

## THE FORMATION OF THE UNIFIED LEGAL FRAMEWORK IN THE RUSSIAN STATE AT THE END OF THE XV - XVI CENTURIES

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### ABSTRACT

Using a wide range of modern historical literature and materials of the Russian legislation of the XV - XVI centuries, the author offers a new original approach to the problem of forming the unified legal framework in the Russian State at the end of the XV-XVI centuries. Applying the concept of the so-called "composite state", the author assumes that despite the seemingly strong supreme authority, neither in the XV century, nor in most part of the XVI century, was there any unified legal framework throughout the territory controlled by the Grand Prince of Moscow. This process began to pick up speed only in the last quarter of the XVI century. The author explains this situation by the forced cooperation of supreme authority with land self-government, with the latter basing its activity on local legal customs and traditions, which prevented the establishment of the unified legal framework for the whole country.

**Keywords:** *the Russian state at the end of XV-XVI centuries, power and the land self-government, legislation*

### 1.INTRODUCTION

Describing the system, established in the Russian State by Tsar Ivan the Terrible, a German adventurer Heinrich von Staden wrote that "the current Grand Prince has managed to make it, as throughout the entire Russian land, that is under his power, there is a single faith, a single weight, a single measure, that he is the only ruler, and whatever he orders must be done, and whatever he forbids should be abandoned" [1. 203, 205]. According to H. von Staden, it was under Ivan the Terrible, when in Russia, almost one hundred years after Ivan III, the grandfather of the first Russian Tsar, had started the completion of an ambitious project to create a unified Russian state, a unified legal and judicial framework was formed. The statement of the German adventurer in this case can be paraphrased as "one faith, one measure, and one law."

This bold statement should remain on the conscience of Staden, since his notes were extremely subjective and biased. Yet his comment on the absolute power of the Grand Prince is worth dwelling upon, for he was not the only one to write about it. Almost half a century earlier, an imperial ambassador and memoirist, Baron S. von Herberstein in his memoirs about his stay in Muscovy also emphasized the omnipotence of the Moscow Sovereign (Ivan IV's father - Vasily III - A.P.), describing it in the following way: "By the authority which he has over his subjects, he surpasses all the monarchs of the whole world ... Everybody is equally oppressed by his [cruel] slavery" [2. 89].

A logical question arises - so when did the Moscow Tsar obtain such excessive unmatched power, or when did his state really enter the era of "one measure" as a one-for-all law expressed in the will of the Grand Prince? Was it under Ivan the Terrible or under his father? Or even earlier, under Ivan III? Or, did it happen much later, in the XVII century? And was a historian A. Smirnov right in this case, when two decades ago he noted that in the Russian State of the late XV-XVI centuries "the military centralization was achieved much earlier than the political (and, therefore, legal – A.P.) or economic centralization" [3. 35]?

Let us try to formulate an answer to this question, basing not on the evidence of the contemporaries, however valuable they might have been, but on a new perusal of the documents available to us, and, first of all, the laws.

## **2 .METHODS**

In our work, we acted on the premises that the problems associated with the formation of a unified Russian state, in spite of the centuries-old tradition of studying them, are far from being solved, especially if we take into account the new politogenesis concept at the turn of the late Middle Ages - Early Modern Age. And it is time to touch on the problem, which has received virtually no coverage in the national historical and legal literature on the problems of the formation of a unified Russian state and its inherent political and legal institutions in the late Middle Ages - Early Modern Age. We mean the so-called concept of “the composite state” [4. 48-71; 5. 191-217].

## **3 .THE PROBLEM OF FORMING A UNIFIED LEGAL FRAMEWORK IN THE RUSSIAN STATE IN THE LATE XV-XVI CENTURIES.**

To begin with, here is the classic formula: "The foundation of a centralized state includes two interrelated processes: the formation of a single national territory through the unification of Russian lands and the establishment of the real authority of a single monarch over the whole territory (emphasis added – A.P.) ...” [6. 8]. We deliberately emphasize these words in the quotation. It is the real authority exercised by a state or a person embodying it that can turn a law into a rule of life and support the functioning of the thin and seemingly intangible, but at the same time quite material, fabric consisting of a range of legal norms and forming a unified legal framework of the state. Formally, looking from the outside, who could challenge the authority of the Grand Prince and the Sovereign of All Russia after the territory of the Russian State had been shaped under Ivan III? Does it mean that a unified legal framework was established under Ivan III?

One can answer affirmatively if one hardly understands the mechanisms of power in that distant era and automatically projects the realities of the present time to five hundred years ago. But if you look deeper, then these perceptions will be gone like the morning mist. And this is the reason why: we have already quoted the statement of A. Smirnov. His remark concerned the times of Ivan III. So, if the state was not fully centralized under Ivan III, does it mean that a unified legal framework was not formed either?

Indeed, the remnants of the period of appanage principalities could be felt for a long time. For comparison, we take two contract letters between Grand Princes of Moscow and their brothers, appanage princes, separated by half a century (one was prepared in 1481, the other - in 1531). In general, the forms of the letters as well as the phrases or the basic legal language remained almost unchanged over that time. The Grand Prince and his counterpart mutually undertake to stay within (“not to interfere”) their jurisdictional boundaries that coincide with the boundaries of the territories under their control, inherited from their father, and not to violate the order established by their posthumous parent’s will [See, for example. 7. 269, 416]. The old order, according to which the prince was the rightful owner in his independent principality, having the right to judge and to act as a legislator, was preserved and recognized by the both parties as inviolable. Naturally, in this case, one cannot talk about the establishment of a unified legal framework.

So does it mean then that it is safe to say that with the elimination of independent principalities, one can talk about the termination of some sort of legal fragmentation and the establishment of a unified legal framework throughout the territory of the Russian state? And can we really date this new order to the 70s of the XVI century?

This statement is also difficult to accept. The reason for this, as we assume, is that the elimination of independent principalities was just another step towards real centralization, both political and legal. And that step was probably not the most important.

Let us now turn to the concept of a “composite state”. Without going deep in its analysis, we note one point which seems extremely interesting to us. The thing is that in Western European countries of the late Middle Ages–early Modern Age the royal power, when annexing new territories, faced a problem of how to establish a more or less effective governance of those lands. And, while maintaining a permanent military control over them (it is a military centralization), the crown was adding (emphasis added – A.P.) new power structures to the remaining old and familiar ones, simultaneously using the institution of patronage in order to achieve and maintain the loyalty of old administrative and political elites [5. 55; 8. 191-216]. Any attempts to replace the old structures by the new ones, as a rule, were the result of an acute social and political crisis and the disrupted interaction between the center and the provinces, and were certainly not welcome [9. 21].

However, it was difficult to expect them to behave differently, for to some degree both the authorities in the center and in independent principalities acted on the principle that Grand Princes of Lithuania formulated as follows: “We neither break the old orders nor introduce the new ones.” In the same way, Ivan III in his letter to the people of Novgorod wrote that he, the Grand Prince, in his claims to them, the people of Novgorod, did not go beyond those legal frameworks that had been outlined in previous agreements concluded between his ancestors, the Grand Princes, and Novgorod. At the same time Ivan reminded the people of Novgorod, that according to that old order, he had the right to punish them if they tried to break that “old order” [10. 285].

In brief, in those days the mentality was based on the assumption that best was the enemy of good, and good was firmly associated with the “old order”, with the tradition, and with the custom. The essence, as pointed out by a British historian N. Henshall, was that “like most European monarchs, the French kings did not rule a nation-state, nor was nation feeling a significant force in it. A 'nation' in the political, racial or linguistic sense was too nebulous to command loyalty - a key determinant in this period. Men were loyal to their family, their lord, their town, their province, their class, their religion or their king. Rarely were they loyal to their country ... Without the bonding agent of significant national feeling, administrative and legal unity was absent (emphasis added – A.P.) ...” [11. 8]. If we replace France by Russia in this statement, will there be many differences found in relation to the times of Ivan III and Ivan IV?

So, the focus on the preservation and maintenance of “the old order” would automatically entail the preservation of the old legal fragmentation and particularism “at the bottom”, and the visible unity was ensured by adding new power structures to the old ones. Can any confirmation of this simple formula of power be found? We assume yes. Let us try to analyze the letters – statutory letters, complaints, fiefdom letters and others - which were issued by Moscow Grand Princes at the end of XV - XVI centuries. What did they say about it? And if we analyze all such legal acts available to us, which were the ones that created a legal framework of the Russian state, it is easy to note a number of specific features. First of all, let us pay attention to the form of the letters, which regularly included the formula “And you, boyar children, and servants, and all the people of the volost (a territory ruled by a prince, with varying degree of autonomy from the Grand Prince), honor him (fief-tenant – A.P.) and listen, and he rules over you, and judges you according to the old custom as it was before that (emphasis added – A.P.) ..”[12. 40-41].

This formula (with minor variations) was also used under Ivan III [13. 110], Vasily III [12. 42, 48, 108], and under Ivan IV [12. 43, 49, 106, 110]. It follows from this that vicegerents and volost rulers assigned by the center to the principalities while ruling over “the land” were to be guided primarily by the local customs and laws.

But then another question arises – how could the vicegerent, volost ruler, or any other fief-tenant “manage, observe and take care according to the old order” of those whom the sovereign had entrusted him with, if he used to come to a fiefdom for one year, leaving it for goods afterwards? In The White Lake Charter, for example, there is an explicit instruction concerning this: “And our vicegerent and their assistants are not to deliver justice without an elected steward and the good (emphasis added – A.P.) ...” [14. 195].

So, it means that the sovereign’s representative in his governance activities had to rely on the already established local administrative apparatus, territorial self-government (stewards, bailiffs, which had properly functioned well before he arrived [13 133 135]). This local self-government (“zemstvo”) felt quite confident - to such an extent that at times the holders of charters from the sovereign had to go cap in hand to the Grand Duke, complaining of arbitrariness of “the bailiff and all the parish people (“volost people”) who, in spite of the grand-ducal charter would levy various duties (“protory and rozmetry”) [15. 116-117]. It is quite understandable why bailiffs and parish people thought they were entitled to continue charging duties. In their view, the charter from the sovereign violated the old order. However, while stopping arbitrariness (from the perspective of the central government) of the “parish people”, the Grand Duke definitely took them under his protection against excessive exactions and claims from governors and volost heads. And here is another formula which is quite common in charters: "But my, tsar’s and Grand Prince’s, villagers and our governors’ and volost heads’ people must not attend feasts and pot luck parties held by those monastery people, if they are not invited. And if somebody uninvited comes to their feast and pot luck party, they have the right to turn them away without any compensation. Should somebody try to take part in the feast by force, and should there happen a murder for this reason, that person must pay for the murder a double price without trial and without delay”[16. 319].

However, might it have been otherwise? Could the central authority do without self-government at that time? M.M.Krom, studying the peculiarities of the emerging departmental apparatus in the center in the 30s - 40s of the XVI century, noted that it was quite ineffective and could obviously not cope with the growing bureaucratic correspondence; this is why, according to the historian, “they used various ways to lift the burden off the central administrative apparatus and to transfer some functions to local government structures (emphasis added – A.P.) ... “[17. 374-375]. But such a transfer would automatically enhance the position of territorial self-government and made it a partner of the central government (which could actually not do without it in running a huge country). And, in our view, there is every reason to agree with the opinion of V.V. Bovykin, who noted that “the supreme authority represented by the Grand Prince and his judges, volost peasants with their organizational and representational structure, and monastic authorities recognized one another, in modern language, as subjects of law” [18. 93].

#### 4 .CONCLUSION

From the above-stated, it can be assumed that the traditional “patchwork” of the legal framework of the Russian state, following the “old order” (despite the best efforts of the central government), was not only preserved, but reproduced every hour and every day. So when Ivan III in his Sudebnik (a collection of laws) wrote that “without a bailiff, a village elder and the best people, no trial can be conducted by vicegerents and volost rulers”, and his grandson in his Sudebnik confirmed this norm [6. 59, 108-109], it indirectly proves our hypothesis.

In this case, the reforms of the 40s - 50s of the XVI century should be viewed as a process of gradual harmonization and, to a certain degree, unification of administrative structures in the center and at the local level; according to V.A. Arakcheev, “in the course of reform in the 1550s, the process of self-governance in volosts and suburbs was bureaucratized and documented, which gave evidence of the beginning of the transition to a modern governance system (emphasis added – A.P.) ... “[19. 395]. According to V.A. Arakcheev, during this process of “the state apparatus’s penetrating into the self-

government”, which gathered momentum at the end of the reign of Ivan the Terrible, there also accelerated the process of gradual unification of law and building uniform legal institutions for the territory of the whole country. This work was not completed as in the Time of Troubles there was a certain setback (for the Troubles can be also viewed as an attempt made by the “lands” to return the rights which had been lost in the last quarter of the XVI century), and after that period and the accession of a new dynasty, the process of creating a unified legal framework was resumed.

## 5. RESULTS

The findings we have obtained in this study suggest that, firstly, the process of forming a unified legal framework on the territory of the Russian state is a far more complex and protracted process than it is shown in the existing literature; secondly, the formation of a unified legal framework is very closely connected with the transformation of the administrative, bureaucratic, and government structures at all levels - from the central to the local; thirdly, the reforms in the area of governance during the reign of Ivan the Terrible resulted in some “unification” of administrative structures, and the tumultuous events of that era led to mass migrations and mixing of the population, thereby destroying the “old order” and promoting the processes associated with the formation of a unified legal framework.

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