



Marju Luts

Professor of Legal History, University of Tartu

The Ambivalence of Reforms and their Absence: Baltic Lections of the 19th Century

1. Introduction

Post-reindependence Estonia has been known as the most reform-inclined country in at least Eastern, if not all of, Europe. Be it the rapid restructuring of the Soviet-style planned economy in the spirit of economic liberalism, unharnessing of private law from the Soviet *étatisme* and its reconstitution upon the foundation of private autonomy, introduction of a penal code grounded on the rule-of-law principles, adaption of the legal system to the EU accession requirements, fundamental reorganisation of the higher education system according to the so-called Bologna model, or something else — decisions to reform are made swiftly and without having long discussions. Thus it is no wonder that locals joke that in the Estonian (legal) culture, only one thing is traditionally constant: the tradition of disruptions.

This statement seems to be supported by the 20th century's changeful political and legal history, spent in a field of tension between various foreign rules and independence. In the beginning of the century, the territories of present Estonia and Latvia constituted as divided into autonomous Baltic provinces — *Estland* (Estonia), *Livland* (Livonia) and *Kurland* (Courland) — still a part of the Russian Empire. The autonomy of the provinces had been strongly contested by the great judicial reform of 1889¹; however, the class-based constitution was retained up to the First World War, and the local administration remained the “knighthoods' self-government”. From the disintegration of empires in World War I, the present day Baltic States emerged as democratic republican nation states, whose one of the first commitments was to abolish social ranks by means of respective laws. The authoritarian tendencies in Europe during the 1930s had their effect also on the constitutions and law of the Baltic States. The Soviet occupation of 1940 brought with itself something unprecedented: the abolishment of the entire applicable legal order and its replacement with the laws of the Russian Socialist Soviet Federative Republic. During the Nazi-German occupation, all of Soviet law was, in turn, entirely abolished and the law of the nation states restored — however, with the reservation of supremacy

¹ More of this by T. Anepaio. Justice Laws of 1889 — A Step in Estonia's Constitutional Development. – *Juridica International* 2005 (X), p. 150 et seq.; *Idem*. Die Justizreform von 1889 in den Ostseeprovinzen und das Baltische Privatrecht: die gegenseitige Beeinflussung. – J. Eckert, K.-Å. Modéer (Hrsgs.). *Geschichte und Perspektiven des Rechts im Ostseeraum*. Frankfurt/M u.a. 2002, p. 59 et seq.; *Idem*. Dialogue or Conflict? The Legal Reform of 1889 and Baltic Private Law Code. – *Juridica International* 2000 (V), p. 168 et seq. In this article, the judicial reform of 1889 is discussed in point 3.1.

for German martial law. The second Soviet occupation and annexation in 1944–1945 brought back the Soviet law which remained applicable up to the collapse of the Soviet Union in 1991. Thereafter have the Baltic States gone through a large number of reforms on their own initiative as well as in the name of accession into the EU.

Against the background of such mobility, the earlier history, although not without changes in power², seems almost like a constitutional and legal stagnation. Post-World War I Republic of Estonia inherited from the Russian Empire's Estonian and Livonian governorates a medieval legal particularism, of which, for example in private law, it still had not managed to free itself by 1940.³ The roots of the aforementioned self-government of the knighthoods went back to the Medieval Ages and it retained its early-modern-era-structure, as well as its ruling position in the local class society up to World War I. The so-called Long Middle Ages⁴, usually considered to have ended approximately in the middle of the 19th century, continued in the local constitution up to the beginning of the 20th century. In law, the influence lasted even longer, partly extending up to the current era of reforms.

On the other hand, it can hardly be said that the European 'saddle era'⁵ ventured past the Baltic provinces of the Russian Empire without leaving a trace. In Tartu (then called Dorpat), a German-language university was active from 1802 onwards. The university saw as its important mission the task of communicating European scientific culture to the Russian empire.⁶ Although the abolishment of serfdom happened gradually, it still became true decades earlier than in the so-called Inner Russia.⁷ Unlike in Russia, the Baltic agrarian reforms became a foundation for the development of small land ownership.⁸ About in the middle of the 19th century started certain processes which give a testimony of the intrinsic modernisation of the society: the beginnings of an organisation movement based on voluntary associations, gradual urbanisation, development of the Estonians' and Latvians' national identity, the evolution of both the Baltic-German and Estonian newspapers into a medium of the modern public sphere, the beginnings of industrialisation in both towns and the countryside, etc. All those processes have also been looked into in both Estonian and Baltic-German history writing.⁹ However, very little attention has been paid to important reform discussions that directly concerned the constitution and law of the provinces: namely, the attempt in 1860s made to reform the Baltic provinces' judicial order and procedural law. The aim of this article is to compensate a bit for this lack of attention (Section 2). Even though it is not yet based on the results of an extensive study, it is nonetheless already possible to correct the picture brought forward in previous studies of the legal policy and jurisprudence of the Baltic provinces in the second half of the 19th century. As the local modernisation attempts were unexpectedly resisted by the unifying modernisation policy of the Russian Empire, its consequences will also be analysed (Section 3).

² From the beginning of the 13th century onwards, Estonian territories have either partly or entirely been ruled over by almost all of the Baltic Sea powers at one time or another: to the Holy Roman Empire of the German Nation (up to 1561), Northern Estonia to the Kingdom of Denmark (1238–1347; the island of Saaremaa/Ösel 1559–1645), Southern Estonia to the Rzeczpospolita as a part of the Grand Duchy of Lithuania (1542–1629); to the Kingdom of Sweden (Northern Estonia in 1561–1710, Southern Estonia in 1629–1710); to the Russian Empire (1710–1917).

³ More on this by M. Luts. *Aktuelle Zivilrechtsreform in Estland als eine historische Herausforderung*. – H. Heiss (Hrsg.). *Zivilrechtsreform im Baltikum*. Tübingen 2006 (= *Studien zum ausländischen und internationalen Privatrecht* 161), p. 31 et seq.

⁴ Cf. J. Le Goff. *La Civilisation de l'Occident medieval*. Paris 1984. I have used the Estonian translation thereof, entitled: *J. Le Goff. Keskaja Euroopa kultuur (Medieval European Culture)*. Tallinn 2001, p. 11 et seq.

⁵ The 'saddle era' is a concept of German history, which was introduced in one of the most remarkable works of the last few decades, that can only in very tentative terms be regarded as a work of conceptual history: R. Koselleck. *Einleitung*. – O. Brunner, W. Conze, R. Koselleck (Hrsg.). *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-soziale Sprache in Deutschland*. Bd. 1. Stuttgart 1972, p. XIV. This refers to the era approximately between the years 1750 and 1850, when Europe was swiftly moving from the long centuries of the *ancien régime* into vortices of a new modern era.

⁶ More on this by M. Luts. 'Eine Universität für Unser Reich, und insbesondere für die Provinzen Liv-, Ehst- und Kurland': Die Aufgaben der Juristenfakultät zu Dorpat in der ersten Hälfte des 19. Jahrhunderts. – *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistisch Abteilung*. Bd. 117. 2000, p. 615 et seq.

⁷ The personal liberation of peasants in the Baltic provinces was carried out under the Peasant Regulations of 1816, 1817 and 1819. In Russia, this was not accomplished until 1861.

⁸ The Livonian Peasant Regulations of 1849 and 1860 and the Estonian Peasant Regulations of 1856 and 1859 regulated very precisely the procedure of separating farmsteads from the manorial property and, eventually, selling the ownership of farmstead lands to peasants. The 1861 reform in Russia provided for communal land ownership, the peasants only having rights of use.

⁹ With references: M. Luts. *Modernisierung und deren Hemmnisse in den Ostseeprovinzen Est-, Liv- und Kurland im 19. Jahrhundert*. – T. Giaro (Hrsg.). *Modernisierung durch Transfer im 19. und frühen 20. Jahrhundert*. Frankfurt/ M 2006 (= *Studien zur europäischen Rechtsgeschichte*. Bd. 205; *Rechtskulturen des modernen Osteuropa. Traditionen und Transfers*. Bd. 1), p. 190 et seq.

2. Modernisation ‘from below’

2.1. The judicial reform attempt in 1860s: a project of progressive intellectuals?

In Baltic-German history writing, the modernisation-readiness of the 2nd half of the 19th century has often been associated with intellectuals. Gert von Pistohlkors argues that especially in the towns and especially on the initiative of the academic circle, a ‘liberally-minded public’ was formed, and — as never before in Baltic history — ‘upheld by the political press’.^{*10} The flagship of the progressive circles, and their most lasting achievement in that context, is without doubt the magazine *Baltische Monatsschrift*, which was first published in 1859 and reached its last annual volume, i.e. Volume No. 62, in 1931.

The discussion around reforms concerning local procedural law and courts administration, that we are concerned with now, was given a decisive push by the plans for judicial reform in the Russian Empire. In 1862, the main principles of the reform were approved by the Governing Senate and published in the Baltic Sea provinces in German translation.^{*11} This became the kick-off for a lively discussion on the shortcomings of the existing law and commencement to an avalanche of reform proposals. E. Winkelmann’s bibliography compilation contains 51 entries on articles and published drafts from 1862 to 1873 in the section dedicated to the judicial reform in the Baltic provinces.^{*12}

That this discussion was not merely academic is apparent already from the fact that from the beginning of the 1860s onward, the knighthoods of all three provinces had all been working on procedural law. Even there, something completely new happened. In the years 1864–1865, a Common Central Judicial Committee of the Baltic Sea Governorates (*Zentraljustizkommission* in German) was carrying out its activities in Tartu.^{*13} The novel aspect of this board was, first of all, the fact that it included representatives from the knighthoods of all three provinces as well as representatives from the towns and the university. However, its objective was even more innovative: to prepare drafts for courts administration order and procedural law that, while shared by all three provinces would lie the foundation for a common court procedure. No earlier codification^{*14} had attempted to harmonise the laws of the Baltic Sea provinces. Neither had it as its aim the codification of local private law, concurrently in preparation, approved by the emperor in 1864 and came into force in 1865.^{*15}

It is obvious that in order to harmonise the procedural law of the three provinces, the discrepancies in existing laws had to be eliminated. This is the point in which the reform discussions of the 1860s showed their nature as that of a true modernisation discussion. In newspapers and scholarly works, as well as in draft laws, changes to the existing (procedural) law were proposed. This was a completely new attitude in the legal policy of the Baltic provinces, where, until then, the exercise of the provinces’ autonomy was often seen in the maintenance of the existing law. The procedural-law drafts of the 1860s, based on the principles of hearing and publicity, spoke the language of modern law and demonstrated a readiness for modernisation.

A new procedural law would also have required a new system of courts administration. This topic was also a subject of heated discussion. In previous studies, it has been emphatically stressed that the draft of the Central Judicial Committee still did not emerge from the idea of a radical modernisation of the class-based judicial system but maintained a more conservative position.^{*16} Baltic-German history writing has attributed

¹⁰ More on this by G. v. Pistohlkors. *Die Ostseeprovinzen unter russischer Herrschaft (1710/95–1914)*. – G. v. Pistohlkors (Hrsg.). *Deutsche Geschichte im Osten Europas: Baltische Länder*. Berlin 1994, p. 365 et seq.; in detail also by M. Haltzel, M. Haltzel. *Der Abbau der deutschen ständischen Selbstverwaltung in den Ostseeprovinzen Rußlands. Ein Beitrag zur Geschichte der russischen Unifizierungspolitik 1855–1905*. Marburg/Lahn 1977, p. 40 et seq.

¹¹ *Die Reorganisation der Rechtspflege in Russland*. Nach dem Original-Text übersetzt. Riga 1862.

¹² E. Winkelmann. *Bibliotheca Livoniae Historica*. Berlin 1875, p. 156 et seq. Cf. that the previous subdivision contains only 14 entries on provincial-law codification although the period of 1818–1866 was a substantially longer one.

¹³ Concisely by G. von Pistohlkors (Note 10), p. 372 et seq.; in more detail by G. von Pistohlkors. *Das “Hineinragen” der ständischer Strukturen in die sich modernisierende baltische Region: Die gescheiterte ständische Justizreform in den 1860er Jahren*. – G. von Pistohlkors. *Vom Geist der Autonomie. Aufsätze zur baltischen Geschichte*. Zum 60. Geburtstag des Verfassers hg. v. Michael Garleff. Köln 1995, p. 43 et seq.

¹⁴ The first two volumes of the intended five-volume codification of the law of the Baltic provinces were completed in 1845: *Provinzialrecht der Ostseegouvernements. Erster Theil: Behördenverfassung*. St. Petersburg 1845; *Provinzialrecht der Ostseegouvernements. Zweiter Theil: Ständerecht*. St. Petersburg 1845.

¹⁵ *Provinzialrecht der Ostseegouvernements. Dritter Theil. Privatrecht: Liv-, Est- und Curlaendisches Privatrecht*. Zusammengestellt auf Befehl des Herrn und Kaisers Alexander II. St. Petersburg 1864. Regarding the codification method which attempted to compile and fix all kinds of class and territorial differences, see M. Luts. *Private Law of the Baltic Provinces as a Patriotic Act*. – *Juridica International* 2000 (V), p. 157 et seq.

¹⁶ Of the contemporaries, see O. Schmidt. *Rechtsgeschichte Liv-, Est- und Curlands*. E. von Nottbeck (Hrsg.). – *Dopater juristische Studien*. Bd. 3. Jujew (Dorpat) 1894, p. 325, which also gives an overview of the further fate of the drafts.

this fact to the inertia and durability of the class-based way of thinking.^{*17} In that respect, Gert von Pistohlkors has provided a quite thorough synopsis of the conservative views of the magistrate of Estonia, Baron Robert von Toll (1802–1876), regarding the defence of the existing judicial and administrative order.^{*18} At the same time it has not been explained why Baron Toll had to stand up so decisively to defend the existing constitution. His letter to the master of the Estonian knighthood^{*19} was actually merely a reaction to the proposals of the committee formed within the knighthood for the purpose of reorganising the judicial and administrative institutions of the Estonian governorate.^{*20} R. von Toll had correctly understood that the knighthood's committee with its new judicial order were attacking the existing constitution. He also made a list of those basic points which, according to the committee's proposal, would have brought principal changes into the existing courts administration and the administrative structure of the knighthood in general:

- (1) land ownership and matriculation could no longer be required from persons who were to be elected judges;
- (2) permanent judges;
- (3) professional jurists as standing members of judicial institutions;
- (4) salaries for judges;
- (5) a new organisation of judicial institutions.^{*21}

All these points suggest an intention to determinedly modernise the judicial system and, thereby, to modernise nothing less than the existing constitution of the province. Among other things, it included a proposal to establish a new administrative structure. It would have been topped by a governorate government composed of 8 magistrates from the knighthood, 4 representatives from towns and later (after the ownership of 1/3 of all the farm lands would have been transferred to peasants) also 4 representatives from peasantry.^{*22} It is clear that all those innovative ideas concerned only the administrative and judicial powers while the establishment of general norms had to remain within the competence of the knighthood. Hence, it never came to the Finnish idea of a general Land Council. It is nonetheless remarkable that so radical amendment proposals were circulating in the most conservative of the corporations of the Baltic Sea provinces, the knighthood of Estonia.

Already those brief hints demonstrate that the ranks in the 1860s' discussions around a judicial reform were not at all clearly defined as conservative rural aristocracy *versus* progressive-minded citizenry, intellectuals and scholars. It rather seems that reform supporters were to be found in all social strata. Furthermore, it is clear that the discussion around the reforms was not limited to the provinces' German-speaking upper classes. The newly-awakened ethnic national movements of Estonians and Latvians also participated in it with their own petitions.^{*23} As with the furiously conservative Baron Toll in the knighthood of Estonia, anti-reformists were represented apparently also among intellectuals and nationalists. The present status of the research does not yet enable to give a proper overview of the 1860s judicial reform on the Baltic provinces' own initiative. However, it can already be said with absolute certainty that a readiness for modernisation in that field existed and encompassed circles that were much wider than just intellectual ones.

2.2. The resultlessness of the reform attempt and the conservative resignation?

The reform of procedural law and the judicial system did not, however, take place according to the provinces' own suggestions. Still, the Russian central government did not intend to leave the local judicial system unreformed. Nevertheless, this was not supposed to happen in the way 'let us create a new and modern judicial organisation, which is, however, different from the rest of the land's', Russia's powerful striving towards unification and, in a structural sense, the empire becoming a modern state, pointed out, to the Baltic Sea provinces, the limits of their autonomy. The extension of the Russian rural self-government system (*semstvo*) to the Baltic governorates in 1864 was planned and also demanded by the provinces'

¹⁷ G. von Pistohlkors (Note 13).

¹⁸ *Ibid.*, p. 51 et seq.

¹⁹ Schreiben des Landsrath Baron von Toll an den Herrn Ritterschaftshauptmann, 16. Oktober [1863]. – The Estonian Historical Archives in Tartu, 854-2-300. Unpaginated dossier. The letter of R. Toll (on 10½ pages) has been printed for in-house use by the knighthood.

²⁰ Grundzüge zur Organisation der Landesbehörden Ehstlands. Als Manuskript gedruckt. [1863]. – The Estonian Historical Archives in Tartu, 854-2-300. Unpaginated dossier.

²¹ R. von Toll (Note 19), p. 1.

²² Abweichende Meinungen und Vorschläge einzelner der Herren Landräthe zu den Grundzügen zur Organisation der Landesbehörden Ehstlands. [1863]. – The Estonian Historical Archives in Tartu, 854-2-300. Unpaginated dossier.

²³ On the demands of the Estonian national movement in connection with the judicial reform, see T. Anepaio. Rahvuslikud lootused ja riiklikud vastused. Rahvusliku liikumise õiguslikud nõudmised ja 1889. aasta reform (National Hopes and the State's Answers. Legal Demands of the National Movement and the Reform of 1889.) – Acta Historica Tallinnensia 2005 (IX), p. 3 et seq. (in Estonian with a German summary 'Nationale Hoffnungen und staatliche Antworten. Rechtliche Forderungen der nationalen Bewegung und die Justizreform 1889', p. 26 et seq.).

peasantry. Still, it did not become true. The imperial town law of 1870, however, was extended to the Baltic provinces already seven years later. Neither in that case were the viewpoints of the local towns paid attention to.^{*24} The Russian Empire determined heteronomously a new constitution for the towns and cities, which, at the same time, meant a modernisation of the existing one.

In this pressure situation, the local jurist corps demonstrated a kind of novel inventiveness, which supports the argument that an interior readiness for reforms had awoken in the Baltic provinces. Although the procedural-law drafts of the Central Judicial Committee did not receive imperial affirmation, opportunities to introduce makeshift amendments to the existing procedure were nonetheless found locally. Oswald Schmidt (1823–1890), the professor of provincial law at the university who had energetically participated in the foregoing reform discussion and even dedicated most of his writings to procedural law, published in *Zeitschrift für Rechtswissenschaft*, the new journal of the faculty of law, his ideas on how to cope with the worst shortcomings in the system without changing it principally.^{*25} On the basis of these suggestions, the Higher Provincial Court of Estonia and the Council of the City of Tallinn in 1872, and the High Court of Livonia in 1876 issued their so-called constitutions, which nevertheless partly amended the existing procedural law.^{*26} Therefore the local reform discussion and modernisation-readiness still yielded some results. Moreover, the fate of Schmidt's proposals shows that both the city council recruited among the urban patriciate as well as higher judicial institutions of the knighthood were ready to act upon the instigations of academic circles. This proves that the knighthoods were indeed ready to reform the judicial system and procedure. It is also noteworthy that at least from the 1870s onward, modern professionalisation began to happen in the judicial system managed by the knighthoods.^{*27}

The already mentioned *Zeitschrift für Rechtswissenschaft*, which was the longest-standing (1868–1892; 11 volumes)^{*28} legal journal of the 19th century, also came into being in a certain sense as a reaction to the actions of the central administration. Its first issue was first published in 1868 and, therefore, its connection to the censorship arrangements of 1865 remains somewhat obscure. The new censorship arrangements were a painful setback for the local press, which had already developed the character of a modern political discussion forum.^{*29} That discussion, particularly on the pages of the *Baltische Monatsschrift*, also involved jurists. While the press was generally subjected to strict censorship, the faculty of law of the university decided to found a scientific professional journal. The theological *Dorpatier Zeitschrift für Theologie und Kirche*, published already from 1859, was there as an example. When the faculty of law decided to found its own journal in the autumn of 1866, they planned to name it *Dorpatier Zeitschrift für Rechtswissenschaft*.^{*30} It is important to note that as a publication of the university, the journal of the faculty of law was also free from censorship. Remarkably, procedural law remained the main subject in the journal during its first years of issue, thus carrying on the debates that had been interrupted in the general press.

The Baltic-German history writing describes the 1870s in the Baltic Sea provinces of the Russian Empire as an era of resignation. After 'The Livonian Answer'^{*31} by Carl Schirren (1826–1910), the conservative retention of the existing legal order was supposed to have become a main virtue of any Livonian or, in more general terms, any inhabitant of the Baltic provinces. Anyone daring to criticise the social situation or legal institutions of the provinces was extensively condemned by his compeers. The local politics of the 1870s should thus have been characterised by resignation and conservatism.^{*32}

²⁴ Further on this by O. Schmidt (Note 16), p. 328.

²⁵ O. Schmidt. Vorschläge zur Reform des in Liv-, Est- und Curland geltenden Civilprocesses. – *Zeitschrift für Rechtswissenschaft*. Jg. 3. Dorpat 1871, p. 216 et seq.

²⁶ Further on this by O. Schmidt (Note 16), p. 360.

²⁷ Further on this by M. Luts: Juristenausbildung im Richteramt (baltische Ostseeprovinzen im 19. Jh.). – J. Eckert, K.-Å. Modéer (Hrsg.). *Juristische Fakultäten und Juristenausbildung im Ostseeraum*. Stockholm 2004 (= *Rättshistoriska Skrifter* 6), p. 297 et seq.

²⁸ On the basis of studying 19th-century legal scientific journals of the Baltic Sea provinces, I have completed two German-language treatises of a more extensive nature. 'Die *respublicae litterariae* um die juristischen Fachzeitschriften in den baltischen Ostseeprovinzen im 19. Jh.' provides an analysis of the body of authors published in the journals and their connections with the University of Tartu. It will be published in the digest of the 3rd Day of Legal Historians of the Baltic Sea Area entitled 'Juristen im Ostseeraum' (Helsinki–Turku, 20.–22.05.2004). The second work, 'Die juristischen Zeitschriften der baltischen Ostseeprovinzen Russlands im 19. Jh. – Medien der Wissenschaftlichkeit der lokalen deutschen Partikularrechte' takes a broader look at the legal context of publishing the journals as well as their contents. It will be published by M. Stolleis ja T. Simon in the digest of the conference 'Juristische Zeitschriften in Europa' of the Max-Planck-Institute for European Legal History (Frankfurt am Main, 30.09.–1.10.2004). The statements provided in this article with regard to legal journals of the 19th century have been substantiated in those articles by reference to sources.

²⁹ Further on this by G. von Pistohlkors (Note 10), p. 374 et seq.

³⁰ Protokoll der Fakultätssitzung, 5. Oktober 1866. – The Estonian Historical Archives in Tartu, 402-9-114, l. 77.

³¹ C. Schirren. *Livländische Antwort an Herrn Juri Samarin*. Leipzig 1869. Samarin criticised the feudal medievalism of the provinces and attempted to present them as a stronghold of backwardness in the progress-seeking Russian empire. Schirren countered Samarin's critique with the position that while incorporating the Baltic provinces, Russia had confirmed their legal and constitutional autonomy and must respect it.

³² G. von Pistohlkors. *F. G. von Bunge und das ständische Denken in den Ostseeprovinzen bis 1905/06*. – T. Rosenberg, M. Luts (Vlja.). *Tundmatu Friedrich Georg von Bunge (The Unknown Friedrich Georg von Bunge)*. Tartu 2006, p. 188 et seq. (in Estonian).

The *Zeitschrift für Rechtswissenschaft* definitely seems to fail to fit into that picture of resignation and lethargic conservatism. The new legal journal became a forum for professional and academically educated jurists. The active authors of the journal also included practising lawyers. Most of them were themselves graduates of the faculty of law of the University of Tartu and had thus natural relations with the faculty. Nevertheless it cannot be said that the faculty or the professors would have had a dominant position among the authors. The scientific quality of the journal did not suffer for that reason; even the articles written by practising lawyers are on a sufficiently high scientific level. Thus the central government's attempts to control the press of the Baltic Sea provinces by means of censorship turned out to be an unexpected favour: it necessitated the establishment of a professional journal which efficiently contributed to the scientific analysis and development of the provincial law. In any case, the reader of the journal is not left with the impression that conservative retention of the existing provincial legal order and its maintenance for any price had among the writing jurists of the Baltic Sea provinces declared to be a fundamental virtue.

Jurisprudence which had ascended to the height of a self-conscious autonomy in the 19th century, functioned as a factor in the modernisation of law particularly in space of German culture and science.³³ The question of whether we can say the same about the local jurisprudence, cannot be answered without additional thorough research. Until now, there have been no studies on whether anything, and if so, then what, of that new scientific enlivenment actually made its way into judicial practice. Likewise, there is a need for a thorough analysis of the essential argumentation concerning the legal scientific approaches of that time, inter alia, in light of modernisation matters. However, it is important to note that the pressure, which became perceptible from the second half of the 1860s in the provincial policy of the Russian central government, did not yield any discouraging effect on the scientific analysis of the local law but, rather, encouraged it. Nothing before the determined Russification of the university in 1892–1893 significantly injured the Baltic-German jurisprudence.

3. Modernisation 'from above'

3.1. The reforms of russian central administration — a success story of modernisation?

The extension of the Russian general town law to the Baltic Sea provinces in 1877 and the resulting changes as a manifestation of modernisation have already been briefly mentioned in this article. Indeed, the constitution of medieval origin, based on guilds and city councils, was replaced with a self-government following the example of the Prussian town order. The strict property requirements in the election of self-government bodies of course rules out the possibility of calling it democratic, but it was no longer a medieval main and administrative constitution either. In larger towns, magistrates were still retained but city administration was no longer within their competence. They remained only as judicial institutions. Thus the administrative and judicial powers had been separated in the towns. Structurally, it meant a big step towards modernisation. Whether this happened in the essentially modern sense is another question. To what extent judicial control over the decisions of administrative bodies was possible and realised has not yet been researched, as far as I know. Yet to be researched is an entire range of other questions that would enable us a glimpse into whether and how the inner development of substantive town law was influenced by the modernisation of the main order in cities and towns as imposed by the Russian central administration.

In a legal-structural sense, the great police and judicial reform of 1888–1889 can also be regarded as the same — modernisation from above. On one hand, that reform was an extension of the Russian judicial reform of 1864 to the Baltic Sea provinces. On the other hand, changes in the initial judicial order were so extensive that this could be regarded as a separate reform. Thus, changes in judicial order that were effected at the same time in Russia have been seen as counter-reformatory.³⁴

In Baltic Sea provinces, the judicial reform meant a dismantling of the existing judicial system, which had been managed by the knightships. This as well as other reforms of the Russification period are specifically regarded as 'dismantling' especially by Baltic-German authors. In more recent writings on legal history, Estonian authors have suggested that the judicial reform of 1889 was also an important modernisation re-

³³ About the science of jurisprudence in modern development and ensuring of legal autonomy in the 19th-century Germany see J. Rückert. *Autonomie des Rechts in rechtshistorischer Perspektive*. Hannover 1988, p. 56 et seq.

³⁴ Cf. J. Baberowski. *Autokratie und Justiz. Zum Verhältnis von Rechtsstaatlichkeit und Rückständigkeit im ausgehenden Zarenreich, 1864–1914*. Frankfurt/M 1996, p. 206 et seq. Baberowski sees the counter-reform mainly in the beginning of restrictions to the competence of juries in the 1880s. At the same time, he does not provide an answer to the question of how the essential aspect of the administration of justice was influenced by the changes in courts administration.

form.^{*35} At this point, mention should be made of a few keywords pointed out by T. Anepaio: state administration of the judicial power, separation of the judicial, police and administrative powers, homogenisation of jurisdictions^{*36}, even partial modernisation of substantive law.^{*37} To this list should definitely be added the statutory requirement of law education for judges and the principles of hearing and publicity of proceedings.

These were mostly the same innovations that had been demanded aloud during the local reform discussions of the 1860s. However, the reform of 1889 also resulted in something not demanded by anyone in the Baltic provinces: Russian as the language of public administration. This is apparently the reason why Baltic-German, Estonian and Latvian literature show the tendency of referring to ‘Russification’ rather than ‘modernisation’ of the judicial system. In effect, it is unclear without conducting in-depth research, whether the above-referred structural characteristics of modernisation really resulted in modernising changes in the legal reality. A separation of administrative and judicial powers will have a modernising effect only if the activities of the administrative power can indeed be controlled by the justice. The state administration of the judicial power must, in this context, also mean independence of the courts and administration of justice on strictly legal grounds. Homogenisation of jurisdictions will have a modern effect if equality and uniformity are provided for by the general rules on legal personality. The lack of law education among pre-reform-period judges was probably rather well compensated by the law education of court registrars, who were responsible for all essential legal preparations for the proceedings.^{*38} However, this was the time when proceedings were conducted in written form. The principles of publicity and hearing introduced by the judicial reform naturally called for judges who were educated in jurisprudence and now had to resolve legal matters by themselves.

The judicial reform of 1889 was, without doubt one of most important breakthroughs, in the history of our local law during the period of the Russian Empire, if not the most important one. In this respect, it must, however, be taken into account that the reform in question was dictated and imposed heteronomously. We do not know whether, and to what extent, the modern possibilities of legal protection established by the reform were embraced by the population of the local provinces. Perhaps they rather returned to such conciliation mechanisms that were carried out extrajudicially (but in their mother tongue). This could be assumed especially concerning the nobles but cannot be ruled out even regarding the citizenry and the peasantry.

3.2. The disadvantages and advantages of the university reform

The university reform of 1892–1893 and the following ‘Yurev period’^{*39} in the history of the University of Tartu are also ambivalent, allowing very different, even extreme points of view. The earlier, rather well-functioning German-speaking faculty of law was almost completely dismantled.^{*40} Those not dismissed left the faculty on their own initiative. On the other hand, the consequent Russian-speaking faculty of law was a quite remarkable phenomenon. The new academic staff were mainly young and in the beginning of their academic careers. Almost without exception, they had also studied abroad in addition to Russia or even abroad exclusively.^{*41} A special role had been played by the Roman-law seminar in Berlin, established with the specific objective of preparing future professors for Russian universities.^{*42} The activities of the

³⁵ T. Anepaio. Justice Laws of 1889 — a Step in Estonia’s Constitutional Development. – *Juridica International* 2005 (X), p. 150-160; *Idem*. Die Justizreform in der zweiten Hälfte des 19. Jahrhunderts in den Ostseeprovinzen – Russifizierung oder Modernisierung? – *Acta Baltica*. Bd. 35. Königstein 1997, p. 257–272.

³⁶ T. Anepaio. Justice Laws (Note 1).

³⁷ On changes in substantive private law brought about by judicial reform: T. Anepaio. Die Justizreform (Note 1), p. 59 et seq.; *Idem*. Dialogue or Conflict? (Note 1), p. 168 et seq.

³⁸ Further on this by M. Luts (Note 27), p. 304 et seq.

³⁹ Yurev was the Russian name for Tartu used in 11th-century Russian chronicles and later, officially, in 1893–1918. [Translator’s note.]

⁴⁰ For a concise overview of legal education offered by the German-language faculty of law at Tartu in the 19th century, see M. Luts. Der lange Beginn einer geordneten Juristenausbildung an der deutschen Universität zu Dorpat (1802–1893). It will be published in the digest of the conference ‘Juristische Ausbildung in Osteuropa bis zum ersten Weltkrieg’ that took place in the Max-Planck-Institute for European Legal History in Frankfurt am Main on 26.–29.11.2004.

⁴¹ The last category included, e.g., Leon Victor Constantin Casso, who had studied jurisprudence in Paris and Berlin and who worked in Tartu in the years 1892–1895. See T. Anepaio. Leon Victor Constantin Casso (1865–1914). Ein russischer (?) Jurist an der Universität Tartu. – *Juristische Fakultäten* (Note 27), p. 313 et seq.

⁴² In recent years, this institution has become a centre of interest for both German and Russian researchers: M. Avenarius. Das russische Seminar für römisches Recht in Berlin (1887–1896). – *Zeitschrift für Europäisches Privatrecht* 1998, p. 893 et seq.; A. Kartsov. Русский институт римского права при Берлинском университете ((1887–1896). (Russian institute of Roman law at the Berlin University.) – *Древнее Право* 2003 (12) 2, p. 120 et seq. (in Russian); an extensive monography by F. Kolbinger: *Im Schleppeil Europas? Das russische Seminar für römisches Recht bei der juristischen Fakultät der Universität Berlin in den Jahren 1887–1896*. Frankfurt/Main 2004.

Russian(-speaking) faculty of law in Tartu coincided with a period of extensive modernisation of Russian jurisprudence in the footsteps of Western European, particularly German jurisprudence. Several of the members of the University of Tartu/Yurev's academic staff of those times are even today, or actually, at last, regarded as 'classics' of Russian jurisprudence.^{*43} Not all of them taught Russian law, but also studied and developed further the local law.^{*44} How much of an effect these treatises had on local legal climate cannot be determined without conducting special research. The Baltic-German counter-reaction to the Russification of a German-language university was entirely understandable, and likewise, one can understand their disinclination to see anything positive in that university. The remarkable scientific potential of the faculty of law has been pointed out primarily by Estonian legal historians.^{*45} Still, this has been one of the least-studied periods in the history of the faculty of law. By this I mean in-depth research that would take a closer look at the academic and scientific activities at the University of Tartu during those times, putting it into a modern Russian and European context.

Until now, insufficient attention has been paid to how the Russification of the faculty of law resulted in the appearance of another legal journal, *Dorpat'er juristische Studien* (4 volumes; 1893–1896), which was the last vigorous manifestation of the German faculty of law but published already outside of the university. Unlike all its predecessors in the local legal literature, this journal had an extraordinarily rapid publication rhythm. The journal had three publishers. The only one still employed by the university was Johannes August Engelmann (1832–1912), professor of Russian law, who still tried to do what he could to save Germanity and the German language in the University of Tartu. The professor of local law, Carl Eduard Erdmann (1841–1898), had been dismissed from the university because he refused to lecture in Russian. Woldemar Eduard von Rohland (1850–1936) had left voluntarily, so to say, and was already continuing his academic career as a professor of the University of Freiburg in Germany. Thus the three publishers represented the three possible fates of the old faculty of law. Contentwise, the new journal, the first two annual volumes of which still indicate *Dorpat* as the place of publication and the following two appear as published in *Jurjew* (*Dorpat*), now indeed carried on the conservative and defensive Baltic-German spirit, which had earlier manifested itself primarily in the general provincial press. This manifests itself also in large proportion of legal historical treatments published in the journal. These included 'The History of the Law of Livonia, Estonia and Courland',^{*46} which was compiled from the manuscripts of Oswald Schmidt and has remained an unsurpassed general treatise even today.

In spite of all that, *Dorpat'er juristische Studien* is not a tombstone for Baltic-German local jurisprudence. From Tartu, its intellectual centre moved to Riga, the capital of the Governorate of Livonia, and even during the Republic of Latvia of the interwar years, German-language jurisprudence continued to flourish there. Its vitality can be seen, e.g., from the publication of the German-language *Rigasche Zeitschrift für Rechtswissenschaft* from 1926–1937. It may sound somewhat cynical from the German-language university of Tartu/Dorpat's point of view, but the Russification of the University of Tartu paradoxically resulted in enlivenment of the local legal science. Firstly, the new academic staff of the University of Tartu were now also contributing to the scientific discussion of local law. Secondly, impetus was added by the defiant self-consciousness of Baltic-Germans.

Remaining somewhat aside from the local jurisprudence activities of the Baltic Sea provinces and studying in Russia rather than Tartu or Riga, a generation of ethnic Estonian jurists appeared. They had to bear the burden of establishing Estonian-language legal education and jurisprudence as well as reorganising the imperial legal order after World War I. Nevertheless, the new disruption still always picked up something of the old or allowed the old live on in a new way.

⁴³ A series of reprints entitled 'The Classics in Russian Civil Law' is being published in Russia. The series has included or will include the works of several civil-law specialists who worked in Tartu: Mikhail Pokrovskiy (1868–1920), Yevgeni Passek (1860–1912), Alexander Krivtsov (1868–1910) et al. Vladimir Hrabar (1865–1956), professor of international law, can definitely be regarded as world-famous.

⁴⁴ See T. Anepaio (Note 41), p. 321 et seq.; about Alexander Nevzorov's (1861–1936) publications on the law of the Baltic provinces see T. Anepaio. *Die juristische Universität zu Jurjew* (1889–1918). It will be published in the digest of the conference 'Juristische Ausbildung in Osteuropa bis zum ersten Weltkrieg' that took place in the Max-Planck-Institute for European Legal History in Frankfurt am Main on 26.–29.11.2004.

⁴⁵ P. Järvelaid. 360 aastat Tartu ülikooli õigusteaduskonda (III) (360 Years of the Faculty of Law in the University of Tartu.) – *Eesti Jurist* 1992/3, p. 247 et seq. (in Estonian); in the context of Humboldtian scientific and education ideals: M. Luts. *Scientific Legal Education and the Faculty of Law of the University of Tartu.* – *Juridica International* 1996 (1), p. 135 et seq.; of recent studies, particularly in the previously referred works of T. Anepaio.

⁴⁶ O. Schmidt (Note 16).