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THE 'GOLDEN AGE OF LEGISLATION' IN FINLAND 1863–79: JUDICIAL REFORMS IN A SOCIETAL CONTEXT

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Finland was part of Russia's multi-national empire from 1809–1917. This period of autonomy witnessed several different phases. The phase that started from the ascent of Alexander II to the throne and ended some decades later is known as the 'Golden Age of Legislation.' The Finnish Diet could convene from 1863 after a moratorium of a half a Century.

This dynamic period witnessed a huge amount of legislative changes. Legislative structures typical to Estate society were dismantled and a legislative basis suitable for a capitalist economy was established. There were not only changes in private law; major changes were also made in other fields of law. For example, principles of criminal law were discussed in the Diet of 1863–64, and changes that modernized and made criminal punishments were enacted in 1866 even though a total reform of the Criminal Code was not realized before 1889.

It is important to put these reforms in a societal context. These reforms can be explained by connecting them to the changing power structures of the Empire. Alexander II's policy aimed at modernizing society and he set about doing this by maintaining an autocratic rule. This allowed Finland to carry out societal reforms; reforms which served the interests of a new commercial class recruited partly from the nobility and partly from the bourgeoisie.

In comparison, it is clear that Finnish reforms and Russian reforms of 1864 had a common societal basis in their aim of serving the interests of the economy. However, this led to legal reforms in different fields of law reflecting the economic, societal and political conditions in Finland and in the Empire.

Key words: Finnish legal history; legal reforms in Finland during the 1860^{s} and the 1870^{s}; contextual legal history; methodology of legal history.

1. Introduction

Finland, a grand duchy within the Russian Empire (1809–1917), experienced a period of fervent legislative activity in the 1860[s] and 1870[s]. The Emperor Alexander II (1855–81) allowed the Finnish Diet to convene in 1863 after a moratorium of more than 50 years. This dynamic period full of public discussion and societal reforms has often been described as the *Golden Age of Legislation*. Traditional Finnish historiography, which is very 'national-idealistic' in character, paints a very positive picture of this era. This image is not only due to the legal policy but also because Finnish nationalism and the position of the Finnish language strengthened considerably during that time. Finland's autonomy in real terms had never been so strong in the Russian Empire than during that period.[1]

It is true that during these decades and in a relatively short period of time Finnish society took significant steps towards modernization. These years were also formative in the history of industrialization and commercialization of agriculture of the country.

This is very significant from the point of view of legal history. A fundamental change took place when the old fashioned mercantilistic legislation which guaranteed economic privileges to leading Estates was abolished and legislation was reformed to meet the needs of a market economy. It can be said that this period witnessed the adaptation of liberalistic principles in the field of private law.[2]

However, the mentioned period was important in the development of many other fields of law as well. Harsh criminal law typical to Estate society was made less severe by reforms in 1866, with some reforms of procedural law also being carried out. In addition, the basis for a relatively modern local administration was established, thus weakening the church's traditional position in this field.

The big issue to answer is, why did all this happen? What were the reasons behind these legal reforms and also the changes in legal practice? These developments must be put in a societal and political context, not forgetting an international and a global perspective. Finland had been part of the Russian Empire since 1809 and all events

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[1] *See* Heikki Ylikangas, Käännekohdat Suomen historiassa: Pohdiskeluja kehityslinjoista ja niiden muutoksista uudella ajalla 149–160 (Werner Söderström Osakeyhtiö 1986) [hereinafter Ylikangas, Käännekohdat Suomen historiassa]. Nationalistic-idealistic history writing takes the Finnish independence (reached December 6, 1917) as its yardstick or prism through which it assesses what has happened in Finland and what kind of decisions have been made. It is idealistic because it sees the idea of striving for (or later maintaining) independence (or at least larger rights for Finland) as a leading motive behind the development. Historically, this approach has been especially appealing to bourgeois political parties in Finland – but not only for them. A kind of idea of a 'success story' is also embedded in this paradigm and it seems to appeal to all leading political forces in Finland.

[2] Jukka Kekkonen, Merkantilismista liberalismiin: Oikeushistoriallinen tutkimus elinkeinovapauden toteuttamisesta Suomessa 1863–79 310–41 and *passim* (Suomalainen Lakimiesyhdistys 1987) [hereinafter Kekkonen, Merkantilismista liberalismiin].

that happened in the centrum of the Empire also resonated in the periphery.[3] Finnish society was also experiencing significant economic, social and cultural changes during the period in focus. It is important to try to determine the background factors in the period in focus that could be linked with the legal changes realized during the reform period.

From the point of view of explaining legal reforms, it is worthwhile considering the connections, if any, between legal reforms in Russia during the 1860[s] and the Finnish experience in the same fields of law, even though I only present substantially the most important legal reforms carried out in Finland. This is also an important issue from the methodological point of view. If connections can be made, these connections must be put in context. It is important to underline that the process of receiving legal ideas is never mechanical. On the contrary, it is always selective. Legal ideas, like any other ideas, do not spread like diseases.

From the outset, it must be highlighted that legal reforms in Finland, as well as everywhere in the Empire, had a societal context ranging from the local political situation to that of the centrum of the Empire and extending even to the global economy. This context is also fundamental for an understanding of the legal reforms put forward.

The important Russian judicial reforms of 1864 took place practically at the same time as the intense legislative activity in Finland, but it was not so intensive in the field of procedural law. It appears that the connections between them were indirect. They seem to reflect to a greater extent the general societal situation in the Empire and the reaction that the Emperor Alexander II's regime had to it. Major legal reforms were initiated in both countries at the same time, and economic interests and the need to modernize the countries seem to have been clear background factors in the process. However, cooperation between Russian and Finnish law drafters, not to speak of the intellectual exchange of ideas, was practically non-existent.

What I have so far pointed out reflects an approach which I call *contextual legal history*.[4] Contextual legal history is critical traditional legal history but it often only points out ideological or doctrinal connections, omitting possible needs and interests behind the reforms. Contextual legal history is an alternative methodological paradigm to a commonly used approach which can be characterized as idealistic, explaining legal changes by referring to ideologies or doctrines.[5]

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[3] This dependence also became evident by the beginning of the 20th century. When the Russian central administration became stronger and more capable of centralizing the administration, it led to pressures to integrate Finland (as well as other regions) more closely into the Empire. In Finnish historiography, 1899 to 1905 and 1908 to 1917 are described as first and second period of oppression. *See* Jukka Kekkonen, Suomen oikeuden historiallisia kehityslinjoja 36–43 (Helsingin Yliopisto 1999).

[4] *See* Jukka Kekkonen, Mitä on kontekstuaalinen oikeushistoria? 6–21 (Helsingin Yliopisto 2013) [hereinafter Kekkonen, Mitä on kontekstuaalinen oikeushistoria?].

[5] *See id*. at 20–21; Jukka Kekkonen, *Oikeudellisen muutoksen tutkimisesta – minun metodini*, in Minun metodini 131–50 (Juha Häyhä, ed.) (Werner Söderström Osakeyhtiö 1997).

An elementary question in contextual legal history is to ask who were the agents of change and who opposed the changes. Understanding this can lead to uncovering the political and economic motives and interests that are behind the legal changes. Ultimately, the changing power relations seem to have a very important role in explaining all types of changes in all legal cultural phenomena. Contextual legal history is also critical of the practices of traditional legal history that concentrate on (legal) texts and omit contexts. Traditional legal history is often too descriptive in character.[6] Hopefully, these paradigmatic ideas are also manifested in the pages that follow.

2. Finnish Legal Development before the 1850[s]

Roughly speaking, Finland had a 700 year long legal past as part of Sweden. Finland was an eastern province of Sweden until 1809, when the country was annexed to Russia as a result of the outcome of the turbulence created by the Napoleonic wars. In the peace treaty, the so-called Old Finland – the eastern regions of the country that were lost to Russia in the wars of the 18th century – was annexed back to Finland.[7]

When the country was conquered by Russian troops, the Tsar Alexander I convened the Estates in the town of Porvoo. There, the Finnish Estates promised loyalty to the new Emperor and the Tsar assured that he would maintain 'the religion, the constitutional laws and the former rights and liberties of the Estates.' However, this assurance was given in general terms and the concrete meaning of it was to become an issue of controversy, especially during the last decades of the period under Russian rule.[8]

This assurance also included the assurance of the validity of the legislation inherited from Sweden. The famous Swedish General Code of 1734 remained the most important source of law. This Code, for which preparation had already started in the 1680[s], was in all relevant features typical to an Estate society and contained harsh criminal laws and systems based on the differences between the Estates.[9]

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[6] Much more critique could be targeted at the so-called traditional legal history writing. It is for example quite common for evolutionary thinking to be embedded in it. This outlook sees legal changes as a development towards a 'better' direction that omits the conflictual nature of law drafting as well as the fact that the administration of justice is always bound to the current power constellation in the society. *See* Kekkonen, Mitä on kontekstuaalinen oikeushistoria?, *supra* n. 4, at 10–15.

[7] This created judicial problems because the Russian legislation concerning for example provisions on serfdom was in force there.

[8] *See* Osmo Jussila, Suomen perustuslait venäläisten ja suomalaisten tulkintojen mukaan, 1808–63 (= 77 Historiallisia tutkimuksia) (Suomen Historiallinen Seura 1969) [hereinafter Jussila, Suomen perustuslait]; *idem*, Maakunnasta valtioksi: Suomen valtion synty (Werner Söderström Osakeyhtiö 1987). The name of the latter book translated into English, 'From a Region to a State' gives an impression of the changing position of Finland within the Russian Empire.

[9] Constitutional laws and polity type administrative regulation whose enactment belonged to the competence of the king was left out of the General Code (*see* Heikki Ylikangas, Miksi oikeus muuttuu?

Moreover, the structure of the administration of justice was kept intact with the exception of the highest judicial power. In actual fact, this legal heritage from the Swedish period was never interrupted during the period under Russian rule. As is well known, direct Russian influence in Finnish legislation and legal culture was to be minor during the decades to come. Therefore, it can be said that Finland was granted a 'special position' within the Empire. The reason for this was that in 1809 it was important for the Tsar to keep the elite (the highest Estates) of the new Grand Duchy content. A fact which probably helped the decision-making during the transition was the Swedish Constitution of 1772 and 1789 which was autocratic. However, the validity of these constitutional laws was 'officially' acknowledged.[10]

It is worthwhile noting that this legal position of Finland later developed into a form that led the Finns to talk about *autonomy*. In fact, the years between 1809 and 1917 are known in Finnish history as a period of autonomy.[11] The basis for this position was set out soon after the annexation. The Finnish central administration was established soon after the annexation. With the founding of the Imperial Government Council, from 1817 the Senate and several public offices that were created formed the basis of Finland's autonomous administration. At the same time, it created new possibilities for Finns to make good careers both in the domestic and Imperial state machinery – especially for the members of the nobility.[12]

The judicial department of the Senate became the highest judicial instance – the Supreme Court of the country. As with other high national organs in Finland, it used the power derived and delegated from the ruler.[13] The Judicial department of the Senate was not an independent Supreme Court in the modern sense because it also took part in the plenary sessions dealing with economic and political matters.

However, the regime changed its favorable stance towards reforms to a less favorable one over the next few decades. A conservative trend could already be

Laki ja oikeus historiallisen kehityksen osana 164–65 (Werner Söderström Osakeyhtiö 1983) [hereinafter Ylikangas, Miksi oikeus muuttuu?]). For example, the Code of 1734 has been praised for its clear and illuminating way of formulating the provisions. Some minor parts of it are still in force in Sweden and Finland.

10 *See* Jukka Kekkonen, *The Main Trends in Finnish Legal History during the Period of Autonomy* [hereinafter Kekkonen, *The Main Trends*], in Finland and Poland in the Russian Empire: A Comparative Study 112–13 (Michael Branch et al., eds.) (School of Slavonic and East European Studies, University of London 1995).

11 In fact the issues of the interpretation of what was the content of the autonomy within a national state or Empire were typical for peripheral regions in Europe during the 19th and 20th centuries. *See* Raymond Carr, Modern Spain, 1875–1980 61–62 (Oxford University Press 1980).

12 In addition, Finns could create a career for example in the Russian army.

13 The Senate was divided into two departments: the financial and the judicial. The former was a kind of national government and the latter the highest judicial organ (Supreme Court). Moreover, the senate made plenum decisions. Thus, the division of power in a Montesquieuan sense was not realized. *See* Markku Tyynilä, *Valtiosäännön ja keskeisten valtioelinten historiaa*, in Suomen oikeushistorian pääpiirteet: Sukuvallasta moderniin oikeuteen 129–49 (Pia Letto-Vanamo, ed.) (Gaudeamus 1991) [hereinafter Suomen oikeushistorian pääpiirteet].

seen during Alexander I's reign. A notable sign of this was the fact that the Finnish Diet was not convened before 1863. This period has entered Finnish history as the 'political night.' The reputation of this period is mostly negative. The moratorium before the Diet meant that legislative reforms that would have needed the decisions of the Diet could not be carried out. Evidently, it was a matter of interpretation and also often of controversy as to what kinds of decisions could be made without the approval of the Estates.

By no later than the 1820s, the political climate in Russia had changed. Liberal leanings had already disappeared in Russia during Alexander I's reign but it was especially during the reign of Nicholas I (1825–55) that harsh punishments and conservative policies were introduced. In Finland, this meant that the country was ruled without any involvement from the Estates. In practice, the power was concentrated in the hands of the bureaucracy. It was clearly also in its interests to keep the situation stable – without the Estates.[14] The Finnish elite – mostly composed of the nobility – was extremely loyal to the Russian rulers.[15]

The lack of a legal definition of the judicial relationship between Finland and Russia led on occasions to conflicts. Leading Finns feared that Russian legislation would little by little replace Finnish legislation. In order to avoid this, the Finnish authorities appealed continuously to the guarantees of their autonomous position given by Alexander I and his successors. In practice, if we are looking at the whole period of 1809–1917 it can be seen that the interests of the Empire took precedence over the wishes of Finns in any real or potential conflicts.[16] The space that the Finnish administration and civil society inhabited was clearly conditioned by the power constellation in the central administration of the Empire.

The legal competence of the Finnish and Russian authorities witnessed a serious conflict in the 1830s. This happened especially in the framework of the Imperial codification procedure. Already during the 1810s there had been plans to codify Finnish legislation. These plans were realized after the Russian codification (*Svod Zakonov* (1832)[17]) was completed. In 1835, an order was given to codify systematically

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14 *See* Ylikangas, Käännekohdat Suomen historiassa, *supra* n. 1, at 103–12.

15 The nobility had access to many high posts in the state administration. The bureaucratic elite also had its own concrete economic interests at stake. It was able to channel economic resources into its own manors and industries. *See* Kekkonen, Merkantilismista liberalismiin, *supra* n. 2, at 24–26; *idem*, *Metsälainsäädännön murros 1800-luvun puolivälissä. Taistelua valtiovallasta*, in Oikeutta ja historiaa: Heikki Ylikankaan 50-vuotisjuhlakirja 89–108 (Werner Söderström Osakeyhtiö 1987). This article contains an analysis of how the high civil servants were 'fighting' for the positions in the state administration and how they used their positions to advance their economic interests. For the close relations between the families of the high nobility *see* Raimo Savolainen, Suosikkisenaattorit. Venäjän keisarin suosio suomalaisten senaattoreiden menestyksen perustana 1809–92 (= 14 Hallintohistoriallisia tutkimuksia) (Hallintohistoriakomitea 1994).

16 *See* Jussila, Suomen perustuslait, *supra* n. 8.

17 A good account of the codification movement in Russia is given by William B. Wisenhunt, In Search of Legality: Mikhail M. Speranskii and the Codification of Russian Law (Columbia University Press 2001).

and summarize the statutes enacted in Finland after 1734.[18] The purpose of this codification was to standardize the administrative and judicial system of the Empire in order to make it function more effectively.

This plan to codify Finnish legislation according to a systematization adopted in *Svod Zakonov* and also partly from Roman law that was put forward in 1835 also challenged the special position of Finland within the Empire. Finnish expert opinion was divided on the need for a new codification. Yrjö Blomstedt sees in this debate a division between 'thibautian' experts and those who represented 'savignian' ideas of the historical school. Ultimately, even the experts favorable to the codification pointed out that many proposed provisions needed to be accepted by the Estates according to the Constitution. The codification plans were eventually abandoned in the wake of the reformative measures which started in the 1850^{s}.[19] Thus, the plan never came to fruition. For the Finnish elite during these decades the 'national issue' was clearly significant because securing its own position was fundamental; this fact accounts for its attitudes and decisions.[20] During the described period, the legal policy consisted mostly of administrative orders and statutes. The system was typical of a pre-modern Estate society governed by the so-called polity legislation.

However, reforms were made and discussions arose concerning the issue of whether the limits of creating statutes via administrative procedure were broken. One reform in the field of criminal law is worth mentioning. In 1826, Nicholas I enacted a statute which abolished *de facto* the use of capital punishment.[21] Death penalties were commuted to lifelong imprisonment (hard labor) in Siberia and later the scope of deportation was widened to include smaller crimes.[22]

In the field of the administration of justice a landmark event was the establishment of a third Court of Appeal in the eastern city of Wyborg (Viipuri) in 1839. Its establishment was ultimately a political act in the sense that the decision was made after a judgement of the Court of Appeal of Turku, in which the court sentenced to death a local civil servant who had beaten to death a peasant who had

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18 *See* Hannu T. Klami, Oikeustaistelijat: Suomen oikeustiede Venäjän vallan aikana 49 (Werner Söderström Osakeyhtiö 1977).

19 *See* Jussila, Suomen perustuslait, *supra* n. 8. In this debate, it becomes clear how tactical the argument over the need for cooperation with the Diet was in reality. *See also* Yrjö Blomstedt, *A Historical Background of the Finnish Legal System*, in The Finnish Legal System 8–23 (Union of Finnish Lawyers Publishing Company 1966).

20 *See* Kekkonen, *The Main Trends*, *supra* n. 10, at 113–14; *cf.* Blomstedt, *supra* n. 19, at 15–16.

21 The history of this statute is closely related to the dramatic process of Nicholas I's ascent to the throne. *See* Jukka Kekkonen, *Chapter IV. The Long and Peculiar History Without Death Penalty in Finland*, in Beyond Death Penalty: Reflections on Punishment 45–61 (Hans Nelen & Jacques Claessen, eds.) (Intersentia 2012).

22 *See* Alpo Juntunen, Suomalaisten karkottaminen Siperiaan autonomian aikana ja karkotetut Siperiassa (Siirtolaisuusinstituutti 1983). The system of deportation remained in force until 1888. During this period, 3,321 Finns were deported to Siberia.

protested against the application of feudal type provisions. The Russian authorities wanted to establish a court which would be loyal to the policies of those holding the highest powers.[23]

3. The Golden Age of Legislation

The ascent of Alexander II to the throne in 1855 during the Crimean War gave a decisive impetus to a new kind of social and legal development in Finland. Something of an enlightened despot of the eighteenth century, he sought his power base not only among the nobility but also among the middle strata of society. This change was necessary given the critical situation in society after the Crimean War. Popular discontent grew to such an extent that promises of social reform were a relevant, if risky, political alternative. Of the potential options he chose the reformist way. He initiated a large societal and legal reform program which led, for example, to the abolition of serfdom (1861) and judicial reform following bourgeois models developed during the era of enlightenment and to a certain extent realized in the course of the French Revolution. In this process, maintaining the autocratic system was fundamental and the means chosen were connected to supporting economic development and dismantling the institutions that were dysfunctional to that aim.[24]

Alexander II visited Finland in March 1856. He gave a speech at the Finnish Senate stating his goals for the future societal policy in general terms. He underlined the need to reinvigorate the economy by different means, including constructing infrastructure and supporting economic growth. The essence of his statement related to modernization. He also voiced ideas concerning developing education and fighting against pauperism. His opinions had strong parallels with those of the enlightened despots of the 18th century.

Major plans for reforms were initiated after his visit and a special January committee was nominated to make a list of the societal reforms needed. In this list, reforms were put in different categories reflecting how urgent they were considered by the drafters.

Thus, convening the Diet of 1863 made it possible to enact legal reforms which – according to most Finnish legal experts – required the assent of the Estates. Even though there were opposing opinions on the nature and power relations between

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[23] An extensive analysis on this procedure which led to the establishment of a new Court of Appeal can be found in Jukka Kekkonen, Wiipurin Itä-Suomen hovioikeus, 1839–1989 (Kustannuskiila 1992). Plans to establish a third Court of Appeal had been made several times before by referring to the population growth of the country which had made the workload of the existing courts of appeal too burdensome. Another argument was the long distance from Eastern Finland to the existing courts which caused excessive troubles and costs to people searching for justice.

[24] The other main alternative to a reformist policy would have been to make the societal control still harsher, thus following the way chosen by his predecessor Nicholas I. As is well known, Alexander II also turned away from a liberal line very soon after the 1864 reforms.

Finnish and Russian institutions, a new Diet Act was enacted in 1869. In it, the social representation of the Estates was slightly widened, and most importantly it was stated that the Diet should convene on a regular basis every three years.[25]

The most important task for the Diet was to dismantle the old fashioned mercantilistic legislation which put obstacles in the way of economic activities. A legislative basis for a capitalistic (market) economy was realized between 1859 and 1879. In the course of two decades, freedom of enterprise was realized, freedom of contract extended, the number of legal subjects increased and the pre-conditions for economic activity were generally improved.[26]

Specific legislative acts included decrees which implemented freedom of enterprise (1859, 1861, 1868, 1879); limited liability companies and limited partnership companies (1864); private banks (1866); mortgages (1868); bankruptcy (1868); and the abolition of restrictions on moving (1859, 1865, 1979) which allowed for the free movement of labor. This is just a short list of the most important pieces of legislation from the point of view of the needs of a rising market economy.

Harsh criminal law was typical and generalized in Europe during the era of absolutism and Estate society. Capital and corporal punishments were instruments used to maintain a highly unequal society. The development reached its peak in the 16th and 17th centuries all over Europe. Things began to change during the era of the Enlightenment and this reflected the new power constellations in which the enlightened despots also met to a certain extent the needs of the rising bourgeoisie and the lower strata of society.[27]

Finland experienced this change in the 1860s. By the end of the previous decade a heated debate on the issue of capital punishment had already broken out.[28] Liberal minded scholars, such as the Professor of criminal law Karl G. Ehrström, wanted to reform criminal law according to the principles of classical criminal law. His program consisted of four demands:

1) the abolition of capital and corporal punishments;

2) the abolition of shameful punishments;

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[25] In spite of this, the Finnish Diet was one of the most old-fashioned institutions in Europe, representing only a tiny minority of the population. This situation changed radically when universal suffrage was achieved in 1906. This reform was also caused by a strong societal turbulence in Russia. *See more closely* Ylikangas, Käännekohdat Suomen historiassa, *supra* n. 1, at 135–48.

[26] *See* Kekkonen, Merkantilismista liberalismiin, *supra* n. 2, at 105–54, 310–41.

[27] *See* Jukka Kekkonen & Heikki Ylikangas, Vapausrangaistuksen valtakausi: Nykyisen seuraamusjärjestelmän historiallinen tausta (Helsingin yliopisto 1982); Tapio Lappi-Seppälä, Teilipyörästä terapiaan: Piirteitä rangaistusjärjestelmän historiasta (Oikeusministeriön vankeinhoito-osaston julkaisu 1982).

[28] *See* Yrjö Blomstedt, Rikoslakireformin ensimmäiset vaiheet vuoden 1866 osittaisuudistuksiin saakka (= 59 Historiallinen Arkisto) (Suomen Historiallinen Seura 1964); Jukka Kekkonen, *Autonomian ajan rikosoikeus* [hereinafter Kekkonen, *Autonomian ajan rikosoikeus*], in Suomen oikeushistorian pääpiirteet, *supra* n. 13, at 258–69.

3) the establishment of a simple sanction system based on imprisonment, fines and detention;

4) the adoption of the idea of trying to reform criminals (the so-called progressive stage system) as a leading principle of the prison system (this goal also required constructing prisons that would fit that purpose).[29]

The basic principles of the future criminal legislation were discussed in the Diet of 1863–64. On some issues, such as the abolition of capital punishment, the Estates would have liked to go further than the Senate. After approving the general guidelines of the reform, the concrete legislative changes were drafted by the Senate. By 1866, five new laws dealing with crimes, punishments and responsibility had been enacted. Their essence was to abolish most types of punishment typical to an Estate society. At the same time, the sanctions were made more lenient. Capital punishment was abolished in some categories of crimes. In addition, the degrees of guilt were defined in a more nuanced way.[30]

Even though this was only a partial reform, it was decisive as it paved the way for the modernization of criminal law and met the requirements of the ideas of the classical school of criminal law. Moreover, sentencing practices had started to become less severe and also reflected changes that gave the middle classes more possibilities to influence the decision-making in society. Historical experience shows that democratization makes punishments more lenient.[31]

The process leading up to the 1889 Criminal Code was to last for several decades. The process was composed of several stages. In 1865, an expert committee was established to completely reform criminal law. It took no less than ten years for a liberal minded plan to be published, and this largely reflected the ideas of Karl G. Ehrström, which has already been described briefly above. However, this plan was severely criticized by conservative-minded experts. A new committee was enacted by the Senate in 1881. It was led by the conservative criminal law professor Jaakko Forsman who was to be the 'father' of the new Criminal Code. The draft was published in 1884. It was more rigid and gave less room for arbitration and variations on sanctions than its predecessor. The changes that were especially clear were the way the punishments were justified and how the committee saw the causes of criminality.[32]

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[29] A central prison administration was established in 1881 in Finland. After that, several new prisons were built over the following decades.

[30] *See* Lappi-Seppälä, *supra* n. 27, at 126–28. These provisions came into force on January 1, 1870.

[31] Putting it simply, advancing democracy leads to more lenient punishments whereas the opposite, a concentration of power in small minorities, paves the way to a harsh policy of control. This is one of the most important lessons of comparative and historical studies on control policy. *See* Kekkonen & Ylikangas, *supra* n. 27; Tapio Lappi-Seppälä, *Penal Policy in Scandinavia*, 36(1) Crime and Justice 217–95 (2007); *see also* John Pratt, Contrasts in Punishment: An Explanation of Anglophone Excess and Nordic Exceptionalism (Routledge 2013). All authors link a mild penal policy to democracy and to a strong welfare state in the contemporary world.

[32] The 1884 Committee was in it general orientation less lenient than its predecessor. This can be seen in the way that it justifies penal measures and analyses the causes of criminality. The Committee did

This was to be the basis for the new Criminal Code which was accepted by the Diet in 1885 and 1888. The Finnish Criminal Code is said to be the last criminal code in Europe that reflected the ideas of the classical school.[33] Basic sanctions were imprisonment (consisting of two categories) and fines. The death penalty was only an option in a few cases – those where the criminal had targeted the ruler or his family. In practice, provisions of high treason and murder were concrete examples of that.[34]

Reforming procedural law was also under consideration during the 1860[s]. Modern principles of procedural law were well known to Finnish experts. However, legislative changes were minor in this field. The administration of justice in normal courts remained in the old format with the exception that several special courts were abolished as well as some local courts. This was part of the dismantling of the institutions and structures of the Estate society and the paving of the way to a liberalistic model.

Some important changes can also be traced in the legal practice. Heikki Pihlajamäki has demonstrated in his dissertation that the free evaluation of evidence started gradually gaining ground in the practice of the Courts of Appeal and the judicial department of the Senate by the mid-19th century.[35] Moreover, as was pointed out previously, practice in criminal cases gradually began to move towards a less severe approach. There was also a more lenient policy on the use of pardons.[36]

4. Context of Legal Change

Decades of reform or the 'golden age of legislation' are a clear landmark in Finnish legal history. It was the first phase in the development towards a state based on rule of

not accept the idea that all criminality, as well as social problems, were caused by bad or deplorable social conditions like poverty. On the contrary, it underlined the individual responsibility and guilt of the offender. It also believed more than the previous Committee in general prevention as a goal of criminal policy. *See* Kekkonen, *Autonomian ajan rikosoikeus*, *supra* n. 28, at 264–68.

33 *See* Eero Backman, 1 Rikoslaki ja yhteiskunta (Suomalainen Lakimiesyhdistys 1977).

34 The provision concerning high treason was generally utilized by the whites (the legal bourgeois government) after the Finnish civil war of 1918. Administration of Justice after the civil war was clearly political by nature not to mention the nearly total lawlessness of the administration (of justice) during the war. *See* Jukka Kekkonen, Laillisuuden haaksirikko: Rikosoikeudenkäyttö Suomessa vuonna 1918 (Lakimiesliiton Kustannus 1991); *see also idem*, *Judicial Repression during and after Finnish (1918) and Spanish (1936–39) Civil Wars: A Comparative Analysis*, in Justice in Wartime and Revolutions: Europe, 1795–1950 / Justice en temps de guerre et révolutions: Europe, 1795–1950 (= 6 Justice & Society) 68–81 (Margo de Koster et al., eds.) (Archives générales du Royaume 2012).

35 *See* Heikki Pihlajamäki, Evidence, Crime, and the Legal Profession: The Emergence of Free Evaluation of Evidence in the Finnish Nineteenth-Century Criminal Procedure (Lund 1997). In spite of legal practice, the principle of free evaluation of evidence was not adopted into Finnish procedural legislation before 1948.

36 *See* Lappi-Seppälä, *supra* n. 27; Toomas Kotkas, Suosiosta ja armosta. Tutkimus armahdusoikeuden historiasta autonomian ajan Suomessa (Suomalainen Lakimiesyhdistys 2003).

law. In creating liberal legislation 'from above,' legislation functional to a nascent market economy (capitalism) was at the heart of this change. However, serving the needs of the developing economy and the new commercial elite was not the whole story.

These decades also witnessed changes in the political constellations, giving the middle strata more influence. For example, this change accounts for the changes in control policy. Thus, in the 1860[s] in the field of criminal law a decisive blow was given to the traditional legislation and also to harsh penal practices that were typical in an Estate society and that were based on a huge divide between the elite and the common man.

The policy adopted by the new ruler, Alexander II, was decisive for Finnish development. As a 'late born enlightened despot' he initiated a reform policy that strived to modernize the economy and society in general. This orientation also gave more room to create a national legal policy in Finland. When the possibility for reforms came, the time was ripe for such reforms after the long 'political night.' Industrial development and market driven economy needed legislative changes to function in an optimal manner.

Additionally, a very rapid population growth had created a large and growing 'population surplus,' that is, large numbers of poor people in the countryside without work or the possibility of getting a decent means of living. For this reason one important part of the reform policy was to fight against growing pauperism. Poor legislation was one of the key issues of the time as was developing the educational system.

In Finland, Alexander's policy allowed national actors to carry out legal reforms that were favorable to them. In all important respects, legal policy followed the interests of a so-called 'new commercial class,' composed of noblemen and some bourgeoisie.

These reforms – and it is important to underline the fact that they were led from above – had their limits in an autocratic state. Steps towards the democratization of the society were minor even though the position of the Diet after 1863 brought a new player to the power constellation. The period that was favorable to reforms came to an end in Finland within about twenty years.[37] The domestic power holders had been able to complete those legislative changes that were fundamental for their interests and position. These changes even affected legal science where a positivistic orientation became a dominant paradigm during the 1870[s] and 1880[s].[38]

Finland was not the only place where reforms occurred during the 1860[s] even though parallel liberal reforms had been carried out some decades earlier in most Western European countries. As a part of the Russian Empire, the Russian reforms

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[37] In Russia it lasted less, as is well known.

[38] *See* Klami, *supra* n. 18, at 73–81; *see also* Ylikangas, Miksi oikeus muuttuu?, *supra* n. 9. The dominance of legal positivism is typical to societies where at least the power holders do not see reasons for radical changes in the society.

were very significant from the Finnish point of view. The reforms in the field of procedural law modernized the administration of justice (1864) to meet Western European standards adopted since the Enlightenment. Big steps were taken towards a state based on rule of law even though the reality was to be far from the principles and ideas of the newborn legislation.[39] Moreover, this reform was part and parcel of even larger reforms aiming to support economic growth and modernize society. An old-fashioned judicial machinery was clearly dysfunctional in a society where the needs of the economy (such as legal security and predictability) were put first.

In Finland, the needs of the new economy and the interests of the commercial elite ran parallel with each other. Major changes in substantive private law were made to meet the needs of the economy.

In actual fact, the reforms realized in Russia did not have an influence on Finnish legal policy. Finnish legal policy reflected the internal situation of the country as did its Russian counterpart. All reforms, both in Russia and Finland, can be explained by putting them into a societal and political context. However, ultimately, everything was directly or indirectly connected to the actual power structures in the Empire. These structures formed a kind of a common ground for all the reforms – noting also the limits of reforms – in Russia as in Finland. This was the big picture.

Finland had – at least to a certain extent – a special position in the Empire. According to some criteria it was one of its most developed parts. Finns had also been very peaceful and loyal to the Russian power holders, and this was perhaps one of the reasons why it had acquired a certain amount of liberty in comparison to many other countries within the Empire. High civil servants of the country also had close contact with their Russian colleagues in the central administration. However, some Finnish legal scholars, although very few in number, were strongly oriented towards Swedish and German legal science. They had only a small amount of contact with their Russian colleagues.

As has been described, Finnish criminal legislation was modernized by the reforms made in 1866, and some steps were also made in the direction of modernity in the field of procedural law. Tribunals, typical to the Estate society, were abolished. However, interestingly enough, despite continuous efforts Finnish procedural legislation did not reach the stage of modernity until the 1990[s].[40]

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[39] In an autocratic system, modern legal institutions constitute a threat to the powers of the Emperor. In Russia, a counter attack to the reforms soon came. *See* Jyrki Ukkonen, Kuinka porvarillinen tuomioistuinlaitos omaksuttiin yksinvaltaiselle Venäjälle? Progradutukimus (Helsingin yliopisto 2002). This Master's thesis is largely based on Russian literature and sources.

[40] In 1993 the local court system was united, made homogenous and the procedure was renewed, reviving classical principles of orality, and an accusatorial and concentrated procedure. *See* Kevät Nousiainen, Prosessin herruus (Suomalainen Lakimiesyhdistys 1993); Jukka Kekkonen, *Reforms and Attempts to Reform Civil Procedure in Nineteenth Century Finland*, in The Law's Delay: Essays on Undue Delay in Civil Litigation (= 47 Ius Commune Europaeum) 171–79 (Remco van Rhee, ed.) (Intersentia 2004).

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