

ТЕОРИЯ И ИСТОРИЯ ПРАВА И ГОСУДАРСТВА; ИСТОРИЯ УЧЕНИЙ О ПРАВЕ И ГОСУДАРСТВЕ

THE CONSTITUTIONAL-MONARCHICAL TRADITION IN POLITICAL CULTURE OF RUSSIAN EMPIRE

V.A. Tomsinov

The Department of the History of State and Law
Moscow Lomonosov State University
1, bld. 13–14, Lenin Hills, Moscow, GSP-1, Russia, 119991

The article deals with the problem of historical byway attempts to convert the autocracy in Russia into a constitutional monarchy. Such attempts have been made in the Russian Empire during the XVIII and XIX centuries, beginning with the reign of Anna Ivanovna and constitutional projects developed with Catherine II. State reform was prepared at the beginning of the XIX century in the reign of Alexander I, then under the direction of M. Speranskii preparing a number of similar projects aimed at the creation in Russia of the constitutional order. Reasons for the failure of the proposed reforms are analyzed in detail in this article.

Key words: autocratic-monarchical form of rule, constitutional-monarchical system, immutable basic laws, constitutional draft, reform of the State, Nakaz of Catherine II.

The autocratic-monarchical form of rule is commonly regarded as traditional for, indeed the very fate, of Russian society. The history of Russia, however, during the epoch of Empire shows that the efforts to transform autocracy into a constitutional-monarchical system were no less traditional for Russia. Under this model, supreme State power would be exercised within frameworks established by immutable basic laws and with the participation of representatives of society. Efforts along these lines were constantly undertaken in the Russian Empire throughout the eighteenth and nineteenth centuries. Although for various reasons they proved to be without result, this does not mean they had no chance of success.

The attempt to limit autocratic rule by a legislative act of a constitutional character, undertaken in Russia by members of the Supreme Privy Council in 1730, when Anna Ioanovna ascended to the throne, might have been successful. Constitutional drafts which proposed to limit the arbitrariness of supreme State authority by basic laws were prepared during the rule of Empress Catherine II. The Empress herself supported this idea to some extent. In her Nakaz given to the Commission to draw up a new draft of Ulozhenie, Her Majesty acknowledged, however timidly, the need to place autocratic-monarchical rule within frameworks established by laws. The Nakaz provided (Article 511): «Again, Despotism is destroyed when the Sovereign imagines

he shall more shew his power by altering, than by adhering to the Order of things; And when he suffers himself to be guided more by Caprice, than by his good Intentions from which all Laws have flowed, and still do flow». And Article 512 stipulated: «It is true, there are Cases in which Power may and ought to be exerted in its full Sway, without any risk to the State, but on the Contrary, there are also other in which it must be exerted under Limits fixed to, and by itself» [2. P. 507].

Assessing the legal significance of the *Nakaz*, Gradovskii commented: «The theoretical ideas of the *Nakaz* were never legislative definitions. But they were, in many respects, guiding principles for our positive law. The resonance of the *Nakaz* is heard in legislative acts of the Empress herself and of Alexander I» [1. P. 7].

A reform of the State whose ultimate aim was the creation of an all-Russian representative organ and the adoption of a constitution, was prepared during the reign of Alexander I. During 1801 and 1802 the plan was discussed by a «Secret Committee», and then M.M. Speranskii drafted a «plan for universal State formation»; finally, at the end of 1820, the State Statute [уставная грамота] of the Russian Empire was drawn up which in essence was a draft constitution .

During the last year of rule of Alexander II, the Minister of Internal Affairs, M.T. Loris-Melikov, drafted a plan for involving social representatives in legal consultative activities. Had an attempt on the life of Alexander II not happened on 1 March 1881, this plan would have been implemented. And this, in turn, would have opened the path for the transformation of Russian autocratic-monarchical rule into a constitutional monarchy [10].

Each of the said attempts to reform the State system of the Russian Empire rested on an ideological program whose basic element was the subordination of supreme State authority to basic laws. Each time the establishment of a new form of rule assumed the adoption by the Autocrat of a draft law limiting his power. These facts show that there existed in the legal culture of Russia in the Era of Empire, together with the political-legal ideology of autocratic-monarchical rule, a tradition that might be called the constitutional-monarchical tradition. Moreover, this tradition was linked closely with the main principle of Russian autocracy — its supremacy in all spheres of State activity, including when exercising legislative power.

The Military Statute of 1715 (Article 20) proclaimed that «His Majesty is an absolute monarch who answers to no one in the world; as a Christian Sovereign he has power and authority over his States and lands and rules by his will and in his name» [6. P. 325]. The absolute character of the Russian Emperor was affirmed in the «Establishment on the Imperial Family» confirmed by his Highness on 5 April 1797 [6. P. 535]. Finally, the Digest of Basic State Laws (Article 1), which made up volume one of the Digest of Laws of the Russian Empire issued in 1833, gave the following definition of autocracy: «The Emperor of All the Russias is an autocratic and absolute monarch. God himself commands to be subject to his power not only from fear but from conscience». The essence of an autocratic monarchy expressed in the said provisions meant that the autocrat was considered to be entirely empowered to adopt a decision to limit his own power by a constitution and establish constitutional-monarchical rule in place of the autocratic-monarchical rule. Otherwise, the Emperor

of All the Russias could not be called an autocratic and absolute monarch ruling the country «according to his will and good opinion».

The ideology of autocracy in that form in which it existed in the Russian Empire permitted the limitation of the power of the autocrat by constitutional laws. To be sure, only if this was done by the Emperor himself, that is, introduced the self-limitation of his own power.

This explains why in all the attempts undertaken in Russian during the eighteenth and nineteenth centuries to transform the autocracy into a constitutional monarchy the principal instrument of reform was not imagined to be a representative organ, but the Emperor: he himself held this power and only he himself could limit this power.

The Events of 1730

The experience of eighteenth-century Russian history shows that the most convenient instances for implementing plans to limit autocratic power by laws of constitutional significance would be when persons ascended to the Imperial throne who did not have firm and incontestable rights to succession.

On the night of 18/19 January 1730 the young Russian Emperor, Peter II, passed away. He lived fourteen years, three months, and six days, and reigned for two years, eight months, and twelve days. According to the Statute «On the Right to Inherit the Throne», adopted by Peter I on 5 February 1722, the Imperial throne should pass after the death of the Sovereign to the person whom he determined to be his heir. However, Peter II left no testamentary disposition as to whom his imperial power should pass. There existed, to be sure, the spiritual testament of Empress Catherine I promulgated by a Manifesto of 7 May 1727, where the procedure for succession was established «if the Grand Prince passes away without heirs» (point 8). In this situation the throne passed first to Tsarevna Anna Petrovna and her descendants, and in this case to her sister Elizabeth and her descendants.

Anna Petrovna died on 4 March 1728, having given birth to a son, Karl-Peter-Ulrich. In accordance with the will of his mother, Catherine I, this child should have inherited the Russian Imperial crown after the death of Peter II. The next pretender to the Imperial throne proved to be the Tsarevna Elizabeth Petrovna. Members of the Supreme Privy Council, however, who assembled early on the morning of 19 January 1730 did not even discuss Catherine's testament. Among them, there was no one who was interested in the ascension to the Imperial throne of any persons named in this document. On the other hand, the legal force of the testamentary disposition of Empress Catherine I relating to the procedure for succession to the throne in the event of the death of Peter II without heirs was void from the standpoint of the Petrine Statute «On the Right to Inherit the Throne». This Statute granted to the «governing Sovereign» the power to designate the heir to the Imperial throne whomsoever he wished and at the same time gave him the right if the heir was already determined to vacate this decision and appoint someone else as the heir. Neither the letter nor the spirit of the 1722 Petrine Edict assumed that some autocrat would appoint not only himself but also the autocrat ascending to the throne after him, that is, established the procedure for succession to the throne. Therefore, from the legal point of view, the death of

Peter II in the absence of his testamentary disposition concerning an heir made the Imperial throne open. At the moment when this occurred, a period of interregnum commenced.

When members of the Supreme Privy Council set about resolving to whom the Imperial throne should pass, Prince Aleksei Grigor'evich Dolgorukii took the floor and suggested that his daughter, Catherine, be elevated to the throne. She was the fiancée of the deceased Sovereign and produced a letter supposedly containing a testamentary disposition in her favor from Peter II. But the Privy Council paid to heed to this letter. Nor did the view expressed by Prince V.V. Dolgorukii that it would be more just to elevate to the Imperial throne the first wife of Peter I, the Tsaritsa who had taken the veil, Evdokia, merit their approval. Only the suggestion of Prince Dmitrii Mikhailovich Golitsyn to choose as Empress the daughter of the brother and co-ruler of Peter I, Tsar Ivan Alekseevich, was approved by the other Privy councilors. According to the recollections of contemporaries, in recommending Anna Ioanovna for the role of future Empress, Prince Golitsyn supposedly said the following: «She is still of marriageable age and in a state to have progeny, she was born among us from a Russian mother in a good old family, we know the goodness of her heart and her other wonderful qualities, and for these reasons I believe her to be the most worthy to rule us». Having heard these words, all the Privy councilors cried out at once: «Yes, yes, there is nothing more to discuss, we choose Anna!»

Pausing while all expressed their joy at the choice of Anna Ioanovna for the role of future Empress, Prince Golitsyn continued his remarks: «Your will of whom to choose», he said, «only makes us feel better». «How does one feel better?» one of the Privy councilors asked him. «One feels better», Golitsyn replied, «because the wills quicken matters». Prince Vasiliï Lukich Dolgorukii expressed this: «Although we begin, we do not hold this back». But Golitsyn was not deflected from his suggestion. «To be sure we will not be restrained», he said, and added after a pause: «If it is your will, we must, having written them down, send points to Her Majesty» [9. P. 201].

After this, the members of the Supreme Privy Council proceeded into another room of the Lefortovo Palace in which the Senators awaited them with the generals and communicated to them the decision taken to elevate Anna Ioanovna to the Imperial throne. All expressed approval at the outcome and dispersed. The Privy councilors retired to an adjacent room where Peter II had died. Summoning the secretary of the Supreme Privy Council, Vasiliï Petrovich Stepanov, they began to dictate to him the rules which Anna Ioanovna should follow during her reign.

These rules, called «Conditions», the Privy councilors intended to suggest to the daughter of Peter I as conditions for her taking the Russian Imperial throne. Their idea was that Anna Ioanovna should sign a document in which she promised to maintain the Orthodox faith, not seek to determine who her successor might be, and, without the advice of the Supreme Privy Council, not go to war or conclude peace; not increase or introduce new taxes; not promote or demote to designated ranks or titles; not to confiscate property of the nobility; and others, which if not complied with, would entail the loss of the Russian crown [9. P. 202].

Directly contradictory assessments of this event are found in the historical literature. The majority of historians characterize this as an attempt to limit autocratic power in Russia undertaken by members of the Supreme Privy Council solely in their own interests. Kliuchevskii saw the «1730 affair» not as an advancement of the idea of political freedom, but as an expression of baser aspirations. The Supreme Privy Council, he believed, wanted to limit the powers of the Sovereign in the interests of a few noble families; the bureaucratic apparatus sought to protect its own interests, and other families desired the privileges of estates [3. P. 377]. The view of the events corresponded to the official explanation set out in an explanatory memorandum issued by the Court after 1730 [4. P. 188].

A second version of the events of 1730 in historical writings explains the actions of the Privy councilors not by narrow egoistic motives, but a sincere aspiration to reform the State system of Russia — to create a Russian variant of a constitutional monarchy, under which monarchical power would operate solely within the framework of laws and in combination with political institutions ensuring the inviolability of the person and the honor and property of the nobility [5].

It should be noted that to regard the 1730 events as an attempt to basically reform the State system of Russia has considerable grounds. The Memoirs on Russia of General Manstein quoted Prince D. M. Golitsyn at the first session of the Supreme Privy Council after the death of Peter II: «With the death of Peter II», he said, «the male line of Peter I has been extinguished, and Russia has suffered terribly from despotic rule, which foreigners recruited in large numbers by Peter I facilitated, and therefore the supreme power should be limited by useful laws and an Empress selected who will reign not otherwise than under certain conditions» (emphasis added — *V.T.*) [6. P. 22].

Documents preserved also show that the idea of the Privy councilors and nobility who supported them assumed a fundamental reform of the State system of the Russian Empire. Among the most important materials were those drafted within the Supreme Privy Council between the end of January and early February 1730.

These include, first, a document prepared between 19 and 30 January and designated in its original text by a phrase which referred to conditions previously determined [7. P. 226–227]. Second is a draft fundamental principles of State policy composed in late January or early February 1730 and containing 16 points. The original text of this document had no title; however, in historical literature it was provisionally called «Points of an Oath» or «Form of Oath» [7. P. 42–47]. Third, a document created somewhat later addresses the means by which State affairs might be managed in a more orderly and stable manner [7. P. 227–228]. Finally, fourth, were the drafts for transforming the State system prepared by nobles who had arrived during the events in Moscow. That the Privy Councilors took these drafts seriously and were ready to take them into account is evident from a digest composed in the Supreme Privy Council of opinions on the drafts of the nobility received in the Privy Council [8. P. 228–230].

These documents were generated during an extraordinary situation that could not have been foreseen. The desire expressed by the Privy councilors when resolving the

succession to Peter II to limit autocratic power had arisen to a considerable extent under the influence of a new situation created by the death of the young Emperor. In any event, never before had such a wish become manifest, although the youth of Peter II certainly enabled Russian aristocrats to link his tender years with limitations on imperial power advantageous to them. However, at the moment of the Emperor's death none of the Privy councilors had a more or less clearly formulated program embodying a new design for State power. It remained for them to devise such a program with a brief period and under conditions of political pressure on the Supreme Privy Council from various groupings of the nobility and clergy. The various documents of January–February 1730 were merely preparatory materials for elaborating a document that would consolidate a limited monarchy in Russia.

There was no system to the documents drafted: they consisted of a rather chaotic assemblage of individual political and legal ideas, principles for organizing supreme State power, and requirements concerning its internal policies. Among these principles was that which held that «persons do not manage the law, but the law manages persons» [8. P. 43]. This principle cannot, in this writer's view, be regarded as an expression of the abstract idea of the supremacy of *lex*. It is proclaimed by the Privy councilors as the first point in the «Form of the Oath» devoted to the composition and purposes of the Supreme Privy Council. There the wish is expressed that one family should not have more than two members of the Council so that no one may appropriate power to himself. The principle that «persons do not manage the law, but the law manages persons» here is understood narrowly as merely an appeal to members of the Supreme Privy Council to have in view when deciding particular issues not the egoistic interests of individuals (persons), but the public benefit, the interests of the State as a whole, avoiding internal quarrels relating to personal considerations [8. P. 43]. The document appealed to members of the Supreme Privy Council to seek the advantage of the State in confidence, without disclosing affairs to their families, friends, or outsiders, and to exert every effort to render unhypocritical justice without any extortion or falseness and to punish those who have committed crimes [8. P. 43].

As noted above, the «Conditions» granted certain guarantees of inviolability of the person and property to the nobility. The «Form of the Oath» expanded these guarantees to protect the moveable and immovable property of spouses, children, and relatives and to leave them sufficient livestock and honor [8. P. 45].

REFERENCES

- [1] *Gradovskij A.D.* Nachala russkogo gosudarstvennogo prava. T. 1. O gosudarstvennom ustrojstve. — SPb., 1875.
- [2] *Zapiska, inkriminirujushhaja chlenam Verhovnogo tajnogo Soveta protivozakonnye dejstviya // Konstitucionnye proekty v Rossii. XVIII — nachalo XX v.* — M., 2010.
- [3] *Imperatrica Ekaterina Vtoraja. Nakaz, dannyj Komissii o sochinenii proekta novogo Ulozhenija / pod red. i s pred. V.A. Tomsinova. Bibliografija: prof. U. Je. Batler.* — M., 2008.
- [4] *Kljuchevskij V.O.* Sochinenija v devjati tomah. — T. 4. — M., 1989.
- [5] *Korsakov D.A.* Vocarenie imperatricy Anny Ioannovny. — Kazan', 1880.
- [6] *Manshtejn H.G.* Zapiski o Rossii. — M., 1998.

- [7] Podgotovitel'naja zapiska k forme prisjage imperatrice Anne Ioannovne [1730 g. janvarja mezhdju 19 i 30] // *Rossija v XVIII stoletii*. — Vyp. 2. — M., 2004.
- [8] *Solov'ev S.M. Istorija Rossii s drevnejshih vremen*. Kn. H. — M., 1963.
- [9] *Tomsinov V.A. Konstitucionnyj vopros v Rossii v 60-h — nachale 80-h godov XIX veka*. — M.: Zercalo, 2012.

КОНСТИТУЦИОННО-МОНАРХИЧЕСКАЯ ТРАДИЦИЯ В ПОЛИТИЧЕСКОЙ КУЛЬТУРЕ РОССИЙСКОЙ ИМПЕРИИ

В.А. Томсинов

Кафедра истории государства и права юридического факультета
Московский государственный университет имени М.В. Ломоносова
ул. Ленинские горы, 1, стр. 13–14, Москва, ГСП-1, Россия, 119991

В статье рассматривается малоизученная проблема исторических попыток преобразования самодержавия в России в конституционную монархию. Такие попытки в Российской империи предпринимались на протяжении XVIII и XIX вв., начиная с периода правления Анны Иоанновны и конституционных проектов, разрабатывавшихся при Екатерине II. Государственная реформа готовилась и в начале XIX в. в правление Александра I, затем под руководством М.М. Сперанского готовился ряд подобных проектов, направленных на создание в России конституционного строя. Причины неудач предлагаемых реформ подробно анализируются в статье.

Ключевые слова: самодержавно-монархическая форма правления, конституционно-монархический строй, основной закон, конституционный проект, реформа государства, Наказ Екатерины II.