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Srđan Šarkić, *History of Serbian Mediaeval Law*, Brill, Leiden 2023, 616.

Major volumes dealing in broad subjects in a well-thought-out systemic approach take great effort and vast experience to envision, let alone write. It has taken Srđan Šarkić around 30 years of research and writing, the last 6 of them rather intensively, to create his „History of Serbian Mediaeval Law" (*History)*, published last year.

A comprehensive monography in Serbian medieval law from the 12th until the 15th century – a simple, yet completely accurate description of Šarkić's book – warrants praise on its own, as a monographic study of this topic had not been attempted in more than eight decades, ever since Teodor Taranovski's pioneer four-volume „History of Serbian Law in the Nemanjić state".[1] Moreover, this is the first such book written in English, thus having the added benefit of making this topic accessible to a broader community of academics and enthusiasts alike.[2]

It is structurally divided into 6 parts and 27 chapters, mostly following the template established by Taranovski in his ground-breaking work. After the preface and a short introductory chapter, the next chapters deal in the most important branches of Serbian medieval law: law of persons (sta-

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1 Teodor Taranovski, *Istorija srpskog prava u Nemanjićkoj državi I-IV* was published between 1931 and 1935, having three more editions in 1996, 2002 and 2020. It has served (and still does) as a go-to history of Serbian medieval law, in spite of some minor mistakes, and some of the author's positions being somewhat outdated.

2 Šarkić underlines both of these points in his preface, Srđan Šarkić, *History of Serbian mediaeval law,* Brill, Leiden 2023*,* XI, while calling his book, somewhat modestly „a study guide to Serbian mediaeval law".

tus law), constitutional law (more on the naming of this chapter below), civil law, criminal law and procedural law. There is no conclusion, which is understandable when we take into account the methodology the author has chosen: the entire piece reads as a road-map to some of the most important institutions of the said legal system. The structure is soundly executed, given the frequent need of the author to direct the reader to a previous/later consideration of connected legal institutes. There is seldom any confusion between „parts" and „chapters", which is easily excused.

The book starts with a short first chapter, detailing the historical background, sources and the two dominant concepts of law: Serbian and Byzantine. The author here mostly summarises the history of the medieval Serbian states (7th – 15th century) and gives an overview of the most significant types of legal and historical sources for his research. The former of these are: the illusive „librum Sclavorum... Methodius", charters, treaties with Dubrovnik (Ragusa), Nomokanon of Saint Sava, the Codification of Stefan Dušan, the city statutes, Farmer's Law[3] and the Law of Mines of Despot Stefan Lazarević, while the latter are hagiographies, annals and other written sources that supplement the gaps in the purely legal ones. Šarkić's list, although mostly traditional in Serbian legal historiography (save for the inclusion of Farmer's law), is not exhaustive, as it does not mention all the legal sources. Valuable information can also be found in various monasterial manor lists which usually contain a detailed account of different legal acts that result in acquiring property; notary acts, the very few contracts that survive from the period, as well as a handful of court rulings – most of which Šarkić does use in his research. This chapter ends in an analysis of the two concepts of law in Serbia and Byzantium, in which the author combines legal history and theory of law in order to better showcase the various meanings of law in the two systems.

The second chapter deals with the law of persons, or status law. As the state had been developing a strong social stratification in the late Middle Ages, this might as well be a branch of law that shows the greatest departure from the relative egalitarianism of Slavic customary law, whilst at the same time being susceptible to Byzantine influence *de facto* rather than *de iure*. In truth, even the Eastern Roman Empire witnessed a shift into a more feudalised society, with ever greater immunity rights being given to the privileged classes.

3 Šarkić's inclusion of the Farmer's law of the Serbian redaction as a legal source in medieval Serbia is a relative rarity in legal historiography. Only one copy of it has survived, in the library of the Hilandar monastery, and dated into the 15th century (cca. 1426–1432). Many of its norms found their way into the Law of Emperor Justinian – however, its applicability is still up for debate. See Šarkić, *History,* 22, 29. Miloš Blagojević, *Zemljoradnički zakon, srednjovekovni rukopis*, SANU, Odeljenje društvenih nauka, Izvori srpskog prava XIV, Beograd 2007.

Šarkić proceeds to list a universally accepted classification of persons in medieval Serbia: noblemen (*vlastela*), commoners (*sebri*), townsmen (*građani*) and foreigners (*stranci*). Each of these classes is later divided further. The noblemen came to signify both church authorities, as representatives of divine authority (monastic seniors and the higher clergy) as well as the worldly aristocracy,[4] as the backbone of the military organisation of the state, all of whom have great privileges and different obligations to the state. The worldly nobles were also differentiated based on the heredity of their lands – into *baštinici* and *pronijari*, as well as their wealth and social standing – the great *vlastela*, (small) *vlastela* and *vlasteličići* (lesser lords).

Their immunities – economic, judicial and administrative – he underlines, reflected their growing importance within the Serbian medieval state. Similarly, the unprivileged were differentiated based on their trades: farmers, shepherds, craftsmen... Status law in medieval Serbia isn't without its historiographical controversies. Many of the lesser social groups, though mentioned in the legal sources, are still not fully understood by modern scholars. The old debates from the last two centuries still linger. Were *otroci* (sing. *otrok*) slaves or just the most dependent of the classes – and were there practical differences between these options? What was the essence of the positions of *sokalnici* and *vlasi ćelatori*, that warranted their slightly different duties to their lords? Šarkić tries to, within the scope of the available sources, answer these questions, usually by adding some arguments to already established positions in academic discussions. This will be a common theme throughout *History*.

The third chapter, titled „Constitutional law", opens with the question of the constitutional character of certain provisions of Dušan's Code. The topic of whether or not one can apply the criteria of material constitutionality whilst analysing legal sources predating the first modern constitutions of the late 18th century, even the ones from the times of antiquity, is widely debated among scholars. Naturally, some academics hold views that are completely opposite – with some older writers attributing it even formal constitutional elements, whilst others fervently deny the notion of pre-18th century constitutionality all together. Šarkić, firmly standing by his previous remarks,[5] insists that „it remains as an evident fact that in Dušan's Law Code there were many elements which

4 Even though the construct „worldly and ecclesiastic aristocracy" is contributed to Nikola Krstić, there are many instances where a variation of it has been used in medieval sources, with Šarkić specifically mentioning a couple of selected charters, Šarkić, *History,* 46–47.

5 See, for example, Srđan Šarkić, „Elementi ustavnosti u srpskom srednjovekovnom pravu", Arhiv za pravne i društvene nauke, 1/1982, 125–135. and Srđan Šarkić,

today would belong to constitutional law, as much as those in Magna Carta of 1215."[6] Consequently, his decision to name this chapter „Constitutional law" rather than „State law" or „Public law" shows his integrity in upholding his theory, although it is not one without controversy.[7]

His theoretical view on the hierarchy of the states, based in Roman/Byzantine law is well founded and based on his previous academic endeavors. The *credo* of this is the famous quote of the Hilandar charter,[8] around which Šarkić masterfully crafts a vision of Serbian medieval rulers' ideology, the center of which is the meaning of the state and its (symphonic) relations with the Church. The ruler, head of state, uses his (theoretical) ultimate military might and his right to deal justice, administering both the country and the entire class system it was founded on... In the first centuries, he is surrounded by his „fellows" (*družina*), who lay the foundation for the future nobility. His courtiers and servants slowly develop into an efficient administrative apparatus, while the assemblies become the State councils (*Sabor*). Later, a more comprehensive reform, influenced by both the reception and tradition of Byzantine institutions follows, creating a blend of administrative styles that would survive as long as the Serbian medieval state. After skillfully guiding his reader through this evolution, the author analyses the regional administration – albeit in a very short overview of units of territorial division (*župa*, *oblast*, *krajište*...) and without a clear criterion and chronology. This section ends with a condensed, but brilliant insight into the role played by the Serbian Orthodox Church in the history of medieval Serbia.

The next part of this books analyses the topic of civil law. Starting from the definitions of natural and legal persons as subjects of law, Šarkić yet again demonstrates that the sheer practicalities, such as the position of towns, villages and churches as legal entities, often take center

„Norme ustavnopravnog karaktera u srednjovekovnom srpskom pravu", Zbornik radova Pravnog fakulteta u Novom Sadu 1–3/1986, 45–51.

6 Šarkić, *History,* 124–125.

7 His view was criticised by Mirjana Stefanovski, „Vrednost zakona prema Dušanovom zakoniku", Sima Ćirković, Kosta Čavoški, *Srednjovekovno pravo u Srba u ogledalu istorijskih izvora,* SANU, Odeljenje društvenih nauka, Izvori srpskog prava XVI, 37.

8 This quote, in Šarkić's translation (*History,* 126) goes as follows: „In the beginning, God created the heavens and the earth and human beings on it, he blessed them and gave them power over the whole of his creation. And some of them he made emperors, others princes, others lords and provided all of them with herds to be grazed and protected from every harm. So, brothers, the merciful Lord established the Greeks as emperors and the Hungarians as kings and he classed all men and gave the law … According to all his infinite grace and mercy He endowed our ancestors and our forefathers to rule this Serbian Land … and appointed me, christened in holy baptism Stefan Nemanja, the Great Župan."

stage. Concerning the law of property, which had a completely feudal structure and roots in customs, the supplanting of Roman law proved to be a necessary addition. The system of hierarchical property (*dominium eminens* / *dominium directum* / *dominium utile*), found in variations through much of feudal Europe in various forms, is attested in medieval Serbia in full. However, this doesn't mean that the unprivileged classes could not fully dispose with their property – the few surviving contracts of sale attest to the contrary. Anyone with full legal capacity could buy or sell, give or accept a gift, make a will,[9] set up a lease etc.

The author puts these and other particular law sources to good use, especially in his chapter on the law of obligations. Otherwise, this one, as well as many other chapters of the *History* would just turn into a listing of legal norms (mostly from the Code and Syntagma) – something that Šarkić, for the most part, skillfully evades. To enrich these sections, in many instances, he insists on giving a short historical overview of the Roman law origins of many legal institutes, later adopted in Byzantine and, via the latter, in Serbian medieval law.

The next part of the book, most voluminous by far, is dedicated to criminal law. At its very beginning, Šarkić extrapolates the two different concepts of crime, Serbian and Byzantine, although the former mostly focuses on the Serbian legal terminology regarding said matters. A prominent spot is given to the various interpretations of what constitutes a crime: an act, or even a thought of the offender, a sin, or, most interestingly, a kind of madness – not in the modern sense, but as a rebellion against the divine order of things.

While treating the questions of the culprit and liability, the author explains the applicability of individual or collective liability in certain cases, noting that the principle of individual liability in Serbian medieval law was introduced from the Byzantine Empire. What follows is a comprehensive analysis of the core institutes related to the culprit – intention and recklessness, mental capacity and accompliceship.

Concerning the system of punishments, Šarkić is again faced with too few sources, especially regarding the application of the death penalty. However, what sources do remain tell us of a complex system of sanctions, one familiar to most of the European states at the time, consisting of

9 Šarkić assumes that many mentions of „gifts for the soul/grave" in the monasterial charters or manor lists serve as indicators of wills being made in favor of said churches or monasteries. However, it stands to reason that these acts could rather be treated as examples of *donatio mortis causae*. Šarkić, *History,* 284–289, contra Aleksandar V. Solovjev, *Zakonodavstvo Stefana Dušana cara Srba i Grka*, Skopsko naučno društvo, Skoplje 1928, 115. Taranovski mentions the „gifts for the soul/grave" just in the context of motivation of the gift giver, Taranovski, *Istorija IV,* 194.

the mentioned capital punishment, as well as the corporal ones, fines, imprisonment, exile, and confiscation, among many others. The author only briefly mentions the spiritual punishments (just anathema and excommunication, as the most serious ones), used by the Church against the offenders of canon law.[10]

The readers are then greeted with an overview of the most significant crimes, grouped according to which legal good is threatened by them – crimes against the state and sovereign, the judicial system, the public order, against Church and religion, the person, morality and property. This obviously modern classification, chosen to systematise these delicts, has been previously used by many legal historiographers, and proven itself more than satisfactory in the previous decades.[11] Some of them are mentioned in detail only from the time of Dušan's codification, like *odboj* and the shaming of a judge, or the refusal of his order by another official, which shows a greater shift in criminal policy – the great codifier decided to severely punish those who act out against public authority. Same is true of the strict punishments introduced in the amended Code of 1354, especially for the professional thieves and brigands. Harsh penalties are also reserved for those who break the class order, mostly the serfs (for the commoner's councils, fugitive serfs, various crimes committed against the nobility) – the nobles are mostly spared the death and corporal penalties, except for the most egregious acts of murder, rape and other cases of a blatant abuse of power. Sadly, once again, the lack of surviving judgments makes it difficult to assess the full results of these developments, although it seems that its more brutal elements remained solely on parchment. Whatever the case, the rulers' efforts to restore peace and order in tumultuous times in their state deserve to be applauded.

The final part is dedicated to procedural law. The trial procedure was one and the same for all matters, civil or criminal. The same „unity" did not apply to the justice system – similarly to other states at the time, the rise of judicial immunities lead to the existence of several ones. The highest authority, of course, is the ruler's court, that slowly evolved from absolute

10 Here Šarkić also mentions the damnation of the ruler, commonplace in many charters, as a sort of a deterrent against all those who might forge or misinterpret his will. On this matter, see also, Stanoje Stanojević, *Studije o srpskoj diplomatici I,* Beograd 1928.

11 Even still, the issue of crimes targeting different protected goods remains. For example, Church theft (*svetokradstvo*/*svetotatsvo*) is both a crime against property and, as a form of sacrilege, against religion. In some cases, Šarkić considers some forms of self-judgement as a form of a violation of immunity rights, although *samosud* is a distinctive crime against the judiciary. Šarkić, *History,* 372. In another, he discusses *najezda* almost as a form of self-judgement, although it is characterised as a callous attack against one's property with a significant force.

jurisdiction to trying the most important cases (*reservata*) – murder, rape, treason, land disputes etc. It also served as a second-degree court, although most likely not an appellate.[12] From this court, explains the author, stems the formation of the state judicature: from the court judge, administrative personnel as judges, all the way to the professional state judges. The second system is the one of feudal courts – of manor lords dealing justice to their serfs. These lords (worldly or ecclesiastic) were expected to supplant the state courts on their lands. The Church itself – here acting fully in the capacity of a religious institution – also tried their believers, clergy or protegees on spiritual matters (*duhovni dugovi*). This leaves two more distinct jurisdictions: one of city courts, based on the various degrees of autonomy they enjoyed in medieval Serbia, and another for foreigners, mostly used for the German miners and Dubrovnik traders, ranging in forms from a mixed border court to consular jurisdiction.

The mentioned structure of the trial, with some variations depending on the adjudicator, looked rather similar, at least from the time of Emperor Dušan and later on, when the scarcity of sources is not as grave as in the period before. Šarkić takes us from the start of an ideal-type of a medieval trial until its very end. Starting with the summons, the parties' appearance and arguments, presentation of evidence, types of evidence used, all the way to the judge rendering a verdict and its execution, the author notes many changes between the different eras. For example, since Dušan's Code at the latest, the judgment must be issued in writing; the trial ordeals are slowly fazed out of the proceedings; the oath is objectivised by the appearance of the jury (*porota*) etc. All these developments show that, although often perceived as static – and treated like that for didactical reasons – the history of procedural law in medieval Serbia, like in all other branches of law, shows remarkable growth.

Having met with Šarkić's approach, some of the topics broached and conclusions reached, after more than 650 pages, one is left with a deepened understanding of Serbian medieval law. His writing style is accessible, yet academic *in vero*. The quoting of sources is, more often than not, supplanted by detailed explanations, often times with parallels to Roman law and the laws of other medieval states. Controversies are mostly solved by acknowledging the existing explanations, while steering clear of conjectures regarding issues currently impossible to resolve. The latter is the case with institutes like „*uzdanije*", that continues to puzzle historians to this day.

That being said, some minor faults are bound to exist even in a book as thoroughly researched and written as this one. Šarkić isn't always

12 Šarkić, while allowing the existence of an appeal in the procedural law of medieval Serbia, based on the Byzantine influence, through the Syntagma, finds its adoption less than likely. Šarkić, *History,* 507–508. This is in line with the opinions of earlier authors.

immune to embracing some questionable older views. An example of this is the notion that the Code of Stefan Dušan loses its regularity or system after article 84, or the authors inconsistent (lack of) trust in the Rakovac manuscript of said Code.[13] The translation and transliteration of titles, institutes and names isn't always consistent, especially with ones originally borrowed from the Greek language. For example, the name of the first Serbian patriarch has three different spellings (Joanikije, Ioanikije and Ioanikios), while the title „headman" is used for different dignitaries, such as the *kefalija* and *knez*. However, these smaller issues, easily mendable at that, do not detract any value from this great work.

Šarkić's *History* feels like a much-needed addition to the historiography of Serbian medieval law. Not only does it rise to the occasion eloquently and comprehensively, but it does so in the English language, which in itself vouches that this important topic will be more accessible to researchers that are non-(fluent) Serbian speakers. It is with great hope that I expect a Serbian edition of this book, with the many insights that it has to offer.

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13 On both of these issues see, for example, Đorđe Bubalo (prir.), *Dušanov zakonik*, Zavod za udžbenike / Službeni glasnik, Beograd 2010, 16–18 (for the system of the Code's 201 articles) and 42–44 (on the Rakovac manuscript).