

СИСТЕМА ПРАВА В АНГЛИИ И АМЕРИКЕ: СРАВНИТЕЛЬНЫЙ АНАЛИЗ

А.А. КОСАРИНА, МГУ им. М.В. Ломоносова⁽¹⁾,
А.Е. ФЕДОТОВА, МГУ им. М.В. Ломоносова⁽¹⁾

alexa7979@yandex.ru

⁽¹⁾ФГБОУ ВО МГУ им. М.В. Ломоносова, филологический факультет
119991, Москва, Ленинские горы, ГСП-1, 1-й корпус гуманитарных факультетов

Система правовых отношений, принятая в той или иной стране, напрямую зависит от многочисленных факторов, таких как развитие страны на протяжении истории, культурные особенности территории, принятые обычаи и традиции и др. На сегодняшний день известны две наиболее распространенные системы права – римское право и противопоставленное ему англосаксонское право. Римское право принято в европейских странах, в то время как англосаксонское – в Англии и США. Статья ставит целью разграничить между собой особенности англосаксонского права в Англии и США, выявив особенности права в каждой из вышеперечисленных стран. Помимо этого, большой упор делается на проследивание исторического процесса возникновения правовых отношений в Англии, что в конечном итоге и привело к становлению англосаксонского права.

Ключевые слова: право, римское право, англосаксонское право, историческое развитие, система права.

The system of law in different countries differs depending on numerous factors, such as development of a certain country throughout the history, cultural specific features, accepted customs and traditions, etc. Nowadays there are two main legal traditions in the world – Civil Law and Common Law, the former accepted in Europe and Russia, the latter – in England and the USA. At the first glance it may seem, that Common Law system in America and in England is quite the same, however, if one looks closer at the subject, certain differences will come to light. The given article seeks to highlight these differences and to trace the process of development of Common Law system in England.

Civil Law is a legal system which developed in continental Europe at almost the same time as Common Law and was applied in the colonies of European imperial powers such as Spain and Portugal. Civil Law is codified. Countries with Civil Law systems have continuously updated legal codes that contain all matters applicable in legal procedures. Civil Law is also used in the Russian Federation. The Russian Civil Law system was borrowed from the Roman Law through Byzantine tradition. In the 18th-19th cc. it was under strong influence of German and Dutch norms. During the Soviet period, certain modifications of the Socialist style took place and since the 1990s the Russian Civil Law system has been under the influence of the Continental European Law.

Common Law is used in England, Wales and Northern Ireland in the UK, the Republic of Ireland, the USA, Canada and many other English-speaking countries. Many Russian and foreign scholars have studied the historical aspects of English Contract Law, for example: K.K. Yaichkov, A.S. Komarov, I.V. Beklenisheva, A.D. Koretsky, R.O. Halfina, V. Anson, F. Pollok, E.A. Farnsworth, and others [1-8].

Common Law is not codified. It is based on the doctrine of precedence: judicial decisions that have been previously made in similar cases. Precedents are binding upon the judges and the court procedure. However, sometimes Common Law relies on statutes, which are legislative decisions. The presiding judge determines what precedents are to be applied to a new case. In consequence, judges play an enormous role in the countries with the Common Law tradition.

As N.G. Sannikov states, *“for historical and other reasons English law developed insulated from the continental reception of Roman law and the civil law emphasis on codification and systematization of law. Hence, the fundamental differences between civil system of law and English common law – differences relating to the very substance of law, its structure, sources of law and even terminology and methodology”* [1, C. 3]. The author points out that English law has developed its own unique doctrines and postulates, such as: trust, estoppels, trespass, etc.

Later some of these notions were accepted by Civil Law countries.

English law is mostly referred to as Common Law, however, it consists of three different systems of law:

- 1) Common Law;
- 2) Equity Law;
- 3) Statutory Law. [1, C. 3]

To understand the distinction between these categories it is necessary to look back and to examine the origins of the English law. According to N.G. Sannikov, English law did not exist at all before the arrival of the Normans in 1066. Until then the *“Anglo-Saxon legal system was based on local communities”* [1, C. 4]. Each area had its own courts and local customs. However, the Normans initiated the process of the centralization of the country, which laid the basis for the emergence of a uniform system of law throughout the country. The members of Curia Regis (King’s Council) were sent from Westminster to all parts of the country to collect taxes, make land records, etc., but with time, their powers became more and more considerable. These commissioners turned into so-called justices, who initially applied local customs during hearings, but then these customs were replaced with the rules applicable to the whole country. Thus, a single pattern of law in England was formed: customs were meticulously studied and analyzed, the unreasonable ones were eliminated and the selected ones were later applied in similar cases. This is how the Common Law of England was created. The courts had emerged by the end of the 13th century and they were known the Courts of (Common) Law and sat at Westminster. [1, C. 4]

Thus, it can be concluded that one of the main features of English Law is that it is custom-based.

However, with time, the Common Law turned out to be a very rigid system: it was almost impossible to see justice from courts. The citizens began to send thousands of petitions directly to the king who could not cope with them and gave them to the Curia Regis. Thus, a committee to hear the petitions was set up. According to N.G. Sannikov, *“the hearings were presided over by the Chancellor and in time petitions were addressed*

to him alone”. In the 15th century, the Court of Chancery was established as the Chancellor was the only one to hear the petitions. Thus, the Equity Law emerged. The Chancellor examined the situation himself and made a decision, which seemed to him to be fair and just. Thus, the second feature of English Law is that this Law is ‘judge-made’. [1, C. 5]

For several centuries, there were two completely independent legal systems in England, which provoked harsh criticism, as the citizens in case they wanted to obtain justice from two courts had to bring two separate actions there. The same situation was observed in case a person brought action to the wrong court – he could not get a remedy until he brought action to the right court. In the 19th century, a reform was made to eradicate the drawbacks of the system. The two courts were merged and every judge could administer both Common Law and Equity Law in his court. The process of bringing actions was also facilitated to the citizens. Still Common Law and Equity Law remained two separate systems, now complementing each other. [1, C. 6]

Statute Law is made by statutes. Statutes are *“the laws passed by legislature or the highest law-making body of a country”* [1, C. 6]. In England, these are the Acts passed by both Houses of Parliament and approved by the Queen. It should be mentioned that Statute Law even now remains incomplete and differs from various Codes in countries with Civil Law system.

Another two categories of law to discuss are Public law and Private law. According to N.G. Sannikov, *“the distinction between these two main spheres of law dates back to the third century AD when it was first introduced by a Roman lawyer Ulpian. This division with the reception of Roman law by civil law countries became the most prominent feature of classification of law in those countries”* [1, C. 10]. In England, as it has already been mentioned, the main division of law is into Common Law and Equity Law, and thus, such categories as public law and private law were not adopted in the country. However, in modern studies this classification is recognized and included in many textbooks on the subject.

Public law regulates the relations between individuals and government, and includes such branches as constitutional and criminal law.

As for the Private law, it deals with the rights and duties of individuals and private disputes between them. Private Law includes such branches as:

- 1) Contract Law;
- 2) Tort Law;
- 3) Property law;
- 4) Trust law;
- 5) Family law;
- 6) Labour law. [1, C. 11]

Moreover, certain attention should be paid to the law system in the USA and especially to its difference from that of England. American law belongs to the Common Law family. It has many common features with English law, such as: divisions of law into common law, law of equity and statutory law, the same branches of law, the doctrine of a precedent, misinterpretation, trust, etc. Still, despite similarities there are considerable differences. When in 1776 America gained independence, its law began to develop independently from that of England, although the country still remained the model for American lawyers. [1, C. 14]

American law is much more codified than English law. According to N.G. Sannikov, *"the first attempts at codification date back to the 18th century and culminated in the promulgation of the Uniform Commercial Code (UCC)"* [1, C. 14]. Nowadays, this code is adopted in all the states except Louisiana, which was a former French colony and derived many law principles from the Napoleon Code.

Another difference consists in the so-called restatements of law. Restatement of law is an attempt taken by an American Law Institute (ALI), a legal organization of distinguished professors, judges and lawyers, in order *"to present an orderly statement of the general common law of the United States, including in that term not only the law developed solely by judicial decisions, but also the law that has grown from the application by the courts of various statutes"*. [11, C. 438]

It should be pointed out that though restatement is not a code, it is often used to

facilitate the process of search for relevant precedents and is intended to be the basis for court's decisions. It allows American lawyers (unlike English ones) not to cite specific cases, but simply refer to relevant sections of the UCC, or the Restatement, or both.

Thus, it can be concluded that there are two main legal traditions in the world: Civil Law and Common Law, the latter adopted in England and the USA. Common Law is not codified; it is based on the doctrine of the precedent; it is custom-based and 'judge-made'.

Though English and American Common Law systems are very much alike, there are certain differences. Thus, American Common Law is much more codified compared to the English one, for example, there are restatements of law, which are secondary sources that seek to 'restate' the legal rules that constitute the Common Law in a particular area. The American Law Institute has written restatements in 15 law areas including Torts, Contracts, Property, Conflict of Laws, Foreign Relations Law, and Products Liability. Restatements have considerable influence on the judicial process. Many courts have adopted Restatement sections as the law of their jurisdiction. Moreover, many professors of law rely on Restatements in their courses.

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THE SYSTEM OF ENGLISH AND AMERICAN LAW: COMPARISON ANALYSIS

Kosarina A.A., Faculty of Philology, Lomonosov Moscow State University⁽¹⁾; **Fedotova A.Ye.**, Faculty of Philology, Lomonosov Moscow State University⁽¹⁾

alexa7979@yandex.ru

⁽¹⁾Lomonosov Moscow State University, Faculty of Philology, Russia, 119991, Moscow, 1-51 Leninskiye Gory, GSP-1, 1st Corps Humanitarian faculties

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Key words: law, Civil Law, Common Law, development in history, law system.

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