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The Formation of New Era Law

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ABSTRACT

This article is about the historical experience of England and France showed that the formation of the new right took place not only in the years of revolutionary upheavals.

KEYWORDS: *law, formation, international, process, historical, legal.*

The formation of the law of the new era did not happen suddenly. Its origin involves a long historical process, starting from the early Middle Ages and extending over several hundred years. This process developed more continuously and smoothly than similar processes in the field of politics and state.

The historical and cultural roots of the law of the new era are deep and solid, and they are based on Roman law, city law, and international trade law. But at the same time, the legal systems of the medieval era were not very developed, many of their rules stopped the development of political democracy and capitalist entrepreneurship. These features of the medieval legal systems, moreover, the lack of internal unity hindered the development of law.

The English revolution of the 17th century and the great French revolution at the end of the 18th century played an important role in reforming the old feudal law on a new basis. These revolutions, especially the next one, were a serious test of the strength of the legal infrastructure left over from the Middle Ages. These revolutions, like any socio-political cataclysms, did not contribute to the direct strengthening of legal foundations in society. On the contrary, they often led to the unjustified destruction of the legal structure created over the centuries, the breakdown of traditional legal culture, legal nihilism and voluntarism.

The historical experience of England and France showed that the formation of the new right took place not only in the years of revolutionary upheavals, but on the contrary, in the years of political stabilization and in the spirit of conservatism.

The limits of penetration of revolutions into the law of the Middle Ages, the speed of renewal and reconstruction of legal systems in many cases also depended on specific historical conditions of different countries. Where the conflicts between the interests of businessmen and the whole society with feudal law took more severe forms, where the plebeian strata actively joined the struggle against outdated feudal legal systems, there the replacement of the medieval legal systems with the new law took place quickly and in the form of taking more radical and drastic measures. . We can clearly see this in the case of France. Where the revolution did not lead to the establishment of the direct and exclusive political rule of the bourgeoisie, where the bourgeoisie came to power by a long way and through a series of agreements with the landowners, there the post-revolutionary law entered to a greater extent with the spirit of tradition and preserved in itself the traditions of the medieval legal systems. . A clear example of this is the new law that was formed after the revolution in England.

Thus, the law of the new era in Western countries (primarily in England and France) was formed and developed as a logical continuation of the first legal systems (for example, "common law") that arose in the Middle Ages, and even ancient (ancient) law (Roman law). The new right could not be a completely different right from its predecessor. In its development, it adopted, preserved and used

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many practical, socially useful elements of the old law.

The degree of inheritance of law was so high that practically nowhere did the legal systems before the revolution disappear without a trace. Most of them entered the law of the new era in updated, modified forms. Medieval law thus began to apply in a society that now knew private ownership and market relations and a much higher level of legal technique. In the 17th-18th centuries and later periods, the rejection of medieval law mainly concerned its norms that denied the fundamental interests of private owners, hindered the further gradual development and internal coordination of legal systems, and contradicted the economic and political needs of capitalism.

With the victory of bourgeois revolutions, new social relations were established. This led to the establishment of a new, bourgeois right. The establishment of a new law indicates a great progress in the history of human society. The emergence of the new right did not happen only by rejecting and ending medieval institutions in economics and politics. Law has shown great creative potential, created the necessary opportunities for the growth of production and trade, personal initiative, and comprehensive satisfaction of the needs of a rapidly developing society. In the new historical stage of the development of law, a number of important features and qualities were manifested in law.

The law of the new era, in contrast to the law of the Middle Ages, which was characterized by its pre-revolutionary fragmentation and legal particularism, was born everywhere in the form of unified national legal systems. It was capitalism that broke down class, regional, customs and other barriers and led to the emergence of not only national states, but also national legal systems.

In the new era, the legal system acquired a new quality, a new way of its existence - a legal system and a legal system. The legal system and the legal system existed only as a bud in ancient and medieval societies.

National legal systems, unlike the fragmented legal systems of the past, have not only acquired the power of the whole state, but also acquired a new content. They imbibed the legal experience of past generations, the applicable law, legal system, and legal consciousness. New legal systems also gave rise to new forms of legal existence. In most cases, law has grown not from custom and judicial practice, but from legislation and other normative documents.

From the very beginning, constitutional law (state law, public law) began to prevail in the legal systems of the new era. The legal structure of any society was established on the basis of constitutional law.

New legal systems were created under the influence of nascent capitalism, which needed both exactly the same legal system and a single legal field. In the establishment of the new law, especially the laws have a system-creating value.

As the Russian scientist professor O. A. Zhidkov rightly showed, the history of world law can be conditionally divided into two major periods. In the ancient world and in the Middle Ages, law was born mainly not from state laws, but from relationships that actually existed and were recognized by society itself.

In the new era, the law in its development reflected the internal needs of the society and the changing life conditions. However, especially with the development of constitutional frameworks, laws became the main source of law. It is laws (not self-regulatory instruments) that have become the basis of the legal system, the law-creating factor. Drafting and issuance of laws emerged as the most important means of law development. In this way, the law was systematized and made whole.

In the ancient world and the Middle Ages, even fairly complete sets of laws (for example, Justinian's Code of Laws, etc.), distinguished by their mastery, confusion, never formed the main majority of legal norms. The legal norms of this period were formed through folk customs and judicial practice.

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Only in the new era, and especially in the 20th century, the law preserved universal values, was expressed in the doctrine of "supremacy of law", and to a certain (large) extent came forward as orders of state bodies.

The legal systems formed and developed after the revolutions included the principle of "rule of law", "rule of law" as well as other principles. The new law, unlike medieval law, was based on the principles of individualism expressed in the freedom of the individual, his freedom from corporate, class and other feudal shackles. This was reflected in the first constitutional and other laws of the French Revolution (Declaration of the Rights of Man and Citizens, etc.). In the center of the legal systems of the new era, not the class-corporate organizations, but the person, was placed. Human rights were also considered as natural, sacred and inalienable rights in legal documents.

The most important principle of the new legal systems remained freedom. It was not only an expression of the universal humanist goal, but also emerged as a structural element of civil society, manifested in the freedom of entrepreneurship, freedom of trade, freedom of competition and other economic and social freedoms, and, of course, political freedom.

Another important principle of the New Age law remained equality. It reflected the egalitarianism of the society. Equality was a necessary element of the business system in the legal sense, as it was the basis of all contractual relations, including labor relations.

The process of the formation of law after the revolution showed that the above-mentioned principles and foundations of law, including political freedoms, cannot exist without the provision of a strong legal order. Business activities especially needed order and stability. Therefore, another main principle of the new law is legality. It became a condition for the realization of political and civil rights, a guarantee of the stability of democratic institutions of power, as well as the entire economic cycle.

Formation of Anglo-Saxon and continental legal systems. In the 18th and 19th centuries, in connection with the establishment of a number of new states in America (USA) and Europe (Belgium, Italy, etc.), the end of the redistribution of the world and the establishment of colonial empires, the spread of the market structure throughout the globe, capitalism is the world that determines the further course of the development of human civilization. became a system. As a result of the internationalization of economic and political life, the interaction of the legal systems of different countries has been increased, and their previous isolation has been ended.

The influence of the law of the advanced countries of the world (first of all, England and France) on the legal life of the countries that later entered the path of building a capitalist society was especially noticeable. The interaction of legal systems in such conditions took very different forms, and their similarities became much stronger. This was helped by the extensive modeling (absorption) of a number of national legal systems, the forceful application of foreign law, as well as the gentle transplantation of the legal principles of individual countries into the legal systems of other countries. In the processes of growing interaction of separate national legal systems of different countries, the new technical capabilities of capitalism in the late 19th and early 20th centuries, modern transport, communication, information media, etc., also played an important role.

World systems of law - Anglo-Saxon and continental (Romano-Germanic) legal systems were formed in connection with the wide spread of the processes of modeling and transplantation of law based on the English and French national legal systems. These are two large groups of national legal systems, which differ from each other in their internal structure and external legal details.

Each of these two legal systems has its own "genetic code", its own historical roots. Despite the fact that the roots of the French and English legal systems go back to the Middle Ages, the emergence of world systems of law is related to the process of establishing the rule of capitalism. The superiority

of these countries in the field of law is determined by the fact that they were quite rich and developed in the 19th century.

In particular, the establishment of the Anglo-Saxon legal system was closely related to the colonial policy. The great importance of the colonial factor in the history of this system is determined by the fact that, despite the fact that English law has great potential for self-development and is unique in its methods of formation, content and form, it is extremely traditional, national, therefore complex and, in order to be modeled, the world it was incomprehensible to be accepted by other countries. As a result, the Anglo-Saxon legal system (family) became the world system not as a result of the adoption of difficult-to-understand English legal norms, but by their transplantation or forced application in the process of colonial expansion.

In the initial stages of English colonial expansion, two judicial doctrines were developed that facilitated the transplantation, not the imitation, of English law. According to the first doctrine, an Englishman going abroad "took" English law with him. With this, the English court supposedly guaranteed the preservation of all the freedoms and democratic institutions that existed in the metropolis itself to the British who were in the English colonies ("beyond the sea"). This doctrine was the result of a generalization of the legal experience accumulated in the first royal colonial charters. For example, the Royal Charter of Virginia of 1606 stated: "Our subjects, if born and dwelling within the territories of our kingdom of England, shall have full and complete Liberties, Liberties, and Immunities, in any country subject to us, jointly and severally, and they take full advantage of them."

According to the second doctrine, defined by Judge Holt in 1963, the local Indians and other indigenous peoples were to be disregarded as an 'uncivilized' people in cases where 'undeveloped' lands were appropriated by the British. In these countries all the laws of England are considered in force. The term "law of England" in colonial practice meant not only statutes, but also "common law" and "equity law", i.e. the law of precedent introduced in the courts established by the British colonists.

The implementation of English law in the colonies by the settlers was not only based on the said judicial doctrines, but also through the issuance of special royal charters as well as Acts of Parliament. For example, in 1683, as stated in the charter granted to the East India Company by Charles II, judges were to decide cases on the basis of "justice, justice and good conscience", that is, in practice, on the basis of English case law. English law was introduced with special documents in the North American colonies, and later in English dominions in Canada (except Quebec, where French law retained its influence), Australia, New Zealand, and South Africa. With the normative documents of the kings, English law was introduced "from above" in the new colonies in Asia and Oceania.

In connection with the complete division of Africa at the end of the 19th century, English law, as well as precedent law, were implemented in African colonies (1874 - Ghana, 1880 - Sir Leon, 1897 - Kenya and others) based on special government documents.

In the 19th century, the laws introduced by English law into the colonies also clearly indicated the limits of its sources. For example, as decided in the Ordinance issued for the Gold Coast (Ghana) in 1874, the "common law, law of equity and statutes of a general nature" that were in force in England until July 27, 1874, that is, before the Ordinance was issued, operated in the colony. It is stated here that "when there is a conflict or disagreement between the norms of justice and the norms of common law on exactly the same issues, the norms of justice should be given priority." Similar provisions were provided in the laws issued for other colonies. In Liberia, based on Negro settlers from the United States, English "common law" was first adopted by its American version. As stated in the 1820 law, the country was introduced "in the form of the common law as reconstructed and in

operation in the United States." It is true that the new Act of 1824 established that "the common law and the custom of the courts of Great Britain and the United States" would now apply, and in 1839 it was stipulated that "in Liberia those parts of the common law established in Blackstone's Commentaries may be applied to the conditions of the said nation."

The British generally did not completely exhaust traditional local law (eg Indian law, Islamic law, customary law, etc.) in the colonies. It was not possible or possible. But this traditional native law operated within the framework established by English law or colonial authorities. In such conditions, peculiar mixed legal systems consisting of elements of English law and local law also arose (for example, Anglo-Indian law). Traditional law mainly regulated family relations and maintained a subordinate status to English law. English law generally determined the development of the legal systems of these countries. In the British colonies and protectorates and in Southeast Asia (Malaysia, Singapore, Hong Kong, Brunei), English law was often mixed with elements of Indian and Chinese law in movement in Indian and Chinese settlements and among traders, where, depending on the extent of the spread of Islam, the norms of Islamic law were mixed. . In England's possessions in Africa, in certain areas (especially in the field of family, inheritance and other relations), the norms of customary law were in action, but the influence of English law grew more and more. As a result, after the collapse of the British colonial empire in the second half of the 20th century, the new states that emerged on the basis of British colonies remained under the influence of the Anglo-Saxon legal system.

In the British colonies in South America, the legal system was formed in a unique way. In these colonies, depending on the degree of occupation, bursary1 republics expanded. Dutch (Roman-Dutch) law was active in Bursa republics. The main features of this right were established in the XV-XVII centuries. At the beginning of the 19th century, the law in the Netherlands itself was reconstructed on the model of French law (based on the Napoleonic codes), and in its colonies (Indonesia, South Africa, etc.) the law was active mainly in its original form. Dutch authorities even referred to Roman law in cases of deficiencies in colonial law.

The British established their rule in the South African colonies, preserving the movement of some local customs and Roman-Dutch law. But throughout the 19th and early 20th centuries, South African law was redeveloped in the spirit of English jurisprudence. As a result, English and Dutch rights became closely intertwined. This legal system was called "hybrid legal system" by South African lawyers.

This unique right was distributed by the British to their other possessions in the south of the African continent (Southern Rhodesia - in 1898, Swaziland - in 1907, etc.). After the end of the First World War, in 1919, the law of the Union of South Africa was also introduced in the mandated territory of South-West Africa. A unique hybrid system of law, although under the very clear influence of English doctrine, also exists in a number of other colonial possessions of England: in Ceylon (Anglo-Roman-Dutch law), the island of Mauritius (Anglo-French law), and in the West Indies (Anglo-Spanish law). came into existence historically.

From the end of the 19th century, English law began to have a great influence on the legal systems of countries that officially maintained their independence, but actually fell under British influence - Egypt, Afghanistan, and others. A unique mixed legal system was formed historically in the British Isles itself - in Scotland. Many institutions of Roman law, which were not fully accepted into the "common law" system, were used here already in the Middle Ages, supplemented by the practice of Scottish courts. But after the Act of Union of England and Scotland in 1707, although Scots law retained its special status, it gradually began to follow the pattern of English law more and more. The strengthening of the position of English law in the world was helped by the fact that it was possible to appeal to the judicial committee of the Privy Council in London over the cases of the colonial high courts.

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Following and conforming to English law continued in the self-governing colonies even after the British Parliament passed the Colonial Laws Act in 1865. The national legislation formed in the Dominions was based on the main principles of the Anglo-Saxon legal system, that is, judicial precedent and common law.

English law was based on the codification of certain branches of law and institutions carried out in a number of colonies. For example, in the 30s of the 19th century, a special commission headed by the famous English lawyer Macaulay drafted the criminal code. It was approved by the Legislative Council under the Viceroy of India only in 1860. This draft of the criminal code was approved after the suppression of the national liberation uprising of 1857 in connection with the desire of the British to strengthen the national legal order. This code was heavily influenced by French law, and it also adopted several rules of Indian and Islamic law. However, it generally conformed to the English legal system in its spirit. In 1859, the Code of Civil Procedure of India was enacted. A number of other codified documents have also been adopted in the field of civil law in India. For example, the Inheritance document of 1863, the Treaties document of 1866, etc. can be evidence of our opinion. The Canadian Criminal Code was adopted in 1892 based on English law (Stephen's project). In the late 19th and early 20th centuries, Indian colonial codes were distributed by England to a number of other colonies (Aden, colonies in East Africa - Somalia, Kenya, etc.). Despite the great diversity of the legal systems that grew out of Britain's former colonial possessions, they were largely similar in their internal structure and legal thinking. Because the role and place of English common law in the Anglo-Saxon legal system is particularly important, this system is often referred to as the "common law family". A pragmatic concept of law prevails in this family. According to this, the legal norm is not just a general and abstract view of behavior, but more in the way of solving court cases. Naturally, precedent and court law play an important role in this. For this right, procedural moments in the conduct of court cases (presentation and evaluation of evidence, hearing testimony of witnesses, etc.) are often more important than determining the truth. Thus, in the Anglo-Saxon legal family, the law is not legislative and systematic-logical, but is related to various procedures and acquires a random, extraordinary character. The rejection of the adoption of Roman law has led to the emergence of many legal concepts, legal constructions and terms in this family of law. Under the influence of English judicial practice, in the Anglo-Saxon legal family, great attention is paid to the protection of individual rights from the arbitrary actions of the state and society.

The continental system (family) of law, different from the Anglo-Saxon system, was created under the direct influence of the French legal system, especially the Napoleonic codes implemented at the beginning of the 19th century.

The term "continental system of law" itself entered the science of comparative jurisprudence at the end of the 19th century. This term, like the Anglo-Saxon legal system, is conditional and does not fully reflect the real reality. Initially, this system included the legal systems of a number of countries on the European continent, which inherited the basic concepts, structures and general spirit of Roman law. This system included related "Roman states"1 such as France, the Netherlands, Belgium, Spain, and Italy. This group also includes Germany, which had a great influence on the continental system of law, especially at the end of the 19th century and the first half of the 20th century. The Germanic factor, which represented the synthesis of barbarian (Germanic) and Roman law, became so important that the continental system itself began to be called the Romano-Germanic legal family.

The continental system of law in its development went beyond the framework of the European continent. Under the influence of the Roman-Spanish legal tradition, it was adopted by almost all Latin American countries in the 19th century. In these countries, imitation of French and Roman law was especially deep. The main elements of the structure and special rules of the continental system were transplanted to the numerous colonies of France, Belgium, Holland, Germany in Africa and Asia in the 19th and early 20th centuries. Although these plantations gained independence in the

second half of the 20th century, their legal systems remained "dependent" on the Romano-Germanic legal family.

The influence of the continental system of law can also be seen in the Japanese codifications of the late 19th and early 20th centuries, the law of the Ottoman Empire, Egypt and other countries. Thus, the continental system of law became one of the two legal systems of the world at the end of the 19th century and the beginning of the 20th century.

The Romano-Germanic legal family has a number of structural and technical-legal features originating from the Roman law and the legal traditions of the Middle Ages. In continental countries, unlike England, legislation and other royal documents played an important role in the creation of law, not judicial practice. At the end of the 18th century and the beginning of the 19th century, the revolutions that "walked" across the European and American continents helped to further increase the influence of the law. It became the main source of law and remained the main system-creating factor in the continental legal family. It is the law, not the case law, that has emerged as a weapon that creates a single national legal order and a single legal regime.

In the countries of the continental system, special legal devices have been formed that ensure the recognition of the rule of law. The law is considered here as an act of the supreme authority, which is given the right to establish norms with supreme legal force. In this legal system, all subordinate and subordinate regulatory documents are based on the law (constitutions). In France in the 19th century, as in the continental system as a whole, "fetishization of the written law" took place, in the words of French jurists.

From a formal legal point of view, in the continental system, any court decision must be based on written law, law (not on previous court decisions). Judges could only apply law within continental systems. They could not create law like English judges. For example, the French Civil Code of 1804 states: "Judges are prohibited from issuing general orders in cases within their jurisdiction." Article 4 of this Napoleonic Code also testifies to the legal nature of the court's activities. According to it, it was determined that a judge who refused to judge on the basis of the abstractness or deficiency of the law could be held responsible for denial of justice. The principle that judges are subject to the law in issuing judicial decisions was further expressed in Article 3 of the Italian Civil Code of 1865. It was shown that the law cannot be applied in a different way from its content and the purpose of the legislator. In the legislation of Latin American countries, there is also an understanding of the relationship between law and judicial practice ("judge law") approximately as above. For example, in Argentina, it is clearly established that judicial precedent and doctrinal cases are aids in the interpretation of the law, but they are not sources of law due to their lack of binding force.

Another important feature of the continental system is codification, which is a necessary condition for the organization of legal norms by sectors. In the codifications carried out in the 19th century within the framework of the continental system of law, the desire expressed by Voltaire in the 18th century, "Let us make all laws understandable, uniform and clear" was realized. The economic and political liberalism typical of the 19th century was particularly vividly expressed in codification. According to it, first the general frame (circle) of the legal building, and then - the establishment of minimal state intervention in the private legal sphere was envisaged. Codes, as intended by 19th century jurists, were supposed to provide a clear definition of prohibited and permitted boundaries.

The continental system of law differs from the Anglo-Saxon legal system not only in terms of its sources, but also in terms of its internal structure, main legal institutions, constructions, and legal techniques. The legal norm itself is regarded as an abstract command, commanding, instructing, as a supreme rule of conduct for citizens and state bodies. Many features of the structure of the continental system of law arise from the fact that Roman law was reworked in accordance with new conditions. For example, for the countries of the continental system, the division of law into public

and private is characteristic, as is characteristic of Roman law. Public law is related to the interests of the general society and unites private individuals into a single community "for the welfare of the whole society" under the protection of state power. Private law is focused on individual individuals and includes branches of law that reflect relations representing private interests and regulate relations between sole proprietors and associations (corporations) based on their independence and initiative in their possible activities and personal relations.

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