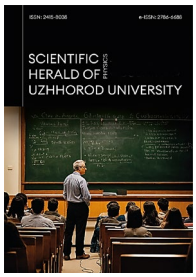
Scientific Herald of Uzhhorod University
Series "Physics"
Journal homepage: https://physics.uz.ua/en
Issue 56, 1011–1020
Received: 28.09.2023. Revised: 16.01.2024. Accepted: 07.03.2024



DOI: 10.54919/physics/56.2024.101le1

Legal contracts and legal customs in the history of law of the Kazakh society

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Abstract

Relevance. The relevance of the study lies in considering the branch function of natural law and analysing the provisions that can form its basis in society.

Purpose. The purpose of this study is to examine the role of legal customs and contracts in the historical development of the legal system in Kazakh society, focusing on their foundational role before and during the early stages of state formation.

Methodology. The study utilizes an interdisciplinary approach, incorporating insights from the "new biology" fields such as animal ethology, behavioral genetics, primatology, evolutionary psychology, anthropology to analyze the origins of moral provisions and legal norms.

Results. The research identifies legal customs as a primary source of legal provisions before the formation of the state and highlights the role of legal contracts at the earliest stages of state development. The study demonstrates the continuity of legal systems throughout the existence of the Kazakh ethnic group. Additionally, it emphasizes the limitations of cultural influence in explaining the root causes of social norms, pointing to the need for a deeper understanding of the natural law origins. The study provides insights into the historical aspects of the legal system development in Kazakhstan, influenced by various biological and social sciences.

Conclusions. The study concludes that legal customs and contracts are fundamental to the development of legal systems, especially in the context of Kazakh society. It underscores the necessity of considering the natural law origins of legal norms to better understand the mechanisms of their development. The research highlights the importance of philosophical

Suggested Citation:
Sadykanova Zh, Korchak N, Klepikova O, Maksymov S, Lytvynov O. Legal contracts and legal customs in the history of law of the Kazakh society. *Sci Herald Uzhhorod Univ Ser Phys.* 2024;(56):1011-1020. DOI: 10.54919/physics/56.2024.101le1

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inquiry into the roots of legal customs, which is crucial for understanding universal and regional legal norms. Furthermore, the study suggests that recognizing the continuity in the legal development of Kazakhstan can provide valuable perspectives on the formation and evolution of legal systems in other societies.

Keywords: legal science; philosophy; origin of moral norms; human nature; society.

Introduction

Modern legal publications describe the concept of natural law in just one sentence and do not contain a single paragraph covering the issues of justice in international law. However, most textbooks on international law published in Kazakhstan in recent years either avoid these topics or pay relatively little attention to them [1]. Meanwhile, the post-Soviet Kazakh philosophy and theory of law, having turned to the works of outstanding philosophers of the past and having accepted the best modern doctrinal improvements, took mainly a natural legal position [2]. This does not mean that positivism is completely excluded from legal thinking [3]. It has found its new place in the overall picture of legal reality, but only as one of the main forms of the existence of law, and not its main idea [4].

In contrast to legal positivism, proponents of the natural legal approach to the understanding of law are guided not by what exists, but by what is due [5]. The basis is not what is, but what should be [6]. Common to all trends in natural law is the idea that all legal provisions are based on some objective and unshakable foundation that does not depend on the will of a person [7]. The basic essence of law is expressed in terms: an objectively meaningful rule of external social behaviour. This foundation is considered as the supra-positive foundation of law (due) [8]. For centuries, there has been a constant debate among natural law advocates regarding the true foundation of law [9]. At different stages of its development, the theory of natural law took as its basis (due) the laws of nature, the will of God, or the human mind.

Natural law is anthropocentric and therefore universal. Its anthropocentric nature lies in the desire to understand and determine the correlation between the natural needs of a person as a social being. If the theory of natural law seeks to capture the essence of natural law, it should take as a basis the philosophical anthropology that comprehensively examines the nature of a person [10]. The universality of natural law allows considering any human communities in its categories, the statutory foundations of their interaction with each other. The unity of human nature constitutes the natural link that unites all peoples into one universal family [11]. Hence it follows that every nation has a natural right to crave from other nations respect for its human nature, and a duty to respect it in others. Law is a spontaneous generation from the needs and aspirations of a person in society [12]. And although some of its features differ depending on time and place, its basic principles are the same, because human nature is, at its core, constant [13]. Without delving into the subtleties of the various trends in natural law itself, its anthropocentric nature and universality means the recognition of the following: firstly, the identity and community of human nature; secondly, the presence of universal psychological foundations of people's legal consciousness, which implies the recognition of the unconditional priority of universal values in law; and thirdly, as a consequence, the recognition of a person as the main subject of the construction of any legal system [14].

Literature Review

The identity and commonality of human nature lies in the fact that a person, like any living organism, is subject to the laws of organic matter. The human being, despite the obvious presence of spiritual principles in it, cannot be denied materiality [15]. People realise their needs (including intellectual and spiritual ones) in society. When interacting with other people, a person is forced to take into account the norms (rules) prevailing in this society [16]. In its long history, humanity has been able to formulate ideal ideas about such necessary behaviour that would fully contribute to the interests of both the whole of humanity and its individual personality. This refers to the basic norms of morality, which, admittedly, have acquired a universal, and therefore international nature. Their presence is confirmed by many reputable scientists [17].

Thus, J. Wilson [18], in his fundamental research on the origin of morality, points to the existence of universal moral rules inherent in all cultures. He writes: “Take murder: in all societies, there is a rule that unjust murder is wrong and deserves to be punished [19]. To justify the exclusion from it, it is necessary to provide strong arguments”. The scientist admits that these arguments may differ in different societies, although not too significantly, but at the same time addresses the fact that “the need to provide such arguments that justify murder in itself indicates that each society considers a person's life to be significant”.

One of the doctrinal sources on which J. Wilson [18] relied in his research was the work of E. Westermarck [20], dealing with the study of moral norms among primitive people. The author, based on the study of numerous primitive communal tribes (“from the peace-loving Australian aborigines to the vicious savages of Tierra del Fuego, the Upper Congo and the Fiji Islands”), came to the conclusion that there are universal patterns of human behaviour. As a result, J. Wilson [18] stated that moral sense has meta-adaptive properties: “Otherwise, natural selection would work against those people who would have such unnecessary properties as the ability to be compassionate, self-control, or the desire to be honest, and in favour of those who would have the opposite qualities”.

A. Verdross [21] draws attention to the fact that positive international law could eventually develop based on coinciding legal views of different peoples. However, this fact of coincidence indicates that the psychological differences of peoples rest on the same and common human nature, as indicated by Article 1 of the Universal Declaration of Human Rights [22], adopted on December 10, 1948 at the session of the General Assembly of the United Nations (UN). This unified normative consciousness of mankind at its core is the basis for the knowledge of natural law. The scientist, like J. Wilson [18], substantiates his conclusion based on ethnological

research (performed by other scientists), which confirm the existence of humane natural law among primitive peoples [23].

The natural legal basis of relations between people is so deep that some scientists have long tried to find its roots in nature. The literal borrowing of animal behaviour patterns by human society has always attracted criticism. In Roman law, there was a division of the inviolable right, on the one hand, into the common for animals and for humans, which in a narrower sense is called natural law, and on the other hand, into the inherent exclusively for people, most often called the right of peoples. But at the same time, it was emphasised that such a division has almost no meaning, because there is, in fact, no being susceptible to law, except for one who is naturally capable of being guided by common principles. Therefore, when justice is attributed to wild animals, it is not done in its proper meaning, because of the presence of a shadow and a trace of reasonableness in them. Therewith, it should be noted that H. Grotius [24] expressed his opinion not too categorically and unequivocally. He went on to write: "However, the very mode of action established by natural law, is inherent in us along with other animals, such as the upbringing of offspring. Whereas, for example, what is unique to us, such as worship, has nothing to do with the nature of law."

Materials and Methods

In modern legal science, there is a different system of views. The historical methodology of law is based on it. Having built a coherent system of non-classical natural legal approach to the understanding of legal reality, it is presented as too ideal, detached from everyday life. The concept of natural law is considered to be more conditional for modern science. Nature is rather a symbol of the separation of law from the will of a human, rather than the actual primary basis of law. This understanding of law contains a certain utopian moment. At the same time, this does not imply the separation of law from reality. After all, although utopian projects do not actually come true, a person, being under the impression of a new reality and inspired by this picture, changes the social world by one's actions, using the symbols and categories of the utopian project. Law is a supernatural phenomenon, and no basis of law can be found in nature. Nature is the realm of objects, and law is the realm of interacting entities [25].

Therewith, modern scientists do not ignore this trend and sometimes express thoughts in support of it. Research on the origin of moral provisions is largely based on the achievements of the "new biology": animal ethology, behavioural genetics, primatology, evolutionary psychology, and anthropology. Pointing to the active influence of culture on human behaviour, attention is drawn to the fact that it, at the same time, cannot explain the root causes of the emergence of social norms. The variability of human culture is not as great as it may seem at first glance. Just as human languages can be infinitely diverse, but reflect common deep linguistic structures defined by the linguistic zones of the new cortex, so human cultures probably reflect common social needs determined not by culture, but by biology. Biology proves conclusively that humans are naturally political social creatures, not selfish isolated individuals. Completely unassisted, without any specially developed strategies and prescriptions, people determine how to interact with each other. Biology demonstrates that the construction of rules and following them, as well as punishments for violations (including self-punishments), have a natural basis, and the human consciousness, due to special cognitive abilities, can distinguish people who are aimed at cooperation from deceivers.

The conclusions should not be interpreted as equating a human with the animal world, and even more so as a call for the return of a human to their natural state. Philosophy distinguishes between the concepts of "natural law" and "natural person" and contrasts them. The natural person is regarded as an exceptionally immoral being, has little control over one's emotions, and is therefore practically out of control. Taking the theory of social progress as a basis, the natural person is considered as the initial "material" that history processed for tens of thousands of years until the civilised human appeared, who seeks to fulfil oneself in the course of following the highest spiritual values developed by human civilisation. All this allows suggests the existence of a legal system in the conditions of the development of individual states. In particular, it is necessary to consider the possibilities of determining the nature of the contract and its difference from custom in the system of continuity and naturalness of law.

Results and Discussion

The history of humankind is rich in experiments associated with a conscious disregard for moral foundations. And even though there are many relevant examples in recent history, the authors of this study would like to turn to Ancient Greece, where, probably, one of the first attempts was made to give a philosophical justification to an anti-social behaviour. This refers to the school of the Cynics, which emerged in the 6th century BC. The Pythagoreans absolutised freedom and proclaimed complete moral autonomy, which lies in complete liberation from the moral norms of society. Their behaviour was demonstratively indecent and shocking. They reduced human nature to the nature of the animal, but at the same time, however, they did not seek to leave society in order to merge with the animal world.

The inconsistency of the Cynic variant lies in the fact that despite all the disregard for social norms, preachers and followers of the Cynics continued to live in society and actually parasitise on its patience. Therewith, such comparisons appeal to the existence of deeper, more intense connections between the human and the environment, between natural law and nature. They point to the fact that the consciousness of all people is of the same nature and therefore is unified at its core.

The unity of consciousness implies a certain commonality of worldviews and the place of the human in it. The study of moral issues describes the final result and the process of developing these general views. Morality is the product of a long historical development of humankind, where both religious and political factors cannot be denied, when over thousands of years, as a result of natural-historical selection, those patterns of behaviour (social norms) that most meet the interests of both the individual and society as a whole were developed. They point out the inextricable connection of natural law with the general normative and value principles that prevail in

the universe, and note that the norms and principles of natural law are not artificial human inventions, that they are not invented by people, but are open. As early as the ancient times, a person begins to discover significant patterns in the surrounding world, which must be taken into account, for the violation of which one has to pay a high price. The idea of the essence of these laws and the regulatory prescriptions resulting from them have entered into archaic myths, religious creeds, principles of morality and unwritten rules of customary law.

Patterns of moral behaviour are firmly entrenched in the public consciousness as the idea of good and evil, bad and good, humane and inhumane. The most general ideas about morality are described by an attitude towards universal values. According to A. Verdross [21], positive law should derive its binding force from the "kingdom of values". In international law, the development of the idea of justice can be traced from the period of the state and is first consolidated in the international legal principle of equivalence (the principle of legal conformity), which becomes the general principle of relations between primitive (pre-state) entities. Subsequently, it becomes such for the international legal regulation of international relations of the ancient states of the Middle East, Ancient Egypt, and Ancient Greece.

In ancient Greece, the idea of legal conformity in international relations, justice, was generally developed, which became the basis of their legal consciousness for the Greeks. The direct and immediate connection between the establishment of the principle of legal conformity in the Ancient world and the development of the idea of justice and equality in international law is emphasised. In the language of ancient Akkad, since the 4th millennium BC, there was a concept of establishing equality. It meant establishing fair relations based on equality. This concept is also found in the Code of Hammurabi [26], and in earlier sources. Most often, however, it is found in sources of an international nature – mainly in the correspondence of Mesopotamian rulers.

Attention is drawn to the way in which the category of justice is enshrined in the most important modern universal international legal instruments, if one compares it, for example, with the obligations to respect human rights. As a rule, justice is mentioned in the preamble of documents as the main idea of international law. In particular, the preamble of the United Nations Charter [27] states: "We, the peoples of the United Nations, are determined... to create conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be observed...".

The preamble of the Universal Declaration of Human Rights [22] begins with the words about "taking into account that recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". The preamble to the International Covenant on Civil and Political Rights [28] begins with the same words. In the preamble to the Declaration of Principles Guiding Relations between the participating States of the Conference on Security and Co-operation in Europe (CSCE): Final Act of Helsinki [29] the participating States reaffirmed their commitment to peace, security and justice and a process of friendly relations and cooperation".

Evidently, there is on clear indication or implication as to the specific conditions that ensure justice. What exactly is hidden in international law behind this concept? Therewith, it is widely recognised that the provisions of the United Nations Charter [27] and, above all, the purposes and principles of the United Nations (Articles 1 and 2) are precisely the embodiment of the idea of justice in international law. At the same time, human rights in general and personal freedom in particular are most fully specified at the universal and regional levels in modern international law.

Here the authors of this study would like to address the fact that the possession of high moral qualities is one of the main requirements that are put forward for candidates for the positions of judges in international judicial and arbitration bodies. For example, according to Article 2 of the Statute of the International Court of Justice [30], "The Court consists of a panel of independent judges, elected, regardless of their nationality, from among persons of high moral qualities who meet the requirements set forth in their countries for appointment to the highest judicial positions, or are lawyers with recognised authority in the field of international law." Notably, "high moral qualities" are put before professional training. Probably, in this case, this refers to something more than just good behaviour of the candidates – in public life, in everyday life (although this is implied as well). It can be assumed that the highly moral behaviour of judges implies their deep understanding and commitment to universal values, the implementation of these values in their professional activities. Such requirements apply to candidates for judicial positions in the vast majority of international courts.

In fact, a similar observation was made upon studying the influence of ethics "as a moral philosophy" on professional behaviour and the drafting of professional codes. In this sense, the provision of Paragraph 2 Article 17 of the Statute of the International Court of Justice [30] is typical, which prohibits a member of the court from taking part in the decision of any case where he or she previously took part as a representative, attorney, or lawyer of one of the parties, or a member of a national or international court, an investigator of the commission or in any other capacity. Thanks to ethics, this reveals a fluctuation between formalism and idealism in legal argumentation. According to authors, such state of affairs clearly demonstrates the general international legal consciousness that has already been developed. Modern educated people from all countries that profess different religions, the content of the concept of "justice" as the most important moral and legal category is understood in the same way.

In the study of the process of the emergence of social norms (primarily moral norms), it is emphasised that norms that arise spontaneously are much more in the interests of people than those that are the product of social choice. Obviously, rational discussion can lead to poor choices that do not serve the true interests of the people who make these choices, while irrational norms can be quite functional – as in the case when religious faith contributes to the maintenance of social order or economic growth. The reasons for the emergence of an incorrect decision made in a rational way can be of all kinds. One of the main reasons is false or incomplete information. People

are simply unable to make rational choices at every moment of their lives.

Probably, when touching upon the advantages of "spontaneous" norms, it is not necessary to keep in mind that they are created as if thoughtlessly, without the participation of human thinking. In this case, the development of any social norm, any rule of behaviour that regulates relations between people, would be absolutely impossible. As P. Sorokin [26] noted, "a social phenomenon is a social connection that has a mental nature and is realised in the minds of individuals". In this case, it means that a person, when faced with certain life situations, tends to act mainly intuitively. After evaluating the events in one's mind, they choose a certain variant of behaviour, comparing one's own interests with the normative and value attitudes prevailing in this society, which were developed naturally over a long period of time. It can be argued that the norms of international customs are developed in the same way, but with the only difference that the regulated relations in most cases are of a different order. But representatives of states, national liberation movements, and international intergovernmental organisations, while taking a position on various foreign policy issues, should strive to ensure that it corresponds to universal moral principles. History has already proved conclusively that finding the will against morality is a dead end.

Previously, the Soviet doctrine rejected this approach to the development of legal provisions. Thus, there was a categorical disagreement with the fact that international customs are created spontaneously. The thesis of the spontaneity of international customary rule-making is unacceptable for a number of theoretical reasons and is not supported by modern state practice. Therewith, the reasons why such position was taken are different.

Firstly, the concepts of "spontaneous" and "unconscious" were completely identified. For the Soviet school, these are synonymous words, which is completely wrong. Spontaneity is involuntary, self-movement, caused not by external factors, but by internal causes. A person, acting spontaneously, behaves independently, internally consciously and, importantly, voluntarily.

And, secondly, the concept of the spontaneity of international custom is fundamentally incompatible with the views that custom is a law – making process based on the coordination of the wills of states. With these words, Soviet researchers declared their fundamentally positivist position, which reduces international law exclusively to the product of the will of states. Accordingly, for the emergence of moral norms, personal freedom of a person has an absolute value. In modern philosophical and legal thinking, the recognition of a human's personal freedom has become one of the fundamental values of the socio-political system. They consider the discovery, recognition, and affirmation of the rights of the individual to be the greatest achievements of the earth's civilisation.

Only a society that recognises the individual's right to freely control his or her own destiny has a strong internal mechanism for self-development and effective overcoming of the problems facing it. Totalitarian societies, which seek to regulate and control the lives of their citizens as fully as possible, have already convincingly proved their unviability and extreme danger in the current interdependent world. A. Toynbee [31], upon considering the problems of the collapse of civilisations, writes: "Previous experiments have convinced us that the criterion of growth does not depend on the degree of control over the environment, either physical or social, just as the loss of such control cannot be the criterion of decay. Careful empirical analysis has also indicated that there is no strict correspondence between the ability of a society to control its environment and the processes of breaking and disintegration of a civilisation. On the contrary, there is evidence suggesting that if there are connections of this kind, they lie in the fact that as the power over the environment increases, the process of breaking and disintegration begins, not growth".

The behaviour of members of a free society, in theory, has a deep internal motivation, which is not based on factors of external coercion, but on independent and free choice, the responsibility for the results of which the individual consciously assumes. A person, as it were, obliges oneself to behave in a certain way, and this self-punishment does not constitute the result of fear of possible punishment. The participants in the relations independently, without the influence of the state, decide for themselves which relations should be provided with a legal nature, and which ones should not. This opinion is gradually gaining acceptance in the theory of law. Contrary to popular claims, formal designation is not a general constitutive feature of law, which is not inherent in all its manifestations. Legal relations do not consist of the will of the state, but are built on the basis of the interaction of individuals and social groups. They acquire a regulatory nature not due to the external influence of the state, but as a result of their constant repetition. In other words, law is initially developed by self-regulation of public relations, and custom is the primary and main result of such self-regulation.

In pre-revolutionary Russian literature, when studying primitive societies as "primitive epochs of social development", it was custom that was singled out as the main source, which indicates the development of "solid principles of law". In the course of time, life also brings a kind of certainty to these relations; in place of the arbitrary decisions of the elders, it creates customs produced by time, in which these decisions find for themselves certain mandatory limits... The emergence of customs, as certain firm norms for judicial decisions, is only the first step towards the independence of law; because at this stage of its development, law is still largely dependent on the fluctuations of the moral sense in connection with which ordinary norms are created and applied.

In this regard, attention is drawn to the fact that throughout the history of humankind there have been various sources of international law, but it is custom that has proved to be the most stable of them. This stability of the custom can be explained by the fact that it reflects innate, inherent human traits, is based on the original worldview of people and is applied to key relationships. The test of time was already passed by the custom in the process of its creation; and this process consisted in a long and uniform practice of application. Therefore, international customs were developed precisely to regulate the key, vital issues of international relations; therefore, the

most important ideas of international law, its imperative principles, have a common origin.

Subsequently, there is a division of customs into legal and non-legal. If the law is considered as a concentrated expression of the ideals of justice, the embodiment of the moral principles prevailing in society, then the legal customs must include those regulatory institutions spontaneously developed in society that ensure the implementation of these ideals. From the very beginning, the forms of legal customs acquired the most categorical (imperative) moral requirements that express an attitude towards universal values (the prohibition to deprive a person of life, freedom, violate the peaceful order in society, the duty to take care of the environment), and only then, after a while, many of them find their development (detailed, clarified) in the provisions of positive law. Some experts call such legal customs "mores". As social relations became more complex, norms emerged that absorbed not only the time-honoured traditional instructions, but also the personal world of a human, taking into account the person's desire for social justice and stability, which, as is known, has only recently ceased to be a luxury for humanity on a historical scale. These norms – "mores" – are customs that have a moral value.

I. Ilyin [32] saw the reasons for the division of customs into legal and non-legal in the inner moral work of a person on oneself, encouraging this person to a loving, kind, brotherly attitude towards his or her neighbour. It turns out that it is very important that good customs and morally correct morals are gradually developed in people's lives. With the development and deepening of education, the harmful and senseless gradually disappears, and the belief that this is necessary, although no one has said it, is associated only with those customs that facilitate the task of morality and law. The customs of the people correspond to what is called the "temper" of the individual: these are the inherent, stable ways of internal life, which are expressed in the form of external customs. And thus, with the spiritual development of the people, morals are increasingly improved and find expression in good customs, and good customs, in turn, contribute to the education of noble and gentle "morals" in people.

Legal customs constitute the basis for the development of customs of international law. They are united by a unified regulatory consciousness of the participants in legal relations (both domestic and international). This thesis is vividly presented in the arguments of the 19th century on the distinction between legal and non-legal international customs. International customs are not always the correct expression of the truth. Thus, for example, it is known that there were times when, based on a generally accepted custom, it was allowed to plunder the property of civilians during the war, to kill prisoners, to claim goods thrown ashore by a storm.

Only those customs can be considered a true expression of international law, that are confirmed not only by the similarity of actions at different times and among different peoples, but, moreover, are consistent with the requirements of justice. If the existing customs contradict the eternal foundations of natural human law, or if they are rejected by the legal consciousness of civilised peoples, they cease to be binding on individual states and must be corrected. At present, the unified normative consciousness of people is consolidated through the affirmation of the value of personal freedom, which has become the cornerstone of the construction of the theory of pluralistic democracy. In the international legal plane, it was developed in the becoming of freedom of choice as a principle of modern general international customary law, formulated in the Kazakh legal doctrine: freedom is really the highest, universal value, which is inherent in both the person and the people.

In modern international law, the protection of universal moral values is ensured mainly through the protection of fundamental human rights and freedoms that are of natural origin. Human rights and freedoms arose and developed based on the biological (anatomical and physiological), psychological and social essence of a person, and hence they have a natural character, are inalienable. First and foremost, they include universal provisions for the protection of human rights and fundamental freedoms in peacetime and provisions that ensure the protection of human rights in wartime (provisions of international humanitarian law). The latter, in contrast to the former, according to the authors, can already be qualified as indisputable peremptory provisions of general international law. The provisions for the protection of human rights and fundamental freedoms in peacetime are still being approved in this capacity. The postulation of the principle of respect for human rights as the main principle of modern international law by many experts is evidence of this.

The principle of respect for human rights has been directly normalised in numerous universal international legal acts, among which the Universal Declaration of Human Rights [22] occupies a central place. It is widely believed that the provisions of the Declaration constitute norms of customary international law. This opinion is not unconditional. A detailed analysis of the contents of this document indicates that only a few provisions are generally recognised as universal customs. Only four types of rights, or rather freedoms, can be considered as such: freedom from slavery, genocide, racial discrimination, and torture.

Admittedly, this list cannot be considered complete, at least because it does not include the right to life, the customary legal nature of which the Kazakh science attempted to prove based on the natural law theory, as well as the right to personal inviolability. In any case, even the rights and freedoms mentioned above demonstrate that they are essentially designed to provide a person with a free physical existence. It is physical integrity that gives a person the guarantee of independent development. And although the discussion about its content and about the content of individual universal human rights and freedoms continues, in general, one can agree with the opinion about the global consensus that has developed regarding many standards that are understood equally in the field of human rights.

This consensus does not constitute an expression of full agreement on priorities, which are largely culturally specific and manifest in some human rights discussions. Therewith, no one can claim that it will be possible in the future to hide behind the doctrines of sovereignty in order to ignore the authority of these standards. Humanity had to come and has come to the need for a civilisational

understanding of democracy. It is this understanding, which in no way offends or infringes on the national and religious feelings of peoples, that permeates international law. Just as it is true that the democratic tradition is not alien to all cultures, so is the essential function of international law, through which this tradition is preserved and reflected in its modern understanding. Therefore, it is not an exaggeration to say, especially with regard to the democratic tradition in international law, that this right reflects the interests of all humankind.

However, the issue of human rights is closely intertwined with the issue of human responsibilities. The latter, unlike the former, has only started to receive justification in the legal doctrine. But even now it can be stated that experts justify its legal nature in the religious and moral feelings of a person, which are of a general nature. Significantly, it is the duties of each person that form the core of any divine commandments, whether they are the revelations of Moses, Buddha, Jesus, Muhammad [32], and the entire universal morality is based on such revelations. Great moralists also reach the same conclusions and ideas – I. Kant, M. Aurelius, L. Tolstoy, H. Thoreau [32]. The entire world is subject to one law, and in all rational beings there is a single mind – argued M. Aurelius [33].

"The basis of all faiths is the same", writes L. Tolstoy [34]. It is surprising and worshipful that the moral imperative – equal to the law, originally presented by different mouths and in different parts of the earth, contrary to what would seem to be the only one in its foundations, is evidently obtained from one common Source. Summing up the arguments, it is proposed to adopt a Charter of Good, which could become a set of global fundamental values as opposed to regional or other socially limited fundamentalism of all kinds. This would not be another set of human rights, but a code of its fundamental obligations to people and to itself.

The authors of this study point to the development of a new concept of human rights that is based on a spiritual tradition, which presupposes a combination of freedom with responsibility and does not allow permissiveness. Many moral guidelines formed the foundation of the basic principles of international law, which were developed over a long time – peremptory norms. Many constitutional duties of a person and a citizen act as moral and legal requirements of society and the state for the behaviour of a citizen in the relevant spheres of life and are guided by international legal standards in the field of human rights. An integral feature of the legal nature of the main duties is that they represent the moral and ethical requirements of society for a person to direct their behaviour towards socially necessary requirements, to coordinate it with the interests of other people.

The concept of human rights and the formulation of the problem of human responsibilities in their semantic content are fully applicable to the legal protection of any other subjects of international law (states, national liberation movements, state-like entities, international organisations). As with human rights, the fundamental rights of these subjects are designed to ensure their inviolability, peaceful coexistence, the right to freely determine their policies in the international arena, and to build fair and mutually beneficial relations among themselves.

In international practice and the theory of international law, attempts have already been made to formulate a list of the rights and obligations of states. On the regional level, the Montevideo Convention on the Rights and Duties of the States [35] was adopted on December 26, 1933. Within the framework of the UN, the International Law Commission prepared a Draft Declaration of the rights and obligations of states, which the General Assembly submitted to the UN member states by its resolution 375 (IV) in 1949 [36]. The project has not been adopted to this day. Among the doctrinal developments on this issue, the draft Code of Fundamental Rights and Obligations of States should be mentioned. Based on these documents, the following rights of states can be distinguished: rights to sovereign equality in relations with other states; rights to independence, territorial supremacy and the free exercise of all their rights; rights to cooperation; rights to individual and collective self-defence, etc. These rights correspond to the following obligations: to respect the sovereignty of other states; not to interfere in matters falling within the internal competence of other states; to respect the territorial integrity and inviolability of other states.

Despite the fact that the rights and obligations of states have not been embodied at the universal level in the provisions of positive international law, they have fully realised themselves in general customary international law. For example, the International Court of Justice in the Military and Paramilitary Activities case [37], subsequent to a detailed analysis, concluded on the existence of the following universal international legal customs: the prohibition of the use of force and the right to self-defence; the principle of non-interference in the internal affairs of other states; the right to collective countermeasures in response to armed intervention; state sovereignty. In the Oil Platforms case [38], the Court confirmed the existence of an international legal custom concerning the right to self-defence and elaborated on its content.

Conclusions

The above discussion quite clearly indicates the existence of modern peoples (states, societies), which sometimes have quite significant cultural differences, a number of common moral and value orientations. Their establishment and recognition of their universality required a long practice of international relations at all levels (from interpersonal to interstate). In international law, these guidelines can have various embodiments: an international legal custom, an international treaty, or a resolution of an international intergovernmental organisation. However, the most stable form of their external expression, which generalises the practice, gives it strength and protects it from unforeseen changes, can only be the custom of international law, which cannot be instantly changed in favour of someone's immediate interests.

Thus, the legal nature of international legal customs has a deep natural legal basis. Its core is the recognition of the identity and community of human nature, manifested in the presence of a unified normative consciousness of humanity, which reflects the natural needs of human civilisation in general and of each particular individual in preservation and further development. The source of the

development of international legal customs is the idea of universal norms of morality and morality as rules of behaviour that reflect objective historical patterns that meet the needs of society for peaceful and progressive development and are revealed in the content of the philosophical and legal categories of freedom, equality, and justice.

Acknowledgements
None.

Conflict of Interest
None.

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Юридичні контракти та правові звичаї в історії права казахського суспільства

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Анотація

Актуальність. Актуальність дослідження полягає в розгляді галузевої функції природного права та аналізі положень, які можуть стати його основою в суспільстві.

Мета. Метою цього дослідження є вивчення ролі правових звичаїв і контрактів в історичному розвитку правової системи казахського суспільства, зосереджуючись на їх основній ролі до та під час ранніх етапів формування держави.

Методологія. Дослідження використовує міждисциплінарний підхід, який включає висновки з таких галузей "нової біології", як етологія тварин, поведінкова генетика, приматологія, еволюційна психологія та антропологія для аналізу походження моральних положень і правових норм.

Результати. Дослідження визначає правові звичаї як основне джерело правових положень до формування держави та підкреслює роль правових контрактів найбільш ранніх етапів розвитку держави. Дослідження демонструє безперервність правових систем протягом усього існування казахської етнічної групи. Крім того, дослідження наголошує на обмеженості культурного впливу у поясненні корінних причин виникнення соціальних норм, вказуючи на необхідність глибшого розуміння природного походження прав. Дослідження також надає уявлення про історичні аспекти розвитку правової системи в Казахстані, які зазнали впливу різних біологічних та соціальних наук.

Висновки. Дослідження доходить висновку, що правові звичаї та контракти є фундаментальними для розвитку правових систем, особливо в контексті казахського суспільства. Воно підкреслює необхідність врахування природного походження правових норм для кращого розуміння механізмів їх розвитку. Дослідження наголошує на важливості філософського дослідження коренів правових звичаїв, що є ключовим для розуміння універсальних і регіональних правових норм. Крім того, дослідження пропонує, що визнання безперервності в розвитку правової системи Казахстану може надати цінні перспективи для формування та еволюції правових систем в інших суспільствах.

Ключові слова: правова наука; філософія; походження моральних норм; людська природа; суспільство.