservation of the old legal customs and traditions in Novgorod. Vasily III acted just like his father, when during the summer of 1514 he made Smolensk surrender. In his letter to Smolensk citizens he promised to rule them according to "their old times", according to those wishes that were received by Smolensk citizens from the great Lithuanian princes (The Charter of the Emperor and Grand Duke Vasily Ioannovich, given to inhabitants of Smolensk. Collection of state charters and contracts 1813), p. 411-412). In this regard the agreement between Ivan the Terrible and the inhabitants of Polotsk taken by Ivan's troops in February 1563 looks more curious. In his order to the voivodes appointed to Polotsk, he pointed out clearly and unequivocally that in the matters of legal proceedings the citizens should act according to the legal customs of Polotsk, and the legal proceedings should be based on the elected nobles from the Polotsk society and other "best" "zemstvo" people (Baranov K.V. (2004). 145-146). Meanwhile, in 1498, the Grand Duke of Lithuania granted the Polovans with the Magdeburg law (with the reservation that all previous agreements and customs that did not contradict Magdeburg law were preserved) (Privilege for Polotsk on the Magdeburg Law and the various benefits and rights 1910, p. 701). Consequently, Ivan the Terrible undertook to observe the Polotsk legal traditions, incl. and the provisions of Magdeburg law.

In this case it is possible, of course, to argue that Polotsk and Smolensk are atypical cases, that the promise of the Moscow princes to observe "the old days" was dictated by political considerations and by the desire to bind the conquered territories to Moscow more firmly. Of course, such an opinion takes place. However, how can

we interpret standard expressions, which are repeated many times in various grants and other certificates on the basis of which local government was administered in the Russian state. So, let's say, sending the rulers to different regions, the grand duke prescribed them and the inhabitants of those volosts and cities where the rulers should have settled, that the latter should listen to him and honor him, whereas the first was instructed to administer the land entrusted to him and to administer justice there within the framework of the "old times" on behalf of the sovereign (Records of Russian law. Records of law during the formation of the Russian centralized state. XIV – XV centuries, 1955, p. 156). At that, the sovereign governors were instructed (see similar passage in the Polotsk Provincial Directive of Ivan the Terrible of 1563) to perform legal proceedings by an obligatory involvement of local "best" people in the proceedings (Statutory charter of Belozerskaya statutory charter (1985. 195).

In this regard, it is worthwhile to mention the observation by V.V. Bovykin, who studied the features of local government in the era of Ivan the Terrible. He noted that the letters issued during the reign of the first Russian tsar "did not provide any intelligible instructions, which should have been followed by numerous addressees." And, developing his idea further, he suggested that "apparently, the legislator had absolutely nothing to say on this matter, and he gave the entire organizational, applied and practical part of the case to the local initiative ..." (Bovykin, V.V. (2012). 184-185). At the same time, we should not forget that the supreme power took local communities and their traditions under its protection, persecuting its violators, without taking into account their post and position in society, sometimes they violated certain legal norms, recorded in the same inter-princely agreements.

Conclusions. The above examples demonstrate clearly the complexity and the ambiguity of the Russian state legal structure during the early modern era. The picture, which emerges during the reference to specific materials preserved in the course of the judicial system proceeding, shows that the picture described by J. Fletcher does not correspond to reality fully. Undoubtedly, the supreme authority sought to expand the sphere of its competence, also in the legal field. However, it had to adapt its desires and aspirations with a harsh reality. And this reality showed that the supreme power did not

have the necessary "sinews of power", which would allow to rule without an active involvement of local regional elites. The cooperation between the supreme power and the provincial elites was the key to the successful functioning of the early modern Moscow state mechanism, and one of the indispensable conditions for this was the preservation of traditions, including the traditions in the legal sphere. The preservation and the reproduction of the "old days" on the ground meant an inevitable preservation of both political, administrative, and, of course, legal "patchiness" (not to mention its other varieties), which manifested itself in various forms. At the same time, the supreme authority retained the right to change the rules of the game - especially if its counterparties allowed the violation of previous agreements (for example, in the same Novgorod or Smolensk) - and the right to review (partial or complete) "Old times" (although it seems that if the revision was carried out, it would be of a limited nature and usually would affect persons, but not relations).

Certainly, Moscow was aware of the dangers and threats stemming from the preservation of the local "antiquity" and sought to curtail it gradually and to expand its sphere of competence. To this end, different strategies were used - for example, the unification and the standardization of judicial procedures throughout the state or the expansion of the list of crimes that are subject to the Grand Duke's or his vicars' judgment and removed from the competence of local judicial authorities. However, this process was extremely slow and nonlinear due to both objective and subjective reasons and continued for many centuries.

Thus, the early Russian state was characterized, among other things, on the one hand, by 2-level legal structures at least - when, along with the Grand Duke's court, local courts continued to function, whose work was determined by "old times". Their existence was one of the bases of loyalty among local elites and supreme power communities. On the other hand, legal centralization was far from completion - the preservation and the reproduction of local legal "antiquities" also contributed to the preservation of the local legal tradition that also contributed to the preservation of the state political unity. At the same time, the supreme power was unable to change the existing order of things, it built different strategies of tradition "embedding" in the new order - also through the provision of legal status to a legal tradition through grand

prince's sanction, and also through the development of uniform judicial procedures. However, this gradual, evolutionary path assumed inevitably the continued preservation of "old times" and the associated "under-centralized" state of the Russian legal field.

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