

FEDERAL STATE BUDGETARY EDUCATIONAL INSTITUTION OF HIGHER
EDUCATION
«MIREA – RUSSIAN TECHNOLOGICAL UNIVERSITY»

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**LEGAL CUSTOM IN THE ACTIVITIES OF VOLOST COURTS OF
THE MOSCOW PROVINCE (1861-1917)**

Specialty - 5.1.1. Theoretical and historical legal sciences

ANNOTATION

dissertation for an academic degree
candidate of legal sciences

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Moscow – 2026

Relevance of the research topic. The volost courts, established during the peasant reform of 1861, occupied a special place in the system of local legal proceedings and became a significant institution for regulating social relations in rural areas. Their activities were based on a combination of state regulations and legal customs, which served as a natural and legitimate regulator of relations between peasants. The relevance of this research is determined by the need for a comprehensive understanding of the role those legal customs played in the functioning of the peasant justice system in the Russian Empire.

The volost courts functioned as a lower court in a system where the general court system was underdeveloped and the legal literacy of the population was extremely low. These courts were integrated into the structure of peasant self-government, as they relied on local legal traditions and established customs, which helped to maintain social order in the villages. The legal customs used by the volost courts reflected the peasant's understanding of justice, duty, and proper behavior. It ensured the internal coherence of the social environment, formed stable patterns of behavior and legal consciousness, and became an important element of the local legal culture.

Customary law is closely related to modern ideas about natural law, which, according to M. V. Baglay, «should be considered as the highest imperative». And if natural law expresses universal, supra-legal norms, then customary law consolidates these norms through certain legal traditions and stable practices of behavior that have developed in a specific social environment, but both are based on the concepts of justice and order recognized by society, so the study of customary law contributes to understanding the origins of the formation of universal rules in the modern period. The study and analysis of the practice of applying legal custom in the volost courts of the Moscow province allows us to identify the most important features of traditional peasant justice in the central region of the Russian Empire and its significance for maintaining law and order, and to assess the influence of customary legal norms on the formation of legal consciousness among the peasant population.

The legal custom of that period was fundamentally different from the modern system with its centralized, formally established, and universally binding norms. It grew

out of local traditions and established practices, which ensured its credibility among the population. However, pre-revolutionary legal scholars, representatives of the progressive scientific community, and practicing lawyers criticized this form of law for its legal subjectivity and lack of uniformity.

Historical and legal studies of volost courts have been conducted for a long time, but the application of legal customs in their activities has been studied only fragmentarily. The regional specifics of this phenomenon have barely been addressed, and the Moscow province is an example of this: the administrative status of the central province was combined with a well-developed legal infrastructure, which led to a unique judicial practice. The norms of positive law were applied alongside traditional customs, and this coexistence created conditions that were not typical for other regions.

The topic requires a comprehensive approach to the study of legal custom as an element of peasant law and order. The volost courts of the Moscow province serve as a representative example of the interaction between traditional legal norms and positive law in the judicial practice of the Russian Empire, and identifying the regional specifics of their functioning will help to fill a significant gap in historical and legal studies.

The purpose and objectives of the study. The purpose of the dissertation research is to determine the role of legal custom as a source of law in the activities of the volost courts of the Moscow province during the period from 1861 to 1917, to identify the features of its application and significance in the system of peasant justice.

To achieve this goal, the following research tasks are **proposed**:

- to analyze and systematize the views of representatives of the domestic historical and legal doctrine on the essence and functions of volost courts in the second half of the 19th and early 20th centuries;
- to reveal the development of the volost justice system in the Russian Empire following the implementation of the reforms of 1861, 1889, and 1912, and to identify the main trends that determined changes in the legal status of volost courts;

- to characterize the role, significance, and place of legal custom in the system of sources of volost legal proceedings, taking into account its specific features and scope of application;
- to identify the specifics of the application of legal customs by the volost courts of the Moscow province in family cases, taking into account the peculiarities of the peasant marriage and family system;
- to determine the features of customary legal norms applied in inheritance cases in the volost courts of the Moscow province;
- to identify the role and characteristics of the legal custom used by the volost courts of the Moscow province in land-related matters, taking into account the ongoing state reforms in the agricultural sector;
- to identify the features of the application of legal custom in obligatory relations and in the implementation of volost legal proceedings.

The object and subject of the research. The object of this research is the social relations that arose in the volost justice system of the Russian Empire between 1861 and 1917.

The subject is legal customs and the practice of their application by the volost courts of the Moscow province (1861-1917), as well as scientific views and ideas about the role of customary norms in volost legal proceedings.

The scientific novelty of the dissertation lies in the fact that, for the first time, based on a systematic study of archival materials from the Moscow Province (1861-1917), specific mechanisms for using legal custom in various categories of cases, such as family, inheritance, land, and obligations, have been revealed. The work identifies regional features of the application of customary law, which are influenced by socio-economic, religious, and organizational factors. This dissertation introduces a significant amount of previously unpublished court cases into scientific circulation, allowing for a new assessment of the role of volost courts as bodies that not only relied on state legislation, but also effectively served as guarantors of traditional peasant law and order.

The novelty of the research is also manifested in clarifying the relationship between legal custom and formalized legal norms in legal proceedings, using the example of volost courts in the Moscow province, identifying the practice of taking into account religious and moral norms in resolving disputes, and assessing the significance of legal custom in shaping peasant legal consciousness.

Provisions of the dissertation research submitted for defense:

1. A variety of scientific approaches to the assessment of parish courts (conservative-critical, liberal, historical-evolutionary, as well as modern institutional-legal, administrative, and cultural-anthropological interpretations) has been established, which allows them to be considered as a complex legal phenomenon combining the features of a state judicial body and the institution of peasant self-government. In the post-reform period (1861-1917), the volost courts represented a unique institutional mechanism that served as a legal and social intermediary between the state apparatus of the Russian Empire and peasant communal self-government. It is proved that in the conditions of objectively existing legal dualism, volost courts ensured not only the application of positive law norms, but also the integration of legal customs into the general legal system of the Russian Empire, which contributed to the preservation of social stability and the gradual modernization of the legal order without destroying the established way of rural life. Acting as a mechanism for state authorization of local customs, the volost justice provided a compromise smoothing of conflicts between legislation and the national legal consciousness. This process acquired special specificity in the Moscow province, where the activities of the volost courts were the most important tool for the legal adaptation of the traditional communal way of life in the context of intensively developing industrial-capitalist relations (p. 34, 42, 43).

2. It is established that the development of the institution of volost justice in the Russian Empire was gradual, in which the reform of 1861, which established autonomous estate courts based on customary law, and the reform of 1889, which transformed them into territorial courts with expanded jurisdiction, served as the institutional basis for the subsequent systemic modernization of judicial proceedings. It is proved that the reform of 1912 She outlined a fundamentally new stage in the evolution of parish courts, aimed

at their integration into the national judicial system by removing them from administrative control, establishing an appellate instance represented by the Upper Rural Court, increasing the educational qualifications of the judiciary and professionalizing the judicial apparatus. It is proved that the long-term institutional stability of volost justice was determined by its dual legal nature: the ability to perform the jurisdictional functions of a grassroots government body, relying on traditional mechanisms of peasant self-government. This allowed the courts to flexibly combine the norms of positive law with legal custom and the priority of conciliation procedures, effectively ensuring social balance and law and order in the context of a large-scale legal transformation of the empire (p. 34, 42, 43).

3. It is proved that in the system of volost justice of the Moscow province of the post-Reform period (1861-1917), legal custom did not function as an archaic subsidiary source of law that mechanically filled in the gaps of positive law, but acted as a fundamental regulatory and corrective mechanism. It has been revealed that formal legal institutions of positive law (including notarized transactions and norms of administrative and police coercion) acquired real legal force in the peasant environment only if they were necessarily verified for compliance with customary legal criteria of social justice, ethics of community solidarity and imperatives of economic survival. The volost courts relied on the norms of customary law in cases where the exercise of a positive right posed a direct threat to the ruin of the peasant household as a basic tax-paying and socio-economic unit. Contrary to the dominant historiographical tradition of perceiving custom exclusively as a patriarchal institution, its high adaptability to the conditions of large-scale industrial modernization is justified. The use of custom as a tool for preventive moral and social control and flexible mediation in collective conflicts allowed the state to ensure a balance of interests in protecting socially vulnerable categories of the population, while maintaining the stability of local governance without radically destroying traditional forms of popular life (p. 18, 19, 42, 43).

4. It is proved that in the conditions of intensive urbanization and socio-economic modernization of the Moscow province at the end of the XIX – beginning of the XX century, the activity of volost courts for resolving family disputes was characterized not

by an isolated application of legal custom, but by a purposeful convergence of customary legal norms and institutions of imperial positive law. The thesis dominating in historiography about the absolute priority of patriarchal custom in peasant justice is refuted: it is revealed that the volost courts of the Moscow province actively used the norms of the Code of Laws of the Russian Empire and the procedural standards of state legal proceedings to overcome archaic traditions and protect the individual. It is proved that the application of the norms of positive law was implemented in the following main directions. Firstly, there was a rejection of the presumption of the unconditional rightness of the head of the family in favor of the standards of objective proof of guilt with the acquittal of vulnerable members of the household (in particular, the daughters-in-law), as well as the priority application of the rules on administrative offenses (art. 102 of the General Regulations of 1861) to the detriment of the traditional provision of filial obedience. Secondly, traditional family and legal customs were formalized through the application of civil legislation: the legal custom of adopting sons-in-law of "adopted children" was regulated by the requirements of art. X Set of laws (regarding age qualifications and documentary evidence), and property intra-family agreements were regulated by the state institution of the "zemstvo" statute of limitations, limiting the indefinite claims of relatives. Thirdly, for the preventive protection of victims of domestic violence, the courts overcame the power of the householder by administratively certifying women and minor children, legalizing their right to separation, bypassing traditional prohibitions (p. 19, 25, 42, 43).

5. It is proved that in hereditary legal relations, legal custom also pointed to the priority of collective principles over individual claims, since the fundamental element was the idea of the indivisibility of the "yard" as a socio-economic unit. The volost courts preferred customs that ensured the continuation of farming "on the old root," often departing from the formal principles of equal division of inheritance. A characteristic feature was the recognition of the priority of direct kinship in inheritance, while at the same time extensive use of oral evidence and testimony, along with a small number of wills, indicating a rather weak formalization of civil turnover. The use of legal custom in

inheritance matters ensured the flexibility of legal regulation, taking into account the real socio-economic conditions of the peasantry (p. 19, 25, 42, 43).

6. It is revealed that the application of customary legal norms in land disputes resolved by the volost courts of the Moscow province ensured a balance between the interests of the individual peasant and the peasant community. Because land in the ordinary peasant view was perceived not as an object of abstract private property rights, but as a collective resource that prioritized community interests over individual claims. The volost courts in their practice proceeded from the need to maintain a balance, considering the right to land through the prism of fulfilling community duties and participating in village life. When resolving land disputes, the principle of labor contribution to the cultivation of land and the maintenance of a land allotment was taken into account. Long-term and conscientious use of land, as well as the labor invested, were more important than formal legal grounds. A feature of volost judicial proceedings in land matters was the recognition of equal legal force for oral and written agreements regarding land within the community. The procedural practice of considering land disputes was characterized by a focus on publicity - the participation of rural gatherings, and the achievement of compromise solutions consistent with ideas of social justice. Even in the conditions of agrarian transformations at the beginning of the 20th century and attempts to introduce the principles of individual ownership, volost courts continued to rely on traditional customary legal norms, which indicates their high stability (p. 19, 25, 42, 43).

7. It is proved that the obligations in the peasant environment were not so much individual as family-collective in nature, which was reflected in the recognition of the subject of responsibility not of an individual, but of the peasant household as a single economic unit. The application of legal custom by the volost courts of the Moscow province in various legal relations, which can be characterized as binding, ensured the priority of collective principles, since the decisions of the village assembly and the testimonies of community members, which were perceived by the volost courts as priority evidence, played a leading role in proving the resolution of peasant disputes. At the same time, written receipts were considered as confirmation of existing trust relationships and emerging obligations, and were subject to execution in the absence of refutations. The

absence of a written form did not become an obstacle to the protection of rights, witness testimony about the actual content of the obligation was applied everywhere and recognized by the court as sufficient evidence. The Court gave legal force to the internal mechanisms of community regulation, legitimizing established practices and ensuring the possibility of their enforcement. The moral side of the obligations was taken into account along with their formal content. When resolving disputes, the volost court sought to maintain good-neighborly relations and social stability, encouraging reconciliation between the parties and encouraging them to make mutual concessions. The family ties of the litigants were taken into account, and the deadlines for the execution of decisions were adapted to the agricultural cycle, which made it possible to avoid the ruin of the peasant economy (p. 19, 25, 26, 42, 43).

The results of the dissertation research. The main conclusions and provisions of the dissertation were repeatedly discussed at meetings of the Department of State and Legal Disciplines of the Institute of Management Technologies of the Russian Technical University MIREA. The key results of the work are presented by the author in scientific publications, including articles in peer-reviewed publications on specialty 5.1.1 Theoretical and Historical Legal Sciences.

The main provisions and conclusions contained in the dissertation are presented by the author in scientific papers, including articles published in peer-reviewed scientific journals on specialty 5.1.1 Theoretical and historical legal sciences. The author carried out the approbation and implementation of the dissertation results:

a) in scientific research activities:

The thesis was presented by the authors in the form of reports at five international and All-Russian scientific and practical conferences in Moscow.

The author has published 16 scientific papers on the topic of his dissertation in scientific publications included in the White List and Scopus, in publications recommended by the Higher Attestation Commission of the Ministry of Science and Higher Education of the Russian Federation.

b) in teaching activities:

Certain provisions of the dissertation research were tested by the author during the thematic classes within the framework of the academic discipline "History of the State and Law of Russia" on behalf of the Department of State and Legal Disciplines of the Institute of Management Technologies of the Russian Technical University MIREA.

The topic of the dissertation research corresponds to the passport of the scientific specialty 5.1.1. Theoretical and historical legal sciences.