RUSSIAN CIVIL LAW.

THE FORMATIVE PERIOD.

PART I.

The earliest accessible historical data indicate that of the great Aryan hordes which overran Europe there were laggards who, in small groups, separated from the great conquering body and in time became united into large tribes north of the Balkans. In course of time there were migrations which scattered them from the Black Sea to the Baltic. That their dispersion began in the neighborhood of the Carpathian Mountains is well established by Greek and Arabian manuscripts, and that they departed in sections is attested by the contents of many earthen "tumuli," or princely tombs, which have for the past fifty years occupied the attention of celebrated archæologists. They became masters of the great unknown countries stretching northward and westward just beyond the outposts of Greek civilization, which, so early as the fourth century B.C., had become established in an irregular line along the northern shore of the Black
Sea, near the debouchments of the Danube, Dniester, Dnieper, and the Don. Having absorbed at the south some Tartar elements, they pushed northward and bore before them the ancient Tchudes, or Finnish people, who must be considered as the earliest occupiers of Russian territory in both Europe and Asia. The Finns did not retreat as a conquered people, but rather yielded to the superior intelligence and numbers of a masterful race, with which they inevitably, to a large extent, became amalgamated. These dominating tribes all belonged to the great Slavonic ethnological group.

This Slavo-Finno-Tartar race, nomadic though it was in the main, in the early part of the Christian era really had practical possession of the country from the Niemen River and Carpathian Mountains on the west to the Ural Mountains and the Volga River on the east, and from Lake Ladoga on the north to the shores of the Black and Caspian Seas at the south, except within the limited southern strip of the Greek colonies. This does not mean that the several bodies were in accord or even friendly, but that they were distinguishable as having a common origin. Nor is it intended to say that other races were not to be found in parts of that area, for, indeed, the Finns were strong in the vicinity of the Baltic; the non-Aryan Caucasians were a recognized unit, as they remain to this day, and the Turanian races were in no inconsiderable number to the east and southeast.

All the peoples of this part of the unexplored world were known to the early Greeks by the name of Scythians, although different names were applied to the various groups or tribes. Some Russian writers, notably Samokvasov and Koulich, claim that all Scythians were really Slavs, but the weight of authority is against this theory. Herodotus (482–420 B.C.) speaks of them collectively as Scythians, but little was known to him except that some of the groups were stationary and some were not, while he admits varieties of language and tribal institutions sufficient to indicate Finnish and Mongolian mixtures. Among the settled tribes he mentions the Garmats to the south of the Don, and it
is believed that they correspond to the nucleus of the sta-
tionary Aryans, which in time grew into the dominating
Slavs. That the latter spread to the northwest is shown
by the Gothic historian Jornandes (sixth century), who
tells of the concession to cross their territory granted in
495 A.D. by the Slavs to the German Heruli after they had
been defeated by the Lombards in Hungary. The Slavs
had become recognized as a distinct people at this time, as
shown by the works of the Byzantine historian Procopius
(500-565) and of Emperor Mauricius (582-602), wherein
they are spoken of as Sklaboi.

We find the most enlightened tribes were those nearest the
Roman frontier, and doubtless the raids made by the Car-
pathian Slavs into the Balkan peninsula so early as the third
and two succeeding centuries had much to do with their
possessing a higher state of development than more distant
tribes, and likewise may account for their arrogated supre-
macy and domination over the latter.

While the Slavs were spreading to the northwest and
north they underwent changes largely wrought by geo-
ographical and climatic conditions and the consequent varied
productivity of the soil. There were the arid steppes of the
southeast, the fairly productive prairie of the southwest, the
middle, or "black earth" (tchernoziom), zone, where Her-
odotus says the "laboring" Scythians dwelt, and the thick
forest of the north, with its border and recurring areas of
rich soil. The great waterways were also factors in national
development, which has always been closely connected with
the three great rivers—the Volga, reaching towards Asia,
the Dnieper, leading to Byzantium, and the Neva, flowing
to the Baltic.

Considering this diversity of natural conditions and the
additional facts that the Romans on the south, the Teu-
ton or Germanic tribe on the west, and the Norsemen
at the northwest were in frequent conflict, or at least com-
munication, with the Slavonic tribes, it is not surprising
that they manifested some results of that contact. Unfor-
thunately we have but little historical information concern-
ing this developing period, and that is mostly from antago-
nistic sources. It is of great interest because it was the preliminary era the traditions and practical traces of which are discernible in the later cohesive nationality. While intertribal conflicts were frequent and knowledge of them was brought by accidental channels to Byzantium, the Slavs en masse were not seriously considered until the reign of Justinian (527–565), when they began to make raids on the south side of the Danube. They had been known, however, but not as a menace, to the Eastern Empire. Procopius (500–565) says: “From the remotest period the Slavs were known to live in democracies, and they discussed their affairs in popular assemblies” (“Gothica seu Bellum Gothicum”). During the reign of Justinus II (565–578) the Slavs made a bolder sally from their unknown country and attempted to conquer the whole Balkan peninsula (576). While they had to relinquish their conquest after holding its rural portions for five years, they succeeded in convincing the Romans that they were not to be ignored. They became better known, and were justly charged with being the most backward of all the Aryan races. They had not learned the simplest arts. Their boats were tree-trunks hollowed out by fire. They knew nothing of defensive armor, and while they could put thousands of spearmen and bowmen in the field they had little discipline and sought battle in defiles and by ambuscades. They inhabited mud huts and cultivated land to a very limited degree. They knew no king, but lived in village communities governed by the heads of the several families and made war under temporary elected chiefs. Even the Emperor Mauricius (582–602) himself writes of them: “The Slavs like liberty; they cannot bear unlimited rulers and are not easily brought to submission” (“Strategicum,” chapter XI). It is manifest that the barbarians who harassed the Roman Emperors were only a portion of the great people that at this same period had practical control of the country to the very borders of the Baltic, or at least soon appeared in that territory. Indeed, from the fact that the Eastern Empire was unmolested by them for some fifty years after their attack upon the Balkan peninsula just mentioned, it is probable
that a considerable emigration from the Danube basin took place. At any rate, we are able to trace large movements towards the Vistula and the Dnieper. Within the next hundred years (seventh century) the various tribes so far increased as to be distinguished by different names and identified with definite territories. The true Slavs controlled practically all of the western half of what is modern European Russia, including Pomerania, Prussia, and former Poland, although many names distinguished the different groups and marked the degrees of Slavonic purity. The country to the east was held by tribes of Finns, Turanians, and Finno-Tartar mixture. The effect of soil and climate also became more apparent. The pure Slavs near the Baltic settled into fishermen and agricultural people, whose contact with the Teutons, the Finns, and the adventurous Norsemen had combined with the Roman influence of preceding centuries to rid them of their nomadic instinct. Substantial villages appeared in place of temporary huts, and by the beginning of the eighth century the north had become a large centre of population and afforded a considerable market for traffic with other Baltic inhabitants. A settlement on the river Volkhov near Lake Ilmen was considered so much of a city as to merit a name, and was accordingly called Novgorod, a name that in itself proclaims colonization, although some data indicate that it was really established by the Scandinavians before the Slavs appeared. At all events, it emerges into history as a centre of population composed of Slavs, Finns, and Swedes, and as the object of frequent raids by the adventurous Varangian branch of the Norse people of the Baltic waters. Its institutions, both civic and military, also indicated even then a degree of advancement unknown to the Slavo-Finnish tribes to the north, south, and east of it, probably due to sea communication with western Europe. This, however, was not the only city at that time to indicate the passing of the Slavs from a nomadic to a municipal existence. To the south, Kiev came into view on the Dnieper out of an unknown past at about the time when Novgorod first appeared. As the latter bore evidence of Western ideas, so
the former exhibited the Byzantine and Oriental influences and formed a striking contrast with the surrounding Slavo-Turkish tribes. Notwithstanding the changes of tribal units and ethnographical modifications of the people themselves, the mark of common Slavonic origin remained traceable through all the divisions, subdivisions, migrations, absorption of other races, and changes in the manner of their existence which had been going on for centuries.

During all this period up to the ninth century, when Russian history really begins, features of practical government were growing which were never entirely to lose their influence in the subsequent civil and political institutions of the country.

As in all Aryan branches, the earliest unit was the immediate family broadened upon the basis of common ancestry and finally through adherents by adoption becoming the tribe, whose struggle for existence created both the warring proclivities and the nomadic spirit common to them all.

When the distinctly military or foraging life was succeeded by the era of settlement and cultivation, and the purely patriarchal direction no longer sufficed for the order and control of large groups, then regulation of private and tribal matters assumed a more definite form and was marked by greater variety of purpose.

The patriarchal principle of the family is one of the oldest traditions of Russia, but by family is meant that early household community composed of all persons united upon the basis of descent from a common ancestor. The special importance of agnatism has never been obliterated in the peasants' minds. The eldest of the living males was the head and absolute ruler. Upon his death it was not necessarily his own son who became head, but the next eldest, who might be brother or nephew. The incidents of the early household community were: complete subjection of wife to husband and of children to the father, community of goods among all the relatives belonging to the same household, acknowledged superiority of old age and direct descent from the common ancestor, lack of testamentary capacity or custom of descent whereby partition or allotment might en-
sue, refusal to recognize degrees of kin concerning property, elimination of women as units of the family, all of which left indelible traces in Russian land law, and peasantry.

From the biini, or popular ballads, it appears that originally "marriage by capture" prevailed, although by the seventh century many tribes had so modified the form of "capture" that it had become a parental bargain and sale. Of course, during this legendary period the ceremonies varied, all the people being pagans and each tribe having some special deity or form of worship. Later the recognition of the rights of parents to decide upon the marriage became a settled custom among all the tribes, on the ground that the family interest was superior to that of the individual—a theory that is still fundamental in Russia. While the payment of money for the bride became general, there was no dower interest recognized, and no such word seems to have been known prior to the fifteenth century. By the early Russian word veno, used to designate the marriage payment, is clearly meant merely the pretium nuptialis, or payment to the bride's family by the bridegroom. Tacitus uses the word dos to convey the same meaning in referring to the Germanic people.

Divorce was recognized as a right resting upon the husband's initiative, but the wife had to agree. The reasons were not inquired into if both parties declared their intention before the general assembly of the tribe (folkmote).

While these customs had developed to some degree during the migratory period, they became more definite when the Slavs began to look to the soil for subsistence and became a practically settled, though scattered, people. Then measures were adopted of a political nature but always of local application, indicating the dominant spirit of independence. The families of a particular locality became one enlarged family, called a mir (township or commune), which was ruled by the heads or "elders" of all the families, who assembled as a council, called a veche. The townships or communes situated in proximity formed a group called a volost, which was governed by the "elders" of the different communes. The eldest of the "elders" was chief or head of the volost, in some in-
stances because of the recognized hereditary right, in others because he was the most ancient, but generally by election. In case of peril from without several volosts of people speaking the same dialect chose a temporary warrior chief, but never gave him any permanent authority. Within themselves the thought of national unity seems not yet to have had a place. The idea of state government was brought to them by foreigners. These early community elements we know existed because they were subsequently developed and advanced, but more particularly because many distinguished Russian and German scholars have carefully compiled convincing testimony gathered in remote parts of Russia where little change has occurred. Although the vast extent of territory indicates that the people dwelt in widely scattered groups, there is evidence that in many places villages of considerable size existed. Their remains, gorodichiche (from gorod, town or city), have been found in great numbers in the form of circular earthworks. In the province of Tchernigov alone one hundred and sixty were found. In one recently opened some Oriental coins were found corresponding with the year 699, or two centuries before the marauding Varangians came into the country. It is believed that there was at least one central village in each volost.

"Ownership of land by community without, and complete communism within the family, were the fundamental elements in the structure of the village at the dawn of Russian history," says Mr. Isaac A. Hourwich in his very able and exhaustive article on "The Economics of the Russian Village" ("Studies in History, Economics, and Public Law," Columbia College, Vol. II, p. 1, 1892).

Besides these villages of the volosts it is certain that Novgorod and Kiev early became not only large commercial centres, but by traffic with foreigners became more advanced and spread their definite organized government to smaller cities founded as colonies or dependencies. Especially was this so in the north around Novgorod. There can be no doubt that this city was a republic and was governed practically on the same theory as the mir and the volost, with variations to suit a municipality with commercial life and cosmopolitan char-
acteristics. Notwithstanding that Nestor (1056–1114), the Father of Russian history, wrote much that seems only an echo of the Scandinavian sagas and the Russian bilini, still his "Chronicle" has in many respects been corroborated by subsequent archaeological discoveries. He says that the Novgorodians had been harassed by tribal contentions in the country to the north, the south, and the east, and by piratical incursions from across the Baltic. To end it all they said: "Let us seek a Prince who will govern and speak to us according to justice." Then Nestor says that Novgorod and its colonies and adjacent tribes declared to the Varangian princes: "Our country is large and everything is here in abundance, but order and justice are lacking—come and take possession and govern us."

Whether we take the theory that the Varangians were of Scandinavian origin, that they were Slavs who had founded colonies in the Scandinavian regions, or that they were merely expatriated Slavs, Scandinavians, and adventurers of other nations, each one of which theories has much evidence to support it, matters little. Their advent in the year 862 is certainly important as marking the beginning of Russian entity and name. ("De Origine Russorum," Theophilus Siegfried Bayer, 1694–1738.)

Whether by invitation or by conquest these Scandinavians did come into not only the northern centre of Slavonic influence at Novgorod, but also to the southern centre at Kiev. The Varangian Rurik, who had hearkened to the Novgorodian call, backed by his sturdy followers (862–879), proved sagacious enough to secure the adherence of all the northern people and fix the first Russian capital at Novgorod and also to found a dynasty which his immediate successor, Oleg (879–913), as regent for Igor (879–945), was powerful enough to impose on the south and hold by removing the capital to Kiev in 882. These foreigners came among the Slavs as a bettering and a cementing element. During the centuries in which the Carpathian tribes were enlarging into a great people, spreading in spots from the Saxon forests to the Ural Mountains and from the Black Sea to the Arctic Circle, different portions of the mass were subjected to influences that
had much to do with a rate of progress that was not only unequal, but strongly tended to segregation of important parts of the great mass. To the south they had met the Roman legions so early as 527, during the reign of Justinian, and for fifty years thereafter were the terror of Constantinople, ever keeping in warring or commercial communication with the Eastern Roman Empire. They also undoubtedly met with the Christian religion, and must have learned even of the schisms of the early church. The followers of Nestorius, a Syrian bishop who was made Patriarch of Constantinople in 428 and subsequently taught the Monophysite heresy, were said to have been found in Tartary, China, and India in the fifth century. It is clear from "De Thematibus," by the Emperor Constantine Porphyrogenitus (905-959), that the nearer Slavs were not beyond its influence, notwithstanding they still adhered to their pagan worship. The Baltic territory likewise must have heard of Christianity very early, considering its communication with the western parts of Europe. The probability is the greater when it is considered that the early Slavonic settlements extended along almost the entire southern coast of the Baltic Sea, that a Slavonic town once occupied the present site of the city of Lübeck, and that the whole territory between the Oder and the Vistula was strongly Slavonic prior to the advent of Rurik. All of that country was within reach of the branches of the great commercial path which the Lombards, the Saxons, and the Danes kept open between the Mediterranean and the eastern Baltic Sea centuries prior to the formation of the Hanseatic League.

It will thus be noted that the northern Russians probably got their first impressions of Christianity from the Roman branch of the church, and that those of the south first met with its teachings through the Eastern or Greek Church. Indeed, just at about the time when the Norse dynasty was establishing its control over western Russia the great schismatic controversy had reached an acute stage. The great quarrel between the Patriarch Photius and the Pope Nicholas I, which laid the foundation for the separation two centuries later, took place in 867. It was shortly after this that Oleg
removed his Russian capital to Kiev and assumed the control of the powerful, but hitherto independent, tribal chiefs or princes and their people, completing the work begun by Rurik at the north. Nestor says that even before this event the Kievan had sent ambassadors to Michael III (842–867) at Constantinople to request baptism in the Christian faith, and that consequently Christianity was introduced into Russia in 865. This is supported by the careful Karamzin in his "History of Russia." The true Slavonic apostles, however, were the brothers Cyril and Methodius, who in 848 were sent by the Byzantine Empress Theodora first to the Khazars of the Crimea, who had requested a teacher of Christianity, and afterwards went by request to Moravia, Bulgaria, Servia, Pannonia, and Bohemia. Their use of the vulgar tongue at mass was approved by Pope Adrian II. They translated the Gospels into old or church Slavonic, their work being the oldest literary monument of that tongue. Indeed, it was the first-named brother who invented the Cyrillic alphabet, which is still used by the Greek Church Servians and in a modified form by the modern Russians. The Russians, however, were still pagans, however tolerant they were of Christian teachers among them, and were bent on material rather than religious advancement.

Oleg’s methods of rewarding his chief followers with grants of land marked the beginning of the Russian feudal system, which became later more inhuman than it ever was in central and western Europe. He likewise established a military profession, which the Slavs had permitted to become merely an occasional pursuit for preserving tribal independence.

This Norse war spirit required an object, and in the fact that Constantinople became marked for conquest one is impressed with the evolution of the weakly constituted Slav tribes into the strongly united and numerous Russian people. At this time the true glory of the great Roman Empire had faded into history. The Western Empire had become a mere fiction, and its modified title of Holy Roman Empire was already a landless imperial name for whose possession the Germanic princes were struggling, intermittently
thwarted or assisted by the Roman Pontiffs. The Eastern Empire had become recognized by the title of "Byzantine" instead of the honored "Roman," and revered less the ancient warring eagles than the civil emblem of star and crescent, which, by a strange irony, the later Moslems adopted and still retain. After Justinian no ruler could claim Latin as his native tongue, and as that language became strange so did the great laws of that Emperor become obsolete or forgotten under utilitarian modifications. Even the Christian religion, whose final conquest of paganism was completed when Justinian closed the Philosphic Schools of Athens in 528, had become artificial and schismatic by the iconoclastic movement and contact with the rising Mohammedanism. Effete Orientalism had laid hold upon the phantom of a departed imperial power. Corruption marked the civil institutions, whilst disorder, neglect, and lack of patriotism rendered useless a mercenary army recruited from all parts of the world.

The Empire of the Caliphs was disintegrated, and Europe was still in the midst of the debacle following the death of Charlemagne.

It was so ordered that amid this decay Leo VI, of scholarly inclination, became the head of the Byzantine Empire, but he perceived not the new danger threatening his subjects while he perused his lettered parchments.

Then it was that Oleg, with his sturdy Norse-Slavonians, descended the Dnieper and hung his shield in derision upon the Golden Gate of Constantinople (907). The Greeks were unprepared but artful. The Slavs were overawed by the indicia of material resources, but crafty. Oleg and his eighty thousand followers were content to wrest from the Byzantine Empire "an ignominious treaty and an enormous ransom."

This treaty was oral and stipulated merely the terms of the peace, but a few years afterwards a written treaty of alliance and commerce was entered into between Oleg and Leo VI. We are indebted to Nestor for the preservation of the terms of this earliest document of Russian international law, which is important, not only as such, but also because of
the references it contains to the laws already in force among the Russians. It recognizes the title of Grand Prince as belonging to the successor of Rurik, that his power was founded on his ability to compel the tribes to pay tribute in valuables and men, and also that he was only a prince among the other princes or boyars who rallied under his standards. Further, the amalgamation of Slav and Norse in the Russian appears in the names of the thirteen treaty makers sent by Oleg. Ten are Norman and three Slavonic.

The following excerpts are material to the present inquiry:

Preamble: "We, native born Russians... deputized by the Grand Prince of Russia and by all the illustrious boyars who recognize his authority, to you, Leo,... to express the desire to see good understanding between the Christians and the Russians for many long years, according to the will of our princes and of all the subjects of Oleg. According to the rites of the religion of our country, we have sworn on our arms to maintain a faithful regard hereof.

"Art. 1. In the first place let us be united, O Greeks...

"Art. 2. Every wrong must be proven, and in default of witnesses it is the accused who shall be put on oath and not the accuser.

"Art. 3. If a Russian kill a Christian or a Christian a Russian, the assassin shall suffer death in the same place where the crime has been committed. If the murderer have a domicile and fly from justice, his estate shall go to the next of kin of his victim but without prejudice to the rights of the wife of the murderer, who shall not be deprived of that which the law accords to her...

"Art. 4. He who strikes his equal with a sword or other arm shall be condemned to pay... according to the Russian Law...

"Art. 7. If, among a number of slaves bought, there be, in Greece, some Russian subjects, or in Russia, some Grecian subjects, they must be set at liberty upon receipt of the price paid for them or at least the price current of slaves. As to the Russians who may desire to serve the Greek Sovereign, they shall have the right to remain in Greece if such be their will.
"Art. 8. If a Russian slave escape or if he be kidnapped by one who pretend to be his owner, the true owner shall have the right to seek him and take him wherever found.

"Art. 9. If a Russian subject in Greece die while in the service of the Emperor, without having disposed of his personal property, leaving neither children, brothers, or sisters, his property shall be sent to Russia for his next of kin. If, before dying, he has made a will, the property shall be given to his legatee."

It is also stated in the conclusion that the treaty was written with cinnabar upon two rolls of parchment, "at the end of which the Greek Emperor has fixed his signature." It would seem that the Russians did not sign, which is not surprising in view of their illiteracy, but they took one copy, and after they had sworn by their weapons on the other copy to observe its terms left it with the Greeks.

Nestor says, also, that it was written in Greek, Latin, and Slavonic.

After the death of Oleg, in 913, Igor took control in person, and on a second expedition against Constantinople, after a disastrous first campaign, succeeded in wringing a rich ransom from the Greeks and entered into a new treaty with them (945).

While it is largely confirmatory of Oleg's treaty, some of its terms adumbrate some later Russian civil and political institutions and indicate some progress in Christianity.

"Art. 1. We, Russians, embassadors and merchants, . . . sent by Igor, Grand Prince of Russia, who reigns over all the principalities and the inhabitants of those countries, etc. . . .

"The Russians promise never to break this alliance . . . under penalty, on the part of those who have been baptized, to suffer all the temporal and eternal pains which the Almighty will inflict upon them; as to the others, to be deprived of all help, to be unable to protect themselves by their shields, to be pierced with their own swords, arrows, and other arms, and finally to be enslaved in this world and the other.
“Art. 2. The Grand Prince of Russia as also his boyars shall be freely permitted to send into Greece their ships, their embassadors, and their merchants.”

The remaining articles refer to matters of criminal law, territorial control along the Black Sea, the fishing industry at the mouth of the Dnieper, and the formalities of signature and ratification.

Four important facts are especially noticeable: The recognition of the principalities, the voice of the lesser princes in the central government and their absolutism within their own domains, the importance of the commercial class—probably from the powerful and growing cities of Kiev, Novgorod, Tchernigov, Pskov, and Smolensk, and the Christian faith of some of the Russian embassadors.

A French jurisconsult of distinction also emphasizes the following points to be deduced from these treaties:

1. That there already existed a Russian law.

2. That the Russians had already recognized the testamentary right and that wills of Russians residing even in Constantinople should be given effect.

3. That, far from admitting the right of aubaine,—monstrous child of feudalism,—the personal property of every Russian who died in the Greek Empire belonged to the mother-country on default of heirs.” (”Aperçu historique de la législation de l’Empire de Russie,” Victor Foucher, Paris, 1841.)

Aside from the conversion to Christianity of Olga, widow of Igor, manifested by her baptism at Constantinople in 955, just after she had surrendered her regency to her son Sviatoslav, and the latter’s unsuccessful expedition against the Greeks, little occurred to advance the interests of the people at large until the death of Sviatoslav in 972 and the division of the country among his three sons. Jaropolk reigned at Kiev, Oleg in the country of the Drevilians (north and west of Kiev), and Vladimir at Novgorod. The civil wars which followed resulted in Vladimir (972–1015) becoming sole ruler by the assistance of an army of Varangians, to whose country he had fled at the outset of the struggle. He stands in history as one of the great men of the early period. After
several years of unyielding adherence to pagan worship he became a convert to Christianity and the first Russian ruler of that faith. By his marriage in 988 to Anne, sister of Basil II, of Byzantium, he brought that empire and Russia closer than they had ever been and gave definite encouragement to that religious conquest from the south which, with the former military conquest from the north, combined to give the Russians a national identity.

The reign of Vladimir the Great brought radical changes. Compulsory baptism of the people, foundation of schools for young men to study the Scriptures,—translated into the Slavonic language,—the destruction of the pagan idol Perune, and the erection on its former site of the Church of Saint Basil (religious name Vladimir had taken at his baptism) were all potent influences in establishing Christianity, although some centuries passed ere the lower classes ceased worshipping their pagan gods. Our interest in Vladimir arises principally from the foundation he laid for the later development of the state championship of the Orthodox faith. A metropolitan was installed at Kiev under the patriarchate of Constantinople. The special ordonances, or decrees of rights and privileges of the clergy, which followed have been preserved and, indeed, largely remain in force even to this day. Vladimir decreed that his children and descendants to the last generation should not interfere with decisions in ecclesiastical matters, which, according to him, did not come within the authority of either the princes or the boyars, but should be exclusively reserved to the metropolitans and the bishops. Some of the affairs arbitrarily placed within the clerical jurisdiction are as follows: Regulation of marriages, discord between husband and wife, divorce, rape, adultery, polygamy, fasts, profanation of church property, witchcraft, heresies, ill-treatment of parents by their children, poisoning, robberies in churches, acts of indecency in holy places, illegitimate sexual relations, abortion, and controversies concerning weights and measures. ("Etudes historique sur la législation russe," S. G. Zézas, Paris, 1862.)

The clergy as a distinct class was specifically created and
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awarded special personal privileges. Among those enumerated as subject solely to the ecclesiastical jurisdiction were the bishops, monks, nuns, guardians of church property, widows, the poor, the sick, and physicians.

It was also decreed that of the costs and fines in all state civil causes the church should take one-tenth, the sovereign the remainder. To insure honesty in this regard it was provided that no judgment should be rendered without the presence of a metropolitan.

While some Russian historians doubt that Vladimir bestowed all the jurisdiction claimed by the clergy, and charge the latter with using their superior learning to invent much of it, there can be no doubt that at the end of that monarch's reign the first Metropolitan of Russia, Theopempt (1015-1019), was settled at Kiev, that he was a Greek, and that he was familiar with the collection of canonical decrees or Nomocanon of the Patriarch Photius, wherein the Roman law had been moulded into a form tending to broaden the temporal power of the clergy under the Byzantine Emperors. There is likewise abundant authority to show that the works of the first Christian Prince of Bulgaria, Simeon (888-927), had already reached Russia, united as the two countries were geographically and ethnologically. He had been educated at Constantinople and had imbibed Byzantine conceptions of government and religion. He had caused translations into Slavonic of the Eclaga of Leo III (717-740), and had begun a compilation of the Byzantine civil and canonical laws. ("Legatio Liutprandi Episcopi Cremonensis ad Nicephorum Phocam," contained in the collection of Ludovico Antonio Muratori, "Scriptores Rerum Italicarum," Vol. II, Part I). These works produced a judicial literature consisting of translations from the Greek and compilations from Hebrew and Byzantine materials, all of which the Greek clergy carried with them to Russia, where it served for centuries in ecclesiastical and even civil courts, particularly in the former, because the clergy had no guides in the customary laws.

Aside from the foundation of the ecclesiastical jurisdiction Vladimir did little to advance the civil and administrative
side of his government beyond giving new force to the institutions which had developed since the original entrance of the Varangians into the country. Rurik and his successors treated their co-adventurers more as companions in arms than as subjects, and from among them were selected the high official advisers, the military chiefs, and the citizens honored by the sovereigns with important duties in their behalf. To them was reserved the honor of composing the droujina, or personal guard, of the Grand Prince, some of them acting at the same time as his Douma, or Council of State. The droujinniki were the faithful, the devoted men of the Prince. Some were of the blood of Rurik and had princely titles and appanages, but others received as rewards for their fidelity the rank of boyar and control of large territories, but they were subject always to the dominant will of the sovereign as to matters of state and held their fiefs rather at his will than by any hereditary title. He could constitute them a high court of justice, a council of war, or send them individually as voievodes, or governors, of territories, or as possadniki, or lieutenants, to cities. The common people within those respective territories and cities, as well as in domains reserved to the crown direct,—ruled by special governors or lieutenants,—in spite of the state changes retained their democratic mir and veche for administrative and judicial functions, although the will of the sovereign was at times imposed upon the whole body of the people, as illustrated by Vladimir abolishing and afterwards re-establishing the capital penalty for certain crimes. While anciently the Slavonic judicial administration depended alone upon the conscience of the elders and judges appointed by the mir or the volost, guided by the established customs of each particular tribe, when the Varangians appeared they brought the ancient Scandinavian laws, which, becoming amalgamated with native customs, in time produced a composite system resting on the two ancient sources and became effective as a general Slavonic customary law.

Rambaud, in his "Histoire de la Russie," enumerates the classes existing at the close of Vladimir's reign, and cites
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authorities for claiming that the droujina was not only no longer confined to the Varangian descendants, but included many Slavs without reference to their rank, thus giving to that body a grade of nobility dependent upon the will of the sovereign. It had its grades, however,—the boyars, or most honored and trusted; the mouges, equivalent to the French baron, and the gridi, or simple imperial guards. The active military class, of which the droujina formed the staff, was likewise open to men of the sword generally. It appears that each boyar also maintained his own droujina, composed of the principal men among the number he was bound to bring to the support of the Grand Prince.

There was next a class of freemen (lieudi), who might be merchants, civil functionaries, or soldiers.

The rural masses, who were already beginning to bear the weight of the growing Russian state by reason of their subjection to the absolute power of the prince or some baron who had been favored by a grant from the Grand Prince, no longer enjoyed the primitive liberty which marked the tribal institution. The countryman or small landholder was called smerd (from smerdet, to have a bad smell) or mou-gak, a contemptuous diminutive of mouge, or baron.

There was still a lower class,—the slaves,—called rabi or kholopi. Slavery resulted from purchase, insolvency, birth during slavery of the parents, but principally from capture in war. The Byzantine influence is especially noticeable in the insolvent slavery. We read even in the Twelve Tables: “Ni judicatum facit, aut quips endo em jurex vindicit secum ducito; vincito, aut nervo, aut compedibus quindecim pondo ne majore aut si volet minore vincito.”

At the time of Vladimir the early Slavonic purely patriarchal household had become subservient to the village community, which possessed definite territorial limits wherein the several households as copartners in the enjoyment of an undivided property became answerable as a unit to the lord paramount for tribute and for crimes and misdemeanors. Each household community had its own land in common among its own members, but represented a unit in the larger body of owners in common as to arable lands and forests
within the limits of the village community. This system, however, varied in administrative details in different parts of Russia, owing largely to the fact that the peasants were no longer free owners of the soil, but had only the right of possession subject to the restrictions emanating from the princely owner of the territory or his baron holding the fief.

These features were but mile-stones along the road of Aryan traditions. Sir Henry Maine, in his "Village Communities," shows that similar institutions have existed in all Aryan nations from the plains of the Punjab to Ireland. Professor Kovalevsky, in his "Modern Customs and Ancient Laws of Russia," says: "Village communities represent a distinct period in the social development of mankind, a period which ought to be placed between the patriarchal and the feudal periods." This is likewise supported by Maurer in his "Mark, Hof und Dorf Verfassung."

It must, further, not be overlooked that the ancient veche, or folk-mote, of the Slavs had lost much of its power at the close of Vladimir's reign. While never absolutely a representative assembly of the whole people, and rarely embracing more than tribal or village chief householders, it was nevertheless a distinct institution throughout Slavonic territory when the Varangians appeared. Indeed, they came at the call of a folk-mote composed of the chief people of Novgorod and the surrounding country. While as a national institution it had become less important, it was still in vogue under varying and limited conditions according to territory, preserving all its peculiar ancient traits as a sort of popular assembly, particularly that which required unanimity of decision. Dithmar of Merseburg, in his "Chronicle," speaking of the early Slavonic folk-motes, says: "Unanimi consilio ad placituni suimet necessaria discutiientes in rebus efficiendis omnes concordant."

It would seem that while Vladimir and his predecessors had no need for popular assemblies in national affairs, they permitted, by indifference, the ancient Slavonic democratic principle to be kept alive among the lower classes, content to let them conduct their own local affairs provided tribute were forthcoming in food, money, and men. Thus way was
made for the later *Sobors* and other assemblies partaking of popular representation intermittently present in Russian history.

Indeed, a new conception of statehood was gradually spreading by reason of the progress of Christianity and the political instruction of the Greek priests, who alone represented the advanced intelligence of the age. They carried into Russia the idea of a united empire, ruled by an unfettered monarch, supported by a permanent army, a hierarchy of officials, a national clergy, and a body of jurisconsults dominated by the priesthood, an idea so unknown to both Slav and Varangian that time alone could accomplish its full acceptance by the Russian people. (Rambaud, "*Histoire de la Russie*.")

It was this condition of affairs that the son of Vladimir found after he had thwarted his father's last wishes by vanquishing his brothers, and from Prince of Novgorod became the ruler of the whole country as Yaroslav the Great (1016–1054). His reign marks what may be termed the second period in Russian barbarian history. He arranged marriages between his daughters and the Kings of France, Norway, and Hungary, and between his son and a daughter of the Byzantine Emperor. He offered asylum to proscribed princes of England, Sweden, and other countries. Kiev under his sway maintained and increased its importance as a great trade depot, where the merchants of Holland, Scandinavia, Germany, and Hungary met *en route* between the Baltic and the Black Seas. It was the object of embellishments rivalling those of Constantinople, even to the extent of having a Cathedral of Saint Sophia, a Golden Gate, and a monastery of Saint Irene. Yaroslav secured artists, scholars, and workmen from other countries and especially from Greece, and founded a school at Novgorod similar to the one his father had founded at Kiev. Under him it can truthfully be said that Russia was more a European state than it ever became during any part of the six centuries after him.

The reign of Yaroslav is especially notable in Russian history by reason of his efforts towards systematic and definite
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legislation, for which he received the title of "the legislator." His activity in this sphere, however, seems to have originated from circumstances rather than from any contemplated initiative on his part. Amid the disturbances following the death of his father, who had given him Novgorod, the citizens of that city, long accustomed to and jealous of their self-governing municipal assemblies, resented his assumption of autocratic authority. While this dispute was in progress the fratricidal conflict among the sons of Vladimir jeopardized Yaroslav personally and also Novgorod, his inheritance. Then it was that his people laid aside their grievances and rallied to his standard. In return they received from him the famous Russkaia Pravda, at once both a charter of political rights and a code of private law (1018). The subsequent successful subjugation of the Russian principalities or appanages enabled him to extend its provisions accordingly. Thus this first Code, considered by later jurists as a lex barborarum, took its place as the first judicial monument of the Russian people. There is no doubt that it was accepted as a collection of the general laws applicable to the entire nation. This is confirmed by the modifications to which it was later subjected by the sons of Yaroslav in their several cities and principalities. The ancient Slavonic text of the original code and even its name were lost for several centuries, until the Russian Privy Councillor Vassili Tatitzez, in 1738, discovered it rolled in a manuscript of Nestor preserved in the library of the Academy of Sciences at Saint Petersburg. Sigel, in his "Lectures on Slavonic Law" (delivered at Oxford, 1900), expresses the belief that the Pravda as now known is composed of the original work of Yaroslav and supplemental legislation of his sons and successors up to the thirteenth century, but he seems unable to mark the sections belonging to the different periods. However this may be, the work as it has come down to us has many points of interest to the student of Russian law calling for a consideration of its provisions in detail.

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