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AUTHORITATIVE TEXTS

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A conference devoted to medieval legal history was held on October 12, 2022, at the Institute of World History, Russian Academy of Sciences, as a part of a research project “Legal History of Middle Ages and Modernity”. The talk was concentrated on authoritative texts, as it had been previously declared in the conference’s title. The choice of this topic was substantiated by the fact that despite the superficial monotony of medieval legal history, the inner logic of the history of medieval jurisprudence is that of authoritative texts. The logic of authoritative texts was the main criteria for compiling juridical monuments, for fixation of oral tradition, and for different essays to make codifications. Nevertheless, the nature of this authority stays obscure, and the aim of the conference was to investigate the history of different legal texts as authoritative texts.

The board announced four key problems to be discussed within the scope of the conference. First of all, it was the problem of studying and commenting on juridical texts in medieval universities and other law corporations: how and where were the authoritative texts studied, commented on, and glossed? Furthermore, the history of juridical monuments as authoritative texts in education was set as a problem. It implied the manuscript tradition, manuscript marginals, and practices of direct and indirect quotation. The third problem suggested by the board to discuss was the problem of early law codifications and its’ commenting in the writings of both civil and canon glossators and commentators. Eventually, the problem of the later existence of medieval juridical monuments was proposed by the board: how were the authoritative juridical texts and their’ ideas transmitted and translated in all-European context. The presentations were arranged generally chronologically in accordance to their topics. Consequently the speakers covered different times from the 9th c. up to medievalism of 20th c. and different geographic areas of European continent from Rus’ to Castile and León.

The report made by Andrey Vinogradov, an Associate Professor of the Center for Medieval Studies at the Higher School of Economics, was devoted to the contradiction between two crucial norms in medieval Russian canonical legal practice. The report was entitled “The Conflict of Authorities:

Tithe and Nomocanon in Pre-Mongol Rus'” (“Конфликт авторитетов: десятина и ‘Номоканон’ в домонгольской Руси”) and was based partly on the Primary Chronicle (as well as legal sources from medieval Rus' such as The Statute of Sviatoslav Ol'govich of 1137) which testified to the well-known usage of tithe and the allegation in the Church Statute of Prince Yaroslav to the Greek Nomocanon (probably the Nomocanon in 14 titles) which traditionally introduced hard-set remunerations to bishops in the context of Byzantine canon law. Therefore conflict between the usage of the tithe (the tradition which came to Rus' probably from the West) and the usage of remunerations to bishops (the norm from Byzantine canon law) is on hand. These two norms were practically in force in parallel, for example in Novgorod, as it was shown on the basis of the Statute of Sviatoslav Ol'govich of 1137 by Andrey Vinogradov. The Statute explicitly replaced the usage of tithe with the usage of remunerations.

Two questions were set by the speaker to this conflict of norms evidence, first, whose interest was the ground for such a replacement, and, second, whose enterprise such a replacement could be. Was it introduced by the prince to conciliate the archbishop in the context of the Revolution of Novgorod of 1136 or to humiliate the archbishop, or was it initiated by the archbishop himself, Niphont of Novgorod due to his Greek sympathies? The speaker hypothesized that the Greek practice of remunerations was after all more sustainable than that of the tithe and therefore the replacement of the tithe by the remunerations was expedient for the archbishop in the context of frequent change of princes in Novgorod after the Revolution of 1136. Therefore, even though the legal framework of the Russian church stayed formally independent of Byzantine, Greek canon norms could be present in Russian canonical legal practice.

The report of the next speaker, Mikhail Zemlyakov, an Associate Professor of the Faculty of Humanities, School of History at the Higher School of Economics, moved the discussion towards the western region of the medieval European world. The report title was “The Anonymous Treatise on Roman and Frankish Offices of 9–10th cc. and its dependence on Late-Roman Law and on *Etymologies* by Isidore of Seville” (“Анонимный трактат о римских и франкских должностях рубежа IX–X вв. и влияние на него позднеримского права и ‘Этимологий’ Исидора Севильского”). It was devoted to Vat. Reg. Lat. 1050, a manuscript of French provenance containing the anonymous *Decurio de gradibus* which was composed to describe the variety of late-Roman and Frankish offices, their system, and the limits of their commissions and jurisdictions. As it was presented by the speaker,

the *Decurio de gradibus* makes use of many sources including the book IX of *Etymologies*, the Code and the Institutions of Justinian, and Germanic legal monuments like the Breviary of Alaric, the *Lex Salica*, and the *Lex Rupuaria*.

The main hypothesis of the speaker touched upon the question of the practical application of *Decurio de gradibus* and Vat. Reg. Lat. 1050 on the whole. In contrast to the conjectures made previously by scholars, Mikhail Zemlyakov inferred a suggestion that this manuscript was not used as a schoolbook but was composed either in the kingdom of Lower Burgundy or in the Burgundian kingdom where the remains of the Roman administrative structure were still present in 8-9th cc. and should have been transferred into the Frankish political culture and nomenclature.

Galina Popova, a Senior Fellow of the Institute of World History at the Russian Academy of Sciences, presented a report entitled as “Was the Visigothic *Book of the Judgments* an Authoritative Text in 12-13th cc.?” (“Была ли вестгосткая ‘Книга приговоров’ авторитетным текстом в XII-XIII вв.?”). The chronological focus of the report was explained by the speaker with the fact that nearly half of Latin manuscripts containing the *Book of Judgments* date from the period of 12-13th cc., and, furthermore, this is the time of the beginning of medieval reception of Roman law through the Roman codifications. Moreover, the very tradition of Visigothic law is one of the most crucial problems in the studies of the *Book of Judgements* because there are no extant manuscripts that would date from the epoch of Visigothic Kingdom: the whole manuscript tradition is no older than 721. The speaker also focused on the Visigothic law in the Mozarab enclaves in Al-Andalus, in Toledo, which has been supposed to be the area of practical usage of the *Book of Judgements* as the local law, as the “law of the Christians”.

Nevertheless, as Galina Popova showed in the report, the Mozarab legal documentation does not contain a single quotation from the *Book of Judgements* but contains only one example showing the actual acquaintance with the text of the *Book of Judgements*. Besides, the clauses the Mozarab legal documentation makes use of are completely different from the formulas elaborated in the *Book of Judgements* because the Mozarabs used Arab formulas. Finally, the speaker concluded that the real reception of the *Book of Judgements* in Toledo constituted the transformation and the transmission of the Visigothic law into the local law and the local traditions of private law, and not in the knowledge of the original text.

The Iberian region continued to be the focus of the discussion due to the report of Alexander Marey, an Associate Professor of the Faculty of Humanities, the School of Philosophy and Cultural Studies at the Higher

School of Economics. The report entitled “A Never-Existed Corpus? How the Siete Partidas Began to Be Studied in Universities” (“Свод, которого не было? Как Семь Партид начали изучать в университетах”). The Siete Partidas were composed in vernacular by order of Alfonso X of Castile and possibly should have replaced both the Corpus of Justinian and the Decree of Gratian, as a part of the realisation of the imperial political ambitions of the Castile king. The Siete Partidas received the status of the secondary statutory document in the middle of the 14th c. and were quite widespread in manuscripts among Spanish jurists and notaries. Nevertheless, the academic jurisprudence stayed mostly ignorant of the text of Siete Partidas, it was not commented on and not studied until the end of 15th c. when the first primitive gloss appeared and the middle of 16 c. when Gregorio López composed the detailed commentary to the corpus of Siete Partidas. Finally, Francisco Suárez in his *Tractatus de legibus ac Deo legislatore* (1612) was the first to recognise the Siete Partidas as the authoritative text as well as traditionally studied texts like the Corpus of Justinian or the Corpus of Canon Law. Thereby the legislation of Alfonso X (which has never been in force as a principal source of law but was well-known and used) had not been the authoritative text for medieval jurists for centuries.

The hypothesis which was put forward by Alexander Marey was that the authoritative status of the text of the Siete Partidas was closely connected with the composition of the gloss by Gregorio López. Up to that time, the Siete Partidas existed just as the “Spanish laws”, in vernacular, and were not connected by the commentary apparatus to the tradition of *ius commune* and the authoritative writings of the Church Fathers. Just such connection made finally possible the study of the Siete Partidas and included this text in the whole range of legal *auctoritates*.

The academic medieval tradition of making glosses and commentaries became also the focus of the next report presented by Elena Kazbekova, a Senior Research Fellow of the Institute of World History of the Russian Academy of Sciences. The report title was “A Student, a Professor, a Doctor, a Scribe? On the Criteria of Identification of Those Who Inscribed Notes and Glosses in Corpuses of Canon Law in 13–14th cc.” (“Студент, преподаватель, ученый, писец? О критериях определения тех, кто вписывал пометы и глоссы в своды канонического права XIII–XIV вв.”). Mainly such criteria allow a researcher to recognise a professional scribe by the manner of writing and the misspelling of Latin words, to recognise a scholar by the content of a gloss or a note and the writing behaviour, and any other hand by the handwriting when the latter is known by other sources.

The speaker presented the case of the manuscript from the Russian State Archive of Ancient Acts containing the *Compilatio Prima* by Bernard of Pavia. The manuscript dates from the beginning of 13th c. and comes from the north of France, it is furnished with the initials and decorated with flourishes. The text is supplied with two apparatuses of glosses, the first one has been swept out and the second one is the gloss of Tancred of Bologna. To identify the hand which copied the gloss of Tancred of Bologna into the manuscript, Elena Kazbekova made use of the negligent handwriting, the writing behaviour, the annotation symbols, and the usage of pasting-ins and compared these features to those of two other manuscripts, one from Oxford, Bodleian. MS. Bywater adds. 2, containing the Missal (Cistercian) for major feasts, and another one from Paris, BNF. Lat. 15996, containing the *Breviarium Extravagantium Bernardi Papiensis*. Finally, the comparison of these three manuscripts was presented by the speaker as evidence of the existence of a specific group of professional scribes of high qualification with a specific style of pasting-ins and their own culture of the usage of annotation symbols, perhaps of the Cistercian circle.

Anna Anisimova, a Senior Research Fellow of the Institute of World History of the Russian Academy of Sciences and an Associate Professor of the State University of the Humanities, presented a report entitled as “Juridical Monuments in English Monastic Digests” (“Юридические памятники в английских монастырских сборниках”). The monastic cartularies or registers of 13-15th cc. were characterised by the diverse composition, they included a huge variety of texts such as legal documents (the statutes), poetry, annals, and histories both in Latin and French languages. The speaker referred to the cartularies of the priory of the Canterbury cathedral, of St Augustine’s Abbey in Canterbury, of Burton upon Trent Abbey, the priory of Worcester Cathedral, Malmesbury Abbey, and some others.

The main point made by the speaker was that it was essential for the compilers of English monastic cartularies to include in their digests the legal texts of all-English importance, for example, statutes, but mainly the *Magna Carta* in different recensions. The disposition of monasteries to copy various statutes into their cartularies was supposed by the speaker to be connected with the lively development of legal culture in 13th c. in England and the political instability as a framework.

The medieval phenomenon of the *auctoritates*, the authoritative texts, is closely connected to the fundamental questions of medieval political theory. The report made by Maria Ponomareva, a graduate student of the Institute of World History of the Russian Academy of Sciences entitled “*Lex Regia*

in the Writings of Oldrado da Ponte: Pros and Cons for the Emperor” (“*Lex Regia* у Ольдрадо да Понте: ‘за’ и ‘против’ императора”) was devoted to the question of the legal reasons for and against the possibility of the world monarchy *de iure*. The speaker addressed to the fragment from Ulpian devoted to *imperium* and *potestas* of the *princeps* as translated to him and into him by the Roman people with the support of *lex regia*, the royal law (D. 1. 4. 1 pr (Ulp., 1 Inst.)) and two different interpretations of this fragment common to the Glossators. According to one interpretation, this translation is irrevocable and took place just historically; according to the second one, this translation was a concession, and the Roman people can revoke the emperor’s power.

The main argument of Maria Ponomareva was that within the formation of the hierarchical system of authoritative texts in legal studies of the following generation of medieval jurists, the school of postglossators, the conflict between two interpretations became irrelevant to the question of the world monarchy. It was shown by the speaker on the basis of *Consilium* LXIX which is partly a university *quaestio* and partly a consultation, written by Oldrado da Ponte in the first half of 14th c. The *Consilium* is structured according to the hierarchical system of authoritative texts and therefore the force of sources of law so the Roman law takes place below the *ius gentium*, and the *ius gentium* takes place below the natural law and the divine law. As there is no mention of the emperor as the world monarch neither in Old Testament nor in New Testament, and according to *ius gentium* there are many kingdoms and dominions, the case of translation of the power from Roman people to the emperor could be justified only by civil law and can *not de iure* pertain to other nations.

Olga Togoeva, a Senior Research Fellow of the Institute of World History of the Russian Academy of Sciences, presented a report devoted to the justification of tyrannicide in the context of authoritative texts. The report title was “Authoritative Opinion in Doubt: *Justification* of 1408 by Jean Petit and Its Critics” (“Авторитетное мнение, поставленное под сомнение: ‘Оправдание’ Жана Пти 1408 г. и его критики”). The *Justification* was composed by Jean Petit in connection with the assassination of Louis I, Duke of Orléans organised by John the Fearless, Duke of Burgundy. As Louis I was the brother of the king, the assassination was extremely close to regicide. The *Justification* was a plea for John the Fearless accused in the assassination. From the legal point of view, Jean petit in the *Justification* introduces and justifies the concept of “*homicidium iustum*”, the just homicide, and he analyses it in the case of John the Fearless as the tyrannicide.

In the history of the reception of the *Justification* two periods were defined by scholars, the first one before 1422 when the treatise was included in the *Chronicle* by Enguerrand de Monstrelet, and the second after 1422.

The point made by the speaker was that the history of the reception of the *Justification* should be divided into four periods, each one closely connected to the focus of its critics. Therefore the first point is 1408 when the lawyer Thomas de Bourgh who served Louis's widow composed a discourse to disprove the theory of Jean Petit, and his argument was based on the concept of greed as the root of all evil including murder. Furthermore, according to the speaker, the second period should be associated with the criticism by Jean Gerson whose argument was congenial to that of Coluccio Salutati and the Italian civilist tradition, according to which even tyrannicide could take place only on the basis of a court decision. In 1414 Jean Gerson organised a council in Paris and invited fourteenth doctors of theology who discussed the text of the *Justification* and finally burned eleven manuscripts of the *Justification*. Furthermore, the *Justification* was denounced by the Council of Constance in 1418. Nevertheless, the final point that turned the history of the reception of the *Justification* is when John the Fearless was assassinated in 1419 in the presence of dauphin Charles. As a result, the condemnation of the *Justification* was repealed and Charles VI discharged Jean Petit (who had deceased a long time before) of all accusations. The authority of the text is revealed as closely connected with the political reality and actual state of political rivalry among noblemen.

The report which concluded the conference was presented by Grigory Borisov, a graduate student of Eberhard Karls Universität Tübingen. The report was entitled "The Authority of Medieval Law in History of Law in 19–20 cc.: Metanarratives of European Legal History and Its Critics" ("Авторитет средневекового права в истории права XIX–XX вв.: метанарративы европейской правовой истории и их критики"). The speaker presented an overview of different approaches to the history of medieval law and the tendencies in the late Modern historiography of medieval law. The speaker made use of the concept of metanarrative to describe these approaches meaning the "mental framework of research models for the construction of historical narrative", and he distinguished two main metanarratives: a national one and an evolutionist one. This overview made a strong connection between the approaches to the history of medieval law and their ideological and political context. Despite the fact that the talk of Grigory Borisov differed considerably from all others' reports, the speaker reminded of the fundamental significance of the craft of the historian.

In conclusion, Galina Popova as a member of the board stressed the fact that authority is one of the most crucial features of juridical sources and therefore the conference topic showed up as a fruitful one. Furthermore, the complex research of such a feature could never be covered by just one conference, and so the future continuation of the discussion is obviously anticipated.

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