

ABAY: OPENING THE HORIZONS OF THE NEW ERA (ON THE OCCASION OF 175 YEARS OF THE BIRTH)

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Abstract

The article is dedicated to the outstanding thinker, poet, and public figure of Kazakhstan — Abay Kunanbayev (1845-1904). The biography and contemporary significance of his creative heritage are briefly presented. The author considers Abay's judicial and legislative activity, the basic norms of the “Charsky Regulation” (1885), in the preparation of which Abay participated actively and where an attempt was made to combine customary Kazakh law and imperial legislation. Abay's criticism of various political and legal aspects and moral imperfections of the modern society and at the same time a strategic guide to the alliance with Russia are shown. The author concludes that Abay as an educator, ahead of his time, opened the horizons of a new era for the Kazakh people, prepared their consciousness for the need to develop education and perception of Western culture, adjusted to the need to change some negative features of domestic psychology. At the same time, Abay together with the future leaders of the Alash Party cared about preserving the core national values and minimizing losses for the people at the upcoming steep turn of history.

Keywords: Abay, Kazakhstan as a part of the Russian Empire, Abay's participation in the lawmaking process, court of biys, customary law, enlightenment, Abay's criticism of the then society.

“As an embodiment of the intelligence, moral and spiritual culture of his nation, Abay is undoubtedly an epoch-making national achievement”.

Chingiz Aitmatov¹

The year of 2020 is marked by the 175th anniversary of the birth of the outstanding son of the Kazakh people — Abay Kunanbayev. The anniversary will be celebrated at the state level, it is planned to republish his works, translate them into major world languages, hold international scientific conferences at the UNESCO headquarters

¹ *Cit.ex:* Abay. Ya — chelovek-zagadka... [Abay. I am a mystery man] Trans. from Kazakh / G. Belger. Astana: Audarma, 2009. 504 p. P. 11.

and in the capital of Kazakhstan, film documentaries, hold various competitions, assign the name of Abay to the State Prize for Literature and Art and the airport in Semey, create Abay Centers on the basis of embassies of Kazakhstan abroad, etc. The Kazakh State Academic Theatre of Opera and Ballet named after Abay (Almaty) will perform the Abay Opera in Turkey, Russia and China².

Abay as an educator

Every nation of the planet Earth has its spiritual and moral pillars. One of such fundamental pillars in the consciousness of the Kazakh people is the creative heritage of the poet, composer, educator, and public figure, Abay Kunanbayev (August 23, 1845 — July 6, 1904)³. His works reflect the traditions of folk art and problems of the society at the pre-revolutionary turn of the late 19th century and the beginning of the 20th century. Abay's legacy is the blend of the traditional mind of the Kazakh people and their world perception, anticipation, understanding of grandiose historical changes, the upcoming acceleration of development and new prospects in the life of the people and all their social groups, which opened up in the minds of the outstanding Kazakh educators.

The age of Enlightenment was a natural stage in the evolution of the public mind of all people on the eve of an active formation of the industrial society with its needs for substantial increase of the level of education of the population, its liberation, its release, and preparation for a new dynamically developing society with people who have legal awareness. In the end of the XIX and early XX centuries, educators in different countries elucidated the perspective of the historical trajectory of nations, encouraged them to rethink critically the past and present and prepare for the forthcoming radical changes in the structure of society and its life.

Being a brilliant educator, Abay guided his people for entering a new historical era. He was the person who “revealed to his people the horizons of development, took the spiritual culture and thinking of the Kazakh people to a new level, opened

² See: Official site of the President of Kazakhstan http://www.akorda.kz/ru/secretary_of_state/secretary_of_state_news/o-zasedaniyah-gosudarstvennyh-komissii-podgotovke-i-provedeniyu-175-letnego-yubiley-a-baya-kunanbaiuly-i-1150-letnego-yubiley-a-abu-nasra-?q=%D0%90%D0%B1%D0%B0%D0%B9 (13 January 2020).

³ See also: Udartsev S.F. Abay Kunanbayev: myslitel, sudya, zakonodatel// [Abay Kunanbayev: thinker, judge, legislator] In book.: Genii kultury: Pushkin i Abay = Madeniyet danyshpandary: Pushkin zhane Abay/ Sinergetika obrazovaniya. No. 8 [Geniuses of Culture/Synergy of Education No.8] Schol. journal (Social Sciences and Humanities). Spec. ed. [Auth.: Kharin N.V. (Russia, MFOY), Udartsev S.F.(Kazakhstan, KAZGUU)]. Rostov-on-Don — Astana — Armavir, 2007. 254 p.

the new spiritual continuum for his nation, developed the new models of artistic perception of reality”⁴.

By the beginning of the XX century, Kazakhstan, as a huge part of the territory of the largest state of the planet, the Russian Empire, was on the eve of an active movement towards a new level of development and new forms of education, culture, and economy. The traditional, primarily nomadic society was in front of the “historical door”, behind which a very different industrial society, alien to the traditional principles of life, was emerging.

Objectively, education in all countries contributes to the corresponding shifts in minds, preparing for the onset of a new industrial stage of society’s evolution. At the same time, enlightenment has some reasonable historical objectives of criticizing forms of social life, culture and the perceptions of the traditional society.

The role of education is also to signal about the need for more intensive work on historical adaptation to new conditions and comprehensive self-improvement for individuals and for the society as a whole. In many ways, this explains sometimes harsh and ruthless critical judgments about the modern society of his time and the contemporaries of the thinker who was deeply concerned about possible negative consequences of the phenomena, human traits and public policies he condemned. On the other hand, the educators paid much attention to the education of the reformers themselves, explaining to them the need for a careful, step-by-step reform, preservation of moral and cultural values that bound the traditional society. For a good reason, the educators of Kazakhstan such as Ch. Valihanov (1835-1865) paid much attention to customary law and the court of *biys* (judges) and to explaining the peculiarities of these phenomena to the representatives of the czar’s administration. They understood their (*biys*’) powerful potential for self-organization of the folk, which was not tied to the past stages of historical development but could be useful in the future. This did not prevent them from criticizing some *biys* for their ignorance of customs and the unfair and selfish exercise of court.

Abay’s origin and education, the influence of the powerful

Abay Kunanbayev was a great educator, thinker and poet of the Kazakh people. He was born in the Semipalatinsk region, in a noble family, by his father he originated from the clan *Tobykty*. His official name was Ibrahim (Abraham), but his mother, and

⁴ Abdildin Zh., Abdildina R. Abay — genialnyi myslitel’ i gumanist. [Abay — a Sublime Thinker and Humanist] Astana: Foliant, 2015. P. 25.

the others called him by hypocoristic *Abay*⁵. His father was the senior sultan in the local administration. On the father and the mother's sides, some of his ancestors were known and authoritative *biys* in the steppe.

At the age of ten, Abay was sent to the madrasa school of the Semipalatinsk Imam, Ahmed-Riza. He also attended the Russian parish school for several months. Abay studied religious Arabic texts and Eastern classical pieces of literature. However, the father considered that five years in madrasa was enough for his education. He thought his son to be ready for preparing him for the practical activities of a *biy* and decided to cease his studies.

Abay was continuing his self-education all his life. He broadened his knowledge in the field of Eastern literature and philosophy, discovered Russian and European culture and literature (including studying the works of the founders of positivism) through talking to the exiled activists of the liberation movement, working in the library in Semipalatinsk, and studying the books and periodicals available to him. He was engaged in translations from Russian into Kazakh of some works by A.S. Pushkin, M.Y. Lermontov and others, and created his own original works, that were spread in the steppe thanks to the established traditional forms and the ground-breaking technique of memorizing and transmitting the information orally.

The freedom-loving works and the personality of the thinker were influenced by the representatives of the intellectual elite of the political exiles. Abay became especially close to Eugene Michaelis (born in 1841). Michaelis studied at St. Petersburg University and was personally acquainted with N.G. Chernishevsky. For his participation in the student movement in 1861 he was exiled to Petrozavodsk, then to other cities, finally, in 1869 to Semipalatinsk, where he worked as an assistant office manager in the regional administration. In 1879, he was released from the police supervision, and in 1881 — 1882 he temporarily acted as the county judge and regional prosecutor. His friendship with Abay continued later. It is known that in 1893 Abay visited Michaelis in Ust-Kamenogorsk for several days⁶. Russian friends

⁵ See: Bukeikhanov A. Abay (Ibrahim) Kunanbayev (Nekrolog)// Abay i arkhiv / [Obituary// Abay and the Archive] Ed.-in-Chief: N. Shakeyev. Auth.: S. Baizhanov. Almaty: "Gylym", 1995. P. 138.

⁶ Detailed in: Galiyev V.Z. Ssyl'nye revolyutsionery v Kazakhstane (vtoraia polovina XIX veka). [The Exiled Revolutionaries] Alma-Ata, 1978. Pp. 126-128; See also: G(erasimov) B(oris). Pamiati Yevgeniia Petrovicha Michaelisa// Semipalat. podotdela Zap.-Sib. otdela IRGO. B. VIII. [In memorial of Eugene Petrovich Michaelis// Semipalatinsk sub-division of the West Siberia department of IRGO B. VIII] Semipalatinsk. 1914. Pp. 1–5. URL: <http://>

helped Abay in his self-education, guided him in the Russian culture and literature, but also enriched themselves with Abay's deep knowledge of culture, customs, and the customary law of the Kazakh people and the peoples of Central Asia. A. Bukeihanov wrote that Abay "admired L.N. Tolstoy and Saltykov" and for the rest of his life remembered Michaelis with gratitude, "attributing all his education to him" and noticing that Michaelis "opened my eyes"⁷.

The exile Severin Severinovich Gross (1852-1896), a Polish by nationality and a graduate of the Faculty of Law of St. Petersburg University, personally acquainted in St. Petersburg with A.F. Koni, A. Spasovich⁸ and other prominent lawyers, also visited Abay in the steppe. Gross worked on the pamphlet "Legal Customs of Kirgiz", and apparently, consulted Abay on these issues.

Abay as the educator saw that the main task of the time in enlightenment was to educate the people and introduce them to the world culture. At the same time, he considered the way of perception of the world culture by the people to be more reliable through European education, especially Russian education, through the best representatives of Russia. He linked the general level of development of the people, forms of their lives, well-being with the level of development of the people's minds, their world perception, and an open exchange of cultural values with other peoples.

Abay's judicial and lawmaking activities

Since the age of 15, Abay attended court proceedings. At the age of 20, he was already famous as a good speech maker and an expert in steppe customs, who was projected to become a famous *biy* (judge). The authority of Abay-biy was also evidenced by the fact that he was repeatedly elected as a mediator-conciliator (*Tube-biy*) in disputes between the representatives of different counties.

Abay served for many years as a judge (*biy*) and a *volost* (a small administrative peasant division in Russia) governor⁹. In the report signed by Major General Galkin

bibliotekar.kz/istorija-kazahstana-za-8-klass-hrestomat/pamjati-evgenija-petrovicha-mihayelisa.html (13 January 2020).

⁷ Bukeikhanov A. Op.cit. P. 141. O perevode Abayem "Yevgeniia Onegina" i populiarnosti v Stepi pesni Abya "Pis'mo Tatiany" [On the Translation by Abay of 'Eugene Onegin' and the Popularity of the Song by Abay 'Tatiana's Letter'] see Story by A. Bukeikhanov (ibid).

⁸ Detailed in: Galiyev V.Z. Op.cit. Pp. 131 — 132; Bukeickanov A. Op.cit. P. 140.

⁹ O sisteme obychnogo prava kazakhov perioda yego rastsveti [About the System of Kazakh Customary Law in the Period of its Prosperity] see: Fuks S.L. Ocherki istorii gosudarstva i prava v XVIII i pervoj polovine XIX v. [Under the General Editorship of S.F. Udartsev. Digest of the History of S.F. Udartsev and N.O. Dulatbekov (in Rus. and Eng. languages). Opening chapter — by Sh.V. Tlepina. Comments and prep.of text — K.A. Alimzhan, Sh.V. Tlepina,

on 25 August 1903 in the name of the military governor of the Semipalatinsk region, said that “Ibrahim Kunanbayev is 60 years old, married to 3 wives, has about 20 children, possesses 1,000 horses and 2,000 sheep. He is a highly developed and intelligent man, who served as a *biy* for two periods by three years and three periods by three years as the governor of the Chingiz volost, thereafter, he served as the governor of the Nukur volost for one period of 3 years as assigned by the government. Kunanbayev’s service was distinguished by reasonable performance and energy, devotion to the government and lack of bigotry”¹⁰.

Considering the cases as the *biy*, Abay showed deep knowledge of legal customs, sought to understand them thoroughly and to fairly resolve the dispute. At the same time, Abay tried to identify the really guilty without any bias. Far not everyone liked this, especially those from the noble or rich, who expected to be treated more favourably by the young *biy*. As A. Bukeihanov wrote “there is no doubt that Abay in the old times would justify the prophecy of the steppe: one would become a *biy* whose right to judge was created not by formal election, but by recognition of his talent, as the glory of the writer and artist is established. The new time, characterized by the success and consolidation in the steppe of Islam, drew Abay’s attention to the knowledge of books in Arabic, Persian and Turkic. Thanks to his leisure and ability, he himself reached the proficiency reading in Arabic and Persian languages, and acquired the name of an expert in sacred books”¹¹.

Abay was known not only as a *biy*, but also as a ***steppe legislator***. In 1885, one of the first legal documents in the Kazakh language published in print and distributed among the Kazakh people was adopted in the village of Karamola on the bank of the Char River (hence one of the titles of the document — “The Charsk Regulation”). It was a set of customs and laws of the steppe and was adopted at the extraordinary congress of more than a hundred *biys* of a number of counties of the Semipalatinsk region. As proposed by the military governor of the Semipalatinsk region, *biys* elected Abay as their chairman at the congress (that time he was about

S.F. Udartsev. Astana / St. Petersburg.: JSC “Yuridicheskaya kniga of the Republic of Kazakhstan” / LLP “University editorial Consortium “Yuridicheskaya kniga”, 2008. 816 p.

¹⁰ Top secret. Ministry of Internal Affairs of the head of the Semipalatinsk volost August 25, 1903 r. No. 48. Semipalatinsk. Gospodinu voennomu gubernatoru Semipalatinskoi oblasti. Raport uездnogo upravatelya Navrotskogo. Podpisal general-mayor Galkin// Abay and Archiv [To Mr. Military Governor of Semipalatinsk oblast. The report by the head of the Navrotski volost. Signed by Major General Galkin // Abay and Archive] Almaty: “Gylym”, 1995. P. 133. The peculiarities of the manuscript preserved.

¹¹ Bukeikhanov A. Opt.cit. P. 139.

forty years old). There is evidence that it was Abay who drafted the document submitted to the congress and that he read out a prepared normative act consisting of 93 articles (paragraphs), which was unanimously approved by the attendees¹². The Act attempted to synthesize the customary law of the Kazakh and certain provisions of the Russian legislation, which was to ensure continuity of the development of the law and at the same time some convergence of the laws of the steppe and the laws of the Russian Empire in a way acceptable for the normal and natural development of the Kazakh society. Final paragraph 74 states that *yerezhe* (regulation) is composed “according to customs and by our conscience and justice”¹³.

A number of interesting features of the document can be noted. Paragraph 7 of the document recognized the right of customary law parties belonging to two different counties to determine the location of the dispute by agreement¹⁴. This rule of customary law is closer not to the State Court of the late XIX and early XX centuries, but to the principles of modern arbitral tribunals and international arbitration, which provide for a possibility for agreement between the parties on both the place of settling their dispute and the law on the basis of which the dispute will be considered.

In addition to hearing testimony, the court of *biys* allowed such evidence as adjuration in accordance with the provisions of a number of articles. Paragraph 14 stated that the oath rite is held “on the Quran in the presence of the mullah of the volost of the defendant”¹⁵. Paragraph 17 established that “the oath rite must be held before sunset”¹⁶. *Biys* made the records about those who were elected to take the oath, how much livestock or property would have to be paid in case of false oath.

According to Paragraph 27 of *yerezhe* (regulation), a *kun* (fine) of 100 camels was established for the intentional homicide, and of 50 camels for the homicide by misadventure. For the murder of a woman, the *kun* was twice less, respectively guilt.

¹² See: *Zakonopolozhenie, sozdannoe v Karamole// Abay i Archiv* [Regulation Developed in Karamola//Abay and the Archive]. Almaty: “Gylym”, 1995. Pp. 62–63. However, in this edition *yerezhe* has 74 Articles (or Paragraphs).

¹³ *Ibid.* P. 81.

¹⁴ See: *Yerezhe, sostavlennoye na Charskom chrezvychainom syezde v maye 1895// Abay i Archiv* [Yerezhe, Developed at the Charsk Extraordinary Congress in May, 1895]. Almaty, 1995. Pp. 67–68. In book — *yerezhe*.

¹⁵ *Ibid.* P. 69.

¹⁶ *Ibid.*

Interestingly, there was the rule that “there was no *kun* for murdering of a husband by a wife or a wife by a husband”¹⁷.

A married woman, taken away or escaped with a lover according to Paragraph 31, was returned to the volost directly to the congress of *biys* and this court decided the case. If the husband agreed to take his wife back, a fine of 1 to 3 nines (a certain number of different livestock) was taken from the person who took her. If a husband refused to live with the wife escaped, she stayed with the person who took her away and he had to pay the *kalym* (dowry), and the wife was not given anything. There were some special rules related to the taking away of the proposed woman¹⁸.

Adultery was punished by caning of both a man and a woman (paragraph 30). Fights, riots, and disobedience to local authorities were punished by fines, including monetary fines. In some cases, such offenders could be arrested by the sentence of the governor¹⁹.

Property liability was imposed for a theft (other than theft from an uncle or grandfather by their nephews and grandchildren), as well as corporal punishment of up to 60 swishes and arrest of up to a month. At the same time, it was believed that the imposition of complex severe punishment by a *biy* was mandatory. People who committed a repeated theft from their relatives could be punished at the request of the victim²⁰.

The humanistic nature of Abay’s laws can be seen in a number of articles. *Yerezhe* (regulation) was aimed at raising and stimulating mutual assistance of people and their mutual support in difficult situations. Thus, according to paragraph 35, those guilty of not rendering help to a drowning man or during snowstorm, etc., should have been subjected to “collection of more than nine items of livestock”²¹. Its general social orientation was also evident in a number of paragraphs of *yerezhe*. Thus, paragraph 36 established responsibility for failure to take measures against the death, decline of livestock, measures preventing the spread of epizootic outbreaks, for damage to irrigation ditches, wells, bridges and other socially necessary constructions²².

This normative document stipulated the provisions which had to protect the Kazakh population, courts, laws from oppressions of imperial administration, attraction of mullah as intermediaries and taking the oath, maintaining registers of

¹⁷ Ibid. P. 71.

¹⁸ See: *ibid.*

¹⁹ Ibid. P. 72.

²⁰ Ibid. P. 73.

²¹ Ibid. P. 72.

²² Ibid. Pp. 72–73.

births “in Kyrgyz”²³, not recognition of professional lawyers in courts, but as persons empowered to act for someone not accepting Russians and Tatars (trusted Kazakhs from the same county were allowed)²⁴, etc.

In general, the above and many other provisions of the legal document prepared by Abay contributed to the solution of the set of tasks on regulation of social relations, synthesis of customary law and certain norms of the Russian legislation, as well as involvement of the potential of moral norms and perceptions of justice by the population in legal regulation.

Abay’s critical political and legal ideas

Abay linked the emergence of the power of rulers to the natural desire of people to streamline social life, to self-realization, to protection against possible attacks on their life, property, and rights. At the same time, faith and power were connected in the minds of people. As Abay wrote, “they say, when everyone is a *biy* in himself, it is hard to get along the great outdoors, when there is a head of the community, it is hard to burn in fire”. People who recognized this truth, sacrificed to the holy spirits, and praying, gave the reins of government to the general elect and continued to try to support him, hiding his shortcomings and glory his virtues”. At the same time, “people protected and cherished unity. Once there was a call for help others, mentioning the names of ancestors, everyone went to the aid, forgetting all grievances and controversies, willingly making concessions and sacrificing”²⁵. Since then, a lot was changed by Abay. Abay asked, “Where is this noble spirit of community and caring about honor now?”²⁶

Abay criticized the orders that prevailed in the steppe, contrary, in his opinion, to both Allah’s principles and humanity. In Abay’s view, all people and all religions recognize that “God has love and justice”²⁷. The same foundations as love and justice, according to him are “the beginning of humanity”. “They are present in everything and solve everything. It is the Crowning Achievement of the Lord”²⁸. Abay believed that this was what often lacked in real life. These were the things that contradicted

²³ See: *ibid.* P. 80 (Para 66).

²⁴ See: *ibid.* P. 81 (Para 71).

²⁵ *Abay.Kniga slov.* [Abay. The book of Words.] // As cited in: *Abay.Kniga slov.* Shakarim. Zapiski zabytogo. [Abay. The book of Words. Shakarim. The Notes about the Lost] Almata, 1992. P. 79.

²⁶ *Ibid.* P. 80.

²⁷ *Ibid.* P. 90.

²⁸ *Ibid.*

with the existing orders of custom. In the opinion of Abay, the most difficult thing is to raise humanity in people and teach them to follow the truth²⁹.

Abay wrote with bitterness that thefts and robberies did not stop in the steppe, that honest people were prosecuted unfairly. He wrote, “The honest sons of the steppe are incriminated the crimes by false denunciation, they are subjected to humiliating inquests, and false witnesses are found who are ready to confirm what they have not seen or heard”³⁰. They seek to defame an honest man, to prevent him from electing for higher positions (they worked the angles against Ch. Valikhanov to hinder an honest and educated man from public service).

Far ahead of those surrounded him, Abay was “an alien among these people”, in many ways he remained misunderstood by the society, his contemporaries, what made the fate of the great Kazakh thinker tragic³¹. The civic positions that Abay held as a judge, as an honest and authoritative man in the steppe, who could not be bribed or broken, sometimes were quite costly for Abay himself. This is evidenced, for example, by Abay’s appeal (1900) against the decision of the regional court, which ceased the case and decided to transfer it to the court of *biys* the case of assault on Abay, by a group of Mukurians (representatives of the Mukur volost headed by its governor). Abay was attacked because he agreed to take part in determining the boundaries between the Mukur and Chingiz volosts, and promised to assist the county governor in catching exiled vagrants who escaped and were hiding away in the Mukur volost. They were kept by the county governor, apparently, as cheap labour force. In the appeal, Abay demanded the case revision in the Governing Senate and the punishment of those responsible for the assault on him. Abay presents the facts, reveals the logical failure of the court’s decisions about the incident, taking into account the testimony, gives legal qualification to the case in accordance with the current legislation (perhaps, in this legal qualification he was assisted by a lawyer). Abay insisted that his case be heard by a state (“Russian”) court as more “impartial and fair in this case”³².

Abay noticed with regret that rulers in the volost achieve power by deception, and they care only about their own well-being and seek support from the same “cunning

²⁹ Ibid. P. 61.

³⁰ Ibid. P. 12.

³¹ Abdildin Zh., Abdildina R. Opt. cit. Pp. 114–115.

³² V pravitelstvuyushiy senat of Kirgiza Chingizskoi volosti, Semipalatinskoi oblasti, togo zhe uezda apellyatsionnyi otzov Ibragima Kunanbayeva // Abay i Archiv. [To the Governing Senate of the Kirgiz-Chingiz volost, Semipalatinsk oblast, the appeal of Ibrahim Kunanbayev]. Almaty: “Gylym”, 1995. Pp. 105–118.

as a shithouse rat” as themselves. They spent most of the effort on fighting rivals and maintaining power³³. The thinker said, “Volost governors are elected for three years. For the first year of their governance they listen to grievances and reproaches from the people: “Didn’t we elect you?” For the second year they fight against their future rivals. The third year they spend on their campaigns to be elected again. What is left?”³⁴

In Abay’s view, the circumstances of life, customs, established relations all together subordinate people to the existing system. Abay wrote, “This is how they live: the lord helps a bai and assists a thief, the poor plays nice for people in power, supporting them in disputes, joining one, then the other party, for no reason, selling wife, children, and relatives”³⁵. The thinker stated that he could not respect the volost governor and *biy* with all the will in the world, as “there is no divine rule neither a court in the steppe. The power purchased for money is not worth much”³⁶. Abay expressed regret that in the steppes a strong and smart man is rather ready for bad deeds than for good ones, that “there is no person whose mind was agile in serving for justice, but there are plenty of those who are cunning and ready for treachery”³⁷.

The thinker drew attention to the need for the thoughtful analysis of everything that is happening, respect for talent, the unacceptability of blind following the crowd and excusing oneself when doing bad things by the fact that everyone does the same. He asked, “What is the comfort to one fool that there are thousands of other stupid people nearby?”³⁸ Abay advocated the rule of enlightened and moral people. For him, these characteristics, his effectiveness and sensibility, were apparently above formal ones such as the number of people involved in decision-making. It was, apparently, a less important issue for him. Although Abay was more positive about the democratic forms of governance inherent to the customs of the steppe, especially if the decisions were competent and fair.

At the same time, Abay was against those who do not believe in a human being, opportunities for his development, and correction. He agreed that man is a child of his time, that his contemporaries and society were responsible for the bad qualities

³³ See: Abay. *Kniga slov* [Abay. The Book of Words]... Pp. 12–13.

³⁴ *Ibid.* P. 13.

³⁵ *Ibid.* P. 24.

³⁶ *Ibid.* P. 36.

³⁷ *Ibid.*

³⁸ *Ibid.* P. 38.

and actions of people. Nevertheless, Abay did not believe that human imperfections were evidence of a man's incorrigible and evil nature. He stated in the 'Word Thirty-Seven,' "if power were in my hands, I would cut off the tongue to someone who says that a human being is incorrigible"³⁹. Man for him was a central figure in historical development and he dreamed of cultivating a perfect man. The orientation towards the education of a man and his self-development are organically connected with the educational direction of Abay's works and cultural activity.

The study of societal order and the critical attitude towards them were combined in his works with proposals to change the current state of affairs. In order to avoid enmity and arbitrariness in the steppe, he proposed to appoint persons as volost governors who had received Russian education, and if there were no such people, to appoint them at the discretion of the county superiors and the military governor. In his view, this would have encouraged to get education and avoid the influence of the local nobility on volost governors⁴⁰.

Abay offered to refuse from electing *biys* for a short term, noting that not everyone is capable of being a *biy*. "Not everyone can allot justice. In order to maintain the Council, as they say, on the "peak of Kultobe" (the area of the annual congresses of *biys* — S.U.), it is necessary to know the sets of laws that we inherited from our ancestors: the "bright way" by Kasim Khan, the "old way" of Yesim Khan, the "seven canons" in Az by Tauke Khan. They also became obsolete over time and require changes and infallible policy makers, who are either underrepresented or do not exist at all"⁴¹. Abay proposed to elect three *biys* from each volost among the "educated and motivated", "not to determine the term of their governance, and to remove only those who will find themselves involved in bad deeds"⁴². He believed that it was necessary to arrange a system of formation of courts in order to assign as judges only educated, trained and honest people, protecting them from claims of self-serving and ignorant competitors to these positions. He also believed that it was not necessary to overload *biys* with small cases that could be resolved by arbitral tribunals, and objected the delay in the consideration of cases in the courts⁴³.

For all that, Abay, as a man of faith, understood that human judgment, however perfect, was not comparable to the God's supreme judgment. In the view of Abay, by

³⁹ Ibid. P. 59.

⁴⁰ Ibid. P. 13.

⁴¹ Ibid. P. 13.

⁴² Ibid. P. 13–14.

⁴³ Ibid. P. 14.

giving a man the ability to hold an answer at the Last Judgment the God showed “justice and love towards a man”⁴⁴.

In the philosophy of law Abay is unique, but at the same time he belongs to the tradition of the synthesis of law and morality, which is traced in the history of legal thought and manifests itself, for example, in the views of Confucius in ancient China, in the doctrine by I. Kant in Germany, half a century before Abay. The various manifestations of this trend are united by the fact that law is understood as a phenomenon much wider than legislation. For Abay, in the structure of law, apart from legislation, above all are customary law, morality, and perceptions of justice. He is rather a supporter of a dynamic connection, an alloy of customary law and legislation but on the basis of customary law. In Abay’s opinion, such a combination and proportions of the blend of the forms of law were probably the most acceptable for Kazakh society of the late 19th and early 20th centuries.

Abay Kunanbayev, by his criticism of feudal divisions and wars between clans in the steppes, played an outstanding role in realizing these shortcomings, and in forming a critical attitude towards them. Abay’s liking towards the institutions of ancestral democracy reflected interests, and perceptions of the fair structure of broad segments of the Kazakh society. As A.N. Taukelev wrote, “For a good reason, the anti-feudal and anti-colonial movements of the Kazakh peasants of the late XVIII and the first half of the XIX centuries took place under the slogan of the struggle for the establishment of ancestral democracy, against the arbitrariness of the khans, sultans, as well as against the colonizing policy of destroying the ancestral division of the Kazakh society”⁴⁵.

However, Abay, while being deeply concerned about the people, expressing their fundamental interests, emphasized the difference between the people and the crowd. As noted above, he was very critical of the crowd. He wrote, “who poisoned Socrates, who burned down Joan of Arc, who executed Gaisa, and who buried our prophet in the remains of a camel?” The crowd. The crowd is reckless. Manage to put it on the right track”⁴⁶.

Promoting the achievements of the Russian culture and literature, calling for the study of the Russian language, the development of European education, Abay was far

⁴⁴ Ibid. P. 65.

⁴⁵ Taukelev A.N. Politicheskie vzgliady kazakhskogo prosvetitelia Aabaya Kunanbayeva [Political Beliefs of the Kazakh Educator Abay Kunanbayev] // Researcher’s notes. KazGU named after S.M. Kirov. Series of legal T. XLIX, issue 6, Almata 1960. Pp. 97–98.

⁴⁶ Abay. Kniga slov [Abay. The Book of Words]... P. 58.

from idealizing everything related to Russia and critical of the Russian officials who often pursued their own interests. “For censorship reasons, he does not express his views about tsarism and about reactionary colonial politics. Nevertheless, he mocked the servant of tsarism in the steppes, the puppets of the colonial administration among the Kazakhs, governors and heads of volosts, those who were ready “to sell the father, mother, all relatives and beloved ones to the first Russian official who patted them on the shoulder” or “gifted them a gown and a medal”⁴⁷. At the same time, in geopolitical and historical and cultural terms, Abay saw the unity of historical fates of Russia and Kazakhstan and contributed to the strategic historical trend of rapprochement of their peoples.

In the Soviet times, some studies did not always correctly emphasize Abay’s criticism of religion, as he criticized the illiterate mullahs he often met, the mindless practice of religious rites, but did not oppose God (Allah), did not reject religion as a whole. He was a devout believer. At the same time, he remained critical and philosophical, including the religious sphere, and in the sphere of Islam. In this respect, he was quite close to L.N. Tolstoy, who was highly critical about the Church and clergy and tried in his own way to understand the foundations of Christianity.

The need for improvement in faith and personal improvement of the believer Abay speaks in the “Word Twelfth”. He recognized teaching others the Word of God as a good thing. However, he noted that the person who took up this cause should not forget two essential conditions: “he must establish himself in his faith” and “constantly improve” in understanding the faith and preserving its foundations in the soul⁴⁸.

Recognizing that everything was ultimately produced by God, Abay believed that many things depended on a person as well. Abay taught, “a reasonable man must know the duty of the believer is to do good. The right thing cannot be threatened by challenges for mind. If you do not give freedom to your mind, how to deal with the truth: “Let the one with knowledge and open mind know me”. If there is a flaw in our religion, how to prohibit an educated and sensible man to think about it? What would religion be based on without the sense?”⁴⁹

⁴⁷ Taukelev A.N. Opt. cit. P. 99.

⁴⁸ Abay. Kniga slov [Abay. The Book of Words] ... P. 25.

⁴⁹ Ibid. P. 47. Some published secret archived materials about rummage in his and his two sons’ houses in 1903 reveal Abay’s position concerning Islam and his relations with the government. Ibid.: Top secret. Ministry of Internal Affairs of the Governor of Semipalatinsk To Mr. Military Governor of Semipalatinsk oblast. The report // Abay and Archive. Almaty: «Gylym», 1995. P. 132.

With regard to the future development of society, Abay recognized that as it evolved, its fundamentals, including the canons of religion, could also change⁵⁰. Future forms of life, its principles will determine those who will then live according to sense and faith. However, Abay was confident as well as in their times Aristotle, Al-Farabi and S.L. Montesquieu, that there should be harmony and the extent of expressing it, the extent to everything, including the good. He said, “Everything in the world has its own extent”, “all that is beyond the extent is evil”⁵¹.

Abay was not a utopian. He was aware of the subsequent evolution of society and its progressive overall focus, but it was also far from idealizing the future. He wrote, “Or after all, bright days will come when people will forget theft, deception, mischief, enmity and concentrate on knowledge, learn the crafts, begin to earn wealth in an honest, decent way”, and, answering his question, he admitted, “Such days are unlikely to come”⁵².

In general, Abay made a significant contribution to the spiritual, moral, political and legal development of the Kazakh people, with his ideas illuminating the new horizons of his future. He contributed to the change of public minds, social relations, and criticized the negative features of domestic psychology.

As a judge and legislator, Abay sought for optimal models of combining traditional customary law and state law, criticized the injustice and selfishness of many modern judges, and defended the idea of a court of *bisys* possessing the potential of fair justice.

With his creativity and activities, Abay foreshadowed many of the ideas and positions that were made and followed by a generation later by representatives of Kazakhstan’s brilliant group of liberal intellectuals who were the leaders of the Alash Party. They received from great educators the historical relay of awakening of national identity, protection and education of the people, further development of national culture, including political and legal ones. As well as Abay, they objectively sought to minimize losses for the people in the transition from the traditional society to the industrial one.

Despite the acceleration of social development, everything that was written by Abay more than a century ago remains relevant. Although society has changed significantly, many of Abay’s critical ideas about morality, economics and politics still highlight new forms of some living prophets that he wrote about being ahead of his time.

⁵⁰ Abay. *Kniga slov* [Abay. The Book of Words] ... P. 72.

⁵¹ *Ibid.* P. 87.

⁵² *Ibid.* P. 38–39.