

“Legal families”, Traditions, Cultures

Traditionally, comparative legal studies aimed to systematize „legal families“. What does this imply?

- Family as father (mother), children –
- British common law and colonies; continental civil law and colonies
- a relationship of dependency, dominance, separation and emancipation

There is a reality behind the metaphor: exporting and importing legal systems, particularly advisory work on constitutions, is a trade, a political enterprise, an important stone in the building of governance.

Is this the civil way of colonization? → Spivak

Is this flawed by eurocentrism? → Nunn

Now: introduction to legal systems.

I. The Civil Law System

Historical development of the Civil Law tradition: Roman law and its reception, development of legal customs in Western continental Europe, the rise of importance of enacted law-statutes, new approaches to the content and structure of law after anti-feudal revolutions.

Development of the Civil Law system in the 20th century.

The content and the structure of a legal norm (rule). Legal interpretation.

Sources of law: enacted law-statutes and by-law acts, legal customs, judicial decisions, doctrines.

Democratic principles of law and their influence on the development of the Civil Law system.

Main features of the Civil Law system: clear distinction between private and public law as well as between different branches (fields) of law, distinctive hierarchy of sources of law, systematization and codes.

II. The Common Law System

Historical development of the Common Law tradition: common and equity law, courts and process in England, new approaches to the content and structure of law after anti-feudal revolutions, development of the Common Law system in the USA in 18-19 centuries.

Development of the Common Law system in the 20th century.

The content and the structure of a legal norm (rule). Legal interpretation.

Sources of law: judicial precedent (case law), enacted law-statutes and by-law acts, legal customs, doctrines.

Main features of the Common Law system: less clear distinction between private and public law as well as between different branches (fields) of law, an accent on legal institutions, priority of the procedural law over substantive law.

Distinctive features of the USA national legal system: supremacy of the Constitution of the USA, two main levels of legal development within the federal system, systematization and codes in the states.

III. Socialist Law

Socialist Law as a legal system created on the basis of Marxist-Leninist concepts of state and law.

Sources of law. Similarities and difference between Socialist Law and the Civil Law systems.

Originality of the Socialist Law main institutions: Soviet republic, socialist property. State interference into private-law relations.
Transformation of the system in the late 1980s- first half of the 1990s.
Preservation of certain institutions and traditions of Socialist Law in the former Socialist states.
Current development and perspectives of the legal systems of Central-and Eastern European countries, and Russia.

IV. Muslim Law

Muslim Law as a legal system. Religious influences on legal norms.
Sources of law.
Combination of general religious and ethical principles and the very specific content of legal norms (rules).
Traditionalism of Muslim Law.
Narrowing the sphere of Muslim Law implementation in the 20th century: combination of the legislation based on the Western European law reception, and Muslim Law in the states of Middle East and North Africa.

V. Far East Legal System

Similarities and difference between the Chinese and the Japanese conceptions of law. Concepts of natural societal order, rejection of the meaning of the law as a system of formal rigid rules.
Evolution of the system in the 20th century (under influence of the Western European, American, and Socialist Law concepts).

VI. African Legal System

Customary law - legal pluralism
Reception of the Western Europe law in the colonial times.
Development of the system after liberation (second half of the 20th century).
Contradictions between western concepts of law and African traditionalism.

VII. Transnational Law

European Union and the Council of Europe
ECJ jurisprudence, choice of sources of law.
Implementation of EC law
The work of the Conventions

VIII. International Law

Interrelations between national and international law
Implementation of international law norms within the national legal systems