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Evolutionary retrospective of the formation and development of modern law

Keywords: law evolution, theory of law development, current legislation, state, custom, current law, positive law

Summary. The article is aimed to attract the attention of not only theorists, but also historians of the study of law to the fact that the latter began its evolution from "custom". It is the latter that is based on worldview recognition and submission. It was closer to justice, and therefore met the ideas of the ideal of the law as the supreme good; it provides peace, order and mutual understanding. According to the authors, the current legislation, as well as the formation of the state, has passed a significant historical path of its formation and development from the primitive custom to the positive law sanctioned by the state. Moreover, in the early states, custom prevailed even with persistent and constantly strengthened attempts by public authorities to influence the legal status of society and dominate it through the judicial and administrative apparatus. This, in turn, ensured a gradual combination of various forms of legal regulation originating from society and the state. The very origins and foundations of the current legislation can be found even in the social regulation of primitive society, which was carried out with the help of customs, taboos, morality, and the like. Moreover, the basic principles of customary law as the first form of positive law were mythological and religious principles, which were also developed and supplemented in the further development of its forms. The sources of the current legislation which reflect the historical beginning of its gradual formation and development are different in certain spatial and social dimensions.

Ewolucyjna retrospektywa powstania i rozwoju współczesnego prawa

Słowa kluczowe: ewolucja prawa, teoria rozwoju prawa, ustawodawstwo obowiązujące, państwo, zwyczaj, prawo obowiązujące, prawo stanowione

Streszczenie. Celem artykułu jest zwrócenie uwagi nie tylko teoretyków, ale także historyków prawa na fakt, że to prawo zaczęło swoją ewolucję od „zwyczaju". Właśnie zwyczaj opiera się na uznaniu

światopoglądu i uległości. Było ono bliższe sprawiedliwości, a więc odpowiadało ideom ideału prawa jako najwyższego dobra; zapewniając spokój, porządek i wzajemne zrozumienie. Zdaniem autorów obowiązujące prawo, podobnie jak powstanie państwa, przeszło znaczącą historyczną drogę jego kształtowania się i rozwoju od pierwotnego zwyczaju do usankcjonowanego przez państwo prawa pozytywnego. Co więcej, we wczesnych państwach zwyczaj ten dominował nawet przy uporczywych i stale nasilających się próbach władzy państwowej poprzez wykorzystanie aparatu sądowniczego i administracyjnego wpływać na status prawny społeczeństwa i zdominować go. To z kolei zapewniało stopniowe łączenie różnych form regulacji prawnych pochodzących od społeczeństwa i państwa. Samych źródeł i podstaw obecnego prawodawstwa można doszukiwać się w regulacji społecznej prymitywnego społeczeństwa, która została przeprowadzona za pomocą zwyczajów, tabu, moralności itp. Ponadto głównymi zasadami prawa zwyczajowego, jako pierwszej formy prawa pozytywnego, były zasady mitologiczne i religijne, które również rozwijały się i były uzupełniane w dalszym rozwoju jego form. Źródła obowiązującego prawodawstwa, odzwierciedlające historyczny początek jego stopniowego kształtowania się i rozwoju, różnią się według pewnych wymiarów przestrzennych i społecznych.

Introduction

In theoretical science, the issue of the emergence and formation of law is considered one of the most debatable, as well as discussed topics. It attracts the attention of both modern historians and theorists of the origin of state and law. The process of studying law and its essence is impossible without revealing the complex of historical premises that prompted its appearance. In addition, it so happened that in the theoretical process of the emergence and formation of the foundations and sources of law, its essence is explored by people much later. The very same law acts in the form of specifically defined, uniform in content, generally binding for the whole society rules of behavior that give rise to the strengthening of social duties, obligations, claims of members of society to grant them legal rights and freedoms, as well as privileges. And the historical conditions in which the current legislation is being formed are very closely related to the processes that take place in the state. Since by contradicting the interests of various social groups the latter create such a legal base that meets the aspirations of the ruling class and allows to impose the will through the mechanism of the state, the decisions of which are generally binding.

Today, the factors of the existence of the development of law acquire a new color and content, which is determined by the features of globalization; it is concluded that there are no sufficient grounds for the assertion that globalization causes the collapse of national states. It is substantiated that under the influence of globalization there is a limitation of state sovereignty, internalization of state functions, and modernization of state governance. Law is understood as a social regulator that unites the general civilizational and the special, inherent in a particular society. Law receives the completeness of its existence through its practical implementation. Regionalization does not exclude globalization as integration and unification at the world level, but acts as their necessary prerequisite.

Globalization, which led to a change in the paradigm of economic development, had a significant impact on the processes of both global and national development[1]. Modern law and all social phenomena and processes that determine its development and functioning are under the determining influence of globalization. Globalization should be interpreted as an objective phenomenon of modern times, which is based on the processes of forming fundamentally new relations between countries and peoples based on the interconnection and interdependence between them in all spheres of life[2]. Globalization processes necessitate the formation of a sufficient legal basis to ensure the harmonious coexistence of nations and the solution of common human problems. Law is the most important element of globalization and the necessary regulatory foundation. Also, the essential characteristics of globalization, its problems and prospects determine the peculiarities of the development of law and its meaning. Globalization not only affects all forms of life, but also modifies them, changes their functions and purpose. The impact of globalization on anthropological factors leads to changes in both the substantive parameters of human rights and the forms and means of their implementation; in particular, on legal factors – to strengthening the mutual influence and interaction of international and national legal systems. Globalization as an independent factor in the development of law necessitates the development of certain general legal standards that will make it possible to move to a qualitatively new coexistence of nations in the modern world on a humanistic basis.

Methodological tools for researching the formation and development of modern law

Today we have several attempts to systematize the achievements of the theoretical process of evolution of modern positive law, in particular, M. Bedrii[3]. paid attention to the issues of basic and additional features of a legal custom in the context of the search for its definition. The research of V. Hrytsenko and O. Brusova[4] is devoted to the historical and legal views of pre-revolutionary scholars about the emergence

[1] Z. Okeanova, *Globalization – the priorities and countries' development problems* [*Text*], "Scientific and Educational Periodical Journal of Economists And Jurists, The Genesis of Genius", December 2017, p. 73.

[2] V. Plavych, *Study of the process of interaction between law and the economy in the conditions of globalization* [*Text*], "Legal State" 2016, No. 23, p. 5.

[3] M.M. Bedrii, *Osnovni ta dodatkovi oznaky pravovogo zvychaiu u konteksti poshukiv yogo definitsii* [*Basic and additional features of legal custom in the context of finding its definition*], "Journal «Science Rise: Juridical Science»" 2018, 1(3), p. 25-33.

[4] V.A. Hrytsenko, O.V. Brusova, *Pohliadi dorevoliutsijnukh ushenykh-yurystiv shchodo vynyknennia prava v davnih skhidnykh slovian* [*Reviews of dorevolutional scientists and lawyers on the emergence of law by ancient Eastern Slavs*], "Forum prava – The forum of law" 2018, 2, p. 37-44.

of law among the ancient Eastern Slavs. The monographic studies of G. Maltsev[5] are devoted to the analysis of the history of early law and the state.

A number of fundamental provisions were used to illuminate the problem under discussion, which are based on the principles of historicism, systematicity, scientificness, interdisciplinarity. The following methods were applied: historiographic analysis, terminological analysis, comparative, as well as typological methods. Based on a wide range of published and substantiated studies in the field of principles of the formation of law, the authors systematized and scientifically proved the formula of causal relationships, which ultimately made a decisive influence on the development of positive law. The method of generalization is used to sunstantiate the main conclusions and recommendations of the problem under study.

Custom and morality as a fundamental basis of law

Coverage of the theoretical conditions of origin, principles and sources of law is possible on the basis of a correct understanding of the defining primary principles, which are essential factors in the process of lawmaking. These primary principles can be safely called the most ancient rules of human behavior, which are characterized by the term «customs». Among the most primitive customs are the taboos, which were followed under the threat of sacred or mystical punishment. Customs were closest to instincts, because people carried them out without thinking about their content and essence, only because it was originally accepted.

The specific natural collectivism is considered as a dominant characteristic feature of the initial existence and consciousness of people, within which there is still no room for individual separation with the corresponding intellectual forms, psychological experiences, and the like. The consciousness of primitive society affirms group values, strengthens an integral way of life. The collective is a natural sphere where human consciousness is formed and developed, and slowly and spontaneously, ideas about the world are being formed, which are brought to each member of the primitive society using traditional forms of socialization[6].

In a society with sufficiently developed social ties, the sphere of social norms and regulatory mechanisms is to one degree or another divided into separate, specific socio-normative systems, among which morality, religion and others are worth highlighting. But at the first stages of the development of mankind, such a distribution does not yet exist, since the level and type of social relations of that time did not provide the necessary basis for differentiating social norms. In ad-

[5] G.V. Maltsev, *Teoretiko-pravovaya kharakteristika pretsedentnoi normy prava* [*Theoretical and legal characteristic of the case law*], Pravovoie gosudarstvo – Constitutional state, 2019, 30, p. 43-52.

[6] *Ibidem*, p. 44-45.

dition, all the components of the material and spiritual life of a primitive society, all the methods of cognitive and practical activity known to him, are inseparable from one another.

If we talk about the social regulators of primitive society, among which there are customs, rituals, rites, myths, religious and moral norms, they performed two important functions: 1) social norms allowed primitive people to "free their psychic energy from fear of the world around them and direct it towards production activities"; 2) the second function of social regulation in the primitive society consists in establishing stable relations in it, since it was precisely such relations that excluded the influence of random, purely subjective motives and circumstances that could "come from relatives and tribesmen"[7].

Social regulation ensured the creation of a situation in a primitive society when, in a normal conscious state, human actions no longer consisted of instinctive reactions to external stimuli and were not a simple response to the situation. Between the situation and the impulse to action generated by it, between the impulse and the response to the situation stood a social norm, which was not deduced from the situation and was not created by it, but was connected with more general principles of human life. Rituals, ceremonies, magic, and the fulfillment of other social norms made life easier for people and more successful, from whence they constantly wanted to repeat them. Subsequently, social norms began to be passed on from generation to generation.

So, the development of primitive customs into the norms of customary law, which occurred as the primitive society developed and the social strata gradually appeared in it, should be considered as the first step in the process of law formation.

In addition, studies of ancient cultures allow us to conclude that even representatives of primitive society, albeit at a primitive level, already distinguish customary law from other types of social regulation, in particular, morality and religion. Moreover, the formation of customary law was the foundation that contributed to the distinction of law and morality in the minds of people[8]. Also, it must be borne in mind that the moral standards that determine the behavior of people are inalienable from the content of the moral assessment of a person's actions, their personal qualities and the like. Such a moral assessment is often completely different, which makes it difficult to apply moral sanctions. Legal norms expressed in the custom or other form of law are exempted from such moral assessment.

The typical for modern legal systems division into substantive and procedural rights occurred in customary law. This is due to the fact that the reaction to the

[7] O.I. Kudermina, L.I. Kazmirenko, S.B. Vlasenko, *Social Psychology*, Kyiv 2020, p. 92.

[8] S.A. Schlegel, *Tiruray Justice: Traditional Tiruray Law and Morality* – [*Tiruray Justice: Traditional Tiruray Law and Morality*], Berkeley 1970, p. 80-81.

failure of a certain person to comply with moral or religious rules is embodied in spontaneous forms and substantially depends on the personal discretion of the participant in a particular social group. In law, such a reaction is strictly regulated, standardized, and this is another important difference between the legal type of social regulation and others. At least, as scientific sources indicate, the emergence of primitive legal forms in order to resolve conflicts, disputes, as well as imposing sanctions or punishments for criminal acts, takes place at an early stage in the development of human society.

So, even at the beginning of the development of mankind, law existed as a certain general regulatory system, with which then in the process of evolution of mankind legal systems of different times and peoples were formed whose legal system was already characterized as a complex hierarchically normative entity. The development of law and legal systems took place in accordance with the general laws of the evolution of society and is rooted in the uniformity of human nature and those problems that are solved at certain stages of social development.

The tribal tradition and customs of the lineage group at the stage of proto-state were no longer enough. There was a need to organize a new, more complex system of regulating social relations, which extended not only to blood relatives, but to the entire territory occupied by people interacting with each other. So, there was an urgent need for power and law, the very first and main form of which was ordinary law. The powers of the authorities have expanded and strengthened over time with the development of the state gaining support in legal institutions[9].

With the emergence of the state, a system of positive law is actively formed, established in the form of laws, administrative orders, judicial precedents, authorized customs, and the like. At the same time, with the emergence of the state as a special political organization of society, mankind gradually accumulated legal experience in regulating public relations based on specific norms of customary law that arose and formed in the era of class society and reflect the complex and lengthy practice of this state stage.

In barbarian states, the ruler or any other person on his behalf could not voluntarily abolish the norms of customary law and customs in general, since at that time it was believed that they came from distant ancestors and belong to the social level that operates on the basis of a fairly wide self-government.

In this context, it is advisable to note that the Laws of the Babylonian King Hammurabi is nothing more than a "series of amendments" to the then existing common law in the form of customs. Rather, they represented reformed legislation that never reached all regions of the Babylonian state. The laws of Hammurabi

[9] V.A. Hrytsenko, O.V. Brusova, *op. cit.*, p. 39.

do not represent an exhaustive codification of laws, and therefore an even greater number of customary legal institutions known from materials from other sources have not yet been processed. This probably depended on the nature of the law reforms contained in the sources, and was exceptionally common for the legislation of later eras. Laws that were in force have been known for a long time, did not require amendments and did not even require their confirmation in writing. Everyone who needed information about the laws was more or less familiar with the basic legal norms, evidence of which was passed on in a traditional oral, and often quite accurate, form.

With regard to the general level of legal technique of Hammurabi's Laws, it should be noted that his legal norms are clearly casuistic in nature. But at the same time, all presented cases are analyzed in sufficient detail. These laws, as a rule (which was typical for any casuistic text), begin with the word "if", after which a description of a specific situation is given, to which the corresponding legal norm of civil or criminal law referred. The Babylonian system of legal norms was implemented on the basis of court proceedings conducted by state officials. Any process was always tied to conflict situations, which could be easily observed. These events had to be formulated in the form of simple statements or denials, which could later be given the force of evidence, supported by an oath or proved by a divine court[10].

Hammurabi's laws, unlike other Eastern codifications, do not contain a religious and moral element. At the same time, it is significant that in the preamble to these Laws these amendments, which are issued by the tsarist authorities, are brought to the attention of people in sacred form, with reference to the authority of the most respected Babylonian gods. It should also be noted that the way to bring the content of the laws of Hammurabi to the general public was in line with the custom of many ancient peoples. The indicated custom was that the laws adopted by the supreme power were exhibited in a visible and public place, as a rule, in the central city square and the main building of the city where justice was administered. This custom was also characteristic of many other ancient memorials of law. In addition, another feature of the ancient law memorials was that, depending on the historical traditions of a particular people, they were written on wooden boards, stone tablets or pillars. So, the laws of Hammurabi were carved on a pillar of black basalt. It should be noted that in the context of legal understanding, the indicated custom and the corresponding practice meant that the compulsory nature of the

[10] *History of the state and the laws of foreign countries*, 2nd edition. processing and additional: Education manual. K.: Center of Educational Literature, 2008. P. 55. URL: https://library.nlu.edu.ua/POLN_TEXT/CUL/13-Istor_derzh_prava_Bostan.pdf [date: 28.11.2024].

requirements of the law was accompanied by the perception and accessibility of regulatory requirements for those to whom they are addressed[11].

The early states are cautious enough to innovate in conventional law systems, while making numerous reservation clauses. According to R. David, in the XII-XIII centuries the law on the European continent

> […] was independent of the orders of the authorities; the sovereign was not authorized to create or change the law. The sovereign performed only administrative functions in order to organize justice, help in the formulation of law, he did not create personally. By issuing ordinances, edicts, the sovereign could correct certain judicial errors; he also had the right to create courts and regulate their procedure. The sovereign did not create laws; he only gave instructions on the application of the principles of law that were created independently by other sources[12].

Further, David continues his thought, noting that in the sphere of private law, the role of legislation for that period was even less significant, since "the authorities did not go beyond the modernization of customs; French kings were interested in maintaining customs and even later absolute monarchies did not consider themselves free to change the usual rules of private law"[13].

Thus, positive law in the form of officially established legislation developed in a rather slow and gradual way, and this feature is characteristic of almost all legal systems. Even in ancient Rome, which, even in ancient times, perfected the rule of law in its general and impersonal form, legislative law was making its way uncertainly and gradually.

Laws of the Twelve Tables as a Basis of positive law

A well-known example of an alleged foreign influence on the drafting of legislation from the early Roman period concerns the Law of the Twelve Tables, the oldest compilation of Roman law enacted in the middle of the fifth century BC. Both the writings of the orator and philosopher Cicero (106-43 BC) and the jurist Gaius (second century AD) appear to suggest that they believed the apparent legend that, before work on the law code commenced, a three-member commission was sent to Greece to learn from the laws of the famous Athenian lawgiver Solon and those of other Greek city-states. Contemporary historians now accept that it is unlikely that a delegation was sent to Greece. This view draws support from the fact that the preserved fragments of the Law of the Twelve Tables reveal very little that can

[11] *Characteristics of the laws of King Hammurabi as a historical source*, URL: https://bookster.com.ua/harakterystyka-zakoniv-tsarya-hammurapi-yak-istorychnogo-dzherela/ [date: 28.11.2024].

[12] R. David, *Osnovnye pravovye sistemy sovremennosti* [*Basic legal systems of the modern world*], "Mezhdunarodnyie otnosheniia" 2003, p. 16.

[13] *Ibidem*, p. 17.

be traced directly to a Greek influence, although certain parallels with the laws of other early societies are observed. However, as the story of the Twelve Tables indicates, the influence of the Greek civilization on Roman culture is undeniable[14].

The tendency that prevailed among the Roman jurists was to focus exclusively on the domestic law of Rome. They sought to preserve this law, while also developing it by devising new ways for the practical use of its doctrines and institutions in a satisfactory manner. But they did not consider that their tasks should encompass an analysis of law from ethical, historical or other more general viewpoints, nor were they directly interested in the laws and customs of other nations. They sustained a conservative attitude and demonstrated an almost total lack of interest in legal concepts and norms originating externally or divergent from the Roman legal system as they understood it. Nevertheless, comparative inquiries into the laws and customs of different peoples appear to have played a part in the formation of the so-called "law of nations" (ius gentium), the body of Roman law that regulated economic relations between Roman citizens and foreigners[15].

That is why the process of forming the modern and most current way of legal regulation using legislative acts as acts of higher legal force and the main form of law is characterized by a long period of development over many centuries, although the formation of written law does not mean the emergence of legislative law in the proper sense of the term. This is due to the fact that written record was required primarily by normative public contracts, as well as judicial precedents expressed in case law, which synthesized legal customs in a certain way and based on which specific court cases were decided. In addition, the case law is the starting point of the case law regulation of public relations. Judicial precedent and case law correlate as a form and content by analogy. However, the assertion that the ratio desidendi is a judicial precedent is erroneous, because, despite the fact that the case norm is the content of a judicial precedent, it does not replace it[16].

It is advisable to associate the emergence of legislative law with the establishment of the dominant role of state lawmaking and law in society. The problem of the history of law during the existence of the early states lies precisely in the need to distinguish between law and transitional legal forms, which were based on a redone custom, included in "codes", "truths", treaties and judicial precedents.

Based on the above, it cannot be said that the emergence of written positive law coincided with the emergence of legislative law as such, since the latter is possible only in a state with a developed political system. Moreover, the law, as a form of

[14] G. Mousourakis. *Comparative Law and Legal Traditions Historical and Contemporary Perspectives*, Kyoto 2019, p. 52, https://library.nlu.edu.ua/BIBLIOTEKA/SAIT/CLLT.pdf [date: 28.11.2024].

[15] G. Mousourakis, *op. cit.*, p. 53.

[16] G.V. Maltsev, *op. cit.*, p. 50-51.

law, organically combines political and legal foundations, reflects what the state really is for a particular society, how fully and effectively the state embodies the requirements of fundamental principles of law in legislation.

Turning to the direct coverage of questions about the conditions for the formation of the most developed modern form of law expressed in the current legislation, it should be noted that the official establishment or recognition of the norms of positive law, expressed in laws and other official sources, takes place on the basis of the emergence of existing living conditions of society and the activities of the state, which are dictated by social needs, expectations of members of society, organizations of people, government agencies, the gradual accumulation of experience in meeting them, implementing and resolving social conflicts, and the like.

Any appearance of new needs, goals, social roles and other important conditions and facts typical of the modern historical stage of development of society also has the goal of obtaining real expression and consolidation in the manufacturing, social spheres and personal life of people, their communities, in the activities of state bodies before these needs, goals, roles will be universally recognized and enshrined in law. Most often, such consolidation is preceded by their recognition and support by public morality, religion, the practice of officials or political and other public organizations. Thanks to this, it becomes possible to consider the issue of legal consolidation of the relevant relations by laws and other decisions of the state.

Modern legislative law has also become possible as a result of the development of the human mind and increase in its ability of abstract thinking, since developed law, as a rule, is characterized by the presence of norms of an abstract rather than casuistic nature, which is associated, in particular, with the complication of social reality and an increase in the volume of social regulation. In this regard, it is noted in the modern legal literature that the principles of modern law include, in particular, the natural foundations, cognitive foundations, socio-economic foundations, moral principles, political principles, historical foundations and internal legal foundations proper.

Principles of modern law

The question of the principles of law has been raised in legal literature for more than two centuries. You can come across a mention of them, in particular, in the works of the famous German jurist, the creator of the global comparative legal project "world history of law" (which, however, was never completed) P. von Feuerbach[17], one of the founders of sociological jurisprudence – the American realistic school

[17] P.J.A. Feuerbach, *Bibliothek für die peinliche Rechts*, "Wissenschaft und Lesetzkunde" 1880, Bd. 2.

of law of R. Pound[18], as well as a number of modern legal scholars – mainly representatives of the science of comparative jurisprudence[19].

However, even today there is no unequivocal answer regarding their existence in the literature. Some authors believe that there are no universal principles of law inherent in all legal systems, just as there are no values common to them and a common understanding of law for all peoples. Others, on the contrary, hold the opinion of the existence of universal principles of law, which are due to the presence of basic values historically common to all legal families, although positions differ on the nature of these values. Still others, while not denying the very possibility of distinguishing among the principles of law common to all legal systems, universal principles of law, at the same time emphasize the need to search for them, which is the goal of comparative jurisprudence[20]. Finally, the fourth state not only the possibility of their separation, but also official recognition at the level of international legal documents, while referring to the mentioned Article. 38 of the Charter of the International Court of Justice of the United Nations[21], and the Vienna Convention on Sales Contracts[22].

Sharing the opinion about the existence of universal principles of law common to all legal systems and the need to continue their search based on the recognition of basic values common to all civilizations (legal cultures), at the same time, we should emphasize at least three important points.

First, it is hardly correct to attribute the ideals of justice, equality, freedom, humanism, etc. to the universal (universal human, civilizational) principles of law, as is the case in literature (not only, by the way, domestic). These ideals (in their peculiar understanding, conditioned by the level of cultural development, historical traditions of various peoples and civilizations) rather characterize the essential property of law, are the personification of its inseparable connections with morality, than, in fact, legal principles, which was discussed above.

Secondly, ideas about justice, equality, freedom, etc. change and are filled with different content depending not only on space and time (after all, ideas about law are inextricably linked with them), but often have significant differences among different people of the same historical era and one culture (civilization). This inevitably leads to differences in their use by different entities. The principles of

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[18] R. Pound, *The Case for Law*, "Valparaiso University Law Review", Spring 1967, No. 2.

[19] R.A. Posner, *Hayek, Law, and Cognition*, "New York University Journal of Law and Liberty" 2005, No. 147, p. 2.

[20] E.J. Eberle, *Methodology of Comparative Law*, "Roger Williams University Law Review" 2011, Vol. 16, Iss. 1, p. 57.

[21] R. Schlesinger, *Research on the General Principles of law Recognized by Civilized Nations*, "American Journal of International Law" 1957, Vol. 51, Iss. 4, p. 734-735.

[22] E.J. Eberle, *op. cit.*, p. 57.

law, even universal ones, although they belong to evaluative categories, are more rationalized and, therefore, more established and stable.

Thirdly, the interpretation of justice, equality, freedom, etc., depends both on the ideas of specific subjects about them, and on the linguistic features of certain countries and peoples. The English words "libertas" and "freedom", which are translated into Ukrainian as "freedom", which denotes one of the leading essential ideals of law.

In this way, we can generalize that the universal, universal values common to all civilizations and legal systems are, first of all, human rights.

Conclusions

So, summing up the above provisions, we can draw the following fundamental conclusions:

1. The current legislation, as well as the formation of the state, has passed a significant historical path of its formation and development from the primitive custom to the positive law sanctioned by the state. At the same time, in the so-called «proto-states», the customary way of legal regulation prevailed even with persistent and constantly strengthened attempts by the public authorities to influence the legal life of society and dominate it through the judicial and administrative apparatus. This, in turn, ensured a gradual compilation of various forms of legal regulation emanating from society and the state;

2. The origins and foundations of the current legislation can be found in the social regulation of primitive society, which was carried out, first of all, with the help of customs, taboos, morality and the like. Moreover, the main principles of customary law as the first form of positive law were mythological and religious principles, which were also developed and supplemented in the further development of its forms. The sources of the current legislation, reflecting the historical beginning of its gradual formation and development, are different in certain spatio-temporal and social dimensions;

3. Historically, the current legislation has arisen in the conditions of the gradual and long-lasting formation of a socially heterogeneous society, as well as the development of social and economic relations primarily. At the same time, the historical conditions for the emergence of officially established modern positive law, that is, legislative law, are formed, inter alia, through a list of social interests of layers close to the state apparatus. These circumstances made it possible to make such managerial decisions that would better protect their property rights and opportunities through the formation of the institution of positive law which is generally binding for the whole society.

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