

Research of the Formation and Development of Common Law System

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Abstract: There are two kinds of legal systems in the world, including civil law systems and common law system, where there are great differences in many aspects, such as legal origin, legal technology, judicial organization and litigation system. However, with the integration of global economy, there is a trend of integration between civil law system and common law system. This paper first expounds the concept of common law system, then analyzes the characteristics of common law system, analyzes the formation process of common law system, and finally tries to discuss the development trend of common law system.

1. Introduction

There are mainly two legal systems, civil law system and common law system, all around the world nowadays. The common law system refers to the general name of the laws of the countries and regions that came into being and developed from the Middle Ages to the capitalist period in England. Because it is mainly represented by the common law, which began to appear in the Middle Ages, it is named the common law system, also known as the English law system. American law is an important part of common law system, so it is also called Anglo-American law system. This paper mainly discusses the formation and development of common law system.

2. The concept of common law system

2.1 The concept of law system

Legal system is a common concept in western law. It is generally believed that any national law that has some common characteristics in content and form and forms a traditional or factional law belongs to the same legal system. Therefore, the so-called legal system of western law is mainly a method to classify the laws of various countries according to the characteristics of law and historical tradition. Western jurists are also very inconsistent in the division of legal systems, but many legal works discuss the legal system, including common law system, civil law system, Chinese legal system, Indian law system and Islamic law system. In addition to the civil law system and the common law system, the rest of these five legal systems have basically become concepts in the history of legal system.

2.2 The concept of common law system

The common law system, also known as the British law system, the common law system, is the general name which is based on the British law since the Middle Ages, especially its common law. The Anglo-American law system first originated from the common law which appeared in the form of case after the Norman invasion of England in the 11th century. The scope of Anglo-American law system, with the exception of Britain (excluding Scotland) and the United States (except Louisiana), is mainly a country and region that was a British colony and dependent country, such as India, Pakistan, Singapore, Myanmar, Canada (except Quebec), Australia, New Zealand, Malaysia, etc. Hong Kong, China, also belongs to the Anglo-American legal system.

Unless the laws of a project need to be made by statute law because of the needs of the objective environment or in order to resolve disputes, it is only necessary to assess who is right and who is wrong according to the local habits of the project in the past. Common law is the law of case law, not the law of enactment. It is a set of legal system suitable for the whole society, which is formed

by judges on the basis of local customary law.

Generally speaking, this kind of legal system distinguishes who is right and who is wrong according to the public order and good custom formed in people's daily life, does not attach importance to the prestige of academic background, and forms a jury with civilians, even if there is no express stipulation, as long as it does not conform to the concept of judging right and wrong by jury, it is illegal. This can avoid lawbreakers from taking advantage of the law, and can solve more controversial cases, which is also conducive to the progress of people's moral quality.

3. The characteristics of common law system

The common law system is mainly based on British common law; taking case law as the main form of expression, following precedents; relatively slow and conservative, the thinking habit of looking backward; judges play a prominent role in the development of law; the system is complex and lack of systematicness; and is paid attention to the procedural litigation centralism.

3.1 The ownership of legislative power belongs to the legislature and judges

The basic structure of Anglo-American law system is established on the basis of the classification of common law and equity. Historically, statutory law represents the law of the legislature (parliament) and the law of the judicial body (judge) (case law). Equity is the law applicable in the event that the common law cannot make up for the loss, and equity is the supplementary rule to the common law. In the common law system, legislative power is actually vested in the legislature, that is, Parliament and judges. Parliament formulates relevant laws in accordance with legislative procedures and empowers the executive authorities to make administrative regulations, as well as judges to create case law.

3.2 Both enacting law and case law are the sources of law

Case law and enactment law in common law system are the source of law, and case law is the basic source in many cases. The judges of common law system should first study the previous decisions of similar cases, draw out the general principles applicable to the present case, and then make a judgment in this case. In the form of law, case law occupies an important position. Traditionally, the case law of common law system dominates, but from the 19th century, its enactment law also increases, but the formulation law is still restricted by the interpretation of case law. Case law generally refers to the legal principles or rules established in the decisions of the High Court. Such principles or rules are binding or influential on subsequent decisions. Case law is not statutory law, because these rules are created by the judge in the hearing of the case, which is also known as the law of the judge.

In addition to case law, there are a certain number of laws in common law countries, as well as some codes, such as the uniform Commercial Code of the United States, the Constitution of the United States, and so on. However, compared with the civil law system, its enactment law and code are still very few, and its influence on the legal system is far less than that of case law.

3.3 Integration of substantive law and procedural law

The common law system has attached great importance to the writ and the form of litigation from the beginning, and the division of this form of litigation itself lacks logic and systematicness, so it hinders the scientific research of legal classification by British jurists. The common law system's substantive law and the procedural law often combine together, the substantive law pays attention to the procedure from the beginning, even the evidence supply way also has the strict request.

3.4 Different judicial organizations

In judicial organizations, the common law system is not as complete as the civil law system. For example, the United Kingdom does not have the Ministry of Justice. Although the United States has the Ministry of Justice, the Attorney General is also the Attorney General. In the common law

system, the jury is not a member of the collegial tribunal, and the jury only determines the fact part, and the legal issue is decided by the judge. In the common law system, civil litigation is attended by a jury.

3.5 There are great differences in litigation activities

The common law system adopts the system of debate or quality, that is, the lawyers of both sides in civil proceedings, the public prosecutor and defendant lawyers play the main role in criminal proceedings, and the judge is only acting as a neutral adjudicator. The party concerned has the burden of proof. Evidence must be presented in the presence of the party, otherwise invalid, the party may confront the other witness in court. In general, the judge cannot interfere in the investigation of evidence or expand the scope of evidence investigation. He is limited by the evidence provided by the client, and the role of the judge is to weigh the evidence in the case in front of him.

4. The formation of common law system

4.1 First of all, it originated from England.

The common law system first originated from England. Before and after the Normandy invasion, the chaotic mixture of laws and customs promulgated by the King of England was the basis of British feudal law. The development of the king's judicial system, especially the circuit judge system, that is, sending Carea members to local taxation and judicial proceedings accelerated the process of compiling the mixed legal materials unique to each region into common laws throughout the country. Roman law also had some influence on the transformation, and then the common law of England came into being.

After the Duke of Norman conquered England in 1066, in order to consolidate his rule, he carried out the system of land partition and centralization. Among them, the Royal Council is an important institution under centralized rule. He mainly assisted the king in dealing with legislative, executive and judicial affairs. Later, the institutions dealing with judicial affairs gradually became independent. Because the Normanic people did not have their own laws before, their laws were formed through the decisions of these courts, that is, case law. These decisions are binding on the decisions of the District Court, with the expansion of the jurisdiction and influence of the royal court. Its case law has formed a great influence on the law of the whole country. The case law of the Royal Court is the common law applicable to the United Kingdom. It is mainly aimed at the customary law of various places. In the time after the emergence of the royal court, there was the coexistence of royal court and district court and church court. Local courts (including county courts and Baihu courts) mainly apply customary law; church courts mainly apply church law, mainly jurisdiction over marriage, family, inheritance, adultery. The conflict between the three is inevitable. The royal court expanded its influence by issuing a lawsuit commencement order. The so-called commencement order means that the plaintiff can request the king to do justice, and then issue a writ through the king's minister, which requires the county sheriff to be responsible for ordering the defendant to meet the plaintiff's request or to stand trial in a royal court.

4.2 Extended to British colonies or dependent countries and regions

The common law system began in England and later expanded to many countries and regions that used to be British colonies and dependent countries. From the 18th century to the 19th century, with the expansion of British colonies, British law was introduced into these countries and regions, mainly including the United States, Canada, India, Pakistan, Bangladesh, Malaysia, Singapore, Australia, New Zealand and individual countries and regions in Africa. The Anglo-American law system has finally developed into one of the main legal systems in the world. There are also two major tributaries in the Anglo-American legal system, namely, British law and American law. There are some differences in legal classification, constitutional form, and court power and so on. The main feature of Anglo-American law system is to pay attention to the continuity of the code, with

case law as the main form.

5. The development trend of common law system

The development trend of common law system is to integrate with civil law system. In terms of the actual attribution of legislative power and the origin of law, the difference between the two legal systems is gradually narrowing after entering the 20th century. Although the civil law system does not recognize the legislative power of the court in theory, in practice the court plays an important role in the creation of the law, that is, in the process of interpreting the legislation, filling the legislative gap and making the legislation concrete. Although jurisprudence is generally not recognized as a source of law, in fact, the existence of a system of appeals makes it necessary for lower courts to decide without taking into account the decisions of higher courts in similar cases. In recent years, the judicial organs of some civil law countries, such as the French State Administrative Court, the German Federal Constitutional Court, the Swiss Federal Court, the Spanish Supreme Court and others, have also used case law or recognized the binding force of jurisprudence in some respects. On the other hand, since the entry of common law countries into the 20th century, there has been a great increase in the number of statutory laws, and many people have emphasized that the statutory law is superior to the case law, and they believe that the case law cannot be violated, and the enactment law can be modified and the case law abolished.

After World War II, transnational law, such as European Common Law, which has both the characteristics of international law and domestic law, appeared. Common law is applicable not only to member States, but also to citizens of member States. In the case of conflict between common law and domestic law, common law takes precedence over domestic law. Especially after Britain joined the European Community, community law became part of British law and enjoyed priority. This marks the beginning of the integration of the laws of common law countries with the civil law system in some ways.

6. Conclusion

In a word, the common law system has its own characteristics. With the development of social economy and politics, it tends to integrate into the civil law system. However, due to the historical tradition and other reasons, the differences between the two legal systems coexist for a long time, and scholars still need to strengthen the research.

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