

Canon Law in Medieval Russia:  
The *Kormchaia kniga* as a Source of Law

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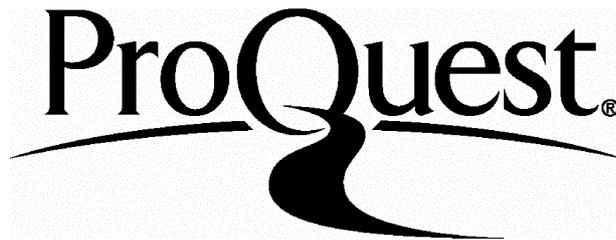
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# Canon Law in Medieval Russia: The *Kormchaia kniga* as a Source of Law

Rosanne Gretchen Mulcahy

Historical studies of the Russian medieval period have traditionally overlooked the *Kormchaia kniga* as a source of law. The *Kormchaia kniga*, a collection of ecclesiastical canons and Byzantine civil law dating from the tenth century, served as a central source of law in Russia. Contained within the *Kormchaia* was the constitutional-legal basis for the relationship between church and state - that is, for the division between the temporal and ecclesiastical spheres of authority (*regnum* and *sacerdotium*). In addition, the *Kormchaia* served as the primary source of Russian property law.

Part I examines the *Kormchaia kniga* and other canonical collections with the purpose to determine how the Russian form of state compared with other models of medieval Christian societies. Chapter 1 discusses Western and Byzantine forms of canonical collections and Byzantine legal collections as a means to demonstrate what kind of canonical legal system existed in Russia. Chapter 2 examines the manuscript history and sources of texts comprising the *Kormchaia kniga*, revising and adding to earlier work.

Part II examines how the *Kormchaia* provided the legal framework in Russia for a constitutional relationship between church and state based on the Byzantine model. Chapter 3 examines the ecclesiastical legislation of the Emperor Justinian governing ecclesiastical property and jurisdiction, which comprised Chapter 42 of the *Kormchaia*. It discusses how these statutes underpinned the constitutional relationship between church and state in Russia. Chapter 4 discusses the role of immunities in this constitution, and how they were legally supported by the *Kormchaia*.

Part III examines the *Kormchaia* as a source of civil law in matters of property law - in particular: dowry, inheritance and life-estates. Using Russian wills, donation charters, dowry agreements, and betrothal contracts, it is demonstrated in Chapters 5 and 6 that operation of these legal transactions was governed by the Byzantine law contained in the *Kormchaia*.

## INTRODUCTION: CANON LAW IN RUSSIA - REMARKS ON THE ROLE OF THE *KORMCHAIA* IN THE RUSSIAN SYSTEM OF CANON LAW ALONG WITH A CRITICISM OF SOURCES

### I. *Remarks on the Role of the «Kormchaia kniga» in the Russian Canon Law System*

The Russian canonical collection, known in the Slavonic as the *Kormchaia kniga*, was a canonical compilation based on the Byzantine *nomokanon*. The original canonical collection upon which the later Russian MS family of the *Kormchaia kniga* was based was transmitted to Kievan Rus' around the time of its conversion to Christianity in the tenth century. The *Kormchaia kniga* comprised ecclesiastical canons which were chronologically arranged and abbreviated collections of Byzantine civil law. The *Kormchaia* may, for this reason, be viewed as both the central Russian canonical collection and central Russian civil legal collection of the medieval period. The *Kormchaia kniga* provided Christian Russia with both a civil and ecclesiastical code of laws.

The *Kormchaia kniga* contained all that was necessary for the foundation of and operation of Russian Christian medieval society. Up to the time of Christianization in the late tenth century, Russia had been governed by customary law much like other European societies of the pre-Christian period. During the Kievan period and the majority of the Muscovite period (ninth - seventeenth centuries), Russian civil law was in type customary law supplemented by small civil codes, the *Sudebniki*, which were mainly administrative rather than substantive law. The same could be said for individual decrees (*ukazy*) issued by the Russian Grand Princes and Tsars during this period, of which few can be described as containing substantive law. By and large, legislation of the Kievan and Muscovite periods rarely conflicted with, and certainly rarely derogated from, the law of the *Kormchaia*. Legislation in Russia, it would appear, was enacted for the purpose to govern where other law or custom was silent, or else to augment what law existed in the *Kormchaia* so as to better fit local conditions. A cursory examination of the legal codes of the Russian medieval period reveals that the civil authority rarely legislated against the laws contained in the *Kormchaia*, nor attempted to extend its legislative authority beyond that prescribed by the *Kormchaia*. Throughout the Kievan and Muscovite periods, during times of great societal upheaval, the *Kormchaia* was both appealed to and consulted in

order to settle disputes. The usual result was that the canons and civil enactments of the *Kormchaia* were deferred to. To give an example, the dispute of the sixteenth century concerning monastic landholding was won by those who demonstrated that the canons and Byzantine civil laws of the *Kormchaia* supported monastic landownership. Through an assiduous reading of the *nomokanon*, the clergy in the end had their privileges upheld. In this example one may see that not only was the *Kormchaia* in such matters considered a guide to supplement Russian law, but was an actual valid source of law in Russia. It was, however, not until the promulgation of the civil code the *Sobornoe Ulozhenie* (1649) of Tsar Aleksei Mikhailovich (1645-1676) that the legal privileges of the Church were first abrogated.<sup>1</sup>

Knowledge of the *Kormchaia kniga* is necessary to any understanding of early Russian civil or ecclesiastical law, because of its great influence on these two spheres of legal jurisdiction. Although there is a general acknowledgement of the importance and influence of the *Kormchaia kniga* on the legal processes of early and medieval Russia, there are relatively few studies of Russian canon law with regard to this, and most of these were completed in the nineteenth century. More broadly, there have also been a number of examinations of the juridical value of the *Kormchaia kniga* in Russia and these studies are from the nineteenth century too, completed mainly by Russian canon law scholars - during the period of revival of canon law studies in Russia. There have been a few

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1 This point can be debated. I speak here of the establishment of the Monastery chancellery (*monastyrskii prikaz*), an official government office which was created to oversee various aspects of the Church, especially finances. I refer here also to the seventeenth century legal restrictions on the seigniorial privileges of church landholders which had previously accorded them complete jurisdiction over secular persons living on ecclesiastical lands. On these restrictions see the *Ulozhenie* Chapters 12 & 13: *Muscovite Law Code (Ulozhenie) of 1649*, trans. and ed. Richard Hellie (California, 1988)[hereafter *Ulozhenie*, Hellie]. This privilege, though, was barely supported in canon law and was, rather, Russian tradition following the Byzantine model. But because this was the first real attempt, however small, of the civil authority at placing restrictions on the church, the action was perceived at the time as a larger transgression of traditional church-state legal relations than such actions might have been perceived in another society. It actually was not until the establishment of the Holy Synod under Peter the Great (1672-1725) in 1721, that the legal and constitutional operation of the *Kormchaia* was completely abrogated. On the *monastyrskii prikaz*, see M. Gorchakov, *Monastyrskii prikaz (1649-1725g.), opyt istoriko-iuridicheskogo izsledovaniia* (St. Petersburg, 1868).

subsequent studies on the *Kormchaia*, most notably the works of Shchapov and Zhuzhek.<sup>2</sup> Many studies concerned with civil law in Russia, while touching on the *Kormchaia*, have tended to exclude a full discussion of the influence of canon law in Russia. In this they reflect a tradition of scholarship which tends to keep the two disciplines separate, a recent study of law in medieval Russia completed by Daniel Kaiser does amply examine the *Kormchaia* and other ecclesiastical compilations (such as ecclesiastical court manuals) as sources of law in Russia.<sup>3</sup>

Unlike other Eastern and Western medieval Christian societies which had highly developed, systematic canon law scholarship, Russia produced no indigenous glossators, scholiasts or canonists, and relied instead on the commentaries and interpretations handed down to them from the elder Orthodox churches. In Western Europe, especially in the twelfth century, canonical studies flourished, and an entire class of canon lawyers evolved. Canonists and glossators by their construction or arrangements of canonical collections, or commentary on them with reference to Romano-Byzantine law of the *Corpus iuris civilis* (*CIC*), provided the legal foundation for the development of what we understand to be the early modern state. This development was a result of political philosophy and legal theory fashioned by centuries of redefinition of the proper legal relationship between civil and ecclesiastical spheres of jurisdiction.

The development of the early modern state also owes much to the medieval formulation of the *ius commune*. The *ius commune*, as distinguished from the common law, was the resultant legal system developed by the medieval canonists. The *ius commune* is best described as a conglomerate of Romano-Byzantine law, indigenous customary law (tempered by vulgar Roman law) and canon law. During this period, the *ius commune* served as the legal foundation of nearly every Western European Christian society.<sup>4</sup> In contrast, no such integrated system of law developed in Russia, and without

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2 Ia. N. Shchapov, *Vizantiiskoe i iuzhnoslavianskoe pravovoe nasledie na Rusi v XI-XIII vv.* (Moscow, 1978); I. P. Zhuzhek, S. J., *Kormchaia Kniga: Studies on the Chief Code of Russian Canon Law* (Rome, 1964) [*Orientalia Christiana Analecta* 168].

3 Daniel H. Kaiser, *The Growth of Law in Medieval Russia*, (Princeton, NJ, 1980).

4 On the *ius commune* see for example the recent work of M. Bellomo, *The Common Legal Past of Europe, 1000-1800* [*Europa del diritto comune*] trans. Lydia G. Cochrane. (Washington, D. C., 1995). The term *ius commune* as it is used by canon law historians to specifically define the integrated Western system of law during the medieval period, is an academic construct.

it no class of canonists or lawyer developed in Russia either. In terms of legal development, Russia possessed only what existed in the Byzantine *nomokanon* it had received upon Christianization, supplemented by its own indigenous law.

Traditionally, the main focus of investigation for canonists, whether Eastern or Western, was the relationship between the two spheres of authority. As laid out in the canons, to each of the two spheres belonged a separate and distinct jurisdiction. What precisely the limits of this jurisdiction were, historically was a source of contention in all Christian societies. In Byzantine Empire, attempts were made to formally define the limits of authority and the jurisdiction of the two spheres (*regnum* and *sacerdotium*). The earliest and most influential idea on this subject was the notion of *symphonia*, first articulated by the Emperor Justinian in his *novellae* of the sixth century, which stated that the two spheres of authority were to exist as interrelated but separate. Subsequent attempts were made to codify this arrangement and so to delimit it constitutionally. The expression of these beliefs is found in the ninth century Byzantine legal text the *Eisagoge*.<sup>5</sup> The *Eisagoge*, while never formally codified, was however, influential in the Byzantine legal thought over the course of the remaining centuries. In addition to such formal legal documents as the *Eisagoge*, canonical commentaries of Byzantine *scholiasts*, in particular those of Theodore Balsamon (mid 12<sup>th</sup> c - 1190), set the tone for the debate over the proper jurisdictional limits of the two spheres. Balsamon is known for his commentaries which attempted to define the role of the Emperor and the legal limits of his legislative prerogatives.<sup>6</sup> However, all this formal political philosophy remained unknown in Russia until the seventeenth century when Balsamon's *scholia* were finally translated into Slavonic. Incidentally, this was the same period during which the *Eisagoge* gained prominence in Russia being especially favoured by the Patriarch Nikon (1652-1658), who based many his ideas of church and state on it, although they never came to fruition.

Though Russia lacked the most instrumental texts on these matters of church and state, nevertheless, Byzantine political ideas were known and understood in Russia. This was so because such ideas were implicit in the canons and civil laws contained in the

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5 On the *Eisagoge* see below Chapter 1.

6 On Balsamon's interest in jurisdiction, see R. Macrides, "The Competent Court" in *Law and Society in Byzantium: Ninth -Twelfth Centuries*, ed. A .E. Laiou & D. Simon (Washington, D. C., 1994) [Dumbarton Oaks Research Library and Collection], 126-129.

*Kormchaia*. The reason why the implicit ideas contained in the *Kormchaia* and the more formally developed political ideas of Byzantium bore an essential similarity to each other is that the political ideas formulated in Byzantium were primarily a conservative expression, or reiteration, of what was contained in the canon law. Therefore, Byzantine political ideas on church-state relations, merely articulated more clearly and at length what was implicit in the canon law, adding little to it. In contrast, the political ideas formulated by Western canonists as a result of their canonical studies and examination of legal theory, while being based in the canons, strayed outside a conservative interpretation of what was in the canonical collections. Humanistic elements derived from the revived texts of the classical period contributed to a more concrete and extra-canonical conception of what the respective rights and duties of the king and papacy were (*regnum* and *sacerdotium*). A Christian society which lacked Western canonistic texts on political theory, would have found it difficult to devise a political system like those which did possess the necessary texts. Because of the conservative nature of Byzantine political ideas on church-state relations it was possible, therefore, for Russia to emulate them. This was possible even if one does not take into account the centuries-long ecclesiastical contact Russia had with Byzantium by virtue of its membership in the oecumene. Russian legal history exhibits an understanding of the Byzantine idea of *symphonia*. The well-known passage from Justinian's Novel six on the idea of *symphonia* is contained in the *Kormchaia*. It is found as the introduction to the Byzantine legal collection, the *Collection of 87 Chapters*, where it is said that the two greatest gifts of God are the priesthood and empire (*tsarstvo*).<sup>7</sup> This legal collection, as it supported the constitutional relationship between church and state in Russia, is examined at length in Chapter 3 below.

The brief examination of the contents of the component chapters of the *Kormchaia* containing civil law which is contained herein, helps to reveal to what degree Russia may be said to have had access to sources of Romano-Byzantine law. The sources of Roman and Byzantine law Russia had access to constitute much less than is understood by the phrase "reception of Roman law". This phrase typically describes the legal status of the societies of medieval Western Europe, which, following the rediscovery of the *CIC* in the

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<sup>7</sup> On the *Collection of 87 Chapters*, which comprised Chapter 42 of the printed *Kormchaia*, see below in Chapter 3.

eleventh century, experienced an integration of Roman juristic principles into a formalised system of canon law over the intervening centuries. The closest parallel one can draw to the Russian situation when drawing comparisons to Western Europe, would be to compare Russia to an early medieval Christian society whose legal operations were governed by vulgar Roman law, such as the early Frankish Empire under Clovis (507-511) who codified what is known as the Sallic Law. Russia, it should be said was more legally developed than the Frankish Empire at this time, however, so the comparison cannot be drawn too closely. But if one bases a conclusion of legal status of a society solely on the criterion of whether or not that society had the entire corpus of Roman law at its disposal, it could be a valid comparison. More accurately, however, if one compares the *quality* of the vulgar law to what Russia possessed in the *Kormchaia*, then the comparison would be somewhat diminished. The Byzantine sources of law Russia had access to, most especially in the legal *compendia*, the *Ecloga* and *Prochiron*, contained in the *Kormchaia* were superior to the vulgar law in many ways. These *compendia* were official Byzantine legal collections employed primarily as provincial legal manuals, and so, were designed to stand on their own without necessitating reference to the law of the complete *CIC*.<sup>8</sup> Though the *compendia* were mere distillations of legal subjects addressed in *the CIC* now in Christianized form, they were nonetheless comprehensive manuals regulating a great many aspects of society - such as family law (e.g. inheritance), economic law (e.g. contracts), and criminal law. The provisions on criminal law in the *compendia* were primarily sanctions in the law for certain crimes. The areas of law addressed in these *compendia* governed the concerns of the Byzantine Christian Empire in its role as *custos fidei*, symbolised by the person of the Emperor, as *defensor fidei*. Later chapters of this work will address aspects of family law, especially property law, covered in the *compendia* demonstrating Russian application of these legal principles.

Part I of this work examines the contents of the *Kormchaia* and its historical evolution in Russia and also contains a history of the various families or redactions of the Russian *Kormchie knigi*. It describes briefly what varieties of law were contained in the *Kormchaia* and what hierarchy existed within this law. An excursus on the origins of

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<sup>8</sup> On the *Prochiron* and *Ecloga*, as well as other early Byzantine legal collections, see Chapter 1 below.

canonical collections in general is provided as supplemental material is provided so that the reader may better determine what advantages or resources Russia lacked in the medieval period concerning canon law as compared to the West or the Byzantine Empire. For instance, the excursus reveals that canonical collections were of two varieties, chronological and systematic. Russia possessed the former, which was a more primitive type of collection. Also included is a description of the types of Eastern and Western Canonical collections so as to highlight the variation in use of canonical collections among Western canonists and their Eastern counterparts. Explaining that the high point in the development of Western medieval canonical collections is represented by Gratian's *Decretum* (12<sup>th</sup> c.), an examination of his application of his Theory on Laws is given so that the reader may see to what extent ideas on the law and political theory in general had been developed among Western canonists. Such an examination helps to underscore the difference between Russian Christian society which saw no such developments as Western Europe.

Part II of this work demonstrates that the division of jurisdiction between the civil and ecclesiastical spheres in Russia conformed with other Christian societies of the period operating under systems of canon law. Further, it is demonstrated that Russia's system of canon law was based Byzantine model founded on the unwritten constitutional idea of *symphonia*, first articulated in Justinian's civil ecclesiastical legislation. While one cannot say that Russia possessed a highly-developed understanding of such a constitutional arrangement because no political treatises on the relationship between church and state existed as one would find in the West and the Byzantine Empire, it can be said that the *Kormchaia* supported a legal framework for a constitutional arrangement of government based on the Byzantine model. This arrangement may, for this reason, be termed a 'system of canon law'. Chapter 3 examines the influence of the civil ecclesiastical legislation of Justinian contained in the Byzantine legal collection the *Collection of 87 Chapters* which formed Chapter 42 of the printed *Kormchaia*. The argument that Russia possessed the constitutional arrangement of church and state which operated like the Byzantine model is further supported in Chapter 4 which discusses the role of immunity charters in Russia granted to ecclesiastical authorities by the Tsar or Grand Prince. These ecclesiastical immunity charters were based on the principles contained within the *Kormchaia*. Because

these same constitutional principles were incorporated into the Princely Statutes<sup>9</sup> a legally enforceable constitution based on the idea of *symphonia* was established in Russia.

Part III of this work examines the way that the *Kormchaia* served as a central corpus of law in Russia. Chapters 5 and 6 demonstrate how Byzantine civil law as found in the *Ecloga* and *Prochiron* governed aspects of property law in Russia, in particular, testamentary and dowry practices. Russian civil legislation was sparse on these subjects and only a small selection of statutes was enacted which prohibited certain acts concerned with inheritance and dowry. In the absence of substantive law in Russian civil law collections on these matters, many scholars have attributed many Russian testamentary and dowry practices to custom. Chapters 5 and 6 of this work illustrate the relationship between Byzantine inheritance and dowry law and Russian practice, showing that Russian practices relied on the *Kormchaia* for their source. Contrary to popular notions, these Russian practices were not arbitrary and did not evolve out of custom but, rather, operated according to the specific set of laws found in the Byzantine *compendia*.

## II. Sources Commenting on Russian Canon Law and the «*Kormchaia kniga*»

Medieval societies were governed by three types of law: customary, civil and canon law. During the medieval period the three types of law functioned alongside one another, and were, for the most part, complementary. Statutory law, that is, the codified customary and civil law, primarily concerned matters which were not within the jurisdiction of the church. The jurisdiction of canon law commenced simultaneously with the Christianization of a particular region, and so created an independent juridical system founded on the principles of the ecclesiastical canons. In regions which were not subject to Roman or Byzantine colonisation and possessed little substantive statutory law, the authority of canon law was often more broadly applied, since it was usually the only actual "system" of law in operation. In all places the pattern was the same - the canon law assumed its role in governing society and church courts came to exist wherever bishoprics or official hierarchical districts were created. The canon law was rarely confirmed in

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<sup>9</sup> The Princely Statutes were civil ordinances enacted by the Kievan princes which granted jurisdiction to the church and church courts, and gave recognition to the juridical authority of the *Kormchaia*. An examination of their legal role in Russia is contained in Chapter 4 below.

statutory law, in that its provisions were not specifically enacted as law. More often, the canon law, and therefore, the various privileges of the church as institution were merely confirmed in special statutes.

The study of the role of canon law in medieval society was developed by Western European historians; the methodology, language and approach, therefore, make reference to Western European circumstances. An examination of the role of canon law in other societies, such as those of the Christian East, poses difficulties because there was no separate methodology developed outside the paradigm Western historians created. Russian studies of Russian canon law rarely predate the nineteenth century, and these often relied on Western methods of analysis much in the same way that Russians historically relied on Latin texts rather than the Greek for the purpose of interpreting their canon law. Reference to Western methodology naturally resulted in Russian examinations of canon law having a negative comparative approach - describing what the Russian system of canon law *was not* and highlighting unusual aspects of the application of canon law in Russia.

In general, studies on canon law may be divided into three categories. The first category of studies analyses the compilation of a particular canon law collection by the tracing of its MS history and influences upon its compilation. For instance, in Western canon law history, many studies have been completed on Gratian's *Decretum*, the well-known twelfth century canonical compilation, and also on the sixteenth century compilation of the *Corpus iuris canonici*. Many studies have also been completed on the universal primitive collections in the East and West, especially with reference to the role they played in the compilation of the *Decretum*. Studies have also been completed on early Byzantine canonical collections, and *nomokanons*. A number of these studies have examined the *Nomokanon of the 14 Titles*, the most widely-used and influential compilation of the East. Russian scholars, in particular, have examined this *nomokanon* since it was this *nomokanon* on which the Slavonic canonical compilations were based.

On *Kormchaia kniga*, Russian scholars have produced work pertaining to its MS history, tracing its compilation to various Byzantine antecedents. Such works typically compare the *Kormchaia* with its South Slavonic predecessors or examine selected portions of the *Kormchaia* for the purposes of comparison to contemporaneous Greek

texts. As these are very specialized studies, they are not so numerous. One should note that these studies were usually textual analyses in kind and so were not concerned with the juridical value of those particular analysed texts or on their role in the Russian system of canon law.<sup>10</sup> Studies of the *Kormchaia kniga* in its entirety are limited as well. A textual analysis of the collection in its entirety as a single study has not yet been completed. One might add, that neither a modern printed edition, nor a photographic reproduction of the *Kormchaia* has been done.

Two notable Russian scholars on the *Kormchaia* are V. N. Beneshevich who contributed much to the study of the origins of the *Kormchaia* through examination of Byzantine canonical collections, and A.S. Pavlov, who also did much to advance this area

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10 *On the text and sources of the Kormchaia or its Slavonic predecessors (older studies)*: Beneshevich, Pavlov. (*modern studies*): Ia. N. Shchapov, *Vizantiiskoe*; Zhuzhek, *Kormchaia Kniga*; Troicki (Troitskii), *Kako treba. Specialised studies limited to one or more chapters of the «Kormchaia»* [numbers in brackets represent the chapter of the printed *Kormchaia* to which the study pertains]: J. Vashicha, "Collectio 87 (93) capitulorum dans les Nomocanons slaves", *Byzantinoslavica* 20 (1959):1-8. [42]; A. Popov, *Istoriko-literaturnii obzor drevne-russkikh polemicheskikh sochinenii protiv latinian (XI-XV. vek.)* (Moscow, 1875). [48];, *Ho Procheiros Nomos Imperatora Vasiliia Makedonianina* (Sergiev Posad, 1906), ed. M. Benemanskii, Vol. II, *Zakon gradskii* (Moscow, 1917). [49]; M. Gorchakov, *O taine supruzhestva. Proischozhenie, istoriko-iuridicheskoe znachenie i kanonicheskoe dostoinstvo 50-i (po spiskam patriarchov Iosifa i Nikona 51-i) glavy pechatnoi Kormchei knigi.* (St Petersburg, 1880). [51]; *50-ia glava Kormchei knigi, kak istoricheskii i prakticheskii istochnik russkago brachnago prava*, A. S. Pavlov, (Moscow, 1887). [51]; V. Moshin, "Serbskaia redaktsiia sinodika v nedeliu pravoslaviia", *Vizantiiskii vremennik* 17 (1960): 279-285. [53]; A. S. Pavlov, "Kanonicheskie otvety Nikity Mitropolita iraliiskago (XI-XII v) v ikh pervonachal'nom vide i v pozdneishei pererabotke Matfeia Vlastaria", *Vizantiiskii vremenik* 2 (1895): 160-176. [55]; *O stoglave. Ego proskhozhenie, redaktsii i sostav*, D. Stefanovich (St. Petersburg, 1909), 282-283. [57]; "Taktikon Nikona Tsernogortsa. Grecheskii tekst po rukopisi Num. 441 Sinaiskago monastyria sv. Ekaterinu.", V. N. Beneshevich, *Zapiski Istoriko-filol. Fakulteta Petrogradskago Universiteta*, 139 (1917). [71]; A. S. Pavlov, "Podlozhnaia darstvennaia gramota Konstantina Velikago pape Sil'vestru v polnom grecheskom i slavianskom perevode" *Vizantiiskii vremennik* 3 (1896): 18-32. [on the *Donation of Constantine*]. *Juridical value & influence on law*: A. S. Pavlov, *Pervonachal'nyi slaviano-russkii nomokanon* (Kazan, 1869); N. Iarushevich, *Tserkovnyi sud v Rossii do izdaniia Sobornago ulozheniia Alekseia Mikhailovicha 1649g.* (Petrograd, 1817); N. V. Kalachev, "O znachenii Kormchei v sisteme drevniago russkago prava", in *Chteniia v Imperatorskom Obshchestve Istorii i Drevnostei Rossiiskikh pri Moskovkom Universitete* (1847) pt. 3: 1-128 and pt. 4: 1-80 (second numeration)[hereafter *CHIODR*]; *Studies of Russian Canonists*: N.S. Suvorov, *Kurs tserknogo prava*, Vol. I (Iaroslavl', 1889); I. S. Berdnikov, *Osnovnyi nachala tserkovnogo prava pravoslavnoi tserkvi* (Kazan, 1902); I. S. Berdnikov, *Kratkii kurs tserkovnogo prava* (Kazan, 1888); *Modern studies on Russian law touching on the Kormchaia*: Kaiser, *The Growth of Law*. Of interest is I. Smolitsch, "Das Kirchenrecht in der Russischen Orthodoxen Kirche" in *Die Russische Orthodoxe Kirche in Lehre und Leben*, ed. R. Stupperich (Witten, 1966), 139-166.

of scholarship. A comprehensive examination of the Serbian *nomokanon* compiled by St. Sava was completed by the Serbian scholar S.V. Troicki. Because of the Serbian *nomokanon*'s similarity to the *Kormchaia*, this work is seen as an influential pioneering effort in tracing the divergent sources of the *Kormchaia*. This effort was followed by P. I. Zhuzhek who building on Troicki's work completed a comprehensive study of the *Kormchaia*, the only one of its kind in English.<sup>11</sup> This study examined the history of the *Kormchaia*, both its manuscript and printed editions, and addressed the juridical value of the canon law collection as it governed the medieval Russian Church.

The second category of studies examines canon law solely as law governing the church, much as we would understand the term 'canon law' today. These studies are primarily confined to theology, dogma, or to the law's particular jurisdiction over the clergy in matters of discipline or over the congregation in matters of morality. Some of the studies on canon and church law published in Russia during the last two centuries, have examined the question of the church's institutional role as mystical corporation as reflected in the canon law, while others have specifically examined the rules in canon law on marriage, divorce and other matters which are purely church concerns. Finally, others have investigated the various canon laws related to ecclesiastical discipline and the internal structure of church hierarchy. However, such studies are mainly of interest only to those who wish to understand the role of canon law from an ecclesiastical point of view. One should note that some of these earlier canon law histories were often polemics on church-state relations in disguise, being particularly concerned with the nineteenth century debate concerning the restoration of the Russian Patriarchate.<sup>12</sup>

The last category of studies examines canon law in the light of its legal authority and significance in medieval society. While in Western historiography many such studies have been completed, Russian historians, whether church, legal or general, have completed little scholarship on this topic. Western canon law historians rely on the various published and MSS canonical collections, publications of church court records and the

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11 Zhuzhek, *Kormchaia Kniga*; Troicki, *Kako treba*.

12 Such as those of I. Berdnikov of the Kazan Theological Academy and P. V. Verkhovskii of the Imperial University in Warsaw, both of whom supported independence for the Church and that of N. Suvorov who opposed it. A recent effort on the subject of canon law is that of V. A. Tsypin, *Tserkovnoe pravo* (Moscow, 1996).

published records of church councils and papal decretals to produce these studies. These are considered the primary sources of canon law. The majority of these are long out of MS form and exist in collected printed editions, which the historian may easily access. Gratian's *Decretum* has been recently published in English, and the *Corpus iuris canonici* has long been published. The *Kormchaia kniga*, on the other hand, has not even been rendered into modern Russian. Neither is there, as mentioned above, a modern printed edition or published facsimile which one may consult. The state of study of the *Kormchaia* may be gauged by the fact that the *Kormchaia* was last republished in the nineteenth century, the 1653 edition and still in the Slavonic. While Russian scholars during the late Imperial period had ample opportunity to consult various editions of the *Kormchaia* for the purpose of investigating its role in Russian legal history, they chose not to. It seems that this subject was not of interest to them as the lack of works produced concerned with Russian canon law history reflects.<sup>13</sup> The Soviet period saw no real interest in the *Kormchaia* in any respect, excepting the voluminous work of Ia. Shchapov who contributed greatly to knowledge of the manuscript history of the *Kormchaia* and the influence the South Slavic lands had on a number of its redactions.<sup>14</sup>

The problem Western historians have had investigating Russian canon law and the *Kormchaia* is that few printed editions are available in the West.<sup>15</sup> The lack of accessibility of the source - both in terms of the difficulty in obtaining it, and its being still in Church Slavonic, has restricted the ability of the general historian to conduct a proper study of Russian canon law and its significance in Russian medieval society. For this reason, many historians of Russia have, therefore, found it more convenient to quote from the *Kormchaia* indirectly through the medium of other primary, but more accessible,

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13 As this compares with Western canon law historians examining Western canon law. The only study completed concerning the juridical value of the *Kormchaia* was completed in 1847. The 'juridical value' of the *Kormchaia*, or the authority of canon law in Russian medieval society, has been examined only by N.V. Kalachev, in his study "O znachenii Kormchei v sisteme drevniago russkago prava" *CHOIDR* 3 (1847):1-128 and 4 (1847):1-80. There have been none published since.

14 Shchapov is also known for his work on church-state relations in early Russia. See *Gosudarstvo i tserkov v drevnei Rusi X-XIII vv.* (Moscow, 1989).

15 Libraries include The British Library, the New York Public Library, and the Library of Congress, all of which have a copy of the printed *Kormchaia*, either the 1650 or 1653 edition, or both (not inclusive of any republications).

sources.<sup>16</sup> Many Western historians when referring to the ‘Russian *nomokanon*’ often have not seen a copy of it, unlike the Western historian, who when referring to a particular canonical collection may easily see it for himself.

Concerning the role of canon law or the *Kormchaia* in medieval Russian society, commentary with regard to this is usually found as part of another work, and then often is only briefly remarked upon. Such studies typically do not include any lengthy discussion of canon law or of the *Kormchaia*. At best, one finds a brief digression on the existence of church courts, the Princely Statutes, or a passing allusion to the ‘*nomokanon*’. Such works fall into three disciplines: general histories, church histories, or legal histories.

Many general histories of Russia analyse the pre-Petrine legal and political situation from the standpoint of the relationship among political, societal or religious institutions. Frequently these analyses discuss the secular authority as autocratic in kind, being only restrained by Orthodoxy, or “the Church”. Further than this, no suggestion is made concerning what may have legally or even constitutionally limited the authority of the secular power. Historians in trying to explain this phenomenon without reference to the legal basis of church authority in the canon law have reduced the legal constitutional relationship the church had to the state in Russia to nothing more than the “Byzantine tradition” or one underpinned by a political ‘ideology’ propagated by the church.

Some historians recognise that the Church had legal privileges, in particular that it had ecclesiastical jurisdiction, but frequently do not comment on the extent of this jurisdiction, and more importantly, by what means this jurisdiction was supported. Interestingly, histories discussing the later political cohesion of the Russian lands in the fifteenth century, while remarking that the hierarchical structure of the church was influential in creating the Muscovite state, tend to overlook the fact that in addition to the church as institution or church as landowner, the church possessed a far more valuable asset which promoted the unity of the Russian lands, and that was the canon law. Canon law supported the legal, constitutional, and political relationship between church and state. That the civil authority in Russia recognised this is evidenced by the non-substantive nature Kievan and Muscovite law which did not derogate from the Church’s sphere of

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<sup>16</sup> For instance, a popular source is the *Stoglav*, the recorded conciliar proceedings of the 1551 Russian church council, which are published in printed editions.

authority.

Any examination of Western Europe during the medieval period would certainly discuss the role of canon law - of its role in society, its influence on political and legal institutions, or of its jurisdictional conflicts with the secular authority. Historians of Russia have often overlooked these themes in treatments of Russian medieval history. The phrase "Christian law" is often used in substitution for canon law to describe that influence and jurisdiction the Church had over the populace. The choice of this term by historians diminishes the concept of canon law as a system of law and as a formal body of law. It reduces the significance of canon law, and implies that canon law rather than having a broad application was, instead, limited in its authority and scope, and was somehow either in opposition to or subordinate to the civil law.<sup>17</sup> Such a description follows in the tradition of Russian historians such as Kliuchevskii who, in only seeing the Church's authority over matters of faith and morality, overlooked the *Kormchaia*'s role in supporting a constitutional relationship between church and state, and as a source of law in and of itself. Histories which do address the relationship between society and canon law in Russia, are primarily limited studies - such as those concerning the sexual mores *vis a vis* canon law in Muscovite Russia, or concerning family law such as the inheritance or dowry practices.<sup>18</sup> But concerning the authority of canon law in general, or of canon law as a *system of law* little is said.

General Russian church histories have not extensively addressed the subject of canon law and the *Kormchaia* in the pre-Petrine period.<sup>19</sup> These works are rather formulaic in their treatment of the subject, and are typically limited to certain sub topics

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17 To cite an example of a recently published work, J. Martin, in *Medieval Russia 908-1584*, (Cambridge, 1995) does not discuss the role of canon law in any of these ways.

18 Some recent studies touching on the canon law as it related to the family in Russia include: A. Kleimola, " 'In Accordance with the Canons of the Holy Apostles': Muscovite Dowries and Women's Property Rights", *Russian Review* 51 (1992): 204-229; G. Weickhardt, "Pre-Petrine Property Law", *Slavic Review* 52 (1993):663-679; L. Farrow, "Peter the Great's Law of Single Inheritance: State Imperatives and Noble Resistance", *Russian Review* 55 (1996): 430-437; E. Levin, *Sex and Society in the World of the Orthodox Slavs* (1989).

19 See for example, Filaret, *Istoriia russkoi tserkvi* (Moscow, 1870); A. B. Kartashev, *Ocherki po istorii russkoi tserkvi*, 3 vols. (Paris, 1959 ); Metropolitan Markarii, (Bulgakov) *Istoriia russkoi tserkvi*, 11 vols. (St. Petersburg, 1881-1882; reprint Moscow, 1994); P.V. Znamenskii *Istoriia russkoi tserkvi* (Moscow, 1996).

concerned with canon law including: the existence of and general jurisdiction of ecclesiastical courts, the history of the *nomokanon* from Byzantine times to its appearance in Kievan Russia, and the presence of the Byzantine legal *compendia* in Russia.<sup>20</sup>

Special studies on church-state relations in Russia have long been the focal point for analysing the significance of the Russian Orthodox Church in Russian history. This subject has often been used to measure the political influence of the church, the relationship the church had with the state, and the church's independence or autonomy as a corporate entity. These studies, too, rarely take into account the role of canon law in Russia, and more importantly, the legal value of the *Kormchaia kniga*. Studies on church-state relations may be divided into a number of categories.

First, there are those which are concerned with the role of the Orthodox Church in Russia as "political ideologist" - how the church worked toward legitimising and expanding the role of the secular authority, especially during the Muscovite period. The second type of study discusses the extent to which church-state relations in Russia followed the Byzantine model - whether the church was "caesaropapist", or whether the secular authority modelled himself on the "constitutionally" defined role of the Byzantine Emperor, for instance. Here the emphasis is again on political theory and political ideology - treating the Church as a self-defined institution with no basis in law, with powers and immunities which sprung merely from tradition. While these studies might allude to canon law or the Russian *Kormchaia*, they say little more than that Russia received her canon law from Byzantium and that its canon law book was much like the Byzantine *nomokanon*, many of these analyses never seem to touch on the role of canon law in

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<sup>20</sup> Let us take for example Golubinskii in his well-known church history, *Istoriia russkoi tserkvi*, Vol. I (Moscow, 1901; reprint, Hague, 1969) in particular the sections "Prostranstvo eparkhial'nago suda" and "Tserkovnye zakony". Here the Church's jurisdiction is analysed with reference to what was written in the Princely Statutes, not to what was written in the *Kormchaia*. On the *Kormchaia*, Golubinskii provides a short history of the *nomokanon* in terms of its Byzantine origins and a brief description of the component parts of the *Kormchaia* - that it contains the canons of various church councils and *scholia* [in Slavonic *tolkovanie*] of the Byzantine canonist Balsamon, but gives no comment on the juridical value the *Kormchaia*, nor of its specific use in church courts. On the presence of Byzantine law in the *Kormchaia*, Golubinskii provides background on the Byzantine legal *compendia* the *Ecloga* contained in the *Kormchaia*, but the influence or actual application of Byzantine law in Russia is not addressed. Golubinskii does not reference that a system of canon law existed in Russia, nor that the *Kormchaia* supported a constitutional relationship between church and state. See esp. pp. 405-408 and 428-431. Other general church histories follow the same pattern.

Russia.

Other studies of this category attempt to discern the extent to which the Church acted in subservience to the State, especially after the introduction of the Holy Synod (1721) under Peter the Great. Some scholars trace the history of its subservience to earlier times, alleging that since the Tsar was a participant in affairs of the church, such as church councils, and that the church often conferred with the secular authority, its independence had always been in question. Again, reference is usually not made to canon law nor to the *Kormchaia* as well.

The last category concerned with church-state relations focuses on the seventeenth century conflict between Patriarch Nikon and Tsar Aleksei. Many of these studies focus on the conflict between the two men, and in so doing, lose sight of the very great legal conflict which was taking place between the two spheres of jurisdiction. Patriarch Nikon's opposition to the promulgation of the *Ulozhenie* and his reprinting of the *Kormchaia* was less about securing the privileges of the Church than it was about the serious erosion of the constitutional basis of church and state.<sup>21</sup> Legal incursions of the civil authority into ecclesiastical jurisdiction, spurred on by a growing trend of secularisation, posed a threat to the foundations of this constitution. The authority the Church possessed was not merely institutional, but legal, residing in the *Kormchaia* itself.

### III. *Studies on the influence of Byzantine law in Russia*<sup>22</sup>

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21 The main point of contention centered on the establishment of the monastery chancery (*monastyrskii prikazi*). See R. Hellie in "The Church and Law in Muscovy: Chapters 12 and 13 of the *Ulozhenie* of 1649", *CASS* 25 (1991): 179-199 who touches on this subject, as do also works on *monastyrskii prikaz* which examine chancellor's establishment in light of church-state relations.

22 See the comprehensive bibliography of Burgmann which includes literature concerned with the sources of Byzantine law in Russia: *Bibliographie zur Rezeption des byzantinischen Rechts im alten Russland sowie zur Geschichte des arminischen und georgischen Rechts*, L. Burgmann, and H. Kaufhold (Frankfurt a. Maim, 1992) [Forschungen zur byzantinischen Rechtsgeschichte, Band 18]. For Russian studies of Byzantine law see: D. I. Azarevich, *Vizantiiskoe pravo*, Vol. 2 (Iaroslavl' 1877); E. E. Lipshits, *Pravo i sud v Vizantii v IV-VIII vv.* (Leningrad 1976); E. E. Lipshits, *Zakonodatel'stvo i iurisprudentsiia v Vizantii v IX-XI vv.* (Leningrad, 1984). Important general legal histories which discuss Byzantine law in Russia are: V. I. Sergeevich, *Lektsii i izsledovaniia po drevnei istorii russkago prava* (St. Petersburg, 1883; 4th ed 1910); M. F. Vladimirkii-Budanov, *Obzor istorii russkago prava* (6th ed, St. Petersburg, 1909). Special monographs on early Russian law which reference Byzantine law: M. A. D'iakonov, *Ocherki*

In addition to the traditional ecclesiastical and civil ecclesiastical legislation of the Byzantine *nomokanon*, that is, the divine laws of the apostles, councils, church fathers and Imperial legislation governing the church, there were appended to the *Kormchaia* the Byzantine legal *compendia*, the *Ecloga* and *Prochiron*. There were in total five chapters in the printed *Kormchaia kniga* which contain Byzantine civil law. These are drawn from the *CIC*, from the *Novellae* of Emperor Alexis Comnenus, and also from the later Byzantine law *compendia*, the *Ecloga* and the *Prochiron*. These chapters of Byzantine law were known in Russia from the thirteenth century, being present in one of the redactions of the *Kormchaia* itself or in the *Merilo pravednoe*, the Russian ecclesiastical court manual.<sup>23</sup> The Byzantine *compendia* were distillations of the larger Justinianic civil code the *CIC* and which are examined in this work in Chapter 1. Many Russian studies concerning the influence of Byzantine law on Russia were completed in the nineteenth century. Their conclusions reflect ideas expressed by the two major historical-philosophic groups involved in the debate over the origins of Russian history and culture - the Slavophiles and Westernists. The Slavophiles tended to reject any notion of outside cultural influence, preferring to assert that Russian culture, institutions, and laws were of indigenous Russian or Slavic origin, while the Westernists tended to diminish any influence, especially that of Byzantium, preferring to trace influences to contacts with the West, such as Poland-Lithuania or Germany. Therefore, the conclusions in many Russian works touching on the influence of Byzantine law - from either perspective - tended to discount the influence of Byzantium. There were, during the period, a number of Russian studies produced on Byzantine law in general, but these spoke little on the subject of Byzantine legal influence in Russia. Russian scholars had many obstacles to overcome in their scholarly pursuits of Roman and Byzantine law, since the sources of Roman and

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*obshchestvennogo i gosudarstvennogo stroia drevnei rusi* (2nd ed. St. Petersburg, 1908); F. I. Leontovich, *Kratkii ocherki istorii russkago prava* (Odessa, 1889); F. I. Leontovich, *Istoriia russkago prava* (Varshava, 1902); K. A. Nevolin, *Istoriia rossiiskikh grazhdanskikh zakonov*, 3 Vols. (St. Petersburg, 1851); N. P. Zagoskin, *Istoriia prava moskovskago gosudarstva* (Kazan, 1877-1879) 2 vols. Two special studies on the influence of Byzantine law in Russia are: K. A. Nevolin, *O vliianii greko-rimskago prava na russkoe grazhdanskoe pravo*; and N.V. Kalachev, *O znachenii kormchei v sisteme drevniago russkago prava* (Moscow, 1850).

23 On the *Merilo pravdenoe* see pages 217, notes 34 and 35; and pages 218 note 37 in the Appendix below.

Byzantine law were not readily available to them in their own language. The *CIC* was unknown in Russia until the end of the seventeenth century, when printed volumes of parts of the *CIC* were imported from Western Europe, in French, Latin and German translation. It was not until the nineteenth century that serious study of Roman law took place in Russia, during which period German scholarship on Roman law was sought out.<sup>24</sup> Many of the most important studies on Byzantine and Roman law were of Western European origin, beginning in the seventeenth century. The German school of Roman legal history had produced a number of eminent scholars in the field, especially in the nineteenth century, and it was on these studies that many of the Russian scholars relied. A difficulty Russian scholars encountered when examining Roman and Byzantine law was that a major critical edition had not been translated into the Russian language. Those Russian scholars who relied on the German school to produce works, which were more textual examinations in kind, did not usually consider the influence of Byzantine law in Russia. Many were, in fact, geared toward Russian legal reform and so concentrated on post-Petrine legislation. Those studies of the nineteenth century which were concerned with the influence of Byzantine law in Russia were often part of larger studies on the influence of Byzantine law on indigenous Russian and Slavonic legal compilations created as specialised studies on the *Russkaia pravda* and *Zakon sudnyi liudem* (*ZSL*).<sup>25</sup>

Studies which attempted to evaluate the influence of Byzantine law upon Russian law during the medieval period used as their standard two criteria. The first of these

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24 On this and later legal developments in Russia concerning the reception of Roman law see D. P. Hammer, "Russia and the Roman Law", *American Slavic and East European Review* 16 (1957), 8-12. On the books of the *CIC* available in Muscovy see his note 28 page five on S. Belokurov, *O biblioteke moskovskikh gosudarei v XVI stolety* (Moscow, 1898). Information on books in Russia may also be found in S. P. Luppov, *Kniga v Rossii v semnadtsatom veke* (Leningrad, 1970), and *idem.*, *Kniga v Rossii v pervoi chetverti vosemnadtsatogo veka* (Leningrad, 1973). P. I. Khoteev, *Kniga v Rossii v seredine XVIII veka: chastnye knizhnye sobraniia*, ed. S. P. Luppov (Leningrad, 1989); *Russkie knigi i biblioteki v XVI-pervoi polovine XIX veka: sbornik nauchnykh trudov*, eds. G.V. Bakhareva S. P. Luppov (Leningrad, 1983).

25 See for instance N. S. Suvorov, *Sledy zapadno-katolicheskogo tserkovnago prava v pamiatniki drevnago russkago prava* (Iaroslavl', 1888), who was of the opinion that Western influence could be seen more strongly in the *Zakon sudnyi liudem* than could Byzantine influence. On the *Russkaia pravda* see N. V. Kalachov, *Tekst Russkoi pravdy na osnovanii chetyrekh spiskov raznykh* (St. Petersburg: 3rd ed., 1881) and two more recent works B. D. Grekov, *Russkaia Pravda* (Leningrad, 1934) and M. N. Tikhomirov, *Issledovanie o Russkoi Pravde* (Moscow-Leningrad, 1941).

criteria was the measure of Byzantine law found in Russian legal collections. The second of these criteria was the impact Byzantine law had on Russian procedural law. However, because the majority of Russian codes prior to the seventeenth century were mainly codifications of customary law and indigenous procedural law, studies on the influence of Byzantine law using these criteria naturally saw little of such influence. There are two reasons which explain why Russian law did not absorb much in the way of Byzantine law or legal procedure. The first of these is that there was little copying out of sources of the *Kormchaia kniga*. Unlike Western European societies which incorporated parts of canon and Roman law into local civil legal collections, Russian authorities who viewed the indigenous legal collections as an adjunct to the central body of law of the *Kormchaia*, found no necessity for this. Even had this occurred, such copying out would not have produced the same result as in Western Europe, and neither would it have lent to Russian collection rules of Byzantine procedural law. The reason for this is that the Byzantine legal sources of the *Kormchaia* did not contain any procedural rules. Therefore, it is not surprising if one looks to procedure as the standard by which to measure Byzantine influence on Russia law and consults Russian legal collections, one could indeed draw the general conclusion that there was actually no influence of Byzantine law in Russia.<sup>26</sup>

Other studies of Byzantine legal influence on Russia focused on the influence Byzantine law had on the legislation of the *Sobornoe Ulozhenie* of Tsar Alexei in 1649.<sup>27</sup> The *Ulozhenie* was the only one of the Russian legal collections which had incorporated into it some extracts of Byzantine law. But, again, such studies did not address the larger question of whether or not the provisions were applied in Russian society, and these were also limited only to those extracts present in the *Ulozhenie*.

The opportunity existed for scholars to examine the application of Byzantine law in Russian society as part of their examination of the *ZSL*, the Slavonic adaptation of the *Ecloga*. However, the majority of studies on the *ZSL* were instead concerned with discerning the history of its compilation through textual analyses comparing the Greek to the Slavonic, with the methodology favoring polemical textual analyses. The question of

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26 Regarding court procedure, this is aside from the accepted belief that Byzantine law influenced Russian rules regarding witnesses. On this see Kaiser, *Growth of Russian Law*.

27 See N. I. Tiktin, *Vizantiiskoe pravo, kak istochnik ulozheniia 1648 goda i novoukazykh statei*. (Odessa, 1898).

national origin then seemed to be the most important concern, whether the *ZSL* was of Bulgarian or Moravian origin. The matter as to what juridical value the *ZSL* had on Russian society was little addressed.<sup>28</sup>

Another concern of Russian legal historians of the nineteenth century was that which pertained to the reception of Byzantine law during the medieval period. By reception these historians meant the incorporation of Roman juristic principles into the system of Russian law, as mentioned above. By this standard, Russia prior to the end of the seventeenth century, certainly cannot be said to have experienced a reception of Roman law, for this condition was not true as Russian civil legal codes and lack of juristic literature (as was the mark of reception in Western Europe) attest to. Russia experienced no systematizing of law as did Western Europe leading to the formation of the *ius commune*, as has been remarked upon above. It was mainly by means of the legal *compendia*, the *Ecloga* and the *Prochiron*, that Russia acquired a measure of Roman law, though in actuality, it was less Roman than Byzantine - and so will be referred to in some contexts as Romano-Byzantine law in order to avoid confusion.<sup>29</sup> By Western standards, the selection of Roman law available to Russia when compared to the entirety of the *CIC* was very little indeed.

The other sources of Byzantine law which Russia had access to besides the *compendia* were a number of excerpted texts from the *CIC*, deriving from special Byzantine legal collections. These special collections included the *Collection of 87 Chapters*, which as noted above comprised Chapter 42 of the printed *Kormchaia*, and a version of the *Collectio Tripartita*,<sup>30</sup> both corrupt and incomplete which comprised Chapter 44 of the *Kormchaia*. Concerning Chapter 44 of the *Kormchaia*, it should be said

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28 See Dewey & Kleimola, trans. & eds., *Zakon sudnyi liudem*, 5-12 for literature and discussion concerning the national origin of the *ZSL*. See also M. N. Tikhomirov, *Zakon sudnyi liudem kratkoi redaktsii* (Moscow, 1961).

29 The term Byzantine law would suffice if one were merely speaking of the *compendia*, but since parts of the *CIC* were incorporated into smaller collections and existed as part of the *Kormchaia*, it would be an imprecise use of the term. Because when one is speaking of Western Europe and the *CIC*, one uses the term Roman Law, the best solution seems to be to use the term Romano-Byzantine. This term thereby conveys the understanding that in Russia were available the *compendia* and parts of the *CIC*.

30 On the *Collectio Tripartita* and Chapter 44 of the printed *Kormchaia* see below Chapter 1 and also the Appendix.

that the legal texts excerpted from the *Codex* or *Digest* contained in this Chapter were, in the main, so fragmentary that they would hardly have been of any use in Russia, and certainly could not have assisted in the reception of the principles of Roman jurisprudence. As mentioned above, Chapter 42 of the *Kormchaia* was instrumental in insuring various privileges of the clergy and reinforcing the idea of divided jurisdiction. This chapter is examined at length in Chapter 4 of this work.

Lastly, a chapter by chapter analysis of the *Kormchaia* building on the work of Troicki and Zhuzhek describes the origins of the component parts of the *Kormchaia*.<sup>31</sup> This analysis updates older scholarship, and adds more background information previously not gathered in one place. In addition Aspects of some of the chapters of the *Kormchaia* not previously examined are discussed, in particular, that containing the index to the *Syntagma of 14 Titles* and that containing the Mosaic Law. This analysis comprises the Appendix of this work.

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31 S.V.Troicki (Troitskii), *Kako treba izdati svetosavsku Krmchiju* (Nomokanon sa tumachenjima), *Spomenik* (102) Srpska akademija nauka. Odeljenje drustvenih nauka; nova serija 4 (Belgrade, 1952).

## **PART I: AN EXAMINATION OF CANON LAW COLLECTIONS AND THE RUSSIAN *KORMCHALA* AS A MEANS TO DETERMINE HOW RUSSIA COMPARES WITH OTHER MODELS OF MEDIEVAL CHRISTIAN SOCIETIES**

### **CHAPTER 1: EASTERN AND WESTERN CANONICAL COLLECTIONS AND THEIR SIGNIFICANCE IN SYSTEMS OF CANON LAW WITH REFERENCE TO ROMAN LAW**

This chapter will discuss what characteristics the Russian canon law collection shared in common with Western and Byzantine canon law collections. It draws together in one place many diverse materials and presents them such as way as to further an understanding of what significance the component parts of the *Kormchaia* had. On a basic level, the component parts of the Russian *Kormchaia kniga* were similar to Western and Eastern collections, having been drawn from the Byzantine *nomokanon*. But because it lacked both the systematic structure of the later Byzantine collections and scholarly commentary on the canons, the *Kormchaia* cannot be properly called a *nomokanon*. This chapter discusses how these collections came to hold authority in Christian states and so shows that the *Kormchaia* would too, have been viewed as the primary repository of law in Russia.

The second purpose of this chapter is to discuss what canon law systems were developed in the West and Byzantium as a method to them compare Russia. The best method by which to accomplish this is to demonstrate what the Russian canonical system was *not*. It was the systematization and treatment of the canonical collections which differentiated the West and Byzantium from the canon law of Russia. When one speaks of Western and Byzantine canon law, one should understand that these canonical collections were used in conjunction with Roman civil law, and being integrated in this fashion, constituted what may be referred to as a canonical-legal system. The Western system, in particular, was very highly developed, experiencing a great influence of Roman legal concepts upon its system of canon law. Both Byzantine and Western canonists had at their disposal the *CIC*, Justinian's comprehensive collection of Roman law. As a

canonical collection, the Byzantine *nomokanon* contained selections of Byzantine civil law enacted by Justinian and later Byzantine Emperors, though such law was mostly limited to ecclesiastical civil legislation. Western collections, on the other hand, as they evolved over the centuries had incorporated into them greater portions of Roman law along with related legal concepts which were extracted from the *CIC*. Western canonists, additionally, developed a methodology among schools of law which emphasized a dialectical method of analysis aimed at giving clarification to contradictory canons and papal decretals.<sup>1</sup> Under the influence of scholastic and humanistic philosophy, this dialectical method served to draw from the civil and canon law certain legal principles and, further, to provide the foundations for the study of legal theory. Byzantine legal theory was not as highly developed as in the West being limited to the political theory of *symphonia*, as mentioned above in the Introduction. This contrasts with Russia where canon law scholarship was not developed, nor, relatedly, legal theory. It was not until the nineteenth century that legal theory as an area of study was developed in Russia.

A third purpose of this Chapter is to illustrate what sources of Roman and Byzantine law were available in Russia. Since the *Kormchaia kniga* contained extracts from Byzantine civil law, including two complete translations of the Byzantine civil legal *compendia*, the *Ecloga* and the *Prochiron*, a survey on Roman and Byzantine law is contained in this chapter. This survey brings together diverse materials using current scholarship to update outdated information, especially as it concerns Byzantine law. This Chapter is divided into two parts: I. Canon Law and II. Roman and Byzantine Legal Collections.

## I. Canon Law

### The Common Origins of Canonical Collections

The word "canon" is a direct translation of the Greek *kanon* (κανόν) with the literal meaning of "rule". The earliest canonical collection (composed only of ecclesiastical canons) is the *Teaching of the Twelve Apostles*, or the *Didache*, a collection which originated in the first century, now considered apocryphal. The *Didache* is primarily

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<sup>1</sup> See J. A. Brundage, *Medieval Canon Law* (London, 1995) on the dialectical method, especially pages 47-48; 51-52.

concerned with the internal governance of the early church - and contains instruction on baptism, marriage, prayer, and rules governing the clergy. The internal governance of the early church was at first emphasised, because before the Constantinian Edict of the fourth century tolerating Christianity, the Church had no need to develop canons applicable to the population at large. As Christianity gradually became the dominant religion in the Empire, church councils produced more expansive canons applicable to the congregation at large. And so, canon law came to cover a wider area of society, having authority over subjects such as heresy, morality, ecclesiastical property, and inheritance. A century later, the *Didache* was incorporated into a larger Eastern collection known as the *Didascalia apostolorum*. A contemporaneous Western compilation emerged, known as the *Apostolic Tradition*, which is attributed to Hippolytus of Rome.<sup>2</sup> This had great influence on subsequent primitive collections through the sixth century. One of these collections is the *Constitutiones apostolicae* or the *Apostolic Constitutions* which would later be influential in both Eastern and Western canonical collections. The *Apostolic Constitutions* is a collection in eight books based on the *Apostolic Tradition*, with the addition of 85 apostolic canons.<sup>3</sup>

A number of excerpts from the books of the *Apostolic Constitutions* including the 85 Apostolic canons form part of the Byzantine *Nomokanon* and the Russian *Kormchaia kniga*.<sup>4</sup> The Apostolic canons in particular were highly regarded in the Eastern canonical tradition, and were viewed as the true work of the Holy Apostles.<sup>5</sup> There were, however, questions which arose concerning the authenticity of the Apostolic Constitutions and Apostolic canons during the fifth century. Pope Gelasius I (492-496)<sup>6</sup> in a decretal of

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2 *Dictionary of the Middle Ages* [hereafter *DMA*], editor in chief Joseph R. Strayer, 13 Vols. (New York, 1982-1989), Vol. 7, "Law, Canon: To Gratian", Roger Reynolds, 397.

3 *DMA*, 397.

4 The 85 Apostolic Canons constitute Chapter 1 of the *Kormchaia*. See below Appendix.

5 H. R. Percival, *The Seven Ecumenical Councils of the Undivided Church* [Series: A Select Library of Nicene and Post Nicene Fathers of the Christian Church, Ser. 2, vol 14, 1899.] Eds., Schaff & Wace. NY, 1886-1900. (Reprinted Michigan, 1991), 592. [hereafter Percival]

6 M. Burgess, *Lords Temporal and Lords Spiritual, A Chronological Checklist of the Popes, Patriarchs, Katholikoi, and Independent Archbishops and Metropolitans of the Autocephalous and Autonomous Monarchical Churches of the Christian East and West* (California, 1985; second edition, 1995) [Stokvis Studies in Historical Chronology and Thought, No. 1], 189.

494 entitled *De libris non recipiendis* declared the Apostolic canons to be apocryphal.<sup>7</sup> Notwithstanding, in the West declared apocryphal or not, the Apostolic canons found their way into various Western canonical collections. The early collection of Dionysius (497-500)<sup>8</sup> known as the *Collection Dionysiana*, included 50 of the 85 canons. Since this collection was considered to hold great authority, subsequent collections such as that of pseudo-Isodore (ninth century) followed the example and so too included the Apostolic canons. The matter became more settled in 1054 when the legate of Pope Leo IX declared that of the 85 only 50 were to be considered non-apocryphal.<sup>9</sup> When in the twelfth century the Apostolic canons were incorporated in Gratian's *Decretum*, up to this point the most definitive collection (that is until the *Corpus iuris canonici* of the fifteenth century), this act lent to the Apostolic canons the "force of laws".<sup>10</sup> So, in summary, the Apostolic canons were accepted in their entirety into the tradition of Eastern canon law, while in the West only 50 were accepted into its canonical collections. Additionally, portions of the *Apostolic Constitutions* were accepted into the Eastern canonical tradition, while in the West they were rejected as apocryphal and never found their way into collections through tradition. The Apostolic Constitutions comprise chapters 2, 3 and 4 of the *Kormchaia kniga*. Chapter 2 contains the 17 Canons of St. Paul the Apostle, Chapter 3 contains 17 canons of the Holy Apostles Peter and Paul, and Chapter 4 contains 2 canons of the Holy Apostles. In post-Byzantine canonical collections, in particular the *Pedalion* of 1800, the Constitutions were no longer included, though the original 85 canons were retained.

Other sources contributing to the body of canon law in both the East and the West are the primary church councils, which include the seven ecumenical councils and nine

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7 Percival, 591.

8 *DMA*, 7, "Law, Canon: To Gratian", Roger Reynolds, 399. On the dating of the *Collectio Dionysiana*.

9 For a discussion on incorporation of the Apostolic canons into various Western collections, see Percival, 591-592. The acceptance of the Apostolic canons into Western collections did not mean acceptance of the Apostolic Constitutions. That is not to say that these were not in part accepted, even if they were by and large considered apocryphal. The words of Humbert, Papal legate, make reference to "Clementis liber": "*Clementis liber, id est itinerarium Petri Apostoli et Canones Apostolorum numerantur inter apocrypha, exceptis capitulis quisquaginta, quae decreverunt regulis orthodox is adjungenda.*" The Constitutions, and thus the canons, were attributed to Clement.

10 On this see Percival, 592.

regional councils (that is, those councils which took place before the growing schismatic conflict between East and West in the ninth century). In addition to the canons and decrees of councils, patristic writings -including those of St Basil, St Cyril and others - also laid the basis for Christian canon law. Finally, Patriarchal and Papal decrees also contributed to the corpus of canon law.

#### Canon law & Canonical Collections - East and West

There are two main types of canonical collections, whether one is discussing Eastern or Western canon law. The first type is known as a chronological collection, in which the ecclesiastical canons are placed in the order of their origin. The canons of the Apostles are placed first, followed by the church councils in order of occurrence; the various patristic writings are often in sequential order, as are various Patriarchal or Papal decrees. The second type of canonical collection is known as a systematic collection, in which the ecclesiastical canons, regardless of their place in history, are organised thematically. In such a canonical collection the theme of marriage, for instance, would have listed various canons appropriate to this subject, along with citations referring to concordant canons governing the same ecclesiastical law. Often, a systematic collection would additionally make reference to related civil law and penalties as well.

Western canonical collections evolved into a systematic form after the creation of Gratian's *Decretum* in the twelfth century. In the East, the later Byzantine collections of canon law, ones that can be termed *nomokanons* by a strict definition, are known as systematic collections. An example of a Slavonic collection of the systematic type is the *Syntagma of Matthew Blastares*<sup>11</sup> which was based on a later recension of the Greek *nomokanon*. The Russian *Kormchaia* throughout its history was chronological and non systematic in form.

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<sup>11</sup> *Syntagma Canonum* of Matthew Blastares is a canonical collection made in 1335 arranged in alphabetical order, with 24 general divisions, and subdivided into 303 titles (both ecclesiastical and civil), each headed by a letter of the alphabet letter. The *Syntagma* was translated into Slavonic, making its way to Serbia in the fourteenth century, to Bulgaria in the sixteenth century, and Russia in the seventeenth century. See the *Old Catholic Encyclopedia*, Vol. 14 (NY, 1913). The title *Syntagma* is a misnomer, since the work is actually a *nomokanon* as civil laws are included as well. On its use in Serbia see, G. C. Soulis, *The Serbs and Byzantium During the Reign of Tsar Stephan Dushan (1331-1355) and his Successors* (Dumbarton Oaks Library and Collections: Washington, D.C, 1984), 72-73.

## Canon Law in the Latin Church

The history of the institution of the papacy is closely intertwined with the history of Western canon law and thus, the study of it is necessary to any good understanding of Western medieval history. It was the papacy which benefited from the scholarly study of canon law, both during the period of what is known as the "classical period" of canonical studies (mid-twelfth to mid-fourteenth centuries) and especially after the period of Reform brought on by the Council of Trent (1545-63). The primate in the West was the author of a much more voluminous collection of writings than were the Patriarchs in Constantinople. Over the centuries, leading up to the classical period of the canonical decretalists and glossators, papal decretals were issued in greater number and frequency reflecting the increasing power of the Pope. The main factor which prompted canonical studies of the classical period during the twelfth century was that the many decretals issued lacked a systematic form of organisation. Reflecting their apophatic view toward Christianity, the Orthodox Patriarchs were not remarkable for their direct contributions to the Byzantine canon law collection. Typically, their contributions came in the form of precepts - a reiteration of well-known canons, usually in a question and answer form, or sometimes in the form of a *tomos* - a clarification or elaboration of church dogma with respect to a specific dogmatic question, e.g., marriage. The works of Byzantine Patriarchs were limited to interpreting the canons, and were not viewed as directives. In the Western church, however, decrees issued by the Pope- known as decretals - had the force of law.

### Western Canonists: Gratian's *Decretum*

The best known of the Western canonists is John Gratian (mid-twelfth century) who compiled a collection of the canons which was known as the *Concordantia Discordantium Canonum*, by using a "systematic process of scholastic analysis", later called simply the *Decretum Gratiani*.<sup>12</sup> The *Decretum* of Gratian formed the basis for the

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<sup>12</sup> This collection reflected the recent re-emergence of Roman law studies in the West which began at the University of Bologna. This systematic study spurred much of the subsequent study of canon law in Western law schools which took place over the following centuries. The *Gratiani* became the central collection which was studied in Europe during this period, much as the *Nomokanon of the 14 Titles* was in the Byzantine Empire during the era of its *scholiasts*. See *DMA*, 7, Charles Donaghue, "Law, Civil", 418-425 on the rediscovery of the *CIC* in Western Europe and its role in the development of canon law scholarship.

*Corpus iuris canonici*, the major collection of the Western Catholic church, published first in 1582 under Gregory XIII. The *Corpus iuris canonici* included, in addition to the *Decretum Gratiani*, the Decretals of Gregory IX (1227-1241).<sup>13</sup> It was the most comprehensive and most authoritative collection that had been hitherto assembled, and it remained so for almost four hundred years. Its authority was only superseded by the promulgation of the *Code of Canon Law* in 1917.

Gratian's influence on legal theory can be traced to his ideas on the law which were contained in his glosses in the *Decretum* (and more appearing in later versions of the *Decretum*). These glosses attempted to explain the relationship between human and divine law.<sup>14</sup> The *Decretum* in its manuscript form had the text of Gratian's work in the center of the page with a running commentary, much like footnotes, on the surrounding edges of the page. The commentary soon became more or less standardised in form, and came to be known as the *Glossa ordinaria*, or the "Ordinary Gloss". This was a great aid to scholars in reading the *Decretum*, since the *Gloss* often made certain passages more clear, or gave the text a cross reference to other standard legal works of the Middle Ages. Those individuals who composed the text of the *Gloss* are known as glossators. The notes comprising the *Gloss* were intended to serve a number of purposes. The notes would often define a term used in the *Decretum*, for instance, elucidating on the meaning of a term like "custom". Others provided a reference to other related passages in the *Decretum*; and still others served as a guide to other standard works of legal merit such as the *CIC*.

Also influential was Gratian's *Treatise on Laws*, a well-defined discussion concerning issues of church and state and the law in general. What the West took for granted among its canonical scholars in Russia was never seen, and so demonstrates the great difference in treatment of the canon law between the two Christian societies. The main emphasis of Western glossators focused on the issue of the two authorities, the secular and spiritual, what the limits of royal and papal power were. Concerning this issue, Gratian laid out his thoughts on the law in a number of what are known as distinctions. Those contained in his *Treatise on Laws* are a collection of the first twenty distinctions

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13 Coriden, *Introduction to Canon Law*, 23.

14 Gratian used the term natural law.

from his *Decretum*.<sup>15</sup>

In assigning hierarchical relationships among the various laws, Gratian provided legal theory with one essential point. That is, in the event human law conflicted with natural or divine law, and so was an unjust law, it had, therefore, to be considered an invalid law.<sup>16</sup> The notion of the possibility of the invalidity of a civil law was expressed clearly in Gratian's study of canon law. Deriving from this were his thoughts on the consequences of conflict between the laws of the secular and ecclesiastical authorities.<sup>17</sup> This point in the theory of law was well understood by those who studied the *Decretum Gratiani*, and was further reinforced by the later scholarly inquiry of Western canon lawyers who were typically well-read in both canon law and in Roman law. One can easily see the implications of Gratian's original thoughts as they were carried through the centuries, that it would be within the right of the individual to resist the civil authority with respect to an invalid law. The formal notion of an invalid law was not so clearly

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15 See for a translation of this, *Gratian, The Treatise on the Laws* (Decretum DD. 1-20), translated by Augustine Thompson, O. P. with the *Ordinary Gloss*, translated by James Gordley, (Washington D.C., 1993) [Studies in Medieval and Early Modern Canon Law, volume 2]. In Distinction I there is distinguished the divine and human law and "among natural law, ordinance or enactment, and usage or custom." Distinction II describes secular ordinances "traditionally recognised by Roman civil law." Distinction III describes different types of ecclesiastical ordinances: "canons, the decrees of pontiffs, the statutes of councils, and privileges" Distinctions IV-VII speak of the immutability of natural law and the history of law, for instance customary law. Beginning with Distinction VIII, the *Treatise on Laws* examines the various hierarchical ranking of authority of the various types of law. Therefore, in Distinction VIII it is said that natural law "has precedence" over custom. Distinction IX asserts that natural law should take precedence over that of secular authorities. Part 2 of Distinction IX also demonstrates that Scripture "has greater authority than the opinions of bishops, scholars and saints." Gratian also made provision for the potential conflict between law of the secular and ecclesiastical authorities in Distinction X, and explained that the ecclesiastical ordinances are superior to those of the secular authority. In the event of there being no secular law to be obeyed, and being governed instead by custom, Gratian, in Distinction XI asserts that custom has legitimacy. In the remaining Distinctions, XV-XX, a major portion of ecclesiastical law is examined, including the ecumenical and regional councils, patristic writings and papal decrees. The relationship among the different types ecclesiastical laws are examined.

16 Gratian actually had employed a less strict distinction in measuring the invalidity of human law than had later decretalists, such as Hostiensis who held the conflict between divine and human law in more stark contrast.

17 On the role of canon law in conflicts between the two authorities, see Stephen Kuttner "The Scientific Investigation of Medieval Church Law: The Need and the Opportunity", *Gratian and the Schools of Law, 1140-1234* (London, 1983) I, 493.

expressed in the East, and especially where Russia was concerned; and so, the lack of developed legal theory had for Russia a number of consequences. Of course, authorities in both East and West distinguished between the civil and canon law, but in the East the distinction between the two laws was much less marked.

## History of Byzantine Canonical Collections

### *Byzantine Collections*

It is highly likely that missionaries brought with them among other things, a Slavonic translation of the Byzantine *nomokanon* at the time of Russia's conversion to Christianity in the tenth century, though no Russian MS from this period survives. That the authority of canon law was accepted during the early period in Russia must have been the case, since the ecclesiastical canons were necessary for the governance of the church hierarchy and were necessary as well for the implementation of Christian norms among the populace. One must take care when making such a statement to point out which particular Byzantine collection one is speaking of, since the Byzantine collections are numerous and underwent alterations over a period of many centuries

### Definition of *Nomokanon*

A *nomokanon* is a collection of civil law, especially civil ecclesiastical legislation, and canon law in one single work, either arranged in parts or integrated by subject.<sup>18</sup> Imperial civil ecclesiastical legislation was that legislation of the Emperor which touched upon concerns of the church. Such legislation is mainly found in the *novellae* of the Byzantine Emperors. By canon law is meant ecclesiastical law - laws governing the clergy and church administration, as well as divine law governing society.<sup>19</sup> According to

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18 A useful definition of a *nomokanon* is found in *DMA*, Vol. 9, "Nomocanon", John Erikson, 158, which defines the term *nomokanon* as "a collection presenting synoptically both ecclesiastical canons (*kanones*) and civil laws (*nomoi*) on ecclesiastical subjects." See also Zhuzhek, *Kormchaia kniga*, 16-17, note 6 for a discussion of the application of the term *nomokanon*.

19 Since the term canon law is sometimes employed to mean ecclesiastical law and divine law (usually in the context of church law), and other times is used to mean a system of medieval law (usually by historians), a word on how the term will be used in this work is necessary. Henceforward, this text will employ the term canon law to describe a system of medieval law. The term ecclesiastical law will be employed when is meant the ecclesiastical canons, regardless of whom they governed, and the term civil law will be used to describe secular and ecclesiastical civil

a strict definition of the word, *nomokanon* usually conveys the understanding that the ecclesiastical canons and their relevant civil laws are arranged according to subject. Under a broader definition, a *nomokanon* is any collection of canon and civil laws which are placed together in one book. For instance, in a systematically arranged *nomokanon*, one might find a heading such as heresy and would see written a primary canon having to do with this subject. This would be followed by a listing of concordant canons from various councils or canons of the church fathers in abbreviated form, which in turn would be followed by a subheading announcing the relevant civil laws. This method of listing the canons and civil laws by subject and having them situated along side one another, not only made for easier consultation of the canons and related civil laws (along with ecclesiastical and secular punishments), but the arrangement also stood as an expression of the belief that the sacred and secular laws were interrelated, and should be in conformity with one another. This method of arrangement further ensured that future civil legislation would be made in conformity with the canons. Early Byzantine compilations of *nomokanons* cannot be properly termed *nomokanons* according to a strict definition, as they usually comprised two distinct parts joined together - the first part containing the canons of Apostles, church Fathers, and church councils, and the second part containing civil law. These parts were not compiled in any systematic fashion as were the later recensions of the *Nomokanon of the 14 Titles*.

#### A Short History of Byzantine Collections

The first substantial collection of canon law in the Byzantine Empire was compiled in the sixth century by John the Scholastic or John Scholastikos who was Patriarch of Constantinople from 565-577.<sup>20</sup> This collection is known as the *Collection of the 50 Titles*,<sup>21</sup> or in the Greek as the *Synagoge kanonon ekklesiastikon eis 50 titlous*

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*leges*.

<sup>20</sup> Burgess, *Lords Temporal*, 107.

<sup>21</sup> The *Collection of the 50 Titles* was a collection of the ecclesiastical canons only. The word *syntagma* could be substituted here for the word *collection*. *Syntagma* or *suntagma*, means that which is put together in order. The reader is referred to the *Greek-English Lexicon* compiled by H.G. Liddell and R. Scott (reprint: Oxford, 1996). Zhuzhek, *Kormchaia kniga*, 16-17 and note 6 on pp.16-17 uses both terms to describe this work of John the Scholastic. This *Collection* was the basis for the early Slavonic *nomokanon* translated by St. Methodius.

*dieiremene*.<sup>22</sup> This collection included, in addition to canons of the ecumenical councils, those of St. Basil and other church fathers, canons of local councils and those of the Apostles.<sup>23</sup> This collection, however, can not be viewed as a true *nomokanon*. While it is true that most compilations of canon law in the later Byzantine period were true *nomokanons*, meaning that the civil and ecclesiastical laws were joined together in an integrated fashion, the earlier collections were not. Initially, the practice of fashioning *nomokanons*, according to a more loosely interpreted definition, was the practice of merely appending a collection of civil law to a collection of canon law. Thus, for instance, when the collection of John the Scholastic, the *Collection of the 50 Titles*, was appended to the *Collection of 87 Chapters*, a collection of civil ordinances, (also composed by the same John Scholastikos in the sixth century), a primitive *nomokanon* was formed.<sup>24</sup>

Primitive *nomokanons* were superseded by the *Nomokanon of the 14 Titles*,<sup>25</sup> a collection in which fourteen titles were arranged by subject heading.<sup>26</sup> The *Nomokanon*

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22 This is how the title is found in V. N. Beneshevich's critical edition - *Ioannis Scholastici Synagoga L titulorum ceteraque eiusdem opera iuridica, iussu ac mandato Academiae scientiarum bavaricae, edidit Vladimirus Benesevic...*, Volume I (Munich, 1937) [Abhandlungen der Bayerischen Akademie der Wissenschaften, Philosophisch-historische Abteilung, Neue Folge, Heft 14], See also *Sinagoga v 50 titulov i drugie iuridicheskie sborniki Ioanna Scholastika: k drevneisei istorii istochnikov prava greko-vostochnoi tserkvi* (St. Petersburg, 1914; reprint: Leipzig, 1972), 220-223.

23 The first recension of this *Collection* included the canons of St. Basil only. It was not until the second recension (circa 565) that the canons of various other church fathers were added. This began the Eastern Christian canonical tradition of granting greater authority to the patristic canons. This was a practice which was not emulated to the same degree in Western canonical collections, and so consequently, the patristic works did not enjoy the same degree of authority same authority in Western Christianity.

24 *NCE*, 8.

25 See below on pages 52 and 53 (Tables 2 and 3) on the history of the compilation and recensions of the *Nomokanon of the 14 Titles*.

26 For a description of the format of the *Nomokanon of the 14 Titles*, see R. Macrides, "Nomos and Kanon on Paper and in Court" in *Church and People in Byzantium: Society for the Promotion of Byzantine Studies: Twentieth Spring Symposium of Byzantine Studies, Manchester, 1986*, ed. Rosemary Morris (Birmingham, England: Centre for Byzantine, Ottoman and Modern Greek Studies, University of Birmingham, 1990), 67. See also the studies of V. N. Beneshevich, *Kanonicheskii sbornik XIV titulov so vtoroi chetverti VII veka do 833 g.* (St. Petersburg, 1905) and *Drevne-slavianskaia kormchaia XIV titulov bez tolkovanii*, Vol. I (St. Petersburg, 1906). These are both republished as Vols. IIa and IIb in the series *Subsida Byzantina* J. Irmscher, et al. (Leipzig 1974). For a listing of legal citations (according to the civil law of the *CIC* of the Byzantine Emperor Justinian, sixth century) which correspond to the various components of the

of the 14 Titles is the best well-known of the early Byzantine *nomokanons* compiled first in the sixth century by an anonymous individual.<sup>27</sup> The first recension of 582, would be better termed the *Syntagma of the 14 Titles*, since its first part contained ecclesiastical canons only.<sup>28</sup> The *Nomokanon of the 14 Titles* was subsequently revised over a period of centuries, most notably in 883, this text being known as the pseudo-Photian compilation of the ninth century, since it was attributed to Patriarch Photius I (858-867; 877-886).<sup>29</sup> This particular recension was greatly influential because it was the alleged learned work of Patriarch Photius. Interestingly, although it is not this particular recension from which the Russian canonical collection originated, this recension was to serve as the foundation for the various recensions prepared by the later Byzantine canonists in the period after the twelfth century.

#### The Byzantine Canonists: Aristenus, Zonaras, and Balsamon

During the twelfth and thirteenth centuries, when the Byzantine Empire saw its great period of canonical scholarship, the pseudo- Photian recension of the *Nomokanon of the 14 Titles* was replaced. These later recensions of Byzantine *nomokanons* may be distinguished by their more systematic arrangement. They may also be distinguished by the addition of various commentaries or *scholia*, which follow many of the canons. This practice of adding commentaries after the canons parallels the work

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14 titles, see Beneshevich, *Kanonicheskii*, 137-146. See the text of the Photian *Nomokanon of the XIV Titles* with the *scholia* of Balsamon in *Patrologia graeca* [hereafter *PG*] 104, 975-1218.

27 The primary recensions of this collection are 629, 883, 1080, and 1198 A.D. See *Dictionnaire de Droit canonique* II [hereafter *DDC*], 1171-1177, C. De Clercq.

28 Zhuzhek explains that the first recension of the *Nomokanon of the 14 Titles* should be termed a *Syntagma*, since although it was a *nomokanon* by a loose definition, its format was different from later recensions in that it separated the ecclesiastical canons, placing them in the first two parts, from the civil laws in the third part. In terming the first recension a *Syntagma*, Zhuzhek, *Kormchaia kniga*, note 23, p. 23, relies on the study of K. E. Zachariae von Lingenthal, "Die griechischen Nomokanones", *Mémoires de l'Académie Impériale des Sciences de St. Pétersburg*, VII série (23 no.7), 8. It was only with the recension of 629-640 that the *Nomokanon of the 14 Titles* may be termed a *nomokanon* in the strict sense. See, K. E. Zachariae von Lingenthal, "Über den Verfasser und die Quellen des (Pseudo-Photianischen) Nomokanon in XIV Titeln", *Mémoires de l'Académie Impériale des Sciences de St. Pétersburg*, VIIe série (23, no. 16) (St. Petersburg, 1885), 39-41 and Beneshevich, *Kanonicheskii*, 229.

29 On its attribution, see Macrides, "Nomos and Kanon", 67, who says that it has been falsely ascribed to Photius since the twelfth century. See also Macrides, 67, note 27.

of Western European canonical glossators. These commentaries were composed by various Byzantine canonists during the twelfth century when Byzantine canonical studies saw a revival of interest following the earlier founding of a law school in Constantinople<sup>30</sup> in the mid-eleventh century by Emperor Constantine IX Monomachus (1042-1055). This period of revival of interest in the law was promoted by the Church, as it was to the Church's benefit that the proper legal relationship between church and state was both understood and promoted.<sup>31</sup> There are three primary Byzantine canonists of this period: Alexis Aristenus, John Zonaras, and Theodore Balsamon.<sup>32</sup> These individuals set about to clarify the confusion and repetition in the existing canon law collections, and to facilitate the easier use of the laws. The medieval Byzantine canonists worked in a similar fashion to their Western counterparts, such as Gratian in the twelfth century,<sup>33</sup> who is most well known for his systematic compilation of canons and papal and conciliar decrees, known as the *Decretum*. Although Western canonical collections of this period, operated by the same principle, namely the need to put some order into the great disorder affecting ecclesiastical law, the end result was different from that of canonists in the East, who viewed the division between civil and ecclesiastical law as less distinct, as is evidenced in their *nomokanons*. The emphasis among Byzantine canonists followed the political tradition of Justinian, which expressed the ideal as being one where the laws of God were supreme and the laws of man should not conflict, but rather serve to make God's law work better among his people creating perfect justice (*ius*). The notion that ecclesiastical law was superior in rank and authority to civil law, and that civil law was to be promulgated in conformity with the canons was a long-standing tradition in Byzantium. The

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30 Law school (*didaskaleion ton nomon*) in the monastery of Mangana, which was headed by a *nomophylax* (guardian of law). *Dictionary of the Middle Ages*, vol. 7, "Law, Byzantine", Nicholas Oikonomides 390-393, esp. 392; Macrides, "Nomos and Kanon", 68.

31 Macrides, "Nomos and kanon", 68, relying on H. G. Beck, *Kirche und theologische Literatur im Byzantinischen Reich* (Munich, 1959), 1-24, "Kirche und Klerus".

32 Current literature on Balsamon includes: R. Macrides, "Perception of the Past in the Twelfth Century Canonists", *Byzantium in the Twelfth Century* (3) 1991 [Society of Byzantine and Post-Byzantine Studies, Athens]: 589-599; and P. Magdalino, "Aspects of Twelfth Century Byzantine Kaiserkritik", *Speculum* 58 (1983):326-346.

33 See C. Gallagher, "Gratian and Theodore Balsamon: Two Twelfth Century Canonistic Methods Compared", in *Byzantium in the Twelfth Century*, ed. N. Oikonomides (Athens, 1991):61-89.

"constitutional" evidence for it, as mentioned above, lies in the *Eisagoge*,<sup>34</sup> the ninth century work of Patriarch Photius which specifically spelled out the rights and duties of the respective spheres of authority, the church and the state.

### The Jurisdiction of Canon Law

#### *Whence its authority derives*

The authority of canon law is rooted in its historical evolution which over the centuries grew out of the early church and its small collections of rules, e.g. the *Didache*, into the much larger collections which emerged from the many local councils and the seven ecumenical councils, up to approximately the eighth century. So too, is canon law rooted in the tradition of patristic writings which often gave strength to the earlier canons by adding to them the weighty interpretations of divinely inspired holy men. There has been historically the tradition to view the Apostolic canons and writings (for instance those in the Scripture such as the *Acts of the Apostles*) as having the greatest moral authority because the Apostles were chosen by Christ himself. Of great authority too are the canons and decrees of the Ecumenical councils which are considered to contain no deviation from the earlier canons, and are too believed to have been decisions which were inspired by the Holy Spirit. Next in rank of authority, come the decisions of local and regional councils. Lastly, in this hierarchy are the patristic writings. The concept of ranking of authority of the canons, that is the weighing of authority was particularly useful when one canon appeared to be in conflict with another. The primacy of the Apostolic canons and the canons of the Seven Ecumenical councils would nullify any conflicting ambiguity in wording or in interpretation where conflicting situations existed. In fact, one can see from a rather cursory look through the history of church councils how this principle has served to retain the greatest amount of orthodoxy in dogma, especially in the period of the early church through to the medieval period. Often, decisions of councils which conflicted with those of earlier ecumenical councils were simply declared invalid. However, this practice of declaring the canons of more recent councils invalid was more

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34 Now known as the *Eisagoge* rather than *Epanagogue*, Macrides, "Nomos and Kanon", 62, note 3 citing the work of A. Schminck, *Studien zu mittlebyzantinischen Rechtsbüchern* (Frankfurt am Main, 1986). *Eisagoge* 2.4-12 directed that the Emperor was to promulgate no law transgressing the canons.

frequently invoked for political purposes as the schism between the East and West widened sometime after the ninth century.

What underlay the belief in the primacy and validity of the canons of the Ecumenical councils, and therefore of canon law, was the belief in the nature of law itself. In both the East and West, there was a common understanding that there were two types of law, divine or natural law, and human or conventional law. In the Latin West the distinction, although already long-standing by the time of Gratian, was articulated at this time as being between *ius* (divine law) and *lex* (human law). According to Gratian's *dicta* contained in his *Decretum*, *ius* was defined as an immutable law whereas *lex* was considered to be mutable or variable law. Implicit in the belief in the infallibility and perfection of divine law, was the notion that law (*lex*) was imperfect. Human law, for this reason, was regarded as virtuous when it conformed to the natural law, and thus the canons; and immoral when it did not. As well, implicit in this theory of law, was the notion that natural law took precedence over human law. The Christian East shared this view, that the divine law was immutable - since, having come from God it could operate in no other way; and that human law was fallible and imperfect reflecting the nature of man. The belief in this concept is evidenced in the many writings of Justinian on the distinction between the laws of God and the laws which the civil authority promulgates. As well, this concept is part of the larger political idea of *symphonia* - that is in Byzantine constitutional thought, that the civil law was inferior to the divine law and should in all instances defer to it.

The validity and, therefore, the authority of the councils rests on this understanding of the Law. In the Christian mind the law which came from God was perfect, and so immutable, and infallible, it therefore, followed that the decrees of the councils which were reached through the inspiration of the Holy Spirit, were then, too, considered infallible since they were but expression of the divine law.<sup>35</sup> The primary role of the ecumenical Councils, aside from their governing the internal regulation of the church, e.g. rules governing the clergy, was that of the protection the faith from heretical belief. This was the main impetus for the convocation of the ecumenical Councils, to put

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35 See *The Rudder (Pedalion)*, translated by D. Cummings, (Chicago, 1957), xix, for discussion on the Eastern view of the law and the validity of councils.

down heretical movements. Therefore, one can see from the reading of the proceedings of any council, that the main emphasis was on dogma, and why so much attention was paid to questions of faith. The Councils existed to ensure that the tenets of faith were in conformity with the Scripture. One may or may not be persuaded by the logic and beliefs supporting the infallibility of Ecumenical councils, but the fact remains that in both the East and West, the essential canons governing the Church and therefore, society were considered to have their origins in divine or natural law, and so it was well understood that no one, not even the Emperor could abrogate them. One can see this evidenced in the East most especially in the manner in which the Byzantine Emperor took care to prevent his law from coming into conflict with the canon law, guiding by the idea of *symphonia*. This understanding is evidenced in the structure of the *nomokanon*.

#### *Extent of its Jurisdiction*

In general, the jurisdiction of canon law extended over two principal areas. First, the jurisdiction was concerned with matters which were considered purely ecclesiastical in type, i.e., over the clergy, both its internal and external conduct. Second, the jurisdiction of canon law extended over matters which were considered private in nature. The authority of the church over private matters gave it, therefore, jurisdiction over the laity. Since it was the basic purpose and responsibility of the church to ensure the salvation of the individual so that he would attain his heavenly reward, the church, therefore, held authority in all matters which were considered to be moral in kind. Although the church's jurisdiction over the laity was restricted in this formal sense - and excluded capital and certain other criminal matters - its authority was very great where matters of morality were concerned.<sup>36</sup> Ecclesiastical jurisdiction over the laity concerned matters of heresy, marriage, inheritance, weights and measures, and general moral conduct, for example, adultery and fornication.

With regard to its jurisdiction over the clergy, the church can be said to have had

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<sup>36</sup> In both the East and West, petitioners often chose ecclesiastical courts over civil courts even if the court did not have jurisdiction. The reasons for this are varied and include aspects of procedure and punishment. However, clerical persons were forbidden from seeking redress in secular courts. This is specified in canon 9 of Chalcedon: "If any Clergyman have a matter against another clergyman, he shall not forsake his bishop and run to secular courts...". Translation in Percival, 274.

a near complete jurisdiction stemming from its earliest days.<sup>37</sup> This jurisdiction held true for both the Eastern and Western churches. The same basic core of canon law, born out of the same tradition, possessed near identical similarities in the basic function of canon law. Both canonical traditions shared a similar understanding that there existed a distinction between the civil and ecclesiastical authorities, and therefore, in both the East and the West, to the civil and ecclesiastical courts belonged each one's respective competency. Frequently the jurisdiction overlapped, and such confusion existed often as a point of contention between the two authorities. As concerned the clergy, ecclesiastical courts held jurisdiction over rape, murder, or robbery, for example,<sup>38</sup> crimes which the civil authority claimed to have jurisdiction only with respect to the laity. The jurisdiction of the civil authority was so restricted because of the special immunities the Church had been granted. The clergy in Russia possessed similar immunities, but in some criminal and capital matters, the clergy was subject to the civil authority. The civil authority in Russia reserved to itself jurisdiction over the clergy in instances of murder (*dushegubstva*), theft (*tat'ba s polichnym*), and brigandage (*rozboi*). These three crimes were frequently, specifically named in jurisdictional immunity charters held by ecclesiastical landlords and establishments.<sup>39</sup>

#### Jurisdiction of ecclesiastical courts in Russia

As mentioned above, Russia, too, followed this same division of authority. Until the seventeenth century, justice in Russia was dispensed by two separate courts - civil and ecclesiastical courts. In Russia, as in other Christian societies, the division of authority between the two court systems, while not always clearly demarcated, followed the principles established by canon law, that to each sphere belonged its own jurisdictional competency. As it applied to Russia, the division of jurisdiction resided in the ecclesiastical canons and civil ecclesiastical laws of the *Kormchaia*. In Russian law the division of jurisdiction was formally enshrined in the *Statute of Vladimir* (early eleventh

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37 It had jurisdiction over "all crimes and offences committed by clerics of whatever description", Brundage, *Medieval Canon Law*, 71.

38 Brundage, *Medieval Canon Law*, 71.

39 See below Chapter 4.

century), and further explained in the *Statute of Iaroslav*, as mentioned above. These statutes enumerated the specific cases which fell under the jurisdiction of the Russian Church. For instance, the *Statute of Vladimir* established the Church Courts (*tserkovnykh sudekh*) to which were given jurisdiction over the following cases: divorce, fornication, adultery, rape, inheritance disputes, illegal marriages (consanguinity), witchcraft, church theft, and idolatry.<sup>40</sup> Should there have occurred any question by later civil authorities concerning under which jurisdiction cases fell, it is likely that these documents served to settle such questions. Certainly the jurisdiction of the Russian church courts was broader than these enumerated offences, as heresy was not named among them, which was indeed the competency of the ecclesiastical courts in all Christian societies. Other, lesser crimes, were reserved to the ecclesiastical courts and would have been known in Russia in the prescriptions of the canons and laws contained in the *Kormchaia*.

## II. Roman and Byzantine Legal Collections

### *A Short History of Roman and Byzantine Law*

The term Byzantine law is used to distinguish that law which was codified or produced after the time of the Emperor Constantine from the classical Roman law, meaning that law which had its origins in the codification of Roman customary law known as the Twelve Tables (c. 450 B.C.). Roman law developed over a period of many centuries<sup>41</sup> from the time of the Twelve Tables reaching its final culmination in the *CIC*

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40 See below Chapter 4 for a discussion. The Synodal copy of the *Statute* in both Russian and English may be found in Kaiser, *Laws of Rus'*, 42-44. Even if one argues that the Statute was subjected to later interpolations and that all crimes enumerated were not originally under ecclesiastical jurisdiction, most of those enumerated fell within the jurisdiction of ecclesiastical courts in other Christian states and are further, repeated elsewhere among ecclesiastical canons. An interesting crime is mentioned in the *Statute* demonstrating citation of Mosaic law. The passage reads "if two friends fight and the wife of one grabs the other by the genitals and crushes them..." (*ili dva druga imetacia biti, edinogo zhena imet' za lono drugago i rozdavit'...*) [translation Kaiser's, 42]. This passage comes from Deuteronomy 25:11,12. See the table below in Appendix which outlines the sources of Mosaic Law contained in Chapter 45 of the *Kormchaia*. The section is number 24 of the 50 extracts contained in Chapter 45 of the *Kormchaia*.

41 The periodization of the development of Roman law varies among Roman law historians. A useful structure is given by H. F. Jolowicz and B. Nicholas in *Historical Introduction to the Study of Roman Law*, 5-7. There was the *Archaic* period, which is the "period of the monarchy and the first three centuries of the Republic", during which the *Twelve Tables* was codified. The *Formative* period which was the "last 50 years of the Republic and the first century of the Empire." The

of the Emperor Justinian. One can say culmination, since it is in this form that Roman law was transmitted to medieval Europe and from which, together with the canon law, the legal institutions of the middle ages sprang. The whole of modern Western European legal institutions are based on what developed in the middle ages and what norms and aspects of Roman law that modern society retains today are based not on pure Roman law, but on the codification of Roman law adapted during the Byzantine period in the *CIC*.

### *Roman Law Historiography*

While Byzantine law is sometime given special consideration as a subject in itself, more often examinations of early Byzantine law are contained in studies of Roman law. This is primarily because Byzantine law is viewed as having an historical continuity with earlier Roman law, especially that considered as classical Roman law. Byzantine law is seen much as the Byzantine Empire is - as the historical continuation of the Roman Empire. Just as it is difficult to say when the Roman Empire ended and the Byzantine began, it is likewise difficult to discern when Roman law becomes Byzantine. The one criterion which can be said to mark a break between the two Empires and thus the tradition of law is that of Christianity. The Christianization of the Roman law in the period following Constantine did not, however, efface from the Byzantine legal tradition the basic principles of Roman law; and one can see in Justinian's sixth century compilation of Roman law, the *CIC*, that Roman law was still held to be valid law.

In the field of Roman law, the majority of monographs on the history of Roman law were completed by German scholars during the nineteenth century. It was the German legal reform of that century which was the impetus behind the thorough investigations which were made into the principles of Roman law. It was in this era as well, that a careful examination of extant sources took place, resulting in the publication of definitive editions of Roman law texts such as Justinian's *CIC*. Work on the collating of manuscripts was begun in the 18th century and was continued into the 19th century resulting in what is known as the definitive edition of the *CIC*. These definitive editions of the last century

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*Classical* period which ran from this time until the death of Severus (235 A.D.), and lastly the *Post-classical* period which lasted until the reign of Justinian.

resulted in what is known today as the stereotype edition of the *CIC*.<sup>42</sup> This was made from the definitive editions<sup>43</sup> of Mommsen, Krüger and Kröll, with the additions of modern textual criticism. There have been a number of translations of the *CIC* made into major European languages, mainly those in which the majority of studies on Roman and Byzantine law have been completed.<sup>44</sup> However, it is advisable to consult the stereotype edition in Latin, as some of the translated editions contain mistranslations.<sup>45</sup> There have been numerous publications of and translations of the *CIC*, either in whole or in part. The translation of the *CIC* by S. P. Scott is the only English translation of the *CIC* in full up to this time.<sup>46</sup> In modern Russia only the *Digest* in part has been translated.<sup>47</sup>

### *Byzantine Codifications of the Law: The Corpus iuris civilis*

The *Corpus iuris civilis* is the name given to the collected juristic writings and

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42 Vol I: *Institutiones*, ed. P. Krüger, and *Digest*, ed. T. Mommsen, ed. stereo. (1963); Vol II: *Codex Iustinianus*, ed. P. Krüger, ed. stereo. (1963); Vol III: *Novellae Iustinianae*, ed. R. Schöll and W. Kröll, ed. stereo. (1963).

43 A. Schiller, *Roman Law, Mechanisms of Development* (The Hague, 1978), 30. The eighteenth century edition was prepared by Gebauer and Spangenberg, 1776-1797; the nineteenth century edition by Beck, 1825-1835, and others; the definitive edition of the *Digest* (by Mommsen), the *Code* (by Krüger), the *Institutes* (by Krüger), and the *Novellae* (by Schöll, and completed by Kröll).

44 Translations have been made into English: S. P. Scott, *The Civil Law, including the Twelve Tables, the Institutes of Gaius, the Rules of Ulpian, the Opinions of Paulus, the Enactments of Justinian, and the Constitutions of Leo; translated from the original Latin, edited and compared with accessible systems of jurisprudence, ancient and modern*. 17 Vols. in 7 (Cincinnati 1932); German: C. E. Otto, B. Schilling, C. F. F. Sintenis, *Das Corpus iuris Civilis in's Deutsche übersetzt von einem Vereine Rechtgelehrter*, 7 Vols. (Leipzig 1831-1839); French: H. Hulot, and others, *Corpus iuris civilis. Le Digeste, les Institutes, le Code, Les Nouvelles*, 14 Vols. (Metz 1803-1811); Italian: G. Vignali, *Corpo del diritto, corredato delle note di D. Gotofredo...* 10 Vols. (Napoli 1856-1864) and in Spanish.

45 Schiller's opinion is that overall the translations are good, except that completed in English. He attributed mistranslation to the use of antiquated texts. Schiller, *Roman Law, Mechanisms of Development*, 31.

46 In full, meaning all four parts of the *CIC* have been translated. Even so, it is, however, incomplete and not considered a very good translation. There are better English translations of portions of the *CIC*. For the *Digest* see: *Digest of Justinian*, 4 Vols., Alan Watson, trans. (Philadelphia, 1985) and the *Institutes* as single works. Regarding the quality of Scott's translation see, W. W. Buckland, *Tulane Law Review* 7 (1932-1933) 627-32.

47 *Digesty Iustiniana, izbrannye fragmenty*, trans. I. S. Pereterskii, ed. E. A. Skripilev (Moscow, 1984). [*Digest* books, 1-26].

imperial legislation compiled by the Emperor Justinian. The purpose behind the *CIC* was to bring order to and simplify in form the Roman laws and juristic commentaries on the law which had accumulated over the centuries. It was first so named in the sixteenth century to distinguish it from the *Corpus iuris canonici* (the collection of canon law). Until this time, in Western Europe the various components of the *CIC* were known under different appellations, and were not until the fifteenth century published as a 'complete set'.<sup>48</sup> Although the term was primarily used by Western jurists, it will serve in this work to convey the understanding that the *CIC* comprised the following in the both the East and the West. There are four parts comprising the *CIC*: the *Codex Iustinianus*, the *Digesta Iustiniani*, the *Institutiones Iustiniani*, and the *Novellae Iustinianae*.<sup>49</sup>

i. *Codex Iustinianus*

The *Codex* or Code was promulgated by Justinian in 529 and revised in 534, and today it is this revised Code which is known to us. The Code is based primarily on law of post-classical Rome, enactments of Emperors from the time of Diocletian, but also includes constitutions from the classical period as well, especially from the time of Hadrian (2nd century) to the end of the classical period (250 A.D.). The Code was composed of 12 books which were divided into *tituli*. It was a common practice to publish only the first nine books of the Code, omitting the last three which were often published separately as the *tres libri*. The *tres libri* were sometimes placed with the *Institutes* and *Authenticum*, and was known as the Volume (*Volumen*). There was little of the *Codex* available in medieval Russia.

ii. *Digesta Iustiniani*

The *Digesta* or Digest is composed of extracts from the writings of the period of classical jurisprudence which is understood to be the period from the first century before Christ to the third century A. D. The extracts were compiled in 533 A. D. under the direction of Justinian. The collection is also known by the Greek name *Pandectae*. The Digest contains 50 books which are divided into *tituli*. The *tituli* were usually divided into

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48 Schiller, *Roman Law, Mechanisms of Development*, 30.

49 For further discussion on the codification of Justinianic law see: W. Kunkel, *An Introduction to Roman Legal and Constitutional History* (Oxford, 1966), 152-164; Schiller, *Roman Law, Mechanisms of Development*, 29-40; and Brundage, *Medieval Canon Law*, 202-205.

three parts: *digestum vetus*; *infortiatum*; and *digest novum*.<sup>50</sup>

iii. *Institutiones Iustiniani*

The *Institutiones* or Institutes was based on the Institutes of Gaius and other earlier books of Institutes. The Institutes of Gaius<sup>51</sup> were compiled in the second century A.D., intended as a textbook for law students. The definitive Latin edition of the Institutes is that of Krüger and in English, the definitive work is Holland's.<sup>52</sup>

iv. *Novellae Iustinianae*

The *Novellae* or Novels of Justinian are a collection of enactments of Justinian written between 535-55? and were collected in the time of Tiberius II (578-582 A.D.) The enactments of Justinian pertained to private law, especially that concerning the family and inheritance. A secondary concern of the *novellae* were *res sacrae*. The collection, the *Novellae leges*, consisted of 168 novels and was circulated primarily in the Eastern Empire.<sup>53</sup> The novels are also known as the *novellae constitutiones* and were written mainly in Greek although some were bilingual, with a few in Latin. Those written in Greek were intended for the Eastern provinces, the bilingual and Latin were intended for the Western provinces. The Western Empire relied on another compilation of the novels which was called the *Authenticum*. During the Western medieval period, the *leges* contained in the *Authenticum* or *Liber authenticum* were either 134 in number or 96 in number after the eleventh century. The *Novellae* were structured into 9 *collationes* which were divided into *tituli*, and then subdivided into *fragmenta*, each having a preface, the main body followed by an epilogue.

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50 This explanation pertains to Western European collections as well.

51 For information of the Institutes of Gaius see *The Institutes of Gaius*, trans. W. M. Gordon and O. F. Robinson. (Glasgow, 1988).

52 T. E. Holland, *The Institutes of Justinian, edited as a recension of the Institutes of Gaius* (Oxford 1873, 2nd. ed. 1881) Cf. Schiller, *Roman Law, Mechanisms of Development* note 14, page 32.

53 According to Schiller, *ibid.*, 40, the Greek novels exist in two MSS - one of the thirteenth and one of the fourteenth century. There were a few editions of the Greek novels made during the sixteenth century but it was not until the nineteenth century that the definitive critical edition was made, first by Zachariae von Lingenthal and later revised by Kröll. There is no English translation aside from that of Scott.

*Special Collections of Byzantine Law (standing alone or contained within larger works)*

i. *Collectio 87 Capitulorum*

The *Collectio 87 Capitulorum*, or the Collection of 87 Chapters, as mentioned above, was a sixth century collection of Byzantine civil laws mainly pertaining to the church and religious concerns, *res sacrae*, and were drawn from the *novellae* of Justinian. The work was divided into eighty-seven chapters with each chapter containing a title heading. Extracts from the *Collection*, including the title headings, comprise Chapter 42 of the *Kormchaia kniga*. The legal extracts contained in Chapter 42 of the *Kormchaia* were instrumental in upholding the privileges of the Russian Church, as discussed below in Chapter 3.

ii. *Collectio Tripartita*

The *Collectio Tripartita*<sup>54</sup> was a sixth century collection of civil law governing the church and other religious concerns (i.e. *res sacrae*) attributed to Johannes Scholastikos.<sup>55</sup> It is thought to have been the companion to the *Syntagma of the Fourteen Titles*, the collection of canon law compiled in the sixth century. The *Syntagma of the Fourteen Titles* was the predecessor to the later *Nomokanon of the 14 Titles* the systematically arranged *nomokanon*.<sup>56</sup> The *Collectio tripartita* was divided into three sections: the first section contained *leges* drawn from the *Codex*; the second section contained *leges* from the *Digesta*; and the third section contained excerpts from various *novellae* of Justinian. As mentioned above, in the printed *Kormchaia kniga*, extracts from the *Collectio tripartita* comprise Chapter 44.

*Later Byzantine Law : The Byzantine Compendia of Laws - The Ecloga and Prochiron*

Later Byzantine law from the ninth century to the eleventh centuries has been

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54 On *Collectio Tripartita* see Pitra, *Iuris Ecclesiastici Graecorum Historia et Monumenta*, Tom. II, 410; Zhuzhek, *Kormchaia kniga*, 83-84, note 23; B. H. Stolte, "The Digest Summa of the Anonymous and the *Collectio Tripartita*", *Subseciva Groningana* 2 (1985) 47-58; *Collectio Tripartita: Justinian on Religious and Ecclesiastical Affairs* eds. N. van der Wal and B. H. Stolte (Gröningen, 1994). The first section of the Collection was taken from the *Codex* (I, 1-13), the second from the *Digest* and *Institutes*; the third from the *Novellae* titles 1-3. *ODB*, I, 480.

55 On authorship see B. H. Stolte, "The Digest Summa", *Subseciva Groningana* 2 (1985), 47-58.

56 See above pages 35 and 36.

examined as a separate, special area of study. The Byzantine law books, the *Ecloga*, *Prochiron*, *Eisagoge*, *Basilis (Basilica)* and the *Epitome* are all law books from this period which scholars have examined under the subject heading of Byzantine law. One area of research has focused on the extent to which these law books broke tradition with the preceding collections of early Byzantine law in particular the *CIC*. These books represent the height of Byzantine codification based on the new Christian ethos and political philosophy. Legislation in Byzantium became at this time more static and less interpretive, with the Emperors choosing to have their law books stand as selections of earlier laws, paring them down to useful distillations befitting a Christian society. The impetus behind this was the desire to bring to the laws purification, rather than innovation or accretion. In this is seen by scholars a shift from the Emperor as legislator and source of legislation aided by God, to the Emperor as God's intermediary, with God as the source of law.<sup>57</sup> This shift, therefore, marks the shift of Byzantine legal culture from one of classical Roman juristic principles and beliefs to one in which Christian principle permeated all.

Aside from the extracts from the *CIC*, the *Kormchaia kniga* included as well, the later Byzantine *compendia* the *Ecloga* and *Prochiron*. These two *compendia* as the word implies were intended to serve as a distillation of the more important (and common) points in Byzantine law, and so were written as to clarify the more complex aspects of the law. That this was the intention is so stated by the Emperors Leo III and Constantine V in their preamble to the *Ecloga*.<sup>58</sup> These *compendia* were intended to be of use in the provinces, and for the rural population.<sup>59</sup>

#### The *Ecloga*

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57 On this see J. H. A. Lokin, "The Significance of Law and Legislation in the Law Books of the Ninth to Eleventh Centuries" In: *Law and Society in Byzantium Ninth-Twelfth Centuries*, eds. A. E. Laiou and D. Simon (Washington, D. C., 1994), 76.

58 "...knowing moreover that the laws enacted by previous Emperors have been written in many books and being aware that the sense thereof is to some difficult to understand, to others absolutely unintelligible, and especially to those who do not reside in this our imperial God-protected city..." From the Preface (*prooimion*), as translated in Freshfield, *The Ecloga*, 67.

59 On the *Ecloga* being intended for the rural population see Dieter Simon, "Legislation as both World Order and Legal Order" In: *Law and Society in Byzantium Ninth-Twelfth Centuries*, eds. A. E. Laiou and D. Simon (Washington, D. C., 1994), 15.

The *Ecloga*,<sup>60</sup> literally a "selection of the laws", is a *compendium* issued by Emperors Leo III (717-741) and Constantine V Copronymus (740-775) in 741 A.D. and became the prototype for Byzantine legal handbooks. It was subsequently translated into a number of languages including Slavonic and was incorporated into the Russian *Kormchaia kniga*. The *Ecloga* was intended to exist as a summary of the Justinian's legal achievements and as is also stated in the preamble, was intended for use by provincial justices in the furthest reaches of the Empire. The *compendium*, drawn from the *CIC* of Justinian was divided into 18 titles. The *Ecloga* contained a few legal innovations; and was especially notable for its inclusion of a new section on penal law. These new penal laws emphasised sexual offences and prescribed harsher punishments for all the crimes listed in the penal section. The less frequent use of capital punishment began in the time of Justinian reflecting the new Christian ethos.

The *Ecloga* is often considered the first Christian law book,<sup>61</sup> for scholars have observed that the *compendium* was arranged with a Christian ethos in mind. This is evidenced by the revisions in the law that were made, especially with regard to marriage and divorce, slavery, and also by the addition of more numerous penalties for crimes of a sexual nature. Additionally there were clearer and more restrictive provisions concerned with heretics (including Jews), primarily regarding the rights of such persons within the

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60 For the text of the *Ecloga* see, K. E. Zachariae von Lingenthal, *Collectio librorum juris graeco-romani ineditorum* (Lipsiae, 1852). A current critical edition in German has been completed by L. Burgman, *Ecloga. Das Gesetzbuch Leonis III und Konstantinos V* (Frankfurt a. Main, 1983). For the English translation see Freshfield, *The Ecloga*. A Russian translation may be found in E. E. Lipshits, *Ekloga: Vizantiiskii zakonodatel'nii svod VIII veka* (Moscow, 1965). Many of the comments made with regard to the *Ecloga* in Russian studies are contained in studies of the *Zakon sudnyi liudem*. These studies of the *ZSL* focused on the origins of the code by means of comparing the *ZSL* to the *Ecloga*, especially Title 27 of the *Ecloga*. In his study on the *ZSL*, N. S. Suvorov, *Sledy zapadno-katolicheskago tserkovnago prava v pamiatnikakh drevniago russago prava* (Iaroslav', 1888), 4, was of the opinion that the *ZSL* was a translation and adaptation of Title 17 of the *Ecloga*. Title 17 was the penal section of the *Ecloga* which enumerated punishments for various crimes. For text and commentary on the *Ecloga* see: Zachariae, *Collectio librorum juris graeco-romani ineditorum*, 44-52; Freshfield, *The Ecloga* as above. See Zhuzhek's chart, *Kormchaia kniga*, 86. See more on the *Ecloga* in the Appendix below, p. 226.

61 In the *Kormchaia* the entire preface to the *Ecloga* is translated into Slavonic. The title heading of chapter 50 of the *Kormchaia* seems to indicate for what uses this law book was most put to. The title reads *Ѡ совѣщанъ и Ѡбръченъ ѧ, и Ѡ брацѣхъ и Ѡ иныхъ различныхъ винахъ* - on the promise of betrothal and on marriage.

Orthodox Christian Empire. The *Ecloga* was divided into eighteen titles, each with a heading and then divided further into shorter sections. The first titles related to marriage, dowry and betrothal, the next four to gifts, inheritance, intestacy, guardians and trustees. Title eight concerned slaves and freemen. The ninth through twelfth titles concerned property; for instance, purchase, loans and security, *emphyteusis*. The thirteenth and fifteenth related to contracts. The fourteenth to witnesses and testimony. Concerning soldiers' property and war booty were the sixteen and eighteenth titles respectively. The last remaining title, title seventeen, concerned punishment and provided a specialized list of punishments to be administered for various offences.<sup>62</sup>

### The *Prochiron*

The *Prochiron*, promulgated under Emperor Leo VI (887-912) after 907 A.D., is regarded as a revision of the *Eisagoge*. Previously dated earlier in the 870's, commentators treated this *compendium* as a revised *Ecloga*, but current scholarship believes that it is in fact a revision of the *Eisagoge*.<sup>63</sup> The manual was divided into 40 titles and its aim was to give a correct rendering of the law and in so doing to purify it. The *Prochiron* was translated into Slavonic as well and found its way to Russia by the eleventh century being subsequently incorporated into the *Kormchaia kniga*.<sup>64</sup> A number of chapters of the *Prochiron* contain new regulations of Leo VI. Parts of this law book were incorporated into Russian legal books, notably the *knigy zakonnyia*.<sup>65</sup>

What we can see from this Chapter is that all Christian societies possessed canonical collections which shared a common origin, that this law held great authority and gave to the Church its special sphere of ecclesiastical jurisdiction, and that the canonical

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62 English edition: Freshfield, *Procheiros Nomos*. Other editions are: Zepos, *Jus graecoromanum* 2: 107-228, 395-410. See also, M. Benemanskii, *Ho Procheiros Nomos*. Of interest is N. Oikonomides, "Leo VI's Legislation of 907 Forbidding Fourth Marriages, an Interpolation of the Procheiros Nomos", *Dumbarton Oaks Papers* 30 (1976):173-193. D. Simon comments that it is "materially similar to the *Ecloga*", but differs in its lack of a "juridical program", D. Simon, "Legislation as Both World Order and Legal Order", 20-22.

63 On this see van Bochove, *To Date and Not to Date*.

64 In the printed *Kormchaia* the preface to the *Prochiron* was not included.

65 Zhuzhek provides discussion on the *knigy zakkonyia* on pages 131-133, which he says included Titles 11, 27, and 39 of the *Prochiron*. See printed text excerpts in Slavonic and Greek in A. S. Pavlov, *Knigi zakonnyia soderzhashchiia v sebe v drevne-russkom perevode, vizantiiskie zakony zemledel'cheskie, ugolovnye, brachnye i sudebnye* (St. Petersburg, 1885).

collections were developed into systems of canon law integrating Roman law. Russia diverged from this last point of development since the *Kormchaia* was not systematic and did not produce any canonical scholarship related to it. The consequences of producing no canonical scholarship meant that in Russia there appeared no formal political theory as occurred in the West and Byzantium which a variety of canonist and scholiasts assisted in the development of. The integration of Roman law and ecclesiastical law was, especially as it concerned the West, instrumental in the creation of a system of canon law. From the above survey on Roman and Byzantine law, it has been shown to what extent Russia had Roman and Byzantine legal texts available. While what Russia possessed was in its extent much less than that available in the West or Byzantium, Russia nevertheless possessed a significant source of Romano-Byzantine law in the *compendia*. The *compendia*, as it was mentioned above, were self-contained collections of law which were used in the Byzantine Empire as provincial legal manuals. Because these were incorporated into the *Kormchaia*, they supplied Russia with a significant, although comparatively small, source of Romano-Byzantine law. Therefore, in its totality, the *Kormchaia* served as a code of canon law and a source of civil law, and in this way can be said to have served as a central repository of law. the actual contents of this repository are discussed below in the Appendix, which in further detail describes the contents of the *Kormchaia* and its manuscript history.

**FIRST PRIMITIVE NOMOKANON**  
Produced by appending *Collection of 25 Titles* to the *Collection of 60 Titles*.

**NOMOKANON 50 CHAPTERS**  
Compiled after 692.  
Added to *Collection of 50 Titles* were *Collection of 87 Chapters*, *Collection of 25 Titles* and Canons of Trullo.  
Translated into Slavonic by St. Methodius in the 9th century.

Lit: NCE (6), 750; Beneshevich

**PRIMITIVE NOMOKANON**  
Compiled at the end of 6th century A.D.  
Produced by appending 21 chapters from the *Collection of 87 Chapters* to *Collection of 50 Titles*.  
The first part ecclesiastical canons; the second part civil laws arranged in 14 Titles.

**NOMOKANON OF 14 TITLES**  
Systematically arranged ecclesiastic canons and civil laws in 14 titles or subject headings.  
First compiled circa 580 A.D. (this one not systematic, rather a *syntagma*).  
Recensions:  
610-640 by Enantiophanes  
883 pseudo-Photian  
1090 Theodore Bestes  
Declared the official collection, Council Constantinople 920.

Lit: NCE (6): 750; Beneshevich, Kanonicheskie; NCE(3), 41; DDC (2), 1171-1177.

### KEY

Beneshevich=Kanoniceskii sbornik: XIV titulov so vtoroi cetverti VII veka do 883 g.: k drevneisei istorii istochnikov prava greko-vostochnoi tserkvi; Sinagoga v 50 titulov i drugie iuridicheskie sborniki Ioanna Scholastika: k drevneisei istorii istochnikov prava greko-vostochnoi tserkvi

CIC = *Corpus iuris civilis* (529 A.D.) of Emperor Justinian

NCE= *New Catholic Encyclopedia* (1966)

DDC=*Dictionnaire de droit canonique*

**COLLECTION OF 60 TITLES**

Compiled 535 A.D.  
Systematic canonical collection.  
Ecclesiastic canons only arranged  
in 60 titles.

*Lit:* NCE (3):35,40-41; NCE (6):750

**COLLECTION OF 25 TITLES**

Compiled 6th century A.D.  
A collection of Justinianic civil  
ecclesiastical legislation arranged  
in 25 titles.

*Lit:* Zachariae, 2-3.

= Primitive *nomokanon*

**COLLECTION OF 50 TITLES**

Compiled 570 A.D.  
Systematic canonical collection,  
according to subject.  
Ecclesiastic canons only arranged  
in 50 titles.

early systematic  
*nomokanon*

**COLLECTION OF 87 CHAPTERS**

Compiled 6th c. A.D. by John the  
Scholastic.

A collection of Justinianic civil  
ecclesiastical legislation (from the  
*novellae*) arranged in 87 chapters.

*Lit:* NCE; Pitra, II, 385-405.

= *Nomokanon 50 Chapters* (later Titles)

**COLLECTIO TRIPARTITA**

Compiled 6th century A.D.  
Civil laws concerned with religious  
matters taken from the *CIC*.  
Arranged in 3 parts: 1) from the  
*Codex*, 2) from the *Digest* and  
*Institutes*, 3) from the *Novellae*.  
Foundation for the *Nomokanon of*  
*14 Titles*.

*Lit:* Troicki; van der Wahl; NCE (6): 750

**KEY**

*Beneshevic*=Sinagoga v 50 titulov i drugie iuridicheskie sborniki Ioanna Scholastika: k drevnej istorii istochnikov prava greko-vostochnoi tserkvi

*CIC* = *Corpus iuris civilis* (535 A.D.) of Emperor Justinian

*NCE*= *New Catholic Encyclopedia*

*Pitra*=*Iuris ecclesiastici Graecorum historia et monumenta, Vol. II*

*Troicki*=*Kako treba izdati svetosavsku Krmchiju (Nomokanon sa tumachenjima)*

*Zachariae*=*"Die griechischen Nomokanones"*

*van Bochove*=T. E. Van Bochove, *To date and not to date: on the date and status of Byzantine law books*

*van der Wahl*=*Collectio Tripartita: Justinian on Religious and Ecclesiastical Affairs*, eds. N. van der Wal and B.H. Stolte (Groningen: E. Forsten, 1994).

***Early Byzantine Canonical and Civil (ecclesiastically related) Collections***

## CHAPTER 2: THE HISTORY OF THE *KORMCHAIA KNIGA*

This chapter critically examines earlier works completed on the sources and on manuscript tradition of the *Kormchaia*. Such previous works include that of Zhuzhek, Troicki, Kaiser and Shchapov each of whom participated in advancing the study of the *Kormchaia*. This examination of the *Kormchaia* brings to light some recent discoveries pertinent to the manuscript history of the *Kormchaia*, for instance, that concerning the so-called *Ustiuzhskaia* family of MSS. From the survey it may be seen that the *Kormchaia* in none of its redactions can be called a *nomokanon* because none of them were systematical arrangements of *nomoi* and *kanones*, and further, that none of these redactions contained even a systematic arrangement of the ecclesiastical canons, and so in this way remained primitive collections. The one exception to this was the sixteenth century *Kormchaia* of Patrikeev, which was one of the few attempts made in Russia at compiling a systematically arranged canonical collection. From the descriptions of the various redactions of the *Kormchaia* it can be seen that very few indigenous works produced were added to the collection, and none of these added anything substantive to the collection. No original Russian *scholia* was added to the *Kormchaia*, and instead the *scholia* of the Byzantine canonists was merely reproduced. Interestingly, the *scholia* of the twelfth century Byzantine canonist Balsamon were not seen in Russia until the sixteenth century - even then not in full. Therefore, the important ideas on the relationship between church and state contained in his *scholia* did not have any influence in Russia until the seventeenth century. The particular chapters comprising the printed *Kormchaia* may be found in the Appendix below where they are examined at length.

*The «Kormchaia kniga». A brief introduction to its significance along with a short historical survey relevant to studies of the «Kormchaia»*

The name *Kormchaia kniga* is of Slavonic origin and can be traced back to at least the thirteenth century, around the same time as a new compilation of the canon law

collection was fashioned in Russia following the church council of 1273.<sup>1</sup> Until the printing of the *Kormchaia* in the seventeenth century, the *Kormchaia kniga* was not merely one single uniform volume, but existed in the form of numerous and differing manuscripts, based on a number of Slavonic redactions stemming from various Slavonic translations of the Greek *nomokanon*, mainly Serbian and Bulgarian. The *Kormchaia kniga*, in addition to being comprised of ecclesiastical canons of the Apostles and various ecumenical church councils, also included patristic works, patriarchal conciliar decrees and precepts from the middle Byzantine period. It also contained portions of Byzantine civil ecclesiastical law. Generally speaking, one can say that in terms of content the *Kormchaia kniga* was the Russian equivalent to the Byzantine *nomokanon*. However, the *Kormchaia kniga* differed from the Byzantine *nomokanon* in one great respect: it contained two Byzantine *compendia* of law, the *Ecloga* and *Prochiron*, which were not incorporated into the structure of the Byzantine *nomokanon*. For this reason the *Kormchaia* should be viewed as the central Russian canonical collection and also the central Russian civil legal collection of the medieval period.

The *Kormchaia kniga* has sometimes been called the *Corpus iuris canonici*<sup>2</sup> of the Russian Orthodox Church conveying the idea of a comprehensive canonical collection. However, although in terms of form the *Kormchaia* does not resemble the *CIC*, in terms of its role, as an ecclesiastical code, it is an appropriate description. So the *Kormchaia* can be said to have a similar function as the *CIC*, in that it served as the primary code of ecclesiastical law in Russia. Secondly, as a *nomokanon*, the *Kormchaia* served an additional purpose as well. It served to give definition to the civil and ecclesiastical spheres of authority, and so, in effect, delineated the relationship between church and state during the early and medieval periods in Russia. In so delineating the relationship between church and state, it can be said to have served as the constitutional foundation for Russian society. Implicit in both the canons and ecclesiastical civil laws were constitutional

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1 Formerly thought to be the council of 1274. Ia. N. Shchapov, *Vizantiiskoe i iuzhnoslavianskoe pravovoe nasledie na Rusi v XI-XIII vv.* (Moscow, 1978), 117-19.

2 The *Corpus iuris canonici* was recognised as the official code of the Roman Catholic church in the sixteenth century. On this see the *New Catholic Encyclopedia*, hereafter *NCE*, "Corpus Juris Canonici". See also, *The Code of Canon Law, a text and commentary commissioned by the Canon Law Society of America*, eds. James Coriden, et. al., (New York, 1985).

principles dividing the two spheres of authority and defining their jurisdictions. Lastly, the *Kormchaia* also served as a civil legal code. The *compendia* of Byzantine law contained within the *Kormchaia* were employed in a number of legal areas of Russian society for instance, dowry and testaments, more about which will be explained further on in this work.

The use of the *Kormchaia kniga* as a both a source of canon and civil law in Russia, extended from the tenth century until the time of Peter the Great in the eighteenth century. The history of its use may be broken down into the following periods: The period of the metropolitanate (988 to 1447); the period of the Russian autocephalous metropolitanate which followed the conquest of Constantinople in 1453 - from 1448 to 1588. And lastly, the period of the Russian Patriarchate, from 1589-1721, until the Patriarchate was abolished by Peter the Great's Spiritual Regulation and the establishment of the Holy Synod. The juridical value of *Kormchaia kniga* remained in force throughout this period as a source of both sacred and civil law. It served as the central code of law for the Russian church - the only church law in effect in Russia, and in a great number of respects, as a source of civil law. The use of the *Kormchaia kniga* itself, as a purely ecclesiastical code applicable mainly to the clergy, continued until 1839<sup>3</sup>. After being replaced by the *Kniga pravil* which was a collection of ecclesiastical canons only in 1839, the *Kormchaia kniga* was still consulted, although officially it was no longer considered to be the central book of church law. The extent of use of the *Kormchaia kniga* after the publication of the *Kniga pravil* is a topic of debate, especially the incorporation of its provisions on marriage, succession etc., into Russian civil statutes. A comparison of these provisions to early statutes in the *Polnoe sobranie zakonov* (hereafter *PSZ*) shows they bear a great similarity to those of the *Kormchaia*.

#### Etymological origins of the term *Kormchaia kniga*

The first Slavonic translations of the Greek word *nomokanon* were rendered as

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<sup>3</sup> *Kniga pravil sviatykh apostol, sviatykh soborov vselenskikh i pomestnykh, i sviatykh otets, na pervonachal'nom Ellinskom narechii i v prelozhenii Slavenorossiiskom, napechatana v tsarstvuiushchem velikom grade Moskve, v Sinodal'noi tipografii, pervym tisnieniem, v leto ot sozdaniia mira 7370, ot Rozhdestva zhe po ploti Boga Slova* (St. Petersburg, 1839; reprint, 1869).

*zakonopravilo* which is a literal translation of the Greek *nomos* (*zakon*) and *kanon* (*pravilo*).<sup>4</sup> This literal translation is first found in a Slavonic MS of the twelfth century. Later, in Kievan Rus', the original Slavonic term *Kormchaia kniga* came into use. The use of the term *Kormchaia kniga* in Russia can be traced back to the thirteenth century.<sup>5</sup> The etymological roots of the term *Kormchaia kniga* are quite well established.<sup>6</sup> The meaning of the word *Kormchaia* is best expressed as "navigator's". Based on this, an appropriate literal translation of *Kormchaia kniga* would read, "navigator's book". The word *Kormchaia* is particularly well-suited to the ship metaphor - as the book of canon law, guiding the church [ship] through the seas. The related word *kormchii* in the sense of "navigator" was also applied to the clergy in Russia as well.<sup>7</sup> Work of nineteenth-century Russian etymologists had argued that the term was Slavonic in origin, rather than of

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4 Most likely this is a literal translation made by Methodius when he translated the Byzantine *nomokanon* into Slavonic, in Moravia during the ninth century. Although the term in Russia was lost in favor of *Kormchaia* it was still known and understood later. See for instance, the *Vita of Methodius* where in describing Methodius's translating of the Byzantine *nomokanon* the passage equates the two terms: "...ТГДА Ж ОН НОМОКАНОНЪ РЕКЪШЕ ЗАКОНУПРАВИЛО...ПРЕЛОЖИ - т'гда zh on nomokanon" rek"she zakonopravilo...prelozhi." ("...then he translated the *nomokanon* called the *zakonopravilo*." [*zakon*=law; *pravilo*=ecclesiastical canon]). Text in: *Medieval Slavic Lives of Saints and Princes*, Marvin Kantor, ed., (Ann Arbor, 1983), [Michigan Slavic Translations 5], 124. The translation is of an East Slavic text of the *Life of Methodius*, found in the *Uspenskii sbornik* of the thirteenth century.

5 Zhuzhek, *Kormchaia kniga*, 10. E. E. Golubinskii, *Istoriia russkoi tserkvi*, Vol. I (Moscow, 1901; reprint: The Hague, 1969) [Slavistic Printings and Reprintings], 660. Golubinskii was of the opinion that the term was of Slavonic origin and not a translation of the Greek. It seems its use was first most prevalent in the Novgorod area and so the first known MS to have in its title the words *Kniga kormchiia* comes from the *Novgorodskaia* family of MSS. This MS, known as the *Novgorodskaia kormchaia* was composed about 1280 in Novgorod. An excerpt of the early Novgorod MS Syn.132 (dated 1280-1282) containing the word *kormchaia* may be found in F. Buslaev, *Istoricheskaia khristomatiia tserkovno-slavianskago i drevne-russkago iazykov* (Moscow, 1861), 380: "...kormchiia rek'she pravilo zakonu..." (КЪРМЧИИЯ РЕКЪШЕ ПРАВИЛО ЗАКОНУ).

6 See for instance *Lexicon palaeoslovenico-graeco-latinum: emendatum auctum* / edidit Fr. Miklosich (Vindobonae, 1862-65) or *Polnyi tserkovno-slavianskii slovar': so vneseniem v nego vazhneishikh drevne-russkikh slov i vyrazhenii ...*, compiled by G. M. D'iachenko (Moscow, 1899; reprint: Italy, 1976?).

7 See *Kormchaia kniga*, 10-12, for Zhuzhek's analysis of the use of the word. Additionally, Zhuzhek sides with Golubinskii's contention posited in the nineteenth century that the word *kormchaia* was of original Russian rather than Serbian origin.

Greek or other origin.<sup>8</sup> Incidentally, the Greek collection of canon law of 1800 was called the *Pedalion* which was thought to be a late Greek adaptation of the word *Kormchaia*.

#### The Russian *Kormchye knigi*

When discussing the Russian *Kormchaia* it would be misleading to give the impression that there was a single, central *Kormchaia*. In actuality, there were many MSS of the *Kormchaia* which appeared over the course of the centuries during the period 1300-1653, which were diverse in form, and varied according to different localities such as Novgorod and Kiev. As well, these families of MSS had differing contents. However, the contents of the various types of the *Kormchaia* bore more similarities to one another than they had differences, so it is possible to generalise to a great degree.

#### Slavonic MSS tradition of the *Kormchaia kniga*

The *Kormchaia kniga* is based on one or more recensions of the Byzantine *Nomokanon of the 14 Titles*, primarily upon the non-systematic recension. The later, more, systematic recensions of the *Nomokanon of the 14 Titles*, while not directly responsible for the formation of the Russian *Kormchaia*, were influential in that it is they which provided the commentary to the canons, which were included in the Russian *Kormchie knigi* in the thirteenth century. The Byzantine canonical commentaries were in Russia often considered to have equal weight to the canons themselves. The commentaries of Aristenus and Zonaras were taken from later recensions of the Greek *Nomokanon of the 14 Titles*, compiled in Serbia. The commentaries of Balsamon, which, however, elucidated much more clearly and at length, on church-state relations, were not known in

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8 Zhuzhek, *Kormchaia kniga*, note 9, p. 9. See I. I. Sreznevskii, *Materialy dlia slovaria drevnerusskago iazyka po pis'mennym pamiatnikam* (St. Petersburg, 1893-1903; reprint: Graz, 1955-56; and under the title *Slovar' drevnerusskago iazyka*, reprintnoe izdanie, 3 Vols. (Moscow, 1989); Miklosich, *Lexicon*. There may be a connection to the Greek word *kormos*. *Liddle Scott Jones Lexicon of Classical Greek* renders this term as the 'trunk of a tree'; and it appears that the term was used in conjunction with adjectives to describe certain types of wooden tools. For example, the term *kormoi xulon*, meant logs of timber, and the term *kormoi nautikoi*, meant oars. An argument could be made in favor of the term originating in the Greek language. A modern reassessment of the etymological origins of *kormchaia* may shed light on this question of origin. Such a reassessment is needed since the majority of work on the subject was completed last century and certainly may have had Slavophile influence on it, giving a bias in favor of the term's Slavonic origin.

Russia until the sixteenth century, and because they were not extensively translated were not at that time very influential. It was not until the seventeenth century that these particular commentaries in full were translated into Russian. They were at this time influential on church-state relations. It is worth noting that applying the term *nomokanon* in its strictest sense, it cannot be said that the Russian *Kormchaia* is a true *nomokanon*. Earlier scholarship classified the *Kormchaia kniga* into four major families,<sup>9</sup> whereas current opinion holds that there are rather three major families. Therefore, the Russian MSS of the *Kormchaia kniga*, may be divided into three families, or redactions: the *Bulgarian* or *Efremovskaia*, the *Serbian* or *Riazanskaia*, and the *Russian* or *Novgorodskaia* redactions.

i. The *Efremovskaia* or *Bulgarian Kormchaia*

The *Efremovskaia Kormchaia* of Bulgarian origin is considered to be the earliest established family of MSS in the Russian lands. It was probably translated from the Greek in the tenth century.<sup>10</sup> The oldest extant Russian MS dates from the twelfth or possibly the eleventh century.<sup>11</sup> It is thought that it was first translated in Bulgaria during the reign of Tsar Boris (852-889).<sup>12</sup> However, it is also proposed that a separate copying of it took place in Kievan Rus' during the time of Iaroslav I (1019-1054). According to another theory, the *Kormchaia* was translated in Kiev under Prince Iaroslav I by Bulgarian scribes,

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9 I leave out the so-called Great Moravian family, or *Ustiuzhskaia* family of MSS. See below in this Chapter.

10 Shchapov proposed the protograph was compiled during the early tenth century. Shchapov, *Vizantiniiskoe*, 67, 91, 96-100; Ia. N. Shchapov, "Retsepsiia sbornikov vizantiiskogo prava v srednevekovykh balkanskikh gosudarstvakh" in *Vizantiiskii vremeni* 37 (1976), 124-6 and Shchapov, "Nekotorye", 265. The earliest codex of the Ephrem is Ephrem MS SHM Synodal no. 227, F. J. Thomson, "The Nature of the Reception of the Christian Byzantine Culture in Russia in the Tenth to Thirteenth Centuries and its Implications for Russian Culture" in *Slavica Gandensia* 5 (1978) and also found as numeral I in F. J. Thomson, *The Reception of Byzantine Culture in Medieval Russia* (Aldershot, 1999), 113; see also his note 111, p. 133. See Ia. N. Shchapov, "O sostave drevneslavianskoi Kormchei Efremovskoi redaktsii" in *Istochniki i istoriografiia slavianskogo srednevekov'ia*, ed. S. A. Nikitin (Moscow, 1967), 209-212 for a list of copies and also see Ia. N. Shchapov "Novyi spisok kormchei Efremovskoi redaktsii" in *Istochniki i istoriografiia slavianskogo srednevekov'ia*, ed. S. A. Nikitin (Moscow, 1967), 258-76.

11 Descriptions of the extant MS may be found in Pavlov, *Pervonalchalnyi*, 28-54; Beneshevich, *Kanonicheskii*, 260-261. A critical edition of the MS was prepared by Beneshevich, *Drevneslavianskaia*, Vol. I using MS Syn. 227 [Library of the Holy Synod, Moscow].

12 Pavlov, *Pervonalchal'nyi*, 54-55; Zhuzhek, *Kormchaia kniga*, 24.

who either made some new translations from the Byzantine *nomokanons* or used an older Slavonic text. The language is, however, older and typical of the very first translations of Byzantine collections into Slavonic, as it includes early Bulgarian and Serbian words.<sup>13</sup> Another clue that this *Kormchaia* family is of older origin is the fact that it contains a translation of an early pre-Photian recension of the *Nomokanon of the 14 Titles*, in which the church councils (861 and 879/880) held under Patriarch Photius of Constantinople are not mentioned.<sup>14</sup> The *Efremovskaia* is characterised by its complete text of the canons, but is not accompanied by the *scholia* of the Byzantine canonists. It is thought that this redaction was used in Russia from the earliest times after Russian conversion to Christianity until the arrival of the Serbian redaction in the 1262.

ii. The *Riazanskaia* or *Kirillovskaia* or the *Serbian Kormchaia*

This family originated from a copy of the Serbian *Kormchaia*, which was sent to Metropolitan Kiril II (c.1250-81) of Kiev and All Rus' from Bulgaria in 1262.<sup>15</sup> This Serbian *Kormchaia* was probably translated in the first half of the thirteenth century on Mount Athos by the monk Sava. His single authorship has been disputed, however.<sup>16</sup> In either event, this work attributed to Saint Sava stands as the prototype for the 1273 and Riazan' *Kormchaia*.<sup>17</sup> The oldest preserved Russian manuscript is a copy made 1284 in

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13 F. I. Buslaev, *Istoricheskaia khristomatiia tserkovno-slavianskago i drevne-russkago iazykov* (Moscow, 1861), 379. See also Pavlov, *Pervonalchal'nye*, 55-8 who supported this claim. Also see Russian church histories [concerning Bulgarian scribes] Golubinskii, *Istorii russkoi tserkvi* I, 729-731 and Makarii, (Bulgakov), Metropolitan of Moscow, *Istorii russkoi tserkvi*, I, 172. Also see Thomson, "Nature of the Reception", 133 note 111, who concerning the *Efremovskaia* believes it is possible that the collection was translated in Russia during the eleventh century, according to the alternate theory postulated.

14 Beneshevich, *Kanonicheskii*, 260-261 who terms it the *Tarasian* recension. The recension occurred during the Patriarchate of Tarasios (784-806).

15 Zhuzhek, *Kormchaia kniga*, 35; Thomson, "Nature of the Reception", 113; Shchapov, *Vizantiiskoe*, 146-150; see also *Russkaia istoricheskaia biblioteka* [hereafter *RIB*] (6).

16 Its being attributed to Sava is supported by Pavlov, *Kurs tserkovnogo prava*, in Goetz, *Pamiatniki*, 110. Pavlov, *Pervonalchal'nyi*, 62-63 and Troicki's works as interpreted by Zhuzhek, *Kormchaia kniga*, 34, note 63. On the work of St. Sava, see Miodrag Petrovic, *Krmcija Svetoga Save: o zastiti obespravljenih i socijalno ugrozenih* (Belgrade, 1990).

17 The relationship is demonstrated in the studies of Troicki, *Kako treba*, his table page 69. See also Zhuzhek's table, in *Kormchaia kniga*, based on Troicki's work, page 36; Kaiser's table in *Growth of Law*, 22 [based on the work of Ia. N. Shchapov, "K istorii teksta novgorodskoi sinodal'noi kormchei" in *Istoriko-Arkheologicheskii Sbornik* (Moscow, 1962), 295-301; "O sostave" and *Vizantiiskoe*] conforms to this as well.

Riazan'.<sup>18</sup>

This redaction is characterised by the abbreviated canons and commentary composed by Aristenus, from his *Epitome canonum*, along with some commentaries by Zonaras as well. It was the *Epitome canonum* with the commentaries of Aristenus and Zonaras which was used by Archbishop Sava of Serbia in 1219 for the ecclesiastical canonical portion of the *Kormchaia*. This family of MS is important since it enabled the transmission of the canonical *scholia*<sup>19</sup> to Russia, which were later incorporated into the first indigenous Russian redaction of the *Kormchaia*. The *Riazanskaia Kormchaia* also contained the *Collection of the 87 Chapters*, the civil legislation on ecclesiastical matters of Emperor Justinian, making its first appearance in Russia.<sup>20</sup> This family of Russian MSS is also significant as it served as the basis for the seventeenth century printed edition of the *Kormchaia*.

### iii. The *Novgorodskaja* or *Sofiiskaia* or *Russian Kormchaia*

Following the Russian church council of 1273 which brought the Serbian *Kormchaia* to Russia, it seems attempts were made to compile a *Kormchaia* specifically for the Russian lands, and so there was created a separate redaction of the *Kormchaia*, which generated the *Novgorodskaja* family of MSS. The oldest preserved manuscript of this family dates from the thirteenth century.<sup>21</sup> The year of its composition has not been

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18 This *Riazanskaia Kormchaia* MS is known as F.11.1 Synodal no. 32. A description of the MS can be found in Zhuzhek, *Kormchaia kniga*, 28 along with further references pertaining to the study of it. See also Zhuzhek, *Kormchaia kniga*, 31. The earliest Serbian MS is the *Ilovichka* of 1262 of Zagreb, on which Troicki based his study of the Serbian *Kormchaia* in *Kako treba*. A reproduction of the original Serbian *Ilovicka Kormchaia* MS may be found in *Zakonopravilo ili Nomokanon svetova Save: ilovicki prepis 1262 godina*, edited with commentary Miodrag Petrovic (Gornji Milanovac, 1991).

19 In Slavonic *scholia* were known as *tolkovaniia*.

20 On the *Collection of 87 Chapters*. See below Chapter 3. For the Greek text see J. B. Pitra, *Iuris ecclesiastici Graecorum historia et monumenta*, Vol. II (Rome, 1864, 1868), 385-405. On its inclusion in the *Serbian Kormchaia* and thus in the *Riazanskaia* redaction see Thomson, "Nature of the Reception", 113; Troicki, *Kako treba*, 80 (?).

21 Novgorod Synodal No. 132. See Buslaev, *Istoricheskaia khristomatiia*, 379-410; Srezenevskii, *Obozrenie*, 85-112.

settled on, but scholars argue that it can be dated between the years 1280 and 1291.<sup>22</sup> Some of its contents were taken from the *Efremovskaia Kormchaia*, while other contents were taken from the *Riazanskaia* family of MSS. Additionally, original Russian canonical writings were appended.<sup>23</sup> This *Kormchaia* was a completely new arrangement of the whole *Kormchaia*. As compared to the other Russian families of MSS, manuscripts belonging to this family are by far the most numerous.<sup>24</sup>

This new redaction was formed by combining the complete canons taken from the *Erfremovskaia* and placing them together with the canonical *scholia* from the *Riazanskaia*. This reworking, known as the *Novgorod* or *Russian Kormchaia*, was the redaction which became the basis for the protograph of both the later northern and southern recensions of the *Kormchaia kniga*.<sup>25</sup> Various components of Russian MS which were absent from the *Riazanskaia* family were added - such as the *Ecloga*, the *Prochiron*, and the *Zakon sudnyi liudem*.<sup>26</sup> Later recensions of the *Russian Kormchaia*, came to include indigenous Russian ecclesiastical writings which acquired canonical status by their inclusion in the *Kormchaia*. This is what most easily distinguishes the Russian *Kormchaia* from other redactions, its original Russian ecclesiastical works. One could view the naming of the Russian canon law book as the *Kormchaia kniga* as an act of some significance.<sup>27</sup> This creation of a new redaction for the Russian lands, thus, differentiated it from those redactions originating in Serbia or Bulgaria. The giving of it a separate and

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22 M. N. Tikhomirov, ed. *Zakon sudnyi liudem kratkoi redakstii* (Moscow, 1961), 8-9 dates the MS to the year 1280.; V. L. Ianin, "O date novgorodskoi sinodal'noi kormchei", in *Drevniaia Rus' i slaviane* (Moscow, 1978), 287-92 maintains that the MS was written between 1284 and 1291. The writing of it is connected with the Russian church council of 1284. See also Shchapov, "K istorii teksta", 295-301.

23 On its composition see Zhuzhek, *Kormchaia kniga*, 38-41.

24 See the computation in Zhuzhek, *Kormchaia kniga*, 46-51. Subsequent scholarship has noted the sources used in the computation are exclusive of first-hand research, and so are necessarily not comprehensive.

25 Kaiser, *Growth of Law*, 21. The recensions are the southern protographs the *Vladimir-Volynia* and the *Ukrainian Lukashevich Kormchaia*; the northern protograph is the *Periaslavl'-Zaleskii*, which it is thought, may have been compiled in 1280 according to Shchapov, *K istorii*, 297-299; *Vizantiiskoe*, 206-209.

26 For more on the *Ecloga*, *Prochiron*, and the *Zakon sudnyi liudem* as in the printed *Kormchaia*, see below Appendix.

27 Assuming that the term had its origins in Russia. See also I. I. Sreznevskii, *Obozrenie*, 86

original name, may have signified that the *Kormchaia* was regarded as having a special attribute, or a different quality - possibly as a code of law intended specifically for the Russian lands.

iv. Various other *Kormchaia*s

The *Ustiuzhskaia* or *Great Moravian Kormchaia*, also known as the *Ustiug Miscellany*

This *Kormchaia*, based on the earliest Slavonic translation of the Byzantine canonical collection, was originally considered a separate family of Russian MS in its own right.<sup>28</sup> There are two surviving copies, one from the thirteenth or fourteenth century belonging to the Monastery of the Holy Archangels in Ustiug; the other dating from the sixteenth century.<sup>29</sup> Both of these copies, however, appear to have later interpolations derived from the *Efremovskaia*. For this reason, there are doubts concerning the existing *Ustiuzhskaia* as a separate redaction,<sup>30</sup> which would be better viewed instead as a compilation of MSS.<sup>31</sup> The authorship of the original MS on which the *Ustiuzhskaia* is based is attributed to St. Methodius, whom it is thought translated it in the ninth century,

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28 Zhuzhek considered it to be a separate family, basing his conclusions on Pavlov's work. Pavlov, *Pervonachalniyi*, especially 23-24. Kaiser, *Growth of Law*, 21, concurring with IA. N. Shchapov's new theory, found in his work "Nekotorye iuridicheskie i kanonicheskie pamiatniki v slavianskoi pis'mennosti XII-XV vekov" in *Metodicheskoe posboie po opisaniiu slaviano-russkikh rukopisei dlia svodnogo kataloga rukopisei khranianshchikhsia v SSSR* (Moscow, 1973), 268, regards this one "redaction" as an anomaly, and not a family in its own right. It seems Pavlov's work concerning this point is now outdated. See Zhuzhek, *Kormchaia kniga*, 14; Iushkov, "Ustiuzhskaia", pp. 20-40; Pavlov, *Pervonachalni'nyi* 16-24; I. I. Sreznevskii, *Obozrenie drevnikh russkikh spiskov Kormchei knigi* (St. Petersburg, 1897), 134.

29 There are currently known and described only three copies. The earliest is the *Ustiug codex* LSL f 265 no. 230, as cited in Thomson, "Nature of the Reception", 132 note 110; this is called also GBLOR f. 256 no. 230, Kaiser, *Growth of Law*, 197 note 10; and Rum 230 (Zhuzhek, *Kormchaia kniga*, 14). A later copy is the *Joaseph codex* LSL f. 173 no. 54 (Thomson, *ibid.*, 132 note 110); in Zhuzhek, *Kormchaia kniga*, termed JAS or no. 54 (Zhuzhek, *ibid.*, 15). Zhuzhek, *Kormchaia kniga*, 15, lists another MS, the OB or no. 38, which is described as a faithful copy of Rum 230. As Thomson notes, both include later interpolations. The RUM 230 was described by Beneshevich, *Sinagoge v 50 tit*, 199-210; Sreznevskii, *Obozrenie*, 113-129, among others.

30 See for instance, Sreznevskii, *Obozrenie*, 134 and Shchapov, "Nekotorye", 268.

31 Sreznevskii, *Obozrenie*, 116-117.

in either Great Moravia or Bulgaria.<sup>32</sup> What differentiates this MS from other families of MSS is that the ecclesiastical canons belong to the *Collection of the 50 Titles* of John the Scholastic - the canonical collection consisting exclusively of ecclesiastical canons.<sup>33</sup> For this reason, the *Ustiug* cannot be called a *nomokanon* by definition. Additionally, the translation of the *Collection* made by Methodius is merely an abridgement of the original Greek, since 142 of the 377 canons, or 37.5 %, are missing.<sup>34</sup> The strongest evidence for the original Methodian collection being the basis of this MS exists in the textual/linguistic analyses concerned with the *Zakon sudnyi liudem* which accompanies these MSS. The *ZSL*, it is agreed, was translated in the ninth century, although there is still a dispute regarding its national origins, Bulgarian, Moravian, or Macedonian.<sup>35</sup>

#### The *Kormchaia* of Vassian Patrikeev

In the sixteenth century (some time after 1518) the monk Vassian Patrikeev<sup>36</sup> composed a new *Kormchaia*, for the purpose of demonstrating that the church, and in particular monasteries, were not canonically permitted to own land. This act was connected with the earlier dispute between the alleged possessors and non-possessors, the focal point of which was said to be the 1503 Russian church council.<sup>37</sup> This dispute

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32 Kantor, *Medieval Slavic Lives*, 9. Kantor considers St. Methodius' work to be best preserved in the *Ustiuzhskaia*. On the *Ustiuzhskaia* see, Pavlov, *Pervonachal'nyi*, 23-24; Beneshevich, *Sinagoge*, 210; Sreznevskii, *Obozrenie*, 115; Zhuzhek, *Kormchaia kniga*, 18.

33 See above Chapter 1.

34 Zhuzhek, *Kormchaia kniga*, 17, refers the reader to Beneshevich, *Sinagoga*, 210-212 and others.

35 For a discussion of scholarship regarding this point, see Zhuzhek, *Kormchaia kniga*, 18-20, who gives a good summary of the evidence. See Appendix below concerning the *ZSL* and its dating.

36 On Patrikeev's work and MSS, see N. A. Kazakova, "Neizdannoe proizvedenie Vassiana Patrikeeva", *Trudy otdela drevne-russkoi literatury* [hereafter *TODRL*] 12(1956):387-426; N. A. Kazakova, "K izucheniiu Kormchei Vassiana Patrikeeva", *TODRL* 28 (1974):345-349; A. S. Pavlov, *Istoricheskii ocherk o sekuliarizatsii tserkovnykh zemel' v Rossii* (Odessa, 1871), esp. 71-79. Zhuzhek, *Kormchaia kniga*, 42-44.

37 Of interest are the letters of Filofei, a monk of Pskov, who wrote a series of letters to Grand Prince Ivan III (1462-1505) in which he allegedly expounded an early version of the "Third Rome" theory. These letters were primarily a defense in support of the church's right to retain its lands. See N. Andreyev, "Filofei and His Epistle to Ivan Vasil'yevich", *Slavonic and East European Review* 38 (1959):1-31.

concerned the legal right of the Church to own land, and in particular monasteries, and the Church's claim to do so in perpetuity. Some clerics defended this canonical right, while others took a differing view, believing that it was not fitting for the clergy to be preoccupied with such worldly concerns.<sup>38</sup> The beliefs of the non-possessors, those who supported the church being divested of its lands were later condemned as heretical. Actually, this heresy was not original to Russia and was in fact much older and had been repeated elsewhere, by those who supported a return to the primitive church without possessions and temporal wealth. It was the goal of Patrikeev to omit from his compilation all those canons which existed in support of church ownership of land. The form of Patrikeev's compilation was that of a systematic *nomokanon*. The MSS surviving are sixteenth century codex Piskarev 228/39 and sixteenth century codex Tolstoi I.169 (F.II.76) and AFM 181/1597.<sup>39</sup> Patrikeev used various sources to fashion his compilation. It is known that the *Riazanskaia* family of the *Kormchaia* and the *Kormchaia* of the

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38 There is quite a large body of work done with respect to the "controversy" between the so-called possessors and non-possessors. The possessors were represented by Iosif (Ivan) Sanin (b. 1439) abbot of Volokolamsk monastery, and are hence called the "Josephites". The non-possessors were represented by Nil Sorskii, and are also known as the Transvolga Elders. In actuality, it is doubtful that the dispute took place at the 1503 council, as most scholars agree that there is no proof to support it. Evidence supports the influence of mid-fifteenth century "polemicists" who created stories about these two figures to suit their own personal views. There was support at this time among both the clergy and civil authorities for the divesting of monasteries of their large landed-estates. Rather than a theoretical impetus, the reality was that in the Moscow area there was a dearth of available land for military servitors. It was not until 1580, however, that an official decree was promulgated forbidding the further acquisition of land by monastic entities. Even so, in numerous regions outside Moscow the tradition of granting land to monasteries through donation charters and testaments continued. For background in general see, S. Bolshakov, *Russian nonconformity: the story of "unofficial" religion in Russia* (Philadelphia, 1950). On landholding and the 1503 Council see, E. L. Keenan, & D. Ostrowski, eds., *The Council of 1503: Source Studies & Questions of Ecclesiastical Landowning in Sixteenth Century Muscovy: a collection of seminar papers* (Cambridge, MA, 1977); R. G. Skrynnikov, "Ecclesiastical Thought in Russia and the Church Councils of 1503 and 1504", *Oxford Slavonic Papers* 25 (1992):34-60. A number of specialised works on the topic of possessor and non-possessor "ideology" have been completed by IA. S. Lur'e, see for instance, *Ideologicheskaia bor'ba v russkoi publitsistike kontsa XV nachala XVI veka* (Moscow-Leningrad, 1960).

39 F. J. Thomson, "The Corpus of Slavonic Translations Available in Muscovy", in *Christianity and the Eastern Slavs I: Slavic Cultures in the Middle Ages*, ed. B. Gasparov & O. Raevsky-Hughes (California: California Slavic Studies 16, 1993). Also as VI in F. J. Thomson, *The Reception of Byzantine Culture in Medieval Russia* (Aldershot, 1999), 208 note 144.

condemned heretic Ivan Volk Kuritsyn were used.<sup>40</sup> Additionally Patrikeev used Greek manuscripts brought to Moscow by Maximos the Greek (Maximos Trivolis)<sup>41</sup> in 1518, especially the *Nomokanon of Photius* with the *scholia* of Balsamon, which till then was almost completely unknown in Russia.<sup>42</sup> Some of the *scholia* of Balsamon was translated into Slavonic by Maximos, and these were incorporated into the new *Kormchaia*. Vassian's *Kormchaia* was completed shortly after 1518; Vassian and Maximos were condemned in 1531<sup>43</sup> by a church council as heretics, and which too rejected Patrikeev's *Kormchaia*.

#### Russian printed tradition of the *Kormchaia*

The printed *Kormchaia* of the period 1649-1653, is based on the *Riazanskaia* redaction of the *Kormchaia*. Patriarch Iosif (1642-1652) and later, Patriarch Nikon, wished to create an authoritative and orderly compilation of the *Kormchaia kniga* to stand as an ecclesiastical counterpart to expanding body of secular law, in particular, the major Russian civil law code, the *Sobornoe Ulozhenie* of Tsar Aleksei Mikhailovich.<sup>44</sup> As part of the project to bring order to the Russian canonical collections, numerous MSS were collected, and initially the task was to entail a direct comparison to Greek MSS in

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40 On the sources used and on the Kuritsyn *Kormchaia* of the early sixteenth century see, Iu. K. Begunov, "Kormchaia Ivana Volka Kuritsyna", *TODRL* 12 (1956), 145-148.

41 On Maximos see V. Ikonnikov, *Maksim Grek i ego vremia*, (Kiev: 2nd ed., 1915); J. Haney, *From Italy to Muscovy: The Life and Works of Maxim the Greek* (Munich, 1973); D. Geanakoplos, "Maximos the Greek: His Mission and Aspects of his Reform of Orthodoxy in Muscovite Russia" in A. Tachiaos, ed. *The Legacy of Saints Cyril and Methodius to Kiev and Moscow* (Thessaloniki, 1992); L. I. Zhurova, "Rumiantsevskoe sobranie sochinenii Maksima Greka (K voprosu o sootnošenii sobranii sochinenii Maksima Greka)", *TODRL* 50 (1999):474-478; D. M. Bulanin, *Perevody i poslaniia Maksima Greka* (Leningrad, 1984).

42 Thomson, "The Corpus of Slavonic Translations", 188. See also A. Ivanov, *Literaturnoe nasledie Maksima Greka. Kharakteristika, attributsii, bibliografiia* (Leningrad, 1969), 8 and 324. The *nomokanon* of Patriarch Photius with the *scholia* of Balsamon was translated in full by the monk Evfimii Chudovskii, circa 1691. It is known as the Evfimievskoi *kormchaia*, T.A. Isachenko-Lisovaia, "O perevodicheskoi deiatel'nosti Evfimiia Chudovskogo" in *Khristianstvo i tserkov v Rossii feodal'nogo perioda. (Materialy)*, ed. I. I. Pokrovskii (Moscow, 1989), 194-210; T. A. Isachenko-Lisovaia, "Nomokanon s tolkovaniem Val'samona v perevode Evfimiia Chudovskogo (konets XVII veka)" in *Voprosy iazykoznaniiia* 3(1987):111-121.

43 A. S. Pavlov, *Istoricheskii ocherk*, 88-89.

44 *Ulozhenie*, Hellie.

the Patriarchal library. This proved too ambitious a project, however, so instead it was determined that the problem would be remedied by choosing a MS from the Serbian family from which to print a more centralised and coherent Russian canonical collection.<sup>45</sup> The family *Riazanskaia* was chosen, in particular the MS *Novo-ierusalamskaia* 53 of the sixteenth century as core for the printed *Kormchaia* text.<sup>46</sup> There are three traditions of printed *Kormchais*, which are, however, closely related.

#### The *Kormchais* of Patriarch Iosif and Patriarch Nikon

The efforts to produce a printed edition of the *Kormchaia kniga* fall into the same period when Tsar Aleksei promulgated the *Ulozhenie*. Although a great number of manuscripts were collected in the printing court in preparation for the project, there is no evidence that an actual comparison between the manuscripts and the original Greek sources took place. The reasons for the decision to print the *Kormchaia* of the *Riazanskaia* family are not certain. Zhuzhek offers three explanations: a textual-historical - because it was the only *Kormchaia* not substantially changed from the thirteenth century; a legal - because this *Kormchaia* was the only one approved by a Russian church council, that of 1273; and a practical - for the simplicity of the abbreviated canons and commentary of Aristenus in his *Epitome canonum*. The volume would certainly have been more compact than other choices would have produced.<sup>47</sup> To this text some chapters from other *Kormchais* were added: the *Zakon sudnyi liudem*, extracts from the *Syntagma of*

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45 From the time of the early fifteenth century, when Maxim the Greek was employed to correct Russian MSS according to Greek sources, there had been difficulties in accomplishing this task. In 1604 Father Basil of Lublin attempted to correct the Russian *Kormchaia* according to Greek sources, but this attempt failed. See his words on the difficulties of this endeavor in the printed *Kormchaia* of Joseph, his *Preface to the Orthodox Reader*, f. 4a. The MS of Father Basil's work is known as MS RUM 237, described in A. Vostokov, *Opisanie russkikh i slovenskikh rukopisei Rumiantsevskago Muzeuma* (St. Petersburg, 1842), 316-319.

46 The original MS is in GIM [State Historical Museum, Moscow]. See Zhuzhek, 29 for details concerning its description, and also V. I. Zhmakin, *Mitropolit Daniil i ego sochineniia* (Moscow, 1881), 743-751. The MS prepared for the printed edition is in SGADA, St. Petersburg (no 545.f, 854, *opis' 4*), Zhuzhek, *Kormchaia kniga*, 53.

47 Zhuzhek, *Kormchaia kniga*, 53.

*Matthew Blastares*,<sup>48</sup> from the *Trebnik* of Petr Mogila,<sup>49</sup> and from the *Ekthesis* of Manuel Xanthios.<sup>50</sup> The printing was completed by the middle of 1650; however, the book was not distributed as it was determined that it should be subjected to another revision. In the meantime, in 1652 Patriarch Iosif died. Nevertheless, after his death a few copies were distributed although not sanctioned by Patriarchal consent.<sup>51</sup>

When Nikon ascended the patriarchal throne on March 25th 1652 he ordered the *Kormchaia* of Iosif to be withdrawn from circulation and further ordered that the edition be again corrected.<sup>52</sup> However, no substantial changes were made to the canonical part of the collection. In the Nikon *Kormchaia* the *Preface to the Orthodox Reader* written by Father Basil was deleted, and several new sections were added to the First foliation, which comprised ff. 1-37b.<sup>53</sup> Among these additions were a polemic concerning the Roman Church, a history recounting the Christianization of Russia, and documents concerning establishment of the Russian Patriarchate in 1589. Toward the end of the Third foliation, following f. 641b were placed 16 folio pages containing a Slavonic translation of the eighth century medieval forgery of the *Donation of Constantine*,<sup>54</sup> and

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48 On the *Syntagma* of Matthew Blastares, see this work page 39. The new edition was translated by Ukrainian Epiphanius Slavinetskii using an earlier fourteenth century translation. Thomson, "The Corpus of Slavonic Translations", note 182 referencing note 65, page 203. According to the description of Vostokov, *Opisanie*, 328 (entire description, pp. 319-330) a *Kormchaia* of 1620, Rum. 238, contains work of Blastares.

49 On the *Trebnik* of Petr Mogila (Metropolitan of Kiev and Galicia, 1597-1647) in the printed *Kormchaia*, see the Appendix below. A copy belongs to the New York Public Library, *E'vkhologion albo Molitvoslov ili Trebnik...* (Kiev, 1646).

50 Concerning the *Ekthesis* of Manuel Xanthios contained in Chapter 51 of the printed *Kormchaia*, see the Appendix below.

51 For details concerning the printing and enumeration of the *folia* of the Joseph *Kormchaia*, see A. S. Zernova, *Knigi kirillovskoi pechati izdannye v Moskve v XVI-XVII vekakh* (Moscow, 1958), 222 note 71.

52 Church support for verification of church texts against the original Greek and for Nikon's other ecclesiastical reforms is evidenced by the church councils of 1654 and 1656 which gave their consent for these projects.

53 According to the New York Public Library version, reference 91-6397. First foliation= A-A3 (1-37b).

54 On the *Donation of Constantine* see the Appendix below.

a polemic concerning the apostasy of the Roman church.<sup>55</sup> Since these changes were not of canonical but rather of political significance,<sup>56</sup> the Nikon *Kormchaia* did not really establish a new branch of the printed tradition of the *Kormchaia* in relation to the *Kormchaia* of Patriarch Iosif. But since it was perceived this way by the contemporary Russian clerics, one has at least to concede that there existed two pseudo-branches. The *Kormchaia* was published June 15, 1653 and had 1200 copies distributed as is written in the section entitled Description of the Book.<sup>57</sup> It was this perception, of the non-canonical nature of the *Kormchaia*, in addition to other ecclesiastical reforms made by the Patriarch Nikon, which resulted in the great schism of the Russian Church in the seventeenth century. Those who contended that they adhered to the old ways, known as the Old Believers (*starovery*), refused to accept the Nikon *Kormchaia*, although it was substantively little altered from the Iosif *Kormchaia*.

In sum, the printed *Kormchaia* therefore, can be distinguished from its earlier MSS forms by: its abbreviated canons, with commentary; the omission of original Russian texts; the addition of the *Trebnik* of Petr Mogila of 1646; excerpts from the *Syntagma of Matthew Blastares*, and the *Ekthesis*<sup>58</sup> of Manuel Xanthios; as well as the inclusion of various materials of a political nature, introduced by the Patriarch Nikon. Interestingly, there was little which was of strictly Russian origin included in the printed *Kormchaia*. Previously, there had been included in the Russian family of MSS of the *Kormchaia* during the period prior to the seventeenth century, numerous pieces of Russian origin which had been considered to have canonical authority - by virtue of their being a part of

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55 On the polemic concerning the apostasy of the Roman church, see the Appendix below. The full title as found in the printed *Kormchaia* is: *On the Falling Away of Rome, How it Apostatized from the Orthodox Faith and from the Holy Eastern Church*.

56 On Nikon's political and canonical ideas see, M. V. Zyzykin, *Patriarch Nikon. Ego gosudarstvennyia i kanonicheskiia idei*. 3 Vols. (Warsaw, 1931, 1934, 1938). A review in German of vol 2 may be found in E. Herman, *Orientalia Christiana Periodica* 2 (1936): 525-526.

57 Printed *Kormchaia* of 1653 f. 647b.

58 *Ekthesis* is defined as a "statement of faith". *Oxford Dictionary of Byzantium* [hereafter *ODB*], vol. 1, 683. A further definition of *ekthesis*, and one more appropriate to this text, may be found in Liddell and Scott, *Greek-English Lexicon*, which defines it as a "setting forth or exposition".

the *Kormchaia*. These Russian works included (not a comprehensive list)<sup>59</sup>:

- Canonical Answers of Metropolitan John the Prophet (1080-1089)
- The Questions of Kirik (1130-1156)
- The Decrees of the Council of Vladimir (c. 1274)
- The Charter of Metropolitan Kiril (c. 1274)
- The Charter of Metropolitan Maximus (1283-1302)
- The Letter of Elias, Archbishop of Novgorod (1163-1186)
- The Letter of Metropolitan John the Prophet to the Bishop of Rome about Unleavened Bread (eleventh century)
- The Statute of Vladimir (tenth-beginning eleventh century)
- The Statute of Iaroslav (c. 1019-1054)
- *Russkaia Pravda*<sup>60</sup>

The printed *Kormchaia* of the seventeenth century, remained unchanged until 1834.<sup>61</sup> This printed *Kormchaia* retained the same authority and juridical value, as in earlier times - since it was still regarded the only source of canon law in Russia. However, after the establishment of the Holy Synod, by Peter the Great in 1721, the new governing body which oversaw the Orthodox Church, only the ecclesiastical canons of the *Kormchaia* retained their authority and remained in use. The authority of the some of the civil laws of the *Kormchaia* had earlier been abrogated in 1649 with the promulgation of the *Ulozhenie*, and later more extensively and permanently, by the legislation of the

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59 The first eight of these may be found in the *Russkaia istoricheskaia biblioteka*, Vol. 6 (St. Petersburg, 1908- ) [hereafter *RIB*]. Ioanna Mitropolit, *RIB* 6, 1-20; V'prashanie kirikovo, *RIB* 6, 21-62; Council of Vladimir, *RIB* 6; Kiril Mitropolit, *RIB* 6, 83-102; Pravilo Maksim Mitropolit, *RIB* 6, 139-142; Iliia Arkhepiskop, *RIB* 6, 75-78; Ioanna Mitropolit...Rimskom, Beneshevich, *Kormchaia Nikiforova*, (St. Petersburg, 1903) t. 18 no. 4, p. 44.

60 A recent examination of a MS from the second half of the fifteenth century in the Perm Pedagogical Institute (*Permskaia pedagogicheskaia instituta - PPI*) by I. S. Demkova and S. A. Iakunina, "Kormchaia XV v. iz sobraniia Permskogo pedagogicheskogo instituta" *TODRL* 43 (1990):330-337, provides for a typical representation of which indigenous Russian texts were appended to the *Kormchaia* of the Russian MS family. Among these are *Ioanna, mitropolita russkago...Iakovu chernoriztsu (list=[folio page], 203)*; *...v"prashanie Kirikovo, izhe v"prasha episkopa Novgorodskogo Nifonta...(list, 213)*; *Pravilo Kirila mitropolita i s sheshikhsia episkop" Dalmata Novgorodskogo, Ignata Rostov'skago...(list, 223)*; *Pravilo Maksima, mitropolita rous'skago (list, 227)*; *Iliia arkhepiskop" Novgorodskiyi ispravil s Belgorodskym" episkopom" (list, 244)*; and *Ioanna mitropolita russkago, k" arkhepiskopu Rim"skomu o opresnotsekh" (list, 307)*. They may all be found in *RIB* 6, aside from the last text which can be found in Beneshevich, *Kormchaia Nikiforova*.

61 Reprinted: 1787, 1804, 1816, 1834.

Petrine period (1682-1721). The Byzantine idea of the *symphonia* between the two spheres of authority, had disintegrated by this time as well.

*Reprints of the printed editions of Joseph and Nikon*

Following this, during the late seventeenth and eighteenth centuries two major projects were initiated in order to prepare a newer and more accurate translation of the Byzantine *nomokanon* into Slavonic. The resultant failure of these projects prompted the reprinting of the Nikonian *Kormchaia* in 1787 along with some minor changes. M. I. Gorchakov,<sup>62</sup> recounts the attempts during this period of church officials to correct the *Kormchaia* according to Greek sources, an episode which characterises the entire history of Russian unrealised attempts through the nineteenth century at correcting MSS according to the original Greek texts. The first such unsuccessful attempt was made under Patriarch Adrian (1690-1700) who directed the monk Evfimii Chudovskii, a corrector at the printing court, to correct the *Kormchaia*, but whose work was never published.<sup>63</sup> The next attempt took place under Feofan Prokopovich (1681-1736) in 1734 who by decree<sup>64</sup> directed that Holy Synod translator Kozlovskii (and his later replacements) again attempt to correct the *Kormchaia* according to Greek sources. In preparation for this, Kozlovskii

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62 M. I. Gorchakov, *O taine supruzhestva. Proischozhdenie, istoriko-iuridicheskoe znachenie i kanonicheskoe dostoinstvo 50-i (po spiskam patriarchov Iosifa i Nikona 51-i) glavny pechatnoi «Kormchei knigi»* (St.Petersburg, 1880), 282-289.

63 The MS edition of the correction prepared for printing, *Khludov 77* in GIM was first examined by G. A. Rozenkampf, *Obozrenie Kormchei knigi v istoricheskom vide* (Moscow, 1829, second edition, St. Petersburg, 1839) who considered it a fifth redaction, naming it the *Evfimievskaiia kormchaia*. The MS is described by A. Popov, *Opisanie rukopisei i katalog knig tserkovnoi pečhati v biblioteke A. I. Khludova* (Moscow, 1872); 201-204. This *kormchaia* contains ecclesiastical canons only. On the subject of Evfimii and the corrections see Pavlov, *Kurs*, 127-128; Zhuzhek, *Kormchaia kniga*, 56-57 (who calls Evfimii, Euphemius); T. A. Isachenko-Lisovaia, "O perevodcheskoi deiatel'nosti Evfimiia Chudovskogo" in *Khristianstvo i tserkov, v Rossii feodal'nogo perioda (materialy)* ed., I. I. Pokrovskii (Moscow, 1989), 197.

64 Text in T. V. Barsov, "O sobranii dukhovnykh zakonov" in *Khristianskoe chtenie* 1897(4), 757 note 1. Prokopovich was a cleric of the Kiev Academy who later served under Peter the Great as advisor to the drawing up of the Ecclesiastical Regulation for the purposes of Establishing the Holy Synod. It was due to his many scholarly works as "ideologist" which helped to advance the political absolutist claims of Peter.

worked on making a Slavonic translation of Beveridge's *Synodikon*.<sup>65</sup> This, too, met with little success as the translation of the *Synodikon*<sup>66</sup> continued until 1786, at which time it was decided to forgo this and instead reprint the Nikon *Kormchaia* in 1787, issuing some 4800 copies.<sup>67</sup> Demonstrating the continuing futility of attempts to correct the *kormchaia*, during the nineteenth century the Nikon *Kormchaia* was reprinted four more times: 1804, 1810, 1816, 1834, there being no other comparable substitute available.

Another reprint of the Nikonian *Kormchaia* deserves brief mention. This reprint does not exactly belong to the ones mentioned above, because it was not an official edition. In the book itself is stated, that it was printed in Warsaw in 1785, and hence, is called the "Warsaw" *Kormchaia*. It is the exact reproduction of the edition of 1653 having only some slight differences in the pagination and the quality of printing. It has been suggested, however, that neither the place of publishing, Warsaw, nor the year 1785, are correct, but that it was a private edition by people who were dissatisfied by the delays by the Holy Synod in publishing a new *Kormchaia*.<sup>68</sup>

The Iosif *Kormchaia* was highly estimated by the Old Believers, for, as they considered it, it was the only code of canon law printed under a truly Orthodox patriarch. In 1826 the Holy Synod granted the permission to the *edinovertsy*- one branch of the Old Believers which tried establish a form of unity with the official Russian church under the condition that it could use the pre-Nikonian church books - to print their own

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65 Wm. Beveridge, Bishop of Asaph, *Συνοδικὸν sive Pandectae canonum, SS. Apostolorum et Conciliorum ab Ecclesia Graeca receptorum; nec non Canoniarum SS. Patrum Epistolarum: una cum scholiis antiquorum singulis adnexis...*, 2 Volumes (Oxford, 1672). This was an authoritative compilation of canonical sources compiled by the English bishop Beveridge which had as its format parallel Latin and Greek texts of the major canonical components which comprised Greek canonical collections. It was for the most part exclusive of comprehensive reproduction of civil ecclesiastical legislation. Part of the *Synodicon* contains the *Syntagma* of Matthew Blastares. The *synopsis canonum* of Aristenus may be found in this collection as well. See a sample page from the *Synodicon*, below in Appendix 2.

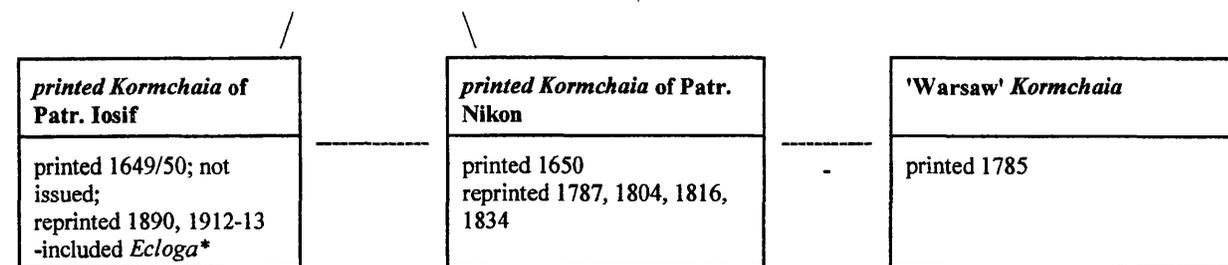
66 Apparently the Slavonic translation was made from the Latin and not the Greek text. As mentioned in the note above, both texts are reproduced in Beveridge. On this see Zhuzhek, *Kormchaia kniga*, 57, who points out that the Greek texts of Beveridge differed substantially from those that were used to translate the *Kormchaia* into Slavonic and would have been of no real use in any case; also Pavlov, *Kurs*, 129.

67 For a summary of the repeated attempts following Evfimii's, see Zhuzhek, *Kormchaia kniga*, 57-59; on the 1787 *Kormchaia*, 59-60.

68 This edition was observed in the British Library, shelfmark Cup. 410.c.136.

books. In 1889 a printing press was established, and one year later the *Kormchaia* of Patriarch Iosif was published, which was in 1912-13 reprinted in St. Petersburg. The printed *Kormchaia* of 1653 was in continuous use for 134 years, until the edition of the *Kniga pravil*. By this time the vast bulk of the civil law of the *Kormchaia* had been absorbed into the civil codes of the Russian state; and ecclesiastical law was addressed in the *Kniga pravil* and also the ecclesiastical statutes of the Holy Synod (1721).

	<i>ustiuzhkaia</i> or great moravian family now called the Ustiug miscellany	<i>efremovskaia</i> or bulgarian family	<i>riazanskaia</i> or kirillovskaia or serbian family	<i>novgorodskaja</i> or <i>sofiiskaia</i> or russian family	<i>kormchaia</i> of Vassian Patrikeev
Origin	9th century	two hypotheses a. 9th century b. 11th century	first half of 13th Century	13th century	about 1518; condemned by church council of 1531
Source	translation made by St. Methodius, most probably in Moravia	a. translated in Bulgaria in the reign of Tsar Boris b translated in Kiev under Iaroslav I. by Bulgarians using an older Slavonic text; text includes early Bulgarian and Serbian, but also some pure Russian forms	translated by monk Savva (Stepan Rastko, son of Serbian Prince Stepan Nemenia) on mount Athos probably with contributions by other monks	contents taken mostly from the <i>efremovskaia</i> , but also from the other families; laws from Russian sources	composed by Vassian Patrikeev; source mostly the <i>riazanskaia</i> family and <i>kormchaia</i> of the heretic Ivan Volk Kuritsyn; Greek <i>nomokanon</i> brought to Moscow by Maksim Grek
oldestMS	13th century; belonging to Ustiug Archangel monastery	10th/11th century; with some marginal inscriptions of the name Efrem	1294, copied in Riazan'	1280-1282	16th century
Characteristic	<ul style="list-style-type: none"> <li>- <i>Syntagma of 50 Titles</i> of John the Scholastic (6thc.); exclusively ecclesiastical canons; neither complete nor exact translation</li> <li>- <i>Zakon sudnyi liudem</i></li> <li>- excerpts from <i>Prochiron</i></li> <li>- Supplemented with material from <i>ephremskaia</i> making it not a family in its own right.</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Nomokanon of the 14 titles</i> (pseudo-Photian redaction)</li> <li>- complete text of the canons</li> <li>- no commentaries</li> <li>- no mention of the councils held under Patriarch Photius (therefore from an earlier recension of the N. of 14 Titles than <i>Serbian</i> or <i>Russian</i> families)</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Nomokanon of the 14 titles</i></li> <li>- canons in an abridged text (epitome)</li> <li>- commentaries of Byzantine <i>scholiasts</i> Aristenus and Zonaras, not of Balsamon</li> <li>- <i>Collection of 87 Chapters</i></li> <li>- <i>Prochiron</i> (full text)</li> </ul>	<ul style="list-style-type: none"> <li>- canons given in complete text</li> <li>- local ecclesiastical regulations:</li> <li>+ <i>Canonical Answers of Metro. John the Prophet</i></li> <li>+ <i>Questionary of Kirik</i></li> <li>+ <i>Decrees of Council of Vladimir 1274 (3)</i></li> <li>+ <i>Charter of Metro. Maksim</i></li> <li>+ <i>Letter of Elias, Archbishop of Novgorod</i></li> <li>+ <i>Letter of Metro. John the Prophet</i></li> <li>+ <i>Statutes of St. Vladimir</i></li> <li>+ <i>Statutes of Iaroslav I</i></li> </ul>	<ul style="list-style-type: none"> <li>- <i>Nomokanon of Photios</i> with commentaries by Balsamon (till then completely unknown in Russia)</li> <li>- systematic <i>nomokanon</i> in type</li> <li>- omitted canons upholding church ownership of land in support non-possessor beliefs.</li> </ul>
Number of MS:	3	5	40	73	6



\*The *Ecloga* was known in Serbia in 13th century, but no MS have been found to include it. It is uncertain when the text first appeared in Russian *kormchye knigi*, before the printed *Kormchaia*, but it was certainly known in Russia during the Kievan period as its inclusion in the *Merilo pravednoe* (circa 1274) demonstrates. This table is based on the work of Zhuzhek, Kaiser & Ia. Shchapov.

**PART II: AN EXAMINATION OF THE ROLE OF BYZANTINE CIVIL ECCLESIASTICAL LEGISLATION CONTAINED IN THE *KORMCHAIA*, THE RUSSIAN PRINCELY STATUTES AND RUSSIAN IMMUNITY CHARTERS AS THEY SUPPORTED A CONSTITUTIONAL RELATIONSHIP BETWEEN CHURCH AND STATE IN RUSSIA.**

**CHAPTER 3: BYZANTINE LAW IN CHAPTER 42 OF THE *KORMCHAIA KNIGA*: THE COLLECTION OF EIGHTY-SEVEN CHAPTERS AS IT RELATED TO THE SPECIAL PRIVILEGES OF THE RUSSIAN CHURCH**

This chapter's primary focus is on furthering the general argument that in the *Kormchaia* lay the rules governing the principle of divided jurisdiction between the ecclesiastical and civil spheres of authority. The argument in this chapter will be furthered primarily through an examination of the contents of the *Collection of 87 Chapters*, the legal collection described earlier in this work which constituted Chapter 42 of the printed *Kormchaia*, and which was entitled: *Ѡ свѣтка заповѣдей ѱстиниана црѣ.*<sup>1</sup> As has been pointed out above, the *Collection of the 87 Chapters* was a sixth century compilation of the ecclesiastical civil legislation of Justinian extracted from his *novellae*, which regulated the church and the clergy. There has been to the author's knowledge no specific work devoted to an analysis of the applications of these statutes in Russia. Neither has any work analysed this *Collection* as in the printed *Kormchaia* systematically through a categorization of its legal provisions. This analysis attempts to present the provisions in

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1 The title to Chapter 42 of the *Kormchaia* provided Russians with the knowledge that the ordinances (*zapovedei* or in Latin *constitutiones*) had come from Justinian. The Chapter comprises some thirty-three *folio* pages, *ff.* 300b - 333b. The index which comes before main text was taken from the original Greek *Collection of the 87 Chapters*, ranging from *f.* 300b to *f.* 306, was not an original addition to the *Kormchaia*. The reader who consults the *Collection* in Chapter 42 of the *Kormchaia* will find Slavonic letters enumerating each of the eighty-seven passages or chapters (а - пз). To avoid confusion, the citations which follow will employ the Slavonic term *glava* (chapter) rather than the word 'chapter'. These will also include the corresponding citation notating from which of Justinian's *novellae* the passage was extracted. So for example, *glava* thirty-two (аа) of Chapter 42 of the *Kormchaia*, extracted from Justinian's novel 123.2, will be cited as "*glava* 32: novel 123.2", after which the relevant *folio* page(s) of the printed *Kormchaia* follow.

such a way as to underscore their importance in supporting the legal-constitutional basis for divided jurisdiction in Russia. The excerpts as originally compiled in the *Collection of 87 Chapters* were not arranged in any systematic order - not even according to subject matter. The following pages will examine the provisions of the *Collection* and discuss what significance they may have had in Russia in terms of their furthering a legal constitutional relationship between church and state based on the Byzantine model. To illustrate this, the excerpts have been arranged thematically by this author in order to aid in their presentation and are, therefore, divided into the following four parts:

- i.) *civil enactments governing the internal regulations of the clergy, reiterating the ecclesiastical canons*
- ii.) *jurisdiction: courts and the clergy*
- iii.) *property and the church*
- iv.) *miscellaneous*

Although, as it has been pointed out by detractors of Byzantine legal influence in Russia, that the bulk of the excerpts contained in the *Collection of the 87 Chapters* were derived from only a few *novellae* (3, 5, 6, 46, 67, 83, 120, 123 & 131) and so did not constitute much in the way of a source of Byzantine law, the *Collection* did support in its legislative excerpts two legal concerns. These concerns were: first, the right of the church and its clergy to own property, and second the privilege of ecclesiastical jurisdiction. The *Collection* begins with the preface from novel six of Justinian in which the Emperor expressed the idea of *symphonia*. The two greatest gifts he said were the priesthood (*sviashchennichestvo*) and the Empire (*tsarstvo*), with the former governing divine matters (*bozhestvenym" sluzha pekiisia*)<sup>2</sup> and the latter governing the affairs of mankind (*chelovecheskimi vladeia*), and so demonstrated that to each sphere belonged a particular authority and jurisdiction. The equality in division came from their both proceeding from the same source (*ot edinogo zhe i togo zhe nachala oboia proiskhodiat*)<sup>3</sup>, and so the

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2 **О**БО ОУБО БЖТВЕННЫМЪ СЛУЖА, СЕЖЕ ЧЕЛОВѢЧЕСКИМИ ВЛАДѢА И ПЕКІІСА...*Kormchaia kniga*, f., 306b.

3 **...Ѣ** ЕДИНОГО ЖЕ И ТОГОЖДЕ НАЧАЛА ОБОА ПРОИСХОДАТЬ...*Kormchaia kniga*, f., 306b.

two authorities residing in the same source gave to them their respective power over the temporal and spiritual affairs of man. Therefore, in them was revealed the proper relationship between church and state. The *Collection of the 87 Chapters* reflected Justinian's belief that there should be no greater concern to the Emperor than the honour of the clergy (*sviatitel'skaia chest'*). For, it was said, that if the clergy were free from blame then there would ensue a concord bringing forth good for mankind.<sup>4</sup>

The legislation contained in the *Collection of 87 Chapters* addressed three main areas of law: the internal regulation of the clergy, the jurisdiction of ecclesiastical courts, and property rights of the church. On the internal regulation of the clergy, the legislation mainly concerned the behaviour of ecclesiastical persons, and imposed punishments for certain crimes. Punishments included suspension of sacerdotal duties, confinement in a monastery, and forfeiture of personal property. The latter two punishments, it appears, were Byzantine innovation as they were not written into ecclesiastical law. The legislation concerning the jurisdiction of the clergy reflected the basic constitutional idea of *symphonia* in upholding the principle of general clerical immunity from the civil authority. It also provided a rudimentary structure for the ecclesiastical court system, including the right of appeal. The special immunity of the church was further supported by the legislation concerning ecclesiastical property, which addressed both the institutional property of the church and the personal property of clerics. One can see in this legislation the sovereign right of the church to acquire and own property. Ecclesiastical establishments were recognised as landlords, immune from tribute and confiscation. Although certain restrictions on the use and transfer of ecclesiastical property were imposed, this was done only to prevent the dissipation of church property. Clerical property appears to have been governed by the same Byzantine inheritance law as governed secular persons.

These laws, through the medium of the *Kormchaia*, are thought to have been consulted in Russia from at least the thirteenth century until the seventeenth century. The contents of Chapter 42 of the *Kormchaia* were incorporated into the *Merilo pravednoe*,

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4 ИЩЕ БО ОНИ НЕ ПОРОЧНИ БОУДУТЬ ВО ВСЕМЪ...БОУДЕТЬ СОГЛАСІЕ НѢКОЕ БЛАГО, ВСЕ ЕЖЕ ДОБРО ЧЕЛОВѢЧЕСТВЪИ ДАРЪА ЖИЗНИ.

the Russian ecclesiastical court manual which dates from the thirteenth century.<sup>5</sup> There is evidence that some four centuries later they were still being consulted. Excerpts from the *Collection* were incorporated into the *Ulozhenie* of 1649<sup>6</sup> and were used in connection with the Russian church council of 1666/1667 which concerned the deposition of the Patriarch Nikon.<sup>7</sup> For such reasons, it is with certainty that one can say that the provisions of the *Collection of 87 Chapters* were known and used in Russia.

That the ecclesiastical sphere of jurisdiction was considered part of the constitution of government in Russia is contained in the statement Tsar Ivan IV made during one of his disputations with the Catholic priest Antonio Possevino. The Tsar demonstrated his understanding and belief in the tradition of divided jurisdiction when he stated that his "duty is to attend to temporal affairs for which I have received the blessing of my Metropolitan not spiritual ones."<sup>8</sup> This same understanding was also written into the proceeding of the 1551 Russian Church Council, the *Stoglav*, where in chapter 60, it was written that a secular head was not permitted to judge church people.<sup>9</sup> Even though that law contained in Chapter 42 of the *Kormchaia* was only in the form of excerpts, they were sufficient to provide Russian authorities with the idea upon what legal principles these provisions were based. After all, the *Collection of 87 Chapters* was considered sufficiently authoritative to have been appended to early Byzantine *nomokanon*.

## An Analysis of the Civil Ecclesiastical Legislation Contained in the Collection of 87 Chapters

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5 See the Appendix below pages 217, notes 34 and 35; and pages 218 note 37.

6 Tiktin, *Vizantiiskoe pravo, passim*. See also my comments below in this chapter relative to the *Ulozhenie* having provisions incorporated into it taken from this Byzantine legal collection.

7 See Zhuzhek, *Kormchaia kniga*, 175-180 concerning the use of the *Collectio 87 Capitulum* at the Council. See especially pages 174, 175, and 179.

8 *The Moscovia of Antonio Possevino* (1586), trans. Hugh Graham (Pittsburg, 1977), 69.

9 See *Stoglav* chapter 60. Editions are: *Stoglav*. ed. D. E. Kozhanchikova (St. Petersburg, 1863); reprint Düsseldorf, Brücken-Verlag, 1969; D. Stefanovich, *O stoglave. Ego proskhozhdenie, redaktsii i sostav* (St. Petersburg, 1909); In: *Rossiiskoe zakonodatel'stvo X-XX vekov*, (Moscow, 1984-1991), Vol. 2, *Zakonodatel'stvo period obrazovaniia i ukrepleniia Russkogo tsentralizovannogo gosudarstva*, 242-500. The Council was convened for the purposes of restoring ecclesiastical discipline and eradicating clerical abuses. On the Council see V. Bochkarev, *Stoglav i istoriia sobora 1551 goda* (Iuchnov, 1906).

i. *Civil enactments governing the internal regulation of the clergy, reiterating the ecclesiastical canons*

The excerpts from Justinian's *novellae* which reiterate what is contained in the ecclesiastical canons pertaining to the internal governance of the clergy, address common issues such as the precedence of clerical rank, the holding of church councils, and the behaviour of the clergy. Overall, the excerpts contain little innovation and are true to their original ecclesiastical text. The civil ecclesiastical regulations governing the ordination and behaviour of ecclesiastics already existed in the canon law, but were reiterated by Justinian in his *novellae* for the purposes imbuing them with greater Imperial authority and as well as to attach to them sanctions in the law.

*Provisions*

Rules governing church councils stated that archbishops, patriarchs and metropolitans were to call councils once or twice a year in order to maintain ecclesiastical discipline in conformity with the sacred canons.<sup>10</sup> However, this was an ideal. As the history of Russian church councils demonstrates this was not a possibility, owing, to among other things, geographical difficulties. And so church councils in Russia were held infrequently when compared to this ideal. On ordination, rules regarding the consecration of bishops stated that a candidate was to have no wife or children, and that he was to be at least 35 years of age.<sup>11</sup> For priests the age was also given as 35, for deacons 25, which it seems was a requirement created by Imperial legislation, for canon 11 of Neocaesaria

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10 *glava 37*: novel 123.10, *Kormchaia kniga*, ff., 321a-321b. This is according to Apostolic canon 37 and canon 5 of Nicaea I. On church councils in Russia see, N. Turchaninov, *O soborakh byvshikh v Rossii so vremeni vvedeniia v nei Khristianstva do tsarstvovaniia Ioanno IV Vasil'evicha* (St. Petersburg, 1829). Also see, A. Herman, *De Fontibus iuris ecclesiastici russorum commentarius historico-canonicius* (Rome: Vatican, 1936), 44-59.

11 *glava 2*: novel 6:1 (4), *Kormchaia kniga*, f., 307a, on wife and children, the provision required that his wife was honorable when he married her (a virgin, not a widow, not a second marriage) but, however, is unclear in its phrasing as to whether having a current wife was an impediment. *Glava 28*: novel 123.1, *Kormchaia kniga*, ff., 358a-358b, clarifies this point making it clear that a candidate could have no current wife in order to be raised to the episcopate. The impediment against an individual becoming a bishop who had previously been married to a dishonorable woman is given earlier in Apostolic canon 7, where the prohibition also extended to priests, deacons or any others of the sacerdotal list. This novel, 123.1(1), speaks on the age requirement of 35 years of age.

recommended the age of 30.<sup>12</sup> Also concerning ordinations, if an accusation was made against a candidate for ordination and this accusation was proven true, then the ordination was to be forbidden. A hearing was then required to take place before ordination.<sup>13</sup>

The behaviour of ecclesiastics<sup>14</sup> was governed by rules in a number of the excerpts in Chapter 42, some of which had special sanctions attached to them. Bishops were not permitted to abandon their churches, nor be absent from them for extended periods of time, usually no longer than one calendar year.<sup>15</sup> In the excerpt from novel 123, ecclesiastics were forbidden to “to play with dice or any such games, to be participants or gamblers; or to be present at a public exhibitions”, **ТАВАΙΑМИ ИГРАТИ, ИЛИ ТАКОВАА ИГРАЮЩИМЪ, ОБЩНИКОМЪ ИЛИ ПОЗАРАТАЕМЪ БЪТИ, ИЛИ НА НЪКОЕ ЛЮБО ПОЗОРИЩЕ ВИДѢНІА РАДИ ПРИТИ.**<sup>16</sup> In Russia the same rules applied to its clergy, in addition to the special concerns about ecclesiastics visiting taverns. Those who transgressed such regulations on ecclesiastical behaviour suffered for their disobedience the penalty of suspension from sacred duties for a period of three years, and confinement in a monastery.<sup>17</sup> Through repentance the length of confinement, however, was able to be reduced, although with the permission of a superior.<sup>18</sup> Concerning deaconesses, the law stated that deaconesses were forbidden to live with men, and that those who did were to

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12 *glav*” 42 and 43: novel 123.12 and 123.13, *Kormchaia kniga*, ff., 322a-322b.

13 *glava* 44: novel 123.14, *Kormchaia kniga*, f., 322b.

14 See some of these rules reiterated in the *Stoglav*.

15 *glava* 3: novel 6.2, *Kormchaia kniga*, f., 307a.

16 *glava* 37: novel 123.10, *Kormchaia kniga*, ff., 321a-322b. The use of the word **ТАВАΙΑМИ** is unclear. The root of **ПОЗАРАТАЕМЪ** shares a similarity to the modern term for gambler (*azartnye igry*). The prohibition against participating in games of chance and other inappropriate behavior is to be found in Apostolic canon 42: **ИГРАЕТЪ И ГЛОУМИТСА И ЛЮДИ ГЛЪМИТЬ, И ОУТИВАЕТСА.** The *tolkovanie* (*scholion*) following canon 40 of Trullo on *Kormchaia f.* 194a also remarked on the unseemliness of the clergy’s participation in games of chance: it is not seemly for Christians to... **НИ ГЛЪМИЩЪ ДѢЛАТИ, НИ ПОЗОРИЩЪ ГЛАДАТИ.** But neither the Apostolic c. 42 nor the *scholion* following Trullo c. 40 specifically listed such games of chance as novel 123 did.

17 Imprisonment in a monastery as a penalty appears frequently in the *novellae*. Like punishment was also dispensed to secular persons, such as in the case of an adulteress. Justinian’s novel 7.10 recommended that a woman found guilty of committing adultery was to be confined in a monastery. This form of punishment was also widely popular in Russia.

18 *glava* 37: novel 123.10, *Kormchaia kniga*, ff., 321a-321b.

be deprived of their ecclesiastical rank and were to be placed in a monastery. The sanction in the law required that the deaconess' property was to be divided among her children with her portion going to the monastery. If she had no children, her estate was to be divided between the monastery and the church to which she was formerly attached.<sup>19</sup> These same rules concerning forfeiture of property applied to monks who abandoned their monastery.<sup>20</sup> A favourite concern of ecclesiastical discipline was preventing the mixing of the sexes within ecclesiastical establishments. Novel 123 repeated this prohibition of the ecclesiastical canons, forbidding women from remaining in the homes of clerics or any order, except women beyond suspicion, that is, mothers, sisters and daughters.<sup>21</sup>

## ii. *Jurisdiction : courts and clergy*

It was a long-established privilege of the clergy that clerics should be judged in ecclesiastical courts and judged before their own. Such was the established practice among all Christian societies in both the East and the West, a practice which was stated in canon law and often upheld in the civil law of that particular society. In the Byzantine Empire, such privilege was codified in the civil laws and appended to the *nomokanon* as guarantee of the clergy's inviolability. The civil laws which described the jurisdiction between civil and ecclesiastic courts were often reiterations of what was present in canon law, and on occasion served to clarify or supplement the canon law as the cultural situation of a particular society warranted. The immunity from judgement in civil courts also extended to matters which involved the laity and clerics in disputes.

Jurisdictional immunity of the clergy is a well-understood legal point, that a cleric was to be tried before his own hierarchs, usually by the hegumen or by the bishop. Such, too, was written into the Russian civil enactments, the Princely Statutes and ecclesiastical immunity charters. What is less well-known is how precisely a cleric was to be judged before one of his own, and more especially, upon what basis in law these rules operated. At the least one should assume that since there existed rules in the civil law regarding the

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19 *glava* 73: novel 123.30, *Kormchaia kniga*, ff., 329a-329b. See also *glava* 5 (novel 6.6) concerning other rules governing deaconesses.

20 *glava* 9: novel 5.4, *Kormchaia kniga*, f., 309a.

21 *glav*" 71, 72, and 73: novel 123.28 and 123.29, *Kormchaia kniga*, ff., 328b-329b. The rule was earlier laid out in canon 3 of Nicaea I.

treatment of secular persons and court procedure, there must, too, have been similar laws regulating the trials and rights of clerics. Whether or not the Church in Russia reserved to itself the same juridical authority as in other Christian countries, East or West, has been much discussed. However, historical discussion has in general been limited to arguments over the degree to which Church placed limits on the autocratic power of the Grand Prince or Tsar. More broadly, though, ecclesiastical courts in Russia, in addition to having full juridical authority over the clergy, also had near full jurisdictional authority over all laity who resided on church lands, much like feudal landlords. This laity included, but was not restricted to persons such as peasants, *boiars*, and the so-called "church people", the *tserkovnye liudi*.<sup>22</sup> The civil authority gave further formal sanction to this established court system in later Russian legal collections of primarily administrative law, which date after the late fifteenth century (the *Sudebniki*). These were also bolstered by numerous immunity charters. Even when ecclesiastical court prerogatives were curbed following the promulgation of the *Ulozhenie*, the Patriarchal Court still retained full jurisdiction over its "church people" and peasants, and other laity on the Patriarchal estates as a 'feudal' landlord. Considering that the Patriarch was the greatest landowner next to the Tsar, this still meant that the Church, still had extensive jurisdiction over lay people. Ecclesiastical court practice in Russia is not as well known as is Western European court practice, since there are no adequate number of court records to evaluate, and the few of those that do exist provide insufficient evidence for any firm conclusions.<sup>23</sup> Court procedure for this reason is known only through study of the administrative law codes of the medieval period.<sup>24</sup>

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22 *Tserkovnye liudi* were monks and priests with their families, servants of the church, people subject to the charity of the church, e.g. in hospitals, people under the special protection of the church, and pilgrims. This list, however, is not exhaustive. See Appel, *Die Auseinandersetzung um die ständische Gerichtsbarkeit in Rußland*, 23. For a fuller treatment of the subject, see the discussion contained below in Chapter 5 on immunities.

23 On Western ecclesiastical court records, see R. H. Helmholz, *Canon Law and the Law of England* (London, 1987). Recent research on church court records has revealed aspects of Western court procedure. Some Russian records are preserved in *RIB 25: Akty kholmogorskoj i ustiuzhkoj eparkhii, kniga tret'ia* (1908).

24 The various *Sudebniki*. For original text see *Sudebniki XV-XVI vekov*, ed. B. D. Grekov (Moscow: Akademii nauk SSSR, 1952). On court procedure see H. W. Dewey & A. M. Kleimola, *Russian Private Law in the Fourteenth-Seventeenth Centuries. An anthology of documents* (Ann Arbor, 1973).

Chapter 42 of the *Kormchaia* contains both specific provisions governing the jurisdictional immunity of the clergy and regulations governing how a cleric was to be tried. Since some punishments for the clergy were to be found in the ecclesiastical canons, which would have been well-known among the clergy, they were not often repeated in this section of the Byzantine laws, and so only the sanctions in the law as Byzantine innovation appear.

### *Provisions*

Canon law stated that, in accordance with the ecclesiastical canons of the church, cases involving members of clergy (cleric vs. cleric) were to be tried before their bishop or hegumen. These provisions regulating the procedure for suits within the ranks of the clergy, merely reiterated what existed in the ecclesiastical canons, for instance, in conflicts between bishops, the metropolitan sitting in council was to settle the disagreement unless a resolution was able to be reached, in which event the patriarch was to decide.<sup>25</sup> The clergy and church people were to be heard before their own superiors in the church court,<sup>26</sup> and were to be tried in the place where the crime took place: *АЩЕ ОУБО НАЧАЛО БЫСТЬ ВО ОБЛАСТИ Ш ТАКОВѢЙ ВИНѢ, ТАМО СОУДЪ СКОУЧАТИ.*<sup>27</sup> By extension, these rights of the clergy also applied to “church people”, that is, persons working for the church in ecclesiastical establishments, referred to in Byzantine law, and also in the Russia law.<sup>28</sup> One can see this provision of ecclesiastical immunity echoed in Russian laws and charters, where the inviolability of the cleric and his right to be judged by one of his own was, through the centuries, repeatedly expressed and upheld.<sup>29</sup> A fundamental legal principle in Byzantine law was that the person of a cleric was immune from compulsion by the civil authority to appear before the civil authority in cases which were not specified

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25 *glav*” 57, 58, & 59: novel 123.22, *Kormchaia kniga*, ff., 325b-326a.

26 *glava* 61: novel 123.22, *Kormchaia kniga*, f., 326b.

27 *glava* 62: novel 123.24, *Kormchaia kniga*, f., 326b.

28 See below in Chapter 4 on church people. This was also written into early Russian civil codes. See *Sudebnik* 1497, article 59, which names priests, monks, nuns, sextons and widows under the patronage of the church as being under the jurisdiction of the bishop or his judge. Article 91 of *Sudebnik* 1550 repeats this same text. See *Sudebniki*, ed. Grekov.

29 *Novel* 123.8. See below Chapter 4.

in law. For instance, a bishop had immunity from authorities of the civil and military courts, and he could not be compelled to appear before either without an Imperial order.<sup>30</sup> Though the bishop was immune to a greater extent, other clerics had privileges befitting their offices when a suit involved a secular person. If a summons against a clerk, monk or nun was issued, the law granted them the opportunity not to appear in court, but rather to have a representative (посолника) appear on their behalf, so that their sacerdotal duties would not be neglected.<sup>31</sup>

Byzantine law governing cases of mixed jurisdiction that is, in cases which involved a secular person and an ecclesiastic, differed from Russian practice. It was common in Russian practice to hold a joint court, where representatives of the church and civil authority were both present. Chapter 42 said in the event a secular person had a suit against a priest, monk, deacon or hermit that the case was to go before the bishop, who was then to decide.<sup>32</sup> The provision said further, that should one of the parties dispute the decision, the case was then to be referred to a judge of the district, who if he found the bishop's decision just, would then ratify it.<sup>33</sup> Should objections be filed within the ten-day statutory limit, then the case went before the judge (властель) of that jurisdiction, who would then ratify the decision if it was found to be just.<sup>34</sup> Demonstrating the flexibility of the court system, a person who had a suit against a cleric in which the bishop delayed hearing it had the recourse of going then before a civil court. The surety to be given by the accused cleric was his property only, having given no oath, only his promise of property: НЕ ПОУДИТСА ПОРЪЧЕНЕ ДААТИ ПО ТОКМЪ ИСПОВЪДАНИЕ БЕЗКЛАДЪВЪ, СО ОБЪЩАНІЕМЪ СВОЕГЪ ИМѢНІА ИЗРЕЦИ.<sup>35</sup> An example of this is given in *glava* 12, where

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30 *glava* 36: novel 123.8, *Kormchaia kniga*, f., 324a. Both the magistrate and bailiff were to be subjected to punishment if they so issued a summons.

31 *glava* 65: novel 123.27, *Kormchaia kniga*, f., 327b.

32 *glava* 64: novel 123.21, *Kormchaia kniga*, ff., 324a-324b.

33 *glava* 54: novel 123.21, *Kormchaia kniga*, ff., 324a-324b.

34 *glava* 54: novel 123.21, *Kormchaia kniga*, ff., 324a-324b.

35 *glav* 55, 56, 57, 58 & 59 on courts: novels 123.21 (1), 123.21 (2) and 123.22, *Kormchaia kniga*, ff., 324b-326a. Apparently such cases against clerics would have concerned civil matters, as the remainder of the extract from the novel reiterates the well-known provision of the law, that in suits concerning ecclesiastical matters the civil authority has no jurisdiction, and the bishop was

a person having an action of money against a cleric had first to apply to the bishop, who then examined the case and rendered a decision whether further action was to be taken, that was, if the cleric should be brought before a civil court.<sup>36</sup> A criminal case, on the other hand, with litigants of mixed jurisdiction, was a different matter. Such a case was to go before a civil court, and if the cleric was found guilty, he was to be both stripped of his office (*sana lit. rank*) and to be placed in the hands of the law: *первѣе оубо шенаженѡ быти томѡ сценническаго сана ѿ бллюбиваго епкпа, и тако под законнѣи роуцѣ преданѡ быти на казнѣ.*<sup>37</sup> What is apparent in these examples is that the more serious crimes were considered to be within the jurisdiction of the civil authority. This shares in common with the practice of the Russian civil authority reserving to itself, as shown in Russian immunity charters, the right to punish matters like murder, theft and brigandage, which was mentioned above in Chapter 1.

Also, one can find in this law the idea of the right of appeal or recourse to independent review of a decision in a case. This right of the clergy to have their case reviewed paralleled the right of secular persons in Russia to the same, mainly through appeal to the Prince. Byzantine law governing the clergy in civil and criminal matters guided by the principle of *symphonia*, was enacted to prevent clerics from being subjected to the civil power unnecessarily and arbitrarily. Underscoring the constitutional relationship between church and state, the civil authority in the Byzantine Empire reserved to itself only the right to punish the clergy under certain circumstances, otherwise, it was the church's duty to do so in which no one was permitted to interfere. It was the privilege of the church to punish its own, and in the Byzantine law one does not usually find a prescription for civil punishment for ecclesiastical crimes committed by ecclesiastics. However, in the case of a cleric and secular person where the cleric was guilty of a criminal act, the civil authority delegated to itself the power to exact civil penalties.

Clerics involved in legal suits who committed perjury were to suffer a civil sanction and, it appears, that the clergy had no immunity from the civil authority in this

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to judge according to the holy canons. On surety see *glava 55, novel 123.21(2)* and *glava 59, novel 123.22*

<sup>36</sup> *glava 12: novel 83. pref., Kormchaia kniga, ff., 308b-311b.*

<sup>37</sup> *glava 12: novel 83, preface and 1, Kormchaia kniga, ff., 311a-311b.*

respect. A cleric who gave false testimony in a civil case (here in the text as property suit) was to be tortured, suspended from duties for three years and imprisoned in a monastery. Of those clerics who testified falsely in criminal cases, the law said that they were to be "punished according to the law", presumably suffering the same penalty as their secular counterparts.<sup>38</sup>

In the Russian practice, it seems the penalties for perjury were not as severe. In the Russian civil law text, *On Witnesses (O poslusekh)*, it was written that a priest or deacon who committed perjury in a civil case was to be excommunicated for three years and to be confined in a monastery. If perjury was committed in an ecclesiastical case, the perpetrator was to be defrocked and punished according to the canon law.<sup>39</sup>

### iii. *Property and the Church*

Byzantine laws regarding church property, and of the rights of individual clergy and their property are quite extensively addressed in Chapter 42 of the *Kormchaia*. It is important to keep in mind that many of these laws concerning the clergy originated out of ecclesiastical canons, which had evolved during the early days of Christianity, and so Justinian by raising them to the status of *nomoi* strengthened the property rights of the Church. The laws governing clerical property owners, that is, churches, monasteries, individuals and other various ecclesiastical establishments, had principles based in the same points of law which governed secular property owners.<sup>40</sup> What differentiated these laws from those that governed secular landholders was the notion that ecclesiastical property should be conserved and if possible added to whenever the opportunity arose. Therefore, in the Byzantine law governing this area, one can see the restrictions on ecclesiastical property laws for the church (e.g. alienation and sale) as a logical conclusion of this notion. In Russia, one can see that the same basic property rights must have been

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38 *glava 53*: novel 123.20, *Kormchaia kniga, f.*, 324a. According to the punishment listed in the Byzantine *compendia*, the penalty for perjury was tongue-cutting. See Freshfield, *Procheiros nomos*, 155, section 46. This section cross-references the other *compendia*, where further legal texts may be found.

38 *O poslusekh*, article 32 in Kaiser, *Laws of Rus'*, 120.

39 Canon 12 II Nicaea later reflected Byzantine institutional practice and declared that no one was to alienate part of the suburban estate of the church. This shows a reciprocal relationship between the two laws.

accorded to ecclesiastical land owners, since they were entitled to receive fiscal/judicial immunity charters, which were not interfered with by the civil authority until the seventeenth century. Up to this time there was no actual substantive law enacted which derogated from the legal basis of these immunities.<sup>41</sup> That a cleric in Russia, particularly a bishop, metropolitan or patriarch, could own property considered his separate estate is well known, and one need only think of the most famous of Russia's patriarchs, Patriarch Nikon, who was a great landlord of the seventeenth century, and whose personal possessions and estates rivalled those of the Tsar,<sup>42</sup> to see that this was a common practice - a practice which still remains even today in the church. Among the clergy, members were permitted to hold personal property disposing of it as they wished. The law as presented in Chapter 42 of the *Kormchaia* is unclear, however, how members of the clergy were to keep individual property separate from the common property.

#### *Provisions*

All members of the clergy were able to hold property inclusive of priests, deacons, subdeacons, readers, and choristers,<sup>43</sup> even if they were not *sui juris*, that is if they were *ПОД ВЛАСТІЮ*,<sup>44</sup> under the power of another - similar to a later form of *patria potestas*.<sup>45</sup>

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41 See below Chapter 4.

42 Patriarch Nikon toward the end of his reign, was reckoned to be the second largest landowner next to the Tsar. See Kartashev, *Ocherki po istorii russkoi tserkvi*, Vol. 2 (Paris, 1959), 140-141.

43 These are the persons so-named in the text. Obviously bishops, metropolitans, the patriarch as well as lesser orders of the clergy were entitled to own property.

44 On this see below Chapter 5.

45 This concept is to be found in Roman law on family and succession. Originally, Roman law as it related to *patria potestas* concerned only the father. Such authority of the father extended during earlier periods of the Roman empire over his children in virtually all matters, to the extent that it was within a father's right to sell his own children in slavery. The father held virtually all authority in the family and by the time of the codification of the *Twelve Tables* this power of the father in law had become "differentiated". Such differentiated powers of the father (patriarch) is described his dominion over his family included *manus*, *patria* and *dominica potestas* and *in mancipio*. The first, *manus* was that authority the patriarch had over his wife and his son's wife. *Patria potestas* concerned that power which a father had over his children. *Dominica potestas* was that power he had over his slaves; and the related power of *in mancipio* which described the father's *potestas* he had over bondsmen. In general, the legal relationship which existed under *patria potestas* could not be broken except for certain reasons and by breaking of formal contract. The authority granted the father by *patria potestas* diminished over the course of the centuries, especially after the Christianisation of the Empire, which saw men and women in a more egalitarian light, i.e. as being the same under God and thus subject to the same rewards and punishments. By the time of the

Further, they had full legal right to this property as they were free to dispose of this property in a last will and testament (ЗАВѢЩАВАТИ), according to the law - bequeathing their property either to their children or to their parents if there were no children.<sup>46</sup> The only instance in Chapter 42 of the *Kormchaia*, when a cleric forfeited his right to his property, was when a monk deserted his monastery and monastic life, for which offence his property was then retained by the monastery.<sup>47</sup>

There are a number of provisions in Chapter 42 of the *Kormchaia* which concerned the ability of the Church to lease or alienate property. The first of these stated that if churches or religious houses owed debt, they could for this reason be granted permission to alienate ecclesiastical property.<sup>48</sup> Permission of the Emperor or civil authority was needed for the reason that the Imperial authority restricted alienation of immovable property for the purpose of conserving ecclesiastical land; whereas there were no such restrictions on immovable property. It is not clear if the church in Russia sought the permission of the Grand Prince or Tsar in these matters. However, so great was the Russian Church's conservation of its property, and so generous were the Russian people in bequeathing it to the Church, that issues of land scarcity for secular use, e.g. as service-estates, prompted legislation which prohibited the Church's further acquisition of land.<sup>49</sup>

Types of religious establishments named in the law included: ОУБОГНУХЪ ЖИЛИЩА (asylum for the poor), СТРАННОПРИИМНИЦЫ (places of hospitality for strangers), БОЛНУХЪ

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eighth century with the compilation of the *Ecloga*, the rights bestowed by *patria potestas*, in some matters such as marriage, had been extended to both parents.

46 *glava* 52: novel 123.19, *Kormchaia kniga*, ff. 323b-324a. See below in Chapter 6 concerning ascending and descending heirs under the provisions of Byzantine and Russian inheritance law.

47 *glava* 10: novel 5.4 and *glava* 84: novel 123.42, *Kormchaia kniga*, f. 309b and ff. 332a-332b respectively. Byzantine law not in the *Collection of 87 Chapters* also penalized other clerics who abandoned their offices as well. In addition to civil disabilities accorded condemned clerics, there was the forfeiture of property also.

48 *glava* 13: novel 46. pref, 1, 2, 3, *Kormchaia kniga*, ff. 311b-312b.

49 Legislation was enacted which placed limits on the acquisition of land by the Russian Church, for example *Ulozhenie*, Hellie, 17.42 which prohibited further acquisition of hereditary estates by the Church. The issue of land restriction in general *vis a vis* the Church is discussed more fully in the chapters below.

КОРМИТЕЛЬНИЦЫ (hospitals), СТЬХЪ МОЛИТВЕНЬХЪ ДОМОВЪ (oratories).<sup>50</sup> *Glava* 15 provided specific instructions for the alienation of immovable property (ПРОДАНИ НЕДВИЖИМЪХЪ ЦРКОВНЬХЪ ВЕЩЕЙ) if there was no other means by which to pay the debt the establishment owed.<sup>51</sup> The law favoured the alienation of movable property, however, and permitted the alienation of immovable property only as a last resort, especially in a debt case. Again, this preference goes back to the principle of conservation of ecclesiastical property supported by the Imperial law. The church and religious establishments were also free to contract temporary (ВО ВРЕМЕНА САЖДЕНІЕ ТВОРИТИ) and perpetual leases (ВО БЕСПРЕСТАНИ САЖДЕНІЕ ТВОРИТИ)(known in the law as *emphyteusis*) without civil authorization. These arrangements, however, were to be made before the bishop by the officials of the institution only if the proposals could be shown that they would not cause financial loss (ПАКОСТЬ) to the institution: ПО ПОВЕЛѢНІЮ БЫВАТИ ТАКОВОМЪ СОВѢЩАНІЮ, КЛЕНУЩИМСА ПРЕДНИМЪ ИКОНОМЪ, И ПРАВИТЕЛЕМЪ, И КНИГОХРАНИТЕЛЮ, ТОГѠ ЧЕСТНАГО ДОМЪ, ІАКѠ ѿ ТАКОВЫА ВИНЪ, НИ ЕДИНА ПАКОСТЬ ЧЕСТНОМЪ ДОМЪ НАВОДИТСА. Where monasteries were concerned, such contracting required the hegumen and a majority of the monks to agree to the drawing up of the contract.<sup>52</sup>

From the time of the Apostolic canons it was believed improper for an ecclesiastic to conduct business in the secular world because of the inherent conflicts this would pose. Following this principle, Byzantine law specifically forbade the clergy from holding certain offices especially if they concerned secular interests or secular financial responsibility. For instance, *glava* 35 provided that the members of the clergy were forbidden to act as collectors or receivers of public debt НИ СОБИРАТЕЛЮ, НИ ИСТАЗАТЕЛЮ ЛЮДСКИХЪ ДОЛГОВЪ, recorders of property НАЕМНИКЪ ДАНЕМЪ, superintendents of households ЧЮЖДИМЪ СОЗДАНИЕМЪ И СЕЛШМЪ, or to be attached to court personnel НИ ПЕЧАЛНИКЪ

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50 As named throughout the *novellae* excerpts. See for instance novel 120.6 (1) as part of *glava* 14, *Kormchaia kniga*, ff. 312b-313a.

51 *glava* 15: novel 120.6(2), *Kormchaia kniga*, ff. 313a-314a.

52 On *empheteusis* and signatories to contracts - *glava* 14: novel 120. pref., 6(1), 6(2), *Kormchaia kniga*, ff. 312b-313a. In the text, managers of the establishment are listed as ИКОНОМЪ, ПРАВИТЕЛЕМЪ, И КНИГОХРАНИТЕЛЮ.

ДОМЪ, ИЛИ ПОСЕЛЬНИКЪ СЪДА, ОТ ТО АС SURETY FOR ANY OF THESE ИЛИ ПОРЪЧНИКЪ Ѡ ТАКОВЫХЪ.<sup>53</sup> Similarly, monastic property was prohibited from being used as a secular dwelling въ простыхъ людей жилища.<sup>54</sup> These prohibitions were the price of ecclesiastical immunity, but such prohibitions did, however, have financial benefits in that the civil authority was prohibited from collecting tribute (in the form of labour) from church entities (зданиемъ).<sup>55</sup> The sorts of tribute in the law were described as скверныа работы и безчинныа не работати нѣкѣа (degrading labour and extraordinary work).<sup>56</sup> The exception to this general rule related to the upkeep of public works.<sup>57</sup> If the city in which the lands of the church were attached required support in public works such as the paving of roads, building of bridges, or any other restoration necessary to the support of the city, in this case the church was compelled to perform (исполнати) the services.<sup>58</sup>

Inheritance law, as it affected the clergy, is well-addressed in the Chapter 42 of the *Kormchaia* and serves to complement related inheritance law of the *Ecloga* and *Prochiron*. Surviving documents show that monks and other clerics in Russia prepared last wills and testaments, and they apparently were legally entitled to do so, although the legal provision for this in the Russian civil law is not readily evident.<sup>59</sup> Much like their Byzantine brothers, Russian churchmen prepared wills and planned for the disposition of their personal property. It is interesting that the law accorded the clergy equal treatment

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53 *glava* 35: novel 123.6, *Kormchaia kniga*, ff. 320b-321a.

54 *glava* 17: novel 120.7(1), *Kormchaia kniga*, f. 314a.

55 Here it seems that the integrity of the text is best supported by a reading of the novel to mean church lands, for this legal sense is clear in the collection of Justinian's *novellae*, although maybe not in this particular excerpt or in the *Collection of 87 Chapters* as a whole. Here the Slavonic word is (*zdaniem*) and so is translated as "entities" in order to convey the sense of immovable property mainly church lands and any of the financial returns from it, and also to mean those persons living on it, i.e. serfs. Presumably the meaning was understood in Russia as legal documents such as immunity charters, for instance, reflect.

56 *glava* 23: novel 131.5, *Kormchaia kniga*, f. 315a. These forms of labor pertained to the селомъ, a village/dwelling on church property. The spirit of law in the text means to prevent the civil authority from exerting undue compulsion in the service of secular concerns.

57 See below Chapter 4 on immunity charters which granted fiscal immunity to ecclesiastical institutions with the exception of contributions to public works (*gorodnye dela*).

58 *glava* 23: novel 131.5, *Kormchaia kniga*, f. 315a.

59 The wills of the clergy may be found in many printed collections.

with their secular counterparts, without much compulsion<sup>60</sup> regarding the eventual disposition of the property. That is, although the church was to be the beneficiary in some instances, it received its share only after the rightful secular heirs had received their shares.

In *glava* 80, the law stated that those persons entering a monastery were to retain their personal estate and recommended that a will be prepared upon entering the monastery, especially if the monk had children. In Russia it seems that the practice was the same until the seventeenth century. This can be seen in the statute of the *Ulozhenie* which now forbade persons about to join a monastery from bringing with them their hereditary estate.<sup>61</sup> After entering the monastery, the monk was permitted at any time until his death to make legal instruments bequeathing his estate to his heirs. The provision directed that the monk should divide his estate among his children according to their rightful portion (часть), with the monastery receiving the remainder.<sup>62</sup> Should the monk die intestate, then the children were to get their lawful portion, and the monastery the residue.<sup>63</sup> This method of a monastery acquiring property is probably not as well-known as acquisition through donation (as in legal gift while living) or a bequest by will - both of which were especially popular throughout the Russian medieval period. Under Byzantine inheritance law, clerics, unlike their secular counterparts, had upon them some restrictions against acting as guardians of an estate or curators. The law specified that bishops and monks were forbidden to act as guardian (приставникъ) or curator (печалникъ), while priests, deacons and subdeacons were not disqualified from doing so.<sup>64</sup> In the case of gifts belonging to clerics, the law declared conditions upon these gifts to be invalid if the individual entered holy orders. For instance, if an individual was the recipient

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60 Though clerics (in the above case monks) were legally entitled to make bequests to their heirs, *glava* 49, novel 123.16, *Kormchaia kniga*, ff. 323a-323b encouraged clerics to donate property to the church for the salvation of the soul.

61 *Ulozhenie*, Hellie, 17.43. This provision also applied to widows who were to become nuns. The statute ordered that the hereditary estate was to be transferred to another's possession. In exchange the new owner had to financial responsibility to the monk or nun ("to feed and clothe them") until their death.

62 The text provided for the possibility of devising the estate equally among his children in which event the monastery was to receive one portion.

63 *glava* 80: novel 123.38, *Kormchaia kniga*, ff. 331a-331b.

64 *glav*" 33 and 34: novel 123.5, *Kormchaia kniga*, ff. 320a-320b.

of a dowry or an ante-nuptial gift, or an inheritance, and these gifts had conditions placed upon them, such as in the case of dowry or the ante-nuptial gift - conditional because of the expectation of marriage, the law said that the conditions were null and void once the individual became a member of the clergy.<sup>65</sup> In this event, should the individual remain in the monastery or hermitage, the gift was permitted to remain, too, with that particular establishment.<sup>66</sup> Legacies left to the church were also a concern of the law. The law provided that if someone left a legacy (for pious use) *покладѣ* in a testament, then it was the duty of the executor that it be given over within six months. In the event of a delay, all profit was to be given over as well, calculated from the time elapsed from the six-month deadline. The law prohibited the church from alienating annual legacies, but they could be sold as long as the price was not less than 35 years of income collected.<sup>67</sup>

#### *iv. Miscellaneous provisions of Chapter 42*

There are a few remaining provisions found in Chapter 42 of the *Kormchaia* which deserve to be remarked upon. They addressed topics not entirely related to the regulation of the clergy or ecclesiastical property, but apparently were viewed at the time as having such importance that they were further commented upon by Justinian and were incorporated into the *Collection of 87 Chapters*. On the subject of slavery, Justinian legislated in his *novellae* that ordination of a slave conferred upon him his freedom. For a slave who wished to become an ecclesiastic or a monk, the law provided that the condition of slavery would be removed from those slaves, who, with the permission of their master, wished to embrace the monastic life.<sup>68</sup> That a slave could be ordained, and that a master's permission was needed, were points which were confirmed by canon 4 of Chalcedon and Apostolic canon 82. In the Byzantine law, however, if such persons were subsequently to abandon the monastic life, they were to be returned to their former condition of servitude. This it seems was an innovation in the Byzantine law, imbuing the statute with some aspect of earlier Roman slavery law. If someone was ordained without

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65 More on laws regulating dowry and ante-nuptial gifts may be found below in Chapter 5.

66 *glava* 78: novel 123.37, *Kormchaia kniga*, ff. 331a-331b.

67 *glava* 26: novel 131.12, *Kormchaia kniga*, ff. 316b-317a.

68 *glava* 7: novel 5.2, *Kormchaia kniga*, ff. 308b-309a.

a master's permission, the master had one year in which to recover him. Russian law permitted a slave to become a cleric and also ordered the return of a slave who had illegally been ordained a cleric.<sup>69</sup> This was reiterated in the Russian civil law, as *Ulozhenie* 20.67 directed that a slave who took vows without the permission of his owner was to be returned to the owner if the owner wished to enforce the return. Serfs were likewise permitted to join the ecclesiastic orders, but the law stated that such an individual had to continue to till the soil as before *ИЛЛЕЖАЩЮ НА НИХЪ РАБОУТЪ И Ш РАНИЕ СОВЕРШИТИ*.<sup>70</sup> This, too, was not covered by the ecumenical or Apostolic canons, and as it seems an innovation of Justinian, ostensibly for the purpose of not depriving the Empire too greatly of its agricultural work force.

The following provisions, on those who ravished nuns, reviled the clergy, disturbed the sacred mysteries and profaned clerical dress, though relating to secular persons as the transgressors, are appropriate to the *Collection of 87 Chapters* as they relate to Justinian's belief in the necessity of honoring the clergy as expressed in his preface to novel six, as mentioned above. Ravishers (*БЛОУДАЪ СОТВОРИТЬ*) of nuns, deaconesses or holy women were to suffer the penalty of forfeiture of their property, and to suffer capital punishment, with the property going to the religious house of the women harmed.<sup>71</sup> This penalty was reduced in the later Byzantine *compendia*, where it was recommended that the punishment rather than execution was instead to be nose-slitting.<sup>72</sup> In the Expanded redaction of the *ZSL*, the punishment for fornication with a nun was having the nose cut off.<sup>73</sup> Persons who reviled (*ДОСАДЪ НАНЕСЕТЬ*) the clergy were to be punished and exiled. An individual who caused a commotion which prevented the completion of the sacred mysteries (*АЩЕ КТО*

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69 *Ulozhenie* Hellie, 20:67. On the subject of slavery in Russia, see R. Hellie, *Slavery in Russia, 1450-1725* (London, 1982).

70 *glav*" 50 and 51: novel 123.17, *Kormchaia kniga*, ff. 323b-324a. Possibly a textual error in the spelling of *ИЛЛЕЖАЩЮ*.

71 *glav*" 85, 86: novel 123.43, *Kormchaia kniga*, ff. 332b-333a. In the Slavonic text, decapitation has been substituted for the phrase 'capital punishment' - *МЕЧЕМЪ ГЛАВЪ ШЕЩИ*.

72 See Freshfield, *Procheiros nomos*, Art. 66, p 156.

73 *НОСА КЪМЪ ОУРЪЗАТИ*. Expanded *ZSL*, Art. 4, Dewey and Kleimola *Zakon sudnyi liudem*.

БЖЕСТВЕННА ТАИНА И БЖЕСТВЕНЮ СЛОУЖЕЃ СМЛАДТЕТЬ),<sup>74</sup> was to suffer capital punishment by the sword. Interestingly, these last two provisions were incorporated nearly fifteen centuries later into the *Ulozhenie* as part of the section, *On Blasphemers and Church Troublemakers*.<sup>75</sup> It is all the more interesting because these specific crimes appeared no where else in the Byzantine law contained in the *Kormchaia*, and so illustrates that the *Collection* was consulted well into the seventeenth century. Lastly, there was a provision against profaning the monastic or ascetic habit. Lay persons who profaned (поругатица) it by wearing it for non-religious purposes were to suffer corporal punishment and imprisonment.

We can see from the analysis above that the Byzantine civil ecclesiastical legislation contained in the *Collection of the 87 Chapters* would have provided for Russia a basic set of rules governing ecclesiastical immunity and ecclesiastical property. The institutional practices of the Russian Church share in common many similarities to the provisions of law described above. It owned extensive property and was accorded jurisdictional privilege. The following chapter will demonstrate how these elements in medieval Russia were incorporated into ecclesiastical immunity charters, and how this broad fiscal and jurisdictional immunity of the Russian Church was dependent for its support on the *Kormchaia*.

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74 *glava* 74: novel 123.31, *Kormchaia kniga*, f. 329b.

75 *Ulozhenie*, Hellie, Articles 1.2 and 1.3. These two crimes - reviling the clergy and preventing the completion of mass - are found as a single passage in the *Kormchaia* and the original Greek text, but were separated into two statutes when they were incorporated into the *Ulozhenie*.

## ***SUBJECTS ADDRESSED IN THE «COLLECTION OF EIGHTY-SEVEN CHAPTERS»***

The following table enumerates each of the eighty-seven chapters as represented by the Slavonic letter (ⱁ - ⱏ) as found in the *Kormchaia*. The corresponding citation for the text excerpted from Justinian's *novellae* follows in the next column. The subject descriptions represent my own categorization of the subjects addressed in this legal section.

A separate set of chapter headings describing the contents of that particular chapter (*glava*) in the selection may be observed in *Kormchaia ff.* 300b - 305b.

The Greek text corresponding to this *Collection* may be found in Pitra, *Iuris ecclesiastici*, Vol. II, 385-405. Pitra's work provides citations marking particular passages according to which extract of which *novella* they were taken from. The following table was compiled using this as a guide. The text of the *novellae* were then compared with the Slavonic text of the *Kormchaia*. Overall, the citations of Pitra corresponded with the Slavonic text, with a few deviations. The table below accurately cites which extract came from which of the *novellae*. As to how precisely the Slavonic text deviates from that of the original Greek is left to another study.

**TABLE 4**

CAPITULA	ΓΛΩΣΣΑ	TEXT FROM NOVELLA	SUBJECT
I	Α	novel 6, pref.	explanation of priesthood and empire
II	Β	novel 6.1§1-6	ordination of bishops and ecclesiastics
III	Γ	novel 6.2	bishops cannot be absent from their church
IV	Δ	novel 6.4	illiterates not eligible to become clerics
V	Ε	novel 6.66	rules on deaconesses
VI	Σ	novel 5, pref. and 1	on building of monasteries
VII	Ζ	novel 5:2 (intro)	on monks: slaves and freemen can be admitted
VIII	Η	novel 5:2§1	on monks: theft and refuge in monastery
IX	Θ	novel 5:4	on monks
X	Ι	novel 5:5,6	on monks: 5.5 property of monks and dowry of children of monks 5.6 property of monk who leaves
XI	ΑΙ	novel 5:7-9	on monks
XII	ΒΙ	novel 83, pref. & 1	ecclesiastics and law suits
XIII	ΓΙ	novel 46, pref.,1,2,3	alienation of ecclesiastical lands
XIV	ΔΙ	novel 120, pref & 6(1) & (2)	laws on ecclesiastical property
XV	ΕΙ	novel 120.6(2)	laws on ecclesiastical property
XVI	ΣΙ	novel 120.9	on the Church of Jerusalem
XVII	ΖΙ	novel 120.7(1)	monasteries cannot be transformed into civil dwellings
XVIII	ΗΙ	novel 56.1	on simony
XIX	ΘΙ	novel 57.1	on clerics abandoning churches
XX	Κ	novel 3.1, 3.2	on number of priests and charity
XXI	ΚΑ	novel 3.2	number of clerics
XXII	ΚΒ	novel 131.1,2,3	councils, precedence of patriarchs

*Subjects addressed in the Collection of Eighty-Seven Chapters*

XXIII	κΓ	novel 131.5	no tributes from the church except public works
XXIV	κΔ	novel 131.6	"prescription of 40 years" governing ecclesiastical establishments
XXV	κε	novel 131.10	laws governing testaments which order the building of a religious establishment
XXVI	κς	novel 131.12	legacies intended for pious uses
XXVII	κζ	novel 67 pref, 1&2	building of churches: on founders of establishments
XXVIII	κη	novel 123, pref, 1§1 and part of §2	consecration of bishops
XXIX	κθ	novel 123, 1§2 (part)	consecration of bishops
XXX	λ	novel 123, 1§2 (remainder)	consecration of bishops
XXXI	λα	novel 123.2	accusers of bishops
XXXII	λβ	novel 123.3	consecration of bishops
XXXIII	λγ	novel 123.5	guardianship/ testaments bishops and monks may not be guardians or curators; priests and deacons may
XXXIV	λδ	novel 123.5	guardianship/ testaments continued
XXXV	λε	novel 123.6	clergy cannot conduct secular business, except regarding church lands (e.g. lease)
XXXVI	λς	novel 123.8	bishop cannot go before a secular judge
XXXVII	λζ	novel 123.10	ecclesiastics cannot be present at public exhibitions; prohibitions against dice
XXXVIII	λη	novel 123.10	on bishops
XXXIX	λθ	novel 123.11	excommunication and communion
XL	μ	novel 123.11	a bishop may not strike another with his hand
XLI	μα	novel 123.11	imprisonment in a monastery for an expelled bishop who refuses punishment
XLII	μβ	novel 123.12	on priests
XLIII	μγ	novel 123.13	on priests
XLIV	μδ	novel 123.14	wives and clergy
XLV	με	novel 123.14	deacons and wives

XLVI	м5	novel 123.14	readers and wives
XLVII	м3	novel 123.15	how a decurian ( <i>riadnik</i> ) may be ordained
XLVIII	мн	novel 123.15	continued
XLIX	м6	novel 123.16	donation of property by a cleric to religious establishments
L	н	novel 123.17	how a slave or serf may be ordained
LI	на	novel 123.17	how a slave or serf may be ordained
LII	нб	novel 123.19	clerics control their own property
LIII	нr	novel 123.20	ecclesiastics and perjury
LIV	на	novel 123.21	ecclesiastics go before bishop in suits
LV	не	novel 123.21 (1)	jurisdiction: courts of civil magistrates and bishops courts
LVI	н3	novel 123.21 (2)	jurisdiction: civil magistrates cannot hear an ecclesiastical inquiry
LVII	н5	novel 123.21 (2)	metropolitan is to hear disputes between bishops
LVIII	нн	novel 123.22	jurisdiction: ecclesiastics and suits (sequence in kk off)
LIX	н6	novel 123.22	jurisdiction: ecclesiastics and suits (bond & security)
LX	з	novel 123.23	jurisdiction: ecclesiastics and suits
LXI	за	novel 123.23	jurisdiction: ecclesiastics and suits
LXII	зб	novel 123.24	jurisdiction: ecclesiastics and suits
LXIII	зr	novel 123.25	on apocrisarii ( <i>posolnitsy</i> ) a rank of the clergy
LXIV	за	novel 123.26	clergy acting as delegates cannot be sued while performing duties
LXV	зе	novel 123.27	monks and nuns summoned before court shall have attorney appointed, and do not have to leave monastery
LXVI	з5	novel 123.27	continued
LXVII	з3	novel 123.28?	criminal cause and clergy (courts)
LXVIII	зн	novel 123.28	payment of fees by clergy summoned in criminal and civil cases
LXIX	з6	novel 123.28	continued

LXX	ο	novel 123.28	continued
LXXI	οΑ	novel 123.29	prohibition against women in clerics' homes
LXXII	οΒ	novel 123.29	prohibition against women in clerics' homes
LXXIII	οΓ	novel 123.30	concerning deaconesses
LXXIV	οΔ	novel 123.31	disturbing sacred rites; reviling clerics
LXXV	οΕ	novel 123.32	rules regarding religious processions
LXXVI	οΣ	novel 123.33	monastic regulations
LXXVII	οΖ	novel 123.34	election of an abbot
LXXVIII	οΗ	novel 123.37	dowries. legacies bequeathed under the condition of marriage, to a person who joins a monastery.
LXXIX	οΘ	novel 123.38	disposition of a person's property upon entering a monastery
LXXX	π	novel 123.28	continued
LXXXI	πΑ	novel 123.39-40	betrothal contract, dowry, and the entering monastery
LXXXIII	πΒ	novel 123.41	disinheritance not permitted if child enters monastery
LXXXIII	πΓ	novel 123.41	parents cannot remove children from monastery
LXXXIV	πΔ	novel 123.42	disposition of the property of a monk who abandons his monastery
LXXXV	πΕ	novel 123.43	ravishers of nuns, punishment
LXXXVI	πΣ	novel 123.43	ravishers of nuns, property of the criminal
LXXXVII	πΖ	novel 123.44	laymen and actors shall not wear monastic habit

#### CHAPTER 4: ECCLESIASTICAL IMMUNITY AS EVIDENCE CONFIRMING THE JURIDICAL AUTHORITY OF THE *KORMCHAIA* - THE PRINCELY STATUTES AND RUSSIAN IMMUNITY CHARTERS

The first part of this chapter examines how the Princely Statutes set the legal precedent in Russian civil law for the later privileges granted in Russian immunity charters, and how these Princely Statutes were rooted in the law of the *Kormchaia*. An illustration of Byzantine legal influence upon the church law contained in the Statutes is provided in order to further demonstrate their direct Byzantine source. The second part of the chapter examines the privileges granted to church institutions by immunity charters through the seventeenth century, and in particular, how these grants differed in substance from secular grants. The legal basis upon which ecclesiastical immunities were founded differed in one great respect - that ecclesiastical immunities were not primarily political in nature and thus subject to political constraints. Of course, ecclesiastical immunities did serve a political purpose, and did ensure some measure of political allegiance through a reciprocal arrangement, but the grants in and of themselves were never intended to act as instruments of political allegiance. It is apparent that since the civil authority later asserted its right to curtail secular grants of immunity, whatever unwritten law which enabled them to exist in the first place was within the power of the civil authority. The civil authority, therefore, had within its power to abrogate this legal privilege, and to revoke the law itself - as is evidenced in the Muscovite civil codes. In contrast, the civil authority during this period did not abrogate the law which had brought ecclesiastical immunities into being, nor, apparently considered it within its scope of authority to do so. Therefore, the basis in law must have resided outside the prerogative of the civil authority. Secular grants, since they did not share the same basis in law as ecclesiastical grants, were in the scope of their privilege eroded during the Muscovite period. In contrast, ecclesiastical immunities were upheld in Russian law until the seventeenth century, the privilege remaining essentially untouched from a legal standpoint until the reign of Peter the Great.

The preceding chapters of this work, have demonstrated that the church in Russia possessed by virtue of the *Kormchaia kniga* a specific sphere of jurisdiction. Confirmation

for such jurisdiction in the Russian law may be found in the Princely Statutes (*kniazheskie ustavy*) of the Kievan period.<sup>1</sup> These Statutes were civil enactments which both detailed the privileges of the church and set down for the grand prince's populace in a rudimentary fashion, a summary of Christian law. The Statutes reflected in their composition the basic legal principles and legal provisions of ecclesiastical and Byzantine civil law as found in the *Kormchaia*. Contained in these Statutes were prescriptions concerning the proper relations between the ecclesiastical. That is, on such matters as jurisdictional domains, the special immunity of the clergy, and, just as importantly, divine law as it related to human kind. That these early civil enactments possessed a juridical value in Russia during the medieval period is evidenced in Russian immunity charters that were granted to ecclesiastical and secular persons and entities over the intervening centuries. The primary forms of Russian immunity charters were known as: *zhalovannye gramoty*<sup>2</sup>, *bezdannye gramoty*, *tarkhannye gramoty*, and *nesudimye gramoty*. All of these forms of immunity charters were granted by Russian princes during the medieval period. These were held by

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1 On the PRINCELY STATUTES, which include *Ustav kniazia Vladimira* (908-1015), *Ustav kniazia Iaroslava* (1019-54), *Ustavnaia gramota kniazia Rostislava* (1128-60), and *Ustav kniazia Vsevoloda* (1135-37), there have been numerous studies completed specifically discussing the origins of each as well as their juridical significance. On ROSTISLAV, see, Shchapov, *Kniazheskie ustavy i tserkov' v drevnei Rusi*, (Moscow, 1972), 136-64. The original may be found in *PRP*, Vol. 2, 244-46; on Vsevolod, see Iushkov, *Izsledovaniia*, and A. A. Zimin, "Ustavnaia gramota kniazia Vsevoloda Mstislavicha" in: *Akademiku Borisu Dmitrievichu Grekovu ko dniu semidesiatiletaia : sbornik statei*, eds., V. P. Volgin, et al. (Moscow: Akademii nauk SSSR, 1952), 123-31. The original may be found in *PRP* Vol. 2, 162-65; On the STATUTE OF IAROSLAV, the original may be found in *PRP*, Vol. 1, 265-72. On the Charter of Sviatoslav [1136-8] see V. L. Ianin, "Gramota kniazia Sviatoslava Ol'govicha 1137 g." in: *Feodal'naia Rossiia vo vsemirno-istoricheskom protsesse* (Moscow, 1972), 243-51. Other more general works, such as church histories, have analysed the Statutes as they related to church people (*tserkovnye liudi*) or to their defining the rights of the clergy. Such church histories include that of Golubinskii, *Istoriia russkoi tserkvi*, Vol. I; Filaret (Gumilevskii), *Istoriia russkoi tserkvi* (Moscow, 1893); Markarii (Bulgakov), *Istoriia russkoi tserkvi*, Vol. I (St. Petersburg, 1857). For a study on canon law which comments on the Statutes, see Pavlov, *Kurs tserkovnogo prava*. See also Sergeevich, *Lektsii i issledovaniia*; Ia. N. Shchapov, *Kniazheskie ustavy i tserkov, v drevnei Rusi XI-XIV vv.* (Moscow, 1972); V. A. Tsy-pin, *Tserkovnoe pravo* (Moscow, 1996); and A. Nikolin, *Tserkov i gosudarstvo istoriia pravovykh otnoshenii* (Moscow, 1997).

2 A *zhalovannia gramota* could mean any charter of grant, especially a grant of immunity where the immunity was judicial/administrative. A *nesudimaia gramota* granted judicial immunity. A *bezdanaia gramota* granted fiscal exemption from tribute - and later evolved into the type known as the *tarkhannaia gramota*, which was another type of fiscal immunity but with a wider fiscal exemption.

ecclesiastical establishments and by secular landlords.

This examination of Russian immunity charters focuses on how charters granted to ecclesiastical establishments were qualitatively different from charters granted to secular landholders. Ecclesiastical charters can be said to have been qualitatively different from secular charters in that their legal basis resided both outside the civil law and outside of the scope of authority of the Russian prince, grand prince or tsar. The ecclesiastical immunity charters had as their legal basis the canon law, and were also further supported by Byzantine tradition, law, and custom. The Byzantine tradition of granting immunities to ecclesiastical establishments is well-known among Byzantine historians, about which more will be mentioned below.

When one is speaking of immunity charters which granted judicial immunity, one could say that the princes, grand princes, and later tsars of Russia did not so much *grant* to ecclesiastical establishments authority and jurisdiction over their own church people (*tserkovnye liudi*)<sup>3</sup> and peasants residing on church land, as rather *confirm* what authority was already vested in the church and ecclesiastical authorities by virtue of the canon law. Following the model of the Princely Statutes, later Russian individual and limited charters of grant developed. The fiscal immunity of the church, while not specifically mentioned in the canon law, was addressed in the Byzantine law to some extent. As mentioned earlier in this work in Chapter 4 concerning ecclesiastical property, the Byzantine Empire strove to uphold as a legal principle the conservation of ecclesiastical property. This was viewed as one of the primary duties of the Emperor as *defensor fidei*. The reasoning behind this principle, as mentioned above, was to enable the church to support its clergy by means of economic self-sufficiency, and in so doing free the clergy from the burden of poverty to support the performance of the sacerdotal duties of the clergy. The performance of the sacerdotal duties of the clergy were necessary to bring to the Empire a concord from which good would follow and so further the creation of a truly Christian Empire. For as

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3 The earliest listing in a Russian document of church people is contained in the *Statute of Vladimir*, where in article 16 were listed: abbot (*igumen*), priest (*pop*) deacon (*d'iakon*) their children, priest's wife (*popadia*), those of the choir (*v klirose*), abbess (*igumen'ia*), monk (*chernets*), nun (*chernitsa*), woman who bakes the Eucharist (*proskurnitsa*), pilgrim (*palomnik*), physician (*lechets*), freed slave (*proshchenik*), manumitted slave (*zadush'nii chelovek*), wanderer (*storonik*), and the blind and lame (*slepets, khromets*) plus people in monasteries, hospitals, inns and refuges for wanderers and pilgrims.

Justinian noted in his preface to his sixth *novella*, when the clergy was free to pray and intercede to God on behalf of the Empire, the ensuing concord would be to the benefit of the Empire. The Byzantine Emperors over the centuries, for this reason, granted to ecclesiastical establishments fiscal immunity. Rosemary Morris in her examination of monastic exemption in tenth century Byzantium asserts that churches and monasteries had by this time complete exemption from taxes, a privilege which in her estimation had "long been established as a method of patronizing" ecclesiastical establishments.<sup>4</sup>

In Russia, immunity charters<sup>5</sup> were given to landholders both ecclesiastical and secular. The majority of early immunity charters, it seems, were granted to ecclesiastical landholders, and such charters would be addressed to a bishop, or to the head of an ecclesiastical institution such as a monastery.<sup>6</sup> After the death of Grand Prince Iaroslav in 1054 when the lands of Kievan Russia grew more decentralized immunity charters came to be granted by local princes to individual bishops, monasteries and other ecclesiastical

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4 Rosemary Morris, "Monastic Exemptions in Tenth and Eleventh Century Byzantium", in: *Property and Power in the Early Middle Ages*, (Cambridge, 1995), 207. Morris adds that under Byzantine law, establishments were viewed as having legal *personae*. Emperor Constantine VII Porphyrogenetos' 945/6 *chrysobull* which gave exemption to the monastery of Prodomos Leontia near Thessalonika specified that the *paroikoi* (dependent peasants) who inhabited the area should be exempt. The Emperor added a gift of non-tax paying tenants (*ateleis paroikoi*), who furthermore were not to have service obligations.

5 The earliest (or among the earliest) of Russian immunity charters dates from the twelfth century, and conferred on a monastery the right to collect tribute from its lands. *Gramoty velikogo Novgoroda i Pskov*, ed. S. N. Valk (Moscow, 1949), no 81: *Gramota velikogo kniazia Mstislava Vladimirovicha i syna ego Vsevoloda Novgorodskomu Iur'evu monastyriu na selo Byitsy...* For studies and or sources concerning immunity charters, see: N. Pavlov-Sil'vanskii, "Immunitety v udel'noi Rusi", *Zhurnal ministerstva narodnago prosveshcheniia*, 332 (Dec. 1900), 318-365, also published as a single volume (St. Petersburg, 1900); S. B. Veselovskii, *Feodal'noe zemlevladienie v serevo-vostochnoi Rusi*, I (Moscow, Leningrad, 1953), 5-12, and 110; I. I. Smirnov, *Ocherki politicheskoi istorii Russkogo gosudarstva 30-50x godov XVI veka* (Moscow-Leningrad, 1958), 337-341; S. Shumakov, *Gubnyiia i zemskiiia gramoty Moskovskago gosudarstva* (Moscow, 1895), 1-13; M. D'iakonov, *Ocherki obshchestvennago i gosudarstvennogo stroia drevnei Rusi* (Moscow-Leningrad, 1926), 165-169; H. W. Dewey, "Immunities in Old Russia", *Slavic Review*, 23 (1964): 643-659; for early ecclesiastical immunity charters see V. D. Grekov, *Feodal'naia derevnia Moskovskago gosudarstva, XIV-XVI vv.* (Moscow, 1935); and *PRP* - generally.

6 One proposed explanation for the disparity concerns the fact that ecclesiastical records were better preserved.

establishments.<sup>7</sup> The immunity charter was a legal document usually signed by the civil authority (in some cases by the ecclesiastical authority) confirming the right of a person or entity to have exemption from fiscal/service obligations and to have judicial/administrative immunity. One can also consider an immunity charter to be a grant of privilege(s). There were in Russia two main forms of immunity charters - those which granted limited immunity, meaning there were restrictions upon the grantee; and those which granted full immunity, meaning the privileges and exemptions extended to the grantee were complete in their scope with no major restrictions attached. It should be said that all immunity charters had some sort of restriction or obligation attached to them. It is only for the sake of distinguishing the types of grant that one may term some immunities "full" or "complete", and does not so imply that the grantee possessed any sort of absolute immunity as a sovereign lord.

Immunity charters are well known among western European historians, as they were an integral part of the feudal-beneficiary system.<sup>8</sup> Among Russian historians, the role of the immunity charter in Kievan and Muscovite Russia is comparatively less well-known. Frequently, examinations of Russian immunity charters are included as part of a larger study, centering on the question of power - whether an immunity charter signified the granting of authority by the prince or potentate or whether the immunity charter signified the confirmation of what was already present in the 'patrimonial state' - that large land owners already enjoyed juridical authority over persons living on their land, and so, the prince merely gave sanction the status quo and thereby confirmed those practices which already existed in customary law.

It can be said that during the medieval period Russia was more or less feudal-beneficiary in its political structure to the extent that seigniorial landownership and resultant privileges shared similarities in their basic structure to the better-known Western

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7 Ia. N. Shchapov, *Gosudarstvo i tserkov' v drevnei Rusi X-XIII vv.* (Moscow, 1989), 99. Shchapov states that mentions of landed property date to the first half of the twelfth century. See also R. G. Skrynnikov, *Gosudarstvo i tserkov' na Rusi XV-XVI vv.* (Moscow, 1991).

8 The term feudal-beneficiary is herein used being preferred to 'feudal', and so avoids all the outmoded historical connotations that the word feudal conveys, especially in view Soviet historiography on the subject. On immunities in Western Europe, see the recent study of B. H. Rosenwein, *Negotiating Space: Power, Restraint, and Privileges of Immunity in Early Medieval Europe* (NY: Cornell University Press, 1999).

form. At the least, it is generally accepted that an immunity in Russia was a valid legal privilege. The subject of immunities in Russian historiography has also been the object of examinations on 'feudalism' in Russia. Historical analyses of the Russian 'feudal' period find that parallels, however, cannot be drawn too closely, since the Russian political system was much less structured and lacked many of the more formalized reciprocal rights and obligations that Western seigniorial landholders owed to civil authorities in Western Europe. In contrast, studies which postulate that Russian charters of grant should not be treated as actual immunities, base this argument on the contention that Russia should not even be considered 'feudal' in its structure because, rather, Russia operated as a patrimonial state. The conclusions are based on the belief in the primordial rights of the patrimonial land owners that there existed in old Russia and into the medieval period no concept of property rights as understood in Roman law and, therefore, in the West; and so, for this reason, that any power distributed (especially as concerns secular landowners) which emanated from the prince in the form of a grant was an impossibility, because it is alleged that these landowners already had such privileges.<sup>9</sup>

There are two final points concerning ecclesiastical immunities. First, in all Russian immunity charters the right of the church authorities to judge the clergy and church people (*tserkovnye liudi*) was never rescinded, and was always implied no matter what the language of the text. Second, with regard to the judicial immunity of monasterial peasants, there existed a qualitative difference between peasants on ecclesiastical lands and the judicial immunity of peasants on secular lands. Secular landholders were at first accorded their privilege for the sake of administrative convenience, and because the privilege was also useful to the civil authority as a means of enforcing some level of reciprocity of political allegiance. While one may contend that the same was true of ecclesiastical judicial immunities concerning church peasants, that the central authority required political allegiance, and from a utilitarian standpoint found it more convenient to have local ecclesiastical landlords judge their own people, the supposition that these immunities were

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9 On feudalism in Russia, see for instance, N. P. Pavlov-Silvanskii, *Feodalizm v drevnei Rusi* (Moscow, 1923); B. D. Grekov, *Feodal'nye otnosheniia v Kievskom gosudarstve* (Moscow-Leningrad, 1935); A. A. Novosel'skii, *Issledovaniia po istorii epokh feodalizma* (Moscow, 1994); *Evoliutsiia feodalizma v Rossii : Sotsial'no-ekonomicheskie problemy*, ed., V. I. Buganov, A. A. Preobrazhenskii, Iu. A. Tikhonov (Moscow: "Mysl", 1980).

used to enforce reciprocity on the part of ecclesiastical establishments and hierarchs is more difficult to prove; and it would be incorrect to assume. This is because the Princely Statutes set the precedent, enshrining into Russian law the general immunity of monasterial peasants from the secular courts which was perpetuated over the following centuries. While it is true that certain obligations were later imposed on church people in contradiction to earlier immunities which had suspended this obligation broadly, no actual derogation of general judicial privilege occurred because of this.<sup>10</sup>

A parallel structure existed within the ecclesiastical sphere of jurisdiction itself, in that the metropolitan and archbishop also conferred grants of immunity on monasteries, preventing their own judicial personnel *desiatniki* (*decurions*) from interference. Immunity charters granted by the archbishop or metropolitan were similar to those issued by the civil authority. Whereas the civil authority prevented his officials from judging persons on church land, so too the church hierarch prevented his *desiatniki* from interfering with the judicial procedure of local monasteries. For example, the 1419 immunity charter issued by archbishop of Novgorod and Pskov to the Solovetskii monastery forbade his *decurions* (*desiatniki*) from having jurisdiction over the persons living on Solovetskii monastery land.<sup>11</sup> Immunity charters issued by the archbishops were usually judicial in type; those which included fiscal exemption were usually the prerogative of the metropolitan, and later the patriarch. It seems that where fiscal immunities were concerned, the metropolitan was not empowered to grant anything else aside from relief from tribute (*dan'*) that was owed to the church. Such relief excluded that *dan'* owed to the prince. The 1512 judicial-financial charter of Metropolitan Varlaam (1511-1521) to the Church of St. Vasilii Kesariskii and the monastery Gorogovets of Nizhnii Novgorod exempted the monastery from paying to the Metropolitan tribute (*dan'*) among other dues. It stated, too, that neither were his *desiatniki* to send for anyone on the monastery lands, nor judge them in anything. With these three provisions, the charter was essentially no different from the

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10 See below pages 118-119 concerning civil obligations imposed on monasterial peasants.

11 *Akty Solovetskogo monastyria, 1479-1571 g.g.* ed. I. Z. Liberzon [*Akty sotsialno-ekonomicheskoi istoirii severa Rossii kontsa XV-XVI vv.*- Akademiia Nauk CCCP] (Leningrad, 1988), number 11. Archbishop Genadii of Novgorod and Pskov wrote to Solovetskii monastery that his *desiatniki* were not to judge them in any matter: "*a tamo ikh desiatinnikom moim ne suditi ni v kakove dele*". See also number 52 of the year 1526. And also Valk, *Gramoty velikogo novgorod*, number 97 of the year 1459-1470 to Spassko-Verendovskii monastery.

judicial-fiscal immunity charters issued by the grand prince to church establishments.<sup>12</sup> This demonstrates that both the civil rulers and ecclesiastical hierarchs were under the law as local potentates endowed with the same abilities and rights to act as sovereign landlords.

### The Princely Statutes as they related to the jurisdictional immunity of the church, and other privileges granted

As was mentioned above, the provisions contained in the Princely Statutes concerning the fiscal and judicial immunity of the church set the precedent for the later immunity charters. The basic features of the Statutes are important to understand, especially as they reflected the legal principles and operation of divided jurisdiction of the *Kormchaia* and Byzantine law. The first of the Princely Statutes, the *Statute of Vladimir*, comes from eleventh century. It is probable that the *Statute of Vladimir* does in fact date from the time of Vladimir (c. 980-1015),<sup>13</sup> but the original has not come down to us, as the earliest extant copy comes from fourteenth century.<sup>14</sup> The most comprehensive study of the *Statute of Vladimir* was completed by S. V. Iushkov in 1926, who traced over 200 copies in various recensions of the Statute, most of them located in various legal collections (*sborniki*).<sup>15</sup> The earliest independent reference to the Statute in historical sources outside Russia is found in the work of Herberstein in his *Rerum Moscovitarum*

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12 Similar charters (all issued by metropolitans) may be found in *Akty feodal'nogo zemlevladieniia i khoziaistva XIV-XVI v.* vol. I, ed. L. V. Cherepnin (Moscow, 1951): numbers 35(1492), 133(1450), 135(1449), 136(1461), 137(1465), 138(1496), 139(1524), 142(1516), and 143(1527).

13 Richard Hellie, *Foreword*, in Daniel Kaiser, *The Laws of Rus'*, xx, states that the *Statute of Vladimir* was compiled in Kiev before 1011. Cf. also Ia. Shchapov, *Kniazheskie ustavy*.

14 S. V. Iushkov, *Izsledovaniia po istorii russkogo prava. Ustav kn. Vladimira*. (Novouzensk, 1926) reprinted in *Trudy vydaiushchikhsia iuristov: S. V. Iushkov* (Moscow, 1989), 71-335. An analysis of Iushkov's work may be found in S. I. Shtamm, "Sovietskie iuristy-uchenyie i pedagogi (S. V. Iushkov, 1888-1952 gg.)", *Sovietskoe gosudarstvo* 4 (1979):114-121.

15 Support for the juridical value of the Princely Statutes comes from their inclusion in various Russian legal collections. The Statutes were incorporated into many MS of the *Kormchaia*, which Iushkov availed himself of. Additionally, and less well-known is the fact that the Statutes were incorporated into the *Merilo pravednoe*. On the *Merilo* see above, p 20 and also note 24.

*Commentarii* of 1558.<sup>16</sup> Literature written about the Statutes up to the end of the nineteenth century was focused mainly on their inclusion in greater works such as the *Stepannaia kniga*<sup>17</sup> (Book of Degrees) and the Russian *Kormchaia kniga*.<sup>18</sup>

Some scholars have disputed the early origin of the Statutes of Vladimir and Iaroslav, some their validity altogether, while others have disputed their actually being enforced in Russia, arguing that they were not held to be legal documents before the fourteenth or possibly fifteenth centuries. Iushkov proposed that the legal provisions termed as church law in the *Statute of Iaroslav* were actually later accretions of the twelfth or thirteenth centuries, and that the central core of the original read much like the earlier *Statute of Vladimir*. Golubinskii in his examination of the *Statute of Iaroslav*, focusing on the system of penal payments in the Statute, came to doubt the authenticity of the Statute altogether.<sup>19</sup> Scholars who doubt the juridical validity of the Princely Statutes in the pre-Muscovite period typically base their arguments on the premise that it was only after the central authority established itself in Moscow following the consolidation of the Russian lands and the establishment of the Muscovite state, that the church in attempting to assert its authority through the formulation of an ideology, came to invoke the Statutes as a quasi-canonical documents.<sup>20</sup>

The *Statutes of Vladimir* and of *Iaroslav* granted broad privileges to the church without the specification of a geographical or institutional restriction such as one may find in later immunity charters. It would appear that the grand princes were attempting to grant a general immunity to the newly-established church in their capacities as representatives

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16 Iushkov, *Ustav kn. Vladimira*, 74 as in *Trudy*. A short history concerned with all literature on the *Statute of Vladimir* can be found on pp. 74-97. Original text of Statute also in *PRP*, Vol 1, 244-46.

17 The *Stepannaia kniga* or the "Book of Degrees" was composed circa 1563 by Metropolitan Makarii during the reign of Ivan IV. It recounted the history of Russia from the time of Vladimir. See original text in *Polnoe sobranie russkikh letopisei*, Vol. XXI, pts. 1-2 (St. Petersburg, 1908-13).

18 Iushkov, *Ustav kn. Vladimira*, 75 as in *Trudy*, his citation of Karamzin, *Istoriia gosudarstva rossiiskogo*, (1816), 482-485, concerning the Statutes as found in a *Novgorodskaia Kormchaia kniga*.

19 Golubinskii, *Istoriia russkoi tserkvi*, Vol. I, 628.

20 N. S. Suvorov, *Sledy zapadno-katolicheskogo tserkovnago prava*, 175-221.

of the civil order. Later princely charters such as that of the Prince Rostislav of Smolensk (1128-1160) were geographically limited and institutionally defined. These were usually directed to the bishop, according to him the same privileges - jurisdictional and fiscal immunity - which were embodied in the earlier Princely Statutes. The granting of a geographically limited immunity reflected the limits of the individual prince's authority and usually marked the occasion of the establishment of a bishopric. There appears to have been a basic pattern to these princely charters or *ustavy*, that once a bishopric was established, afterwards followed a civil enactment confirming the privileges of the church in that same geographic area.

The legal basis of the Princely Statutes rests upon law contained in the *Kormchaia kniga*, and so one frequently finds among the Statutes references made to the *nomokanon* and canon law. It is certainly not merely a point of rhetoric since the confirmation of the jurisdiction of church courts by the Russian princes had its basis in canon law. It was no mere custom or deference to the church which provided the legal basis of these charters, but rather the canon law itself. In accepting Christianity, and so the foundations of the Christian 'state', (a process essentially no different from that which other areas of the world experienced during the time of their Christianization), the Russian princes also accepted what law accompanied the church. Thus we see the *nomokanon* invoked as the reason for why privileges were being accorded to the church. In the *Statute of Vladimir*, it is said that 'having opened the *nomokanon*', it was discovered that neither the prince and nor his judges should have jurisdiction over certain cases belonging to the church: "*Po tom, razverz'she grets'skyi nomokanon i obretokhom v nem', ozhe ne podobaet' sikh sudov i tiazh' kniaziu suditi, ni boiarom ego, ni sud'iam.*" Prince Vladimir wrote that for this reason he had given to the church, metropolitan and all bishoprics their cases (jurisdiction): "*...dal esm' ty sudy tserkvam, mitropolitu i vsem piskupiiam...*"<sup>21</sup> The *Statute of Iaroslav* also made reference to the *nomokanon*, and stated that it was for reason of the laws of the *nomokanon* that the church had received its cases in which neither the prince nor his officials were to judge: "*...slozhikhom grecheskyi nomokanon,*

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21 *Statute of Vladimir*, synodal copy, articles 4 and 5. Kaiser, *Laws of Rus'*, 42.

*ezhe ne podobaet sikh tiazh' suditi...Dal esm' mitropolitu i episkopom...*"<sup>22</sup> The legal foundation of judicial privilege in canon law is further supported in the phrase which stated that temporal rulers were not to interfere in the Metropolitan's court and church courts, since to them authority had been given according to the canons of the Holy Fathers. Secular persons were forbidden to transgress the Prince's ordinances with regard to ecclesiastical jurisdiction (*[ne] porushaiut' moia riady*) or to interfere in the court of the Metropolitan (*v''stupiat' v sud mitropolich'*), because these ordinances were given by the Prince to the church in accordance with the canons of the Holy Fathers (*po pravilom sviatykh otets*).<sup>23</sup> The stereotype phrase in this and other Princely Statutes is: *[ne podobaet] sikh sudov i tiazh' kniaziu suditi* - it is not appropriate that the prince judge these cases. The *Statute of Prince Vsevolod* expanded on the idea that the authority to judge ecclesiastical cases did not belong to the prince through the use of the word *dr'zhati*. The Statute, after prefacing the text with reference to the *nomokanon*, explains that secular officials were prohibited from judging certain cases as neither the prince, nor his children, nor his lieutenants, nor his *boiars*, nor his stewards, nor *decurions*, have the power (*ne dr'zhati*) [to judge].<sup>24</sup> This text also has more expansive language explaining the legal basis of the jurisdictional immunity of the church in articles 10 and 21. The articles underscore the legal basis of the jurisdiction as residing in the ordinances of the first Emperors and the seven ecumenical councils: *A to dal esm' po pr'vykh tsarev uriazheniiu, i po vselen'skyikh sviatykh 7[seven] s''borov' velikykh sviatitel'*.<sup>25</sup>

## "Church law" in the Princely Statutes

In addition to the granting of fiscal exemptions and jurisdictional immunity, the

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22 Lit. "We have compared the Greek nomokanon". *Statute of Iaroslav*, archeographic copy, article 1. Kaiser, *Laws of Rus'*, 45.

23 *Statute of Iaroslav*, article 58. Kaiser, *Laws of Rus'*, 50.

24 *Statute of Prince Vsevolod*, article 3. Kaiser, *Laws of Rus'*, 59. The article on the *nomokanon* says that "we have found in the Greek *nomokanon*..." ("*iz''obretokhom v grecheskom nomokanone...*").

25 *Statute of Prince Vsevolod*, article 10. Kaiser, *Laws of Rus'*, 61. Article 21 repeats article 10 of the Statute. Saying that the church courts were established according to the arrangement of the first emperors and princes, and according to the canons of the Holy Fathers.

*Statute of Iaroslav* included prescriptions which have been termed "church law".<sup>26</sup> These prescriptions were codifications of various ecclesiastical laws common to the Christian church. That there were in fact some aspects of indigenous custom overlaid on various of these church laws, has led some scholars to argue in favor of the view that the church merely "usurped" traditional family law and custom which existed in Kievan Rus'.<sup>27</sup> This view comes about for two reasons. Firstly later Soviet studies discounted the possibility that these laws in the Statute represented a wholesale adoption in Rus' of Christian canon law because this idea stood in contradiction to the Soviet paradigm based on the principles of politics, power and ideology. This Soviet paradigm held that the church existed as a rival power institution to the 'state'. This view assumed that from the civil authority originated all power and authority, which merely ceded jurisdiction through grant to the church, rather than such jurisdiction being vested in the church by virtue of the canon law itself. For example, Hellie's assertion that church law in Kievan Rus' contained in the Statutes gave the church "control over all ideology"<sup>28</sup> misinterprets the fact that the church upon Christianization already had such control. One would be better served understanding that it was not so much ideology, as dogma and thus Christian law, that the church enforced among the populace through its code of canon law. In acting within the limits set out in canon and Byzantine law, the church also formally endowed the civil authority with a greater power. Rather than diminishing the role of the civil authority, it raised it. Formerly, the civil authority, was merely concerned with enforcing the basic customary rules governing society at that time (i.e. settling disputes [bloodwite] and keeping order), and with the collecting of tribute and fines (compelling allegiance by economic means). Now, with the acceptance of Christian law (canon law) the jurisdiction

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26 See for instance J. Martin, *Medieval Russia, 908-1584* (Cambridge: Cambridge University Press, 1995), who continues the tradition of employing this term. The term, in differentiating "church law" from an indigenous law, gives to it the character of alien law, and implies that it was something which existed without a basis in real law. The implication is that indigenous Russian law was somehow subsumed in it and, hence this "church law" had an aspect of illegitimacy, and casting doubt on its juridical value in Russia. By this phrase is implied also that the provisions were later accretions made to the Statutes by the clergy.

27 See for instance Shchapov, *Gosudarstvo i tserkov' v drevnei Rusi X-XIII vv.* (Moscow, 1989), 59.

28 Hellie, *Foreward*, in Kaiser, *Laws of Rus'*, xxi.

of the civil authority penetrated more deeply into society than it had previously. Because the church had authority over more numerous aspects of society, so necessarily did the civil authority, for it was the duty of the civil authority to administer punishment for the preservation of the faith and Christian society. This function of the 'state' in Christian societies had existed since the time of Emperor Constantine in the fourth century. One can see in the various juridical documents of the period that Kievan Rus' shared much in common with other Christian societies in this respect, that civil punishments were decreed for transgressions committed against the Christian law.

An aspect of "church law" in the *Statute of Iaroslav* demonstrating its affinity to the *Kormchaia*

One purpose of this chapter is to re-evaluate work already established with regard to analyses of the Princely Statutes and immunity charters in light of the proposition that the *Kormchaia* served in Russia as a source of law, and gave to Russia a political system based on the Byzantine model of divided spheres of jurisdiction. A subsidiary purpose of this chapter is to set out more concretely evidence usually only vaguely referred to in monographs as "the Byzantine law", or "Byzantine legal influence", or "inherited from Byzantium". While it is generally accepted that the church law of the *Statute of Iaroslav* was based on Byzantine and canon law, few textual studies have been devoted to this subject.<sup>29</sup> Here follows an illustration of what relationship the Byzantine law had to the provisions of the "church law" of *Statute of Iaroslav*. While it is not within the scope of this chapter to present an actual textual comparison of the *Statute of Iaroslav* with the *Kormchaia* or earlier Greek manuscripts, an examination may be made nevertheless.

The following section will illustrate the influence of Byzantine law on the church law of the Statute using as an example article 56 of the *Statute of Iaroslav*. Article 56 pertained to divorce and described the particular reasons under which a man could divorce his wife. Laws on divorce were first written into the canon law, themselves basically repeating what was contained in the New Testament. These were later expanded on in the

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29 One major study concerned with textual analysis was completed in the nineteenth century, published in a source now not easily obtained. See K. Mysovskii, "Drevnee russkoe tserkovnoe pravo v sviazi s pravom vizantiiskim" *Pravoslavnyi sobesednik* (1862), pt. 3: 3-31.

Byzantine civil law first by the Emperor Justinian. The same laws were later incorporated into the Byzantine *compendia*, the *Ecloga* and the *Prochiron*. The specific just causes for divorce elaborated on by Justinian were rooted in the Roman past as well as in Christian law, but many of them were not named in the ecclesiastical canons of the ecumenical councils, nor were they mentioned in the gospels, nor by the church fathers. The primary, and usually only, reason given in canon law for a just divorce was for reason of adultery, this was so stated in Nicaea I canon 46 and in the canons of St. Basil. Roman law was much more liberal in permitting divorce requiring merely common consent, and so Justinian and the early Emperors by comparison probably considered their legislation severely restrictive on divorce.<sup>30</sup> The other reason which might explain the addition of these extra-canonical causes for just divorce in Byzantine law has to do with marriage being viewed under the law as a contractual arrangement, and so any great violation of this contract would have been grounds for divorce. The first major legal changes to divorce in the Byzantine Empire were set down by Justinian in novel 117 (particularly Chapters 8, 9, and 13) which listed the reasons for which a just divorce could be obtained. These legal provisions were later incorporated into early Byzantine nomocanonical collections such as the *Collectio Tripartita* and the *Collection of 87 Chapters*.

The illustration of the influence of Byzantine law on Article 56 of the *Statute* will compare the provision as found in the *Statute* to the relevant text of Chapter 44 of the printed *Kormchaia*, derived from novel 117 and to the relevant text of Chapter 49 of the printed *Kormchaia*, translated from the *Prochiron*. Table 5 below provides a direct comparison.

The text of Justinian's novel 117.8 and 117.9, as found in the *Kormchaia*, constitutes *gran'* 18, *glava* 4 within Chapter 44 of the printed *Kormchaia*.<sup>31</sup> This text, unlike many of the other fragmentary and corrupted excerpts from the *Corpus iuris civilis* present in Chapter 44 of the *Kormchaia*, is clear and the text's integrity is true to its source. In the *Ecloga*, the law on divorce comprises title 2 under the heading of marriage, especially articles 17-22, which speak on the dissolution of a marriage. In the *Prochiron*,

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30 Though divorce by common consent was generally forbidden by Justinian, exception was made for persons who wished to separate "by the desire of living in chastity". Novel 117.10, as in Scott, *The Civil Law*, Volume 17, 57.

31 *Kormchaia kniga ff.* 361a-362b.

divorce constitutes its own title, that is title 11. Title 11 of the *Prochiron*, chapter 5 lists the same reasons for divorce which are specified in novel 117 of Justinian. Both the novel of Justinian and the articles contained in the *compendia* both provided for the dissolution of marriage by either the husband or the wife, in that either party could initiate the proceeding without civil disability. The text of the *Statute of Iaroslav*, provided only the reasons for which a husband could divorce his wife, and so the focus of investigation will only be with regard to what was contained in the Statute in relation to Byzantine sources as they occur in the *Kormchaia*.

Both Justinian's novel 117.8,<sup>32</sup> which names the reasons a husband could divorce his wife, and the *Prochiron*, contain six reasons for which a husband could with just cause divorce his wife. Both of these texts list in the same order the wrongs committed by a wife, which could result in a notice of repudiation. The *Statute of Iaroslav* follows this same order too with one exception. The text of the Statute differs in some places from its Byzantine source, having been abbreviated or altered in some manner, in ways which will be discussed below. First among the reasons a husband was permitted to divorce his wife was if she was aware of a plot against the government, Emperor or sovereign, and did not inform her husband of it: *ѡЩЕ НА ЦРѢВО СОВѢЩАВАЮЩИХЪ НѢКНІХЪ, ОУВѢДАВШИ ЖЕНА, И СВОЕМОУ МОУЖУ НЕПОВѢСТЪ.*<sup>33</sup> Novel 117.8 and *Prochiron* 11.5 both follow with the exception that if a wife informed her husband and he did not report the plot, that the husband could not therefore obtain a divorce.<sup>34</sup> In the *Statute of Iaroslav*, article 56, the first cause does not include this exception.<sup>35</sup> The second reason for which a husband could

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32 Scott, *The Civil Law*, volume 17, 54-55.

33 *Kormchaia kniga* 1653, f. 427 b, *glava* є.

34 Text from *Kormchaia kniga*, chapter 49, *gran'* а (11) corresponds to the *Prochiron*, Title 11.5. In the *Kormchaia*, the arrangement differs from that of the *Prochiron*. In the *Prochiron*, the reasons for divorce are listed within Title 11.5. In the *Kormchaia* text, they are each listed as *glavy* and are individually assigned a letter (number). So *Prochiron* Title 11.5, part 1, is found in the *Kormchaia* text as *gran'* а, *glava* є; *Prochiron* title 11.5, part 2 is listed in the *Kormchaia* as *glava* з and so on.

35 Cause (*vina*) 1, *Statute of Iaroslav*, article 56, Kaiser, *Laws of Rus'*, 49: *Ashche uslyshit' zhena ot inykh liudei, chto dumaiut' na tsaria ili na kniazia, a togo muzhiu svoemu ne skazhet', a posle oblichitsia, razluchiti ikh.* The *Kormchaia* text specifies a plot as against the kingdom or empire (*tsarstvo*), the *Statute of Iaroslav*, specifies the plot either as against the tsar or prince.

divorce was for the crime of adultery. Novel 117.8 and *Prochiron* article 5, part 2, both stated that a husband had first to produce a written charge of adultery against his wife, which if proven, meant he was entitled to a portion of the dowry and ante-nuptial gift. This penalty was followed by specific rule on how the dowry was to be divided depended on if there are children or not.<sup>36</sup> The crime of adultery as it was written in the *Statute of Iaroslav*, required only that the crime be known and that a case against the wife be initiated with witnesses.<sup>37</sup> The third cause was in the case where a wife plotted against the life of her husband, or if she knew that others plotted and did not warn him. All the sources, novel 117.8 the *Prochiron*, and the *Statute of Iaroslav* include similar legal provisions.<sup>38</sup> The fourth cause for divorce listed in the *Statute of Iaroslav* was if a wife without her husband's permission ate, drank, or slept outside the house.<sup>39</sup> The fifth cause listed in the *Statute of Iaroslav*, stated that a husband could divorce his wife if she attended dances (*khoditi po igrishcham*) without his permission. This differs in wording from the original *Prochiron* text and that of novel 117.8, both of which forbade bathing with strange men (со внѣшними мужчи пиетъ, и мѣется спими въ бани).<sup>40</sup> It is not clear why the authors of the *Statute* altered the wording of this section, but it conforms with the *novel* and *Prochiron* which aimed at forbidding Hellenistic practices. The last and sixth cause for divorce in the *Statute of Iaroslav* concerns robbery. This is the only one

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36 Both specified that the husband was entitled to a 1/3 if there were no children, and if there were children the whole of the dowry should be kept for them. The *Kormchaia* text f.427b, *glava 5* preserves the same integrity of text as in the *Prochiron*.

37 *Statute of Iaroslav*, article 56 *vina 2*, Kaiser, *Laws of Rus'*, 50: "Ashche muzh' zastanet' svoiu zhenu s ljubodeem, ili uchinit' na niu dobrymi poslukhy ispravu..."

38 The legal provisions of the texts are similar, but the phraseology differs. In *Kormchaia*, f. 428b, *glava 3* the text states: "Ще кимъ любообразомъ, или зелиемъ, или инѣмъ чимъ жена на зивоу мужа своего совѣщаетъ, или инѣхъ се творящихъ свѣдѣци, мужъ своему не вить." The text of the *Statute of Iaroslav* says: "Ashche podumaet zheni na svoego muzha zeliem, ili inymi liud'mi, a ona imet vedati, chto muzha eia khotiat' ubiti, ili umoriti, a muzhiu svoemu ne skazhet', a naposled' ob"iavit'sia: razluchiti." The *Kormchaia* text elaborates on the method of attempting to kill the husband, and specifically names poison (*zeliem* - with poison), Kaiser, *Laws of Rus'*, 50, article 3.

39 *Statute of Iaroslav*, *vina 4*, Kaiser, *Laws of Rus'*, 50, "Ashche zheni bez muzhnia slova imet' s chuzhdiimi liud'mi khoditi ili piti ili iasti, ili oproche domu svoego spati..." This is the fifth cause in the *Prochiron* and novel 117.

40 *Kormchaia*, f. 428a, *glava 11*. This is the fourth cause listed in the *Prochiron* and novel 117.

of the causes which does not to have been directly descended from the Byzantine legal sources. The *Prochiron* and novel 117.8 concern prohibitions against a woman frequenting public exhibitions or the theatre without her husband's knowledge, and have nothing to do with the crime of robbery.<sup>41</sup> Since the *Ecloga* and *Prochiron* in the translation of Freshfield contains references to the circus, the Hippodrome and theatres of low resort, it is possible that in Russia the clergy found these words meaningless and inapplicable and substituted in the Statute something more appropriate.

### Specific elements contained in the *Princely Statutes* and ecclesiastical immunity charters

A Russian immunity charter usually first stated the reason for which it was being given. Typically, a bishopric was being created, a church or monastery was being founded, or a donation of land was being made by the prince. Following this in a charter a number of privileges being given to the grantee or beneficiary were usually enumerated. There were usually five frequently occurring forms of grant among Russian charters which are able to be distinguished, though not all, however, were always written into a single charter. First, sole judgement was given to the church or monastery (that is, cases were to be heard in the hierarch's court) in matters of the church, and thus gave jurisdiction to the church over the clergy; which included as well, jurisdiction over secular persons living on church lands. Though not spelled out specifically in charters, the judicial immunities granted to the church governed those areas already expressed in the *Statute of Vladimir*, and were so implied.

Judicial immunity charters which were granted to ecclesiastical establishments typically in their language reserved to the grand prince the right to judge monastery people, *liudi* and *krest'iany* - secular persons on church land - in only those cases concerning murder (*dushegubstva*), theft (*tat'ba s polichnym*), or brigandage (*rozboi*); the remainder were within the jurisdiction of the head of the ecclesiastical establishment, or church hierarch. As an example, an immunity charter of 1539 granted by Ivan IV to

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41 *Kormchaia ff.* 428a-b, *glava* 1. "ѡще на конное оуристаніе, или на позорища, или на ловы изыдесть, жоже се позоры дѣюши, невѣдущѣ, или возбраняющѣ мѡужеви", a translation close to that of the *Prochiron*.

hegumen Aleksei of the Solovetskii monastery freed from his jurisdiction persons living on the land in *Spassko vygoreskii pogost*. His officials, the charter stated, were not to judge *liudi* and *krestiani* in anything except brigandage and theft: "...*namestnitsy nashi nougorodtskie, i volosteli vygozerskie tekh ikh liudei i krest'ian ne sudiat ni v chem, oprich' rozboia i tat'by s polichnim...*"<sup>42</sup> Charters often varied in their terminology regarding which crimes were not subject to ecclesiastical authority. Sometimes all three terms were used within a single charter, on other occasions only one or two of the terms. In some charters the exception was not specified at all, either because it was so well known, or because the exception was written into statutory law.<sup>43</sup> The crime of theft which was reserved to the civil authority was that which was described in the law as "*s polichnym*", that is, "red-handed", with the understanding that the individual committing the crime had been caught in possession of the stolen property. It is unclear as to what variety of situations such a term would have taken into account. However, it most likely has some connection with the concept of manifest theft derived from the *Corpus iuris civilis* found in Chapter 44 of the *Kormchaia*. Why the term for manifest theft in the Slavonic as in the *Kormchaia* (ІАБАЕНАА) differs from the term of common usage in Russian immunity charters is not known<sup>44</sup>

In the event that a secular person had a suit against a person on monastery or ecclesiastical land, the Russian law provided for a mixed court at which representatives of both jurisdictions would be present. Those immunity charters known as *zhalovannye nesudimye* usually included a stereotype phrase following the grant of general judicial immunity which described the reasons for and terms of mixed courts: "*A sluchitsa sud smestnoi tem ikh manastyrskim liudiam i krest'ianom s volostnymi ili z gorodtskimi*

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42 This is one such example: *Akty Solovetskogo monastyria 1479-1571 g.g.*, no. 75. This is a *zhalovannaia dannia i obel'no-nesudimaia gramota*.

43 For an example of no excepted crimes being specified in the text of a charter, see that of 1580 number 212 in *Akty Suzdal'skogo Spaso-Evfim'eva monastyria 1506-1608 gg.* (Moscow, 1998). [hereafter *Akty Suzdal'skogo*].

44 In the *Digest*, a theft was explained as either being manifest or not manifest. A manifest theft was said to have occurred when the thief was either caught in the act, or was in possession of the property before "he [had] taken it to its intended destination". An action of theft could be taken even if a thing that was stolen no longer existed (including a dead slave), and the thief could be sued by *condictio*. [Ulpian, *Sabinus*, book 42 as in 41, Dig. 47.2§46]. An action of theft could also be taken in any matter in which property was stolen, including slaves.

centuries). A new obligation of the fifteenth century, for both ecclesiastical and secular peasants, was the obligation to participate in *gorodnye dela* (city fortification work), but this obligation was sometimes made an exemption.<sup>50</sup> There is a similar obligation referred to in an excerpt from *novella* 131 which is contained in Chapter 42 of the *Kormchaia kniga*.<sup>51</sup> It is likely that contributing to public works, such as defenses was considered an obligation which could be imposed by the civil authority without undermining the integrity of an immunity. In Byzantine immunities, the peasants could be freed from certain service obligations as well. One of these service obligations was *katoiktisia* (construction and upkeep of fortresses).<sup>52</sup>

Second, a typical charter granted exemption to the grantee, including anyone residing in his jurisdiction from paying tribute (*dan'*). Early immunity charters originally entitled the grantee to retain the tribute (*dan'*) collected from his own lands. Later charters, while not specifying this right, implied it, at least it is believed until the fifteenth century. It was in the fifteenth century that charters began to distinguish among different types of incomes, fees and obligations, and it was then that the general fiscal immunities granted to a landlord were restricted, in particular, the right of the landlord to *dan'*. This right was restricted by means of the grantor setting a time limit on the immunity - no longer granting them in perpetuity, and instead limited the time during which a landlord could collect *dan'*. The Russian scholar S. M. Kashtanov has written extensively concerning this point and states that by the second quarter of the fifteenth century complete secular fiscal immunities were replaced by limited or temporary immunities which disallowed exemption from payment of direct taxes.<sup>53</sup> What can be seen in this

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50 The term common to fifteenth century was *gorodnye dela*; in sixteenth century charters, the term was *gorodovye dela*. S. M. Kashtanov, "Feudal Immunities in Russia", *Slavonic and East European Review* 49 (1971), 241, note 45.

51 Novel 131.5. As discussed above. See page 90 and note 57.

52 Morris, "Monastic Exemptions", 208. Other obligations and duties included *chorton* (supply of forage) and *posodion* (charges for upkeep of military officials), 208.

53 Kashtanov, "Feudal Immunities", 238. See also Kashtanov, "Otmena tarkhanov v Rossii v seredine XVI veka", *Istoriia SSSR* 6 (1986): 40-60. See the example in *Akty sotsial'no-ekonomicheskoi istorii Severo-vostochnoi Rusi*, Volume 2 (Moscow 1958), number 48. Kashtanov's study emphasized the Beloozero princes of this period, but draws a more generalized conclusion from the sample.

*liudmi, i namestnitsy nashi nougorod'tskie, i volosteli vygozerskie tekhn ikh liudei i krest'ian sudiat, a igumen ili ikh prikazshchik s nimi zhe sudit...*"<sup>45</sup> Rules on mixed courts were elaborated on for the first time in Russian civil codes and decrees during the sixteenth century.<sup>46</sup>

Judicial immunity also meant that the grantee and all persons on his land were free from administrative interference. Judicial immunity implied that there was a geographically definable zone where neither the civil authority, nor its agents could reach.<sup>47</sup> It is probable that immunities in Russia in this respect were much like those in Western Europe, where representatives of the civil authority were prohibited from trespassing upon the landed estates and establishments. Language in the charters limiting administrative interference was quite clear. For example, a 1479 charter forbade the grand prince's officials from entering any part of church lands: "*A nashim boiarom novgorodskim, i korel'skim detem, i inomu nikomu v te ostrovy ne vstupatisia v stradomuiu zemliu...*"<sup>48</sup> An alternate form of this prohibition expressed the order that no civil officials were to send for persons on monastery land: "*ne emliut i ne vsylaiut k nim ni po schto*".<sup>49</sup> From the charters one can tell also what sorts of service obligations those living on church lands were exempted from (taking into consideration that this privilege varied in scope over the course of the

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45 See for instance the 1539 *Zhalovannaia dannaiia i obelo-nesudimaia gramota* of Ivan IV to Solovetskii monastery concerning land in the Vygozerskii uezd. *Akty Solovetskogo monastyria 1479-1571 g.g.*, number 75. See also charters 85, 130, 153, 167. Similar charters may be found in *Aktyfeodal'nogo zemlevladieniia i khoziaistva: akty Moskovskogo Simonova monastyria (1506-1613 gg.)* ed. L. I. Ivin (Leningrad, 1983), numbers 112 and 147; *Akty Suzdal'skogo Spaso-Evfim'eva monastyria 1506-1608 gg.*, numbers 36, and 64. All these are from the sixteenth century during the time of Ivan IV.

46 See *Sudebnik 1550.30*; and *Sudebnik 1589.77*. Article 77 may be found in *Sudebnik tsaria Feodora Ioannovicha 1589 g.*, ed. S. Bogoslovenskii (Moscow, 1900). Related laws also appeared in decrees of 1533, 1538, and 1539.

47 Not only monasteries owned land, but cathedrals and major churches owned villages and occasionally towns. Shchapov, *Gosudarstvo i tserkov*, 100. It seems in Russia, like other European societies, that there were attached to churches, as well, geographically defined zones which were granted administrative immunity.

48 *Akty Solovetskogo monastyria 1479-1571 g.g.*, number 1. Grand Prince Ivan III forbidding his *boiars* and other officials from entering (*ne vstupatisia*) the islands so named in the charter belonging to Solovetskii monastery.

49 See for example, number 212 of 1474 in *Aktyfeodal'nogo zemlevladieniia i khoziaistva I*, Cherepnin.

limiting or restricting of fiscal immunity was the direct result of the trend toward centralization in the Muscovite period<sup>54</sup>

Whether or not the landlords of the church at some time paid direct taxes to the prince is a point of discussion among historians. It seems that in the early days of the church according to the *Statutes of Vladimir and Iaroslav*, the church was exempt from paying direct taxes, which was at that time in kind, solely tribute. Later, it appears, the ecclesiastical landlords did not have an exemption from the payment of direct taxes, and such were collected from the quit rent (*obrok*) of the tenant peasants and a portion from other dues the civil authority permitted the landlord to enjoy. It should be noted however, that in this period, the limiting of fiscal immunities was confined mainly to the lands under Muscovite princes.<sup>55</sup>

Early fiscal immunities, *bezdannye gramoty* were replaced by *tarkhannye gramoty* when taxes, fees and service obligations became more differentiated. As this affected ecclesiastical landlords, some charters exempted the people attached to monastery land from certain taxes and services. Some exemptions were written into grants which were perpetual. More commonly those that granted a broad exemption from extra duties, that is grants which exempted persons above and beyond the tribute payments (*dan'*) and some which allowed *obrok* to continue to be collected by the ecclesiastical establishment were in the nature of a short term grant. This is especially common among *zhalovannye l'gotnye gramoty*, which often exempted persons on church land from all dues, and service duties for the populating of sparsely settled lands. The 1514 charter granted by Vasilii Ivanovich to Spaso-Evfim'ev monastery exempted its people and peasants from military service, post taxes, city fortification work, and payments to local officials (e.g. *namestniki*).<sup>56</sup>

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54 Kashtanov, "Feudal Immunities", 236.

55 Other, lesser appanage princes did not limit fiscal immunities. But the point is made, that where the growth in political power and centralization occurred, there was the general tendency on the part of the civil authority to limit immunity in various ways in particular financially. Kashtanov "Feudal Immunities", 243.

56 *Akty Suzdal'skogo Spaso-Evfim'eva monastyria*, number 8: the people were not to pay or perform the following: "*ni pososhnaia sluzhba, ni iamskie dengi, ni gorodovoe delo, ni portnoe, ni tukove, ni namestnichy kormy, ni inye nikotorye poshliny na god.*" Two of the more important exemptions in this phrase are military service (*pososhnaia sluzhba*) and city fortification work (*gorodovoe delo*). In this particular charter, the exemption was to stand for a year. Number 20, *ibid.*, of the year 1523 specified similar provisions exempting persons from all service, taxes, and

Other charters gave certain service/fiscal exemption on the short term, while still requiring military service.<sup>57</sup>

Third, a typical charter usually conferred a grant of fines to the grantee which were due him - either being generated out of his jurisdictional competence or from within his own domain. The prince or grantor usually stated that these fines were exclusively intended for the grantee: "...if there is a suit or fine belonging to the bishop, small or great, then it is not the affair of the prince, his mayor, his steward, nor anyone else..."<sup>58</sup> The exemption entitled the grantee, for instance the bishop, to retain all fines collected - meaning those not intended for the prince as per jurisdiction spelled out in the immunity charter and more extensively in Russia law. Revenues due the church from disposed cases were paid to the church, and often also to the prince. The cases were divided according to the rules of canon law, and the fines were prescribed according to Russian law, in schedules set out in the *Statute of Iaroslav*. In cases which involved the church and issues of dishonor, frequently the guilty party had to pay both the civil and ecclesiastical authorities. However, it is difficult to generalise who received what revenue from the disposition of court cases in Russia because often it seems there were penalties in the law granting fines to the ecclesiastical authority in cases which canon law (ecclesiastical canons) had no specific jurisdiction. Take for example, the case of someone stealing hemp or flax, which according to the *Statute of Iaroslav*, decreed that a person guilty of this crime had to pay the Metropolitan 3 *grivnas*.

Fourth, often the grantor made certain dispositions of land found usually in *zhalovannye dannye gramoty*. In such dispositions could be included persons (functionaries, peasants, slaves), or material goods to the church. The charters would often also denote the exact geographic domain which fell under the direct jurisdiction of

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duties, but in this instance for a three year period.

<sup>57</sup> See *Akty Suzdal'skogo Spaso-Evfim'eva monastyrja*, number 81 of the year 1551.

<sup>58</sup> *Statutory Privilege Charter of Prince Rostislav*, Art. 13. In: Kaiser, *Laws of Rus'*, 51-55. "Azhe budet ili tiazha, ili prodazha episkoplia...ot mala ili velika...da nenabe ni kniazju, ni posadniku, ni tivunu, ni inomu nikomu..." page 55. One can see support for this in article 3 of the Charter, where the prince giving the bishop free slaves also entitled the bishop to the fines paid by these persons. It is apparent that once a person came to live on church lands, whether he were ecclesiastical or secular, the bishop or grantee of a certain ecclesiastical establishment had full entitlement to money due from him which was generated on church lands.

the church. As was discussed above, this geographic domain was not subject to the control of the prince or his agents, and was also it seems to be considered an inviolable locality - the agents of the prince were not permitted to trespass.

The fifth and last attribute which was common to Russian immunity charters was that pertaining to time limitation. Until the sixteenth century, the majority of charters, both secular and ecclesiastical, were granted in perpetuity. Earlier charters specifically stated this, and it is probable that if such statements did not characterise later immunity charters, that is because for centuries they had been issued routinely. There was presumably the understanding among landlords and rulers that such charters were granted in perpetuity. When, in the sixteenth century, charters granted to secular landowners became temporary in kind, it became more common among ecclesiastical landlords to have their charters reconfirmed, affirming their privilege in perpetuity. Ecclesiastical charters which reconfirmed already established immunities were usually brief documents a paragraph or so in length stating that there "[was] to be no variation...neither increase nor decrease" in the terms of earlier charter(s). Further, confirmations often added the phrase that said that all was to "stay unchanged".<sup>59</sup> Reconfirmation, it appears, was not legally necessary. However, it seems that following the death of a prince or tsar, or during a time of political upheaval, the church considered it prudent to have its privileges reconfirmed.

The Princely Statutes contained an additional element which ordinary ecclesiastical immunity charters did not contain, unless they were accompanying the foundation of a cathedral church. That was the gift of a tithe given by the civil authority to the ecclesiastical establishment. Tithing was a traditional donation given by the civil authority to the church and it was a widespread custom throughout the Christian world. In most cases a tithe was given upon the founding of a bishopric, which meant a tithe went to the cathedral church at its foundation. In the Statutes the word tithe is written into documents as *desiatina*. The definitive document in Russia which specifically addressed this issue outside of the various princely charters and other ecclesiastical charters was the thirteenth century document, *Regulation on Church People and Tithes (Pravilo o tserkovnykh*

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<sup>59</sup> See for instance *Charter of Moscow Prince Vasilii Dmitrevich and Metropolitan Kiprian (1402)*, in: Kaiser, *Laws of Kievan Rus'*, 64 and *Charter of Moscow Grand Prince Vasilii and Metropolitan Fotii 1419*, in: Kaiser, *Laws of Kievan Rus'*, 65.

*liudiakh i o desiatakh*).<sup>60</sup> In Russia the tithe was collected from three sources, which were basically the same three major sources of revenue from which the civil authority derived its income. One can feel certain that the same sources were utilised in collecting tithe for the church since it was decreed in the Statutes that portions of all monies received were to be used to support the church. Tithe in Russia came from tribute, a portion of the prince's court fees and a portion from duties derived from trade.<sup>61</sup> Two things need to be said with respect to tithe in Russia. First, the Statutes themselves are quite clear on what revenue the church was to receive. Second, tithing was further explained in the *Regulation*. It has been speculated that *desiatina* when calculated in fact constituted more than ten percent of the prince's revenue.<sup>62</sup> A point of interest among Russian historians was the origin of the practice of tithing among the Slavs and in particular among the Russians themselves. It has been contended that the origin of the tithe is to be found in the pre-history of Russia, that the ten percent figure was common among the Slavs of the Russian lands before the arrival of Christianity.<sup>63</sup> But one might expect, this was the contention of pre-revolutionary Russian Slavophile scholars who preferred to emphasize Russia as unique. The fact is that there were long-standing and well-known biblical prescriptions for the tithe, and these were soon worked into the framework of the early Christian communities.

## Remarks on the Fiscal and Jurisdictional Immunity of the Russian Church During the Sixteenth to Eighteenth Centuries

During the sixteenth century secular landlords saw their immunities diminish in both scope and number. Already in the early sixteenth century, the last of fiscal immunity

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60 See *RIB* (1920) 36, issue 1, 50-52, text a. See also M. D. Priselkov, *Ocherki po tserkovno-politicheskoi istorii kievskoi Rusi X-XII vv.* (St. Petersburg, 1913), 151. See also N. V. Kalachov, *Predvaritel'nyia iuridicheskiiia svedeniia dlia polnago ob''iasneniia russkoi pravdy* (St. Petersburg, 1880), 256-258. See also the *Merilo pravednoe* [edition Tikhomirov] which contains the Regulation.

61 Shchapov, *Gosudarstvo i tserkov*, 89-92.

62 Shchapov, *ibid.*, 93-94.

63 This is the view of A. S. Pavlov, *Knigi zakonnyia sodержashchiia v sebe v drevne-russkom perevode, vizantiiskie zakony zemledel'cheskie ugolovnye, brachnye i sudebnye* (St. Petersburg, 1885), 22-23.

charters was issued to secular landlords.<sup>64</sup> The *Sudebnik* of 1550 article 43 ordered that no further fiscal immunity charters were to be issued, and that the old ones were to be withdrawn. The article did provide for the possibility of a temporary fiscal exemption, so it seems that fiscal grants in perpetuity were the intended target of the legislation. The authorizing of a temporary fiscal exemption was not actually for the benefit of the landlord in this period, but rather for the benefit of the 'state', that it could act as an incentive to attract populations to areas sparsely settled. It was also during this same period that the tsar ordered a number of taxes covered in fiscal immunities to be rescinded. The diminution of secular grants of fiscal immunity was a direct consequence of the financial interests of the central Russian authority, which required for its expansion revenues formerly going to individual landlords. No longer was the securing of allegiance by means of financial benefit politically advantageous, nor necessary in the later Muscovite period. Allegiance to the tsar was, in fact, undermined by the presence of independent secular landlords able to act as autonomous judicial and economic entities. In the growing centralization of the Muscovite state, such was antithetical to the notion of autocracy. It was, therefore, only a matter of time between the abolition of fiscal grants of immunity to secular persons and the abolition of judicial grants to them. By the mid 1550's the last secular judicial immunity charters were issued.<sup>65</sup> The bureaucratic apparatus of the central government was by this period better equipped to administer justice to its populace, and so the utilitarian foundation for judicial immunity had been removed.

Ecclesiastical grants were not subjected to the same restrictions during this period. Many of the historically perceived restrictions on ecclesiastical immunities relate to the alleged trend toward secularization of ecclesiastical lands and restriction on ecclesiastical land ownership during the early sixteenth century. The issue of ecclesiastical land during this period was a genuine concern to the civil authority, but the issue was never whether the church was *legally entitled* to hold land, for this was a legal assumption which remained unquestioned in this period. Some have pointed to the decree of 1535, seen as one of the first moves toward restricting ecclesiastical acquisition of land, which ordered that further acquisition of land by the church had first to be approved by the tsar.

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64 Dewey, "Immunities in Old Russia", 655.

65 Dewey, *ibid.*, 655.

But the decree did not actually legally *prohibit* further acquisition. In either event, the church nevertheless continued to acquire land by a number of means, including among them private donation charters and testaments. It has been estimated that the sixteenth century saw greater growth in monastic land acquisition than any previous century, and that during it the number of monasteries doubled in size.<sup>66</sup> That the true concern of the tsar was the *type* of land being acquired by the church and not necessarily the fact of its possession is further illustrated by the church councils of 1580, 1581 and 1584 which discussed limiting acquisition of *votchina* (hereditary estates) estates by the church.<sup>67</sup>

Over the course of the century, though there were some restrictions made on ecclesiastical landholding, the tsar never undermined the legal right of the church to own land, nor were great efforts made to halt acquisition of land; in fact, quite the opposite occurred. The supposed secularization efforts made to divest the church of its lands were not the result of any legislation. Because there was no substantive change in the Russian civil law governing ecclesiastical land, the same privileges accorded to earlier ecclesiastical land owners remained in force. Fiscal and judicial immunity charters continued to be issued to the church throughout the sixteenth century, while secular charters were being abolished.<sup>68</sup> That the legal foundation of ecclesiastical fiscal immunities remained untouched is shown by the church council of 1551, the *Stoglav*, convened under Ivan IV. Chapter 75 of the text, derived from the proceedings of the *Stoglav*, stated that monastery land and other immovable property were not to be sold but rather to be preserved in accordance with the canons of the church. In this statement one sees reiterated the basic principles repeated throughout the *Kormchaia* and Byzantine law: that the church was entitled to possess property, that this property was necessary for the maintenance of the church, and that it should above all be conserved. Church possession of property and its concomitant privilege of fiscal immunity were inseparable. It had been so in the Byzantine

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66 M. B. McGeehan, "The Problem of Secularization in Sixteenth-Century Muscovy" In: *The Council of 1503: Source Studies and Questions of Ecclesiastical Landowning in Sixteenth Century Muscovy*, ed. E. L. Keenan and D. G. Ostrowski (Cambridge, MA, 1977), 167.

67 J. E. Kollmann, *The Moscow Stoglav ('Hundred Chapters') Church Council of 1551* (Volumes I and II), Ph.D (University of Michigan, 1978), 113. See also in Kollman note 46 page 130.

68 See for instance the *Zhalovannaia-tarkhannaia-nesudimaia gramota* in *Akty Suzdal'skogo*, number 212 of 1580.

Empire and in Russia from the earliest times, as written into the Princely Statutes. It would appear, therefore, that there were no substantive legal attempts at secularization of church lands which were made during the proceedings of this church council.

Ecclesiastical immunity charters from a legal standpoint remained essentially untouched throughout the sixteenth century and into the seventeenth century. Chapter 60 of the *Stoglav* reiterated the legal principles upon which ecclesiastical judicial immunity was built in the early Princely Statutes, that a secular ruler was not able to judge church people, and neither was he able to interfere in the church lands nor in their immunities. This privilege, said the *Stoglav*, was to remain until the end of the world.

Events of the seventeenth century have been interpreted as making inroads into ecclesiastical judicial immunity. The centralization of ecclesiastical administration which occurred during the term of Patriarch Filaret Romanov (1619-1633), while it did lessen the independence of ecclesiastical landowners, did not have the effect of diminishing the privilege in and of itself. The charter of 1625 which aimed to centralize judicial and fiscal administration of ecclesiastical lands through creation of various chancelleries (*prikazy*) - the *patriarchshii dvorshii prikaz* (supervisory), *kazonii prikaz* (financial) and the *razriad prikaz* (disciplinary) - merely *redistributed* power and concentrated it within the hands of the Patriarchate, but did not *transfer* it to the civil authority. Some have pointed to the fact that in this period Russia was essentially a diarchy because Patriarch Filaret, father of the Tsar Mikhail, bore the title "great sovereign" (*velikii gosudar'*) (the same title accorded the tsar), and was in power co-ruler of Russia, and so the move toward the centralization of ecclesiastical administration signified the subsuming of ecclesiastical authority in some new form of government.<sup>69</sup> It is erroneously concluded that because the ecclesiastical authority linked itself with the secular authority and took great interest in temporal affairs there was a form of reciprocity, that the secular authority by virtue of this had greater control over ecclesiastical fiscal and judicial affairs. In fact, it was not until the establishment of the *monastyrskii prikaz* under Tsar Aleksei that one can observe any substantial change in the traditional juridical privileges of the church, when clerics and people living on monastery land in all matters were to be subject to the *prikaz* except in purely ecclesiastical matters. The provisions of chapter 12 of the 1649 *Ulozhenie*,

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69 J. H. L. Keep, "The Regime of Filaret", *Slavonic and East European Review* 38 (1961), 339.

however, exempted persons living on Patriarchal estates, over which the Patriarch was still to retain jurisdiction. Taking into account that the Patriarch was the second largest landowner next to the tsar, this concession tempered any ambitions the civil authority had regarding the usurpation of ecclesiastical privilege. Political considerations had, however, played a large role in the making of this concession. The concession was made for the sake of the Patriarch Nikon, who as Patriarch held power as if there existed a diarchy. It also lessened any potential discord in the realm. However, the restrictions which were imposed on the church were short lived since the canonical illegality of the *monastyrskii prikaz* was demonstrated during the Russian church council of 1667, and prompted the dissolution of the *prikaz* shortly thereafter.<sup>70</sup>

The laws enacted which brought the *monastyrskii prikaz* into existence had not derogated from the Byzantine and canon laws which underpinned ecclesiastical privilege. The substance of ecclesiastical privilege was not undermined because the laws of the *Ulozhenie* related to this matter were limited by the political thought of the times which was still rooted in the Byzantine political idea of *symphonia*. Neither were the laws of the *Ulozhenie* in their scope substantial enough to undo the law of the *Kormchaia*, which had since the time of Christianization supported the ecclesiastical privilege of the Russian Church. Though the effects of secularization were being felt in Russia during the seventeenth century, absolutist political ideas had not yet taken root. But the episode did demonstrate that the old order was no longer immune to the new secular political ambitions of the tsar, who was beginning to see his role in a manner different than it had been in Russian tradition. Effective abolition of church privilege and immunity was achieved by the reestablishment of the *monastyrskii prikaz* in 1701 during the reign of Peter the Great (1682-1725). By such an act, the tsar arrogated to himself the powers the church had held because of its special immunity. This arrogation of powers was accomplished through the secularization of church property which placed the administration of church estates under the control of civil administrative persons.<sup>71</sup> The dissipation of ecclesiastical property, which occurred in the ensuing years, prompted the

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70 On the proceedings of the council see *Deianiia moskovskikh soborov, 1666-1667* (2nd ed. Moscow, 1893).

71 See *PSP*, I, 133.

return of control to the church, although under the direction of the Holy Synod (1721), which was itself a department of state.<sup>72</sup> The legal basis for church immunity was eroded during the reign of Peter the Great, as the seeds of absolutist political ideas began to take root. The new ideas had provided the tsar with the pretext to, with impunity, abrogate the law of the *Kormchaia kniga* as it supported the special jurisdictional and property-owning privileges of the church. The essential change in Russian political ideas is illustrated in the seventh point of the introduction to the *Spiritual Regulation* (1721) which explained the reasons for the establishment of the Holy Synod. These reasons, formulated by Archbishop Feofan Prokopovich (1681-1736) under the influence of Western political and philosophic concepts, were based on eighteenth century absolutist ideas of government.<sup>73</sup> Article Seven of the text expressed a new concept of the relationship between the temporal and spiritual powers. Whereas in medieval Russian political thought, the relationship between the *regnum* and *sacerdotium* was viewed in the Byzantine tradition according to the notion of *symphonia*, now it was said that the spiritual power was not in fact co-equal to the temporal power.<sup>74</sup> In this one may see that once the juridical value

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72 On the Holy Synod see, A. V. Kartashev, *Ocherki po istorii russkoi tserkvi* Vol. 2 (Paris, 1959) and J. Cracraft, *Church Reform of Peter the Great* (Stanford, 1971). The Holy Synod was established in 1721 and was governed by the *Ecclesiastical Regulation (dukhovnyi reglament)*. Based upon the Swedish model of the State Colleges, it was governed by an eleven-member committee of clerics but was ultimately under the authority of the tsar. The patriarchate had been held in abeyance since 1700.

73 His works may be found in his *Sochinenia*, ed. I. P. Eremin (Moscow-Leningrad, 1961).

74 "Ibo prostoi ne vedaet', kako razistvuet' vlast' dukhovnaia ot samoderzhavnoi no velikoiu vysochaishago pastyria chestiu i slavoii udivliaemyi, pomyslhaet', shto takovyi pravitel' est' to vtoryi Gosudar' samoderzhitsu ravnosiliny ili i bolshii ego, i shto dukhovnyi chin" est' drugoe i luchshee gosudarstvo." in: *Uchrezhdenie dukhovnoi kollegii i dukhovnyi reglament: k voprosu ob otnoshenii tserkvi i gosudarstva v rossii*, Volume 2, ed. P. V. Verkhovskoi (Rostov on Don, 1916), 31. The beginning of the statement has been translated in different ways, giving to it different shades of meaning. In keeping with other political philosophical tracts of the period, such as *Pravda voli monarhei* (1722), the sentence is better rendered as "people do not consider how far the spiritual power is from, and inferior to the Regal", from the 18th century work of Thomas Consett in: *For God and Peter the Great. The Works of Thomas Consett, 1723-1729*, ed. James Cracraft (New York, 1982), 18-19. The translation of Alexander Muller, *The Spiritual Regulation of Peter the Great*, trans. and ed. Alexander Muller (Seattle: University of Washington Press, 1972) translates the passage as "how the spiritual power is *distinguishable* from the autocratic"[emphasis added]. The remainder of the passage makes historical reference to the Patriarchate of Nikon: "[the people] consider such a ruler [the patriarch] to be a second sovereign with power equal to or greater than his [the autocrat's], and the spiritual order to be another and better sovereignty (*gosudarstvo*)."

of the *Kormchaia* was abrogated the notion of *symphonia* lost its legal and philosophic support.

## Conclusion

By abrogating the laws of the *Kormchaia* which had given to the church its legal right to fiscal and judicial immunity, the civil authority arrogated these powers to itself. Without the laws of the old order to restrain the ambitions of the tsar, a new political order was thus able to be instituted. The Russian theocratic autocrat was able to transform himself into a Western style absolutist monarch. Ecclesiastical immunities were historically qualitatively different from secular immunities, but once the legal foundation which underpinned ecclesiastical immunity charters was removed, the church had no longer any canonical claims to its ancient privileges; for these were of no meaning any longer to the new order, in which the church was to be subordinated to secular claims of *raison d'état*.

TABLE 5

<p><i>Just Causes for which a husband may divorce his wife</i></p>	<p><i>Statute of Iaroslav, Article 56 Kaiser, Laws of Rus''</i></p>	<p><i>Prochiron, Title 11.5 Divorce Freshfield, Procheiros Nomos</i></p>	<p><i>1653 Kormchaia kniga Chapter 49 [Prochiron] gran'ли, glavy ē - Г</i></p>	<p><i>Novel 117.8§1-6 Concerning the Just Causes for which a Husband is Permitted to Obtain a Divorce S.P. Scott, The Civil Law</i></p>	<p><i>1653 Kormchaia kniga Chapter 44[excerpt from novel 117.8] gran'Г, glava Д</i></p>
<p>Cause[vina]1 Plot against tsar or sovereign</p>	<p>Ashche uslyshit' zhenā ot inykh liudei, chto dumaiut na tsaria ili na kniazia, a togo muzhiu svoemu ne skazhet', a posle oblichitsia, razluchiti ikh.</p>	<p>If the wife being cognizant of a conspiracy against the Sovran does not warn her husband. If however after being warned by her he is silent the wife may by another person denounce the same to the Sovran. In that case the husband cannot on that pretext obtain a divorce.</p>	<p>ѠЩЕ НА ЦРѢВО СОВѢЩАВАЮЩИХЪ НѢКНХЪ, СОВѢДАВШИ ЖЕНА, И СВОЕМОУ МОУЖѢ НЕПОВЕСТЬ, ИЛИ АЩЕ МОУЖЪ СІЕ Ѡ ЖЕНѢ СВОЕѠ СЛЫШАВЪ ОУМОЛЧИТЬ, ПОДОВАЕТЪ ЖЕНѢ КІИМЪ ЛЮВООРАЗОМЪ ВОЗВѢСТИТИ ЦРѢВИ, ТАКОЖЕ МОУЖЕВИ ЕѠ Ѡ ТОГѠ ДНЕ НЕ ИМАѢТИ ИЗВѢСТА НИКОЕГОЖЕ Ѡ РАЗЛУЧЕНІИ ВРАКА.</p>	<p>Where a woman is aware that certain persons are plotting against the government, and does not inform her husband. But if the husband, having learned of this from his wife, should remain silent, the latter will be permitted to notify the government by means of any persons whomever, in order that her husband may not take advantage of this as a pretext for repudiation.</p>	<p>ѠЩЕ НѢКІѠ ВѢДАШЕСОВѢТЪ ТВОРАЩѠ НА ЦРѢВО И СВОЕМОУ МОУЖѢ НЕ ГОВИТЬ.</p>

Cause 2  
Adulterous wife

Ashche muzh' zastanet' svoiu zhenу s liubodeem, ili uchinit' na niu dobrymi poslukhy ispravu, razluchiti a.

If the husband thinks that his wife is guilty of adultery he must prefer a written charge of adultery against her. And if the charge is proved and divorce ensues the husband is entitled to the prenuptial gift and the dower. And if he has no children then he shall also be entitled to take from his wife's estate a sum equal to a third part of the dower. So that the dower and the said third part, which is treated as a penalty for the offence, shall pass into his possession. If however he has children of the marriage we command that the dower and the rest of the wife's property shall be kept for the children: and thus when the adulterer has been legally convicted he shall be punished with the wife. [...] [the remainder of the passage concerns the adulterer]

ѡЩЕ Ш ПРЕЛЮВОНАНІИ, МОУЖЪ МНИТСА МОЩИ ЖЕНОУ СВОЮ ШВАНЧИТИ, ТО ПОДОВАЕТЪ МОУЖЕВИ ПРЕЖДЕ НАПИСАТИ ЖЕНОУ, И ПРЕЛЮВЫ СОТВОРШАГО СЕНОУ. И АЩЕ ТАКОВОЕ Ш КЛЕВЕТАНІЕ ГЛВИТСА ИСТИННО, ТОГДА РАЗЛУЧЕНІЮ ВЪИШЪ, ДА ИМАТЬ МОУЖЪ ПРЕЖЕ ВРАЧЬНИ ДАРЪ И ВЪНО, И КЪ СМЪ АЩЕ И ДЪТЕЙ НЕ ИМАТЬ, НЕ ТОЛИКО ДА ВОЗМЕТЪ Ш ИНОГШ ЖЕННА ИМЪНІА, ВО ЕДИНО ЖЕ ВЪНА ТРЕТІА ЧАСТЬ ВОУДЕТЬ, ТАКОЖЕ И ЕГШ ВЛАСТИ ЧАСТЬ, И НА СІЕ ПОВЕЛЪННАА КАЗНЬ ТЪМЪ ИСПОЛНИТСА. АЩЕ ЖЕ ДЪТИ ИМАТЬ Ш ТОГШ СОЖИТІА, ПОВЕЛЪВАЕМЪ И ВЪНО, И ИНОЕ ЖЕНЫ ТОА СОЖИТІА, ПО ПРЕЖЕ ПОВЕЛЪННЫМЪ ЗАКОНОМЪ ДЪТЕМЪ ХРАНИТИ, И ТАКО ПРЕЛЮВОНАНІА ЗАКОННО Ш ВЛИЧИШЕ, КОУПИШ СЪ ЖЕНОУ МОУЧИТИ: И АЩЕ ОУВШ ИМАТЬ ПРЕЛЮВОНАНІИ ЖЕНОУ, ВЗАТИ ЕЙ СВОЕ ВЪНО, И ВРАЧЬНИ ДАРЪ ПОВЕЛЪВАЕМЪ: И ТАКО АЩЕ ДЪТИ ИМАТЬ, ТОКОШ НА СОВЛОДЕНІЕ ЖЕНА ДА ВОЗМЕТЪ ДАРЪ: ВЛАСТЬ ЖЕ ЕГШ ПО ЗАКОНОМЪ ДЪТЕМЪ ДА ХРАНИТЬ. И НОЕ ЖЕ МОУЖА ТОГШ ИМЪНІЕ ДЪТЕМЪ ЕГШ ДА ХРАНИТЬ. АЩЕ ЖЕ ДЪТИ НЕ ВОУДЪТЬ, ПРЕЖДЕ ВРАЧНАГШ ОУВШ ДАРА ГОСПОДСТВО ЖЕНЪ ПОВЕЛЪВАЕМЪ ВЗАТИ, ИНОЕ ЖЕ МОУЖА ТОГШ ИМЪНІЕ, ВЪ ЛЮДСКОЕ СОКРОВИЩЕ ПО ВЪТХИМЪ ЗАКОНОМЪ ВЗАТИ ПОВЕЛЪВАЕМЪ.

Where the husband thinks that he can convict his wife of adultery; but he must previously file a complaint against her, as well as against the adulterer, and if the accusation is shown to be true, the husband, after having served notice of repudiation, will be entitled to the ante-nuptial donation as well as the dowry; and when there are no children, he will also be entitled to an amount equal to the third of the dowry, out of the other property of his wife, the ownership of which, as well as that of the dowry, will absolutely vest in him. But where the husband has children by the same marriage, We, in conformity with the spirit of the laws on this subject, do hereby decree that the ownership of the property, as well as that of the other possessions of the wife, shall be preserved for their benefit. [...] [remainder of the passage concerns the adulterer.]

ѡЩЕ Ш ПРЕЛЮВОНАНІИ ВОЗГЛАГОЛЕТЪ НА НИО ИЪКТО, И ГЛВИТСА ИСТИНА.

<p><b>Cause 3</b> A woman who plots against the life of her husband</p>	<p>Ashche podumaet' zhen a svoego muzha zeliem, ili inymi liud'mi, a ona imet vedati, chto muzha eia khotiat' ubiti, ili umoriti, a muzhiu svoemu ne skazhet', a naposled' ob'iavit'sia: razluchiti.</p>	<p>If in any manner the wife conspires against her husband's life or being aware of the conspiracy she does not warn him.</p>	<p>ѡще кѡмѡ любовобразомѡ, или сеаіемѡ, или инѡмѡ чимѡ жена на животѡ мужа своего совѣщаетѡ, или инѡхѡ сіе творацихѡ свѣдѣши, мужѡ своему не гавитѡ.</p>	<p>Where a wife has plotted against the life of her husband in any way whatsoever, or where she has consented for others to do so, without informing her husband.</p>	<p>ѡще кимѡ любовобразомѡ, или сеаіемѡ, или инѡмѡ чимѡ на животѡ мужа своего злое совѣщаетѡ, или инѡи нѡкѡа совѣщавающѡа злое на мужа еа, вѣдаши не повесть емоу.</p>
<p><b>Cause 4</b> A woman who consorts with others without her husband's permission.</p>	<p>Ashche zhen a bez muzhnia slova imet' s chuzhdimi liud'mi khoditi ili miti ili iasti, ili oproche domu svoego spati, a potom uvedaet' muzh': razluchiti.</p>	<p>If contrary to her husband's wish she consorts with strange men, drinking or bathing with them.</p>	<p>ѡще мужевѡ еа не хоташѡ, со вѡнѡшними мужи пнетѡ, и мѡветса сними въ бани.</p>	<p>Where she attends banquets, or bathes with strangers, against the wishes of her husband.</p>	<p>ѡще совѡнѡшними мужѡи нѡетѡ въ корчемницѡхѡ, или инѡдѡ нѡградѡхѡ, или мѡветса въ бани, сними же не хоташѡ мужѡ еа.</p>
<p><b>Cause 5</b> <i>Statute:</i> A woman who attends pagan dances <i>Others:</i> A woman who stays away from her home</p>	<p>Ashche zhen a imet', oproche muzha svoego vole, khoditi po igrishcham, ili v dni, ili v noshchi, a muzh' imet' s'chivati, a ona ne poslushaet: razluchiti iu.</p>	<p>If contrary to her husband's wish she stops ways from home, unless it be with her parents.</p>	<p>ѡще не хоташѡ мужевѡ еа, вѡнѡ домѡ своего ношѡ преспитѡ, токми аще приащитса ей оуродителей своихѡ.</p>	<p>Where she remains away from her husband's house without his consent, unless she is visiting her own parents.</p>	<p>ѡще безповелѡнѡа мужа своего, вѡнѡ домѡ своего предложитѡ не ѡродителей своихѡ.</p>
<p><b>Cause 6</b> <i>Statute:</i> A woman who robs her husband or a church. <i>Others:</i> A woman who attends pagan secular events such as theatres or circuses</p>	<p>Ashche zhen a na muzha navedet' tati, velit' pokrasti dvor muzha svoego, ili sam pokradet, ili tovar ili tserkov' pokradshchi, a inem podaet': pro to ikh razluchiti.</p>	<p>If without her husband's knowledge or against his wish she frequents the hippodrome, theatres, or low resorts.</p>	<p>ѡще на конное оуристаніе; или на позорища, или на ловѡи изѡидетѡ, такоже се позорѡ дѡющѡи, невѣдѡщѡ, или возвращающѡ мужевѡ. аще же приащитса комѡ свѣне единѡа, прежде реченихѡ винѡ свою женоу ѡ своего домѡ изгнати, такоже аще она не имоуши родитель своихѡ, оунихѡ же можетѡ шблещи, по ноужди вѡнѡ домѡ ношѡ преспитѡ, повелѡваемѡ ни единѡа же имѡти мужевѡ власти, такоѡа ради винѡ различитса ѡ женѡи, понеже самѡ семоу повиненѡ вѡиваетѡ.</p>	<p>Where, without the knowledge, or against the prohibition of her husband, she attends circuses, theatres, or other public exhibitions.</p>	<p>ѡще не самѡ безреченихѡ винѡ ѡринетѡ еа.</p>

<p>Comments/Additional Material</p>	<p>Sleeping away from home, listed as cause 5 in the other sources, is contained in Cause 4 of the Statute. The provisions in Cause 6 not mentioned in any of the Slavonic texts used for comparison, but were probably known from other texts/sources, as they are contained in the Freshfield translation of the Greek following Cause 6.</p> <p>The Statute does not include any provisions concerning the reasons for which a wife may divorce her husband. All other sources, <i>Prochiron</i> [Title 11.5], <i>Kormchaia</i> Chapter 49 [<i>glavy</i> ᾱ - ζ̄], Novel 117 [117.9], and <i>Kormchaia</i> Chapter 44 [<i>gran'</i> ῑ, <i>glava</i> Ᾱ] contain these provisions.</p>	<p>Following cause six is the following text: Should it happen that any husband expels his wife for reasons other than those aforementioned, and, having no parents to go to, she is forced to spend the night out, we command that the husband was not justified in expelling his wife since he was responsible for the occurrence. Also: if the wife is guilty of deception, or abets murder, or kidnapping, or grave robbing, or sacrilege, or is an accessory to thieves or theft, or dares to lay hands on her husband, or purposely contrives to procure an abortion and so distresses and disappoints her husband by frustrating his hope of offspring.</p>	<p>The proviso concerning a husband who forcibly expels his wife to sleep outside the house is contained within cause 6 of the translation in the <i>Kormchaia</i>.</p> <p>Title 11 or <i>Gran'</i> ᾱι of the translation of the <i>Prochiron</i> is entitled: ω̄ ραζρ̄ῑσ̄η̄ν̄ῑ β̄ρᾱκᾱ, ῑ ω̄ β̄ῑνᾱχ̄η̄ ε̄γ̄ω̄. The title consists of ff. 426a - 430b. The specific causes are listed on ff. 427b-428b, <i>glavy</i> ε̄ - ῑ.</p>	<p>§ 7 follows: If, however, a husband, without one of the aforesaid reasons, should drive his wife away from his own house, and she, not having any relatives with whom she can live, is obliged to pass a night outside, We order that the husband shall not, under these circumstances, have permission to send a notice of repudiation to his wife, since he himself is responsible for what she has done.</p>	<p>The last provision does not conform to the other texts. The causes for divorce are found on f. 361a. The heading following <i>glava</i> Ᾱ is:</p> <p>БѢУТЬ ВИНѢ НХ ЖЕ РАДИ МОУЖЬ ПОДОБНО ПЪЩАЕТЪ ЖЕНОУ; И ВЪНО ПРИВЕРЪТАЕТЪ И СУДЕРЖИТЬ, И ХРАНИТЬ ВДАТИ Е ХОТА Ш ВРАКА ИЖЕ СМЕЮ ПОДПШНАЛСА ЕМОУ ДѢТЕМ, АЩЕ ВОУДЪТЪ.</p>
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### **PART III: AN EXAMINATION OF THE *KORMCHALA* AS A SOURCE OF LAW: BYZANTINE STATUTES ON RUSSIAN DOWRY AND TESTAMENTARY PRACTICES**

#### **CHAPTER 5: RUSSIAN DOWRY PRACTICES AND THE BYZANTINE LAW ON DOWRY AS FOUND IN THE *KORMCHALA KNIGA*: ACCORDING TO THE OPERATION OF DOWRY IN ROMAN LAW**

In general, studies on Russian women's property rights which address dowry usually concentrate on how dowry secured a woman's property rights.<sup>1</sup> The actual operation of a dowry system in Russia is rarely discussed, in particular, what laws might have underpinned it. Concerning the purpose of dowry, such studies say little more than a dowry was the woman's portion of her inheritance given to her by her father, held within the union of her marriage for the purpose of the maintaining the family. The fact that dowry was an ancient institution supported by centuries of legal commentary and

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1 *On women's dowries, life-estates, women's property rights, and more generally on women's legal rights in Russia through to the seventeenth century see for instance:* K. Alekseev, "Ob" Otnosheniakh suprugov po imushchestvu v drevnei Rossii i Pol'she", *CHOIDR* 2 (1868):1-108, on dowry and ante-nuptial agreements, see pp. 13-37; N. L. Pushkareva, *Zhenshchiny drevnei Rusi* (Moscow, 1989), *Zhenshchiny Rossii i Evropy na poroge novogo vremeni* (Moscow, 1996), see especially section iv, 'imushchestvennye prava zhenshchin'; A. Kleimola in "In Accordance with the Canons of the Holy Apostles': Muscovite Dowries and Women's Property Rights", *Russian Review* 51 (1992), 208-227; G. Weickhard, "Legal Rights of Women in Russia, 1100-1750", *Slavic Review* 55 (1996):1-23, and "The Pre-Petrine Law of Property", *Slavic Review* 52 (no. 4) (1993): 663-679; Valerie A. Kivelson, "The Effects of Partible Inheritance in Gentry Families and the State in Muscovy", *Russian Review* 53 (1994):197-212; M. L. Marese, "The Enigma of Married Women's Control of Property in Eighteenth Century Russia", *Russian Review* 58 (1999):380-395; S. B. Veselovskii, *Feodal'noe zemlevladienie v serevo-vostochnoi Rusi* (Moscow-Leningrad, 1947)[on inheritance and clan rights]; V. B. Kobrin, *Vlast' i sobstvennost' v srednevekovoi Rossii* (Moscow, 1985). *On ante-nuptial agreements and marriage: Pamiatniki Russkogo Prava*, IV, pp. 87-88; G. M. Kotliarov, "K voprosy o vremen poiavleniia na Rusi svabednyx aktov", *Russkii Istoricheskii zhurnal*, 6 (1920):162-3; G. M. Kotlarov, "Riadnyiagovonyia zapisi XVI-XVII vv. (Opyt istoriko-diplomaticeskago opisaniia aktov)", *Istoricheskie obozrenie* 21 (1916):195-210.

legislation is often overlooked.<sup>2</sup> Instead, secondary sources commenting on dowry rely mainly on what the author has garnered from documents concerned with dowry transactions, or from what the author has studied relating to the practices or customs of a particular society.<sup>3</sup> Why these two particular methods of research are chosen, has to do with the fact that Russian civil collections did not contain any substantive laws governing the operation of dowry practices. Most important, nowhere in Russian legal collections was there expounded a formal definition of dowry.

Lacking extensive information in Russian legal collections and documents on the operation of dowry, the single best source one can consult is the Roman law itself. The clearest definition of the purpose of dowry in Roman law appears in the *Digest*. That the primary purpose of dowry was for the support of the family is best reflected in the juristic statement of Pomponius in the *Digest*, where it was said that it was in the “public interest for women to keep their dowries, since it is absolutely essential for women to have dowries so that they can produce offspring and replenish the state with their children.”<sup>4</sup>

The method by which one may best determine if the Byzantine law did have influence on dowry practices and dowry-related property matters, or actually operated as law in medieval Russia governing these things, is by an examination of Russian documents and charters concerned with dowry and to compare them against the Byzantine statutes. In this way, one may demonstrate that dowry practices in Russia operated according to Byzantine dowry law contained in the *Kormchaia kniga*. The Byzantine law had far more than mere influence on dowry practices and property law in Russia. One should say rather, that the Byzantine statutes on dowry *were* the law governing dowry practices in medieval Russia. My initial examination of ante-nuptial agreements, donation charters, wills, and other miscellaneous documents, showed that dowry practices in Russia followed a certain pattern, and that the related rights and obligations of the parties involved had a basis in

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2 This is not to overlook the work of George Weickhardt, “Legal Rights of Women”, as in note 1 above, who makes reference the Byzantine law in this matter, attributing to it a substantial influence in relation to Russian women’s property rights.

3 I speak here only of European societies.

4 Pomponius, *Sabinus*, book 15: “...nam et publice interest dotes mulieribus conseruari, cum dotatus esse feminas ad subolem procreandam replendamque liberis ciuitatem maxime sit necessarium.” *Digest* 24.3.1. See below note 14 in this Chapter concerning citation of the *Digest*.

law, making it impossible to conclude that dowry practices were based merely in custom.

*Remarks on the Historiography related to Dowry*

Since the topics of women's property rights in Russia and the subsidiary topic of Russian dowry practices are relatively new areas of study there is, therefore, little in the way of older literature on the topic.<sup>5</sup> The two major sources which are often cited in studies on women's property and legal rights are those of V. I. Sergeevich and M. F. Vladimirkii-Budanov.<sup>6</sup> These both, however, are general legal histories and mainly make reference only to what is contained in Russian civil law up to the seventeenth century. The main focus of recent literature concerns whether female property owners received equitable treatment under Russian law. Were women free to dispose of property - alienate, donate, pass on to a legatee, etc. the same as men? But these studies, too, use Russian historical documents and the Russian civil law codes in their determinations. Many times it is concluded that dowry practices and, therefore, the privileges and obligations which were attached to them (such as an inventory or accounting) were customary in origin. No comprehensive analysis is provided as to how Byzantine laws operated in Russia as reflected in documents of the period.

On the subject of dowry, there are few general, broad studies, and also a number narrowly focused studies, limited to examinations of dowry in certain localities (e.g., medieval Western Europe) which have been published. To the first category belong two major general studies on dowry which are often consulted by historians working on Russia for the purposes of background information on the dowry process. These are: *Family and Inheritance: Rural Society in Western Europe, 1200-1800*<sup>7</sup> and *The Marriage Bargain:*

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5 One current notable scholar who has completed work on women, property and law in Kievan and medieval Russia is N. L. Pushkareva. See for instance, "Imushchestvennye prava zhenshchin na Rusi (X-XV vv.)", *Istoricheskie zapiski*, 114 (1986):180-224.

6 V. I. Sergeevich, *Leksii i issledovaniia po drevnei istorii russkogo prava* (St. Petersburg, 1910), esp. pp. 456-579; M. F. Vladimirkii-Budanov, *Obzor istorii russkogo prava* (St. Petersburg & Kiev, 6<sup>th</sup> ed, 1909), esp. pp. 409-503.

7 *Family and Inheritance: Rural Society in Western Europe, 1200-1800*, ed. Jack Goody, et. al. (Cambridge University Press, 1976).

*Women and Dowries in European History*.<sup>8</sup> While these studies are useful, they are, however, in their discipline more anthropological/sociological studies than they are legal histories, and so do not provide the historian with any sort of legal history background. Most important, they do not describe what concomitant legal rights and obligations there were with dowry.

Well-known Roman legal histories do not generally provide an in-depth examination of dowry law. Specific studies on the institution of marriage in Rome more commonly refer to dowry law, but not in a comprehensive manner.<sup>9</sup> The well-known secondary sources do not generally contain any extensive analysis of the law of dowry. The primary source materials have been so organized since literature on Roman law has not devoted great space to the law of Roman dowry, and neither has it distilled the important points of this law in publication form. The rights and obligations which accompanied dowry may only be discerned in the primary source materials of Roman and Byzantine law. The sections related to dowry contained in the *Digest* are composed of passages derived from the works of Roman jurists. These essential points of dowry law were later incorporated into the Byzantine *compendia* in an abbreviated form. The legal opinions contained in *the Digest* have been distilled by this author into three primary operations of law below in section I.

#### *Common Perceptions of Dowry Practices in Russia*

Russian charters concerned with dowry include ante-nuptial agreements (*riadnye* or *sgovornye zapisi* or *gramoty*), wills (*dukhovnye gramoty*), charters of sale and purchase (*kupchie gramoty*), donation charters (*dannye gramoty*), and divorce decrees (*rozvodnye gramoty*). These legal documents were formulaic, and were consistent in their treatment of the legal rights and obligations as related to dowry property. For these reasons, one must conclude that such documents were guided by a specific set of laws. The laws governing dowry, however, were not to be found in the Russian civil codes. No substantive laws existed in the Russian civil codes or in statutory decrees. What law there

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<sup>8</sup> *The Marriage Bargain: Women and Dowries in European History*, ed. Marion A. Kaplan (New York, 1985).

<sup>9</sup> The only work this author has seen which discusses dowry at length is that of Susan Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford, 1991).

was written on dowry took the form of amendments or modifications to already existing legal dowry practices. Such amendments of law were not substantive in kind and were typically enacted to suit the political concerns of the times. For example, a great many of these amendments were concerned with the issue of preventing the transfer of hereditary lands (*votchina*) to female heirs.

Some scholars have posited the rules governing dowry in Russia developed out of customary practices, and that for example, norms contained in the dowry-related charters developed over time as a result of mere practice. The belief that dowry practices in Russia originated out of customary practice was most strongly influenced by Slavophile historians,<sup>10</sup> who frequently attributed any practice which was not to be found in Russian civil law to custom. One can see this idea popularised in Kovalevskii's nineteenth century work, *Modern Customs and Ancient Laws of Russia*, who in commenting on the Slavic family, attributed many of the betrothal and marriage practices to customary law. For instance, it is said that "the customary law of Russia, like the old German jurisprudence, established a difference between betrothal and marriage."<sup>11</sup> While such studies were focused upon ancient German law, they overlooked the more extensive Byzantine law Russia possessed in the *Kormchaia*. Kovalevskii's assumption that Russian dowry practices were of customary origin was not an uncommon one in the nineteenth century. This notion, however, is not limited to nineteenth century historians. Even to this day the notion persists that Russian dowry practices and the related property norms were based in custom.<sup>12</sup> Similarly, the nineteenth century legal historian, Vladimirskii-Budanov, concluded that some Russian dowry practices were customary in origin. For instance, he attributed the maintaining of separate marital estates within the marital union, to Slavic custom.<sup>13</sup> On the contrary, the practice of maintaining separate marital estates was in

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10 See Weickhardt's discussion of patrimonial property theory in: "The Pre-Petrine Law of Property", p. 665.

11 M. M. Kovalevskii, *Modern Customs and Ancient Laws of Russia* (London, 1891).

12 The rendering of an account is considered as customary in origin. See A. Kleimola in "In Accordance with the Canons of the Holy Apostles': Muscovite Dowries and Women's Property Rights", *Russian Review* 51 (1992), 208. [hereafter "In Accordance with the Canons"]

13 Vladimirskii-Budanov, *Obzor*, esp. p. 374. Separate marital estates extended beyond dowry. See below Chapter 6.

actuality one of the primary tenets of Roman and Byzantine dowry law. As written in the Roman and Byzantine law, it was the inviolable right of a woman to retain ultimate ownership of her dowry, and for this reason it was to be kept as a separate estate, distinct from that of her husband's and the common household account.

Present day studies on Russian dowry and related property law are often part of larger studies concerned with the topic of women and property rights in Russia, and often focus on the extent to which Russian women possessed the right to own and control property. These studies, in assessing women's property rights, use as their main criterion whether or not women could hold absolute ownership of property. It is true, that one may easily find Russian property transaction documents, which when addressing a woman's property, frequently restricted her use of it. And from this it is concluded that Russian women's property rights were somehow incomplete. For instance, the fact that a woman who held a dowry was not able to sell it, is considered a shortcoming in the law, one unfavourable to women. However, this misinterprets the legal tradition concerning dowry, which was always governed by more restrictive property laws. In addition, women in medieval Russia had comparatively a more economic freedom than their Western counterparts. It must be understood that dotal property was always treated as a separate category of property under Roman law, and had accompanying it its own set of laws. These laws were devised specifically to enable the owner/possessor of dotal property to fulfil the purpose of dotal property - that was, for the support and maintenance of the family. To say that a woman's property rights were reduced because she could not alienate the dotal property would be incorrect. This interpretation attaches a modern interpretation to an ancient institution.

The following chapter is divided into three parts: I. The Roman Law on Dowry as Written in the *Digest*; II. Dowry Provisions in Russian Civil Law, and Russian Ante-Nuptial Agreements; III. Dowry Statutes in the Byzantine Law of the *Kormchaia kniga* and Their Application in Russian Dowry Practices.

#### I. *The Roman Law on Dowry as Written in the Digest* .

In order to determine how Russian dowry practices followed the provisions of Romano-Byzantine law, it is necessary first, to examine what these provisions were. Law

on dowry was addressed in books 23, 24, and 25 of the *Digest*.<sup>14</sup> The law consists of numerous excerpts taken from the works of Roman jurists thematically arranged among the books of the *Digest*. The excerpts in the *Digest* are repetitive and oftentimes contradictory, since Roman dowry practices evolved over a period of centuries, but they may be reduced to a few points. This section organizes the law on dowry into three categories, each addressing one particular aspect of the law - first, fiscal obligations, second, the substance of dowry properly, and third, the return and recovery of the dowry. Such a summary like that provided below is essential to an understanding of Byzantine dowry law and, thus, of Russian dowry practices, because Byzantine dowry statutes as contained in the *Ecloga* and *Prochiron* are a much reduced form of the essential points in law. Without the juristic commentary of the *Digest*, the Byzantine statutes alone do not readily reveal the operation of law which underlay them, so in this regard the summary provided here of the *Digest* is useful. As the Byzantine statutes were rendered in the *Kormchaia*, they were even more abbreviated. This, however, is not to say that *some* operation of law cannot be observed in them.

#### I. Fiscal Obligations in Roman and Byzantine Dowry Law

Upon marriage, ownership of the dowry property was transferred to the husband.<sup>15</sup> It could, by stipulation in the dowry agreement, be transferred before the wedding if this was preferred.<sup>16</sup> But in either event, it was the marriage or the promise of marriage which legitimized and made legal the transfer of dotal property. The dotal property which the husband acquired became part of his estate, *eo dominium ad maritum ipso iure*

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14 The citations are from *The Digest of Justinian*, 2 Vols., ed. & trans. Alan Watson, (Philadelphia: University of Pennsylvania Press, 1998) [revised edition]. Hereafter *Dig.[W]*. The English translations quoted in this section are Watson's. Law on dowry in the *Digest* consists of book 23.3 *Law of Dowry*, book 23.4 *Dotal Pacts*, book 23.5 *Dotal Land*, book 24.3 *Recovery of the Dowry on Dissolution of the Marriage*, and book 25.1 *Expenses Made Related to Dotal Property*.

15 It was said that dowry was transferred to the husband "on account of his wife" ("*...propter uxorem enim uidetur is fundis ad maritum peruenisse.*"), *Dig.[W]* 23.5.14§1.

16 The transfer of property was real and not just a formality, since the law required that a woman who gave a repudiation before the marriage took place to bring a *condictio* if the property had already come into the husband's possession. Otherwise she was able to reclaim it immediately. *Dig.[W]* 23.3.7§3.

*transferri*.<sup>17</sup> It should be said that as the law evolved, it became more favorable toward a woman's position in the marriage with respect to her dowry property. It was said that though the property was controlled by the husband, it still belonged to the wife.<sup>18</sup> Centuries of legal commentary which concerned the husband's acquisition of the property followed a similar pattern of legal reasoning based on a single point. The reason why the husband acquired ownership of the dotal property was because it was he who held the greatest responsibilities within the marriage.<sup>19</sup> The same reasoning was applied to the issue of profits made on the dowry (*dotis fructum*) within the marriage. According to the law, it was the husband who was entitled to them. This was for two reasons, first, since it was he who acquired possession of the property by his bearing of the burdens of marriage, it was only fair he retain the profits.<sup>20</sup> The second reason had to do with the complex financial system which evolved in connection with dowry. In general, the husband was to provide the funds for the upkeep of the dotal property, and in return retain the profits on it. Out of it came a division of profits, which were apportioned according to certain traditions. Basically the husband was entitled to the offspring of livestock, the fruits of the crops, and any natural resources on the land; the wife was entitled to the offspring of slaves.<sup>21</sup> Numerous other examples in the law supported the husband's rights to the profits within the marriage. There was a certain reasoning behind the systematization of profit distribution in the marriage. There is in the *Digest* the example of a quarry on dotal land, which said that the profits were the husband's because the presumption of the law, unless otherwise stipulated, was that the woman gave him the dowry with the intention that the

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17 *Dig.[W]* 23.3.9 §1. *Dominium* meaning ownership. See also *Dig.[W]* 23.5.15, where the term *possessionem retinuit* (retaining possession) is employed.

18 "Although a dowry becomes part of a husband's estate, it still belongs to the wife." *Dig.[W]* 23.3.75.

19 It belonged to the husband because "the dowry should remain with the person who bears the burdens of the marriage" ("*Ibi dos esse debet, ubi onera matrimonii sunt.*"), *Dig.[W]* 23.3.56§1.

20 "*Dotis fructum ad maritum pertinere debere aequitus suggerit: cum enim ipse onera matrimonii subeat*", *Dig.[W]* 23.3.7§ pref.

21 "The offspring of slaves [given as dowry] belong to the woman, the progeny of cattle belong to the husband." *Dig.[W]* 23.3.10 § 2&3. The same provision is contained in the *Prochiron*. See below pages 165-166. Also see below page 155 concerning Russian law on the same.

profits belonged to him.<sup>22</sup> Profits had to be genuinely made, that is from the improvement or proper use of dotal property, and so there was a prohibition on the husband against collecting tribute from his wife on her dotal land.<sup>23</sup> These methods of generating profits from the property were well understood in the Roman and Byzantine periods.

The relationship under the dotal financial arrangement was reciprocal. Laws preventing dissipation of the dowry ensured that neither the husband nor the wife would have an advantage over the other, and so provided an equitable set of rights and obligations with regard to this property. It was not only a matter of the husband acquiring ownership and so the right to the profits. He in return had an obligation under law to incur expenses in connection with the dowry. The expenses were to fulfill his primary obligation to the maintenance of the dotal property. Since it was in his possession during the marriage and he had the primary obligation not to dissipate the dotal property, it was likewise his obligation to expend funds intended for its upkeep. Dowry property, which was commonly in the form of land, was viewed as property intended to generate income and be self-sustaining in order to provide economic support for the family,<sup>24</sup> and therefore, necessary expenses were to come from the husband's funds, so as not to diminish the dowry by taking from it and defeat the object of its economic existence.<sup>25</sup> The maintenance of the property was also supported from the woman's fund derived from the property itself. For this reason the man had the right to demand expenses to be deducted from dowry funds for the support of the dotal property. The expenses he demanded were to be, however, only those for those which were considered useful and necessary.

What determined whether or not an expenditure was useful or necessary was based again on the principle that expenditures deducted from the dowry should be aimed at improving the woman's property.<sup>26</sup> The law specifically prevented a husband from

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22 *Dig.[W]* 24.3.8§13.

23 *Dig.[W]* 25.1.13.

24 "*...sed ipsae res ita praestare intelleguntur, ut non tam inpendas in eas, quam deducti eo minus ex his percepisse uidearis*", *Dig.[W]* 25.1.15.

25 "for a man must look after the dowry at his own expense" ("*nam tueri res dotales uir suo sumpto debet*") – the man himself (by himself) ought to assume the protection of the dotal property. *Dig.[W]* 25.1.15.

26 *Dig.[W]* 25.1.5§3.

demanding expenses which were not useful and necessary. So demands which might have constituted a gift were forbidden. This was for the reason that the law prohibited the exchange of gifts between spouses.<sup>27</sup> Reasonable necessary expenses included those incurred, for instance, from the cultivating of the land.<sup>28</sup> The view that the woman's consent should be secured in conjunction with necessary expenses is evidenced by the suggestion that a husband could only justly deduct expenditures he made if he had made them with his wife's consent.<sup>29</sup> This right of a woman to have transactions secured with her consent was strengthened in later Roman and Byzantine times, until the legal practice was such that no transaction could be done without it. The joint nature of dotal property and reciprocal responsibilities of the husband and wife in relation to dotal property were reflected in the laws governing the profits and expenses incurred. The recommendation contained in the *Digest* that any improvement made should ideally be capable of being divided in the event of a divorce says much about the equitable nature of the dowry arrangement.<sup>30</sup> And just as the husband was entitled to the profits on dotal property, he was likewise entitled to suffer a legal penalty should he let the property dissipate or cause some loss.<sup>31</sup>

#### *A Note on Roman Dowry Agreements*

A dowry typically came from the father or other ascendant of a woman as

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27 *Dig.[W]* 25.1.1. See also the Byzantine law, for instance the *Prochiron*, Title 10. Gifts in the context of marriage were forbidden to be exchanged except under certain circumstances. Such extra-legal gifts under Byzantine law were considered null and void.

28 *Dig.[W]* 25.1.3, 16. Section 25.1.16 said that harvesting costs were the responsibility of the husband.

29 *Dig.[W]* 25.1.8.

30 *Dig.[W]* 25.1.9.

31 "In matters relating to the dowry, the husband is responsible for fraud as well as negligence...he must exercise the same diligence as he shows in his own affairs.", *Dig.[W]* 23.3.17 § pref. In the passage fraud and negligence reads "*dolum quam culpam*". This was especially true where property other than money was concerned, *Dig.[W]* 24.3.66 § pref. In the event of divorce, the husband was responsible for the loss (*detrimentum*) on dowry property during the intervening period between divorce and the return of the dowry. For example, in the case of slaves who ran away, the husband was responsible for replacing them, *Dig.[W]* 24.3.25 § 2&3.

part of his property,<sup>32</sup> but could also be given as a gift by a stranger or other relation. Most usually, a gift given as dowry by a stranger or someone acting on a father's behalf was to be understood as coming from the father.<sup>33</sup> The Roman and Byzantine law distinguished between a gift given by an ascendant or father, and one given by a stranger (non-family) as the first being profectitious<sup>34</sup> and the other not profectitious.<sup>35</sup> The type of dowry, whether it was profectitious or not, determined whether the giver of the dowry was able to have an action for recovery of dowry.

A woman had a right to demand a dowry from her father, his guarantor or his heirs,<sup>36</sup> under an action for dowry (*dotium causa*), if it had been promised to her.<sup>37</sup> However, the obligation to provide dowry extended only to the first marriage.<sup>38</sup> Typically such a woman upon the event of her first marriage would still have been under the *potestas* of her father. But an action for dowry was permitted even if a daughter had already been emancipated by her father. In the event that a father had emancipated his daughter before her wedding, having already promised her a dowry, he was still legally

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32 See for instance, *Dig.[W]* 23.3.5§pref.

33 For example, *Dig.[W]* 23.3.5§2.

34 Profectitious is that which comes from one's ascendants. *Dig.[W]* 23.3.5§11, 12 discusses that it was in what capacity the dowry was given not the legal position of the father or other ascendant which determined whether a dowry was profectitious. If the father was the curator of his emancipated daughter, the dowry was considered as coming from him in his capacity as father, not curator. The dowry was considered profectitious unless it settled a debt, in which case it was considered adventitious (*aduenticia dos*).

35 This term is not specifically mentioned in the Byzantine legal texts of the *Kormchaia*, so it is likely as a formal legal concept this was not understood in Russia. But the Byzantine law in the *Kormchaia* spoke sufficiently on the return of dowry in its provisions so that it was evident in the statutes that there were two distinct types of gifts with differing statuses.

36 See for instance, *Dig.[W]* 24.3.46.

37 The law considered that an action for dowry was "to take precedence at all times and in all circumstances"*Dig.[W]* 24.3.1. Also *Dig.[W]* 24.3.44.

38 This was "commonly held", *Dig.[W]* 23.3.68, regarding a first marriage. Under Roman law, a woman could be legally married at 12 years of age. *Dig.[W]* 23.3.68. The legal age was raised in Byzantine law to fourteen years. This same age restriction also found its way into the *Stoglav*, Chapter 18 *Engagement and Wedding* (*obruchenie* and *venchanie*). One cannot say for certain whether in medieval Russia women were married at this age or at a later age, but the civil enactment of the *PSZ* raising the age requirement was the first civil enactment governing the age of marital eligibility. Prior to this the ecclesiastical age requirement remained the same until the eighteenth century. See below note 93.

obligated to provide the dowry.<sup>39</sup> Under the law, if a woman had been emancipated with her father supplying to her the dowry, it was seen under the law as having come from the woman and not the father.<sup>40</sup>

Under Roman law, dowry agreements were able to be made both before and after marriage, though it was more common that they were made before a marriage took place. In addition to a dowry agreement being a means by which the property transaction was formally set down in consideration of the marriage, the agreements also ensured that all parties to the agreement had their respective rights and liabilities affirmed. The law recommended a dowry agreement or pact be made in anticipation of a possible suit should something occur within the marriage to alter the legal status of the dotal property.<sup>41</sup> This was especially important because all parties were held liable in a dowry agreement.<sup>42</sup> A verbal agreement was acceptable under the law.<sup>43</sup>

The contracting parties of a typical agreement were the father-in-law and the son-in-law, as the woman was not usually a formal party to the contract. This was especially true if the woman had not received her dowry. A woman who had not yet received her dowry, would typically have been a woman who had not married previously and was not *sui juris*. However, under the law a woman became a party to the agreement if she had already received the dowry. This occurred when the gift had either been given early in anticipation of the marriage, and so at this juncture she had a legal interest in the agreement; or the woman already held in her possession the dowry, and was embarking on a second marriage, for example, and would already have been *sui juris*.<sup>44</sup>

The law gave the parties some latitude in drawing up the agreements, by means

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39 *Dig.[W]* 23.3.44§pref.

40 *Dig.[W]* 23.3.51, though under certain circumstances, as per the illustration.

41 It was recommended that when drawing up a pact concerning the return of a dowry the signatory should include “everyone who can sue for a dowry or be sued for one”, *Dig.[W]* 23.4.1§1.

42 *Dig.[W]* 23.3.41§pref.

43 The promise of dowry could also be made verbally, in which case “a verbal guarantor for it is liable.” *Dig.[W]* 23.3.55.

44 When making a pact, a woman’s position “need not be considered”. If the pact was made before the marriage, it was then just between the father and son-in-law; if the woman had already received her dowry, then the woman was to be a party to it, *Dig.[W]* 23.4.7.

of stipulation. Some stipulations were standard and to be found in most agreements, such as those which stated the dowry would be transferred only “if the marriage takes place.”<sup>45</sup> The basic laws governing dowry agreements and which made them legal instruments, forbade certain types of stipulations that would have had the effect of nullifying them. For example, a valid dowry agreement could not state that a woman had no right at all to claim back her dowry, because then in effect “in law she has no dowry.”<sup>46</sup> Another common stipulation concerned that of the return of the dowry after a woman’s death. Under certain circumstances, as mentioned above, it was the convention that the dowry went to the father-in-law, or if he was deceased, to his son, or other heir.<sup>47</sup> It was just as acceptable that part of the dowry could be retained for her offspring and thereby be held by the husband with the other part of it being returned to the woman’s father or his heirs.<sup>48</sup> A part of the dowry could constitute a portion per child, or a half.<sup>49</sup> Or even the whole of the dowry could remain with the husband, provided there were children.<sup>50</sup> A father-in-law could also stipulate that the whole dowry was to remain with the husband in the event of the woman’s death even if there were no children.<sup>51</sup> A third common stipulation concerned the time period for the return of the dowry. It was common practice that the time for the return of the dowry matched the time of its giving. The customary time period which was preferred was usually one calendar year. It was recommended that dowry agreements not have written into them extended time periods permitting for the return of dowry.<sup>52</sup> For any matter not stipulated to in an agreement, the woman retained her right of action with

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45 *Dig. [W]* 23.3.21. See also *Dig. [W]* 23.4.5§pref. It was forbidden to have a pact in which an agreement was made not to bring an action for misconduct against the husband if he caused some loss to the dowry. The reason given for this was that such a pact would “remove the right to public punishment” and thereby serve to nullify “an action for recovery”.

46 *Dig. [W]* 23.4.12§1.

47 *Dig. [W]* 23.4.9.

48 *Dig. [W]* 23.4.23. It was also possible for the dowry to go to the woman’s brother if she died, *Dig. [W]* 23.4.29§2.

49 *Dig. [W]* 23.4.26. See for example the possible kinds of stipulations which could be made concerning dowry in §1-5.

50 See for example, *Dig. [W]* 23.4.2 and 23.4.25.

51 *Dig. [W]* 23.4.12§pref.

52 *Dig. [W]* 23.4.17.

regard to the dowry.<sup>53</sup>

ii. The Substance of Dowry Property<sup>54</sup>

While the *Digest* did not specifically recommend or forbid what could constitute dotal property, from among its provisions one can see what a dowry could consist of. Both movable and immovable property could comprise a dowry.<sup>55</sup> The most common items a dowry included were land, slaves, and livestock, all of which were held and given as dowry in Russia.<sup>56</sup> Another fundamental point underlying dowry law in the *Digest* was that the dowry existed only within the bonds of matrimony.<sup>57</sup> Dowry was received in anticipation of the marriage, and was transferred to the husband upon the marriage. It ceased to be dowry upon the dissolution of the marriage. Though the funds still existed, the dotal property was, under the law, no longer considered to be dotal in kind once the marriage had ended. For there, too, ended the reciprocal rights and obligations with respect to the property.<sup>58</sup>

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53 *Dig. [W]* 24.3.22 pref. In the passage, it is said that the woman would have a right of action where a situation arose which was not provided for in the dowry agreement or by stipulation.

54 A description of dotal land, including rural and urban descriptions, is contained in *Dig. [W]* 23.5.13.

55 Dowry property was differentiated from personal belongings, see *Dig. [W]* 23.3.9. Personal property called *peculium* or *paraphena*, remained in a woman's possession during the marriage, though the husband had custody over it. The section indicates that a written record of the property was made and signed by the husband. The practice of making accounts is mentioned in the *Digest* book 24.3. See in particular, 24.3.7, where the offsetting of profits against losses, and valuation of the dowry, etc. is discussed .

56 See for instance, *Dig. [W]* 23.3.10§2&3. On laws concerning dotal land see *Digest* book 23.5 *De fundo dotale*.

57 *Dig. [W]* 23.3.1&3. See also Ulpian in 23.3.9§2: "We must understand property given as dowry to mean property given for the sake of a dowry." ("*Dotis autme data accipere debimus ea, quae in dotem dantur.*").

58 It is unclear in the written law what happened to the property upon a woman's death when it was retained by the husband for the benefit of the children. Often the dowry was apportioned it seems according to the number of children. Obviously, if the children were minors the father held the funds in trust for them. But as to whether the property was controlled by the dowry laws and thus restricted in its use is not evident in the laws. The law in its many juristic statements concerning the disposition of the dowry after death or divorce, only stated to whom it was to revert or by whom it was to continue to be held. There was no explanation concerning the effect on its substance.



dissipation of the dowry. Therefore, although some dissipation was permitted under the law if it was necessary to conserve the dotal property, a wholesale alienation was never permitted under any circumstances. No one, not a betrothed man, a husband or a legatee who received dowry was able to alienate or encumber the property.<sup>66</sup> Dowry funds, however, were not to be used for purposes beyond the support of the family, for instance to settle personal debts or for the personal acquisition of property, nor for anything which was not in the common economic interest of the family. Under the law such uses rendered the dowry as wrongly received (*male accipere*).<sup>67</sup>

On the question of whether profits became part of the substance of the dowry, the law of the *Digest* addressed this issue. The law stated that a husband was entitled to profits on the dowry only after the marriage took place,<sup>68</sup> and so further underscored his privilege as owner of the dowry. This section of the *Digest* pertains to the ability of a party to make a stipulation in a dowry agreement directing that the profits on dotal property become part of the dowry.<sup>69</sup> It can be concluded that where profits were concerned they did not fall into the category of property governed by the principle that property bought with dowry funds became dotal. Instead it appears that the profits were an exception as it was this which contributed to the source of funds which the husband was obligated to expend as necessary expenses for the upkeep of the dotal property.

### iii. Recovery and Return of the Dowry

Though the husband acquired ownership of the dowry through marriage and retained this ownership throughout the duration of the marriage, the dowry was not his to possess indefinitely. Since the dowry was in effect a woman's portion of her father's estate, the woman's family (herself included) retained an interest in the dotal property.

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66 *Dig. [W]* 23.5.1. Also 2,3,4. Section §1 prohibited alienation by a slave's master. This was for the reason that slaves were permitted to receive dowry. But just as the slave was owned, so too, ultimately was his dowry, though this did not grant the master exception under the law. 23.5.4 stated that the *lex Julia* provided that a husband could not alienate or otherwise encumber dotal land. Section 23.5.17 referred to what happened to land which was alienated with the wife's permission.

67 See for instance, *Dig. [W]* 24.3.20.

68 *Dig. [W]* 24.3.7§3,4.

69 *Dig. [W]* 23.4.12§3.

While the husband acquired ownership of the dowry by marriage, it lasted only the duration of the marriage.<sup>70</sup> In the event of either divorce or death, the dowry was returned to the woman or her father-in-law if living, thus preserving the dotal property in the woman's family. It could also remain with the husband. This was commonly the custom if there were children of the marriage.

An action for the recovery of the dowry was a means by which the woman either acting on her own behalf or with her father if they had a joint interest could have her dowry returned to her.<sup>71</sup> This return could be effected for a number of reasons. The general rule was that dowry returned or recovered had to be the same property as that which was given, the monetary value was not able to be substituted. However, if the property no longer existed because the property had been sold for some reason, it was permissible for the equivalent of its initial valuation to be returned.<sup>72</sup>

An important aspect of this law is that in order for the dowry to be properly returned, it was necessary that all parties concerned know what comprised the dowry at any given time. This was accomplished through the keeping of household accounts. Initially there would have been a record of the dotal gift written into the dowry agreement. Following this, after the marriage, the dotal property generated profits or losses, which the husband and wife determined through calculations setting their necessary expenses against the profits.<sup>73</sup> Accurate accounts were necessary because a woman had the right to demand the return of her dowry even during the marriage. The reasons given in the law as to why a woman could have her dowry returned to her within the marriage were: "to

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70 With regard to Russian terminology concerning a distinction between owner and possessor, the following examples may prove useful. See for instance 16:17 of the *Ulozhenie* on a woman possessing a service landholding (*pomest'ia*) until marriage, *...pomest'em vladet...* In the *Prochiron* text as rendered in the *Kormchaia*, there are other terminological variations. *Gran' 9, glava 10 9 (Kormchaia f. 423a)* says that a husband shall *retain* the dowry...*veno da ostanetsia oumuzha*. *Gran' 9, glava 6 (Kormchaia f. 422b)* says that a husband shall *acquire* the dowry [if there are no children and the mother dies]...*mouzhevi ouderzhati veno...*

71 Consent issues where a joint interest was present are explained at length in *Dig.[W] 24.3.2*.

72 *Dig.[W] 24.3.50, 51*.

73 On necessary expenses, profits and accounting see *Digest*, book 25.1, especially § 2,3,6 and also 24.3.7§16. Necessary expenses included cultivation and planting, the preservation of buildings, care of slaves, or livestock, and more generally, any development of the estate in terms of utilitarian improvements to the woman's advantage.

support her children, to buy suitable land, to make provision for her father who is in exile or has been relegated to some island, or to relieve her son by another husband, or her brother or sister who are in need.”<sup>74</sup> A woman was also permitted within the marriage to initiate an action if it appeared that her husband lacked the funds to return her dowry, or if part of the dowry had been confiscated;<sup>75</sup> this right, however, was lost if the whole of the property had been confiscated.<sup>76</sup>

## II. Dowry Provisions in Russian Civil Law, and Russian Ante-Nuptial Agreements

This section examines those few Russian civil legal provisions related to dowry, and shows that they were mainly amendments to the law rather than prescriptive law. Also contained in this section is a description of the primary elements which comprised a typical Russian ante-nuptial agreement, demonstrating the contractual nature of the agreements as based on Roman dowry law.

### *Dowry in Russian civil law*

In Russian civil law, there are few provisions which spoke specifically on family law, especially those which were concerned with the marriage contract, dowry and the woman's economic position after widowhood.<sup>77</sup> Yet throughout the course of the Kievan and Muscovite periods, charters (*gramoty*) and deeds (*zapisi*) were transacted under the rule of law regarding these matters. Documents such as wills, purchase agreements, donation charters, ante-nuptial agreements and grants of divorce of the Muscovite period, with regard to women and property provide the historian with evidence that these rights were rooted in some standard of law. The role of the dowry in these documents is central to an understanding of what laws governed matters of the family and more specifically women's property rights during these periods. The treatment of dowry in Russia demonstrates that there were laws present in Russia governing the property rights of

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<sup>74</sup> *Dig.[W]* 23.3.73§1; 24.3.20.

<sup>75</sup> *Dig.[W]* 24.3.24§1-7, speaking on what conditions made such an action legal.

<sup>76</sup> *Dig.[W]* 24.3.24§7.

<sup>77</sup> Such provisions in law as were present in Russian legal collections will be spoken of in further detail below.

women, laws outside of the Russian civil codes. This may be said because of the consistency of the documents, as mentioned already. It was the central legal feature of dowry in Russia that dowry property in marriage was considered to be inalienable and that the woman possessed an absolute interest in it. All transactions involving dowry apparently operated with this understanding. In Russia, just the same as was expressed in Byzantine law, the cornerstone of dowry law was for the preservation of the family unit by means of the retention of property within the unit. The basis of such legislation rested upon the foundation of the marriage contract - that is, the financial transactions of the two consenting parties. In the marriage contract, the woman brought to the marriage her dowry and the man his marriage gift. This property was intended to support the family during the course of the marriage. The man and woman in the unity of the marital bond were entitled to draw jointly on the profits from these separate estates they brought into the marriage.

Upon the death of her husband, a woman in Russia had returned to her the dowry property which was held by the husband in ownership during the course of the marriage. She also acquired control of the family property – as a life-estate for the purposes of supporting her children, just as a woman did under Byzantine law. Thus, acting as administrator of the estate, ensuring through the maintaining of the estate that her heirs would receive their share, the woman was permitted to control the property especially for the immediate purpose of providing marriage gifts for her children. Evidence in Russian charters suggests that during the marriage the dowry of women was not alienated. Roman and Byzantine law permitted one exception, that was for just use in the case of poverty of the extended family.<sup>78</sup> In many Russian documents, transactions concerning dotal property required the woman's consent. In Russia, just as in Roman and Byzantine law, although a woman's husband acquired ownership of the dowry property during the

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78 See *Prochiron kk, gran' 9, glava 1, f. 422b* which allowed for dissipation of dowry for this purpose. . . СИМИ ВИНАМИ ИЗДАВАТИСА, ЯКОЖЕ СЕ, ДА СЕБЕ, И СВОА ДА ПИТЪЕТЬ, ДА СЕЛО ДОБРО КОУПИТЬ, ДА ИЗГНАНА ОУЦА БЪВША КОРМИТЬ, ИЛИ МОУЖА, ИЛИ ОБНИЦАВШЮ БРАТЮ.

*N.B.* See below pages 158-159 where is described the system of citation which has been devised to designate passages belonging to the Byzantine *compendia* as rendered in the 1653 printed *Kormchaia*. It is similar to that employed in Chapter 3 above.

marriage, the woman retained an absolute interest in the dowry property. Her husband could not act without her consent in changing the substance of it.

The Russian civil law was largely silent on family law, especially concerning dowry and related property law such as dower - the life estates of widows, until the promulgation of the *Ulozhenie* in the seventeenth century. What family law which was addressed in the Russian civil legal collections mainly concerned inheritance. The earliest of these Russian collections, the *Rusaskaia pravda* (expanded redaction) makes only one reference to family law in this regard. It stated that land was to go to male offspring and movables to females (Articles 91 & 95).<sup>79</sup> In the *Zakon sudnyi liudem* (*ZSL*)<sup>80</sup>, Article 42 of the expanded redaction instructed that a father was to divide his estate equally among his children. This provision did not distinguish among males and females. The reason for this can be explained by the compilation history of the *ZSL*. Byzantine law did not distinguish between the sexes in matters of inheritance law, and, since the *ZSL* was based on the *Ecloga*, this point in law was carried over into the Slavonic rendering of it. Apparently it was incorporated into Russian practice as well.<sup>81</sup> Article 84 of the *ZSL*, in describing the procedure behind the writing up of a will, stated that if the testator wished to make a gift to his wife in the portion of one-half of the household, he could.<sup>82</sup> Muscovite codes, later amended this equitable treatment of the sexes. For example, the 1497 *Sudebnik*, Article 60 and 1550 *Sudebnik*, Article 92 commenting on intestacy, provided that lands were heritable by daughters only if there were no sons.<sup>83</sup> In the event that there were no direct heirs, the law then specified that the estate should go to the nearest of kin. In the 1589 *Sudebnik* is repeated the provision that in the event there were no direct heirs, the estate was to go to the nearest of kin- either maternal or paternal.<sup>84</sup>

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79 *Rusaskaia pravda* (expanded redaction), Articles 91 and 95 in *PRP* Vol. I, 117-118.

80 *Zakon sudnyi liudem*, Dewey and Kleimola, 40.

81 At least until the late fifteenth century. On the testamentary succession of women, see below Chapter 6.

82 *Da ashche khoshchet dariti ot svokia chasti. Zhenu si veshchnuiu to darit dostoinoiu chast'iu. Iezhe narechetsia pol d'mu na polu bo domu daet iemu sud" vlasti.* Art. 84, expanded *ZSL*. *Zakon sudnyi liudem*, Dewey and Kleimola, 50.

83 *Sudebniki XV-XVI*, Grekov: *Sudebnik* 1497, Article 60, and *Sudebnik* 1550, Article 92.

84 *ibid.*: *Sudebnik* 1589 expanded redaction, Article 190.

The first specific mention of dowry in the Russian civil law is found in the *Sudebnik* of 1589. One provision addressed the return of dowry property. It said that if a woman died without heirs, the dowry was to go to the woman's parents.<sup>85</sup> This upholds the early Roman and Byzantine statutes as found in the *Prochiron*.<sup>86</sup> Article 193 of the *ZSL* said that if she was widowed though childless, the dowry reverted to her.<sup>87</sup> This article, as well, upholds earlier Roman and Byzantine dowry law as in the *Prochiron*. Not until the early seventeenth century does one find anything more extensively written in Russian legal collections on the subjects of dowry or women's property rights. Until this time, it seems that in practice, women generally had rights in law comparable to those of men to own, use, and dispose of property.

The *Ulozhenie* (1649) contained a number of articles concerning dowry. But as in earlier Russian legal collections, one finds no substantive legislation regarding dowry practices, merely amendments to already existing practices, which as has been mentioned above, actually used as their source in law the Byzantine statutes on dowry as contained in the *Kormchaia*. For the first time, dowry transactions were to take written form. Article 10.250 required that people of all ranks make written transaction documents such as purchase of hereditary estates, mortgages, and dowries (here as *dannye*). Persons in villages were required to draw up written wedding contracts (*sgorvornykh*), marriage registrations (*svadebnykh zapisei*), wills (*dukhovnykh*), and loan memoranda (*zaemnyx pamiatei*).<sup>88</sup> On the return of the dowry, Article 17:1 confirmed this practice saying that a childless widow was to receive 1/4 of her movables plus her dowry. It should be said that the provisions of the article were primarily focused on the issue of childless widows and their financial support, in particular negating their claims on hereditary service estates (*vysluzhenyia votchiny*).<sup>89</sup> The article was not for the first time allowing the return of a woman's dowry, since this was already a long-standing practice, supported in the

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85 *ibid.*, Grekov: *Sudebnik* 1589 expanded redaction, Article 192.

86 As mentioned, this was the usual practice. See Titles 9:6 and 9:10 of the *Prochiron*, which in the *Kormchaia* is *gran' 9, glav' 6 and 10, ff. 422b and 423a*.

87 1589 *Sudebnik*, expanded redaction, Grekov, Article 193.

88 Of course, many charters concerned with property transactions exist predating this statute.

89 *Ulozhenie*, Hellie, 17:1. on the prohibition against the passing of hereditary estates to childless widows. This article referenced a decree of 1627/8 speaking on the same.

Byzantine law and evidenced in Russian documents, especially last will and testaments predating this statute. Other articles of the *Ulozhenie* which make mention of dowry were those concerned with hereditary service estates and preventing their being passed on the childless widows. Article 17.2 granted a childless widow an allotment (*prizhitok*) from hereditary service estates, in the event there was no other source of income (i.e. purchased hereditary estate - *kuplennaiia votchina*) from which an allotment could be drawn. The law forbade any further claim on the property by the childless widow, specifying that it could not be transferred; that was: not mortgaged, donated, taken to a second marriage, or registered as a dowry.<sup>90</sup>

In Article 17.1, one sees that the transfer of dowry was permitted, with certain restrictions. This Article, similar to the one above, merely confirmed an operation of dowry which long had existed in Russia. The Article, while listing the prohibitions against the improper transfer of hereditary service estates to women, was careful to direct that women were still to be considered as legitimate testamentary heirs. It should be noted, that the statement contained in the Article which directed that brothers should inherit hereditary estate land *before* sisters, was primarily aimed at preventing such land from passing into a state of stagnation or disuse. The Article did permit those women who had already received hereditary estates as their dowries, or as bequests previous to the enactment of the law, to retain them.

The remaining Articles of the *Ulozhenie* relevant to dowry practices were those which concerned the transfer of hereditary and other slaves given as dowry, in particular Articles 20:31, 20:61 and 20:62. These articles mainly affirmed what had been done in Russian practice, that slaves could be given as dowry and passed on in testamentary documents. These articles specified what was to happen in the event that slaves of the husband married slaves of the wife, for instance, and proscribed the transfer of limited

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<sup>90</sup> *Ulozhenie*, Hellie, 17:2. This article repeats material found in Article 16:16. The article amended the decree of 1627/28 which enacted new regulations governing hereditary service estates and the widow's portion. The decree of 1627/28 of Patriarch Filaret prohibited childless widows from a share in *votchina* or *pomest'e* lands and instructed that the share was instead to go to the deceased husband's nearest male relations. The widow's portion was to include the woman's dowry and 1/4 of movables from the marriage, and also a share in the estate land of her deceased husband. Exceptions to this article were made with regard to certain localities where there was unsettled land, see Article 17:45.

contract slaves (*kabalnykh kholopi ili rabi*) by means of such instruments.

#### *Dowry Agreements in Russia - riadnye sgovornye gramoti*

In Russia, there was not *per se* a dowry agreement or pact like that which has been described above in Roman law. More commonly, details concerning the amount and transfer of the dowry were addressed in what one could call a betrothal contract. In Russia, these were known as *riadnye* or *sgovornye zapisi* or *gramoti*.<sup>91</sup> For the purposes of this work, the Russian contract, the *riadnaia (sgorvornaia) gramota*, will be referred to henceforth as an ante-nuptial agreement. These documents essentially combined the elements of both a Roman betrothal contract and dowry pact. According to provisions of Slavonic translation of the *Prochiron*, the act of agreement in betrothal had the force of a contract and the parties under the contract were liable for penalties in the event the marriage did not occur. It was usual in Russia for the family of the girl to be betrothed to act on her behalf, and in *sgovornye gramoti* it was often the case that the legal guardians of the girl devised the contract, most usually the father. In Byzantine law, a girl was permitted to contract a marriage if she was *sui juris*, and the same seems to have been true in Russia especially concerning widows embarking on a second marriage. It would seem that with regard to women who were not *sui juris*, that the cultural practice in this instance reflected the typical Muscovite tradition which placed a woman under the subjugation of her father and her male relations. It is difficult to know whether every marriage contracted had accompanying it a written ante-nuptial agreement, as it is known that oral agreements were made especially among less well-off families. Under Byzantine law, a marriage was considered valid without the necessity of having a written contract,<sup>92</sup> but certainly it was advantageous to have one since there was the matter of financial liability with respect to the dowry. It is not possible to discern from these Russian charters the age of the woman who was being betrothed. According to research, Russian marital practices followed age restrictions recommended in Byzantine law, which was for a girl

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91 On Russian *zapisi*, see Kotlarov, "Riadnyia-sgovonyia zapisi".

92 *Prochiron* kk: *gran' 4, glava 14, f. 409b*. A marriage was valid without a written marriage settlement.

thirteen years of age and for a boy fifteen years of age.<sup>93</sup> Scholars, when referring to this impediment of age, have often attributed it to the church and canon law, while in actuality it was part of Byzantine law. The *Ecloga* stated that the marriageable age for a man was fifteen and for the woman thirteen. The revised marriage law contained in the *Prochiron* reduced the ages to fourteen for the man and twelve for the woman.<sup>94</sup>

Russian ante-nuptial agreements contained three main elements. First, the two parties, usually the girl's father and the prospective son-in-law, agreed that a marriage would take place by a certain date or within a certain time span. A woman was not considered a party to the agreement as she had no direct economic interest in the property. Dotal property in Russia, just as under Roman law, was given by the father (who was typically usually the owner of such property) to the son-in-law to whom the ownership was then to be transferred. It was only in the event that the woman was *sui juris*, or had already been given the dowry in advance, that she was legally entitled to act as a party to the agreement. Second, such agreements often provided a description of what the woman brought to the marriage as her dowry. Such descriptions were usually brief, describing both the woman's specified landed property and other movables, though in the case of the aristocracy the enumeration of the dowry contents could be rather lengthy. For those agreements which concerned a second marriage the agreement often had written into it that the woman brought to the marriage the children from her first marriage. In this case, the agreement included a provision for maintenance of the children and stated that the prospective groom would care for the children to maturity, providing for them as his own. Finally, agreements concluded with a stipulation concerning the forfeiture of moneys and dowry should the marriage not take place. Following Byzantine provisions regarding dowry, Russian charters stated that if the wedding did not take place

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93 N. L. Pushkareva, *Women in Russian History from the Tenth to Twentieth Centuries*, trans. and ed. Eve Levin, (NY, 1997), 30. It was not until 1830 that the a civil age was mandated, which according to the decree, was for boys 18 and for girls 16. *Polnoe sobranie postanovlenii i rasporiazhenii po vedomstvu pravoslavnago ispovedaniia*, Vol. Id., 314. Until this time it appears, the ecclesiastical age stood as the law.

94 *Ecloga* 2:1 in: Freshfield; *Prochiron*, 4:3 as in Freshfield. The provisions while differing, both have as their essential point that the two will have reached the age of puberty, or discretion. This was the same as was written in the Slavonic translation of the *Prochiron* in the *Kormchaia*.

by a certain date the dowry would be returned or "not-given".<sup>95</sup> Byzantine law specified that if the wedding did not take place, the return of the dowry property was due in addition to the fine incurred by the prospective groom, who by law had to forfeit a certain fee as penalty for the broken contract.

### III. *Dowry Statutes as Found in the Byzantine Law of the «Kormchaia kniga» and their Application in Russian Dowry Practices*

This section will examine Roman law on dowry rendered in the Slavonic translation of it, contained in the *Kormchaia kniga* as it governed Russian dowry practices. Russian documents are used to support the contention that Russian dowry practices were not a matter of custom, nor a result of any Russian civil legislation, but instead were derived from the dowry law contained in the *Kormchaia*. As mentioned above, the *Ecloga*, the *Prochiron* and the *novellae* of Emperor Alexios Comnenus (chapter forty-three of the *Kormchaia*) comprise the main collection of dowry statutes contained in the *Kormchaia*. While the statutes were but an abbreviation of the expanded law one finds in the *Digest*, they were nevertheless sufficient to establish and govern a complete system of rights and obligations as they related to dotal property in medieval Russia.

Since the Byzantine law on dowry was substantively similar to Roman law, as the same three points were addressed: fiscal obligations attached to dotal property, the substance of the dotal property, and the return of dotal property.

The Byzantine law on dowry as rendered in the *Kormchaia* is examined below in the same fashion as was the Roman law on dowry above, that is, according to the three above named categories. The following examination of dowry law in *Kormchaia* mainly focuses on those statutes belonging to the *Prochiron*. All references to the *Prochiron* as rendered in the *Kormchaia*, are for the sake of clarity, named as *Prochiron kk*, that is, *Prochiron: Kormchaia kniga*. A particular statute will be cited as *gran'* (title) and *glava*

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<sup>95</sup> The dowry and not the monetary equivalent was to be returned. *Prochiron kk, gran' 8, glava 3, f. 421b*. If the dowry was specifically described in detail in the agreement, the specification was reiterated in the passage concerning its return.

(chapter). The citation parallels that of the *Prochiron*. For instance, *Prochiron* Title 9.4 will be cited as *gran' 9, glava 4*. Following this is the *folio* page where the statute may be found in the 1653 printed edition of the *Kormchaia*.

The law on dowry is contained in the *Kormchaia* chapters forty-nine and fifty. Chapter 49 of the *Kormchaia* - the Slavonic translation of the *Prochiron*,<sup>96</sup> - contained two sections specifically devoted to dowry: *gran'* (Title) 8, entitled *O ispravlenii vena*<sup>97</sup> (On the law of dowry), and *gran'* (Title) 9 entitled *O otmshchenii vena, i tiazhesti ego* (On the repayment of dowry and its burden). These two Titles of Chapter 49 of the *Kormchaia* contain in total some twenty-nine Byzantine statutes, many a sentence or two in length, and some nearly a paragraph in length. Chapter 50 of the *Kormchaia* - the Slavonic translation of the *Ecloga*<sup>98</sup> - contains fewer statutes on dowry, many of which were repeated in the *Prochiron*.

Among the statutes contained in the *Kormchaia*, the of purpose of dowry is not explicitly stated as it was in the *Digest*. However, the statutes *in their totality*, were sufficient to have made the purpose of dowry clear to Russian authorities and, further, allowed for its application in Russia in the Roman and Byzantine tradition.. That the purpose of dowry was for the maintenance of the family is expressed in the *Kormchaia* where it was said that where the marital burdens (*tiazhkoe imenie brachnoe*) were, so must remain the dowry.<sup>99</sup> This statute conveyed the notion that the dowry was for the purpose of the family, not to be treated as other property, and that there were restrictions

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96 The related titles in the *Prochiron* are: Title 1, *On Betrothal*; Title 2, *Earnest Money on Betrothal*; Title 3, *Gifts on Betrothal*; Title 4, *Marriage* - covering issues of age, consent, dowry and prenuptial gifts. Also there are further laws in Title 5, *Further Concerning Marriage*; Title 6, *Prenuptial Gifts*; Title 7, *Persons Who Are Forbidden to Marry*; Titles 8 and 9, *On Dower*; Title 9, *On Divorce*- which speaks of the dowry and other property issues upon divorce. See Freshfield, *Procheiros Nomos*. There are corresponding titles contained in Chapter 49 of the *Kormchaia*. Ff. 421b-425a comprise titles 8 and 9.

97 The word *veno* (ВѢНО) is of an older usage and was replaced later by the word *pridannoe*.

98 Title 1 of the *Ecloga* is *Concerning the Contract of Betrothal*; Title 2 is *Concerning the Contract of a Christian Marriage* which pertains to the substance and function of the marriage contract. This section makes some reference to dowry.

99 *Prochiron* kk, *gran' 8, glava 8, f. 422a*: ИДЕЖЕ ТАЗЖКОЕ ИМѢНИЕ БРАЧНОЕ, ТОУ И БѢНДЪ ПОДОБАЕТ БЪТИ. Further, the statute explained that in the event of the death of the father the burden fell to the son.

on its use. It also conveyed the notion that dowry was inextricably linked to the bond of matrimony, and for that reason, could not be separated from it (by alienation, for instance). Lastly, the statute conveyed the idea that it was only within the marital union that dowry could exist. For when that union was dissolved, the burden and responsibilities were removed, and so there ended, too, the dotal nature of the property.

Under the provisions of the *Kormchaia*, a husband had a right to an action for dowry, he could compel a stranger (*vneshnii chelovek*) who had promised a dowry to pay it over. He was liable if he did not enforce the promise of a dowry. In that case, he had to provide it himself.<sup>100</sup> Likewise a son-in-law could compel his father-in-law to provide dowry, if it had been agreed he would do so.<sup>101</sup> No evidence in Russian documents is readily apparent with regard to enforcement of the promise of dowry. But it would seem reasonable to say that since similar enforcement penalties were written into ante-nuptial contracts to which parties were held accountable, that similar promises with regard to dowry were likewise enforced in Russia. Certainly, dowry given as a legacy, which appears in Russian testamentary instruments allowed a woman her right of action for dowry, for these instruments were legally enforced in Russia.

### *Fiscal Obligations*

The statutes contained in the *Kormchaia* addressed the fiscal obligations the husband had to the dowry. They shared in common the basic legal principle of the Roman law that said with the transfer of ownership or possession came certain fiscal responsibilities. Before the marriage, property was considered to be at the wife's risk because the property had not been transferred to the husband's ownership.<sup>102</sup> In consideration of a dowry agreement both a valuation and non-valuation of the dotal property was permitted to be made. Valuation was at the husband's risk should there be any losses. A non-valuation was at the risk of the wife, and it was she who took the losses without remedy. If a valuation had been performed on the dowry, the law of the *Kormchaia* said that the husband then became responsible for any material losses to the

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100 *Prochiron kk, gran' 8, glava 4, f. 421b: ВНЕШНИИ ЧЕЛОВЕК.*

101 *Prochiron kk, gran' 9, glava 4, f. 422b.*

102 *Prochiron kk, gran' 8, glava 2, f. 421b.*

dowry, having the obligation to reimburse his wife.<sup>103</sup> It was made clear that the man had the obligation to prevent the dowry from diminishing (*oumaliami*), and so it was for him an obligation to meet any necessary expenses for the purpose of the upkeep of the dotal property.<sup>104</sup> Not only was the husband liable for any losses incurred, that is the dissipation of dowry funds, but he was financially liable for the entire dowry even if he were impoverished or became a pauper (*oybog'*).<sup>105</sup> The following example is representative of Russian last wills and testaments which show that fiscal obligation was taken seriously. The will of Prince Andrei Vasil'evich Nogtev (1533/4) of the Suzdal' region stated that a dowry had come to him in a *riadnaia gramota*, and was now being returned to his wife. He referred in the document to the dowry property which had been transferred to him in the ante-nuptial agreement, which included both movables and livestock.<sup>106</sup> In his will, he explained that a horse given to him as dowry had died and so that he had in compensation replaced it with three others.<sup>107</sup> This demonstrates fulfilment of the legal provision that the husband was responsible for any loss caused to the dowry, as determined by the original valuation of the dotal property. In addition, he granted to his wife Orina freedom to use the dowry and his gifts as she wished, and thus she was free to marry, or to take the veil (*volna zamuzh itti, ili postrizhetsia*).<sup>108</sup>

Even though the Byzantine legal statutes of the *Kormchaia*, unlike those of the *Digest*, did not specifically demand an accounting of dotal property be made it seems to have been the practice in Russia. Russian documents show that accounts were made

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103 *Prochiron kk, gran' 8, glav' 1 & 2, f. 421b*. The passage in 8.1 describes material loss such as the death of livestock, or the perishing of his wife's raiment: *ashche oumret' skotina, ashche i zhena rizy razderet'*.

104 *Prochiron kk, gran' 8, glava 9, f. 422a*. The word used here is ΟΥΜΑΛΙΑΤΗ, to diminish, rather than using the word to dissipate ΡΑΣΠΩΙΑΤΗ. This term for dissipation is used, for instance, in *Prochiron kk, gran' 9, glava 1, f. 422b*.

105 *Prochiron kk, gran' 9, glava 2, f. 422b*.

106 *Akty Suzdal'skogo, no. 34, page 87*.

107 *ibid.*, 88. He has given his wife, additionally, considerable movable property items of his own.

108 *ibid.*, 88. Under such conditions, there were in Russia typically restrictions placed on the life-estate property of the wife if she chose any of these options. Thus, if there were no restrictions placed on the woman and her property, this signified complete ownership of it, and demonstrated the practice in Russia of absolute ownership of the property once the marriage had been dissolved - following the original prescriptions in the Roman law.

concerning dowry transactions.<sup>109</sup>

### *Substance of the dowry property*

The fundamental principle concerning the substance of dowry property was expressed among the Byzantine statutes in the *Kormchaia*, that was, property bought with dowry funds became dowry.<sup>110</sup> The prohibition against alienation or encumbrance of dowry property is mentioned numerous times within the Byzantine texts.<sup>111</sup> In the statutes was contained the general principle was that dotal land could not be alienated, except under certain circumstances when it could then, with the consent of a wife, who after a space of two years and having been indemnified by other sources, could consent. The intent of the law was such that encumbering a property meant that it especially could not be pledged. A contract made for such a purpose was considered null and void, even if it was done with the wife's consent.<sup>112</sup> The same was true of the mortgaging of dotal property.

The one exception mentioned in the statute was that a mortgage could be made if the debt could be shown to have been incurred for the wife's benefit.<sup>113</sup> This proviso followed the general principle which gave exception to those financial transactions otherwise forbidden if they enhanced the economic position of the woman. It is certain that this understanding existed in medieval Russia, as there are few documents showing this generally prohibited transaction taking place. The majority of documents relating to dowry transactions indicate that dotal property was conserved and held as a separate estate throughout a marriage. Even so, some documents do indicate that purchases, sales and donations of dotal property took place in Russia, but it seems they were made in conformity with the restrictive Byzantine law on alienation of the dotal property.

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109 Kleimola, "In Accordance with the Canons", 210, in her analysis of sixteenth century Russian dowry practices found that "careful accounts were kept of dowry transactions".

110 *Prochiron kk, gran' 8, glava 7, f. 422a.*: ВЪНОВНАГО ИМЪЕНІА, КОУПЛЕНА ВСА ВЪНОВНА СОУТЬ.

111 *Prochiron kk, gran' 8, glava 9, f. 422a*; and *gran' 9, glava 13, f. 424a*.

112 *Prochiron kk, gran' 9, glava 18, f. 424b*.

113 *Prochiron kk, gran' 9, glava 20, f. 425a*.

A purchase charter (*kupchaia gramota*) of 1554/5<sup>114</sup> states that Ivan purchased a *votchina* village from his father and brothers and that 20 rubles from the dowry money of Katarina, Ivan's wife was used in payment. This example demonstrates, first, that the dowry funds were kept separate, and, second, that if they were used they were referred to in legal documents as dowry property or funds. Unfortunately, no specific reason for the purchase was written into this charter, but it would seem that the acquisition of land for money was an advantageous purchase to the wife's benefit.

The sale of dowry property is illustrated in the purchase charter of Vasiliu who, with his wife Solomanida, jointly sold her dowry *votchina* to Demidi Ivanovich for the sum of two hundred rubles.<sup>115</sup> This example demonstrates the legal requirement of the woman's consent for any transaction concerning her dowry. It was common in Russian dowry practice for both the husband and wife to consent in charters to the sale or donation of property which was in substance dowry property. Unfortunately, not all regions of Russia shared the same phraseology. For example, there are a number of collections of charters which state that a husband and wife jointly consented to transaction, but make no specific mention of the property being dowry property.<sup>116</sup> One can only conclude that, because the woman was a party to the transaction, she had some legal interest in the property. This conclusion can be drawn since the majority of land transaction charters in Russia were accomplished with the man's consent only. So, the fact of a woman acting jointly in consenting to a transaction, implied that she had a legal interest in the property. This is also indicated by the fact that in Russian charters it was standard practice for all interested parties to be signatories to a given transaction. This was especially true of Russian donation or purchase charters. The person initiating the transaction consented with other individuals who, it was implied, had a legal interest in the property. It is unfortunate that in Russian charters, in some localities, the woman's interest in dowry property was not specifically expressed. Fortunately, specific mention

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114 *Kupchaia s otvodom Ivana Omeshchatova syna Titova u ego otsa Omeshchaty Vasil' eva syna Titova i u brat'ev ...* In: *Akti feodal'nogo zemlevladieniia i khoziaistva: akty moskovskogo simonova monastyria (1506-1613 gg.)* L. I. Ivina (Leningrad, 1983), no. 111.

115 *Akty Suzdal'skogo*, no. 208.

116 Including those of *Akty Solovestvogo monastyria, 1479-1571*, and *Akty Feodal'nogo (Cherepnin)*, Vol. I, in which the term *pridannoe* (dowry) is not employed.

of dowry property is amply found in the charters from the Suzdal' region, which have been recently published.<sup>117</sup> For this reason, many charters from this region are used here to illustrate the operation of dowry in Russia.

The donation of dowry property is also evidenced in Russian charters.<sup>118</sup> As with the donation of other non-restricted property in Russia, dowry property was, too, donated to monasteries. As the charters show, the donation was usually jointly made if both the husband and wife were both still living, showing the husband's legal interest as life-time possessor of the property, and the wife's legal interest in the property. Obviously, such jointly made donation charters were made with the intention of the property reverting to a monastery only after the death. From charters and Russian law, is not clear what attributes the property had after the transfer - whether it was still considered as dowry property and thus had restrictions on it - or if it could be held by the monastery as a non-dotal property without restrictions. But it is likely that non-alienation laws governing the dotal property would have been superseded in any event by the Byzantine laws forbidding the alienation of ecclesiastical land.

#### *Return and recovery of the dowry property*

The idea that dowry existed within the context of marriage is contained in a number of statutes in the *Kormchaia*. First, it was a well understood concept in Russia that if the marriage did not take place, after the father had given over the dowry, then the woman was entitled to have the dowry returned. The Byzantine law, however, unlike earlier Roman law made no mention of the requirement that dotal property be returned in actual substance, and it seems, therefore, that substitution by means of other indemnification (substitution of property) was permitted.<sup>119</sup> In Russian documents, after a marriage ended through the death of the spouse, the return of the dowry took place most commonly in last wills and testaments. In last wills and testaments, one finds at the minimum a statement authorizing the return of the dowry. Occasionally, the dowry being

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117 *Akty Suzdal'skogo*

118 See *Pamiatniki russkoi pis'mennosti XV-XVI vv., Riazanskii krai* (Moscow, 1978), no. 39. Also *Akty Suzdal'skogo*, no, 162.

119 See below for example the testament of Prince Krivoborskii.

returned was specifically listed, sometimes at length and in great detail This was especially common where the dowry contained dowry people (*pidannye liudi*), that is, slaves given as dowry.<sup>120</sup> Often the specific persons were named in the will, being either returned or manumitted along with their families.

When the husband returned the dowry by means of his testament, a stereotype phrase was often included stating that his wife was free to dispose of her dotal property as she wished. This demonstrated that the substance of the dotal property no longer existed when the marriage ended. The return of dotal property to the wife by means of a last testament was a method frequently spoken of in the *Digest*. This method, too, was indirectly alluded to in the Byzantine dowry statute which permitted a father to bequeath in his will a dowry to his daughter.<sup>121</sup> Evidence that in Russia dowry could revert to someone other than to a woman's parents, who in relationship to the decedent were ascendants, is found in the 1629/30 will of Ivan Vasil'evich Volynskii where the dowry was returned to the brother of his deceased wife.<sup>122</sup> This example also demonstrates evidence that the question of to whom returned dowry property belonged was guided by Byzantine laws on succession.<sup>123</sup> In the absence of ascending and descending heirs, collateral heirs were the next in rank of precedence.

The return of the dowry as shown in the will of Mikhail Vasil'evich Gorbatii (1533/4) is representative of wills from the Suzdal' region. In this example, Mikhail returned to his wife the settlement (*selo*) of Iarlyk which he states he had received as dowry. The stereotype phrase releasing her from restrictions on the dowry is inserted into this will as well (*vol'no ei to selo prodat' i otdati i po dushe dat'*).<sup>124</sup>

An example which demonstrates that in Russia the legal provision concerned with profits on the dowry was observed - that to the wife went the offspring of slaves<sup>125</sup> - is the

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120 See above in this Chapter the related Russian laws.

121 *Prochiron kk, gran' 9, glava 5, f. 422b.*

122 N. P. Likhachev, *Sbornik aktov sobrannykh v arkhivakh i bibliotekakh* (St. Petersburg, 1895), no. 26.

123 On these laws see below Chapter 6.

124 *Akty Suzdal'skogo*, no. 35, page 91.

125 *Prochiron kk, gran' 8, glava 2, f. 421b.*

will of Piotr Vasil'evich Pozharskii (1537/8). According to this, slaves attached to the dowry property were kept separate throughout the marriage and that the dowry people were returned to the wife upon the dissolution of the marriage as prescribed by law. In this document also is shown that dowry people of the wife who had married slaves of the husband (and presumably had offspring) were no longer considered as belonging to the wife. The *pridannye liudi*, the will says, were not hers to bequeath since Piotr had "supplied husbands to the spinsters".<sup>126</sup> In general, according to Roman law, the offspring of slaves were the woman's to possess. But since Piotr had supplied his slaves as husbands to his wife's *pridannye liudi* it seems that they were no longer hers by virtue of the women's *pridannye liudi* having married his slaves. It would seem that the law favored the rights of the husband in slave marriages of mixed ownership. The *Ulozhenie* 20.62 decreed that slaves given as dowry, who later married, were to be returned to the person who gave them (presumably the woman's family) along with their spouses and children, since families were not to be separated. The statute, it would appear, did not provide for a case like that of Piotr. In a passage which speaks of his giving his wife a life-estate (his *votchina* and petty livestock), Piotr distinguished between those persons attached to the *votchina* and his wife's dowry people (*pridannye liudi*). It is stated that the life-estate and persons attached to it were not be hers should she marry or take the veil. Piotr bequests in the will his serving people to his wife. He, as well, releases a number of them to a state of freedom (*na slobodu*). The return of dowry people and their families in the husband's possession is found also in the will of Kiril Alekseev Ershevskii (1578/9): "*a liudi moi pridannye i krepostnye vse zhene moei Mavre...*"<sup>127</sup> In the will of Prince Fiodr Ivanovich Krivoborskii (1586/7), it is explained that of the 300 rubles he received as dowry and has spent, he now restored to his wife the value of her dowry by means of granting her his *votchina sel'tso* in substitution.<sup>128</sup> One *selo* he gives to her from his own property to remain as her life-estate, and another (*selo Iarlykogo*) he gives to in place of her dowry,

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126 *Akty Suzdal'skogo*, no., 102, page 229.

127 *Akty Suzdal'skogo*, no. 209, page 381.

128 *Akty Suzdal'skogo*, no. 228, p. 432. This was as long as the heirs made no claim upon the *votchina*, in which case they had to pay the wife her dowry. For an example of how in Russia dowry and the value of it were interchangeable in opposition to earlier Roman law, see *Akty feodal'nogo zemevladeniia i khoziastva*, Vol. II, nos. 236 and 248.

having dissipated her dowry property "*ego esmi za nego vziat i isteriaa*". This example demonstrates that according to the Byzantine statute, substitution was permitted so long as the woman was indemnified or repaid.

The example of the dowry being returned to the woman as a result of divorce is also evidenced in ante-nuptial agreements contracting a second marriage.<sup>129</sup> While there is no phrase which speaks of its return, it is fairly obvious that the woman was providing dowry funds from a former marriage. A *riadnaia sgovornaia* of 1661 detailed the agreement under which Kiril Leontiev was to marry the widow Tatiana. In the charter he that he understood Tatiana brought with her her son Ivan. Kiril agreed to care for him until maturity and be as a father to him. In terms of the dowry agreement, Kiril said that as dowry, a *dvor* comes to him, that this *dvor* was to be Ivan's and that it had been sold and so in exchange Kirill would give Ivan an allotment. If the marriage did not take place, Tatiana was to receive 20 rubles.<sup>130</sup> This example demonstrates that along with the transfer of dowry property, so was transferred the legal encumbrance on it. Since a portion of a *dvor* was set aside for Tatiana's son by her first marriage, on taking the whole dowry Kiril had to make compensation for that portion. Finally, another common occasion on which the dowry was returned was in the event of a divorce. The example of a *rozvodnyia* (divorce decree) of 1675-97 demonstrates that Russian dowry practices followed the Byzantine concept that without marriage there was no dowry. The document very simply certifies that Melanie has received from her husband Ivan her dowry fund (*pridannoe plat'e*) and some movables as was written in their original ante-nuptial agreement.<sup>131</sup>

### Conclusion

From these examples it can be seen that Russian dowry practices were based in

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129 See also the *riadnye sgovornye* numbers 394 and 397 concerning remarriage in: *Akty iuridicheskie ili sobranie form starinnago deloproizvodstva* (St Petersburg, 1838). [hereafter *Akty iuridicheskie*].

130 *Akty iuridicheskie ili sobranie form starinnago deloproizvodstva* (St Petersburg, 1838). No. 396. See also no 397, where the prospective groom agrees to care for the widow Nastasia's two children to maturity.

131 *Akty iuridicheskie ili sobranie form starinnago deloproizvodstva* (St Petersburg, 1838). No. 404.

law. This law resided in the *Kormchaia*, in particular in the *Prochiron* Titles 8 and 9. These, as noted above, represented a distillation of the more extensive law on dowry of the *Digest*. During the seventeenth century, especially after the promulgation of the *Ulozhenie*, dowry rights became more restrictive in terms of the types of land transfer. The *Ulozhenie*, in prohibiting a woman from having as her dowry any *pomest'e* or *votchina* land, showed that there were increasing restrictions on land possession by women. The *Ulozhenie* prohibited a woman from having in her dowry any portion of a *votchina* or service estate, instead she was permitted a life-time interest as dowry. This trend was also reflected in the dowries of women of this period which contained movable rather than immoveable property.<sup>132</sup> But these provisions of Russian law were restrictive (or negative) in content, rather than prescriptive - leading one to conclude that the regular operation of law was based *outside* the Russian civil law. For to prohibit meant that there was already some substantive law governing the operation of dowry. Likewise, Russian charters concerned with dowry transaction operated with no specific instruction written into the Russian civil law. It is not surprising that the Byzantine law should have formed the basis for Russian dowry practices, since in Western Europe these same laws had been incorporated into canonical collections.

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132 This is the analysis of Kleimola, “In Accordance with the Canons”, 225.

## CHAPTER 6: ASPECTS OF RUSSIAN INHERITANCE LAW – WOMEN AS TESTAMENTARY HEIRS AND THEIR LIFE-ESTATES

The preceding chapter on women's property rights as they related to dowry demonstrated that women in medieval Russia possessed a definite set of property rights with respect to their dowries. As has been shown, the system of dowry in Russia was too complex to have been governed by customary law, and was, rather, governed by Byzantine law. Byzantine law supported other property rights of women in Russia as well, again, on which the Russian civil law had said little. These other property rights of women included the testamentary rights of women and a variety of special rights of women which derived from their marital unions.

With regard to the testamentary rights of women, Byzantine law provided that women should possess right of inheritance the same as men. For this reason, women were permitted both to devise testamentary instruments and to act as testamentary heirs. Although in Russian practice, this legal testamentary equality of men and women was somewhat less than equal, nevertheless, women in Russia were generously endowed with testamentary and property rights by Western standards of the period.

Testamentary equality was closely related to the Byzantine legal principle of partible inheritance, under which persons of any gender were to inherit equally. Studies which have examined the topic of partible inheritance in Russia have often contended that the practice had its origin in customary law and the patrimonial land-holding traditions of the Russian or Slavic peoples.<sup>1</sup> It will be explained in this Chapter, that the practice of partible inheritance was in fact one of the most basic provisions of Byzantine law which

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1 On partible inheritance and inheritance generally, see for instance V. I. Sergeevich, *Leksii i izsledovaniia po drevnei istorii russkogo prava* (St. Petersburg, 1910); M .F. Vladimirskii-Budanov, *Obzor istorii russkago prava* (St. Petersburg & Kiev, 6<sup>th</sup> ed, 1909); Valerie A. Kivelson, "The Effects of Partible Inheritance in Gentry Families and the State in Muscovy", *Russian Review* 53 (1994):197-212; S. B. Veselovskii, *Feodal'noe zemlevladienie v serevo-vostochnoi Rusi* (Moscow-Leningrad, 1947).

*\*N.B.* This Chapter will employ the same system of citation used above in Chapters 3 and 5 which has been devised to designate passages belonging to the Byzantine *compendia* as rendered in the 1653 printed *Kormchaia*. See below page 185 note 51 concerning citation of the *Ecloga*.

said that children, no matter their sex, were to serve as the first heirs of an estate, inheriting equally.

With regard to the variety of special rights which women derived from their marital unions, Byzantine law provided that widows were to act as the guardians of the household, administering the estate of the decedent. Since widows commonly had children to support, they had the responsibility and legal obligation to preserve the estate thereby holding it in trust for their children until they had reached their majority. A woman was provided with a life-interest in part of the estate from which she could support herself. This life-estate was governed by the same basic principles which governed other usufruct property under Byzantine law, that is, both the use of, and the life-interest in the property ended upon termination of the contract. Termination of the contract was effected, in this instance, upon the death or remarriage of the woman. Additionally, under Byzantine law, a widow was granted the right to possess a portion of her husband's estate so that she might be provided with an additional means of support. This portion typically constituted one-quarter of the husband's estate and is commonly known as the 'widow's portion'.

It is generally accepted that Russian inheritance practices were based on Russian customary law and Byzantine law. In Russia, the primary source for such Byzantine inheritance laws was the *Kormchaia kniga* and to a lesser extent, Russian civil court manuals.<sup>2</sup> Customary law affected Russian inheritance practices as they related to the norms of Slavic custom regarding land tenure. Otherwise, Russian inheritance practices can be said to have derived almost entirely from Byzantine law.

The following chapter will examine Byzantine law as found in the *Kormchaia* in relation to Russian inheritance practices. This will be accomplished through reference to Russian wills and other property documents of the medieval period. Other aspects of Russian inheritance law about which there has been little written will also be addressed in this chapter including: the origin of the ranking of testamentary heirs, and an examination of the characteristics of the Russian testamentary instrument. This chapter is composed of three parts: I. On Byzantine Inheritance Law and "Customary" Practices in Russia; II. On the Widow's Portion and Life Estates in Russia; and, III. Russian

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<sup>2</sup> See the brief discussion on Russian civil court manuals, the *knigy zakonnyia*, above on page 50.

## I. On Byzantine Inheritance Law and “Customary” Practices in Russia

### *i. Highlights of developments in Byzantine inheritance law*

What set Byzantine inheritance law apart from earlier Roman law was that it distinguished between intestate and testate succession, and emphasised a practice of partible inheritance.<sup>3</sup> Two of the major modifications made to Roman inheritance law were that of granting to women recognition as potential beneficiaries and that of granting to corporations (primarily the church or church institutions) recognition as legal heirs.<sup>4</sup> During this period, procedures were established for the order of succession - that descendants were to inherit first, followed by ascendants, and lastly by collaterals.<sup>5</sup> This order of succession supported the primary tenet of Byzantine inheritance law which said that children in their capacity as descending heirs were to be the primary beneficiaries of an estate. Rules related to the ranking of heirs were based on the principles contained in Orthodox church laws governing consanguinity, which had been adopted as civil law during the early Byzantine period.<sup>6</sup> The main reason laws on consanguinity were adopted as civil law was for the purpose of enforcing penalties of civil disability upon those who had contracted illegal marriages. Byzantine inheritance law underwent little subsequent changes during the intervening centuries, maintaining the earlier legal principles found in the *Codex Theodosius* and Justinian's *Corpus iuris* and so the *Prochiron* and *Ecloga* deviate little from them, aside from elaborations in the law concerning the viability of

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3 Further changes to inheritance laws provided that both moveable and immovable property could be inherited.

4 The law also granted testamentary capacity women, allowing them to devise wills. These more liberal inheritance laws secured the right of a woman to inherit as a full testamentary heir just as her male counterpart. The law also ensured that the property of a woman was legally protected under a title given in her own name. See especially novels 118 and 127 of Justinian.

5 As set out in the *Institutes* of Justinian.

6 The Orthodox consanguinity laws were similar to those of Western Europe, but forbade marriage to the seventh degree of consanguinity. On Byzantine (and thus Russian) consanguinity laws see the 1653 printed *Kormchaia* Chapter 51.

heretics, pagans and Jews as testamentary successors.<sup>7</sup>

Byzantine inheritance law emphasized partible inheritance, a practice which was transmitted to Russia, and which remained the mainstay of Russian inheritance practice until the time of Peter the Great.<sup>8</sup> As a result of the practice of partible inheritance in Russia, women were legally considered as possible testamentary heirs. However, since a woman frequently received her share of an estate in the form of a dowry, as was mentioned above in Chapter 5, one does not commonly find women named as partible heirs along side male heirs in Russian testamentary documents. Studies of women's property in Russia, while acknowledging that: 1) women were devised life-estates, 2) that a practice of usufruct existed, 3) and that women historically acted as administrators of their husband's estates, have not examined these subjects in detail. Nor have they been discussed with respect to the provisions of Byzantine law as rendered in the *Kormchaia*.

*ii. Historiography and criticism - on the treatment of Russian inheritance practices and the influence of Byzantine inheritance law*

The standard works which examined pre-Petrine Russian inheritance law and practices are the nineteenth century general legal histories of Sergeevich<sup>9</sup> and Vladimirkii-Budanov.<sup>10</sup> Both histories considered the influence of Byzantine law on Russian practices, and especially Russian civil law governing inheritance. The subjects of partible inheritance and female inheritance were examined in these works, but the conclusions rested on the accepted belief of the times. The accepted belief was that both partible, and thus, female inheritance practices were rooted in Slavic custom rather than in Byzantine legal practice. For instance, on the subject of separate marital estates, Vladimirkii-Budanov (as was mentioned above in Chapter 5), considered the

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7 The *Basilica* of Leo VI (ninth century), which post-dated the *Prochiron* and *Ecloga*, provided the most extensive legislation concerning inheritance law. However, these laws were drawn almost entirely from earlier Justinianic legislation. On exclusions against non-Orthodox persons (especially apostates) as successors, see *Prochiron*, Title 13, *On Forfeiture of Inheritance*.

8 Until legislation altered former practices, changing it to unigeniture. See L. A. Farrow, "Peter the Great's Law of Single Inheritance: State Imperatives and Noble Resistance", *Russian Review* 55 (1996): 430-447. The text of Peter the Great's legislation can be found in *PSZ* 5:2.789.

9 Sergeevich, *Leksii i izsledovaniia*.

10 Vladimirkii-Budanov, *Obzor*. See also recent works touching on inheritance and women's property as cited above in Chapter 5, note 1.

phenomenon of spouses in Russia having separate marital estates to be customary in origin.

However, not every Russian inheritance practice was attributed to customary law and both Sergeevich and Vladimirskii-Budanov credited the Byzantine law with some significant influence. Often, however, the reason attributed for this Byzantine influence is inaccurate. For instance, on the subject of testamentary succession, Sergeevich did identify correctly that there was Byzantine legal influence on Russian practice, but drew his conclusion for the wrong reason. In drawing his conclusion, Sergeevich contended since in Russia collateral heirs were not excluded from intestate succession as they were among the German tribes, that this evidenced Byzantine legal influence.<sup>11</sup> A simple reading of the Byzantine texts in the *Kormchaia*, along with a few supporting Russian testaments would have been far more useful than the sociological/anthropological comparison employed by Sergeevich.

The most important criticism one may levy against these works, is that many their conclusions are based on a reading of Russian civil law without extensive reference to the Byzantine law as rendered in the *Kormchaia*. Additionally, these works overlooked important source materials such as Russian charters and wills. Sergeevich, like other historians of his time, while noting the existence of the Byzantine *compendia* in the *Kormchye knigi*, did not consult the Slavonic texts, at least according to the citations noted in his work. Instead, Western editions of the Byzantine law were consulted. For instance, the *Ecloga* which Sergeevich cites as *kormchaia, leona tsaria i konstanina*, was in actuality the edition of the *Ecloga* published by Zachariae von Lingenthal in the nineteenth century.<sup>12</sup> It should be noted that the Western European editions *compendia* derived from different Greek MSS than those upon which the *Kormchaia* was based, and so the texts of the *Kormchaia* do not correspond exactly to them. Through the excluding of the Slavonic texts, studies of Russian inheritance practices thereby excluded legal

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11 Sergeevich, *Lektsii i izsledovaniia*, 549-551.

12 Sergeevich used also a version of the Byzantine *compendium* made by Leunclavius in the seventeenth century.

terminology contained in these texts in favor of modern legal terminology.<sup>13</sup> There were greater consequences, too. These monumental legal histories in overlooking the Byzantine legal texts of the *Kormchaia*, diminished the significance of the *Kormchaia* as a source of law in Russia. Modern scholarship follows in this tradition, too, of ignoring the texts the *Kormchaia*, preferring to consult other distant or derivative sources instead.

*iii. Common Misperceptions about gender, legacies and partible inheritance in Russia*

The fact that male heirs were generally favored over the female heirs in Russian testamentary practice, and that Russian law concerning women's property was sometimes restrictive, has tended to obscure the fact that Russian practice closely followed fundamental points of Byzantine inheritance law as it concerned women. Byzantine inheritance law in supporting the right of a woman to serve as a testamentary heir, so granted to her the accompanying legal property rights. The right of a woman to act as a testamentary heir was related to the two major components of Byzantine inheritance law. First, because Byzantine law emphasized the practice of partible inheritance, women were to receive their share equally, either as her dowry or directly in a will as a legacy. Second, because Byzantine inheritance law employed a ranking system in the appointing of heirs, which as was mentioned above, was based on earlier Orthodox canons concerned with consanguinity, women were often in the position of closest of testamentary rank to inherit. Under the law it was the *criterion of rank not of gender* which determined the closest heir. Therefore, if a woman ranked closer in relation to the testator than a more distant male relation, it was to her the legacy was legally bound to be given. So in Russian practice, the fact that male heirs were at times overlooked in favor of female heirs, who according to popular perception should have had less claim on a legacy, has nothing at all to do with the generosity of the testator, or the presence of a burgeoning 'social policy' in Russian law. Rather, it has all to do with the fact that the woman ranked as the closer

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13 For instance, Sergeevich terms collateral line of heirs as *vokovaia liniia [rodstva]*. The Slavonic is *soushchikh ot strany*.

heir.<sup>14</sup>

This principle is specifically spelled out in Byzantine inheritance law contained in the *Prochiron*. In the *Prochiron*, as rendered in Chapter 49 of the *Kormchaia*, one finds phrases such as “whether boys or girls” or “even if a woman”, contained within the statutes which clearly stated that gender was not to be a determining factor in the instituting of an heir. This provision of Byzantine law was generally upheld in Russian civil law, and in Russian practice, though its application fluctuated over the course of the Kievan and Muscovite periods. Even so, in general, both males and females, were throughout the centuries considered equal as potential heirs. Research does seem to support that in the early Kievan period male heirs were preferred. This preference though, may have been influenced by the statutes of the *Ruskaia pravda (RP)* which did not emphasize the equality of gender in this respect. However, the use of this customary collection predated the arrival of the *Prochiron* as transmitted via the *Kormchaia*. After this period, female heirs came to be considered under the law as legitimate heirs. G. Weickhardt, in his analysis the legal rights of women with regard to their control of property, asserts that during the twelfth century women acquired important property rights and that these rights as related to land remained secure up to the mid-eighteenth century.<sup>15</sup> V. Kivelson, examining female gentry landholding practices of the seventeenth century, found that women were legally entitled to serve as heirs, and in Russian practice often did.<sup>16</sup> The continuity of Russian inheritance practices through to the Petrine period,

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14 See for instance Kivelson who presumes that a male relation (an uncle in the example given) should have taken precedence in testamentary rank over the daughter of the testator. Such a presumption overlooks the fact that descending heirs under Byzantine law were to take precedence over collateral heirs, Kivelson, V. A., “The Effects of Partible Inheritance on Gentry Families and the State in Muscovy”, *Russian Review*, 53 (1994), 210.

15 George Weickhard, “The Pre-Petrine Law of Property”, *Slavic Review* 52 no. 4 (1993), 1. The analysis excludes the period under Ivan IV during which period women’s property rights experienced a temporary diminution. In this analysis, Weickhard adds that the opportunities provided to women to obtain land were “infrequent”.

16 Valerie Kivelson’s study of 142 female landholders (gentry women) in the Vladimir-Suzdal’ region during the seventeenth century, found that the majority of women received equal shares of estates with their brothers. She found that despite the decree of 1627, which made restrictions on the land that women could hold, the widows of the petty gentry of the Vladimir-Suzdal’ region continued to hold land unrestricted. In this analysis, Kivelson also found that in contradiction to perceptions that childless widows were not properly provided for (because under law a widow received back only her dowry and sometimes just a payment or annual installment) that childless

despite Russian legislation to the contrary (especially that of the seventeenth century) is evidence that Russian inheritance practices were in great part based on Byzantine inheritance statutes.

Because of the practice of partible inheritance, women had the same opportunities to inherit as her male counterpart, and with her property received the same legal rights and obligations. For this reason, women were able to dispose of property by sale, donation, loan, or the devising of it in a will. While it is true that women much less commonly held complete title to landed property, those who did were accorded the same treatment under the law as men.

That partible inheritance was a practice based in custom is a commonly held belief.<sup>17</sup> The belief that partible inheritance is based in Russian customary law is founded on the equally erroneous perception of the communal nature of Slavic society and theories of patrimonial land ownership. In Russian historiography there has been much debate concerning the alleged patrimonial nature of landed property and how its disposition among heirs reflected the Slavic concept of communal property ownership. While it is true that the immediate family had joint interests in the landed property, as reflected in typical Russian purchase agreements which often contain the assent of multiple parties, it would not be correct to understand partible inheritance as natural consequence of this alleged Slavic concept of property. Nineteenth century beliefs concerning the nature of Russian partible inheritance practices were influenced by Russian historians who drew on the Slavophile perceptions of the uniqueness of Russian historical development.<sup>18</sup> Moreover,

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widows of the region often remarried, sometimes numerous times, and thereby augmented their holdings through a series of marital transactions, on occasion taking with them land from the male line. Kivelson, *ibid*, 209.

17 This is so even in modern historical works. See for instance Robert Crummey, *Aristocrats and Servitors: the Boyar Elite in Russia 1613-1689* (NJ, 1983), where it is said that the Russian nobility “followed the custom of partible land inheritance” and that it was customary law which “obligated the noble to divide his estate among all his sons and provide for his daughters as well”, pp. 113 and 171.

18 This is also related to the perception that the practice of partible inheritance was inferior to the Western inheritance practice of unigeniture, which, it is considered was more advantageous because it ensured that the bulk of one’s estate was preserved through the devising of it to a single heir. This perception, too, has been the case with regard to Byzantine history as well. See A. E. Laiou, *Peasant and Society in the Late Byzantine Empire: a social and demographic study* (Princeton, NJ, 1977) which describes Byzantine practice. Both Russian and Western historians

Russian legal historians, in particular, were influenced by what they found in the early Russian civil law collection the *Russkaia Pravda* concerning the devising of property to the male offspring of the testator. Interpreting this civil collection as a collection of indigenous customary law, and comparing it with later Russian practices and laws, Russian historians concluded that the fact that Russian inheritance remained partible in type meant that the Slavic concept of property remained the underlying principle supporting partible inheritance.<sup>19</sup>

The simple explanation is that during the time of the *Russkaia pravda*, Russian testamentary practices were indeed based more on customary practices, but by the time the Byzantine law came to Russia, first via the *Zakon sudnyi liudem* (ZSL) and later via the *Kormchaia kniga*, Russian inheritance law was based entirely on the Byzantine norms.<sup>20</sup> It is difficult to discern exactly when Russian inheritance practices began to more strongly reflect the Byzantine norms contained in the *compendia*, but the documents (testaments) being more expansive than earlier documents (excepting wills of the Grand Princes), demonstrate that by the fourteenth century many of the fundamental provisions of Byzantine law were being followed.

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have criticized the practice of partible inheritance for the reason that over time it resulted in holdings too small to provide the owner with any sort of pecuniary security. Russian historians were influenced by the negative criticism of partible inheritance, which first expressed by Peter the Great in his 1714 Law. Recent research, however, in particular that on the Byzantine Empire, has demonstrated that the problems of continuing subdivision of land among heirs was ameliorated through a number of factors, including the management of various family holdings as a single holding. *Dictionary of the Middle Ages*, Inheritance, Byzantine, Vol. 6, p. 452. The fact is that partible inheritance existed and survived as a viable institution in the Byzantine Empire and was in the time of Justinian through to the medieval period a primary component of inheritance law. While both partible and single inheritance was practiced in the Byzantine empire, it was the former which was far more prevalent.

19 The reader is referred to note 18 above. Russian legal scholars held the practice of partible inheritance in disdain. Such conclusions were based on the perception that the practice of partible inheritance was somehow inferior to the Western practice of unigeniture. Evidence of this prejudice among the legal scholars and educated elite in Russia during the seventeenth century may be observed in Peter the Great's law on single inheritance. See above note 8.

20 In the *Zakon sudnyi liudem* the statutes did not specifically address the issue of gender among heirs. The statutes addressed only the issue of partible inheritance and the equitable division of the testator's property, namely Article 42 entitled "Concerning children" (*O dete*), which charged that a father should divide his estate equally among his children, not preferring one over the other. The statute added that should the father act unfairly in this regard, then the estate was to be equally divided, presumably by the civil authorities.

iv. *Remarks on Russian wills and Byzantine inheritance law in the «Kormchaia»*

Precisely when the emergence of the written testament occurred in Russia is not known as there are few surviving documents which can be dated earlier than the twelfth century.<sup>21</sup> The earliest extant testament coming from Pskov, dates from the thirteenth century.<sup>22</sup> There is speculation concerning why the written will in Russia became preferred to earlier oral testaments, which, it is known, did exist in Russia as they did elsewhere in Europe. Kaiser proposes that the rise of the written testament in Russia had much to do with the influence of churchmen.<sup>23</sup> In general, this was probably true since churchmen had at their disposal the corpus law in the *Kormchaia kniga*. Since it was a great custom in Russia to bequeath land by will or donation charter to the local monastery, it was probably prudent of the churchmen to mark the occasion and have it permanently inscribed that the ownership of certain property along with the rights and attached persons had been transferred. But it is more likely that the arrival of Byzantine law in Russia was impetus behind the adoption of the practice of written wills. The Byzantine law itself did not actually demand that a will take written form, as the statutes permitted oral testaments too. But, in view of the complexity of Byzantine inheritance law, it is likely that Russian churchmen saw the advantage of having a witnessed testament over an oral one. It is also likely that the wills of early Russian grand and local princes provided the prototype for the written will which was thereafter emulated.<sup>24</sup>

The *Kormchaia* chapter 49, *gran' 21* entitled *O zavete naslednikom*" detailed

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21 See Valk, *Gramoty*, No. 103 of 1147 of Novgorod.

22 Kaiser, *Growth of Law*, p. 153. This is not found in Valk.

23 Kaiser, *Growth of Law*, see for instance pp. 153-155. It would not necessarily be correct to attribute to this any sort of motive as Kaiser does, who sees a connection between the rise of the written will and ecclesiastical jurisdictional aspirations.

24 Early testaments use the term *spisax' rukopisan'e*, later during the late fifteenth century, the term is It is interesting to note the terminology employed in various testaments referring to the document itself. *dukhovnaia gramota*. A testament could be referred to in other documents such as donation charters simply as *dukhovnaia*. The earliest extant testament from Pskov in the thirteenth century, uses the term *riad'*, Kaiser, *Growth of Law*. It does not emerge from the documents, at least those from the fifteenth century onward, if the term testament (*zavet'*) as found in the Byzantine law in the *Kormchaia kniga* was ever employed in wills. Neither does it emerge from the documents, how the term *dukhovnaia gramota* evolved, though one might suppose that *EZSL* article 80 may have had some thing to do with it.

among chapters (*glav*”)1-10 what a last will and testament (*zavet*”) was, what conditions were necessary to make a will, who was able to make a will, and the legalities surrounding the making of a will, in particular the necessity of having a testament be witnessed.<sup>25</sup> A will was defined as the “lawful declaration” (ПРАВЕДЕНЪИ СОВѢТЪ),<sup>26</sup> made by an individual possessing a “sound mind, not just a sound body” (ОУМЪ ИМѢТИ ЗДРАВЪ, А НЕ ТѢЛО).<sup>27</sup> It is interesting to note in many Russian testamentary documents, especially those after the late fourteenth century, a stereotype phrase concerning the testator’s fitness to devise a will appears with increasing frequency.<sup>28</sup> The Russian stereotype phrase shares a similarity to its Byzantine antecedent. Early phrases were expressed as “with my whole mind” (*tselym*” *umom*”),<sup>29</sup> and later developed into expanded into “with my whole mind and reason” (*tselym*” *umom*” *i svoim*” *razumom*”),<sup>30</sup> which gave it a more rhetorical flair. The dates at which this phrase appears in the wills of a particular region may be related to the extent of the influence Byzantine testamentary law had at that time.

Under Byzantine law, the devising of a will was limited to those who were considered as civil persons under the law, so neither a minor, a slave, a person under subjection (that is in Roman law under *patria potestas*, in Slavonic, *pod*” *vlastiiu*),<sup>31</sup> nor

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25 See *Ulozhenie*, Hellie, 10.252 on procedure regarding the witnessing of a will.

26 *Pravedenyi sovet*”. *Prochiron kk, gran’ 21, glava 1, f. 444b*: ЗАВѢТЪ ЕСТЬ ПРАВЕДЕНЪИ СОВѢТЪ, ИМЪ ЖЕ КТО ХОЩЕТЪ ПО СМЕРТИ ЕГО БЫТИ.

27 “...Оум” *imeti zdrav*”, *a ne telo*”. *Prochiron kk, gran’ 21, glava 2, f. 445a*: ЗАВѢТЪ ЗАВѢЩАВААН, ДОЛЖЕНЪ ЕСТЬ ОУМЪ ИМѢТИ ЗДРАВЪ, А НЕ ТѢЛО.

28 See for example in Valk, *Gramoty*, the following early wills where this stereotype is absent: will from 1393 (no. 105), 1435 (no. 111), 1471 (no. 120), beginning of fifteenth century (no. 126), undated fifteenth century (no. 144).

29 See for example in *Akty iuridicheskie ili sobranie form starinnago deloproizvodstva* (St. Petersburg, 1838) [hereafter *Akty iuridicheskie*] no. 409 (iv), 409(x) of Arkhangel monastery’. Also, two from fifteenth century Novgorod - no. 250 and no. 256 in: Valk, *Gramoty*.

30 *Akty iuridicheskie*, no. 410, the year 1472.

31 See below pages 195-196 on *pod*” *vlastiiu*.

a person under the age of fourteen years<sup>32</sup> was able to make a will.<sup>33</sup> This prohibition, too, governed persons who had lost civil *persona* through their being non-Orthodox, or excommunicated.<sup>34</sup> Prior wills were able to be revoked. The act of revocation was accomplished by declaring that the new will was made in revocation of the old will and by this act it superseded (*prevrashchaetsia*) the prior will.<sup>35</sup> In Russia there is some evidence that this practice existed.<sup>36</sup>

A common feature of Russian wills was the granting of freedom to slaves and serving persons belonging to the testator. A great proportion of Russian wills made some provision of manumission in their text, and it seems that it was a very widespread practice through the seventeenth century. This practice was most certainly based in Byzantine law, which allowed for the manumission of slaves in last wills and testaments.<sup>37</sup> As far as it concerns Russia, this Byzantine legal provision reiterated in the extended ZSL article 84, which also allowed for the manumission of slaves in testamentary instruments. The manumitting of slaves through a will, it is known, was long-standing practice in the Byzantine Empire. There were a number of legal statutes regarding the testamentary disposition of slaves contained in the *Ulozhenie*. Article 20.31 granted that slaves could be transferred by means of a will. This is one of the few Russian statutes which repeated

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32 *Prochiron kk, gran' 21, glava 3, f. 445a*. The age was twelve years for females.

33 *Prochiron kk, gran' 21, glava 11, f. 445b*: *ѡЩЕ ЗАВѢЩАЕТЪ ПОД ВЛАСТЮ СЪНЪ, ИЛИ НЕ СОВЕРШЕНЪ СЪНЪ ВОЗРАСТОМЪ, ИЛИ РАБЪ, НЕ ТВЕРДЪ ЗАВѢЩЪ*. Even though the text specified a son, it must have implied daughter, as statute 21.3 mentions the age at which a daughter was eligible to make a will. Women were permitted to do so under Byzantine law. The text adds, if someone was *sui juris*, but a minor, though was free, the will could be validly made.

34 See *Prochiron kk* chapter 33, *gran' 33 On the revocation of a legacy (O otmeshchemyx' nasledii)*, in particular *glava 15*, which what occurred when a child fell outside communion with the Catholic faith (*deti iako sout' sobornyiia tserkve very, ni vo sveti zhe tserkvi ne prichashchaiutsiia*), or persisted in heresy (*ashche prebyvaiut' deti v takovom' ne veriiu*).

35 *Prochiron kk, gran' 21, glava 12 and glava 13, f. 445b*.

36 Evidence that revocation or alteration of a will by means of a codicil was employed in Russia may be found among the codicils of grand princes of Russia. See for example, the codicil (*pripisnaia gramota*) to the testament of Grand Prince Vasilii Vasil'evich II, dated 1461-1462. Cherepnin, L.V., *Dukhovnye dogovornye gramoty velikikh i udel'nykh kniaziei* (Moscow, 1950), 142-143.

37 These provisions are scattered in the Byzantine *compendia*. See for instance, *Prochiron kk, gran' 34*, which is entitled *On Freedom, glav' 10 and 15*.

a Byzantine legal provision on inheritance.<sup>38</sup>

Interestingly, article 84 of the extended *ZSL* instructed that a testator, in preparing his will, should write concerning the state of his faith (*vpishet' very svokia obraz*). No such provision appears in the Byzantine *compendia*. The Russian tradition of referring to the state of one's soul was a widespread one, as is evidenced in Russian wills.<sup>39</sup> It has been thought that since the documents were confessional in nature that perhaps they were made close to death rather than in anticipation of death. However, recent research on Western European testaments has demonstrated that contrary to a similarly held opinion that testaments were devised close to death, that in fact, testaments were well-considered acts made much earlier in a testator's life than popular perception formerly asserted.

*v. Byzantine statutes contained in the «Kormchaia kniga» supporting women's right to inherit equally*

The following section highlights selected Byzantine statutes including those related to partible inheritance, and those supporting the right of women to serve as testamentary heirs. Such Byzantine statutes are found in Title 30 of the *Prochiron*, that is, Chapter 49 of the printed *Kormchaia*. The statutes reveal that the testamentary rank of women was not limited to that of descending heirs alone. The precise structure of ranking and testamentary relationship was provided in the *Prochiron*, and also elsewhere in the *Kormchaia*. The statutes referenced below are cited in the same manner as above in Chapter 5: as *Prochiron kk, gran', and glava*.

*Glava 2* directed that descendants, whether male or female, (...АЩЕ БОУДЕТЬ МОУЖЕСКЪ ПОЛЪ, ИЛИ ЖЕНЕСКЪ...) should have priority over ascendants.<sup>40</sup> *Glava 5* explained that if there were no descendants, then the ascendants were to be called in, and,

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38 *Ulozhenie*, Hellie. The same provisions were repeated in Article 20.77. See also Articles 20.61, 20.63, 20.64, 20.106.

39 In a fair number early testaments, in particular those predating the seventeenth century, one finds the words *grekh* or *greshchnii* employed to convey the sinful state of the testator's soul. In later wills, more elaborate confessions appeared in which the testator listed his sins and asked forgiveness for them.

40 ...*ashche boudet' mouzhesk' pol', ili zhenesk'*... *Prochiron kk, gran' 30, glava 2, ff. 447a-b: С ХОДАЩИИ, АЩЕ БОУДЕТЬ МОУЖЕСКЪ ПОЛЪ, ИЛИ ЖЕНЕСКЪ, ЧЕСТНѢЙШЕ СОУТЬ ѿ ВОСХОДАЩИХЪ, И СОУЩИХЪ ѿ СТРАНЫ.*

further, that the ascendant of the closest rank (*БЛИЖНИ СТЕПЕНЕМЪ*), even if she was a woman (*...АЩЕ И ЖЕНЕСКЪ ПОЛЬ ЛИЦЕ БОУДЕТЬ*) took priority of rank.<sup>41</sup> The partibility of inheritance was mentioned in this statute as well that if there was more than one heir of equal rank, then all were to inherit: *ИЩЕ БО СОУТЬ ВСИ ТОГОЖДЕ СТЕПЕНЕ, КОУПНО ПРИЗЫВАЮТСА В НАСЛѢДІЕ*. It shows too, that partibility need not to have been restricted to the offspring only.<sup>42</sup> The same principle held true in the case there were no descendants or ascendants. Should the collaterals be called in, and there were many of the same rank, then they all were to share the inheritance *РАВНО ВСИ НАСЛѢДЮТЬ*.<sup>43</sup> It was not only in cases of intestate succession that the heirs were to share equally, but also in cases where the testator had not specifically apportioned his gift or estate.<sup>44</sup> As the legal section affected women's inheritance, statute 19 provided that if a spouse died intestate without any heirs, then the other spouse was to be appointed as the heir.<sup>45</sup>

## II. On the Widow's Portion and Life Estates in Russia

A number of studies concerned with women's property rights in Russia have examined the various practices and provisions present in Russian law which governed widows. From the earliest times, a widow was entitled to a life-estate in her husband's property and to administer the entire estate until her children reached their majority.

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41 *Blizhnii stepenem*" and *...ashche i zhenesk" pol" litse boudet*". *Prochiron kk, gran' 30, glava 5, ff. 448a*: *ИЩЕ...СЪ ХОДАЩИМЪ НЕ СОУЩИМЪ, ПРИЗЫВЛАЕМИ БЫВАЮТЬ ВЪ НАСЛѢДІЕ ВОСХОДАЩИИ ПРЕЖДЕ ВСѢХЪ СОУЩИХЪ Ш СТРАНЫ, КРОМѢ ИЖЕ Ш ТѢХЪ ЖЕ РОДИТЕЛЬ РОДИВШААСА БРАТІА. ВѢДОМО ЖЕ, ЕСТЬ ІАКЪ ВОСХОДАЩИХЪ ЧЕСТНѢЙШИ ЕСТЬ, БЛИЖНИИ СТЕПЕНЕМЪ, НЕ ПРИБЛИЖАЮЩАГОСА АЩЕ И ЖЕНЕСКЪ ПОЛЬ ЛИЦЕ БОУДЕТЬ.*

42 *Glava 5 continued: Ashche bo sout" vsi togozhde stepene, koupno prizyvaiutsia v nasledie. Prochiron kk, gran' 30, glava 5, f. 448a*: *ИЩЕ БО СОУТЬ ВСИ ТОГОЖДЕ СТЕПЕНЕ, КОУПНО ПРИЗЫВАЮТСА В НАСЛѢДІЕ.*

43 *...ravno vsi na sleduiut*" *Prochiron kk, gran' 30, glava 10, f. 449a*: *...АЩЕ И МНОЗИ ШБРАЦЮТСА ТОГЪ СТЕПЕНЕ СОУЩЕ, РАВНО ВСИ НАСЛѢДЮТЬ.*

44 *Prochiron kk, gran' 30, glava 16, f. 449b*: *И АЩЕ НЕ РАЗДѢИТЬ ИМЪ ЗАВѢЩАВШИ, РАВНО ЗАВѢЩАВАЮЩИСА ВСИ ПРИЕМАЮТЬ.* In this section is also an interested concept of inheritance law. The statute states that heirs are by law successors *Наслѣдници праведномѹ соутъ приемницы (Naslednitsi pravednomu sout" priemnitsy)*.

45 *Prochiron kk, gran' 30, glava 19, ff. 449b-450a*: *...ТОГДА МОУЖЪ БО ВСЕ ЦѢЛО ЖЕНЪ СВОЕА ПРИЗЫВАЕТСА НАСЛѢДІЕ, И ЖЕНА МОУЖА СВОЕГЪ ДА ПРИЕМАЕТЪ.*

Rudimentary provisions were set out in the expanded *Ruskaia pravda* (hereafter *ERP*), the thirteenth century collection of what is considered to be Russian customary law.<sup>46</sup> There has been some debate concerning what precisely a widow's rights in Russia were with respect to her deceased husband's property. According to various interpretations of Russian civil law, some have argued that a widow gained control only of her husband's moveable property, at least in the pre-Muscovite period. Some scholars such as Pushkareva have interpreted the provisions of the *RP* as granting to a widow only movable property. This contention is based on the broader theory that until the fourteenth century women were not able receive land, only movable property.<sup>47</sup> Weickhard has disagreed with this interpretation seeing in *ERP* article 102, which provided widows with a life interest in the main household (*dvor*), evidence that women in early Russia were entitled to receive immovable property.<sup>48</sup> It seems a widow received a separate portion, in addition to a life-estate. It is not clear whether the portion (*chast'*) that a widow received, which was referred to in article 93, was connected with the life-estate or was separate from it and also of what this portion consisted.<sup>49</sup> On the subject of widow's as administrators of their husband's estates, scholars have seen in this a customary origin because of its inclusion in the *RP*. Outside of the *Ruskaia pravda*, there was no mention in Russian law concerning what particular rights and obligations a widow had as administrator. That a widow was empowered to act as administrator of her deceased husband's estate is evidenced in *ERP* article 99. The article explained that should a woman remarry, then another individual in the capacity of guardian was to be appointed to maintain the estate in order to provide for her children. In ordering the substitution of

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46 Kaiser, *Laws of Rus'*, pp. The text is thought to contain the legislation of twelfth century Russian grand princes. Since the earliest extant copy of any version of the *Ruskaia pravda* dates from the thirteenth century, it is likely that the Extended Redaction contains later interpolations. The Short redaction, which scholars believe was in fact written in the eleventh century, contains no articles pertinent to inheritance or widow's property. Since the Kievan princes were obviously aware of Byzantine law, it would suggest that the Expanded Redaction, as it concerned inheritance practice, reflected Byzantine legal influence.

47 Pushkareva, *Zhenshchiny drevnei Rusi*, 47.

48 Weickhardt, "Legal Rights of Women in Russia", 5.

49 Article 93 stipulated that a widow as long as she did not remarry was entitled to retain her portion (*chast'*). Further reference to this portion was made in Article 103 which stated that the widow's children were not permitted to have their mother's portion.

another administrator/guardian of the household when a woman forfeited this position by remarriage, the law reveals that widows were in practice the first choice for the position and, further, that such was standard practice.

During the intervening centuries, Russian law remarked little more upon both these basic practices and the status of widows until the seventeenth century. In the interim, various decrees were issued and a few statutes were enacted regarding widows, but these were mainly concerned with restricting the rights of women as heirs vis á vis immovable property. These restrictions, which attempted to prevent women from receiving a legal interest in hereditary (*votchina*) estates, have been remarked upon earlier in this work. The only evidence from which one may learn what occurred in practice in Russia exists among extant acts of the period - deeds, wills, donation charters, and ante-nuptial agreements, because of the lack of statutes and legal commentary in Russia. Various studies of these documents have arrived at differing conclusions. The conclusions differ on a variety of issues. For instance: 1) can women be said to have had actual rights to property, that is, having title to it? and 2) how did the restrictions of the sixteenth century affect women's control of property and ability to acquire property? The one fact that is certain, however, is that women's property rights and Russian practice conformed to what was originally written in the *Russkaia pravda*. One might suggest it is possible that, rather than the *Russkaia pravda* existing as the source of law supporting widow's property rights, in actuality, the Byzantine law was a more influential source.<sup>50</sup> The statutes contained in Byzantine law were inclusive of those legal points contained in the *RP* and elaborated on them. This is in addition to the numerous titles of the legal *compendia* devoted to inheritance law in general.

Often in the literature one finds the Emperor Justinian credited with originating the practice of the widow's portion, but little more commentary is given with regard to Byzantine legal influence on this point. Of its origins, it is known that the law was enacted by Justinian so that widows could be maintained without having to drain the resources of ecclesiastical institutions. A set of laws related to the support of widows emerged from this which were later incorporated into the Byzantine *compendia*. As they existed in the

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50 Of all the current literature on the topic, Weickhardt gives the greatest credit to Byzantine law as a source of legal influence upon Russian practices.

*compendia*, no specific title was set aside for them, and so they are scattered among a number of titles in both of the *compendia*. One who examines these statutes will see that a specific number of entitlements were granted widows which derived from her marital union. In the capacity of a legatee, upon the death of her husband, a widow was entitled to the return of her marriage portion (dowry), a part of her husband's estate, a part of his marriage portion (the pre-nuptial gift), and whatever else her husband had specifically devised to her. In the capacity of administrator and head of the household, the widow was empowered to control the remainder of that estate, including the pre-nuptial gift, with the obligation to hold that property in trust for her minor children. Certain rights of possession also were conferred on the widow, who was entitled to a life-estate in that property. These rights and privileges were granted as a result of the woman's part in the marital union, and extended until her death. A widow forfeited some of these rights upon remarriage.<sup>51</sup>

That Russian practice followed some provisions of Byzantine law on widows is evidenced in the Russian civil enactments of the seventeenth century. These enactments, in content were not actually prescriptive, but rather, were amendments to already existing practice. As it was said above, the status widows had not been remarked upon in Russian law aside from a few statutes contained in the *Russkaia pravda* and in the *Sudebniki*. The decree of 1627 issued by Patriarch Filaret said that widows were to receive 1/4 of the movables of her husband's estate which, it was understood, would be in addition to the

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51 The Byzantine statutes as they related to divorce will not be addressed in this section. On widowhood, the *Ecloga* in a number of statutes in *zachatok*"\* 2 (*gran*' 9), forbade a woman from remarrying before the prescribed twelve month period of mourning had expired. A woman who disobeyed this law was found guilty of infamy and suffered the loss of whatever property and rights with respect to it that had come to her through the death of her first husband. See for instance, *glava* 7 of this title (*zachatok*).

\**N.B.* *Zachatok*" is the term used in the Slavonic translation of the *Ecloga* to designate the various Titles of it. It is equivalent to the term *gran*' (Title) found in the Slavonic translation of the *Prochiron*. In this Chapter, the format of citation of the *Ecloga* will follow the same format as employed above in Chapter 5 used for the *Prochiron* - only now substituting *zachatok*" for *gran*'.

return of her dowry and any additional property her husband chose to bequeath to her.<sup>52</sup> The decree, however, excluded childless widows from a share in her husband's estate. *Ulozhenie* Article (17.2) remedied what was seen as a position unfavorable to childless widows, and established a maintenance allotment (*prizotok*), for childless widows and also for unmarried daughters. The conditions of the *prizhotok* were much like those attached to the typical life-estate, since possession of the allotment reverted to a woman's children when they reached their majority and in turn, the woman was to be provided for by her children.<sup>53</sup> The law favored the widow's position *vis a vis* her husband's estate and allowed that she could be granted the home estate (*sadishcha*). However, some have argued that even such preferential treatment before the law cannot negate the fact that widows were limited to allotments rather than be invested with full title to the property. actually demonstrated women's inequality before the law. But, as was mentioned above, such restrictions on women's ability to inherit hereditary estates had much to do with preventing land from falling into a 'dead hand'. Similarly, the Russian prohibitions against women receiving and interest in service lands were based on similar concerns, that land would not be readily available to the state for its servitor class. While land was indeed a primary concern, it does not explain completely why childless widows and unmarried women were entitled only to an allotment while other widows were not.

Legal provisions which directed that childless widows should receive 1/4 of the husband's estate were also contained in the *Kormchaia*. The first statute, (*Ecloga* 2.4), said that a woman who was predeceased by her husband, and was childless, was entitled to a return of her dowry and a 1/4 part of his estate: **ТАКОЖЕ НАСОВЕРШЕННОЕ ОУСТРОЕНИЕ, ИСПОВЕДАНАГО ЕМОУ ПРИСТРОА ЧЕТВЕРТЮ ЧАСТЬ...**<sup>54</sup> The second statute, *Ecloga* 2.9,

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52 The decree made reference to canon law and it is thought that Patriarch Filaret was in this instance citing the law of Justinian as found in the *Kormchaia*. See Kleimola "In Accordance with the Canons", 226 on this point. Wieckhardt views the distribution of 1/4 of movable property to widows as the "Byzantine rule".

53 One may conclude this from *Ulozhenie* Article 16:58 which permitted a woman to sue for a separate allotment from which her maintenance could be drawn, if her children refused to provide for her.

54 *Ecloga* kk, *zachatok* 2, *glava* 4, *f.* 498b. The term **пристроа** is rendered as "marriage settlement" in the English translation of Freshfield, *Ecloga*. See also the Prochiron *gran' 5, glava* 6 which repeated the legal provision that a childless widow was entitled to 1/4 of her husband's pre-nuptial gift.

concerned childless widows who in addition were also impoverished. Both these statutes confirm that the 1/4 portion was the standard legal portion a childless widow was entitled to receive. From the latter statute it is not clear to what precise legal condition the term “poor” described. However, since this statute made no provision for the return of the woman’s dowry as was referenced in *Ecloga* 2.4, one could conclude that the term “poor” described the condition of a woman who did not possess a dowry with which she could support herself. It is also possible that the statute was describing the status of a woman whose husband had no immovable property which was to be conveyed to her after his death. The ambiguity may be seen in the statute by comparing the phrasing of it to *Ecloga* 2.4. The first statute, *Ecloga* 2.4, said the woman was entitled to a quarter part of her husband’s *property*, which in the Slavonic text is written as (ИМѢНІЕ), while *Ecloga* 2.9, said merely ‘one-quarter part’ (ЧЕТВЕРТЮ ЧАСТЬ). Finally, *Ecloga* 2.9 directed that in addition ten pounds of gold was to be given to the widow who was both poor and childless.<sup>55</sup>

### III. On the Widow’s Portion and Life Estates in Russia

#### i. Rights and Obligations of Widows as administrators

The section below examines evidence for Russian women acting as administrators and guardians of their husband’s estates and households and how this practice conformed to Byzantine statutes on the same. This section also examines Russian practices with regard to the life-estates of widows. Under Byzantine law, the right to a life-estate was derived out of the marriage settlement which had been held during the course of a marital union. As mentioned above, women in Russia were known to have acted as administrators of their deceased husband’s estates and since frequently women held the estate in trust for her children, she, thus, acquired a great deal of control over the property. As mentioned, only scant provisions appeared in the Russian law legally entitling a woman to have these privileges. To discern if these privileges were rooted in custom or not it is instructive to

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55 *Ecloga* kk, *zachatok* 2, *glava* 9, *f.* 500b:...ПРИАТИ ЖЕНѢ ѿ МОУЖНА ОСТАНКА ЗА БЕСЧАДІЕ ЧЕТВЕРТЮ ЧАСТЬ, ПОСИЛѢ МОУЖА, ІАКѢ ЛИТРЪ ДЕСАТЬ. On the monetary sum, the passage in the *Komchaia* says merely ЛИТРЪ ДЕСАТЬ (*litr’ desiat’*). Elsewhere in *compendia* the measurement *litra* is specifically associated with the measure of money, either silver or gold, but more commonly gold.

examine the Byzantine statutes in relation to evidence in Russian last wills and testaments.

Many of the widow's legal rights and privileges may be seen in Title 2.5 of the *Ecloga* or *Zachatok 2, glava 5* of the *Kormchaia kniga*, Chapter 50. Contained in this statute is the legal reasoning behind these special rights a widow acquired upon the occasion of her husband's death. The law endowed a widow with special rights because, the statute said, that she, as the wife and mother, was to serve as head of the household, and was, therefore, to have control of both marriage portion or settlement (the pre-nuptial gift), in addition to her husband's property (...и женѣ, рекше тѣхъ матери содержателю, пристрою же ея и мѡужиа имѣнїа всегѡ быти, и сею все домѡ сотворити.).<sup>56</sup> Her fiscal responsibilities included preparing an inventory of her husband's possessions and providing for the marriages of her children. Such an inventory in all likelihood would have been similar to the type of inventory that was kept during the marriage for the purposes of the dowry, which as remarked above in Chapter 5 was one important legal component of Russian dowry practice.<sup>57</sup> The widow's fiscal responsibilities as they related to providing for the marriages of her children were confined to supplying their marriage portions as she saw fit ( . . . должны соуще...и брачными ризами оукрашати, и пристрою поати іакоже хошетъ.).<sup>58</sup> That the widow gained control, but not title to the possessions of her husband, is confirmed in the last part of the statute which said that upon remarriage, a widow forfeited her control of the estate, whereupon her children could claim title to the estate.<sup>59</sup> It was, however, not actually

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56 *Ecloga kk, zachatok 2, glava 5, f. 499a*. The term *пристрои* (*pristroi*) appears in the context of dowry and pre-nuptial gift. Although pre-nuptial gift is referred to by its literal rendering often in Title six of the *Prochiron*, *ѡ преждебрачнѣмъ дарѣ* (*o prezhdebrachnem" dare - On pre-nuptial gifts*) among other statutes of the *Ecloga* it is called simply settlement. The term used to describe the husband's property is *имѣнїе* (*imenie*). Freshfield.

57 *Ecloga kk, zachatok 2, glava 5, f. 499a*: ...печаль же, людское іавѣ стоенїе, написанием творащее, рекше своего же и оставляющагосѡ ѡ мѡужа ея іаже всако имѣаше богатство... . The term in the *Kormchaia* used to connote the husband's possessions is *богатство* (*bogatstvo*), his wealth.

58 The text in the *Kormchaia* added that providing for the marriage also included adorning the child with wedding garments (*брачными ризами оукрашати*).

59 *Ecloga kk, zachatok 2, glava 5, ff. 499a-499b*:...чадомъ и всѡ отчи имѣ вещи без ѡскѡдѣнїа принесеню же пристрою ѡ неѡ ко отцоу ихъ.... Here the estate is described as the children's patrimony (*отчи*) (*otchi*). This statute also reiterated that the children were entitled

stipulated in this statute whether it was necessary for the children to have reached their majority before making claim upon the estate in the event their mother remarried. Although the law as it was rendered in the *Kormchaia* was unclear on this point, Byzantine inheritance law was clear on this point - that minors were not legally able to inherit. Further support for this legal point exists in a related statute which concerned the rights of a widower. *Ecloga* 2.6 said that if a man remarried, while in control of his wife's estate holding it for the benefit of his children, that he was to continue to preserve it for his children if they were minors.<sup>60</sup> While neither of these statutes specifically mentioned usufruct or life-estates, evidence for it in Russian practice, and by implication in the Byzantine law, may be seen below in this Chapter.

Some examples taken from Russian property documents aid in one's evaluation of the manner in which Russia adapted the legal provisions of Byzantine law on widows. In the fourteenth/fifteenth century will of Ostafi, one may see that he left the use of his property to his wife on the condition that she did not remarry. Evidence confirming that his wife had use and control over his property was contained in the statement: *A zhená moia ozhe vsedit" v' zhivote moem" ino ospodaryna zhivotu moemy.*<sup>61</sup> The term *ospodaryna* was used to signify her position as administrator and guardian of the household. The will said that in the event that she did remarry, she would then receive an allotment of 10 rubles with the property passing to his son Teodor'.<sup>62</sup>

The will of Ostafi Anan'vich from 1393 stated that his wife was to receive his property and keep it as long as she did not remarry. The phrase used was similar to the previous example, employing the term *ospodaryna*: "*A zhená moia vsedit" v zhivote moem", ino ospodaryna zhivotu moemu.*". The idea that his wife was to have certain

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to the father's marriage portion.

60 *Ecloga kk, zachatok 2, glava 6, f. 499b*: ...РЕКШЕ ОУЦОУ ЧАДОМЪ СОДЕРЖАТЕЛЬНИКЪ ПРИСТРОЕНІА, И ВСЕГО ЕА ИМѢНІА БЪТИ, ІАКЪ ПОДВЛАСТІО ИХЪ СОУЩИМЪ... . The deceased wife's estate is similarly described as that of her husband, by the term *имѣніе* (*imenie*).

61 The term *vsedet'* conveys some power of administration. *Slovar' russkogo iazyka XI-XVII vv*, G.A. Bogatov, vol. 24, (Moscow, 1999). *Sideti*: Definition 11: *Nakhodit'sia u vlasti; pravit', upravliat' (gosudarstvom, oblast'iu, gorodom, eparkhei)*. The will also provided for the possibility of his wife having children by a second husband.

62 *Atky iuridicheskie*, No. 409 (I), p. 434. From a collection of wills from the Muscovite period from the Novgorod and Dvina regions.

rights and privileges was conveyed by this term. These rights were understood to mean that she, entitled to usufruct of the property, would treat it as her own and, further, would have the power to administer it and would serve as guardian of the household.<sup>63</sup> The will stated that upon remarriage, his wife was to receive a ten-ruble allotment (*nadelka*) and so forfeit her interest in the property (this is assumed although not stated).

The 1473 will of Stepan Lazarev, gave his wife Ontonida his *derevnia* Kopylovskaiia, with the instruction that after her use of the property (*posle zhivota zheny moei*), it was to pass to his four sons. He appointed his wife as administrator of the estate, explaining that it would be her duty to hold the estate in trust for the children: “*to vedaet*” *zhena moia Ontonida, podelit*” *detei, komu chto dast*’. *A to vse pridal*” *esmi svoei zhene Ontonide i svoim detem Zvonikhe i Baksheiu sobrati, i rozdati i po dushe popraviti*”, *i dolg*” *zaplati*.”<sup>64</sup> Along with this, Stepan made other gifts to his wife including the remainder of his estate. The will did not specifically state whether these additional gifts were to revert to her sons should she remarry. It would seem that his wife was to retain them inclusive of the residue, as Stepan further instructed that this property was to be divided between two other children, whom, it would seem, were from her previous marriage.

The will of Karp, dating from the fifteenth century Novgorod, conferred similar rights upon his wife, but in this example the title *ospodaryna* was not used. The testator gave to her his *selo* to use during her lifetime (*esti khleb*” *do ee zhivota*). That his wife was empowered to act as administrator of his property is contained in the stipulation that if she remarried she was not longer empowered to act as such: *...ne usedet*” *zhena moia Marina v domu moem*.”. In this event, the *selo* was go to the church of Holy Iliia.<sup>65</sup>

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63 Valk, *Gramoty*, no. 110, p. 168. The testament also made provision for a son or daughter born of a second marriage if his wife should remarry.

64 *Atky iuridicheskie*, no. 411, p. 438.

65 Valk, *Gramoty*, no. 256, p. 265. This will was in effect a donation charter. In many Russian wills testators frequently granted property to a monastery or church, with the proviso that the testator's wife be permitted to a life-estate in this property. The wife forfeited the property if any of the usual stipulations concerning remarriage or taking of the veil were violated. The property would then revert to the donee. His wife received also livestock, crops, and the residue (*ostanki*) of his property. *A ch*’*to ostanki v zaseki obil’ia zhita ili rzhi, ili pozh’ na zemli, ili ostanki zhivota moego, a to zheni moei Marini popraviti po mne*. A similar example is found in *Akty Suzdal*, no. 228, p. 432. The 1586 Will of Fedor Ivanovich Krivoborskii, shows the testator making a donation

The will of Tedor Akinfiev,<sup>66</sup> dating from the beginning of the sixteenth century, assigned to his wife Olena the rights to a life-estate. In this example, the property was jointly devised to Olena and their youngest son Matfei, who, it seems, was a minor. Tedor gave his *derevnia* to them on the condition that Olena not remarry, otherwise, it was instructed that the property should pass to all the children: “*ino ta derevnia detem’ moim’*”, *vsem’ na podeľ*”. Also, Tedor in the will has given his 3 children, excluding Matfei, a number of properties. In devising property outright to his other sons, it is clear that the intention was to have his wife act as administrator and trustee for their minor child.

## ii. *Life-estates*

From an examination of Russian wills it can be seen that life-estates in Russia were either singly devised to a woman or jointly devised to a mother and her minor children. The *Ulozhenie* alludes to this practice in Article 16.58 which permitted a mother to petition the Tsar to receive a maintenance-holding separate from that of her children in the event they refused to support her economically, having had devised to them jointly service landholdings. The life-estate as expressed in Russian wills was clearly intended to exist a usufruct property as the phrase *do ee zhivota* (lit. during her lifetime) reflects. If one looks to find further explanation concerning the legal operation of life-estates among statutes in Russian law concerned with usufruct possessions (*ugod’e*), one would be disappointed. Statutes related to usufruct are of the sort which would typically be contained within a collection of agricultural law. Those contained in *Ulozhenie* focused mainly on what constituted an illegal use of usufruct possessions.<sup>67</sup> The related statutes of the *Ulozhenie*, affirmed the right to usufruct possession, and elaborated on a few selected permitted uses of usufruct possessions, that, for instance, they could be rented

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to the Spaso-Evfim’ev monastery. The donation of his *votchina* was to go to the monastery through his children who were instructed to give 50 rubles to the monastery as well. It is explained that his wife was to have in the meantime a life-estate in all the property.

66 *Atky iuridicheskie*, no. 414, pp., 441-442.

67 Such as scaring beavers, illegal harvesting, stealing of bees, and the cutting of wood. *Ulozhenie*, Hellie, Articles 10.214-6;10.218 and 10.241.

or used to raise settlements.<sup>68</sup> But, again, none of these statutes directly referred to the life-estate like the one finds granted in Russian charters.

Most statutes relating to the practice of granting the right of a usufruct possession to the surviving spouse were found mainly in the *Prochiron*, particularly in Title 6, *On Prenuptial Gifts*. Typically, a women did not gain the right of usufruct to the entirety of her husband's estate, but only to a specific portion of it. As E. Freshfield pointed out in his examination of the *Prochiron*, it appears with regard to the section on pre-nuptial gifts, that an older system of marital gifts had been revived, over the early laws set out in the *Ecloga* which spoke only of a marriage settlement.<sup>69</sup> However, if one understands that the pre-nuptial gift was in effect the marriage settlement a husband brought to the marriage comparable to the dowry a woman brought, the laws contained in title six of the *Prochiron* may be interpreted similarly as if there were a simple marriage settlement. In Russian practice, whether or not a husband formally conveyed a pre-nuptial gift is not readily evident in ante-nuptial agreements. However, it is certain that in most instances a prospective groom did bring with him property into the marriage. That a portion of the marriage settlement belonged to the wife when her husband died, was a widely-understood provision of customary law in Western Europe where usually one-third was given to a wife. That a marriage settlement was distinct from the entirety of a man's estate was also understood in Russia. One can see this understanding existed in early Russian law, and practice, in situations which described a woman having a usufruct right to the *dvor*.<sup>70</sup> This same point was reiterated in the *Ulozhenie* centuries later. As it was explained in Title 6 of the *Prochiron* on pre-nuptial gifts, a woman who did not remarry received, besides the right to usufruct of the pre-nuptial gift, a share of the pre-nuptial gift which was equal to that of one child (ПРИЕМАЕТЪ КЪ ПОТРЕБѢ БРАЧНАГО ПРИБЫТКА ЧАСТЬ, ПО ГОСПОДСТВѢ ЕДИНАГО ДѢТИЦА).<sup>71</sup> *Prochiron* 6.2 made clear that a woman was entitled

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68 *Ulozhenie*, Hellie, Articles 10.247 and 17.18.

69 Freshfield, *Ecloga*, 35.

70 See above page 185.

71 *Prochiron* *kk, gran' 6, glava 1, f. 412b*. As with the primary estate, upon divorce, legal estate (по господствѢ) of the property was granted to the children, with the parent having usufruct rights to the property for maintenance of the children. Usufruct in this passage is rendered as: ИМѢНИЕ ТАКОВАГО ПРИБЫТКА ДЕРЖАТЬ, КОРМАЩЕ ІАЖЕ ѿ ТОГО БРАКА ДѢТИ.

to a life-estate, and not merely limited use of the pre-nuptial gift for the purpose of supporting her children. Here the passage said that upon a second marriage a woman forfeited her portion of the pre-nuptial gift, but retained a *right of usufruct* during her lifetime: ...ТОЖЕ ИМѢНИЕ МАТИ ДА ХРАНИТЬ ЕМОУ, ДОНЕЖЕ ЕСТЬ ЖИВА... .<sup>72</sup> Further demonstrating a woman's right to usufruct of the pre-nuptial gift was *Prochiron 6.5* which said that the legal estate of the pre-nuptial gift went to the children upon a second marriage, however, the woman was still entitled to some of the profit from it: **ОСТАВИВЪ ТОН НѢЧТО МАЛО ПРИПОДІЕ**, This profit clearly implies usufruct possession.<sup>73</sup>

### *iii. Basic operation of life-estates as in Russian wills*

As Russian last will and testaments reveal, life-estates followed a certain operation in law, similar to that of dowry. This was for the reason that the property, as pointed out above, had its origins in the marital settlement originally brought to into the marital union. Two main operations can be observed in Russian wills in this regard. The first operation concerned the substance of the life-estate property. That its substance was defined legally in the same manner as dowry property was - that it could not be alienated or granted to anyone by the woman.<sup>74</sup> Second, that after the woman's use of the life-estate it was to be "returned" as a dowry was. The return of the life-estate was accomplished when that property went to the heir the husband's appointed heir, who was to receive it after his wife's use.

#### *Substance of the life-estate property*

The sixteenth century will of Petr Vasili'evich Pozharskii,<sup>75</sup> stands as an example

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72 *Prochiron kk, gran' 6, glava 2, f. 413a*: the legal estate passed to her children: **ПРИБЫТКА ВСѢМЪ ДѢТЕМЪ ГДРЬСТВО ПРЕЖДЕ БРАЧНАГО ДАРА БОУДЕТЬ...**

73 *Prochiron kk, gran' 6, glava 5, f. 416a*. In this statute different phrasing is used to convey the notion of the life-estate. A provision requiring the widow to observe the twelve month period of mourning was also included in this statute.

74 *Ulozhenie, Hellie, Article 17.12*

75 *Akty Suzdal, no. 102, p. 229*. Additionally, Petr gave to his wife the residue of his estate, including horses, money and the profits of crops. The will also provided for the return of Oksin'ia's dowry.

of a testator bequeathing to his wife a life-estate restricted by the two usual stipulations of remarriage or taking of the veil. In this will, the testator reveals in his additional comments something about the substance of the property his wife was to receive as a life-estate. The substance of the property was usufruct in nature, and so could not be mortgaged, or given as a gift. This prohibition was conveyed in the stereotype phrase: *ni zalozhiti, ni prodati*. In this way, the life-estate is revealed to have functioned very much like a woman's dowry property which had similar restrictions put on it. Moreover, this example demonstrates that even though the Russian civil law had not specifically commented on the substance of life-estate property it was understood in Russian practice. After his wife's use of the property, then it is to pass to the Spaso-Evfim'ev monastery.

In the fourteenth/fifteenth century will of Ondrei,<sup>76</sup> the testator gave to his wife and small children his property which consisted of a number of villages, with his wife permitted to have use of the property during her lifetime. The will included one of the standard stipulations against retaining possession of the property after remarriage. The substance of the property is revealed in the testator's statement that should his wife remarry that she was not to give her portion to anyone, and neither any longer to hold her portion: ... "*ino ei ne dati uchastov" nichego i uchastka ei v" zemli net"*". The nature of the usufruct property restricted the ability of the possessor to transfer the property.<sup>77</sup>

#### *The return of the life-estate property*

The return of the life-estate was accomplished through the fulfilment of the testators' wishes for its final disposition. If the testator had children, then they were to receive the property after the death or remarriage of their mother. In those cases in which the life-estate had not been jointly devised, the testator often specified the final legatee in the will. Most commonly in Russian wills the designated legatee was the church.<sup>78</sup>

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<sup>76</sup> *Atky iuridicheskie*, no. 409(x), p. 435. This will specifically mentions that the testator's children were in their minority. Ondrei devised the property to his minor children with [their] mother: *menšim" detem" s" mater'iu*.

<sup>77</sup> A will from fifteenth century Novgorod uses the same phrase, *ei ne dati, uchastok nichego, i uchastka ei v zemli net*, forbidding the transfer of a usufruct property. See Valk, *Gramoty*, no. 250, p. 262.

<sup>78</sup> For examples see: *Atky iuridicheskie*, nos. 418 and *Akty Suzdal*, no. 88, p. 159.

Presumably, it was legally permissible to devise the property to the testator's next of kin, but this it seems that this choice was not as common.<sup>79</sup> A clear example of return of the life-estate is contained in a donation charter of (1557/8) from the Suzdal' region. It demonstrates that the return of the life-estate upon marriage was legally enforced. In this example, Zloby, apparently acting in his capacity as executor, is donating the property of his deceased brother Ivan to the Spaso monastery according Ivan's wishes. Zloby says that Ivan's wife Olena possessed a life-estate with the restriction that should she marry again, she would forfeit the property. He writes that since she has contracted a new marriage, he is executing his brother's wish that this donation be transacted.

*A word on «pod" vlastiiu» and «sui juris»*

The concept of *sui juris* is related to the Roman practice of *patria potestas*, that the father had power over his children, wife and sometimes extended family. One who was not legally of the status *sui juris*, was subject to the *patria potestas*. At certain times the status of *sui juris* was conferred – in the event of marriage for instance. Contained in chapter 26 of the *Kormchaia* is a passage from the *Prochiron* which described the meaning and circumstances by which *patria potestas* was dissolved and the status of *sui juris* was acquired. In the Slavonic translation, the term *patria potestas* is rendered as *soushchyia pod" vlastiiu*. Most commonly, the status of *sui juris* was acquired was through the death of the parents.<sup>80</sup> The status was also acquired, at least on a temporary basis, if the parent was absent from the household for some reason of circumstance. Thus, if a father was taken prisoner of war, the son gained the status of *sui juris*; if the father returned, the son reverted to his former status under the subjugation of the father.<sup>81</sup> A father was permitted to confer the status of *sui juris* on his son before the local magistrate (*podobnomu sudak*), simply by stating that he desired to confer the status of *sui juris* and “manumit him from my control” (*otpushchaitu ot moeia ruki*)<sup>82</sup>. It is interesting to note

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79 For an example where the testator selected his nephew's son to inherit the life-estate property, see: *Akty Suzal*, No. 21, p. 50.

80 *Prochiron kk, gran' 26, glava 1, f. 451a.*

81 *Prochiron kk, gran' 26, glava 4, f. 452b.*

82 *Prochiron kk, gran' 26, glava 5, f. 452b.*

that in the Slavonic translation the same metaphor has been retained from the original in Roman law – that of releasing from the hand. The last method by which the status of *sui juris* was acquired was by means of official appointment. Such appointment could include: to that of patrician (*patrikii*) or to the rank of patrician (*patrichestva*), to the eparchate (*eparshestvo*), to the *magister militum* (*voedstvo*), or to the episcopate (*episcopiia*).

Certainly, a fully-developed concept of *patria potestas* did not exist in Russia, since historically it rarely existed outside the Roman Empire. But nevertheless one can see that some legal aspects of related legal concept of *sui juris* as contained in Byzantine law were understood in Russia. For instance, there is no evidence that children or those under the power of their parents in Russia were permitted to make transactions of property, nor to contract a marriage. This was especially true for Russian women. Inheritance statutes, and other sections of Byzantine law in the *Kormchaia* which related to the duties of guardians and trustees with respect to minor children must certainly have conveyed some part of the concept to Russia. That is why in Russia, as elsewhere in Europe, the patriarchal-based family was governed by certain codes of conduct with respect to these legal matters. Although the Slavonic phrase *soushchyia pod" vlastiiu* appears quite frequently in the *Kormchaia*, and was clearly used to designate the individual who was not *sui juris*, it appears that the phrase was not used in property transactions documents such as wills and ante-nuptial agreements of the Russian medieval period. One may, however, see evidence that the *concept* of *sui juris* was both understood and held to be legally valid in Russia in property documents which conveyed property jointly to a mother and her minor children, like those that have been discussed above.

That the concepts of *sui juris* and minority were not one in the same in Russia is evidenced in ante-nuptial agreements. It is certain that some women had reached their legal majority before marrying, and yet, such agreements were made without the woman's participation as a legal party. It was the fact that the female was to remain under the legal authority or power of her father until such time as she married. That the act of marriage conferred a different status on a woman is evidenced by the fact that upon remarriage, a woman could contract her own ante-nuptial agreement in addition, she could act as legal party (either alone or with others) in property transactions.

## Conclusion

It can be seen then, that Byzantine law had a much stronger influence on Russian inheritance practices than can be attributed to custom. Russian testamentary practices such as partible inheritance, gender-neutral appointment of heirs, and rank of heirs based on the degrees consanguinity clearly have their root in the Byzantine law and not in Slavonic custom.

A comparison between the Byzantine law of the *Kormchaia* and the Russian practice of life-estates, reveals a number of things. First, that women holding usufruct possessions under the status of widow, were protected by a definite set of laws. This is evidenced in Russian property transaction documents and wills which demonstrate that the operation of life-estates or usufruct possessions followed a certain pattern which was far from arbitrary in its nature. In fact, it emerges that under the law, such usufruct possessions were treated in much the same manner as dowry property. Second, that women upon their becoming a widow, acquired a number privileges and related obligations as administrators of their deceased husband's estate and guardians of the household.

Because the majority of Russian testamentary practices operated according to the Byzantine law, women in Russia played a more prominent role in economic affairs than otherwise might have been the case, had their privileges and rights of possession been supported only by custom and subject to arbitrary abrogation of them by the civil authority.

## CONCLUSION

The preceding Chapters have illustrated the *Kormchaia kniga* served as the central source of law during the Russia medieval period. First, it was demonstrated through comparative means that the *Kormchaia*, while sharing many of the basic components of its Western and Byzantine counterparts, was in its organization and substance different from them. Further, the comparison underscored the differences in the development of Western and Byzantine canon law systems. Russia neither possessed a system of canon law which was built on a scholarly examination of it and either did Russia possess a developed theory of law stemming from such scholarship. For these reasons the presence of a canon law system in Russia has been overlooked. Why this is so has to do with the fact that canon law history, as we have said developed out of the Western experience, with methodology reflecting this. Scholars applying the same standards to Russia with which they scrutinize and interpret Western canon law developments, especially as they supported the rise of the early modern state, would find little in Russia to examine in this way. Yet, using a different methodology, the existence of a canon law system in Russia may be detected. This system of canon law in Russia provided for a division of jurisdiction between the ecclesiastical and temporal spheres. For this reason the Russian Church held a legally defined authority and possessed, in addition, special privileges of immunity and property rights. The relationship between these spheres was based on the Byzantine idea of *symphonia* - that the two jurisdictions were to act in harmony with one another. We may go one step further and assert that this Russian canon law system, based on this Byzantine model, provided a constitution for the relationship between church and state.

That a legal constitutional relationship between church and state existed in Russia is shown in Part II above. Russian law was silent on these matters, but in the *Kormchaia* is found ample Byzantine civil law which legislated on these matters. This may be

observed in the civil ecclesiastical legislation of the Emperor Justinian contained in the Byzantine legal collection The *Collection of the 87 Chapters*. This Collection comprised Chapter 42 of the *Kormchaia* and had been known in Russia from at least the thirteenth century. Evidence that it was both known and enforced exists in the fact of its incorporation into the Russian ecclesiastical court manual the *Merilo Pravednoe*. The *Collection* contained legislation which supported the jurisdiction of the Church and also its extensive property rights. Russian law was silent on these matters for the most part, and a comparison of the provisions of the Collection contained in Chapter 42 of the *Kormchaia* as compared to Russian practice reveals that they were influential. Ecclesiastical privilege was furthered by the numerous grants of immunity given to ecclesiastical establishments. These were based in the principles of the *Kormchaia*, and served to uphold the jurisdictional immunity of the Russian Church and to extend to it privileges as sovereign landlord. That these privileges were had their basis in law in a different manner than had secular persons who had held grants of immunity is shown in Russian civil enactments, which during the late medieval period curtailed the secular grants of immunities. The special immunity of the Russian Church had been codified in Russian civil law in the Princely Statutes, which as we have seen, were instrumental in upholding that law of the *Kormchaia* which gave to the Church a constitutional relationship to the temporal sphere.

Lastly, Part III demonstrated that the *Kormchaia* was utilized as a source of civil law. In the absence Russian civil law concerning women's dowries and life-estates, the Byzantine civil law contained in the *compendia*, the *Ecloga* and the *Prochiron*, governed these property matters. The evidence supports the contention that the operation of Russian dowry and life-estate practices was supported by the Byzantine statutes contained in the *Kormchaia*. It is indisputable that the *Kormchaia* served as a source of law and gave to Russia both constitutional relationship between church and state and extensive property law.

## APPENDIX 1

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### CHAPTERS OF THE PRINTED *KORMCHAIA*

This section contains a description the various chapters and component parts of the printed *Kormchaia*, building on the work of Troicki, Zhuzhek and many Russian scholars.<sup>1</sup> Work completed by Zhuzhek, provided for each chapter of the *Kormchaia* a citation for the corresponding Greek text and for the printed Slavonic editions. To accomplish this he relied on some earlier Russian works, many of which were studies devoted to a single chapter of the *Kormchaia*. For this reason, citations for the original Greek text have generally not been included, nor have the citations of Russian works which may be consulted in Zhuzhek.

Since much of the material contained in the *Kormchaia* is very specialized or comes from somewhat obscure sources, pertinent background information has been added where possible. Since the component parts of the *Kormchaia* span some 1500 years, adequate background information aids in this understanding of its significance. Such additions concern lesser-known persons, places, events, and heresies. It is hoped that in addition to helping one distinguish the more important texts of the *Kormchaia* it will also render them less obscure. For this purpose materials related to each of the component chapters were examined.

To a few of the chapter descriptions has been added substantial information. For example, substantial additions have been made to Chapter V, *Index to The Syntagma of the 14 Titles* and to Chapter 45, *The Mosaic Law*. Concerning the latter, vague references of historians to the 'Mosaic law' prompted an investigation of this chapter. It seems that there existed a synoptically arranged abridgment of the Pentateuch which was considered in the Eastern Church as comprising the Mosaic law. Here passages from the Pentateuch have been compared to the Slavonic text of the *Kormchaia*, using as a guide the citations found in Freshfield. The resulting table may be found below on pages 200-203 which records the precise citation of the biblical passages according to the Slavonic text.

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<sup>1</sup> Zhuzhek, *Kormchaia kniga*; Troicki, *Kako treba*. Many of these Russian scholars are cited throughout this section.

Additionally, a comprehensive source base has been compiled which lists the location of the English translation, if available, for each particular chapter of the *Kormchaia*. While there are not direct translations of the Slavonic texts contained in the *Kormchaia*, they are a fairly useful tool by which the reader may better ascertain the subject matter of a particular text of the *Kormchaia*, without having to refer to the Slavonic. Many of the English translations, even though they were made from different source texts, e.g. Greek, Latin, Syriac, are close in content to those of the *Kormchaia*. Where the *Kormchaia* text deviates substantially from a particular English translation of a text cited, the appropriate notation has been included within the chapter description. To my knowledge, no such compilation has been made to date.

The section below begins with the First Foliation of the Iosif *Kormchaia* (or second in the Nikon *Kormchaia*), followed by the main body of the *Kormchaia*, which is the Second Foliation in Iosif (and Third in Nikon). Then follows the First Foliation of the Nikon *Kormchaia*, which was not part of the Iosif *Kormchaia*. Finally, the Fourth Foliation of the Nikon *Kormchaia*, follows which, again, did not constitute part of the Iosif *Kormchaia*.

## ***FIRST FOLIATION IN IOSIF KORMCHAIA, SECOND FOLIATION IN NIKON KORMCHAIA***

### ***I. PREFACE TO THE ORTHODOX READER***

*English text:* none

This preface is not contained in the Nikon *Kormchaia*. It was written by Father Basil of Lublin in the seventeenth century. See above page 64.

### ***II. ACCOUNT OF THE SEVEN ECUMENICAL COUNCILS***

*English text:* none

This was originally an account of the six ecumenical councils. According to Zhuzhek, *Kormchaia kniga*, 67, the account was written by Germanos I, Patriarch of Constantinople (715-730).

### III. AN ACCOUNT OF ALL THE HOLY COUNCILS (INCLUDING THE REGIONAL COUNCILS)

*English text:* none

The account dates from the sixth century.<sup>2</sup>

### IV. THREE PREFACES TO THE NOMOKANON OF THE 14 TITLES

The first preface belongs to the early recension of the *Nomokanon of the 14 Titles*, really the *Syntagma of the 14 Titles*. See above pages 36-37. The second preface was written by Patriarch Photius of Constantinople in the ninth century, so thinks *Troicki*, 77. The third preface is thought to be of Russian origin. See *RIB* 6, 127-128.

### V. INDEX TO THE SYNTAGMA OF THE 14 TITLES

*English text:* none

This section contains the Titles themselves along with the Chapter headings contained within each Title. Following each Chapter heading is a paragraph containing citations directing one to the relevant canon pertaining to that particular Title and Chapter. On the subjects addressed by the various Titles, see below on pages 203-206. On the *Syntagma of the 14 Titles*, see above page 36.

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<sup>2</sup> For details see Zhuzhek, *Kormchaia kniga*, 67.

## ***SUBJECT DESCRIPTIONS FOR EACH TITLE (GRAN') ADDRESSED IN THE SYNTAGMA OF THE 14 TITLES***

The following Titles, а-дI (1-14) are listed in the *Kormchaia* ff. 26a-58b. Following each is a Chapter heading describing the subject matter of that particular Title. After this follows a subtitle containing an index of abbreviations where the relevant canons may be found.

For instance, under Title 11 (Грань вI), are 18 Chapters or subject headings. Title 11 concerns heretics, Jews, and Hellenes<sup>1</sup>: ѿ еретицѣхъ, и ѿ жидѣхъ, и ѿ еллинѣхъ

Under Title 11 is found Chapter 14 (глава дI) which concerns heretics, their being received into the true faith, and how they might be led to the community of believers (причетъ). The section speaks on which heretics to baptise and which to anoint only with the holy chrism, baptism being unnecessary. It says, further, that they should be received with gentleness so that they may be converted.

Following this explanation are citations where the relevant canons regarding this subject may be found. For instance among the list is canon 8 of the first ecumenical council (собора перваго вселенскаго, и).

Provided on the next pages is a chart listing the fourteen Titles, a copy of the *Kormchaia* passage from chapter 14 (глава дI), and, as well, a copy of the 8th canon of Nicaea, which in the *Kormchaia* is followed by a Byzantine *scholion* (*tolkovanie*), but is not here reproduced.

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<sup>1</sup>This is apparently a direct translation of the Greek term. See the Greek text of the *nomokanon* of Photius, in *PG* 104, 975-1218, Title 12. The Latin equivalent is *paganis* (pagans).

Грань а (глава а - аи)

none specified.

Грань б (глава - а - г)

ω созданіи цркви, и сценныхъ создѣхъ, и ω возложеніяхъ, сирѣчь, ω всехъ сдѣихъ потребахъ, и ω причетницѣхъ, иже безволи епкпа своего поставлаю, цркви.

Грань г (глава - а - кв)

ω мѣтвахъ и фалмѣхъ и ω чтеніихъ и ω приношеніихъ, и ω сдѣжѣ четкевъ и пѣвцевъ и слоугъ.

Грань д (глава - а - з)

ω оглашенныхъ сиречь ω подчающихъса вѣрѣ и ω сѣомъ крещеніи.

Грань пачаа (главы три)

ω нерадашихъ ω црквахъ, ни приходящихъ во время пѣнїа на молитвѣ, и гнѣшавшихъса памати сѣыхъ, сирѣчь праздникъ, и ω глдоущихъ въ црквахъ и ω трапезахъ.

Грань шестаа (главы три)

ω приношеніи плодѣвъ в црковь, которыа подобаетъ плоды прїимати, или раздаати, и ω вземлющихъ нѣто ѿ цркве или воскъ; или ѡмїамъ, или масла, и ω живущихъ въ сценныхъ мѣстѣхъ и согрѣшающихъ.

Грань седмаа (главы пачать)

ω постѣ, и ω четьредесати днехъ, и ω пасцѣ, и панткостїи, сирѣчь ω патьдесатницѣ, и ω недѣли, и ω сдѣштѣ, и ω поклонанїи коленъ.

Грань осмаа (глава а - ѡ)

ω предѣлахъ како подобаетъ превѣвати епкпомъ, и причетникомъ, и какω камо ѡходити имъ. и ω соборѣ бывающихъ во вса лѣта, и ω страннопрїимствѣ, и ω сученїи людеи, и еретикъ, и ω поставленыхъ, и ω мирскихъ посланїихъ, которыа мирскїа и людскїа вещи, подобаетъ имъ творити, и како подобаетъ причетникомъ дрѣгъ дѣгга почитати.

Грань деватаа (глава а - ѡѡ)

ω согрѣшенїихъ и ω сдѣхъ епкпомъ и причетникомъ, и ω ѡдченїи, и изверженїи, и ω покаанїи и, и которыа грѣхи поставленїе разрѣшаеть.

Грань десятаа (главы осмь)

ω суправленїи црквнаго имѣнїа, и ω своемъ ѡсовнѣмъ имѣнїи епископѣ.

Грань аї (глава а - ѡ)

ω мнѣхъ, чернѣхъ, и ω чернѣцахъ.

Грань вї (глава а - ии)

ω еретицѣхъ, и ω жидѣхъ, и ω еллинѣхъ.

Грань пї (глава а - ма)

ω мирскихъ людѣхъ

Грань дї (глава а - з)

сїа грань ошца всемъ человекомъ.

ГЛАВѢ, БІ, ВІСІИЖЕ ГЛАВѢ, III, ѠЕРІ  
ТНЦѢХЪ, II ѠЖИДѢХЪ, II ѠЕЛАННѢХЪ.

ГЛАВА, ДІ.

ѠЕРІТНЦѢХЪ ѠЕРАЩАНЩИХЪ КЪ ПРАВО  
ВѢРЕНІИ ВЪРѢ, II ѠТОМУ, АЩЕ МОЩЕ  
НШ ЄСТЬ ТАКОВЫА ВПРНІЕГЪ ПРНВІДІЕГІ,  
II КТОРЫА ЄРІТНІКН ПДІКАЕТЪ КРЕТНІТН,  
КТОРЫА ЖЕ ТОКМѠ МИРМЪ ПОМАЗОВАТИ,  
II ѠТОМУ ІАКѠ ПДІКАЕТЪ ІТНХІЕГІИ, II КРО  
ТКѠ ЄРІТНІКН ПРНМАТИ ѠЕРАЩАНЩЫА,  
ІАКѠ ДА БЫ ѠБРАЩЕНІА МНОЗИ: ПРАВНА,  
СБОРА ПЕРВАГѠ ВВЕЛЕНІКАГѠ, II, АНІТЪ,  
ЛЕ, ДІ, АНІТЪ, М. СБОРА ЛАСДНІКІИ  
НКАГѠ, З, II, АН, ОГ. СБОРА ВТІРІГѠ ВЕ  
ЛЕНІКАГѠ, З, АН, ПЧ. СБОРА КАРДАГЕ  
НКАГѠ, МЗ, АН, РА. ИЗ, АН, РА. Д.  
ЗС, АН, РМБ. СБОРА ШЕСТАГѠ ВВЕЛЕНІКА  
ГѠ, ЧЕ, АН, СЕ. АСОФНАА АРХІЕПІСКОПА ЛАВ  
НАНДРНІКАГѠ, БІ, АН, СОВ.

ПРАВИЛО . И . СРЕДЦА ГЛАГОЛЕМЪИ ЧИСТИИ ,  
ПРИХОДЯЩЕ КЪ БОГОРОДНИЦЪИ ЦРКВИ , ПЕРВОЕ ДА НЕ ПИ-  
ВЪДАЕТЪ , ЯКЪ ПОВНИУИТЕЛЪ ЦРКОВНЫ ЗАКО-  
НОВЪ , И ПРИСВЕЩАЮТЕСЯ СЪ ДВОИЖЕНЦЕИ , И  
ПРИСТАЕТЪ СЪСРЪШАЮЩИХЪ . И АЩЕ ОУДО  
ДЕТЬ ВЪ КОМУ ГРАДЪ ИСТИННЫИ ЕПИСКОПЪ ГРАДА  
ТОГОВА , БУДЕТЬ ЖЕ И ОНИХЪ , ГЛАГОЛЕ ЧИСТИИ  
ДРУГИИ ЕПИСКОПЪ ПОСТАВЛЕНЪ , ИЛИ ПРИЗВАНЪ  
ВЪ СВОИМЪ САНУ ДА ПРЕБЫВАЕТЪ . НО ОБЯТИ ПО-  
ЧТАВЛЕННЫИ О ЧИСТИХЪ ЕПИСКОПЪ , ИЛИ ЯКЪ  
ПРИЗВАНЪ ДА ИМАЕТЪ ЧИСТИЕ . ИЛИ АЩЕ ХОЩЕ  
ГРАДА ТОГОВА ЕПИСКОПЪ , ДА БДАЕТЪ СМЮ И ВЪ ДА  
ВЪ СЛАГЪ ЕПИСКОПЪ , ИМАЕТЪ БО МОЩНО ДВЪМА  
ЕПИСКОПА БЫТИ БО ЕДИННОМУ ГРАДЪ . ПРА-

## VI. INDEX TO THE CONTENTS OF THE KORMCHAIA

### SECOND FOLIATION IN IOSIF *KORMCHAIA* (THIRD IN NIKON *KORMCHAIA*)

#### CHAPTER 1: 85 CANONS OF THE HOLY APOSTLES

*English text:* H. Percival, *The Seven Ecumenical Councils of the Undivided Church* (1899) [*A Select Library of Nicene and Post Nicene Fathers of the Christian Church*, Ser. 2, Vol. 14 Eds., P. Schaff & H. Wace NY, 1886-1900](Reprint, 1991: Wm. B. Eerdmans Publishing, Grand Rapids, Michigan), 391-600 (Hereafter: Percival); *The Rudder (Pedalion)*, translated by D. Cummings, (Chicago, 1957), 1-153. This is a translation of the 1800 Greek canonical collection.

In Eastern canonical collections there are 85 canons; in Western canonical collections there are typically 50 canons.<sup>3</sup> N. B. Following each of these canons in the *Kormchaia* is a *scholion* of Aristenus<sup>4</sup> [in Slavonic *tolkovanie* plural *tolkovaniia*]. In the *Kormchaia* is used the Slavonic abbreviation  $\pi\circ$  in substitution for *tolkovanie*.

#### CHAPTER 2: 17 CANONS OF ST. PAUL

*English text:* *The Apostolical Constitutions*, Wm. Whiston, trans. & ed., with notes, James Donaldson [*Ante Nicene Christian Library*, Vol. 17](Edinburgh, 1870), 244-246.

St Paul's canons are contained in Book 8, Chapter 32 of the Constitutions. In this edition, the text is in paragraph form and not divided into canons. This work is regarded as apocryphal. On this see *Apostolic (Injunctions) Constitutions* in the *Old Catholic Encyclopedia*. Also see O'Leary, *The Apostolic Constitutions, Cognate Documents*

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3 For further background see "Canon, Apostolic", in the *OCE*, Vol. 3, 279.

4 And on occasion a *scholion* of Zonaras. *Scholia* (Latin term) or *tolkovanie* (Slavonic term) follow most of the canons of the ecumenical and regional councils contained in *Kormchaia* chapters 1-18. This is for the reason that these chapters are based on the collection of Aristenus' *Epitome canonum*, a canonical collection which the Byzantine canonist or scholiast made his *scholia* or glosses upon. On Aristenus' *Epitome canonum* see above page 58. For this reason, the canons found among these chapters are in the epitome form only, not the long form. Therefore, the reader in consulting English translations of the canons should prefer the epitome over the long form in the various cited printed editions of the ecumenical and regional councils, although for dogmatic purposes the epitome was not historically as authoritative, but was, however, often more clear. Percival's edition contains both forms, the *Pedalion* uses the long form.

(London, 1906) [Series: *Church Classics*]. These canons are absent in the *Kniga pravil*, the Russia canon law collection of the nineteenth century.<sup>5</sup>

*CHAPTER 3: 17 CANONS OF THE APOSTLES PETER AND PAUL*

*English text: The Apostolical Constitutions, 246-248; 252-253.*

The canons are contained in Book 8, Chapters 33-34 & 42-45 of the Constitutions. In this edition, the text is in paragraph form and not divided into canons. This work is also regarded as apocryphal.

*CHAPTER 4: 2 CANONS OF THE HOLY APOSTLES*

*English text: The Apostolic Constitutions, 254-257.*

The canons are contained in Book 8, Chapter 46 of the Constitutions. In this edition, the text is in paragraph form and not divided into canons. This work is also regarded as apocryphal. The text in the *Kormchaia* is only a small portion of this selection.

*CHAPTER 5: 20 CANONS OF THE FIRST ECUMENICAL COUNCIL HELD IN NICAEA IN 325*

*English text: Pedalion, 155-201; Percival, 8-42; Norman, P. Tanner, S. J., The Decrees of the Ecumenical Councils. Vol. 1: Nicaea to Lateran V. (Georgetown University: Washington, D.C., 1990).*

Tanner's work is among the newest translations in English from Greek and Latin sources. Both the *Pedalion* and *Tanner* include short introductions before each council. For a more extensive history of general councils see Hughes, Phillip, *The Church in Crisis: A History of the 20 Great Councils* (London, 1961). *Tolkovaniia* follow the canons in the *Kormchaia*.

*CHAPTER 6: 25 CANONS OF THE REGIONAL COUNCIL HELD IN ANCYRA IN 314-315*

*English text: Pedalion, 489-506; Percival, 63-75.*

The *Kormchaia* contains a short prologue to the council. *Tolkovaniia* follow the canons in the *Kormchaia*.

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<sup>5</sup> See above page 53.

CHAPTER 7: 15 CANONS OF THE REGIONAL COUNCIL OF NEOCAESAREA OF 314-325

*English text: Pedalion, 507-521; Percival, 79-86.*

*Tolkovaniia* follow the canons in the *Kormchaia*.

CHAPTER 8: 20 CANONS OF THE REGIONAL COUNCIL OF GANGRA OF 325-381

*English text: Pedalion, 521-532 [21 canons]; Percival, 92-101.*

In the *Kormchaia*, there are 19 canons followed by one lengthy *tolkovanie*.

CHAPTER 9: 25 CANONS OF THE REGIONAL COUNCIL OF ANTIOCH OF ABOUT 341

*English text: Pedalion, 533-550; Percival, 108-121.*

The *Kormchaia* contains a lengthy prologue to the council. *Tolkovaniia* follow the canons in the *Kormchaia*.

CHAPTER 10: 58 CANONS OF THE REGIONAL COUNCIL OF LAODICEA OF 343-381

*English text: Pedalion, 551-578 [60 canons]; Percival, 125-160 [60 canons].*

Although there are 58 canons in the *Kormchaia*, the unnumbered passages following canon 58 are actually text contained in canons 59 and 60 in the English printed editions. The reason for the difference in numbering is not known; however, it seems that 60 became at some point the established number of canons for this council. Canons 59 and 60 concern the canonical and uncanonical books of the bible, giving the names of the books of the accepted biblical canon. *Percival*, 159, states that canon 60 is of "questionable genuineness". *Tolkovaniia* follow the canons in the *Kormchaia*.

CHAPTER 11: 8 CANONS OF THE SECOND ECUMENICAL COUNCIL HELD IN CONSTANTINOPLE IN 381

*English text: Pedalion, 201-220 [7 canons]; Percival, 172-187 [7 canons].*

Western canonical collections recognised only four canons from this council.<sup>6</sup> The seventh canon is rendered in two parts in the ancient *Epitome*.<sup>7</sup> The *Kormchaia* contains

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6 On this see Tanner, Vol. 1, xiv, note. 14 and p. 23. Also see *Percival*, 171, his reprint of a selection from K. J. von Hefele, *A History of the Councils of the Church, from original documents* 5 Vols. (Edinburgh, 1883-1896), Vol. 2, 351.

7 *Percival*, 185 note 1. The eighth canon is printed on page 185 of *Percival*.

a brief prologue to the council. *Tolkovaniia* follow the canons in the *Kormchaia*.

*CHAPTER 12: 9 CANONS OF THE THIRD ECUMENICAL COUNCIL HELD IN EPHESUS IN 431*

*English text: Pedalion, 221-240 [8 canons]; Percival, 225-235 [8 canons]; Tanner, 63-66, [Canons 8 and 9 are not included; the text is not broken into canons, but as letters of Nestorius and St. Cyril].*

Zhuzhek, *Kormchaia kniga*, 72 says that the ninth canon is taken from a letter of this Council to the Bishop of Pamphilia. Regarding the variation in canons among canonical collections, see Percival, 231, sections entitled: "Observation of the Roman Editors" and "Observations of Philip Labbe, S.J.P.". See below this section under heading Chapter 35 concerning the *Anathemas* of St. Cyril against Nestorius. *Tolkovaniia* follow the canons in the *Kormchaia*.

*CHAPTER 13: 30 CANONS OF THE FOURTH ECUMENICAL COUNCIL HELD IN CHALCEDON IN 451*

*English text: Pedalion, 241-278; Percival, 267-292; Tanner, 67-70 with some comments.*

The *Kormchaia* contains a prologue to the council. *Tolkovaniia* follow the canons in the *Kormchaia*.

*CHAPTER 14: 21 CANONS OF THE REGIONAL COUNCIL OF SARDICA OF 343-344*

*English text: Pedalion, 579-600 [20 canons]; Percival, 415-433.*

The *Kormchaia* contains a prologue to the council. *Tolkovaniia* follow the canons in the *Kormchaia*.

*CHAPTER 15: 138 CANONS OF THE REGIONAL COUNCIL OF CARTHAGE OF 419*

*English text: Pedalion, 603-712 [141 canons]; Percival, 441-510. Tolkovaniia follow the canons in the Kormchaia.*

*CHAPTER 16: 1 CANON OF THE REGIONAL COUNCIL HELD IN CONSTANTINOPLE ON SEPTEMBER 30TH, 394*

*English text: Pedalion, 601-603 [2 canons]; Percival, 513-514.*

CHAPTER 17: 102 CANONS OF THE ECUMENICAL COUNCIL HELD IN TRULLO IN 691-692

English text: *Pedalion*, 283-412; *Percival*, 359-408; *Tanner*, with some comments.

Their canonical validity within the Roman church has long been disputed.<sup>8</sup> This council is also called the Quinisext. On its ecumenical authority as viewed by the Roman church see *Percival*, 279-282. The *Kormchaia* contains a lengthy prologue to the council. *Tolkovaniia* follow the canons in the *Kormchaia*.

☞ Previous to this chapter on *f. bis. por-poc*, there is an account of the Fifth Ecumenical Council (553 A.D.). This council, which affirmed the Anathemas of St. Cyril against Nestorius, produced no canons. See *Percival*, 297-323 and *Pedalion*, 279-282.

CHAPTER 18: 22 CANONS OF THE SEVENTH ECUMENICAL COUNCIL HELD IN NICAEA IN 787

English text: *Pedalion*, 413-452; *Percival*, 555-570; *Tanner*, with some comments.

*Tolkovaniia* follow the canons in the *Kormchaia*.

CHAPTER 19: 17 CANONS OF THE REGIONAL COUNCIL HELD IN CONSTANTINOPLE (probably 863)

English text: *Pedalion*, 453-474.

This council is also called the "*Primum Secundum*". In the *Kormchaia* the chapter header calls it the *Council in the Church of the Holy Apostles*, making reference to its historical location.

CHAPTER 20: 3 CANONS OF THE REGIONAL COUNCIL HELD IN CONSTANTINOPLE IN 879 (880).

English text: *Pedalion*, 477-479. Also the named the *Council Held in the Temple of Holy Wisdom*.

CHAPTER 21: 91 CANONS OF ST. BASIL

English text: *Pedalion*, 772-861 [92 canons]; *Percival*, 604-611 [93 canons]. In *Percival* the canons are based on: Epistle 188 to Amphilocheus Bishop of Iconium (canons

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<sup>8</sup> Tanner, Vol 1., 123, note 2, discusses the Roman Catholic Church's position on the validity of these canons.

1-16); Epistle 199 to the same (canons 17-50); Epistle 217 to the same (canons 51-85); Epistle 236 to Diodorus Bishop of Tarsus (canon 86); Epistle 160 to Gregory a Presbyter (canons 87, 88); Epistle 54 to the Chorepiscopi (canon 90); Epistle 53 to his Suffragans (canon 91). Also see Bettenson, Henry, ed & trans., *The Later Christian Fathers* (London, 1970), 92-94.

CHAPTER 22: 26 VERY SHORT CANONS OF ST. BASIL

*English text:* none

These canons are attributed to St. Basil, but it is unlikely that they are his work. Zhuzhek posits that they were composed by John the Scholastic.<sup>9</sup>

CHAPTER 23: A TREATISE OF ST. BASIL CONCERNING PENANCE

*English text:* none

Zhuzhek believes this treatise is based on canon 75 of St. Basil concerning public penance.<sup>10</sup>

CHAPTER 24: A TREATISE OF ST. BASIL TO PRIEST ON THE MASS, ON COMMUNION, AND ON PENANCES

*English text:* none

In Latin the work is entitled, *Basilii Sermo Ob Sacerdotum Instructionem*.<sup>11</sup> This treatise is considered to be a spurious work, and is among the list of spurious works attributed to St. Basil in: *Basil of Caesarea*, Vol. I, Paul J. Fenwick, (Toronto: Pontifical Institute of Medieval Studies, 1979) [Studies and Texts 45], xxxi.

CHAPTER 25: A TREATISE OF ST. BASIL TO GREGORY NAZIANZEN (THE THEOLOGIAN) ON MONKS (FOURTH CENTURY)

*English text:* Deferrari, *Epistola Basilii*, Vol I., 7-25. This is letter number II. In this edition, these letters are in English accompanied by the Greek text.

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9 Zhuzhek, *Kormchaia kniga*, 75.

10 Zhuzhek, *Kormchaia kniga*, 76.

11 PG, 31, 1685-88.

CHAPTER 26: 4 CANONS FROM THE LETTERS OF DIONYSIUS THE GREAT, BISHOP OF ALEXANDRIA (MID 3RD CENTURY)

English text: *Pedalion*, 713-725; *Percival*, 600-601.

CHAPTER 27: 14 CANONS OF PETER, BISHOP OF ALEXANDRIA CONCERNING REPENTANCE (FOURTH CENTURY)

English text: *Pedalion*, 739-757; *Percival*, 600-601.

CHAPTER 28: 13 CANONS FROM AN EPISTLE OF GREGORY THAUMATURGUS OF NEOCAESAREA (3RD CENTURY)

English text: *Pedalion*, 725-739; *Percival*, 602.

CHAPTER 29: FOUR EXCERPTS FROM THE LETTERS OF ST ATHANASIUS, BISHOP OF ALEXANDRIA (FOURTH CENTURY)

English text: *Pedalion*, has three of the epistles, excluding the one on virginity: (i) 758-760; (ii) 763-765; (iii) none (iv) 786-769; *Percival*: (i) 602-603; (ii) 603; (iii) none; (iv) 603; See also for text (iv) B. J. Kidd, *Documents Illustrative of the History of the Church*. 2 Vols. (London, 1938). Vol. 2, 81-82.

(i) extract from a letter to the Monk Ammus [aka Ammun, in *Pedalion*]

(ii) extract from a letter to Ruffinian

(iii) an extract concerning virginity

(iv) an extract from the thirty-ninth Festal Letter

Concerning text (iii), Zhuzhek, 77, believes that the original Greek text has not yet been edited.<sup>12</sup>

CHAPTER 30: TWO EXTRACTS CONCERNING THE CANONICAL BOOKS OF THE HOLY BIBLE (FOURTH CENTURY)

English text: (i) *Pedalion*, 883-884; *Percival*, 612, which text is abbreviated, leaving out

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<sup>12</sup> See David Brakke, *Athanasius and the Politics of Asceticism* (Oxford, 1995) one of the few recent English translations of St. Athanasius' work. Zhuzhek's opinion still stands. A current search (conducted by myself) produced nothing new.

the names of the books.

This extract comes from the meter poems of Gregory (Theologus) Nazianzen.

(ii) *Pedalion*, 884-885; *Percival*, 612. This is an extract from the *Epistula iambica ad seleucum* of the Bishop of Iconium Amphilochius to Seleucus. These extracts state which books of the bible are considered by the Christian church to be canonical and excludes those considered to be apocryphal.

*CHAPTER 31: 8 CANONS OF GREGORY OF NYSSA TAKEN FROM THE LETTER TO LETOION, BISHOP OF MELITINES (FOURTH CENTURY)*

*English text: Pedalion, 865-883; Percival, 611.*

*CHAPTER 32: 15 CANONS FROM THE CANONICAL ANSWERS OF TIMOTHY, BISHOP OF ALEXANDRIA (381-385)*

*English text: Pedalion, 889-903 [18 canons]; Percival, 612-613 [18 canons].*

The references here actually correspond to the full text of the Canonical Answers of Timothy. See below this section Chapter 61, in which extracts from the Canonical Answers have been made into canons. There is not, however, a direct English translation of the text contained in the printed *Kormchaia*,

*CHAPTER 33: 14 CANONS OF THEOPHILUS, BISHOP OF ALEXANDRIA (385-412)*

*English text: Pedalion, 903-914; Percival, 613-614 [There are 10 along with a few extra paragraphs].*

Although the *Kormchaia* text differs from the numbering found in the text of the *Pedalion*, the format follows the *Pedalion's* translation most closely.

*CHAPTER 34: EXTRACTS FROM FIVE LETTERS OF CYRIL, BISHOP OF ALEXANDRIA (FIFTH CENTURY)*

*English text: Pedalion, 915-922; Percival, 615; John Mc Enerney, trans., St Cyril of Alexandria. Letters, Vols. I [letters 1-50] & II [letters 51-110], (Villanova, PA: Catholic University Press, 1987) [Fathers of the Church]; Lionel Wickham, ed. & trans., Cyril of Alexandria. Select Letters (Oxford, 1983).*

(i) 3 canons from his letter to Domnus

*Pedalion*, 916-920; *Percival*, 615 (paragraph form, not specified canons). Neither of these texts closely corresponds with that contained in the *Kormchaia*. *McEnerney*, letter 77 or 78.

(ii) 2 canons from the Letter to Bishops of Libya and Pentapolis

*Pedalion*, 920-92; *McEnerney*, letter 79.

(iii) a short extract from the letter to Maximus the Deacon

*McEnerney*, 41-42, letter 58.

(iv) a short extract from the letter to Archimandrite Gennadius

*McEnerney*, 37-38, letter 56.

(v) short extract from the letter to Eulogius of Alexandria

*English text*: none

CHAPTER 35: 11 CANONS ON THE FAITH TAKEN FROM THE WORKS OF CYRIL, BISHOP OF ALEXANDRIA FROM THE FIVE TOMES AGAINST NESTORIUS (COMPOSED 430)

*English text*: *Later Treatises of S. Athanasius, Archbishop of Alexandria with notes & Appendix on S. Cyril of Alexandria & S. Theodoret* [A Library of Fathers of the Holy Catholic church, anterior to the division of the East and West / translated by members of the English Church](London, 1881), 157-175.

*Percival*, 206-218. In *Percival* the text of each canon or anathemas has commentary following each one; *Wickham*, "Doctrinal Questions and Answers" in the form of 12 questions and answers, 180-213. The 11 canons in the *Kormchaia* are the text of 11 of the 12 Articles or anathemas of St. Cyril against Nestorius. Article 2 is omitted in the *Kormchaia*, the reason is unknown.

CHAPTER 36: ON SIMONY IN ORDINATIONS

*English text*: *Pedalion*, *Percival*, *DeFerrari*

The *Kormchaia* text is longer than the known edited Greek sources.<sup>13</sup> The three sources below comprise the majority of the text, and so may be considered to be a partial translation.

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13 Zhuzhek, *Kormchaia kniga*, 80.

(i) Letter of St Basil to Chorepiscopi

*Deferrari, Epistolae of St Basil*, Vol I, 337-348. With Greek text.

(ii) Encyclical letter of Patriarch Gennadius I (458-471)<sup>14</sup> to the Council of Constantinople & Pope (circa 459).<sup>15</sup>

*Percival*, 615; *Pedalion*, 924-926 (called St. Gennadius).

(iii) Letter of Patriarch Tarasios (784-806)<sup>16</sup> to Pope Hadrian I

*Pedalion*, 953-958 (called St Tarasios).

For background on Hadrian [Adrian] see *Lives of the Popes in the Middle Ages*, Vol. I, pt. 2, Horace Mann (London, 1925), 657-795. See esp. 394-495 on the second council Nicaea, and in particular Tarasius, 447-451. Hadrian is also called Adrianus I (772-795).<sup>17</sup> In *Pedalion* the title reads the *Epistle of Tarasius...to the Arian Pope...*, 953.

#### CHAPTER 37: ON THE RECEPTION OF HERETICS INTO THE CHURCH

*English text*: none.

This text is an extract from a letter sent to Martyrius, Bishop of Antioch from the Church at Constantinople. Part of this text is contained in canon 95 of the Council of Trullo, and so serves as a suitable, although not direct translation of the Slavonic. Of interest also is Canon 7 of the Second Ecumenical Council, the First of Constantinople, See *Percival*, 184-5 which concerns the canon being dated later than the Council as it comes from the letter of Martyrius (fifth century) and the Council took place in 381 A.D. See the comments of Beveridge, *Synodicon*, II and Hefele, *History of the Councils*, vol. II, 368. See also *Tanner*, Vol. 1, 22, note 8.

#### CHAPTER 38: ON ASYLUM

*English text*: none

From a *chrysobull* (Greek: *chrysoboullon*, "golden edict") of the Emperor Justinian

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14 Burgess, *Lord Temporal*, 107.

15 The letter is dated to the year 459, Zhuzhek, *Kormchaia kniga*, 80. *Percival* does not provide a date for the letter. In the year 459 the Pope of Rome was Leo I *Magnus* "The Great", Burgess, *Lord Temporal*, 189.

16 Burgess, *Lord Temporal*, 108.

17 *ibid.*, 191.

(sixth century). This *chrysobull* is found in Beveridge, *Synodicon*, II, dd. It is included as part of Aristenus' *Epitome Canonum*, written in Beveridge as *Alexii Aristenii Epistolarum Quae Dicuntur Canonicae Synopsis*. The chrysobull is entitled as *Aurea Bullae*<sup>18</sup> *magnae Ecclesiae Concessae Justiniani, de servis fugitivis*. This *chrysobull* (ΣΑΛΤΑΔΑ ΠΕΧΑΤΕ)<sup>19</sup> is divided into six canons in the *Kormchaia*. The recognition of the right of asylum in the church is first found in the *Codex Theodosius* Book 9, Title 15.4. Concerning the background of the right of asylum and its use in the Byzantine Empire see, Macrides, R. J., "Killing, Asylum and the Law in Byzantium", *Speculum* 63 (1988), 509-538, reprinted in *Kinship and Justice in Byzantium, 11th - 15th Centuries* (Aldershot: Variorum Collected Studies Series, 1999). Breakers of sanctuary, according to the later Byzantine *compendia* the *Ecloga* and *Prochiron*, were to be flogged, tonsured and sent into exile.<sup>20</sup> The Expanded ZSL (*Zakon sudnyi liudem*) recommended only flogging.<sup>21</sup>

#### CHAPTER 39: EXTRACTS ON TWO HERESIES

*English text: none*

(i) A text against Jacobites and Armenians "*Catzizari*"<sup>22</sup> taken from the writings of Demetrius, Metropolitan of Cyzicus<sup>23</sup> (eleventh century). See Blunt, *Dictionary of Sects, Heresies, Ecclesiastical Parties and Schools of Religious Thought* (London, 1874), 106.

(ii) A text against the Messalians

18 *Bulla aurea* is the Latin term for *chrysobull*.

19 The text reads ЗАПЕЧАТАНЫ БЛАГОЮ ПЕЧАТЮ.

20 Freshfield, *A Manual of Eastern Roman Law. The Prochieros Nomos*. E. Freshfield, trans. (Cambridge, 1928), Art. 7, 153.

21 *Zakon sudnyi liudem*, trans. Dewey and Kleimola, Expanded Redaction, Article 20.

22 From the entry in Blunt: "An Armenian sect mentioned by Nicephorus. Their name is derived from "Chaza" the Armenian word for the Cross. The members of the sect are described as worshipers of the cross, and hence are also called *staurolatrae* (Nicep. Hist. Eccl. xviii. 54) Demetrius of Cizycus, writing in the seventh century, speaks of the sect as still existing, and says that its adherents were Nestorians in principle, maintaining a dual Personality in Christ instead of two Natures in one Person. He also records that they used fermented bread, and wine, unmixed with water, in celebration of the Holy Eucharist." Note that canon 32 of the Council of Trullo makes reference to the heretical practice of using wine unmixed with water.

23 Cyzicus was located in Asia Minor, a "titular see in Asia Minor, the Metropolitan of the ancient ecclesiastical province of Hellespontus" *OCE*, entry, Cyzicus.

On the history of the Messalian heresy, see the entry on Messalians in the *Encyclopedia of Early Christianity*, ed. Everett Ferguson (London 1990).<sup>24</sup> See also John of Damascus' "Heresies in Epitome: How they began and whence they drew their origin", 131-137 in F. H. Chase, trans., *The Writings of John of Damascus*, part 2. (New York, 1970) [Fathers of the Church, vol. 37]; and see *Percival*, 240-242 which contains two excerpts from others works concerning the Messalians. The second of these excerpts devoted to the Messalians, that of Tillemont, mentions that the Messalian heresy "became the source of the sect of the Bogomils."<sup>25</sup>

#### CHAPTER 40: ON THE PENTARCHY AND UNLEAVENED BREAD

*English text: none*

(i) An extract from the letter of Peter, Patriarch of Antioch (eleventh century) to the Bishop of Venice. The *Kormchaia* text heading states that the letter is from *Peter, Archbishop of Alexandria to the Archbishop of Venice in the time of the Patriarch of Constantinople, Alexii*. This heading is incorrect in that Peter was the Patriarch, not archbishop, of Antioch, and neither of Alexandria.<sup>26</sup> The letter was written, according to the *Kormchaia* in the time of Alexios, Patriarch of Constantinople, but is found in Latin publications of the text among the documents concerned with the reign of Patriarch

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24 The entry says: "Ascetic sect. Also known as Euchites (Greek for "Praying ones"). The Messalians (their Syriac names) originated shortly after the mid-fourth century. They held that only intense and ceaseless prayer could eliminate the passion and desire by which demons held power over a person; consequently they refused to work and lived on alms. They were attacked by Ephraem the Syrian, Flavian of Antioch, Amphilochius of Iconium and Epiphanius and were condemned at Antioch (ca. 385) Side (383), Constantinople (426) and Ephesus (431). Possible connections with Eustathius of Sebaste, Diadochus, Gregory of Nyssa and Pseudo-Macarius have been debated. They are last heard of in the seventh century"

25 Tillemont, *Memoires*, vol. VIII, part 2 as cited in *Percival*, 240.

26 Zhuzhek, *Kormchaia kniga*, 82 refers the reader to Pavlov, *Kriticheskie opyty po istorii drevneishei greko-russkoi polemiki protiv latiniam* (St. Petersburg, 1878), 71 See Latin texts confirming that the letter was from Peter of Antioch in *PG* 120, 755; and Will, C. J. C., *Acta et Scripta quae de controversiis ecclesiae Graecae et Latinae* (Paris, 1861), 208. Concerning the dating of the text by means of the period during which the historical persons named in the *Kormchaia* held clerical office, see Burgess, *Lord Temporal*, 108. Peter (Butrus) III held the patriarchate of Antioch from 1052 to 1056 (page 39). Alexii, as mentioned in the incorrect *Kormchaia* heading refers to Alexios Stoudites, Patriarch of Constantinople (1025-1043).

Michael Cerularius (Keloularis) (1043-1058).<sup>27</sup> A notable portion of the text concerns the five patriarchates, explaining by use of a metaphor their relationship to the Church as the five senses are to the body.

(ii) An extract from the first letter of Leonta, Bishop of Bulgaria, concerning the use of unleavened bread (eleventh century).

This extract is concerned with the Latin practice of using unleavened bread. The letter can be found in *PG* 120, 835-844, among the section of letters to Bishop Joannem Tranense. Here the Bulgarian Bishop is named Leonis. Leon was Archbishop of Okhrid circa 1037-1054.<sup>28</sup>

*CHAPTER 41: A LETTER OF ST. NILUS OF SINAI TO A PRIEST CALLED CHARCICLES (FIFTH CENTURY)*

*English text: none*<sup>29</sup>

St. Nilus or Neilos, one of the great ascetic writers of the 5th century who died in 430.<sup>30</sup> The text in the *Kormchaia* examines the sacrament of penance. The letter is listed in the collection edited in the *PG* as letter 243.<sup>31</sup> On the letter's insertion into the Serbian *Kormchaia* compiled by Archbishop Sava, see Zhuzhek, *Kormchaia kniga*, 82.

*CHAPTER 42: COLLECTION OF EIGHTY-SEVEN CHAPTERS*

*English text: none*<sup>32</sup>

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27 On the dates of the reign of Patriarch Cerularius, see Burgess, *Lords Temporal*, 108.

28 Burgess, *Lords Temporal*, 91. These dates are uncertain. See the entry on Leon ek Romaion or Luv I as he is named in this work.

29 Tanner, Vol. III, 496-504 indicates that no English translation of letters exist in a separate collection. The Latin title (*PG* 79, 495-502) is *Charicli Presbytero, severiter delinquentes pertractanti asseverantique non esse satis confessionem ad poenitentiam*.

30 Concerning his biography, see the *NCE*, Saint Nilus.

31 *PG* 79, 495-502.

32 There is no direct translation of the *Collection* made from the Slavonic, Greek or Latin. However, S. P. Scott, *The Civil Law, including the Enactments of Justinian and the Constitutions of Leo*. 32 vols. (Cincinnati, 1932) contains the English translation of Justinian's *novellae*. The citations, as they correspond to the printed *Kormchaia*, are set out in the chart above on pages 95-99. The English translations of the *novellae* in Scott, it should be said, are incomplete. Although

See above Chapter 4. A Byzantine collection of civil laws from the sixth century attributed to John the Scholastic which was appended to the *Collection of the 50 Titles* to form an early *Nomokanon*, predating the *Nomokanon of the 14 Titles*. The *Collection* primarily concerns laws governing the clergy, but touches on civil concerns as they affected the clergy, for instance, Byzantine law governing ecclesiastical property.<sup>33</sup> This collection also comprised part of the *Merilo pravednoe*<sup>34</sup> and served as part of the Russian legal system of laws.<sup>35</sup> In an examination by Zhuzhek of the 1666/7 Russian Church Council, it is shown that this *Collection* was still consulted in Russia as late as the seventeenth century.<sup>36</sup>

#### CHAPTER 43: THREE NOVELLAE OF EMPEROR ALEXIS COMNENUS (1081-1118)

*English text:* none

These imperial *novellae* of the eleventh century are concerned with marriage and betrothal. They were intended to act as supplemental law to the provisions already existing in the Justinianic code and Byzantine *compendia*. The civil laws in these *novella* comprise part of the *Merilo Pravednoe*.<sup>37</sup>

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all the *novellae* are included in Scott's translation, the *novellae* themselves are, in some instances, not fully translated. J. B. Pitra in *Iuris ecclesiastici Graecorum*, 385-389 contains a listing in Latin of each if the title headings of the 87 Chapters. Following these title heading is the Greek text (pp. 390-405) which contains cross-reference to the particular text of Justinianic law from which the portion is excerpted. In Pitra there are some errors among the citations as they correspond to the Slavonic text of the *Kormchaia*.

33 For discussion of the history and development of the Greek *Nomokanon*, relative to this, see Zhuzhek, *Kormchaia kniga*, note 6, pp., 16-17. See also Cicognani, *Canon Law* (Rome, 1949), 200. Zhuzhek makes note of the fact that this *Collection* is attributed to John the Scholastic (546-551), 82.

34 On this Russian legal collection see, *Merilo Pravednoe po rukopisi XIV veka*. M. N. Tikhomirov, ed. (Moscow, 1961). On its supposed use in Russia, see Kaiser, *Growth of Law*, 23-25.

35 On the relevance of this collection to the ecclesiastical courts see, *Merilo pravednoe, Die moralisch belehrenden Artikel im altrussischen Sammelband*. ed. Rudolph Scheider [edited Russian and German text]. See also A. A. Zalizniak, «*Merilo pravednoe*» XIV veka kak aktsento logicheskii istochnik (Munich, 1990); and N. V. Kalachev, "Merilo pravednoe", *Archiv istoriko-iuridicheskikh svedenii otnosiashchikhsia do Rossii* (Vol. I, Moscow, 1850), III, no. 5, 39-40.

36 Zhuzhek, *Kormchaia kniga*, 175-180. See esp. 174-175, & 179 concerning the use of the *Collection of 87 Chapters* at the Council.

37 *Merilo Pravednoe*, ed. Tikhomirov. See chapters 20, 21, 22 of Tikhomirov's work.

- (i) *novella* 35 (1095) on the marriage of servants
- (ii) *novella* 24 (1084) on the making of the contract of betrothal
- (iii) *novella* 31 (1092) on the dissolving of the contract of betrothal<sup>38</sup>

*CHAPTER 44: EXTRACTS OF CIVIL LAWS FROM THE NOMOKANON OF THE 14 TITLES*

*English text:* in part, Scott, *The Civil Law*

The excerpts are comprised of the *Codex*, the *Digestia* and the *Novellae* of Justinian. A reference table to the citations for the excerpts of law can be found in Troicki, S .V. *Kako treba*, 86. The contents of this chapter in the printed *Kormchaia*, it should be mentioned, are barely usable. Of the 34 *grani* (titles), less than half have sufficient intelligible text to have been applied as a source of law. However, a great proportion of extracts belonging this chapter are repetitions of passages contained in Chapter 42 of the *Kormchaia* which are intelligible.

*CHAPTER 45: SYNOPSIS OF THE MOSAIC LAW*

*English text:* none

There is no direct translation of this particular text, but a satisfactory translation may be pieced together from excerpts of any English language bible. The Synopsis is composed of passages from the last four books of the Pentateuch: Exodus, Leviticus, Numbers, and Deuteronomy. In the *Kormchaia* Synopsis there are fifty passages, with some prefaced by the biblical citation. Freshfield compiled a guide to the passages contained in what is known as the Mosaic Law on pp 142-144 in *A Manual of Roman Law. The Ecloga, Published by the Emperors Leo III and Constantine V of Isauria at Constantinople, A.D. 726*. Freshfield, E. trans. (Cambridge, 1926). However, Freshfield provided no background information on the origins of this compilation. As the Freshfield guide corresponds to the *Kormchaia* text, there are some slight discrepancies. See the chart below in this section, pages 223-226.

The Mosaic Law was considered a valid source of law in medieval Russia, as evidenced

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<sup>38</sup> This *novella* is attributed in the *Kormchaia* to Ioann Frakisii. This is the name of the eleventh century Byzantine chronicler John Skylitza. See *ODB* for further details on Skylitza.

by its inclusion in the *Merilo Pravednoe*.<sup>39</sup> It was also influential on long redaction of the *Zakon sudnyi liudem*, the Slavonic medieval legal compilation, which was widely known in Russia. On aspects of the influence of Mosaic law on this compilation see, *Zakon sudnyi liudem*, Dewey and Kleimola, xx-xxii and note 104 concerning Russian studies on this. See also this section below on page 227.

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39 It appears as chapter 15 of the Tikhomirov edition of the *Merilo Pravednoe*.

## Chapter 45

This is the first time that a summary of Mosaic Law as presented in the Russian *Kormchaia* has been put into print. On many occasions in Russian history the Mosaic Law has been referred to, but without citation. This chart follows the general citations presented by Freshfield. It should provide clarification to those who refer generally to the Mosaic Law and, further, demonstrate that the Mosaic Law as a synoptical collection had long been known in Russia. According to the printed *Kormchaia*, there are some 50 excerpts from the Mosaic Law contained in Chapter 45. The exact titles along with the citations have been provided for the reader.

КК	SUBJECT	HEADING	PASSAGES
а	Concerning judgment and truth	Ѡ сѣдѣ и Ѡ правдѣ	Exodus 23: 1,2,3,6,7,8 Leviticus 19: 15,16
б	Concerning the Ten Commandments written on tablets of stone	Ѡ десѣати словѣ, иже в каменыхъ скрижалѣхъ писаныхъ	Exodus 20: 2-17
г	Concerning blasphemy	Ѡ хѣдѣ	Leviticus 24: 13,15,16
д	Concerning honor to elders	Ѡ чести сѣдыхъ старецѣ	Leviticus 19: 32
е	Concerning neither convicting a father for a child nor a child for a father	Ѡ томѣ, еже не Ѡ сѣдити родитель зачадѣ, ни чадѣ за родителя	Deuteronomy 24: 16
з	Concerning reviling a father and mother	Ѡ досаждающихъ отцу и матери	Exodus 21: 15 Leviticus 20: 9
з	Concerning not depriving ---- of money or any hireling in need	Ѡ томѣ еже не лишати мзды вищаго	Leviticus 19: 13 Deuteronomy 24: 14, 15
и	Concerning not afflicting a widow or orphan	Ѡ томѣ, еже не Ѡ слобити вдовицы и сироты	Exodus 22: 22, 23, 24
ѡ	Concerning correct measures and weights	Ѡ мѣрилѣхъ Ѡ ставлѣхъ праведныхъ	Leviticus 19: 35,36

І	Concerning the amount of inheritance	Ѡ НАСЛАДНИЦѢХ Ѡ ЧИСЛѢ	Numbers 27, 8, 9, 10, 11
АІ	Concerning taking a loan and on profit	Ѡ ЖААН И ВЗАЕМЪ, И Ѡ ЛИХВѢ	Exodus 22: 25, 26
БІ	Concerning theft and restitution	Ѡ ПОКЛАДѢ И ФЕЩЕН И	Exodus 22: 7, 8, 9
ГІ	Concerning those taking away any livestock	Ѡ ВЗЕМЛЮЩИХЪ ВСАКЪ СКОТИНЪ	Exodus 22: 10-13
ДІ	Concerning harm to a neighbor's livestock	Ѡ ИСТАЗАЮЩЕМЪ Ѡ БЛИЖНАГО СКОТИНЪ	Exodus 22: 14,15
ЕІ	Concerning theft	Ѡ ТАТЕХЪ	Exodus 22: 1-4
ЖІ	Concerning stealing a freeman	Ѡ СВОБОЖЕН И ОУКРАДАЮЩИХЪ ЧЕЛОВѢКИ	Exodus 21: 16 Deuteronomy 24: 7
ЗІ	Concerning not holding a freeman in bondage	Ѡ ТОМЪ ЕЖЕ НЕ ОУДЕРЖАВАТИ СВОБОДНАГО ВЪ РАБОТЪ	Leviticus 25: 39-43
ИІ	Concerning trampling a field or vineyard	Ѡ ИСТРАВЛЕНИИ НИВЪ, ИЛИ ВИНОВАДА	Exodus 22: 5
ѦІ	Concerning opening a pit and not covering it	Ѡ ѠВЕРЗШИХЪ ЗМЪ И НЕ ПОКРЪВИШИХЪ	Exodus 21: 33, 34
К	Concerning engaging in burning	Ѡ ТВОРАЩЕМЪ ПОЖАРЪ	Exodus 22: 6
КА	Concerning -- goring with a horn a man or a bull	Ѡ ЮНЦѢ ПРОБОДШЕМЪ РОГОМЪ ЧЕЛОВѢКА, ИЛИ ВОЛА	Exodus 21: 28-32, 35, 36
КБ	Concerning an unlawful wife	Ѡ НАЛОЖНИЦѢ	Deuteronomy 21: 10-14

КГ	Concerning the punishment of him who slanders his wife	Ѡ ѡРѢВЛЮЩЕМЪ СВОЮ ЖЕНОУ, И КЛЕВЕЩОЩЕМЪ НА НЕЮ	Deuteronomy 22: 13-21
КА	Concerning a woman in a fight who grasps a man	Ѡ ЖЕНѢ В БОЮ ЗАИСТА МОУЖА ОУХВАТИВШИ	Deuteronomy 25: 11, 12
КЕ	Concerning rape of a maiden	Ѡ РАСТЛѢВШИХЪ ДѢВИЦЪ	Exodus 22: 16, 17 Deuteronomy 22: 23-27
КС	Concerning adultery	Ѡ ПРЕЛЮБОДѢХЪ	Leviticus 20: 10
КЗ	Concerning injury to a pregnant woman	Ѡ ЖЕНѢ ОУДАРЕННѢЙ Ѡ БЮЩИХСА, И ИЗВЕРГШЕЙ ДѢТИЩЕ	Exodus 21: 22, 23
КИ	Concerning the daughter of a priest who commits fornication	Ѡ ДЩЕРИ ІЕРЕѠѢ ТВОРАЩЕЙ БЛОУДЪ'	Leviticus 21: 9
КѠ	Concerning a woman who commits fornication with livestock	Ѡ ЖЕНѢ БЛОУДЪ ТВОАЩЕЙ СО СКОТОМЪ	Leviticus 20: 16
ЛА	Concerning incest with one's mother	Ѡ КРОВОМѢШЬСТВѢ СО СВОЕЮ МАТЕРЮ	Leviticus 18: 6, 7
ЛАА	Concerning sinning with one's stepmother	Ѡ СОГРѢШАЮЩИХЪ СЪ СВОЕЮ МАЧЕХОЮ	Leviticus 20: 11
ЛАБ	Concerning committing fornication with ones offspring	Ѡ СОТВОРИЕМЪ БЛОУДЪ СЪ СВОИМА ВНОУКАМА	Leviticus 18: 10
ЛАГ	Concerning sinning with one's sister	Ѡ СОГРѢШАЮЩЕМЪ СЪ СВОЕЮ СЕСТОЮ	Leviticus 20: 17
ЛАД	Concerning sinning with one's aunt	Ѡ СОГРѢШИВШЕМ С ТЕТКОЮ	Leviticus 20: 19
ЛАЕ	Concerning sinning with one's daughter-in-law	Ѡ СОГРѢШИВШЕМЪ С СВОЕЮ СНОХОЮ	Leviticus 20: 12
ЛАС	Concerning knowledge of the wife of one's brother	Ѡ ПОИМШЕМЪ ЖЕНОУ БРАТА СВОЕГО	Leviticus 20: 21

м	Concerning sinning with the wife or one's uncle	Ѡ СОГРѢШАЮЩЕМЪ С СТРЪНЕЮ	Leviticus 20: 20
ма	Concerning other relatives [text is about step-mother]	Ѡ ПРОЧЕМЪ С РОДСТВѢ	Leviticus 20:11
мб	Concerning committing fornication with beasts	Ѡ ТВОРАЩЕМЪ БЛОУДЪ СО СКОТОМЪ	Leviticus 20: 15
мг	Concerning committing fornication with the masculine sex	Ѡ ТВОРАЩИХЪ БЛОУДЪ СЪ МОУЖЕСКИМЪ ПОЛОМЪ	Leviticus 20: 13
мд	Concerning killing or injuring one's slave	Ѡ УБИВАЮЩЕМЪ, ИЛИ НИЧТО ЖЕ ТВОРАЩЕМЪ СВОЕГО РАБА	Exodus 21: 20, 21
ме	Concerning striking [another] in a quarrel with one's neighbor	Ѡ УДАРИВШЕМЪ ВЪ БОЮ БЛИЖНАГО СВОЕГО	Exodus 21: 18, 19
мс	Concerning murder with or without intent	Ѡ УБИСТВѢ ВОЛНОМЪ И НЕ ВОЛЬНОМЪ	Exodus 21: 12-14
мз	Concerning the killing of a man or an animal	Ѡ ОУБИСТВѢ ЧЕЛОВѢКА И СКОТА	Leviticus 24: 17-19
ми	Concerning witnesses and contempt	Ѡ СВИДѢТЕЛЕХЪ, И Ѡ ПРЕЗРѢНИХЪ	Numbers: 35, 30-32
мѳ	Concerning witnesses and false witnesses	Ѡ СВИДѢТЕЛЕХЪ, И Ѡ ЛЖИХЪ СВИДѢТЕЛЕХЪ	Deuteronomy 19: 15-19
и	Concerning conjurers, wizards and sorcerers	Ѡ ЧАРОДѢХЪ, Ѡ ВОЛСВѢХЪ, И Ѡ ОБАВНИЦѢХЪ	Leviticus 20: 6

CHAPTER 46: THE ZAKON SUDNYI LIUDEM

*English text: Zakon sudnyi liudem, Dewey and Kleimola [ZSL]*

A Slavonic code of law dating from the ninth century,<sup>40</sup> based on portions of the Byzantine *Ecloga*. The origins of the *ZSL*, whether it was compiled in Bulgaria, Macedonia or Moravia, by whom and for what purpose it was compiled, are as yet undetermined. A comparative table between the two texts, the *ZSL* and the *Ecloga* (two versions - that published by Freshfield and that published by Zachariae (Zachariae von Lingenthal, K. E., *Collectio librorum juris graeco-romani ineditorum. Ecloga Leonis et Constantini, Epanagogue Basilii Leonis et Alexandri* (Lipsiae, 1852) was completed by Zhuzhek, 86-87.<sup>41</sup> Its inclusion in the Russian *Kormchye knigi* has been examined by Tikhomirov.<sup>42</sup> The version contained in the printed *Kormchaia* is the short recension of the *ZSL* with 32 articles.<sup>43</sup> The long recension of the *ZSL*, with 45 articles was also known in Russia and was contained in MSS of the Russian *Kormchaia*.<sup>44</sup> A useful study concerning its application in Russia is by A. M. Kleimola, "Law and Social Change in Medieval Russia: The *Zakon sudnyi liudem* as a Case Study", *Oxford Slavonic Papers* 9 (1976):17-27.

CHAPTER 47: A POLEMIC OF NICETAS STETHATOS AGAINST THE LATINIS (ELEVENTH CENTURY)

*English text: none*

A polemic written by Nicetas Stethatos of the Studion monastery, Constantinople,

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40 There are three redactions: the short, expanded and concordance. The short redaction is considered to be the earliest. This conclusion is based upon a ninth century protograph. See *ZSL*, Dewey and Kleimola, p. v. The earliest extant copy of the MS of the short redaction dates from the thirteenth century, *ZSL*, p. v. The textual history of the short redaction can also be found in M. N. Tikhomirov, *Zakon sudnyi liudem kratkoi redaktsii* (Moscow, 1961).

41 See also that of A.S. Pavlov, *Pervonachal'nyi slaviano-russkii nomokanon* (Kazan, 1869), 96-97.

42 It is generally agreed that the code's presence in Russia dates from the time of conversion as it was part of the canon law collection which likewise came to Russia at the time of conversion in the tenth century. See concerning this M. Benemanskii, *Zakon gradskii*, 95-102, esp. 98. However, the *ZSL* text was not included in the Serbian MSS of the *Kormchaia*, Zhuzhek, 85.

43 Extra text follows article 32 in the printed *Kormchaia*. It concerns heresy and is accompanied by an unidentified *scholion* (*tolkovanie*).

44 According to Zhuzhek's examination of *Kormchaia* MSS, the long redaction in some MSS is sometimes entitled the *Merilo pravednoe*. Zhuzhek, *Kormchaia kniga*, 85-86.

criticising various heretical practices of the Latins. The subjects covered include: the use of unleavened bread, unmarried priests, and the shaving of beards.<sup>45</sup> Concerning biographical background on Nicetas, see the *OCE* and *Pravovlavnyi bogoslovskii entsiklopedicheskii slovar'*. 2 Tom. P. P. Soikina., II, p., 1642 [hereafter PBES]; and *ODB*. Of interest is Kolbaba, T. M., *Heresy and Culture: Lists of the Errors of the Latins in Byzantium* PhD, (University of Toronto, 1993).

#### CHAPTER 48: BYZANTINE POLEMIC ON THE FRANKS (ELEVENTH CENTURY)

*English text:* none

A polemic, formerly attributed to Patriarch Photius of Constantinople (ninth century), discussing the errors of those of the Roman faith. The errors range in type from larger theological issues such as the use of unleavened bread, the Roman baptismal ritual and fasting practices, to smaller theological issues, such as the alleged Roman practice of preferring the title "Holy Mary" to "Mother of God" (Mother of God = in Greek, *Theotokos*; in Latin, *Deiparam*). The text contained in the printed *Kormchaia* corresponds with the text from the MS *Photii S. Patriarchae Constantinopolitani tractatus de Francis et reliquis Latinis*.<sup>46</sup>

#### CHAPTER 49: THE BYZANTINE LEGAL COMPENDIUM - THE PROCHIRON

*English text:* Freshfield, *The Prochieros Nomos*. *Russian text:* Benemanskii, M. *Ho Procheiros Nomos Imperatora Vasiliia Makedonianina* (Sergiev Posad, 1906). Vol II,

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45 The edited Latin text [*Libellus Contra Latinos Editus et Ab Apocrisariis Apostolicae Sedis Constantinopoli Repertus*] in Will, C. J. C., *Acta et Scripta quae de controversiis ecclesiae Graecae et Latinae* (Paris, 1861), 127-136, does not contain the portion concerning Latin customs relating to beards and hair, which the text in the *Kormchaia* does. The Latin text found in Will parallels the *Kormchaia* up to the part where the polemic finishes discussing these customs at which point, the *Kormchaia* text continues on without a corresponding printed Latin text. The same edited Latin text may be found in J. B. Pitra, *Analecta sacra et classica Spicilegio Solesmeni parata* (Paris-Rome, 1891), 762-783.

46 The printed edition of this text in Latin is found in J. Hergenröther, *Monumenta graeca ad Photium eiusque historiam pertinentia*. (Ratisbonae [Regensburg], 1869). For a discussion concerning the text being attributed to Photius, see J. M. Hussey in the introduction to the 1969 reprint. The Church Slavonic text as contained in A. Popov's *Istoriko-literaturnyi obzor drevnerusskikh polemicheskikh sochinenii protiv latinan XI-XV vv.* (Moscow, 1875), 58-69, compares the Greek text of Hergenröther against two thirteenth century Church Slavonic texts: *Kormchaia* 1280 Novgorod, and *Kormchaia* 1284 Riazan'.

*Zakon gradskii* (Moscow, 1917).

This code was promulgated by the Emperor Basil I in the ninth century. On the dating of it see T. E. van Bochove, *To Date and Not to Date: on the date and status of Byzantine law books* (Groningen: E. Forsten, 1996), which places it in the 870's. It is uncertain whether the complete text existed in the Russia before the thirteenth century, from the time of the arrival Serbian *Kormchaia*.<sup>47</sup>

#### CHAPTER 50: THE BYZANTINE LEGAL COMPENDIA - THE ECLOGA

*English text:* Freshfield, *The Ecloga*.

This Byzantine law code was promulgated by of the Emperors Leo III and Constantine V. Of interest is F. Dvornik, "Byzantine Political Ideas in Kievan Russia", *Dumbarton Oaks Papers* 9-10 (1956,1957), 77. The text in the printed *Kormchaia* is complete, and the heading attributes the code incorrectly to the Byzantine Emperors Leo VI and Constantine VII.

#### CHAPTER 51: TEXTS ON MARRIAGE AND CONSANGUINITY

*English text:* none

##### (i) On the sacrament of marriage

This text discusses the theology of the sacrament of marriage, and as well, the conditions necessary for a valid marriage. An examination of this chapter was completed by A. S. Pavlov in his work *50-ia glava Kormchei knigi, kak istoricheskii i prakticheskii istochnik russkago brachnago prava* (Moscow, 1887). Pavlov traced the origins of this *Kormchaia* text,<sup>48</sup> showing that it was excerpted from the Roman Ritual<sup>49</sup> (*Rituale romanum*), in particular, the text *De sacramento martimonii*. The Slavonic translation was adopted by Peter Mogila of Metropolitan of Kiev (1633-1647) as part of his compilation of the *Trebnik* (1646); the text then made its way to Russia. Concerning the *Trebnik* see Paul Meyendorff, "The Liturgical Reforms of Peter Moghila: A New Look", *St.*

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47 Zhuzhek, *Kormchaia kniga*, 88-89.

48 See the comparative texts in Pavlov, *50-ja*, 238-324. See also M. Gorchakov, *O taine supruzhestva*, 11-20. Gorchakov, 11, note 1 cites the Latin text used as "*Rituale romanum Paul V* 1614, cf. Vilna 1849, 106-109".

49 On Paul V, the *Rituale Romanum*, and the Council of Trent, see the *NCE*.

*Vladimir's Theological Quarterly* 29 no. 2 (1985): 101-114.

(ii) On Consanguinity

This text demonstrates, by means of example, the degrees of relationship under the Byzantine canon law governing consanguinity. Marriages within the seventh degree were forbidden among the Orthodox. This text is a translation of the *Ekthesis* of Manuel Xanthios<sup>50</sup> (sixteenth century). Pavlov, *50-ja* and M. Gorchakov, *O taine supruzhestva* both discuss and examine this text.

CHAPTER 52: ON UNLAWFUL MARRIAGES

*English text:* none

(i) *Conciliar decree of Patriarch Sisinnios II (996-998)*<sup>51</sup> 997

On consanguinity to the sixth degree<sup>52</sup>

The beginning of the *Kormchaia* text contains a list of personages which is to be found at the end of the Latin text, *PG* (119) 727-742.

(ii) *An Extract taken from the Work of Dmitrius Synkellos (eleventh century)*<sup>53</sup>

On the seventh degree of relationship

(iii) *Decree of Patriarch Alexios Stoudites (1025-1043)*<sup>54</sup>

On the seventh degree of consanguinity

(iv) *Decree of Patriarch Alexios Stoudites*

On the marriage of minors

(v) *Conciliar decree of Patriarch Alexios Stoudites*<sup>55</sup>

On marriages in the seventh degree

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50 See *ODB* for biography.

51 Burgess, *Lord Temporal*, 108.

52 The date in the printed *Kormchaia* text is incorrect. See Pavlov, *50-ja*, 109. Also Zhuzhek, *Kormchaia kniga*, 92, who notes that the Slavonic contains a large extract for which the original Greek text has not yet been found. See *RIB* 6 appendix 407-418.

53 In the *Kormchaia* as *Togo zhe sobora*. See Pavlov, *50-ja*, 111-113. On Demetrius Synkellos see below notes 56 and 57.

54 Burgess, *Lord Temporal*, 108.

55 Zhuzhek, *Kormchaia kniga*, 92 gives the date of the Council in Constantinople as April 7, 1038.

(vi) *Extract from the Declaration of Demetrius Synkellos*<sup>56</sup> *Metropolitan of Cyzicus*<sup>57</sup>  
(eleventh century)

On the sixth degree of relationship

(vii) *On computation of degrees of relationship*

According to Sreznevskii, *Obozrenie drevnikh russkikh spiskov Kormchei knigi* (St. Petersburg, 1897), 126, this text is composed from *Prochiron* 7.1.7 and *Ecloga* 2.49.

(viii) *Text on degrees of relationship and impediments to marriage*

According to *RIB* (6): 143-144, this text is of Russian origin. It appears in the *Novgorodskaiia kormchaia* as well as in the *Merilo pravednoe*.<sup>58</sup>

#### CHAPTER 53. THE TOMOS OF 920 PROHIBITING A FOURTH MARRIAGE

*English text:* none

This concerns the issue of Byzantine Emperor Leo VI's fourth marriage. See Jenkins, Romilly, "Three Documents Concerning the Tetragamy", *Dumbarton Oaks Papers* 16 (1962), 231-241. See the same also for a translation of letters concerning the remarriage of Leo VI the Wise in 906 - which was probably the foundation for this later *Tomus*. The Russian Church council of 1572 which concerned the fourth marriage of Tsar Ivan IV, no doubt referred to this text.

#### CHAPTER 54: 20 CANONICAL QUESTIONS AND ANSWERS OF NICHOLAS, PATRIARCH OF CONSTANTINOPLE

*English text:* none

There is a related basic English translation of the text in *Pedalion*, 970-1075, entitled "Questions of certain Monks exercising outside the city limits, and Replies thereto of the Holy Synod of Constantinople, when Nicholas was Patriarch, and Alexis Comnenus was Emperor". This text differs, however, from that of the *Kormchaia*, but is useful

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<sup>56</sup> *Synkellos*: a term or name given to the liaison between Emperor and Patriarch in Byzantium. See Geanakoplos, *Byzantium*, 51, 212, 224.

<sup>57</sup> This title may be found in the *PG* (119) 1097/8. The printed *Kormchaia* text does not provide the author's identity. The extract starts from the beginning of the Latin text and constitutes about 1/12 of the entire work.

<sup>58</sup> *RIB*, 6 (St. Petersburg, 1908).

nonetheless as it illustrates what types of issues were addressed in the text. There are in this text only 11 replies. Patriarch Nicholas was Nikolas III Grammatikos Kyrdiniates, Patriarch of Constantinople (1084-1111).<sup>59</sup>

*CHAPTER 55: 10 REPLIES OF NICETAS, METROPOLITAN OF HERACLEA (TWELFTH CENTURY)*

*English text: none*

Heraclea is the titular see of Tracia Prima; the Metropolitan of Heraclea is also the Exarch of Thrace and Macedonia.<sup>60</sup> For the Greek text see, Pavlov, A. S. , “Kanonicheskie otvety Nikity Mitropolita Irakliiskago (XI-XII veka) v ich pervonachal'nom vide i v pozdneishei pererabotke Matfeia Vlastaria”, *Vizantiiskii vremennik* 2 (1895): 160-176.

*CHAPTER 56: PATRIARCH METHIDIUS ON APOSTASY AND PROFANING OF IMAGES*

*English text: none*

Methodius I was Patriarch of Constantinople (842-847),<sup>61</sup> at the end of the Iconoclastic Period. He was elected by a council (842) which also excommunicated the iconoclasts and confirmed the rulings of the Seventh Ecumenical Council of Nicaea (787). Zhuzhek, *Kormchaia kniga*, 94 states that there is no edited Greek text which corresponds with that of the *Kormchaia*. None was located subsequently by myself.

*CHAPTER 57: RULES FOR PRIESTS CONCERNING THEIR VESTMENTS*

*English text: none*

The first part of this text is thought to be of Russian origin,<sup>62</sup> the second part is ascribed to John (Eleemosinarius) Bishop of Alexandria (d. 620) belonging to a text about the Life of John Eleemosinarius, Bishop of Alexandria (d. 620).<sup>63</sup>

*CHAPTER 58: 23 PRECEPTS OF NIKEPHOROS THE CONFESSOR, PATRIARCH OF*

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59 Burgess, *Lords Temporal*, 109. For background, see *NCE*, 10, 447.

60 See *OCE*, Heraclea.

61 Burgess, *Lords Temporal*, gives the dates as 843-847, 108.

62 Zhuzhek, *Kormchaia kniga*, 94.

63 See E. Dawes and N. H. Baynes, *Three Byzantine Saints* (Oxford, 1948).

CONSTANTINOPLE (806-815)<sup>64</sup>

*English text: Pedalion, 963-969 [37 precepts included in the Pedalion]*

These precepts were known in Russia in the fifteenth century.<sup>65</sup> Zhuzhek provides two tables [based on the works of Herman, *De fontibus & Troicki, Dopunski chlanici*, 33]. The first table compares the *Kormchaia* to the Greek original, in G. Ralles & M. Potles, *Syntagma ton theion kai hieron kannon*, 6 vols. (Athens, 1852-1859). The second compares the *Kormchaia* with the *Slavonic Syntagma of Matthew Blastares*. For a biography of Nikephoros (Nicephorus), see the *Pedalion*, 963. Also see *NCE*, 10, 428-429; and *PBES*, II, 1646.

CHAPTER 59: 8 REPLIES OF DEMETIRUS CHOMATENUS, BISHOP OF OCHRIDA (THIRTEENTH CENTURY)

*English text: none*

The text in the *Kormchaia* states that the replies are those of John, Bishop of Kitros. A study by Pavlov<sup>66</sup> demonstrated that the Replies belonged to Demetrius Chomatenus.<sup>67</sup>

CHAPTER 60: CONCERNING A NEWLY ORDAINED PRIEST

*English text: none*

The text is thought to be of Russian origin. The earliest MS containing this appears in the late thirteenth century.<sup>68</sup>

CHAPTER 61: 10 CANONICAL REPLIES OF TIMOTHY, ARCHBISHOP OF ALEXANDRIA

*English text: in part, Pedalion, 889-903.*

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64 Burgess, *Lords Temporal*, 108.

65 A. S. Pavlov, "Mogul li nezakonno-rozhdennye byt' postavliaemy na sviashchenno-sluzhitel'skie stepeni", *Tserkovnye vedomosti* 2, (1889): 226-229.

66 A. S. Pavlov, in "Komu prinadlezhat kanonicheskie otvety, avtorom kotorych schitalsia Ioann Episkop Kitrskii (XIII veka)", *Vizantiiskii vremennik* 1 (1894):493-502.

67 Dimitrii II Khomatian (Demetrios Chomatianos or Chomatenos) was Archbishop of Okhrid (Church of Bulgaria) from 1216?-1234?. Burgess, *Lords Temporal*, 92. Concerning the background of Demetrius Chomatenus, see the *NCE*, 4, 745.

68 *RIB*, 6, no. 7, 102. The text probably dates from the Council of Vladimir circa 1273/4. *RIB* 6, 102-110.

These replies of Timothy are from the same text that is contained above in Chapter 32 of this section found in the printed *Kormchaia*. Some of the replies repeat those of Chapter 32, and may be found in the *Pedalion* which contains 18 replies.<sup>69</sup> Others are taken from a longer version of the same text of Timothy; and the remainder have been identified as being composed by Barsonothii,<sup>70</sup> who is named in the *Kormchaia* text f. 607b.

#### CHAPTER 62: PUNISHMENTS FOR MONKS

*English text: none*

There are 74 punishments enumerated in this text which is ascribed to St. Basil the Great.<sup>71</sup> The Latin text in PG 31:1306-1314, is entitled *Poena in Monachos Delinquentes*, in which there are listed 60 punishments.<sup>72</sup> This text was translated into Slavonic in the thirteenth century.<sup>73</sup>

#### CHAPTER 63: CANONS FOR NUNS

*English text: none*

There are 19 canons contained in this text; here, too, they are ascribed to St. Basil the Great. This text, however, is probably spurious or dubious as well.

#### CHAPTER 64: PROHIBITIONS OF THE HOLY FATHERS GOVERNING THE REFECTORY TABLE

*English text: none*

Rules governing monks at the *trapeza* (dining table) attributed to the Holy Fathers. For examples of rules governing monasteries on this subject see the various *typika* in:

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69 See the chart of Zhuzhek, *Kormchaia kniga*, 96 for the reference number of the various replies.

70 This is according to Zhmakin, *Metropolit Daniil*, 747, note 2. St. Barsanuphios The Great Elder, who died c. 540, was a hermit in the monastery of St. Seridos in Gaza.

71 The text is listed as “dubia” rather than “spuria” in *Basil of Caesarea* (Fedwick), xxix, vol. I. In *The Ascetic Works of St. Basil*, W. Clarke., trans. [SPCK. Society for the Promotion of Christian Knowledge](London, 1925), 36, the text is said to be spurious.

72 See the table comparing the text in the PG to that of the printed *Kormchaia*, in Zhuzhek, *Kormchaia kniga*, 97.

73 Sreznevskii, *Obozrenie drevnikh russkikh spiskov*.

*Byzantine monastic foundation documents: a complete translation of the surviving founders' typika and testaments*, edited by John Thomas and Angela Constantinides Hero; with the assistance of Giles Constable; translated by Robert Allison, et al. [Dumbarton Oaks Research Library and Collection](Washington, D.C., 1998). See, in particular, Appendix B "The Regulation of Diet in the Byzantine Monastic Foundation Documents", 1696-1716.

*CHAPTER 65: ON MONKS FROM A WORK OF CYRIL OF TUROV*

*English text*: Simon Franklin, trans. *Sermons and Rhetoric of Kievan Rus'* [Harvard Library of Early Ukrainian Literature, 5] (Massachusetts, 1991), 86-87 (a translation of Eremin).<sup>74</sup>

This text was composed by Cyril, Bishop of Turov (twelfth century) as part of his writings concerning the monastic order. For a short ecclesiastical history and importance of Turov as an episcopal See, see A. Senyk, *History of the Church in Ukraine*. Vol. I, *To the End of the Thirteenth Century* (Rome: Pontifical Oriental Institute, 1993), 138, in particular, the section on Cyril in the chapter on Literary Culture, 410-413. See also *NCE*, 4, 579. Part of the *Kormchaia* text is not translated, but is contained in Eremin's note 179, p. 357, under the edition listed as *Dob*.

*CHAPTER 66: ON THE VESTMENTS OF AARON AND THE MONASTIC HABIT FROM A WORK OF CYRIL OF TUROV*

*English text*: Franklin, *Sermons and Rhetoric of Kievan Rus'*, 88-91.

*CHAPTER 67: ON MONASTIC LIFE*

*English text*: Franklin, *Sermons and Rhetoric of Kievan Rus'*, 91-94

*CHAPTER 68: EXPLANATION CONCERNING VESTMENTS AND CLERICAL RANK*

*English text*: none

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<sup>74</sup> The translation is based on the critical edition of Eremin, I. P. "Literaturnoe nasledie Kirilla Turovskogo", *TODRL* 12(1956):354-361.

It appears that this text may be of Russian origin.<sup>75</sup>

CHAPTER 69: 14 REPLIES OF ANASTASIOS OF SINAI CONCERNING VARIOUS SINS (SEVENTH CENTURY)

*English text:* none

St. Anastasios was abbot at St. Catherine's Monastery in Sinai where he composed numerous theological works, in particular works against the Monophysites and Monothelites. While much of his work has been edited, it appears that this text has not been edited.<sup>76</sup> For background on St. Anastasios see *PBES II*, 1659.

CHAPTER 70: A TREATISE OF TIMOTHY, PRIEST OF CONSTANTINOPLE, ON THE RECEPTION OF HERETICS

*English text:* none

The text of Timothy, *De iis ad Ecclesiam accedunt, sive, de receptione haereticorum*, (circa 600) was a well-known text of the East. The text is quite lengthy and is reproduced in full in MSS editions of the *Kormchaia*.<sup>77</sup> The text, however, is much abridged in the printed *Kormchaia*.<sup>78</sup> The treatise of Timothy examines numerous heresies in detail in terms of their theological deviations and how each type of heretic may be received into the church.

CHAPTER 71: EXTRACTS FROM THE WORKS OF NIKON FROM THE BLACK MOUNTAIN (ELEVENTH CENTURY)

*English text:* none

The monk Nikon was born circa 1025 in Constantinople. He was first a monk of the

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75 Zhuzhek, *Kormchaia kniga*, 99.

76 The Greek text on which the *PG* text was based differs from what Greek text was used for the Slavic translation. Zhuzhek, *Kormchaia kniga*, 99.

77 MSS families *Sava*, *Chil*, and *Riazan'*, Zhuzhek, *Kormchaia kniga*, 99.

78 The full text of Timothy's treatise is contained in *PG* 86, 1:11-74. The excerpt in the *Kormchaia* follows pages 69-74, including the canon of Trullo 95, which is not reprinted in the *PG*. The Section of the *PG* is subtitled *Ex Niconis Pandectae* and likely is from the *Pandects* of Nikon of the Black Mountain, being Nikon's excerpt of Timothy. See this section below Chapter 71.

Black Mountain near Antioch, and later of the monastery of the Mother of God *tou Roidiou*, Antioch. He composed major works which had incorporated into them canon law. These included the *Pandektes* (also known as the *Interpretations of the Commands of the Lord*) and the *Taktikon*.<sup>79</sup> The first part of the text in the printed *Kormchaia* is taken from the *Taktikon*, and the remainder from chapter 63 of Nikon's *Pandektes*. The *Taktikon* was written in the mid twelfth century, the *Pandektes*, toward the end of the twelfth century. They were both translated into Slavonic in the thirteenth or fourteenth centuries.<sup>80</sup> The extracts concern the authority of canon laws and related civil laws.

### **FIRST FOLIATION (CONTENTS PRESENT IN THE NIKON PRINTED *KORMCHALA*, NOT IN THE IOSIF *KORMCHALA*)**

*POLEMIC CONCERNING WHY THE EASTERN PATRIARCHS AND THE POPE FELL OUT OF COMMUNION*

*English text:* Summarised in Palmer, W. *The Patriarch and the Tsar* 6 Vols. (London, 1871-1876); Vol. I, 653-655.

*ON THE AUTOCEPHALY OF THE SERBIAN AND BULGARIAN CHURCHES*

*English text:* none

*STORY OF THE BRINGING OF THE CHRISTIAN FAITH TO RUSSIA BY THE APOSTLE ANDREW*

*English text:* Summarised in Palmer, W. *The Patriarch and the Tsar* 6 Vols. (London, 1871-1876); Vol. I, 655-661.

*DOCUMENTS PERTAINING TO THE ESTABLISHMENT OF THE RUSSIAN PATRIARCHATE*

*English text:* none

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<sup>79</sup> *Byzantine monastic foundation documents*, 377.

<sup>80</sup> *Byzantine monastic foundation documents*, 378. See V. Beneshevich, *Taktikon Nikona Chernogortsa*. (Petrograd, 1917). A new translation was made in the seventeenth century, as the extant version was partial, F. Thomson, *Corpus*, 185. See p. 205 note 92 where are given examples of South Slav (Hilander 175) and East Slav (Syndo 836) codices of the thirteenth century which contained the text.

- (i) document of 1589 on the directive of the Council of Moscow ordering the establishment of the Russian Patriarchate
- (ii) document of a Council of Constantinople of 1590, confirming this decision and placing the Russian Patriarch as fifth within the Pentarchy.
- (iii) document of 1619 issued by the Patriarch of Jerusalem Theophanes affirming the consecration of the Russian Patriarch Filaret Romanov.

#### **FOURTH FOLIATION IN NIKON *KORMCHAIA***

##### *THE DONATION OF CONSTANTINE*

*English text: Select Historical Documents of the Middle Ages*, trans. and ed. E . F. Henderson (London, 1892; NY, 1965), 319-329; *The Treatise of Lorenzo Valla on the Donation of Constantine*, trans. Christopher B. Coleman (Toronto: University of Toronto Press, 1993), 10-19.

The abbreviated text of Coleman is taken from that belonging to Gratian's *Decretum*, and does not closely correspond to that in the *Kormchaia*. The *Donation of Constantine* was an eighth century forgery in which the Emperor Constantine allegedly granted to Pope Sylvester (314-336), authority over the other four patriarchates, and to him authority over the entire West which was to remain under the jurisdiction of the Roman See. The document became a part of Western canon law, being incorporated into the *Pseudo-Isodorian Decretals* of the ninth century, and later was also part of Gratian's *Decretum* of the twelfth century. It was translated into Slavonic in the thirteenth or fourteenth centuries. For the text and its use in Russian ecclesiastical documents see A. S. Pavlov, "Podlozhnaia darstvennaia gramota Konstantina Velikago pape Sil'vestru v polnom grecheskom i slavianskom perevode", *Vizantiiskii vremennik* 3 (1896): 18-82. It was first incorporated into the Russian *Kormchaia* by the Patriarch Nikon (seventeenth century).

##### *ON THE APOSTASY OF ROME*

*English text: Palmer, W. The Patriarch and the Tsar* 6 Vols. (London, 1871-1876); Vol. I, 662-665.

The full title in the printed *Kormchaia* reads *On the falling away of Rome, how it*

*apostatised from the Orthodox faith and from the Holy Eastern Church*, as mentioned above. This polemic was known in Russia from at least the fourteenth century. It was incorporated into the Russian *Kormchaia* during the seventeenth century by Patriarch Nikon. See A. Popov, *Istoriko-literaturnii obzor drevne-russkikh polemicheskikh sochinenii protiv latinian (XI-XV. v.)*. (Moscow, 1875), 178-188.

# CHAPTER TITLES AS WRITTEN IN THE *KORMCHAIA KNIGA*

(SECOND FOLIATION IN IOSEF *KORMCHAIA*)

Предисловіе к православному читателю

A<sub>i</sub>-A<sub>ii</sub>

(1-4b)

E<sub>i</sub>-E<sub>ii</sub>

(5a-15b)

Книга глаголемаа греческимъ языкомъ номоканонъ словенскимъ же сказаемаа, закона правило. Сказаніе ш сѣтыхъ великихъ вселенскихъ седми соборѣхъ, и девяти помѣстныхъ, гдѣ и когда кѣждо ихъ собраса.

Подобаетъ оубо вѣдати всакомѹ хрѣтіанинѹ, тако седмь есть сѣтыхъ вселенскихъ великихъ соборъ, и девять помѣстныхъ.

И еще ш всѣхъ сѣтыхъ соборѣхъ: и ш времени чина ихъ, которыи по которомъ бысть.

S<sub>i</sub>-KA<sub>i</sub>

(16a-21a)

Предисловіе съ ведшаго сѣла правила, въ, дѣ граней

KA<sub>ii</sub>-KГ<sub>ii</sub> (21b-23b)

Дрѹгое предисловіе сведшаго правила іаже по пжтомъ соборѣ, шестаго же седмаго, по сихъ приложшаго, и сочтавшаго с правилами, со апльскими же испрежде бывшихъ сѣтыхъ оцъ соборы.

(KA<sub>i</sub>-KE<sub>i</sub>)

(24a-25a)

Ѫ заповѣден сѣтыхъ оцъ, ш храненіи сѣенныхъ правилъ.

(KE<sub>i</sub>-KE<sub>ii</sub>)

(25a-25b)

Титлы правилъ сочитаніа и подобныхъ коеаже титлы главъ, титла словенскимъ языкомъ сказаетса грань.

KZ<sub>i</sub>-III<sub>ii</sub>

(26a-58b)

Грань же іаснѣе именуется сочтаніе, или совокѹпленіе.

О главлени номоканонѹ, сирѣчь, законоправилѹ, сѣтыхъ апль, и седми вселенскихъ соборшвъ и дрѹгихъ помѣстныхъ, и нѣкихъ сѣтыхъ оцъ особно бывшихъ правилъ: и какш по радѹ стоать: и которыи соборъ, или особъ сѣын, колико правилъ изложи.

III<sub>i</sub>-Z<sub>i</sub>

(59a-60a)

(THIRD FOLIATION IN IOSEF KORMCHALA)

ГЛАВА А

Изложение правилом апльскимъ и отеческимъ, имѣа  
толкованіе, алеѳіа діакона, и законохранителя  
аристина. Правила сѣрыхъ аптль.

А<sub>1</sub>-К<sub>А</sub><sub>ii</sub>  
(1a-24b)

ГЛАВА В

Сѣагѡ апла павла, правилъ црковныхъ седмь  
надесять.

К<sub>В</sub><sub>i</sub>-К<sub>В</sub><sub>ii</sub>  
(25a-26b)

ГЛАВА Г

Обію сѣдію верховндію аплѡ петра и павла.

К<sub>З</sub><sub>i</sub>-К<sub>З</sub><sub>ii</sub>  
(27a-29b)

ГЛАВА Д

Всехъ сѣрыхъ апль коупно два правила.

А<sub>1</sub>-А<sub>ii</sub>  
(30a-30b)

ГЛАВА Е

Сѣрыхъ вселенскіи иже вникен первѣи соборъ, бысть в  
цртво константина великагѡ, собравшихса трехъ сѡтъ,  
и осми надесяте сѣрыхъ оцѣ, на злочестиваго аріа,  
хѡуливаго сѣа бѣіа гда нашего іса хрѣта. его же  
проклаша сѣи оцѣ. и правила изложиша оучиненаа  
заѣ.

А<sub>А</sub><sub>i</sub>-А<sub>А</sub><sub>ii</sub>  
(31a-41a)

ГЛАВА З

Иже во анкирѣ сѣарѡ помѣстнагѡ собора правилъ,  
двадесать пать.

А<sub>А</sub><sub>ii</sub>-А<sub>А</sub><sub>iii</sub>  
(41b-51b)

ГЛАВА З

Иже в новѣй кесаріи сѣагѡ собора правила. Иже в  
новѣй кесаріи близъ понтьскаго мора, сшедшіиса  
соборъ, вторѣи оубѡ естѣ по анкирѣтѣм соборѣ,  
прочихъ же первѣи, и тогѡ первагѡ вселенскагѡ иже  
вникен соборъ. на томъ оубѡ соборѣ собравшіиса сѣи  
оцѣ. сними же бѣ и сѣын сщенномѡченикъ василій,  
епкпъ амасійскій, правила из гласиша, на црковное

И<sub>В</sub><sub>i</sub>-И<sub>З</sub><sub>i</sub>  
(52a-57a)

СТОЕНІЕ; ІАЖЕ СОУТЬ СІА.

ГЛАВА И

СѢАГШ ПОМЕСТНАГШ СОБОРА ИЖЕ ВЪ ГАНГРѢ, ПРАВИЛЪ  
ДВАДЕСАТЬ. СЕЙ ЖЕ СѢШЫН СОБОРЪ ПОНИКЕЙСТѢМЪ ПЕРВОМЪ  
СОБОРѢ СНИДЕСА, И ПРАВИЛА ИЗЛОЖИ.

ИЗ<sub>ii</sub>-ЖА<sub>ii</sub>  
(57b-61b)

ГЛАВА Ю

СѢАГШ ПОМѢСТНАГШ СОБОРА АНТІОХІЙСКАГШ, ИЖЕ В СИРИИ.

ЖВ<sub>i</sub>-ОА<sub>ii</sub>  
(62a-71b)

ГЛАВА І

СѢШЫН СОБОР ПОМЕСТНЫИ ИЖЕ В ЛАОДКІИ ФРИГІЙСТѢИ  
СОБРАСА Ш РАЗЛИЧНЫХЪ ОБЛАСТЕЙ. АСІНСКАГШ ПРАВЛЕНІА,  
МНОГИМЪ БЛЖЕННЫМЪ ОЦЕМЪ С ШЕДШИМСА, ИЖЕ И  
ЗАПОВѢДИ ЦРКОВНЫА ИЗЛОЖИША, ІАКОЖЕ НАПИСАНЫ СОУТЬ  
ЗАѢ.

ОВ<sub>i</sub>-ПА<sub>ii</sub>  
(72a-84 b<sup>(b)</sup>)

ГЛАВА АІ

СѢИИ ВСЕЛЕНСКИИ ВТОРЫИ СОБОРЪ БЫСТЬ ПРИ ЦРѢ ѲЕОДШСІИ  
ВЕЛИЦѢМЪ, В КОНСТАНТИНѢ ГРАДѢ. С ШЕДШИМСА СТОУ И  
ПАТИДЕСАТИМЪ СѢШЫМЪ ОЦЕМЪ Ш РАЗЛИЧНЫХЪ МѢСТЪ,  
НА МАКЕДОНИА ДХѢОБОРЦА.

ПѢ<sub>i</sub>-ПИ<sub>ii</sub>  
(85a-88b)

ГЛАВА ВІ

ПРАВИЛА СѢАГШ ТРЕТНАГШ СОБОРА ВСЕЛЕНСКАГШ ИЖЕ ВО  
ЕФЕСѢ, СШЕДШИХЪСА СѢШЫХЪ ОЦЪ ДВОЮ СТОУ.

ПѢ<sub>i</sub>-ЧВ<sub>i</sub>  
(89a-92a)

ГЛАВА ГІ

ПРАВИЛА СѢАГШ ВСЕЛЕНСКАГО ЧЕТВЕРТАГШ СОБОРА, ИЖЕ ВЪ  
ХАЛКИДОНѢ.

ЧГ<sub>i</sub>-РЗ<sub>ii</sub>  
(93a-106b)

ГЛАВА ДІ

СѢАГШ ПОМЕСТНАГШ СОБОРА ИЖЕ ВЪ САРДИКИИ, СИРѢЧЬ, ВЪ  
СРЕДЦѢ ПРАВИЛЪ

РЗ<sub>i</sub>-РЄ<sub>ii</sub>  
(107a-115b)

ГЛАВА ЕІ

СѢАГШ ПОМЕСТНАГШ СОБОРА ИЖЕ В КАРѢАГЕНѢ.

РЗ<sub>i</sub>-РОВ<sub>i</sub>  
(116a-172a)

ГЛАВА 51

Сотворшееса в константиѣ градѣ, ѡ агапїи и гавадїи, прациемаса ѡ прѣтолѣ енкпїи вострьскагѡ града, въ црѣтво аркадїево, сѣа ѳеодосїа великагѡ.

Р0В<sub>ii</sub>-Р0Р<sub>i</sub>  
(172b-173a)

ГЛАВА 52

Правила сѣаго вселенскагѡ шестагѡ собора, в константиѣ градѣ, в троуллѣ полатнѣмъ, рекше в теремѣ црквихъ полатъ правилъ.

Р0А<sub>i</sub>-СЗ<sub>ii</sub>  
(174a-207b)

ГЛАВА 53

Правила сѣаго вселенскагѡ седмагѡ собора, иже вникей второе собравшагоса.

СН<sub>i</sub>-СЗ<sub>i</sub>  
(208a-217b)

ГЛАВА 54

Правила иже в константиѣ градѣ, бывшагѡ первагѡ; и вторагѡ собора, въ цркви сѣыхъ аптлѣ.

СН<sub>i</sub>-СКА<sub>ii</sub>  
(218a-221b)

ГЛАВА 55

Правила три еже въ константиѣ градѣ, в применитѣй цркви бжїа м<sup>р</sup>ости, рекше во сѣй софи, собравшагоса собора, иже седмъи соборъ оутверди.

СКВ<sub>i</sub>-СКГ<sub>i</sub>  
(222a-223a)

ГЛАВА 56

Сѣагѡ василиа великагѡ ѡ посланїа еже ко амѳилохїю епкпѣ иконїйскомѣ, и къ дїодорѣ, и конїемъ нѣкїимъ посланыхъ правилъ.

СКА<sub>i</sub>-СМѳ<sub>ii</sub>  
(224a-249b)

ГЛАВА 57

Тогоже сѣагѡ василїа ѡ времени согрѣшенцихъ

СН<sub>i</sub>-СНА<sub>i</sub>  
(250a-251a)

ГЛАВА 58

Того же сѣагѡ василїа, ѡ томъ колико и какова соуть мѣста, епитемїамъ рекше запреценїемъ.

СНА<sub>ii</sub>-СНВ<sub>i</sub>  
(251b-252a)

ГЛАВА 59

Того же сѣагѡ василїа, къ презвитерѣ ѡ бжтвенѣй

СНВ<sub>i</sub>-СНД<sub>i</sub>  
(252a-254a)

службѣ, и ѡ причащеніи, и ѡ нерадащихъ  
запрещеніихъ.

глава кѢ

Того же сѣагѡ василіа, посланіе къ григорію  
бгословцѣ; ѡ миншествѣмъ строеніи.

СИД<sub>i</sub>-СИѲ<sub>ii</sub>  
(254a-259b)

глава кѤ

Сѣагѡ діѡнісіа архіепкпа александрьскагѡ, о томъ  
какѡ подобаетъ в великю сѣбѡтѣ постъ оставити.

СИѲ<sub>ii</sub>-СѢ<sub>ii</sub>  
(259b-260b)

глава кѥ

Сѣагѡ петра александрьскагѡ, сѣенномѣченика, правила  
ѡ швергъшихса во время гоненіа, и паки кающихса

СѢ<sub>ii</sub>-СѢВ<sub>i</sub>  
(260b-262a)

глава кѦ

Сѣаго григоріа епкпа новыа кесаріи чудотворца, ѡ  
бывшихъ в нашествіи варваръ.

СѢВ<sub>i</sub>-СѢГ<sub>ii</sub>  
(262a-263b)

Глава кѧ

Великагѡ аѳанасіа, архіепкпа александрьскагѡ, ко  
аммонѣ мнихѣ, ѡ соблажняюща въ ноши.

СѢГ<sub>ii</sub>-СѢЕ<sub>i</sub>  
(263b-265a)

глава л

Сѣагѡ григоріа бгослова ѡ словесъ ѡ тѣхъ же  
книгахъ.

СѢЕ<sub>i</sub>-СѢС<sub>ii</sub>  
(265a-266b)

глава ла

Сѣагѡ григоріа нисскагѡ, къ литонію епископѣ  
мелетинскомѣ.

СѢС<sub>ii</sub>-СѢѲ<sub>ii</sub>  
(266b-269b)

глава лв

Тимоѳеа архіепкпа александрьскагѡ, единогоѡ ѡ рѣ  
сѣыхъ оцѣхъ, иже в константинѣ градѣ на македоніа  
собравшимса. сей же Тимоѳеи прееминка имаше,  
юешфила престолѣ.

СѢѲ<sub>ii</sub>-СѢО<sub>ii</sub>  
(269b-270b)

ГЛАВА ЛГ

Θеофила архієпкпа александрьскагѡ, возгласеніе  
бгѡавленію, наставшѡ въ недѣлю.

СО<sub>ii</sub>-СОВ<sub>ii</sub>  
(270b-272b)

ГЛАВА ЛД

Кирила архієпкпа александрьскагѡ, ѿ посланіа иже къ  
домнѡ, правилъ, паать. и ины главы ѿ дрѡдгихъ егѡ  
посланий, къ евлогію александрьскомѡ.

СОВ<sub>ii</sub>-СОД<sub>i</sub>  
(272b-274a)

ГЛАВА ЛЕ

Тогожде ѡ правой вѣрѣ главизны, на нестворіа.

СОД<sub>i</sub>-СОЕ<sub>ii</sub>  
(274a-275b)

ГЛАВА ЛЗ

Ѽ ѡказаній бжественныхъ писаній стѣыми оцѣ, еже не  
поставлати на мздѣ во сщениыа чины. Иже во стѣихъ  
оцѣ нашего василіа великагѡ, архієпкпа кесарии  
каппадокійскіа, посланіе къ иже поднимъ епкпшмъ,  
іакѡ да не поставлати имъ напѣназехъ.

СОЗ<sub>i</sub>-СЧГ<sub>i</sub>  
(276a-293a)

ГЛАВА ЛЗ

Ѽ посланіа константина града собора, къ мартирію  
епкпѡ антїохійскомѡ, о томъ, какѡ примати еретики,  
приходящыа къ соборнѣй цркви.

СЧГ<sub>ii</sub>  
(293a)

ГЛАВА ЛИ

Главы великїа цркви, рекше стѣа софи, запечатаны  
златою печатію, црѡа и оустинїана, ѡ рабѣхъ  
привѣгающихъ въ црковь.

СЧА<sub>i</sub>-СЧА<sub>ii</sub>  
(284a-294b)

ГЛАВА ЛѠ

Димитріа митрополита кизическагѡ, ѡ іаковитѣхъ, и ѡ  
хацъцарѣхъ.

СЧА<sub>ii</sub>-СЧЕ<sub>ii</sub>  
(294b-295b)

ГЛАВА М

Петра архієпкпа александрьскагѡ къ венетескомѡ  
архієпкпѡ; вѣже сей при патріарсѣ константина града,  
алеѣи.

СЧЕ<sub>ii</sub>-СЧЗ<sub>ii</sub>  
(295b-296b)

ГЛАВА МА

Блженнагѡ нила чернориеца посланіе къ харикаю презвитерѡ сѡрово на падающѡ на согрѣшающыа, и глаголющѡ не доваѣетъ на покааніе исповѣданіе оустень, аще дѣла постинческаа не боудѡтъ.

СЧ<sub>ii</sub>-Т<sub>i</sub>  
(296b-300a)

ГЛАВА МВ

Ѡ свитка бжтвеныхъ новыхъ заповѣдей, иже въ бжественомъ наслѣди црѡ іустиніана различны заповѣди, сходящеса подобно съ бжественными и сщениными правилы, и Ѡ обилаа свою крѣпость дающе. имъ же чинъ нѣкїи и число положихомъ, да еъ скорѣ шбращетса искомаа глава: понеже іакѡ речно естъ, Ѡ различныхъ заповѣдей быти сочтанымъ іакоже писано естъ здѣ справилы соборными, лежащихъ заповѣдей; и главъ.

Т<sub>i</sub>-ТЛГ<sub>ii</sub>  
(300a-333b)

ГЛАВА МГ

Новла заповѣдь блгочестивагѡ црѡ алеѣїа комнена.

ТЛД<sub>i</sub>-ТМЗ<sub>ii</sub>  
(334a-347b)

ГЛАВА МД

Ѡ различныхъ титлъ, рекше граней іустиніана црѡ, новыхъ заповѣдей, главы по избранію различны.

ТМН<sub>i</sub>-ТѢВ<sub>ii</sub>  
(348a-362b)

ГЛАВА МЕ

Избраніе Ѡ закона бгомъ данаго израильтаномъ монсеомъ, первое ѡ сѡдѣ и ѡ правдѣ.

ТѢГ<sub>i</sub>-ТОО<sub>ii</sub>  
(363a-371b)

ГЛАВА МЗ

Законъ соудный людем, црѡ константина великагѡ.

ТОВ<sub>i</sub>-ТОЗ<sub>ii</sub>  
(372a-377b)

ГЛАВА МЗ

Никиты минха, презвитера монастыра стѡдійскагѡ, по рекломъ скиѡита, к латинемъ ѡ опрѣсноцѣхъ.

ТОН<sub>i</sub>-ТПѢ<sub>ii</sub>  
(378a-389b)

ГЛАВА МИ

ѡ фразѣхъ, и Ѡ прочихъ латинѣхъ.

ТҮ<sub>i</sub>-ҮГ<sub>i</sub>  
(400a-403a)

ГЛАВА МѠ

Закона градскаго главы различны, в четьредесятихъ  
гранѣхъ.

УА<sub>i</sub>-УЧГ<sub>ii</sub>  
(404a-493b)

ГЛАВА Н

Леона цр̄а премоудрагѡ, и константина вѣрною цр̄ю,  
главизны ѡсовѣщани обрѣченїа, и обрацѣхъ, и ѡ  
инъихъ различныхъ винахъ.

УЧА<sub>i</sub>-ФК<sub>ii</sub>  
(494a-520b)

ГЛАВА НА

ѡ тайнѣ сд̄пружества, сїестъ законнагѡ брака.

ФКА<sub>i</sub>-ФНВ<sub>i</sub>  
(521a-552a)

ГЛАВА НВ

ѡ беззаконныхъ брацѣхъ, сирѣчь ѡ кровосмѣшенїи.

ФНВ<sub>ii</sub>-ФѠЗ<sub>i</sub>  
(552b-567a)

ГЛАВА НГ

Изложене, рекше воспоминанїе бывшаго цр̄ковнагѡ со  
единенїа, при константинѣ и романѣ. овомѣ оубѡ  
цр̄ствѣющѣ. Овомѣ же тогда цр̄евѣ оцѣ саномъ  
почтенѣ соущѣ.

ФѠЗ<sub>ii</sub>-ФОС<sub>ii</sub>  
(567b-576b)

ГЛАВА НД

Главы цр̄ковныа, и вопросы правилныа, и ѡвѣты  
сѣагѡ собора, бывшагѡ водни пресѡщеннагѡ и  
вселенскагѡ патрїарха николты константина града,  
вопрошенїе и иванна мниха; и молчалника, иже во  
сѣѣй горѣ; и соущихъ снимъ черноризецъ.

ФОЗ<sub>i</sub>-ФПВ<sub>ii</sub>  
(577a-582b)

ГЛАВА НЕ

Ѡвѣти пре бл̄женнагѡ митрополита никиты и  
раклинскагѡ, предложенымъ емоу вопрошенїемъ, ѡ  
константина памѣилїйскагѡ.

ФПГ<sub>i</sub>-ФПС<sub>ii</sub>  
(583a-586b)

ГЛАВА НС

Сѣагѡ меѡдїа патрїарха константина града,  
завѣщанїе ѡ Швергшихъса и ѡ ѡскверньшихъса  
различными образы и возрастомъ.

ФПЗ<sub>i</sub>-ФЧА<sub>ii</sub>  
(587a-594b)

ГЛАВА ИЗ

Правило іерешомъ, иже не шблачаюцца во вса сщениыа ризы, ли неразоуміемъ, или гордостію, или лѣностію.

ФЧЕ<sub>i</sub>-ФЧ5<sub>i</sub>  
(595a-596a)

ГЛАВА ИИ

Сѣагѡ никифора константина града исповѣдника, и иже снймъ сѣыхъ оцѣ, правила и црковныхъ счиненійхъ.

ФЧ5<sub>i</sub>-ФЧИ<sub>i</sub>  
(596a-598a)

ГЛАВА ИѠ

Сѡвети іѡанна сщениѣшагѡ епкпа китрошкагѡ, къ сщениѣшемѡ епкпѡ драчьскомѡ кавасилѡ.

ФЧИ<sub>ii</sub>-ХА<sub>i</sub>  
(598b-601a)

ГЛАВА Ӏ

ѡ хиротони, сирѣчь, ѡрдкоположеніи стльскомъ, на новопоставленомъ іереи, въписано из правилъ сѣыхъ аплѣ, и сѣыхъ оцѣ. бгда ѡ стоитъ новосщениыи попъ оурокъ свой оусоворныа цркве, тогда наказавъ его сѣль, и прочетъ емоу свиток сей, положитъ во олтарѣ, на прѡломѣ, и велитъ емоу взати ѡ прѡломомъ вѣдѣніа сегѡ памать, сщениагѡ рѡкоположеніа и наказаніа.

ХА<sub>ii</sub>-Х5<sub>i</sub>  
(601b-606a)

ГЛАВА Ӏа

Сѡветы правилныа тимоѡеа сѣѣшагѡ архіепкпа алеѡандрійскагѡ.

Х5<sub>i</sub>-ХѠ<sub>i</sub>  
(606a-609a)

ГЛАВА Ӏв

Сѣагѡ и великагѡ василіа запрѣщеніе инокомъ.

ХѠ<sub>i</sub>-ХП<sub>ii</sub>  
(609a-613b)

ГЛАВА Ӏг

Правила тогоже сѣагѡ василіа ѡ инокиахъ.

ХА<sub>i</sub>-ХЕ<sub>i</sub>  
(614a-615a)

ГЛАВА Ӏд

На трапезѣ запрещеніа различна сѣыхъ оцѣ.

ХЕ<sub>ii</sub>-Х5<sub>i</sub>  
(615b-616a)

ГЛАВА Ӏе

Втоу же мѣрѡ ѡ новагѡ закона ѡ черныцѣхъ.

Х5<sub>i</sub>-ХИ<sub>i</sub>  
(616b-618a)

глава ђ5

Ѡ аронахъ ризахъ, и Ѡ скимном образѣ, и Ѡ стихарѣ  
и поасѣ, и Ѡ подири, и Ѡ ефодѣ, и Ѡ четвероскъдѣи  
ризѣ, и Ѡ ометѣ и Ѡ кидарѣ.

ХИ<sub>i</sub>-ХѠ<sub>i</sub>  
(618a-619a)

глава ђ3

Разѡмъ Ѡ сложеніи обою законѡ, хрѣтова іерейства, и  
образа скимнаго.

ХѠ<sub>i</sub>-ХѢ<sub>ii</sub>  
(619a-620b)

глава ђи

Сказаніе Ѡ мантию патріарховѣ, и митрополотовѣ, и  
архіепкповѣ, и что есть именованіе патріархово, и  
митрополота, и архіепкпа, и епкпа, и архимандрита,  
игоумена, и протопопа, и протодіакона, и презвитера, и  
діакона.

ХКА<sub>i</sub>-ХКВ<sub>ii</sub>  
(621a-622b)

глава ђѡ

Ѡгаго анастасіа синайскаго, вопросы Ѡ различныхъ  
винахъ.

ХКВ<sub>ii</sub>-ХЛГ<sub>ii</sub>  
(622b-633b)

глава о

Тимоѡеа презвитера великіа цркви, и созддохранителя,  
прчтыа бцы в халкопратин, Ѡ различіи приходящихъ  
Ѡ ересей къ блгочестивѣи нашей вѣре.

ХЛА<sub>i</sub>-ХЛЗ<sub>i</sub>  
(634a-637a)

глава оа

Прѣнаго никона, игоумена черныа горы, первыа  
книги Ѡ шестьдесятъ третіаго слова, и Ѡ предисловіа  
вторыа книги, из глашеніе Ѡ бжтвеныхъ правилъ, Ѡ  
бгоншсныхъ соборовъ, и особъ стыхъ оцъ, бывшихъ,  
яко единъ дхъ стыхъ дѣйствова, въ помѣстныхъ же и  
вселенскихъ соборѣхъ, и подобаетъ даже и до  
кончины вѣка хрѣтианомъ бжтвенна тѣхъ хранити  
правила, а не нещевати вины шгресѣхъ, и яко аще  
кто, нѣкаа Ѡ бжтвенныхъ правилъ истоцевати, или  
возбранати начнетъ, повиненъ есть потоковомѡ

ХЛЗ<sub>i</sub>-Хма<sub>ii</sub>  
(637a-641b)

правилѹ и запрещеніе прїимати.

ѿ писаніе книгѣ сей, глѣмѣй кормчѣй, и ключезнымъ читателемъ.

ХМВ<sub>i</sub>-ХМЭ<sub>ii</sub>  
(642a-647b)

Каталогъ по азбѹцѣ, сирѣчь съчисленіе словъ израднѣйшихъ вещей въ книгѣ сей, глаголемѣй кормчѣй.

ХМИ<sub>i</sub>-ХОЮ<sub>ii</sub>  
(648a-679)

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APPENDIX  
FIRST FOLIATION IN NIKON *KORMCHAIA*

Сказаніе известно чешѹ ради вселенскїи патрїархъ константина града, и алеѳандрїискїи, и антїохїискїи, и їеросалимски, римскихъ папъ ѿ бжественныа восточныа цркви ѿ обычнагѹ поминанїа, и любовнагѹ союза извергоша, и своегѹ патрїаршескагѹ поставленїа ѿ нихъ не востребо ваша.

A<sub>i</sub> - E<sub>i</sub>  
(1a-5a)

ѿ константина же града помногомъ мѣстомъ первостоятелемъ поставляемымъ сиречь митролитомъ трапизонѹ и селоуню болгаромъ же и сербомъ влахомъ же и арбанасомъ и дрѹгимъ.

E<sub>i</sub> - S<sub>ii</sub>  
(5a-6b)

ѿ оувѣренїи, и ѿ крещенїи рѹсїи, такѹ попрозрѣнїю бжїю родъ рѹсїискїи ѿ восточныа цркви, глїюже ѿ цара града вѣрѹ хрїстїанскѹю и весь чинъ прїатъ.

Z<sub>i</sub> - I<sub>i</sub>  
(7a-10a)

ѿ прихожденїи митрополитшвъ.

I<sub>i</sub> - KA<sub>ii</sub>  
(10a-21b)

Дѣданїе, си есть поставленїаа грамота.

KA<sub>ii</sub> - KС<sub>i</sub>

Іеремїи млтїю бжїю архїепкпъ, константинопольскїи,  
новагѡ рима и вселенскїи патрїархъ.

(21b-25a)

Сказаніе извѣстно ѡ поставленїи, великагѡ гдѣра  
црѣа и великагѡ кнѣза михаила ѡеодѡровича всеа  
рдсїи самодержца, оца егѡ великагѡ гдѣра  
преѡсѣннагѡ филарета никитича митрополита  
ростовскагѡ и гарославскагѡ, на первысокїи  
патрїаршескїи престолъ црѣтвдѡющагѡ града москвы, и  
всеа великїа рдсїи.

КЕ<sub>ii</sub> - ЛЗ<sub>ii</sub>  
(25b-37b)

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#### FOURTH FOLIATION IN NIKON *KORMCHAIA*

Иже во црѣхъ первагѡ црѣтїанина бѣвша, сѣагѡ и  
блженнагѡ, и равна аплом: великагѡ црѣа  
константина. Повелѣенїе егѡ црѣкое содѣанно и  
даносѣѣи соборнѣи и апостольстѣи црѣкви.

А<sub>i</sub> - І<sub>ii</sub>  
(1a-10b)

ѡ римском ѡпаденїи, како ѡстѡпиша ѡ православныа  
вѣры, и ѡ сѣѣа восточныа црѣкви.

АІ<sub>i</sub> - ЗІ<sub>i</sub>  
(10b-16b)

## ABBREVIATIONS

Beveridge	<i>Συνοδικὸν sive Pandectae canonum</i>
CASS	<i>Canadian American Slavic Studies</i>
CHOIDR	<i>Chteniia v Imperatorskom Obshchestve Istorii i Drevnostei Rossiiskikh pri Moskovskom Universitete</i>
CIC	<i>Corpus iuris civilis</i> - the law of the Byzantine Emperor Justinian, generally
Digest [W]	<i>Digest of Justinian</i> - printed edition of Watson
DMA	<i>Dictionary of the Middle Ages</i>
Ecloga	<i>Ecloga</i> - edition Freshfield
ekloga kk	created system of citation signifying the <i>Ecloga</i> as found in the printed 1653 <i>Kormchaia kniga</i>
EZSL	Expanded <i>Zakon sudnyi liudem</i> - any of the printed editions
generally	
NCE	<i>New Catholic Encyclopedia</i> - 1967 edition
OCE	<i>Old Catholic Encyclopedia</i> - 1913 edition
ODB	<i>Oxford Dictionary of Byzantium</i>
PBES	<i>Pravoslavnyi bogoslovskii entsiklopedicheskii slovar'</i>
Pedalion	<i>Rudder (Pedalion)</i> - edition translated by D. Cummings
Percival	<i>Seven Ecumenical Councils of the Undivided Church</i> - edition H. R. Percival
PG	<i>Patrologia Graeca</i> - edition Migne
PL	<i>Patrologia Latina</i> - edition Migne
Procheiros Nomos	<i>Procheiros nomos</i> - edition Freshfield
prochiron kk	created system of citation signifying the <i>Prochiron</i> as found in the printed 1653 <i>Kormchaia kniga</i>
PRP	<i>Pamiatniki russkogo prava</i>
PSP	<i>Polnoe sobranie postanovlenii i rasporiazhenii po vedomstvu pravoslavnago ispovedaniia</i>
PSZ	<i>Polnoe sobranie zakonov Rossiiskoi Imperii,</i>
RIB	<i>Russkaia istoricheskaia biblioteka</i>
RP	<i>Russkaia pravda</i> - any of the printed editions generally
SEER	<i>Slavonic and East European Review</i>
TODRL	<i>Trudy otdela drevnerusskoi literatury</i>
ZSL	<i>Zakon sudnyi liudem</i> - any of the printed editions generally

## SELECT BIBLIOGRAPHY

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### Primary Sources

*Acta et Scripta quae de controversiis ecclesiae Graecae et Latinae*, Will, C. J. C. (Paris, 1861).

*Acta Conciliorum Oecumenicorum*. (Tom. I and II), ed. E. Schwartz. (Berlin & Leipzig, 1927-1932).

*Akti feodal'nogo zemlevladieniia i khoziaistva: akty moskovskogo simonova monastyria (1506-1613 gg.)* sostavitel' L. I. Ivina (Leningrad: Nauka, 1983).

*Akty Solovetskogo monastyria: 1479-1571 gg.* ed. I. Z. Liberzon (Leningrad, 1988).

*Akty Moscovskogo gosudarstvo* (St. Petersburg, 1890).

*Akty feodal'nogo zemlevladieniia i khoziaistva XV-XVI vekov*, 3 Vols. ed. L. V. Cherepnin (Moscow, 1951-1961).

*Akty Rossiiskogo gosudarstva : arkhivy moskovskikh monastyrei i soborov XV- nachalo XVII vv.* ed. T. N. Aleksinskaia (Moscow, 1998).

*Akty iuridicheskie ili sobranie form starinnago deloproizvodstva* (St Petersburg, 1838).

*Akty Russkogo gosudarstva: 1505-1526 gg.* eds. A. A. Novoselskii, L. V. Cherepnin (Moscow, 1975).

*Akty Solovetskogo monastyria 1572-1584 gg.* ed. I. Z. Liberzon. (Leningrad, 1990).

*Akty iuridicheskago byta drevnei rossii*, Vol. I, ed. N. Kalachev (St. Petersburg, 1857).

*Akty moskovskikh monastyrei i soborov, 1509-1609 gg.:* iz arkhivov Uspenskogo sobora i Bogoiavlenskogo monastyria, eds. L. V. Cherepnin, et al. (Moscow, 1984).

*Akty Suzdal'skogo Spaso-Evfim'eva monastyria 1506-1608 gg.* (Moscow, 1998).

*Analecta sacra et classica Spicilegio Solesmeni parata*, J. B. Pitra (Paris-Rome, 1891).

*Apostolic Constitutions, Cognate Documents*, ed. M. O'Leary (London, 1906).

*Apostolical Constitutions*, trans. & ed Wm. Whiston, with notes, James Donaldson. [Series: Ante Nicene Christian Library vol 17] (Edinburgh, 1870).

- Ascetic Works of St. Basil*, trans. W. Clarke (London, 1925).
- Athanasius and the Politics of Asceticism*, David Brakke (Oxford, 1995).
- Ecloga: Das Gesetzbuch Leonis III und Konstantinos' V*, ed. Ludwig Burgmann (Frankfurt a. M.).
- Byzantine monastic foundation documents: a complete translation of the surviving founders' typika and testaments*, edited by John Thomas and Angela Constantinides Hero; with the assistance of Giles Constable; translated by Robert Allison, et al. [Dumbarton Oaks Research Library and Collection](Washington, D.C., 1998).
- Byzantium: Church, State and Society Seen Through Contemporary Eyes*, ed., Deno J. Geanakoplos, (London, 1984).
- Civil Law, including the Enactments of Justinian and the Constitutions of Leo*, S. P. Scott, 32 Vols. (Cincinnati, 1932).
- Code of Canon Law: a text and commentary* / commissioned by the Canon Law Society of America; edited by James A. Coriden, Thomas J. Green, Donald E. Heintschel (New York: Paulist Press, 1985).
- Collectio librorum juris graeco-romani ineditorum. Ecloga Leonis et Constantini, Epanagoge Basilii Leonis et Alexandri*, K. E. Zachariae von Lingenthal (Lipsiae, 1852).
- Collectio Tripartita: Justinian on Religious and Ecclesiastical Affairs*, eds. N. van der Wal and B. H. Stolte (Groningen: E. Forsten, 1994).
- Corpo del diritto corredato delle note di D. Gotofredo...*, G. Vignali, 10 Vols. (Napoli 1856-1864)
- Cyril of Alexandria. Select Letters*, ed. & trans. Lionel Wickham (Oxford, 1983).
- Das Corpus iuris Civilis in's Deutsche übersetzt von einem Vereine Rechtgelehrter*, C. E. Otto, B. Schilling, C. F. F. Sintenis, 7 Vols. (Leipzig 1831-1839)
- Decrees of the Ecumenical Councils. 2 Vols: Vol. I: Nicaea to Lateran V*, trans. and ed. Norman P. Tanner, S. J. (Georgetown University: Washington, D.C., 1990).
- Deianiia moskovskikh soborov, 1666-1667* (2nd ed. Moscow, 1893).
- Digest of Justinian*, 2 Vols., ed. & trans. Alan Watson (Philadelphia: University of Pennsylvania Press, 1998) [revised edition].
- Digesty Iustiniana, izbrannye fragmenty*, trans. I. S. Pereterskii, ed. E. A. Skripilev (Moscow, 1984).

*Documents Illustrative of the History of the Church*, ed. B. J. Kidd, 2 Vols. (London, 1938).

*Drevne-slavianskaia kormchaia XIV titulov bez tolkovanii*. Vol. I, V. N. Beneshevich (St. Petersburg, 1906; reprint: Leipzig, 1974).

*Dukhovnye dogovornye gramoty velikikh i udel'nykh kniazei*, ed. L. V. Cherepnin (Moscow, 1950).

*Ecclesiae Graecae monumenta*, J. B. Cotelerius, 3 Vols. (Lutetiae, Parisiorum, 1677-1686).

*Ecloga. Das Gesetzbuch Leonis III und Konstantinos'*. trans. V. L. Burgman, (Frankfurt a. Main, 1983).

*Epistola Basilii*, trans. R. J. Deferrari (London, 1926-1934).

Eremin, I. P. "Literaturnoe nasledie Kirilla Turovskogo", *Trudy Otdela Drevnerusskoi Literatury* 11 (1956):342-367; 12 (1956):357-358; 13 (1957): 409-426; 15 (1958): 331-348.

*Evkhologion albo Molitvoslov ili Trebnik...* (Kiev, 1646).

*For God and Peter the Great. The Works of Thomas Consett, 1723-1729*, ed. James Cracraft (New York, 1982).

Gorchakov, M. *Otaine supruzhestva. Proischozhdenie, istoriko-iuridicheskoe znachenie i kanonicheskoe dostoinstvo 50-i (po spiskam patriarchov Iosifa i Nikona 51-i) glavy pechatnoi «Kormchei knigi»*. (St Petersburg, 1880).

Gratian, *The Treatise on the Laws (Decretum DD. 1-20)*, translated by Augustine Thompson, O.P. with the Ordinary Gloss, translated by James Gordley, Catholic University Press, Washington D.C., 1993. [Studies in Medieval and Early Modern Canon Law, volume 2].

*Gramoty Velikogo Novgorod i Pskova*. ed. S. N. Valk (Moscow, 1949).

*Greek-English Lexicon* compiled by H.G. Liddell and R. Scott (reprint: Oxford, 1996).

*Gubnyia i zemskii gramoty moskovsago gosudarstva*, ed. S. Shumakov (Moscow, 1895).

*Ho Procheiros Nomos Imperatora Vasiliia Makedonianina*, M. Benemanskii (Sergiev Posad, 1906). Vol II, *Zakon gradskii* (Moscow, 1917).

*Institutes of Gaius*, trans. W. M. Gordon and O. F. Robinson (Glasgow, 1988).

*Institutes of Justinian, edited as a recension of the Institutes of Gaius*, T. E. Holland

(Oxford 1873, 2nd. ed. 1881)

Ioannis Scholastici *Synoagoga L titulorum ceteraque eiusdem opera iuridica, iussu ac mandato Academiae scientiarum bavaricae, edidit Vladimirus Benesevic ...* Vol. I (Munich:Verlag der Bayerischen,1937). [Abhandlungen der Bayerischen Akademie der Wissenschaften, Philosophisch-historische Abteilung, Neue Folge, Heft 14].

*Iuris Graeco-Romani tam canonici quam ciuilibus tomi duo* Iohannis Leunclauui Amelburni, v. cl. studio ex variis Europae Asiaeque bibliothecis eruti, Latineque redditi / nunc primum editi curâ Marquardi Freheri i.c. cum eiusdem auctario, chronologia iuris ab excessu Iustiniani ad amissam Constantinopolin, & praefatione ad Imp. Caes. Rudolphum II. P. F. PP. A.; opus non solum iuris vtriusque consultis, sed omnino diuinarum humanarum[ue] rerum studiosis, & tam ecclesiasticae quam politicae antiquitatis amatoribus, ob multiplicem vtilitatem summe expetendum.(Francofurti, 1596).

*Juris ecclesiastici Graecorum historia et monumenta*, J. B. Pitra, 2 Vols. (Rome, 1864, 1868).

*Jus graecoromanum*, 8 Vols. eds. J. & P. Zepos (Athens, 1930-1931; Aalen, 1962).

*Jus graecoromanum*, Vol. 3, K. E. Zachariae von Lingenthal (Lipsiae, 1857).

Kalachev, N. V., “Merilo pravednoe”, *Archiv istoriko-juridicheskikh svedenii otnosiashchichsia do Rossii izdavaemii Nikolaem Kalachovum*, Vol. I, Moscow, 1850, 3, no. 5, pp. 39-40.

*Kniga pravil sviatykh apostol, sviatykh soborov vselenskikh i pomestnykh, i sviatykh otets, na pervonachal'nom Ellinskom narechii i v prelozhenii Slavenorossiiskom, napechatana v tsarstvuiushchem velikom grade Moskvie, v Sinodal'noi tipografii, pervym tishnieniem, v leto ot sozdaniia mira 7370, ot Rozhdestva zhe po ploti Boga Slova*, 1862. [First ed., 1839, St. Petersburg].

*Kormchaia Nikiforova*, V. N Beneshevich (St. Petersburg, 1903).

*Kanoniceskii sbornik: XIV titulov so vtoroi cetverti VII veka do 883 g.: k drevneisei istorii istochnikov prava greko-vostochnoi tserkvi*, V. N. Beneshevich, (St.Petersburg,1905; reprint: Leipzig,1974).

*Kormchaia kniga*, 1653.

*Kormchaia kniga*, 1650.

*Krmcija Svetoga Save: o zastiti obespravljenih i socijalno ugrozenih*, ed. Miodrag Petrovic (Belgrade: Dragomir Antonic, 1990).

*Later Treatises of S. Athanasius, Archbishop of Alexandria with notes & Appendix on S. Cyril of Alexandria & S. Theodoret* [Library of the Fathers of the Holy Catholic Church].

(London, 1881).

*Later Christian Fathers: a Selection from the Writings of the Fathers from St. Cyril of Jerusalem to St. Leo the Great.* Edited and translated by Henry Bettenson (London, 1970).

*Laws of Rus' - Tenth to Fifteenth Centuries,* translated and edited by Daniel H. Kaiser; foreword by Richard Hellie (Salt Lake City, Utah: C. Schlacks, 1992).

*Manual of Eastern Roman Law. The Ecloga, Published by the Emperors Leo III and Constantine V of Isauria at Constantinople, A.D. 726,* trans. E. Freshfield (Cambridge, 1926).

*Manual of Eastern Roman Law. The Procheiros Nomos, Published by the Emperor Basil I at Constantinople between 867 and 879 A.D.,* trans. E. Freshfield (Cambridge, 1927).

*Materialy dlia slovaria drevnerusskago iazyka po pis'mennym pamiatnikam, I. I Sreznevskii.* (St. Petersburg, 1893-1903; reprint: Graz, Akademische Druck- u. Verlagsanstalt, 1955-56; and under the title *Slovar' drevnerusskago iazyka, reprintnoe izdannie* 3 Vols. Moscow, 1989).

*Medieval Slavic Lives of Saints and Princes,* ed. Marvin Kantor (Ann Arbor, 1983). [Michigan Slavic Translations 5].

*Merilo pravednoe XIV veka kak aktsento logicheskii istochnik,* A. A. Zalizniak (Munich, 1990).

*Merilo Pravednoe po rukopisi XIV veka,* ed. M. I. Tikhomirov (Moscow, 1961).

*Monumenta graeca ad Photium eiusque historiam pertinentia,* J. Hergenröther (Ratisbonae, 1869 [Regensburg] reprint, 1969).

*Moscovia of Antonio Possevino* (1586), trans. Hugh Graham (Pittsburg, 1977)

*Moskovskaia delovaia i bytovaia pis'mennost' XVII veka* eds. S. I. Kotkov, A. S. Oreshnikov, I. S. Filippova (Moscow, 1968).

*Muscovite Law Code (Ulozhenie) of 1649,* trans. and ed. Richard Hellie (California, 1988).

*O Stoglave ego proischozhdenie,* redaktsii i sostav, D. Stefanovich (St Petersburg, 1909).

*Pamiatniki russkogo prava,* 6 Vols. (Moscow, 1952-1957).

*Pamiatniki russkoi pis'mennosti XV-XVII vv. Riazanskii krai,* eds. S. I. Kotkov and I. S. Filipova (Moscow, 1978).

*Pamiatniki drevnerusskoi tserkovno-uchitel'noi literatury*, ed. A. I. Ponomarev, Vols. 1-4 (St. Petersburg, 1894-1898).

*Pamiatniki rossiiskoi slovestnosti XII veka, izdannie s ob"iasneniem, variantami iobrazsami pocherkov*, K. Kalaidovich (Moscow, 1821).

*Patrologia Latina* J. P. Minge, 221 Vols. (Paris, 1844-1864)

*Patrologia Graeca* J. P. Minge, 167 Vols. (Paris, 1857-1866).

Pavlov, A. S., "Kanonicheskie Otveti Nikity Mitropolita Irakliiskago (XI-XII veka) v ich pervonachal'nom vide i v pozdneishei pererabotke Matfeia Vlastaria", *Vizantiiskii vremennik* 2 (1895): 160-176.

Pavlov, A. S., "O novom perevode tolkovanii na tserkovyia pravila", *Pravoslavnoe Obozrenie*, April (1876): 730-746 (Moscow).

Pavlov, A. S., *50-ia glava Kormchei knigi, kak istoricheskii i prakticheskii istochnik russkago brachnago prava* (Moscow, 1887).

Pavlov A. S., «*Knigy zakonnyia*» *soderzhashchiia v sebe drevne-russkom perevode, vizantiiskie zakony zemledel'cheskie, ugolovnye, brachnye i sudebnye* (St Petersburg, 1885).

*Pedalion = The Rudder (Pedalion)*, translated by D. Cummings, (Chicago, 1957). [translation of the 1800 Greek canon].

*Polnoe sobranie zakonov Rossiiskoi Imperii*, 31 Vols. (St. Petersburg, 1885 - ).

*Polnoe sobranie postanovlenii i rasporiashenii po vedomstvu pravoslavnago isповedaniia*, 19 Vols. (St. Petersburg, 1869-1915).

*Polnyi tserkovno-slavianskii slovar' : so vneseniem vnego vazhnieishikh drevne-russkikh slov i vyrazhenii ...*, compiled by G. M. D'iachenko (Moscow, 1899, reprint, Italy, 1976).

Popov, A. *Istoriko-literaturnii obzor drevne-russkikh polemicheskikh sochinenii protiv latinian (XI-XV vek.)* (Moscow, 1875).

*Rossiiskoe zakonodatel'stvo X-XX vekov*, ed. O. I. Chistiakov, 8 Vols. (Moscow, 1984-1991).

*Rituale Romanum*, Paul V (Rome, 1615).

*Russian Private Law XIV-XVII Centuries*, trans. and ed. H. W. Dewey and A. M. Kleimola (Ann Arbor, 1973). [Michigan Slavic Materials 9].

*Russian Private Law in the Fourteenth - Seventeenth Centuries. An anthology of*

*documents*, H. W. Dewey & A. M. Kleimola (Ann Arbor, 1973).

*Russkaia Pravda*, ed. B. D. Grekov (Leningrad, 1934).

*Russkaia istoricheskaia biblioteka*, 39 Vols. (St. Petersburg, 1872-1927).

*Sochinenia*, Feofan Prokopovich [1681-1736], ed. I. P. Eremin (Moscow-Leningrad, 1961).

*Select Historical Documents of the Middle Ages*, trans. and ed. E. F. Henderson (London, 1892; NY, 1965).

*Seven Ecumenical Councils of the Undivided Church*, H. R. Percival [Series: A Select Library of Nicene and Post Nicene Fathers of the Christian Church, Ser. 2, vol 14, 1899.] eds., Schaff & Wace (NY, 1886-1900; Reprinted 1991 Wm. B. Eerdmans Publishing, Grand Rapids, Michigan).

*Sinagoga v 50 titulov i drugie iuridicheskie sborniki Ioanna Scholastika: k drevneisei istorii istochnikov prava greko-vostochnoi tserkvi*, V. N. Beneshevich (St. Petersburg, 1914; reprint, Leipzig, 1972).

*Spicilegium Solesmense complectens sanctorum Patrum scriptorumque ecclesiasticorum anecdota hactenus opera*, J. B. Pitra, Vol. 4. (Paris, 1858).

*Spiritual Regulation of Peter the Great*, trans. and ed. Alexander Muller (Seattle, 1972).

*St Cyril of Alexandria. Letters*, trans. and ed. John McEnerney [Fathers of the Church Vols. 76 & 77] (Villanova, 1987).

*Stoglav*, ed. D. E. Kozhanchikova (St. Petersburg, 1863).

*Sudebnik tsaria Feodora Ioannovicha 1589 g.*, ed. S. Bogoslovenskii (Moscow, 1900).

*Sudebniki XV-XVI vekov*, ed. B. D. Grekov (Moscow, 1952).

Συνοδικὸν sive Pandectae canonum, SS. Apostolorum et Conciliorum ab Ecclesia Graeca receptorum; nec non Canoniarum SS. Patrum Epistolarum: una cum scholiis antiquorum singulis adnexis...., 2 Volumes, Beveridge, Wm., Bishop of Asaph (Oxford, 1672).

*Taktikon Nikona Tsernogortsa*, V. N. Beneshevich (Petrograd, 1917).

*Tekst Russkoi pravdy na osnovanii chetyrekh spiskov raznykh*, N. V. Kalachev, 3rd ed. (St. Petersburg, 1881).

*Treatise of Lorenzo Valla on the Donation of Constantine*, trans. Christopher B. Coleman (Toronto: University of Toronto Press, 1993).

*Uchrezhdenie dukhovnoi kollegii i dukhovnyi reglament: k voprosu o otnoshenii tserkvi i gosudarstva v Rossii*, Vol. 2, ed. P. V. Verkhovskoi (Rostov on Don, 1916).

*Zakon sudnyj ljudem - Court law for the people*, trans. H. W. Dewey and A. M. Kleimola (Ann Arbor, 1977).

*Zakon sudnyi liudem kratkoi redakstii*, ed. M. N. Tikhomirov (Moscow, 1961).

*Zakonopravilo ili Nomokanon svetova Save: ilovicki prepis 1262 godina*, edited with commentary Miodrag Petrovic (Gornji Milanovac, 1991).

## Secondary Sources

Alekseev, K. "Ob" otnosheniakh suprugov po imushchestvu v drevnei Rossii i Pol'she", *CHOIDR* 2 (1868):1-108.

Andreyev, N. *Studies in Muscovy. Western Influence and Byzantine Inheritance* (London, 1970).

Andreyev, N. "Filofei and His Epistle to Ivan Vasil'yevich", *Slavonic and East European Review* 38 (1959):1-31.

Azarevich, D. I. *Vizantiiskoe pravo*, Vol. 2 (Iaroslavl' 1877).

Barsov, T. V. "O sobranii dukhovnykh zakonov", *Khristianskoe chtenie* 4 (1897).

*Basil of Caesarea: Christian, Humanist, Ascetic. A Sixteen Hundreth Anniversary Symposium*. Pt. 2. , ed. P. J. Fedwick, [Pontifical Institute of Medieval Studies] (Ontario, 1981).

Barker, E. *Social and Political Thought in Byzantium: from Justinian I to the Last Palaeologues* (Oxford, 1957).

Beck, H. G. *Geschichte der byzantinischen Kirche und Theologie* (Munich, 1959).

Beck, H. G. *Kirche und theologische Literatur im Byzantinischen Reich* (Munich, 1959).

Begunov, Iu. K. "Kormchaia Ivana Volka Kuritsyna", *Trudy Otdela Drevnerusskoi Literatury* 12 (1956):141-159.

Bellomo, M. *The Common Legal Past of Europe, 1000-1800* [*Europa del diritto comune*] trans. Lydia G. Cochrane. (Washington, D.C., 1995).

Berdnikov, I. S. *Osnovnyia nachala tserkovnago prava pravoslavnoi tserkvi* (Kazan, 1902).

Berdnikov, I. S. *Kratkii kurs tserkovnogo prava* (Kazan, 1888).

*Bibliographie zur Rezeption des byzantinischen Rechts im alten Russland : sowie zur Geschichte des armenischen und georgischen Rechts / unter Mitwirkung von Azat Bozojan ... [et al.] ; zusammengestellt von Ludwig Burgmann und Hubert Kaufhold.* (Frankfurt a. Maim, 1992) [Forschungen zur byzantinischen Rechtsgeschichte, Band 18].

Blunt, M. *Dictionary of Sects, Heresies, Ecclesiastical Parties and Schools of Religious Thought* (London, 1874).

Bochkarev, V. *Stoglav istoriia sobora 1551 goda* (Iuchnov, 1906).

Bochkarev, V. *Stoglav i istoriia sobora 1551 goda* (Iuchnov, 1906).

Bolshakoff, S. *Russian Nonconformity: the Story of "Unofficial" Religion in Russia* (Philadelphia, 1950).

Brundage, J. A. *Law, Sex and Christian Society in Medieval Europe* (London, 1987).

Brundage, J. A. *Medieval Canon Law* (London, 1995).

Bulanin, D. M. *Perevody i poslaniia Maksima Greka* (Leningrad, 1984).

Burgess, M. *Lords Temporal and Lords Spiritual, A Chronological Checklist of the Popes, Patriarchs, Katholikoi, and Independent Archbishops and Metropolitans of the Autocephalous and Autonomous Monarchical Churches of the Christian East and West* (California, second edition, 1995) [Stokvis Studies in Historical Chronology and Thought. No 1].

Buslaev, F. I. *Istoricheskaia khristomatiia tserkovno-slavianskago i drevne-russkago iazykov* (Moscow, 1861).

*Catholic Encyclopedia*, Vols 1-18 (New York, 1967).

*Catholic Encyclopedia*, Vols. 1-15, (New York, 1913).

Cicognani, A. *Canon Law* (Rome, 1949).

Cobham, C. D. *The Patriarchs of Constantinople* (Cambridge, 1911).

Coriden, James A. *An Introduction to Canon Law* (New York: Paulist Press, 1991).

*Council of 1503: Source Studies & Questions of Ecclesiastical Landowning in Sixteenth Century Muscovy: a collection of seminar papers*, eds. E. L. Keenan, & D. Ostrowski (Cambridge, MA, 1977).

Cracraft, J. *Church Reform of Peter the Great* (Stanford, 1971).

Crummey, R. *Aristocrats and Servitors: the Boyar Elite in Russia 1613-1689* (NJ, 1983).

D'iakonov, M. *Ocherki obshchestvennago i gosudarstvennogo stroia drevnei Rusi* (Moscow-Leningrad, 1926).

Dawes, E. & Baynes, N. H. *Three Byzantine Saints* (Oxford, 1948).

Demkova I. S. and Iakunina S. A. "Kormchaia XV v. iz sobraniia Permskogo pedagogicheskogo instituta", *Trudy otdela drevnerusskoi literatury* 43 (1990): 330-337.

Dewey, H. W. "Immunities in Old Russia", *Slavic Review* 23 (1964): 643-659.

*Dictionary of the Middle Ages*, editor-in-chief Joseph R. Strayer 13 Vols. (New York: Scribner, 1982-1989).

*Dictionnaire de droit canonique* (Paris, Letouzey et Ané, 1935- ).

Dvornik, F. "Byzantium, Muscovite Autocracy and the Church", In: *Re-Discovering Eastern Christendom*, eds. B. Winslow & A. Armstrong, (London, 1963):106-118.

Dvornik, F. "Byzantine Political Ideas in Kievan Russia" *Dumbarton Oaks Papers* no. 9-10 (1956):73-123.

*Encyclopedia of Early Christianity*, ed. F. Everett (London, 1990).

*Evoliutsiia feodalizma v Rossii: Sotsialno-ekonomicheskie problemy*, V. I. Buganov, A. A. Preobrazhenskii, Iu. A. Tikhonov (Moscow, 1980).

*Family and Inheritance: Rural Society in Western Europe, 1200-1800*, ed. Jack Goody, et. al. (Cambridge University Press, 1976).

Farrow, L. A. "Peter the Great's Law of Single Inheritance: State Imperatives and Noble Resistance", *Russian Review* 55 (1996): 430-447.

Filaret (Gumilevskii), *Istoriia russkoi tserki* (Moscow, 1893).

Gallagher, C. "Gratian and Theodore Balsamon: Two Twelfth Century Canonistic Methods Compared", in *Byzantium in the Twelfth Century*, ed. N. Oikonomides (Athens, 1991):61-89.

Geanakoplos, D. "Maximos the Greek: His Mission and Aspects of his Reform of Orthodoxy in Muscovite Russia" in A. Tachiaos, ed. *The Legacy of Saints Cyril and Methodius to Kiev and Moscow* (Thessaloniki, 1992).

Goetz, L. K. *Pamiatniki drevne-russkago kanonicheskago prava Kirchenrechtliche und kulturgeschichtliche: Denkmäler Altrusslands nebst Geschichte des russischen Kirchenrechts.*(Stuttgart, 1905, reprint: Amsterdam, 1963).

Golubinskii, E. E. *Istoriia russkoi tserkvi*, Vol. I (Moscow, 1901; reprint:The Hague, 1969).

Gorchakov, M. I. *O taine supruzhestva* (St.Petersburg, 1880).

Gorchakov, M. I. *Monastyrskii prikaz (1649-1725 g.) Opyt istoriko-iuridicheskago*

*izsledovaniia* (St Petersburg, 1868).

Grekov, B. D. *Feodalnye otnosheniia v Kievskom gosudarstve* (Moscow-Leningrad, 1935).

Grekov, V. D. *Feodal'naia derevnia moskovskogo gosudarstva, XIV-XVI vv.* (Moscow, 1935).

Halkin, F. *Biblioteca hagiographica graeca*. Vol. 2 (Brussels, 1957).

Hammer, D. P. "Russia and the Roman Law", *American Slavic and East European Review* 16 (1957):1-13.

Haney, J. *From Italy to Muscovy: The Life and Works of Maxim the Greek* (Munich, 1973).

Hefele, K. J. von *A History of the Councils of the Church, from original documents* 5 Vols. (Edinburgh, 1883-1896).

Hellie, R. *Slavery in Russia, 1450-1725* (London, 1982).

Hellie, R. "The Church and the Law in Muscovy: Chapters 12 & 13 of *Ulozhenie* of 1649", *CASS* 25 (1991):179-199.

Herman, E. *De fontibus iuris ecclesiastici Russorum commentarius historico-canonicus*. S. Congregazione per la Chiesa Orientale, codificazione canonica orientale, serie II, fascicoli VI. (Rome:Vaticani, 1936).

Hughes, P. *The Church in Crisis: A History of the Twenty Great Councils* (London, 1961).

Ianin, V. L. "Gramota kniazia Sviatoslava Ol'govicha 1137 g." in: *Feodal'naia Rossiia vo vsemirno-istoricheskom protsesse* (Moscow, 1972): 243-51.

Iarushevich, N. *Tserkovnyi sud v Rossii do izdaniia Sobornago ulozheniia Alekseia Mikhailovicha 1649g.* (Petrograd, 1817).

Ikonnikov, V. *Maksim Grek i ego vremia* (2nd ed. Kiev, 1915).

Isachenko-Lisovaia, T. A. "Nomokanon s tolkovaniem Val'samona v perevode Evfimiia Chudovskogo (konets XVII veka)", *Voprosy iazykoznaniiia* 3 (1987):111-121.

Isachenko-Lisovaia, T. A. "O perevodicheskoi deiatel'nosti Evfimiia Chudovskogo" in *Khristianstvo i tserkov' v Rossii feodal'nogo perioda: materlialy*, ed., N. N. Pokrovskii (Novosibirsk, 1989):194-210.

Iushkov, S. V. *Obshchestvo-politicheskii stroi i pravo kievskogo gosudarstva* (Moscow,

1949).

Iushkov, S. V. *Isledovaniia po istorii russkogo prava. Ustav kn. Vladimira*. (Novouzusk, 1926) reprinted in : *Trudy vydaiushchikhsia iuristov*: S.V. Iushkov (Moscow, 1989), pp. 71-335.

Ivanov, A. I. *Literaturnoe nasledie Maksima Greka: kharakteristika, atributsii, bibliografiia* (Leningrad,1969).

Jenkins, Romilly, "Three Documents Concerning the Tetragamy", *Dumbarton Oaks Papers* 16 (1962):231-241.

Jolowicz H. F. and Nicholas B. *Historical Introduction to the Study of Roman Law* (3<sup>rd</sup> ed. Cambridge, 1972).

Kaiser, D. H. *The Growth of Law in Medieval Russia*, (Princeton, NJ: Princeton University Press, 1980).

Kalachev, N. V. *Predvaritel'nyia iuridicheskiia svedeniia dlia polnago ob"iasneniia russkoi pravdy* (St. Petersburg, 1880).

Kalachev, N. V. *Russkoi pravdy na osnovanii chetyrekh spiskov raznykh*, 3rd ed. (St. Petersburg, 1881).

Kalachev, N. V. *Ukazanie na iuridicheskie pamiatniki, nakhodiashchiesia v osobennoi sviazi s sodержaniem russkoi pravdy*. 1846.

Kalachev, N. V. "O znachenii Kormchei v sisteme drevniago russkago prava." in *Chteniia v Imperatorskom Obshchestve Istorii i Drevnostei Rossiiskikh pri Moskovskom Universitete* 1847, pt. 3, 1-128 and pt. 4, 1-80.

Kartashev, S. M. *Ocherki po istorii russkoi tserkvi*, Vol. 2 (Paris, 1959).

Kashtanov, S. M. "Feudal Immunities in Russia", *SEER* 49 (1971): 235-254.

Kashtanov, S. M. "Otmena tarkhanov v Rossii v seredine XVI veka", *Istoriia SSSR* 6 (1986): 40-60.

Kazakova, N. A. "Neizdannoe proizvedenie Vassiana Patrikeeva" in *Trudy otdela drevnerusskoi literatury* 12 (1956): 387-426.

Kazakova, N. A. "K izucheniiu Kormchei Vassiana Patrikeeva" in *Trudy otdela drevnerusskoi literatury* 28 (1974):345-349.

Kazhdan, A. "Some Observations on the Byzantine Concept of Law: three authors of the ninth through twelfth centuries:" In: *Law and Society in Byzantium Ninth-Twelfth Centuries*, eds. A. E. Laiou and D. Simon (Washington, D.C., 1994):

- Keep, J. H. L. "The Regime of Filaret", *SEER* 38 (1961): 334-360.
- Kivelson, V. A. "The Effects of Partible Inheritance in Gentry Families and the State in Muscovy", *Russian Review* 53 (1994):197-212.
- Kleimola, A. M. "In Accordance with the Canons of the Holy Apostles': Muscovite Dowries and Women's Property Rights", *Russian Review* 51 (1992): 208-227.
- Kleimola, A. M., "Law and Social Change in Medieval Russia: The *Zakon sudnyi liudem* as a Case Study", *Oxford Slavonic Papers* 9 (1976): 17-27.
- Kniga v Rossii v seredine XVIII veka: chastnye knizhnye sobraniia*, ed. P. I. Khoteev (Leningrad,1989).
- Kollmann, J. E. *The Moscow Stoglav ('Hundred Chapters') Church Council of 1551 (Volumes I and II)*, Ph.D (University of Michigan, 1978).
- Kopitar, "O grecheskoi Kormchei i Prokhirone", *Wiener Jarbücher d. Literat.* Bd. XXVIII, 1834.
- Kotliarov, G. M. "Riadnyia-sgovonyia zapisi XVI-XVII vv. (Opyt istoriko-diplomaticeskogo opisaniia aktov)", *Istoricheske obozrenie* 21 (1916):195-210.
- Kotliarov, G. M. "K voprosy o vremen poiavleniia na Rusi svabednyx aktov", *Russkii Istoricheskii zhurnal* 6 (1920):162-3.
- Kovalevskii, M. M. *Modern Customs and Ancient Laws of Russia* (London, 1891).
- Krmcija Svetoga Save: o zastiti obespravljjenih i socijalno ugrozenih* (Belgrade: Dragomir Antonic, 1990).
- Krumbacher, K. *Geschichte der byzantinischen Littertaur* (2nd ed., Munich, 1898).
- Kunkel, W. *An Introduction to Roman Legal and Constitutional History* (Oxford, 1966)
- Kuttner, S. "The Scientific Investigation of Medieval Church Law: The Need and the Opportunity", *Gratian and the Schools of Law, 1140-1234* (Variorum Reprints, London, 1983), I, 493-501.
- Lahana, M. *Novaia Nemetskaia Sloboda: Seventeenth Century Moscow's Foreign Suburb*, Ph.D (University of North Carolina At Chapel Hill, 1983).
- Laoiu, A. E. *Peasant and Society in the Late Byzantine Empire: a social and demographic study* (Princeton, NJ, 1977).
- Leontovich, F. I. *Istoriia russkago prava* (Varshava, 1902).

Leontovich, F. I. *Kratkii ocherki istorii russkago prava* (Odessa, 1889).

*Lexicon palaeoslovenico-graeco-latinum: emendatum auctum* / edidit Fr. Miklosich (Vindobonae, 1862-65).

Lipshits, E. E. *Zakonodatel'stvo i iurisprudentsiia v Vizantii v IX-XI vv.* (Leningrad, 1984).

Lipshits, E. E. *Pravo i sud v Vizantii v IV-VIII vv.* (Leningrad 1976).

Lokin, J. H. A., "The Significance of Law and Legislation in the Law Books of the Ninth to Eleventh Centuries" In: *Law and Society in Byzantium Ninth-Twelfth Centuries*, eds. A. E. Laiou and D. Simon (Washington, D.C., 1994): 71-91.

Luppov, S. P. *Kniga v Rossii v pervoi chetverti XVIII (vosemnadtsatogo) veka* (Leningrad, 1973).

Luppov, S. P. *Kniga v Rossii v XVII (semnadtsatom) veke* (Leningrad, 1970).

Lur'e, Ia. S. *Ideologicheskaia bor'ba v russkoi publitsistike kontsa XV nachala XVI veka* (Moscow-Leningrad, 1960).

Macrides, R. "Perception of the Past in the Twelfth Century Canonists", *Byzantium in the Twelfth Century* 3 (1991): 589-599 [Society of Byzantine and Post-Byzantine Studies, Athens].

Macrides, R., "The Competent Court" In: *Law and Society in Byzantium: Ninth -Twelfth Centuries*, ed. A. E. Laiou & D. Simon (Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1994): 117-129.

Macrides, R. "Nomos and Kanon on Paper and in Court" In: *Church and People in Byzantium: Society for the Promotion of Byzantine Studies : twentieth Spring Symposium of Byzantine Studies, Manchester, 1986*, ed. Rosemary Morris (Birmingham, England: Centre for Byzantine, Ottoman and Modern Greek Studies, University of Birmingham, 1990).

Magdalino, P. "Aspects of Twelfth Century Byzantine Kaiserkritik", *Speculum* 58 (1983): 326-346.

Makarii (Bulgakov), Metropolitan of Moscow, *Istoriia russkoi tserkvi* (1866-1874, reprint: Moscow: Spaso-Preobrazhenskogo Valaamskogo monastyria, 1994-1997).

Mann, H. *Lives of the Popes in the Middles Ages* (London, 1925).

Marese, M. L. "The Enigma of Married Women's Control of Property in Eighteenth Century Russia", *Russian Review* 58 (1999): 380-395.

Mariott, G. L. "The Messalians and the Discovery of their Ascetic Book", *Harvard Theological Review* 19 (1926): 191-198.

*Marriage Bargain: Women and Dowries in European History*, ed. Marion A. Kaplan (New York, 1985).

Martin, J. *Medieval Russia, 980 -1584* (Cambridge, 1995).

McGeehan, M. B. "The Problem of Secularization in Sixteenth-Century Muscovy" in *The Council of 1503: Source Studies and Questions of Ecclesiastical Landowning in Sixteenth Century Muscovy*, ed. E. L. Keenan and D. G. Ostrowski (Cambridge, MA, 1977): 165-180.

Meyendorff, Paul, "The Liturgical Reforms of Peter Moghila: A New Look", *St Vladimir's Theological Quarterly* 29:2 (1985):101-114.

Meyendorff, John, *Byzantium and the Rise of Russia* (Cambridge 1981).

Morris, R. "Monastic Exemptions in Tenth and Eleventh Century Byzantium", In: *Property and Power in the Early Middle Ages*, eds. W. Davies and P. Fouracre (Cambridge, 1995): 200-220.

Mysovskii, K. "Drevnee russkoe tserkovnoe pravo v sviazi s pravom vizantiiskim", *Pravoslavnyi sobesednik* (1862), pt. 3: 3-31.

Nevolin, K. A. *Istoriia rossiiskikh grazhdanskikh zakonov* (St. Peterburg, 1851).

Nikolin, A. *Tserkov i gosudarstvo: istoriia pravovykh otnoshenii* (Moscow: Izdanie Sretenskogo monastyria, 1997).

Novoselskii, A. A. *Issledovaniia po istorii epokha feodalizma* (Moscow, 1994).

Obolenski, Dimitri, "Russia's Byzantine Heritage," *Oxford Slavonic Papers* 1 (1950): 37-63.

*Oxford Dictionary of Byzantium*, editor-in-chief A. P. Kazhdan, 3 Vols. (Oxford, 1991).

Palmer, W. *The Patriarch and the Tsar*, 6 Vols. (London, 1871-1876)

Pavlov, A. S. *Fasciculus anecdotorum byzantinorum precipue ad jus canonicum spectantium*, (Sbornik neizdannykh pamiatnikov vizantiiskago tserkovnago prava) (St Petersburg, 1898).

Pavlov, A. S. *Istoricheskii ocherk o sekuliarizatsii tserkovnykh zemel' v Rossii* (Odessa, 1871).

Pavlov, A. S. *Pervonachal'nyi slaviano-russkii nomokanon* (Kazan, 1869).

Pavlov, A. S. "Podlozhnaia darstvennaia gramota Konstantina Velikago pape Sil'vestru v polnom grecheskom i slavianskom perevode", *Vizantiiskii vremennik* 3 (1896): 18-82.

Pavlov, A. S. "Komu prinadlezhat kanonicheskie otvety, avtorom kotorykh schitalsia Ioann Episkop Kirskii (XIII veka)", *Vizantiiskii vremennik* 1 (1894): 493-502.

Pavlov, A. S. *Kurs tserkovnogo prava*, in Goetz, *Pamiatniki*, pp. 40-53.

Pavlov-Silvanskii, N. P. *Feodalizm v drevnei Rusi* (Moscow, 1923).

Pavlov, A. S., "Mogut li nezakonnorozhdennye byt' postavliaemy na sviashchenno-sluzhitel'skie stepeni", *Tserkovnye vedomosti* 2 (1889): 226-229.

Pavlov-Sil'vanski, N. "Immunitet' v udel'noi rusi", *Zhurnal ministerstva narodnago prosveshcheniia*, 332 (Dec. 1900), 318-365, also published as a single volume (St. Petersburg, 1900).

Popov, A. *Opisanie rukopisei i katalog knig tserkovnoi pečati v biblioteke A. I. Khudova* (Moscow, 1872).

*Pravoslavnyi bogoslovskii entsiklopedicheskii slovar'*. 2 Tom. P.P. Soikina. (St. Petersburg, 1913; reprinted Moscow, 1992).

Priselkov, M. D. *Ocherki po tserkovno-politicheskoi istorii kievskoi Rusi X-XII vv.* (St. Petersburg, 1913).

Pushkareva, N. L. *Women in Russian History from the Tenth to Twentieth Centuries*, trans. and ed. Eve Levin, (NY, 1997).

Pushkareva, N. L. *Zhenshchiny Rossii i Evropy na poroge novogo vremeni* (Moscow, 1996).

Pushkareva, N. L. *Zhenshchiny drevnei Rusi* (Moscow, 1989).

Quasten, J. *Patrology*, Vol. 3. (Utrecht, 1960).

Rosenwein, B. H. *Negotiating Space: Power, Restraint, and Privileges of Immunity in Early Medieval Europe* (NY, 1999).

Rozenkamp, G. A. *Obozrenie Kormchei knigi v istoricheskom vide* (Moscow, 1829; second edition, St. Petersburg, 1839).

*Russkie knigi i biblioteki v XVI-pervoi polovine XIX veka: sbornik nauchnykh trudov*, eds. G.V. Bakhareva and S. P. Luppov (Leningrad, 1983).

Schiller, A. *Roman Law, Mechanisms of Development* (The Hague, 1978)

Schminck, A. *Studien zu middlebyzantinischen Rechtsbüchern* (Frankfurt am Main, 1986).

Senyk, S. *History of the Church in Ukraine. Vol. I, To the End of the 13th Century* (Rome: Pontifical Oriental Institute, 1993) [Orientalia Christiana Analecta, 243].

Sergeevich, V. I. *Leksii i izsledovaniia po drevnei istorii russkago prava* (St. Petersburg, 1883; 4th ed. 1910).

Shchapov, Ia. N. *Kniazheskie ustavy i tserkov' v drevnei Rusi* (Moscow, 1972).

Shchapov, Ia. N. "Nekotorye iuridicheskie i kanonicheskie pamiatniki v slavianskoi pis'mennosti XII-XV vekov" in *Metodicheskoe psoboiie po opisaniiu slaviano-russkikh rukopisei dlia svodnogo kataloga rukopisei khranianshchikhsia v SSSR* (Moscow, 1973): 261-273.

Shchapov, Ia. N. "K istorii teksta novgorodskoi sinodal'noi kormchei" In: *Istoriko-Arkheologicheskii Sbornik* (Moscow, 1962).

Shchapov, Ia. N. "Novyi spisok kormchei Efremovskoi redaktsii" In: *Istochniki i istoriografiia slavianskogo srednevekov'ia*, ed. S. A. Nikitin (Moscow, 1967): 258-276.

Shchapov, Ia. N. *Vizantiiskoe i iuzhoslavianskoe pravovoe nasledie na Rusi v XI-XIII vv.* (Moscow, 1978).

Shchapov, Ia. N. "Retseptsiiia sbornikov vizantiiskogo prava v srednevekovykh balkanskikh gosudarstvakh", *Vizantiiskii vremenik* 37 (1976): 123-129.

Shchapov, Ia. N. *Gosudarstvo i tserkov v drevnei Rusi X-XIII vv.* (Moscow, 1989).

Shchapov, Ia. N. "O sostave drevneslavianskoi Kormchei Efremovskoi redaktsii" in *Istochniki i istoriografiia slavianskogo srednevekov'ia*, ed. S. A. Nikitin (Moscow, 1967): 207-215.

Shevchenko, I. "A Neglected Byzantine Source of Muscovite Political Ideology" *Havard Slavic Studies* 2 (1954): 141-180, reprinted in: *Byzantium and the Slavs in Letters and Culture* (Cambridge, Mass, 1991): 49-87.

Shtamm, S. I. "Sovietskie iuristy-uchenye i pedagogi (S. V. Iushkov, 1888-1952 gg.)", *Sovietskoe gosudarstvo* 4 (1979): 114-121.

Simon, D. "Legislation as both World Order and Legal Order", In: *Law and Society in Byzantium Ninth-Twelfth Centuries*, eds. A. E. Laiou and D. Simon (Washington, DC, 1994): 1-25.

Skrynnikov, R. G. "Ecclesiastical Thought in Russia and the Church Councils of 1503 and 1504", *Oxford Slavonic Papers* 25 (1992): 34-60.

- Skrynnikov, R. G. *Gosudarstvo i tserkov' na Rusi XV-XVI vv.* (Moscow, 1991).
- Smirnov, I. I. *Ocherki politicheskoi istorii russkogo gosudarstva 30-50x godov XVI veka* (Moscow-Leningrad, 1958).
- Smolitsch, I. "Das Kirchenrecht in der Russischen Orthodoxen Kirche" In: *Die Russische Orthodoxe Kirche in Lehre und Leben*, ed. R. Stupperich (Witten, 1966).
- Soulis, G. C. *The Serbs and Byzantium During the Reign of Tsar Stephan Dushan (1331-1355) and his Successors* (Dumbarton Oaks Library and Collections: Washington, D.C., 1984).
- Sreznevskii, I. I. *Obozrenie drevnikh russkikh spiskov Kormchei knigi* (St. Petersburg, 1897).
- Stolte, B. H. "The Digest Summa of the Anonymous and the Collectio Tripartita", *Subseciva Groningana* 2 (1985): 47-58.
- Suvorov, N. S. *Sledy zapadno-katolicheskago tserkovnago prava v pamiatniki drevnago russkago prava* (Iaroslavl', 1888).
- Suvorov, N. S. *O tserkovnom sudoustroistve v drevni Rossii* (St. Petersburg, 1874).
- Suvorov, N. S. *Kurs tserknogo prava*, Vol. I (Iaroslavl', 1889-1890).
- Suxomlinov, M. *Issledovannia stat'i po russkoi literature i prosveshcheniiu* (St. Petersburg, 1889; reprinted, The Hague, 1970).
- Thomson, F. J. "The Nature of the Reception of the Christian Byzantine Culture in Russia in the Tenth to Thirteenth Centuries and its Implications for Russian Culture", *Slavica Gandensia* [State University of Ghent, Dept. of Slavonic Philology] 5 (1978):107-139.
- Thomson, F. J. *The Reception of Byzantine Culture in Medieval Russia* (Aldershot, 1999).
- Thomson, F. J. "The Corpus of Slavonic Translations Available in Muscovy", In: *Christianity and the Eastern Slavs I: Slavic Cultures in the Middle Ages*, ed. B. Gasparov & O. Raevsky-Hughes (California: California Slavic Studies 16, 1993):179-214.
- Tikhomirov, M. *Issledovannie o Russkoi Pravde* (Moscow, Leningrad, 1941).
- Tiktin, N. I. *Vizantiiskoe pravo, kak istochnik ulozheniia 1648 goda i novoukaznykh statei* (Odessa, 1898).
- Treggiari, S. *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford, 1991).

Troicki, S. V. "Kako treba izdati svetosavsku Krmchiju (Nomokanon sa tumachenjima)", *Spomenik* (102) Srpska akademija nauka. Odeljenje drustvenih nauka; nova serija 4 (Belgrad, 1952).

Tsy-pin, V. A. *Tserkovnoe pravo* (Moscow, 1996).

Turchaninov, N. *O soborakh byvshikh v Rossii so vremeni vvedeniia v nei Khristianstva do tsarstvovaniia Ianno IV Vasil'evicha* (St. Petersburg, 1829).

van Bochove, T. E. *To Date and Not to Date: on the date and status of Byzantine law books* (Groningen: E. Forsten, 1996).

Veselovskii, S. B. *Feodal'noe zemlevladienie v serevo-vostochnoi Rusi*, I (Moscow, Leningrad, 1953).

Vladimirskii-Budanov, M. F. *Obzor istorii russkago prava* (6th ed., St. Petersburg, 1909).

Vostokov, A. K. *Opisanie russkikh i slovenskikh rukopisei Rumiantsevskago Muzeuma* (St. Petersburg, 1842).

Weickhard, G. "Legal Rights of Women in Russia, 1100-1750", *Slavic Review* 55 (1996):1-23.

Weickhardt, G. "The Pre-Petrine Law of Property", *Slavic Review* 52 (1993): 663-679.

Zachariae von Lingenthal, K. E. "Die griechischen Nomokanones", *Mémoires de l'Académie Impériale des Sciences de St.-Pétersbourg*. VIIe série, 23 no. 7 (St. Petersburg, 1877).

Zachariae von Lingenthal, K. E. "Über den Verfasser und die Quellen des (Pseudo-Photianischen) Nomokanon in XIV Titeln", *Mémoires de l'Académie Impériale des Sciences de St. Pétersbourg*, VIIe série, 23, no. 16 (St. Petersburg, 1885).

Zagoskin, N. P. *Istoriia prava moskovskago gosudarstva*, 2 Vols. (Kazan, 1877-1879).

Zaorserskii, N. *Istoricheskoe oboznenie istochnikov prava pravoslavnoi tserkvi* (Moscow, 1891).

Zernova, A. S. *Knigi kirillovskoi pečati, izdannye v Moskve v XVI-XVII vekakh: svodnyi katalog* (Moscow, 1958).

Zhmakin, V. I. *Mitropolit Daniil i ego sochineniia* (Moscow, 1881).

Zhurova, L. I. "Rumiantsevskoe sobranie sochinenii Maksima Greka (K voprosu o sootnoshenii sobranii sochinenii Maksima Greka)" in *Trudy otdela drevnerusskoi literatury* 50 (1999): 474-478.

Zhuzhek, I. P., S.J. *Kormchaia Kniga: Studies on the Chief Code of Russian Canon Law* (Rome, 1964) [Orientalia Christiana Analecta 168].

Zimin, A. A. "Ustavnaia gramota kniazia Vsevoloda Mstislavicha" In: *Akademiku Borisu Dmitrievichu Grekovu ko dnu semidesiatiletaia : sbornik statei*, eds., V. P. Volgin, et al. (Moscow: Akademii nauk SSSR, 1952).