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The archaic law. Mononorms and archaic relations of the primitive communal society

Архаїчне право. Мононорми та архаїчні відносини первіснообщинного суспільства

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Abstract

The purpose of this research is to study the archaic law and its mononorms in the context of connection with the archaic relations of primitive society as a means of their implementation, as well as analysis of the dynamics of development of archaic relations, and their peculiarities. During the research were used the following scientific methods: historical, formal-logical, special-legal, comparative-legal, structural-functional analysis. The work is determined to study the problems of the existence of archaic (pre-state) law on conditions of the primitive communal society as the first known type of socio-normative regulation in the history of mankind. The reasons for its occurrence, the peculiarities of formation and provision are argued. The differences of archaic (customary) law from positive juridical law, which is inherent to state-organized society have been analyzed. The place and role of mononorms in archaic law, its characteristic features, peculiarities, varieties and methods of providing have been revealed.

Анотація

Метою статті є дослідження архаїчного права та його мононорм у зв'язку з архаїчними відносинами первісного суспільства як засобу їх реалізації, а також аналіз динаміки розвитку архаїчних відносин та їх особливостей. Під час дослідження використовувалися такі методи наукового пізнання як: історичний, формально-логічний, спеціально-юридичний, порівняльно-правовий методи, структурно-функціональний аналіз. У роботі досліджено проблему існування архаїчного (додержавного) права в умовах первіснообщинного суспільства як першого відомого типу соціонормативного регулювання в історії людства. Аргументовано причини його виникнення, особливості формування та забезпечення. Проаналізовано відмінності архаїчного (звичаєвого) права від позитивного юридичного права, яке притаманне державно організованому суспільству. Розглянуто місце та роль мононорми в архаїчному праві, її характерні риси, особливості, різновиди та способи

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The structural elements of the mononorms have been highlighted, the syncretic nature of their application has been substantiated. Complex forms of the expression of the mononorms, that ensure their existence and regulatory function in the primitive society have been characterized. The archaic relations have been analyzed in close connection with the generated mononorms.

Key words: archaic law, mononorms, archaic relations, primitive communal system, tribal society.

Introduction

An objective and comprehensive study of modern legal systems is impossible without proper analysis of the origins of law as a whole and its main components – legal norms and legal relations – in particular. After all, without proper understanding of the legal past and its main values, there will be no objective prediction of ways to develop legal regulation and harmonize the effective legal future of both the national legal system and the legal systems of the modern world.

The dialectical law of cognition of legal existence from general scientific research to a particular study prompts us to build a methodology for knowing legal relations from the general interpretation and defining them by the theory of law as an abstract category to a specific interpretation of the latter, taking into account the characteristic features of the investigated sphere. This approach will enable to combine systematically general theoretical positions and generalizations with concrete scientific achievements during the analysis of individual elements of a narrower subject of the study, and thus to reveal the hidden features, specific properties, deep links that are characteristic of the legal relations of narrow areas of law enforcement or any other state activity that take place in modern society.

Problems of socio-normative regulation of the emergence of law, legal norms and the formation of social relations in the pre-state period of the development of human civilization in different times have risen already repeatedly in the scientific thought by both domestic and foreign scientists. However, up to now, there is no single approach to the recognition and resolution of these problems. In the first decades of the twenty-first century further discussion concerning the existence of law and legal norms in the primary (pre-state) society continues.

забезпечення. Висвітлено структурні елементи мононорм, обґрунтовано синкретичний характер їх застосування. Схарактеризовано складні форми виразу мононорм, що забезпечують їх буття та регулятивну функцію у первісному суспільстві. Проаналізовано архаїчні відносини у тісному зв'язку з мононормами, що їх породжують.

Ключові слова: архаїчне право, мононорми, архаїчні відносини, первіснообщинний лад, родове суспільство.

Thus, some scholars, without acknowledging its existence, claim that for generic society, such regulators of social relations, as syncretic mononorms, which, in the absence of state security, cannot be called a law, are characteristic of generic society. Other researchers convince that the existence of customary (archaic) law in the pre-state primitive society is based on the thesis: “where society is, the law is there”. For its existence there is no need for state support, but recognition and support from the side of society is sufficient. The mononorm and archaic relations generated by it are considered as the primary regulator of the first historical type of customary law and, respectively, as a means of implementing mononorms.

The purpose and objectives of the study. Proceeding from the above mentioned, the purpose of our scientific research is to study archaic law and its mononorms in the context of connection with the archaic relations of primitive society as a means of their implementation, as well as analysis of the dynamics of development of archaic relations, their peculiarities, ways of provision, etc.

The stated goal required solving the following objectives:

argue the existence of archaic (customary) law in the tribal society of the primitive communal system as the primitive type of socio-normative regulation in the pre-exploitory society;
outline the differences between archaic law and the positive legal law of a state-organized society;
highlight the characteristic features, peculiarities, varieties of mononorms of the archaic law, ways of providing them, the specifics of being and evolution, taking into account the stages of development of the primitive communal system;
characterize the archaic relations of the generic society in close connection with the mononorms

of archaic law and the forms of their expression.

Methodology

The reliability of the results and conclusions obtained in the research was ensured by a set of selected scientific methods. Using the methods of structural-functional analysis, historical, formal-logical, special-legal analysis was studied the issue of the origins of archaic law and archaic relations of a primitive tribal society, the role and place of mononorms in the formation of archaic relations, as well as factors confirming the existence of archaic law and archaic relations in the pre-state period of human civilization.

The combination of comparative legal as a primary one, as well as the already mentioned special-legal, formal-logical and structural-functional methods helped to clarify the differences between the archaic law of primitive tribal society compared with the positive legal law of the state-organized class society.

Methods of classification and grouping in combination with the mentioned methods were used to characterize the mononorms of archaic law and the forms of their expression in the archaic relations of the pre-state society.

Literature review

The above mentioned and other problems of social regulation of primitive society were investigated in their scientific works by ethnologists, historians, lawyers, sociologists, as well as representatives of legal anthropology and legal ethnology. The most significant contribution to the study of the problems of socio-normative regulation of primitive society was made by such domestic and foreign scientists as Alekseev, Anners, Gurvitch, Dumanov, Nersesyants, Parkhomenko, Pento, Perschits, Hartland, Shershenevich and others.

However, the works of these scholars mainly deal with the peculiarities of the social system of primitive society, its customary law, the types and purposes of mononorms, the ways of ensuring their implementation, and so on.

At the same time, for some reason, the problem of primitive archaic relations, the highlighting of their peculiarities, types, differences, methods of providing and other issues of their analysis and study is omitted.

Results and Discussion

Origins of Archaic Law and Archaic Relations of Primitive Tribal Society and Factors Confirming their Existence

Thus, for the effective general theoretical study of the concept of legal relations, one should refer to the origins of their origin in the world practice of human coexistence. A well-known dogma has been known for a long time stating that legal relations began to form and develop simultaneously with the emergence of a positive legal law; therefore, it is logical to state that, if there is no law, then there are no legal relations. After all, legal relations are the result of the implementation of the norms of law in everyday life of the society, social groups and a single individual. Therefore, in most of the scientific and educational sources of the legal systems of the Roman-Germanic legal family, there is an idea that legal relations are the result of the law in a state-organized society. So, modern well-known Ukrainian and foreign scholars Zaichuk, Onischenko (2006), Rulan (2000) and others state that in the generic (pre-state society) legal relations did not exist, because there was no law. Continuing this opinion, they state that legal relations are the legal expression of various social relations, the result of their legal regulation by the state authorities in the course of the implementation of their powers by them (Zwick et al, 2011).

Dominant in the Russian Empire and Soviet times, the idea of the simultaneous emergence of state and law for the same reasons and the enforcement of the law by a specially created apparatus of coercion, organizational and economic means of the state did not allow the general attitude to address the problem of the primacy of the origin of law regarding the state (Matuzova & Malko, 1997; Arzhanov et al, 1949). Therefore, the problem of the origin (formation) of legal relations in the primitive society disappeared by itself or was completely forgotten. The dominant idea of the absence of law in such a society excluded the possibility of asserting the existence of legal relations in it.

The concept of legal positivism significantly influenced the dissemination and adoption of this position in the scientific environment, according to which law is the product of the state, voluntary orders of the sovereign (embodied in the law), which were provided by state coercion to the desired behavior (Danylyan et al, 2009).

The claim of the lack of law, and, respectively, of legal relations in the primitive society, did not deny the logical thought of the need to streamline the everyday life of the primitive community. After all, in any society, to maintain order in it, harmonize interests, achieve consensus requires social regulation (Skakun, 2001).

The role and place of mononorms in the formation of archaic relations

At first, the position that the regulation of social relations in the primitive society was carried out by customs, prohibitions (taboos), religious norms, norms of primitive morals, etc. dominated in the science (Arzhanov, et al, 1949). However, already at the beginning of the twentieth century the concept of mononorms, which was supported by Shershenevich (1995) and others, became actively disseminated. In the second half of the twentieth century this concept was substantially developed and substantiated by Perschits (1979); Dumanov & Pershits (2000); Alekseev & Pershits (1990). According to it, under the mononorm the above-mentioned authors understand the synthesis (syncretism, indivisible unity) of legal, religious, moral and other regulators, explaining this by the fact that on conditions of a primitive society, the level of its development and the type of social relations did not give grounds for differentiating them into separate species. After all, all material and spiritual life of the primitive society, all known methods of cognitive and practical activity were not separated from each other and represented a coherent substance (Nersesyants, 1999).

However, adherents of the concept of mononorm, both of the past and of the present, are far from considering unanimously the mononorm as a constituent element of pre-state primitive law, since they deny its existence altogether or bypass this problem. Therefore, recognizing the mononorm as an independent regulator of social relations, they undoubtedly acknowledge that mononorms served as sources of the formation of positive legal law in the state era of the functioning of society (Zwick et al, 2011; Skakun, 2001).

There is a diametrically opposite point of view (which we follow) concerning the problem of socio-normative regulation of social relations in the primitive tribal and secular society. Many researchers, whom we will quote in this study, recognize the existence of pre-state ancestral law in the society of the primitive communal system, calling it “habitual”, “archaic”, “primitive”, “reconciliatory” law, etc. (Zwick et al, 2011).

Gurvitch (1931), in the 1930's, passed the term “law” to any social norms if they reached the appropriate level of effectiveness, are recognized and adhered to by the majority.

Famous French researchers Pento and Gravits (1972) emphasize that any society is determined by law and its existence is impossible without a certain rule of law. Hartland (1970) and Annors (1994) are also of the same point of view, affirming that the primitive law of primitive society is a collection of all tribal customs. It is a significant reflection of the life of primitive society, which permeates all its spheres, performing a reconciling function in the generic society.

The comprehensiveness and detailing of the archaic regulation were due to the inability of the primitive man to explain the essence of the vast majority of natural phenomena. Therefore, in order to ensure the safety of the family and of the individual, to distort the wrath of the gods and spirits, the behavior of the primitive man was excessively regulated, excluding any excesses from the members of the community, which was the main guarantee of the safe coexistence of the primitive man. Therefore, the departure from the exact performance of the mononorm met not only strict condemnation, but also the corresponding punishment (Spenser & Gillen, 1899).

It should be borne in mind that the reasons for the need to comply with many mononorms were lost in the depths of millenniums, they could not be explained even by the authority of the primitive society, but they demanded their unconditional performance as a tribute to the past, which does not require explanations, but is a prerequisite for the security of society.

The conciliatory character of the archaic law, the contents of its mononorms and the relations generated by them, is explained, first of all, by the need to unite the genus for its successful survival, effective counteraction to external threats. After all, a cohesive family, which was not torn by internal quarrels, was more viable and less vulnerable. Every person, especially the male, represented a tremendous value, firstly as a hunter, and secondly, as a warrior, due to the insignificant number of those of the time. Therefore, the purpose of the archaic consideration of disputes was to ensure the harmony of primitive society through the reconciliation of the parties. Such a procedure of reconciliation was accompanied by bilateral negotiations with the involvement of intermediaries, the conclusion of a peace

agreement, which ended with a relevant ritual with a common dinner, etc. (Khvorostyan, 2010).

Recognition of the existence of customary (archaic) law in the primitive society automatically deprives the mononorm of dominant status in the system of socio-normative regulation. Therefore, the mononorm here loses its independent meaning and acts as a constituent element of archaic law.

Certain contemporary domestic and foreign scholars also share this position, emphasizing that the customary (archaic) law was formed even in the pre-state period, and only with the appearance of written acts in a state-organized society, it turns into an auxiliary source (Skakun, 2001; Legal Encyclopedia, 2003).

Thus, taking into account the arguments set above, it can be noted that the archaic (customary) law of a primitive society is the first in the history of mankind an independent type of the law of non-differentiated into antagonistic classes society, which expressed the will and defended the interests and needs of the maximum majority of the members of society, based on public authority and public recognition and for a long regulated the relations in the pre-state era of the evolution of world communities.

Factors proving the existence of archaic law and archaic relations in the pre-state period of human civilization

In favor of the existence of archaic law in the primitive society there evidence a number of factors set in the scientific works of various branches of knowledge: from ethnology, history, sociology to jurisprudence, etc.

If in the first half of the twentieth century the epoch of generic organization of social life was otherwise not called as the era of barbarism, savagery, etc., then in the last half century a solid scientific material was accumulated, which gives grounds to assert the high level of intellectual development of members of primitive society. They, in the absence of writing, remembered and conveyed to the next generations the names of the hundreds of gods and their ancestors to the tenth and more generations, the contents and nature of a huge number of rituals, taboos, customs, myths, spells, etc. Among the positive features of the primitive man that contributed to the successful cultural, social evolution of generic society, Nersesyants (1999) names collectivism, spiritual universalism, religiosity, limitation in needs and ability for self-sacrifice.

For the purpose of successful survival and development on conditions of fierce competition with neighboring tribes and natural disasters, primitive society was compelled to co-exist on the level of self-preservation instinct and co-exist peacefully and to help each other. Therefore, consciously or instinctively, people were forced to reconcile their behavior with each other to achieve a certain goal. It was through the coherence of their behavior that people were able to meet their own needs and interests and to survive and develop more or less successfully on conditions of all kinds of threats (Kozyubra, 2016).

Representatives of the historical school of law, who interpreted it as the best expression of national law conscience and the key to understanding the national spirit, made a significant contribution to the substantiation of the existence and successful functioning of archaic law in the pre-state period of the tribal system, including on the territory of present-day Ukraine (Legal Encyclopedia, 2003).

The most famous representatives of this school, denying the artificiality of the origin of law and the state's participation in the process of its formation, noted that the law is the result of social development. Lawyers are not the creators of law, but only the speakers of national self-consciousness, so no legislator is able to stop the natural process of creating law or substantially change it, because law, like the language, develops naturally, by itself (Trubetskoy, 1998).

Differences of the archaic law of primitive tribal society from the positive legal right of a state-organized class society

Thus, we can conclude that the archaic law of primitive society is significantly different from the positive legal law inherent to a state-organized, socially dispersed society, namely:

- 1) archaic law was formed gradually, naturally, objectively through the natural selection of the best social mononorms during the millennial history of the evolution of mankind, and a positive legal law was created by the state in the form of written laws and other normative legal acts or was approved in the form of other legal forms (legal precedents, regulatory agreements, etc.);
- 2) positive law was provided by the legal compulsory force of the state with the help of a special apparatus of coercion, and archaic law was ensured by the internal

- conviction of each member of the family (which was based on the thesis “it is necessary so”), the force of habit, a positive example of authoritative people of tribal society, upbringing, fear of the ancestors forces, the possibility of condemnation by the social community, the use of internal sanctions, and, finally, expulsion from the tribe;
- 3) archaic law expressed the interests of all members of the tribal community, and the positive legal law – to a greater extent the interests of the ruling class, a clan to which the public political power and law-making powers belonged, which made it possible to create “under himself” laws for their own needs and interests;
 - 4) archaic law is conservative by its form and contents, so changes in it occur slowly over a long period of time and are conditioned by changes and evolution of the conditions of social life, and public legal law is more dynamic, adaptive to changes in the social environment, since it depends on the subjective will of the supreme ruler – the bearer of power, whose will is embodied in the law;
 - 5) the archaic law existed orally for thousands of years and was passed from generation to generation on the level of social consciousness, and a written form of consolidation and existence is, as a rule, inherent to positive legal law;
 - 6) the mononorms of archaic law do not have fixed, clearly defined sanctions for their violation, they are blurred, differ among themselves even in close social communities. Their application depends on the authority and willful decision of the carriers of the social power of the primitive society (elders, tribal chiefs, councils of elders, priests, etc.), and the legal norms of positive legal law contain well-defined legal sanctions, which stipulated the class principle of application to the representatives of different layers of society depending on their social status and property;
 - 7) positive legal law is more systematized, its level is gradually improved, as it is carried out by professional state officials who have gained experience in the application of legal technology in the field of law-making. The archaic law was of unsystematic character because of the lack of need for its systematization and ordering, as it existed orally.

These differences significantly influenced the nature of social relations, which were regulated both by archaic and positive legal law, in the state era of society life, about which we will speak somewhat later.

Confirmation of the duration of functioning of the archaic law in human societies of pre-state organization of social life is also evidenced by the fact that the time of civilized development of state-organized society is only 5–6 thousand years, and the era of primitive society covers a period of about 2 million years (Zwick et al, 2011), according to other data – 2.5 million years (Danilov, 2014).

Proceeding from the above mentioned, the recognition of the existence of archaic law as an independent type of social regulation of social relations on conditions of the primitive communal system radically changes the time boundaries of the emergence (origin) of legal relations in the legal history of mankind as an independent legal phenomenon. This fact matters not only for the study of the concept of the development of legal relations on the territory of Ukraine, but also for studying the peculiarities of their development in other nations of the world.

Taking into account the complexity and incompleteness of studying the given problem, it can become the subject of independent study. We shall dwell in greater details on the analysis of the peculiarities of origin, methods of providing and characteristic features of the archaic legal relations from the point of view of comparative studies.

General Characteristics of the Mononorms of Archaic Law and the Forms of their Expression in the Archaic Relations of a Pre-State Society

So, we shall try to draw parallels between the characteristic features of the mononorms of archaic or customary law and archaic relationships as the main means of realizing its mononorms.

Research of various scientific, reference and educational sources, which we will refer to during the coverage of the problem, has given us the opportunity to distinguish the main features of the mononorms, and, respectively, to outline the specific features of archaic relations of primitive society.

So, the main feature of the mononorms is that they were not differentiated by regulatory

features. The elements of rituals, myths, moral principles, legal requirements and religious canons were interacting in them. Therefore, archaic relations, generated by them, were monistic, syncretic, complex, mixed by character, reflecting the rational side of the life of primitive society. However, a banning factor or a religious or moral component could dominate in the mononorm. In connection with this, the archaic relations created by the mononorms were formed predominantly as guard, religious, moral, and so on.

In order to understand better the constituent elements of the contents of the mononorms and the forms of their expression, and, respectively, the peculiarities of archaic relations, the specifics of their implementation, we will dwell in greater details on the characterization of these constituents, as well as on the most complex forms of the expression of the mononorms primitive society.

Taboo (prohibition) is the first historical component of mononorms

The first known social regulator in the originating generic society, according to the point of view of many scholars, was a taboo (prohibition). The above mentioned primacy is explained by the following reasons: simplicity and clarity of prohibitions, due to the lack of authoritative-binding components in them; prohibitions concerned all primitive members of the family, consolidating archaic equality and justice; the ease of adaptation of the ban among the members of the family in connection with the lack of the need to explain the reasons for setting taboo.

The imposition and removal of taboo was considered to be the right of tribal leaders, elders, priests, who sometimes performed in one person. Objects of taboo could be people, animals, trees, words, actions, food, objects of the area, etc. Taboo relied on faith in the afterlife forces, so their imposition and removal was carried out with the help of special rites (Kislyuk & Kucher, 2005). Later, the taboo became the genotype of other social regulators and constituent elements of complex forms of the expression of the mononorms, such as myths, magic, rituals, rites, cults, customs, etc. (Kovler, 2002).

Such combined, complex forms of the expression of the mononorms generated quite complex by contents and different in purpose, mythical, magic, ritual, ceremonial, traditional, religious

and other relations, about which we will speak somewhat later.

Myths as a form of mononorms expression

A great importance as a form of expression of the mononorms and development of archaic relations have myths. The myth is interpreted as a fruit of human imagination of the primitive man, an artificially created world generated by the mythical consciousness that dominated in the generic society. This was due to the inability of the primitive man to explain rationally certain phenomena of nature (earthquakes, tsunamis, tornadoes, etc.), and impotence in front of them prompted the original community to explain them by otherworldly causes, the mythical interference of external forces, etc. (Zwick et al, 2011). The acquired empirical knowledge, fantastic inventions, moral regulations, normative guides, religious representations, etc. were combined in the myths. Mythical and real in such forms of the expression of the mononorms were closely intertwined and perceived as a whole. Myth performed not only normative and regulatory, but also educational function, as it popularized the behavior of mythical heroes as a standard, explaining the need for its imitation due to special holiness and orderliness (Olya, 1976).

Magic and magical relations

Magics also play some role in the formation and development of archaic relations. Magic (from the Greek – witchcraft) is a complex of ritual rites and actions that, according to their performers, can lead to supernatural influence on a particular object of the surrounding world with a concrete practical purpose (Kislyuk & Kucher, 2005).

The main criterion for the division of magic into species is its positive or negative orientation. Therefore, according to this criterion they distinguish white (guard) magic, which is carried out by the healers, and black (harmful) magic, which practiced by sorcerers (Danilov, 2014).

White magic is divided into reversible, the essence of which is to turn away the black forces, to neutralize them; purifying magic, the purpose of which is to liberate from the influence of the black forces of a man, animals, families, buildings, etc. According to the spheres of life they distinguish military, amorous, curative, economic, meteorological and other types of magic.

It is worth noting that a certain number of magic rites have come to our days in the form of the conversion of the tricks, love spells, fortune telling, etc.

Rituals as a special form of mononorms expression

Another form of mononorms expression and the archaic relations generated by them were rituals. The ritual is such a form of the mononorms expression and achievements of a common culture, which is a complex procedure for execution that does not allow any deviations from the requirements of mononorms, is carried out in strict sequence and is mandatory for all members of the social group. The typical features of the ritual are that it is ceremonially demonstrative, somewhat dramatized, designed for the general public. The purpose of the ritual is the suggestion of certain feelings, the formation of appropriate mood of the present people (Lysyuk, 2011). In the rituals, the emphasis shifted from the contents to the external form of its expression, which was strictly canonized (Zwick et al, 2011). The main purpose of the rituals was to placate the otherworldly forces, to appeal to them for help, for example, in causing rain, assistance in productive hunting, the treatment of patients, etc.

The ritual includes a number of consecutive acts of an iconic nature, the contents of which are clear or only initiated, or to all members of a particular genus and not more, and only with the complication of social ties and the formation of tribal unions and associations of tribal alliances, rituals began to regulate inter-tribal and inter-union archaic ritualistic relationship, which increased their role and significance in the life of primitive society.

The ritual was an important means of mobilizing the social group to maintain its unity. Due to the creation of a special emotional ritual background and concrete settings for practical actions, it united people with the sacred world, as A. K. Bayburin is right to emphasize (Bayburin, 1991).

Reference sources state that the ritual is a historically determined form of the expression of the elements of customary law (mononorms) and a complex symbolically significant social behavior that expresses certain cultural features and interconnections between the social strata of primitive society. Rituals performed various functions, such as: normative-regulatory, cultural continuity (which provided the transfer of

experience to younger generations) and educational (Legal Encyclopedia, 2003).

Thus, ritual archaic relationships are quite complex in structure, multifunctional in purpose, conservative in time action and multi-element in contents.

Rites and cults, their significance as mononorms form expressions

Another, not less important form of the expression of the mononorms and archaic relations of the generic society were rites. The rite is interpreted as established by the custom or right ritual, associated with everyday traditions or religious beliefs (Legal Encyclopedia, 2003).

G. V. Maltsev, in turn, notes that the religious rite is a complex of actions, signs, signals, visual and sound acts containing the code of communication of people with the otherworldly entities: gods, spirits, souls of the dead, etc. (Legal Encyclopedia, 2003).

Rites and ritual relations existed in all spheres of human life of primitive society, therefore the most common rites were hunting rites, rites of farming and cattle breeding (aimed at causing rain, increasing the fertility of the land, fertility of livestock, etc.), birth rites, adoption, sisterity, the rite of initiation (initiation in adulthood), marriage rites, funeral rites and many others. All rites were accompanied by appropriate actions (rituals, customs, prohibitions), namely: the bringing of gifts, animal and human sacrifices to deities, idols, totems, earth-mother, water, the sun and other objects; carrying out funeral treats, ceremonial games and competitions; collective or individual expression of certain calls, spells, threats to enemies, etc.; changing of the clothes, painting the bodies and dressing up corresponding masks of informational character (Nersesyants, 1999).

The contents of the rites was filled with different customs, taboos, obligations, rituals, mostly sacred, etc. Therefore, archaic ritual relations were of a complex mystical nature, were quite conservative, as well as the entire way of life of primitive society.

Cults also played a significant socio-normative role in the social and legal life of the generic society, including as a means of expressing mononorms and archaic relations.

Under the cult one should understand the honor of worshipping someone (for some reason), which

is formed in the form of a set of religious rites related to sacrifices, spells, prayers, etc. (Ukrainian Soviet Encyclopedic Dictionary, 1987).

For the consciousness of the primitive man and his world perception, it was characteristic to divide the world around him into evil and good forces; therefore, they worshiped good forces, brought animal, vegetable, food, and sometimes human sacrifices; and evil forces they tried to comfort, compromise through the provision of various gifts, food, drinks, victims, etc. So were the cults of natural objects and phenomena: the cults of the sun, the moon, the earth, water, domestic animals and plants, the cult of leaders, deceased ancestors, etc. (Danilov, 2014).

The contents and mechanism of the implementation of the cults contained a number of rites, customs, taboos, moral guidelines, imbued with religious spirit and mysticism, and therefore the religious archaic relations were also quite complex, multifaceted, somewhat contradictory and conservative. However, they also contributed to the development of general and legal consciousness, the improvement of the mononorms and archaic relations of the tribal system.

Custom – the main form of mononorms embodiment

The mononorms dominated by the customary principle regulated the most stable social relations that were formed over a long period of time as a result of repeated repetition. Therefore, their observance acquired the character of a wasted habit (Zwick et al, 2011). Respectively, such customary relations differed in standardized polished by the generations behavior of its carriers, which, as a rule, was subconsciously automatic.

In the generic society, primitive people gradually developed standards of a conduct taking into account the external threats of an objective and subjective nature, and the periodic repetition of such actions during many decades or even centuries led to a habit of acting in such a way that it made impossible the negative impact of such threats (Parkhomenko, 2008).

The custom was made up historically in the life of many generations by way of the natural objective removal (ousting) of its fragile, imperfect elements and the gradual filling its contents with new, more perfect provisions of religious, prohibitive, moral, ethical or other

nature. Such a complicated, combined archaic custom of a mature tribal society gave reasons for many scholars to identify it with a mononorm, which was reflected in their scientific works used by us in this study. This position has become the reason to call the first in the history type of socio-normative regulation the customary law, which many scientists also call archaic, conciliatory, primitive, that has already been discussed in this study.

Thus, the custom acts as the main constituent component of the contents of archaic law and at the same time it is an important component of the various forms of mononorms expression: rites, rituals, traditions, cults, etc. As professor Nersesyants (1999) rightly emphasizes, the custom was not a separate legal, moral, ethical, political or religious regulator, but served as a universal means of fulfilling all the normative functions necessary for the society of that time (Nersesyants, 1999).

Other forms of mononorms expression of primitive communal society

An important component of the customs (mononorms) are religious norms, the appearance of which is due to the birth of the first religious beliefs of the generic society. Such beliefs are the result of the impotence of the primitive man before the disasters of nature (tornadoes, lightning, earthquakes, tsunami, etc.) and the inability to explain the causes of their origin. Respectively, there was a need for worshipping in front of them, their constant admiration, deification through the sacrifices, gifts, etc. This gave rise to special religious relations – social relations of religious contents, which required social regulation, that gave rise to relevant religious norms. They arose on the basis of religious generalizations, representations, evaluations and views and serve as a powerful means of socio-normative regulation of the archaic relations of tribal society. However, their application was not individual but complex by nature, since such norms were constituent elements of mononorms or even more complex phenomena – the forms of their expression (cults, rituals, rites, etc.), about which we have just been speaking.

For the religious norms of primitive society, it is characteristic that they are the embodiment of the spiritual union of a man with God, who perceives the teachings of the Lord as rules of his own behavior, embodied in religious teachings. Such norms indicated the ways to salvation, avoidance of sufferings and achievement of immortality.

They also reflected the similarity of the processes of religious development in different regions of the planet due to the similarity of pagan gods of various elements (God of the sun, the earth, water, wind, etc.) and the only socio-psychological laws of social development of religious consciousness and religious culture in many nations of the world (Lysyuk, 2011).

A significant regulative component of archaic mononorms are the norms of primitive morality. They, as a form of the reflection of public consciousness, were born together with human civilization and were formed on the basis of conceptions of good and evil, useful and harmful, just and unfair. Norms of morality were not imposed from the outside, but were formed in the depths of the social group (genus) of primitive society. The contents of moral norms, their observance depended on whom they concerned – “their” or “strangers”. On strangers, such norms were not disseminated and were restrictive by nature (Zwick et al, 2011).

The moral guidelines concerned justice in the distribution of products of labor, in a humane and respectful attitude towards the elderly members of the family, representatives of the social power of the family, parents, pregnant women, cripples, etc. The norms of morality united the primitive society on the basis of spirituality, respect for neighbors, mutual assistance needs, intermediary, especially during hunting and in military conflicts, etc. Compliance with such norms was ensured, first of all, by the complaints of their own conscience, internal experiences, positive examples, which were popularized in myths, rites, and the power of public opinion.

However, the norms of morality, as well as other elements of the mononorms, did not have independent regulatory significance, but were used as components of the mononorms (custom) as a whole socio-normative regulator of archaic relations. Radcliffe-Brown (1945), confirming this position, emphasizes that law, morality and religion are the three main ways of controlling human behavior, which harmoniously complement each other in different types of society and create multivariate combinations of social regulation of social relations (Radcliffe-Brown, 1945).

Consequently, the interaction and correlation of the regulatory elements of the mononorms (taboos, moral, religious factors) and various contents forms of mononorms expression (rituals, rites, cults), etc. were quite complex, versatile, multivariate and interpenetrating. After

all, the myth justifies and explains the customs, the custom materializes the myth, mythological positive examples are expressed in rites and rituals, etc. (Nersesyants, 1999).

Respectively, the regulatory potential of the primitive society was quite complex and versatile, which found its imprint on archaic relations.

Conclusions

Thus, having considered separate problems of the emergence of law, peculiarities of its mononorms and archaic relations in the pre-state period of the evolution of primitive society, we can draw the following conclusions:

recognition of archaic law and its mononorms of archaic relations generated by it gives an opportunity to depart from the traditional etatisation (the role of the state) of law and legal relations in contemporary scientific thought, and more objectively and comprehensively cover the mentioned problem. It is known that ethical position is monistic in its essence, therefore excludes a pluralistic understanding of law and legal relations, their independence and autonomy from the state, which certainly undermines domestic and world legal science;

the recognition and, ultimately, the dominance of a pluralistic conception in scientific thought will confirm the absence of a state monopoly over the law and legal relations, will facilitate the objectification of scientific research in this problem;

on the basis of this position, it can be stated that the archaic law and the positive legal law of the state functioned in parallel for a long time, on conditions of the gradual destruction of the primitive communal system and the establishment of the foundations of the state-class organization of society;

and, finally, it should be emphasized that the archaic relations of the generic society generated by the monologues cannot be regarded as legal in the modern sense, since they do not correspond to the current theoretical and methodological criteria, but they are completely correlated with the characteristics of the monarchy of archaic law of primitive society.

Bibliographic references

Alekseev, V. P., & Pershits, A. I. (1990). The history of primitive society, Moscow: Higher School, 351 p.

- Anners, E. (1994). *The History of European Law*, translation from Swedish. Moscow: Science, 397 p.
- Arzhanov, M. A., Keчекian, S. F., Mankovsky, B. S., & Strogovich, M. S. (1949). *Theory of State and Law*. Moscow: Gos. publishing legal literature, 511 p.
- Bayburin, A. K. (1991). *Ritual in the System of Symbolic Means of Culture. Ethnological Functions of Culture*. Moscow: Science, p. 23–42. Retrieved from: https://eusp.org/sites/default/files/archive/et_dep/Baiburin/Bayburin.pdf
- Danilov, V. Yu. (2014). *The History of Primitive Society. Vladimir State University named after Alexander Grigorievich and Nikolai Stoletovs, Vladimir, VSU Publishing House*, 80 p. Retrieved from: <https://cutt.ly/rD2KtvL>
- Danylyan, O. G., Dzoban, O. P., & Maksimov, S. I. (2009). *Philosophy of Law*. Kharkiv: Law, 208 p. Retrieved from: https://library.nlu.edu.ua/POLN_TEXT/KNI GI_2009_2/FilosofUchebn2009.pdf
- Dumanov, Kh., & Pershits, A. (2000). *Mononormatics and elementary law. Article Two, State and law, No. 9, p. 85–91*. Retrieved from: <http://lawlibrary.ru/article1084400.html>
- Gurvitch, G. (1931). *The present time and the idea of social law. [Le temps présent et l'idée du droit social]*. Paris: J. Vrin, 333 p.
- Hartland, E. S. (1970). *Primitive Law*. Port Washington, NY: Kennikat Press, 222 p.
- Khvorostyan, M. V. (2010). *Common Criminal Law of Aboriginal Australia. The Legal State, No. 12, p. 388–393*. Retrieved from: <https://docplayer.com/64129093-Obychnoe-ugolovnoe-pravo-aborigenov-avstralii.html>
- Kislyuk, K. V., & Kucher, O. M. (2005). *Religious Studies*, Kyiv: Kondor, 636 p. Retrieved from: https://library.nlu.edu.ua/POLN_TEXT/KNI GI/KONDOR1/CD/RELIGIEZNAVSTVO.pdf
- Kovler, A. I. (2002). *Anthropology of Law*. Moscow: NORMA (“NORMA – INFRA M” Publishing Group), 480 p. Retrieved from: <https://lib.sale/antropologiya-yuridicheskaya/antropologiya-prava-uchebnik-dlya-vuzov.html>
- Kozyubra, M. I. (2016). *General Theory of Law*. Kyiv: Vaite, 392 p.
- Legal Encyclopedia (2003). [Recurso electrónico] Kyiv: Ukr. Encycl., vol. 5, 736 p. Retrieved from: <http://kul.kiev.ua/praci-2003-roku/juridichna-enciklopedija-v-6-t.-redkol.-ju.s.-shemshuchenko-vidp.-red.-ta-in.html>
- Lysyuk, I. I. (2011). *Some Questions of the Emergence of Social Norms*, *Journal of the Kyiv University of Law*, No. 3, p. 65–69.
- Matuzova, N. I., & Malko, A. V. (1997). *Theory of State and Law*. Moscow: Yurist, 672 p. Retrieved from: https://pravo-olymp.ru/wp-content/uploads/2013/04/TGP_Matuzov_Malko.pdf
- Nersesyants, V. S. (1999). *Problems of the general theory of law and the state*. Moscow: NORMA – INFRA Publishing Group, 832 p.
- Olya, B. (1976). *The Gods of Tropical Africa*, translation from French. Nauka publishing house, 286 p.
- Parkhomenko, N. M. (2008). *The System of Sources of Law in the Roman-Germanic Legal Family. Comparative Jurisprudence (Legal Systems of the World)*. Kyiv: Parliamentary publishing house, p. 20–50. Retrieved from: https://library.nlu.edu.ua/POLN_TEXT/UP/PARXOMENKO_2008.PDF
- Pento, R., & Gravits, M. (1972). *Methods of Social Sciences*. Moscow: Progress, 607 p. Retrieved from: <https://ru.ua1lib.org/book/3088857/cb4bae>
- Pershits, A. I., (1979). *Problems of normative ethnography. Studies in general ethnography*. Moscow: Science, p. 210–240.
- Radcliffe-Brown, A. R. (1945). *Religion and Society*, *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, 75(1/2), p. 33–43.
- Rulan, N. (2000). *Legal Anthropology*, translation from French, Editor – Academician of the Russian Academy of Sciences. Moscow: NORMA, 310 p.
- Shershenevich, G. F. (1995). *The General Theory of Law: in 2 volumes*. Moscow: Publishing House “Law College of Moscow State University”, 2(2), 363 p. Retrieved from: <https://naukaprava.ru/catalog/435/939/2081/17934>
- Skakun, O. F. (2001). *Theory of Law and State. 4th view*. Kyiv: Konsum, 656 p. Retrieved from: https://dut.edu.ua/uploads/l_948_3907_2050.pdf
- Spenser, B., & Gillen, F. (1899). *The native tribes of central Australia*. London: Macmillan and Company, 671 p.
- Trubetskoy, E. N. (1998). *Encyclopedia of Law*. St. Petersburg: Law Institute, 183 p.
- Ukrainian Soviet Encyclopedic Dictionary (1987). [Recurso electrónico] Kyiv, vol. 2, Publ. House Caligraphy–Portuguese, 736 p. Retrieved from: http://www.history.org.ua/?termin=Ukrainska_radyanska_yentsiklopediya

Zaichuk, O., & Onishchenko, N. (2006). Theory of state and law. Kyiv: Yurinkom Inter, 688 p. Retrieved from: https://www.ebk.net.ua/Book/law/zaychuk_tdp/zmist.htm

Zwick, M. V., Petryshyn, O. V., & Avramenko, L.V. (2011). The General Theory of State and Law. Kharkiv: Law, 584 p. Retrieved from: https://library.nlu.edu.ua/POLN_TEXT/KNI GI_2009/TEorijaDerjav_2009.pdf

