

**RESEARCH DIRECTIONS OF CUSTOM AND COMMON LAW
OF NORTH CAUCASUS PEOPLES IN XIX-XX**

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For reconstruction of historical and legal development of Adyghe, Kabardinian, Nakh peoples, and other peoples of North Caucasia, works of F.F. Tornau and P.K. Uslar, E. Markov, V.F. Miller are very important. Many works of M.M. Kovalevsky are devoted to the problem of law and customs in the Caucasus. The author was the first person who considered antique, eastern and western influence on adats of Caucasia nations. Ethno legal theme gives serious confrontation of the state of origin and law of Indo-European, Caucasian and Turkic peoples. The work "The adats of Caucasia mountaineer" written by F.I. Leontovich is a basis for historical and legal researches. The custom in Russian law is considered as a complex of maxims of law which appeared in the course of history. A custom which has got a sanction on a state became a legal one. The scientists differentiate non-legal or legal customs and common law though there is no a common criterion for such division. In modern science the study of common law of Caucasian peoples is carried out by two directions: 1) its analysis as a source of law or a legal system of the past and the connected study of correlation between the very custom and legal one in particular as an ancient form of law; 2) the analysis of common law as a historical phenomenon developed in North Caucasian societies since ancient time and actively functioned in the Middle Ages and partially in the forms of norms which still exist in some Northern Caucasian peoples. Concerning the notion "common law" we proceed from the position that "common law is a set of customs authorized as legal regulations". State authorization of a custom and its conversion into a legal custom (or common law) are implemented by different ways. We can see the same in Alania, Dagestan and other republics of North Caucasia.

Key words: custom, common law, state, law, Caucasian studies, law history.

The North Caucasian peoples' state and law history study allows revealing succession of development of institutional settings and state institutions and quite many-sided cultural synthesis of peoples inhabited this region. The problem of development of social relations in North Caucasia became essential in Caucasian studies of XIX century. At first the Caucasian societies were studied when the region was a part of the Russian Empire. The version of permanent Caucasian "clan system", where there is no social development and the social order is static, was originally formed in historiography. But in XIX century in nation historiography there was a development concept of mountaineers and feudal relations, according to works of S. Bronevsky. M.M. Kovalevsky, who described in detail the place and the role of generation and a community in some Caucasian peoples' social development, wrote about genesis of feudalism.

The concept of M.M. Kovalevsky was based on social ideas of ethnography and study of law history with the help of the comparative historical method. The author gave the description of a particular regularity: those legal regulations which Germans considered as German spirit manifestation but our Slavophiles did it as Slavic ones turned out to be common not only for both nationalities but many other ones including Caucasian peoples who achieved the same phase at this or that period of time. The main factors of law development were social conditions and not borrowing of laws. This usage of the comparative method was an unconditional step forward in the study of social relations, the state system and law. Many works of M.M. Kovalevsky were devoted to the problem of "the custom in Caucasia" (Vol. I-II. 1890). The author was the first person who considered antique, eastern and western influence on adats of Caucasia nations. Ethno legal theme gives serious confrontation of the state of origin and law of Indo-European, Caucasian and Turkic peoples.

The works of F.I. Levontovich in particular «The adats of Caucasian mountaineers» edition I-II (Odessa, 1883), show social relations and law in detail and touch a problem of Caucasian common law. In the studies of XIX century the history is inseparably connected with ethnography, folklore, and science of law. Till the middle of the XIX century publications of ethnographical materials and historical excursus of "Tiflissky" and "Zakavkazsky vestnik" and other editions were pre-

valent. They showed readers Caucasian exotics.

By the middle of the XIX century there were enough materials of ethnography, history and law of Caucasia. There was a real publishing sensation. In 1845 the first “Kavkazsky calendar” and then “Zapisky” and “Izvestiya russkogo geographicheskogo obshestva” were published. The editions which differed in deep study, more objectivity and reliability of materials were very popular. Among them: “The collection of materials for description of the territory and Caucasian tribes”, the collections of description about North Caucasia and Caucasian mountaineers. Such famous specialists in Caucasian studies as N.F. Garbovsky, P.A. Ippolitov, A.V. Komarov, L.A. Lurie and others published their works in those editions. With all variety of authors’ directions and interests the historical legal element was clearly noticed in those publications. For reconstruction of historical and legal development of Dagestan, Alania and other peoples of North Caucasia, works of F.F. Tornau and P.K. Uslar, are very important. “Studies of Caucasia” by E. Markov and especially “Ossetian etudes” by V.F. Miller differ in generalization of a great sum of materials collected by nation Caucasian study.

In modern science the study of common law of Caucasian peoples is carried out by two directions: 1) its analysis as a source of law or a legal system of the past and the connected study of correlation between the very custom and legal one in particular as an ancient form of law; 2) analysis of common law as a historical phenomenon developed in North Caucasian societies since ancient time and actively functioned in the Middle Ages and partially in the forms of norms which still exist in some Northern Caucasian peoples.

Many works of lawyers are devoted to the analysis of common law. In these researches it is possible to divide works of 1980-1990s when there were theory the questions of theory and study methods of common law as one the law systems. They are researches of S.S. Alekseev, V.M. Baranov, A.B. Vengerov, V.N. Kartashova, T.V. Kashanina, G.V. Maltsev, V.P. Salnikov, L.G. Svechnikova, V.A. Tolstik, D.Y. Shapsugova etc.

The custom in Russian law is considered as a complex of maxims of law which appeared in the course of history. A custom which has got a sanction on a state became a legal one. The scientists differentiate non-legal or legal customs and common law though there is no a common criterion for such division. Many researchers such as Y.I. Semyonov, V.K. Babaev, P.P. Baranov strictly link a legal custom with necessity of state authorization. Others think that it is necessary to analyze the matter of a custom and emphasize that a custom must be based on realization of its necessity (obligation) and belief that it is desirable to do in this way and not another one in the interests of people common habitation. A legal custom has repeated usage, moral basis and use in legal essential fields such as land tenure, property disputes, marriage relations etc.

As we can see in modern science of law there is no uniform understanding of a custom as a source of law. And even in the law doctrine of the same country we can find different notions of a legal custom. Concerning the notion “common law” the authors proceed from the position that “common law is a set of customs authorized as legal regulations”. State authorization of a custom and its conversion into a legal custom (or common law) are implemented by different ways. We can see the same in Alania, Dagestan and other republics of North Caucasia.

A great number of researches of common law are carried out for law history and the history of North Caucasian peoples and are mostly based on archive materials. The most successful researches are hold by K.G. Azamatov, V.A. Azimov, I.L. Babich, Z.M. Blieva, V.O. Bobrovnikov, F.A. Gantemirova, H.M. Dumanov, F.G. Kamkiya, Y.M. Ketov, Z.V. Kanukova, K.A. Kokurhaev, S.A. Lugev, P.I. Magaiaeva, Z.H. Misrokov, A.I. Musukaev, A.S. Omarov, G.T. Trofimov, M.M. Turov, F.D. Edieva and others.

In Caucasia study there are many researches, in which the law situation that is typical for an urban town, were analyzed. The works of such researchers as V.K. Gardanov, V.H. Kazharov, T.H. Kumykov, I.H. Thamokova should be mentioned. They consider common law in the context of feudal society. However there are no historical peculiarities in these works. The very history of adats wasn’t studied. The famous researcher of Caucasian adat is A.M. Ladyzhensky who traced formation of common law in Caucasia.

There are works of historians and lawyers which contain divisions for particular aspects, set for researchers. They are studies of I.L. Babich and V.O. Bobrovnikov who wrote about common criminal law of North Caucasian peoples; H.M. Dumanov and Z.H. Mirsokov said about Kabardian rights of property and land; Z.A. Kalmykov wrote about court changes in the Russian Empire in the North-West Caucasia. L.G. Svechnikova considered the combination of legal and historical-ethnographical methods of researches for North Caucasia more thoroughly. Thus it showed the variety and orientation of researches of a North Caucasian peoples' custom and common law in XIX-XX centuries.

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