

Western and eastern traditions in the sphere of human rights and freedoms: analysis of sociocultural basis

Alexandra Grigoryeva, Ardak Kapyshev, Anna Svinarchuk, Ermek Elzhanova, Dana Akhmetzhanova, Aigul Bayetova, Gulnar Tasbulatova

Abay Myrzakhmetov Kokshetau University, M. Auezov Street, 189a, Kokshetau, 000002, Republic of Kazakhstan

Abstract. The article is a summary of philosophic and sociocultural traditions in the sphere of protection of human rights and freedoms in western and eastern societies in terms of their historical formation. The authors believe that the contradictions between different regions in regard to norms and legislative initiatives are determined by philosophic perception of the world and a set of cultural traditions which influence greatly both internal and external policies of modern states.

[Grigoryeva A., Kapyshev A., Svinarchuk A., Elzhanova E., Akhmetzhanova D., Bayetova A., Tasbulatova G. **Western and eastern traditions in the sphere of human rights and freedoms: analysis of sociocultural basis.** *Life Sci J* 2014;11(5s):90-94]. (ISSN:1097-8135). <http://www.lifesciencesite.com>. 18

Keywords: human rights, socio-cultural basis, western traditions of rights, eastern interpretation of humanism.

Introduction

It is impossible to imagine modern legal culture without domination of human rights concept. It has firmly fixed in public consciousness and become key condition of democratization of any political regime; and if the constitution of some state lacks a section "man and citizen" in which the norms about rights and freedoms of a man are described it will seriously concern the western countries, human rights become universal scale to "measure" liberalism, maturity and openness of the state to dialogue with the world. Central issue in this context is the problem of universality: should the legislature in the sphere of rights and freedoms be panhuman and obligatory for all countries? Many authors propose to take human rights as a base for steady development of globally changing world, because they are determined by the nature of a man and represent key wishes of a personality: "A man has two wishes: first of all, he wants protection from violence; secondly, he wants respect for his beliefs and his will. The protection is provided by law-governed state, the respect for his views and will - by democracy", - Karl Jaspers argued [1]. In general this is true. But human rights and democracy are achievements of western cultural tradition, they were born in the course of development of antique, Western European and American civilizations, and direct import of constructs successfully applied in Germany or Holland into countries which have quite different historical-cultural basis is impossible.

That is why we find it appropriate to investigate human rights in different legal systems of the world in the context of presuming of universality of the concept, the idea of human rights. "Positioning of human rights as some absolute truth must be based on something" [2]. Let us consider particularities of Western civilization through the prism of philosophy.

Primary analysis of its character allows to find out the following features: domination of political and civil freedom, rational basis of cognition, logics and empiricism, linear character of time and existence, which determined technological way of European nations, individualism - all this reflects its historically formed realism.

Main part

The West like all other cultures wants to create the image of panhuman. However such panhumanism "is not frozen as dogma of obligatory institutions and notions and does not lead to caste system or domination of cosmic order" [1]. Freedom and individualism created the world of western man, who looked for new "shore" and new opportunities there. The mind of western sea-traveler was set to find Terra Incognita while western scientist and politician were looking for new ways to support this expansion. Cruelty of conquistadores was legitimized in Catholic dogmas, killing Indians - in Protestant ethics.

American lawyer and theorist of law Harold Berman proposes the following main characteristics of western legal tradition based on mentioned above historic-philosophic world-view concepts: "...policy and morality can specify the law but they never become a law as it is observed in some other cultures. In the West (but of course not only there) they believe that legislature has its own character with its own relative autonomy" [3].

Looking through his work "The Formation of the Western Legal Tradition" we shall try to find out key features of historically formed categories of western legal system:

- Law and its institutes are developed by professionals - lawyers having special university education able to analyze existing law organisms in the context of metalaw.

- “In western legal tradition the law is perceived as integrity, single system, organism which is developing with time through the centuries and generations” [3].

- “It is suggested that changes do not happen by chance, but through the new interpretation of the past they are striving to satisfy needs of the present and future. The law is not just goes on: it has its history. It tells its history” [3].

- In this historical self-significance the law dominates over the power: "Developing organism of law both in any given moment and in long term is understood by some people - though not obligatory by everybody - as obliging for the state itself". Thus, H. Berman argued that “the monarch can create law but he cannot create it as he wishes and until he will change it in legal way he will be obliged to follow it” [3].

- Probably the most prominent feature of western legal tradition is co-existence and competition inside one society of different jurisdictions of different legal systems. Such pluralism of jurisdictions and legal systems allows the law to dominate. This pluralism of law in the West which represented and in the same time reinforced pluralism of political and economic life of western people was at some point the source of development - legal, economic and political growth. It has also become, or was at some point, the source of freedom” [3].

- “There is strain between ideas and reality, between dynamics and stability, between transcendence and immanence of western legal tradition. Such strain periodically resulted in revolutions and forced overturn of law systems. In spite of this the tradition itself which is larger than any law system included in it has survived and even renewed in the furnace of these revolutions” [3].

It must be mentioned that European legal tradition during XVI-XIX centuries considered human rights as a set of civil and political rights while the rights of the second “generation” – economic, social and cultural - were formed in European consciousness later, in XIX-XX centuries, they were realized in practice only in the middle of XX century. Not all European philosophers, politicians and lawyers agreed to accept the pan-human character of second generation rights, in many cases they regarded them skeptically or as a kind of a “loophole” for non-democratic regimes to find excuses for violation first generation rights. In any case, in Western tradition civil and political rights were prioritized. For example, leading political philosopher of modern times John Rollis in his main manifest about liberalism of XX century “Theory of justice” says about “lexical priority” of civil and

political rights and freedoms - no compromises, restrictions for the sake of economic efficiency are not allowed etc. [4]. Practice of international relations has shown that political and civil rights are most often become the trigger to blame Asian and African countries in non-compliance with democratic principles of development.

Let us turn to the world of the East whose substantial matter is highly diverse in its cultural manifestations and in the same time uniform in its cosmocentrism and in those reflexive cycling which determined special march of time in human consciousness.

Formation of any culture is influenced by historical environment. Ancient “Oriental culture is special in this respect - it was the first culture created by class society, therefore it was obliged to perform titanic mission of discoverer - to invent writing and create the foundations of the state, invent the rules of co-existence of people different by its social and economic status, by ethnos, by professions etc. <...>If other general historical types of cultures, for example, antique culture were stimulated by different cultures - primitive and ancient Eastern, they could use and used their rich experience and achievements the historical environment of antique Eastern culture was relatively uniform primitive environment [5].

Yu. Kachanovsky emphasized "5 key features which determine specific character of historical development of the East:

1. stronger trend in keeping communal cultures;
2. important economic role of the state;
3. establishment of supreme ownership for land;
4. feudalism without big landlord economy;
5. centralized despotic power" [6].

Civilized communities of the East are as follows:

Far East (Chinese, Japan, Korean) and Arab-Moslem, Indo-Iran and Eurasian cultural communities. Legal systems of medieval Eastern countries, in spite of their diversity, have many common features. Conservatism and stable relationship between laws and cultural tradition can be observed in economic structure: these features formed the world outlook, based on the striving for wisdom and self-improvement, quest for supreme truth: cognition has become the way of moral improvement in contrast with utilitarian progress of Western countries driven by practical interests.

Conservatism of social legal and moral norms was also manifested in close relationship with religion - Hinduism, Islam, Confucianism - and in internal integrity of religious, moral and law regulations. Dharma in India, sanctioned and enforced by the state was in the same time the moral norm which must be followed because of supreme

role of religion. Indian dharma corresponded to Japanese Giri, which prescribed behavioural norms for people in any situation [7]. In Arabian caliphate, Delhi sultanate and Mughal India as in all Moslem countries, Koran was the key source of laws. In theory Koran excluded laws imposed by the state - they could only interpret Koran prescriptions, respectfully treating the opinions of Moslem theologians [7]. Sheriat as systematized set of Moslem laws was by mistake considered as Moslem legislature while fiqh (Moslem legislature) was just a part of Sheriat. If fiqh is restricted mainly to norms and regulations in Sheriat and considers public behavioural rules and the obligations of believers before God the Sheriat covers life and activity of a Mohammedan from birth to death.

Principal difference of Sheriat from Christian religious canon and other religious legislature systems is that the latter in spite of functioning for a long time has never substituted co-existing with them secular legislature in full while Moslem world from the moment of Islam appearance in VII century and up to XIX century in fact had now other legal systems except Sheriat [8]. "Not subject to changes" was based on Sacred Vedas Dharmasastra's legislature of Hindus [7]. In China the most important source of legislature was the law, Emperor's Decree but the base was Confucian tradition selected by Confucian ideologists and imperative behavior patterns, the norms of Confucian morals ("li") [7].

It is important that philosophy of human rights in the East is based on different from Western interpretation of humanism lying in the center of this legislature.

History shows that the term "humanism" as we know it was introduced by Coluccio Salutati and Leonardo Bruni in Italy. They borrowed it from Cicerone [9] in order to denote endless creative opportunities of a man and his eternal striving for good. So European interpretation of humanism is based on necessity of self-improvement of human personality as supreme value and freedom.

In the East the way of man is viewed at another angle. The term "zhen" was introduced by Han Yui in China in order to differentiate his way from what was before him. But the content of this "way" is different. Confucian preached love for a man, Han Yui - love for the whole world understood pantheistically and spiritually. Thus Eastern humanism was not anthropocentric. Chzhan Min-dao says: "My soul is similar to the soul of grass, trees, birds, animals. Only a man is born taking the middle of Heaven-Earth [10]. So, it is a kind of ecological outlook, nature-centrism.

Globalization processes of modern times were not the first manifestations of Western Culture and

Western political-legal thought in the history of eastern cultures (Far East, Arabian-Moslem, Indo-Iranian and nomadic steppe civilization). The first conquistadors from the West brought new ways of economic development, new laws which regulated the norms of behaviour and though not all Western Empires established their own legislatures in legal systems of the East from the very first days their influence on the local social system was significant. "But the traditions were still rather strong and further familiarization with European culture and attributed to it material values and the concept material success hindered westernization and focused attention of local population on their own fundamental and religious-cultural values and traditions of Eastern civilizations. This phenomenon was manifested especially distinctly when non-European countries got independence and had to make difficult choice which way to go" [7].

For the last decades Eastern leaders in their rhetoric tend to build up their own values' paradigm instead of accepting legal constructs from the West. Firstly this refers to compliance with international principles in the sphere of rights and freedoms of a man. For most Eastern countries of today the priority is economic growth, technologies, expansion in world markets and the only need of ordinary man is food and shelter. In Chinese White Book 1991 it was said that "to eat enough food and have necessary clothes are fundamental needs of Chinese people who suffered from hunger and cold for such a long time" [11].

A lot of experts point out to imposing of western values and necessity of protection of cultural uniqueness of the world and impossibility to use the problems in human rights sphere in the countries of the East by some world leading countries in narrow political purposes for making "humanitarian interventions". The term "humanitarian intervention" is close to humanism to the same extent as war is close to peace. In this context relativism is becoming very popular as excuse for incompliance of Asian values with Western culture and philosophy. Relativism declares cultural uniqueness when trans-cultural standards are just impossible because every civilized community has its own norms, way of life and its own regime of human rights.

Globalization of legislature, on the contrary, dictates in accordance with ideology of liberalism general significance and appropriateness of "panhuman values" and "universal rights" of man which is direct projection of Western cultural thought onto civilization plane of the East where different cultural contexts complicate this process greatly. Both interpretations are characterized by surplus radicalism of approaches: universalism does not

leave the place for cultural specifics while relativism denies the availability of common, single for all mankind, moral values with bias to intolerant freezing of ethnic culture by established canons and denying its development.

Democratic principles and traditions of respect for human rights have their roots in the cultures of Asian people. The rights of people are universal because of universality of fundamental human interests guaranteed by these rights. For example, protection from physical violence. Quite different thing is attitude of society to such facts. Interaction of personality and society is forms the key difference between Asian and Western values. Official declaration of Singapore government "General values" (1991) accentuated the community as key value for Singapore survival [12]. Human rights and legal state from Asian point of view are individualist by nature and because of that are destructive for social mechanisms of Asia. It is partly true. Methodology of political liberalism and philosophic concepts of liberal structure of social relations were always biased to individualism: individual is prior to society and his interests are prioritized over interests of the state, interaction of the latter with a man are contractual with explicitly formulated rights and obligations. Such approach is quite different from collectivism principles and priority of society over personality in the East. It must be mentioned that Western countries are in crisis of identity and individualism when the effect of surplus openness and moral liberty was total decline of morality, intellectual and cultural degradation, growth of divorce rate and de-popularization of family institution and other traditional institutions, growth of adolescent criminality rate and the number of suicides among wealthy people.

Newest civil republicanism, communitarism, liberal culturism in the framework of European liberal paradigm emphasize much more community interests, commitments to follow social moral norms and interests of society as a whole. Such trends are very similar to eastern traditions. Can we call it revolution in liberal mindsets of western countries or not will be clear in the nearest decades. At present moment we can only acknowledge that such processes are available in western society which seemed so monolithic in its political and legal orientations.

But these processes do not help us to solve the problem set in this article: what about implementation of "globally" approved rights of a man into the countries with non-western historical and cultural traditions? And how significant is the role of such traditions for the states at transition stage, such as the countries of Central Asia? In spite

of attempts to find the signs of "individual freedom" values and human rights in the history and culture of Asian countries, and sometimes these attempts are successful, but they are found with difficulty, in spite of western culture from where these values originated.

Therefore 2 approaches are used to solve this problem: isolationism, which has already become the reason for military-political conflicts and crises in the history, and globalism where purely western mindsets are used without any restrictions.

The last approach is very popular in neo-conservatism circles of USA, and external intrusion including military occupation to force such mindsets is regarded as permitted - as exemplified by Japan and Germany.

The fact is that domination of human rights though it originated in the legislature of western world is universal and non-contextual. It was supported by most countries of the world and its importance is determined by the character human existence which will be equally valuable for Brahman and for cleric in Rome.

Contextuality of realization of such norms and freedoms become the best ways for further transformation of the world as a whole.

Conclusion

Summarizing the discussion we have to point out to a number of important conclusions from modern cultural and legal reality of globalizing worlds of the East and the West.

First of all, the attempts to stand for national, unique, Asian traditional values are not always restricted to propaganda of one's own development way with the purpose to conceal authoritarian and even tyrannical foundations of national identity. Such attempts are reasonable because of real mindsets of way of life and outlook of society. The problem of "democracy transit" must be more actively debated by scientists because it deals with the issues from different cognition spheres: cultural, historical, social, political and of course, legal. Stability of traditional Eastern communities today is determined by authoritarian elements in ruling class, multi-nationality of Eastern states, their religious diversity is also the reason for impossibility of transition to direct democracy because "democracy is the matter of differences and rivalry between them in public sphere and it works only when there is concord in regard to foundations" [13].

Many modern states of the world whose history for a long time was controlled by hegemonies of great empires of the past today must solve the up-to-date problems of nation-building and transition from command way of development, totalitarian

consciousness and legal nihilism to society based on democracy. At least, the constitutions of most such states declare secular character of power, orientation to democracy and recognition of main human rights and freedoms. Western criteria in making such reforms are not always appropriate recommendations for democracy choice. Generally speaking, democracy in abstract terms facilitates stabilization of social relations, reduces the risk of revolutionary movements and allows to solve all conflicts in the society and its discord with solutions of power structures peacefully, but “non-mature”, “non-established” in the society democracy is able to destabilize the situation and demolish all available in the country achievements, both in economic and legal spheres.

Therefore positive aspects in history and culture of every society are freedom to criticize and freedom to borrow the best from other cultures, respect one's own traditions and be tolerant to traditions of other ethnic communities. The authors believe that such approach to identification of the right way of mankind development, both in terms of legislature and in terms of social significance, is most productive.

Corresponding Author:

Dr. Alexandra Grigoryeva
Abay Myrzakhmetov Kokshetau University
M.Auezov Street, 189a, Kokshetau, 000002,
Republic of Kazakhstan

References

1. Jaspers, K., 2003. The origin and goal of history. Textbook Publishers, pp: 294.

2. Human rights. Summary of the century, trends, perspectives, 2002. Ed. By E. Lukasheva. Moscow: Exmo.
3. Berman, H., 1983. The Formation of the Western Legal Tradition. Harvard University Press, pp: 657.
4. Rawls, J., 1999. A Theory of Justice. Oxford University Press, pp: 538
5. Weinberg, I., 1986. Man in the culture of ancient Middle East. Moscow: Nauka, pp: 22-23.
6. Kachanovsky, Yu., 1971. Slavery, feudalism or Asian way of production? Discussion about social system of ancient and medieval East, pre-colony Africa and pre-Columbus America. Moscow: Nauka.
7. Vassiliev, L., 1993. History of the East in two volumes. Moscow: Higher School, pp: 18-19.
8. Kerimov, G., 2010. Sheriat: Law of Moslem life. Responses of Sheriat to challenges of modern times. St. Petersburg: Dilya.
9. Huizinga, J., 1997. The Autumn of the Middle Ages, University of Chicago Press, pp: 490.
10. Kobzev, A.I., 2002. Philosophy of Chinese neo-Confucianism. Moscow: Eastern literature RAS.
11. The Progress of Human Rights in China. Date Views 09.07.2002
www.fmprc.gov.cn/eng/topics/3711/t18991.shtml
12. Lee Kuan Yew, 2000. The Singapore Story: 1965 - 2000. From third world to first. Harper Collins Publishers, N.Y., USA, pp: 15.
13. Mandelbaum, M., 1999. A Perfect Failure: NATO's War against Yugoslavia. Foreign Affairs. Council on Foreign Relations, 5(78): pp. 2-8.

3/23/2014