Marju Luts

Lecturer of History of Law

Freedom via Acquired Profession? On the Possibility of Being a Jurist in an Estate Society

The transfer of the principal and universal freedom of an individual to act as a constituent basis of society can be considered the greatest achievement of the French Revolution and the modern era succeeding it. Among else, such universally recognised freedom that is basically owned by each individual comprises the right to educational and professional self-determination. The jurist profession is one of those professions in the Western World that had, to a greater or lesser extent, run in parallel with general structural changes in society. Thus, it is not surprising that its modernisation may be expressed almost as a slogan "From estate to profession or something" of the kind.[1]

At first glance, this seems to have been a relatively straightforward process at the end of which stands the present-day professional jurist. The jurist has acquired a special juridical knowledge through academic and theoretical education in university. The preparation of the jurist has been institutionalised into university; frequently through the following practical training and also through the corresponding institutions the jurist, among else, acquires certain professional ethics. In addition to that, institutionalised theoretical and practical preparation enables the jurist to master unexpected and complicated dilemmatic situations independently. He or she has proved his or her aptitude for the jurist profession by passing a publicly accepted examination. He or she has to use his or her professional competence and appropriate knowledge for the welfare of the general public, rather than for his or her own benefit. The profession determines the contents of professional knowledge, competence and standards, as well as the patterns of behaviour of the professionals.[2]

At the same time, it is clear that the class of jurists characteristic of *ancien regime* on the one hand, and the class of jurists by social standing on the other hand did not "evolve" linearly into a professional class and free and equal jurisdiction.[3] The setbacks of and digressions from the general tendency of the jurist profession becoming increasingly professional may be detected both by time and by region. Generally, people speak of the first half of the 19th century as the period when the final evolution of the jurist profession took place and became influential.[4]

In the 19th century, the Baltic provinces (*Est-, Liv- und Kurland*)[5] belonged to the Russian Empire. The Acts of surrender, concluded in 1710 between the local estates and towns on the one side and the central power of Russia on the other side, confirmed that the old European organisation of estate society remained in force in those provinces. Thus, this area proves to be a colourful example of whether and to what extent the modern class of professional jurists, immediately interconnected with the right to personal self-determination could dominate in a traditional legal order based on the class system.

In fact, at the beginning of the 19th century, one of the central prerequisites for the rise of the modern jurist pro-

fession had been created in the Baltic provinces. Namely, the University of Tartu was reopened in 1802. After a period lasting almost a century, youth of the Baltic provinces had acquired a chance to study in a home university. Unlike the other universities in the Russian Empire, the German and Lutheran University of Tartu also comprised the Faculty of Theology and Law.[6] The purpose was, naturally, to train clergy and jurists for the local provinces. Consequently, the re-opening of the University provided the basis thanks to which representatives of any estate could study on the spot, to become jurists and start to earn a living aided by their professional knowledge. Together with modernising jurisprudence and the relevant education the Faculty of Law sought to fix its position as a single authority to judge the qualifications and appropriateness of future jurists. This gave rise to several tensions between the University and local estates, especially as both parties possessed judicial proof to their competence.

Legal Basis for Legal Order in an Estate Society

In 1710, in the course of the Great Northern War, the troops of Peter I took over both the provinces of *Estland* and *Livland* from Sweden. Legally, their merger with the Russian Empire, while *Kurland* was merged in 1795, was formalised with the so-called Acts of surrender.[7] In his proclamation (*Universale*) to the inhabitants of the provinces of *Estland* and *Livland*, Peter I ascertained that he as a monarch of Russia,

"nicht alleine ohne einige Innovation die im ganzen Lande und Städten bisherzu übliche Evangelische Religion, alle ihre alten Privilegien, Freiheiten, Rechte und Immunitäten, welche unter der Schwedischen Regierung zeithero weltkundig violiret worden, nach ihrem wahren Sinn und Verstand heilig zu conserviren und zu halten gesinnet sey, sondern auch gelobe dieselbigen mit noch ampleren und herrlicheren nach Gelegenheit zu vermehren".[8]

Naturally, the provincials gladly accepted the Emperor's generous offer concerning the increase in privileges and the right to autonomy, especially as the centralisation attempts by the Swedish central government, carried by enlightenment absolutism, had sharply touched the interests of the local nobility. Now they were pleased to rush to write down their grandiose demands. The estates naturally felt that they possessed a historical right to do so. Even the Swedish government had, upon seizure of the Baltic provinces, assured that all the privileges and rights remained in force. The later attempts of the Swedish royal power to limit the privileges of the nobility appeared to the parties as infringement of the treaty. Thus, the Acts of surrender concluded with the Government of Russia came to include sections that could not be treated as "privileges, freedoms, rights and immunities" that were in force under the rule of the Swedish government.

One of such sections was about the structure and functioning of the legal system. On the one hand, it was assured that all the judicial instances that existed during the Swedish rule would remain in place. From this aspect, it really was "conservation" of the present situation. At the same time, clause 6 of the Acts of surrender of the *Livland* order set out that the courts may employ only

"*Personen aus dem Adel des Landes oder dazu geschickte Eingeborene Deutscher Nation" and determined that "Der Adel und die Landeseingeborenen sollen ein Vorzugsrecht haben bei der Anstellung zu allen Civil- und Kriegsämtern"* (clause 11).9

In the Acts of surrender of the Estonian order, the provision had been worded in an even more conservative manner,

"... in den oberen wie den niederen Gerichten keine andere Richter als die bestehenden angeordnet."[10]

A captious person could interpret such wording as prescribing that after the death of the judges currently filling the positions their positions should be eliminated altogether as nobody else could be appointed as judge.

The Acts of surrender of the *Livland* order granted the local nobility the pre-emptive right to fill civil positions. However, the indigenous right was set out in a rather unambiguous manner. Besides the nobility, representatives of other estates could be appointed as judges; only on condition that they were local Germans and, in addition to that, "skilled for profession". Let it remain unspecified whether this quality meant legal training as it remained unspecified in the following historical development of the Baltic provinces.

In the middle of the 18th century, the so-called peerage books were introduced to the Baltic provinces, and all manors were entered in the books. The owners of the manors who had not yet proved their noble descent had to do that. O. Schmidt claims that originally political merits and expansion of the nobility's rights bore no relation to the books.[11] Instead, it was intended that on the basis of the books the buildings of orders be decorated with the coats-of-arms of all the local noble families. Even in the diet of *Livland* (*Landtag*) in 1742 it was explicitly affirmed that the books to be drawn up would be merely a list of the local noble families. A new regulation adopted at the diet (*Landtagsordnung*), dated 1759, set out that participation in the diet is mandatory only for the matriculated nobility or the members of the order (Cap. II, § 4). Henceforth, only they possessed the active and passive vote in filling positions (Cap. VI, § 6).[12] In fact, the restriction contradicted the Acts of surrender of 1710, but proved to be a determinant in the following history of the Baltic provinces.

The fact that the privileges of the nobility in filling positions were expanded in the 18th century was actually not exceptional. Rather, this was a general tendency in Europe that had now reached also the shores of the Baltic

Sea. In historical context, this phenomenon is called "an aristocratic reaction" and R.R. Palmer even considers it to be an over-European phenomenon.[13] The nobility and its elite acquired a dominating position in all European courts, representations of estates and in many places even in city magistrates, occasionally outnumbering the other estates. The same tendency could be detected in German territories.[14] The nobility regarded themselves as being responsible for the well-being and welfare of the whole country and this task could actually be fulfilled only through respective positions. According to O. Brunner, the estates did not simply "represent" the country but they "were" their country.[15]

Self-consciousness of the orders was also characterised by this existential bond with their area of administration,

"*Die Ritterschaften fühlten sich als die berufenen Vertreter des ganzen Landes, als Patrone der evangelischen Landeskirche, als Wahrer der von den Vätern ererbten deutschen Kultur. Die Verfassung gab ihnen die Möglichkeit, in diesem Geiste zu wirken.*"[16]

The orders referred to their administrative, judicial and legislative power in the province as "self-government" (*Selbstverwaltung*) and occasionally as "country-sate" (*Landesstaat*). As such, it contrasted, in respect of autonomy, with the central government of the Empire that could be analogously referred to as "*Reichsstaat*".[17] Here it is not important whether *Reichsstaat* was established by the Holy Roman Empire (from 13th to 16th century), by the Kingdom of Denmark (in *Estland*, from 13th to 14th century), by the Kingdom of Poland (in *Livland*, from 16th to 17th century), by the Kingdom of Sweden (from 16th to 18th century), or by the Russian Empire (from 18th to 20th century). Throughout this time "the king was far away and God high above" as an Estonian ancient saying goes. Thus, it is not surprising that the right and also the obligation to attend to the welfare of the country was strongly expressed in self-consciousness of the local orders.

The self-government of the orders also covered judicial system. As this was in fact treated as self-government, the members of the order were obliged to undertake the tasks of a judge as an honorary position. Contemporaries regarded such locally arranged administrative and judicial system as justified in every way. Thus, J. Engelmann, a professor of Russian law in the University of Tartu, called attention to the Baltic provinces as to a positive example of their historically evolved and effectively operating local self-government system in his review of Russian constitutional law, published in 1889,

"*Die Bedeutung der Ostseeprovinzen für Rußland liegt vor Allem in der Tatsache, daß Rußland in denselben drei Landschaften besitzt, in welchen die Selbstverwaltung nicht erst von oben mühsam begründet, eingeführt und bevormundet zu werden braucht, sondern seit Jahrhunderten fest eingebürget ist. Die Stände sind hier daran gewöhnt, die Angelegenheiten des Landes zu verwalten. ... Der Dienst ... ist stets als eine Ehrenpflicht angesehen worden und als eine erfolgreiche Thätigkeit im Landesdienste, eine Schule, in der auch die bedeutendsten und vornehmsten Repräsentanten des Adels ihre Laufbahn begonnen haben. ... Selbstverwaltung ist nicht glänzende, außergewöhnliche Repräsentation, sondern alltägliche Arbeit zur Aufrechterhaltung der Sicherheit, Ordnung und Wohlfahrt des Landes.*"[18]

It is clear that Engelmann treated the self-government of the Baltic orders as nearly equal to the so-called modern local government that became common in continental Europe only in the 19th century.

Holding any office naturally necessitates expenditure. If judicial or police functions had to be performed as obligations of an honorary position, it might have involved considerable expenditure for the holder of the position. In *Livland* and *Kurland*, a person elected to the police offices was allocated certain remuneration from the treasury of the order, whereas in *Estland*, the owner of a manor who had been elected had to fulfil the respective tasks without pay; moreover, he had to pay expenses from his own funds. At the same time, he was subject to the duty of office. If a person was elected to fill a position in the judicial system or in the police force, it rendered resignation from the office impossible. Instead, he acquired no less than a greatly admired position among his peers,

"*Richter und Verwaltungsbeamte wurden von ihren Standesgenossen Gewählt. Es galt für eine Ehre und als Pflicht, dem Lande zu dienen. ... Aber die Beamte waren eng vertraut mit Land und Leuten, sie sprachen deren Sprache, sie kannten deren Gefühlsleben, sie hatten dieselbe Rechtsvorstellungen. Vom Vertrauen ihrer Standesgenossen berufen, kannten sie keinen anderen Ehrgeiz, als dieses Vertrauen zu rechtfertigen. Da es für sie keine beförderung gab und keine andere Belohnung, als das erhöhte Ansehen, welches Pflichterfüllung und Treue verleihen, wurde ihre Beamtentätigkeit nur von sachlichen Erwägungen geleitet.*"[19]

While the 18th-century aristocratic reaction or "the renaissance of the estates" was a widespread phenomenon in all of Europe, the legislative approval of its results was still rather unusual in the middle of the 19th century. Within the framework of the codification attempts of the Russian Empire, some parts of the law of the Baltic provinces were also codified.[20] On 1 January 1846, two initial parts of "the Provincial Law of *Livland*, *Estland* and *Kurland*": Administration of Offices[21] and Law of Estates[22] entered into force.

Cap. II, 3 of law of estates was dedicated to the rights of the nobility to fill positions. According to that, only the matriculated nobility or the members of the order were allowed to fill positions in all three provinces (§§ 364, 428-433, 450, 501); whereas the Acts of surrender of 1710 are pointed out as the original source of the provision, while

such restriction in fact did not arise from the wording of the Acts. Unlike in *Estland* (§ 451), no person in *Livland* was obliged to fill the position for which he was elected (§ 365).

So, among else, the judicial and administrative system had received imperial confirmation in the form of a legal act in the middle of the 19th century. Although order of *Livland*, for example, waived its exclusive right to offices[23] in 1871, the right was applied only to the so-called *Landschaft*. It consisted of landowners who possessed manors that were not matriculated. In this way, only a step was taken towards what was set out in the Acts of surrender of 1710.

Greater changes occurred during the so-called Russification reforms at the end of the century.[24] As to the filling of juridical positions, the judicial and police reforms of 1889 proved to be groundbreaking. It was only in the course of these reforms that a judicial system suitable for the emergence of the modern jurist profession also in the Baltic provinces was created. In this respect, these reforms may be regarded as a part of the modernisation process that also, with a slight delay, reached the Russian Empire in the 19th century.[25]

The Faculty of Law in the University had started fighting for prerequisites for the emergence of the modern jurist profession much earlier. It was one aspect of the process of acknowledgement and modernisation of legal studies that had started in the 1820s.[26] In this, the Faculty of Law could also rely on legal support.

Legal Support to the Right of the Faculty of Law to Participate in Filling Juridical Positions

Already during the preparatory work for the re-opening of the University, an imperial order arrived from St. Petersburg that in the Baltic provinces, only persons who have previously studied in the University of Tartu for at least two years might be appointed to local offices that require juridical knowledge,

"*Damit nun ein stärkerer Antrieb zur Beziehung dieser Universität erweckt und die Studierenden zur Beschäftigung mit den Wissenschaften desto mehr aufgemuntert werden: so müßten nach Verlauf von zwey jahren, von der Eröffnung der Universität ab gerechnet, von den im Liefländischen und Ehstländischen Gouvernemente gebornen Leuten, adlichen, bürgerlichen und andern Standes, bloß diejenigen zu Aemtern und Chargen in diesen Gouvernements angestellt werden, welche auf der gedachten Universität zwey Jahre lang studieret haben.*"[27]

In the same wording, this was also repeated in §18 of the Statutes compiled by the Board of Trustees of the orders who had been active in establishing the University. However, here the trustees had added a supplement,

"*Jeder aber, der auf dieser Universität studirt hat, ist nach Maaßgabe der erhaltenen Zeugnisse und vorhergegangenen Prüfung... in Civil-Dienste anzunehmen und als Registrator oder in ähnlichen Function anzustellen.*"[28]

Thus, according to the eminent trustees, the order did not apply to judges and higher administrative officials, for example. The orders were to elect them from among themselves as previously, and consequently, they also had to decide whether legal training was required at all. At the same time, it is noteworthy that the Statutes compiled by the trustees prescribed an examination as a test of juridical qualifications. Unfortunately, it is not possible to say whether this denoted an examination passed at the University or at an appropriate office. Due to opposition of the Enlightenment-minded professors the Statutes compiled by the Trustees did not receive imperial confirmation. Moreover, almost seven months after the opening of the University, the Emperor signed a new Foundation Act[29] of the University and assigned the right to compile the Statutes of the University to the academic corps.

The respective terms were changed with the Foundation Act, approved by the Emperor on 12 December 1802: the mandatory period of studies in the local University was extended to the term of three and the vacation period to the term of five years. The fact that studies in Tartu were equalised with studies in some other universities of the Russian Empire expressed the interests aimed at unifying the central government,

"*Jede Unserer Unterhanen in den oberwähnten Provinzen Liv- Ehst- und Kurland, ist verpflichtet, drey Jahre auf dieser oder irgend einer andern in Unserm Reiche errichteten Universität zu studieren, un zu irgend einem Amte, wozu juristische oder andere Studien erforderlich sind, in diesen drey Provinzen zu gelangen; diejenigen Beamte ausgenommen, die auf Unsern namentlichen befehl angestellt werden. Jedoch soll diese Verordnung, die Besetzung der Aemter durch angehende Beamte betreffend, erst nach fünf Jahren, von der Eröffnung der Universität an gerechnet, in Ausübung gebracht werden.*"[30]

The imperial order was repeated almost word for word in §3 of the Statutes, approved on 15 December 1803.[31]

Until the Statutes were in force (until 1820) the provision did not give rise to any discussions. One could graduate from the University without passing an examination. The certificates issued to those leaving the University were very different. During their three year studies, some students had listened to two or three lectures while some students had listened to twenty or more. In fact, a faculty curriculum did not exist at the time. Only in 1814 Dean Professor Meyer compiled a draft curriculum on the request of the imperial curator.[32] Namely, the Ministry of Education was about to establish a universal examination procedure for the whole Empire. That received imperial confirmation on 20 January 1819.[33] Jurists could obtain four scientific degrees: *gradus studiosi*, *candidatus iuris*,

magister iuris and *doctor iuris*. The first was actually the final examination. At the same time, the regulation dating from 1819 did not prescribe that such examination should be mandatory to every student about to graduate. However, this requirement soon came to be one of the central concerns in the name of which the Faculty itself took steps.

In 1814, the Academic Council of the University of Tartu had started preparing the new Statutes. The Emperor approved it on 4 June 1820.[34] Section 2 of the new Statutes repeated the already familiar requirement, but now the wording was different,

"*In den Gouvernements Livland, Esthland und Kurland, die den Bezirk dieser Universität ausmachen, dürfen zu Aemtern, die juristische und andere Kenntnisse erfordern, nur solche angestellt werden, welche Zeugnisse beibringen, dass sie auf der Dorpatischen oder einer andern Universität im Russischen Reiche ihre Studien begonnen, und wenigstens drei Jahre hinter einander mit Erfolge fortgesetzt haben*."

The Faculty of Law derived support to its right to judge the juridical qualification of graduating students from the phrase "successful". How else, apart from examinations, could one decide whether the mandatory studies in law had been completed successfully.

Attempts of the Faculty of Law at the Introduction of Mandatory Examination

In 1820s, Christoph Christian Dabelow (1780-1830)[35] and Walter Friedrich Clossius (1795-1838)[36], two professors who had come from Germany greatly contributed to reforming the Faculty of Law. Above all, their attempts were directed to acknowledging legal studies in the sense of modern jurisprudence.[37] Among else, this meant placing emphasis on the students' independent work and their conscientiousness in general. The mandatory examination was perceived as an effective tool for that.

In 1825, Dean Clossius made a relevant proposal to his colleagues.[38] In doing so, he referred to clause 2 of the Statutes of the University, dating from 1820, and the phrase in it that legal studies should be completed "successfully". Dabelow as a more experienced person tried to mitigate his young and energetic colleague's enthusiasm. He pointed out that due to the class-based legal order of the local provinces the initiative of the Faculty of Law would remain only on paper and never be put into action. At the same time, he himself supported the introduction of mandatory examinations. Finally, the Faculty made a proposal and sought approval to it from higher authorities. Among else, they proposed that the nobility also be subjected to mandatory examinations. Namely, the Faculty of Law could not identify any reason why they should be exempted from the requirement. They relied on the interests of the Crown in their statement,

"*... da es eines Theils immer Interesse der hohen Krone ist, daß die Stellen, deren Besetzungsrecht sie auch gewißen Corporationen verliehen hat, von tüchtigen Subjecten bekleidet werden, andern Theils, unbeschadet der Privilegien vermöge des Oberaufsichtsrechts, welches keine Regierung entsagen wird und entsagen kann, Prüfungen bestehen können und auch in anderen Länder in gleichen Fällen bestehen.*"[39]

As this indicates, the Faculty of Law sought to find an ally in the central government of Russia. The Faculty did not regard the issue of honorary positions as an obstacle. They appealed to the nobility's patriotic conscience, that they should not be discouraged by examinations.

On the one hand, the Faculty's expectations aimed at the central government were justified in every aspect. The imperial curator confirmed during the same year that every student was to complete the whole curriculum of legal studies and should also be carefully examined in all the subjects[40] On the other hand, it was a mere prescript to the University. The local orders treated the Statutes of the University in the same manner — as a prescript to the University which lacked binding force on the orders.

Thus, it is not surprising that the Faculty regarded the legal and administrative order in force in the provinces as the main source of students' laziness and lack of studiousness. The students lacked interest in subduing themselves to strict control of knowledge in an examination while the fact whether they were appointed to a particular job was independent of it. Moreover, the local authorities deliberately disregarded the fact that according to the imperial regulation the examination passed at the University should guarantee access to civil service for everyone.

In 1826, the Faculty had to complain about a new problem — the provincial authorities in *Kurland* had begun to re-examine those who had passed the examination at the University. It is unknown whether they aimed at imitating the Prussian state examination[41] or something else; legislation in force, however, provided no support for such procedure. Dean Dabelow bitterly appealed to the Board of the University, complaining about the harmful effect of such vocational examinations to students' diligence,

"*Diese Gesezeswidrigkeit hat zu Folge, daß die Studierenden sich lieber hier gar nicht prüfen laßen, wen sie nicht etwa der mit dem Grade verbundenen Klaßenrang besonders intereßieren sollte, was selten der Fall ist, indem sie diesen auch auf dem Wege des Dienstes bald zu erwerben hoffen, oder ihn in der Provinz gar für etwas überflüßiges halten. Diese Folge könnte man noch hingehen laßen, obgleich nach meiner Meinung die Absicht der Regierung, daß sich jeder Studierende einen Grad und den damit verbundenen Rang aneignen solle, dadurch offenbar hintertrieben wird, allein die Gesezwidrigkeit hat noch eine zweyte und wirklich recht schlimme Folge, indem sie den Unfleiß der Studierenden befördert. Die Behörden-*

Prüfung ist rücksichtlich der Strenge mit der Facultäts-Prüfung gar nicht zu vergleichen, und verdrößt sich der Unwißenste damit, daß er bey der Behörden-Prüfung schon durchkommen werde."[42]

However, the Faculty of Law did not question the authorities' right to test their future employee's practical abilities and skills. The right to judge the theoretical qualification and aptness of future jurists should reside in the competence of the Faculty of Law of the University.

According to the Faculty of Law the examinations arranged by the authorities were so uncomplicated that every beginner could have passed them successfully. This presented a threat to the quality of jurisdiction and legal procedures in general. In Dabelow's opinion the management of law in force in the Baltic provinces was very complicated due to its heterogeneous sources that dated from different periods in history, which necessitated the preceding exhaustive studies. Students lacked necessity and will to complete the studies for uncomplicated examinations designed by authorities. They confirmed this themselves.

The Faculty of Law sought to provide independent work for and require active participation from its students. In this respect, students' laziness could prove to be the main obstacle in modernising legal studies both in the light of Humboldtean ideas and introducing the modern legal procedure into the Faculty of Law itself. Thus, the approval of highest authorities to the request that the representatives of the local nobility not be exempted from the examination was to be sought once again. Or as Dabelow expressed, their privileges should not have provided them the right to work as jurists without sufficient juridical knowledge,

"*Eine gute Justitzverwaltung ist die Seele des Staats: eine solche läßt sich aber ohne gründliche RechtsKenntniß nicht denken. ... Niemand dürfte daher einen Justiz-Posten bekleiden, der nicht wenigstens den Studenten-Grad erhalten hätte. Von der Regel dürfen auch die hiesigen sogenannten Landes-Posten nicht auszunehmen seyn, denn in dem Privilegium, daß solche nur vom Adel bekleidet werden können, ist nicht sogleich das Privilegium der Rechtsunwißenheit erhalten, und wer Rechtsunwißend ist mag dem Wißen Plaz machen*."[43]

The Faculty continued its quest to increase students' conscientiousness for decades. At times, the exhaustive examination was divided into parts in order to compel students to start working already at the beginning of their studies, at times the University attempted to limit the scope of the examination and merge various subjects. All these attempts proved fruitful only for those who were not of noble descent.

According to the part of the Codification of Provincial Law of the Baltic Provinces that dealt with the administration of positions[44] juridical training was required in several positions. For example, under this regulation all persons applying for lawyer's post were to possess a master's or doctors degree taken in any university of the Russian Empire (§ 101). Consequently, a diligent representative of another estate could also rise at least to lawyer's position. However, this was not a concession initiated by the orders themselves. The demand for that originated from another imperial act.[45] A secretary to the town council was to have juridical training in two towns: in Tartu (§ 637) and in Pärnu (§ 717). This prescript relied on the regulations by the governor of *Livland*, dated 1811, 1817, 1827, 1830 and 1831. In towns of *Estland* Tallinn and Narva, the secretary had to belong to the so-called class of scholars or literates (§§ 1007 and 1530) only. In Tallinn, the prescript arose from the agreement between the town council and the Great Guild, concluded in 1672; in Narva, this was simply an "unbroken custom" (*ununterbrochene Gewohnheit*). But the class of scholars also comprised pharmacists, teachers etc.[46] Thus, their legal training was not essential; however, in the 19th century they had still studied law in most cases.[47] These few examples about the academic training required for filling juridical positions enable the assertion that even in an estate society the modern jurist profession could evolve and even dominate in some fields. In this case, however, interference by the central government was needed or the estates themselves should resign from their exclusive right to filling positions. The solitary efforts of the Faculty of Law of the University that trained jurists to establish a scholarly prepared class of professional jurists could serve as a merely supportive measure.

Notes:

[1] Cf. F. Ranieri, Vom Stand zum Beruf: Die Professionalisierung des Juristenstades als Forschungsaufgabe der europäischen Rechtsgeschichte der Neuzeit. - Ius commune, Bd. 13, Frankfurt a. M. 1985, p. 83 ff, or M. John, Between Estate and Profession: Lawyers and the Development of the Legal Profession in Nineteenth Century Germany. — R. J. Evans, D. Blackbourn (Ed.), The German Bourgeoisie. London 1991, p. 177 ff.

[2] The list of the features of the profession presented here is not exhaustive, neither is it historically or spatially differentiated. The notion of the profession was introduced into the contemporary sociological discussion by T. Parsons. A summary of his standpoints can be found: T. Parsons. Professions. — International Encyclopedia of Social Sciences. Vol. 12, 1968, p. 457 ff.

D. Rüschenmeyer, for example, has examined the sociological theory of profession from the historical viewpoint, Professionalisierung — Theoretische Probleme für die vergleichende Geschichtsforschung — Geschichte und Gesellschaft. Heft 3. Professionalisierung in historischer Perspektive. Göttingen 1980, p. 311 ff. Together with relevant references and overviews of the discussion to date about the notion of the profession and its nature H. Siegrist. Advokat, Bürger und Staat Sozialgeschichte der Rechtsanwälte in Deutcshland, Italien und Schweiz (18.-20. Jh.). Bd. 1. Frankfurt a. M. 1996, p. 12 ff.

[3] This is also emphasised by F. Ranieri who demands that the faulty idea that historical-linear continuity could be identified in the development of the jurist profession be definitively discarded. Cf. F. Ranieri (Fn. 1), p. 101.

[4] Cf. about Germany, for example: G. Dilcher. Der deutche Juristenstand zwischen Ancien Régime und bürgerlicher Gesellschaft. — G. Köbler. H. Nehlsen (Hg.), Wirkungen europäischer Rechtskultur. Festschrift für K. Kroeschell zum 70. Geburtstag. München 1997, p. 164 ff., as well as F. Ranieri (Fn. 1), p. 101.

[5] The present-day territories of the Republic of Estonia and Latvia.

[6] Theology was not taught in other Russian universities. The clergy for the Orthodox church were prepared by the educational establishments owned by churches - seminaries. Juridical subjects were still taught in universities, but on a limited scale and in so-called ethical-political faculty. Cf. M. Silnizkzi. Geschichte des gelehrten Rechts in Rußland. Jurisprudencija an den Universitäten des Russischen Reichen 1700-1835. Frankfurt a. M., 1997, p. 192 ff.

[7] The respective merger and surrender treaties were concluded with orders and districts of each province (*Ritter- und Landschaft*), or with whole nobility, and separately with towns. In fact, these treaties bore different names: *Kapitulation*, *Akkordpunkte*, *Vertragsartikeln*, Punkte. Cf. Geschichtliche Uebersicht der Grundlagen und der Entwicklung des Provinzialrechts in den Ostseegouvernements. Allgemeiner Teil. St. Petersburg 1845, p. 79 ff. It was only later that the concept 'Acts of surrender' as a general term came to denote all these treaties. More detailed information about the merger of the Baltic provinces with the Russian Empire and the Acts of surrender: R. Wittram. Peter I: Czar und Keiser. Zur Geschichte Peters des Großen in seiner Zeit. Göttingen 1964, p. 323 ff.

[8] Geschichtliche Uebersicht (Fn. 7), p, 83 f.

[9] Geschichtliche Uebersicht (Fn. 7), p. 87.

[10] Geschichtliche Uebersicht (Fn. 7), p. 95.

[11] O. Schmidt. Zur Geschichte der Ritter- und Landschaft in Livland. — Dorpater Juristische Studien. Hrsg. von J. Engelmann, C. Erdmann und W. v. Rohland. Bd. 3. - Dorpat 1894, p. 25.

[12] O. Schmidt (Fn. 7), p. 25. In *Estland* and *Kurland*, the peerage book was institutionalised basically according to the same scenario.

[13] R. R. Palmer. The Age of Democratic revolution. Vol. 1. Princeton 1959, p. 29. K. Epstein. The Genesis of German Conservatism, Princeton 1966 relates the evolvement of this phenomenon with a reaction to Enlightenment ideas. However, literature of the Baltic provinces at the time and statements presented at *Landtag* indicate that Palmer's attempt to explain it is more feasible. Palmer treats aristocratic reaction in the middle of the 18th century as an attempt to justify the existing order, as its theoretical motive. Whether an entirely practical process in which the filling of certain positions is proclaimed to be a privilege of the nobility can be called "a theoretical motive" is another question.

[14] Cf. R. Vieraus. Ständewesen und Staatsverwaltung in Deutschland im späteren 18. Jahrhundert. — Dauer und Wandel der Geschichte. Festgabe für K. Raumer. 1966, p. 337 ff., who calls this phenomenon "the renaissance of the estates" (*ständische Renaissance*). Q.v. also D. Gerhard. Probleme ständischer Vertretungen im früheren achtzehnten Jahrhundert und ihre Behandlung in der gegenwärtigen internationalen Forschung. — D. Gerhard (Hg.), Ständische Vertretungen in Europa im 17. und 18. Jahrhundert. Göttingen 1969, p. 13 ff.

[15] O. Brunner. Land und Herrschaft. 5. Aufl., 1965, p. 422.

[16] A. v. Transehe-Roseneck, Geschichtlicher Rückblick. — Baltische Bürgerkunde. Teil 1. Riga 1908, p. 181 ff.

[17] Such notion was not used in contemporary sources. However, it seems to me that this contrastive use of notions enables to describe rather well the actual relationships and power structures and their mutual areas of tension.

[18] J. Engelmann. Das Staatsrecht des Russischen Reiches. Aus Marquardschens Handbuch des Oeffentlichen Rechts. Freiburg i. Br. 1889, p. 226 ff.

[19] A. v. Transehe-Roseneck. Geschichtlicher Rückblick (Fn. 16), p. 189.

[20] General overview of the codification of provincial law with references to sources: W. Kundert. Russische Ostseeprovinzen (Baltikum) ja B. Dölemeyer, Das Privatrecht Liv-, Est- und Kurlands von 1864. — H. Coing (Hg.). Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte. Bd. 3, Hbbd. 2. München 1982, p. 2071 ff. and 2076 ff.

[21] Provinzialrecht der Ostseegouvernements. Erster Theil. Behördenverfassung. St.-Petersburg 1845.

[22] Provinzialrecht der Ostseegouvernements. Zweiter Theil. Ständerecht. St.-Petersburg 1845.

[23] A. v. Transehe-Roseneck. Geschichtlicher Rückblick (Fn. 16), p. 192.

[24] General summary of the reforms: M. Haltzel. Der Abbau der deutschen ständischen Selbstverwaltung in den Ostseeprovinzen Russlands. Ein Beitrag zur Geschichte der russischen Unifizierungspolitik 1855 - 1905. Marburg 1977. With bibliography: G. Pistohlkors, Die Ostseeprovinzen unter russischen Herrschaft (1710/95 — 1914). — G. Pistohlkors (Hg.), Baltische Länder. Berlin 1994, p. 266 ff.

[25] On the same theme: T. Anepaio, Die Justizreform in der zweiten Hälfte des 19. Jh. in den Ostseeprovinzen — Russifizierung oder Modernisierung? — Acta Baltica. XXXV, Königstein 1997, p. 257 ff. However, who, if anybody, profited from court proceedings held in the Russian language in provinces where the majority of population spoke Estonian or Latvian and a minority German, is another question.

[26] About the attempts to acknowledge legal studies in University of Tartu in the 1820s in a greater detail: M. Luts. Integration as Reception: University of Tartu Faculty of Law Case in 19th Century. — Juridica International: Law Review University of Tartu, Vol. 3, 1998, p. 133 ff.

[27] Befehl Sr. Kayserlichen Majestät des Selbstherrschers aller Reußen aus dem dirigirenden Senat an den General von Infanterie, rigischen Kriegs-Gouverneur, Verwalter des Lief- Ehst- und Kurländischen Gouvernements und Ritter, Fürsten Sergei Feodorowitsch Golitzin. Den 21sten Januar 1802. Dorpat: Universitäts-Buchdruckerei (1802), p. 2.

[28] Statuten der Kayserlichen Universität zu Dorpat. Zum eigenen Gebrauch der Universität gedruckt. Dorpat 1802.

[29] Vene Impeeriumi Täielik Seadustekogu (PSZ) (Complete Collection of Acts of the Russian Empire), Vol. 27, art. 20 551.

[30] Fundationsakte der Dörptschen Universität. 12. dezember 1802. — Rußland unter Alexander dem Ersten. Eine historische Zeitschrift hg. von H. Storch. Bd. 2. St.Petersburg 1804, p. 85.

[31] Statuten der Kaiserlichen Universität zu Dorpat. 15. September 1803.

[32] Entwurf eines Cursus für Juristen. 12. Dezember 1814. — Eesti Ajalooarhiiv (National Archives), fund 402, list 9, item 55, p 32 ff.

[33] PSZ, Vol. 36, art. 27 646.

[34] PSZ, Vol. 37, art. 28 302.

[35] Dabelow was a professor of Roman and German private law in Tartu from 1818 to 1830. About Dabelow's biography in general: Allgemeine Deutsche Biographie, Bd. 4, Leipzig 1876, p. 684 ff.

[36] Clossius was a professor of criminal law and law of criminal procedure and juridical literature in Tartu from 1824-1837. About Clossius's biography in general: Allgemeine Deutsche Biographie, Bd. 4, Leipzig 1876, p. 343 ff.

[37] I have written about the nature of modern jurisprudence and its bases also earlier: M. Luts, Scientific Legal Education and the Faculty of Law of the University of Tartu. — Juridica International: Law Review University of Tartu, Vol. 1, 1996, p. 129 ff.

[38] Umlauf für die Mitglieder der Juristenfakultät. 17. Oktober 1825. — Eesti Ajalooarhiiv (National Archives), f. 402, l. 9, i. 71, p. 26 ff.

[39] Unterlegung der Juristenfakultät an Rektor. 31. Oktober 1825. — Eesti Ajalooarhiiv (National Archives), f. 402, l. 9, i. 71, 1. 28 p.

[40] Kurator Lieven an das Conseil der Universität Dorpat. 25. September 1825. — Eesti Ajalooarhiiv (National Archives), f. 402, l. 9, i. 63, l.

[41] About administration of state examinations in Prussia and references to relevant sources, q.v. I. Ebert, Die Normierung der juristischen Staatsexamina und des juristischen Vorbereitungsdienstes in Preussen. Berlin 1995.

[42] Entwurf der Unterlegung der Juristenfakultät an Rektor. 22. April 1826. — Eesti Ajalooarhiiv (National Archives), f. 402, l. 9, i. 72, p. 18 ff.

[43] Entwurf der Unterlegung der Juristenfakultät an Rektor. 5. April 1826. —

Eesti Ajalooarhiiv (National Archives) 23 ff.

[44] Provinzialrecht der Ostseegouvernements. Erster Theil. Behördenverfassung. St.-Petersburg 1845.

[45] Allerhöchst bestätigte Meinung des Reichsraths vom 5. Juli 1840. §§ 1 ff.

[46] About the notion of the class of scholars and its membership in the towns of the Baltic provinces: C. Redlich. "Literaten" in Riga und Reval im 17. und 18. Jahrhundert. — J. Hein, C. J. Kenéz (Hg.). Reval und die baltischen Länder. Festschrift für H. Weiss zum 80. Geburtstag. Marburg 1980, p. 295 ff.

[47] In fact, at the present stage of studies it is almost impossible to say who actually filled juridical positions in the Baltic provinces in the 19th century. To date, we lack appropriate social and historical research and works which would enable us to draw conclusions on the actual implementation of regulations.