

KINGSHIP: THE WEST AND RUSSIA

Walter Ullmann's, *Principles of Government and Politics in the Middle Ages*, describes the complexity of politics and those competing for power. As Kievan Rus reached its apogee of commercial, religious, and political importance, its partners in the West had already experienced a millennium of development. The political and religious sphere had embroiled church and state in the lay investiture battle, the crusades had proven a disaster, the Papacy was battling Cathars, Spain was in the throes of the reconquest, villages and towns were metamorphosing into larger urban settlements, and money was circulating. Europe's economy was reviving as witnessed by the fairs, intrepid merchants from Italy were doing business with the Orient, and Marco Polo visited the court of Kublai Khan. What is evident is that Western enthusiasm was symbiotically associated with change. What part did Kiev and, in later centuries, Muscovy play in this dynamic? In a very noticeable way, these centers of Rus were participants. Unfortunately many traditional Western historians ignore the energetic diplomacy and economic interactions between the West and Russia. The West and Russia were engaged in trade, marriage alliances, military joint efforts, the sending and receiving of embassies, and personal correspondence between monarchs.

Were these interactions and exchanges sufficient to outweigh hostility and suspicion? Unfortunately, for a myriad of circumstances, that would not be the case. At the core of the Russian psyche is an orthodoxy that is interwoven into every aspect of life. The Patriarch, however, whether in Kiev or later Muscovy, never had the power claimed and for a time exerted by the papacy. As Walter Ullmann points out: "As the organ that was responsible for the well-being of the Church the pope...was entitled not only to depose a king...but who in one way or another had infringed upon papal rights."³⁵

The same cannot be said for Russia where at no moment in its history did the Patriarch claim "the principle that the transfer of a kingdom was in papal (patriarchal) hands, because royal power was an effluence of divine grace."³⁶

The tsars would strengthen their claim to autocracy with the assertion that their person reflected "divine grace", but not that "divine grace" was bestowed by the patriarch. The struggle for power between sacral and secular authority

never became as bitter as the eleventh century vicious contest between the Holy Roman Emperor and the Papacy. In Russia, autocracy would never be seriously challenged by the patriarch where the sacred would embellish autocracy with an aura of extra-spirituality.

The tsar, as his western cousin, relied on scripture to legitimize their claims to authority. The tsar, as the monarchs of the West, held office because of God's grace. The defection of Prince Kurbskii during the hellish period of the Oprichina resulted in a lengthy correspondence between Kurbskii and Tsar Ivan IV. Historians have cast some doubt on the letters' authenticity but there is little disagreement that Ivan was versed in those portions of scripture that acknowledged his power. Whether king or tsar, their position was ex Dei constitutione; monarchy received power from God.³⁷

A natural evolution of this belief was that the monarch was God's vicegerent. A central moment in coronation, linking the monarch with God, was the ceremony of unction. The mysticism that accrued from coronation and unction became interwoven into the fabric of Russian monarchy. The tsar was responsible for the welfare of the community, as such he became giver and adjudicator of law and justice. He was, however, not bound by the law but stood apart and above those rules that applied to society.

In England, Germanic custom restrained monarchy's assertions of power. Following the Conquest in 1066 William introduced feudalism with its emphasis on mutual obligations. The feudal contract was a contradiction to royal absolutism. Law was not the sole authority of a monarch but was limited by the rights explicit and implicit in the feudal contract. In the western variation of a feudal contract and that of what arose in Russia, the similarity was the boyars' right to shift their service from one prince to another. If the ceremony of unction elevated the recipient to God's vicegerent, the feudal contract emphasized his humanness. This, as Ullmann notes "presented severe dilemmas."³⁸

There was a distinction in the West between theocratic and feudal that was not an issue for theocracy in Russia. The tsar owned the realm and all oaths were solemnized with kissing the cross. The Patriarch Sylvester, an early confidant and advisor to Ivan IV, lost the tsar's confidence and was ignominiously removed from office, stripped of all authority, and sent to a monastery where he died at the end of the 1560's.

In Russia, there occurred an accommodation and synthesis of theocratic and autocratic that was not the experience in the West. Constitutional development was encouraged by feudal contracts whereas the same would not transpire in Russia. When, however, both king and tsar imprisoned a vassal or boyar,

confiscated their resources, expelled them from their fief or *pomestie*; all these actions were legal, the indisputable right of a theocratic king.

To the claims of the tsar, the boyars were ill-prepared to voice their distress in an organized manner. Nothing like the *Magna Carta* occurs in tsarist Russia. The excesses during the decade of the Oprichnina did not lead to organized resistance. The boyars, unfortunately, went like sheep to their executions. This indicates a power structure not experienced in the West.

By the sixteenth century, the rivalries and petty wars resulted in the acknowledged dominance of Muscovy. The major challenge had been Novgorod, and Ivan III reduced that city to a reluctant but submissive dependency. There would be no further challenge to Muscovy, at least none from within Russian territory. The interest in the West was selective, adopting the useful as it rejected ideas and formulas alien to its culture. Feudalism as practiced in the West had no cache for Russia. What did appear was a variation of that system that reflected the conditions within a Russia that cannot be separated from its growing vastness. As a result, a form of the system suitable to Russia was instituted. Unfamiliar to Russia were feudal contracts as practiced by the Carolingians and rooted in the *comitatus* of German tribal customs. The concept of mutual responsibility, so integral to Western political development, was not current in Russia. In its stead, an immersion in autocracy and theocratic government blossomed in Russia where autocracy prevailed while incorporating theocratic justification to support Tsarist power.

In France, as in England during the twelfth and thirteenth centuries, feudal and theocratic functions of the king were combined. Monarchy was increasingly bound by law that required university trained bureaucrats. It is not by happenstance that these same centuries witnessed the establishing of universities and the reappearance of Justinian's *Corpus Juris Civilis*. Roman law was both the arbiter and antagonist to autocracy. Monarchies, whether in the West or Russia, claimed theocratic justification for their power. But only in Russia would theocracy become as suffused within the paradigm of tsarist rule. Roman law, however, was not studied in Russia, thus Roman law did not act as a restraint to tsarist claims. Until the reign of Peter the Great there were no universities in Russia to train lawyers and bureaucracy.

The University of Paris attracted some of Europe's keenest intellects where they studied Justinian's *Code*, graduating to enter the service of the crown. The same is not the case of England and Russia where neither commentaries on Roman law nor *jurisconsulti* served kings and tsars. In Russia, it was customary law and not the sophisticated laws of Rome. In point of fact "most of the

fundamental laws affecting Russia's system of government and the status of its citizens were never at all promulgated in any formal way." As a result there was no place for arbitration and the binding of legal precedents.³⁹

The Ukaz of Ivan III and Ivan IV addressed class structure and confirmed tradition, but were not intended to be a reform. It would not be until the nineteenth century, the reign of Alexander II, that Russian jurisprudence began to distinguish between decrees, administrative ordinances, and laws. Once approved by the tsar they were considered of equal importance. The arcane Russian system lacked sophistication and, as a result, it was a morass of tangled webs. Important edicts of royal succession were of no greater significance than a simple ukaz.⁴⁰

Another element of theocratic monarchy practiced in France, but not adopted in either England or Russia, was a belief that with anointing, the king's person was endowed with thaumaturgy power to heal. There was a dreaded affliction, scrofula, a tubercular bacterium that attacked the lymph nodes causing painful lesions. It was believed that healing would result if touched by the king or touching his garment. In France, the holy oil of anointing was possessed of remarkable qualities. When Clovis (d. 511) was baptized a dove appeared from heaven carrying a *sainte ampoule* in its beak. From that time until the French Revolution all kings of France were anointed from the *sainte ampoule*. There was no other monarch that had this distinction. The ceremony of anointing altered the nature of the king from human to that of a religion royal.⁴¹

French kings and Russian tsars were sovereigns, not suzerains. There, vassals and boyars existed on a lower plain. Being tsar, as being king in France, was not a partnership with aristocracy. English barons might write the Magna Carta but there was nothing similar in France and Russia. There, neither vassals nor boyars had the will or power to offer any meaningful resistance to autocracy and theocracy.⁴²

The theocracy that evolved in France, unlike Russia, could be challenged by Rome. The papacy, in the eleventh and thirteenth centuries, exerted its power through the threat and /or implementation of interdict or excommunication. The Holy Roman Emperor, Henry IV, had done penance at Agnani and Philip Augustus had submitted to Innocent III. Russia's tsars were not constrained by patriarchs from acting as they pleased.

French theocratic kingship relied upon Justinian's Code to provide them with the legal confirmation of their theocratic claims. "The French king was on the same level as that ruler of Justinian's law books."⁴³

The French barons were unable to avoid the erosion of their feudal privileges. The boyars of Russia, on the other hand, had few privileges to begin with. The traditions and norms engrained in Russia's culture became an adjunct of theocratic kingship. The tsar filled the power vacuum created by the jealousy and intrigue so common among boyar families.

Legal developments in France, England, and Russia displayed significant differences. England's kings became the seigneur of a feudal hierarchy losing their position as sovereign. In France, kingship evolved into sovereignty with control of the feudal pyramid, directing its resources and repossessing any fief lax in its obligations. Roman law furnished the legal precedents and language that permitted king "to circumvent, if not to disregard, feudal ties."⁴⁴

Whether disputes were civil or criminal, Roman law lent credibility to arguments for or against, pro or con. The flexibility of Roman law, however, might be carried too far and for some monarchs, such as the French King Philip Augustus (1180–1223) who decreed in 1219 that Roman law would be outlawed at the University of Paris. Such proscriptions also occurred in England where King Stephen forbade the teaching of civil and canon law and Secarius' summary of Justinian's *Codex* and *Digest* were confiscated. The laws of England and Russia were to follow local precedents and norms, not generalizations introduced from the continent. England and Russia's legal system followed a different path than those of its neighbors, for here custom and norms were the cornerstone of their law.⁴⁵

Russian tsars likewise circumvented and usurped their boyar's customary privileges. The niceties of Roman law, however, were not a factor as the tsars used cunning and coercion, not legal precedents to enforce authority. While principles and methods utilized in East and West did not correspond, the objective was the same: to make the state a tool that would extend the authority of monarchy.⁴⁶

In the West, by the ninth century, a paradox was evident in laws and their application. Was one to follow Germanic custom or Roman legal principles? The contest was between feudal civil law that was Germanic in origin and ecclesiastic law that was Roman. As the West struggled to determine what law to follow, Russia was not troubled with that quandary of conflicting law. Russia adhered to custom and traditional norms where Roman law was alien.

With interactions in areas of trade, diplomacy, and war, Kievan Russia, by the twelfth century, was well-known to West and East. Western culture, however, differed from their contemporary to the East as it was experiencing an

intellectual awakening. Stimulated by Maimonides' *Guide for the Perplexed*, that assimilated the philosophy of Aristotle with Judaism, Thomas Aquinas attempted the same for Christianity. Aristotle's logic and the rediscovery of Justinian's *Novels* and *Digest* stimulated Western students of law with new epistemologies. A Europe in flux required new intellectual tools to meet the legal demands of emerging states. These changes would eventually supplant feudal custom and law with a reliance on Roman logic and precedence. Europe would forge its own path combining a Roman legacy with the emerging nation state.⁴⁷

Charles Homer Haskins was convinced that the intellectual and artistic flowering of the twelfth century was a Renaissance. There is little doubt but that he was correct. Paris, Padua, and Bologna rank as intellectual centers of the highest degree. Likewise, Cambridge and Oxford were centers in the study of Justinian's law.

The Codex *Juris Civilis* was a compendium of laws that armed protagonist and antagonist with arguments that replaced medieval practices of judicial combat and torture. Frederick Barbarossa considered himself an absolute monarch and Pope Gregory VII argued the same for the church. Both found justification in the laws of Rome. For Italy, Justinian became a heroic figure, a rallying call against interference from their aggressive neighbors across the Alps. Italy's heritage was Rome and its laws would be their paradigm.⁴⁸