

Social Norms

- ▶ Norms of Morals
 - ▶ Norms of Customs
 - ▶ Norms of Religions
 - ▶ Corporative Norms
 - ▶ Norms of Law
- ▶ They all have the same purpose, i.e. to govern social relations.
 - ▶ However, norms of law are of special character.

- ▶ **Social norms** are the rules of behavior that govern the behavior of members of a society.
 - Morals implies standards of what is right and what is wrong in people's behavior.
 - Customs implies a usage or practice common to many or to a particular people or place.
 - ▶ Note: Custom may mean also a traditional practice that is so long-established and universal that it has acquired the force of law (Customary Law).
 - Religion implies people's beliefs and opinions concerning the existence, nature, and worship of a deity or deities, and divine involvement in the universe and human life.
 - ▶ Note: Religious norms may have the force of law, if officially endorsed by the state.
 - Corporative norms implies rules of or relating to a corporation, i.e. a company recognized by law as a single body with its own powers and liabilities, separate from those of the individual members.

What is Law?

Law is the system of mandatory norms, which are adopted and protected by state

Attributes:

- ▶ Law is binding for all persons
- ▶ Law is adopted by state
- ▶ Law is protected by state
- ▶ Law is enforced by state (its violation results in juridical liability)
- ▶ Norms of law constitute a system

System of Law

Elements of the System

- ▶ Norms of Law – rules adopted by state
- ▶ Branches of Law – complexes of similar rules

Branches of Kazakhstan's Legal System

- ▶ Constitutional Law;
- ▶ Administrative Law;
- ▶ Criminal Law;
- ▶ Criminal Procedure Law;
- ▶ Civil Law;
- ▶ Civil Procedure Law;
- ▶ Labor Law;
- ▶ Family Law;
- ▶ Land Law;
- ▶ Energy Law;
- ▶ Environmental Law;
- ▶ Financial Law;
- ▶ Tax Law; etc.

Also there two major branches of international law

- ▶ Private International Law;
- ▶ Public International Law.

Public and Private Law

- ▶ **Public law** (lat. *ius publicum*) is that part of law, which governs relationships between the state and individuals and between state bodies.
 - Based on Imperative Method of Regulation (Subordination)
 - Includes Constitutional Law; Administrative Law; Criminal Law; Land Law; Criminal and Civil Procedure Law; Environmental Law; Financial Law; Tax Law; Public International Law, etc.
- ▶ **Private Law** (lat. *lex privata*) is that part of law, which deals with the relations between individuals.
 - Based on Dispositive Method of Regulation (Coordination)
 - Includes Civil Law, Family Law, Private International Law, and partially also Labor Law.

Sources of Law in Kazakhstan

The Constitution of the Republic of Kazakhstan (CRK) stipulates that:

the “functioning law” in the Republic is constituted by:

- the Constitution,
- the legislative acts,
- other regulatory legal acts [sub-law acts],
- international treaties as well as
- resolutions of the Constitutional Council and the Supreme Court of the Republic” (Art. 4, Par. 1 CRK).

What is State?

State is an organization of the political sovereign power which spreads its jurisdiction over certain territory and population living on it.

- ▶ Sovereign State Power
- ▶ Territory
- ▶ Population
- ▶ Legal System
- ▶ Tax System

- ▶ Derived from the Latin term *superanus* through the French term *souveraineté*, sovereignty means the equivalent of supreme power.
 - The logical consequence of sovereignty of a state is its independence in international relations.
- ▶ Territory is a geographic area that is controlled by a state.
- ▶ Population is the total number of people who inhabit a state.
- ▶ Legal System is a set of rules of law by which a state is organized.
- ▶ Tax System is a part of the legal system which enables a state to levy a certain amount of money on its citizens and use it to exercise its authority and functions.

Functions of State

▶ Internal Functions

- Protective Function
 - ▶ Legal Order
 - ▶ Protection of Human Rights and Freedoms
- Regulative Function
 - ▶ Economic Relations
 - ▶ Financial Relations
 - ▶ Tax Relations
 - ▶ Social Relations
 - ▶ Cultural Relations
 - ▶ Ecological Relations

▶ External Functions

- Defense and Security
 - ▶ Armed Forces
 - ▶ Defense Infrastructure
 - ▶ Participation in Military Alliances
- Foreign Policy and International Cooperation

Forms of State

Various kinds of States may be differentiated according to the following criteria:

- ▶ Form of Government
- ▶ Form of State Structure
- ▶ Form of Political Regime

Form of Government

- Monarchy
 - ▶ Absolute
 - ▶ Constitutional
- Republic
 - ▶ Parliamentary
 - ▶ Presidential

Monarchy

- ▶ Monarchy is a form of government in which one person has the hereditary right to rule as head of state during his or her lifetime.
 - ▶ Monarchs include such rulers as kings and queens, emperors and empresses, tsars, kaisers, khans and shahs.
 - ▶ The power of the monarch varies from absolute to limited. The latter is exemplified in modern-day constitutional monarchies.
 - Absolute monarchy is a form of monarchy in which a ruler has supreme authority that is not restricted by laws. Throughout history most monarchs have wielded absolute power, often based on their presumed divinity. In ancient Egypt but also e.g. in the Empire of Sacae, the first known state on the territory of what is now Kazakhstan, the monarch was considered a living god.
 - Constitutional monarchy (also known as a parliamentary monarchy) is a form of monarchy in which monarchs exercise their authorities in accordance with a written or unwritten constitution. Today it is the most common form of monarchy. Usually the monarch is only a head of state with purely ceremonial competences, who is considered as symbol of national unity.

Republics

- ▶ Republic (government) (Latin *res publica*, literally “the public thing”) is a form of government based on the concept that sovereignty resides in the people, who delegate the power to rule in their behalf to elected representatives and officials.
 - As early as 8th century BC many of the city-states of Greece were republican in form. Rome was a republic in 509-27 BC. The era of modern republicanism began with the American Revolution of 1776 and the French Revolution of 1789.
- ▶ Republics may be presidential and parliamentary.
 - In a presidential republic, president is both a head of state and a major policy-maker (e.g. the United States).
 - In a parliamentary republic, president is only a head of state and a purely ceremonial figurehead. A major policy maker is prime-minister, who derives his legitimacy from and is accountable to the Parliament (e.g. Germany).

Forms of State Structure

- ▶ A **unitary state** is a state governed as a single power in which the central government is ultimately supreme and any administrative divisions exercise only powers that the central government chooses to delegate.
- ▶ A **federation** is a union of partially self-governing states or regions united by a central (federal) government.
- ▶ A confederation is a union of sovereign states created. Usually created by treaty, confederations tend to be established for dealing with critical issues (such as defense or a common currency).

Forms of Political Regime

- ▶ **Full democracies** are nations where civil liberties and basic political freedoms are not only respected, yet are also reinforced by a political culture conducive to the thriving of democratic principles. These nations have a valid system of governmental checks and balances, independent judiciary whose decisions are enforced, governments which function adequately, and media which is diverse and independent. These nations have only limited problems in democratic functioning.
- ▶ **Flawed democracies** are nations where elections are fair and free and basic civil liberties are honored but may have issues (e.g. media freedom infringement). Nonetheless, these nations have significant faults in other democratic aspects, including underdeveloped political culture, low levels of participation in politics, and issues in the functioning of governance.
- ▶ **Hybrid regimes** are nations where consequential irregularities exist in elections regularly preventing them from being fair and free. These nations commonly have governments which apply pressure on political opponents, non independent judiciaries, widespread corruption, harassment and pressure placed on the media, anemic rule of law, and more pronounced faults than flawed democracies in the realms of underdeveloped political culture, low levels of participation in politics, and issues in the functioning of governance.
- ▶ **Authoritarian regimes** are nations where political pluralism has vanished or is extremely limited. These nations are often absolute dictatorships, may have some conventional institutions of democracy- but with meager significance, infringements and abuses of civil liberties are commonplace, elections- if they take place- are not fair and free, the media is often state-owned or controlled by groups associated with the ruling regime, the judiciary is not independent, and the presence of omnipresent censorship and suppression of governmental criticism.

Theories of Origin of State and Law

▶ Theological Theory

- State and Law are the will of God. People need state because they are sinful (e.g. Saint Augustine).

▶ Contractual Theory

- State is created by voluntary agreement among people defining the relationship of individuals with one another and with government and by this process forming a distinct organized society (e.g. Thomas Hobbes, John Locke, Jean Jacques Rousseau).

▶ Organic Theory

- States, like individuals, are viewed as organisms. Yet Social Darwinists held that the existences of states was a struggle for existence ruled by "survival of the fittest," a phrase proposed by the British philosopher Herbert Spencer.

▶ Conflict Theory

- In contrast with voluntary theory contending that diverse groups of people came together to form states as a result of shared rational interest, conflict theory regards conflict and dominance of some population over another population as key to the formation of states.

▶ Economic (Marxist) Theory

- According to Marx, state is an "apparatus of oppression" operated by a ruling class for the purpose of maintaining its economic supremacy. It must be replaced by a "dictatorship of the proletariat," which would be followed by the "withering away of the state," and then by a classless society based on the fair distribution of goods and property.

Rule-of-Law State

Definition: Rule-of-Law State is a state the activities of which are based on the principles of law and the main purpose of which is the observance and protection of human rights and freedoms.

Attributes of Rule-of-Law State

- ▶ Recognition of an individual as the highest value;
- ▶ Protection of human rights and freedoms;
- ▶ Legality (Lawfulness);
- ▶ Separation of Power;
- ▶ Transparency and Political Pluralism;
- ▶ Economic Freedom (Inviolability and Protection of Private Property);
- ▶ Civil Society – Society of Free, Independent, Educated, Politically Active People