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OIRAT LAW: THE ERA OF DEVELOPMENT

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Abstract

The article describes Oirat law through the prism of its interaction with traditional foundations of Mongolian society during the era of the Genghis Khan empire and after the Oirat tribes became part of the Russian Empire. The legislation that regulated the relations in modern Kalmykia was described. The article discusses aspects of the Oirat legal system analyzing three legal monuments of Oirat law of the XVII–XVIII centuries – Iki-Tsaajin Bichik (1640), Decrees of Galdan Khuntaji and Toktaly Donduk-Dashi. The sources of law were resulted from a combination of objective social factors. They were aimed at solving the most important political problems and regulating existing social relations. Political power and its inherent organization and management structure existed in the conditions of the cattle-breeding economy. If the Iki Zajin bichik reflects the influence of Mongolian law, the transition to feudalism, and old tribal relations, the Decrees of Galdan Khuntaiji and Toktaly Donduk-Dasha reflect changes in the social structure of the Kalmyk society, new internal and external conditions, the influence of Russian legislation. The codification of customs of the nomadic peoples aimed at mitigating and preserving customary law made it possible to identify the content of customary law and legal identity of indigenous ethnic groups. These collections of law are a kind of historical monuments of law, evidence of legislative and law enforcement activities of the Oirat during the feudal period.

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Keywords: Oirat, Oirat law, sources of law.



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1. Introduction

The Oirat belonged to the western group of Mongols. They have been mentioned since the 13th century. The Oirat became part of the empire of Genghis Khan. Their history was associated with its development and conquests. After the collapse of the Mongol Empire in the XIV–XVII centuries, the Oirat created the Derben-Oirat alliance, and at the end of the XVI – beginning of the XVII centuries the Oirat tribes living in Dzungaria and neighboring regions became divided: one part migrated to the area of Lake Kükünor and established the Khoshut Khanate, the other part made up the main population of the Dzungar Khanate, and the third one moved to European territories in the Kalmyk Khanate (Ochir, Enkhtur, & Erdenebold, 2005). Oirat law developed as a synthesis of Mongolian, Chinese, and Russian legislations. The development of law was analyzed, and the combination of various aspects (social, economic, cultural, etc.) makes it possible to recreate an objective picture of historical development. Political power and its inherent organization and management structure developed in the conditions of the livestock farming.

2. Problem Statement

Oirat legal heritage is a new research issue. Its study is connected with the modern stage of development of historical and legal science. The research allows us to identify the level of development of Oirat law, its features and controversial points; its transformation under the influence of Russian legislation. The legal relations of the Oirat reflected their social, political and economic life during the statehood development and served as a vivid monument of justice. This is one of the sources for studying the national history of law. Their significance is not limited to national boundaries. Oirat law is an interesting research object for the general theory of law and comparative law.

The Oirat legal system was characterized by patterns inherent in the public development of all the peoples. Public relations were regulated by law, moral standards, religion, and traditions. Legal and moral norms of Oirat law were stable **and conservative**. This tradition which is a reflection of the slow evolution of the economic system, **convinced** people of eternity, completeness of the rules of social behavior, moral standards, and their wisdom. **Their** attitude towards traditional **legal** norms **was based on their** inhibitory effect on the social and socio-economic sphere. **Conservatism of legal rules was in** their connection with the Buddhist religion, internal indivisibility of religious, moral and legal requirements.

3. Research Questions

The research subject is sources of Oirat law of the XVII–XVIII centuries – Iki-Tsaajin Bichik (1640), Decrees of Galdan Khuntaji, Toktaly Donduk-Dashi. These legal sources are the historical contribution of the Oirat society to the treasury of world civilization. They regulated legal relations, synthesized custom and law, and served as an intermediate step in the transition from the old to the new – from custom to law. “Representatives of the Oirat aristocracy as the main subjects of legislative power sought to regulate political rather than territorial ties between nomadic associations” (Perlee, 1973 p. 18). The chronological framework of the sources is limited to the XVII–XVIII centuries: the period of

migration of part of the Oirat from Dzungaria to the Volga region. This chronological framework revealed the mutual influence of Oirat, Mongolian law, and law of other nomadic peoples of Central Asia and the national legal culture of Russia. Public institutions were influenced by the nomadic civilization

4. Purpose of the Study

The research purpose is to carry out a comprehensive analysis of the theoretical and cognitive content, source base and research problems, identify patterns and features of development of traditional Oirat law, study the nature and features of the legal system of Kalmykia when it became part of the Russian state; analyze sources of Oirat law and compare it the legislation of feudal Mongolia and Russia; study the evolution of legal sources.

5. Research Methods

The study of the sources of traditional Oirat law was carried out using the systematic and historical approaches. We used the general scientific dialectic method of cognition, which implies an objective, comprehensive analysis of factual materials, identification of historical facts. The following methods were used as well: dialectical logic, an analysis and a synthesis, formal legal, comparative legal, and problem-theoretical methods.

6. Findings

The historical development of Oirat law can be investigated by comparing early Mongol law and legal sources of other nomadic peoples. An analysis of these legal sources made it possible to trace the genesis of the sources of Oirat law linked with the development of legal thought and laws of the internal development of Mongolian society. Traditional Oirat law is a manifestation of legal creativity of the people who lived in two parts of the world – Asia and Europe. “The legend about the nomad’s inability to creativity is “a black legend”. The nomads played an important role in the history and culture of mankind” (Gumilev, 1993, p. 67).

Legislation reflects features of the social and political system, spiritual and material culture, judicial practice. The main monuments of traditional Oirat law include the legislative monument “Ik Tsaadzhi” created in 1640 at the congress of princes and prominent religious figures of Khalkha, Dzungaria, Kalmyk Khanate and Kukunor. The initiative to convene the congress belonged to Batur Khuntayji who headed the Dzungar Khanate. The political situation was rather complicated. Some of the Torguts and Derbets migrated to the Volga region, and the Khoshuts migrated to Kukunor, as a result of which the number of Oirats decreased. Some local rulers did not want to submit to central authorities.

In historical literature, this act is known as “Iki Tsaajin Bichig” and the Russians “Mongol-Oirat Laws of 1640”. It belongs to the most studied monuments of Oirat law. Its sources were customs of the Oirat. In addition, the sources of the charter were “The Secret Legend of the Mongols”, decrees of Kalmyk princes. According to these legal monuments, one can trace how old customs were filled with a new content.

According to “Iki Tsaajin Bichig”, the purposes of legal regulation were as follows: settlement of internal relations, consolidation of legal laws, creation of new ones, prevention of crimes, strengthening of power of princes. This code of laws reflects all spheres of life of the Oirat tribes. The main tasks of this normative source are as follows: to strengthen the tribal alliance, to ensure peace and order and to organize defense against outside attacks. The content of the document is heterogeneous and touches on issues of tribal relations, defense and protection, the status of the clergy and religion, property law, obligation and inheritance law, cattle breeding and hunting, mail, conscription, family, and the status of women. It qualifies crimes and regulates the organization of courts. This is characteristic of medieval law. The authors paid special attention to the system of punishment.

According Romanov and Nozdracheva (2019), “Iki Tsaajin Bichig” is a code of laws reflecting ethno-legal relations and a source of legal customs, legal culture, legal mentality, ethno-legal foundations of the Oirat ethnic community. Ryazanovsky (2000) says that “Ik Tsaadzi” reflects the Buddhist worldview, a humane attitude to the person. It lacks the harsh spirit of Yasa which contained only harsh penalties (Ryazanovsky, 2000). The influence of Buddhism on "Iki Tsaajin Bichik" can be observed in the preamble of this document, which includes prayer worship of both Buddhas and Buddhist teachers. All this shows the attitude of the Oirat authorities to the Buddhist religion. The belonging of Oirats and Mongols to this school should have united the Mongol tribes. According to some researchers, the inclusion of canonical Buddhist law in the state law of the Kalmyks helped strengthen the position of the Buddhist church in Kalmyk society. Buddhist norms were regulators of legal relations (Ulanov & Badmaev, 2017).

Thus, the Mongol-Oirat charter of 1640 reflected traditional relations that existed in Kalmyk society, and fixed the political compromise reached when four Oirat tribes were united. It did not change for two centuries, and even in the middle of the XIX century it regulated relations in Kalmyk society.

The decrees of Galdan hun taiji are understudied. Two decades of the 17th century in the history of the Dzungar Khanate are connected with the name of this khan. Galdan studied in Tibet. When he was twenty-six years old, tragic events occurred in his homeland. His brother Senge was killed. According to historical literature (Ryazanovsky, 2000), Galdan was sent by Dalai Lama to restore order in Dzungaria. He issued a decree to restore the administrative order, stop thefts and free movement of people. The second decree was devoted to legal proceedings. The date of the second decree is written at the end of the text: soroi morin jiliyuru cayan sarayin sineyin sayin odor bicibe "written in the year of the horse on the first day of the capa tsagan", which corresponds to 1678. It can be assumed that the first decree was written in 1677 or in 1678 (Gedeeva, 1999). These decrees are aimed at suppressing the flight of the Albatu (serfs) from their feudal lords, intensifying the fight against attacks on property and improving the operation of courts. For example, those who voluntarily migrated from their aimag were fined. If such persons were hiding in foreign aimags, their same-name people shared responsibility with them. The decrees of Galdan Khan established responsibility for the lack of proper administrative supervision over zaysangs and shulengs. Zaysangs and shulengi should financially support their fellow tribesmen. And if someone avoided this and "a person perished from hunger, the guilty official was responsible" (Sergeev & Sergeev, 1998, p. 64).

The second Galdan-Khan Decree includes rules aimed at improving the judicial process. Khotons decided their own affairs through khoton judges, while public affairs were decided by the main court (judge), since the main court was in charge of mutual relations of the Yolets and Turkestan. It was forbidden to buy claims. The case was led by the plaintiff (prosecutor). The court was divided into local (khoton) and main courts; there were measures of state coercion to enforce court orders, material and procedural rules (fees, duties in favor of the prince, etc.). Thus, according to the Oirat legislation, the judicial power belonged to the state; the court was a permanent state body. This was a significant step forward. But at the same time, traces of the previous period, private (permissible) arbitrariness can be found in the organization of the Oirat court.

Toktola Donduk-Dashi is a special source of law. After the death of Ayuki-Khan, Donduk-Dashi was appointed viceroy of the Kalmyk Khanate. He managed to unite Kalmyk uluses into a centralized khanate. However, the final restoration of Kalmyk society required reforms. It was necessary to establish a rule of law that would protect internal unity. In addition, commodity-money relations penetrated into the Kalmyk steppe. Legal norms governing new types of relations were required. The exact time of the appearance of these laws has not been established. They might have been adopted during the reign of Donduk-Dasha (1741–1761). In addition to the introduction, the decrees included 54 articles on the clergy, organization of attacks and defense, tribal life of the Kalmyks, household servitude, vagrant cattle, crimes. These rules represent corrected, replaced rules created because of new conditions and needs of the Kalmyks who became part of the Russian Empire. *Ik Tsaajin Bichig* contained criminal legal and procedural rules. Duties of Yargachi officials were determined in Toktolah. Criminal law rules were changed. New types of punishment (stigmatization, monetary fine) were established. Unlike *Ik Tsaaji*, the text is divided into separate chapters, including international and state administrative law, tax law, criminal, private, commercial and judicial laws, marriage and family relations, inheritance law.

7. Conclusion

The following conclusions can be drawn.

1. Oirat law is a fragment of the legal space of the Russian state based on the unwritten long-standing tradition, a system of customs that developed over a long period. The main source of Oirat law was customs preserved in the oral tradition and memory of fellow tribesmen. The rules of law were based on established patterns of behavior. The custom was filled with a new social content and sanctioned by the state.

2. Oirat law was influenced by the Buddhist religion. The legal rule had a religious basis. The offense was considered as a simultaneous violation of the rules of religion and morality.

3. Oirat law was of a class nature. Rules were differentiated in relation to different social strata.

4. Rules governing marriage, family and inheritance are characterized by patriarchy. The individual was not separated from the community, the legal capacity of a person was determined by belonging to the clan, community, large family. The family was created to continue the clan, increase the population, strengthen the kinship. Wedding ceremonies and material assistance for marriage were specified.

5. Legal liability was primarily criminal. There were no division into branches of law. The development of steppe legislation and law-making techniques was not systematic.

The sources of Oirat law were the most important regulator of Kalmyk public life right until the 1917 revolution.

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