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**COMMON LAW AND THE FORMATION
OF THE CIVIL LAW SYSTEM OF RUSSIA
(MIDDLE XVII – EARLY XX centuries)**

Speciality 5.1.1. – Theoretical and historical legal sciences

ANNOTATION

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The relevance of the dissertation research. In recent decades, fundamental changes have taken place in the social system of the Russian Federation, reflected in a significant update of the legislative framework for all branches of law, including civil law. As a result of the active legislative activity of the state, new regulatory documents were developed and adopted that determined the implementation of the legal rights of Russian citizens in property, liability, inheritance and other legal relations: the Civil Code and the Civil Procedure Code of the Russian Federation.

However, the changes that took place in the social status and financial situation of Russian citizens were at times extremely sharp and profound, which could not but cause corresponding shifts in the public consciousness and mass psychology of the country's population. One of the manifestations of such shifts was the awakening in the historical memory of popular ideas about social justice, based not so much on laws as on informal rules, the usual norms of relationships created by people themselves on the basis of their life experience. Therefore, not only in the mass consciousness, but also in the practice of resolving various disputes and conflict situations of an objective legal nature, there is a certain spread of appeal not to the law, but to various group traditions, including ethnic and religious ones.

The actualization in the minds and activities of people of ideas about “real”, “folk” law, voluntarily or involuntarily opposed to the law, occurs when in social relationships the most important for the vital, everyday interests of a person issues of a property nature, which in the legal sense are subjects of civil law, come to the fore.

Investigating the causes of these socio-cultural processes in their basis, legal science cannot but take into account that in the relatively recent - by historical standards - past, a little more than a century ago, the peasant population, numerically absolutely predominant in Russia, in its daily life was more often guided not by official legislation, but by the norms of customary law, which basically had just a civil law character. At that time, many peoples living on the territory of Russia were in a similar position. Despite the cardinal changes that took place throughout the XX-th century in Russian society, customary legal traditions could not disappear

without a trace. On the contrary, having been preserved in people's memory and in everyday behavior, for example, in the form of certain symbols and rituals, during periods of new profound changes affecting the social status and material situation of the country's population, they are able to "come to the surface", become, in essence, one of the elements that form the space of mass legal consciousness and legal behavior "parallel" to the law, play their role in the relapse of the phenomena of "legal nihilism" known from Russian history.

Therefore, it is impossible to adequately understand the reasons for the revival of customary legal concepts in modern society without referring to the study of the historical experience of coexistence and conflict interaction between custom and law in the Russian past, especially in the relatively recent past.

The study of the evolution of the relationship between custom and law, folk customary oral law and state written legislation is now acquiring increased not only scientific, but to a certain extent social relevance. The modern Russian state, its law-making bodies, in response to the revival of customary legal ideas in the mass legal consciousness, need to find effective means and methods for using the positive potential of this phenomenon and limiting its possible negative consequences associated with the substitution in certain circumstances of the operation of the law by the action of informal rules of a social group, ethnic and religious nature.

The purpose of the dissertation research – reconstruction of the customary law of Russian peasants in the second half of the XVII-th – early XX-th centuries as an element of the emerging system of civil law.

Research tasks:

- to determine the content and consequences for the unity of Russian customary law of its competitive interaction with the law in the XI – XV centuries;
- to analyze the process of differentiation of Russian customary law in the Muscovite state of the XVI – XVII centuries;
- to identify the main features and features of the evolution of customary law among state, appanage and owner peasants in the Russian Empire in the XVIII-th – first half of the XIX-th centuries;

- reveal the consequences of the reforms of Alexander II for the evolution of customary law and its relationship with positive civil law;
- to identify the features of the functioning of ordinary peasant law in the system of civil law with elements of dualism.

Methods and methodology used in the research was determined on the basis of the principle of combining general scientific methods, which are mandatory for scientific research at all its stages, and particular scientific (special) methods, used in accordance with the disciplinary features of a given science and the specific properties of the subject of direct study, adopted in the methodology of science. General scientific methods were, first of all, methods of scientific objectivity, consistency and historicism, as well as dialectical and basic logical methods (analysis, synthesis, induction, deduction, comparison, analogy, classification, complexity, etc.); among the special methods inherent both in social science in general and specifically in legal science, and its historical and legal division, formal-legal, chronological methods, the method of reconstructions, discretionary, comparative-historical, historical-legal, historical-genetic, structural-functional, institutional and retrospective methods should be singled out.

The object of the dissertation research is the legal system of the Russian Empire.

The subject of the study – customary law of the Russian peasantry in the legal system of the Russian Empire.

The theoretical and practical significance of the research. The theoretical significance of the study is to substantiate the dualistic nature of the sectoral system of civil law in the Russian Empire, to establish the historical reasons for its emergence in the process of evolution of Russian customary law, starting from the early Middle Ages. This rationale can serve as a basis for further research to discover similar properties in other national systems of law.

Separate provisions and conclusions of the dissertation, factual material can be used in teaching general and special courses on the history of law and the state of Russia, the theory of law.

The scientific novelty of the dissertation research.

It has been established that the formation in the Russian Empire of a branch system of civil law with elements of dualism (simultaneous state-sanctioned functioning of positive law and customary Russian peasant law) was a natural result of the entire historical evolution of Russian customary law, during which its internal differentiation took place under the influence of the social transformation of society and the state policy of integrating customary law into the system of positive law.

It is proved that throughout Russian legal history, the internal differentiation of Russian customary law, which had relative unity in the pre-state period, took place according to levels and types that corresponded to different stages of the social transformation of society: peasant and townsman customary law (XI – XV centuries), customary law of service and tax strata (XVI – XVII centuries), peasant and urban (merchant, petty-bourgeois) customary law; peasant public and private (civil) customary law (XVIII – XIX centuries).

The decisive role in the evolution of customary law of its competitive interaction with state positive law (law), which reflected the general socio-political transformation of the Russian (Russian) society and developed in two main forms, was revealed: borrowing and adaptation of customary legal norms by law (mainly during the XI – XVII centuries); direct and indirect integration of customary law into positive law or complete replacement of customary law with positive law (mainly during the XVIII – early XX centuries).

The general and specific features of the integration by the state of the public-legal part of ordinary peasant law into the composition of police law in three peasant categories (state, appanage and owner peasants) are determined as the most important prerequisite for the formation of a branch system of civil law with elements of dualism based on the combination of positive civil law and ordinary peasant civil law.

The features of the functioning of the sectoral system of civil law as a system with elements of dualism in the second half of the XIX - early XX centuries are

established. and patterns of evolution of ordinary peasant civil law within this system.

The novelty of the dissertation is substantiated by the provisions submitted for defense.

1. One of the main qualitative differences in the legal system of the Russian Empire in the second half of the XIX – early XX centuries from the modern systems of law of the countries of the Romano-Germanic legal family consisted in the presence in the civil law system of elements of dualism - the state-sanctioned simultaneous operation of codified positive law and uncoded peasant customary law.

2. Reconstruction of the process of content and structural evolution of Russian customary law made it possible to establish the main stages, causes and patterns of its functioning as an element of the system of Russian law in the early medieval and Moscow periods of legal history and a formative element of the dualistic system of civil law in the imperial period.

3. The formation in the Russian Empire of a system of civil law with elements of dualism was the result of the evolution of Russian customary law that took place throughout the Russian legal history under the decisive influence of two factors: the social transformation of society in the direction of estates and the competitive interaction of customary and positive law with a decisive influence on its course of orientation of princely, royal, imperial power towards the gradual integration or complete replacement of customary law by law.

4. The first regularity in the evolution of Russian customary law was its consistent internal differentiation from the primary organic (East Slavic, tribal) unity into levels and types: peasant and townsman customary law (XI – XV centuries), customary law of service and tax strata (XVI – XVII centuries), peasant and urban (merchant, petty-bourgeois) customary law; peasant public and private (civil) customary law (XVIII – XIX centuries).

5. The second pattern of the evolution of Russian customary law was the direct and indirect integration into the composition of positive law of the public law

component of customary law or its replacement by police law, later by administrative law with class isolation of the field of action of the private law (civil law) component, which were purposefully carried out in the legal policy of the princely, royal and imperial authorities.

6. The formation of elements of dualism in the sectoral system of civil law took place in the Russian Empire during the 18th - first half of the 19th centuries. in the form of legitimization of the public law part of customary peasant law (organization and functioning of communal peasant self-government), which actually integrated this part into police law, and latent ("by default") recognition of the operation of customary civil law among the state and appanage peasantry with the provision of initiative to the landlord nobility in determining the status of customary law of the serf peasantry.

7. The legitimization of peasant customary law, carried out in the course of the reforms of 1861 and 1864, had its consequences in its reduction to customary peasant civil law, which actually completed the entire centuries-old evolution of Russian customary law, and the final formation of a sectoral system of civil law with elements of dualism created by the legitimate use by various estates of both codified norms of positive civil law and non-codified customary legal norms that regulated civil law relations within the limits of rural and volost societies, including with the use of institutions of volost and world justice.

8. Simultaneous functioning in the Russian legal space of two different types of civil law, differentiated by class, contradicted the main direction of the socio-economic transformation of society in the post-reform period as a transition from estate to class social organization. The government bureaucracy objectively faced a choice: either to refuse to preserve the legal isolation of the peasantry, integrating its customary law into legislation, or, while maintaining such isolation, "administer" customary law, that is, by taking control of its application in the volost court and rural communities, to limit manifestations of the legal independence of the peasantry that are undesirable for the authorities.

9. The realization by part of the government bureaucracy of the negative inhibitory effect on the economic development of Russia of the inconsistency of the current civil law, the obstacles that were thereby created in the way of the development of market civil turnover, led to the beginning, by imperial decree of 1882, of work on the creation of a draft Civil Code - general civil legislation, potentially capable of eliminating the elements of dualism in the system of civil law. During the development of the project, an attempt was made to include in the future Code a number of norms of customary peasant law, giving them legislative force. However, the project was not fully implemented and did not become law; integration of customary peasant law into positive law did not occur in the Russian Empire.

10. The policy of preserving the class legal isolation of the peasantry, dictated primarily by the intention of the authorities to keep the peasantry within the framework of a communal organization, was most consistently embodied in the law of 1889 on zemstvo district chiefs. Through this new institution of administrative management, control over the daily activities of rural and volost structures was strengthened, including actual subordination to the zemstvo chief of the volost court, and the possibilities of administrative influence on the activities and sentences of rural gatherings were significantly expanded. Even under the conditions of the Stolypin agrarian reform, which destroyed the communal organization, the authorities continued to adhere to the former line of legal isolation of the peasantry (the reform of the local court in 1912).

11. As a result, in the first decades of the twentieth century, there was a progressive loss by ordinary peasant law of its functional role in the system of civil law. Conservation in the practice of volost justice of customary property and obligation norms, archaic against the background of those that took place at the beginning of the XX-th century, changes in the economic activity of the peasantry, stimulated the transition of its market-oriented part into the scope of positive civil law - from volost to general judicial regulations. The legal isolation of the peasantry, as well as customary law, which ensured this isolation, lost the stabilizing role assigned to them by the creators of the reforms of 1861 and 1864, which in turn

intensified the crisis in the system of civil law, increased the instability of the entire system of law and played the role of one of the many factors that facilitated the collapse of the Russian Empire in February 1917.

Approbation of the results of the dissertation research. The main provisions of the study were presented in author's publications and presented in reports at international and all-Russian conferences.

In total, 10 scientific papers were published on the topic of the dissertation research, including 6 articles in scientific journals reviewed by the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation.

The author presented reports on the topic of the dissertation at the conferences: International scientific and practical conference "Theory and practice of modern science" (Samara, 2016), International scientific and practical conference "Problems and prospects of jurisprudence in modern conditions" (Kazan, 2016), International scientific and practical conference "State, politics, society: challenges and strategic development priorities. Change Management: A Mosaic of Scenarios in Conditions of Turbulence" (Yekaterinburg, 2019), All-Russian Scientific and Practical Conference "Law in the Modern World: Achieving Metasecurity as an Attribute of the State v. 2020" (Yekaterinburg, 2020), the All-Russian Scientific and Practical Conference "Law in the Modern World: Building a Legal Ecosystem in the Post-Pandemic World" (Yekaterinburg, 2022).

The topic of the dissertation research corresponds to the passport of the scientific specialty 5.1.1. – Theoretical and historical legal sciences.