IURIS SCRIPTA HISTORICA – KVAB

XXX

IUS COMMUNE GRAECO-ROMANUM
ESSAYS IN HONOUR OF PROF. DR. LAURENT WAELKENS

Wouter Druwé
Wim Decock
Paolo Angelini
Matthias Castelein

PEETERS
LEUVEN – PARIS – BRISTOL, CT
2019

TABLE OF CONTENTS

mgr. Roland MINNERATH
Préface 5

Wouter DRUWÉ, Wim DECOCK, Paolo ANGELINI and Matthias CASTELEIN
Introduction 9

PART 1:
IUS GRAECO-ROMANUM IN THE ROMAN EMPIRE

Chris RODRIGUEZ
L'application de la loi et la persistance de la coutume dans l'Égypte romaine au Haut-Empire: essai de synthèse autour des travaux de Joseph Mélèze-Modrzejewski 17

Tiziana FAITINI
Redemption between law and theology. The theological translation of the Roman *redemptio* in the Patristics 37

Valerio Massimo MINALE
Macro nel *Nomos Stratiotikos*: diritto militare e 'ritorno al futuro' 53

Vasileios-Alexandros KOLLIAS
The influence of emperors on dispute settlements in ecclesiastical matters: the jurisdictional struggle over the Diocese of Amykleion and the relevant court battle (1340 AD) 69

PART 2:
INFLUENCES OF BYZANTINE LAW OUTSIDE OF THE EMPIRE

Tomáš GÁBRIŠ
The Relationship of *Ecloga* and *Zakon Sudnyj Ljudem* Revisited: On Possibilities of Reconstruction of Archaic Law in Great Moravia 91

Annick PETERS-CUSTOT
Les donations pieuses dans l'Italie méridionale normande: *quid* du don/contre-don dans une terre influencée par l'héritage culturel et juridique byzantin? ... 109

Tamara MATOVIĆ
Bequeathing in medieval Serbian law 129

Gábor HAMZA
Fortleben der Tradition des römischen Rechts (*ius Graeco-Romanum*) in der Entwicklung des Privatrechts und in der Neukodifikation des Zivilrechts in Georgien (Sakartwelo) 139

Dmitry POLDNIKOV
Byzantine Roman law studies in Russia within the framework of political ideologies 147

PART 3:
ROMAN LAW AND IUS COMMUNE IN CENTRAL AND EASTERN EUROPE

Dalibor JANIŠ
The Early Reception and Influence of Canon and Roman Law in the Medieval Czech Lands 167

Maciej MIKUŁA
Professors of the Law Faculty of the University of Cracow and their legal writings (16th and early 17th centuries) 179

Hesi SIIMETS-GROSS, Merike RISTIKIVI and Katrin KELLO
Favor libertatis: the ancient *regula iuris* as an argument for freedom in the courts of the late 18th century in the provinces Estland and Livland of the Russian Empire 209

Mirela KREŠIĆ
Praesumptio muciana and the Status of Croatian Women with Respect to the Law of Succession according to the Austrian General Civil Code 225

Levente VÖLGYESI
Presentation of the effects of Roman and canon law in Hungary through the institutions of Hungarian civil procedure until the creation of the regulation on civil jurisdiction in 1868 241

Paulina ŚWIĘCICKA
Amicus Paulus sed magis amicus est Windscheid. About Stanisław Wróblewski's *modus docendi* of Roman Law 259

Bibliography 279

Index of authors 325

BEQUEATHING IN MEDIEVAL SERBIAN LAW**

Tamara MATOVIĆ

The sources on Serbian medieval law show a lack of contracts of sale[1] as well as wills. Some information on testamentary inheriting is found in the *Nomocanon* of St. Sava, which systematically replicates the legal provisions of the *Procheiros nomos* from the Middle Byzantine period. Two unusual features are noteworthy. The first concerns the fact that Dušan's Code fails to regulate the institution of testament, while the accompanying sources give it no more than a passing mention.[2] On the other hand, the few surviving testaments written in the Cyrillic script and the Serbian recension of Old Church Slavonic date precisely from the period of Emperor Dušan, i.e. from the first half of the fourteenth century.

Although inheritance law ranked among the favourite topics from the field of legal history in Serbian scholarship – both in comparative overviews of legal

** The paper was written as part of the project *Tradition, Innovation and Identity in the Byzantine World* (cat. no. 177032) supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia. This article represents an augmented version of the Serbian text, published as: T. MATOVIĆ, "Zaveštavanje u srpskom srednjovekovnom pravu", *Pravni zapisi* 8/1 (2017), p. 20-33.

1 See A. SOLOVJEV, "Ugovor o kupovini i prodaji u srednjovekovnoj Srbiji", *Arhiv za pravne i društvene nauke,* 15 (1927), p. 431.

2 See B. MARKOVIĆ (ed.), *Justinijanov zakon. Srednjovekovna vizantijsko-srpska pravna kompilacija*, Beograd, 2007, §2, §3 (the Athonite manuscript); §2, §3, §4, §5 (the Borđoški manuscript). The older manuscripts follow the structure of one of these two manuscripts. In the recensions of younger manuscripts, testamentary provisions are §2–§5, see *Justinijanov zakon*, p. 30. In addition to Dušan's Code, the abridged recension of the *Syntagma* of Matthew Blastares (AS), the Serbian translation of the late Byzantine compilation of ecclesiastical and secular rules, is another source. There is a widely accepted view in scholarship on the testamentary rules in AS, S. NOVAKOVIĆ (ed.), *Matije Vlastara Sintagmat*, Beograd, 1907, and related institutions (K 12) and the reasons for the omission of some articles present in the unabridged version of the *Syntagma*, (D 4, K 38, F 1): see A. SOLOVJEV, *Zakonodavstvo Stefana Dušana*, Skoplje, 1928, p. 138.

inheritance systems among the Slavs and South Slavs[3] or *per se*[4] – approaches to this subject rarely included a survey of other legal affairs *mortis causa* – an aspect that may well be justified.[5] Serbian medieval law was shaped under the strong influence of the Byzantine legal system, which often featured various template contracts written in a subjective form to be concluded as mortis causa contracts. These were usually contracts of sale or bequests given for the salvation of the testator's soul – charitable and pious offerings known as *zadužbina* or *zadušje*.[6] Greek

---

[3] The comparative approach has often been applied in the study of institutions of inheritance law. Comparative legal syntheses include: V. Bogišić, *Pravni običaj u Slovena*, Zagreb, 1867, p. 161–165; K. Kadlec, *Prvobitno slovensko pravo pre X veka* (translated and amended by Taranovski, T.), Zemun, 1923, pp. 83–84; A. Solovjev, *Predavanja iz istorije slovenskih prava*, Belgrade 1939. The study by J. Gerasimović, *Staro srpsko pravo*, Belgrade 1925, does not offer a separate section in inheritance law; on wills in Dušan's legislation, see A. Solovjev, *Zakonodavstvo Stefana Dušana*, cit., p. 133 sqq; L. Urošević, *Pravosuđe i pisano pravo u srednjovekovnoj Srbiji*, Belgrade, 1939, clarifies the provisions on wills in the *Syntagma* of Matthew Blastares on pp. 142–143; K. Jiriček, J. Radonić, *Istorija Srba II. Kulturna istorija*, Belgrade, 1978, p. 128 sqq; T. Taranovski, *Istorija srpskog prava u nemanjićkoj državi*, Belgrade 2002, p. 512 sqq; S. Šarkić, *Srednjovekovno srpsko pravo*, Novi Sad, 1995, p. 92 sqq. Analyses of inheritance laws in other Slavic legal systems were also used in this paper: S. Bobčev', *Istorija na starob'lgarskoto pravo*, Sofia, 1910, p. 527 sqq; D. Nikolić, *Drevnorusko slovensko pravo*, Belgrade 2000, p. 178 sqq.

[4] See B. Petranović, "O pravu nasljedstva kod Srba", *Rad JAZU* 23 (1873), p. 24–42; M. Milovanović, "Nasledno pravo u starom srpskom pravu", *Godišnjica Nikole Čupića* 5 (1883), p. 188–211; A. Jovanović, "Nasledno pravo u starih Srba: prilog čl. 100 i 101 Dušanova zakonika", *Otadžbina* (1888) 74, pp. 1–33 (reprint). More recent studies include: the essay in legal anthropology by N. Pavković , "Običajno-pravne radnje u vezi sa smrću", in: N. Pavković (ed.), *Studije i ogledi iz pravne antropologije*, Belgrade 2014 (= N. Pavković, "Običajno-pravne radnje u vezi sa smrću", *Glasnik Etnografskog instituta* 40 (1991), pp. 75–89; originally published in N. Pavković, "Actes à cause de mort chez les slaves du Sud", in: L. Waelkens (ed.), *Acts à cause de mort – Acts of last will III: Europe médiévale et moderne – Medieval and modern Europe*, Bruxelles, 1993; S. Šarkić, "Pojam testamenta u rimskom, vizantijskom i srednjovekovnom srpskom pravu", in: Lj. Maksimović, N. Radošević, E. Radulović (eds.), *Treća nacionalna konferencija vizantologa*, Belgrade–Kruševac, 2002, pp. 85–90 (= S. Šarkić, "The concept of will in Roman, Byzantine and Serbian mediaeval law", in: L. Burgmann (ed.), *Forschungen zur byzantinischen Rechtsgeschichte* 26 – *FM* 11, Frankfurt am Main, 2005, p. 427–433); B. Marković, "Nasledno pravo u Dušanovom zakoniku i u Zakonu cara Justinijana", in: S. Ćirković, K. Čavoški (eds.), *Zakonik cara Stefana Dušana: Zbornik radova*, Belgrade, 2005, p. 67–79; N. Kršljanin, "Izuzimanje (isključivanje) iz nasleđa i pitanje namene Dušanove kodifikacije", *Anali Pravnog fakulteta u Beogradu*, 58/2 (2010), p. 281–301; N. Stojanović, O nasleđivanju u Zakonopravilu Svetoga Save, *Zbornik Pravnog fakulteta u Novom Sadu*, 48–1 (2014), p. 25–45.

[5] Cf. S.Ćirković, R. Mihaljčić (eds.), *Leksikon srpskog srednjeg veka*, Belgrade, 1999 (henceforth: LSSV), „Testament", (S. Šarkić,); D. Janković, *Istorija države i prava feudalne Srbije (XII–XV vek)*, Beograd, 1956, p. 100–101. There are separate studies that treat the institution of bequest in medieval Serbian law: S. Šarkić, "Poklon u srednjovekovnom srpskom pravu", *Istraživanja,* 17 (2006), p. 7–15; Z. Mirković, D. Đurđević, "Pravila o poklonu u srpskom srednjovekovnom pravu", *Anali Pravnog fakulteta u Beogradu*, 59/2 (2011), p. 63–90; on dispositions mortis causa, see the monograph by D. Pantić, *Poklon za slučaj smrti*, Belgrade, 2015, p. 237 sqq.

[6] See Pavković, "Običajno-pravne radnje u vezi sa smrću", cit., pp. 299–300. In the Serbian medieval tradition these gifts were made 'for the soul' and 'the salvation of the soul', identically to the Byzantine practice of '*hyper tēs psyhēs*', or '*psyhēkēs sōtērias*,' see T. Matović, *Zaveštanja u arhivama svetogorskih manastira (XIII–XV vek),* doctoral thesis, Belgrade, 2017, p. 109 sqq. The Byzantine *psihikon* was derived from this phrase and, analogously, the Serbian term *zadušnina*. However, a few formulas contain phrases not found in Byzantine diplomatics: 'for one's tomb' ('za grob svoi'), see

documents that inform us about these legal transactions are difficult to differentiate from wills, which usually do not name a universal inheritor. Other formal and diplomatic similarities correspond to the legal framework defined under Justinian I and unaltered thereafter,[7] suggesting that these peculiar medieval legal institutions ought to be seen as wills. The analogies between the Serbian and Byzantine legal and documentary sources were the key reason for the application of this approach in this paper.

In addition to the very rare wills, legal affairs arranged in the event of death include dispositions and other so-called 'mixed legal affairs.'[8] Unlike the *Nomocanon*, i.e. the set of provisions called the 'Zakon gradski' that contains translations into the Serbian recension of Church Slavonic Byzantine legal provisions on inheriting by will, dispositions *mortis causa* and miscellaneous legal affairs, Dušan's Code seems to provide current information[9]. Legal documents relevant for this analysis include the few surviving wills in the Serbian recension of Church

---

S. Šarkić, "Pojam testamenta u rimskom, vizantijskom i srednjovekovnom srpskom pravu", cit., p. 89. The third variant appears in bequests given 'in memory' [of the testator] (see S. Šarkić, S., "Pojam testamenta u rimskom, vizantijskom i srednjovekovnom srpskom pravu", cit.), which also appears in Byzantine diplomatic formulas (see T. Matović, *Zaveštanja u arhivama svetogorskih manastira (XIII–XV vek)*, cit., p. 111). On the other hand, phrases such as 'for the soul' (*pro anima*), 'for the redemption of the soul' (*pro redempcione animae*), 'for the healing of the soul' (*pro remedio animae*), 'for pious purposes' (*ad pias causas*) etc. appear in Latin diplomatics, for more details see Z. Ladić, *Last will: Passport to heaven. Urban last wills from late medieval Dalmatia with special attention to the legacies pro remedio animae and ad pias causas*, Zagreb 2012; Z. Ladić, "Oporučni legati pro anima i ad pias causas u europskoj historiografiji. Usporedba s oporukama dalmatinskih komuna", *Zbornik odsjeka za povijesne i društvene znanosti HAZU* 17 (2002), p. 17-29.

[7] Drawing on C. 6, 43, 2 i N.J. 1,1, the view that the approximation of the institutions of legacy, codicil and trust as well as donations in the event of death was completed under Justinian I has become widely accepted in scholarship.

[8] The terminology used here follows L. Bénou, *Pour une nouvelle histoire du droit byzantin*, Paris, 2011, p. 263 sqq.

[9] Several provisions inform us about endowing churches. An article elaborating the rights of the 'farmhands' (*zemljodelci)* to dispose of their landholdings (*baština*) is particularly noteworthy. One option was to 'endow the Church' (*crkvi podlože*) – to donate their property (DZ, Athonite MS, §174). On the other hand, this Serbian phrase warrants some caution, as noted by A. Solovjev, *Zakonodavstvo Stefana Dušana*, cit., p. 116, n. 2, as the Serbian verb 'podložiti' also appears in another sense, usually meaning to 'subjugate' rather than 'endow.' Thus in the translations of the manuscripts of Baranja, Prizren, Šišatovac, Rakovac i Ravanica (M. Pešikan, I. Grickat-Radulović, M. Jovičić (eds.), Beograd, 1997 *Zakonik Stefana Dušana knj. III*, p. 47, 113, 185, 239, 309) the phrases 'crkvi podložiti' or 'podložiti pod crkvu' have been incorrectly rendered as 'to subjugate'; cf. Đ. Bubalo, *Dušanov zakonik*, Belgrade, 2010, §47, p. 166. A few changes in the interpretation of the articles containing this phrase were made in the posthumously published study by A. Solovjev, *Zakonik cara Stefana Dušana 1349. i 1354. godine*, Belgrade, 1980, p. 212, 213. The formula 'pod crkvu potpisati,' which can be loosely translated as to 'assign to the Church' and usually denotes donation, is a different matter. Phrases denoting donation can be found in the formulas of many medieval Serbian charters listing the characteristics of the benefactor's property rights (when the benefactor can, among other things, choose to 'assign to the Church for his soul' ('za dušu pod crkvu zapisati'); 'donate for the soul' ('za dušu otdati'), 'bequeath to one of his kin' ('nekome od svojih ostaviti'), or 'to bestow favor' ('harisati'), see A. Solovjev, *Zakonodavstvo Stefana Dušana*, cit., p. 115–116; S. Šarkić, "Pojam testamenta u rimskom, vizantijskom i srednjovekovnom srpskom pravu", cit., p. 88.

Slavonic,[10] dispositions *mortis causa*,[11] and mixed documents containing (or including) someone's last will.[12] Finally, this group also includes a few documents of a different nature, such as acts on will execution and related documents.[13]

Serbian medieval diplomatics is also characterised by documents of public law used by high-ranking members of the nobility (including rulers) to endow monasteries. Some of these acts contain specific stipulations in the form of guidelines or instructions to be followed after the testator's death and concerning the donation of a particular village, place or church. Having noticed this shared characteristic, in editing a collection of sources Ljubomir Stojanović grouped these documents in the same category and described them as bequests.[14]

---

[10] They are the following Cyrillic documents: the 1392 will of Medoje Nikulin of the Žrnovnik *župa* (A. Solovjev, *Odabrani spomenici srpskog prava od XII veka do kraja XV veka*, Belgrade 1926, № 88); the will of Jelena Balšić dated 5 April 1443 (copy) (M. Pucić, *Spomenici srpski od godine 1395. do 1423*, II, Belgrade, 1862, № 137; F. Miklosich F., *Monumenta serbica spectantia historiam Serbiae Bosnae Ragusii*, Viennae, 1858, № 341); the will of 'guest' Radin dated 5 January 1466 in Novi (Ć. Truhelka, "Testamenat gosta Radina", *Glasnik Zemaljskog muzeja u Sarajevu* 23 (1911), also described by A. Solovjev, Gost Radin i njegov testament, *Pregled,* 2, Sarajevo, 1947, pp. 311–318); the will of Stefan Kosača dated Tuesday, 20 May 1486 (M. Pucić, *Spomenici srpski od godine 1395. do 1423*, № 138; A. Solovjev, *Odabrani spomenici srpskog prava od XII veka do kraja XV veka*, cit., № 133); the will of Vlahna Radišević Stonjanin dated 8 January 1486 (A. Solovjev, *Odabrani spomenici srpskog prava od XII veka do kraja XV veka*, cit., № 138); the will of Vlahuša Kuljašić written in Janina on Ston in 1491 (A. Solovjev, *Odabrani spomenici srpskog prava od XII veka do kraja XV veka*, cit., № 141). Information in several Ragusan wills written in Latin and Italian suggests that these were in fact translations of wills originally written in 'the Slavic language' ('in lingua sclava'). The testators of these wills are Ragusan citizens who lived in the territory of medieval Bosnia. Their surviving Latin versions were shaped later on, when they were officially registered at the archives of the Ragusan chancellery. See D. Kovačević Kojić, Fojnica u srednjem vijeku, *Gradski život u Srbiji i Bosni (XIV–XV vijek),* Belgrade 2007, p. 137.

[11] The bequest of Nikola Utoličić and his mother from 1348 (S. Novaković, *Zakonski spomenici srpskih država srednjeg veka*, Belgrade 1911, № 691) – with a variation; information on pious bequeathal is also found in a 1346 document listing the estates of the Monastery of the Virgin in Tetovo (A. Solovjev, *Odabrani spomenici srpskog prava od XII veka do kraja XV veka*, cit., № 65), see S. Šarkić, "Pojam testamenta u rimskom, vizantijskom i srednjovekovnom srpskom pravu", cit., p. 89.

[12] The document dated 4 September 1434 about the adoption of priest Bogdan by monk Savatije [A. Solovjev, *Odabrani spomenici srpskog prava od XII veka do kraja XV veka*, cit., № 118; Lj. Stojanović (ed.), *Spomenik SKA* III, Beograd, 1890, VIII № 6]; the bill of sale and last will and testament of Radosava, the wife of Radonja Miraković dated 19 January 1438 [A. Solovjev, *Odabrani spomenici srpskog prava od XII veka do kraja XV veka*, cit., № 121, Lj. Stojanović (ed.), *Spomenik*, cit., № 52; also described by Đ. Bubalo, *Srpski nomici*, Belgrade, 2004, p. 186 sqq].

[13] Such as the documents certifying the reception of the legacy of Mrs. Jelača by her nephew Vlatko Popović, see S. Rudić, "Tri potvrde kneza Vlatka Popovića o primanju dohotka od zaostavštine kneza Braila Tezalovića u Dubrovniku", *Građa o prošlosti Bosne* 3 (2010), p. 153–162.

[14] These include: the documents by which Roman, Grgur and Vuk Branković endow the Monastery of Hilandar with some villages (1365?); the document on the donation of the village Kuzmino on the Sitnica River by Đurđe Branković with his mother Mara and brother Lazar, to St. Paul's Monastery (14 October 1410, Peć); the document on the donation of two villages by Đurđe Branković and his wife Jerina (Irina) to St. Paul's Monastery (15 November 1419, Vučitrn); the document on the donation of a village by kesar (caesar) Uglješa to the Hilandar Monastery (10 July 1423); the document wherein the 'čelnik' Radič becomes the ktetor of the Kastamonitou Monastery and pledges to provide an annual allowance in silver during his lifetime and after his death (1 September 1430); the document

It should be noted, however, that the above-mentioned documentary evidence has a more general character and does not necessarily belong to the acts of the Serbian medieval chancellery. The closely tied nobility in the territory of Serbia, Bosnia and Montenegro continued to leave evidence of their life and business affairs even after the Ottoman conquest of Smederevo in 1459. However, the peculiar source material of this period – usually preserved in the archives of Dubrovnik (Ragusa)[15] – is usually considered a valuable contribution to the study of medieval Serbia.[16]

* * *

The work *De administrando imperio* written by the Byzantine Emperor Constantine VII Porphyrogenitus, which offers information on the Serbian settlement in the territory of the Byzantine Empire, informs us about the oldest ruling authorities in the Sclaviniae – the first independent Slavic regions in the Balkan Peninsula. These were the 'the old *župans*'[17] who are commonly believed to have been the representatives of tribal aristocracy, i.e. the chieftains of socio-territorial, familial-tribal communities.[18] The land they inhabited, which was, according to Porphyrogenitus, governed by the 'the old *župans*', was probably from the outset seen as the property of these tribal communities. In fact, the leading opinion in scholarship argues that the first narrower familial landholdings (*baština*) – as notable exceptions to the main customary rules – appeared as early as the *županija* period, as a result of the disintegration of initial tribal communities into kinship-based clans (or families[19]).[20]

---

wherein the 'čelnik' Radič restores the Kastamonitou Monastery and, together with Metropolitan Marko of Arilje, arranges the monastery's typicon (22 May 1433); finally, the document which informs us about the donation of the Church of St. Nicholas in Čičavica in Strelac by nun Makrina to St. Paul's Monastery (c. 1419). See LJ. STOJANOVIĆ (ed.), *Spomenik*, cit., p. 31–36 (V № 1–7). Some of these documents were published by Solovyev in his edition of selected manuscripts, but there is no need to list their numeration here.

15 On the importance of the Ragusan archives for the reconstruction of medieval Serbian law, see A. SOLOVJEV, "Značaj Dubrovnika u istoriji jugoslovenskog prava", *Arhiv za pravne i društvene nauke* 25 (1932), p. 241–248. See also R. MIHALJČIĆ, *Srpski spomenici Dubrovačkog arhiva*, *O starom srpskom pravu*, Belgrade, 2015, p. 89–94.

16 On the other hand, documents in the Latin script that had originated in the coastal cities of medieval Serbia or Ragusan colonies, which do include some wills, were not taken into consideration.

17 B. FERJANČIĆ (ed.), *Vizantijski izvori za istoriju naroda Jugoslavije*, tom II, Belgrade, 1959 (henceforth: VINJ II).

18 LSSV, „Župan" (G. TOMOVIĆ); M. BLAGOJEVIĆ, *Državna uprava u srpskim srednjovekovnim zemljama,* Belgrade, 2001, p. 38 sqq. Cf. S. ŠARKIĆ, "Vladarske titule u srednjovekovnoj Srbiji", *Zbornik radova PF u NS,* 46/2 (2012), p. 23–35, 24.

19 A. JOVANOVIĆ, "Nasledno pravo u starih Srba: prilog čl. 100 i 101 Dušanova zakonika", cit., p. 2. Cf. B. PETRANOVIĆ, "O pravu nasljedstva kod Srba", cit., p. 28.

20 Also quoted in A. MAJKOV, "Baština u starih Srba", *Glasnik Srpskog učenog društva* 6 (1868), p. 1–48, 20–21; A. JOVANOVIĆ, "Nasledno pravo u starih Srba: prilog čl. 100 i 101 Dušanova zakonika", cit., p. 2.

The first references to the tribe of the Serbs include the report that this South Slavic ethnic group established a stratified patrimonial state in the territory of Diocleia (Duklja). This is mentioned in the so-called *Gesta Regum Sclavorum,* which is considered a rather unreliable source for the reconstruction of political history. However, A. Solovyev nonetheless chose to take this manuscript into consideration in his studies on the legal practices of the first Serbian kingdom.[21] The chronicle reports that King Prelimir divided his state among his four sons in his lifetime and afterwards went on to live to a very old age.[22] This piece of information indicates the nature of succession of power as well as the possibility of dividing up the state as the individual property of the father-testator.[23]

On the other hand, having compared this to other tribes at the same level of development but of different characteristics, scholars have hypothesised that in the oldest days various Slavic tribes saw property as an indivisible unit, which was certainly the case in regard to immovable property.[24] The situation could have been different with the small group of movable, personally owned property, but these personal items were probably buried with their owner and hence could not become an object of bequeathal.[25] This family and property situation suggests that property was kept within the extended family or *zadruga* and passed on as a whole onto the next generation.[26] Hence composing a will would have been redundant, as the property remained undivided even in the following generation. Notably, the chieftain of the *zadruga* was not authorised to independently dispose of joint property unless the remaining adult members had given him their consent.[27]

Drawing on the experience accumulated in the research of Slavic customs, scholars have concluded that different scenarios appeared in practice. If the *zadruga* happened to be reduced to a single member, even a woman, he or she held testamentary rights to dispose of the property.[28] Another noteworthy feature was the alienation of property earned personally by a member (known as *peculium* in Roman jurisprudence) – after his death, this property was passed on to the

---

21 A. Solovjev, *Predavanja iz istorije slovenskih prava*, cit., pp. 102–103.

22 T. Živković (ed.), *Gesta Regum Sclavorum*, Beograd, 2009, XXX, p. 119.

23 See N. Radojčić , "Društveno i državno uređenje kod Srba u ranom srednjem veku – prema Barskom rodoslovu", *Glasnik Skopskog naučnog društva* 15 (1935), p. 12. It was the same among other Slavic tribes. According to Solovyev, this piece of information suggests that the *zadruga* community did not survive and was instead replaced by the tendency of each chieftain (*knez*) to own personal property: Solovjev, A., 1939, p. 116.

24 Kadlec, K., *Prvobitno slovensko pravo*, cit., p. 84.

25 Ivi, p. 84; Cf. A. Jovanović, "Nasledno pravo u starih Srba: prilog čl. 100 i 101 Dušanova zakonika", cit., A. Jovanović, "Nasledno pravo u starih Srba: prilog čl. 100 i 101 Dušanova zakonika", cit., A. Jovanović, "Nasledno pravo u starih Srba: prilog čl. 100 i 101 Dušanova zakonika", cit., A. Jovanović, "Nasledno pravo u starih Srba: prilog čl. 100 i 101 Dušanova zakonika", cit., p. 2.

26 On these matters see the introductory chapters in A. Jovanović, *Istorijski razvitak srpske zadruge: prinosi za istoriju starog srpskog prava*, Belgrade 1896..

27 See V. Bogišić, "De la forme dite Inokosna de la famille rurale chez les Serbes et les Croates", *Revue de Droit international et de législation compare,* 16 (1884), p. 17.

28 See V. Bogišić, *Pravni običaj u Slovena*, cit., p. 162.

community rather than his closest relatives.[29] At some point in time, the strengthening of kinship ties among blood relatives in the families that made up the *zadruga*, as well as the rise of individual ownership, gave rise to the desire to bequeath this property to one's relatives – first from a husband to his wife, and then to other relatives as well, facilitating the bequeathal of a *peculium* to an individual relative.[30]

Later sources from the Nemanjić period reveal the parallel existence of both the *zadruga* as a form of collective ownership and some forms of private, personal property. Again, it should be noted that medieval Serbia was a stratified state with hereditary legal statuses (and related property rights over landholdings) and hereditary titles.[31] Hence any analysis of legal provisions on bequeathal must bear in mind that it was not only unusual but impossible to transcend the constraints of one's class in compiling a will or appointing inheritors – if it was at all possible to appoint inheritors with no kinship ties to the testator.[32]

According to an observation by T. Taranovski based on a charter issued by King Stefan Vladislav Nemanjić, leaving the *zadruga* was mandatory in some cases, as seen in the first half of the thirteenth century.[33] Later sources indicate that the *zadruga* was present among lower and upper classes;[34] however, there are also numerous examples of independent and individual disposal of property in the same period. In some of these cases it was noted that the sellers or donors had no children ('were bereft of offspring'); in other cases, it was underlined that the children would not be able to contest their parents' legal decision.[35] These examples support the hypothesis about the widespread and deep-rooted existence of individual property disposal, especially in the case of ordering relatives and heirs not to contest the legal act undertaken by their kinsman. According to Božidar Petranović, in medieval Serbia, if a person did decide to leave a will, s/he did so not to appoint a universal inheritor (since this did not need to be specified and was simply assumed based on customary practice), but rather to divide his/her property among relatives, which suggests a gradual transition from the *zadruga* to a single family unit.

Some Slavic tribes have left very old evidence on bequeathal. The agreement between the Russian princes and Byzantium dating from 911 suggests that the

---

29 B. Petranović, "O pravu nasljedstva kod Srba", cit., p. 29; M. Milovanović, "Nasledno pravo u starom srpskom pravu", cit., conversely, cf. p. 194–195.

30 See V. Bogišić, *Pravni običaj u Slovena*, cit., p.162; cf. M. Milovanović, "Nasledno pravo u starom srpskom pravu", cit., p. 192.

31 T. Taranovski, *Istorija srpskog prava u nemanjićkoj državi*, cit., p. 11–12; S. Bojanin, S., B. Krsmanović, "Byzantine Administration in the Time of the Nemanjić Dynasty", in: Bikić, V. (ed.), *Byzantine Heritage and Serbian Art* I, Belgrade 2016, p. 45–51, 46.

32 See B. Petranović, "O pravu nasljedstva kod Srba", cit., p. 38.

33 Taranovski assumed that this rule illustrated a long-standing custom rather than a novelty; see T. Taranovski, *Istorija srpskog prava u nemanjićkoj državi*, cit., p. 450.

34 Ivi, p. 450.

35 Ibidem.

Russians used wills to bequeath their property.[36] Identically, wills of the members of patrician families of Zadar,[37] of Croatian-Slavic ethnicity, have survived from the tenth century.[38] Older medieval wills are also found in Great Moravia,[39] Poland[40] and Bohemia.[41] The only exception is the legal tradition of medieval Bulgaria, which has not preserved any wills dating from this early period. Like in the case of medieval Serbia, this is usually interpreted as a result of the *zadruga* system and communal way of life.[42]

'Zavet' is the oldest term reliably confirmed to have denoted bequeathal in Serbian law and is found in the Old Serbian translation of Byzantine regulations concerning wills.[43] This expression might indicate an orally declared last will (nuncupative will), a practice akin to a testament also found in other early Slavic legal systems.[44] It follows that this form of bequeathal corresponds to Petranović's theory of property division, because it suggests the 'distribution' or 'arrangement'[45]

---

[36] See D. Nikolić, *Drevnorusko slovensko pravo*, cit., p. 78. There is also a surviving Russian testament from the 12th century (V. L.Yanin, *Novgorodskie akt'i XII-XV vv*., Moskva, 1991, № 122) cf. T. Taranovski, *Istorija srpskog prava u nemanjićkoj državi*, cit., p. 450; A. Solovjev, *Zakonodavstvo Stefana Dušana*, cit., p. 133.

[37] This is the will of prior Andrija (918) – M. Kostrenčić (ed.), *Codex Diplomaticus Regni Croatiae, Dalmatiae et Slavoniae* I, Zagreb, 1967, № 21 (henceforth: CD) and nun Agata (969?) – CD, № 33; as well as a few others dating from the first half or the middle of the 11th century.

[38] Their Slavic ethnicity is indirectly attested by the names mentioned in these wills. Despite attempts to describe the patricians of Zadar as Roman aristocracy, in this case the members of the Madi family, they were probably of Slavic origin, see I. Strohal, *Pravna povijest dalmatinskih gradova* I, Zagreb, 1913, p. 325 sqq; cf. N. Klaić, I. Petricioli, *Zadar u srednjem vijeku*, Zadar, 1976, p. 89. See also N. Klaić, "Tribuni i consules zadarskih isprava X i XI stoljeća", *Zbornik radova Vizantološkog instituta* 11 (1968), p. 97–92, especially n. 10 on the form of Dalmatian wills.

[39] Porphyrogenitus mentions that Svatopluk I of Moravia divided his country among his sons in the second half of the 9th century (G. Moravcsik (ed.), *Constantine Porphyrogenitus – De Administrando Imperio*, Washington, 1967, p. 41); this information was also discussed by S. Bobčev', *Istorija na starob'lgarskoto pravo*, cit., 1910, p. 534 and dated to c. 870. Moravian sources also include donations *in remedio animae*, see, for example, A. Boczek (ed.), *Codex Diplomaticus et Epistolaris Moraviae* I, Olomucii, 1836, № 225.

[40] Duke Bolesław III of Poland also left a will in the 12th century, see A. Solovjev, *Predavanja iz istorije slovenskih prava*, cit., p. 129. For other 12th-century Polish wills, see I. Zakrzewski (ed.), *Kodeks dyplomatyczny Wielkopolski* I, Poznań, 1877.

[41] Bretislav of Bohemia, who divided his realm among his sons in his lifetime, left his will in 1055 (*Codex Diplomaticus et Epistolaris Moraviae* I, № 147), see G. Friedrich (ed.), *Codex Diplomaticus et Epistolaris regni Bohemiae* I, 1904–1907, № 358, № 364.

[42] Vid. S. Bobčev', *Istorija na starob'lgarskoto pravo*, cit., p. 527 sqq.

[43] *Nomocanon* of St. Sava, Urban Code, §21 (in: M. Petrović (ed.), *Zakonopravilo ili Nomokanon Svetog Save. Ilovički prepis*, Gornji Milanovac, 1991). On other terms used in Serbian medieval charters to denote disposal of property in wills, see A. Solovjev, *Zakonodavstvo Stefana Dušana*, cit., p. 138; Đ. Bubalo, *Pisana reč u srpskom srednjem veku*, Beograd, 2009, p. 37–38; S. Šarkić, "Pojam testamenta u rimskom, vizantijskom i srednjovekovnom srpskom pravu", cit., pp. 86–87.

[44] Šira Pravda (XII vek), in V. L., Yanin (ed.), *Roskiijskoe zakonodatel'stvo X-XX vekov* I, Moskva, 1984, p. 64–73 (§92); cf. the translation provided in D. Nikolić, *Drevnorusko slovensko pravo*, cit., p. 221.

[45] Again derived from the Greek verb *diatithēmi* – to dispose (of), to arrange (translation: O. Gorski, N. Majnarić, *Grčko-hrvatski rječnik*, Zagreb, 2005).

indicated by the testator in assigning his possessions to individual inheritors, which more or less follows the usual customary rules and hence includes only the testator's relatives who are thereby ranked according to his preference.[46]

From the end of the twelfth century the influence of Byzantine written law began to spread in medieval Serbia, supplementing and transforming the previous system of customary law.[47] The legal regulations that the old Serbs inherited from the Byzantines reveal that they were sometimes outdated and dichotomous. In medieval Serbia, law was often practised with the mediation of the Church, which enjoyed special competences in some sub-branches of civil law. Old Serbian laws on testamentary bequeathal of property were shaped in the interplay of current Slavic customary law and largely obsolete Byzantine written law.

---

[46] See K. KADLEC, *Prvobitno slovensko pravo pre X veka*, cit., p. 84. Unlike the Germanic institution of *affatomia*, which appeared already in the Frankish Salic code and which allowed the testator to arrange the transfer of his property to a person he was not related to. In the Ripuarian code *affatomia* became tantamount to adoption for inheritance purposes, like the corresponding Lombard institution of *thinx*: see A. AVRAMOVIĆ, S. STANIMIROVIĆ, *Uporedna pravna tradicija*, Beograd, 2007, p. 208; M. STANKOVIĆ, "Pravna priroda afatomije", *Anali Pravnog fakulteta u Beogradu*, 63/1 (2015), p. 169–185.

[47] K. JIREČEK, J. RADONIĆ, *Istorija Srba*, cit., p. 122. This was particularly evident in the institution of testament, which was in itself seen as a deviation of customary rules, see B. PETRANOVIĆ, *O pravu nasljedstva kod Srba*, cit., 1873, p. 38.