Since the nineteenth century, jurisprudential theory has been dominated by conceptions of law which rely upon notions of authoritative state structures and coercive penalties inflicted by agents of that structure upon social deviants. While such a viewpoint should provoke no surprise, given the extraordinary growth of national state institutions in nineteenth-century Europe, the so-called "command theory" of law and its coercive law parallels have helped to obstruct the application of jurisprudential theory to the issue of legal development. Long after John Austin's formulation of this "key to the science of jurisprudence,"1 respected jurisprudents continue to call for an understanding of the law exclusively in terms of coercive sanctions and hierarchical state structures.

Recent studies of international law and especially of the law of traditional societies have proven the coercive-law model unworkable. In both cases legal norms frequently exist without formal sanction and social relations are ordered strictly on a bilateral level. Frustration with the prevailing theory has led to some creative theoretical work aimed at constructing a model capable of including both "non-coercive" and Austinian legal formulations.2

While it is difficult to reduce all the peculiarities of numerous societies to a single model, certain regularities stand out. Societies sometimes described as pre-legal evidence what H. L. A. Hart calls primary rules—behavioral norms—without the accompanying secondary rules of power and sanction.3 Typically, the societies which sponsor such legal systems are homogeneous, often small and isolated. Norm actualization is based upon social consensus, and individual responsibility plays a relatively small role in regulating social conduct. Disturbances in the social order are the business of those directly involved, so that

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relations are sometimes described as dyadic or horizontal. Torts are resolved exclusively through self-help carried out by the victim and his kin against the offender and his kin. With the exception of the occasional informal intermediaries who assist in conflict mediation, this dyadic system has no power hierarchy nor any of the sanctions of the law in the sense that Austin construed them. Likewise, horizontal conflict resolution employs none of the specialized personnel that Weber thought so important to legal development.4

Vertical legal systems occupy the other end of the spectrum. More true to the Austinian model, they are characterized by power hierarchies, show a relatively high level of social differentiation, and are often subject to a high level of extra-cultural influence. Here personal responsibility is greater as kin support ebbs, and social deviance is detected, judged and punished by specialized personnel. Consequently conflict resolution is triadic, and the hierarchy assumes the role of the victim in seeking satisfaction for violations of the social order.

The developmental model briefly described here may bear different descriptive terms, but in essence it seeks to broaden the conception of social ordering in so-called "stateless" societies. In particular it points out the usefulness of perceiving legal systems on a spectrum of complexity and size. Furthermore it offers some insights into the dynamics of legal change, especially when considered in conjunction with the increasing volume of case studies published by anthropologists. Historians of law have been slow to realize the potential of this new construct. It suggests a technique for penetrating legal systems in transition, especially for societies where surviving documentation is inadequate.5

Precisely these characteristics make appealing the application of the developmental model to Rus' legal structures of the thirteenth, fourteenth and fifteenth centuries, which for lack of better information have been described largely on the basis of later legal forms.6 To judge from the extant sources, Rus' law (excepting that of the northern cities most heavily visited by Western

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5. This model is discussed in some detail by Barkun (Law, passim). Also see Richard D. Schwartz and Jane C. Miller, "Legal Evolution and Societal Complexity," The American Journal of Sociology, 70 (1964-65), 159-69; Howard Wimberley, "Legal Evolution: One Further Step," ibid., 79 (1973), 78-83.