TITLE: CIVIL SOCIETY AND EMPIRE IN FIN-DE-SIÈCLE RUSSIA: THE CASE OF JEWS AND THE LEGAL PROFESSION

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CIVIL SOCIETY AND EMPIRE IN FIN-DE-SIÈCLE RUSSIA: THE CASE OF JEWS AND THE LEGAL PROFESSION

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Summary

The disintegration of the Soviet Union has been understood largely in terms of an epic contest between capitalism and communism. In scholarly works as well as in the mass media, the year 1991 now marks the endpoint of an extraordinary 74-year period, a period that the historian Martin Malia has memorably encapsulated in the title of his influential book, The Soviet Tragedy. And in case anyone missed the point, Malia's sub-title spells it out: A History of Socialism in Russia, 1917-1991 (emphasis added).

Periodization, of course, contains within it an act of interpretation. In this sense, the collapse of the Soviet Union marked the end not of one historical period, but two. It brought an end not just to seven and a half decades of something that called itself "socialism," but to over four centuries of something that until 1917 was comfortable calling itself "empire." We are only now beginning to come to terms with the imperial dimension of Russian history, with the fact that Russia is not and never has been a nation-state, though it has often been treated as such.

This paper examines a particularly significant moment in Russia's history as a multi-national society. This 'moment' began with the Great Reforms of the 1860s, the last comprehensive attempt by the tsarist government to modernize the empire from above, and ended with the Revolution of 1905. These four decades mark the tentative emergence of a civil society, an educated, critical public, within the framework of an authoritarian state. It was also during this period that the first empire-wide census was conducted. The census confirmed in the language of statistics what many already sensed: ethnic Russians were no longer a majority in their own country. Comprising 43% of the total population, they were now merely the largest minority.

What follows, is an exploration of the intersection of these two constellations: civil society and ethnic diversity. Using the legal profession as a case study, this paper analyzes the problem of ethnic and religious fault-lines within an elite and progressive segment of Russian society. The story is relatively straightforward: it concerns the genesis of quotas on the admission of non-Christians to the Bar. There are fundamental implications for the study of public institutions in pre-revolutionary Russia, as well as useful historical background against which to assess the current emergence of civil societies in the countries of the former Soviet Union. The aim is to advance three principal arguments: First, that the controversies surrounding the high proportion of non-Russian, in particular Jewish, lawyers triggered a crisis within the legal profession that cut to the core of its identity and relationship to the state. Second, that these controversies evoked a profound pessimism in educated Russian society, a sense that the social mobility made available to non-Russian minorities in the wake of the Great Reforms threatened the very structures upon which a reformed Russia was being built. Finally, that in contrast to the inherited liberal mythology of civil society in pre-revolutionary Russia as engaged in a struggle for autonomy from an authoritarian state, some of the most significant barriers to independent public institutions derived from within the public itself.
The Setting

The Judicial Reform of 1864 was one of a half-dozen of what have been called "Great Reforms," designed to transform Russia into a modern European state. Though the most famous of these reforms was undoubtedly the emancipation of some 40 million serfs in 1861, the creation of a modern judiciary three years later was scarcely less significant for Russia's future. With the Prussian Rechtsstaat (the state governed by rule of law) as a model, Tsar Alexander II took the unprecedented step of creating a judicial apparatus formally separated from the executive power, as well as a corps of attorneys and judges with unparalleled professional autonomy. This in a society which up to the middle of the nineteenth century had no lawyers at all: previous tsars had even banned use of the imported word advokat.

Moreover, in contrast to much of tsarist legislation, the Judicial Reform made no distinctions based on nationality or religious faith. Thus despite the Polish Uprising of the previous year, 1863, and the general suspicion with regard to Catholics, Poles were eligible to take part in the entire range of judicial functions, including as participants in the new jury system, as sworn witnesses, as lawyers, prosecutors, and judges. Similarly, despite the labyrinths of discriminatory legislation against Jews, they too were treated as full equals in the new legal system.

It may indeed come as something of a surprise that Russia's judiciary was at the time more tolerant than that of the Austrian Empire, where Jews were first admitted to the Bar in 1867, and of Great Britain, where they were first admitted in 1883. Looking back on the Judicial Reform a quarter-century later, one of its beneficiaries, the prominent Russian-Jewish lawyer Leontii Bramson remarked that "in no other reform did the principle of the equality of all citizens before the law and the rejection of all exclusions find such full, deep, and consistent expression."

"Jewish lawyers in tsarist Russia": the phrase itself makes one pause. When we picture a Russian Jew in the nineteenth century, we are more likely to imagine a shabbily-dressed individual playing a violin on the roof of his hut, or a fiery-eyed revolutionary, than a sharply attired, urbane lawyer. The image of the East European Jew, as it has come down through the paintings of Marc Chagall and photographs from Ellis Island, is of the resident of a shtetl, a village or small town where people and livestock freely mingled.

In reality, by the end of the 19th century, Jews were the most urbanized of the more than one hundred ethnic and linguistic groups that peopled the Russian Empire. In contrast to Western Europe, where the prominence of the so-called "Jewish Question" in public discourse often obscured the fact that Jews comprised only a tiny fraction of the population, in the Russian Empire Jews were a truly mass phenomenon. At the end of the nineteenth century, more Jews lived in Russia than in the rest of Europe, indeed than in the rest of the world. Even after a million of them had emigrated to the United States at the turn of the century, Russian Jews still numbered some 5.2 million. They thus constituted the single largest non-Slavic and non-Christian ethnic group in the empire.
Jews made eager use of the new access to institutions of higher education created by the Great Reforms. Russia's largely aristocratic intelligentsia expanded during the 1860s and 1870s, not only across lines of class and estate, as vividly recorded in Turgenev's novel Fathers and Sons, but also across lines of ethnicity and gender. Since Jews were de facto barred from most forms of state employment, including academia, they overwhelmingly chose training in law and medical faculties, where the chances for private employment after graduation were greatest.

In contemporary accounts as well as memoirs, Jewish lawyers stand out as some of the most ardent champions of their profession. And no wonder: for secularly educated Jews, the Bar appeared to hold the hope of social advancement and integration, of freedom from the otherwise ubiquitous constraints of discrimination, in a way unmatched in any other arena of Russian society. For Maksim Vinaver, who was to become a founder of the Constitutional Democratic party in 1905 and a member of the first Russian Duma (parliament), the legal profession represented a kind of civil society in miniature:

Is the profession a hereditary caste, a medieval guild, a closed circle of a limited number of immortals? It is none of these. It is accessible to anyone who can satisfy criteria which are set in advance. It is a free union of individuals, unlimited in number, who are united by a common goal and who have placed themselves under public scrutiny.³

The eminent lawyer Aleksandr Passover, denied an academic career because of his refusal to adopt Christianity, was fond of telling his protégées, "Instead of converting to Russian Orthodoxy, I converted to the legal profession."⁴

To be sure, Jewish lawyers were not the only ones to champion the legal profession's independence and openness within an absolutist system. The Polish-born lawyer Vladimir Spasovich, the widely acknowledged doyen of the profession and the chairman of the governing Council of the St. Petersburg Bar Association, celebrated the profession as "the great asylum for all races and nationalities."⁵

By the late 1880s, scarcely one generation after the Judicial Reform, Jews constituted some 14% of the Empire's lawyers and 43% of all apprentice lawyers (the primary pool from which future members of the Bar were drawn). And the proportion of Jews was growing with time. Between 1885 and 1890, 22% of those admitted to full membership and an astounding 89% of those who became apprentice lawyers were Jews.⁶ These figures applied to the Empire as a whole; in areas of high Jewish settlement such as Warsaw and Odessa, they were still higher. Even in the capital, St. Petersburg - home of the most prestigious and influential Bar Association - Jews comprised 21% of all lawyers and 30% of all apprentice lawyers, not counting converts.⁷
The Reaction

These trends did not escape contemporary observers, in particular the press. In 1876, an Odessa newspaper charged that:

In the new system of open courts, Jews have greedily thrust themselves into the legal profession, and by this means they cleverly transfer their clients' money into their own pockets. Fleecing the ignorant common folk at every turn, the Jew sells his conscience even in the sanctuary of the court.8

Lawyers, so the argument went, had already squandered their initially positive reputation by taking sides in cases simply according to who offered the highest payment, and this practice had developed "precisely since the time when Jews achieved a dominant position in the legal profession."9

The legal profession's initially positive public reputation, I should note, derived primarily from its role in a series of spectacular courtroom defenses of arrested radicals in the 1870s. In 1878, for example, the populist Vera Zasulich shot and wounded the military governor of St. Petersburg after he had beaten a political prisoner; later that year her lawyers created a sensation by persuading a jury to acquit her. For the government, of course, this display of political independence on the part of defense attorneys was an unexpected and highly undesirable effect of the Judicial Reform. After Zasulich received her acquittal, the Ministry of Justice decided that future political trials would be held behind closed doors. But this was not enough; by the mid-1880s, the government was determined to chip away at the autonomy of the profession itself by regulating the admission process.

It is important to note that Jewish lawyers did not play a significant role in the celebrated political trials. In theory, the government's effort to curb the autonomy of the profession had nothing to do with the high proportion of Jewish lawyers or with their alleged unethical behavior. Yet, in a remarkable chain of events, these two issues became inextricably and fatefully bound to one another.

No sooner had the Ministry of Justice announced the formation in 1885 of a commission to overhaul the rules of admission to the Bar, than voices began to call for restrictions on admission of non-Christians. There was in fact a precedent for such an approach, namely the quotas that limited the proportion of Polish and Jewish students in certain institutions of higher education. Once again the conservative press led the way, eagerly reporting rumors that the commission was planning to impose a Jewish quota in the legal profession.

But the press was not alone. For the first time, voices from within the legal profession openly supported restrictions on Jewish colleagues, not so much for their supposedly underhanded dealings with gullible clients, but in the name of protecting the profession from encroachments by the state. In 1886, the trade journal Sudebnaia Gazeta (The Court Gazette) printed a letter to the editor from a lawyer complaining that Jewish lawyers were ruining the reputation of their Christian colleagues and of the courts as well. This "parasitic element," the letter concluded, "must be eliminated in order to
maintain the high place given to the courts by the judicial reforms of emperor Alexander II." Two years later, a committee of apprentice lawyers in Moscow, responding to the influx of Jews into its ranks, urged its senior colleagues in the Bar to impose a quota.

As the diverse political and professional agendas for reform of the legal profession began to converge, a decisive step was taken in 1889, when for the first time the St. Petersburg Bar Association included in its published annual report a section on the religious affiliations of its members and apprentice members:


<table>
<thead>
<tr>
<th>Religion</th>
<th>Lawyers</th>
<th>Apprentices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Russian Orthodox</td>
<td>160 (54%)</td>
<td>109 (41%)</td>
</tr>
<tr>
<td>Jewish</td>
<td>62 (21%)</td>
<td>104 (39%)</td>
</tr>
<tr>
<td>Catholic</td>
<td>38 (13%)</td>
<td>34 (13%)</td>
</tr>
<tr>
<td>Lutheran</td>
<td>36 (12%)</td>
<td>17 (7%)</td>
</tr>
<tr>
<td>Total</td>
<td>296 (100%)</td>
<td>264 (100%)</td>
</tr>
</tbody>
</table>

The release of these data unleashed a stormy public debate, and nowhere was the clash sharper than in the legal profession itself. Within the Bar, the controversy provided an arena for previously muffled viewpoints, not only about Jewish lawyers, but about the role of religion and nationality in legal culture and legal practice, the identity of the legal profession, and its relationship to Russian society and the state. The substance and rhetoric of this debate is worth a closer look.

At two stormy meetings of the General Assembly of the St. Petersburg Bar Association in April 1889, some members demanded radical measures to curtail the admission of Jews, while others argued that information on religious affiliation should never have been published in the first place. In a speech to the Assembly responding to the latter charge, Vladimir Spasovich, the Polish-born chairman of the Council who had been responsible for the decision to publish the data, defended the move as a necessary step to induce the Bar to take the Jewish issue into its own hands, thereby avoiding state intervention and the possible loss of professional autonomy. If present trends continued, he noted, within a few years Jews would comprise over half of the capital’s apprentice lawyers, and not long thereafter, of the profession itself. In response to a leading liberal journal’s argument that of all the various professional organizations in Russia, the Bar had the greatest obligation to follow "strict logic and principled rigor," Spasovich argued: "Simple logic may say, 'what concern is it of yours if one particular group grows in relation to another?' I cannot follow such logic. We are dealing with a colossal problem, one which cannot be solved according to the rules of cliché liberalism."
The full import of these words can be measured only when one bears in mind that Spasovich himself was a self-described liberal, a leading representative of the reform-minded intelligentsia who, only a few years before, had closed a speech to the St. Petersburg Bar with a ringing toast, "to those people who stand firmly for progress, for liberalism!"\(^{15}\) Because of his prominence in the legal world - Spasovich liked to remind his listeners that he had participated in drafting the original Judicial Reform of 1864 - and because he resists easy categorization, his defense of the publication of data on religious affiliation is particularly important.

While according to Spasovich the presence of individual non-Russians - whether Jews, Poles, Baltic Germans, or Georgians - posed no particular threat to the legal profession,

If, as a consequence of the artificial influx of an alien ethnic group, the composition of the profession changes fundamentally, if it is in danger of changing from Russian to Jewish, then I am obliged to see to it that this sort of change does not occur. I must do so not from my own personal point of view, but from a more elevated, public one. I would justify this resistance to the sudden influx of Jews in terms of the Jews' own interests. This was a good corporation, this was the *magnum asylum*, the great asylum, for you too. If you quickly overflow it, the state may not tolerate this and may abolish the elected Councils. The baby will get thrown out with the bath water.\(^{16}\)

Spasovich was under no illusions about the virtual impossibility of employment in the academy and the state bureaucracy for Jewish lawyers, and the resulting over-representation in the legal profession. But there was little hope of these circumstances changing. Again addressing Jewish colleagues in his audience directly, he urged,

Do what we Poles do. We direct our young generation not to law faculties, but to secondary and vocational schools, where they can build careers without leaving their home territory. You don't have a home territory, you are a race; try to insure that your generation prepares itself for useful careers in those arenas to which no state law can deny you access. How is one to reduce the flood of the law school proletariat into the ranks of apprentice lawyers? By having the government set a percentage? I am against this method. Only the General Assembly of Lawyers, should set norms. If it does not take this matter into its own hands, then the Damoclean sword of government-enforced quotas on admission will fall upon us.\(^{17}\)

For Spasovich, the future autonomy of the profession required that the Bar, by its own internal, democratic means, remove the temptation for the state to take unilateral action against the flood of aspiring lawyers, of whom an alarming percentage were Jews. It bears repeating, however, that in principle the issues of admission and the presence of Jews in the profession were entirely distinct. By conflating them, Spasovich aimed at what appeared to be a strategic compromise: to preserve one part of the legacy of 1864, namely professional autonomy from the state, at the expense of another,
namely an admission policy based strictly on universal criteria of education and training.

I want to stress again Spasovich's impeccable liberal credentials. Even with regard to the so-called "Jewish Question," Spasovich was more actively sympathetic than were the vast majority of his colleagues, or for that matter than the intelligentsia as a whole. In 1882, for example, he had publicly condemned the pogroms which had begun the previous year, and criticized the intelligentsia for its silence on the subject. In 1900, toward the end of his life, he took a leading role in the defense of a Jew accused of ritual murder in Vilna. In the memoirs of Jewish lawyers one finds again and again words of praise for Spasovich; the worst that is said about him is that he succumbed to a government strategy of playing national minorities off against each other - in this case, Poles against Jews.

But if Spasovich's justification for discriminating against Jews was the seemingly higher goal of preserving professional independence from the state, the same cannot be said for many of his colleagues. In a June 1889 report on trends in the legal profession, the Journal of Civil and Criminal Law, the organ of the prestigious St. Petersburg Juridical Society, fairly begged the government to intervene and establish quotas. Here, in contrast to Spasovich, the emphasis was on the alleged internal threat posed by Jewish lawyers to the profession. If one took into account the presence of converted Jews, the journal argued, then the St. Petersburg Bar was already half Jewish. Moreover, because of the Jews' "well-known solidarity among themselves" it was becoming "physically impossible for a Russian lawyer to compete with them."

Here, as everywhere, free competition between Jews and Christians is dangerous and even simply impossible, and this impossibility is grounded in racial characteristics with which one cannot avoid reckoning. Historical factors have fostered in the Jewish people a resourcefulness which stops at nothing, a love for grubbing and an awareness of commonalities of interest to such an extent that one cannot place in servitude to Jews those people in whom other historical factors have not fostered those qualities. The task of government is to come to the aid of such people, to prevent the exploitation of one by the other. The government has not only the right but the duty to limit Jewish exploitation.

The Darwinian, or perhaps one should say Lamarckian, pessimism inherent in this discussion is all the more striking given the élite education and status of the Russian lawyers it sought to defend. In fact, the same reasoning was extended to other élite segments of Russian civil society:

One or the other - either we recognize that Jews in Russia ought to have the same rights as Russians, in which case there would be no need to limit their admission, or, recognizing the danger of their predominance, we should also limit their numbers in all professions.
There is no denying that the word "competition" comes up frequently in attacks on Jewish lawyers from within the profession. It is therefore tempting to suggest that ethnic and religious rivalries within the professions in Russia were driven primarily by competition for employment and status. But as critics of quotas pointed out again and again, the facts indicated otherwise. Indeed, the evidence points to a severe shortage of lawyers in the Russian Empire: in 1889, the year Spasovich released the data on religious affiliation, there were fewer than 3000 lawyers in a country of over 100 million people, or one lawyer for every 35,000 people. It seems, therefore, that we should understand "competition" not in terms of supply and demand, but of perceived ethnic and cultural dominance.

Despite Spasovich's impassioned plea that the General Assembly of Lawyers take the initiative and establish Jewish quotas in the profession, no consensus was reached on what was by now a red-hot issue. An appeal by Spasovich to the Minister of Justice to help reduce the flow of Jews into the legal profession, by lifting the unofficial ban on hiring Jews for the civil service, fell on deaf ears. Instead, in November 1889, the Justice Ministry, with Tsar Alexander III's approval, issued a temporary administrative decree which required that every admission of a non-Christian apprentice lawyer to the Bar receive the personal approval of the Minister of Justice.

For Spasovich, this decree represented a resounding defeat. By granting personal discretionary powers to the Minister of Justice, it increased state control over admission to the Bar far more than internal quotas would have. And like many so-called "temporary" administrative measures in late Imperial Russia, the November 1889 decree remained in force until the collapse of the Old Regime in February 1917. During its first fifteen years, that is up to the Revolution of 1905, an average of one Jewish apprentice lawyer per year was admitted to the Bar. Thereafter, the numbers fluctuated but remained low. Maksim Vinaver and many other Jewish lawyers were forced to remain apprentices even as their published works and political activism earned them wide renown. A joke began to circulate about Jewish tombstones reading "Here lies an apprentice lawyer..."

Russian Identity and the Consequences of Empire

As one traces the effects of the 1889 decree, one is struck by the extent to which public debates about ethnicity and the legal profession not only did not subside, but intensified. This was in part because significant numbers of Jews continued to become apprentice lawyers, even while being denied full membership in the profession. Yet in another sense, concern about Jews in public institutions fed off of broader, more intractable anxieties on the part of the intelligentsia, regarding Russian identity and the consequences of empire.

By and large, educated Russians regarded themselves as the only historical nation in the empire, with the possible exception of the Poles. That is, they saw themselves as the only ethnic group that had a tradition of political sovereignty, and thus a natural claim to pre-eminence. But the
Russian state, like most imperial states, preferred to express its legitimacy in a conservative, dynastic idiom, and was wary of any kind of alliance with Russian nationalism. What historians have often referred to as an official policy of "russification" of minority groups was in fact aimed more at domestication and extraction of utility, rather than at re-fashioning national identities. Ironically, the very success of the government's program to harness non-Russians to the project of modernizing the empire ended up threatening, or appearing to threaten, Russian national pre-eminence, especially in new social arenas such as the professions.

The central feature of the debates about Jews in the legal profession after 1889 is that they severely compromise our received image of russification and discrimination against minorities as driven primarily by the state. One can certainly understand how this misleading image fit the self-understanding of the pre-revolutionary intelligentsia, which saw itself as fighting for liberation and progress against a despotic regime. This same intelligentsia produced the first generations of historians of Imperial Russia, whose works long nourished the field in general. Even in current research on the professions and the middle class in Russia, the liberal mythology of russification and discrimination as originating in the autocracy is alive and well.

Without denying the state's readiness to discriminate against Jews and other minorities, I would argue that the decisive impetus for such action more often than not came from within the Russian public itself. Before 1889, it was the conservative press and groups within the legal profession that first raised and substantiated demands for restrictions on Jewish admission. To be sure, the government hardly needed to have its arm twisted in order to act on such demands. But it is worth noting that when it did act, as in the 1889 decree, the government operated within certain limits. It did not target Jewish lawyers who converted to Christianity. It did not, until 1912, target Jews who worked as apprentice lawyers. It did not retroactively revoke membership in the Bar.

By contrast, debates among lawyers after 1889 show that substantial portions of the profession, including many of its most respected representatives, wanted to go much further than the government.21 A group of Moscow lawyers demanded in 1890 that the official registry of Bar members list Jews by their Yiddish names, rather than the Russian versions. In the same year the Odessa Bar summarily expelled thirty-two Jewish apprentice lawyers from its ranks. Shortly thereafter, the Moscow Bar Council voted to stop accepting Jews as apprentice lawyers, while the St. Petersburg Bar Council voted to require that Jewish apprentice lawyers be given a maximum of three years, rather than the usual five, to gain admission to the Bar, after which they would be expelled from the profession. Both of these votes were subsequently annulled by the government.

At the turn of the century, the Ministry of Justice organized a commission of twenty-four leading attorneys and jurists to re-examine the whole complex of questions regarding admission and self-government. A virtual who's who of the legal profession, the commission included members such as Spasovich, St. Petersburg University law professor Nikolai Tagantsev, and the most famous
attorney of the time, Anatolii Fedorovich Koni. In its concluding recommendation that a formal system of quotas on Jews in the legal profession be established, the Commission stressed the importance of Christian morality in the burgeoning public arena, where new and unfamiliar forces were finding expression:

One cannot ignore the danger for state and society that can result from the subordination of an entire institution to points of view alien to Christian morality. This danger, so easy to confront in government institutions by simply barring the admission of non-Christians above a certain quantity, presents a particularly serious problem for those public institutions which are accessible to all persons who can satisfy certain legally established requirements. To such institutions unquestionably belongs the legal estate, for which the danger of being flooded with morally unreliable individuals is compounded by the practice of estate self-government. Any group of individuals, having achieved numerical predominance, acquires thereby a dominant position in the estate.22

As several critics subsequently noted, the Commission’s final report, while amply documenting the proportion of Jews in the legal profession, contained no evidence whatsoever concerning the ethical behavior of Jewish and non-Jewish lawyers. Over a decade later, an ad-hoc committee of attorneys used the Commission’s own data on disciplinary actions against lawyers to show that there was no correlation between the frequency of such actions and the proportion of Jews in the various judicial circuits.23

But the Commission went further, giving voice to the same pessimism heard in earlier rounds of debate:

Given the Jewish tribe’s characteristic unity and capacity for cohesive, coordinated and determined action - as opposed to the lack of organization and happy-go-lucky attitude towards one’s interests which make up the usual qualities of the Russian character - there is no doubt that, even without achieving numerical predominance, the Jewish portion of the legal estate might be able to secure power over estate governance and subordinate the remaining lawyers to its moral viewpoint.24

As this passage suggests, Commission members were not content to keep Jews a simple minority in the legal profession. Instead they insisted that Jews should be allowed to constitute no more than 10% of the lawyers in any circuit. Had this plan been realized, it would have meant mass expulsions of Jews who had been full members of their Bar Associations. Finally, Commission members voted to forbid Jewish lawyers from being elected by their peers to the post of Chairman or Vice-Chairman of regional Bar Councils, finding that "it would be impossible for such individuals to serve as representatives of the entire estate of lawyers."25

A minority of lawyers - some of them Jewish - publicly protested the commission’s findings. One ad-hoc committee blasted the Commission for applying crude national stereotypes within an elite
profession such as the Bar, and insisted that if Jewish lawyers in fact abused their clients, the latter were free to turn to Russian lawyers without any necessary interference by the state. With regard to the proposed ban on electing Jews to positions of leadership within the profession, the committee condemned the idea that "people who have received higher education and long years of practical training, and who now occupy prominent social positions, are incapable of selecting their own representatives." 26

But alongside these dissenting voices one could find others willing to endorse the Commission's findings, or even to push for more severe restrictions. Two Commission members urged that the Jewish quota be set at 5% rather than 10%. In a separate appendix to the commission's report, the lawyer Fedor Nikolaevich Plevako, a future delegate to the Russian Duma, argued that the quota should apply to people of "non-Christian origin" rather than simply to "non-Christians," so as to include Jewish converts to Christianity. In the name of an integral, Russian-Orthodox nationalism, and drawing on the Slavophile privileging of inwardness over formal reason. Plevako carried the Commission's stated position on legal culture and national identity to its logical extreme:

Law, like religion, can be the subject of knowledge. But can someone who knows our dogma in great detail, and yet remains outside it for want of acknowledging its truth, can such a person be a teacher of faith? No, he cannot, for he knows but does not believe. The same holds for the law. It is not enough to know it, one must live it, embody it in oneself by means of ideas transmitted through native speech, native customs, native conditions. Herein lies the justification for restrictions on the admission of non-Christians to the corporation (and not only that of lawyers). 27

Another ardent nationalist and member of the Bar, Vladimir Ptitsyn, came to similar conclusions in his 1905 pamphlet The Russian Legal Profession and the Jews. This work is particularly striking for the way it combines bold calls for greater professional autonomy for lawyers with attacks on Jewish members of the Bar. Even after fifteen years of highly restricted admissions, Ptitsyn claimed, Jewish lawyers still enjoyed a dominant position in the legal profession. The solution, he argued, was to create a separate Bar Association for Jews, with sharp limitations on the kind of work its members could perform.

This proposal was never translated into reality. Admission of Jews to the Bar continued to depend on a case-by-case review by the Minister of Justice. But in 1912 the government responded to renewed complaints from regional Bar Associations, and extended the 1889 decree so as to require permission from the Minister of Justice not only for Jews seeking full membership in the Bar, but for those applying to become apprentice lawyers as well. Thus within a half-century of the creation of an open, semi-independent legal profession in Russia, Jews were entirely barred from admission to its ranks.
Conclusion

Although I have limited my remarks to the legal profession, a similar though less well-documented story could be told about the medical and pharmaceutical professions as well. Other groups, such as engineers and teachers, await further research. With striking consistency, debates about Jewish lawyers extended to other professional groups, and by implication to the entire nascent public sphere. The *Journal of Civil and Criminal Law* insisted that Jews should not be allowed to predominate in any public institutions, while a more liberally-minded newspaper observed at the turn of the century - with regret - that "there is no estate from which one does not hear calls for new restrictions against the Jews."  

As a case study, the legal profession illustrates with maximum clarity the dilemma confronting what one might call an "imperial civil society." In tsarist Russia one could hardly find a more highly educated, urban, and independent social group than lawyers. No other profession had as much autonomy. Yet even here the need to combat Jewish influence took on an irresistible logic, even when it was at the price of state intervention in the fundamental mechanisms of professional life, namely admission to the Bar and election to its regional Councils. The Bar therefore provides the sharpest example of how the formation of a civil society in late Imperial Russia was complicated by ethnic and religious fault-lines, and not solely by the resistance of the autocracy.

Behind many of the calls for restrictions on Jewish lawyers was a conviction that unregulated social mobility according to educational and other ethnically neutral criteria would put Russians at a decisive disadvantage in their own country. A profound ethno-cultural pessimism, not to say despair, seems to have insinuated itself into fin-de-siècle Russian elites.

Russia was of course not the only country to confront the presence of ethnic and religious minorities within its borders, although except for Austria, no other country in Europe could match the Russian Empire for the sheer range and size of its minority groups. Nor is the phenomenon of the "missing bourgeoisie," the "illiberal" middle class, or the "weak" civil society unknown in other European countries, as we know from the voluminous historical debates concerning nineteenth-century Germany.

I would therefore like to conclude by briefly reflecting on the larger European context of the issues I have been discussing. In Britain and much of Western Europe, the classic "free" professions of law and medicine emerged out of the centuries-old traditions of guilds. Even as they re-legitimized their power and privilege during the nineteenth century through a new discourse of expertise and service, lawyers, doctors, and other professionals in Western Europe continued to jealously guard their monopolistic prerogatives, whether against aristocratic resistance from above or democratic pretensions from below. In Central and Eastern Europe, by contrast, professions were often fashioned from above by absolutist states, with little opportunity for monopolistic self-regulation. In a context of delayed but rapid economic growth, professions became powerful
channels of social mobility, especially for urban minority groups. If the professions in the Eastern half of Europe were free of exclusiveness based on estate or class, they often succumbed to various practices of ethnic and/or religious exclusion, and in doing so, invariably opened themselves to direct intervention by the state. In this way, the East European pattern of a relatively late but accelerated transition to modernity, combined with the phenomenon of the "ethnic shatter zone" - the dense conglomeration of many different nationalities within a single polity - produced an explosive combination that took its revenge on aspirations for professional autonomy, and more broadly on the formation of civil societies.

My attempt to place the Russian Empire in a European context brings us around full circle to the issue of periodization, with which I began this essay. Looking comparatively at state-sanctioned ethnic or racial quotas within the professions, does Russia fit into a broad pattern that extends beyond the First World War, to newly independent states such as Hungary and Poland in the 1920s and, in its most extreme form, to Nazi Germany? In all these cases, whether the end result was a quota system, separate professional associations for different ethnic groups, or outright expulsion of minority members, the initiative began within the professions themselves, coinciding with a loss of confidence in the efficacy of laissez-faire development, and with a new desire by professional elites for direct intervention by the state.

What is curious, and what demands explanation, is why Russia appears chronologically first on this list. After all, we are used to thinking of Russia as relatively backward, engaged in a game of catch-up modernization. New forms of negotiation between state and society are supposed to emerge in the West and spread to the East, not vice-versa. In this regard, it is tempting to fall back on the paradigm of what Laura Engelstein has called "precocious dissatisfaction," that is, the fact that the Russian intelligentsia produced a critique of capitalism, liberalism, and bourgeois culture before they had a chance to develop on Russian soil.

But in fact there was nothing precocious about the anxieties within the legal profession. By the end of the nineteenth century, after only three decades of accelerated, state-driven social reform, the domestic consequences of Russia's imperial expansion were fully apparent. The intersection of empire and modernity produced the phenomenally rapid and large-scale integration of minority groups, groups which in some cases were more urbanized, more literate, and better positioned than Russians to enter the new, modern occupations created by the Great Reforms. This explains, I think, why lawyers in Imperial Russia were among the first in Europe, rather than the last, to compromise their independence from the state.

It also helps explain why, despite the Marxist conviction that national differences would wither away under socialism, similar ethnic restrictions reappeared in the Soviet Union in the 1930s, and remained in place until that country's break-up five years ago. It is true that in contrast to tsarist Russia, ethnic quotas in the Soviet empire were never officially acknowledged. But they too were a
response to rapid social and geographical mobility on the part of non-Russians that had begun well before 1917 and continued into the 1920s. Whereas prior to 1917 the concern had been over the ethnic composition of public institutions that made up a burgeoning civil society, after 1917 attention focused above all on the ethnic composition of the Communist Party itself, which in both theory and practice had all but replaced civil society.

Modern Russian history has not yet found its Tocqueville, someone who can tease out the deep continuities across the revolutionary divide of 1917. But when it does, that person will undoubtedly highlight the continuity, and the centrality, of the imperial dimension.

ENDNOTES

1. With the exception of France, where Jews were first admitted to the Bar in 1791, most European countries did not permit Jews to practice law until the mid-nineteenth century. See "Lawyers," Encyclopedia Judaica (1972) Vol. 10, pp. 1490-1498.


3. M. M. Vinaver, Ocherki ob advokature (St. Petersburg, 1902), p. 36.


6. Vysochaishe uchrezhdennaia kommissiia dlia peresmotra zakonopoloizhenii po sudebnoi chasti. Ob"iasnit'naia Zapiska k proektu novoi redaktsii uchrezhdeniia sudebnikh ustanovlenii vol. 3 (St. Petersburg, 1900), pp. 34-35.

A five-year apprenticeship (usually following graduation from a law faculty) was required before one could apply for full membership in the Bar.

7. "Z" [pseudonym], "Za mesiats (Iuridicheskaia khronika)," Zhurnal grazhdanskogo i ugolovnogo prava no. 6 (June 1889), p. 146. I have found no data on the number of apostates from Judaism in the legal profession.

Those who warned of Jewish dominance, however, commonly asserted that because of the considerable number of converts, data on religious affiliation failed to convey the full extent of Jewish control.


Another issue of the same newspaper (no. 3817 [August 23, 1887]) claimed that "It is hardly necessary to hold forth on the influence of the Jewish element on our still young but already powerfully corrupted legal profession. Everyone is fully aware that it is precisely the Jews who cultivate the type of lawyer whom society treats with deserved disdain, the wheeler-dealer type, for whom there is no such thing as black and white, but only sky-high fees for which he is ready to crucify truth and conscience and anything else several times a day."

10. Sudebnaia Gazeta no. 23 (1886), pp. 10-11.

11. Between 1885 and 1887, the percentage of Jews among apprentice lawyers in Moscow had risen from 3% to 17%. See I. V. Gessen, Istoriia russkoi advokatury Vol. 1: Advokatura, obshchestvo i gosudarstvo, 1864-1914 (Moscow, 1914), p. 280.

12. Source: Zhurnal grazhdanskogo i ugolovnogo prava no. 6 (June 1889), p. 146.

13. Zastoi'nya rechi V. D. Spasovicha, p. 51; Zhurnal grazhdanskogo i ugolovnogo prava no. 6 (June 1889), p. 145.


15. Ibid., p. 29.

16. Ibid., pp. 51-54.

17. Ibid., pp. 54-55.

18. Ibid., p. 31; Nedel'naia Khronika Voskhoda no. 16 (April 15, 1882), p. 419 and no. 50 (December 14, 1882), p. 1368; Evreiskaia entsiklopediia. Svod znanim o evreistve i ego kul'ture v proshloim i nastoiaschem (St.

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19. Zhurnal grazhdanskogo i ugolovnogo prava no. 6 (1889), pp. 147-149.
20. Ibid., p. 154.
22. Vysochaishe uchrezhdennaia kommissiia dlia peresmotra zakonopolozhenii po sudebnoi chasti, vol. 3, pp. 33-34. Here as elsewhere in the contemporary discussion of quotas the terms "non-Christian" and "Jewish" were used more or less interchangeably to refer to the objects of restrictive policies. As the Murav'ev Commission noted (ibid., p. 40), in 1896 there were a total of four Muslim lawyers in the Russian Empire. Other non-Christian religions were not represented in the profession.
27. Vysochaishe uchrezhdennaia kommissiia dlia peresmotra zakonopolozhenii po sudebnoi chasti, vol. 3, appendix three, pp. 4-5 (emphasis in original). Plevako's professional encounters with Aleksandr Passover may have helped to foster (as they did for Spasovich) an enduring and ambivalent impression of Jewish lawyers. Commenting on Passover's manner, Plevako remarked, "A remarkable mind, perhaps non-Russian - he doesn't squander his energies in the least, he doesn't glance off to the side. A mind as sharp as a razor, mercilessly piercing precisely that which it seeks to pierce." See Severnyi Vestnik no. 3 (1897), p. 323.
28. Fuller treatment of this and other issues raised in this paper can be found in my book, Beyond the Pale: The Jewish Encounter with Late Imperial Russia (forthcoming, University of California Press).
29. Zhurnal grazhdanskogo i ugolovnogo prava no. 6 (1889), p. 147; Russkaia Mysl' no. 3 (1888), p. 197.
30. The literature on the professions is enormous; I have benefitted in particular from the following works: Harley Balzer, ed., Russia's Missing Middle Class: The Professions in Russian History (1996); Konrad Jarausch, The Unfree Professions: German Lawyers, Teachers, and Engineers, 1900-1950 (New York, 1990); Maria Kovacs, Liberal Professions and Illiberal Politics: Hungary From the Habsburgs to the Holocaust (New York, 1995); Kenneth Ledford, From General Estate to Special Interest: German Lawyers 1878-1933 (Cambridge U.K., 1996).