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The Character of the *Russkaia Pravda*

We should be thankful to Samuel Kucherov, and to the editor of the *Review*, for reminding us about an important and neglected field of study. If I may venture an outsider's opinion, I think it is unfortunate that American students of Russian history have paid so little attention to the Kievan period. The legal history of early Russia, in particular, offers interesting challenges to creative scholarship. In this brief comment on Kucherov's paper I should like to suggest some lines of inquiry. The central problems have already been stated—the source of the legal rules (including the question of possible foreign influence), the dating of the texts, and the relation of law and custom. But in addition there is the more general problem of developing a proper *legal* understanding of these materials, and first of all of the *Russkaia Pravda*.

What exactly was the *Russkaia Pravda*? It was not one document but several, and Soviet scholars refer not to different “versions” but to various *izvody* (redactions) of these old legal texts. The student must rely on the work of linguists to discover some of the basic facts. The view of Tikhomirov, perhaps the leading Soviet specialist, that there were three different documents composed at different times but all called “*Russkaia Pravda*” now seems convincing.¹ The earliest part—the first ten articles of what Kucherov calls the “Brief Version”—was composed in Novgorod in 1016, possibly on the authority of the prince. The second part also originated in Novgorod, probably in 1036. The third section of the Brief Version is the *Pravda* of Iaroslav's sons, which Tikhomirov dates at 1072. His conclusion that the earliest parts of the *Russkaia Pravda* were written in Novgorod is based primarily on linguistic evidence. Only two copies of the Brief Version have survived. They have been published, along with all the known copies of later versions, by the USSR Academy of Sciences.²

These facts are only a beginning, and the analysis of legal sources cannot be left to the linguists alone. The *Russkaia Pravda* is a source of legal history, and legal analysis can help further to classify the various versions and discover the role they played in early Russian society. A knowledge of comparative legal history may help to answer some of the questions about the *Russkaia Pravda*.

1. *Issledovanie o Russkoi Pravde*, esp. chaps. 4 and 5. See also his *Posobie dlia izucheniia Russkoi Pravdy* (Moscow, 1953).

2. *Pravda Russkaia*, 3 vols. (Moscow and Leningrad, 1940–63), under the editorship of B. D. Grekov.

In his famous theory about early law and early societies, Sir Henry Maine found that there were typically three stages in the evolution of a legal system. The first is the Age of Customary Law. This term should not be confused with “custom” in the general sense. Like all law, customary law is a norm supported by a sanction. The *bani* and the other picturesque practices described by the chroniclers are not examples of customary law. But the practices of revenge for murder and of monetary payment for injury—so important in all versions of the *Rusaskaia Pravda*—were laws. They were laws because they were sanctioned, first by society and then by the prince. The second stage of development, as Maine described it, was the Age of the Early Codes. These codes—like the Twelve Tables, or the codes of the Germanic tribes, or the *Rusaskaia Pravda*—were not created as a result of a new concept of law. They were simply recorded after a system of writing had been invented, and their original content was not much different from the accepted norms of customary law. It is hard to agree with Iushkov that the mere fact that the *Rusaskaia Pravda* was written proves it contains norms that were new. However, the early codes eventually did lead to a new concept of law. Just as writing had a profound effect on the oral tradition in literature, the codification of customary law changed some deeply rooted ideas about what “law” is. We can never be sure how old any customs are, but it seems to be true that a custom (especially customary law) is usually thought to be older and more permanent than it really is. Customary law can change with changing times, but once written down it acquires a fixity that may be undesirable. A certain amount of art is required to bring about changes in the law which may be socially necessary. The third age of legal history, which Maine usually called the “mature” period, is the stage at which the problem of legal changes becomes acute. It is the age not of codification but of reinterpretation and reconstruction of the law. The third stage might be called (this is not Maine’s term) the Age of Jurisprudence.

The *Rusaskaia Pravda* belongs to the family of early codes. It is concerned, in the earliest version, almost exclusively with setting penalties for various wrongs. As Maine described the typical early code: “on the whole all the known collections of ancient law are characterised by a feature which broadly distinguishes them from systems of mature jurisprudence. The proportion of criminal to civil law is exceedingly different. In the German codes, the civil part of the law has trifling dimensions as compared with the criminal. . . . It may be laid down, I think, that the more archaic the code, the fuller and the minuter is its penal legislation.”³ This characteristic can certainly be seen in the *Rusaskaia Pravda*. Of course what Maine called “penal legislation”

3. Henry Sumner Maine, *Ancient Law*, 10th ed. (new printing, Boston, 1963), pp. 355–56.

was not necessarily “criminal law” in the modern sense. What takes so much space in the *Rusaskaia Pravda* is related to what in modern language would be called the law of torts. The theory of the *Rusaskaia Pravda* is that for each wrong some penalty (often a sum of money) should be specified. In this regard a description of early Anglo-Saxon law could be applied to the *Rusaskaia Pravda* as well: “a sum was placed on the life of every free man, according to his rank, and a corresponding sum on every wound that could be inflicted on his person, for nearly every injury that could be done to his civil rights, honour, or peace.”⁴

Such similarity is not proof of influence. I would agree that the similarity among the early codes is due to similarity in social structure and not to a borrowing of law. A very important similarity in the early codes is what they lack. We do not find important branches of modern law, such as property and contract law, or else they are quite underdeveloped. We find specific provisions for righting all sorts of individual grievances, but few general principles and no legal theory. What we see in the *Rusaskaia Pravda* is law without jurisprudence.

The source of this law is certainly earlier Russian custom. In the first written source for Russian law—Oleg’s treaty of 911—the rule is laid down that striking someone with a sword requires compensation to be paid in silver. This is according to the Russian rule (*po zakonu ruskomu*).⁵ The same rule appears in the treaty of 944,⁶ and in the earliest version of the *Rusaskaia Pravda*, where the penalty is set at twelve *grivna*.

Kucherov is correct when he says that the *Rusaskaia Pravda* “codified customary law.” But it does not necessarily follow that it was a private compilation rather than a code issued on the authority of the Kievan prince. As Kucherov points out, scholarly opinion has been rather sharply divided between those who have seen it as an “official” document—a law enacted by the rulers of Kievan Russia—and those who have considered it a “private” compilation of some sort. Tikhomirov has taken a middle position by suggesting that the *Rusaskaia Pravda* was not legislation but was still something more than a private document. He is probably right. For to raise the question in the usual way, to ask whether the *Rusaskaia Pravda* was “official” or “private,” is to introduce concepts and categories that would not have been meaningful in the eleventh century. *Legislation*, in the sense of *conscious writing of new law*, is a relatively modern idea. It appears late in the history of legal institutions. Maine, in describing the process of the “adaptation of law of social wants,” refers to other devices which could change law without seeming

4. Quoted *ibid.*, p. 358.

5. *Pamiatniki russkogo prava*, vol. 1 (Moscow, 1952), p. 7.

6. *Ibid.*, p. 34.

to do so. Among these are legal fictions and equity, which generally are developed in some form before the legislator appears on the scene. In all versions of the *Russkaia Pravda* there is only one example of what we could call "legislation." This is the report, in the Expanded Version, that after Iaroslav's death his sons abolished (*otlozhisha*) the principle of blood revenge for murder, and replaced it with a monetary payment.⁷ Some parts of the Brief *Pravda* may have been, as Kucherov says, "new laws or old customs adjusted to new conditions." But this does not mean that they were the product of legislation.

Although the *Russkaia Pravda* is a good example of an early code, it is not entirely primitive in its legal structure. Even the Brief Version reveals some of the concerns of legal theory, such as the problem of evidence. The oldest part of the *Russkaia Pravda* contains a rule that a person who complained of injury by another was required to have physical evidence (*krovav ili sin'*) or else had to produce an eyewitness. (This rule appears in two different places in the Brief *Pravda*, a fact which suggests that the document was compiled from two different but related sources.) We also find, in the Brief *Pravda*, an early version of the rule of *flagrante delicto*. If a thief was apprehended on a person's premises (and apparently at night), he could be killed on the spot. But if he was held until morning, he had to be brought before the prince for punishment. Anyone who held a thief captive and then killed him was guilty of murder.

When we turn to the Expanded *Russkaia Pravda* we have quite a different document. The Expanded Version, according to Tikhomirov, was compiled in Novgorod early in the thirteenth century, although its sources (including the Brief Version) are much older. The Expanded Version shows more concern for procedure and for such matters as the recovery of stolen property. We find at least a hint of credit arrangements among merchants, and a concept of legal fault which is missing from the older version. There is a rule that if a merchant who is in possession of another's property loses it through no fault of his own (for example, in a fire), he is allowed to pay off the loss over a period of years. The loss was not considered to be his fault, but an act of God ("Zane zhe paguba ot Boga est', a ne vinovat est'"). There is also provision for inheritance, which is never mentioned in the Brief *Pravda*.

Thus the principles contained in the various versions of the *Russkaia*

7. The Vernadsky translation of the *Russkaia Pravda* is quite misleading at this point: "And as to anything else, all that Iaroslav had decreed, his sons confirmed accordingly" (*Medieval Russian Laws*, p. 35). Actually they promised to judge cases in the way that Iaroslav had done (*iako zhe Iaroslav sudil*). There is no statement in the *Russkaia Pravda* that Iaroslav had decreed—that is, legislated—anything.

Pravda can tell us much about the development of Russian society. If we are to show that these rules and concepts are of foreign origin, we need to see two kinds of evidence: first, that there is a strong similarity between a Russian rule and the external source; second, that the source was available to the Russian compilers. To my knowledge no such strong evidence of Germanic influence on Russian law has been found. Those who believe that the *Rusaskaia Pravda* was influenced by Byzantine law are on somewhat firmer ground. Certainly the *Zakon sudnyi liudem* was known in Russia. The same thirteenth-century manuscript which contains the oldest text of the *Rusaskaia Pravda* also includes the Bulgarian *Zakon*. But this is not proof that the original compilers of the *Rusaskaia Pravda* were familiar with the *Zakon*. Kucherov mentions two passages in the *Rusaskaia Pravda* which are similar to parts of the *Zakon*, but they are not identical. In one case the differences are as important as the similarities. Both codes provide a penalty for horse stealing, hardly an unusual thing in medieval societies. But the *Zakon* says that the thief must be beaten, whereas the *Rusaskaia Pravda* calls for a penalty of three *grivna*.⁸

There remain many unanswered questions about early Russian law. Kucherov has not found new answers to these old problems, although of course that was not his purpose. But he has reminded us that the questions remain open, and one may hope he has stimulated new discussion on a neglected aspect of Russian history.

8. M. N. Tikhomirov, ed., *Zakon sudnyi liudem kratkoi redaktsii* (Moscow, 1961), esp. p. 23. The most detailed study of this source is Venelin Ganey, *Zakon soudnyi liudem: Pravno-istoricheski i pravno-analitichni prouchvaniia* (Sofia, 1959).