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Peter the Great and Court Procedure

According to the works of pre-revolutionary legal historians and jurists, Peter the Great’s contribution to the development of Russian legal procedure consisted of the extension and formulation of inquisitorial process. His legislation was the basis of the system of closed, chancellery justice that governed Russian courts until the court reform of 1864. But, these commentators point out, inquisitorial process was widespread even before Peter came to power. Peter’s last major law on court procedure, “On the Form of the Court,” appeared to re-introduce adversary process, but since it was at variance with the practice at the time it had little effect on court operations. Peter’s legislation, in this manner, was little more than a formalization of practices already in effect.¹

It is the contention of this paper that such an approach misconstrues the thrust of Peter’s legislation. It imposes nineteenth-century categories on Peter’s institutional changes. Inquisitorial justice (rozysk) and adversary justice (sud) meant far less to Peter than to historians sophisticated in modern concepts of procedure. Peter’s objectives were rather to create a new state organization, and a new source of bureaucratic personnel in the gentry—a new officialdom—and his legislation on procedure endeavored to bring this new social and institutional order into the courts.

There is little doubt that Peter worked to extend the use of rozysk in the courts. The spread of inquisitorial procedures in the courts was part of the general accretion of state power that Peter worked to advance in all areas of his activity. In the manner of the monarch of the eighteenth-century “police” state, he saw the intervention of the state as beneficial and essential to honest dispensation of justice. Litigation left unsupervised merely gave free rein to chicaners.

From the plaintiffs and defendants there is much injustice and conniving. Many have started suits to no purpose. Defendants have answered with untruths . . . . Other plaintiffs and defendants involved in the same perfidy hire for the confrontation (poval’nyi obysk) their brothers and boyar children, those chicaners and contrivers, those thieves and despoilers of souls, who force the weak to go through red tape, bribes, losses and ruin.²

¹. F. Dmitriev, Istoriia sudebnykh instantsii i grazhdanskago appekliatsionnago sudoproizvodstva ot sudebnika do uchrezhdeniia o guberniiakh (Moscow, 1859), pp. 535-580; Iu. Gor’c, Istoriia oblastnago upravleniia v Rossi ot Petra do Ekateriny II, 2 vols. (Moscow-Leningrad, 1913-1941), II, 394-407; I. E. Engel’mann, Kurs russkago grazhdanskago prava (Iur’ev, 1913); N. W. Rozin, Ugolovnoe sudoproizvodstvo (St. Petersburg, 1914).
². Polnoe sobranie zakonov Rossiskoi Imperii, Sobranie pervoe, 45 vols. (St. Petersburg, 1830), [hereafter PSZ], 1572, February 21, 1697.
The very act of litigation was suspect and more likely than not the design of chicanery. The state had to impose the authority necessary to protect justice.

By the end of the seventeenth century, rozysk had replaced the primitive sud in criminal cases and suits about land. The judge had ceased to be a passive arbitrator of conflicting claims and had begun to play an active role in initiating and running trials. He directed the gathering of information, the investigation and the interrogation. In 1697, Peter extended rozysk to the remaining civil cases obida and razoren’e (defamation and ruin). He limited proofs to two—oaths and witnesses. False testimony was to be punished with death. Torture was prohibited, and officials were not to collect circumstantial evidence.3

As Peter struggled against lawlessness and widespread opposition to his government, he resorted increasingly to inquisitorial devices. The use of military force to suppress domestic unrest prompted legislation describing and systematizing inquisitorial procedure. In a lengthy decree of 1710, he gave instructions to a special agent, a syshchik, polkovnik Fedosei Kozin, to apprehend and interrogate bandits who were ravaging the area of Klin, Mozhaisk and Volokolamsk. There were large numbers of bandits, many of them recruited from deserting soldiers. They roamed the countryside looting, burning, abducting women and children. Kozin was given detailed instructions on conducting interrogations, including the right to use torture when needed.4

In the West, inquisitorial procedure was adopted according to the example of ecclesiastical courts. It came to Russia through the military, the most advanced of Russian institutions, as military forces were used as an expedient to cope with internal problems. The definitive statement on the inquisitorial process for the eighteenth century was the Military Process, a section of the Military Statute of 1716. The Military Statute began by stipulating that its rules shall apply only to military personnel. But the decree ordering the dissemination of the Military Statute, issued only eleven days after its promulgation, extended those rules to civil institutions as well.5

The Military Process made no distinction between criminal and civil procedures. Trials were to be closed: all present “must keep what happened in court secret and tell no one, whoever he may be, anything about it.”6 The suit could be initiated either by a plaintiff or a judge. Defendants were to respond orally to the charges; written statements were optional. Lawyers were permitted in civil trials only if the party took ill or presented important reasons to be absent. They were banned from criminal trials, for “by their worthless and prolonged arguments, they are a burden to the judge, and extend cases to enormous length rather than bring them to quick conclusions.”7

The most important innovation of the Military Process was the adoption of the European practice of formal proofs. The best proof was voluntary confession, then followed witnesses, written statements, and the purifying oath. The Process enumerated at great length the types of witnesses to be excluded. The quality of the witnesses would determine the weight to be given to their testimony and the outcome of the

3. Ibid.
4. Ibid., 2310, November 30, 1710.
5. Ibid., 3006, March 30, 1716; 3010, April 10, 1716.