“The State as a Murderer”:
The Death Penalty and Just Authority in the Late Tsarist Empire

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In the backdrop of the debates on the death penalty around 1905, this article contributes to a history of justice in turn-of-the-century-Russia. Justice in Russia always seems to be a matter of sovereignty. Acting on the assumption that justice is created by rulers in a particular historical context, it thus has become an institutionally top-down business, in which the subjects wait for the tsar’s milost’ [mercy]. Only the late tsarist empire can be described as an exception as there was a differentiation and depersonalization concerning ideas of justice. This essay demonstrates that this shift, among other things, occurred as a result of the development of a public debate. By means of the debates on death penalty, this article highlights the evolvement of pluralized perceptions of justice, which were rooted more and more intra-societally. The image of a ‘just ruler’ regressed on behalf of versatile discourses on justice. Discussions on the death penalty help shed light on the communication and verbalization of structures of justice among an emerging public during the late tsarist empire as well as the ongoing loss of legitimacy of autocratic power. The essay thus situates this shift as well as the decline of the image of a ‘just authority’.

“I have often thought that Russia would not allow me to be sent to death...”1 Unfortunately, Lieutenant Piotr Petrovich Schmidt’s hope that the Russian state would not sentence him to death were wrong. He met his death on March 6, 1906 on a lonely island called Berezan and, in his words:

I’m going to die peacefully and happily, peacefully and happily as I stood on the Ochakov under an unprecedented barrage of artillery fire in the history of warfare. I left the Ochakov when it was seized by fire, and there was nothing to do on it, and nobody was being held in a panic of fear, there was nobody to calm down. What a strange

1 Nikol’skii 2010. Further information: Naida 1956; Maksakov et al. 1957; Khikin 2006; Mel’nikov 1982; Genkin 1925; Platonov 1925; Gelis 1924; [Author unknown] 2003.
kind of people! Since they are afraid of death. I have told them that we are not afraid of
death, because the truth is within us. But they did not feel it as deeply as I do, and they
let the animal fear of death overwhelm them.²

As one of the leaders of the uprising in Sevastopol, Schmidt was invited by the
Rossiskaia Sotsial-Demokraticheskaia Rabochaia Partiia (RSDRP) to take over
command of the rebel ships, when the mutiny started on the cruiser Ochakov on
26th November, 1905 and the crew was chased away. The event ended in a very
bloody way: after ninety minutes of artillery fire, the participants in the uprising
who were not killed were arrested along with Schmidt and his sixteen-year-old son
Eugene.

The government immediately took Schmidt to a closed naval field court,
which was held on the cruiser Ochakov from 7th–18th February, 1906. Although
he was defended by several famous barristers, among others by A. V. Vinberg
from Odessa, who was an active member of the General Jewish Labour Bund
in Lithuania, Poland, and Russia (The Bund), S. A. Balavinsky, one of the most
popular lawyers in Moscow, and A. S. Sarudny, who received international attention
as the barrister in the “Bailey Case”, and although not only democratic circles tried
to force the government to reprieve Schmidt but also large numbers of intellectuals
and criminologists manifested their disgust at Schmidt’s punishment, the autocratic
government nevertheless decided to put the lieutenant commander to death by
hanging. Three of his comrades, N. G. Antonenko, A. Gladkov, and S. Chastnikov,
were sentenced to be shot.

The government’s decision was all the worse as Schmidt attempted to mitigate
the sentence for others, taking all the blame upon himself, and expressing his
readiness to undergo every punishment.³

The lieutenant’s death sentence during the First Russian Revolution stands
symbolically for the huge number of capital sentences handed down in the late
tsarist empire, especially in the years around 1906.⁴ Schmidt’s trial itself aroused
much attention because of the fast and hard line the government took.

It was the first years of the 20th century, when the discourse on the death
penalty not only influenced Russian political decisions but also became “for the
Duma as well as for the government (…) of such high prestige and importance that
neither side could give way without running the risk of losing face.”⁵ Demands for
justice and morality became mixed up with ideas on which role the state and the
government should take in killing a person and, on the other hand, what society at
large thought about these issues.

² Nikol’skii 2010.
³ Vodovozov 1903, 888–889.
⁴ Ostroumov 1976, 40; Daly 2000, 349.
⁵ Liessem 1989, 518.
Against the backdrop of the debates on the death penalty around 1905, I contribute in this article to a history of justice in the late tsarist empire. My focus will be on the following questions: (1) How did the perception of a hitherto just authority change in the course of the emerging debates about the death penalty? (2) What influences did the debates have regarding autocratic legitimacy and by what means did this autocracy enforce justice?

On the following pages, I will use the discussions on the death penalty as one example to highlight ongoing changes about ideas of justice and just authority around 1900. These debates were characterized by a change in perception from the notion of a just ruler to a more secular and broader concept of a just authority, and by an ongoing loss of legitimation for autocratic rule. I act on the assumption that social and political changes in turn-of-the-century-Russia smoothed the way for an intra-societal discourse on justice that represents a more modern perception of justice. Hence, for the first time in Russian history (through to the present day) one can find a balance within the idea of Russian justice, which reflected a traditional but also at the same time a socially and politically nuanced concept of justice. The public discourse on the death penalty and the aspects of its justification, including ideas about responsibility, morality, and legality, contributed to the perception of that balance no longer in personal terms, but in terms of social and intra-societal justice.

After giving a theoretical grounding on how justice and a just rule were seen in turn-of-the-century-Russia, I will provide a short overview of the history of the death penalty in Russia. With Schmidt’s case in mind, I will explain why the excessive use of the death punishment was seen as a sign of backwardness and what that meant for the image of a just authority. I will then highlight the widespread understanding among the majority of the intelligentsia that the Russian state did not have the moral authority to liquidate criminals. A volume a great number of Russian intellectuals contributed to as an “agitation against capital punishment,” and a collection, compiled by Russian criminologists “to show how decisive and how unanimous as well as in what a great measure scientists and Russian criminalists excoriated capital punishment,” serve as my main sources.

Especially interesting were the intense debates among the Duma representatives around 1906. In the Duma’s meeting protocols several cases were discussed concerning people who had been sentenced to death by the state. These debates placed the autocratic regime under pressure to justify themselves before a society no longer bound to a single source of power and might. Instead, local representatives stood in as proxy for the people’s demands and claimed both a different and a broader notion of justice, i. e. justice for society as a whole. I will touch on two examples concerning death sentences which were discussed during

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6 Liessem 1989, 492.
7 Belogric-Kotlyarevsky 1909, ot redakcii.
8 Belogric-Kotlyarevsky 1909, ot redakcii.
the Duma meetings, and in my discussion of the justification speech of Minister of Justice I. G. Shcheglovitov I will show by what means the autocratic government enforced justice.

On Justice and Just Authority in Russia

The connection between justice\(^9\) and rule and the idea of justice as an element of legitimation can be followed from the 17\(^{th}\) century until the time of the late tsarist empire. However, in the late 19\(^{th}\) and early 20\(^{th}\) century, one can observe a fundamental change in the ideas of what was typically associated with just authority. The modernization of the state and the implementation of ‘modern’ legal institutions led to the secularization of the traditional image of a just ruler,\(^{10}\) which for the first time in Russian history became depersonalized. Starting from around 1861, it was the image of an almost abstract just authority that replaced the traditional idea of a just ruler. The focus was no longer on the ruler as a person, but on the autocratic system which was merely represented by the reigning tsar. Society began to be seen as the force which decided questions of justice. Societal discussions on justice, a judiciary influenced by society, and negotiation and communication between competing parties and perceptions took the place of the tsarist monopoly over norms and actions.

It has always been a matter of great interest what justice is and how one can realize it.\(^{11}\) The terms ‘just or unjust authority’ or ‘just or unjust ruler’ are taken into account, especially when an authority uses justice to legitimate itself and when it controls normative content. A particular authority can claim a monopoly for creating justice and that authority might well be accepted by the majority of society if an alternative legitimate authority or image of justice is not provided. Where authoritarianism reigns, the justice of the authority is the justice of society at large.

However, it is part of the history of justice that changing circumstances cause alternative perceptions of justice.\(^{12}\) In such cases, the dominant authority can be rejected as unjust. Hence, it would seem that there is a close connection between justice and authority, though having said that a decisive point needs to be added. In Russia, the development of justice is not the same as it would be in a liberal and

\(^9\) On the concept of justice in Russia, see for instance Pecherskaya 2005, 545–564. Spravedlivost’ is a polysemantic term which includes different ideas of justice. Besides that, one can find several different descriptions for justice in the Russian language, for example pravda or zakon as well as the notion of the violation of dignity (dostoinstvo) or honour (chest’). Thus, conceptual history is only one aspect of research on justice in Russia.

\(^{10}\) On the concept of a “just ruler”, see for example Burbank 2004; Cherniavsky 1969; Kolonitskii 2010; Rustemeyer 2006.


\(^{12}\) Justice and just authority are not static models. Hence, modern theories of justice should be taken into consideration as they mostly emphasize the processuality of the concept of justice. See Prodi 2003; Sen 2010.
democratic state, which is a unique invention of the Western World. For Russia, justice needs to be seen within the context of authoritarian rule.

I argue from the assumption that a history of justice in Russia is not possible without taking authority and autocratic rule into account. Up until the mid-nineteenth century, a just or unjust rule was always related to a just or an unjust ruler, leading to the personalization of the problem. In this historical perspective the Russian ruler was seen as the personification and sole guarantee of justice. This, of course, represents a one-sided conception of the image of the just ruler. But starting around the year 1861, this traditional conception of a just ruler was put into question and was replaced, on the one hand, by perceptions of justice influenced by fundamental social changes around 1900, and on the other hand, by a depersonalized and abstract idea of a just authority. Justice in Russia must be seen as a general political, social and legal problem in which power relationships hold the key to understanding.

At different times the Russian people formulated alternative conceptions of justice and just authority. Despite the perception of the traditional strong position of the Russian ruler, ordinary folk always took an active part in the discussions on justice. This is true for two reasons: On the one hand, there was a normative expectation of a just tsar among the people, which was based on a traditional paternalistic image of authority; on the other hand, new ideas and the influence of alternative models from the West were adapted to the specific circumstances of the Russian conditions. It is obvious that these perceptions were often in conflict with each other, and continually interrogated the problem of power.

The specific idea of a just ruler can be traced back to the times of Old Russia. A just ruler combined the unlimited power of authority, religious legitimation and all monarchical and governmental functions. As an emperor by the grace of God, the tsar was first and foremost obligated to guarantee and enact Pravda, i.e. God-given justice. Thus, the tsar was never responsible to anyone other than God and he or she was, moreover, the highest instance of justice and law in Russia. The tsars' justice was as unlimited as their power.

It was Tsar Peter I, the Great, who invented a broader perception of ruling. From that time on, tsars not only legitimated their position by the grace of God, but were characterized as just and good if they possessed personal capabilities to reign and if they used them for the advantage of the state.  

However, this more secular perception of authority did not lead to the idea of rulers assuming responsibility or being accountable to the people. At the same time, Russian subjects did not question the traditional paternalistic image of the tsar and the personalized justice which was linked to him. Neither did competing ideas of justice coming from the church, nor alternative rights from other institutions effectively challenge the tsar's unlimited power. Moral, religious, state and legal spheres were not divided from each other, nor did they develop in different ways.

They all came together in the person of the tsar. This state of affairs was encouraged by the paternalistic expectations among the subjects towards their tsar. In the eyes of the people, it was the ‘batiushka tsar’ [father tsar], who was responsible for the people’s welfare. As in several thousands of peasant petitions, people asked for the tsar’s “unshakeable and just protection.” He should reign with humanity and care for his subjects as a father would do.  

Overall, this personalized perception of justice stayed as a figure of public discourse right through to the post-Soviet era. Around 1900, however, this constellation was widely questioned and this time remains a unique exception within the history of Russian justice and just authority. How can this conclusion be reached? 

There were three decisive processes which started in the middle of the 19th century: (1) the structure of the Russian society changed due to the emancipation of the peasants in 1861. This action led to rethinking about the form Russian society should take in the future. (2) Russian autocracy increasingly came in for criticism due to its politics on almost all levels, starting in the 1860s with the biggest and most bloody uprising in Bezdna. These developments had important repercussions concerning notions of justice and just authority, for criticism and resistance manifest moments of doubt and shock. They reveal glimpses of injustice and raise in particular questions about who should represent justice. (3) With the reforms of 1864, Russia’s autocratic state also started a fundamental change at the legal level. This was characterized by the appointment of independent judges and barristers and the institution of jury courts. The tsar, who was seen as the Chief Judge, a kind of King Solomon, up to that day, was replaced by the administration of justice in an almost modern way. 

All these fundamental reforms led to the development of a sense of a public voice, a notion encouraged by an up and coming press. Social differentiations, nation-building, and the development of an opposition, even a revolutionary intelligentsia, led the way for the erosion of the ruler’s monopoly over justice and to a changed image of the just ruler. It was the idea of the justice of the people which more and more came to the fore, starting from the 1860s to the years of the First Russian Revolution, the time where this article starts. 

A Betrayal of Christianity – The Death Penalty in Russia 

Around 1900, discourse on capital punishment gained high attention in Russia. Reinvented in the 1880s with the increasing support of governmental representatives and the tsar, the death penalty found its way back into Russian jurisdiction. 

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14 For example, RGIA, f. 1291, op. 52, d. 203, 1863 g., II 6, RGIA, f. 1291, op. 52, d. 52, 1861 g., II 35., RGIA, f. 1291, op. 52, d. 27, 1862 g, II. 12–13. See also Nicholls 1993, 125–141.
In the Western countries as well as in Russia the discussions contained different but overlapping concepts of justice during the 18th and 19th centuries. This was characterized by a change in the concept of punishment as a "publicly witnessed homicide" to an "act of maximal discretion," a change due to the development of cultural self-understanding. This led to a rejection of capital punishment especially in the late tsarist empire, where state-approved executions were characterized by the upcoming intelligentsia as a "betrayal of Christianity" and an "anti-cultural institution."

Simultaneously with these developments, perceptions about human beings changed: not only did the individual and the question of his/her rights become the focus of attention, but perceptions of the body, materiality, and the "[material] and [immaterial] existence" of human beings were also subject to change. Both aspects refer to the time of the late tsarist empire, when the peasant emancipation in 1861 led to a fundamental change in Russian society in a social, political, and cultural sense. Such a change in self-understanding and in perceptions of living in a civilized culture transformed the modes of punishment and influenced issues relating to the sense and purpose of punishment and one’s experience of physical violence, both in the West and in the Russian empire.

To understand the highly moral criticism which occurred in turn-of-the-century-Russia, one needs to look closer at developments concerning capital punishment in Russia. Mainly, Russian criminologists used the concepts of revenge and utilitarianism to argue against the use of the death penalty. Their basic attitude was that:

\[\text{[t]}\text{]he death penalty not only possesses no deterrent character, but that it is also an antithesis to correction, which is accepted as the most important aim of criminal punishment. (…). The death penalty is not necessary for the protection of legal order, which can be proved by the fact that the number of criminal acts did not increase after its abolition.\]

Thus, on 19th June, 1906 the First Duma decided unanimously to abolish the death penalty in the tsarist empire. All cases, they formulated in a resolution, in which the existing laws (criminal code from 1903, the penal code from the year

15 Martschukat 2000, 4.
17 Belogric-Kotlyarevsky 1909, 32.
18 Martschukat 2000, 4.
19 Kuz’min-Karavev 1903, 1073–1083. Kuz’min-Karavev summarized the results of the peasant emancipation in 1861 with the following statement: "Along with societal conscience emerged the perception of a free personality in Russia, a personality which knows about its rights and which demands guarantees for the exercise of those rights," Kuz’min-Karavev 1903, Sp. 1076. See further Litzinger 2007.
20 Dukhovskii 1909, 102.
1845, the military and marine code) provide the death penalty for punishment, should be transformed to the next following punishment.

The Duma and the autocratic leadership fought hard with each other before this resolution was finally made. During those months, debates on the death penalty became a major political and intellectual discussion.

The generally negative attitude towards the death penalty, which was not only found among the intelligentsia, but also among people in all sections of Russian society, had its roots in the reign of Tsarina Elisabeth I. She never abandoned the death penalty completely, though, but stopped it for the first time since the 14th century, when the death penalty was first anchored in law.

Elisabeth I’s decision to stop capital punishment took away its legal basis for the time being. From that time on, the death penalty was classified as an extraordinary method of punishment, until it was brought back in the 1880s. Elisabeth’s I decision was based on two important developments during those years: (1) before the reign of Peter I, the Great, capital punishment was imposed for acts of blasphemy, murder, repeated robbery, the intention to overturn the tsar or for forgery of documents. Only with Peter I did attitudes to the death penalty change. First and foremost, Peter considered his subjects to be useful for the economic welfare of the state: a person sentenced to hard labour in the mines, rather than a person sentenced to death, could still work for the state. Hence, during the time of Peter I, especially political crime as well as “flagrant crimes linked to people” became the focus of attention. (2) In the middle of the 18th century, a widespread change in thinking about the death penalty and about punishment in general occurred, taking place not only in Europe, but also in the tsarist empire. After this, public opinion moved towards the idea that punishments for certain crimes should be less severe, that the punishment should fit the crime, and that, on the whole, punishment should be more efficient and fair. Hence, as Russia was one of the first countries to restrict the death penalty, the reign of Elisabeth I marked a progress within criminal law, with the tsarist empire heading the move towards legal enlightenment in Europe.

Catherine the Great's decision to continue with the restriction of capital punishment was interpreted as an enlightened decision. The Italian legal philosopher Cesare Beccaria had a significant influence on the tsarina and on her attitude to use the death penalty only as an exceptional punishment. Catherine showed her enthusiasm for the Italian philosopher in her Nakaz, which took several ideas almost word-for-word from Beccaria's Dei delitti e delle pene, a work which was popular not only in Europe but also in the tsarist empire.

Pugachev’s Rebellion was a rare case in which Catherine pronounced the death penalty. The death penalty could also be applied when ignorance of the

21 On the history of the death penalty in Russia, see for example Filipov 1891; Jakovenko 1899; Kistyakovsky 1896; Timofeev 1904; Zhi'llcov 2002.


23 Rawson 1984,32. See also Daly 2000, 341.
quarantine laws was concerned as well as offenses against the imperial family or the ruler him- or herself.

In the early 19th century, when the desire for a renewal of the codification of Russian law arose, it was accompanied by a redefinition of the adoption of the death penalty. This redefinition was reflected in the _Svod zakonov_ [compendium of laws] from 1832.

But only the penal code from 1845 explicitly mentioned cases where people could be sentenced to death. In the _ulozhenie o nakazanniakh ugolovnykh i ispravitel'nykh_ [The penal code on punishment and corrections of criminals] it was explained that the following crimes should be punished by death:

> malicious acts against the life, honour, or well-being of the emperor or members of the imperial family; attempts to remove the emperor from the throne; insurrection directed against the sovereign or the state; and those cases of treason in which the accused attempted to separate any part of Russia from the sovereign's rule or aided the enemy in wartime.

In Russia during this period, beginning with the reign of Peter I, the death penalty was primarily given for cases of open mutiny and treason. Besides Pugachev’s Rebellion, there was also the case of Vasily Mirovich, who was beheaded during the reign of Catherine II, or the Decembrist revolt of 1825, when Piotr Kakhovsky, who shot the military hero Count Mikhail Miloradovich, was executed by hanging, together with four other rebels. The history of the death penalty in Russia is in obvious contrast with, for example, Britain. Russia did not routinely execute murderers and thieves after the 1750s. Moreover, when capital punishment was meted out to so-called political prisoners who were fighting against the tsarist regime, the barbarity of the death penalty was noted and debated. Public opinion generally considered it unjust because, it was thought, those who really deserved it, i.e. murderers and thieves, were let off, while those who tried to improve society were killed.

Especially during the First Russian Revolution, the excessive use of the death penalty in Russia was seen as a sign of Russian backwardness which had a significant effect for the autocratic rule and its claim to guarantee justice. Since the debates on the death penalty, its use and its barbarity were published in the daily press, autocratic rule was put in question by the highly morally charged debates, which faced an ongoing loss of legitimation. A least since the 1880s, when the powers decided to again reintroduce and legalize the death penalty, this moral question posed a problem for those who ruled. Monarchical virtues and monarchical justice were two basic concepts which had provided legitimation for the Russian

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24 _Svod zakonov ugolovnykh_ 1885, article 241–244, 249, 253–254, 831.

25 Rawson 1984, 32.

26 Thatcher 2011, 531–561.
autocracy for centuries, but now the stage was open for alternative concepts of what form a just Russian government should take.

**Opinions of Russian Criminologists and Critics**

In a time in which autocratic rule was questioned on almost all levels, the well-documented Schmidt case can serve as an initial point to highlight the multi-faceted protest against the death penalty in the late tsarist empire, which culminated in the early years of the 20th century.

Primarily, the complaints of the barristers in Schmidt's case related to the process of reaching a just verdict in the military courts, which would seem to have been swiftly set up with revenge rather than with legal jurisdiction in mind. It was not until 1906 that these military courts acquired a legal character with the decision of the tsar to "immediately introduce a temporary drumhead court martial" on 19th August, 1906. The statutes of these special courts demanded adjudications "directly, without any pre-investigations and with the public excluded." Furthermore, judgment and execution should be carried out within 24 hours, prosecutors and barristers were not allowed to take part in the trials, and even appeals against the judgments were not permitted.

Among other things, there was one aspect in particular that led critics to see the trial as unlawful. Schmidt's barristers argued that his surrender to the war court was illegitimate since such courts were only allowed to preside over active members of the military. Schmidt, however, was a retired Captain of Second Rank.

Apart from such obvious legal complaints, intellectuals and critics appealed to moral and religious justice:

Allow us, the sailors of the whole trade fleet, to express the endless and enormous sympathy, which can be compared to our element the ocean, towards Lieutenant Schmidt, who suffered an undeserved punishment. Schmidt and the people around him are important to us as trade fleet sailors, and he [Schmidt] as a person, who erected the crucifix and as someone who stands up for our sovereign and his folk. He is an innocent victim of the general political psychosis. And we, who love him with good reason and with all our thoughts, revolt against the judgment that was passed on him. Why was he executed? … For his love for the tsar and for the people? Did those who need our blood, and the blood of a worker on the ocean, find delight in it [the blood], such an abundant deluge that distresses the whole of Russia, which is covered by wounds! No, we have had enough of blood and arbitrariness! Finally, we appeal deeply

27 Baberowski 1996, 763.
28 Lazarevskij 1909, 399–404.
29 Baberowski 1996, 764.
30 Drezen 1936, 80–81.
to end these unjust judgments, and we even feel confident that the riots which occur on the great seas can be judged in the higher light of Christian understanding.\footnote{[Author unknown]: Moriaki torgovago flota 1906, 237.}

This statement, given by the sailors of the merchant fleet, is just one example of protest against Lieutenant Schmidt’s death sentence. The protest in general appealed to morality, and Christianity and was deeply concerned with the arbitrariness of the judgment, and can be taken as a primary example of the discourse on justice in turn-of-the-century-Russia.

Conscience played an important role in the discourse on capital punishment as evidenced by this telegram sent by some citizens from Yalta and Alupka:

Judgments exist above the war court: those are the judgments of the human conscience, and this judgment does not allow the prosecutor to demand the death penalty, since it is impossible to rob the individual of something that cannot be given back again.\footnote{[Author unknown]: Telegramma grazhdan Yalty i Alupki 1906, 237–238.}

Russian criminologists from the early 20th century particularly referred to the moral demerits of capital punishment and the notion of making speedy judgments for the sake of convenience. Highly connected with this was the question of whether men are allowed to play God and thus kill other men, even though everyone is made in God’s similitude.

This connection between morality, justice and the discourse on the death penalty is made clear in the statement of students from the St. Petersburg Theological Academy. These students formulated a letter during a private gathering on February 21, 1906, which they sent to the prosecutor of the war court in Ochakov:

The whole of Christian ethics and secular morality is based on one great principle – charity. The judgment of the war court in Ochakov regarding Lieutenant Schmidt seems to be just a new humiliating blow to a country which ostensibly follows Christ and His doctrine. Do not injure the imperative of right and grace in the courts. Schmidt’s execution will be the ethical and moral death of justice. We, the students of the Theological Academy, impose standards of love and socialism in the name of Christ and we call on the court to confess itself to its duty and responsibility before the country and we tell it: “The country is in favor of Schmidt and is it right to ignore the voice of the country?”\footnote{[Author unknown]: Studenty S.-Peterburgskoi dukhovnoi akademii 1906, 243.}

Equally clear was the statement by the soiuz soiuzov\footnote{The soiuz soiuzov was a coalition of several groups of liberal professions, forming the basis for the professional-political organization of the Russian intelligentsia. As a result of “Bloody Sunday” (January 22, 1905) this group became radicalized during the following month and formed a coalition in early May.} who submitted the following statement:
1) That the judgment of those people in the mentioned order contradicts the societal opinion of the country, which has refused capital punishment long and steadfastly.

2) That the whole situation of the court completely precludes a legal and impartial relation to the accused person. Among the participants of the mutiny in Kronstadt we especially recognize people who are victims of the intolerable oppression, made by the war statutes, and recognize their rights in the name of human dignity and fundamental human needs. That dignity is injured hourly. (…) 

Besides concrete protests against the death sentence of Lieutenant Schmidt, famous criminalists as well as private lecturers and Russian jurists like Gernet, Kiselev, Kistiakovsky or Kuz’min-Karavev, all members of the Russkaia gruppa mezhdunarodnago soiuza kriminalistov [Russian Group of the International Associations of Criminologists], used the heated debate over Schmidt’s case to stimulate an international discussion and investigation regarding the death penalty. That event took place in Budapest in 1905. The consequent publication, titled On the Death Penalty: Views of Russian Criminologists, mirrored the responses to the death penalty among the so-called League for the Struggle against the Death Penalty, and spread in October 1910 to Washington, DC within the scope of the International Prison Congress. 

Michail Gernet, one of the strictest and most famous opponents of capital punishment, collected all of the articles. In his opinion it was not only unsuitable but also absolutely unfair for those criminalized, who received the guilt and blame caused by social injustices. He also pointed to the erosion of moral values:

it is said that you can adapt to everything: for the grave-digger it is only difficult to dig the first grave; for the butcher to butcher his first cow; for the court to sign its first death sentence, while to seal the second already comes much more naturally.

Professor Kalmykov, who worked at the Imperial School of Jurisprudence in St. Petersburg, explained in his paper from 1866 that:

there is no doubt that the death penalty is extremely terrible and least of all just, because it debars people from life and implements a cruel theory of punishment, expressed in the formula ‘an eye for an eye and a tooth for a tooth’ […]. For this reason there is no


36 See, for example, [Author unknown]: Peterburgskaia gruppa “soiuza pisatelei”1906, 235–236; [Author unknown]: Soiuz farmacevtov 1906, 236–237; [Author unknown]: Dva protesta Pirogovskago obshchestva vrachei 1906, 238; [Author unknown]: Gruppa glasnykh g. Moskvy 1906, 239.

37 Northwestern University 1910, 132–137; Kelso 1910. Russia was represented, among others, by the Commissioner M. Etienne de Khrouleff, who was the Chief of Prison Admissions of Russia, the editor of the Prison Messenger in Saint Petersburg, M. Nicolas Loutchinsky and Associate Professor at the Imperial University of St. Petersburg, M. Paul Lubinsky.

38 Liessem 1989, 514.

39 Gernet 1906, quoted from: Gernet 1974, 56.
doubt that the death penalty is unable to justify any theoretical or philosophical thought […]

He argued against the death penalty by citing corresponding statistics which showed that its absence has no influence on society’s safety. Professor Spasovich, who was also a strong opponent of the death penalty, explained: “A lot of the time I tried to demonstrate the illegality of this terror, and the impossibility of using the criminal’s dead body as a tool to act as a deterrent to other people.” In 1896 Bogdan Kistyakovsky, a Professor at the University of Kiev, summarized and explained in detail the most famous arguments against the death penalty by starting with the most important aspect, namely that a human life is indefeasible and, accordingly, the death penalty is unjust. In a similar way as Spasovich, Kistyakovsky made the point that the death penalty did not intimidate people or stop those who would carry out serious criminal acts. Furthermore, it would not only be useless but also curtail criminals from correcting their own behaviours.

In his 1899 paper, Professor Kolokolov from the University of Moscow started by invoking the supporters of the absolute theory of Hegel and Kant and, in that way, he outlined their position as defenders of capital punishment and its necessity, because

for some criminal acts it is very difficult to find an equivalent. But these arguments (of the defenders of the death penalty) could be convincing for all those who see punishment as a realization of absolute justice. From a rational point of view the whole matter should be reduced to this: the death penalty would be necessary for the elimination of personal revenge or for the general and personal prevention of criminal acts.

Professor Belogric-Kotljarevsky from the University of Kiev even called the death penalty “uncultured” because it would merely demoralize the people. He explained:

The experience shows that the death penalty appeals to the masses. On the one hand, it turns out to be a descriptive example of massacre, […] an example, which is extremely dangerous for uneducated people, who are disposed to imitate it. On the

41 Spasovich V. D., Prof. SPb. Univ.: Uchebnik ugolovnago prava. SPb. 1863. In Belogric-Kotljarevsky 1909, 12.
43 Ibid., 21, 24.
other hand, […], an example for rude devilment and wanton joke; all this transforms the sight of the death penalty into a school of rudeness and brutality.\(^{46}\)

Professor Esipov from the University of Warsaw connected the arguments against the death penalty with morality and religion and explained that to execute someone would contradict morally and religiously crucial claims. In addition, he explained that the death penalty would not permit the essential conditions which correspond to lawful punishment.\(^{47}\) Lastly, Duchovsky, also a professor at the University of Moscow, invoked the inner obligation of a criminal. The death penalty, he explained, would remove the possibility of finding a suitable punishment consistent with the criminal’s inner obligation.\(^{48}\)

Obviously, the discourse on capital punishment in the late tsarist empire emerged forcefully at that moment and was connected with the questions of how just an authority can be and who can utilize such punishment. Criticized as illegitimate, as an act of terror and arbitrariness, and an unjust measure which damages people’s dignity, the different and mostly contradictory attitudes toward capital punishment raised questions about existing concepts of justice and a just authority. Changes within the Russian order accompanied this morally heated debate and began to offer the people several new and almost modern ideas of how justice could be seen in turn-of-the-century-Russia.

In addition to the moral aspects of this discourse, one can also recognize the refusal of that kind of punishment because of its contradictions with the law in the late tsarist empire. Hence, a group of doctors in Pirogovsk, for example, made a passionate plea for the abolition of death penalty on the grounds that violently taking away life is contrary to the Russian law.\(^{49}\) They explained that allowing capital punishment in courts would be a great violation of the law; an unforgettable harm to authority as well as a heavy disgrace to the whole country.\(^{50}\) Barristers from Moscow formulated the following statement during their second assembly in 1905:

(…) in this way capital punishment seems to be an arbitrary act of administrative power, which outrageously contradicts legality, which has been promised in the ukaz from the 12\(^{th}\) December. The Congress explains that the use of the death penalty is a harmful act, which does not have any justification and which offends both the societal conscience and any existing understanding of legality.\(^{51}\)

\(^{46}\) Ibid., 32.
\(^{49}\) [Author unknown]: Dva protesta Pirogovskago obshchestva vrachei 1906, 238.
\(^{50}\) Ibid., 238.
\(^{51}\) [Author unknown]: Vtoroi s’ezd advokatov v g. Moskve 1906, 245–246.
In terms of how the Russian group of the International Association of Criminologists in 1909 finally saw the role of the Russian state, they demanded the “immediate abolition of the death penalty, which is necessary for the welfare of the state, because the state has to contribute to the reduction of the numbers of bloody crimes, to the inner freedom and moral epiphany of Russian society.”

Tsarist Russia was one of the few states which was not embarrassed to publicize the death penalty debates at the international level. As previous citations have shown, the discourse on the death penalty was characterized by statements which were framed in a highly moral discourse. Although one could find arguments on a legal level, moral aspects were more frequently discussed. Autocracy in Russia was seen as an executioner without conscience or feelings of Pravda, slaughtering its people and robbing them of their lives by hiding behind legislation. For the tsarist autocracy these morally framed debates meant an increasing loss of legitimacy and the erosion of the image of a just authority. These factors combined with the political and social changes of the period, such as the introduction of the Duma. This representative body placed the autocratic regime under pressure to justify itself in a society no longer bound to one powerful and sole might. Local representatives began to act as spokespersons for the people’s demands and claimed a different as well as a broader idea of justice.

With the opening of the First Duma, the protest against the death penalty immediately rose among Russia’s intellectuals, but also among the majority of Russian society. Thus, one can find a wealth of petitions against death sentences or pleas for mercy. One example was the negotiations the Duma conducted regarding executions by firing squads in Riga – not the first ones, as the Duma protocols show. There had already been 36 people who had been sentenced to death earlier. Now, on 27th May, 1906, seven other people should be executed by firing squad, named Sakharov, Verba, OaoI', Grundberg, Rubinstein, Paiegle and Sheinberg, “whereby the two latter ones are not yet of legal age.” The Secretary of the State Duma reported about the previous course of the events.

He explained to the attendees that the Duma had already pleaded for the abolishment of the death penalty for the upcoming year. But “an answer failed to appear. The war jurisdiction stayed silent and deaf to the conscience of the people.” That was the reason why the representatives from Riga now, on the 29th

[52] [Author unknown]: Russkii Gruppii mezhdunarodnago soiuza kriminalistov 1909, 107.

[53] [Author unknown]: Peterburgskaia gruppa “soiuza pisatelei” 1906, 235–236; [Author unknown]: Soiuz farmacevtov 1906, 236–237.

[54] On 12th May, 1906, the Duma received a telegram on the execution of eight workers. Therein, the Baltic governor confirmed the sentence of Vindedz, Tarkig, Andrei and Iulius Kalejakh, Rebok, Sinnola, Meier und Ering. These eight people, it could be read, were sentenced to death by war court because of their participation in a political murder. See Stenograficheskie otchety, 1906, ot 12 maia, 295.


[56] Ibid., 796.
of May, decided to express their reluctance against the condemnation of the seven new victims. Their letter to the Duma was formulated in a very clear way, furnished with a moral hint, because “in the name of the preservation of seven human lives, in the name of humanity and justice, it is the duty of the signers to say once again: Stop the executions.”

News regarding upcoming executions was also sent to the Duma. Thus, the representatives received a telegram from Warsaw on 8th June, 1906, which pleaded for the lives of three adolescents. Khil’ Kimel’man, Moshek Pudlovsky and Aron Faibisiak were accused of murdering Sergeant Mushinsk from Petrokov. The attempted murder was made on 4th January, 1906. From the telegram it was found that the confessions have been extracted by torture and also the right to work had been denied the three victims. The minutes of meeting reported that:

it is clear that against the exact meaning of the current laws, and especially of the articles 55 and 57 of the penal code from 1903, which mean that the death penalty has to be stopped for infants, three under aged persons were sentenced to death in Warsaw, by virtue of the laws of wartime. In that way, the feelings of the societal justice, in which name the Duma strong and unanimously voted for a fast abolition of death penalty and acclaimed the urgent necessity to stop the fulfilment of all executions by death, got offended again.

The telegram highlighted the fact that the accused persons were adolescent and that they were not granted the right to appeal against this judgment. The petitioners made clear that the autocratic reign had failed not only in a moral but also in a legal sense. They called for a clear and open justification made by the responsible representatives of the autocracy concerning this case.

Examples such as these caused especially prominent members of the Duma to contribute to the discussions on the death penalty and its abolition. Franz J. Novodvorsky from Warsaw, for instance, explained:

(…) The death penalty is damned throughout the civilized world. It was also damned here in this round by the promptings of conscience and the feelings of the representatives of the Russian people. (…) We should express here, in this hall, the death sentence for the death penalty. It must not be in the laws. It must not be promoted in the name of human feeling; it must not be promoted in the name of respect towards freedom; it must not be promoted in the name of respect towards the legal order; it must not be promoted in the name of a sense of justice.

57 Ibid, 796.
58 Ibid., 1151.
59 Ibid., 1152.
60 Stenograficheskie otchety, 1906, Sessiia pervaia, tom 2, zasedaniia 1–18 (s 27 aprelia po 30 maia), 422 f.
The Duma was not only able to take a position on the legal and intellectual level, but it also took up the possibility of summoning any representative of the government. The government official then had to justify certain political acts before the Duma representatives. This right of interpellation gave the Duma a mechanism to control autocratic reign and thus, forced its representatives to take part in a public process of justification. In this way, the Duma became a “forum of resistance against the death penalty.”

One example in the early years of the Duma is an invitation sent to the then Minister of Justice, I. G. Shcheglovitov. On 19th June, 1906, Shcheglovitov had to justify the practise of the death penalty before the Duma representatives. In his speech, he first and foremost mentioned the political crimes which had recently shaken the tsarist empire, which the minister considered to be the work of revolutionaries. Shcheglovitov explained that the solution concerning the question of the death penalty would demand a “clarification of the character of the current political crimes.” The death penalty would be a suitable method to fight against anarchy, and protect the right and the interests of individuals, because

[...]the abolition of the death penalty for political crimes under these circumstances [the revolutionary movement and anarchy] would be identical with the refusal of the state to protect its loyal servants in general.

The representatives followed the minister’s speech, but a great tumult arose after Shcheglovitov finished this last sentence. The audience demanded he stop talking and although the minister was able to go on with his speech, it was subsequently silenced after a few more minutes.

Unlike Max Weber wrote in his article on the Russian pseudo-constitutionalism, the efforts of the Duma did receive a response from the government, at least regarding the death penalty. The number of people sentenced to and executed was reduced. The petitions submitted by barristers, those sentenced or their advocates mitigated the effects of an autocratical criminal justice system to a large extent. Speeches like that of the Minister of Justice may show the strict official attitude towards the debates on the death penalty, but an invitation to hold a speech before the representatives of the Duma was an ongoing process of justification which the representatives of the autocracy wanted to avoid as the government was afraid of

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61 Liessem 1989, 520.
63 Ibid., 1479 f. Before the beginning of the First Russian Revolution, several representatives of the government fell victim to terrorist attacks, namely, of course, Tsar Aleksander II in 1881, besides him the minister of education, N. P. Bogolepov, in 1901, the reactionary minister of interior D. S. Sipjagin in April 1902, and the minister of interior Pleve in July 1904. Interesting is the statement of the minister of justice who explained to provide “every single criminal the torment he deserves”, in: Gessen 1937, 144.
64 Zhbankov 1911, 291–315; Zhbankov 1912, 248–266.
the negative consequences which could influence their relationships not only with foreign countries but also with their own.\textsuperscript{65}

**Conclusions**

In this article I have analyzed the terms justice and just authority against the backdrop of debates concerning the death penalty in Russia in 1905-6. I used debates on this kind of punishment to show that, among other developments during turn-of-the-century-Russia, the theory that justice in Russia had been a solely institutionally top-down business, and was created only by the respective ruler, is untrue. I asked the question how the perception of a hitherto one-sided just authority changed in the course of the emerging debates on the death penalty and what influences the debates had regarding autocratic legitimacy.

In summary, one can say that social and political changes around 1900 smoothed the way for intra-societal discourse on questions of justice that could be characterized as modern. The perception of a just autocratic rule regressed in favor of ideas and images of justice from the people. Debates about the death penalty in Russia at the turn of the century were important as they contributed to (1) a questioning of the hitherto traditional and paternalistic image of a just authority and, as a consequence, to a much broader and manifold perception of justice during the late tsarist empire, to (2) demands for public justification processes by an upcoming public, which increasingly challenged the image of a good and just authority and to (3) an ongoing process of legitimation by the autocracy, as it was questioned not only in a legal but especially in a moral sense, meaning that a general idea arose “that the state does not have any moral legitimation for the liquidation of even the worst criminal.”\textsuperscript{66}

Capital punishment was seen as a cruel, evil and uncultured act which ran counter to Russian traditions. In addition to the attitude Russian intellectuals had towards the death penalty, there was a huge number of people’s petitions which were published in the most popular newspapers.\textsuperscript{67}

But how did the autocracy handle the means of enforcing justice? The autocratic government of the time presented itself in two different ways. Particularly in its discussions with Duma representatives the autocracy appeared to have little understanding alongside of an unwillingness to compromise. The challenge of justification before the people led to a reactionary attitude by the government. For the tsar and his government highest priority was given to protecting the traditional notion of a God-given, just order. The stabilization and preservation of order had been the aims of the autocracy during the 1860s, in particular during the peasant

\textsuperscript{65} Liessem 1989, 520.
\textsuperscript{66} Liessem 1989, 492.
\textsuperscript{67} Gernet 1906, 32.
Consequently, the official line was that the death penalty offered protection not only to individuals but also to the state, which in the eyes of state representatives was infiltrated by anarchistic movements. In this, the government failed to take the moral argument into account.

In turn-of-the-century-Russia we see an obvious reversal of perceptions concerning morality and the creation of justice. For centuries, both elements had been strictly connected to the tsar as the sole guarantee of justice and these very notions were used to legitimate tsarist rule. These perceptions changed around 1900. Different social groups, influenced by both traditional and modern structures, claimed to possess morality and therewith also justice while tsarist autocracy was seen as an arbitrary and unjust element. In the course of this change, the debates on the death penalty became the political trigger for the moral dimension of justice. They contributed to far broader and more secular perceptions of rule, politics, rights and obligations, which forced the current autocracy into a continuous test of legitimation. Simultaneously, that process was influenced by upcoming ideas of social and political justice which were located within the Russian society.

Hence prior to the twentieth century the situation was characterized by the coinciding of different perceptions of justice although no one view was able to gain general acceptance. It was only during the turn of the century that a unique set of circumstances existed in Russia which created a unique situation for the notion of justice. This concerned a rethinking of the traditional image of a just authority and a societal perception of justice which was characterized by not only its moral, but also its social and political implications.

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68 Walter Markov (1958) gives a detailed overview of the peasant’s uprisings during the 1860s.


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