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Indigenous and Foreign Influences on the Early Russian Legal Heritage

For long years Russia's legal history has intrigued the scholars of Eastern Europe, and some in the West, but little attention has been devoted in English to the most ancient sources, those to be found in the chronicles and the *Russkaia Pravda*. Although Russian legal history offers little of the continuity of institutions to be found in Anglo-Saxon law, its earliest documents are matters of concern even to Soviet legal historians in an effort to understand a heritage that has left its impact upon contemporary developments. In order to sketch a part of that heritage conveniently for English-language readers, this brief article has been prepared.

Historians generally divide prerevolutionary Russian history into three periods: Independent Principalities, Muscovite, and Imperial. Legal history may be similarly partitioned. After the foundation of the Russian state in 862, its supreme power in the person of the prince of Kiev brought into union under his sovereignty several Slavic and foreign tribes living in the middle flow of the Volga, Dnieper, Pripet, Western Dvina rivers and the Chudskoe and Ilmen lakes. Yet, soon after this foundation the unity was destroyed, as princes divided their principalities among their sons at death. The supreme power thus became decentralized, for the Russian land was broken up into a system of independent principalities which engaged in constant rivalry and open hostilities.

Parallel to the princely power there emerged another force, that of the people. This will of the people came to be expressed in the decisions of the *veche* (popular assembly). Although the prince was able to maintain a balance of power, it swung sharply in favor of the *veche* in the two "republics,"¹ as they are often called, of Novgorod and Pskov.

Contractual relations permeated the political, public, and social life in the first period of Russian history. Indeed, the contractual principle was the basis of relations not only between the prince and the people, and among the princes themselves, but it regulated also class and social relations.

1. They are called "republics" not because the two principalities had a political structure different from other principalities but because of the predominant power of the *veche*.

Custom and Customary Law

The primary source of law in the first period was custom. A custom that is used in a society for a long time becomes customary law—that is, obligatory for everyone. Customs are observed in individual cases “because of the concordant conviction of the actors of the necessity to submit to them,” writes V. I. Sergeevich, “or because custom has been promoted to customary law, and its violation or nonobservation is punishable. Since custom has no distinct beginning—that is, is not related to a publication date—we become aware of it when it is already functioning in definite form for certain actions. These forms are provided by customary law and are obligatory for these actions.”²

René A. Wormser asserts that “customs . . . came into being very late in man’s career. Customs were then followed consciously, even though men might have no idea why a custom had originated or what purpose it served. . . . Great numbers were merely accidental in their origin, and customs have a way of persisting long after their origin has been lost and even after their usefulness has completely disappeared. . . . Each people built up its set of customs, and many of these customs developed into law. I might put it that the customs turned into ‘customary law,’ and from that into ‘law.’”³ Consequently, customary law has no personal source, such as a law provided by a legislator. Its source is the people.

Sergeevich, however, explains the origin of customary law as follows: “Common norms are generated by actions of individual persons, not certainly and not always, but only under favorable conditions. Various persons with common interests and similarity in their way of life can, in similar circumstances, act identically. Similar actions are generated by the similarity of characters, needs, and the entire conditions of life. If the conditions in which these persons act remain the same during a certain time, a consecutive series of similar actions in similar cases is created” (p. 5). The oncoming generations observe the actions of their parents before taking action themselves. Thus, according to Sergeevich, customary law is generated by a person’s individual consciousness of the vital interests influencing this or that action. This autonomy is based on personal interest and individual judgment about what must happen under given conditions, and not on the abstract idea of truth and justice. This does not yet create customary law, but only individual actions—a certain practice. However, with the realization that the individual wills of various persons have become identical in similar cases and in substantial quantity, a second force—which inspires subsequent practice through the

2. V. I. Sergeevich, *Lektsii i issledovaniia po drevnei istorii russkago prava* (St. Petersburg, 1910), p. 5.

3. René A. Wormser, *The Law* (New York, 1949), pp. 3–4.

knowledge that there exists a definite practice to act similarly—is created. “This is the inert force of habit,” writes Sergeevich (p. 11). The way of action chosen by some (always more energetic) persons becomes a common norm—a custom—because other persons (more or less passively) become accustomed to act similarly. A certain practice becomes transformed into a general custom as a consequence of the passive imitation of the action of leading personalities, and establishes a conviction that all persons must act in a certain way and not in any other.

It must be noted that it is not necessary for everyone to be convinced of the adequacy and justice of a customary law for it to be applied. Like a regular law, customary law can be enforced anyway (for example, the ancient custom of burying the living widow with her dead husband). However, a simple custom, having acquired no obligatory character, can be violated without penal consequences.⁴

Sergeevich’s explanation of the origin of customary law was opposed by M. F. Vladimirsky-Budanov.⁵ He was of the opinion that “autonomy”—the arbitrary actions of energetic persons, followed by passive imitators and establishing a certain practice—could not be the source of customary law. Arbitrariness (that is, the negation of law) is not able to create law. Another argument against the scheme put forward by Sergeevich is, according to Vladimirsky-Budanov, the fact that customs of different people, separated by space and time, are similar and frequently even identical. In his opinion, the principal source of law is human nature—physical and moral—subjected to the same laws as organic and inorganic nature. Law on the first level of development is a feeling, an instinct—such as vengeance, the protection of children by parents and vice versa, and the primary right of possession. In general, such a character is retained by law in familial and tribal unions. Everyone acts identically not because of imitation of someone, but under the influence of an identical feeling everywhere and at the same time. On the second level, law is penetrated by consciousness (in communal and state unions) transforming itself from natural phenomena into volitional acts; that is, what *is* (fact) is transformed into what *must be* (law): “Laws governing consciousness and will are identical with regard to all human beings in the same way as physical laws of nature. Consciousness sanctifies the same norms established by nature. Thus, personal and public activities in law are completely merged. Custom only fortifies the action of similar norms, but does not create them. The diversity of customs in various

4. For example, no one was obliged to use the *bani* for bathing.

5. Sergeevich and Vladimirsky-Budanov are the foremost historians of Russian law for the tsarist period. They diverge in their opinions on almost all important questions.

tribes and nations is explained by the different levels of culture and the conditions of economic and social life."⁶

In resolving the question of the origin of custom and customary law, it seems to the present author that preference must be given to Sergeevich's explanations. Customs were formed in ancient human society to meet the need to bring some order into the development of social life. Aristotle's *zoon politikon* from the very beginning of his existence must be directed by rules of behavior. The initiative in creating such rules has to be taken in a certain sphere by an individual. The "people" cannot act as initiator. It is always an individual, or a group of them, who starts the action which is accepted by the people and becomes popular. When a certain way of action is accepted by a considerable number of persons behaving in the same way under similar conditions, a custom is created. This custom gains the character of law if it is applied by the overwhelming majority of the people: it becomes obligatory and its violation is punishable.

Indeed, Vladimirsky-Budanov's assertion that the primary source of law is *human nature* (physical and moral) which is subjected to the same laws as organic and inorganic nature seems to be unwarranted. To what laws of organic and inorganic nature is human nature subjected to provide the sources of mankind's law? Is it the protection of children by parents, and vice versa, and the primary feeling of passion? Is vengeance a "natural" feeling? Is protection of children, not to mention protection of parents, common to all beings created by nature? We know that this is not the case. Indeed, the greatest moral law of human beings—not to kill—does not correspond to a law of nature in which the survival of larger species of animals and fishes is based on the killing (eating) of smaller species. By the same token, one cannot agree that "laws of consciousness and will are identical to those established by nature" and that "the same norms are sanctified which were established by nature." Man's morality and law are not identical with laws of nature, and are often created in order to restrain the influence of natural law (for instance, the unlimited sexual urge).

Finally, Vladimirsky-Budanov's conclusion that "the diversity of customs in various tribes and nations is explained by the different levels of culture and the conditions of economic and social life" is in contradiction to his assertion that "the laws governing consciousness and will are identical with regard to all human beings in the same way as physical laws of nature." If the variety of customs is to be explained by the diversity of cultures and economic conditions, what does human nature have to do with it, since human nature is identical everywhere? If human nature is the primary source of custom, then custom

6. M. F. Vladimirsky-Budanov, *Obzor istorii russkogo prava* (St. Petersburg and Kiev, 1905), pp. 88–89.

must be identical in all countries; and if cultural and economic conditions are the source of different customs, how can it be explained that people living under the same cultural and economic circumstances have different customs?

Ancient Chronicles

The ancient chronicles were written by hand in the old Slavic-Russian language. There are three kinds of orthography in old Slavic: (1) The *ustav* letters are written straight, perpendicular to the line, with every letter at the same distance from the next one, but the words are not especially separated from each other. A particularity of the *ustav* is the square form of the letters, equally high and overly wide. (2) The *poluustav* (created in the fourteenth century) is characterized by numerous abbreviations of words, by omission of vowels (*tsr* for *tsar*, *knz* for *kniaz'*), and even use of a single letter (*d* for *dvor* 'court' and *m* for *monastyr'* 'monastery'). As its name implies, it was adapted to a more fluent form of handwriting—with frequent abbreviations and less rigid formation of letters. (3) The third is *skoropis'* (cursive), which originated in the fifteenth century, was much used in the sixteenth, and predominated in the seventeenth.

Figures were represented by alphabetic symbols (as in old Hebrew) up to the eighteenth century, with the exception of zero, which was not used at that time (hundreds and thousands were indicated by special symbols). Thus *a* (*az*) symbolizes also the figure one, when it has a particular sign (*titlo*) on its head; *v* (*vedu*) means two; *g* (*glagol'*) three; *d* (*dobro*) four; *e* (*est'*) five; *s* (*zelo*) six; *z* (*zeulia*) seven; *u* (*izhe*) eight; *o* (*fita*) nine; *i* (*deseterichnoe*) ten. To symbolize eleven to nineteen two letters were necessary, and the units were put before the tens according to the Russian pronunciation—*odinnadtsat'* (one/ten), *dvenadtsat'* (two/ten), and so forth—whereas figures between twenty and ninety were formed again according to the Russian pronunciation by putting tens in the first and units in the second place.

The oldest chronicles (as of the fourteenth century) used parchment, at first imported from Byzantium and Western Europe and later produced also in Russia. The chronicles of the fourteenth through seventeenth centuries were written no longer on parchment but exclusively on paper imported from Western Europe (paper production did not begin in Russia until the eighteenth century). Most of the Old Russian manuscripts are on single pages pasted together and rolled in the form of tubes (similar to the Hebrew Torah, which is written by hand on parchment up to the present time) or sewn together in the form of a book. The roll form was much used for documents in *prikaz* (department) offices of the sixteenth and seventeenth centuries, and the rolls were collected there—*stolbttsy*, *stolpy*, or *stolbiki* (columns, pillars, small columns). I. L. Sherman relates that the ancient Russian writings were formed by a great

number of such tubes, some of them very long.⁷ For instance, the text of *Sobornoe ulozhenie* (Assembly's Code) of 1649 occupies 959 sheets, and unrolled is 309 meters long.

The chronology of the old chronicles was taken over from Byzantium, where, beginning with the seventh century, time was calculated from the creation of the world. The period from the creation of the world until the birth of Christ was established as 5,508 years. The beginning of the year was the first of September. In Russia, however, the year started with the first of March (until the fourteenth century). The contemporary system of chronology, introduced by Peter the Great in 1700, is not the Gregorian calendar of 1582 that is accepted in the West but the Julian calendar of 46 B.C. The Julian calendar was eleven days behind the Gregorian calendar at that time, and thirteen days behind in the twentieth century. The new style calendar was established in the Soviet Union simply by declaring the first of February 1918 to be the fourteenth of February.

More than two hundred chronicles have been found, and their originals are kept in the Central State Archives of Ancient Documents in the Central State Historical Archives in Leningrad and the major libraries of Moscow and Leningrad. Using these most precious historical memorials, Russian scholars have reproduced the ancient history of Russia and its old customs from the tenth through the fifteenth century. The chronicles by monks of various monasteries were written as continuations of preceding chronicles and were arranged chronologically by separate years. Several chronicles have been put together in the form of collections (*svody*) named after various chroniclers. The study of the chronicles started in Russia in the eighteenth century and was intensified in the nineteenth and twentieth centuries, also by Soviet scholars.

The most prominent student and interpreter of the chronicles is A. A. Shakhmatov (1864–1920).⁸ It was he who proved that the oldest chronicle known to us, the *Povest' vremennykh let* (*Chronicle of Times Past*) of the Laurentian Collection,⁹ contained quotations from even older chronicles (not discovered yet) by analyzing the text and comparing it with other chronicles. According to him the chronicles of 1037, 1050, 1073, and 1093 preceded *Povest' vremennykh let*, which was written by the monk Nestor in 1113.¹⁰

7. I. L. Sherman, *Russkie istoricheskie istochniki* (Kharkov, 1959), pp. 12 ff.

8. His best-known work is *Razyskaniia o drevneishikh russkikh letopisnykh svodakh* (St. Petersburg, 1908; reprint, The Hague, 1967).

9. The *Lavrentievskii svod*, the oldest collection known, was composed by the monk Lavrentii for the Suzdal Prince Dmitrii Konstantinovich in 1377. The major part of the collection is written in *poluustav* letters and the rest is in *ustav* handwriting. See *Polnoe sobranie russkikh letopisei* (Leningrad, 1926), 1:1 ff.

10. Nestor's authorship is contested; but it is not possible to have a full discussion of

Let us take a look into *Povest' vremennykh let* for some customs and customary laws of that time. The Chronicle starts with the words in ancient Russian: "Se povesti vremian'ykh let otkudu est' poshla Russkaia zemlia, kto v Kieve nacha pervee kniazhiti, i otkudu Russkaia zemlia stala est'" ("This is the narration of the past years, from where the Russian land started, who was the first ruler in Kiev, and how the Russian state came into being").¹¹

Custom's Particularism

Although basic customs are common to all Slavic tribes of the epoch, still the particularism of custom and customary law is evident in many aspects.

The chronicler of the *Povest' vremennykh let* narrates: "Slavic tribes, all of them had their customs and laws of their fathers and traditions—each of them their own usages. Polianye had gentle and quiet customs, respectful with regard to their daughters-in-law, sisters, mothers, and parents; outwardly very restrained toward their mothers-in-law and brothers-in-law [*dever'*, groom's brother]; they have also matrimonial customs of their own; the bridegroom [*ziat'*] does not fetch the bride, but she is brought in the evening, and what is given with her [dowry] is given the next day. But Drevliane following bestial customs lived like animals, killed one another, ate impure food, and did not conclude marriages, but abducted girls at the spring [or where they went for water]. However, Radimichi, Viatichi, and Severiane had common customs: lived in the forest like animals, ate impure food. They used foul language in the presence of their fathers and daughters-in-law. Nor did they conclude marriages, but instead plays between villages were arranged. People gathered for games, dances, and any kind of devilish songs, and there they abducted girls on agreement with them; each man agreed to take two or three wives" (pp. xiii–xiv).

But all these tribes, which displayed different behavior with regard to family relations, had at the time of idolatry a common horrible custom described by the chronicler of *Povest' vremennykh let* as follows: "If someone died, a funeral feast [*trizna*]¹² was arranged and afterward the corpse was laid on a big log and burned; the ashes were collected and put into a small container and put on a pole at the roadsides exactly as the Viatichi do it up to the present time. This custom was observed by Viatichi, and other pagans, un-

the question in this article. The *Povest'* has been translated into English by Samuel H. Cross and O. P. Sherbowitz-Wetzor, *The Russian Primary Chronicle: Laurentian Text* (Cambridge, Mass., 1953). As in the case of other texts in this article, the translations are by the present author.

11. *Polnoe sobranie russkikh letopisei*, 1:1.

12. See Pushkin's *Pesni' o veshchem Olege*. A *trizna* also takes place in memory of the deceased one year after his death.

aware of God's law, but making laws for themselves" (p. xiv). A wife or a girl from the household of the defunct was burned and buried with him.

Arab writers of the epoch relate that the killing and cremation of one of the defunct's wives and of a girl of his household belonged to the burial customary law. Abul'-Khasan Ali ibn-Khusein (known under the name Al'-Masudi) related: "When a man dies [in Slavic and Russian pagan tribes] also his wife is buried alive with him; but if a woman passes away, the husband is not burned. If a single man dies, he is married after his death. There was a desire among wives to be burned in order to enter Paradise together with their husbands." This custom of burning the wife has the form of law and according to Masudi cannot be avoided by the wife. He asserts that an identical law exists in India, but there the burning depends upon the consent of the wife.¹³ Abu-Ali Akhmed ibn-Omar ibn-Dasta relates that one of the wives of the defunct who loved him the most "brings to the corpse two pillars and they are driven through the ground. Then a third pillar is put over the other two and a rope is tied to the crossbeam; the wife mounts on a bench, and the rope is tightened around her neck. After this is done the bench is taken from under her feet and she remains hanging until she chokes and dies, and then she is thrown into the fire and burned."¹⁴ From another Arabian writer, Akhmed-ibn-Abbas ibn-Rashid ibn-Khammad (tenth century A.D.), we know that a girl from the household of the dead person had to die with him. The writer witnessed a funeral ceremony and related in great detail how all the girls were asked which one wanted to be burned with the defunct. The girl who volunteered was choked to death and burned in the same fire.

Besides the great diversity of customs and customary laws, as reported by the chronicler, they were very stable. The people were conservative and observed the customs through centuries. Certainly some of them were changed or abrogated in the process of cultural development. Wives and servants ceased to be cremated with their husbands and masters. But other customs proved amazingly durable and became common among the whole people. An example is the *bania*.

What Saint Andrew saw of the *bania* during his travels through the Slavic lands to Rome is told in *Povest' vremennykh let*: "I saw wooden *bani*, heated red hot, in which people undress and naked, after having drenched in *kvas*,¹⁵ use young twigs for flogging themselves and are half dead when they come down [from the upper shelves]. They are revived by cold water spilled over them, and repeat this self-torture every day, but it is not a torture but a

13. A. E. Harkavy [A. Ia. Garkavi], *Skazaniia musul'manskikh pisatelei o slavianakh i russkikh* (St. Petersburg, 1879; reprint, The Hague and Paris, 1969), p. 129.

14. *Ibid.*, p. 265.

15. *Kvas*, an acid beverage, is no longer used for bathing, but as a beverage and soft drink it is no less popular with the Russian people than vodka is as a liquor.

cleaning process. Those who heard it were amazed" (pp. vii–viii). Indeed, the habit of using a *bania* for cleaning the body has lasted through centuries of Russian history to the present time. As a rule, every peasant household has a shed in the yard equipped with a hearth surrounded by stones. Steam is produced by pouring cold water on the burning hot stones. The room is divided by horizontal shelves. Since steam concentrates in the upper levels of the room, the air nearest the ceiling is the hottest. The bathing person increases the temperature to which he is submitted by ascending the shelves. Flogging is still used in order to stimulate blood circulation. *Bani* existed and still exist in all small and large cities, and they were and are visited regularly by all classes of the urban population. They have survived even the building of modern apartment houses with a bathroom in every apartment. Even though they can bathe at home, citizens of the Soviet Union still also go to the *bania* in order to enjoy this peculiar but very pleasant sensation that their forefathers enjoyed for centuries.

Customs in Family Relations

The power of the *pater familias* over his wife and children was unlimited at the time of the *Povest'*. There is, however, a curious description of how Prince Vladimir, the future Saint and Baptizer of the Russian People, proceeded in order to get Rogneda, the daughter of Prince Ragvold in Polotsk, for his wife. "And he sent [envoys] to Ragvold, to declare 'I wish your daughter to be my wife,'" relates the chronicler. Surprisingly enough, Ragvold demanded the consent of his daughter for the marriage: "Do you want Vladimir for a husband?" he asked.¹⁶ She answered, "I do not want to take the shoe off the son of a slave, but I want Iaropolk for a husband."¹⁷ Her answer was made known to Vladimir, who "went to war against Polotsk, killed Ragvold and his two sons, and took Rogneda for his wife" (p. 75).

A remnant of polyandry, *snokhachestvo*,¹⁸ which existed at a low level of cultural development, was known to the Slavic tribes in the earliest period of Russian history, and it lasted for centuries. We have seen that *Povest' vremennykh let* describes the Radimichi, Viatichi, and Severiane as living in forests like beasts and having no restraint toward their daughters-in-law. "*Snokhachestvo*," writes Kovalevsky, "is not something new in our legal life. Its existence since the ancient times of our society is proved by many customs,

16. He certainly must have only been seeking a pretext to reject Vladimir's bid.

17. For a wife to take off her husband's footwear is a symbol of her submission to him. Vladimir's mother was a slave (this is an interesting example of the social prejudice of the time). Iaropolk was an older brother of Vladimir's, and his bitter foe.

18. *Snokhachestvo* is sexual relations between the father of the groom and the daughter-in-law (*snokha*).

and it is retained in some places up to our time.”¹⁹ One of the circumstances favorable to these relations was the marriage of the son at a tender age to a much older girl. Kovalevsky relates that such marriages, allegedly to gain a worker for the family, were very frequent in Siberia. In 1749 a peasant in Yeniseisk Province complained that his father had married him when he was seven years old to a girl of forty. “Some facts testify to the substantial spreading of *snokhachestvo*, also in our time,” remarks Kovalevsky. If the daughter-in-law did not agree to sexual relations, she was persecuted by the father-in-law, in whose house she usually lived, and the entire family joined in the persecution. The situation was often the cause of scuffles in the family and fights between father and son. The church fought *snokhachestvo* from ancient times. According to the Church Statute of Iaroslav (art. 17) in cases of sexual intercourse between the father-in-law and his daughter-in-law, the father-in-law had to pay a fine of one hundred grovers to the bishop and he had to undergo public penance.

Marriage

Legally marriage and divorce were regulated by canon law in Russia prior to 1917. Civil marriage or divorce did not exist there before the Revolution. Marriage—a sacrament—had to be performed by a priest. But “for many centuries,” Kovalevsky narrates, “the Russian clergy had to fight against the inveterate custom of our lower classes to contract unions without the sanction of the Church. . . . No later than the end of the sixteenth century an assembly of Divines convened by Ivan the Cruel entered a strong protest against the custom which everywhere prevailed of omitting the religious consecration of the marriage tie, and strong measures were in consequence taken against those who did not comply with the requirements of the clergy. All [measures], however, failed and marriage remained in the eyes of the common people nothing more than a sort of civil contract, entered into in the presence of the community as a sign of its recognition and sanction.”²⁰

Charusin wrote, no more than a century ago, that the following method of concluding marriage was the general rule among the Don Cossacks: The young couple appeared before the popular assembly of the village and declared their intention to be husband and wife. “Be my wife,” said the bridegroom; “Be my husband,” replied the bride. “So be it,” proclaimed the assembly, and

19. M. M. Kovalevsky, *Pervobytnoe pravo*, 2 vols. (Moscow, 1886), 2:58.

20. Maxime Kovalevsky, *Modern Customs and Ancient Laws of Russia* (London, 1891), pp. 37–38. Russians just persisted in concluding marriages unofficially, as they did at the time of the *Povest*.

that was all.²¹ Also, in some places in the Ukraine the religious consecration of marriage was even in modern times considered a superfluous ceremony, according to Kovalevsky (p. 39). Thus through hundreds of years the custom of concluding marriages without civil or clerical sanction was retained.

When after the October Revolution the clerical marriage lost its mandatory character and civil marriage was introduced, the "factual marriage" (the common-law marriage of Anglo-Saxon countries), with all its legal consequences, was recognized by Soviet law (until the Ukase of July 1944, when registration of the marriage was made obligatory for it to be valid). Thus the old Russian custom of factual marriage enjoyed legal sanction in the Soviet Union for twenty-four years.

Conservatism of Custom

Since customary law functioned in place of written law, it acquired the stability usually reserved to written law. Its observance remained mandatory even after laws issued by legislators began to be the usual form of social norm. It was held in such respect by the people that as late as the fifteenth century even such autocrats as Ivan III considered it necessary to have the support of custom for actions which under written law required no support from any side. For instance, when Ivan decided, after the death of his son Ivan, to establish as his heir apparent Dmitrii, the son of his late son, he referred to the "custom of our fathers who used to give the Grand Princely Throne to the oldest son,"²² and asked the metropolitan to bless his grandson, Dmitrii, in this position, by virtue of old traditions. Furthermore, in his correspondence with Prince Kurbsky, Ivan the Terrible based his autocracy on custom. He wrote that "up to the present time, Russian rulers never gave account to anyone, but were free to reward or punish their subjects, and did not go to court with them."

When the same monarch was to be crowned, he ordered research to be undertaken to establish the procedure "applied by our forefathers, Tsars, and Grand Princes, and our relative, the Grand Prince Vladimir Vsevolodovich Monomakh, when he took over sovereign power." "This indicates," wrote Sergeevich, "that according to the feelings of the Muscovite people of the Muscovite state, the notion of what is right corresponds to what was done in olden times" (p. 23). Even a religious character was given to customary law: its origin was attributed to God himself. So the Russians swore to fulfill the treaty with the Greeks according to the customs (*zakon i pokon*) of their

21. *Ibid.*, p. 38.

22. See Sergeevich, *Lektsii*, p. 22.

country, "as God's creation."²³ V. N. Latkin wrote, "Ancient Russians valued custom as a norm of divine origin, a Sacred rule."²⁴

But how did a custom change or disappear completely? If a time arrived when an ancient custom did not correspond any longer to the culture or moral level of the society in which it was applied, and was rejected by individual persons, then when it was a secular custom, not a customary law, it was gradually abandoned by an increasing number of people and was finally dropped by the great majority, and ceased to be a general custom. Only individual persons still followed it in some places. But a customary law, the violation of which was punishable, could be abrogated only by written law.

The status of "law," in the sense of a general rule obligatory for everyone, was found first of all in custom as late as the sixteenth century. "Law is that which is sanctified by observation," as Sergeevich said.²⁵ The whole life of the ancient principalities, private and state rights, was, therefore, regulated chiefly by custom.

Legal Symbols

Customary law was also expressed in legal symbols. These were actions, testifying to the legality of a certain relationship: for instance, the exchange of rings and confarreation (the eating and drinking from the same plate and cup by spouses to symbolize their community of life). To shake hands as a symbol of a completed bargain has remained a custom throughout the centuries in Russia even to the present time. As Chislov put it, "By symbols people on the first steps of culture express their notion of rights, striving to give them a comprehensive form for everyone. Serving as a means for the knowledge of origin of ancient law, they disclose to us features of the life of ancient people, not to become known in another way."²⁶

The Russkaia Pravda

If the chronicles were a source of knowledge of custom and customary law of the first period, the *Russkaia Pravda* is the first collection of written laws of great significance.²⁷ It codified customary law. It also regulated court

23. The chronicles do not differentiate between written law (*zakon*) and unwritten law or custom (*obychai*). Both customs and customary laws are designated by the following words: *pravda*, *norov*, *obychai*, *predanie*, *poshlina*, *starina*, *pokon*, and *zakon*.

24. V. N. Latkin, *Lektsii po istorii russkago prava* (St. Petersburg, 1912), p. 6.

25. Sergeevich, *Lektsii*, p. 23.

26. P. I. Chislov, *Kurs istorii russkago prava* (Moscow, 1914), p. 21.

27. The word *pravda* is used in old Russian documents and chronicles in various senses—"law," "custom," "ordeal," "oath," "trial," and "law code" according to which the trial took place. It seems to the present writer that, taking into account its content

decisions and sentences during several centuries and served as a legal source for statutes published subsequently. Its provisions can be found in Pskov's Judicial Charter, in the Codes of 1497 and 1550. It is also the only ancient source which speaks of *zakupy* (hired hands). Indeed, even some provisions of the *Sobornoe ulozhenie* of Aleksei Mikhailovich (1649) were taken over from the *Russkaia Pravda*.

Undoubtedly the *Russkaia Pravda* is one of the most important legal instruments of the Middle Ages and one of the most precise memorials of Slavic law. A product of Russian legal thought of the tenth, eleventh, and twelfth centuries ("a cornerstone of medieval Russian jurisprudence," in Vernadsky's words), it introduces us to the legal thought of that time. No separate specimen of the *Pravda* has ever been found. The copies that have been discovered are all included in the collections of legal and literary material, such as the *Nomocanon*, and other law collections and chronicles. Three versions of the *Russkaia Pravda* are known: the Brief, Expanded, and Shortened Versions. The Brief Version is divided into two parts: the *Pravda* of Iaroslav, and the *Pravda* of Iaroslav's sons. The Expanded Version consists of the amended Brief Version and the Statute of Vladimir Monomakh and other enactments. The Shortened Version is a compilation from the Brief and Expanded Versions.

A copy of the *Russkaia Pravda* (Brief Version) was discovered for the first time in 1738 by the historian V. N. Tatishchev in the Novgorod Chronicle. He prepared a copy of the document and presented it to the Imperial Academy of Sciences for publication. The initial publication of the *Russkaia Pravda* was carried out not by the Academy but by A. L. Schloezer, professor in St. Petersburg (1761–66) and Göttingen (1768–1809), in 1767,²⁸ thirty years after Tatishchev's find. A great interest in the *Russkaia Pravda* developed in Russia and abroad during the nineteenth and twentieth centuries. Evers, Tobien, Kalachov, Sergeevich, Goetz, Maksimeiko, and the historians

and application, the most appropriate translation for *Russkaia Pravda* is "Russian Law Statute," although Filippov thinks that the *Pravda* cannot be called a code or statute, because it was not an official collection of laws. But Filippov himself cites the Novgorod and Pskov Chronicles, which name the *Pravda* "*ustav*" (statute) and "*ustav and sudebnik*" (code) respectively, and his opinion of the unofficial character of the *Pravda* is not shared by many authorities, as we shall see later. Furthermore, this author's translation is confirmed by the fact that the Expanded Version of the *Pravda* is entitled "*Ustav of the Grand Prince Iaroslav on Courts*," and another part of it is called "*Ustav of Vladimir Vsevolodovich*." In Vernadsky's translation of the *Russkaia Pravda* into English the statute is called "Russian Law," although in his introduction he writes, "In the reign of Iaroslav the Wise (1015–1054), the first *Russian code* [italics added] of laws was compiled, known as *Pravda Russkaia*." See George Vernadsky, *Medieval Russian Laws* (New York, 1947; reprint, New York, 1965), p. 4.

28. *Pravda Russkaia dannaiia v odinnadtsatom veke ot velikikh kniazei Iaroslava Vladimirovicha i ego syna Iziaslava Iaroslavovicha* (St. Petersburg, 1767).

Karamzin and Kliuchevsky wrote extensively on the *Russkaia Pravda* before the Revolution of 1917.²⁹ It was Karamzin who discovered the oldest version of the Expanded *Russkaia Pravda* in the *Nomocanon*, one of the *Kormchaia kniga* at the Holy Synod Library, dated 1280. More than a hundred copies of the versions have been discovered to date. New editions of the *Pravda* have been printed in the Soviet Union. In 1935 the Ukrainian Academy of Sciences published the *Russkaia Pravda* in the Russian and Ukrainian languages, edited and commented upon by S. V. Iushkov. The Institute of History of the USSR Academy of Sciences published all the discovered copies of the *Russkaia Pravda* in two volumes in 1940. The text was prepared by a commission of the Institute and edited by B. D. Grekov. Thus great interest in the *Russkaia Pravda* has also been shown in the Soviet Union.

The first attempt to classify the various copies of the *Russkaia Pravda* was made by Tobien. Only six copies were known to him. He classified them in two groups: the Brief Version and the Expanded Version. About fifty copies were available to Kalachov when he made his classification. He divided them into four families or versions in relation to the works in which the *Pravda* was contained. Another classification was suggested by Sergeevich, who recognized also four versions, but divided the Brief *Pravda* into two versions.

The USSR Academy of Sciences edition of the *Russkaia Pravda* is based on two versions: the Brief and the Expanded. "Only such a contraposition of the two *Pravdas* gives the first starting point for the study of the documents," comments V. P. Liubimov, the author of the introduction to the publication.³⁰ The two versions are divided into kinds and branches. M. N. Tikhomirov disagreed with the classification introduced by Liubimov in the Academy edition of 1940, and insisted upon division into three basic groups: the Brief *Pravda*, the Expanded *Pravda*, and the Shortened *Pravda*.³¹ In the opinion of S. V. Iushkov, the basic task facing the classifiers is the need to bring to light the changes in the text concerning the development of *legal norms*.³² According

29. I. Evers, *Drevneishaia Russkaia Pravda v istoricheskom ee razvitii*, trans. from German by I. Platonov (St. Petersburg, 1835). E. S. Tobien, *Sammlung kritisch-bearbeiteten Quellen der Geschichte des russischen Rechtes* (Dorpat, 1844). N. V. Kalachov, *Predvaritel'nyiia iuridicheskiia svedeniia dlia polnago ob'iasneniia Russkoi Pravdy*, 2nd ed. (St. Petersburg, 1880). V. I. Sergeevich's article in *Zhurnal Ministerstva narodnago prosveshcheniia*, January 1899. L. K. Goetz, *Das russische Recht (Russkaia Pravda)*, 4 vols. (Stuttgart, 1910–13). N. A. Maksimeiko, *Opyt kriticheskago izsledovaniiia Russkoi Pravdy* (Kharkov, 1914). N. M. Karamzin, *Istoriia gosudarstva rossiiskago* (St. Petersburg, 1892; reprint, The Hague and Paris, 1969). V. O. Kliuchevsky, *Sochineniia*, 8 vols. (Moscow, 1956–59).

30. Akademiia nauk SSSR, Institut istorii, *Pravda Russkaia*, 3 vols. (Moscow and Leningrad, 1940–63), 1:31.

31. M. N. Tikhomirov, *Issledovanie o Russkoi Pravde* (Moscow, 1941).

32. S. V. Iushkov, *Russkaia Pravda: Proiskhozhdenie, istochniki, ee znachenie* (Moscow, 1950), p. 351.

to this principle Iushkov recommends division into five groups, and this system was used in the publication of the *Pravda* by the Ukrainian Academy of Sciences (edited by him) with the addition of a sixth group. Thus his classification comprises redaction I (the so-called Brief *Pravda*), redaction II (the Synod and Troitsky versions), redaction III (uniting the so-called Karamzin copies), redaction IV (composed from two copies, the Troitsky variation and V-Pushkinsky copy), redaction V (the *Russkaia Pravda* united with *Zakon sudnyi ljudem*),³³ and redaction VI (the so-called Shortened *Pravda*).

The Origin and Sources of the Russkaia Pravda

The origin and sources of the *Russkaia Pravda* were a subject of argument among Russian and foreign historians and jurists of the nineteenth century. But there is no agreement on the subject even at the present time. N. M. Karamzin was of the opinion that the Brief and Expanded Versions of *Pravda* were official documents produced by Grand Prince Iaroslav's legislation. According to Karamzin, the second part of the Brief Version, known as "The *Pravda* of Iaroslav's Sons," was also created by Iaroslav, because his two sons, Iziaslav and Sviatoslav, were ten and eight years old, respectively, in 1035, the year of the publication given in the Chronicle. Karamzin wrote: "Even in the time of Oleg, Russia already had laws, but Iaroslav *perhaps* discarded some of them, corrected others, and, as such, published the first *written* laws in the Slavic language." And "the brilliant and successful reign of Iaroslav left a memorial in Russia worthy of the great Monarch."³⁴

The first analysts of the *Pravda*—Tatishchev, Schloezer, and Tobien—held the same opinion about Iaroslav's authorship. Also, according to Chislov, Iaroslav's authorship of the most ancient *Pravda* cannot be disputed. His conviction is based on the words of the Novgorod Chronicle saying that Iaroslav gave to Novgorod a *Pravda*, and on the political need to present such a document. Chislov wrote, "Iaroslav was obliged to give such a judicial charter to Novgorod, in consideration of the steady striving of the people for direct access to a princely court." His conclusion was, "The most ancient collection of the *Russkaia Pravda* is a judicial statute granted by Iaroslav the Wise to Novgorodians in 1016" (p. 51).

With regard to the *Pravda* of Iaroslav's sons, Chislov adhered to the majority opinion that it was not written by Iaroslav's sons, but was a collection

33. *Ibid.*, p. 16. For the detailed classification of all copies and versions that have been discovered to date see pp. 18–24. All the known copies of the *Pravda* are listed in the Academy edition (1:55 ff.).

34. Karamzin, *Istoriia gosudarstva rossiiskago*, 2:30 (the italics are Karamzin's). A regrettable misprint occurs in Iushkov's *Russkaia Pravda*, in which a quotation from Karamzin is reproduced: "Already at the time of Oleg, Russians had 'no' laws" (p. 226, n. 65).

undertaken by a third person in order to supplement the *Pravda* with the material accumulated after the promulgation of Iaroslav's *Pravda* but not before the expulsion of Iziaslav from Kiev in 1068. Chislov wrote, "Who was the compiler: a private or official person entrusted with the job by Iaroslav's sons—this question I suppose will remain open forever" (p. 52).

However, both Iaroslav's authorship of the *Russkaia Pravda* and its official character were denied by a majority of the subsequent writers during the imperial period. Iaroslav was reinstated as author of the most ancient *Pravda* (the first part of the Brief Version) by Soviet analysts much later. Thus Kalachov in 1880 declared, "The *Russkaia Pravda* is a collection of customary laws compiled by private persons and supplemented in the same way" (p. 79). Also Filippov in 1914 professed the opinion that the *Russkaia Pravda* is "a collection of our ancient laws, compiled in the eleventh and twelfth centuries by private persons, containing recordings of popular customary laws, princely statutes, court decisions, and some norms taken from Byzantine codes circulating at that time in Russia."³⁵

Sergeevich rejected in 1910 the opinion that Iaroslav alone, or together with the princes named as authors in various parts and versions of the *Pravda*, created the *Pravda*. He cites copies of the *Pravda* which do not mention any prince as author of its parts (for instance, the most ancient copy of the *Pravda* in the Novgorod Chronicle discovered by Tatishchev).³⁶ The registered text of the *Pravda* gives grounds for Sergeevich's conclusion that the chronicler did not reproduce the exact text of the laws, but only their contents (i.e., what he knew about them). Thus Sergeevich joins the group of analysts who are persuaded that the *Russkaia Pravda* is a private collection of laws (p. 99).

Latkin in 1912 agreed with Sergeevich on all points. He thought that the subtitles did not prove the origin of the provisions following them, because it can be proved that norms ascribed by the subtitle to one prince were really published by another. He believed that the sentence in the Chronicle asserting that the *Pravda* was awarded by Iaroslav to Novgorod (in reward for the aid provided by Novgorod to Iaroslav in his campaign against his brother Sviatopolk) should not be believed, since there is not a single word of privileges to Novgorod in the text that follows in the *Pravda*. That the *Pravda* is a private collection seemed to him evident from its text, which does not begin with the usual, "I, Prince so and so, award . . .," but starts directly with the first provision, "If a man kills a man," and so on. Latkin also quotes articles from the *Pravda* that include no legal provisions, but purely historical informa-

35. A. Filippov, *Uchebnik istorii russkago prava* (Iuriev, 1914), pp. 87–88.

36. Sergeevich, *Lektsii*, p. 96. See his examples of subtitles in the *Pravda* that do not correspond to the content (pp. 67 ff.).

tion, which would be impossible in an official statute. Finally, the quotation of individual decisions could not occur in a statute. His conclusion is that “the collection is of a completely private character.”³⁷

Vladimirsky-Budanov was of the same opinion. He stated in 1905, “The number of law collections composed by private persons from princely statutes, customary laws, and partly from Byzantine sources, is called the *Russkaia Pravda*.”³⁸ Like Sergeevich (especially), he believed that subtitles could not be used as proof of the *Pravda*'s origin, since they appear only in the Expanded Version. He was also not convinced by the story related in the Chronicle about the award of the *Pravda* by Iaroslav, since it contains no privileges for Novgorod.

V. O. Kliuchevsky gave his opinion that “the *Russkaia Pravda* was not a special individual code but a part of church legislation,” of *Kormchaia*. According to him the *Pravda* belongs not to the sphere of general but of clerical jurisdiction, the necessities and bases of which guided the compiler of the *Pravda* in his work.³⁹ This assertion Kliuchevsky based on the absence of provisions concerning *pole* (the duel),⁴⁰ a means of regulating litigation that was opposed by the church. Political crimes, the abduction of women, offenses against women and children, and verbal abuses, although under the jurisdiction of clerical courts, were tried according to special clerical legislation and not the provisions of the *Russkaia Pravda*: “Since the adoption of Christianity, the Russian church had a double jurisdiction; first, it sat in court over cases involving all Christian clerics and laymen, with regard to *some* cases of a spiritual and moral character, and second, it decided upon cases, spiritual and laic, criminal and civil, of *some* Christians—the spiritual courts sitting for nonspiritual cases, criminal and civil, involving only clerics, had to decide according to local laws and needed a written code of local laws, such as the *Russkaia Pravda*.”⁴¹

Kliuchevsky's argument about the absence of *pole*, in Iaroslav's *Pravda*—as a method of deciding arguments, since it is contrary to church doctrines—seems ill-founded, because ordeal by iron and water, which also was fought by the church,⁴² is admitted in the Expanded Version.⁴³ His view is also rebutted by the attitude of the *Pravda* toward slaves, who are treated not as human beings but as chattels, a part of the movable property of their owners; their

37. Latkin, *Lektsii*, pp. 16–17.

38. Vladimirsky-Budanov, *Obzor*, p. 95.

39. Kliuchevsky, *Sochineniia*, 1:212.

40. A personal combat to determine the result of a trial or suit.

41. Kliuchevsky, *Sochineniia*, 1:212 (the italics are Kliuchevsky's).

42. See Vladimirsky-Budanov, *Obzor*, p. 645. *Pole* replaced ordeal in the eighteenth century.

43. Karamzin Copy, art. 17, l. 100.

children are regarded as animals' progeniture; the penalty for the killing of a slave is the same as for a horse or cattle. This position evidently contradicts the assertion about the clerical character of the *Pravda*, because the church preached meekness and mercy toward slaves and acknowledged their human dignity.

To the question whether the *Russkaia Pravda* is an official document, a product of princely legislation, or a private legal collection of unofficial origin deprived of obligatory force, Kliuchevsky responded, "Neither one nor the other: the *Russkaia Pravda* is not a product of princely legislative power, but it did not remain a private legal collection; it was in force as a legislative code with regard to one part of Russian society, that is, in the part which was under ecclesiastical jurisdiction in nonspiritual cases, and was acknowledged by princely power in this obligatory sense" (p. 215). However, Kliuchevsky was somehow not satisfied with this conclusion. He admitted that "nevertheless, it can be assumed that the validity of the *Russkaia Pravda* extended beyond the limits of ecclesiastical jurisdiction with time" (p. 216). Still he thought that although the *Russkaia Pravda* became a guide also for princely judges, it was "hardly an obligatory one, but rather it had the significance of a legal textbook, as, so to say, a referential interpretation of the law in force."

Kliuchevsky's interpretation of the *Pravda* as an ecclesiastical code, extending to only a part of the cases of clerical competence, won no followers among the groups of prerevolutionary and Soviet analysts of the *Russkaia Pravda*. Only Tikhomirov called Kliuchevsky's conclusions "very important."⁴⁴ Not adhering to Kliuchevsky's opinion completely, he thought that some individual parts of the *Pravda*—*Pokon virnyy* and *Urok mostnikom*—originated in clerical surroundings and that the Expanded Version was under clerical influence.

Iushkov rejects Kliuchevsky's theory and Tikhomirov's assertion of the great role of the church in the creation of the *Pravda*. The *Russkaia Pravda* "is a collection of laic laws," he declares.⁴⁵ Chislov adopts a mixed position. According to him the *Russkaia Pravda* consists of three collections. The first is a charter granted by Iaroslav the Wise to Novgorod in 1016; the two others were compiled by private persons; the second, known as the *Pravda* of Iaroslav's sons, was published as an addition and development of Iaroslav's *Pravda*; the third, called the Expanded *Pravda*, was compiled no later than the beginning of the eighteenth century and is an attempt to codify all the laws of Kievan Rus'.⁴⁶ However, the leading specialists on ancient Russian law in the Soviet Union abandoned the theory of the private character of the *Russkaia*

44. Tikhomirov, *Issledovanie o Russkoi Pravde*, pp. 23, 24.

45. Iushkov, *Russkaia Pravda*, p. 351.

46. Chislov, *Kurs*, p. 47.

Pravda, and some of them *de facto* returned to the assertion of the first analysts of the eighteenth and beginning of the nineteenth centuries.

M. N. Tikhomirov argues that if the *Russkaia Pravda* is a collection of laws compiled by private persons, it could not have been included in *Kormchaia*'s official statutes: "In three or four versions of the *Kormchaia*, the *Pravda* is included as a separate chapter." Another argument that refutes the private character of the *Pravda*, according to him, is the fact that two articles of the Code of 1497 reproduce provisions from the *Pravda*. It is clear to him that the *Pravda* "does not fit into the notion of a 'private' collection of laws." But on the other hand, with regard to the systemless and even chaotic distribution of its material, the *Pravda* does not resemble a piece of official legislation. Still, he admits that the absence of any direct reference to the prince or to the time and the reason for the awarding of the *Pravda* cannot be seen as proof of its private origin, and he accepts the opinion of the official origin of the *Pravda*. But in conclusion, Tikhomirov thinks that the question of the "official" or "private" character of the *Pravda* is an academic one, to a great extent. Its character as a compilation did not prevent its becoming of great importance as a leading legal instrument of the eleventh through thirteenth centuries.⁴⁷

Iushkov categorically, without reservation, repudiates the view of the *Pravda*'s private character. According to him the Brief Version, "Iaroslav's *Pravda*," was composed by Iaroslav, presumably in the eleventh century, about 1030.⁴⁸ The basic source of Iaroslav's *Pravda* is customary law, arranged to suit the needs of princely power, and a piece of legislation by Iaroslav himself. The main sources of the second part of the Brief Version, "The *Pravda* of Iaroslav's Sons," are the legislation and judicial practice of Iaroslav's sons. Thus the *Pravda* contains also some norms of customary law "specially settled by Iaroslav's sons" (p. 95). Having recognized the argument about the official or private character of the *Pravda*, Iushkov states, "We insist on the official origin of the *Russkaia Pravda*" (p. 97). Iushkov's decisive arguments, which he puts in italics, for rejecting the private and asserting the official character of the *Pravda*, are the following: "It is impossible to understand the scope and the sense of the compilation of a [private] collection with repetition of the contents of several norms of customary law, known literally to everyone. . . . Only the assumption that the norms laid down in the most ancient *Pravda* are new—not known before that date to the wide masses of the population and the judicial and administrative apparatus—can explain the publication of a special statute and its promulgations."⁴⁹ Iushkov comes to this conclusion

47. Tikhomirov, *Issledovanie o Russkoi Pravde*, pp. 6 and 55.

48. S. V. Iushkov, *Istoriia gosudarstva i prava SSSR*, vol. 1, 4th ed. (Moscow, 1961), p. 94.

49. Iushkov, *Russkaia Pravda*, pp. 290–91.

by analyzing the “provisions” of the *Pravda* and comparing them with previous legislation. The same consideration of the futility of publishing norms of customary law known to everyone prompts Iushkov to recognize legislation of Iaroslav’s sons as the origin of their *Pravda*. As a matter of fact this is acknowledged by the overwhelming majority of analysts of the tsarist as well as the Soviet period.

A specific viewpoint concerning the time when the most ancient *Russkaia Pravda* originated, contradicting the opinion of all other analysts, is adopted by L. K. Goetz, professor in Bonn, in his four-volume work entitled *Das russische Recht (Russkaia Pravda)*. Goetz has translated the *Russkaia Pravda* into German and has provided detailed commentaries. His peculiar assertion is that the most ancient *Pravda*, the *Pravda* of Iaroslav, in the first part of the Brief *Pravda*, originated not later than the eighth century.⁵⁰ Goetz writes: “The oldest redaction of the Russian Law (*Russkaia Pravda*) represents the legal situation and the level of the court organization as they were [in force] before Vladimir and up to the time of Vladimir. . . . It is a document of civil and criminal procedure; Vladimir’s reform has introduced public procedure.”⁵¹ His main argument in defense of this assertion is that the *Pravda* represents “the most important” legal reform of Vladimir, who transferred to the state the “punitive and judicial functions.” In support of this opinion Goetz quotes a passage of the Laurentian Chronicle,⁵² commenting on it in a way that is unusual. The chronicler relates: “Vladimir after he accepted Christianity lived in the fear of God. Cases of robbery greatly increased, and the Bishops said to Vladimir: ‘Hence the robbers have multiplied, why do you not execute [*kazniti*] them?’⁵³ He replied: ‘I am afraid of sin.’ They replied to him: ‘Thou art put by God to punish the evil and favor the good. Thou must execute robbers, but after investigation.’ Thus Vladimir abrogated the *vira* [*Wergeld*] and began to execute the robbers; and the bishops and elders said to him: ‘We have many wars. If we would be paid *viry*, it would be used for weapons and horses.’ And Vladimir said: ‘Let it be so.’ And Vladimir lived according to the precepts of his father and grandfathers.”

50. A. A. Zimin, writing in 1965, is of the opinion that the basis of Iaroslav’s *Pravda* originated in the eighth or ninth century. See his “Feodal’naia gosudarstvennost’ i Russkaia Pravda,” *Istoricheskie zapiski*, 76 (1965): 231.

51. Goetz, *Das russische Recht (Russkaia Pravda)*, 1:183, 207.

52. See *Polnoe sobranie russkikh letopisei*, 1:126-27.

53. The word *kazn’* is used in the Chronicle in two senses, “execution” and “punishment in general.” Cross, in his translation, used “punishment” in this passage (Cross, *Russian Primary Chronicle*, p. 122). It seems to the present writer that “execution” fits better with the meaning of the sentence, on grounds that will be discussed later. In I. I. Sreznevsky’s opinion this passage provides an example of an instance in which *kazniti* means “to execute.” *Materialy dlia slovaria drevne-russkago iazyka*, 3 vols. (St. Petersburg, 1893-1912; Moscow, 1957), 1:1178.

Goetz interprets the word “robbery” (*razboi*) not as premeditated murder from mercenary motives but as “crime” in general. Also the word *kazniti* is translated by Goetz not as “execution” but as “punishment” (*Bestrafung*).⁵⁴ Thus he argues that according to the Chronicle, *vira* (the indemnity paid to the victim or his heirs by the perpetrator) was abolished for a time and reinstated not as indemnity paid to the victim or his heirs but as a fine collected by the state. Also the private vengeance right was abolished in the first part of the *Pravda* by Vladimir’s reforms and not in the second part, according to Goetz.⁵⁵ In this way Vladimir’s “legal reform” acquired enormous importance, since the infliction of punitive fines was assumed by the prince (the state) from this time on, and lost the private character that it had before Vladimir. A consequence of this reasoning is Goetz’s assertion that the most ancient *Pravda*, which knows the *vira* only as a private indemnity, must be of very remote origin (i.e., before Vladimir) and in no way connected with the second part of the Brief Version, the *Pravda* of Iaroslav’s sons, which was a completely independent piece of legislation. “We are dealing,” he writes, “with two independent works which must be strongly separated from each other with regard to the time of their origin and their contents.”⁵⁶ Thus the origin of the first part of the Brief *Pravda* is taken back by Goetz to the eighth century, to the pre-Christian and pre-Varangian epoch in Russia,⁵⁷ which facilitates his assertion that the most ancient *Pravda* is an “Ancient-Slavic, thus really Russian, law.”⁵⁸

The opinions of the German scholar are so different from those of Russian analysts that his book provoked something of a sensation in Russia. He was criticized by a number of experts on the history of Russian law. Let us examine what was said in opposition to Goetz’s opinion by four eminent experts.

Vladimirsky-Budanov, who wrote a booklet in review of the first two volumes of Goetz’s work, first of all disagrees with the translation by Goetz of the word *kazniti*. In his opinion this word means “execute” in the context of the Chronicle.⁵⁹ Indeed, Vladimir, as a Christian, could have been “afraid” only of the infliction of the death penalty and not of “punishment” in general.

54. Goetz, *Das russische Recht (Russkaia Pravda)*, 1:195.

55. *Ibid.*, p. 206 and n. 1. This seems improbable, because if bloody vengeance was not restored by Vladimir, it could not have been discarded by Iaroslav’s sons in their *Pravda*.

56. *Ibid.*, p. 2.

57. According to Goetz it originated even before the treaties with the Greeks, in which the mention of “Russian Law” may be a reference to the *Pravda* (*ibid.*, p. 173).

58. *Ibid.*, p. 159.

59. M. F. Vladimirsky-Budanov, *Das russische Recht (Russkaia Pravda)* (Kiev, 1911).

Analyzing Vladimir's reform as described in the Chronicle, Vladimirsky-Budanov concludes that not only is it not a great reform but "nothing new was introduced by him [Vladimir]. The *vira* was abolished and reintroduced, personal punishment introduced and abolished." It is evident that the last sentence in the passage of the Chronicle cited above—that Vladimir continued to live "according to the precepts of his father and grandfathers"—brings confirmation to Vladimirsky-Budanov's assertion (p. 15). Vladimirsky-Budanov also denies that the *vira* was transformed from a private indemnity to a criminal fine. Indeed, the opinion that the most ancient *Pravda* speaks only of compensatory money and not of fine is not shared by the majority of Russian scholars.⁶⁰ But Vladimirsky-Budanov, comparing article 1 of the most ancient *Pravda* as repeated in the *Pravda* of Iaroslav's sons and the Expanded *Pravda*, convincingly proves that the money paid according to article 1 went to the prince (the state) and not the victim or his heirs (pp. 22–24). His conclusion is, "All the three *Pravdas* form a chain of legislation tightly connected with each other and developing each from the other without jumps. . . . We remain convinced that the First *Pravda* is a collection of Iaroslav's time, that signs of the legislative and punitive activity of princes are clearly expressed there, and consequently there is no need to refer it to the immemorial time of pre-Russian antiquity" (p. 24).

M. A. Diakonov criticizes Goetz's argument that the absence of signs of judicial activity of the prince in the most ancient *Pravda* (whereas in the second and third versions this activity is reflected) points to the antiquity of the *Pravda*, to the time when meting out justice did not belong to the princely function.⁶¹ He replies by citing the oldest chronicle in which it is said that the purpose of calling a prince from abroad was described in order to let the prince "rule and administer justice according to law," and he points out that Goetz himself repeatedly admits that the *Pravda* is not a complete collection of laws, and that "you cannot expect it to give particular details, pp. 157, 168, 170, 173" (p. 245). Thus judicial activity was expected even from the first prince,⁶² and the omission of it can be explained by the incompleteness of the first *Pravda*. Diakonov is also of the opinion that the word *kazniti* in the Chronicle, in the place quoted above, means "execution" and not punishment

60. Lange, Kedrov, Presniakov, Rozhkov, and Vladimirsky-Budanov are of another opinion, which is acknowledged by Goetz himself (1:55).

61. M. A. D'iakonov, review of L. K. Goetz, *Das russische Recht*, vol. 1, *Die älteste Redaction des russischen Rechtes* (Stuttgart, 1910), in *Izvestiia Otdeleniia russkago iazyka i slovesnosti Imperatorskoi akademii nauk*, 16, no. 1 (1911).

62. The judicial activity of the early Russian prince is described by Dasta (writing in the 930s) in the following way: "If one of them [the Russians] has a claim against another person, he calls him to court before the tsar, in whose presence they argue: when the tsar pronounces a sentence, what he orders is executed" (Harkavy, *Skazaniia musul'manskikh pisatelei*, p. 269).

in general as Goetz thinks, and he objects to the transformation of the *vira* as an indemnity into a fine, according to Goetz. He reproaches Goetz for “simply ignoring that which contradicts this or that of his conjectures” (p. 246). This is especially true for the last sentence in the passage of Vladimir’s reform about Vladimir returning to the old order of things, which Goetz called “a phrase without a particular sense” and which in reality destroys Goetz’s entire conception of Vladimir’s reform. Diakonov’s main reproach to Goetz is that even assuming that his assertions concerning Vladimir’s reform and the origin of the most ancient *Pravda* are correct, Goetz failed to show when and under what conditions the *Pravda* originated (p. 247).

A. Presniakov thought that Goetz’s attempts to restore features of “pre-princely” law transformed his argument into a risky effort, by referring the text of the *Pravda* back to an epoch preceding the treaties of Oleg and Igor with the Greeks and even before the advent of princely power. Presniakov said, “Vladimir’s reform, according to Professor Goetz, acquires huge dimensions: it means not only the reformation of norms of criminal law, but also the acquisition of the punitive and judicial power itself by the princes. The most ancient *Pravda* must be attributed, according to him, to an epoch when neither the one nor the other existed, when the preservation of justice was exclusively the task of the communal court, without any participation of princely power. And he was so carried away by this idea that it brought him to an arbitrary handling of the *Pravda*’s text and its chronological relation to Vladimir Sviatoslavovich’s decisions.”⁶³

In his review of Goetz’s work, A. Filippov set forth the critical opinions of Vladimirsky-Budanov, Diakonov, and Presniakov and declared that he was “ready to adhere in general to the opinions of the three critics,” but with one reservation: “If it is necessary to recognize that Professor Goetz did not prove his contention about the extent of the importance acquired by Vladimir’s reform in his interpretation, and did not as well prove that the *composition* of the most ancient *Pravda* is to be attributed to the pre-Christian epoch, then his other thought deriving from this, namely that in the most ancient *Pravda* we have, so to say, a pre-Varangian, ancient Slavic and early Russian law, seems to us correct.”⁶⁴ Filippov found a “seed of historical truth” in Goetz’s narration, certainly not in the sense that the *Pravda* was *composed* in pre-Christian times, but in the fact that it *reproduced*, speaking generally, the law of olden times, “created at the dawn of our life and brought by the flow of history, with some changes, to the time of Iaroslav, when it was *recorded*” (p. 164, Filippov’s italics).

63. A. Presniakov, review of L. K. Goetz, *Das russische Recht (Russkaia Pravda)*, in *Zhurnal Ministerstva narodnago prosveshcheniia*, 41 (1912): 158.

64. A. Filippov, “*Russkaia Pravda*,” *Iuridicheskii vestnik*, 6 (1914): 170–71.

Foreign Influence

The influence of foreign law on the *Russkaia Pravda* is much contested.⁶⁵ The so-called Normanists (the proponents of the Norman Doctrine of the origin of the Russian State), such as Karamzin,⁶⁶ have asserted that the *Russkaia Pravda* is received Scandinavian law, and thus is virtually Scandinavian law. But S. Soloviev, although a follower of the Norman Doctrine, successfully repudiated Karamzin's assertion.⁶⁷ G. Evers thought that the entire *Russkaia Pravda* was borrowed from German law.⁶⁸ But Goetz refuted Evers's contentions; and Filippov, by comparing provisions of Salic Law with those of the *Pravda*, convincingly rejected any influence of German law on the *Pravda*.⁶⁹ Vladimirsky-Budanov came to the conclusion that the opinion of the German school (that the main contents of the *Russkaia Pravda* were from the ancient Scandinavian or ancient German laws) had no grounds whatsoever, except for certain similarities that are characteristic of all infant peoples.⁷⁰ What is acknowledged by the overwhelming number of prerevolutionary writers is the influence (more or less) of Byzantine law on the *Pravda*. Along with Christianity, the codes of Orthodox canonic laws were brought to Russia and also exercised their influence upon the *Russkaia Pravda*. Vladimirsky-Budanov says it must be acknowledged that the provisions about *kholopstvo* (serfdom) and succession show a strong Byzantine influence (p. 97). Latkin thought that Byzantine law was one of the sources of the *Russkaia Pravda* and that many provisions of the *Pravda* were so similar to Byzantine legislation that they bordered sometimes "on the simple paraphrase of Byzantine Law provisions."⁷¹ Sergeevich found in the Expanded *Pravda* a number of provisions borrowed from Byzantine law, such as those concerning succession and worship.⁷² "The author of the *Pravda*," he concluded, "did not copy from the *Ekloga*, maybe he never saw it; he knew judicial practice only based on the *Ekloga*."

There is no identity of opinion among Soviet writers on the subject. Whereas Tikhomirov thinks that the most ancient *Pravda* was only supple-

65. In the framework of this article it is impossible to give the details of the individual assertions and the arguments pro and con presented by a number of Russian and foreign authors. What follows is a brief summary of the debated questions.

66. Karamzin, *Istoriia gosudarstva rossiiskago*, 2:38, n. 9.

67. S. M. Solov'ev, *Istoriia Rossii s drevncishikh vremen* (Moscow, 1962), vol. 1, pt. 2, p. 273.

68. I. Evers, *Predvaritel'nyia izsledovaniia dlia russkoi istorii*, trans. from German, vol. 1 (Moscow, 1825), pp. 92 ff.

69. Filippov, "Russkaia Pravda," pp. 171-73.

70. Vladimirsky-Budanov, *Obzor*, p. 98.

71. Latkin, *Lektsii*, p. 15.

72. Sergeevich, *Lektsii*, p. 94. He cites ten articles from the Expanded *Pravda*.

mented by two provisions taken from *Zakon sudnyi liudem*,⁷³ Iushkov, in repudiating Tikhomirov's assertions, declares that authors of special research works have provided exhaustive evidence that shows the impossibility of an influence of Byzantine law on the *Russkaia Pravda*.⁷⁴ Iushkov's declaration in its categoric form is unwarranted. It is based on K. Chernousov's research. However, Chernousov, after comparing many provisions of Byzantine law with the *Russkaia Pravda*, concluded that "the *Russkaia Pravda* borrows its *outer form* [my italics] from Byzantine law—only a partial similarity [of material law] is present, which permits speaking of an *influence* [my italics] which does not deprive its objects of individuality, but supplements its lacking parts."⁷⁵ Finally, let us note that Golenishchev-Kutuzov, after comparing the *Ekloga* with the *Russkaia Pravda*, concludes, "the influence of the *Ekloga* is most insignificant."⁷⁶

Thus the origin of the *Pravda* is disputed up to the present time; its official character is asserted by one group of authors and denied by another. In view of this diversity of views, an attempt to explain the causes of the dispute may be in order.

As has been indicated, more than a hundred copies of the three versions of the *Pravda* have been discovered in the chronicles, the *Nomocanon*, and other legal instruments. Not a single monographic original or authentic copy of the *Pravda* is known. The text of the copies in the numerous sources varies greatly. It is evident that the compilers of the legal collections in which the *Pravda* was reproduced changed the original text and made additions and corrections. Under these conditions it must be assumed that the original laws contained in the *Pravda* were individually promulgated by the supreme power, and were issued by the princes named in the *Pravda*. But customary laws and court decisions are also codified together with the princely legislation. It must be remembered that the collection of laws called the *Russkaia Pravda* was not promulgated by the supreme power in the form of a code, but was compiled by private persons.

The opinion of the great majority of analysts that the laws in the Brief *Pravda* are a product of legislation is convincingly proved by Iushkov, in the

73. Tikhomirov, *Issledovanie o Russkoi Pravde*, p. 58 (a Byzantine Code of Constantine reworked in Bulgarian).

74. Iushkov, *Russkaia Pravda*, p. 368. Iushkov reached his conclusion slowly. His various conclusions, as set forth in his several editions, have been reviewed in J. N. Hazard, "Law and Tradition in the New Russia," *Oxford Slavonic Papers*, 4 (1953): 132-34.

75. K. Chernousov, "K voprosu o vliianii Vizantiiskago prava na drevneishee russkoe pravo," *Vizantiiskoe obozrenie*, 1, no. 2 (1916): 321.

76. D. Golenishchev-Kutuzov, *Russkaia Pravda i Vizantiia* (Irkutsk, 1913). The booklet was not available to the present writer. The quotation is taken from a review by N. Nikulin in *Zhurnal Ministerstva iustitsii*, February 1914, p. 346.

opinion of the present writer. They were conditioned by the new social, economic, and political development of the Russian state; they were new laws or old customs adjusted to new conditions and thus could be issued only by the princes, the legislative power in the country. The whole controversy about the official or private character of the *Pravda* collection is more or less academic, as stated by Tikhomirov, since it is of paramount importance only that the laws contained in the collection were in force and regulated for centuries the branches of legal life they dealt with.

With regard to when the *Pravda* originated, independently of its official or private character, Goetz's theory relegating it to the eighth century—that is, before Vladimir—must be rejected; and the opinion of the great majority of analysts that the *Ruskaia Pravda* in all its three versions originated in the eleventh century must be accepted. It is possible that the most ancient *Pravda* (Iaroslav's *Pravda* or the first eighteen articles of the Brief Version) was promulgated in 1016 as dated on the two copies (*Arkheograficheskaia* and *Akademicheskaiia*) known to us. The *Pravda* of Iaroslav's sons (the second part of the Brief Version) must have been adopted some time after Iaroslav's death (1054). The Expanded *Pravda*, according to the majority of analysts, is a product of the thirteenth century, or the second half of the twelfth century, since it includes the Brief *Pravda* and the Statute of Vladimir Monomakh.

As to the birthplace of Iaroslav's *Pravda*, the majority of analysts claim Novgorod, since it was discovered in the Novgorod Chronicle, in which it is said that Iaroslav awarded it to Novgorod. But another group of writers have denied the authenticity of these contentions in the Chronicle and acknowledge Kiev as the birthplace of the *Pravda*. Kiev, the capital of Rus', is unanimously accepted as the place of origin of the *Pravda* of Iaroslav's sons.

The question whether Iaroslav's *Pravda* originated in Novgorod or Kiev seems to the present writer irrelevant, as is the controversy over the official or private character of the *Pravda*, since indisputably the *Pravda* was in force in all of the country. Yet, whatever its origin, the *Ruskaia Pravda* is of such historical and legal importance as a document reflecting the legal and socio-economic life of the eleventh and twelfth centuries in Russia that the historian cannot overestimate it.