

CUSTOMARY LAW AS A REFLECTION OF THE LEGAL CONSCIOUSNESS OF THE RUSSIAN PEASANT*

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INTRODUCTION

Under the Emancipation statute of 1861, disputes and litigation between peasants were to be judged in the *volost'* court [canton court]. Judges were elected from among the peasants, most of whom were illiterate. The norms for civil cases were based on local customs,¹ so it has been argued that Russian peasants were legally isolated from the general judicial system of the Russian Empire and that in practice the customary law functioned instead of the written formal state laws.

After analyzing the decisions made by *volost'* courts compiled by the Liuboshchinskii committee in the 1860-1870s, I conclude that the written law, such as state civil codes, upon *volost'* court decisions were influential enough in practice to persuade state officials to believe that the peasant *volost'* court functioned well as a mediator in the countryside.²

Studies on Russian peasant legal practice in the late Imperial period are now ongoing, especially by Gareth Popkins and Jane Burbank. They criticize the view that finds a dichotomy between customary law and state law and write that “in a litigational context, then, custom often appears in a symbiotic, sometimes inextricable, relationship with the state and its law”,³ and

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1 Polnoe sobranie zakonov Rossiiskoi Imperii, sobranie vtoroe (*PSZ II*), t. 36, No. 36657, articles 38 and 107.

2 Yoshida, Hiroshi, “*Roshia Noson niokeru Ho to Saiban* [Law and court in the Russian village],” *Roshiashi Kenkyu* 53 (1993).

3 Gareth Popkins, “Code versus Custom? Norms and Tactics in Peasant Volost Court Appeals, 1889-1917,” *Russian Review* 59 (July 2000), p. 417.

“thus, the *volost*’ courts, far from legitimating oral custom (even if this is what ethnographers and other observers took from their records), in fact bound the rural population closer than before to the written culture of state law and educated society.”⁴ Their arguments are new in that they are contrary to the notion which insists that the *volost*’ court didn’t work very well. Debate which measures the peasant legal system against the modern legal system usually concludes that Russian peasants lacked a sense of legal consciousness. Burbank’s idea of peasant legal consciousness as opposed to peasant customary law may end the long disputes over the existence of *peasant customary law*, as opposed to the idea of *peasant legal custom*. I agree with her thinking that the *volost*’ court was a significant arena for local justice and the very existence of the court encouraged a mature belief in law and in the value of the legal process. But their point of view to see peasants looks similar to that of state officials of the Tsarist Russia. This may be because they take the ultimate aim of the Russian Empire for granted, that is the full integration of the peasants into the complete judicial system and the evolution of a single court system for all the estates of the Empire. This ‘ultimate aim’ may have been the objective of the state administrators (especially the officials of the Ministry of Justice, in their eyes the peasant world was a subordinate layer of the State), but for peasants it was more important to survive daily life and to adapt themselves to a changing world. So they were indifferent to this ‘ultimate aim.’

One of the traditional views is, as I stated above, to imagine the legal situation of the peasant as a world dominated by customary law. Supporters for this view often idealize peasant customs and they tend to emphasize a static legal situation in custom. What is really needed is debate on what ‘local custom’ means to the peasants, without idealizing peasant life, thoughts and mores, yet analyzing the concrete and varying patterns of

4 Jane Burbank, “Legal Culture, Citizenship, and Peasant Jurisprudence: Perspectives from the Early Twentieth Century,” in Peter H. Solomon, Jr., ed., *Reforming Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order* (New York, 1997), p. 90.

living law in rapidly shifting circumstances, such as the approach of capitalism, and the transformation of the Empire into a Nation State.

In this paper, I will analyze peasant practice in property disputes and suits about family division and inheritance.⁵ The aim of my presentation is to discover; the extent to which the customary law was respected, what the contents of the customary law were, and what the customary law meant to Russian peasants. From the late Imperial period onward, there was much debate over what the customary laws of Russian peasants actually were. Some scholars emphasized the originality of customary law outside the influence of state statutes. Others saw a mixture of original peasant law and state regulations.⁶ Still others denied the relevance of customary law in the provinces. As it is known that in the *volost'* court, peasants often arrived at different judgments on the same kind of evidence and disputes in the same *volost'*,⁷ this group asks how this could occur if customary law really existed. On this point I concur with A. Leont'ev, an eminent jurist of that time. He said there were no customary-juridical norms in the peasant consciousness as are generalized in juridical laws, and denied the very existence of a customary law. At the same time he proposed the notion of 'customary-juridical views' instead of customary law.⁸ There weren't any uniform and aggregate laws which could be called customary laws among Russian peasants, but even peasants had some juridical sense although it varied from one locality to another.

I won't dwell on the philosophical problems of law, or the differences between 'customary law' and 'customary-juridical

5 This kind of civil case was the third most common reason for going to the *volost'* court. See Jane Burbank, "A Question of Dignity: Peasant Legal Culture in Late Imperial Russia," *Continuity and Change* 10 (1995), p. 397.

6 A.A. Rittikh, *Krest'ianskii pravoporiadok* (SPb., 1904), pp. 26-27.

7 G. Brazol', *Ob uprazhnenii volostnykh i sel'skikh sudov* (Khar'kov, 1886), pp. 6-8, 12.

8 A.A. Leont'ev, *Volostnoi sud i iuridicheskie obychai krest'ian* (SPb., 1895), pp. 70-71.

views'. Rather, I will address questions such as how peasants perceived and interpreted the 'local customs' which were often cited in *volost'* court decisions as proof and grounds for judgments. What were these 'local customs' and how were they conceptualized and represented in their minds? How did peasants use 'local custom'?

The materials for this study are based upon *volost'* court decisions, district congresses of land captains (*uezdnyi s"ezd zemskikh nachal'nikov*) and the provincial board (*gubernskoe prisutstvie*) of Moscow province at the turn of the 20th century. The reason for this setting (period and field) is as follows: More than 30 years of experience gave the *volost'* court a kind of authority in the countryside,⁹ so the cases sent to the court were not exceptional. After the 1889 reform, the court became the first juridical step for the people living in the villages and they could appeal the decisions of the court up to the district congress where bearers of another (modernist) judicial spirit judged. This means that by comparing the *volost'* court's deliberations and its appeals, we can follow peasant legal consciousness more rationally. Of course the villages in Moscow province were situated relatively near to one of the most industrialized cities in the Empire. So these villages had closer contacts with new, modern legal concepts such as property rights, which were thought to be particularly important to peasant legal culture.

CONCRETE CASES: DISPUTES OVER THE INHERITANCE OF PROPERTY

In 1911, the Gorbovskii *volost'* court, in the Ruz district of Moscow province, heard a civil case concerning a right of in-

9 There were other ways to 'seek justice' in the Russian village by both formal and informal routes such as the village assembly (*volostnoe pravlenie*) or councils of elders (*sovet starikov*). The first decade after the emancipation, peasants preferred these institutions but by the end of the century most petty disputes were directly taken to the *volost'* court. See Cathy Frierson, "'I Must Always Answer to the Law...' Rules and Responses in the Reformed *Volost'* Court," *Slavonic and East European Review* 75:2 (1997), p. 329. See also Burbank, "A Question of Dignity," p. 398.

heritance. Nataliia Sadikova, a peasant woman from Kostina village, insisted that she was her late father, Mikhail Larionov's only heir. But the *volost'* court did not recognize her claim, after considering Mikhail Larionov's will that all his property should be inherited by Agrafeia Il'ina, a woman from another village. The testament had already been confirmed by the circuit court.¹⁰ Sadikova appealed this decision at the district congress. In spite of Sadikova's father's will, Il'ina wasn't able to take possession of the property, because it was in Sadikova's hands. The district congress rejected Sadikova's appeal because the re-allocation of peasant property by will is permitted if it doesn't contradict *local custom* and this was not the case.¹¹ In June 1912 this case was sent to the provincial board which made another decision. The board said that there was a limit to the estate that one could leave in a will. As the defendant Il'ina didn't prove that the contents of the will didn't contradict local customs, the will was invalid and the board abolished the congress' decision and sent it back. The retrial in the congress supported the original decision of the *volost'* court, because all Larionov's property was given to the defendant and there wasn't any custom in the village which regulated the inheritance of estates. This meant that Larionov could bequeath all of his property and that his will was valid.¹² The plaintiff of course appealed against this resolution but the provincial board accepted the conclusion of the district congress.¹³

We can draw two things from this case. One is on the role of the will and the other is about the influence of *local customs*. In the post-reform period, one of the dominant principles of inheritance, was that after the death of the head of a family, all property was equally divided between all the male children. If there weren't any male children, the wife or daughters could inherit some portion of the property. An heir had to be a member of the family or a person who contributed to the accumula-

10 TsIAM (Tsentral'nyi Istoricheskii Arkhiv Moskvy), f. 571, op.1, d. 943, l. 3.

11 Ibid., ll. 12-12ob.

12 Ibid., ll. 20-20ob.

13 Ibid., l. 23.

tion of family wealth and property.¹⁴ This is why the role of the will was underestimated. There was a district congress decision that refused the inheritance rights of the son and affirmed the ownership of a person who had no kinship with the family, but to whom the father left his property in a will.¹⁵ This is understandable when we are aware that the son lived outside the village and the beneficiary had been working on the land when the father died. But in the case of the Gorbovskii *volost'*, the willed assets were under the control of the daughter, and the defendant lived in another village, so the defendant had not contributed to the accumulation of this property. In this context, the *volost'* court attributed a greater significance to the will than was usual.

Second, it seems that any act could be upheld as long as it wasn't contradictory to the *local custom*. In this case we might think that *to reallocate family property by will was a local custom* of this village. In another village, the provincial board stated that the "inheritance problem should be solved by the *volost'* court according to the local custom."¹⁶ This means that the way the *volost'* court solved inheritance problems was by *local custom*. Article 25 of the Temporary Regulations on the *Volost'* Court¹⁷ says "In the solution of suits and disputes among peasants, especially in the division of peasant inheritance, the (*volost'*) court is guided by local customs." So the case above is quite *legal*. There were villages whose local custom was to divide property according to the state civil code after death. The widow got one-seventh, daughters one-fourteenth and sons divided the remainder in equal parts.¹⁸ Supporting a *volost'* court conclusion, the decision of the Mozhaisk district congress in 1899 says "inheritance rights among peasants is based mainly

14 Christine D. Worobec, *Peasant Russia: Family and Community in the Post-Emancipation Period* (Princeton, 1991), ch. 2; Boris Mironov, *Sotsial'naia istoriia Rossii perioda imperii (XVIII-nachalo XX v.): genезis lichnosti, demokraticheskoi sem'i, grazhdanskogo obshchestva i pravovogo gosudarstva*, t. 2 (SPb., 1999), pp. 72-73.

15 TsIAM, f. 570, op. 1, d. 1253, ll. 3-7.

16 Ibid., f. 62, op. 1, d. 603, ll. 5-5ob.

17 *PSZ III*, t. 9, No. 6196, article 25.

18 TsIAM, f. 62, op. 1, d. 1578, l. 3.

on the (fact of) living and working together for the accumulation of household wealth and property, not on kinship.”¹⁹ We can see here the traditional principle of Russian peasants ‘legal consciousness,’ and the labor principle (*trudovoe nachalo*) or rights of labor (*pravo truda*). This was the *local custom* of the region.

In 1912 a peasant woman Dar’ia Cherkasova appealed to the Ruz district congress. Her husband Dmitrii had died three years before and all his property including his allotted land and buildings were now under the control of her brother-in-law, Ivan. But Cherkasova asserted that she should also be a beneficiary and she claimed her rights to two *dusha* [souls] of strip land. Since both Cherkasova and Dmitrii had been living outside the village for employment and since there was no proof that they had been sending money to support Ivan’s farming operation, the *volost’* court rejected the plaintiff’s request. Though witnesses presented evidence that there was a local custom that after a husband’s death, his wife inherits his property, the court didn’t recognize Charkasova’s need for the land because she didn’t live in the village and she didn’t have any children.²⁰

From this case we can see that the *volost’* court gave priority to the individual who was actually working on the farm or in other words the labor principle. At the same time we mustn’t overlook the plaintiff’s contention: the existence of a local custom for the husband’s property to be inherited by his wife. As the court regarded Cherkasova as an outsider to the village, it didn’t recognize any reason to adapt to local custom. The same customs prevailed in other villages in Moscow province as the next case shows.

In September 1899, the Kukarinskii *volost’* court heard a suit brought by Andrei Davydov, a peasant of the Novosurina village, against his step-mother Praskov’ia Antonova. His father Mikhail made his will in August 1895 and it had been confirmed by the *volost’* administrative board.

19 Ibid., f. 570, op. 1, d. 1438, ll. 31-310b.

20 Ibid., f. 571, op. 1, d. 1103, ll. 4-6.

The testament: In the name of The Father and the Son and the Holy Ghost, Amen. I, a peasant who signs at the end (of this testament), of Moscow province, Mozhaisk district, Kukarinsk canton, Novosurina village, Dmitrii Davydov, being in good health and (having) complete recollection thought fit to distribute all my property both movable and immovable upon my death as follows: my own property which is located in the Novosurina village, the wooden house with its yard building and all its belongings such as thatch standing by my farmstead, and a cow, I am bequeathing to my wife, Praskov'ia Antonova. All other things, that may be left upon my death, should to be divided between all my heirs according to the law.²¹

The Kukarinskii *volost'* court concluded that the plaintiff's complaint was unsubstantiated, because the deceased father had willed his property to his wife. The son, of course, appealed this decision for the following reasons. 1) The house in dispute was situated in an area that followed a traditional inheritance system, thus he contended that it should be regarded not as acquired but from a patrimonial lineage. A patrimony should be handed down to the family heir, not to an outsider, so the will shouldn't take legal precedence. 2) The *volost'* court dismissed the case because the son had his own house. But this was not strictly legal because there was no law which prohibited a person who has his own house from inheriting his patrimony. 3) The *volost'* court based its decision on the will, but its validity was doubtful. How could the father make a will giving all his property to his surviving second wife and leaving nothing to the son of his first marriage despite the fact that the son had been sending his father money (over 100 rubles) for nine years? 4) The son paid his father's funeral expenses and provided for the ritual of the dead at the church. As the son had spent his own funds for his father, his father's property ought to be transferred to him as the legal heir.²²

In spite of these reasons, the Mozhaisk district congress sided with Antonova. It says the will was made correctly. So, as the

21 Ibid., f. 570, op. 1, d. 1439, ll. 12-12ob.

22 Ibid., ll. 3-4ob.

will ordered, the ownership of the disputed house was transferred to Antonova.²³

We can see that both the *volost'* court and the district congress favored the widow's right of inheritance. Again a respect for the will is observed here. In another *volost'*, in the same district, the *local custom* that after the death of a husband, his wife must receive the remaining property, was cited in response to a peasant's claim to his deceased brother's property. The claim was rejected and the court protected the rights of the widow.²⁴ In these villages, we can observe the joint ownership by husband and wife.

In the post-reform period, once a family provides a daughter with a dowry or trousseau, she was excluded from subsequent inheritances. At least peasants maintained their custom of endowing daughters with movable property.²⁵ But at the turn of the century, more and more women asserted their rights to inherit the allotted land or farmstead. In November 1896, the Filimova village assembly decided to sell a farmstead, whose owner had died, considering the farmstead as an escheat. But the Bogorod district congress rejected this decision and affirmed his married daughter's hereditary rights.²⁶

CONCLUSIONS

We have seen various disputes over the allocation of property in Moscow province at the turn of the 20th century. The Russian countryside was inefficient and unproductive, and peasant family budgets were burdened with various taxes, as a consequence peasant legal customs favored the property rights of those who actually used the land, i.e. those who could pay taxes. This is the origin of that well-known formula: the labor principle or rights of labor.

At the same time, however, a new trend arose in peasant customs: claims arising from kinship, an increase in the use of

23 Ibid., l. 20.

24 Ibid., d. 1443, ll. 12-12ob.

25 Worobec, *Peasant Russia*, pp. 62-63.

26 TsIAM, f. 696, op. 1, d. 435, l. 9.

wills and women's rights of inheritance. When a son who had lived outside the village for a long time, claimed his rights under patrimony after the death of a parent, both the *volost'* court and the district congress sided with him.²⁷ On the other hand, there was a case of a son-in-law, who had contributed to the household economy, who didn't benefit in the division of the family property, because there was no kinship and no contract which specified the newcomer's rights to patrimony.²⁸

Thus we observe various interpretations of local peasant custom. Generally speaking, when kinship and the labor principle were contradictory, decisions were based on the individual situations. Then they used *local custom*, the contents of which weren't definite or shouldn't be definite. Peasants appropriated the state term 'local custom' and in this way they were able to use *local custom* to reflect their own consciousness.

27 Ibid., f. 62, op. 1, d. 1567, l. 8.

28 Ibid., f. 570, op. 1, d. 1314, l. 24. In the post-reformed period, the right of in-laws was not indisputable and was broken for a variety of reasons. See, Worobec, *Peasant Russia*, pp. 60-61.