

*From the Editors*

The Rule of Law in Russia

Invitation to a Discussion on e-Kritika

Readers of this issue are invited to participate in our first eKritika debate, which will take place between Richard Wortman and those who wish to discuss his review article, "Russian Monarchy and the Rule of Law: New Considerations of the Court Reform of 1864." Professor Wortman's article is a revised version of his new introduction to the Russian translation of *The Development of a Russian Legal Consciousness*, published in 2004 by NLO Press. It is our hope that you will help make this discussion a success and a model for future electronic exchanges, which will become a part of the scholarly record and amplify the print version of the journal. We are especially excited about the prospect of fostering a productive, collegial dialogue between an author and his audience in a public forum that benefits the general readership. See the instructions below for information on how to make your own contribution to the debate. The editors are very grateful to Professor Wortman for agreeing to take part in this experiment.

Was the rule of law possible in imperial Russia, and is it possible today? Richard Wortman's article raises many important and stimulating issues for this discussion, which is why we have selected it to launch this new venture. Legal history, as Wortman notes, has often been peripheral to the field (145-46). All too often, legal history has been viewed merely as a political ideology, as a proxy for "liberalism." Wortman highlights the ideological component of a legal consciousness, but he also insists on the importance of the formal institutional underpinnings, on the workings of law as law. The issues recent legal history has raised, as brought out in Wortman's own work and in the scholarship treated in this review article, are crucial both to the most thorny questions about late imperial Russia and to even bigger questions about Russia's historical path.

One set of questions Wortman raises involves the relationship between the legal system and the state and how to conceptualize the evolution of law and the legal system in the "variegated and fragmented" society of late imperial Russia. A second set of questions revolves around how to evaluate the historical successes and failures of the court reform of 1864. This was perhaps the most promising chapter in the history of Russian legal reform, yet one that led to decades of struggle over the limits of legality and, of course, lacked the proverbial "happy ending." Was successful reform possible in conditions in which, in Wortman's words, "Russia adopts Western forms of legality, but without the legal institutions of Western monarchy" (149)? A third set of issues, then, has to do with the importation of Western legal ideas, practices, and institutions by both the state and the intelligentsia and refocuses the perennial question of "Russia and the West" through the prism of legal history. In

addition, Wortman's article reviews the historiography of the court reform and related issues from the 1960s, but especially in recent years. The editors especially appreciate the manner in which Wortman brings English and German language scholarship into a fruitful and productive dialogue with Russian literature. A most fitting example is his contrast of the far reaching but mutually contradictory approaches of Jürg Baberowski and Boris Mironov, which raises the question of how to conceive of Russia's modernization or, perhaps more felicitously, path to modernity through the prism of law. Wortman's critique of "the great impersonal forces propounded by models of modernization and Hegelian historicism" (163) implicitly puts forward an alternative approach that eschews teleology, recognizes a particular kind of imperial Russian fragmentation, and focuses on legal consciousness and the multifaceted role of the state. Here Wortman avoids simply cataloguing what Russia lacked while accounting for the specific contours that Russian political culture took specifically, the "myth of law" (or, in Viktor Zhivov's words, "a cultural fiction") in place of its institutional embodiment. How convincing are this characterization of the historiography and the approach implicitly endorsed here?

Wortman, finally, raises the intriguing connection of these issues to his own scholarly autobiography, discussing how he progressed from the study of the emergence of a Russian legal consciousness to his celebrated inquiry into myth and ceremony in Russian monarchy. His study under the great P. A. Zaionchkovskii in the 1960s also opens the door to a discussion of Soviet/ Russian historical and intellectual interactions with Western scholars. Today, when the current political situation in Russia raises the specter of rapidly increasing authoritarianism, the contemporary resonance of this historical discussion can hardly be more apparent. But does a more optimistic or pessimistic assessment of legal reform after 1864 have any specific ramifications for the present day? On the one hand, the Rechtsstaat model so important in late imperial Russia posited the pursuit of legality within an authoritarian system of state administration; this suggests a certain kind of legality should not be incompatible with certain kinds of authoritarianism. On the other hand, even as Wortman eschews teleology and insists on a particular Russian trajectory to "legal consciousness," his account also suggests an enduring suspiciousness by Russian executive authority be it imperial, Soviet, or the modern Russian Federation's toward the "rule of law." How is one to account for this striking continuity across time, especially given the otherwise "disparate and incompatible character of Russian institutions in general" (162)?

Under what conditions can various forms of legal consciousness Wortman insists that they are multiple and contingent upon context not only arise but achieve some kind of success? Does the "exception" of the Great Reforms only point out the "rule" of Russian and Soviet continuities, or does the messy and ambiguous situation after 1864

suggest alternative ways of looking at Russian prospects after 1991 and 2005? We are sure that readers of Richard Wortman's piece will have much to say about these issues and will raise many others on their own.

### How to participate in e-Kritika

After you have read Richard Wortman's piece, please direct your questions and comments for the author, preferably kept to a maximum length of a few paragraphs, to the email address [ekritika@mac.com](mailto:ekritika@mac.com). Professor Wortman will periodically respond to these questions, creating a dialogue with his readers that will later be posted to the Kritika website ([www.slavica.com/kritika](http://www.slavica.com/kritika)) under the link eKritika ([www.slavica.com/kritika/e-kritika.html](http://www.slavica.com/kritika/e-kritika.html)). Future additions to e-Kritika—including other discussions, images, data, and other amplifications of the print version will be posted to the same site. Readers have until 15 May 2005 to take part in this discussion by sending an email to the [ekritika](mailto:ekritika@mac.com) address. The final transcript of the dialogue will be posted under the eKritika link on Kritika's website under the URL [www.slavica.com/kritika/e-kritika/wortman.html](http://www.slavica.com/kritika/e-kritika/wortman.html). This link will be included in the electronic versions of Kritika, volume 6, number 1; and future readers of Professor Wortman's review article will be able to click on this link and peruse the exchange. In this way, the readers' discussion with the author which we would like you to help create will become a "virtual" part of the publication and, we hope, add in useful and interesting ways to the historical record.