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The contribution of Kharkiv University scientists to the development of historical and legal science (first half of the XIX century)

Abstract. *In the article, the author, based on the methodological principles of historicism, objectivity, systematics, explored the specific achievements of Kharkiv University scientists, who worked in the first half of the XIX century, in the formation and development of science History of State and Law. Their scientific works, in accordance with the main trend in the genesis of this science at that time, were centered around the law of Kyiv Rus and, in particular, the content of the Rus'ka Pravda (Russian Truth). This area of their activity is studied insufficiently in the scientific literature, both domestic and foreign. This is due to the fact that the main contribution to the development of these issues was made in the second half of the XIX century – then a significant number of works on this topic was published, which provided an opportunity for their systematic analysis. The activity of scientists of this university in the first half of the XIX century concerns the period of formation of historical and legal science. Hence the main shortcomings of their work: a certain fragmentation in the coverage of problems, a narrow historiographical base, the hypothetical nature of some theses. Professor Uspenskyi was the first who started working on the history of law at Kharkiv University and considered the question of “the antiquity of Russian laws and their dignity”. At that time, scholars of many universities in the empire had to prove the authenticity of the Rus'ka Pravda and those laws that was not yet generally accepted. O. Kunitsyn, a professor of Kharkiv University, also expressed some doubts in this, although he cannot be attributed entirely to the supporters of the “skeptical school” in Russian historiography. O. Palumbetskyi made the most significant contribution to the development of historical and legal science at that time at Kharkiv University. He conducted one of the first comparative studies of Old German and Old Rus law, convincingly showed their differences, some influence of German law on Russian, which he considered insignificant. Quite thorough and one of the best was his study of treaties between Rus and Byzantium in the X century. Based on the provisions of these agreements, the scientist made a successful attempt to determine the essence of some of Old Rus laws, in particular on revenge, compensation to the victim and*



court evidence. Most of his arguments were tested over time and are not disputed by modern scientists. Scientists-lawyers of Kharkiv University in that period did not form a separate scientific school, as happened at the University of Kyiv due to the activities of M. Ivanishev, but they worked in line with the then prevailing paradigms in Russian historiography, and made a certain contribution to the formation of historical and legal science. Therefore, their scientific activity deserves further study.

Keywords: *Ukraine; Law; Old Rus law; Kyiv Rus; the Rus'ka Pravda*

Introduction.

The emergence of historical and legal science in the Ukrainian lands is linked inextricably with the opening and development of universities on these areas and the development of legal education in them. The formation of the science of History of Law in Ukrainian universities (we are talking, first of all, about the three universities opened in the XIX century: Kharkiv, Kyiv and Odesa) was provided by research of local professors. The first of these universities was in Kharkiv and it was its scholars who began to develop historical and legal science in the first half of the XIX century, as the other two universities were opened later. Already in the early XX century about the contribution of jurists of Kharkiv University to the development of jurisprudence, including to studying the law of Kyiv Rus, was written in the work “Law Faculty of Kharkiv University for the first hundred years of its existence (1805–1905)” (Chubinskyi & Bagaley, 1908, p. 311). General aspects of the development of legal education and science in universities in the Ukrainian lands are covered in the dissertation of O. Yegorova “Legal education in the universities of Ukraine XIX – early XX centuries (stages and features of development)” (Yehorova, 2004). Nothing was said about the works of historians of law of that period in the Great Legal Encyclopedia (Vol. 1 – History of State and Law, 2016) and in the 10-volume “Encyclopedia of the History of Ukraine” (2003–2019).

The activities of some professors of Kharkiv University in the field of historical and legal science are covered in several articles by the author of this scientific investigation (Grechenko, 2014; Bandurka & Grechenko, 2018). Thus, the scientific achievements of professors who were engaged in historical and legal research during that period at Kharkiv University have been studied insufficiently and very unevenly. Many more publications relating to the analysis of the works of scientists of the second half of the XIX century and early XX century. According to the degree of exploring they can be divided into three groups. The first group includes the more explored, who have made a significant contribution to the development of this science and about whom dissertations have been written. These are S. Pakhman and M. Maksimeiko. The second group includes less explored by scholars of later historians of law, about which there are separate articles or references (M. Kovalevskyi, A. Stanislavskyi, O. Paliumbetskyi, G. Uspenskyi, P. Tsytovykh, O. Zagorovskyi, I. Sobestianskyi). The third group consisted of historians of law, whose scientific achievements for various reasons have not actually been studied (M. Klobutskyi, K. Mikhailovskyi, A. Fateyev

and some others. Only one article partially covers this problem, but it speaks only about the activities of G. Uspenskyi (Grechenko & Yarmysh, 2017).

Thus, the general assessment of the contribution of Kharkiv University professors in the first half of the XIX century and the personal contribution of most of them to the development of the History of Law of Kyiv Rus is an insufficiently developed scientific problem and needs further research. This insufficient study of the topic and its relevance led to the purpose of the article, which is to determine the value of scientific achievements of scientists of Kharkiv University in the study of the Rus'ka Pravda and the development of historical and legal science in the first half of the XIX century.

Research methods.

The methodological basis of the article were such principles of scientific knowledge as historicism, objectivity and systemacy. The author tried to adhere clearly to the principle of historicism, examining the processes, events and facts in chronological order, taking into account the current situation in education and science. The use of the principle of objectivity made it possible to analyze impartially the source base, works and views of legal scholars of the time. The task of system analysis was to give a holistic comprehensive picture of formation history and the History of Law development at Kharkiv University in the first half of the XIX century.

Results and discussion.

As it is known, on November 5 (17), 1804, the Emperor Alexander I approved the Charter of the Kharkiv Imperial University, which included the Department (Faculty) of Moral and Political Sciences. The main task of the faculty was to train lawyers for the civil service (Kharkiv University, 2004, p. 17). Professors from European countries, who during the first 15 years of the university's activity made up the majority of the scientific and pedagogical staff, had a significant influence on the formation of legal education at the department. This factor contributed to the spread of advanced educational ideas from Europe, where the theory of natural law dominated.

There was also an organizational institutionalization of scientific activity of the University professors. In 1812, the Society of Sciences at the University was founded the main task of which was to publish the scientific works of scientists. It must be noted that professors of the faculty in the first years of its existence prepared and published reports that had a historical and legal aspect. Thus, in 1811, Professor G. Uspenskyi published a study "The experience of the narrative of Russian antiquities" part one, and the following year – the second part (Faculty of Law, pp. 18–19). In the second part there were the divisions "On the antiquity of Russian laws and their dignity", "On proceedings, fines and punishment". Originally written and interesting for today's reader is the section "On the former ranks and present places in Malorosiya", which deals with the origin of the Cossack ranks (Colonel, Osaul, etc.) (Uspenskyi, 1818, pp.707–761). We can state that this was the first publication at Kharkiv University which had elements of historical and legal research.

In 1839, with the Law Faculty approval of Kharkiv University, M. Klobutskyi's work "Study of the main basic laws of the Russian Empire in their historical development" was published.

As we already mentioned, the pioneer in the field of historical and legal science at Kharkiv University was Gavril Uspenskyi (1765–1820). He began working at Kharkiv University in 1807, after M. Karamzin refused to head the department of history. After that G. Uspenskyi was offered to work at this department. He immediately proved to be an active lecturer, and in 1807 he submitted to the department the first part of a detailed "Dictionary of Establishments and Observations", which he has been preparing for several years. Since October 1807 G. Uspenskyi was a lecturer at Kharkiv University in Russian history and statistics, since 1808 he was an associate professor, since 1811 he was an extraordinary professor, since 1813 he was an ordinary professor, and since 1814 he was the dean of the verbal department (Encyclopedic Dictionary, 1902, p. 19). In 1812, Uspenskyi became the editor of the scientific and art journal *Ukrainskyi Visnyk* (Ukrainian Herald), which was published in Kharkiv and distributed in Kharkiv province and Sevs, Karachev, Briansk. In his work "The Experience of the Narrative of Russian Antiquities" (part II), G. Uspenskyi expressed the opinion that even in the pre-state period, the Eastern Slavs had their own laws. He believed that these laws were oral and passed on to subsequent generations through tradition (Uspenskyi, 1818, p. 452).

Regarding the existence and functioning of written laws and *Rus'ka Pravda*, the professor agreed with the opinion of V. Tatyshchev, considering their existence a proven fact (Uspenskyi, 1818, p. 453). Great importance among the evidence in favour of this thesis, he attached to the treaties concluded in the X century between Rus and Byzantium. G. Uspenskyi noted that these treaties have repeatedly contain references to Rus laws. The indisputable merit of the scientist is that he was one of the first to make a detailed analysis of these agreements and it was quite original and convincing. The novelty of the analysis was that, based on these agreements, the scientist tried to define the essence of some Rus laws. 1) He noted the value of the oath when concluding contracts. 2) He emphasized that the penalty for murders (the death penalty, not the fine) put the rich and the poor on the same level, because the rich could no longer redeem themselves and that meant their formal equality before the law. 3) The treaties showed that in Russia a woman was not disenfranchised – after the death of her husband, his wife could inherit his property. 4) The wife and children of the offender were responsible for his crime. 5) If the wound was inflicted with a weapon, the "eye for an eye" rule did not apply – a fine had to be paid for the damage. 6) Theft of another's property provided for double or triple compensation from one's own property. 7) A thief caught at the scene of a crime could be killed on the spot if he resisted and did not surrender. 8) The property of a foreigner who died without leaving a will must be transferred to his relatives in the country from which he came. G. Uspenskyi believed that these laws were in force throughout the X century, and then

were corrected, in particular by Vladimir Sviatoslavovich (Uspenskyi, 1818, pp. 454–455).

Another pioneer of historical and legal science at that time at Kharkiv University was Capiton Mykhailovskyi (1789–1823). Holding from February 1812 to 1819 the position of professor at the Department of History, Geography and Statistics of the Russian state he conducted lectures and practical classes with students on Russian civil law (1812, 1813, 1819), Theory of Russian jurisprudence (1813), History of the legislation of the Russian Empire (1815–1816), History of Russian law (1819), Russian criminal law (1816). Since 1823 he has been an extraordinary professor at Kharkiv University. In 1823 he delivered an act speech “On the Beginnings and Origins of Russian Legislation” in which he pointed out that the first written source of Russian law was Rus’ka Pravda, and its author was Yaroslav the Wise. He also believed that the Slavs borrowed criminal laws from the Germans and civil laws from the Romans. Quite an early death (January 1, 1823, at the age of 34) prevented him from doing anything more (Faculty of Law, pp. 8, 191–193).

Some more information about another pioneer of historical and legal science at the university (and not only!) Alexei Kunitsyn (1805–1883). In 1834, defending the thesis “On inheritance under the law on the basis of Russian law” at St. Petersburg University, was approved as a doctor of law and appointed a lecturer at Kharkiv University. Since 1837 he has been an extraordinary professor, and since 1838 he has been an ordinary professor at the Department of Civil Law. Kunitsyn was approved by St. Petersburg University with a doctorate in law (Faculty of Law, p.193). He defended his doctoral dissertation on “On the right of inheritance in accordance with the law, on the basis of the laws of the Russian Empire, in its historical development” (published in 1842). In 1839–1841, 1849–1850 and 1852–1853 he served as a rector. In 1874 he retired and settled in Kharkiv. Died 7 (19) February 1883 in Kharkiv (Servants of Themis, 2015, pp. 85–86).

The peculiarity of his views on the Old Rus legislation was that he generally considered the provisions of the Rus’ka Pravda on family law hypothetical (Kunitsyn, 1844, p. 73). It should be noted that here his views were close to the “skeptical school” in the Russian historiography. These views were based on the position of A. Schletzer, who considered unreliable some of the Old Russian treaties (Schletser, 1816). A. Schletzer’s theses, which questioned the authenticity of the original Russian chronicle, were supported by a native of Kharkiv and a graduate of the Kharkiv Collegium, and later – the rector of Moscow University, M. Kachenovskyi, who argued that the creation of the Rus’ka Pravda dated back to later than the XI century time and it contained inaccurate data (Kachenovskyi, 1829). But most scientists had a different opinion. These views were analyzed in detail in the book of V. Ikonnikov, Professor of Kyiv University (1841–1923) (Ikonnikov, 1871, p. 106).

Oleksandr Palumbetskyi (1811–1897) made the greatest contribution to the development of historical and legal science at that time. Since 1838 he worked at Kharkiv University. He was repeatedly the dean of the Law Faculty, as well as the

rector of this university (Bakirov & Posokhov, 2002, p. 413). In 1844, O. Palumbetskyi defended his doctoral dissertation “On the system of judicial evidence of ancient German law in comparison with Rus’ka Pravda and later Russian laws that are in close contact with him”. The main theses of the dissertation were as follows. Firstly, he showed the difference between Old German law and Rus’ka Pravda in terms of revenge and private reward. He wrote that “private revenge turned in general against crimes..., against violations of peace (Palumbetskyi, 1844, p. 7). The scientist showed the importance of private remuneration to victims for violating their rights. He believed that the establishment of such a reward was a step forward in the development of law, as it restricted the freedom of revenge that had previously dominated, replacing it in cases where it was prohibited by law. The novelty of the O. Palumbetskyi’s study was that he revealed the importance of private reward to victims for violating their rights, proving that this was an important shift in the evolution of law, as it narrowed the scope of revenge. Secondly, the dissertation analyzed in detail the court evidence on Rus’ka Pravda and the author concluded that the code did not belong to the court evidence. Third, the scholar believed that the appointment of assistants at the oath was a precursor to jurors. Fourth, the author proved that the right to prove by oath and ordeals according to Rus’ka Pravda belonged not only to the plaintiff but also to the defendant. Fifth, a duel between the parties under the same set of laws was applied only when the plaintiff did not have enough evidence. For the defendant, it could be proof that he replaced everyone else except the oath. Sixth, the author of the dissertation came to the conclusion that the influence of Old German law on Old Rus law in the field of judicial evidence was insignificant (Faculty of Law, p. 293).

It seems to us that the Ukrainian researcher V. Zaruba, in that period, in general, the actual Ukrainian historical and legal science has not yet separated and was part of the Polish and Russian, and its delimitation was not even discussed at the discussion level (Zaruba, 2010). But we should add that all Russian historical and legal scientists, including scholars who worked at Kharkiv University, were under the strong theoretical influence of the Dorpat School of History and Law, in particular the views of its main representatives J.F.G. Evers and A.M.F. Reitz. His textbook on the History of Law was one of the most popular at that time in the universities of the country. The merit of this school is that they initiated the study of the History of Law of Ancient Russia, were supporters and popularizers in Russian law of a new, as at that time, methodological approach – historical and dogmatic direction. Their scientific achievements are the cornerstone of historical and legal science in this country, and they are, by right, its pioneers in many specific historical and legal problems (Holovko & Grechenko, 2016).

Conclusions.

Thus, a number of professors at Kharkiv University, who taught there in the first half of the XIX century, made some contribution to the deepening and expansion of

knowledge about the law of Kyiv Rus. Oleksandr Palumbetskyi should be especially noted in this sense. These scientists were the first – and this is their advantage and disadvantage. The advantage of primacy needs no explanation, and the disadvantages were explained by the search for new concepts and ideas, not all of which remained in the history of science. During the period under study, the History of Law began to become a science gradually, including the efforts of the above-mentioned scholars.

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***Анотація.** У статті автор, базуючись на методологічних принципах історизму, об'єктивності, системності, дослідив конкретний доробок вчених Харківського університету, які працювали в першій половині XIX ст., у становлення та розвиток науки «Історія держави та права». Їхні наукові розробки, відповідно до основної тенденції в генезі цієї науки в той час, були зосереджені навколо права Київської Русі і, зокрема, змісту Руської Правди. Цей напрям їх діяльності недостатньо досліджений в науковій літературі, як вітчизняній, так і зарубіжній. Це пояснюється тим, що основний внесок в розробку вказаних питань було зроблено у другій половині XIX ст. - тоді вийшла значна кількість праць з даної тематики, що давало можливість для їх системного аналізу. Діяльність же вчених вказаного університету першої половини XIX ст. стосується періоду становлення історико-правової науки. Звідси й основні недоліки їх робіт: певна фрагментарність у висвітленні проблем, вузька історіографічна база, гіпотетичність деяких тез. Першим, хто почав розробляти питання історії права у Харківському університеті, був професор Г. П. Успенський, який розглянув питання «про давність законів руських та їх достоїнства». У той час вченим багатьох університетів на теренах імперії доводилося доводити достовірність цих законів та Руської Правди, що не було ще загальноприйнятою думкою. Певні сумніви у цьому висловлював і професор Харківського університету О. В. Куніцин, хоча його не можна цілком віднести до прихильників «скептичної школи» в російській історіографії. Найістотніший внесок в розвиток історико-правової науки в цей час у Харківському університеті зробив О. І. Палюмбецький. Він провів одне з перших порівняльних досліджень давньогерманського і давньоруського права, переконливо показав їх відмінності, деякий вплив германського права на руське, який він вважав незначним. Досить ґрунтовним і одним з найкращих було його дослідження договорів між Руссю та Візантією у X ст. Спираючись на положення цих договорів, вчений зробив вдалу спробу визначити суть деяких з давньоруських законів, зокрема щодо помсти, винагороди потерпілому та судових доказів. Більшість з цих його аргументів пройшли перевірку часом і не заперечуються сучасними вченими. Вчені – юристи Харківського університету у вказаний період не утворили окремої наукової школи, як це відбулося у Київському університеті завдяки діяльності М. Д. Іванішева, вони працювали в руслі пануючих тоді в російській історіографії парадигм, але зробили певний*

внесок у становлення історико-правової науки. Тому їх наукова діяльність заслуговує на подальше вивчення.

Ключові слова: Україна; право; давньоруське законодавство; Київська Русь; Руська Правда

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Вклад ученых Харьковского университета в развитие историко-правовой науки (первая половина XIX в.)

Аннотация. В статье автор, основываясь на методологических принципах историзма, объективности, системности, исследовал конкретный вклад ученых Харьковского университета, работавших в первой половине XIX в., в становление и развитие науки «История права». Их научные разработки, в соответствии с основной тенденцией в генезисе этой науки в то время, были сосредоточены вокруг права Киевской Руси и, в частности, содержания Русской Правды. Это направление их деятельности недостаточно исследовано в научной литературе, как отечественной, так и зарубежной. Это объясняется тем, что основной вклад в разработку указанных вопросов был сделан во второй половине XIX в. – тогда было опубликовано значительное количество работ по данной тематике, что давало возможность для их системного анализа. Деятельность же ученых указанного университета первой половины XIX в. касается периода становления историко-правовой науки. Отсюда и основные недостатки их работ: определенная фрагментарность в освещении проблем, узкая историографическая база, гипотетичность некоторых тезисов. Первым, кто начал разрабатывать вопросы истории права в Харьковском университете, был профессор Г. П. Успенский, который рассмотрел вопрос «о древности законов русских и их достоинства». В то время ученым многих университетов на территории империи приходилось доказывать достоверность этих законов и Русской Правды и это не было еще общепринятым мнением. Определенные сомнения в этом высказывал и профессор Харьковского университета А. В. Куницын, хотя его нельзя полностью отнести к сторонникам «скептической школы» в российской историографии. Самый существенный вклад в развитие историко-правовой науки в это время в Харьковском университете сделал А. И. Палюмбецкий. Он провел одно из первых сравнительных исследований древнегерманского и древнерусского права, убедительно показал их различия, некоторое влияние германского права на русское, которое он считал незначительным. Достаточно основательным и одним из лучших было его исследование договоров между Русью и Византией в X в. Опираясь на положения этих договоров, ученый сделал удачную попытку вычленить суть некоторых из древнерусских законов, в

частности относительно мести, вознаграждения потерпевшему и судебных доказательств. Большинство из этих его аргументов прошли проверку временем и не отрицаются современными учеными. Ученые – юристы Харьковского университета исследуемого периода не создали отдельной научной школы, как это произошло в Киевском университете благодаря деятельности Н. Д. Иванишева, они работали в русле господствовавших тогда в российской историографии парадигм, но сделали определенный вклад в становление историко-правовой науки. Поэтому их научная деятельность заслуживает дальнейшего изучения.

Ключевые слова: Украина; право; древнерусское законодательство; Киевская Русь; Русская Правда

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