

2. Archaic Law : Back to Slavic Legal History?

2.1 Two Methodological Approaches to Researching Slavic Legal History

Slavic legal history was a stream in historiography that was mostly popular in the 19th and in the first half of the 20th century. It represented an analogy to the so-called Germanic legal history, whereby both have attempted to uncover the “common legal history” of Slavic, respectively Germanic populations. Nowadays, prevailing approaches deny the existence of a common Slavic or a common Germanic legal past, as well as their mutual antagonism. In contrast, Slavic and Germanic legal history are claimed to share some common features, instead of being completely different.

Still, the truth is that unlike in case of Germanic law-codes, there are virtually no extant sources preserved that would capture the archaic legal system of Slavs from Eastern Europe from the period prior to 1000 AD.⁶⁹ It is even not known whether any such source ever existed at all. Scholars are even not sure as to what form did the archaic Slavic law take – that is, whether contemporary Slavic communities distinguished between “laws” and “customs” at all. Namely, even while according to the Fulda annals dating to 849 AD, Slavic emissaries to a Frankish assembly were knowledgeable of Slavic “laws and customs” (*leges et consuetudines*),⁷⁰ it is often claimed this could have been only a simple insertion by the contemporary Frankish scribe, not reflecting the actual situation in the legal system of the Slavic communities.⁷¹ Therefore, most authors suggest

⁶⁹ From a later period, after 1000 AD, the Russian Pravda is a good example of a Slavic law-code. See e.g. KUTCHEROV, Samuel: *Indigenous and Foreign Influences on the Early Russian Legal Heritage*. In: *Slavic Review*, 31, 1972, pp. 257-282. On the oldest Polish law-book (from the 13th or 14th century) see MATUSZEWSKI, Józef: *Najstarszy zwód prawa polskiego*. Warszawa : Państwowe wydawnictwo naukowe, 1959.

⁷⁰ Cf. further details in: RATKOŠ, Peter: *Pramene k dejinám Velkej Moravy*. Bratislava : Vydavateľstvo SAV, 1964, p. 94. Quoting from *Annales Fuldenses ad a. 849*, in *Monumenta Germaniae Historica*, SS I.

⁷¹ The Latin notion of *lex* did not mean an Act of a Parliament, however, but rather “law” in general. See LUPOLI, Maurizio: *The Origins of the European Legal Order*. Cambridge : Cambridge University Press, 2007, p. 416.

that, in practice, the archaic Slavic law took only the form of customs, respectively the form of an archaic customary normative system, not even discerning between laws and customs.

It was this more or less unknown customary normative system that the Church and local Christianized rulers attempted to amend or outright to disrupt since the 9th century, by introducing new “law of God” (Christian religion), accompanied by a new secular law. This was the case also with the Princedom of Great Moravia existing in 833-906/7 AD, being located at the intersection of today’s Czech Republic, Austria, Slovakia and Hungary, and with the normative texts authored by the Byzantine missionaries Constantine (Cyril) and Methodius, being active in Great Moravia since 863 AD. They namely introduced to Great Moravia a number of legal texts, written in a language similar to the language of local Slavic population, but being heavily inspired by foreign, mostly Byzantine law, in an attempt at “modernization” and “Christianization” of the local normative system. And albeit their actual success and the actual use of these texts in practice remains doubtful (there is no evidence as to their practical application), still, knowing that the original Byzantine models were textually accommodated to the needs of the local Slavic community, a vast field of research opens up for legal historians – namely, through “deconstructing” the extant texts it might be possible to identify what exactly was changed or omitted in comparison with the original Byzantine models, thus showing the most pressing and also the least pressing legal issues to be regulated among the Slavs in Great Moravia.

This is hence another specific methodological approach to researching archaic legal systems in a situation where any positive information as to the content and shape of the archaic law is missing – similarly as in the previous chapter. However, this time it is going to be a different, deconstructive, methodology, applied specifically to a concrete piece of legal text from a concrete territory and time period. What we shall do here namely is to seek for differences between the most famous extant Great Moravian legal text *Zakon sudnyj ljudem* and its Byzantine model – *Ecloga*. We believe that upon identification of differences and omissions in the *Zakon* as compared with the *Ecloga*, one may be able to uncover and reconstruct bits and pieces of the normative system originally applied in the archaic Slavic community of Great Moravia, sought to be amended by the new Christian law – *Zakon*. Some comparisons in this vein have already been

attempted lately by, for example, Marek Meško,⁷² Zofia Brzozowska⁷³ or Adam Mesiarkin,⁷⁴ however, we believe that these authors have insufficiently examined the differences between the cyrilo-methodian texts and their Byzantine models, and reasons for these differences.

Still, important to note, there is also another methodological approach possible when researching the extant Byzantine-inspired legal texts authored by Constantine (Cyril) and Methodius, in order to uncover the archaic Slavic law of Great Moravia – namely, their linguistic analysis, rather than content analysis. This is what we shall attempt for in the very end of this chapter. It is namely highly probable that the missionaries translating the Byzantine texts into Slavic language did not replace the original archaic Slavic legal terminology by new legal notions completely; rather, most probably, they used the terminology being close or identical with the local terminology, in order to make the texts intelligible for their addressees.⁷⁵ Drawing on the lexical aspect of the extant sources, historical linguistics could thus be used as another promising way to at least partially reconstruct the archaic Slavic legal terminology preserved in the texts originating in Great Moravia.

A similar examination of historical legal language and phrases⁷⁶ with the aim to identify relics of historical customs and legal institutions was especially popular in Germany throughout the whole 20th century – linguistic analysis of historical monuments of ancient Germanic law was thus undertaken for

⁷² MEŠKO, Marek: Právny systém v Byzantskej ríši v 8. a v 9. storočí. In: *Duchovné, intelektuálne a politické pozadie cyrilometodskej misie pred jej príchodom na Veľkú Moravu*. Nitra : Univerzita Konštantína Filozofa v Nitre, 2007.

⁷³ BRZOZOWSKA, Zofia: Recepcia byzantského práva na území Slavia Orthodoxa v 10. až 13. storočí. In: *Štúdie o dejinách. Historia nova*, 6, 2013.

⁷⁴ MESIARKIN, Adam: Prvky byzantského práva v právnych pamiatkach Veľkej Moravy. In: *Štúdie o minulosti. Historia nova*, 7, 2014.

⁷⁵ Cf. AUSTIN, John L.: *How to do Things with Words*. 2nd Ed. Oxford : Oxford University Press, 1975.

⁷⁶ SCHMIDT-WIEGAND, Ruth – SCHOWE, Ulrike: *Deutsche Rechtsregeln und Rechtssprichwörter*. München : C.H.Beck, 1996, p. 15.

example by K. von See,⁷⁷ H.-D. Kahl,⁷⁸ G. Köbler,⁷⁹ R. Schmidt-Wiegand,⁸⁰ or G. von Olberg.⁸¹ This approach to historical law is thereby still alive even today, in the 21st century⁸² – take for example the analysis of Danish legislation and its terminology in the works of legal historians D. Tamm and H. Vogt.⁸³

A similar approach to Great Moravian texts has only recently been applied by the author of this book for the first time in a more complex manner,⁸⁴ albeit already in the first half of the 20th century some German authors pointed to the possibility of linguistic analysis of Slavic legal terminology being used in the translations of Byzantine texts,⁸⁵ where allegedly a large number of local Slavic legal terms had been preserved.⁸⁶ Similarly, the importance of Slavic legal terminology in the translations from Byzantine texts was emphasized as early as in 1885 by a Russian-Polish legal historian F. Zigel⁸⁷ – he even noticed a link between the cyrilo-methodian texts and later legal terminology from East-Central and Eastern Europe.⁸⁸ The pioneers as to the use of historical linguistics methodology in relation to Slavic legal texts were then subsequently foremost R. Nahtigal⁸⁹ and R. Katičić,⁹⁰ who, however, analyzed mainly the texts connected to modern-day Slovenia and Croatia, rather than Great Moravian sources.

⁷⁷ SEE, Klaus von: *Altnördische Rechtswörter*. Tübingen : Niemeyer, 1964.

⁷⁸ KAHL, Hans-Dietrich: Europäische Wortschatzbewegungen im Bereich der Verfassungsgeschichte. In: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 77, 1960, p. 154ff.

⁷⁹ KÖBLER, Gerhard: Richten – Richter – Gericht. In: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 87, 1970, p. 57-113; KÖBLER, Gerhard: Klage, klagen, Kläger. In: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 92, 1975, p. 1-20.

⁸⁰ SCHMIDT-WIEGAND, Ruth: *Stammesrecht und Volkssprache*. Weinheim : VDH, 1991.

⁸¹ OLBERG, Gabriele von: *Die Bezeichnungen für soziale Stände, Schichten und Gruppen in den leges Barbarorum*. Berlin : Gruyter, 1991.

⁸² See FRUSCIONE, Daniela: Zur Frage eines germanischen Rechtswortschatzes. In: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 122, 2005, p. 1-41.

⁸³ TAMM, Ditlev – VOGT, Helle: Creating a Danish Legal Language: Legal Terminology in the Medieval Law of Scania. In: *Historical Research*, 86, 233, 2013, p. 394-407.

⁸⁴ GÁBRIŠ, Tomáš – JÁGER, Róbert: *Najstaršie právo na Slovensku?* Bratislava : Wolters Kluwer, 2016.

⁸⁵ *Magnae Moraviae Fontes Historici I. – V. Prameny k dějinám Velké Moravy*. Praha, Brno : SPN, Masarykova univerzita, 1966-1971 (hereinafter referred to as “MMFH”).

⁸⁶ SCHMID, Heinrich F.: *Die Nomokanon Übersetzung des Methodius*. Leipzig : Markert & Petters, 1922, p. 120.

⁸⁷ MMFH IV, p. 227.

⁸⁸ Ibid., p. 153.

⁸⁹ NAHTIGAL, Rajko: *Uvod v slovansko filologijo*. Ljubljana : Univerza v Ljubljani, 1949.

⁹⁰ KATIČIĆ, Radoslav: *Die Verfassungsterminologie der frühmittelalterlichen Slawenherrschaft*

Similarly, attempts at linguistic analysis of ancient Slavic legal terminology by I. Wiehl⁹¹ and the Slovenian author K. Škrubej,⁹² also omitted the Great Moravian texts altogether.

Still, we consider the use of historical linguistics as another highly topical and promising methodological strand of research into archaic Slavic history of law. Therefore, in the following pages, we shall attempt to provide examples for both the deconstructive as well as the linguistic methodological approach to the extant cyrilo-methodian legal texts, indicating thus two new ways of researching the archaic Slavic law.

2.2 The Deconstructive Approach: *Ecloga* versus *Zakon sudnyj ljudem*

The extant Great Moravian sources of legal nature and content are particularly the following three normative texts: the secular *Zakon sudnyj ljudem* (Court Law for the People),⁹³ the *Nomocanon*, being a large source of ecclesiastical as well as of secular law, and finally the *Provisions of Holy Fathers*, a text of ecclesiastical law.⁹⁴ Due to the limitations of this chapter, we shall only concentrate on the Court Law for the People, i.e. the code of secular law, closely following the model of the Byzantine *Ecloga*.

The Court Law for the People (*Zakon sudnyj ljudem*, hereinafter referred to also as the “Court Law”)⁹⁵ is traditionally considered the most important cyrilo-methodian legal text. Its earliest extant transcriptions date back to the end of the 13th century (four hundred years after its origin) and were found in the territory

ten. In: *Slavica Slovaca*, 31, 1, 1996; KATIČIĆ, Radoslav: Praslavenski pravni termini i formule u Vinodolskom zakonu. In: *Slovo*, 39-40, 1989-1990.

⁹¹ WIEHL, Irene: *Untersuchungen zum Wortschatz Freisinger Denkmäler: Christliche Terminologie*. München: Verlag Otto Sagner, 1974; WIEHL, Irene: Die Rechtswörter in den Freisinger Denkmälern. In: *Beiträge zum VIII. Internationalen Slawistenkongress in Zagreb 1978. Theoretische und praktische Linguistik des Russischen 1; Studia Slavica 2 = Marburger Abhandlungen zur Geschichte und Kultur Osteuropas 20,1; 21,2* (Gießen, 1981), 2, 1981, pp. 59-80.

⁹² ŠKRUBEJ, Katja: The old vernacular legal lexis and institutions of the Early Middle Age Alpine Slavs (The reconstruction model). In: *Europa und seine Regionen*. Wien: Böhlau, 2007, p. 81-105.

⁹³ DEWEY, Horace William – KLEIMOLA, Ann M.: *Zakon sudnyj ljudem (Court Law for the People)*. Michigan Slavic Materials No. 14 Ann Arbor: University of Michigan, Department of Slavic Languages and Literatures, 1977.

⁹⁴ All published in MMFH IV.

⁹⁵ Court Law for the People is published also in: MMFH IV, p. 147ff.

of Russia, in somewhat corrupted language versions.⁹⁶ Great-Moravian origins of the Court Law were advocated shortly after its discovery by one of the first Slavic linguists, Šafárik (1795–1861), pointing to the Western Slavic language elements found in the texts,⁹⁷ but soon several other hypotheses were presented on the origin of this textual source – starting from Macedonian, going through Serbian, Bulgarian and Pannonian, up to a Russian theory. Three of these hypotheses were considered as most probable – Bulgarian, Macedonian and Great Moravian: the Bulgarian theory argued that Court Law was a text associated with the Bulgarian Prince Boris, who accepted Christianity approximately at the same time when the Cyril and Methodius' mission took place in Great Moravia. The Macedonian theory, in turn, claimed that the Court Law was authored by Methodius in his capacity as an administrator of a Slavic principality in Macedonia in the years 830–840 AD (prior to his mission to Great Moravia), and that it was to be designated primarily for regulating the behaviour of Macedonian soldiers – in this way explaining its peculiar contents disregarding numerous important aspects of a civilian life. Finally, however, based on the linguistic analysis of the terms used in the Court Law for the People, containing mostly elements of the Western Slavic language, a Czech scholar Vašica convincingly argued for the Great Moravian origin of this legal monument, to which most authors are inclined nowadays.⁹⁸

From the point of view of its contents, the Court Law is admittedly neither a completely original work, nor a work capturing the pre-cyriilo-methodian customary law valid in Great Moravia. The content basis, model and starting

⁹⁶ Cf. VAŠICA, Josef: *Literární památky epochy velkomoravské*. Praha : Lidová demokracie, 1966, p. 74ff.

⁹⁷ Šafárik pointed out that the earliest glagolitic texts contain „Slovak“ elements, e.g. in using the word “hej” as meaning “yes”, being a specific Slovak feature. Similarly, later Croatian texts are said to contain Slovak elements, e.g. in using the word “godina” to mean “hour” instead of “year” as all the southern Slavic languages do. Cf. SLANINKA, Martin: *Assemanov evanjeliár a kalendár. Kódex 3. Vatikánsky slovanský*. Martin : Matica slovenská, 2013, p. 14-16.

⁹⁸ Cf. DEWEY, Horace William – KLEIMOLA, Ann M.: *Zakon sudnyj ljudem (Court Law for the People)*. Michigan Slavic Materials No. 14 Ann Arbor : University of Michigan, Department of Slavic Languages and Literatures, 1977, p. x-xii. This theory is accepted by some Russian scholars. Cf. MESLARKIN, Adam: *Prvky byzantského práva v právnych pamiatkach Veľkej Moravy*. In: *Štúdie o minulosti. Historia nova*, 7, 2014, p. 59-66. In spite of that, there is still a theory vivid claiming that the text was prepared for the needs of Prince Kocelj of Pannonia. This theory is proposed and defended by Slovenian historians: ŠTIH, Peter – SIMONITI, Vasko – VODOPIVEC, Peter: *A Slovene history : society – politics – cultures*. Ljubljana : Inštitut za novejšo zgodovino, Sistory, 2008, p. 51.

point of this text is clearly the Byzantine *Ecloga* (dating to 726 or 740/741)⁹⁹, especially its Title 17. Only a few articles of the Court Law are based on other titles of the *Ecloga*.¹⁰⁰

The greatest attention has been paid to this text primarily because some authors¹⁰¹ claimed that it is the legal collection requested by the Great Moravian Prince Rastislav, when he had sent for “teachers” from Byzantium – it was namely claimed that Rastislav asked from the Byzantine Emperor a law-code, the *Ecloga*: “...posōli takō možb, iže ny ispravitō vvsjako pravbdo”¹⁰² (send us such men who will equip us with manifold law); where the term “*pravbdo*” was interpreted by the authors as meaning “the law” – *Ecloga*, or the Court Law for the People, respectively. However, Dagmar Marečková¹⁰³ convincingly demonstrated that this was only a rhetorical figure commonly found in Byzantine letters and documents, and that the Byzantines themselves claimed that “the good law for the whole worlds originates in them”. Rastislav’s message, therefore, did not necessarily mean words of Rastislav’s admiration for any particular collection of laws that he would have asked for from the Byzantine Emperor;¹⁰⁴ his messengers (or those who wrote the story down later on) rather only used the rhetorical *topoi* known in the Byzantium of the period.

⁹⁹ MMFH IV, p. 174. Cf. MEŠKO, Marek: Právny systém v Byzantskej ríši v 8. a v 9. storočí. In: *Duchovné, intelektuálne a politické pozadie cyrilometodskej misie pred jej príchodom na Veľkú Moravu*. Nitra : Univerzita Konštantína Filozofa v Nitre, 2007, p. 223; MESIARKIN, Adam: Prvky byzantského práva v právnych pamiatkach Veľkej Moravy. In: *Štúdie o minulosti. Historia nova*, 7, 2014, p. 60.

¹⁰⁰ *Ecloga* was supposed to contain some Slavic elements; the same was claimed about the Byzantine *Nomos Georgikos*. However, no proof of this was ever shown. Cf. WALDMÜLLER, Lothar: *Die ersten Begegnungen der Slawen mit dem Christentum und den christlichen Völkern vom VI. bis VIII. Jahrhundert*. Amsterdam : Verlag Adolf M. Hakkert, 1976, p. 422.

¹⁰¹ MEŠKO, Marek: Právny systém v Byzantskej ríši v 8. a v 9. storočí. In: *Duchovné, intelektuálne a politické pozadie cyrilometodskej misie pred jej príchodom na Veľkú Moravu*. Nitra : Univerzita Konštantína Filozofa v Nitre, 2007, p. 223ff.

¹⁰² Cf. ŽIGO, Pavol – KUČERA, Matúš et al.: *Na písme zostalo : Dokumenty Veľkej Moravy*. Bratislava : Perfekt, 2012, p. 104.

¹⁰³ MAREČKOVÁ, Dagmar: Rostislavovo poselství v Životech Konstantinově a Metodějově ve světle středověkých řeckých listů a listin. In: *Listy filologické*, 91, 1968, vol. 4, pp. 401-414. For more details: MAREČKOVÁ, Dagmar: Moravské poselství do Cařihradu jako řecký document. In: *Slovo*, 18-19, 1969, p. 109-140; MAREČKOVÁ, Dagmar: Rastislavovo posolstvo po grécky? In: *Matičné čítanie*, III, no. 5, 2.3.1970, p. 1.

¹⁰⁴ STANISLAV, Ján: *Starosloviensky jazyk 1*. Bratislava : SPN, 1978, p. 159.

The independence of the Court Law from the Rastislav's request could be confirmed also by a later source (probably from the 11th or mid-12th century¹⁰⁵), the chronicle of Dukljanin, who states that the Ruler Svätopluk (successor to Rastislav) issued several laws and introduced good customs, which can be read in the book called Method.¹⁰⁶ These new laws and customs issued by Svätopluk, respectively the very book Method, might possibly be identified with the Court Law, albeit this is only a hypothesis.

The Court Law itself consists of 33 articles, if counting in absolute numbers (various shorter versions are numbered differently, counting from 30 to 41 articles), and regulates in particular criminal law issues (offences against faith, morals, property offences, asylum, witnesses) and private law (compensation of damage, monogamy, marriage impediments, separation of spouses).

It is thereby a well-known fact that in archaic societies, in general, regulation of criminal law matters prevailed, which may have been the reason why the Court Law is based specifically on the 17th title of *Ecloga*, which deals with criminal law (mostly with sexual offences). Private law, especially law of contracts, is on the contrary much more limited in the scope and regulation in the archaic societies, allegedly due to the absence of corresponding social and economic relations.¹⁰⁷ This may be also evidenced by the contents of the Court Law, which seems to have faithfully taken into account the actual needs of the local society at its lower stage of development. All this shows that *Ecloga* and its 17th title was indeed a good choice as a model for the Court Law. Moreover, according to a Czech legal scholar, Kizlink, *Ecloga* was deliberately chosen instead of Justinian's codification also because unlike the "secular" Justinian law, *Ecloga* placed a relatively strong emphasis on God's action and on the Christian religion.¹⁰⁸ This could have indeed better reflected the values of the two missionaries, Constantine (Cyril) and Methodius – namely, their normative work was most certainly to play a role as a Christianization tool as well.

Although it is generally assumed that it was Methodius who authored the Court Law for the People, there were several doubts voiced in this regard. In 1960s, for example, Kizlink pointed out that the author had to be less educated

¹⁰⁵ HOMZA, Martin: *Svätopluk v európskom písomníctve*. Bratislava : Post Scriptum, 2013, p. 126-136.

¹⁰⁶ RATKOŠ, Peter: *Pramene k dejinám Veľkej Moravy*. Bratislava : Vydavateľstvo SAV, 1964, p. 360.

¹⁰⁷ SEAGLE, William: *The History of Law*. New York : Tudor Publishing, 1946, p. 57.

¹⁰⁸ KIZLINK, Karel: *Právo Veľkej Moravy*. In: *Právnické štúdie*, XVII, 1969, 3, p. 476.

than Methodius, because he allegedly did not understand some of the Roman law institutes and incorrectly translated some *Ecloga* articles. For example, the punishment for self-help and its classification as a crime was interpreted by Kizlink as a misunderstanding of the Roman legal institute of self-help.¹⁰⁹ He insisted that the respective rule in the Court Law was not an attempt to ban self-help (by considering it to be an act of unlawful conduct, specifically the crime of theft) and an attempt to take over the dispute resolution into the state's hands, but rather claimed that it was a misunderstanding of the original Byzantine text. On the contrary, he claimed that other articles were translated in an elegant way; thus probably really coming from Methodius.¹¹⁰ Hence, Kizlink suggested that the work had at least two layers from two different authors.

While we do not agree with Kizlink on the above issue of authorship, one may accept his other suggestion: Kizlink, and along with him some other authors, sketched a skeptical idea that this "Law", if at all officially promulgated,¹¹¹ was probably never used in practice, and in fact, it was never a legally binding normative text. This conclusion was drawn by Kizlink from the fact that the content of the Court Law did not show any significant impact on the later legal development,¹¹² but also from the fact that Methodius himself (in the so-called Anonymous homily) had to appeal to Great Moravian leaders to obey the Court Law.¹¹³ However, on the contrary, some other authors drew a completely opposite conclusion from the very appeal by Methodius to obey the Court Law – it can namely be seen as a proof that the Court Law was in fact to be used in practice and that it was supposed to be binding.¹¹⁴ Sceptical authors, however, additionally point out that the text lacks provisions on such important criminal offences as murder, bodily harm, etc., which must not be omitted in any actual

¹⁰⁹ Ibid., p. 471.

¹¹⁰ Ibid., p. 471-473.

¹¹¹ Doubts as to its official character arise from the fact that the introductory formula does not ascribe the text to any ruler, but rather to a Constantine, considered by some authors (Vašica, Ratkoš) to be the Emperor Constantine the Great (cf. RATKOŠ, Peter: *Pramene k dejinám Velkej Moravy*. Bratislava : Vydavateľstvo SAV, 1964, p. 267.), while others believe that Saint Constantine (Cyril) is meant instead – cf. DEWEY, Horace William – KLEIMOLA, Ann M.: *Zakon sudnyj ljudem (Court Law for the People)*. Ann Arbor : Department of Slavic Languages and Literature, 1977, p. xiv.

¹¹² Cf. KIZLINK, Karel: *Právo Velkej Moravy*. In: *Právnické štúdie*, XVII, 1969, 3, p. 433-486.

¹¹³ Cf. KUČERA, Matúš: *Kráľ Svätopluk*. Martin : Matica slovenská, 2010, p. 102.

¹¹⁴ MMFH IV, p. 204.

law code.¹¹⁵ Still, there is a counter-argument to this at hand again – namely that those crimes were sufficiently regulated by customary law that the authors of the Court Law did not wish to change.

In any case, in view of the primary objective of this chapter, we shall not be interested in the question of the actual use of Court Law in practice; rather, we shall concentrate on the relationship between the Court Law and *Ecloga*,¹¹⁶ to try to uncover their differences and to identify potential aims the author had pursued in relation to the customary Slavic law.

A detailed analysis and comparison of the differences between *Ecloga* and the Court Law was partially offered already in 1922 by a Czech legal historian Theodor Saturník. He was the one to note that *Ecloga* deals in particular with criminal law and shows a considerable simplification of private law as compared to the Justinian's codification; there is even no mention of property rights (ownership) in *Ecloga* at all. This only proves that *Ecloga* could have really matched better the developmental stage of the Great Moravian society (where private ownership of land is being questioned¹¹⁷).

Within the framework of criminal law, it was additionally often emphasized that while the mutilating provisions of the *Ecloga* are in fact a lighter version of the capital sentences originally contained in the Byzantine (Roman) legislation, the translators of the Court Law have gone even further – in the Court Law, capital punishments and mutilations are replaced by penance (fasting), according to Western European models, distinguishing between different degrees of penance. In addition, interestingly, unlike in *Ecloga*, the punishments in the Court Law do not make any mention of the social status of perpetrators and their victims (their belonging to different social classes), which could have also better reflected the social reality of Great Moravia in contrast to a more stratified society in Byzantium.¹¹⁸

¹¹⁵ KIZLINK, Karel: Právo Velkej Moravy. In: *Právnícké štúdie*, XVII, 1969, 3, p. 443. The structure of the work is considered to be influenced by the Mosaic decalogue. Cf. MMFH IV, p. 154.

¹¹⁶ For a comparison of the texts see: VAŠICA, Josef: *Literární památky epochy velkomoravské 863-885*. Praha : Lidová demokracie, 1966, p. 149ff.

¹¹⁷ MACHÁČEK, Jiří: Disputes over Great Moravia: chiefdom or state? The Morava or the Tisza River? In: *Early Medieval Europe*, 17/3, 2009, p. 267.

¹¹⁸ SATURNÍK, Theodor: *Příspěvky k šíření byzantského práva u Slovanů*. Praha : Nákladem české akademie věd a umění, 1922, p. 11.

All these specificities of the Court Law – the lack of regulation of ownership of land, absent mutilating punishments, and non-differentiation between social classes – could alone provide some insights into the pre-cyriilo-methodian law in Great Moravia. The deconstructive approach – identifying the *lacunae* in the Court Law – thus might look like a promising enterprise.

With this in mind, moving from the general comparisons to a more detailed textual analysis and comparison of the Court Law with *Ecloga*, we can again start with an older analysis by Pavlov,¹¹⁹ who proved earlier that out of the 32 articles of the Court Law (he used a version divided into 32 articles only), 30 were based in the *Ecloga*. Out of these, 10 articles (in the version used by Pavlov these were Articles 12, 15, 18, 21, 24-26, 31 and 32) represented a literal translation of the *Ecloga* (Titles 17.32, 17.40, 17.5, 14.9, 17.6, 17.7, 17.8, 17.12, 17.17 and 2.12). The remaining 20 articles contained an adapted text of the *Ecloga* – amended mostly by adding ecclesiastical punishments (Articles 4-9, 11, 14 and 16 in the Pavlov's version) or by replacing severe penalties by fine and fasting (Article 25, 27-29 in the Pavlov's version). Only seven of the articles based on *Ecloga* were, according to Pavlov, modified to a greater extent – Art. 3 on witnesses (today mostly numbered as Article 7a) admits testimony of a freedman against his former lord, which *Ecloga* did not allow for.¹²⁰ Finally, according to Pavlov (and also according to Saturník), the two articles of the Court Law that do not originate in the *Ecloga*, have their source in the laws of Justinian, in the canons of Basil the Great, and in the Apostolic constitutions.¹²¹

Similarly, according to a later analysis by Vašica, most of the articles of the Court Law were actually taken from the 17th title of the *Ecloga*,¹²² with only five of them originating in other titles – namely, an article on the war booty was taken from the title 18, the article on the testimony of parents and children from the title 14.2-3, the article on redeeming a war prisoner from the title 8.6, the article on a special type of witnesses from the title 14.9, and the article on dis-

¹¹⁹ PAVLOV, Aleksej Stepanovič: *Pervonačalnyj slavjano-russkij nomokanon*. Kazan, 1869.

¹²⁰ For a detailed comparison, cf. OROSCAKOFF, Haralampi: Ein Denkmal des bulgarischen Rechtes (Zakon Sudni Ljudem). In: *Zeitschrift für vergleichende Rechtswissenschaft*. Bd. 33. Stuttgart : Ferdinand Enke, 1916, p. 141-282.

¹²¹ SATURNÍK, Theodor: *Příspěvky k šíření byzantského práva u Slovanů*. Praha : Nákladem české akademie věd a umění, 1922, p. 35.

¹²² Title 17 of the *Ecloga* represents one fifth of the *Ecloga*, and if counting the number of Articles, it amounts to one third of the *Ecloga*. Cf. TROIANOS, Spyros: Bemerkungen zum Strafrecht der *Ecloga*. In: *Αφιέρωμα στον Νίκο Σβορώνο*, I. Rethimno, 1986, p. 100.

putes between spouses from the title 2.12-13.¹²³ Furthermore, Vašica identified which changes in the articles from *Ecloga* were of Western origin – these were especially the gradual penance, the formulation of “bread and water”, the marriage impediment of spiritual relationship, and the modification of the article on witnesses and on evidence.¹²⁴ Even the Slavic denotation of coinage – by the word *stljaz* – was to be derived from the Western “skilling”, Vašica claimed.¹²⁵ Finally, Vašica agreed with Saturník that Article 1 on punishment of paganism, which did not have its model in the *Ecloga*, was a modification of the Justinian’s Codex 1, I, tit. XI, 7-8, and in addition he claimed that Article 2 on witnesses was inspired by the Mosaic law on witnesses from the Old Testament (Dt 19.15, 18, 19).

To add something new to the above comparisons, and in order to really use a deconstructive approach, let us now – instead of re-assessing the outcomes reached by Pavlov, Saturník, and Vašica – rather compare the two sources in a different way – concentrating on differences rather than similarities, in order to identify those elements of the Byzantine model, that the author decided to omit.

From a detailed comparison with the Court Law for the People, which can be skipped in this chapter, it follows that the Court Law omitted articles 2-4, 9, 11, 18, 19, 24, 34, 36-39 and 42-53 of the 17th title of *Ecloga*. This means that the following has not been taken over by the Court Law:

2. oath on the Scripture in litigation
3. conspiracy against the emperor
4. attack on a priest in the church
9. responsibility of an animal owner
11. theft elsewhere than in a camp
18. counterfeiting of coins
19. adultery
24. abduction and fornication with a a nun or a virgin against her will
34. sexual intercourse with a woman and her daughter

¹²³ VAŠICA, Josef: *Literární památky epochy velkomoravské 863-885*. Praha : Lidová demokracie, 1966, p. 157.

¹²⁴ *Ibid.*, p. 74-75.

¹²⁵ AVENARIUS, Alexander: *Die byzantinische Kultur und die Slawen*. Wien : Oldenbourg, 2000, p. 105.