Chapter 4

Land Tenure, the *Druzhina* and the Nature of Kievan Rus’

The question of land tenure, of how land was used, and by whom, is of particular importance for an understanding of Kievan Russia. This question can also be considered from a legal point of view and such an approach would even have certain advantages by encouraging a more precise determination of the ramifications of the usage of land. A legal approach would require an adequate set of conceptual tools.

The importance of the question rests on a variety of reasons. The *first* one is that an elucidation of the system of land tenure contributes powerfully to the visualization of Kievan Russian society and culture. The same can, of course, be said of, say, the study of the role of towns in Kievan Russia or of the system of social classes. But the way a society, a polity, handles the use of land would normally also embrace the rural-urban relationship and the social hierarchies. If a sufficiently clear picture of the use of land can be assembled, we already have the landscape in front of us in which the other details can be painted.

Such a visualization is less problematic where historical periods and societies are concerned which are closer to us in time and affinity and where a multitude of sources of information is at our disposal. For Kievan Russia, the literature may be vast, but the primary sources (as explained in the chapter on sources) are scarce. This has resulted in strongly diverging views on its socio-political and economic characteristics.

A *second* point concerns the role Marxist-Leninist ideology has played, and in fact continues to play, in the study of Kievan Russia. Land, as one of the primary factors of production, is one of the most basic concepts for dialectical materialism and Soviet historians of Kievan Russia have assigned it a correspondingly central place in their studies.

*Thirdly*, the land issue has also loomed large in Western scholarship concerning Kievan Russia. It has often been expressed as the question concerning the feudal character of Kievan Russia. In Soviet scholarship, the feudalism question is of course intimately bound up with the more general question of land tenure.

The conceptual framework of the legal aspects of land tenure, land ownership and related subjects lends itself to being treated separately. The other three questions (the ‘visualization’ of Kievan Russia, the Marxist-Leninist approach to it, and the question of the feudal character of Kievan Russia) are so intimately related that they cannot very well be discussed in isolation.
1. Land Tenure: The Legal Perspective

An adequate set of conceptual tools would be required for a meaningful legal analysis, as we stated above. Modern concepts might not always be suitable. In particular, the ownership concept based on Roman law and dominant in the West since Napoleon is defective in this respect. It has made ownership the fundamental and pivotal right from which all other private law rights flow. The determination of ownership then becomes the first and most fundamental question to be solved in any legal relationship. Moreover, lawyers are often inclined to regard ownership as an inherent, almost physical, quality of a material object, to be established through ‘scientific’ observation and analysis.

Marxism, true to its 19th century origins, did not offer an exception in this respect; ownership of the means of production was considered the basically decisive and determining factor for the entire economic, social, political and ideological superstructure.

Outside the socialist world, this absolute ownership concept has retained its function as the central organizational principle of private law, although not without causing considerable strain. In the Soviet Union, this principle, notwithstanding its ideological qualifications, did not fit well into the political and economic reality. Declaring the land the inalienable heritage of the Soviet people was translated in legal terms as the single and indivisible state ownership of the land. Land ownership had, thereby, become almost irrelevant from a practical legal point of view. The real question was not any longer: Who is the owner? but: Who enjoys a particular (limited) right with regard to this piece of land?

In constructing the socialist law concerning real property, the legal scholars of the Stalin era used the comparison with medieval law to find a way out of the dilemma. In his discussion of the rights in rem in a feudal system, the leading civil law scholar of that time, A.V. Venediktov, pointed out in his basic work on state socialist property, published in 1948, that the distinction between ownership and possession in such a system was blurred, that there was also not a clear line of distinction between ownership and various rights in rem, and that as a result several types of ‘ownership’ in one and the same object might co-exist.1

The same thought was expressed by the historian A.L. Shapiro, who even went so far as to assert that the Marxist definition of ownership did not embrace “all varieties of ownership existing under feudalism”.2 In a

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1 A.V. Venediktov, Gosudarstvennoia sotsialisticheskaia sobstvennost’, Moskva, 1948, 102-106. In the West, V. Gsovski had made a very much similar point in his work on Soviet Civil Law, Ann Arbor, MI, 1948, I, 576, 789.