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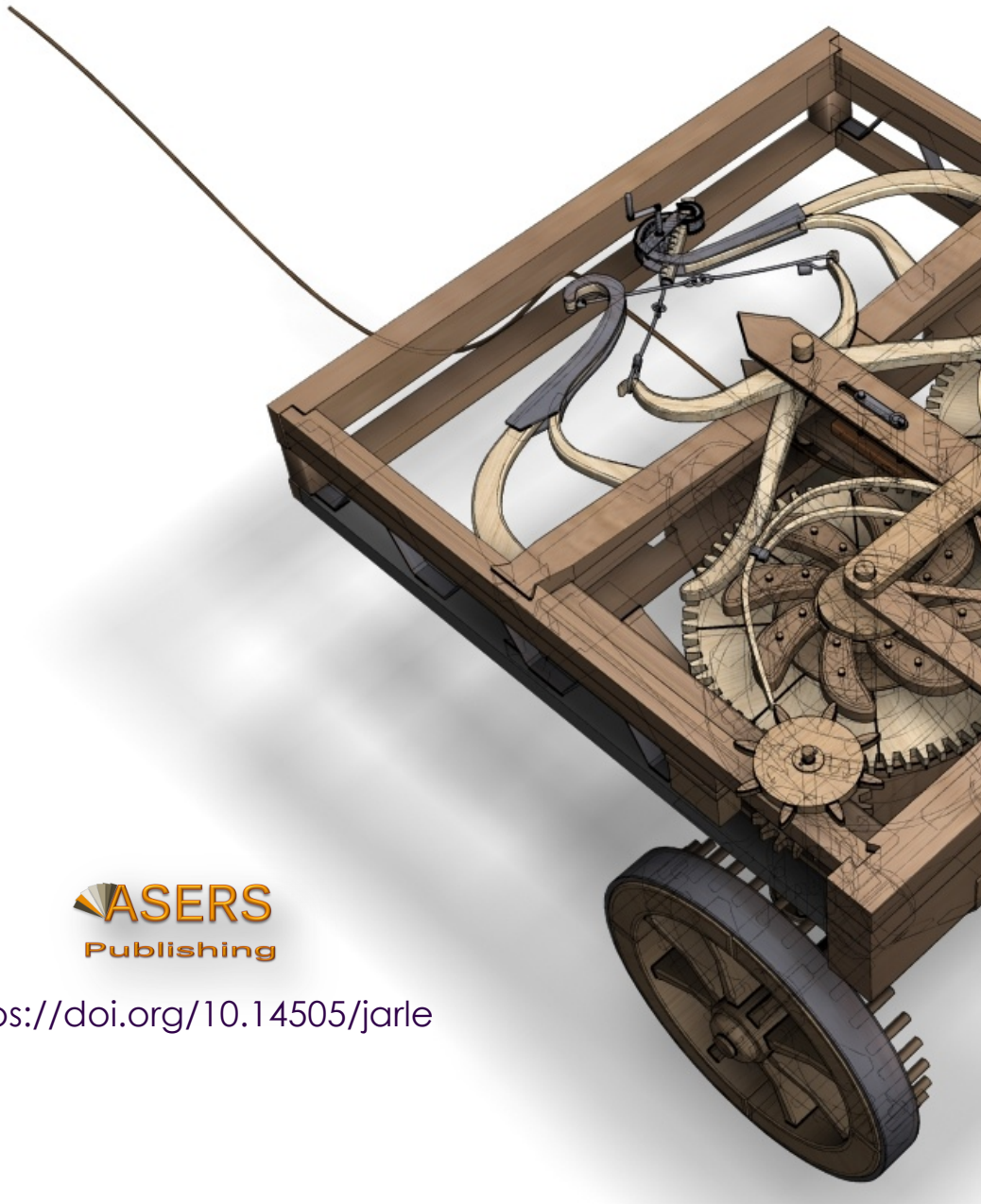

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The Place of Legal Custom in the System of Sources of Regulation of Private Relations

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Abstract:

The relevance of the work is to fully implement the possibility of the exchange of information and technologies between subjects of law for the formation of a balanced legal system. The novelty of the scientific paper is determined by the fact that legal custom is considered not only as a consequence of the emergence of a certain legal system, but also as an environment that forms additional legal relations, formalizing certain traditionalistic legal relations related to the historical and cultural features of the region. In this paper the authors show the genesis of the legal custom, its forms of implementation and the principles of its implementation, which can be applied to case law and codified systems of law. The scientific paper reveals the concept of tradition and custom; legal custom is differentiated from the case and the possibility of its evolution is shown. The practical application of the research determines the possibility of forming an innovative legal environment, along with the development of traditional legal systems.

Keywords: law; custom; system; formation; development.

JEL Classification: K40; K19; K29.

Introduction

The history of the development of world statehood testifies: when critical situations occur, then the existing legal system undergoes qualitative transformations associated with a change in the fundamental foundations of society existence (Gordon 1975; Albano *et al.* 2017). Under the conditions of radical state and legal transformations aimed

at consolidating the priority of human rights, the formation of an effective system of their protection, the main focus of legal analysis is concentrated on the ability of legal institutions to organize a variable social environment. The ability of a right to change along with a change in social relations is the main sign of its effectiveness and it determines the ability to serve as a reliable regulator of the latter (McFaul 2018). At the same time, ideological monism dominating in recent decades and excessive state control, the monopoly position of a regulatory legal act as a source of law hindered the development of many important mechanisms for the effective regulation of public relations (Krygier 1986; Shinysherova *et al.* 2018). But the new trends and the new nature of modern law contribute to the re-thinking and identification of those phenomena that were not previously taken into account or ignored (Graver 2018). Accordingly, in these latter days, the study of the category of 'customary law' is becoming especially critical, the positive significance of which is manifested in the functions of self-regulation and the primary normative regulation of social relations (Borisov 2014; Yarotskiy 2018; Kostruba 2018).

Under the conditions of modern world views, there is an objective need for a new assessment of the role that legal custom has played and is playing in the legal system of the state (Shu-Chen 2007; Tishchenko 2018). Customary law is invariably transformed along with the development of any society, as an integral component of the life of the corresponding nation, its traditions and other social norms (Koehn 2019; Kokhanovska 2018). Moreover, legal custom is the basis and condition for a certain development of legal systems, one of its qualitative representations (Oto-Peralíasand Romero-Ávila 2017a; Adhikari and Guha 2018).

The essence of custom is manifested through myths, religion, rituals, which are closely related to moral standards (Ma 2012; Rai 2018). Primary socionormatics is a certain legal material, the basis of the entire legal culture. The term 'custom' is associated with such a category as 'archaic law', which emphasizes its difference from modern law (van den Dungen 1991; Druskienė and Šarkiūnaitė 2018).

Attention should be paid to archaic civil law, in particular to 'archaic forms of agreements' (French 1989; Rakštelytė and Rakštelytė 2018). It is possible to highlight the following features of the agreements:

- parties to the agreements are families, clans, tribes;
- objects are not only movable, immovable property, but also courtesies, ceremonies, military services, women, children, dances, fairs;
- the content of the agreements is delivery and delivery in return (deliveries are compulsory and evasion of them may lead to war).

It is possible to highlight the main features of archaic law: the oral form (moreover, subject to a proviso), the mental character (plants and animals were also punished), the special nature of the consideration of procedural disputes (ordeals are the court, the duel) (Voghouei *et al.* 2013), the institutions of blood feud, the institutions of mediation typical for a primitive society, the conservative nature (violation of the norms of behavior that were passed on from generation to generation were punished harder).

1. Literature Review

The formulation of the indicated problem is also updated by the foundations of an external nature – the reforming of the legal system in accordance with international law (al-Fiqhiyyah 2010). Under the conditions of the abolition of the state monopoly on international trade, the expansion of the circle of entitied engaged in foreign economic activities, the problem of applying customs is gaining increasing attention. In addition, the legislation that determines their place in the system of sources of regulation of public relations is characterized by inconsistency, and many issues, such as determining the legal nature, features of application, require additional research and solution (Jemielniak 2002).

Well-known scholars suggest that criminal and procedural law could arise as a result of hostilities and reconciliations after them (French 1989). Focusing on archaic law, they pay special attention to the issues of mononormatics, which entered the science not so long ago (Martinez-Blasco *et al.*2015). An opinion is given about a society with a traditional system in which legal custom is not treated as a law, distinguishing it from religion or morality (Rotolo 2005). There is an opinion that archaic law, mononormatics and the genesis of legal custom take up a very important place in the development of modern legal systems (Tontti 1998).

It should be noted that often the latter arose when interpreting the norms of Roman law in Germany at the time of its reception by the society and lawyers (Oto-Peralíasand Romero-Ávila 2017b). Unwittingly, they interpreted the norms not in the sense that they really had, but in the one that was more acceptable for those days. Thus, customary law rules were created that were outwardly based on Roman law, but in fact replaced Roman law with a modern twist (Boria 2017). This is the case when society accepts an erroneous interpretation of the norm and puts it into practice (Del Mar 2015).

Traditionally, the main emphasis in defining the concept of 'legal custom' and its difference from the category of 'custom' is concentrated on the recognition and authorization of custom by the state, which means the formal provision of legal force to customary norms (Petrishin 2014; Strelnikovaand Pogorelov 2010). However, in the scientific literature there are other views on the problem of differences between these categories, in particular, it is emphasized that only such a custom is the basis of customary law, which corresponds to the legal sense and legal awareness. Analyzing the differences between the categories of 'legal custom' and 'custom', we can indicate that only general practice, which reflects a legal obligation, is the basis of legal custom, but not the motives of politeness, morality and justice (Grinyak and Protsenko 2015; Shapenko and Kovtun 2015).

Thus, analyzing all of the mentioned above, we can state the fact that there is a specificity of the author's approaches to the concept of 'custom', which, in turn, indicates the complexity, ambiguity and active creative development of this problem. However, despite the close attention of theoreticians and practitioners to certain issues, it should also be noted that among them there is still no consensus on such an important issue as the development of a universal approach to understanding of this category (Zack 2018). The problem associated with the concept of 'custom' is, primarily, that in the doctrine and practice of different states, along with the term 'custom' it is used the term 'customs,' almost as an equivalent and interchangeable term (the term 'order' is sometimes used).

Moreover, the terminological differences in this issue are related to the use of one or another methodological approach in determining the legal content of the concept of 'custom' (Conklin 2001). So, if from the point of view of the traditional methodological approach, the main criterion for determining the legal force of a rule is the will of the state, and the recognition of a custom as a legal norm depends entirely on domestic law, then, based on the characteristics of private relations that are created by the participants themselves for satisfaction of their own needs, the right to endow a certain legal norm with legally binding force belongs not only to the state, but also to the entities of such relations. In other words, the main criterion for distinguishing custom from the norm is the presence of *opinio juris*, that is, the perception of this norm as mandatory by most participants in public relations. Another criterion by which a comparison can be made between the categories of 'custom' and 'norm' is the method of their formation. If the first is created in the process of interaction between individuals and legal entities, then the second is created by states. In addition, the custom is less general than the norm in nature and is a kind of technical rule, which helps to regulate certain aspects of the agreement.

2. Materials and Methods

The research is based on the historical method. It is associated with the fact that custom becomes legal when the state appears. In this case, it relies on the possibility of coercion by state bodies and becomes mandatory. The sociological method is expressed in the fact that customs, morality, religious attitudes are implemented due to certain beliefs, moral influence, by force of habit. However, in relation to a large group of social relations, such means of formation and implementation of the norms are insufficient. To ensure a tougher and more effective regulatory impact, an assessment, support and external protection by the authority of the government are needed. The collection of customs and their further state authorization is one of the first ways to establish legal customs. In addition to the mentioned above, there are other ways of customs authorization: references to the custom (reference to the custom in the regulatory legal act), use of the custom as the normative basis of the court decision.

Using the historical method, several stages of the formation of a legal custom were identified:

- the emergence in society of a situation through which the need to create a new norm arises;
- the creation by society of a norm that can resolve this situation;
- repeated application of this norm, its perception by society as the most acceptable and obligatory;
- state authorization of the norm.

The first three stages in the formation of a legal custom are held with the participation of society, and only at the last stage the state enters into this process. Due to the high level of self-organization, the norm created in this way will be the most acceptable, understandable and close to society, satisfying the problems of the population majority. At the same time, this process of creating a legal norm has several disadvantages: it takes a long time to create a norm; it is impossible to predict the result of such a process. Accordingly, the regulation of public relations by the state is reduced.

Similar stages are characteristic for creating the norm of a regulatory legal act. But in this case, the state actively enters into the process at the last stage, and starting from the second (the norm is created exclusively by society, and by the state – its special bodies). The role of self-organization in this case becomes insignificant, the role of the state grows, and the effectiveness of the newly created norm will depend on its compliance with the

situation for regulation of which it was created. The ability of the state body to feel the problem situation and provide the most beneficial way for society to solve it is very important.

3. Results and Discussion

The custom is understood as a stereotypical rule and a way of behavior, spontaneously reproduced in a particular society or social group, and stereotypic behavior of a person in certain circumstances is considered its main features; publicity of manifestation to customs, which distinguishes them from habits and skills; mandatory implementation; specificity of its orders. Among other signs of custom in the legal doctrine, the following are distinguished:

- duration of existence: the custom is not proclaimed or introduced, but spreads and develops over time. As a rule, we can determine the moment when it first comes into full force very roughly. The use of customs is limited by time and serves as the basis for their legitimacy and general distribution;
- consistency and uniformity of compliance: unlike other social normative formations, the custom gives no reason to doubt whether to comply with its requirements or not, since it leaves no choice. Therefore, in addition to increased stability and psychological attachment of people to it, the custom is also characterized by conservatism;
- absence of a law-making entity: although it is possible to describe the category of persons among whom this or that custom is gradually becoming the norm of behavior, however it does not have a specific author, there is no person or body that can be praised or condemned for creating a specific custom;
- public order undeniability: publicity of customs manifestations distinguishes them from stereotypes (psychological properties of a person) and skills (various kinds of automated skills);
- high degree of dynamism: customary law is not created first, and then projected onto the behavior that they are intended to regulate. They manifest themselves in behavior. The assignment of customary law is never manifested explicitly. So, if the law can contain a preamble, which explains what evil it is intended to prevent or what good it is intended to contribute, then in customary law there is nothing like that. It can be concluded that the norms of the latter are assigned, assuming that they arose from some kind of need that was felt by those who first adapted their behavior to them;
- obligatory performance: if the custom is legal, it is mandatory for all entities of legal relations. The certainty of the custom is expressed in the sufficient concreteness of its orders. The selection of rules of behavior is more consistent with the needs of social regulation of norms, it reveals its reasonableness.

Depending on the role in the legal system, three types of customs are distinguished:

(1) customs as 'supplement to the law' (*secundum legem*) – their purpose is to clarify the meaning of the valuation concepts used in the law (reasonable price, abuse of law, etc.);
(2) customs 'except the law' (*praeter legem*) – are used when there are gaps in the law;
(3) custom 'against the law' (*abversus legem*) – when the law and the custom regulate the same social relations in different ways. As a rule, in the event of such a conflict, the provisions of law are used.

Customary law is currently the most common in countries of the traditional legal family. Over the centuries, the effect of customs was maintained there with the help of self-governing public structures, without appealing to government bodies. And until now, most disputes in these countries have been resolved through reconciliation on the basis of customary law, that is, state structures are hardly used in the process of implementation of the law. Government bodies seem to society a certain artificiality, isolation in comparison with the ability to regulate social relations by more natural means of influence with the help of moral standards, pressure on the part of the public. Legal science and education, legal professions of judges, prosecutors, lawyers in these countries are underdeveloped. In the countries of Oceania, Asia and Africa, custom has become part of the national systems of law, on the basis of which justice is administered and the activities of the highest state bodies and officials are implemented. So, in the countries of Tropical Africa, there is a custom of tribalism (derive from tribe), according to which privileges are granted to descendants from a certain tribe (mainly their fellow tribesmen are appointed to government posts, etc.).

Basically, the legal custom is perceived as archaism. With the complication of public relations, with the development of state structures, the expansion of the spheres of state influence, the emergence of rule-making, the role of custom in society decreases, legal customs give place to laws and other sources of law. However, legal custom cannot be completely avoided. This is especially true of relations in the field of private law. This is due to the following reasons:

(1) private law relations are based on the initiative of equal participants;
(2) significant influence of traditions on the establishment of private relations in a certain territory;

(3) the concept of 'civil society', which is now referred by many states, provides for the manifestation of initiative on the part of the public.

Even in England (the Anglo-Saxon legal family), where traditions usually have compulsory knowledge, customs operate only in a limited sphere of public relations. Customs are often spreading in electoral, parliamentary practice, and the activities of local government bodies (Bocheliuk *et al.* 2019).

Until recently, the role of custom was quite limited in the Romano-Germanic legal family. At the same time, it is noted that in Italy, the system of formal sources of law includes the Constitution, laws (constitutional, ordinary, local), decrees and decree-laws, various regulations of executive government (executive, administrative, regulatory decrees), corporate standards (in labor law, court decisions, collective agreements, trade co-ordinates, trade union documents), customs (in Parliament, in commercial affairs, civil law, but only on issues not regulated by law). In some provinces of Spain, especially in Catalonia, customary law almost completely replaces the 'national civil law' (the system of norms contained in the 'national' civil code), and therefore is reasonably considered in such cases not only as 'very important, but also as a de facto primary source of law'.

Currently, the legal regulation of public relations using sources of law has undergone significant changes. In particular, the issue of transferring part of legal regulation from the national to the local level (decentralization of legal regulation) is being actively discussed. The following levels of decentralization are distinguished:

(1) at the level of state bodies (republican and local regulation);
(2) at the level of groups of organizations (local regulation);
(3) at the level of individuals (individual regulation or self-regulation).

In connection with the rejection of centralized legal regulation in the field of private law (since the regulation of relations between the entities of this law is more efficiently done through self-organization), the role of legal custom is growing. Thus, the possibility of using a custom is provided for by almost all normative acts in the field of civil law, which is a product of customary law, since it is folk customs, provisions of religion, the official ideology of society dominating in society, reflected in legislative acts. The criminal law makes provision for liability for violating the customs of war provided for in international treaties, the consent to commitment of which is rendered by the Government of the country or the Supreme Commander. In the absence of legislation governing disputed relations with the participation of a foreign business entity, the arbitration or magistrate court may apply international trade customs. The consolidation of ordinary norms in law is the basis to consider them an important source of national law, despite the fact that the role of legal custom is much narrower than that played by other sources of law, such as regulatory legal acts and agreements.

Customary law is a complex multilateral social, cultural and legal phenomenon. The destruction of customary law system in many countries at the beginning of the 20th century is associated with the simultaneous destruction of the legal culture. The synthesis of the basic ideas of historical types of customary law allows us to formulate the grounds on which it is necessary to build the national legal system of the modern state. Indeed, the forcible destruction of an established legal custom cannot but affect the level of legal culture, because these two phenomena are closely related. The provisions of customary law are based on traditions and moral beliefs.

Thus, each system (in this case, the state) chooses for itself the most applicable form of regulation of social relations, which best reduces the level of entropy in the system, requires less cost, *i.e*., causes less disturbance, and, accordingly, it is easier perceived by society. In addition, in the same state, at the same time, there may be several forms of law (various types of law sources). Custom serves as an indicator, a litmus test of those persistent problems that arise in society, and which best shows the way out of the crisis (problematic situation). This way requires less effort from society to overcome the problem (reducing the level of entropy in the system) and, at the same time, it is the most effective for solving a problematic situation, since it is created directly by society itself, but it has certain disadvantageous features (in particular, it takes a considerable amount of time to form a custom, which in the modern information society is very problematic). The system of norms created by society, in comparison with the system of norms adopted by the state, is a more stable formation, with a lower degree of entropy, more natural for this society. Government bodies seem to social system a certain artificiality, isolation in comparison with the ability to regulate social relations by more natural means of influence with the help of moral standards, pressure on the part of the public, etc.

A variety of social factors influence the prevalence of a particular form of law in the country:

- historical features of this statehood, economic and cultural development;
- the rates of change in the life of the country;
- the degree of spontaneity or, conversely, the rationality of the law-making process;
- features of the political regime and forms of government.

The choice by the state of a particular form of law as the prevailing one appears as one of the synergetic factors, since it serves as an indicator of the level of self-organization of society. A custom is not proclaimed or introduced; it spreads over time. As a rule, we can determine the moment when it first comes into full force very roughly. Although in general terms it is possible to describe the category of persons among whom a particular custom is gradually becoming the norm of behavior, however, it does not have specific authors: there is no person or body that could be praised or condemned for creating a specific custom.

The author supports the view that a custom becomes legal and is perceived by the state only then when it does not contradict the adopted laws. It is shown schematically that a custom that does not comply with the laws is considered an offense. Mentioning the thesis about the emergence of a legal custom together with the advent of the state, it is necessary to highlight the main ways, methods of authorizing the legal custom and the entities of authorization (state, state authorities, parties to the contract, non-governmental organizations). The authorization methods should be provided:

- legislative (reference to the law, the Constitution – a legal custom as a form of law that can be applied in legal matters);
- personal application, when the legislative norm contains a direct reference to the use of the law in a particular case;
- law enforcement authorization (judicial, law enforcement authorization of executive bodies, contractual, 'tacit', state recognition of an international custom).

In this regard, it is necessary to identify five main entities of authorization of legal customs:

- the state as the main entity of authorization;
- governmental authorities: legislative, executive and judicial;
- parties to the contract;
- non-governmental organizations;
- states as entities under international law.

Studying the signs and concepts of legal custom, we derive the definition of legal custom. So, a legal custom is a social norm that has been recognized by society as its authoritative perception as useful, necessary, designed to resolve various disagreements in life, in everyday life, through its uniform application for a long time without changes and formalized by the legislator at the state level; as a rule of law to protect the interests of a particular society, ensure the fulfillment of rights and obligations by establishing a specific legal sanction.

A detailed description of a legal custom logically leads to its specific classification. Let us consider and analyze the versatile legal material and give a broad classification of legal custom. In particular, the classification by significance, by historical periods, by direct and indirect methods of state authorization, by the scope of regulation of relations, by the nature of effect and by sectoral affiliation. Having considered the concept, essence and legal nature of a legal custom, and specific classification, it is possible to establish common ways for the development and existence of a legal custom. Legal custom can be considered both a form of law and a source of law. The problems of the source of law and the form of law arise from the very concept of law. Recent scientific developments of famous scientists also confirm the presence of different views: one category of scholars considers the source of law and the form of law to be opposite and independent categories, another category of scholars considers the source of law and the form of law to be identical concepts.

The correlation of form and source of law takes place when it comes to secondary, formal legal sources of law. The latter are often called simply formal sources of law. This also emphasizes, by the way, the identity of the form and source of law, where the form indicates how the legal (normative) content is organized and expressed externally, and the source indicates legal and other sources, factors providing for the form of law and its content. In all other cases, identification is impossible. The degree of vitality of the law largely depends on how it takes into account the customs of society. But at the same time, custom takes roots when it does not contradict precedents and laws. Historically, in international law, where there is no single supranational regulator, legal custom plays a leading role. The customary rules of private international law are particularly detailed: Incoterms 2010, Principles of International Commercial Contracts UNIDROIT 1994, Unified Rules and Customs for Documentary Letters of Credit 2007. All these documents reproduce the norms prevailing in business circulation. A large place is occupied by legal custom in international maritime law. In Article 38 of the Statute of the International Court of Justice (San Francisco 1945), the legal custom is recognized as a source of law, to which commentators include such characteristics:

- duration of use;
- identity;
- general nature;

- legitimacy.

The identity should be understood as the identity of the order of actions in a given situation, the general character – referring to common situations of the same type, the legitimacy – the absence of disputes on the application, *i.e.*, general recognition. Thus, under the conditions of a variety of behaviors of participants in civil relations, which generates frequently occurring operations, various rules arise and they are sanctioned by society itself, which are recognized as a legal custom. The state, paying tribute to the autonomy of the individual, recognizes and authorizes the effect of legal custom in the branches of private law. A legal custom in the system of legal regulation is located in places where there is a well-established practice, and the state prefers to refrain from interference.

Islamic law is a divine right according to its sources and norms in the minds of Muslims. It applies to countries that belong to the Muslim type of society, mainly located in the Near and Middle East, North Africa, as well as South Asia (Pakistan). The theory of Islamic law recognizes that divine revelation needs to be interpreted (through the passage of time and the change in the views of society), which is what the lawyers of Islamic countries have been doing for quite some time. The main form of law is the Koran. There are a number of divine collections, such as the Sunnah, a collection of a data, that is, traditions regarding the actions and expressions of Muhamed, recreated by a number of intermediaries. First of all, ijma was considered as the joint consent of the Muslim community. Hence, the custom, which received the unanimous opinion of a connoisseur of Islam, became the rule of law – ijma. People living within such a system do not actually distinguish between them. At the same time, in individual states, customary and religious law systems underwent a profound transformation under the influence of colonial laws, and later the laws of national states. Despite the deep roots of Islam, pre-Islamic customs continue to be used in villages.

Among the regulators of social relations an important place is occupied by Islam-sanctified, deep-rooted customs and traditions. A custom is an adapt, which is divided into authentic, stable and weak. And only an authentic custom can be the rule of law. Such customs are compiled in a kind of collection of instructions for Muslims for all occasions. Religious prescriptions are a system-forming factor that renders the Islamic character even to such rules of behavior (legal norms and customs), which according to their origin and nature are not directly related to Islam. Therefore, it was concluded that the system of Muslim law includes the norms of customs that correspond to it, supplement it, at least do not contradict it and, therefore, are recognized sanctified by Islam. Studies of Islamic law make it possible to ascertain the fact that the customs of Muslims are widely supported at the state level, forming a special model of the legal system – the legal system of Muslim law. Islamic law fully reflects the religious teachings of Allah.

India is a vivid example of preservation of the identity and observance of legal customs, which are commonly formalized at the state level. Hinduism is characterized by a number of features: this religion does not have an organized church, its religious dogmas and norms are not unified, which leads to tolerance not only in unorthodox religious movements born in the bosom of Hinduism, but also to other religions. Tolerance, which is combined with strict rules of social, class-caste organization, is based on a religious concept, according to which any religion is a product of a person's knowledge of the same truth at different levels of its development, with regard to the same reality. The state has a policy of not prohibiting various religious groups from using their customs, which do not have violent actions in their essence. We examined issues of the marriage and family sphere, property rights, and inheritance from verbal consolidation to incorporation into Indian laws. Over the twentieth century, the content of Hindu law has undergone significant changes aimed at the abolition of caste and gender inequality, the abolition of the most archaic signs of marriage and family relations. Among the sources of Hindu law, first of all, *dharma shastri* and *dharma sutri*, religious-ethical and legal treatises that were written by the brahmanas and for a long time they formalized and supplemented the most common and well-known norms of customary law, should be highlighted. A certain influence on the content of these comments was provided by state institutions.

The Jewish legal system, incorporating the signs of Romano-Germanic, Anglo-Saxon legal systems, Jewish, Muslim and canon law, recognizes law and principles of law as the main sources of law. It should be noted that, despite thousands of years of contact with other legal systems, Jewish law remains deeply specific and retains a number of unique features and institutions:

(1) a rather long and contradictory period of formation and development compared with other religious legal systems;
(2) the mandatory nature of Jewish law, the prevalence in its system of direct prohibitions, requirements, all kinds of restrictions and duties over the rights and freedoms of entities;
(3) the multifunctional nature of Jewish law, which manifests itself in the fact that it performs standard functions (regulatory, protective), as well as functions specific only to Jewish law (the formation and

consolidation of the Jewish community, its influence on various spheres of public life, its doctrinal nature, which affects legal culture of Israel);

(4) the limited nature of the direct regulatory influence of Jewish law on Israeli society and its distribution to Jews living in other countries (its personal, national and social character).

The value of legal custom is preserved in the relations of the marriage and family sphere, inheritance. The Torah and Talmud support the customs of the foundations of Jewish society. African legal custom is fundamentally different from traditional legal custom. This is due to the fact that the peoples of Africa were in colonial dependence, which led to a change in the norms of the African people. Also, the indigenous tribes did not have written monuments. In resolving the conflict, the focus is concentrated on the reconciliation of the parties, rather than determining who is right. There is not any mechanism to enforce a decision in African customary law, and the person in whose favor the decision is made is likely to refuse to enforce it. A distinctive feature of customs and legal systems are centuries-old community traditions of collectivism, mutual assistance and joint work, which largely determine the nature of legislation.

With the advent of the European colonialists the development of law in Africa begins, since traditions and the community have stopped the growth of customs into a developed system of law, because the colonialists needed effective mechanisms for regulating economic relations. In those spheres in which the legal custom has been preserved, it is fundamentally different from European and Muslim law, in particular in family and obligation relations, in inheritance, in land ownership and the like. Some of the collections of customary law acquired official significance, and some of them remained a collection of legal customs that did not have the force of law.

There are about forty independent states on the African continent. It should be noted the great differences between the peoples of Africa, the diversity of their customs. After all, even the tribes located nearby, basically differ significantly. Within one African state, peoples of completely different ethnic and linguistic backgrounds can live. It is traced that now in African countries the signs of legal systems of Anglo-Saxon and Romano-German law prevail. Legal custom exists in written and oral forms. Folk traditions, including legal ones, have roots in the distant past and are part of the national culture. Therefore, states must reckon with this fact (Zakieva *et al.* 2019).

The Far Eastern legal system was formed under the influence of the teachings of Confucianism, Taoism and Legalism. At the same time, the presence of developed legislation does not mean that it is used in the daily life of Chinese citizens. Unlike the legal systems of Western countries, they recognized the main role of the state in creating the rule of law (through legislative or judicial activity), in traditional legal systems in the formation of the rule of law, priority belongs to society itself. Over the centuries, views on law have ignored many legislative norms. Due to the fact that the courts were corrupt, bureaucratic, incompetent, people avoided contacting them. The parties to the conflict, as before, do not turn to the courts, but to intermediaries, who use the traditional technique of reaching a compromise to resolve it. The vast majority of disputes were resolved through conciliation procedures in the mediation of respected members of society on the basis of customary laws that have been formed over the centuries. Obviously, it takes more than one decade to change the legal consciousness of most citizens. In China, as before, there is a struggle of the ideas of Confucianism, Taoism and Legalism.

Now the main source of law in Japan is a regulatory legal act. But 'Giri' - the norms of social regulation, legal customs in all spheres of life - have retained their meaning. The Japanese do not share the opinion that in resolving disputes there should be a party that won and lost, because there is always a more flexible solution to the matter (reconciliation, compromise). Even disputes that are to be considered in court, mostly end with reconciliation. The author believes that the main features that are inherent in the Far Eastern legal customs are a compromise solution to the contradictions, a peaceful way to settle them. The Romano-Germanic legal family covers almost all countries of continental Europe, with the exception of England and Ireland. The main form of law is the law, and the auxiliary is the legal custom. The constitutions and laws of the Romano-German countries recognize the effect of legal custom. Legal customs of a general nature are those that are enforced in a particular branch of law by the state. This means that in customary laws and special regulatory acts there is a permission of the legislator in certain areas of the law to be guided by customs.

The system of Anglo-Saxon law pays great attention to judicial precedent as a source of law. In resolving cases courts are not guided by laws (statutes, bills), but by previous court decisions on similar issues. Among the sources of law, this legal family also admits such a source of law as custom. At the moment, the role of custom is secondary. Considering the role of the precedent as the main source of law, the role and significance of the custom are determined in connection with it. Their connection was so close that the system of 'common law' is still translated as a system of 'customary law'. At the same time, in the modern Anglo-Saxon system, custom is only considered a source of law when it received the sanction of a judge, that is, it was confirmed by a judge in at least one of his/her decisions on a specific case.

One of the differences of the Anglo-Saxon system of law is that the signs that custom should have are most often already formalized in a number of judicial precedents and statutes (to be reasonable and not to contradict the primary sources of law; to be universal so that it can be argued that it is widely known in practice, *i.e*., everybody follows it; to be specifically designated). In the Anglo-Saxon system, customary law manifests itself today mainly in casual law. Also mainly constitutional customs and trade customs are applied. The most famous legal customs are the constitutional legal customs of Great Britain, effecting for many centuries. It has been revealed that the legal custom, although it plays a secondary role in the legal life of society, is nevertheless applied in resolving issues of various branches of law (merchant shipping, navigation law, sale and purchase, the constitutional process), and it occupies a special place in the regulation of international relations. That is, legal custom has an impact not only on countries that have established international legal standards, but also on countries that are parties to international legal treaties with international legal norms.

Conclusions

In the process of analyzing the emergence and development of a legal custom, the stages of its evolution from subordination to the leader to subordination to the state are considered. It is determined that mononormatics was perceived as an aggregate concept, which covered all the norms (moral norms, religious norms, custom norms) and it was not separated. It is established that the key factors in the emergence of legal custom are the development of society, the emergence of monetary exchange relations, the violation of established customs, writing, as well as the emergence of the state and the corresponding consolidation of customs at the state level.

The way of acquiring the legal form of customs was traced. Through an analysis of legal customs in various legal systems of the world, conclusions were drawn that custom becomes legal in different ways: court authorization, tacit consent, state and legislative binding. On the issue of the legal nature of the custom, an opinion is given on its social character, on the impact of law on legal custom, and a characteristic of the legal custom is proposed. A deep analysis of legal customs as forms of law and their systematization reveal the development of the category of legal custom.

The concept of legal custom as a form of law is solved by identifying the forms and sources of law. Legal custom is considered as a rule of law, and therefore is a secondary source or formal legal source of law. That is, the manifestation of custom as a form (source) of law takes place in the study of its origins (legal and others) and the study of the content of legal custom. The place of legal custom among existing forms of law shows that it can be called a modern form of law due to its adaptation to public relations and their legal regulation. The legal custom in the Muslim legal system ranks third after secular law and Muslim law. Only a legal practice of an authentic nature can be valid in Muslim states. A striking example of Muslim legal custom is the Sunnah – collections of legal customs. That is, the provision on the importance of legal custom in the religious legal systems of Muslim countries as one of the most effective sources is confirmed.

Hindu law, perhaps among all legal systems, is still spreading its influence through legal customs. It is proved that, to a large extent, through the tolerance of Indian law of various religious movements, legal custom remains one of the main forms of the modern legal system of India (of course, after the law). Legal practice in Israel is often associated with religious postulates. It has signs of imperativeness and is mainly used in marriage and family relations, in contractual relations, when workers are dismissed from work, and the like.

The stay of the peoples of Africa in colonial dependence influenced the evolution of the legal custom: ancient customs are completely transformed or left in their original state, or they are denied as a form of law or applied together with the law. From ancient times, the traditional legal system of the Far Eastern countries of China and Japan was based on the establishment of strict restrictions for society. Therefore, the legal customs of China and Japan are more likely taboos than regulators of public relations. In these countries one can affirm the concept of the emergence of a legal custom based on the concept of taboo. The legal custom of the Romano-Germanic and Anglo-Saxon legal systems is denied as a form of law or is used in a very narrow circle of relations. The modern world of Anglo-Saxon law recognizes the effect of legal custom only if it is applied for forty years. In the Roman-German legal system, legislators assigned a customary role to legal custom and secured it in the relations of merchant shipping, navigation law, and the like.

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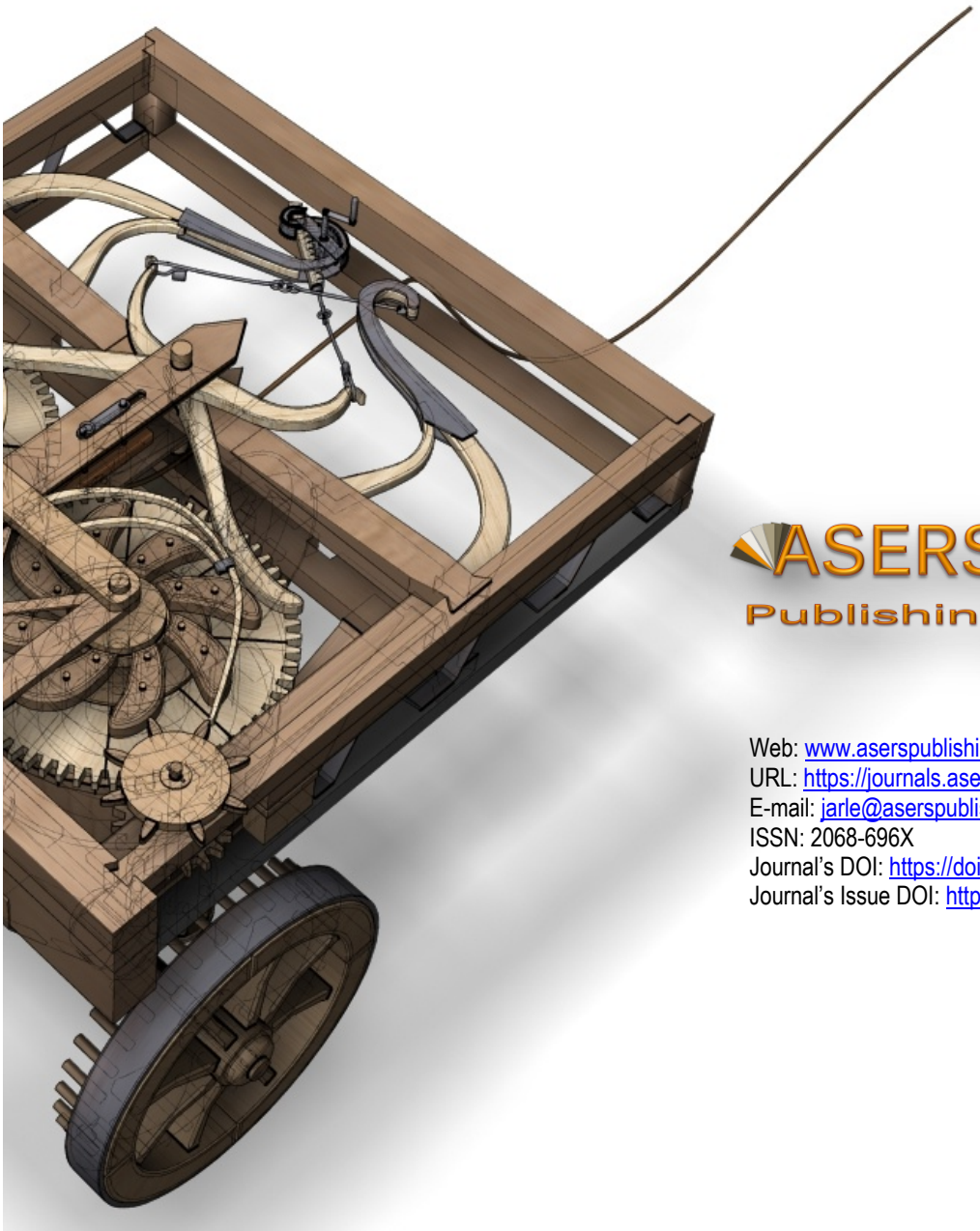

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