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IDEOLOGICAL AND THEORETICAL FOUNDATIONS OF BIYS — INSTITUTE IN THE PRE-SOVIET HISTORIOGRAPHY

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This paper analyzes the efforts of the Russian Empire to establish itself politically and legally on its south-eastern outskirt territories. Special attention is paid to the development of the evolutionary approach on the part of the government when incorporating a common law into a normative and social space of the Empire. The author states that since the legal occupation of Russia on the territory of Kazakh Steppe, the government set about a gradual merging of the adat with the Russian law. A number of reforms were implemented aimed at seizing the local power and to expose the population of the area to the imperial "civilized" law. The author of the paper in detail describes two approaches to reforming the local law culture. While the followers of the painless integration of the common law relied on the practical experience and their awareness that to reform the nomadic society of the Kazakhs, it is necessary to introduce such system of governance which would enable to establish a unified law society; the liberals supported establishment of the united civil society and believed that the main principles of a civilized society was equality of all the citizens before the law without regard to their ethnicity and financial position. Despite hot discussions on the problem, the Russian government stuck on the plan – incorporation of a common law into a legal field of the Empire.

Keywords: institute of biys; common law; law; legal pluralism.

1. INTRODUCTION

The development of theoretical and methodological principles and approaches in pre-revolutionary historiography of the 18th and 19th centuries concerning the analyzed issue, depended not only on the ideological situation in the Russian Empire. It related to the logic of political and strategical aims of Russia, including the Kazakhs of the Junior and Middle zhuz who legally entered the Russian Empire in the first half of the 18th century. By that time, Russian unitary state that originated under the rule of Ivan III paid attention to the west, where Peter the Great was successfully establishing a "window to Europe" in the course of Russian and Swedish wars, and to the east, where a great reformist did his best to find the "keys" to the Asian "gates".

Such a "multi-vector" foreign policy can be explained by the fact that Peter the Great epoch involved social revaluation of the historical mission of Russia on

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the international stage and establishment of the Empire concept. The firm belief that Russia was an heiress of Rome and Constantinople that it had a "divine right" to dispose of people's rights underlaid it. In this case, "movement to the east was believed to be a historical mission of Russia, determined by its central geographical position" (Asian Russia, 2004, p. 293).

The policy of expanding territories with the idea of "gathering the Russian land" was continued throughout the existence of the Russian state, after the Empire as "the maintenance in the 19th century of the most important principles inherent from the Byzantine Empire, shows that implicitly an Empire was considered the icon of the Kingdom of God, as the state with a mystical foundation and thus, it was a unique state but not just one among the many" (S.V. Lurie, 1997, p. 132).

Thus, for example, "the day before the enthronement of Peter the Great, the territory of Russia was 256.126 square miles. After his death it was 275.571 square miles. After the death of Anna – 290.802 sq. miles. After the death of Elizabeth – 294.497 sq. miles. Neither the character of the ruler, nor the counselors surrounding the throne had not any influence on the process: it was moving on in one direction, expanding the territory and acquiring new lands" (Heller, 1997, p. 124).

It would not be correct to explain the success of the consistent and large-scale annexation only by a forceful influence on the outskirts (however, this factor cannot be excluded), various methods of colonization including spontaneous and organized flows of displaced people, and by the tolerant (by the measures of the past) attitude of the state to the people and nationalities (for example, the freedom of religious belief). Basically, historical movement forward and expansion of borders towards the south-east relates to the government activity, policy and administrative and legal practice of the Empire.

The process on inclusion of the Kazakh Steep into the Russian Empire took relatively long time (18th – the middle of the 19th centuries) and was accompanied by the introduction of legal norms which were virtually introduced to the local social and legal field. Those norms served as an important factor for making the power legitimate in the area, besides they were intended to contribute to the development of unified legal awareness among all the people in the Empire.

2. METHODS

One of the requirements of the contemporary historical science researchers is the turn from descriptive style to the methodological analysis of the historiographic facts. From simple ascertaining of historical events to the comparative analysis of material which allows to reveal problems in the studied subject and one or another aspects of the historical process. This process, owing to different conjuncture or other reasons remained out of sight of the scientist. To objectively compare them and, on the basis of it, to define perspectives of the future researches for the purpose of ensuring succession of knowledge in development of scientific idea.

General scientific and special methods of historic and historiographic research are used in the article. Also, the methods of objectivity and the comparison analysis belong to them.

The objectivity in the historiographical research is one of the main conditions during the source analysis. This is very important for the researcher because it allows to neutralize as much as possible biased attitude at interpretation and evaluation the facts. *In the consequence,* the principle of objectivity gives an opportunity for the researcher to study historical phenomena and processes *inside and out.* This leads to the reliable scientific results.

One of the main methods that the author used the article is the method of comparative analysis. This technique prompts the common advantage for the general public and to the advancement of the history on new bases. This is connected with the fact that the same questions of historical development of Russia and Kazakhstan, for example, biys' institute, the problem of accession of Kazakhstan to Russia, the Russian-Kazakh and others relations, have different interpretations and forms of expression both in Russia and Kazakhstan. Despite this, because of the commonality of the historical destinies of our nations, now is time to create new ways for mutual development, for new values, new sense-containing guides. Furthermore, the historical comparativism, while pointing out types of social fabric, feature of culture, management, social structure uses private and general, dialogue and polylogue, analogies and parallels that allow to investigate the object comprehensively and to reveal variety in it.

3. RESULTS

The analysis of the problem in the context of this paperwork has a multidisciplinary manner. Scientific and theoretical issues and considerations in this paper may serve as a foundation for historical and legal studies concerning theoretical and methodological problems of social history of nomadic societies. Besides, the materials may be used for writings of specific and general papers about history of the Kazakh society, the history of a traditional society in the pre-revolutionary time.

4. DISCUSSION

It will be logic to start with the fact that since the 18th century the process of legal inclusion of the Junior and Middle zhuz into the Empire did not imply the actual establishment of the Russian Empire on those territories. Its presence there was rather "guest", that is why in those times there were no plans about serious legal reforms. Some Russian researchers and travelers think that in the vast steppes and Kazakh nomads "was difficult to find any signs of a state system". This formed a strong impression about the Kazakhs as about the society in a pre-class development stage in the Russian society. Consequently, in a pre-revolutionary historiography an idea about a tribal life and a tribal character of social relations dominated.

A significant contribution for shaping such approach was made by a prominent scientist and head of Orenburg expedition V.N. Tatischev (1737-1739) who interpreted the world history as a continuous ascent from the infantry to the "manhood". At the same time he connected ascension on each stage of development with the next level of knowledge and culture. "It seems that we can compare the times before the written language appeared and before the Law of Moses as a human infantry" (Tatischev, 1979, p.70). "Peculiar" features of the nomad life of the Kazakhs was explained by age criteria and the nomads were considered to be not just as "alien" but also as "different" people living in the "state of immaturity".

That methodological approach was acknowledged in the 19th century as well, only then they needed a legislative support to be actually established on the territory. The ideas of historicism and evolutionary law by German philosophers, for instance, Schelling, Fichte and Herder had a great influence on the bureaucrats and investigators of the law. Among the followers of those ideas was one of the first reformers of the Kazakhs law, governor general of the Western Siberia M.M. Speransky (1819-1921).

Unnecessary Russian laws for Kazakhs, made it difficult to take measures and to review and reassess the adat with the final aim to make it get lost in the Empire legislation. It was not without a reason that the policy in the area where M.M. Speransky ruled was a mirror reflection of popular in those times ideas about the need of transformations in the organization of the outskirts following the civilized (European) model as it was corresponding to the culturally developed society. His pioneer ideas about the plan of Russia transformation (for example, his idea to divide the power on legislative, executive and judicial) made M.M. Speransky one of the leading political theorists in Russia at the beginning of the 19th century.

Coming to Siberia, he learned that the locals were very different from the Russian people. In a letter to his daughter M.M. Speransky wrote about the holidays of "savage Kyrgyz people" living in the surroundings of Omsk: "They (hereinafter "the Kazakhs") eat almost raw mutton and drink kumis. There is nothing more awful than a wild nature if this is the nature indeed but not its wild product" (Speransky, 2002, p.104). He found differences in everything: climate, lifestyle, belief and court. At the same time he believed that the "laws must reflect spiritual and intellectual needs of the people, formed by the national history and tradition".

Every society goes through childhood, maturity and old age and "a legislator cannot and must not change this age, but he must be well aware of it and control it according to the character of each age" (Slezkin, 2008, p.102). Thus, the laws were closely associated with the certain level of culture development.

In this sense, the "way" to the cohort of civilized societies for the "retarded" and "less-developed" was seen through the laws. This laws were to become "the models for transformations and if they were introduced – thoughtful and responsive

administrators; in this case, gradual acknowledgment and respect of the legal norms will occur naturally" (Raeff, 1969, p. 340).

It was planned to reform the society and steer it to the right direction In order to "attract" less developed societies to the Russian (European) model and to create a homogeneous Russian society. The only question that worried the society was the ways of that reforming: progressive (approach of historicism) or a sharp demolition of well-established local cultural values (call it revolutionary). Throughout the 19th century the followers of the first approach had the strongest positions among the bureaucrats and representatives of the society. That was why the main statements in all legislative documents implied the establishment of the Russian government including the use of the norms in the adat.

According to that principle, M.M. Speransky his reform was based "Charter about the Siberian Kyrgyz" of 1822 using the Russian law as means for "enculturation" of the Kazakhs and including them into the Russia "civilized (civil) society". We should notice that before 1822 the Empire was present in the Steep legally but after that consistent political and legal inclusion of the Steep into Russia took place (reforms 1824, 1854, 1867, 1868 years etc.) An important characteristic of that legislative document, which defined the character and the content of the further documents, was that M.M. Speransky set a course for gradual transformation of the existing judicial practices, for progressive introduction of the idea about the imperial law as the most humane and fair. As-local people in the Western Siberia were the representatives of different ethnic segments with their own unique cultures and in general that society had a different level of development, M.M. Speransky saw the process of merging the Steep with the Empire as gradual and evolutionary. In practice, the Empire legislation was introduced relating to some types of the crimes, the Kazakhs had the right to regulate their conflicts according to the adat, however since that a recodification of some norms of the common law took place, making those norms illegal.

It was expected, that with time the court of the biys would be driven out by the competition of the world courts and gradually it would become a rudimentary remnant in the nomads' life. That was the logic of the evolutionary approach dominating in those times.

Thus, we can conventionally define the 1820 reforms as some "starting point": since that time a long-lasting transformation of the court of the biys was started and its inclusion into the Russian social and normative field.

We should recognize that Russia was very well aware of the fact that the territory of the Empire was a diverse space geographically, confessional, ethnically etc. And it helps to develop thoroughly-thought and balanced approach for managing vast outskirts on the south and east.

Taking into account established local legal traditions and regarding the failures in Caucasian experience (Bobrovnikov, 2002; Obychai, 2009), Russian lawyers

set a course for gradual incorporation of a local uncodified law into the Russian legal field. We assume that such poly-juridicial policy was oriented at solving several tasks. First, in the course of 1820 reforms, a practice of legal pluralism was established. It was a synthesis of the adat and the norms of the Russian legislation, being the first attempt of incorporation of local adat courts into the Russian social and normative field. In such a way, the government acknowledged existence of the adat alongside the Empire law. It could be explained not by a favorable attitude to the adat, rather by pragmatic aims: demolition of traditions and any forceful transformations of the Kazakh culture could lead to the opposition between the region and the Empire, to the loss of control over human and material resources on the part of the Empire. But balanced, careful and thoroughly thought policy could provide incorporation of the region into the field of Empire's influence and gradual and painless inclusion of all its institutes into a social and cultural space.

The aim of the adat incorporation into the Empire law required a comprehensive study of all its norms by collecting the oral material and its codification. It is not surprising that at the beginning of the 19th century, the first serious studies devoted to the local law appeared; and because of it regional authorities received controversial judgments about the courts of the biys.

In the Russian society throughout the 19th century and at the beginning of the 20th century there was an ambiguous attitude to the imperial practice of the legal pluralism which caused hot discussions about the ways of reforming the judicial system and the appearance of the number of "temporary" and "project" statements as a compromise between the liberals – the followers of a unified (civilized) judicial practice, and the followers of the normative pluralism. However, despite all those obstacles and contradictions, a differentiated approach in the Russian legislation was the major line and its main initial aim was to reserve local practice of law with further painless (at least, it was expected) incorporation into the imperial law. However, the aforementioned does not mean that the practice was fully supported by the government. On the contrary, the government set the course for indirect regulation of the adat by its codification and regular abolishment of those norms that did not correspond to the values of the European law. As numerous efforts on the part of the government concerning the codification of the norms failed, the government was staking on giving the illegal status to certain norms.

Secondly, the imperial course, legitimizing various legal regimes, expected to "promote the dominance of the Russian power and at the same time to give *huge authorities for self-government*" for the population (cursive is by the author) (Berbank, 2004, p. 323).

Here we may mention several points: 1. Giving to the local courts the right to interpret the legal custom in their own way, the Empire, directly and indirectly, engaged them in to the process of law-making, i.e. regional governance. 2. At the first stage, the authorities had relatively complete information about the population

comprising the state. Due to that information, the Kazakhs were classified as the society with potestary organization having evident military and political elite. It was no coincidence that trying to establish themselves in the region, the authorities wanted to benefit from the local elite by attracting them to the Russian state system on favorable terms for both parties and the authorities could use the elite for further territorial expansion. Allowing the use of customary law (including, *judicial precedent*) as the best law-enforcement for the given social and cultural environment, on the one hand, the authorities made a legitimate "agreement" with the local nobles (including, the biys), as it gave them certain benefits and privileges on the condition that they would serve them and be the guides of the imperial colonial policy at the local level. I. Lakost argued: "No colonization is possible without the assistance of the locals and autochthonous aristocracy" (Gorshenina, 2007, p. 238).

On the other hand, such an "agreement" was a guaranty of the legal order provided with the help of the local political elite (read: gave "*huge authorities for self-government*") without any expenditures or the use of military resources. It means that elaborate imperial ideological policy implied to the building of consensus relationships between the government and the society through the local bodies of government by "binding" the latter to the imperial power as they indirectly represented the interests of all the nomads. 3. Each decade of the 19th century witnessed the use of effective instruments to bring the locals on their side. For example, setting the course for the egalitarization of the local society (the idea to construct a civil society), in the middle of the 19th century the authorities introduced the norms that constitute the abolishment of class privileges, the equality of rights of the social groups by announcing all the Kazakhs "lower middle class". If before to become a biy one should have certain characteristics, and the power of head of the family played a great role, then now "theoretically" any nomad satisfying certain criteria could become a biy. For an ordinary nomad a door to the power was open and population, as the administrators expected, was engaged in the governing process. The introduction of new rules abolishing class benefits for the local upper circles leads to a contradiction with the traditional law according to which the local upper circles had a special status. Their opposition to the imperial initiatives was logical. However the course for constructing a unified legal society was a major idea of the government and no forms of opposition could interfere it.

Thirdly, the practice of the legal pluralism was defined by one more important fact. The administrators were sure that a powerful way to Russificate the Kazakhs was a policy of large-scale resettlement of the peasant as a factor of positive influence of the "civil legal awareness" on the nomads. However, in practice it was not that easy. The authorities expected that migration of the peasants in the second half of the 19th century would lead to assimilation, especially in border districts. In fact, it only leads to a mutual alienation between the settlers and the

locals. The preservation of the traditional culture is the sign of self-preservation instinct of the people, their desire to uphold their identity under conditions of imposing other values. The situation may be described by the words of Plato who explained that people after the flood are so peaceful because of their small number and relative isolation: "Because of their small number, people looked at each other with pleasure" (Asian Russia, 2004, p. 396). That was at the very beginning, but later the fight for grazing lands and other livelihoods lead to the "conservation of traditional cultures" (ib., p. 397) and that was an obstacle for the integration. The government realized that there was a great risk for inter-ethnic conflicts, so it was very careful with any active measures concerning the abolishment of the local law. No measures on the part of the authorities should trigger inter-ethnic conflicts in the region. Moreover, following its major line concerning the people in the outskirts, the government, despite the public pressure and opinions of the authoritative government officials (K.K. Pallen, A.V. Samsonov etc.), used the tactic of "freezing" "their forms of social organization, customary activities and households" (Minenko, 1975, p. 230).

Fourthly, the adat was considered as a flexible and adaptive legal practice which may be modified and, ultimately, the Russian legal field may be incorporated. It means that the adat was flexible enough, it could be changed and it could response to the changes in the society. This factor was critically important as Shariat employed by the Kazakhs was well-established and its norms, as well as the whole life of any Muslim, were clearly defined in the Koran and hadiths. Rigorous compliance with the Shariat was one of the main obligations of the religious Muslims. Imperial authorities had to be tolerant to the customary law because they were afraid that choosing between the imperial law and the Shariat, the Kazakhs would choose the latter. Moreover, government believed that accelerated incorporation of the Russian law could lead to the situation when tributary people reject the European law as they were not ready for it. And it could become the reason for disappointment in the Russian law and become an obstacle for further "enculturation" of the people. The government was well aware that it required a long historical process to trust the law.

It should be noted that the efforts to establish a common "Russian" law on the whole territory of the Empire relating to the Kazakh Steep had their own unique characteristics. For example, the authorities saw the course for a gradual abolishment of the adat and transformation of the courts of the biys as construct new "people's court" of the biys which would be a lower stage of the local judicial system. Such transformation led to the emergence of two types of the courts: on the one hand, the "old people's court" remained and was based on the free expression of will of the both parties (traditional, intermediate). On the other hand, a new "people's court" appeared which was established according to the Russian legislation.

The attitude to those courts in the nomad society was controversial. Judging by the archive materials, the majority of the Kazakhs preferred their traditional "old" court which solved the problems clearly and quickly, though they had an opportunity to solve a case in the state court. For example, from the note of a government official Lazarevskyi we can read: "Without exaggerating the situation, we may confidently say that out of 50 crimes between the Kyrgyz people, the Commission (boundary Commission) learns only about one case; 49 cases are solved without Commission awareness, in the Horde according to the national traditions. The Commission learns about one case most often when some stranger reports about it" (RGIA, sheet 9).

However, we cannot ignore the tendency appeared in the middle of the 19th century of addressing the Kazakhs to the volost' and emergency courts, established the Russian government. Otherwise we would miss a huge body of the archive materials in which it is clearly shown what reasons and motives were behind the nomads' choice of a new "people's court". The same note by Lazarevskyi gives us one of the answers why the Kazakhs wanted to go away from the "old" courts of the biys: "If the Kyrgyz themselves send a complaint to the Border Commission, we can be sure that the complaint has already been reviewed by the biys but the plaintiff or defendant was not satisfied with the decision, or when one of them is to be blamed and he is afraid if the court of the byis.

The development of the set of general principles of the local practices was made to increase the effectiveness of the local authorities performance who could learn the local law and selectively choose only those norms which did not contradict the imperial law.

Credit should be given to the Russian government that consistently throughout the 19th century implemented regional and local reforms to solve its strategic tasks. One of the main reforms was a judicial reform which was intended to solve the existing dichotomy between the customary and state law, and several legal provisions were published to carry out that reform.

According to the "Charter about the Siberian Kyrgyz" dated 1822, all the cases of the Kazakhs can be divided into three groups: a) criminal; b) claims and c) complaints on the Administration. The court of the biys had the authority to review all the cases except the criminal ones. According to the new statement the criminal cases were treason, murder, robbery and seizure of the cattle, and obvious insubordination to authority. According to the "Regulation approved by the Siberian committee on the subordination of the Kazakhs in the Siberian administration to the common laws of the Russian Empire" dated 1854, the list of the criminal cases was significantly expanded and those who did not want to address to the courts of the biys had the right to address to the imperial court.

The epoch of the "Great reforms" was marked by the appearance of the judicial provisions dated 1864, the principles of which constituted the basis of all further

legal initiatives of the government in the Steep region. The provisions of 1867-1868, 1886 and 1891 expressed the strategic plan of the Empire on the reorganization of the nomad society and further introduction of the imperial law norms. "Temporary provision on the governing in the Semirechenskaya and Syrdaryanskaya regions" dated 1867, and "Temporary provision on the governing in the Ural, Turgay, Akmolinskaya and Semipalatinskaya regions" dated 1868 made the principle of the right to choose for the biys legal. Three types of courts were established – imperial, military and people's courts. As we already mentioned, the court of the biys lost the majority of the cases. According to the "Steep provision" dated 1891 in the regions general imperial courts were established and they were based on the general state laws, and the courts of the biys that were guided by the norms of the adat (customary law). General imperial courts consisted of justices of the peace; district and justice courts were the highest judicial instance. Justices of peace appeared in Kazakhstan in 1886 were designated and deposed by the Ministry of justice after agreement with the Steep governor general. The courts existed in all the districts and in the cities of Semipalatinsk, Verny, Uralsk and reviewed all the criminal cases. They also had extended authorities in reviewing civil cases.

Thus, the implementation by the Russian government of the laws in the form of "Charters" and "Temporary provisions" was the effort to spread statutory law among the Kazakhs. We should note that alongside the materials from field investigations, among the other resources for collecting information about the adat were various reports, notes, messages etc. From the educated state officials who turned up in a far away steep. By 1820s there were two main approaches to the reforming the normative field of the Kazakhs. Thus, according to the suggestions of the followers of the liberal approach Russian law-making was considered as a unitary (in a legal aspect) legal space in which all the other local legal practices should dissolve (Dingelstedt, 1892; Zuev, 1907; and others).

The liberals thought that the main principles of a civilized state were supremacy of statute law and equality of all the citizens before the law disregarding their social status and wealth. In the "enculturation" of the non-Russian people they saw the future of Russia as educated and civilized state. Consequently, the course of the government for gradual and inclusive propagation of common law raised resentment and sharp criticism. The arguments of the liberals for unification of the law were the change of life for the Kazakhs who "began to take example by us, build houses and mosks, practice agriculture and now, the relatives of a killed person do not demand money, but they demand the punishment of the criminal. They do not go and take away their cattle but they go to the Russian authorities being sure that they will help to get the cattle back and to punish the criminals. Those who are not satisfied with the decision of the biys court concerning robberies or something else come with their complaint to the Russian authorities. All this proves that currently the Kyrgyz people are satisfied with the Russian laws and it

seems they *demand propagation* (cursive by the author) of other laws of the Empire" (GIAOO, l.342). The liberals were negative about the local legal practices, and the courts including the customary law were associated with the "vestiges", "patriarchalism", and "underdevelopment". These are damaged the reputation of Russia in the eyes of "educated" Europe and impeded modernization of the society.

The position of the liberals strengthened in the second half of the 19th century, when in 1875 the first meeting of the Russian lawyers was held. On that meeting M.N. Soloviev and A.M. Falkovsky made a report "On the publishing of the Russian Empire code giving the reasons on the necessity to abolish local laws and showing major provisions promoting the unification of the civil law in Russia" (Soloviev et al., 1882) which became one more strong impetus for "popularization" of the discourse about the unified imperial law.

However, the apologists of the unified imperial law, if to speak about the concept of the legal integration of the Empire, marked only those geographical territories that met the criteria of "civilization": "To impose the civil norms of the civilized society to the chukchi or samoeds is, of course, absolutely impossible like it is impossible to expect that the fish would fly and the bird would crawl" (Perviy, 1882, p. 80).

At the end of the 19th and the beginning of the 20th centuries such outstanding and authoritative lawyers-liberals as V.D. Nabokov, V.A. Maklakov, A.F. Koni, and V.M. Gessen took part in important discussions devoted to the problems of public order in Russia. "Their thoughts and ideas about modern society had a huge and long-lasting influence on the discussions about the perspectives, opportunities and failures of the legal development in Russia" (Burbank, 1995). According to those scholars, the followers of the liberal transformations, the legal culture should be made on such "principles as the development of unified and homogeneous for all citizens judicial system, publicity and the jury trial, comprehensive knowledge of the statutory law, rational codification of the laws, normative-based judicial proceedings and independence of the jurisdiction" (Burbank, 2000. p. 272). The liberals were sure that the lack of those principles could be a major setback for developing a law-governed state.

Another direction was suggested by the followers of the polylegal approach (we may designate this approach by several notions, for example, statist or official). They took into account their practical experience and understanding of the fact that to modernize a nomad society it was necessary to have such a governing system which would enable them to construct a homogeneous law-build society without prejudice for both parties (Babadjanov, 1861; Kostenko, 1871; Terentiev, 1875; and others). Though the time period for this process was not determined, still it was not meant for the decades. Being very well aware that the process was complicated and there were a number of objective problems, they wanted to develop a flexible legislation which, due to incorporation of the local law, should have

facilitate gradual transformation of the legal awareness of the Kazakhs and its inclusion into the legal social and cultural space of the Empire.

Of course, the process of local law incorporation into the Russian law was expected to be progressive, but it was suggested not to prolong the process for the centuries. It is not without reason that through the second half of the 19th century different commissions were working (F.K. Girsa 1865), M. Kurbanovsky (1883), K.A. Nesterovsky (1902-1903), K. K. Palen (1908-1909), A.N. Kuropatkin (1916) and others). They were to fulfill the task and attract local legal practices to the imperial law. In practice everything turned out to be more complicated. That was why, despite the numerous efforts of the opponents of the local legal practices to raise the question about complete abolishment of the traditional legal institutions on the governmental level, higher judicial powers of the Empire refused to liquidate them.

5. CONCLUSION

Thus, the process of local law incorporation into the imperial field was progressive and based on the evolutionary approach. It was assumed that the nomads would become "mature" enough to acknowledge the statutory law and they would painlessly dissolve in the social and cultural space of the Empire. It should be noted that the reforms aimed at construction a unified legal system, at changing the legal awareness of the Kazakhs were not quite successful to some extent. The adat was still used everywhere in the judicial practices of the Kazakhs. However, it would be incorrect to state about the complete failure of the governmental measures. Goal-oriented intentions of the government by the 20th century reduced the rebellion against the perspective of the nomads. The fact that the Kazakhs could address to the Russian court for various reasons indicates that the course chosen by the imperial powers was correct.

However, events of the 1917 did not let the administrators to realize their plans and immanent social institutions including the customary law, remained in the Steep.

References

Asian Russia in geopolitical and civilized dynamics. XVI–XX centuries / V.V. Alexeev (*et al.*). Moscow: Nauka, 2004. 600 p.

Babadjanov Khodja Mohamed-Salikh. Notes of a Kyrgyz about the life and participation of his relatives. Vedomosty of Saint-Petersburg . 1861. No. 136. p. 2.

Burbank G. Legal culture, civilization and peasants' law: perspective s in the beginning of the 20th century. American Russian studies: recent historiography. Imperial period. Anthology. Samara: Samara university, 2000. p. 269–298.

Burbank G. Local courts, imperial law and citizenship in Russia. Russian Empire in comparative perspective. Collection of articles / Under edition of A.I. Miller. Moscow: Novoe Izdatelstvo, 2004. p. 320–358.

Bobrovnikov V.O. The Muslims of the Northern Caucasus: traditions, law, violence. Notes on legal history and ethnography in Nagorniy Dagestan. Moscow: Eastern literature, 2002. 368 p.

Heller M. The history of the Russian Empire. T. P. Moscow: MIK, 1997. 318 p.

State historical archive of the Orenburg district (GIAOO). Federal Law 2. Case. 3148. Sheet 342.

Gorshenina S.. Is marginality of Russian colonial Turkestan forever and whether post-Soviet Middle Asia will be included into the *post*-studies. Ab Imperio. 2007. No. 2. p. 230–252.

Dingelstedt N. Judicial transformation in Turkestan. Journal of civil and criminal law. 1892. Book 7. p. 34–35.

Zuev A. Kyrgyz people's court. Journal of the justice ministry. 1907. No. 10. p. 161–208.

Lurie S.V. From the ancient Rome to the 20th century Russia: Succession of the Empire tradition. Social sciences today. 1997. No. 4. p. 130–152.

Kostenko L. Middle Asia and establishment of Russian civil society. Saint-Petersburg: Bazunov, 1871. 358 p.

Martin V. Law and tradition in the Steep: Kazakhs of the Middle zhuz and Russian colonialism in the 19th century / translation from English D.M. Kostin. Almaty: Sanat, 2009. 265 p.

Minenko N.A. North-Western Siberia in the 18th century – first half of the 19th century: Historical and ethnographic study. Novosibirsk: Nauka, Siberian department, 1975. 308 p.

Nebolsin P. Report about the journey to Orenburg and Astrakhan. Vestnik IRGO/ under the edition of V.A. Miljutin. Saint-Petersburg: Publishing House n.a. E. Pratz, 1852. Part IV. Book 1–2. p. 18–29.

Tradition and law in the written monuments of Dagestan in 5th – beginning of the 20th centuries. In the Tzarist and early Soviet Russia / Author and editor V.O. Bobrovnikov. Moscow: Publishing House Mardjani, 2009. 262 p.

The first meeting of the Russian lawyers in Moscow in 1875. Moscow: Publishing House n.a. A.I. Mamontov and Co, 1882. 280 p.

Russian state historical archiv (RGIA). Fund. 1291. Series 81. Case 222. Sheets 9–10.

Slezkin Y. Arctic mirrors: Russia and small people of the North / Author. Translation from English O. Leontieva. Moscow: Novoe Literaturnoye Obozreniye, 2008. 516 p.

Soloviev M.N., Falkovsky A.M. On the publishing of the Russian Empire code giving the reasons on the necessity to abolish local laws and showing major provisions promoting the unification of the civil law in Russia/ The first meeting of the Russian lawyers in Moscow in 1875 Moscow: Publishing House n.a. A.I. Mamontov and Co, , 1882. p. 59–99.

Speransky M.M. Letters to the daughter / Author N.V. Kuksanova. Novosibirsk: Novosibirsk State University, 2002. 196 p.

Tatischev V.N. A dialogue of two acquaintances about the benefits of science and educational institutions. Tatischev V.N. Selected works/ under edition of S.N. Valka. Leningrad: Nauka, 1979. 463 p.

Terentiev M. Turkestan and its people. Vestnik of Europe. 1875. No. 9. p. 65–112.

Burbank Jane. Discipline and Punish in the Moscow Bar Association. The Russian Review 54. 1995. No. 1. P. 45–48.

Raeff M. Mikhael Speransky. Statesman of Imperial Russia 1772–1839. Second edition (The Hague: Martinus Nijhoff). 1969. P. 340–342.

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