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The complex and seemingly inconsistent use of the social vocabulary has been on the research agenda of those who study the Russian Empire for quite some time. Historians have long believed that the indiscriminate use of such terms as “estate” (“*soslovie*”) and “corporation” reflected Russian backwardness and eventually impeded further social and economic development, especially when it came to professional groups. The paper examines this assumption by focusing on the terminology deployed for the designation of Russian lawyers, in comparison to their French counterparts. Therefore, it dwells at length on the references to the French Bar in the bureaucratic discussion and in current press at the time of drafting the basic principles of the future Bar organization in Russia between 1857 and 1864. The comparison of the two sets of references provided plenty of evidence that the French notion of the estate (*l'ordre des avocats*) had a dramatic impact on the interpretation of Russian *soslovie* of legal practitioners. The French model seemed to spur social imagination and eventually helped Russian political and intellectual elites envisage a new type of social organization encompassing free, well-educated and politically engaged men.

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The Judicial Reform of 1864 established the Russian Bar as a set of local corporate organizations which were to enjoy a great deal of autonomy compared to other professional groups. First local Bar organizations appeared in St. Petersburg and Moscow in 1866 and held a promising fascination for the educated society of both capital cities. Since the Bar came across as a brand new institution, it symbolized the universal aspiration for change that saturated the public life in the late 1850s and early 1860s. Nonetheless, despite its striking novelty, the Bar was commonly given surprisingly traditional names. For example, in 1875, prominent lawyer and journalist Konstantin Arsen'ev hailed the Russian Bar as “a corporation that shares a bond of customs and traditions, self-government and moral solidarity and has the internal strength that is beyond the reach of private solicitors who have nothing in common except for an occupation”. Then he continued that the corporation, otherwise called “*the estate (soslovie)* of sworn attorneys[,] has the edge over *the population (sovokupnost')* of private solicitors as an organic unity has over separate particles...” (Arsen'ev, 1875, p. 11).

The fact that such traditional terms as “*soslovie*” and “corporation” were routinely applied to the Bar organization since its very inception is remarkable and yet rather problematic. William Pomeranz suggested that by deploying this social vocabulary, policymakers aimed to raise the status and prestige of the legal profession and rooted this radically new institution in the existing corporate structure (Pomeranz, 1999, p. 245). However, the heavily amended legislation fell short of the original intent and endowed the Bar with two countervailing identities, one of a truly independent and self-governing profession and another of a quasi-traditional estate (Ibid., p. 246). Jane Burbank argued that despite the severe antagonism between the legal profession and autocratic state, lawyers readily adopted the title of “*soslovie*” along with the corporate organization devised by the state bureaucracy, moreover, they successfully adjusted the terminology and organization to create a peculiar disciplinary regime within the legal profession. The “*soslovie* thinking” and “moralized collectivism” underpinned the transition of the concept and vocabulary from the bureaucratic discourse to the emerging professional culture (Burbank, 1995, pp. 52–53). Both authors agreed that by asserting their collective identity with such “antiquated” forms of social vocabulary Russian lawyers proved that *sosloviia* did not fade in importance after the Great Reforms. As Gregory Freeze succinctly put it, *sosloviia* “remained astonishingly resilient, providing the primary means of collective identity and forming the bedrock of social stratification in late imperial Russia” (Freeze, 1986, p. 26; also see : Rieber, 1991, pp. 356–357).

This rather compelling argument, however, implies that bureaucratic elites and lawyers modeled the Bar organization on four “traditional” estates of nobility, clergy, townspeople, and peasantry and the words they used to designate it were indigenous to Russian social vocabulary.

Meanwhile, the judicial reform of 1864 was a complex and multifaceted legislation which appeared as a compromise between the general idea of “national roots” of law and legal practice and particular ideas and practices transferred from various European countries (Korotkih, 1989, p. 33). Thus it seemed natural for those who laid out the regulation of the legal profession to consult with the legislation of England, German countries, Italy, Piedmont and, especially, France, the country with the oldest and most famous Bar organization on the continent. Since the French Bar also bore the title of “*l'ordre des avocats*”, it begs the question of how the French model affected the way policymakers and then lawyers perceived the Russian Bar organization. To address the issue this article examines two apparently interweaving discussions which took place between 1857 and 1864. The first one that accompanied the draft of the new legislation making its way through the highest ranks of imperial bureaucracy is explored through the collection of documents called “The Judicial Reform Files” which contains drafts, memorandums, reviews of European and Russian legal systems, and proceedings of the highest state agency, the State Council, so it accurately reflects the development of the judicial reform legislation (*Materialy po sudebnoi reforme v Rossii 1864 goda, 1857-1866*). The second one is a public discussion of the history and contemporary organization of the French Bar which unfolded in Russian periodicals and daily press in the observed period.

However, before focusing on the debate arising in Russia in the era of the Great Reform there are a couple of things in the history of the French Bar worth clarifying, for example, why a certain fraction of legal practitioners, called *avocats*, opted for and then retained the title of “*ordre*”, and what type of the social organization it designated for almost three centuries. Since none of the Bar organizations ever obtained a royal charter as other *grand corps de l'Etat* did under the *ancien régime*, it seems extremely hard to distinguish *avocats* from the nebulous social and cultural milieu of the French courts before they set off a series of collective actions in the seventeenth and eighteenth century. This allows Lucien Karpik to consider *avocats* part of the judicial corporation established by the crown and, therefore, assume that they constituted a *proto-grand corps de l'Etat* sometime around 1660s (Karpik, 1999 cited in Burrage, 2006, p. 63). David Bell argues that, on the contrary, the Parisian Bar association took shape in response to the consolidation of the system of *corps* and strove to offset the social consequences of the royal encroachment upon judiciary (Bell, 1994, p. 42). While the growing practice of crown selling out judicial offices in hereditary possession tremendously undermined the Bar as a “nursery” for the highest posts of the state, *avocats* sought to arrest the declining prestige of the profession by establishing a formal organization with a self-governing body, control over the list of practitioners, mandatory training and code of professional conduct (Ibid., pp. 53-58). Although the emerging organization bore a close resemblance to many other corporate bodies, *avocats* refrained from using the term “*corps*”

and stuck to the title of “*ordre*” which elusively tied new arrangements to immemorial time and allowed successfully evading state control (Ibid., p. 52).

By 1710 *avocats* managed to create the corporate, but autonomous organization with a bunch of privileges, including the publication of legal briefs without censorship. Some years later this allowed *avocats* to insert themselves into political debate by pleading Jansenist cases, disseminating their highly personal statements on the issue in print and occasionally paralyzing the court with strikes in response to the royal administration attempting to tame judiciary and the Bar (Ibid., pp. 75, 80-81). Thus *l'ordre des avocats* heralded the advent of the new kind of politics – the politics of public opinion – which turned lawyers into the “voices of the nation” who spoke directly to the public to pressurize the crown and effect political change. Since the politics of public opinion gathered pace, *avocats* did not fade in importance even when *l'ordre* temporary ceased to exist in 1771-1774. On the contrary, the next generation of *avocats* appeared significantly less influenced by the corporate discipline and, therefore, showed a stronger preference for the politics of public opinion for its own sake (Ibid., pp. 148-149, 163). Although the intimate connection between the corporate status and the political role of *avocates* seemingly faded away in the last years of the *ancien régime*, it revived after the second abolition of *l'ordre* during the Revolution and its restoration with the limited corporate rights by Napoleon I in 1810. As soon as successive political regimes of the first half of the century claimed to be constitutional ones and prosecuted their political enemies and predecessors in public trials, *avocates* regained their position of the spokesmen addressing the nation on the most urgent political issues (Burrage, 2006, p. 114). This time, however, the advocacy for a particular political cause went hand in hand with the struggle to restore the precious ancient rights and privileges (Ibid., p. 115). The Second Empire (1848-1870) initially lacked constitutional aspiration bringing a sense of the political stability, and this marked the very beginning of the political and social decline of *l'ordre des avocats* (Ibid., pp. 134-135).

Meanwhile, the first serious attempt to contemplate the Russian Bar organization dates back to the reign of Alexander I (Davydov and Polianskii, 1915, p. 256). In February 1820, the Law Drafting Committee suggested that Russia had undoubtedly made a great advancement in terms of civility and public relationships, so it was able to co-opt this kind of establishment from other countries like France, England or Germany (Gessen, 1914, p. 17). The policymakers considered setting up the *soslovie* of solicitors, who would appear in civil courts if they were enlisted by the Ministry of Justice and deposited a certain amount of money as a pledge to the court where they were going to practice law (Ibid., pp. 18, 20). Furthermore, solicitors were to share legal responsibility in case one of them abandoned his duties or forcefully kept the documents or money that belonged to his clients (Ibid., p. 21). To ensure this collective responsibility, the Committee

allowed solicitors to elect a governing body (*uprava* or *soviet*) under the supervision of the Minister of Justice, so this body would expel, detain or take offenders to court (Ibid., p. 22). Despite significant autonomy, solicitors were also granted the rights of civil service (Ibid., p. 23). In general, the proposed organization of the Bar bore more than a passing resemblance to French *avoués* with their obligatory court deposits and “corporate-looking bodies” (Burrage, 2006, p. 93).

Unfortunately, the Committee proposal which might have led to a breakthrough was set aside and forgotten until 1832 when high bureaucrats attempted to alleviate the pressure that commercial disputes put on the regular judiciary by introducing separate trade courts (*Uchrezhdenie Kommercheskikh Sudov*, 1832; Davydov and Polianskii, 1915, p. 258). As it was put in the legislation of May, 14 1832, the personnel of trade courts included legal representatives, otherwise called sworn solicitors, who had a virtual monopoly of pleading but totally lacked autonomy as they were recruited and dismissed at the discretion of court officials and had no corporate bodies (*Uchrezhdenie Kommercheskikh Sudov*, 1832, p. 270). It is no surprise that the introduction of the trade courts with highly limited jurisdiction was not able to solve the problem of legal representation in general, and the organization of legal practice remained a matter of concern for both state bureaucrats and practitioners. The archive of the Third Division of His Majesty's Own Chancery preserved two quite interesting memos that revealed both the grassroots and the bureaucratic prospective on the Bar organization. The first one was prepared by retired captain Alexei Kudriavtsev, who had been allegedly practicing law in a province for twenty five years, and submitted to Head of the Third Division Alexander von Benckendorff in September 1832. The second one appeared to be anonymous, however, more elaborate in style and lexis as well as more sophisticated in tackling the issue. It apparently belonged to an extended corpus of documents which was compiled sometime about 1835. However, despite the differences, both documents dwelt at length on the ills of the current system of legal representation and proposed rather similar solutions.

According to Kudriavtsev, the current judicial system was in desperate need of learned jurists or, at least, of those who might explain legal claims logically. Private practitioners (*chastnye poverennye*) appeared utterly incompetent as they tended to obfuscate and prolong trials due to lack of legal knowledge or simply for the sake of profit. Furthermore, practitioners usually lost seemingly fare cases inflicting moral pain on clients who suffered not only from the feeling of injustice, but also from the severe disappointment in their legal advisers. Meanwhile, this did not seem to effect the credibility of private practitioners or put in question the way they earned their livelihood (Kudriavtsev, 1832, list 2ob.-3). Kudriavtsev believed that the government should address this problem by restricting “the old freedom” of legal representation (Ibid., list 5) and

subject practitioners to local state officials who would be in charge of licensing, supervising and resolving conflicts between practitioners and their clients in provinces. A special tax should be imposed on practitioners to fund this new arrangement and, supposing there was money left, to set up an endowment to educate the “children from this *soslovie*” in law (Ibid., list 3ob.). Directors might also promote laborious and honest practitioners in local newspapers, moreover, they should be allowed to “choose from the *soslovii* they were entrusted with one official candidate who is famous for his talents and able to take an honorable office of this *zvanie*” (Ibid., list 4ob.). These positive incentives, along with bureaucratic control over admission and practice, would foster the sense of responsibility and fruitful competition among practitioners and, eventually, secure interests of local communities and private individuals.

The memo of 1835 echoed Kudriavtsev's opinion describing the flawed Russian system of legal representation with gullible and extremely passionate private individuals seeking help from self-professed legal experts. The anonymous author lamented people of various ranks (“*liudi vsiakogo zvaniia*”) “easily braking into the *soslovie* of solicitors” without either special knowledge or the slightest sense of responsibility (“*Zapiska neizvestnogo avtora ‘O striapchikh privileirovannykh,*” 1835, list 4). As a result, the Russian legal system suffered from the unregulated influx of practitioners, while “all [other] well-ordered states are well-known for having their Solicitors or Advocates organized in privileged *sosloviia*, which include only those who have been formally educated and gained special knowledge in law as well as in practice of law, and none but them can enjoy the right either to be a Solicitor or to write legal claims, no matter how insignificant they are” (Ibid., list 1). The memo stated that the privileged *soslovie* of solicitors would carefully guide private individuals on their way to justice and prevent unfair claims nipping in the bud all kind of fraud and slander. Well-educated solicitors could also help judges to acquire a more balanced view of a particular case by bringing all its legal minutiae to their attention. The memo suggested that the newly established *soslovie* might include current or former civil servants, licensed by a special bureaucratic body, and, on top of that, university graduates in law. All privileged solicitors should be forced to comply with the regulations which, on the one hand, held practitioners accountable to clients and therefore secured public trust, on the other hand, made solicitors responsible to the government and eventually restrained their wicked intents that poorly fitted the purposes of a well-organized state arrangement (Ibid., list 7).

Despite the differences in style and perspective, there are many striking similarities in the proposals. Firstly, both authors applied the term “*soslovie*” to an occupational category, which had been in place for quite some time and comprised people of various ranks (*zvanii*) who practiced law freely. Then, they both believed that the desirable improvement in practice of law required no

changes to the current judicial system, and saw the main purpose of the state legislation in restricting the freedom of legal representation by establishing a professional monopoly based on legal knowledge and backed by the bureaucratic control over admission and professional conduct. Finally, both authors considered the state recognition of legal profession a powerful incentive for ambitious lawyers to enter fruitful rivalry for prestige and public trust. And this is the point where the authors' opinions split on the issue of the relationship between practitioners and the public. In Kudriavtsev's interpretation, the immediate relationship between those two seemed to be redundant as public recognition simply mirrored the state approval expressed in press and in an honorable office (Kudriavtsev, 1832, list 4ob.). Conversely, the anonymous author expected a solicitor to strive at enhancing public trust in his *zvanie* and earn good fame (“*dobraia slava*”) for himself by performing his duties openly and honestly (“*Zapiska neizvestnogo avtora ‘O striapchikh privilegirovannykh,*” 1835, list 2-2ob.). In this case, a bureaucrat-mediator became redundant as the public appeared to be able to judge all licensed practitioners by their deeds. However subtle, the discrepancy continues when it comes to the political role of legal practitioners. While Kudriavtsev remained silent on the issue, the anonymous author mentioned in passing those “great masters of law” whose sophisticated mindset and unique eloquence were shining in “representative governments”, though he also refrained from discussing this type of advocates at length (Ibid., list 1, footnote).

Apparently, none of the proposals worked their way through the legislative process and it took more than another twenty years to reinvigorate the debate on legal practice at the highest levels of the Russian bureaucracy. When Grand Duke Alexander succeeded to the throne after the unfortunate death of Nicolas I, the universal aspiration for radical change brought it back to the political agenda along with the more general issue of the judicial reform. In June 1857, Alexander II entitled Count Dmitrii Bludov, Head of the Second Division of His Majesty's Own Chancery, to present a draft of the Civil Procedure Code to the State Council. Although the draft was prepared by the Second Division in 1849-1850 and swept under the carpet in 1851, Bludov decided to rescue the draft from oblivion and try to pass it with no apparent amendments (Ruzhitskaia, 2009, pp. 142–143). An inclosed memorandum laid out a rather moderate program of the judicial reform suggesting very few elements of the adversarial system, including an increasing involvement of private individuals and simplification of the procedure (*Materialy*, 1857, vol. 2, The General Memorandum for the draft of the Civil Procedure Code, pp. 103-104). However, while the urge to simplify the procedure went hand in hand with wholehearted praise of those who were educated enough to present cases in court “clearly and accurately”, Count Bludov completely rejected the possibility of establishing the Bar, as he put it, because of the absent *soslovie* of advocates and the

general lack of people experienced in law (Ibid., pp. 116-117). This striking ambiguity concerning the issue of legal representation climaxed in that passage of the memorandum, where Bludov on the one hand reminded his prospective reader of “how harmful, or even dangerous, for the state it may be if sound juridical attainments readily take place in any other class or rank of people rather than government employees”, – and, on the other hand, stated that “there is no doubt that the dissemination of legal knowledge outside the bureaucratic circle is desirable and essential for the emergence of well-educated attorneys, whom adversarial trials desperately need” (Ibid., p. 147). Generally speaking, the memorandum let the future decide whether the Bar emerged as a viable institution, in the meantime, it handed over legal representation to the members of courts (Ibid., p. 111).

Bludov reiterated this in another memo presented on November, 7 and Alexander II agreed that it seemed rather premature to introduce open courts and the Bar, so he preferred the State Council not to discuss these issues while considering the draft of the Civil Procedure Code (Bludov, 1857, list 1). However, unlike the monarch, some influential political figures saw Bludov's proposal less favorably. Grand Duke Konstantin Nikolaevich, whose Naval Ministry had become a vehicle for reforms, asked one of his close associates Prince Dmitrii Obolenskii to write a critical response to the draft presented by the Second Division. It was no surprise that Prince Obolenskii, who had come from the new generation of imperial bureaucrats and was working on revising regulations for naval courts, did not miss the opportunity to call for a broader change in the judicial system. In his memo prepared for Konstantin Nikolaevich he argued forcefully for public adversarial trials exposing the contradictions in Bludov's argument, including the hilarious ambiguity concerning legal representation. “On the one hand, he wrote, [it is said that] our civil procedure is awful due to the lack of advocates, on the other hand, [it is said that] we have no advocates because of an awful civil procedure” (“Zamechaniia na proekt novogo sudoproizvodstva v Rossii,” n.d., list 13). But “nobody, from a peasant to a member of the State Council, appear in courts personally”, hence “we already have the *soslovie* of advocates, however, illegal and called into existence merely by the state of things and necessity” (Ibid., list 13ob.-14). Obolenskii emphasized that illegal and unsupervised practitioners had been doing a lot of harm, so the public had nothing but scorn for this *soslovie*. Nonetheless, he believed that the government could raise their prestige by organizing the *soslovie* in a proper way. This in turn would attract honest and well-educated people, because “most of them would willingly embark on the career of an advocate if this *zvanie* becomes part of State institutions and appeared to be legal and well-ordered” (Ibid., list 14-14ob.).

Although Obolenskii wrote the memo exclusively for Konstantin Nikolaevich and his circle, Grand Duke decided to disseminate it among the highest ranks of bureaucracy, causing a lot of hype

at the imperial court. To offset the effect of the critique, Count Bludov forced Sergei Zarudnyi, the secretary of the State Council at the time, to take up the debate (Obolenskii, 2005, p. 174). In response to Obolenskii, Zarudnyi found his arguments partially reasonable, though totally impractical (Zarudnyi, n.d., list 17-17ob.). He argued that public trials and advocates as means to improve civil procedure were at odds with the state of the art of the Russian legal system as well as the current demands for reforms (Ibid., list 24). Speaking about advocates, Zarudnyi pointed out that his opponent failed to tell the difference between two types of lawyers: those who were assigned to courts for preparing cases and representing litigants and those who constituted the “free *soslovie* of advocates” and spoke publicly in courts on behalf of private individuals, – putting it in terms of the French judicial system, he criticized Obolenskii for not distinguishing *avoués* from *avocats* (Ibid., list 32-32ob.). Zarudnyi acknowledged that introducing the first kind of practitioners appeared a viable prospect, but he doubted that a new Code might create “the whole *soslovie* of advocates” without any preliminary steps. However, the legalization of practitioners and increasing involvement of educated people in legal practice would probably bring it to life in due time (Ibid., list 33-33ob, 34).

Strikingly, Obolenskii, who was arguing for a more liberal reform, seemed to have a rather traditional take on the Bar compared to Zarudnyi. Like the authors of 1830's, he treated advocates strictly as an occupational category and, as it was put in his response to Zarudnyi's memo, he was in favor of subjecting practitioners to the bureaucratic control of the Ministry of Justice (“Zapiski bez podpisei,” 1858, list 39ob.-40, 40ob.). Meanwhile, his opponent showed a more sophisticated approach towards the issue, warning the reader that if someone spoke about advocates in general and imprecise terms, there might be something more to that than just describing an occupation. Without directly pointing at *l'ordre des avocats*, Zarudnyi, nonetheless, contended that the *soslovie* of advocates differed from either present private practitioners or legal representatives who were likely to appear as a result of the judicial reform.

The heated exchange between Obolenskii and Zarudnyi which, of course, was not restricted to the issue of legal representation, best exemplified the combative atmosphere at the highest level of imperial bureaucracy in the winter and spring of 1858. The ever growing debate about various aspects of the judicial reform apparently affected the way Count Bludov and his associates dealt with a broad range of issues including the organization of legal practitioners. Although it remains unclear what exactly made Bludov take this particular issue a step further, but at some point he found it inevitable and got the permission of Alexander II to draft legal practice regulations and then discuss this document in the State Council (Gessen, 1914, pp. 42–43). The first draft called “Regulations for sworn solicitors” was completed by the Second Division in December 1858 and

brought to the table of the Joint Committee of the Civil Department and Department of Laws of the State Council in March 1859 (*Materialy*, 1857, vol. 4 (consecutive numbering) and vol. 10, The Journal of the Joint Committee... March, 23 and April, 24 1859, p. 1).

The draft defined sworn solicitors as an office or rank (*zvanie*) and treated them like state employees who were appointed by the Ministry of Justice and supervised by local court officials, yet it denied the right to get paid by the government and advance through bureaucratic hierarchy (*Materialy*, 1857, vol. 4 (consecutive numbering), pp. 17-19). A more illuminating account of the new organization came up in the enclosed memorandum. This time Bludov claimed the *soslovie* of trustworthy solicitors to be a prerequisite for the reform of civil procedure, but reiterated that the main purpose of these practitioners should be to lay out cases before court “accurately and in full detail” (Ibid., pp. 3-4, 5). In support of his argument, Bludov summarized the experience of different European countries paying close attention to France where “advocates are known for constituting a separate estate (*soslovie*) with members called to the Bar by their peers and supervised by elected doyens” (Ibid., pp. 10-11). Such an organization along with extraordinary circumstances and major upheavals in civil society allowed French advocates to “gain *political prominence* which does not comply with their genuine calling” (Ibid., p. 11). Despite of the fact that the French Procedure Code had been adopted by many countries, none of them established the French dual system of legal representation, but let *avoués* perform the duties of *avocats* and plead in courts. To step even further away from this system, Bludov suggested avoiding the word “advocate” by replacing it with more familiar terms like “solicitor” or “attorney” (“*striapchii*” or “*poverennyi*”) and adding an adjective “sworn” to emphasize that the government recognized the trustworthiness (*blagonadezhnost'*) of these practitioners (Ibid., p. 13).

In two session taking place in March and April of 1859, the Joint Committee of the Civil Department and Department of Laws agreed that the question of introducing official legal representatives was settled, but pointed out that in Russia their organization should head in a completely different direction compared to France. The Joint Committee believed that sworn solicitors or sworn attorneys might emerge only as counterparts to French *avoués*, and therefore they were supposed to “constitute not an independent estate (*soslovie*), but an institution (*uchrezhdenie*) under direct supervision of judicial authorities” (*Materialy*, 1857, vol. 10, The Journal of the State Council ... March, 23 and April, 24 1859, pp. 4-5). However, despite this pledge of allegiance to the idea of incorporating legal practitioners into the bureaucratic court system, the regulations went further to a plenary session of the State Council with a number of amendments that would have seemed rather unusual for the organization of *avoués*. Although in the very first article sworn attorneys were identified as posts in courts, practitioners were not put under

immediate bureaucratic control, as it was in the initial document, but granted the right to elect local bodies or councils (*soviets*) that appeared to play an intermediary role between lawyers and bureaucrats (*Materialy*, 1857, vol. 9, The Draft of Regulations for sworn attorneys, p. 4). Councils were entitled to provide court officials with the preliminary decisions about the admission of prospective candidates. In addition, they were in charge of settling disputes between practitioners and their clients and appointing free defense attorneys for the poor (*Ibid.*, pp. 4-5). All this pictured sworn attorneys more like a partially autonomous organization rather than a branch of court employees and looked slightly awkward being put next to the expression of a strong aversion to the independent estate of legal practitioners.

However, further development of the regulations appeared even more dramatic. In October 1859, Alexander II approved the report submitted by the chairman of the State Council Count Alexey Orlov who urged Bludov to present a proposal for the court system reform and what was more important suggested to enlist the help of various legal experts for evaluating all the drafts having been prepared by the Second Division (Korotkikh, 1989, pp. 81–82). During the next year the Ministry of Justice, led by a liberal bureaucrat Dmitrii Zamiatnin, collected a number of written comments from the members of the State Council, Ministry's employees and university professors (see the list of contributors in *Katalog pechatnykh materialov po sudebnomu preobrazovaniuu 1864 g.*, 1891). Then the State Chancellery put together, anonymized and presumably censored the comments preparing a concise compilation for the coming sessions of the State Council (*Materialy*, 1857, vol. 12, part 3, p. 2).

The comments on “Regulations for sworn attorneys” which eventually made it to the State Council, constituted a striking departure from the core idea of the previous debate. While the predecessors saw the state incorporation of practitioners as an institutional remedy for the current ills of legal practice, the bulk of the commentators spoke about the devastating effect which bureaucratic control might well have on the prestige of the legal profession. They contended that none of those who reached a certain level of education and valued his dignity would become a sworn attorney to practice under the immediate supervision of court officials within the limited judicial districts. Furthermore, no one would be able to advocate for the causes of private individuals under the disciplinary control of courts (*Materialy*, 1857, vol. 12, part 3, pp. 5, 10, 11-12, 14, 18, 60-61, 62). Instead of being subdued to bureaucracy, the *soslovie* of sworn attorneys should be allowed to manage their own affairs, including admission and discipline, though judiciary or another bureaucratic body might be turned into the court of appeal for those who would be dissatisfied with the decisions of advocates' councils (*Ibid.*, pp. 12-13, 14-15, 15-16, 18, 38). The supervision of peers (*so-chlenov*) seemed the most effective form of control, because sworn

attorneys were supposed to be more interested in protecting “the honor and moral standing of their institution” than anyone else (Ibid., p. 10). As one of the commentators put it, “a supervisory council [made up of practitioners] would have the most beneficial influence on the development and maintenance of the moral dignity among solicitors. [Because] the council, driven by its own interest in securing and upholding public trust, would not only punish but prevent illegal and incorrect actions of its peers” (Ibid., p. 14). On top of that, sworn attorneys would be definitely more careful in licensing prospective colleagues since they bore a moral responsibility to the public for the deeds of their peers (Ibid., pp. 10, 15-16, 38). These arguments apparently offered a new perspective on the Bar by knitting together the public trust, professional prestige and professional autonomy rooted in the collective moral responsibility. Subtle references to the public, overshadowed by the idea of the government legitimating the legal profession, finally gave way to distinctive elements of the politics of public opinion.

The Joint Committee of the State Council discussed the comments on the “Regulations for sworn attorneys” in two sessions in May and June of 1861. Taking a middle-of-the-road approach, it agreed that the supervision “should not deprive [legal practitioners] of independence, which is necessary for arguing on behalf of their clients, though it should, on the one hand, guarantee protection for a private individual from solicitors abusing their power, [and], on the other hand, serve to establish and uphold the sense of truth (*pravda*), honor and moral responsibility to the government and society among solicitors” (*Materialy*, 1857, vol. 16, The Journal of the Joint Committee... No 45 May, 5 and June, 5 1861, p. 4; initially in comments in vol. 12, part 3, p. 10). According to this general idea, the Joint Committee put state procurators at the head of the councils and entrusted courts with granting admission (Ibid, pp. 15-16), however, it simultaneously restricted the supervision of court officials and expanded the scope of councils' control upon practitioners, including the right to dismiss those who did not prove their trustworthiness (Ibid., pp. 8-9, 13).

In the meantime, the State Council set about revising the draft of the Criminal Procedure Code, so the corpus of reform proposals turned into an entirely incomprehensible patchwork of diverse and asynchronous documents. The general incoherence of the drafts along with the raging debate on public adversarial trials forced Count Bludov to admit that the discussion of the judicial reform appeared to have reached a deadlock. He reported it to Alexander II in October 1861 and got the permission to hand over the duties of the Second Division to the State Council and, ultimately, to the State Chancellery, headed by Vladimir Butkov but overtly led by Sergei Zarudnyi (Korotkikh, 1989, p. 92; Ruzhitskaia, 2009, p. 152). On October, 23 1861, Alexander II ruled the State Council to proceed with the reform and lay the basic universal principles of a new judicial system (*Materialy*, 1857, vol. 19, p. 8). The State Chancellery put down the initial version of the

“Basic Principles of the Reform of the Judicial System” by April 1862. During the five following months the Joint Committee of the State Council and the State Council itself discussed and amended the document which was then approved by Alexander II and published for general public in September 1862 (*Materialy*, 1857, vol. 49, Memorandum [December, 24 1863], p. 2).

This revision of the reform program completed the transformation of the sworn attorneys from the state employees to an independent professional organization. For the first time the duties of the sworn attorneys were extended to defend the accused in criminal trials (*Materialy*, 1857, vol. 19, The Journal of the Joint Committee... [No 65] (consecutive numbering), p. 340 and vol. 20, The Journal of the Joint Session of the State Council September, 4 1862, p. 11). They were also allowed to elect all members of the councils, including chairmen, so the state procurators disappeared from the governing bodies of legal practitioners along with the responsibility of courts for granting admission and disciplining sworn attorneys (*Materialy*, 1857, vol. 19, pp. 340, 364 art. 76 and vol. 20, Basic Principles of the Reform of Judicial System, p. 14 art. 79). As a result, councils finally became a principal instance where private individuals might bring their complains about the misbehavior of legal practitioners, even in cases of criminal indictment (*Materialy*, 1857, vol. 19, pp. 364 art. 77, 365 art. 83 and vol. 20, Basic Principles of the Reform of Judicial System, pp. 14 art. 80, 15 art. 86). Strikingly, none of the members of the Joint Committee or State Council raised objections to these changes, though the issue of professional monopoly caused some, however, feeble attempts at a debate (*Materialy*, 1857 vol. 19, pp. 342-343 and vol. 20, The Journal of the Joint Session of the State Council September, 4 1862, p. 12).

This shows that the high-profile bureaucrats of the State Council came to terms with the idea of introducing the independent Bar, or other more pressing issues like the jury and justice of peace pushed this part of the legislation away from the limelight, and policymakers just did not pay much attention to it anymore. Whatever the case may be, it took Zarudnyi and his colleagues another two years to transform the “Basic Principles” into the Judicial Statutes, and the organization of sworn attorneys provoked little debate apart from the questions of the professional monopoly and compatibility of legal practice and teaching at universities (*Materialy*, 1857, vol. 49 ad., Memorandum for the Regulations for Sworn Attorneys, pp. 1-68). The Judicial Statutes, eventually promulgated on November, 20 1864, established the Bar as a bunch of local self-governing professional organizations with the right to select and supervise their members without a direct intervention of courts. Interestingly enough, the term “*soslovie*” did not make it to the final version of the law, however, it appeared in the comments to the articles in the second edition of the Statutes, edited by Zarudnyi. These comments quoted the Journals of the Joint Committee and the State Council, reminding the reader that the main goal of the “newly established *soslovie* of sworn

attorneys is to ensure morals, knowledge and honest beliefs” (*Uchrezhdenie sudebnykh ustanovlenii*, 1864 p. 219 art. 354).

While the state bureaucrats were contemplating the future of the Russian Bar, current press eagerly discussed contemporary Bar organizations of other countries. In the summer of 1857, even before the very first draft of the Civil Procedure Code began its way through the State Council, *Moskovskie Vedomosti*, one of the oldest and most influential newspapers, published a series of articles about the Bar organization in various ancient and modern states, including France. The articles, signed with the initials “A.B.”,¹ argued for the Bar being a political as well as judicial institution. In terms of jurisprudence, “advocates” seemed indispensable legal experts (“*pravovedy*”) who constituted estates or societies (“*izvestnye sosloviia (ili obshchestva)*”) and had their rights and duties recognized by the government. However, in terms of politics, advocates gained much more prominence since the Bar was a highway to the Parliament in England, and it led to the highest ministerial offices in France and to the presidency in the United States ([Bogdanovskii], 1857, No 79, p. 357 pag. 2). In those countries advocates were “hard-working, talented and independent men”, well-known for good morals and deep religious beliefs, righteous behavior and hard work for the good of the public, and these virtues stemmed from one simple fact that they owed their income and high social standing solely to public trust (Ibid., p. 357 pag. 3). Publicity (*publichnost'*) nurtured advocates while granting them public respect and independence. It allowed them to speak to and educate the people (“*narod*”) about rights and responsibilities (Ibid., p. 358 pag. 1).

Although the author perfectly grasped the idea of the intimate connection between the political standing of advocates and the public opinion, the social organization of the Bar appeared irrelevant to its public status in his writing. While the term “*soslovie*” frequented in generalizations, the author seemed to use it inconsistently when it came to delineating real Bar organizations. For example, describing English barristers, the author opted for the original term “inns of courts” explaining that it referred to the associations of legal experts (*obshchestva pravovedov*) who worked and occasionally dined together (Ibid., p. 403, pag. 2-3). Nonetheless, he concluded the passage stating that the *soslovie* of English barristers enjoyed the high respect from immemorial time (Ibid., p. 404 pag. 1). The author also referred to the French and American Bar as *soslovie* in the general passage about the political role of advocates ([Bogdanovskii], 1857, No 79, p. 357 pag. 2), nonetheless he omitted the term completely in the description of American legal practice,

3 The initials “A.B.” apparently concealed budding criminologist Alexander Bogdanovskii, who had his thesis viva at Moscow University in 1857 (Masanov, 1956, vol. 1, p. 31).

but granted French advocates the title of *soslovie* in almost every sentence ([Bogdanovskii], 1857, No 89, p. 404 pag. 1 et seq.).

A more detailed account of the French Bar was published in *Russkii Vestnik* in November 1858, just in time for the completion of the first draft of the “Regulations for sworn solicitors”. The author, also hidden behind the initials, laid out a refined history of *l'ordre des avocats* from the thirteenth century to the present day with no apparent conflicts or discontinuity except for the abolition of *l'ordre* during the French Revolution. The author contended that advocates were able to gain prominence in the society of the *ancien regime* and did not fade in importance after the revolutionary upheaval because they had always cherished “the sense of the honor and dignity of their *soslovie*” and massively contributed their knowledge and eloquence to justice (K.S.U., 1858, pp. 208-215). Compared to advocates, French *avoués* earned significantly less respect as they were much more interested in profit than in justice and, as a result, would occasionally prolong trials to increase their earnings (Ibid., pp. 219-220). However, despite the profound difference between two kinds of practitioners, the author referred to them both as a *soslovie* and applied the term “corporation” to advocates, once he spoke about the demolition of the Bar during the Revolution, and to *procureurs*, the predecessors of modern *avoués*, who undoubtedly constituted the *corps* under the *ancien regime*. Nonetheless, he distinguished advocates from their less honorable counterparts by using the calque of the French *l'ordre (orden)* in the description of the Bar organization (Ibid., pp. 211, 215).

While the anonymous author argued in favor of advocates apparently trying to influence the policymakers who were contemplating to establish Russian *avoués*, the next extended piece of writing on the French Bar appeared in press after some elements of professional autonomy had already sneaked into the “Regulation for sworn attorneys”. In August 1859, professor of Richelieu Lyceum in Odessa and future advocate Alexander Lokhvitskii published an article where he initially dwelt on the right for a defender and freedom of speech in criminal courts, and then proceeded to delineate the corporation or *soslovie* or *l'ordre* of French advocates, using the terms interchangeably. Lokhvitskii contended that the natural right for a defender went hand in hand with the right of advocates to speak openly and freely before courts since freedom of speech proved the trust the people (*narod*) bestowed upon the judicial system (Lokhvitskii, 1859, p. 6). Advocates earned public trust by virtue of their knowledge and morals, both of which were upheld by the “well-ordered corporation” or *l'ordre des avocats* (Ibid., pp. 18, 22). Unlike other corporations, *l'ordre* did not provide its members with any privileges and looked more as “a society (*obshchestvo*) aiming at cherishing the dignity of their profession, upholding... the unanimous understanding of law, [and] preventing confreres from abandoning their duties and honor, [while]

expelling the dishonorable [members] [and] punishing the morally loose and feckless [ones], [and, finally,] providing the legal aid for the poor. <...> This kind of corporations are not only useful, but necessary [as] people unite on the basis of their common occupation, and the primary goal of [such] association (*soedineniia*) is the moral elevation of the profession” (Ibid., p. 23).

A year and a half later, in March 1861, the problem of free speech in French courts was revisited by Konstantin Arsen'ev, one of those invited to contribute comments on the “Regulation for sworn attorneys” in 1860. Compared to Lokhvitskii who only mentioned in passing the interconnectedness of judicial and political freedom (Ibid., p. 20), Arsen'ev appeared much more outspoken on the issue and turned his argument into a thoughtful reflection on political power in its relation to the freedom of speech in courts. Arsen'ev began with the assertion that the highly centralized bureaucratic state of Napoleon I couldn't help but confront the Bar for a number of reasons, firstly it rested upon the idea of strict and precise rules being passed down from the emperor as the embodiment of the nation to bureaucrats, including court officials, who efficiently implemented the rules. Meanwhile the Bar with its critical attitude and freedom of speech hindered this, otherwise smoothly running, process in courts the same way as the public political debate did in the National Assembly (Arsen'ev, 1861, pp. 135, 138–139). Then the triumphing bureaucratic state, being unsatisfied with mere obedience, tried to conquer the hearts and minds of its subjects by nurturing “certain beliefs and sentiments” through university education and conscription. However, the Bar along with literature, jury and judicial estate appeared a major obstacle to the state bringing up “right-minded children who would later become brave soldiers or humble citizens”, it also distracted people from “the great tragedy of war” by drawing their attention to “domestic courtroom dramas” (Ibid., pp. 135, 139). Since Napoleon III successfully reinforced the bureaucratic state of the First Empire with religion and greed, he dipped the French society into political apathy (Ibid., pp. 142-143), while the Bar remained the last bulwark of freedom where former politicians taught a new generation to value the “noble spirit of independence, [and] sense of personal dignity”, the rights of advocates and achievements of their great predecessors. Thankfully, the calling of the French Bar along with its corporate organization, critical attitude and aversion to wealth provided a fertile ground for this (Ibid., p. 144). The fundamental strength of advocates stemmed from the fact that “like any other corporation, the Bar provided moral support for its members”, but lacked in traditional exclusivity and, as a result, attracted a lot of decent and honorable men (Ibid., pp. 148-149). To quote Arsen'ev, “the moral solidarity of French advocates, traditions which they so deeply appreciate, the sense of the honor of their estate (*soslovie*) which makes them value their independence, all this upholds and further reinforces that general outlook which every decent man brings to the Bar” (Ibid., p. 149).

The public concern for the Bar apparently lessened after the “Basic Principles” with a concise outline of the prospective Bar organization came out in the autumn of 1862. Nonetheless, the Journal of the Ministry of Justice, a periodical founded and run with a direct and immediate support of the ministry, kept publishing articles on the issue in 1863 and 1864. In August 1863, jurist Alexander Kistiakovskii laid out yet another comparative account of the French, English and German Bar which roughly repeated the anonymous publications of 1857 and 1858. However, despite the lack of novelty and originality, his article presented a good example of how the terms “*soslovie*” and “corporation” might be used. Compared to his predecessors, Kistiakovskii more consistently referred to French advocates as individuals with the term “*soslovie*” and to the organizational structure of the Bar with the term “corporation”. For example, he argued that in France the *soslovie* of advocates had appeared “before the state began to interfere in the organization of that *soslovie*, so advocates managed to form a strong and stable corporation” (Kistiakovskii, 1863, p. 255). Furthermore, he opted for the term “corporation” while describing the structure of professional self-government (Ibid., pp. 269-270) but wrote about *soslovie* when it came to encouraging the personal qualities indispensable for advocates, such as “moderation, honesty, [and] disinterestedness” (Ibid., p. 271). The way Kistiakovskii dealt with the English Bar was even more striking since he considered barristers the only professional organization which totally and utterly deserved the title of “corporation” because of its full professional autonomy and the nonexistent state control (Ibid., 280). Meanwhile he hardly used the term “*soslovie*”, but called the organizations of barristers communes (*obshchiny*), laying particular stress on the communal property and lifestyle of the English Bar (Ibid., pp. 283, 285).

Before the Judicial Statutes were implemented in November 1864, the Journal of the Ministry of Justice published another piece of writing on the French Bar and then let author S. Belikov elaborate his ideas in the article which outlined the course and results of the judicial reform. These articles appeared in February and April of 1864 and made the intellectual link between the organization of French advocates and Russian sworn attorneys more explicit than ever before. Speaking about the French Bar, Belikov contended that the dignity of courts and the justice of verdicts depended on the dignity of advocates. Since it took a lot of effort to counterbalance the influence of court officials and prevent them from abusing judicial power, advocates appeared in dire need of a corporate organization which provided mutual assistance and advice, and, thanks to it, advocates got used to caring about the high morals of colleagues as well as the general moral standing of the profession (Belikov, 1864a, pp. 301–302). To describe the French Bar Belikov employed the transliterated version of “*le barreau*” which he placed on the same footing with “*l'ordre des avocats*” and “*soslovie*” (Ibid., p. 343). However, as soon as he recognized the

necessity of clarifying the meaning of the term for the Russian reader, he argued that *le barreau* was a *soslovie* which implied the corporate organization, elements of self-government and the sense of shared interests and the maintenance of the professional reputation (Ibid., p. 309). Two months later Belikov wrote even more emphatically: “Only the *soslovie* of sworn attorneys will allow for proper administration of justice: [because] the quality of defenders determines the quality of court verdicts. This *soslovie* puts court[s] under natural control more vigorously and steadily than public opinion [ever does]... [Therefore] The corporation of advocates will become a fulcrum which allows individuals to stand up against the high and mighty along with the common abuse of power” (Belikov, 1864b, p. 31). The corporate life would let sworn attorneys watch their colleagues in order to protect the interests and honor and reputation of their *soslovie* and, as a result, “the mutual connection and control” would improve morals (Ibid., pp. 42-43). Belikov specifically pointed out that there was no reason to be suspicious of the corporate status of sworn attorneys since unlike medieval corporations which used to “enslave a man and his progeny”, this modern kind of corporation appeared to be just “an association of people who share an occupation and unite for the mutual help and supervision”, moreover, it was based upon the monopoly of knowledge and allowed any educated man to join the profession, so being an advocate was not a privilege, but right (Ibid., pp. 63-64).

The press coverage of the French Bar happens to cast the light on the bureaucratic discussion of the Russian legal profession as it makes more evident the shift in interpretation which occurred in the late 1850s. Those who spoke about the issue two decades before tended to consider the *soslovie* of legal practitioners an occupation which seemed unstructured, unsupervised or even illegal, moreover, they were more concerned about the professional monopoly than autonomy and hence argued for the incorporation of legal practitioners into the state bureaucracy in order to secure the exclusivity of the legal profession. However, in the late 1850s, when subtle and overt references to the French Bar appeared in press and bureaucratic memos and memorandums, the interpretation of *soslovie* shifted away from that occupational category to the notion of corporation which implied collective moral responsibility and, subsequently, autonomous control over admission and self-government. Both bureaucrats and publicists clearly realized that the type of the professional organization represented by the French Bar had significant political implications and while policymakers strove to conceal the intimate connection between the Bar and the politics of public opinion, the press recurrently put it forward. However, despite all the praise of *l'ordre des avocats*, most of the publicists apparently understood that the term “*l'ordre*” translated into Russian would sound bewildering so they constantly stressed that the *soslovie* or corporation of sworn attorneys meant to designate the new type of public associations which had nothing to do with traditional

corporate groups but encompassed free, well-educated and politically engaged men. Thus, the social vocabulary utilized for the description of the legal profession did not merely reflect the reality of social cohesion or existing identities, on the contrary, it represented proactive thinking since by applying the original French notion of the estate to the Russian legal profession, the authors envisaged the future still yet to come.

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