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XXX

*IUS COMMUNE GRAECO-ROMANUM*  
ESSAYS IN HONOUR OF  
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# BYZANTINE ROMAN LAW STUDIES IN RUSSIA WITHIN THE FRAMEWORK OF POLITICAL IDEOLOGIES

Dmitry POLDNIKOV

Hardly any historical or legal knowledge is possible without ideologies or the 'politics of interpretation'. In the West, 'the politicization of historical thinking was a virtual precondition of its own professionalization, the basis of its promotion to the status of a discipline worthy of being taught in the universities...'<sup>1</sup> This claim of Hayden White seems to be very true for a country which did so much to oppose all Western 'bourgeois' ways. In contrast to the West, social sciences in Russia since 1917 were politicised openly, uniformly and rigidly.

The toll of the official ideology is believed to be weaker on those who study ancient and medieval general history and legal history. The Soviet community of medievalists, which includes Byzantinists, has recently been praised by the Russian academy fellow Pavel Uvarov for its high professional standards and apolitical ethos.<sup>2</sup> Such an assessment provoked a prompt criticism on the part of specialists in modern history, and brought about a critical review by Dmitry Bovykin.<sup>3</sup> Obviously, this academic duel hit a nerve, that of understanding the ideology(ies) of Russian and Soviet legal science, which has been a topic of debates for quite some time.<sup>4</sup>

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<sup>1</sup> See H. WHITE, "The Politics of Historical Interpretation: Discipline and De-Sublimation", *Critical Inquiry* 9, 1 (1982), p. 118. Nikolay KOPOSOV is ready to extend this claim to all social sciences. See N. KOPOSOV "От социальных наук к свободным искусствам" ["From social sciences to liberal arts"], in: N. KOPOSOV, *Хватит убивать кошек! Критика социальных наук [Stop slaughtering cats! Critique of social sciences]*, Moscow, 2005, p. 220-239.

<sup>2</sup> P. UVAROV, *Между 'ежами' и 'лисцами': Заметки об историках [Between hedgehogs and foxes: Some notes about historians]*, Moscow, 2015, p. 63.

<sup>3</sup> D. BOVYKIN, "Обратной дороги может и не быть..." ["There could be no way back..."], *Средние века [Middle ages]* 77, 1-2 (2016), p. 357-370.

<sup>4</sup> For Soviet historical science generally, see N. KOPOSOV, "The Armored Train of Memory: The Politics of History in Post-Soviet Russia", *Perspectives on History* 49 (January 2011), available at <https://www.historians.org/publications-and-directories/perspectives-on-history/january-2011/the-armored-train-of-memory-the-politics-of-history-in-post-soviet-russia>. On the Soviet historical science specifically see: N. KOPOSOV, "Sovjetische Historiographie. Marxismus und Totalitarismus. Zur Analyse der mentalen Grundlagen der Historiographie", *Österreichische Zeitschrift für Geschichtswissenschaften* 2, 1 (1991) (cited after Russian translation in: N. KOPOSOV, *Stop slaughtering cats!*, p. 172-192). For Soviet and post-Soviet legal science Russian (and some other post-USSR republics) jurists hold a series of conferences. To name but few: 'Twelve (annual) Readings on legal philosophy in memoriam of academy fellow V. NERSESYANTS' (since 2005; with the following collected papers);

Against this backdrop, the re-evaluation of Byzantine legal studies in the USSR and its lasting impact on today's Russia has not yet been made. What role did the official ideology play in Soviet Byzantine studies? How did it change the pre-1917 academic tradition? Does it still exercise its influence on contemporary historiography? The reason for addressing these questions is not only the occasion of celebrating Professor Laurent Waelkens' achievements in studying the influence of Byzantine Roman law on Western Europe; it is also the revival of interest in the legal legacy of Byzantium and its pre-Soviet studies in contemporary Russia. Some voices praise this medieval Empire as the first state of law in the world, one that was heavily underestimated in the Soviet historiography due to ideological constraints.

To investigate the ideological matrix of Soviet Byzantine legal studies, I build on Nikolay Kaposov's narrative of a cumulative evolution of historiography.<sup>5</sup> The multiplicity of publications, subjects, and issues is put into the context of the social sciences and reduced to a structure resembling an extended abstract of his or her potential dissertation highlighting the main authors, the presumed relevance and the range of topics, the goals and methods, the primary sources, and the novelty of the results.

## 1. How the Steel of Marxist Byzantine Studies was Tempered

The Russian legal school of Byzantine studies originated in the nineteenth century simultaneously with other leading centres of Byzantine studies in Europe and flourished in the aftermath of the great reforms of Alexander II. Enthusiastic research on various aspects of general history of Byzantium by Vasily Vasilievsky (d. 1899), Nikodim Kondakov (d. 1925), Vasily Bolotov (d. 1900), Fyodor Uspensky (d. 1928) and other 'founding fathers' of a new discipline led to the formation of a close academic community around the journal *Byzantina xponika* (1894 to 1927).<sup>6</sup>

The reason for these studies rested on the perception of Russia as the third Rome, or 'Byzantium after Byzantium'.<sup>7</sup> In the words of Fyodor Uspensky, '... for

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"Hard Issues of Post-Soviet legal theory and philosophy", in [The Collected Papers], Moscow [at Moscow High School of Social and Economic Sciences], 2016, and most recently, the International conference "Our Way to Law: Rethinking the Soviet Legacy" at Moscow, Higher School of Economics, on 12 October 2017.

<sup>5</sup> N. KOPOSOV, *Stop slaughtering cats!*, p. 172-192.

<sup>6</sup> Available at <http://www.vremennik.biz> (last visited 4.12.2017).

<sup>7</sup> The concept of Moscow as the successor of Byzantium was probably authored by the monk Filofey in the Moscow Principality as early as 1524, but its true popularity is due to the Great Eastern Crisis in 1875-1878. See: N. ULYANOV, "The Complex of Filofey", *The new journal* 45 (1956), at <http://www.ukrhistory.narod.ru/texts/ulyanov-1.htm> (last visited 3.11.2017); D. OSTROWSKI, "Moscow the Third Rome as Historical Ghost", in: S. T. BROOKS (ed.), *Byzantium: Faith and Power (1261-1557). Perspectives on Late Byzantine Art and Culture*, New Haven, 2006. p. 170-179. The phrase "Byzantium after Byzantium" was coined by Nicolae IORGA in 1935.

... Byzantium is not an archaeological site or an abstract concept but the real object which is very relevant for understanding our own history. Our age-old relations with Byzantium left many deep imprints in people's consciousness and shaped the organisation of the [Russian] state, as well as marked our ecclesiastical, civil and everyday life.<sup>8</sup>

Following the lead of general historians, legal studies were initiated by the authors who received their language training at schools called gymnasia, along with a solid legal background in the history and dogma of Roman and Orthodox canon law. As a consequence, by 1917 the Russian list of publications on Byzantine legal history included introductory courses on canon and secular law, bibliographical surveys, critical editions of primary sources, as well as investigations into specific topics.<sup>9</sup> A good knowledge of primary sources and modern standards of legal and historical research ensured the academic compatibility of Russian and international Byzantine academic circles. 'From the very beginning Russian scholars were integrated into the international Byzantine studies and kept in touch with European science.'<sup>10</sup>

Byzantine studies in the late Imperial Russia were not entirely impartial. The words of Uspenski (quoted above) are tinted with the 'special relationship' between two Orthodox powers which provided a lasting model of state and church symbiosis, justified Russian pan-Slavic ambitions and cemented its spiritual identity as opposed to the Latin (Catholic) West.<sup>11</sup> Yet, this ideology was balanced with the 'noble dream' of objectivity in historical and legal science shared by academics across the Continent.<sup>12</sup>

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<sup>8</sup> This text was published shortly after 1917 but distilled the motives for Byzantine studies of that time. Cited after: О. ВАРЫНИНА, "Отечественное византиноведение на рубеже эпох: Русско-византийская Комиссия (1918-1930 гг.)" ["National Byzantinistics at the turn of the epoch: Russian-Byzantine commission (1918-1930)"], *Труды Исторического факультета Санкт-Петербургского университета* [Proceedings of the Faculty of History of the Saint-Petersburg University] 4 (2010), p. 180-182.

<sup>9</sup> Including the status and privileges of the Church, canon law of marriage and its influence on the southern Slavs, jurisdiction of canon courts, private property of peasants, general conditions of Byzantine influence on Slavic laws, on nomocanons, on Serbian laws etc. For references see I. РОДОВ and I. СНИЧУРОВ, "Византиноведение в России" ["Byzantinistics in Russia"], in: *Православная энциклопедия* [The Orthodox Encyclopedia], vol. 8, p. 388-401, at [http://www.pravenc.ru/text/158430.html#part\\_15](http://www.pravenc.ru/text/158430.html#part_15) (last visited 5.12.2017).

<sup>10</sup> F. VON LILIENFELD "On the perception of Russian Byzantinistic by German scholars in the end of the 19th – early 20th centuries", in: *Материалы XVIII Международного конгресса византинистов* [Proceedings of the 18th International Congress of Byzantinists], Moscow, 1991, p. 83. For transmission of European legal culture into Russia in the nineteenth century, see: S. DAUCHY, G. MARTYN, A. MUSSON, H. PIHLAJAMÄKI and A. WIJFFELS (eds.), *The Formation and Transmission of Western Legal Culture. 150 Books that Made the Law in the Age of Printing*, Cham, 2016.

<sup>11</sup> A remarkable book on the relation of the West and Russia see: N. DANILEVSKI, *Россия и Европа* [Russia and Europe], St. Petersburg, 1869. For the debate between Slavophiles and Westerners see "Slavophile (Russian history)", at <https://www.britannica.com/topic/Slavophile> (last visited 6.12.2017).

<sup>12</sup> P. NOVICK, *That noble dream. The 'Objectivity Question' and the American Historical Profession*, Cambridge, 1988.

The course of Byzantine studies dramatically changed after the Bolsheviks rose to power in November 1917 and gradually imposed their ideology (Marxism or Marxism-Leninism) as the only creed for all humanities. Against this backdrop, the drama of the Byzantine studies played out in three acts:

- a. Repression of the old and establishment of the new canon in the 1920-30s.
- b. Revival of Soviet Byzantine studies under the aegis of Marxism after 1945.
- c. Their 'professionalisation' since the late 1960s.

#### a. Act one

As the Bolshevik regime withstood the civil war and intervention, it opened the front against the inner enemies including academics and intelligentsia branded as 'bourgeois', 'bourgeois and noble', 'reactionary', 'conservative'. Byzantinists came under suspicion. Some of them emigrated.<sup>13</sup> Those who stayed but persisted in studying Church history, canon law, state-church relationships, were censored and fired from the academic institutions or even imprisoned. The last academic institution on Byzantine studies in Russia (the Russo-Byzantine commission) was dissolved following the deaths of Fyodor Uspensky (d. 1928) and Vasily Regel (d. 1932).

Pre-revolutionary Byzantine studies seemed incompatible with the new canon. The course of history in the new Soviet vision was determined by universal 'laws' (regularities), above all by the means of production and class struggle. This claim was a curious amalgam of the humanistic belief in man's rationality and ability to construct an ideal society with the revolutionary vision of history as a series of violent clashes between the rulers and the oppressed.<sup>14</sup> This vision of history allocated quite a modest role to law as a tool of governance of the powers that be. In the 1930s, the relevant narrow normative definition of law – a system of the rules of conduct created and sanctioned by the state in the interest of the ruling class – was soon coined by the prominent Soviet jurist and Procurator General of the USSR Andrey Vyshinsky (d. 1954) to strengthen the governance with the principle of 'revolutionary legalism'.<sup>15</sup> The development of this 'only correct line' led to the emergence of the legal science marked by Marxism, sociological approach and concepts, extreme dogmatism, reference to the authorities as the ultimate argument and self-sufficiency (isolationism).<sup>16</sup>

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<sup>13</sup> George OSTROGORSKY and Alexander SOLOVIEV moved to Serbia, Dimitri OBOLENSKY to England, Alexander VASILIEV to the USA, Nikodim KONDAKOV to Czechoslovakia.

<sup>14</sup> N. BERDYAEV, *Истоки и смысл русского коммунизма* [*Origins and meaning of Russian Communism*], Moscow, 1990 (first published in English in 1937), p. 80-84.

<sup>15</sup> A. VYSHINSKY, *Революционная законность и задачи советской защиты* [*Revolutionary legalism and the tasks of Soviet advocates*], Moscow, 1934. The politicians of the 1930s reasoned that the state and law were indispensable as the class struggle was expected to exacerbate on the way to communism.

<sup>16</sup> A. IVANOV, "Советская юридическая наука: путь к праву" ["Soviet legal science: a path to law"], in: *International conference 'Our Way to Law: Rethinking the Soviet Legacy'*, at Moscow, Higher School of Economics, 12 October 2017.



The 'let's make a clean slate of the past' approach (to quote from *L'Internationale*) meant the death sentence to the pre-revolutionary Byzantine studies which invoked too many religious, national (or pan-Slavic) and other marginal connotations. As the deputy minister of education of the Soviet Russia in 1918-1932 Mikhail Pokrovsky used to say, 'in our science a non-Marxist scholar is not worth a button'.<sup>17</sup> The rebuilt discipline was supposed to be oriented towards the material, international and western-European 'highway' of history of class struggle taught by the graduates of the Institute of the revolutionary professorship<sup>18</sup>, the Institute of Soviet formation (the new name of some law faculties) and their pupils.

## b. Act two

Marxist canon was applied to the teaching and studying of foreign legal history shortly after World War II when the USSR was preparing for its role as the superpower of the emerging Socialist block. The revival of Byzantine studies coincided with the consolidation of Soviet influence in Eastern and Southern Europe and could be intended as a kind of historical justification for the political unity of this region.

However, the 'slate' of legal academia was cleaned too well. In the first and, probably, best post-WWII textbook for law students 'The Universal History of State and Law' (in four parts, Moscow, 1944-1947) a 10-page long overview of Byzantine law up to the tenth century by Joseph Martysevich (a specialist in feudal land property in Moscovia in the sixteenth and seventeenth centuries) was quite basic: secular legislation, civil law (property relations, serfdom, spread feudal property-*pronia*), law of obligations (simplified and equated with the *Corpus Juris Civilis*), family law (mentioning divorce *cum damno* and *sine damno* (?)), inheritance, criminal law (branded as 'openly class-oriented'), and legal procedure (evolved towards inquisition due to the class struggle). All that without precise references to sources ('according to the Byzantine codes'), cultural context, or canon law, and with the emphasis on framing the legal development within the framework of the Marxist canon – progressive transition from slavery-based society to feudalism.<sup>19</sup>

In the following years, Soviet legal historians did next to nothing to investigate Byzantine legal heritage. *Graeca sunt, non leguntur*. Thus, general historians had no rivals in organising Byzantine research and applying the Marxist canon to

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<sup>17</sup> See M. POKROVSKY, *Историческая наука и борьба классов* [Historical Science and Class Struggle], Moscow, 1933, p. 33.

<sup>18</sup> The institute was founded by the Soviet government in 1921 to prepare Bolshevik party insiders and lecturers in the domain of domestic and foreign history and law.

<sup>19</sup> See on Byzantine law, cited after the reprinted edition: *Всеобщая история государства и права* [The universal history of state and law], Moscow, 2011, p. 434-444. Even this openly Marxist textbook as a whole, deserved criticism for 'forgetting the partisan principle of Marxism', for being 'inexcusably' 'objective' and 'apolitical', for 'slavishly copying bourgeois legal concepts'. See Pyotr GALANZA's review in: *Советское государство и право* [Soviet State and Law] 9 (1948), p. 91-98.

it. The series of All-Union conferences of Byzantine studies began in 1945. Academy fellows sponsored the continuation of *Byzantina xponika* (in 1947) and the founding of the department of Byzantine Studies at the Institute of Universal History of the Academy of Sciences (in 1955). Little by little, groups of Soviet Byzantinists were established in Moscow, Leningrad, Sverdlovsk (now Yekaterinburg), Tbilisi, Yerevan. And their leading members were allowed to participate at the international congresses of Byzantine studies.

The development of *pax Byzantina* was incorporated into the Marxist master narrative in the monumental *History of Byzantium* (3 vols., Moscow, Leningrad, 1967): slavery-based social formation in the early Byzantium; feudalism in the middle period, subdivided into the early (fifth to mid-ninth century), and high (mid-ninth to the twelfth century) middle period; and finally, elements of the capitalist mode of production in the late feudal period (thirteenth century to 1453). Priority was given to economic and political history and international relations with the Slavs. Legal issues deserved a special mentioning only in connection with the reforms of Justinian. Thus, Byzantine law was marginalised as secondary to the economy and class struggle.<sup>20</sup>

### c. Act three

Khrushchev's Thaw and the early Brezhnev Era somewhat loosened the iron grip of the official ideology on legal and historical studies. Since the late 1960s one can discern a tendency to establish and follow the 'professional' style of historical studies, a 'more balanced approach' without the revolutionary pathos and clichés of the 1930s and 1940s.<sup>21</sup>

This period saw some debates with the international academic community. Soviet historians began to read certain western literature on social history. Although all public debates ended with the foregone conclusion of the correctness of Marxism, elaborating arguments in support helped, and some advances in Soviet scholarship expanded the field of research. Such was the discovery of legal culture within the new, fourth (cultural) sphere of Soviet social sciences.

The shift is best illustrated with the *opus ultimum* of the Soviet Byzantine studies – *The Byzantine Culture* (Moscow, 1984-1991). Each of its three volumes included chapters on jurisprudence, which was presented as part of the general culture connected with the real needs of society and ultimately, dependent on economic and political trends.<sup>22</sup>

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<sup>20</sup> There was not even a keyword 'law' in the index. Specific legal collections (e.g. *Pira*) are mentioned among other sources on the history of Byzantium. See *History of Byzantium*, vol. 2, Moscow-Leningrad, 1967, p. 106.

<sup>21</sup> N. KOPOSOV, *Stop slaughtering cats!*, p. 186.

<sup>22</sup> Z. UDALTSOVA, "Введение" ["Introduction"], in: *Культура Византии [Byzantine Culture]*, vol. 1, Moscow, 1984, p. 6. Culture was opposed to an even broader and somewhat vague concept of 'civilisation', as well as to the non-creative 'production'. It was understood as a (creative)

Yet, such a development did not challenge the Marxist canon until 1991, which profoundly shaped all aspects of Byzantine legal studies (the background of the researchers, the presumed relevance and the range of topics, the goals and methods, the primary sources, and the novelty of the results).

### c.1 The authors

All notable authors of Soviet Byzantine studies came to this field with a general historical background. The curriculum of law faculties in the USSR provided poor language training (no classes in Greek or Latin). Shortly after 1945 the course on Roman private law was reintroduced but only as an introduction to 'bourgeois' civil law. Old professors Ivan Novitsky and Iosif Peretersky prepared the standard Soviet textbook on Roman private law (1948) which examined the *Corpus Juris* of Justinian mostly to have a look into the law of the classical period.

With such a curriculum and few incentives for lawyers to delve into the casuistry of an ancient legal order, one should not wonder at the lack of monographs on Roman law<sup>23</sup> and Byzantine law between 1917 and 1991. The textbooks for law students allowed only a chapter in the vast course of 'Universal / Foreign History of State and Law' built upon the research of Soviet general historians after 1945.<sup>24</sup> This precarious situation in 1976 led Professor Oleg Zhidkov (the leading specialist in the history of modern 'bourgeois' law) to draw the harsh conclusion that medieval foreign legal history remained an 'unbroken soil for Soviet legal scholarship'.<sup>25</sup>

On the contrary, general historians were quite active in grouping together to study various aspects of the Byzantine legacy. Legal topics were also of some interest in Moscow (Kazhdan, Udaltsova, Litavrin, Milov, Schapov), Leningrad (Lipshits, Medvedev, Muryanov), Sverdlovsk (Suzumov, Khvostova).

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combination of spiritual and material and interrelated with social development (Z. UDALTSOVA, "Введение", p. 6).

<sup>23</sup> Regarding the lack of studies in Roman law see E. SUCHANOV and L. KOFANOV, "Sul ruolo del diritto romano nella Russia contemporanea", in: *Ivs Antiquvm* 1 (1996), p. 14-16 (Italian resume to Russian article), at <http://elar.uniyar.ac.ru/jspui/handle/123456789/3479>, accessed 6 December 2017.

<sup>24</sup> This was the case of an authoritative textbook of the late Soviet period, namely: Z. CHERNILOVSKY, *Всеобщая история государства и права. Учебное пособие* [*The universal history of state and law. A textbook*], Moscow, 1973. The textbook allocated Byzantium in the section on feudalism in Eastern Europe (in connection with the Slavs), limited the scope to Byzantine public order and legislation (mostly the *Corpus Juris Civilis*) and reasoned with reference to Soviet historians (UDALTSOVA, KAZHDAN, LIPSHITS).

<sup>25</sup> O. ZHIKOV, "О состоянии и задачах научных исследований в области всеобщей истории государства и права" ["On the state and goals of academic research in universal history of state and law"], in: O. ZHIKOV, [Selected Works], Moscow, 2006, p. 29.

## c.2 The relevance

Historians perceived the Byzantine legacy as part of a national (including other peoples of the USSR) and universal history offering just more evidence of the 'laws' (regularities) of progress in world history. The significance of a legal 'superstructure' was downplayed. Until the late 1960s Soviet historians first had to look into class struggle. Moreover, in the *History of Byzantium* (1967) Alexander Kazhdan warned the reader that the Byzantine legislation of the middle and late period was outdated and did not reflect the actual state of affairs in the economy and politics.<sup>26</sup> Given the scarcity of our information about legal practice, it was hard to justify investigations into legal sources in a predominantly social history.

Only the promotion of culture to a semi-autonomous sphere of Soviet historical studies allowed several authors to make the Byzantine legal heritage one of their primary fields of research. It was easy to show the unmatched level of influence that Byzantine legal culture had had on Southern and Eastern Europe throughout the Middle Ages.<sup>27</sup>

## c.3 The objects of research

In the 1940s and 1950s, the strictly imposed Marxist canon limited Byzantine studies to three main spheres: economic, social, ideological and political developments. In accordance with Marxist legal science, law was understood as a tool of governance and repression in the interest of the ruling class. Consequently, historians began to pay attention to translations and commentaries on legislation as a source of information on economic and political history.<sup>28</sup>

In addition to source studies, Soviet Byzantinists paid considerable attention to the legal organisation of the Empire (Kazhdan) and the administration of justice (Lipshits). But by far the most researched topic was the feudalisation process of Byzantium. The authors discussed features and types of 'feudal' property with particular reference to *pronia* (Kazhdan), various ways of its formation (Lipshits), feudal privileges, comparing public and feudal property (Kazhdan, Litavrin), the influence of *pronia* on Slavs (Naumov), and farmers' relations in the late Byzantium (Khvostova). Other topics included the legal status of village communities and the oppressed population groups (peasants, colons, day labourers, slaves), labour disputes and other forms of social struggle, and the influence of Byzantium on the Slavs and Kievan Rus in particular.

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<sup>26</sup> *History of Byzantium*, vol. 2, p. 106.

<sup>27</sup> *Byzantine Culture*, vol. 1, p. 7.

<sup>28</sup> Lipshits translated the *Tax Law of the 10th century* (1951), she and SUZUMOV commented on the social background of the *Basilika* (1953, 1958). Other publications of this kind followed in the late 1960s till the 1980s.

In contrast, private law was of marginal significance. In the periodical publications I found, there were only two articles regarding insurance contracts in Constantinople and medieval Italian cities (Shitikov, 1969) and the sale of goods under *Pira 2.2* (Lipshits, 1973).

#### c.4 The goals

According to the Marxist canon, historical studies were supposed to reveal the laws (regularities) in the progress of humankind through the social formations. The case of Byzantium was intended to provide evidence for the rise and demise of the feudal formation mostly through the analysis of the economic relations and class struggle as the primary drivers in history.

This schematic framework set a series of tasks with regard to Byzantine legal legacy:

- to analyse the ‘social essence and political motives of [legal] reforms’;
- to evaluate the legal development in terms of ‘progressive’ or ‘conservative’ trends (i.e. complying or not with the transition to the next social formation);
- to determine the general and the particular in comparison with the ‘universal’ typologies and schemes of development (in fact, based on European experience);
- to criticise the biases of the ‘bourgeois’ European and old Russian historiography and to prove the superiority of the Marxist approach.

Soviet historians treated imperial legislation as the result of social pressure (Udaltsova) and understood legal provisions as a source of information on social history (Kazhdan).<sup>29</sup> The key problem in most research was the typology, and differentiation of the general and the specific.<sup>30</sup>

#### c.5 The methodology

Soviet Marxism presented itself as the only comprehensive and universally applicable scientific theory. It rose to the status of the master narrative to be applied in all disciplines and branches of social studies. This irrefutable presumption produced much literature on the general methodology of history<sup>31</sup> and shifted the focus of research to doctrinal and deductive proof of the progress from one social formation

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<sup>29</sup> See Z. UDALTSOVA, “Законодательные реформы Юстиниана” [“On the legislative reforms of Justinian”], in: *Byzantina xronika* 26, 51 (1965), p. 3-45.

<sup>30</sup> *Byzantine Culture*, p. 7.

<sup>31</sup> Most notably see M. BARG, *Категории и методы исторической науки [Major concepts and methods of the historical science]*, Moscow, 1984, p. 238-315; I. KOVALCHENKO, *Методы исторического исследования [Methods of historical research]*, Moscow, 1987. Also a series of collective monographs on basic theoretical issues of the laws of history.

to another with foregone conclusions.<sup>32</sup> Historical evidence was forcefully arranged according to these universal schemes and typologies.

This teleological view of history, of the unity of 'historical progress' in Eurasia, was maintained until the final *opus magnum* of Soviet Byzantine studies. In the 'Culture of Byzantine' the editors state that the constant progress from one formation to another was the main theoretical principle of historical materialism.<sup>33</sup> The work also professes 'the general laws (regularities)' in history and the primacy of economic and political development (i.e. the mode of production and class struggle). Not surprisingly, the inaugural chapter in each volume of 'Culture of Byzantine' is dedicated to the general economic, social and political conditions of Byzantium. The dialectical materialism commanded the acceptance of 'constant conflicts' between old and new as the primary driver of all development, even in the cultural sphere.<sup>34</sup> The only significant concession to the plurality of historical experience was that progress in history was not linear, but 'resembled a zigzag'.<sup>35</sup> This 'outside'-perspective on legal development made redundant any discussion and application of specifically legal methods for researching and understanding the 'inner' logic of Byzantine law. Soviet historians marked some institutions of later legislation as outdated and anachronistic only to discard their examination for the purpose of understanding the social realities of the Empire.

#### c.6 The sources

Thanks to the efforts of Soviet historians, the range of primary sources in the professional discourse steadily expanded. All major acts of secular legislation (except the *Basilika*) were translated into Russian between 1951 and 1988, including the Book of the *Eparch* and the Rhodian Sea Law (by Suzumov in 1962, 1969), the *Ecloge* (by Lipshits in 1965), the Farmer's Law (by Medvedev, 1984), and a considerable number of late Byzantine legal documents in the archives of the USSR (by Medvedev and others), secular law (adaptation of Byzantine *Ecloge* in Bulgaria and Rus' by Tikhomirov and Milov, 1961), reception of the Byzantine legacy in Russian *Sobornoje Ulozhenie* of 1649 (by Tikhomirov and Epifanov, 1961).

Additionally, Byzantinists commented on major legislation with an emphasis on the social (class) struggle behind the legislative reforms (e.g. Udaltsova on the *Corpus Juris Civilis*, 1965, 1967; Lipshits on the Farmer's Law in 1969, she and

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<sup>32</sup> For the Soviet historiography generally see N. KOPOSOV, *Stop slaughtering cats!*, p. 190-192. For the quasi-scientific debates in Soviet Byzantine studies see: I. MEDVEDEV, "Несколько слов о советском византиноведении" [A few words about Soviet Byzantinistics], in: I. MEDVEDEV, *Петербургское византиноведение. Страницы истории* [Byzantinistics in St. Petersburg: pages of history], St. Petersburg, 2008 (first published in 2000), p. 313-319.

<sup>33</sup> *Culture of Byzantine*, vol. 1, p. 10.

<sup>34</sup> *Culture of Byzantine*, vol. 1, p. 10.

<sup>35</sup> *Culture of Byzantine*, vol. 1, p. 7.

her pupil Medvedev on formulas of various legal acts in 1973; essays on diplomat-ics in 1988).

The almost total absence of canon sources in such a religious society as Byzantium is remarkable and can be explained only with reference to the general atheistic bias of Soviet social sciences.

It should also be noted that for general historians, legal sources had no additional value as compared with other primary sources on the history of Byzantium. They were relevant inasmuch as they preserved information on the social development and reflected social struggle. Hence, attention to the legislation decreased proportionally to its increasingly anachronistic and symbolic character in the later period of Byzantium (see Kazhdan above in the *History of Byzantium*).

### c.7 The novelty of the results

The efforts of general historians to investigate Byzantine legal heritage within the framework of the Marxist canon yielded a peculiar image of this legacy. The main novelty was the analytical approach used with respect to the socio-economic and political motives of legal reforms in Byzantium (most notably, the *Corpus Juris Civilis* by Udaltsova, the Farmer's Law by Suzumov, *Ecloge* by Lipshits, but also notarial acts by Medvedev) 'with the language of sociological categories'.<sup>36</sup> It helped historians fit legal development into the general course of social and political history, to lift the veil of dogmatic language and to present legal history in a more comprehensible way.

It is this very approach that Alexander Kazhdan advocated as 'a new history of Byzantine law' after being exiled from the USSR in 1978.<sup>37</sup> A decade later Bernard Stolte contested this proposal<sup>38</sup>, but after another ten years (in 2009) he seemed to reverse his negative opinion on understanding society through the practice of law: 'Writing that [social history of Byzantine law] would be a difficult task [due to the one-sidedness of the sources... and a different understanding of the role of law and legislation], but someone who would try his hand at that task would be applauded by more colleagues than just the late Alexander Kazhdan.'<sup>39</sup>

At the same time European legal historians would hardly applaud the downside of the same approach. When Soviet historians without due legal training presented Byzantine law as part of general culture, its concepts and inner logic became watered down without a proper dogmatic examination. Rare exceptions were

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<sup>36</sup> See Z. UDALTSOVA, *On the legislative reforms of Justinian*, p. 9-24.

<sup>37</sup> A. KAZHDAN, "Do we need a new history of Byzantine law?", *Jahrbuch der österreichischen Byzantinistik* 39 (1989), p. 1-28.

<sup>38</sup> B. STOLTE, "Not new but novel: notes on the historiography of Byzantine law", *Byzantine and Modern Greek Studies* 22 (1998), p. 264-279.

<sup>39</sup> B. STOLTE, "The Social Function of the Law", in: *The Social History of Byzantium*, Blackwell, 2009, p. 89.

Udaltsova's analysis of Justinian's reforms in family law and inheritance,<sup>40</sup> Kazhdan and Lipshits' interpretation of *pronia* as a close match of European fief, and Lipshits' commentaries on the Byzantine judicial system and legislation of the middle period which let her qualify Byzantium as the 'commonwealth based upon the law', *έννομος πολιτεία*.<sup>41</sup>

## c.8 The ideology in the end

The assessment of the results of the Soviet historiography on Byzantine legal legacy brings us back to the curbing role of the Marxist canon. Repressions against pre-revolutionary legal historians, expulsion of classical studies from the curriculum of law faculties, harsh criticism of all 'bourgeois' historiography, and a forward-looking (progressive) orientation turned Soviet lawyers away from studying the medieval *έννομος πολιτεία*. The majority of general historians able to read primary sources in Greek were neither well versed nor interested in law *per se* as a 'supporting actor' according to the Marxist master narrative of social evolution. Not surprisingly, even the head of Soviet Byzantinists had to acknowledge in 1969 that the Byzantine legal legacy, despite some remarkable results, belonged to the 'least researched fields of Soviet Byzantine studies'.<sup>42</sup> The assessment would not be that different by 1991, for, in the words of Nikolay Koposov, '*Soviet legal and general historians were not prepared for any profound change in the Marxist canon and to an open dialogue with the international academic community*'.<sup>43</sup>

## 2. A slow revival with a blend of ideologies: *quo vadis?*

After the collapse of the Soviet Union in 1991, Russian academia rushed through another 'clean slate' period. The Constitution of the Russian Federation of 1993 prohibited any state ideology and stipulated the right to ideological pluralism (art. 13) and freedom of speech (art. 29) as well as of academic and artistic work (art. 44). The State fostered programmes to renovate the humanities and social sciences in Russia with the financial and consultative help of the international and foreign institutes. Not

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<sup>40</sup> *Polychronion Festschrift für G. DÖLGER zum 75. Geburtstag*, Heidelberg, 1966, p. 505-520. But her conclusions about the significance of the Digest seem quite trivial for jurists: 1) it shows the evolution of Roman law and jurisprudence by the sixth century (historic significance), 2) it preserved the legacy of Roman law (academic significance), 3) provided data for the reception of Roman law in Western Europe in modern times (practical significance) (Z. UDALTSOVA, *On the legislative reforms of Justinian*, p. 9-24).

<sup>41</sup> Lipshits claimed to prove the inconsistency of declaring 'progressive' claims of the legislator in the *Eclogae* and their implementation. Novelty was due to the customary law of eastern provinces, nothing more than a step-by-step evolution.

<sup>42</sup> Z. UDALTSOVA, *Советское византиноведение за 50 лет [Russian Byzantine studies during the 50 years]*, Moscow, 1969, p. 224 and 228.

<sup>43</sup> N. KOPOSOV, *Stop slaughtering cats!*, p. 191.



surprisingly, the majority of social scientists hastened to cast off the shackles of the Marxist master narrative. Many general and legal historians engaged actively in the search for Russian national identity in the pre-revolutionary 'golden age'.<sup>44</sup>

During the 2000s, economic and social stability in Russia helped to identify gaps in the research and understanding of legal history, not least the lack of a coherent theory of legal history. It animated methodological debate and discussion (mentioned in the introduction, above) and stimulated the publication of updated literature on world history and the history of Byzantium.<sup>45</sup>

The revival trend gave a new impulse to Byzantine legal studies, not least because of the revival of the pre-1917 ideological rationale. A remarkable factor was again the Orthodox vision of the significance of Byzantine legacy for shaping the Russian 'symphonic' model of state and church relationships, and imbuing legal rules with moral values of mercifulness, clemency, good faith, and collectivism. This interpretation is also shared by secular historians of moral and political thought in Russia (by Milov, Schapov, Vin) and legal theorists and comparatists (Maltsev, Lafitski, Gagen).<sup>46</sup>

Some contemporary scholars also raise new claims to draw the attention of legal academia to Byzantine law and order. One of them is the perception of the universal validity of Byzantine law and legal order. Byzantine jurisprudence is believed to carry an embryo of the doctrine of natural rights and humanism ages before these ideas were developed during the Renaissance and Modernity (Medvedev, Vin). Sergey Gagen builds on the thesis of Elena Lipshits on Byzantium as *ἔθνος πολιτεία* and claims it to be the first 'state of law' (*Rechtsstaat*) in world history, providing an inspiration for today.<sup>47</sup> Gennady Maltsev credits Justinian with 'shaping Roman law as the first universal legal order and a unique cultural phenomenon'.<sup>48</sup> Igor Medvedev stresses the exemplary legal pluralism and tolerance in Byzantine society where old and new law, statutes, customs and precedents, courts and mediation coexisted for a long time.<sup>49</sup>

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<sup>44</sup> Remarkably many textbooks and monographs on legal history and theory of civil law were reprinted in the series of 'classics of Russian jurisprudence'.

<sup>45</sup> See A. CHUBARYAN (ed.), *Всемирная история* в 6-ти томах, под ред. [World History, in 6 vols.], Moscow, 2011-2015, prepared by the members of the Institute of Universal History of the Russian Academy of Sciences. See also A. CHUBARYAN (ed.), *Теория и методология исторической науки. Терминологический словарь* [Theory and methodology of the historical science, the terminological dictionary], Moscow, 2014. The perception of history sponsored and approved by the Orthodox Church is unfolded in: *Православная энциклопедия* [the Orthodox encyclopedia], Moscow, 2000, 46 vols. [till now], available at <http://www.pravenc.ru/index.html> (last visited 6.12.2017).

<sup>46</sup> See G. MALTSEV, *Культурные традиции права* [Cultural traditions of law], Moscow, 2016, p. 348; V. LAFITSKY, *Сравнительное правоведение в образах права* [Comparative jurisprudence in the images of law], Moscow, 2010, vol. 1, p. 162.

<sup>47</sup> S. GAGEN, *Византийское правосознание в IV-XV вв* [Byzantine legal consciousness in the fourth through fifteenth centuries], Moscow, 2012.

<sup>48</sup> G. MALTSEV, *Cultural traditions of law*, p. 357.

<sup>49</sup> I. MEDVEDEV, *Правовая культура Византийской империи* [The legal culture of Byzantine Empire], St. Petersburg, 2001, p. 6.

Such claims look very different from what legal historians were allowed to profess about Byzantium in the USSR. The Soviet ideology in Byzantine studies seems all but forgotten as few historians still adhere to a Marxist vision of history openly. Paradoxically, Soviet legacy survives in contemporary Russian historiography of Byzantine law, having its impact in various ways and ultimately preventing this branch of studies from flourishing.

#### a. The authors

The community of Byzantinists had been reorganised on the basis of the National Committee of Russian Byzantinists and the All-Russia Academic Sessions of Byzantinists<sup>50</sup>. But the leading role in this community is in the hands of general historians, most notably Sergey Karpov (chairman) and Igor Medvedev (vice-chairman) who are professionally interested in Byzantine legal culture. Among other academics sharing the same interest are social historians (Galina Lebedeva, Ksenia Khvostova, Yury Vin), philologist Kirill Maksimovich, specialists in medieval Russian history (Leonid Milov, Yaroslav Schapov), and theologian Vladislav Tsypin. Authors with a secular legal background here are as rare as a white raven and they tend to dwell on Byzantine experience in connection with other topics (Sergey Gagen, Gennady Maltsev).

As in the USSR, Byzantine legal history still misses lawyers. Legal academia is oriented towards today's practice and the future, not the past. The place of legal history in the curriculum of the law faculties is shrinking. The textbooks on foreign legal history present a chapter on Byzantine state and law with references to the late Soviet publications and similar conclusions as to the progress and stagnation of Byzantine law.<sup>51</sup> Roman private law is often taught on the basis of the reprinted textbook by Novitsky and Peretersky (1948). All that drives law students further from understanding and appreciating Byzantine legal legacy.

#### b. The relevance

Despite the growing estrangement between the Russian legal community and Byzantinists, the latter appear to have succeeded in reaffirming the relevance of this subject thanks to Byzantium's strong and lasting influence on Russia, Eastern

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<sup>50</sup> For details see: <http://www.vremennik.biz/en/content/ncom> (last visited 3 December 2017).

<sup>51</sup> Z. CHERNILOVSKY, *Всеобщая история государства и права, Учебное пособие* [The universal history of state and law. A textbook], Moscow, 1995. Also see: O. ZHIDKOV and N. KRASHENNIKOVA (eds.), *История государства и права зарубежных стран* [The History of the State and Law of Foreign Countries], Moscow, 1996, p. 274-282 and 359-369 (e.g. 'at the turn of the 12th century the centralised state became an objective impediment to a progressive development of the peoples in Byzantium', p. 282). Some textbooks skipped the topic altogether. See K. BATYR, *Всеобщая история государства и права* [The universal history of state and law], Moscow, 1995. This textbook sponsored by the Open Society Institute, compresses all foreign history of state and law into 357 pages.

Europe and the world.<sup>52</sup> It inspires awe in the state officials and the Orthodox Church. Remarkably, the concluding meeting of the 20th All-Russia Academic Session of Byzantinists in 2013 took place in the Kremlin Armoury. The next Session of Byzantinists in 2016 in Belgorod was opened by the local metropolitan Ioann and attended by several clerics. Byzantine legal studies (especially canon law) are fostered at the academies of the Russian Orthodox Church (e.g. Saint Tikhon's Orthodox University, Moscow Theological Academy, Sretensky Theological Seminary). Claims of the universal validity of Byzantine law and its special role in shaping Russian legal and political thought provide a solid ground for such studies.

### c. The objects of research

As the Marxist canon was removed, the sphere of Byzantine legal studies gradually expanded to include canon law, church and state relations, and the cultural dimension of the Byzantine legal mentality. Canon law studies quickly rose to prominence with support from the Russian Orthodox Church. By the end of the 1990s, they had already covered reprinted works of the pre-1917 period, new academic courses, as well as articles and dissertations focusing on Byzantine canons, their place in church history, and their influence on nomocanons in the Slavic lands, as well as church and state relations.<sup>53</sup> Studies of the Byzantine legal mentality by Gennady Maltsev and Sergey Gagen aim at examining the impact of religion on positive law (censored and neglected in the USSR).

The study of primary sources shifted its focus from legislation to the application of the law, especially in the late Byzantine period (Medvedev, Khvostova)<sup>54</sup> and in relation to the Byzantine influence on Russian and Slavic legal cultures.<sup>55</sup> On the contrary, social conflicts and economic changes behind the legal reforms became unpopular.

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<sup>52</sup> Cf. the title of the 20th All-Russia Academic Sessions of Byzantinists: 'Byzantium and the Byzantine legacy in Russia and the world'. See the review of the 2013-conference at <http://expertmus.livejournal.com/100741.html> (last visited 3 December 2017).

<sup>53</sup> V. TSYPIN, *Каноническое право* [Canon law], Moscow, 2009; M. VARIAS, *Краткий курс церковного права. Учебное пособие* [A concise guide to canon law. A textbook], Moscow, 2001.

<sup>54</sup> K. KHVOSTOVA, "Роль и значение права прецедентов в системе византийского правового порядка" ["The role and significance of the law of precedents in the system of Byzantine legal order"], in: K. KHVOSTOVA, *Византийская цивилизация как историческая парадигма* [Byzantine civilisation as a historical paradigm], St. Petersburg, 2009.

<sup>55</sup> K. MAKSIMOVICH, "Aufbau und Quellen des altrussischen Ustjurer Nomokanons", in: L. BURGMANN (ed.), *Fontes Minores X* [Forschungen zur Byzantinischen Rechtsgeschichte, 22], Frankfurt am Main, 1998, p. 477-508; K. MAKSIMOVICH, "Byzantinische Rechtsbücher und ihre Bedeutung für die Rechtsgeschichte Osteuropas", in: Tomasz GIARO (ed.), *Modernisierung durch Transfer im 19. und frühen 20. Jahrhundert*, Frankfurt am Main, 2006, vol. 1, p. 1-32.

#### d. The goals

There is a notable trend in the recent historiography to ‘refurbish’ the Byzantine legacy for today’s world. Russian legal and general historians seem to put an emphasis on proving the universal value of the Byzantine legal legacy, its relevance for Eastern Europe and beyond. It is popular to search for an ‘embryo’ of such cornerstones of ‘any civilised modern society’ as natural rights, legal humanism, equal protection before the law, a state of justice, legal diversity and tolerance.

Reading the Byzantine legacy through the lens of contemporary theoretical concepts coexists with efforts to better understand the sources using interdisciplinary coordination and modern methodology.

#### e. The methodology

Emancipation from the Marxist dogma produced a methodological vacuum in legal history in the 1990s. By the 2000s it had been gradually filled with the paradigm of various civilisations, their flexible pluralistic investigation, and the relevance of the law’s cultural background.<sup>56</sup> For Byzantine studies it means an emphasis on the features of this civilisation, its complexity and the need to research its legal legacy with the combined efforts of legal theoreticians, general historians, philologists, cultural study scholars, etc. The research toolbox, thus, must include dogmatic, hermeneutical, sociological, comparative methods, and even computer algorithms for a deeper understanding of intertextual links within the Byzantine legislation and other sources.<sup>57</sup> In the legal literature one can definitely see a tendency to use the concepts of contemporary jurisprudence (such as the state of justice, legal consciousness) to conceptualise the Byzantine legal heritage and its relevance for our world.

#### f. The sources

The range of sources studied in connection with Byzantine legal studies has been expanded primarily with the Church canons and religious literature (both Byzantine and Slavic), the usage of which was restricted in the Soviet period. It has paved the

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<sup>56</sup> See the collected papers of the methodological conference of legal historians at Moscow State University in 2007, *Вестник Московского университета [Herald of Moscow University]* [Серия 11 Право [Series 11: Law], No. 6], Moscow, 2007.

<sup>57</sup> In 2004 the Centre of Development of Historical Knowledge at the Institute of Universal History with collaboration with the Bauman Moscow State Technical University created the digital database ‘Byzantine law and acts’ on the basis of the books of the *Basilika (Libri Basilicorum)* and its cross-references to the *Corpus Juris Civilis, Novellae* of Leo the Wise, *Procheiros nomos*, the Rhodian Sea Law (the Church canons and Slavic laws to be added later). The database is meant to build a treasury of legal terms. See A. VIN JU and A. GRIDNEVA, “Правовое наследие Византии и новые перспективы его информационного исследования: База данных Византийское право” [“The legal legacy of Byzantium and new prospects of its IT investigation: the Database of Byzantine law”], in: *Byzantina xponika* 63, 88 (2004), p. 206-225 (available at <http://www.vremennik.biz/node/53280>).

way to a fuller understanding and evaluation of the Byzantine legal heritage steeped in religious ideas. It has also provoked general historians and philologists to work on new commented editions of the primary sources connected with Russian history.

### g. The novelty of the results

All these changes in Byzantine studies lead scholars, first of all, to re-evaluate the legacy of Soviet historiography as generally biased and limited to the secular black-letter law in Byzantium. Soviet academics are reproached for neglecting the 'law in action', primary non-statutory sources (especially in the late Empire), canon law and its implications for secular legal order.<sup>58</sup>

In addition to this necessary critical assessment, the main novelty of today's Byzantine studies seems to be the claim of the universal validity of the Byzantine legal order which can be conceptualised in terms of contemporary jurisprudence as the bedrock of the state of justice (έννομος πολιτεία), human (natural) rights, and humanitarian law as a far-reaching linkage between all people within the public community. These ambitious claims beg for more justification from primary sources, which is likely to follow as it resonates with the semi-official perception of today's Russia as the true spiritual heir of Byzantium. For the same reason, one can also expect more discoveries in the field of the Byzantine influence on Russian legal history (both secular and clerical). Secular studies are fostered with the State Fund of Academic Research. Canon law and church history are backed up by the institutions of the Orthodox Church. On the contrary, the novelty of Soviet academia, the social history of Byzantine law and its analysis using the language of sociological categories, seems to be short of sponsors within contemporary Russia.

### 3. Conclusions

The case of Byzantine Roman law studies in the USSR shows how profound the impact of official ideology could be even on medievalists. Soviet Byzantinists were severed from all pre-revolutionary and foreign 'bourgeois' literature, blocked from studying canon law, and substantially limited in the range of secular topics, sources, methods of interpretation by the Marxist master narrative which fixed any legal order in the past and present to be a mere reflection of class struggle. Within the rigid boundaries of partisan historiography, Soviet academics managed to lay the foundation for a new social history of Byzantine law 'with the language of sociological categories'. The forfeiture for this novelty being the neglect of the religious dimension of Byzantine legal culture and a strictly legal (dogmatical) analysis of

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<sup>58</sup> I. MEDVEDEV, *A few words about Soviet Byzantinistics*, p. 314; K. KHVOSTOVA, *The role and significance of the law of precedents*, p. 124-140.

law which led to the growing estrangement of Byzantine studies from the legal community.

Following the restoration of academic liberty in Russia after 1991, Byzantinists engaged in the search for a new national identity and eventually fell back on the staples of the pre-revolutionary perception of Byzantium as a great Orthodox commonwealth of nations and Russia as its true heir. Research on the Byzantine legal legacy focuses on the universal value of its law, profoundly Christian, humanitarian, and pregnant with human rights, laying the foundation for a state of justice. Such an interpretation finds support with the Orthodox Church and the State but definitely calls for more justification from primary sources. Yet, this task seems particularly difficult since the community of Byzantinists include academics from various disciplines while lawyers lack the necessary linguistic and historical training. For this reason, to paraphrase the rhetorical question of the late Alexander Kazhdan, in today's Russia we need not so much a new ideology or vision of Byzantine law as an interdisciplinary team of Byzantinists, which includes lawyers.

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