

MAJOR CONTEMPORARY SYSTEMS OF LEGAL CIVILIZATION AND CULTURE: THE ROMANO-GERMANIC LEGAL SYSTEM AND THE ANGLO-SAXON LEGAL SYSTEM

Mihai BĂDESCU*

Abstract. The contemporary world is divided into major systems of legal civilization and culture, distinguished primarily by the historical type of law to which they belong. The formation of these major systems is explained by the convergence of legal systems across various countries resulting from social transformations; the history of law reveals significant legal shifts throughout the ages. An overview of the major systems in the contemporary world entails examining the legal frameworks currently applied in various states. Codes, statutes, decrees, and regulations of all kinds—along with their practical application, governing principles, and prevailing perspectives—collectively shape the national legal system. A careful analysis of these structures shows that national legal systems fall into broader categories defined by a shared set of principles.

Keywords: civilization, legal culture, legal family, Romano-Germanic law, Anglo-Saxon law, religious legal systems.

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1. Introduction

Historically, the law has undergone several major processes of reception that affected vast regions—sometimes spanning entire continents—shaping "local" legal systems according to specific rules, principles, and concepts. Montesquieu stated that laws "[...] must be suited to the physical conditions of a country, to the climate—cold, hot, or temperate—to the quality of the soil, to its location and extent, and to the people's way of life—whether farmers, hunters, or shepherds; they must be suited to the degree of liberty the state order allows, to the local religion, and to the people's morals and customs."

A primary instance of reception is that of Roman law, which remained applicable in many countries around the world for centuries, even after the fall of the Roman Empire. In Germany or Greece, for example, Roman law was applied directly until the present century. In other countries (such as France), Roman law—combined with, supplemented by, or amended by local customs—formed the substance of modern French law. In Germany, even when Roman law ceased to be applied directly, it lived on through its interplay with local customs and

* Professor PhD, Bucharest Academy of Economic Studies, Full member of the Academy of Romanian Scientists, President of the Section of Philosophy, Psychology and Theology, e-mail: badescu.vmihai@gmail.com

legislation, giving rise to contemporary German law; the great Romano-Germanic legal system emerged from the normative foundation of these two currents.

Another major reception process that left its mark on the history and geography of law is the French one. The Napoleonic conquests introduced the Civil Code into states occupied by French armies. Italy, the Netherlands, and Luxembourg adopted civil and commercial codes based on the French model. French law subsequently became applicable in former French colonies, where these regulations remained in force even after independence was achieved.

Furthermore, certain states influenced by French culture and legal scholarship adopted specific regulations inspired by the French model (e.g., Egypt, Romania, Poland).

There was also a "second-degree" reception: Spain and Portugal—formerly major colonial powers—extended their legislation overseas. Central and South American states, as well as Mexico, adopted civil codes of the Latin type.

Elsewhere in the world, the reception of British law—the common law—took place; originating in England, it spread to former British colonies. It remains in force today in Australia, New Zealand, and Canada (with the exception of Quebec), as well as in former African colonies, where it coexists with tribal customs. In India, however, a highly distinctive system emerged through the fusion of traditional Hindu law and British law, the latter being codified for the first time.

An interesting phenomenon occurred in the United States (excluding Louisiana). There, the common law took root but underwent an evolutionary process; it adapted to the U.S. federal structure and the American way of life, resulting in a legal system distinct from the original.

Through such processes, national systems coalesce into major legal systems that shape the world's legal geography.

The grouping of national systems into major legal families takes on a distinct character within each branch of law. The criteria for classification into these major families vary depending on the content of the specific branch of law.

A major legal system represents the grouping of significant national legal systems based on shared characteristics—with the notable exception of so-called traditional and religious legal systems. These are characterized by their attachment to personal status; their norms do not apply to all residents of a given territory, but rather to all individuals of a specific faith—regardless of their state of domicile—who are subject to a personal status based on that religion's precepts (for example, Islamic law). The need to delineate major legal systems arose primarily after the First World War, following the emergence of a large number of independent states, although interest in the subject had existed even prior to the 1918–1920 period.

Some classifications are no longer of any significance today, having been refuted by scholarship—such as the theory promoted by the fascist system, which used "race" as a classification criterion. According to this theory—pioneered by the ethnologist Sauser-Hall—modern legal systems were categorized into: an Indo-European system (comprising Latin, Germanic, and English subsystems), a Mongol system, a Semitic system, and a "barbarian" system.

Another criterion used was the degree of evolution and civilization of the population, and Levy Ullman proposed as a criterion the predominant role of custom and religion in a certain legal system.

René David, criticizing this classification, states that their authors base them on criteria that are not scientifically substantiated. In his 1950 work, *Traité élémentaire de droit civil comparé*, the French professor distinguishes five fundamental legal systems: the Western world system, the "Soviet world" system, the Islamic system, the Hindu system, the traditional Chinese system.

What emerges from this classification is the role that is given to the law of socialist states, and on the other hand, it must be highlighted that the opposition between the Romano-Germanic and the Anglo-Saxon systems is not used, including them in the concept of "Western world systems".

In a 1964 work, R. David, starting from the criterion of law belonging to a pool of legal civilization, creates another typology – the family of law. The author analyzes in this sense, the following families of law: – the Romano-Germanic family; – the Anglo-Saxon family ("common-law"); – the family of socialist law; – a family of philosophical and religious systems (Muslim, Hindu, Chinese, Japanese, Far Eastern); – the family of law of Black Africa and Madagascar.

The specific differences between these families (which make up the major legal systems contemporary) are of an ideological-legal nature (legal language, legal concepts, philosophical considerations, etc.).

Another attempt at classification was made in the 1950s by the Spanish comparatist Felipe de Solá Cañizares, who distinguishes only three major legal systems: Western, socialist, and religious.

Harsh but justified criticism was leveled at these attempts by the French professor René Rodière, because, in his view, this classification "*risks transforming comparative law into a study of comparative civilization [...] Ultimately, what is being compared is not legal rules so much as the higher principles of civilizations. Such an examination is far from uninteresting. However, it risks having only a tenuous connection to the surrounding science and technology.*"

While criticizing this classification, the French professor himself proposes a classification that is even more incomplete than the one he criticized. Thus, he distinguishes three major groups, as follows:

–a Western group, which, in his opinion, includes French, German, and Spanish law, etc.;

–an Anglo-Saxon group, comprising the law of the United Kingdom of Great Britain, various Commonwealth countries, and the United States of America;

–a group of socialist countries.

All of these supposedly share common traits stemming from the fact that they represent the law of the Christian world.

The incomplete nature of this classification—based on the criterion of the "foundation of the respective civilizations"—stems primarily from the fact that the author refuses to consider any system other than these. Thus, traditional systems in Africa and Asia that govern the lives of hundreds of millions of people are disregarded on the grounds that the civilizational foundation upon which they rest is incomparable to that of the others.

Another shortcoming of this classification is that the Anglo-Saxon system does not encompass the entire United Kingdom of Great Britain and Northern Ireland (Scottish law must also be considered), nor do the legal systems of the USA and Canada fit perfectly into the Anglo-Saxon model—with Louisiana and Quebec representing major, well-known exceptions.

A superior classification attempt is credited to Marc Ancel, who distinguishes between three essential groups of clearly defined legal systems and two complementary groups that are less sharply defined.

In the opinion of the French professor, the essential groups are as follows: the Romano-Germanic system, characterized by its Roman lineage and tendency toward codification; the Anglo-Saxon system, which is uncoded and features the coexistence of three parallel regulatory systems—common law proper, equity, and statute law; and the system of socialist states.

The complementary groups are: the religious law system and the system of Third World countries.

Western European economic integration gradually gave rise to a common Community law, which subsequently became the law of the European Union. This body of laws constitutes a legal system distinguished by specific traits—namely, a unified structure and function—that have shaped a Community legal order.

2. The Romano-Germanic legal family

The importance of Romano-Germanic law in today's world is evident; it is widespread not only in Europe but also in the Americas (Central and South) and even in Africa.

Contrary to what might be assumed at first glance, the Romano-Germanic system is not merely the result of combining Roman law and German law; rather, its components include the French legal system and German customary law, as

well as other related systems (such as Spanish, Italian, Portuguese, and Belgian law).

The emergence of Romano-Germanic law dates back to the 13th century, arising from the reception of Roman law and the establishment of legal principles within major European university centers.

Regarding the timing of the emergence of Romano-Germanic law (13th century AD), R. David points out that legal elements existed prior to this date; specifically, there were norms of Roman law as well as French and German customs applicable throughout Europe. Medieval universities (Italian, French, and German)—true centers of the era's culture—played a significant role in the synthesis of law; they countered the fragmentation of Roman law by establishing a body of universally applicable principles and rules.

By virtue of its strength, prestige, and superiority over local customs, Roman law gained increasing ground across Europe, despite resistance from customary law that had been systematically organized into collections by jurists.

It is worth noting several codifications recorded in the 5th and 6th centuries AD, intended to create a genuine bridge between Roman law and the law of the Middle Ages on the one hand, and the law associated with the great invasions of migratory peoples—particularly Germanic ones—on the other:

–*Edictum Theodorici*, promulgated by Theodoric II, King of the Visigoths;

–*Codex Euricianus*, promulgated by King Euric (c. 475 AD);

–*Lex Romana Visigothorum* (also known as the Breviary of Alaric), promulgated by King Alaric II in Provence;

–*Lex Romana Burgundiorum*, promulgated by King Gundobad in the Kingdom of Burgundy.

Catholic canon law also exerted a significant influence on the formation of legal systems in Western countries; it consists of two major bodies:

–"divine law," based on Holy Scripture, "divine tradition," and the works of medieval Christian theologians;

–"human canon law," based on the *Opus juris canonici* (compiled in the 16th century and comprising fundamental normative acts of the Catholic Church).

Legal scholarship generally classifies legal systems belonging to the Romanist (or Romano-Germanic) tradition into: **a) systems showing a more pronounced French influence; b) the German-Swiss-Italian system; and c) the Nordic system.**

a) Systems inspired by the French model are based on the French Civil Code of 1804—a code adopted in Belgium, Luxembourg, Italy, Portugal, Spain, Venezuela, Puerto Rico, Panama, and elsewhere. The history of French law is divided into three periods: the "ancien droit" (old law)—extending from its origins

to June 17, 1789, when the Constituent Assembly was formed; the French Revolution period—the "intermediate law," lasting until the onset of the Napoleonic codifications; and the period that began during the Empire and continues to the present day.

The first period—that of the "*old law*" (*ancien droit*)—encompasses the numerous customs in force across the entirety of present-day France. Historically, this territory was divided into two zones by a clearly defined demarcation line: the "land of customs" (*pays de coutume*), located north of the Loire, where the primary—if not sole—source of law was local custom (varying from province to province and even from city to city); and the "land of written law" (*pays de droit écrit*), located south of the Loire. In the latter region, Roman influence persisted longer due to the written law embodied in Justinian's *Corpus Juris Civilis*. Its provisions served as a form of common law—a "written reason"—whenever local customs (which were diverse and contradictory) failed to provide a solution for a case at hand or offered conflicting rules. Nevertheless, customs remained the fundamental source of positive law in southern France as well.

The period of "intermediate law" is characterized by profound legislative transformations. Laws adopted after June 17, 1789, enshrined the dismantling of the feudal state apparatus and the creation of a new, modern system aimed at establishing capitalist property relations.

Other normative acts from this period (particularly decrees) eliminated vestiges of canon law, authorized interest-bearing loans, and abolished inequalities among heirs—granting equal shares of the inheritance to all heirs of the same degree or establishing the right of representation in succession matters along the direct descending line without limit.

When discussing the formation of the great Romano-Germanic legal system, one cannot overlook the drafting and adoption of the French Civil Code of 1804.

Work on the draft of the new Civil Code began during the Consulate and was entrusted to a commission composed of: Fr. Touchet (President of the Tribunal of Cassation), F. Bigot de Préameneu (Government Commissioner to the same tribunal), J. Portalis (Commissioner General to the Council of Maritime Prizes), and J. de Maleville (member of the Tribunal of Cassation). The commission was led by J.J. de Cambacérès (Consul) and overseen by Napoleon.

The drafting process took four months, and the text was subsequently submitted for debate before the Council of State (spanning 102 sessions). Subsequently, the draft was presented (by Portalis) to Parliament for debate; it was noted that the authors had sought to preserve customs and royal ordinances as much as possible, discarding only those "whose spirit had vanished in the face of

a new spirit" while retaining those "linked to the great changes that had occurred in the political order."

The Civil Code was adopted between 1803 and 1804 in the form of 36 separate laws, which were consolidated into a single code on March 21, 1804. It was structured into three books of varying length, further divided into eight titles.

The reception of French law worldwide. It is estimated that the reception of French law—spanning vast territories and an impressive number of inhabitants—surpassed even the global reception of Roman law.

While Roman law spread primarily through Roman occupation—across territories ruled by Rome or, via gradual expansion, into the Byzantine Empire and the Holy Roman Empire of the German Nation—French law followed multiple and diverse paths of reception.

French legislation (particularly civil and commercial law) was introduced in many territories subject to the Empire—such as Belgium, the Grand Duchy of Luxembourg, and parts of Switzerland, Germany, and Italy—as well as in other regions, including Westphalia, Hanover, the Grand Duchies of Baden, Frankfurt, and Nassau, the Grand Duchy of Warsaw, the Kingdom of Naples, and the Netherlands.

French law was retained in Belgium and Luxembourg (where codes adopted based on the French model remain in force to this day); it remained in effect for a long time in the Rhineland states until 1900, in Switzerland until 1907, and in Poland until the establishment of the socialist regime.

French law was adopted in Romania (1865), Portugal (1867), Spain (1889), and Egypt (1883) due to its exceptional qualities.

Towards the end of the 19th century, French law also spread to non-European countries. Thus:

- The Spanish Code extended to the Philippines, Panama, Honduras, Cuba, Puerto Rico, Bolivia, Haiti, and the Dominican Republic; it heavily influenced the Chilean, Colombian, Argentine, Peruvian, and Mexican codes, and—to some extent—the Brazilian code;

- The Italian Code was adopted in Malta and Venezuela, and partially in Bulgaria;

- In the Americas (Louisiana and Quebec), French law was adopted despite opposition from the Anglo-Saxon legal system.

In the first half of the 20th century, French law was directly adopted in French colonies and in Asian and African states that emerged following the independence of former colonies—states such as Indochina, the Maghreb region, Senegal, Togo, the Malagasy Republic, etc.

However, the most significant adoption of French law took place in major European countries.

b) The German-Swiss system

- **German law** represents the second major pillar of the Romano-Germanic legal tradition.

Customary law is linked to the origins of German law in the 12th and 13th centuries. Popular maxims defining the mentality of the era—such as "in the beginning was custom," "custom is sacred," and "custom is law"—were deeply rooted in the social reality of the time.

In the 13th century, famous collections of customs known as "Mirrors"—specifically the **Sachsenspiegel** (Saxon Mirror) and the **Schwabenspiegel** (Swabian Mirror)—emerged, serving as genuine consolidations of customary law.

From the 15th century onwards, Roman law began to overlay customary law within the German states; this process of reception was facilitated by the fact that the Holy Roman Empire of the German Nation regarded itself as the successor to the Roman Empire, and Roman law was consequently viewed as the law of the German Empire.

The codification enacted in Prussia in 1794 played a significant role in the formation of the German legal system.

Frederick the Great initiated the drafting of a general code encompassing private, constitutional, administrative, and penal law—and even canon law; the era's eminent jurist, Carl Gottlieb Svarez, realized this vision by creating an exceptional work: the **Allgemeines Landrecht** (ALR), which comprised 17,000 sections.

Regarding the ALR, Arminjon, Nolde, and Wolff noted that "unlike the French Civil Code, which marks the beginning of a new historical era, the ALR is the product of an age that was passing away; it remains untouched by the ideas of the Revolution. Its spirit is that of the police state."

German law experienced an unprecedented flourishing in the 19th century. The fragmentation of the German Empire did not lead to the abolition of private law; under the designation "common law" (**Gemeines Recht**), it remained consistent across many of the states that emerged from the ruins of the former empire. This period saw the rise of the famous Historical School (Savigny, Eichhorn, Pufendorf, Dernburg), which distinguished within German law between the so-called "law of the Pandects" (or "contemporary Roman law") and "German private law"—the latter comprising institutions that had developed independently of Roman law influence.

The "Pandectist" movement was notably exemplified by the following works:

- *System of Contemporary Roman Law** (**System des heutigen römischen Rechts**), authored by Friedrich Karl von Savigny; –**Pandekten** (Dernburg);

–*Textbook on the Law of the Pandects* (*Lehrbuch des Pandektenrechts*), by Windscheid. In this century, the most significant legislative achievements were:

–the Civil Code (Bürgerliches Gesetzbuch – B.G.B.), promulgated in 1869 and entering into force on January 1, 1900, and

–the General Austrian Civil Code (Allgemeines bürgerliches Gesetzbuch – A.B.G.B.).

The German Civil Code (BGB):

–represents one of the most important, yet also original, legislative monuments of the great Romano-Germanic legal system;

–introduces novel elements and highly technical language, and possesses a unique structure—all of which distinguish it from the French Civil Code and secure it a distinctive position within this major legal system;

–finds one of its primary sources in Roman law—specifically, in the German "common law" (*Gemeines Recht*) of Roman origin;

–comprises a general part containing the principles underpinning the regulation of civil legal relations, followed by four special parts (obligations, property, family law, and succession), totaling 2,385 sections;

–employs legal language that is inaccessible to the uninitiated; every term has an invariable meaning, and studying the Code is further complicated by the technique of cross-referencing between sections;

–unlike the French Civil Code, it avoids general formulations and rules with broad content.

The German Civil Code "bears the stamp of its era; the product of the Pandectist school and 19th-century German legal conceptualism, it pushes abstraction to the limit and is expressed in language that is at once rigorous and incomprehensible to the layperson."

• **Swiss Law.** As previously noted, the contribution of the two principal legal systems (French and German) to the formation of the great Romano-Germanic legal family was impressive. Swiss law, in turn, makes a significant contribution to shaping and perfecting the Romano-Germanic system, successfully synthesizing—in a distinctive manner—key legal institutions from both French and German law.

The Swiss Civil Code stands as one of the most successful codifications in Western Europe.

Adopted in 1907 and entering into force in 1912, the Swiss Civil Code replaced a series of civil codes promulgated in various cantons during the 19th century; some of these had replicated the Napoleonic Code, others the Austrian code, and others the BGB (German Civil Code).

The Swiss Code is drafted in simple language accessible to its intended audience and is written in multiple languages, reflecting Switzerland's multilingual nature. While the official text is in German, translations into French and Italian also exist.

c) The legal system of the Nordic countries

The law applicable in the Scandinavian countries (Sweden, Denmark, Norway, Iceland, and Finland) does not deviate from the characteristic elements of the Romano-Germanic legal tradition: the predominance of written legislation, the absence of the rule of judicial precedent, the minor role of custom, and the influence of Roman law.

Understanding the position of Scandinavian law—and exploring the legal systems of Sweden, Denmark, Norway, Finland, and Iceland—is no simple task, precisely because the vicissitudes of history have seen these states at times united in various forms and at other times separate.

The legal systems of the Nordic countries have held varying degrees of influence; for instance, the legal systems of Denmark and Sweden—the largest of these states—exerted a strong influence on the others. The political history of these states provides the necessary explanations: from 1387 to 1814, Norway was united with Denmark. In 1389, Sweden was conquered by Danish kings, but this occupation lasted only until 1448, when the country regained its independence. Iceland was a Norwegian province from 1264 until 1918, when it separated from Norway to become an independent and sovereign state linked to Denmark by a real union that lasted until 1944.

Finland, in turn, was conquered by the Swedes as early as the 13th century; their rule ended only in 1808, when the country was annexed by Tsarist Russia. In 1918, exercising the right to self-determination proclaimed by Stalin, the Finnish state became independent.

From 1814 to 1905, Norway formed a real union with Sweden.

All these historical vicissitudes led to the emergence of two distinct legislative groups within the private law of the Scandinavian countries: the Danish-Norwegian legal system and the Swedish-Finnish one.

In the legal systems of the Nordic countries, Roman law penetrated late and indirectly, as their courts turned to principles and concepts derived from Roman law to fill gaps in their national legal frameworks.

Over the last century, the Scandinavian countries have engaged in a continuous process of modernizing their laws, drawing upon European systems.

This modernization process—which resulted in the introduction of numerous legal institutions and regulations similar to those found in European states of the Romano-Germanic tradition—has significantly altered the provisions of the older codes. All this justifies the assertion that contemporary Scandinavian

law does not constitute a standalone system—as some believe—but rather a variant of the broader Romano-Germanic legal family.

The legislation of the Scandinavian states is grounded in the Danish Code of 1683 (*Danske Lov*), the Norwegian Code of 1687 (*Norske Lov*), and the Swedish Code of 1734 (*Sveriges Rikes Allmänna Lag*).

The Swedish Code—a codification of prior Swedish law that took over half a century to draft—is the most renowned and widely discussed of the Scandinavian legislative monuments. Although based on ancient Swedish statutes and customs, the Code reflects the principles of Roman law. While the Danish and Norwegian codes have a less developed structure—being essentially collections of concrete solutions—the Swedish code displays a more elaborate structure. It is composed of the following titles (*balkar*): marriage, succession, real estate, construction, commerce, crimes and punishments, enforcement, and judicial procedure.

Finnish law has followed a distinctive evolutionary path. After an initial period—characterized by the application of local customs and practices recorded in the national epic *Kalevala*—the Swedish General Code was adopted in 1834, subsequently undergoing various amendments over time.

Following the attainment of independence, the legal system underwent extensive modernization (spearheaded by Professor Robert Montgomery); later, after the Republic was proclaimed, legislative acts covering various areas of civil law (marriage, contracts, obligations) were adopted in 1929.

Since 1919, Finland has participated in the Pan-Scandinavian movement for legislative unification, coordination, and cooperation—an involvement that has yielded remarkable results in shaping the Finnish legal system.

3. The place of Romanian law within the Romano-Germanic legal family

Following the revolutionary transformations in Eastern Europe and the collapse of the socialist legal systems, the national legal systems of these countries resumed their place within the broader Romano-Germanic legal family. This applies to the German Democratic Republic, the Czech Republic, Slovakia, Poland, Bulgaria, Hungary, Yugoslavia, Romania, and even Russia.

Romanian law falls within the Romano-Germanic legal tradition, with origins rooted in classical Roman law and ancient Dacian law.

Romanic elements were also present in the customary law applied for centuries in both Principalities (known as *jus Valachicum*). Thus, the family was organized in a manner closely resembling the Roman model, with the central institution being *patria potestas*; this granted the head of the family—the male—exceptionally broad rights over its members—rights that, while not

extending to the **jus vitae necisque** (the right of life and death) found in classical Roman law, certainly encompassed the power of disinheritance.

In his study—which has become a classic work on the Roman character of our legal system—Andrei Rădulescu demonstrated that the influence of Roman law is evident in a range of institutions within both family law and civil law proper: adoption, emancipation, matrimonial property regimes, ownership, usufruct, servitudes, succession, and so forth.

However, one should not consider **jus Valachicum** to be a body of rules of exclusively Roman origin. Indeed, the very originality of our customary law stems from the indigenous origin of the majority of its provisions. At the same time, it must be acknowledged that Roman law was adopted in the Romanian Principalities primarily through legal codes and law manuals applied as actual laws—in other words, through normative acts.

The customary law applied in the early period was known as the "custom of the land" (**obiceiul pământului**).

Unlike the two principalities, Transylvania saw the introduction of a foreign legal system following the Magyar occupation; however, this system did not conflict with the Romanian one. Even there, **jus Valachicum** remained applicable in certain regions.

From the 14th century onwards, the influence (and adoption) of Byzantine law began to make itself felt in Moldavia and Wallachia. Examples include:

- Matthew Blastares' **Alphabetical Syntagma**, applied during the reign of Alexander the Good;

- The **Basilika**, also known as the "Imperial Books";

- The **Institutes** of Theophilus and the **Hexabiblos** by Harmenopulos (1345).

Subsequently, in the 17th century, three Romanian legal codes were added to these Byzantine law manuals:

- *Cartea românească de învățătură** (1645);

- Eustratie's Code (**Pravila lui Eustratie**) in Moldavia (1632);

- *Îndreptarea legii** in Wallachia (1632).

O. Sachelarie, a Romanian author dedicated to the study of Romanian law, highlights a unique situation regarding that period—one otherwise found only in common-law systems: the coexistence of three normative systems applied in parallel:

- customary law, which was not superseded by the introduction of the **pravile** (law codes) and applied to "simpler" cases;

- written law, represented by these **pravile**, applicable to "more complex" cases; and

- "princely law," represented by princely charters (**hrisoave**).

In the following century, significant strides were made in the reception of Byzantine law. Worthy of mention in this regard are:

- the four successive drafts (1765, 1766, 1775, 1777) of a general law code, authored by M. Fotino;
- the **Pravilniceasca Condică** (1780);
- the **Legiuirea Caragea** (1818)—a particularly important regulation which, alongside the **Codul Calimach** in Moldavia (inspired by the 1811 Austrian Civil Code), constituted the most significant legislation applied in the Principalities prior to the adoption of the Civil Code.

We also note the two **Regulamente Organice** (Organic Regulations)—of 1831 in Wallachia and 1832 in Moldavia—which provided the Principalities with an institutional structure inspired by French law. French legislation was extensively introduced into the Romanian Principalities starting in 1838. Specifically:

- in 1830, the French Commercial Code was translated into Romanian and adopted as national law in Wallachia, while in 1852, under Prince Știrbei, the Napoleonic Penal Code was adopted;
- on July 11, 1864, Prince Alexandru Ioan Cuza established the Council of State—modeled on the French system and later transformed into the Legislative Council—which was tasked with drafting a Civil Code based on the French model, incorporating modifications introduced by the Italian Civil Code of 1865;
- between 1831 and 1846, various laws of French inspiration (concerning guardianship, emancipation, **protimisis**, etc.) were enacted in both Principalities;
- in 1840, a law regarding the organization of guardianship—translated from the French Code—was adopted in Moldavia and subsequently incorporated into the Civil Code of 1864;
- in 1840, the French Commercial Code was adopted in Wallachia.

The drafting of the Civil Code project took place during a period when all of Europe was stirred by a desire for codification. Ripert and Boulanger spoke of a veritable "mystique of codification" that had spread everywhere.

The initiative to draft the Civil Code project came from Prince Alexandru Ioan Cuza (via the princely decree of July 11, 1864). The drafting commission was composed of renowned jurists: Dimitrie Roseti, Ludovic Stega, and Costache Donescu—counselors at the Court of Cassation; Tudor Veîșă—a prosecutor; Gh. Cruțescu, Grigore Filiti, and others.

The commission's work lasted 40 days. On January 15, 1865, the first three books of the code were submitted to the Legislative Assembly; the Code

was sanctioned by the Prince on November 26, 1864, and promulgated on December 4, 1864. The Civil Code entered into force on January 1, 1865.

Regarding the Civil Code thus adopted, the following points can be made:

- it does not represent a mere translation of French law; other sources were also taken into account during its drafting, such as the 1851 Belgian law on mortgages or Pissanelli's civil code draft;

- a series of innovations were introduced into the Romanian Civil Code, including the obligation to pay succession charges and debts **ultra vires hereditatis** (Art. 774 of the 1864 Civil Code) and the recognition of the right of universal legatees to the fruits of the estate (Art. 898 of the 1864 Civil Code);

- certain institutions established by tradition in Romanian law were also introduced, such as marriage impediments arising from baptismal or adoptive kinship, the husband's "enmity" as grounds for divorce for the wife, and the recognition of the impoverished widow's right of succession; Regarding the Civil Code adopted in this manner, the following points can be made:

- it is not merely a translation of French law; other sources were also taken into account during its drafting, such as the 1851 Belgian law on mortgages or Pissanelli's draft civil code;

- a series of innovations were introduced to the Romanian Civil Code, including the obligation to pay succession charges and debts **ultra vires hereditatis** (Art. 774 of the 1864 Civil Code) and the recognition of the right of universal legatees to the fruits of the estate (Art. 898 of the 1864 Civil Code);

- certain legal institutions already established in Romanian law were also incorporated, such as marriage impediments arising from baptismal kinship or adoption, the husband's "hostility" as grounds for divorce for the wife, and the recognition of the impoverished widow's right of succession;

- an important innovation was the recognition of **traditio** (delivery/transfer of possession) as a means of acquiring property (Art. 644 of the 1864 Civil Code);

- at the same time, the Romanian legislator eliminated a number of institutions found in the French Code, such as judicial separation (**séparation de corps**), **tutelle officieuse** (informal guardianship), the **curator ventris** (curator for the unborn child), the subrogated guardian, and civil death.

The Romanian Civil Code was harshly criticized by progressive forces for the retrograde spirit it often displayed and for the fact that it represented a code favoring the usurer, the creditor, and the banker. Furthermore, numerous provisions established blatant discrimination between men and women, between "legitimate" and "illegitimate" children, and between employers and employees.

Following the French model, the Romanian Civil Code proclaimed that "property is the right of a person to enjoy and dispose of a thing exclusively and absolutely, yet within the limits determined by law" (Art. 480 of the 1864 Civil Code).

In the same vein, adhering to the concept that property reflects a relationship between the holder and the object held, the Code consistently safeguarded the positions of property owners, employers, and creditors. These were, of course, not creations of the Romanian legislator, but were adopted **tel quel** from the French code.

Over time, the civil legislation adopted during Cuza's reign—particularly the Civil Code—underwent substantial amendments on several occasions.

Following World War II, the establishment of the communist regime altered the face of Romanian private law for more than four decades, gradually transforming it into "socialist law."

Thus, the 1864 Civil Code remained in force, albeit subject to numerous erosions and limitations. These include the following:

- the separation of family law regulations from the Civil Code (1954) through the adoption of the Family Code;
- the exclusion of state enterprises engaged in planned economic activity from the scope of commercial law, leading to the emergence of a new branch of law known as "economic law," alongside which a distinct "enterprise law" also existed;
- the emergence of "cooperative law," which governed relations between agricultural cooperative units.

The Code of Civil Procedure also underwent significant changes, notably regarding the promotion of the court's active role, the adoption of a two-tier judicial system, and the introduction of extraordinary appeals. Currently, the Civil Code of July 17, 2009 (approved by Law No. 287/2009, published in the Official Gazette, Part I, No. 505 of July 15, 2011) and the Code of Civil Procedure of July 1, 2010 (approved by Law No. 134/2010, published in the Official Gazette No. 247 of April 10, 2015, in force since April 10, 2015) have been in effect in our country since October 1, 2011.

4. The Anglo-Saxon legal family

Common law, alongside the Romano-Germanic legal system, represents one of the most important contemporary legal systems.

For centuries, the development of these two legal systems proceeded in parallel—on the European continent and in the British Isles, respectively—without either system exerting any significant influence on the other.

This evolution resulted in the emergence of two distinct legal environments—the insular and the continental—that remained largely unaware of one another.

The term "common law" derives from *commune ley* (common law) and traces its origins to the customs in force prior to the Norman Conquest.

Subsequently, the process of unifying local customs into a common law for the entire kingdom was carried out exclusively by the Royal Courts at Westminster.

Currently, the term "common law" carries two meanings of varying scope: in a broad sense, it designates the major legal system of English origin; in a narrow sense, it refers to one of the three branches of rules characteristic of that major legal system—or, as a contemporary English legal scholar puts it, "the most fundamental part of our law."

Common law is a legal system governing vast territories extending beyond Great Britain across three continents: Africa, Asia, and the Americas. Former British colonies—including the USA (which broke free from the political, economic, and cultural influence of the mother country)—maintain ties with the British Empire through the Commonwealth (or the British Commonwealth of Nations), connections that are predominantly economic in nature. It is particularly noteworthy that all former British colonies have retained the legacy of the common law system; some regions adopted it fully, whereas others with deeply rooted legal traditions (such as India and Pakistan) developed hybrid frameworks that incorporated both the strengths and weaknesses of these legal systems.

Common law proves to be the legal system of a feudal society into whose mold the substance of bourgeois law was cast. Viewed from this perspective, one can explain the distinctive characteristics of British law—a system defined by precedent and shaped by judicial practice.

Judicial precedent is the most important mechanism in the formation of the English legal system. The practice goes so far that, even when a statutory provision or a rule of customary law exists, judges prefer to cite previous court rulings that applied them rather than directly applying the text or rule establishing the governing principle. This state of affairs led Bentham to declare that English law is a creation of jurisprudence (*judge-made law*).

A contemporary English author has systematized the advantages of this system, the most important being: the fairness it ensures in resolving essentially similar cases; the capacity for growth and the continuous adaptation of new legal rules to changing circumstances and the demands of a constantly evolving society (hence the flexibility of the English system); the wealth of detailed rules; its practical nature, enabling it to readily address everyday needs.

The main disadvantages of the English system cited by the same author are: rigidity; once established, a rule cannot easily be altered; the risk of illogical

distinctions leading to the application of rules in situations for which they were not intended; the volume and complexity, which make it difficult to ascertain the applicable norms.

Institutions specific to "common law"

English law features certain institutions characteristic of common law, the presentation of which is essential for an accurate description of this major legal family. Some of these are linked to British legal traditions and the social arrangements characteristic of Great Britain—such as, for instance, the regulation of property rights. The conservative nature of English law has led to the preservation of a feudal-style property structure.

Property law involves a technique for protecting rights in rem that differs significantly from the approaches found in continental legal systems. The primary distinction made in common law is between **real property** and **personal property**. Simply put, **real property** encompasses rights protected by **real actions** (actions **in rem**), whereas **personal property** covers the sphere of rights protected by **personal actions** (actions **in personam**). In reality, this division is arbitrary. By analogy with the Romano-Germanic legal tradition, this classification resembles the distinction between movable and immovable property. However, the analogy is only approximate; certain categories of assets—such as movables that are treated as immovables by virtue of their intended use—do not fall under **real property** (which includes most rights over movable assets) but rather under **personal property**.

Personal Property

The concept of **personal property** comprises two categories of assets: **choses in possession**—assets capable of being possessed, such as tangible and intangible goods—and **choses in action**—assets excluded from the protection afforded by the actions specific to the first category (examples include debts/receivables, trademarks, and copyright or patent rights).

Possession—a legal concept governed exclusively by common law (in the strict sense)—gives rise to a presumption of ownership (**prima facie** evidence of ownership). The primary legal remedy available to a possessor is the action for **trespass**. Originally a tort action, **trespass** evolved over time into a broad concept designed to provide a remedy for any interference with property resulting from a physical act, regardless of the manner in which that interference occurred. The action of trespass is supplemented by the action of trover, which—unlike the former—may be brought not only against the original wrongdoer but also against any subsequent acquirer, whether in good or bad faith. In general, the term "possession" is used only in relation to movable property, whereas the term "seisin" is used for immovable property.

Real Property

The system of real property rights—real property law—offers the most striking example of the attempt to reconcile a feudal past with the new demands of an evolving society. Thus, the outward appearance of feudal property relations—though long since stripped of their original substance—was preserved to cover a vastly different reality, one corresponding to the new modes of production established following the bourgeois revolution. Under English law, all land in the country belongs to the Crown; from this perspective, landholders are not true "owners," as their rights to the land—known as **tenures**—derive from the feudal relationship of vassalage between the king and his subjects. Vassals do not "own" the land; they "hold" it. While this medieval system is today devoid of substantive meaning, it nonetheless reflects the extreme conservatism of English law. In the realm of real property, we encounter a distinctive legal concept: the doctrine of "estates"—another significant feudal remnant. In the legal systems of continental countries, the coexistence of multiple real rights over a single asset is addressed through the mechanism of the "dismemberment" of ownership. In the case of usufruct, for instance, the right of ownership is split into its constituent parts: the right of disposition (**abusus**) remains with the "bare owner," while the rights of use and enjoyment of the fruits (**usus** and **fructus**) pass to the usufructuary. English law does not employ this technique of dismemberment; instead, it allows for the coexistence of multiple "estates" regarding the same asset. Each holder possesses full ownership rights over their specific estate.

There are two main categories of estates:

- freehold estates – estates of indefinite duration (e.g., for life);
- leasehold estates – estates for a fixed term.

Settlement

Unlike Romano-Germanic law, English land law is dominated by the need to keep estates within the family, applying the principles of primogeniture and male preference. Thus, succession rules are based on the premise that the entire estate—including noble titles—must pass to the firstborn, within the framework of inalienable family settlements. This feudal regime was modified in 1925 by distinguishing between assets subject to family settlements; it was acknowledged that certain items—such as castles, armories, or art galleries—could not be alienated in any way, whereas others lacking such sentimental value could be sold, with the proceeds taking the place of the original assets within the family estate. This serves as an example of how anachronistic legislation was adapted to the capitalist economic system.

Trust

The most significant feature of English law is the institution of the trust—a concept subsequently exported to and widely adopted by the legal systems of many other states. A trust is a legal arrangement in which assets are entrusted to a specific person for a designated purpose, requiring them to be used for a particular objective. The legal relationship involves three parties, each with a distinct designation and a clearly defined role in the execution of the trust:

- settlor – the person who establishes the trust by transferring ownership of the assets;

- trustee – the person responsible for executing the trust and receiving ownership of the assets;

- beneficiary – the person for whose benefit the trust operates; He is not free to dispose of other assets as he sees fit; rather, he must use, administer, or alienate them in the interest of the **cestui que trust** and in accordance with the purpose for which the trust was established.

The legal transaction consists of earmarking specific assets for the achievement of a particular purpose; formally, these assets leave the settlor's patrimony to enter that of the trustee—without the latter becoming a true owner, but rather remaining, in essence, a mere executor. These relationships become even more apparent when the settlor and the **cestui que trust** are the same person. Within the trustee's patrimony, these assets do not merge with their own property, remaining instead as two distinct pools of assets. Moreover—and this reinforces the notion that the trustee is not a true owner—they have the right to be indemnified out of the value of the trust assets for any losses suffered in the course of execution. However, they are not entitled to remuneration, as the trust is a gratuitous undertaking.

The success of the trust is explained by the functions it performs. It serves as a substitute for gifts or legacies subject to conditions, for the dotal regime, or for guardianship and curatorship arrangements; it is designed to safeguard a person's patrimonial interests while simultaneously fulfilling the role of a testamentary executor.

A trust can be used to avoid bankruptcy or the creation of a security interest (such as a mortgage or pledge). A "trust for sale" may be established to facilitate the sale of assets, a "charitable trust" performs the role of a foundation, and a "business trust" serves as a substitute for a capital-based company.

The object of a charitable trust comprises charitable, educational, scientific, and public health activities. A characteristic feature of the charitable trust is that it remains valid even if the **cestui que trust** is not designated or cannot be identified. For under the **cy-près** doctrine, it is accepted that if a charitable trust is left without an object, or if its object becomes impossible or illegal, the court may alter the object by dedicating the assets to another

purpose—the one closest possible (which is the meaning of the expression *cy-près*) to that established by the settlor.

3. The Law of the United States of America

The law of the United States of America belongs to the broad Anglo-Saxon legal family, being the modern product of the implementation of English law on the American continent. While originating in English law, this legal system exhibits a number of differences, primarily due to the divergent evolution of the two nations. American law emerged at the intersection of common law and equity rules with the written law of the new state—a body of law that differs fundamentally from English statutory law.

However, the structure of legal sources, the principal legal institutions, and the reasoning style characteristic of English jurists remain similar, even though influences from the Romano-Germanic legal tradition have emerged over time. In this regard, it is worth noting that Louisiana—a former French colony and now one of the 50 states of the American Union—utilizes legal codes modeled on the French system. The development of North American law can only be understood by studying the historical evolution of the former British colonies. Only in this way can one grasp the gradual divergence of American law from classical common law and the unique characteristics it displays today as a legal system substantially different from the British one.

This phenomenon must be viewed against the backdrop of the colonial period, when the English colonies in North America were never unified and maintained no legal ties with one another. Upon declaring their independence, the thirteen colonies became thirteen separate states forming a federation, with each state retaining its legislative autonomy. Initially, the majority of these colonies were "proprietary colonies." The issue of applicable law in English colonies was first raised in 1608—in *Calvin's Case*—establishing that English law follows British subjects when they settle in territories "not previously ruled by civilized nations," but only insofar as the applicable rules are suited to the conditions prevailing in those territories. In the French and Spanish colonies, the influence of the Romano-Germanic legal system was far stronger; indeed, that influence persists to this day in the legal systems of those jurisdictions (such as the law of the State of Louisiana).

Drawing inspiration from common law and equity rules while rejecting those of statutory law, American law—over the course of its evolution—also adopted a series of legal mindsets derived from French and German law.

Divergences between British and North American law emerged with the proclamation of independence. Thus, although American law remains a system based on precedent, the essential role of legislative acts—and the Constitution in

particular—is recognized in the evolution of this legal system. Statutes, alongside common law and equity, are considered the primary sources of law today.

The Constitution of the United States of America was adopted on September 17, 1787; it serves as the central instrument of the American system of government and the supreme law of the land. For over two centuries, it has guided the evolution of governmental institutions and provided the foundation for political stability, individual liberty, economic development, and social progress.

The American Constitution is the oldest constitution in the world still in force, having served as a model for many others. Its enduring nature stems from its simplicity and flexibility. Originally intended to provide a framework for governing four million people across thirteen highly diverse colonies, its fundamental provisions were so wisely crafted that—with only twenty-six amendments—it now meets the needs of 255 million inhabitants across fifty states (plus a federal district) that are equally diverse and span the continent from the Atlantic to the Pacific.

The U.S. Constitution is grounded in rigorous principles, such as:

- the principle of federalism, according to which the U.S.A. It constitutes an indestructible union of independent states. The member states are independent within their own spheres, yet by adopting the Constitution, they have renounced the right to leave the Union and have recognized its right to represent them externally. The Union's powers are limited, strictly formulated, and defined. All state powers belong to the member states, which are the true holders of power; the principle of the separation of powers: legislative, executive, and judicial;
- the principle of the supremacy of the Constitution;
- the principle of limited government, which includes the guarantee that any attempt to usurp power or exercise it abusively is blocked;
- the principle of total equality before the law for individuals and the states comprising the federation;
- the principle of guaranteeing fundamental human rights;
- the principle whereby the form of national government may be changed through the means stipulated by the Constitution;
- the principle whereby the Constitution may be amended when America's socio-political and economic-spiritual reality necessitates the adoption of binding legal rules.

Under the U.S. Constitution, the review of the constitutionality of laws is vested in the U.S. Supreme Court; it is tasked with examining and determining—through a special legal recourse—whether laws were enacted within the scope of legislative competence, and it has the authority to strike down laws of the federated states if it deems them unconstitutional. The principle regarding the legislative competence of the federated states was established in 1791 by the Tenth Amendment to the United States Constitution: "The powers not delegated

to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Thus, federated bodies possess legislative competence only in exceptional cases, and solely to the extent that such competence is grounded in a provision of the Constitution. Currently, this rule is interpreted very broadly by federal courts, which have accepted an increasing number of situations where federated authorities have been recognized as having the competence to legislate.

The first ten amendments to the Constitution, known as the Bill of Rights, are essential to and characteristic of the American legal mindset. According to the Fourth Amendment, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

In criminal proceedings, an indictment is issued by a grand jury, and the accused has the right to a speedy and public trial by an impartial jury of the state or district wherein the crime was committed; he is confronted with the prosecution's witnesses and has the right to the assistance of counsel for his defense.

It is observed that, just as in English law, trial by jury is maintained in American law (a right conferred in the United States by the Fourth Amendment to the Constitution); however, the formalism characteristic of the English legal system is significantly reduced in this instance.

Unlike the Constitution, ordinary statutes appear to hold little authority in and of themselves. A U.S. Supreme Court decision is often cited in this regard, in which the Court refused to examine whether a law enacted in a specific state was constitutional until judicial precedent had clarified the law's true meaning through interpretation.

A primary characteristic of the American legal system—which emerged under the influence of the continental system—is the attempt to systematize legislation through the publication of systematized case law compilations. The first of these is the *Restatement of the Law*, produced by a private organization (the American Law Institute); although not considered official, it enjoys significant scholarly authority. Over the years, nineteen volumes of this work have been published, comprising the most important cases representative of the American legal system. The subjects covered in the *Restatement* include:

- a) Contracts – two volumes published in 1932;
- b) Agency – two volumes published in 1933;
- c) Conflict of Laws – one volume published in 1934;

- d) Torts (civil liability for wrongful acts) – four volumes published between 1934 and 1939;
- e) Property (real rights) – five volumes published between 1936 and 1944;
- f) Security (personal and real security interests) – one volume published in 1941;
- g) Restitution (quasi-contracts) – one volume published in 1957;
- h) Trusts (regulation of trusts) – two volumes published in 1935;
- i) Judgments (procedural issues) – a volume published in 1942.

Although it does not constitute a source of law (akin to the "Digest"), the Restatement carries great authority within the American legal community.

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