TITLE: BETWEEN STATUTE AND CUSTOM: MEDIATION, the JUSTICE OF THE PEACE, and POPULAR LEGAL CULTURE IN IMPERIAL RUSSIA

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Executive Summary

The Problem
In this paper I examine the origins, theory, and practice of mediation in the Russian judicial system of the late imperial era. This same sort of adjudication has recently been revived in the United States under the name of Alternative Dispute Resolution. Mediation as a judicial process is also of great interest to reformers in Russia and other regions of the former Soviet Union, in their efforts to reconstruct their judicial institutions and practices.

The Argument
I argue that Russian reformers in the nineteenth century had mixed, sometime contradictory motives for instituting mediation. These motives illuminate the mentality of the judicial reformers of the 1850s-60s and their ideas about popular legal consciousness. The conflicts among motives also help explain why mediation failed to sink roots in Russian judicial practice. In addition, the practice of mediating disputes failed to fulfill reformers’ high expectations for a variety of reasons (discussed below), all of which have lessons for today’s judiciary.

Mediation in Theory
Russian reformers in the nineteenth century were united in their wish to see mediation become the main form of adjudication in the justice of the peace court, the institution that had jurisdiction over petty crimes and civil disputes, but they did so out of a variety of motives. These included:

1. using informal procedures as a way of cutting through the layers of corruption and red tape that were making the pre-reform courts unable to deal with existing case-load.
2. viewing mediation as a speedy, efficient method for dealing with the increasing case load brought on by urbanization, commercialization, and industrialization.
3. viewing mediation as an oral, public procedure that would make the legal process more accessible to the largely illiterate and legally ignorant population and could therefore “teach the law to the people.”

These conflicting desires meshed nicely during the reform process so their underlying differences did not create problems until after the courts were in place.
Mediation in Practice

The reasons mediation failed to meet reformers’ hopes include the following:

1. As for efficiency, mediation did indeed replace lengthy, intimidating, and incomprehensible written procedures, making the court more efficient and more accessible as well. But when justices of the peace mediated settlements they took much longer than when making a decision based on statute law. Because the courts were more accessible to more people, their caseload far exceeded expectations and continued to grow throughout the century. By the beginning of the twentieth century, few JPs had the time to mediate settlements. And, unless litigants specifically requested mediation, most urban JPs stopped offering it as an alternative.

2. JPs based mediated decisions on their personal evaluation of oral testimony. They were supposed to take individual and extenuating circumstances into account and hard evidence was not officially required. Thus, the ambiguous status of evidence created two difficult problems.

   ---Appeals courts (the Senate) overturned almost all cases based on mediation when they either did not accord with a specific law or were not based on verifiable evidence. This naturally made people less inclined to opt for mediation in the first place.

   ---JPs viewed evidence in highly disparate ways. Some regarded written evidence as essential to decision making in mediation and, at the other end of the spectrum, others disregarded evidence that contradicted testimony. Both undermined the popularity of the mediation process and neither enhanced the cause of serving justice.

3. The kinds of cases that JPs mediated illustrate another set of problems with mediation. (The second half of the paper is devoted to reporting and analyzing these cases.)

   ---Insults and disputes. These were the most common civil cases heard in the justice of the peace courts. They were successfully mediated in cases where insults and injuries were extremely petty, the litigants knew each other and had good reason to wish to put the dispute behind them, or where they were of a similar culture and socio-economic group, which minimized additional sources of resentment. When class, ethnicity, and gender differences entered the picture, mediation became almost impossible. In the court’s early years the JPs...
continued to attempt mediation, but increasingly both disputants and justices opted for statute and vengeance.

---Debts. Debts were most successfully mediated when there was a concrete amount of money that could be divided between litigants.

---Labor disputes. Disagreements between workers and employers had a mixed record. When workers could produce written evidence that they had been cheated out of their pay, they won their settlements, but in most cases contracts had either been arranged orally or the workers claimed that because they were illiterate, their employers could falsify contracts or other documents without their approval or agreement. In analogous cases concerning peasants, litigants bringing cases against members of the nobility, most JPs bent over backwards to favor the peasants when the evidence was murky, but the same JPs generally favored commercial and industrial employers over workers in equally ambiguous situations. Cases brought by domestic employees/servants generally fell in the former category and JPs often went out of their way to add to the embarrassment noble and military men felt at being summoned to court by a domestic servant who claimed she had been abused or insulted by them. Not surprisingly commercial and industrial workers ceased bringing their grievances to the JP courts. In part this was also the result of the appearance of other options for expressing labor-related grievances (strikes and other less organized collective activities) but labor grievances resurfaced in the JP courts in the early 1900s. In this period workers rarely requested mediation and often won their cases.

Conclusions

Regarding late imperial Russia

Russian reformers underestimated the ability of the Russian people to both understand and manipulate the law (zakon). Although mediation made the JP courts more accessible, other factors were more important in increasing accessibility (vernacular, oral testimony, no court fees, speed of decision-making), and mediation often worked against them. On the other hand informal, direct testimony in the JP courts, which was often begun as mediation, was successful in spreading knowledge about and comprehension of the law: the justice of the peace courts were indeed a “school” for “teaching law to the people.”

Mediation worked best where there was something concrete to divide or where disputants had a stake in reconciling with each other, in other words where there was a community of interests and a common language of expression. Mediation was especially disastrous in disputes between members of different ethnic groups or classes: either there was not enough of a
common language to engage in mediation or at least one side was more interested in vengeance than in healing.

For Contemporary Reformers

Alternative Dispute Resolution in the United States since the 1980s has followed many of the same patterns I discovered in Russia in the late nineteenth century in terms of identifying the conditions in which ADR or mediation worked best. Russian reformers and judicial practitioners could learn from these experiences when and where ADR is likely to have the most success.

The Russian reformers of the 1850s and 1860s were sure that the people's lack of experience in courts of law or with the "rule of law" would hinder their ability to learn to use the law or obey it or respect it. Based on the nineteenth-century experience, this is utter nonsense. By the end of the nineteenth century, after the JP courts had been in place for two decades or more, everyday urban life -- commercial, civil and criminal -- was regulated by law and regulated relatively well. The "rule of law" was hindered far more by tsarist bureaucrats and radical revolutionaries who flaunted their disregard for the law, than it was by popular ignorance and inexperience. The post-Soviet leadership might learn from this experience as well.

Mediation failed in part, because JPs used it inconsistently and at time unfairly. Therefore, even ignorant workers and other poor and middle-class folks were able to recognize a lack of stability and certainty in comparison with the more dependable statute law. No set of laws and practices is without its prejudices and usually those prejudices perpetuate the hierarchies and injustices of the rest of the social system. However, it turns out that even those who are at a disadvantage before the law often choose it over less predictable forms of adjudication. This is not meant to be taken as license to establish inherently unjust legal systems, but as notice that since law is more easily understood by the inexperienced than leaders had usually realized and since power of the law is attractive to people, it has provided the means for challenging inconsistencies and injustices. Post-soviet leaders should learn from this as well: "Build it and they will come."
The judicial reform of 1864 is almost always represented as an effort to transform Russia's native, "traditional" legal system into a "modern," "western" one. Scholars have assumed that the reformers saw Western European legal systems not only as a suitable model but as the only possible ideal.¹ In fact, however, Russia's judicial reformers were anything but slavish imitators of the west. The jury, the bar, the justice of the peace, the separation of judicial from administrative powers, glasnost' and adversarial trial procedures were, of course, based in part on western models, but these institutions and their western components have been highlighted in studies of the reforms (beginning with the reform-era press and late nineteenth-century liberal historians) because they were western and foreign, not because they comprised the totality of the reforms. Many features of the judicial reforms were, in contrast, rooted in native practices and many of the most western institutions were adapted to Russian conditions. The authors of the judicial reforms agreed as a body on very little, but they all -- even the most liberal and western-oriented -- believed in the need to create a judiciary suited to what they saw as unique Russian conditions.² In many cases that meant adapting western models but in others it meant reviving native institutions and practices.³ Not only was customary law retained in rural areas (in what most reformers hoped would be a short-term temporary measure) but custom was also explicitly to be taken into account in the resolution of disputes in the justice of the peace court.⁴ This was not just a matter of artificially recovering bits of the national heritage in order to deceive a recalcitrant government into accepting a legal system at odds with the basic tenets of autocracy. Reformers looked to native traditions for usable institutions that may have been hampered by arbitrariness (proizvol) in the past. And when they looked to the west, they found both institutions based on the idealized model (the jury, the justice of the peace, etc) but they also found courts with substantial room for interpretation based on various contingencies -- equity courts, courts of conscience, courts of mediation and of "summary" justice.

These misunderstandings of the reformers' views concerning judicial institutions are rooted in a second misconception regarding the law. Earlier historians have often accepted the liberal view of the law as transcendent, acontextual, neutral, and universally applicable, at least in sufficiently "developed" societies. This perspective valorized written statute law, adversarial procedure, certain kinds of evidence, and the discovery of guilt or innocence, as the
foundations of the rule of law and essential to the pursuit of justice. The corollary of this view is to see any practices that are contextually contingent, subjective, or variable as inferior: they represent backwardness, Russianness, or perhaps peasantry and such elements of contingency had to be eradicated in order to establish the rule of law. The process of replacing one with the other has been seen as a linear one, similar to familiar modernization models, and the desire to do so has been at least partly mistakenly attributed to the reformers of the 1850s and 60s. Distinctions between custom and statute were clarified and articulated after the judicial reforms were enacted, in part through observing the new institutions and their shortcomings, during debates over the existence of customary law in the 1870s and 80s. During the reform process these ideas were more intuitive and unexamined.

Here the historical motives of the reformers are more difficult to untangle. A wide variety of perspectives characterized opinions of the reformers on nearly every aspect of the Statutes and many of those involved were internally inconsistent. On the whole, the framers of the reforms spoke or wrote about formal, written, statute law, universally and equally applied in Russian society, as the eventual goal of the process, and they clearly saw any aspect of customary law or any other of the more contingent aspects of legal practice as signs of backwardness, to be eliminated. But, on the other hand, the same individuals gave elements of custom, conscience, and contingency key roles in the new judicial system. Here I am not speaking of the exclusion of the rural peasantry from the new judicial system. I am referring to the resort to conscience allowed Russian jurors, the government’s refusal to grant a legal monopoly to the lawyer’s bar association, and especially to the institutionalization of mediation in the justice of the peace courts. The reformers clearly saw these elements as “vestiges of backwardness,” unfortunate but necessary elements given the state of Russian development -- but they were included in the new system anyway.

Two elements of contingency were, in fact, central to the conception of the justice of the peace court -- the new institution with which by far the most people had contact. The Judicial Statutes of 1864 allowed the justice of the peace to make decisions based on mediation in civil cases and on “common sense” or “inner conviction” in criminal cases. They were to resort to statute or “decree a resolution” only when mediation failed. Even then a JP might base his decision (there were no female JPs), on statute or on his own “conviction” or “conscience”. In all cases, justices of the peace were to take into consideration local customs and traditional practices even when they conflicted with statute. These provisions hardly resemble a blueprint for the development of a “modern,” “rational,” western, liberal legal system. They do, however, describe a system in which the formal was expected to function alongside the customary and the subjective to provide equal justice for all -- a commodity distinctly lacking
on serf estates as well as in the prereform courts. The combination was also expected to spread understanding of and respect for the law and the courts among the population. This made the justice of the peace courts a critical site for the development of popular legal culture and an ideal laboratory for testing the ability of custom and statute to coexist.

In this paper I want to explore the ways in which the urban JP court functioned between custom and statute by examining the role of mediation. Some reformers assumed that the narod would need mediation because they were incapable of understanding formal law, but these reformers hoped that statute would eventually replace that need. I want to argue that formal law very quickly replaced mediation, but not because formal statute was inherently more just. On the contrary, mediated settlements, based on subjective judgments regarding context, personalities, and traditions were not necessarily inferior methods of resolving disputes. Consequently, I would like to suggest that the rule of law is not necessarily better served by formal statutory laws. In part this is because their universality and neutrality are exaggerated -- ruling elites have always been "more equal" under the law than subordinate groups, and it didn't take Foucault to teach us this. A staple of popular rebelliousness and, later, of Marxist thinking, lower-class and marginalized groups have been challenging the rhetoric of legal equality for centuries. But more interesting, formal law needs to be seen as only one method of justice. There are of course many situations in which even the illusion of neutrality and the goal of punishing the guilty serve justice best, and conversely, there are more than enough examples of situations in which judges have abused the powers of informal, flexible procedures, but there are also cases where reconciliation works better or should work better. Mediation failed to establish itself in the Russian justice of the peace courts, but its fate was neither a foregone conclusion nor was it an indication of the superiority of statute. The failure of mediation in the justice of the peace court has more to do with the purely pragmatic considerations of dispute resolution and with the ability of statute (or the myth of statute) to exert its authority. Its illusory simplicity and universality appeal not only to powerful state actors but also to individuals seeking a modicum of control in the minutiae of everyday life.

Mediation can take a variety of forms and serve a number of purposes, intended and unintended and it was instituted in Russia for a number of specific historical reasons. In order to understand what role it played in the Russian judicial system we need to begin by examining the role reformers wanted it to play.

The Origins of Mediation in the Reform Process

Although the justices of the peace courts evolved into courts of formal, statute law, particularly in the cities, there is abundant evidence that most people involved in the reforms
expected these courts to be primarily, even exclusively, institutions for mediation rather than
courts of statute law. Until late in the century many sources never even refer to a justice of the
peace court (mirovoi sud) but only to the justice of the peace (mirovoi sud'ia), emphasizing the
personal quality of justice being offered. This is most clearly expressed in the Statutes
themselves: the justice of the peace was to “decree a resolution” only when mediation failed,
as noted above. “The principal task of the justice of the peace and the loftiest quality of his
justice is mediation. He is not only a judge, but a conduit for bringing about
reconciliation.”⁹ The primacy of mediation was behind the extensive discussions regarding
the personality of the ideal JP: ordinary judges needed juridical training but mediators needed
“common sense,” “good will,” “knowledge of local customs and local affairs,” and so on.¹⁰
A sharp distinction was made during the reform period between the justice of the peace
courts and those of the rest of the legal system precisely because of the JPs’ role as mediators. In
fact, one of the main controversies connected with the establishment of the justice of the peace
courts was over their place in the hierarchy of appeals. Many jurists wanted to exclude JPs’
cases from the appeals process altogether, for the same reason the volost’ courts were
excluded: because they based their decisions “po sovesti” -- on the JP’s individual conscience,
and therefore could not logically appeal to a court that based decisions on the rules of
evidence.¹¹

Justifications for granting the JPs the power to decide cases on the basis of mediation
ranged from the theoretical to the most practical, but mediation was always and for everyone
central to the conception of this institution. What follows, then, is not meant to be a complete
bureaucratic history of mediation, but a search for the social and cultural assumptions that
placed mediation at the center of the most popular of the judicial reforms.

Historians have recognized that an urgent need for efficient and accessible courts to deal
with petty crimes and civil disputes was widely felt before the Crimean War and the end of
Nicholas I’s reign.¹² Less well-known is that a petty court with some kind of simplified
procedure was among the first features of the reform to receive nearly unanimous approval
among the various people involved in judicial reform. In one of Count Dmitrii Bludov’s first
official reports to Alexander II, such a court featured prominently: “in rural districts it will be
necessary to establish . . . several lower, petty courts (sudov), or one should say judges
(sudei), empowered to base decisions upon abbreviated procedure (sokrashchennoe
sudoproizvodstvo)¹³, in oral hearings . . . In this regard, it would be useful to require that
such a court . . . attempt mediation between the disputants and only if that fails to move
toward a decision based on law.”¹⁴ At the other end of the political spectrum, Sergei
Zarudnyi wrote almost identically of the need for courts that could decide the petty cases of everyday life in procedures that were simpler and speedier than regular processes. “Abbreviated procedure,” in local, petty courts “is the expression of a popular need, not a lawmaker’s imposition.”¹⁵ Even Count Viktor Panin, the most obstructionist of the officials connected to judicial reform, saw the value in local courts with some kind of simplified procedure based on mediation.

But agreement on the need for such courts masked significant differences among the motives of those who supported mediation as a procedure appropriate for the petty courts. It is, however, important to note that these disagreements did not provoke major or even minor conflicts among reformers or government officials during the reform process that produced the justice of the peace court, a process remarkably free of controversy (ironically, because it was as viciously attacked as it was lavishly praised from the day it opened its doors). Nonetheless, people involved in the judicial reform supported the court and its special procedures for a variety of different reasons, which are worth probing in order to understand how Russian judicial and political leaders conceptualized mediation and the character of popular legal needs.

Mediation as a judicial process first surfaced in reform discussions in connection with the need for simpler, time-saving, or “abbreviated” procedures. For many of the reformers, procedural simplicity was not much more than a way to eliminate the endless stultifying bureaucratic methods of the existing courts. In this regard, mediation did not figure as an alternative to adversarial process or formal law, but rather as a simple expedient.¹⁶ Other reformers and especially local officials who expressed opinions about the need for reform went far beyond these moderate, pragmatic, goals. Zarudnyi specifically linked the oral nature of adjudication in the petty courts (necessary to circumvent the time-consuming red tape of existing courts) with the need for glasnosit’ in the judicial system as a whole. Zarudnyi also based part of his argument for the separation of powers on the need for local mediation courts. He believed that establishing genuine justice in regions where serfdom had only recently been abolished required that the courts be accessible and comprehensible to the narod, rather than the exclusive province of the landed elite or the local government. Mediation in oral hearings, based as much on local custom as on formal law was necessary, he thought, to provide a foundation for cultivating popular trust for law and legal institutions. But in the aftermath of emancipation, all the judicial functions that remained after removal of the pomeshchiki from authority over the peasants, remained in the hands of the local police or other administrative authorities, figures in whom the peasants put no trust whatsoever. Only the complete separation of powers at the local level would permit the growth of legal consciousness. Zarudnyi
argued. In both cases the informal procedures of mediation in local courts were expected to make justice more accessible, more fair, and less likely to be subject to the arbitrary power of local police and administrative officials. This complex, liberal view was not shared by those who were more interested in abbreviated procedure for efficiency’s sake.

Views on mediation were also divided along rural-urban lines. For rural society, reformers sought first and foremost a replacement for the judicial functions noble landlords had performed as masters over their serfs. The urgency felt in regard to urban areas was connected to the quickening of commercial life, which produced an increase in the number of financial disputes and the growth of “dangerous elements” within the working class. Each sector of the population required courts that could circumvent formal legal procedures but for somewhat different (though of course overlapping) reasons. In cities and towns, the ability to make quick decisions on a growing number of disputes related to commercial life, and the need to deal rapidly with the petty criminals who seemed to gravitate to commercial centers, were far more important in the thinking of urban officials than the need to make justice accessible or comprehensible. These needs were felt not only in the established urban centers of central Russia but in small towns and trading centers as well. The lack of funds and personnel made the implementation of the judicial reforms problematical, which is more fortunate for historians than for the hapless officials in the far-flung towns of the empire -- local leaders had to petition for permission to open new institutions, which produced an illuminating trail of documents. In Orenburg province, for example, officials managed to publish a small pamphlet for making their case to the center, requesting the right to open justice of the peace courts sooner rather than later. They explained that Orenburg and Troitsk were trading centers from early spring to late fall,

at which time there arise a great many cases involving small sums of money, which require quick resolution. In addition, Cheliabinsk is a nest of horse thievery and petty theft, as well as a magnet for vagrants and runaways from Siberia. The recommended number of justice of the peace institutions cannot remain unchanged since the city is growing incessantly with continuously new waves of people and new buildings (in 1865, 576 new buildings were constructed). With the increase in civic activities (grazhdanskaia deiatel’nost’) there have arisen a host of new public encounters of the kind regulated by civil law, and as a consequence, many legal disputes.

Here, and in other Russian cities, the special function of a mediation court was considered secondary to the need for a court that could process a great many cases of a particular, modern financial kind, as quickly as possible.
When discussing the countryside, local officials and reformers alike paid more attention to the needs (or the perceived needs) of the rural population. Illiteracy, ignorance of the law, cultural simplicity, and recent serf status were all placed at the forefront of a consensus that viewed mediation as a way to make dispute resolution and criminal responsibility comprehensible to the peasantry, at least in the years immediately following emancipation. As Bludov put it first, “in my opinion, such an institution will fully correspond to the spirit of our people (narod) with their general tendency towards speedy, reconciliatory (primirtel’nyi) hearings.” The tsar marked this line in Bludov’s text with the notation: “This idea seems an eminently good one to me.”

The State Council committee reviewing the Fundamental Principles on which the Judicial Statutes would be based offered the opinion that

the majority of the population...do not know the law and cannot stand formalism but respect natural fairness [spravedlivost’] and value their time; they, therefore, are primarily concerned to obtain a speedy, and, according to their own understanding of fairness, a sound decision.

In the light of these comments, it is clear that mediation was also seen in part as a sort of incomplete justice: appropriate for the simple people with their rudimentary ideas about fairness and their ignorance of “real” laws.

These simple people would also, it was widely assumed, be involved in only the simplest of crimes or disputes. Consequently, there would be no need to resort to legal statute if common sense would do. Any responsible person with basic education, good will and a knowledge of local customs could cope with the people’s legal problems. This was convenient because there was a notable lack of trained jurists in Russia, even in the cities. As a result, it is not always clear if reformers’ arguments for simplified procedure were based on popular needs or on the government’s lack of qualified personnel. In any case, these issues led to the decision to make Justices of the Peace elected officials, despite much resistance to the idea both during the reform deliberations and afterwards. Elections, it was believed, would ensure that local leaders with a chance of being trusted by the narod would preside over the petty courts.

Election of JPs was central to the court’s character for these pragmatic reasons but it was also central to the court’s social and cultural roles and was embedded in the fundamental principles on which it was based. The Justice of the Peace would be the formal legal system’s main intermediary and herald among the narod. He was responsible for “teaching the law to the people” and eventually weaning them from the necessity for mediation based on custom and conscience. To do this he needed to possess high moral qualities and be held in esteem by the local population.
Mediation, election of justices, informality of procedure all made the JP courts something of an anomaly in the new reformed judicial system (the rest of which was statute based), but it should be made clear that reformers, jurists, JPs, and publicistic observers nonetheless viewed this institution as a bona fide court. Despite the ambivalence of its status (mentioned above in connection with the appeals process), it was clear that it differed substantially from the volostnoi sud, for example, or the even more informal judicial tribunals and conferences that remained a feature of peasant life. The mirovoi sud was a bridge between informal mediation and formal statute, between the dichotomy constructed as narod and obshchestvo, but it was part of the new formal, modern system, by virtue of its laws, its upper-class judges, the regularity or zakonnost' of its procedures, and its link to the rest of the system through the appeals process. Precisely because of its special ability to join the popular and formal, the justice of the peace court was viewed by many as the most important of the new institutions: it would teach the law to the people, begin the process of assimilating the former serfs into society, and at the same time it would expedite the development of the new urban, commercial sphere. As one observer, V. P. Bezobrazov put it,

The immensity of the moral and practical consequences of such a revolution is obvious -- it facilitates the gradual reeducation of every stratum of our society...The introduction of the justice of the peace court, by virtue of its immediate repercussions, represents the most portentous facet of the judicial reforms.

Thus mediation was expected to play a number of overlapping cultural, social, and financial roles in Russian judicial life. It remained a central facet of the reformed judiciary for a variety of conflicting reasons, but it is important to note before turning to the use of mediation in practice, that none of these reasons matched those used in recent times in the United States, where mediation has been revived, and in some legal circles is viewed as the panacea for all that ails our overburdened system. In the U.S. mediation is presented as an alternative to adversarial procedures that pit two sides against one another in a search for the guilty party to punish for some past wrongdoing. Mediation, conversely, is an effort at reconciliation for the purpose of healing ruptures within a community, looking towards the future rather than the past. As such, it is offered as an alternative to the contest and vengeance central to the adversarial model. Some of its adherents point to the use of mediation in American Indian communities in much the same way that Slavophiles idealized the peasant commune. But mediation courts have been criticized by feminists and others who challenge one of the basic assumptions of the mediation proponents -- that all people marginalized by the formal legal system will benefit from alternatives. Nonetheless, mediation has had successes in a number of significant areas, particularly in avoiding high court costs and the bureaucratic red tape involved in official legal procedures, and in its more basic goal, providing reconciliation.
especially in cases involving personal insults or disputes where trials have left years if not decades of social scars.\textsuperscript{27}

There are obvious points of resonance here, especially in the romantic evocation of community, and even if Russian reformers were not conscious of them at the time of the establishment of the \textit{mirovoi sud}, they offer a context for viewing the failures of Russian nineteenth century mediation and a cautionary lesson for today's post-communist legal reformers. The mediation offered by the justices of the peace in late imperial Russia often functioned in ways that suggest deep similarities with modern American mediation courts, both in their benefits for the community and their disadvantages for the most powerless members of those communities.

\textit{Mediation in Practice}

The high hopes for mediation were not fulfilled when the practice of mediation in the justice of the peace courts turned out to be far more complicated than anyone had expected. In the countryside the \textit{mirovoi sud} was pretty much a disaster from the beginning, for reasons which would take me too far away from the issues in this paper, but which can be gleaned in part from A.N. Engel'gardt's second "Letter from the Country," which describes in detail the peasants' reluctance to either take the time or trust their affairs to a \textit{pomeshchik} justice of the peace.\textsuperscript{28} In contrast, the justices of the peace court thrived in the cities of the empire, but they thrived more as courts of statute law, \textit{zakon}, than of mediation. Mediation was demanding and time-consuming, it was used inconsistently, and was often employed in inappropriate cases. JPs offered mediation irregularly and applied rules of evidence erratically. Litigants in civil cases chose mediation far less often than expected and common folks generally understood the regular old (or new) law rather more easily and chose it rather more often than expected. And of course, mediation involves a degree of bias (class, gender, etc.) which strict adherence to legal norms is supposed to eliminate. Thus, I will argue, mediation failed to satisfy reformers' hopes not for reasons inherent to the process itself, but because of the assumptions that guided reformers in instituting it and justices of the peace in applying it.

\textit{Mediation in Labor Disputes}

The numbers in this story are unequivocal (they are from Moscow but they are echoed in big and little cities throughout the empire): although mediation was used in a fair number of cases in the early years of the court, it never approached even a simple majority after the court's first year. In Moscow by 1891, only debts and disputes over small sums were still mediated; almost all other cases were decided according to statute law. [See Table, page 9a]
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1Source: Dvadtsatipiatletne moskovskikh stolichnykh sudebno-mirovykh uchrezhdentii. 1866-1891 (Moscow, 1891)
But these numbers still leave us with numerous questions: what kinds of cases were successfully mediated? Who decided which process to use? Who benefited and who suffered from mediated settlements? The proponents of mediation (from Zarudnyi to the most conservative State Councilors) believed that it would be particularly useful in cases concerning disputes between workers and their employers, cases of insult and injury, and disputes over unpaid debts of small sums. Those are, in fact, the kind of cases where mediation was most often attempted in the first two decades of mirovoi sud practice, so let's see what happened.

The highest hopes for mediation were connected with disputes between laborers and employers. One of the original justifications for implementing mediation in the petty court was based, in part, on official satisfaction with an experimental arbitration court created in St. Petersburg in 1858. This Special Commission was established by decree in June 1858 to resolve the growing number of labor disputes, with which existing institutions could not cope. The decree recognized the need for speedy decisions, accessibility to the mostly illiterate workers, an abbreviated procedure, and mediation rather than formal adjudication -- to resolve rather than to punish. By 1858 it was already clear that an entirely new set of institutions was in the works, so this commission was never more than a stop-gap, but it was considered so successful that it elicited positive consensus across the political spectrum as expressed in a number of published articles as well as requests by officials in other cities for similar courts to meet “this pressing need of society,” as the Governor-General of Moscow put it in his own petition. The problems these labor mediation commissions faced foreshadowed dilemmas confronted later by the justices of the peace, but from the official point of view they resolved a high number of cases in a short time, with relatively few complaints. They made some judicial resolution available to workers, and the “commissioners” bent over backwards to be fair to the workers and show employers (at least this small number of employers) that the government could protect the legal rights of their employees. These were all important lessons, taken to heart both within the reform commission and among publicistic writers. A chronicler in Notes of the Fatherland declared that “if this report still does not prove the advantages of oral, mediated judicial procedure, then we refuse to believe that 2 x 2 = 4.” The same writer was impressed by the number of cases decided by mediation to the apparent satisfaction of both sides, despite the fact that many of the decisions went against the workers involved. This illustrated for him, “how little the Russian really needs in order to be satisfied with justice,” or, in other words, how many people preferred swift resolution and the dignity of an official hearing to endless, incomprehensible litigation or the arbitrary power of the boss -- even if official mediation produced negative results. This journalist’s typical response to the Special
Commission embraced a number of the assumptions that made mediation so popular among judicial reformers. Only one sour note was raised in regard to this commission’s use of mediation: Count Panin, the arch-reactionary Minister of Justice, in a typically pessimistic comment, claimed that the workers only chose mediation when they were sure it would serve their advantage better than the law. And, indeed, once the mediation of such disputes was transferred to the new justice of the peace courts, in almost every case where mediation worked, there were extenuating circumstances that put pressure on one side or the other to accept the decision.

When the justice of the peace courts opened in the capitals in 1866, the most common labor disputes JPs heard had to do with hiring problems connected with seasonal labor. The cases that reached the JPs were almost always complaints brought by workers against their employers or contractors. Labor contractors used every trick in the book to exploit workers and cheat them out of their wages, while on the other hand employers complained that their workers often took off for their villages before their contracts expired. One St. Petersburg JP from the 1860s, P. M. Maikov, proudly recounted the following case as evidence of the success of mediation. A crowd of workers appeared in his court, refusing to work but demanding that their passports be returned to them and that they be paid for the work they had done (pazschet). “Clearly something was amiss,” Maikov concluded. But when he asked the contractor for his side of the story, all he got was “the usual”-- a laconic explanation that the workers had been hired for the season but had quit working before their contract was up. When he turned to the workers, all he got was “noise.” Maikov had the workers choose a few representatives to present their case but they still could not make themselves understood. So the JP began asking them questions, which at last elicited “clear and fair” answers revealing that the workers did not dispute the contractor’s story but wanted their pay supplemented since summer wages offered newly hired workers were higher than the wages they had been offered when hired in the spring. The contractor refused, but the workers’ “strike” had been effective in bringing them all to court. Here Maikov launched his mediation skills: he persuaded the contractor to understand that if the workers quit he would have to hire new workers at the higher wages anyway and he convinced the workers that they needed these jobs and it would be hard to find work in the middle of the summer. Financial compromise was reached at five extra rubles each. But then just as the two sides were about to put pen to paper, the workers remembered the two days’ wages lost to the dispute. Maikov persuaded them to accept an amount equal to half their pay for those days. And “with some satisfaction.” the JP drew up the agreement and each side signed.
In this case both sides stood to win by negotiation and compromise, but this sort of equity was rare. In Moscow in 1868 a typical case appeared in the Smolensk JP district: a merchant, Shushurin, claimed that his employee, Petrov, had quit work and left before paying him the eight rubles Shushurin had loaned him. During a long stretch of quarreling, which the JP tried in vain to halt, the judge was able to ascertain that no pay book (knizhka) had been kept for Petrov and (in a common and understandable ploy) when presented with a receipt he had supposedly signed, Petrov claimed that since he was illiterate, Shushurin could have written anything down, and he, Petrov, had no reason to trust his boss. The two sides agreed to accept a mediated settlement and the JP was moving them towards compromise when Petrov conceded: “I’ll give him the two rubles, but not until next month.” Shushurin, now furious, replied “What’s this? Two rubles instead of eight [is bad enough] but he doesn’t want to pay now! Order him to pay!” But the judge explained that he couldn’t order him to pay, “If he doesn’t have any money, what can he give you?” “Well, in that case,” Shushurin realized, “I’ll never get anything. Forget the whole eight rubles.” And he dropped the case. Mediation failed here because there was no way to enforce it. Of course, the JP could have “ordered” the worker to pay -- failure to pay debts was punishable under law by a short stint in the mirovoi sud arestnyi dom (House of Detention) -- but he chose not to do so.

An 1867 case heard by one of the more distinguished JPs, A. A. Lopukhin, pitted a workshop master against his apprentice’s mother. The master cobbler, Bogdanov, brought a complaint against Osipova for removing her son from his workshop and breaking their contract. He wanted the boy returned to work and he wanted to be reimbursed for the labor lost. But Osipova refused to return the boy, claiming that Bogdanov not only beat him but failed to teach him anything. This JP based his decision on a contract (usloviia) she had signed, which turned the boy over to Bogdanov for five years beginning in 1865. Osipova disclaimed the contract with the same logic Petrov had used, arguing that Bogdanov could have written down whatever he wanted. Based on this objection, the JP offered a mediated settlement whereby the boy returned to the workshop and the master agreed not to beat him (at this, the people listening in the courtroom burst out laughing). Osipova agreed but only if the boy received higher wages in return, but the judge repeated that he could not change the contract: “The law is the same for everyone,” he said, “and no one can evade the law on the grounds of ignorance.” He went on to argue that if she didn’t accept the mediated settlement he could decree a resolution. She did resist, holding out for the money, so he decreed, in exactly the same terms that he had “mediated” earlier: Osipova must return her son to the workshop under the conditions written into the contract.
In this case Justice of the Peace Lopukhin displayed the contradictory attitude towards written evidence, that was endemic to JP practice. On the one hand, JPs were given the power to make decisions based on “inner conviction” and “conscience” if hard evidence were in short supply. But on the other, Lopukhin made no effort to discover whether Osipova had indeed been deceived into signing this contract, if Bogdanov had a history of duping the illiterate parents of his apprentices, or if there were any other extenuating circumstances that might have made this settlement more of a real negotiation.

The question of evidence was a vexed one for JPs and they approached it in various ways. Although they were specifically instructed to employ their “inner conviction,” many JPs in St. Petersburg, Moscow, Odessa, Khar’kov, and Kazan’ (my sample cities) refused even to hear cases in which there was no hard evidence. This was particularly true in labor disputes, where the law required that a knizhka or pay book be kept for each employee (recording terms of work, salary, advances on salary, fines, and breeches of conditions). In F. O. Svesnnikov’s court, in Moscow’s Piatnitskii district, workers were reprimanded for coming to the courtroom without a pay book and the indignation with which the JP addressed the workers’ indicated long-term frustration with such difficult cases (already by September 1868). Possessing a knizhka, however, was no guarantee of clear evidence, because like Osipova and Petrov, most workers claimed that their bosses wrote whatever they wanted into the pay books, knowing that the workers’ illiteracy prevented them from checking. Was this a ploy? (It brings to mind the wily peasants of Bezdna and Chigirin who used their “naive” faith in the tsar to shorten the sentences they received for rebellion in 1861.) If it was a ploy, JPs did not generally make any effort to find out. According to another court commentator on labor disputes from this period, seasonal workers were almost always hired under false pretenses of some kind, which were naturally never recorded in writing, making it impossible for JPs to decide in their favor. In many such cases in Odessa, the court reporter Vanich recounted, most construction contracts were based on oral agreements, meaning that when the contractor broke his agreement and refused to pay the promised salary, workers had no evidence to support their claims. From my perspective, the most important point there is that JPs in Odessa made no attempt to circumvent the formal rules of evidence to engage in true mediation or to base decisions on “inner conviction” in these cases.

In general, urban justices of the peace in the early years were hard on workers in disputes with their employers, much tougher than they were on peasants in disputes with members of the nobility. Almost every memoir on the early period and every collection of newspaper reports from the courts describe numerous cases in which JPs bent over backwards to show that peasants were to be treated with “equal respect” in court, against the shrill and
usually ridiculous protests of the noblemen concerned. But while JPs usually treated workers with personal dignity and often condemned the employers for their belief that JPs should approach them with more deference, JPs made little effort to uncover the true class relations behind the complaints brought by workers. Indeed, in some cases, JP mediation looked suspiciously like proizvol. In Moscow, justice of the peace V. A. Verderevskii sided squarely with the bosses in many negotiations, even going so far as to ignore the written evidence of the knizhka. When one worker tried to retrieve his passport after having completed the contracted work period and his employer refused to return it, the worker went to court. There the Verderevskii inquired of the boss:

JP: Do you still need him in your shop?  
Defendant: Of course I need him, this is our busy period, perhaps in a month or so I can spare him.  
JP (to the Plaintiff): There, you see, your employer doesn’t agree to release you.  
Plaintiff: But I already worked out the month [of the contract].  
JP: Well, then you can work another.  

This is exactly the kind of power that advocates of formal law sought to preclude and that mediation is hard put to avoid. Was there more pressure to formalize legal relations between workers and employers? Did the bourgeois, urban JPs identify more closely with the interests of workshop masters and factory employers, than with the noblemen insisting on obsolete class privilege? I don’t have definitive answers to these questions but class difference (or its absence) played a significant role in mediating personal insult and injury claims (oskorblenie and obida) in both civil and criminal forms.

Mediating Disputes over Insults and Honor

When the insults were petty and between acquaintances, by the time they reached the court the JP frequently found himself patching up animosity that no longer existed. In cases where the plaintiff began by asking for criminal penalties to be applied, JPs were often able to persuade the parties to accept a settlement. Viktor Nikitin reported scores of this sort of case in his newspaper columns on the justice of the peace court in St. Petersburg in the 1860s and 70s. In a typical case, two neighbors would get to calling each other names, uncovering long simmering, complicated histories of hostility between families who lived on the same staircase and had had ongoing disputes for years. Where the disputants were neighbors or acquaintances or, more important, of the same class and ethnicity, the overwhelming majority of these cases required nothing more than a moderately tactful effort at reconciliation. Nikitin published a
case of successful mediation in which an officer's widow called a single working woman who lived across the hall from her a "whore," "eligible for a yellow ticket," because she wasn't married to the man she lived with. In a similar case but from a different social milieu, two old gentlemen and longtime friends in Kazan' had exchanged violent words regarding a missed meeting, but were reconciled through JP mediation. The two men had gotten into a quarrel over a chair: Mr. Masanov pushed Mr. Akkerman out of a chair when he (Masanov) wanted to sit there himself. Although this case involved surprisingly lengthy discussion about whether or not Masanov was acting discourteously, mediation ended it happily in reconciliation. In many similar cases the reconciliation had all but occurred before the parties appeared in court. In a complicated case involving a stolen dress, a beating on a staircase, lying on both sides, another accusation of "streetwalker," the JP took fifteen minutes (a long time) to read the entire case but when he began questioning the women involved they confessed that they had long ago forgotten the incident and came to court only because they were curious to hear how the judge would respond. These were the most common sort of insult, but they were the least entertaining reading so reporters tended to publicize cases with convoluted, long-term conflicts, or those based in class, ethnic, or gender differences. These were much harder to reconcile and often resulted in a "decreed resolution."

The older the dispute, the less likely the parties were to accept a mediated settlement, and the sharper the differences between the disputants, the less likely was mediation to be successful. Nikitin recorded a case in which a Jewish artisan brought suit against a Russian artisan for calling him a "Yid" and pulling his beard. The Russian repeatedly denied both charges until he lost his temper and revealed that he had behaved exactly as the plaintiff had claimed. The JP offered to mediate a settlement, but in these cases the plaintiff had the right to choose whether a defendant would be punished with a fine or a term in jail. The Jewish artisan opted for the money, but refused to request what the JP (and naturally the defendant) considered a reasonable amount, so in the end the JP had to decide on his own, and decree a decision that was binding even without the approval of the parties.

Some of the most interesting cases in this era involved domestic servants seeking redress in court for insults and injuries imparted by their employers. In these cases, mediation was usually forced upon the defendant against his (usually, but also her) will. The young girls who brought the suits showed an astonishing amount of poise in court, withstanding a barrage of additional insults from merchants, chinovniki, and noblemen embarrassed at being summoned to answer publicly for behavior no one had challenged before. One defendant, a wealthy merchant accused of speaking "nastiness" (nagovorit' derzoste'i) to his maid (gornichnaia). denied the charges, blustered loudly, claimed he never remembered trivialities, accused the
maid of lying, refused to pay any damages, and grew increasingly mortified when it became clear that there were credible witnesses. Eventually, after stout resistance (and repeated pleas that none of this appear in the newspapers) he agreed to perform his only punishment -- to apologize publicly. In a similar and less amusing situation, a 17 year-old servant accused her employer, a forty year-old officer (with a chest full of medals) of threatening, insulting, and nearly choking her. The officer treated the entire court and everyone in it with such disdain that his fate was sealed early on in the case, but the JP continued the questioning until the officer not only disgraced himself but conceded his guilt. Nonetheless he refused a mediated settlement of any kind and the JP had to decree a decision, which included a fine.47

Other Cases of Mediation
There was one more class of cases that might be brought for mediation to a justice of the peace. Under article 30 of the Civil Law Code, if both sides to a dispute agreed, any case (except the most serious crimes) might be brought for mediation to a JP, even if the suit or crime were normally out of the jurisdiction of the justice of the peace. The intent of this provision was to make mediation widely available, but it was problematic from the beginning. Decisions in cases involving large sums of money or central legal concepts were almost always overturned on appeal by the Senate. Contrary to the intentions of the judicial reformers, the Senate immediately made clear its objection to the principles of basing judicial decisions on “inner conviction” and “conscience,” or, in other words, on anything except statute law.48 Therefore, bringing a case to mediation based on article 30 was usually futile from a legal standpoint, and the article was finally eliminated in 1891. But mediation of this kind was also problematic because it was often used in highly inappropriate situations, the clearest example of which (and the only one I have room to include here) is domestic abuse.

The failure of mediation to protect women and children beaten by their husbands, sons, fathers and other men hardly needs to be explained to a North American audience in the 1990s. These cases were made known to an educated urban audience in the nineteenth century by a rural justice of the peace, Iakov Ludmer, in a series of articles published in luridcheskii vestnik and later issued as a separate pamphlet under the title Women’s Wails.49 Ludmer’s articles are a haunting, bloody chronicle of hopeless cases in which bludgeoned women seeking escape from physical torment turned to the justice of the peace who had nothing to offer them beyond their power to extract unenforceable promises from their tormentors. Ludmer publicized the cases out of desperation at his own inability to offer these women protection, much less justice. Because he often saw them again (and not always alive) he realized that mediation only sent the women home to be beaten again.
Mediation, as a basic, or even, the basic form of decision making in the justice of the peace court did not live up to the expectations placed on it by the judicial reformers of the 1850s and 60s. Already in the opening years of mirovoi sud practice, the difficulties in using mediation were prominently displayed. By the turn of the century mediation had fallen into disuse in all but a few cases of insult and injury and in simple debt cases. I. A. Galov, one of the few JPs who served continuously since 1866 and was still active in 1900, explained that mediation had become more difficult because JPs had too many cases to spend the time negotiating, because the contesting parties had become more “ill-intentioned,” and because the cases themselves had become more complicated. In another interview, Galov pointed out that people needed mediation less (than in the 1860s and 70s) because they had become much better informed about the law. These explanations have a truthful ring but leave many questions unanswered. Was mediation (is mediation) only a stop-gap for people who do not understand or know the law? Is the failure of mediation a sign that legal culture did not penetrate the population? or that it did? or that the existence of legal culture preceded the judicial reforms and made mediation or decisions based on “conscience” instead of evidence and formal statute unnecessary? Or is it a sign that mediation in the reformed justice of the peace courts was poorly conceived and applied? Finally, is mediation incompatible with a formal judicial system as many of the reformers argued?

The main reason mediation failed to become entrenched in post-reform legal practice was that jurists and justices almost universally saw it as an inferior form of adjudication, a temporary provision, to be eradicated along with illiteracy, rural isolation, and ignorance. It is appropriate to remember that originally, mediation was instituted in an effort to circumvent the time-consuming process of formal trial law and to ease the transition from customary legal practice to a formal legal system; it was not an attempt to transfer informal adjudication from peasant culture to post-reform society, nor was it an affirmation of the inherent value of mediation as a judicial process. When justices of the peace engaged in mediation, although it was often offered in a spirit of good will, it was just as often a patronizing, half-hearted gesture. In many of the cases recorded by Nos, Nikitin, Vanich and others, it is clear that the offer to mediate was made reluctantly or in a rigid, formulaic manner: “Now I am supposed to offer you the choice of a mediated settlement,” one JP usually intoned, while another proclaimed that “before I decree a decision in this case and announce the sentence, I should offer the parties an opportunity to settle the case by mediation.” In other cases, as noted above, mediation was offered but the settlement was no different from a judicial decree. And in yet other cases, mediation based on a JP’s “inner conviction” could be lacking all the
protection offered by formal law and then it resembled most of all the *proizvol* it was established to replace.

For their part, the “dark and simple folk” for whom mediation was instituted, often preferred the clarity and permanence of statute law. In many of the recorded cases, peasants, workers, domestic servants and others who could not be expected to know much about the law, made it clear that they came to the JP explicitly for the law, for the power of *zakon*, whatever they conceived that to be. When told, for example, in an insult case that the plaintiff had the right to decide whether the defendant would pay damages or serve a sentence, more than one plaintiff replied “As the law allows, you should judge” (*kak zakon velit, tak i sudite*). But there were two other reasons why plaintiffs (and defendants) refused mediation: when they believed the law was on their side, there was no advantage to an informal settlement and might well be a financial or other disadvantage, or, they wanted vengeance. These concepts required no formal education to appreciate (and are anything but unique to Russia), but mediation cannot work in situations where they are in operation. Indeed, the law exists, in part, to provide some recompense to injured parties and to regulate or discipline our desire for vengeance. While it came as a surprise to the judicial reformers and JPs in the 1860s and 70s, it should not surprise us that the poor, uneducated, and trampled upon found the power of the law irresistible. Russian literature about the court in its first decades is full of astonishment at the hordes of *narod* who flocked to the JP courts -- despite their elite justices, their artificiality, their alienating and intimidating surroundings. We do not in fact know whether these people also considered mediation an inferior form of adjudication or whether they were swayed by such representations of mediation conveyed by the JPs, but we do know that, when presented with the opportunity, a large, and increasing, number of people chose formal law.

Does this mean that there was “the rule of law” in post-reform Russia? Without addressing this question in its enormous entirety, I would argue that popular practice in the JP courts suggests that at the local level, the law -- formal, statute law -- regulated everyday life in a significant and meaningful way. Despite the failure of mediation in the JP courts, the courts themselves were not a failure and they managed to satisfy the reformers’ primary goals even if they took an unexpected path. The JP courts were accessible in the broadest possible terms: they were easy to find, easy to use, easy to understand once inside the door. Certainly many of their features mystified novices and there was no shortage of impatient, imperious justices of the peace. (But who of us, law-abiding and legally conscious as we are, could find our way around a courtroom?) And for every JP with a tendency towards condescension and indifference, there were those who took the time to explain the laws and procedures, to listen
to the convoluted narratives of the people who came before them, and to use his conscience to soften their society’s blows on the powerless: to sentence an elderly “incorrigible” vagrant-beggar to a prison with a hospital rather than to the hard labor the law required he be sent, among many other stories. The JP courts were also effective in dealing with petty commercial disputes and financial misdeeds. And until they were overwhelmed with cases of public drunkenness at the turn of the century (in a misguided campaign to clear the streets), they were fairly effective at dealing with petty crime. Within a few years of opening their doors, the JP courts were thoroughly entrenched in the everyday life of each city lucky enough to have one -- entrenched enough to inspire a steady stream of anecdotes, cartoons, and music-hall routines before their first decade was out. Even before the Ministry of Internal Affairs announced the plan to abolish the JP courts in the late 1880s (the rural and most urban courts were abolished in 1889), scores of cities, as large as Saratov and as small as Yalta (pop. 5000) responded to rumors of their demise by imploring the Minister to leave these “indispensable” institutions intact.

The failure of mediation is not, of course, conversely proof of the popular understanding of and respect for the law that was the goal of most judicial reformers. True, people often chose law over mediation when it benefited them, but mediation was never given a fair trial in the justice of the peace courts. And although by the turn of the century JPs were far too busy to hear the individual stories of every unhappy servant, apprentice, wife or shopkeeper, their legal right to base decisions on “inner conviction” made it possible for them to continue to defend the dignity of the poor and mitigate the impact of the law in their lives: contracts could be renegotiated, pensions for injuries on the job were obtained (stretching the rules), miserable wives occasionally received their own passports, and in 1905 a handful of Petersburg justices of the peace used their power to force some industrial employers to pay their workers for days lost to revolutionary activity!

ENDNOTES

1. Variations of this perspective are nearly universal in the literature. Examples begin with the liberal theorists and historians of the late imperial period: I. V. Gessen, Sudebnaia reforma (St.P, 1905), G. A. Dzhanshieiev, Osnovy sudebnoi reformy (Moscow, 1891) and Epokha velikikh reform (Moscow, 1896), Chicherin, A. F. Koni, Ottsy i deti sudebnoi reformy (Moscow, 1914), M. A. Filippov, Sudebnaia reforma v Rossii, vols. 1-2 (St.P, 1871-1875); and pick up again with the historiography after the second world war: Samuel Kucherov, Courts, Lawyers, and Trials under the Last Three Tsars (New York, 1953), Richard Pipes, Russia under the Old Regime ( ), Leonard Shapiro, “The Pre-Revolutionary Intelligentsia and the Legal Order,” Russian Studies (New York, 1987), Richard Wortman, The Development of a Russian Legal Consciousness (Chicago, 1976), W. Bruce Lincoln, The Great Reforms (Dekalb, IL, 1990), B. V. Vilenskii, Sudebnaia reforma i konturreforma v
Rossii (Saratov, 1969), M. G. Korotikh, Samoderzhaviia i sudebnaia reforma 1864 goda v Rossii (Voronezh, 1989); see also Andrzej Walicki, Legal Philosophies of Russian Liberalism (Oxford, 1987).

2. To take but one example, the most important advocate of liberal legal norms, Sergei Zarudnyi, was only persuaded of the value of western institutions after a journey to western Europe, and he never gave up his belief in Russia’s particularism. Compare his comments in “Neskol’ko myslei po povodu vozrozhdenii neizvestnogo avtory na novyi Ustav Grazhdanskogo sudoproizvodstva,” February 8, 1858, Rossisskii gosudarstvennyi istoricheskii arkhiv (RGIA), fond 651, opis’ 1, delo 362, p. 18 with his “O znachenii mirovogo sud’i i slovesnogo poriadka grazhdanskogo sudoproizvodstva,” May 12, 1859, Otdel rukopisi i redkikh knig, Rossiiskaia natsional’naia biblioteka (ORRK RNB), fond 637, delo 291. Among Anglo-American historians, Kucherov noted adaptive elements, for example, Courts, Lawyers and Trials, p. 87.

3. These included such moribund institutions as the slovesnyi sud, sovestnyi sud, and treteiskii sud.

4. See note 6 below.

5. See note 1 above.


7. Although peasants in rural areas were restricted for the most part to volost’ customary courts, in cities where no volost’ court, or after 1889 no land captain or gorodskoi court existed, petty civil and criminal cases involving members of all estates were tried by justices of the peace. In the countryside, when a case involved a peasant and a member of another estate, it could come before a JP. These issues were, however, complex and unclear at the time and the lines separating the volost’ from other courts were not as sharply defined as they are often presumed to be.


10. “Ob”iasnitel’naia zapiska k proektu uchrezhdeniia sudebnykh mest,”


13. “Abbreviated procedure” is another one of the features of judicial reform, whose origins predate the Crimean War (see Bludov’s historical comments in “Ob”iasnitel’naia zapiska k proektu polozheniia o proizvodstve del gazhdanskikh poriadkom sokrashchennym,”(May 14, 1858), Materialy, vol. 2, p. 3-11) and refers to oral presentation of evidence, more flexible rules for evaluating evidence, and decisions based on mediation or conscience. On the evolution of abbreviated procedure see “Proekt: Polozheniia o proizvodstve del gazhdanskikh poriadkom sokrashchennym,” (1860) Materialy, vol. 1, pp. 2-44; “Ob”iasnitel’naia zapiska k proektu polozheniia o proizvodstve del gazhdanskikh poriadkom sokrashchennym,”(May 14, 1858), Materialy, vol. 2, pp. 3-25; and “Ob”iasnitel’naia zapiska k proektu polozheniia o proizvodstve del gazhdanskikh poriadkom sokrashchennym,” (April, 15, 1860) Materialy, vol. 9, pp. 3-32. Eventually many of these features found their way into the structure of the justice of the peace courts.


16. In addition to the reform commission documents cited above, see for example requests and comments from local judicial and government officials in Odessa, Voronezh and Kiev, calling for simpler, oral procedure to expedite commercial life and protect their cities from the petty criminals who gravitated to commercial centers; “O vvedenii v g. Odesse mirovykh uchrezhdenii odnovremennno s vvedeniem onykh v storitseakh” RGIA, f. 1405, op. 63, d. 4951 (i865), “Po otnosheniiu Kievskogo voennogo, Podol’skogo i Volynskogo General-Gubernatora o luchshem ustroistve gubernskikh i uezdnykh grazhdanskikh upravlenii vo vverenykh ego upravleniui guberniakh, RGIA, f. 1405, op. 57, d. 6310, Part I (1859); Letter to the Ministry of Justice from A. Shakhmatov, Voronezh Provincial Prosecutor, Dec. 4, 1862, RGIA, f. 1405, op 60, d. 5966, pp. 187-214.


20. “Sudebno-statisticheiske svedeniia i soobrazheniiia o vvedenii sudebnoi reformy po Orenburgskoi gubernii,” RGIA, f. 1405, op. 64 (1866), d. 5925b, p. 18; see also pp. 66ff on similar arguments presented by government officials in the “Northwestern borderlands,” i. e., the Baltic region.


23. On elections see comments in Materialy, vols. 13 (Gos. sovet on mir. sud proposals) and 18 (Gos. Kants. on all the proposals); on JP characteristics, see “Ob”iasnet’ia naia zapiska k proektu uchrezhdeniiu sudebnikh ustanovenii,” Materialy, vol. 7; also the press in the 60s. Obninskii and furor over elections in the 70s.


25. This was clearly expressed during debates about implementation; see for example “O vvedenii v deistvie Vysochaische utverzhdennych 20 noia. 1864 Sudebnikh Ustavov,” excerpts from State Council General Assembly, September 20 and 27, 1865, pp. 2-5, where it was defended on these grounds against preemptive strikes by Valuev and the ministry of internal affairs.


26. The literature on the mediation revival is too large to cite here. One might start with Kentucky Bench and Bar (Alternative Dispute Resolution issue) vol 57, no. 4 (Fall 1993); Robert A. Baruch Bush, “The Dilemmas of Mediation Practice: a Study of Ethical Dilemmas and Policy Implications (Symposium),” Journal of Dispute Resolution, vol. 1994, no. 1 (Spring 1994); Peter Marchel, “Real Lawyers do not Mediate; They Litigate.”

28. A.N. Engelgardt, Letters From the Country, 1872-1887, transl. and ed. Cathy Frierson (New York-Oxford, 1993), pp. 39-45. It should be noted here, however, that the peasants in the case described here resisted taking a case to the JP because it failed to perform as a JP court was expected to: it was far away, inconvenient, alien to local culture, and would have decided the case on the basis of criminal law rather than mediation, which, it is implied, the peasants would have preferred.

29. I’ve decided not to discuss criminal cases here, although many of them fit the patterns found in the category discussed as “insults” and some cases of obida and oskorblenie could be tried under articles in the criminal code as well.


37. Nos, MSM, pp. 117, 118, 125, 129.

38. Daniel Field, Rebels in the Name of the Tsar (Boston, 1989).

37. Vanich, Sstyeny v mirovom sudei (Odessa, 1876), pp. 46-52.

40. Nos, MSM, p. 117.

41. V. N. Nikitin, Mirovii sud v Peterburge: Sstyeny v kamerakh sudei i podrobnye razbiratel’stva zapisannye z podlinnykh slov (St. Petersbourg, 1867), pp. 157-63. See also, TsGIAGM, f. 1296, op. 8, d. 2, for an almost identical case from more than forty years later. The “yellow ticket” refers to the yellow license given to prostitutes who registered with the police.

42. Izbrannye sstyeny u mirovykh sudei v Peterburge i Moskve (St. Petersbourg, 1867), pp. 17-19.

43. “Iz kamery mirovogo sud’i,” Volzhskii vestnik, April 5, 1886.

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44. Nikitin, *MVP*, pp. 86-88

45. In one interminable case, the two sides produced 11 witnesses and repeatedly refused to accept reconciliation: Nikitin, *MVP*, pp. 135-148.


47. *Izbrannye stseny*, pp. 1-6, 11-17.


50. N. G-e, “Proshloe i nastoiashchee mirovogo suda v Peterburge (Beseda s stareshim mirovym sud'ei d.s.s I. A. Galovym),” *Petroburskaiia gazeta*, May 23, 1901.


53. Nikitin, *MVP*, p. 164


