

The second lecture

Section Two: The spread of the Latin-Germanic legal system

This system expanded and spread inside and outside Europe

- 1- Its spread within Europe:** The Latin-Germanic system spread in Europe with the issuance of the French Civil Code, influenced by the ideas of the French Revolution of freedom, fraternity, and equality. Some European countries adopted this law, such as Belgium and Luxembourg, and other countries such as Italy and Austria adapted it. Then, with the issuance of the German Code, comparative study was activated, as it was modified. Other countries borrow their civil laws, such as Switzerland.

Thus, French and German laws were considered essential sources for Eastern European countries, such as Poland and Czechoslovakia, in addition to Russia, which was considered a member of the Roman-Germanic family. However, it quickly deviated from this system and abandoned it by adopting the communist system, which has a different legal structure, so Eastern European countries joined it after adopting it. Communist regime.

- 2- Its spread outside Europe:** This system spread outside Europe through French, Spanish, and Portuguese colonialism in Africa, the north of which was

influenced by the Latin Germanic system due to colonial control. Egypt was also affected by this group despite being subject to English colonialism for a period of time, in addition to North America, which was affected. It includes the state of "Louisiana" in the United States of America, the state of "Quebec" in Canada under French law, and Latin America due to Spanish and Portuguese colonialism.

Japan was also influenced by Roman-Germanic laws, and Turkey also took from them. As for the Arab Gulf countries, although the provisions of Islamic Sharia were applied to a large extent, they were in turn influenced by this legal body, especially by quoting many issues from Egyptian law, which was partly taken from this family. Codifying the laws of this system has greatly contributed to its dissemination in many countries of the world.

The second requirement: the legal structure of the Latin-Germanic legal system

The legal systems of the countries of the Roman-Germanic family differ in the field of public and private law, respectively, the first because of the difference in their political and administrative systems, and the second because of the disparity between them in terms of the degree of development. However, there is a similarity between their laws in terms of the essential legal elements, especially with regard to the divisions of law. And the characteristics of the legal rule, which will be explained later.

The first section: similarity in terms of divisions of the law

Roman-Germanic family laws are similar in terms of the basic divisions of the law as well as in terms of its subdivisions.

Similarity in terms of basic divisions: The law in the Roman Germanic system is divided into public law and private law, and this division derives its source from Roman law, where public law includes the provisions regulating state facilities, while private law, which remained dominant in Europe for a long time, regulates relations between individuals. Ordinary matters and the disputes that could arise from them, as judges used it extensively in resolving disputes and disputes.

Due to the accusation that the judge was impartial when the administration was a party to the dispute where the interests of individuals conflicted with the public interest, the judge began to take into account the necessity of reconciling the interests of individuals with the interests of the state, whereby rules arose under which the state was subject to the law until they were actually embodied in the establishment of the

French Council of State and then spread to many countries.

Other countries were later defined as the set of rules that govern the functioning of intervening bodies to achieve the public interest in terms of their organization and functioning. As for private law, it is the set of legal rules that regulate relations between individuals.

Similarity in terms of subdivisions: The laws of the Latin Germanic system are similar in terms of subdivisions of law, as public law includes constitutional, administrative, fiscal, criminal, and public international law, while private law includes civil law, commercial law, labor law... It was divided into a law relating to persons, a law relating to funds, and a law relating to lawsuits. Funds were also divided into immovable and movable, material and moral, and liability was divided into those based on personal actions and others based on the actions of others, in addition to distinguishing between liability based on positive error and negative error. Dividing contracts into consensual and formal, as well as contracts binding on two sides and others binding on one side. As for personal status law, it was derived from Latin Germanic law from church law.

The laws of this system: are also similar in legal systems, concepts, and terminology. The reason for this similarity between the laws of the Latin-Germanic system is the unity of their source, which is Roman law and canon law. However, some countries derive their laws from local customs, which makes these rules different and not similar to the laws of this system. Other countries. As for the laws derived from international customs, such as commercial law, they are similar. This is because the commercial customs that were formed in the Middle Ages were linked by jurisprudential schools of thought to Roman law, and countries included them in their codification.

The second section: similarity in terms of the characteristics of the legal rule

In addition to the similarity in divisions, the laws of the Latin-Germanic system are similar in the characteristics of the legal rule. They are characterized by generality and abstraction. They address the general public without being specific to their characteristics, not to themselves, which allows each individual to realize the consequences of his actions in advance.

The characteristic of generality and abstractness results in the fact that the legal rule in this system is few compared to the Anglo-Saxon system, as its generality and abstractness extend to a large number of facts. The brevity of these rules also makes them sometimes shrouded in ambiguity, which opens the way for the judge to exercise discretion to remove this ambiguity and remove it through... Resorting to interpretation of the rule.

The legal rule acquired the characteristics of generality and abstraction in this

system thanks to the efforts of jurists who used to establish general provisions that apply to concrete or assumed facts. The legal rule was formed from these provisions to be a rule of conduct and not a rule for specific solutions in and of themselves.

Third requirement: Characteristics of the Latin-Germanic legal system

The Latin-Germanic legal system has a number of characteristics that can be summarized as follows:

Section One: Codification

It means arranging and classifying the rules regulating every field of life and including them in a single code after removing any contradiction that may be present in it, issued by a body charged with legislation in the form of a law that follows certain standards, such as not delving into scientific definitions or partial details, in addition to Adopting flexibility in formulating legal rules so as to allow the judge, when applying them, room to develop appropriate solutions according to the circumstances of each case before him.

This mechanism, which was called for by the men of the French Revolution, has many advantages that are credited to it, perhaps the most important of which are:

- ✓ It makes it easy to know the legal rules and then apply them, which made it a necessity called for by the practical needs of our current era.
- ✓ It contributes to the unification of the law within the state. An example of this is what happened in France when legal unity was achieved by issuing various codifications after they were scattered in many laws.
- ✓ Achieving equality between individuals in society by enabling all individuals to be informed of the legal rules in advance by publishing them, making them available to everyone, so knowledge of their content does not have a monopoly over that.

Section Two: Influence by Roman law

Roman law dominated Western European countries and controlled them until the fall of the Western Roman state in the late fifth century AD, when Roman law began to decline in this region, especially during the Middle Ages, so that the twelfth century witnessed a strong return to the application of Roman law in Western Europe with the introduction of some amendments to it.

It helped to revive Roman law, represented by the study of Justinian's collections, because the judge in the Middle Ages, the Renaissance, and modern times, until the issuance of the Napoleonic Code, did not issue his rulings according to binding codes,

but rather relied on justice, which at that time was only derived from Roman law according to the dominant idea in In that era, legislators relied primarily on Roman law in the legislation and laws they issued, both in form and in substance.

Thus, Roman law dominated Europe, especially Western Europe, from the twelfth century AD until the issuance of modern legal collections in France and the countries from which they were taken, without the issuance of such collections affecting Roman law, as Napoleon's group adopted the explanations and writings of commentators on Roman law who They directly preceded the French Revolution, and among the most famous of them were the famous French jurists Domat and Pothier. Thus, Roman law turned into a historical source for Napoleonic law and the laws of the countries that were taken from the latter, including the Arab countries.

Section Three: Judicial duality

In countries that adopt the Latin legal system, there are two different judicial bodies. The first decides on disputes that arise between private individuals, i.e. persons of private law, and it is the regular judiciary. The second decides on disputes that arise between the public administration, as it has authority and sovereignty, and individuals, or between public administrations, as it has authority and sovereignty. Persons of public law and it is called the administrative judiciary. This distinction between the two aforementioned judicial bodies was derived from the special interpretation put forward by the men of the French Revolution of the principle of separation of powers.