

Colonial Law's Role in the Formation and Consolidation of Contemporary Legal Families

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Abstract

The paper examines the role of colonial law in shaping the contemporary map of legal families, tracing, through a comparative-historical method, how two European traditions came to structure legal orders across every continent. The starting point is the distinction between legal system, legal family, and legal tradition. The central thesis begins from one observation: colonial law did not create the Romano-Germanic family, nor did it create the common law, for both had already taken shape in Europe before the imperial expansion; colonization changed their scale, however, turning two continental traditions into global families. Diffusion followed distinct paths: the continental model exported the text, the code that could be applied by distant administrations, while the English model exported the method, formed around courts, procedure, and precedent. The colonial transplant left behind, in place of copies of metropolitan law, mixed and hybrid systems, in which European law was superimposed hierarchically upon customs and religious norms fixed by the administration. The persistence of codes, institutions, and legal language explains why today's map still preserves the contours of former empires. Belonging to a family concerns form, however, rather than the quality of the law: the legal family proves to be a historical dominant, and comparative law cannot read its own classifications outside their colonial genesis.

Keywords: comparative law; legal transplant; legal families; colonial law; mixed and hybrid legal systems.

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1. Introductory Considerations. Legal Families and the Legal Geography of Colonialism

The classification of national legal systems into major legal families belongs to the ordinary toolkit of comparative law. By reference to common criteria (the sources of law, normative technique, the role of the judge, legal language, the cultural foundations of the legal order), the comparatist orders a vast normative reality and captures affinities between orders sometimes separated by great geographical distances. The Romano-Germanic family and the common law family thus appear as the two major models of Western legality, each with its own genealogy, its own institutions, and its own technique for constructing the legal rule².

The usefulness of this classification is beyond dispute, but usefulness should not be mistaken for neutrality. Legal families are not natural realities, given once and for all; they remain doctrinal constructions, through which the comparatist seeks to give coherence to a complex legal history. They describe, but they also simplify; they explain, yet they leave the premises of their own formation in shadow. One of these premises, perhaps the least examined in the classical literature on the major legal systems, is colonialism. Classical approaches describe legal families through their internal features: sources, technique, the role of the judge; the present study traces them, by contrast, through their colonial genesis, convinced that the form of a legal family is clarified only through the history of its diffusion³.

The contemporary map of legal families cannot be explained solely by the prestige of Roman law, the force of modern codifications, or the capacity of the common law to adapt through case law. Such elements explain the formation of the major traditions within their European space of origin; they say much less, however, about how the same traditions came to structure legal orders in Africa, Asia, Latin America, Oceania, or the Caribbean. Between the European genealogy of legal families and their current worldwide geography stands the colonial experience⁴. The two families existed prior to modern colonial expansion and had

² René David and John E. C. Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, 3rd ed. (London: Stevens, 1985), 17–22; Leontin-Jean Constantinesco, *Tratat de drept comparat. Vol. 1: Introducere în dreptul comparat* [Treatise on Comparative Law. Vol. 1: Introduction to Comparative Law] (Bucharest: ALL, 1997), 11–16; Victor Dan Zlătescu, *Geografie juridică contemporană: Introducere în teoria marilor sisteme de drept* [Contemporary Legal Geography: Introduction to the Theory of Major Legal Systems] (Bucharest: Editura Științifică și Enciclopedică, 1981), 15–22.

³ On the critical perspective regarding the colonial genesis of legal categories, see Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005), 37–45; Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002), 5–9.

⁴ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 1996), 17–21; James Thuo Gathii, “Africa,” in

developed their essential features within European space: the Romano-Germanic family on the foundation of Roman law, university legal scholarship, and the great codifications; the common law family around the English royal courts, precedent, and a pragmatic, procedural understanding of the legal rule. Colonialism changed their historical scale. Through colonization, two European legal traditions became global families.

We consider that this transformation took place through two structurally distinct mechanisms. In the case of the Romano-Germanic family, the code functioned as the principal vehicle of diffusion: a written, systematic, portable text, capable of being imposed directly or received through legislative reform. The common law, by contrast, relied on the organization of the courts, on procedure, on precedent, and on the controlled integration of local customs. The distinction goes beyond technique, for it expresses two conceptions of what is exported when a colonial power transfers its law: the continental model exports the text, the English model exports the method⁵.

Alongside administrations, armies, language, and economic models, the European metropolises also exported legal forms: codes, statutes, courts, procedures, property registers, commercial rules, criminal norms, criteria for validating local custom. The result was not uniform. In some territories systems close to the metropolitan model took shape; in others, hybrid orders formed, in which European law coexisted with customary law, with religious law, or with local institutions reshaped by the colonial administration. These hybrid orders, far from being mere taxonomic anomalies, are the structural trace of colonial superimpositions. From this follows a consequence that we will trace throughout the study: the legal family must be regarded as a historical dominant rather than as a pure form⁶.

The approach is comparative-historical: it sets the continental model alongside the common law and relates them to the conditions under which they spread⁷.

The Oxford Handbook of the History of International Law, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2012), 407–428.

⁵ Alan Watson, *Legal Transplants: An Approach to Comparative Law*, 2nd ed. (Athens, GA: University of Georgia Press, 1993), 21–25; Bogdan Cristian Trandafirescu, “Perioada marilor codificări în familiile de drept romano-germanice” [The Period of the Great Codifications in the Romano-Germanic Law Families], *Ars Aequi* 10, no. 1 (2020): 16–26.

⁶ Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), 1–40; Mamdani, *Citizen and Subject*, 16–18.

⁷ On comparative method and its application to the study of major legal systems, see Leontin-Jean Constantinesco, *Tratat de drept comparat. Vol. 2: Metoda comparativă* [Treatise on Comparative Law. Vol. 2: The Comparative Method] (Bucharest: ALL Educațional, 1998), 4–51; Mark Van Hoecke, ed., *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011), 17–19. Against the background of the classical literature on the major legal systems, see René David and Camille Jauffret-Spinosi, *Les grands systèmes de droit contemporains*, 10th ed. (Paris: Dalloz, 1992); Zlătescu, *Geografie juridică contemporană*; Anghie, *Imperialism, Sovereignty and the Making of International Law*; Benton, *Law and Colonial Cul-*

Within the present study we will confine ourselves to the structural effect of the colonial phenomenon: the way in which colonial experience shaped the contemporary map of legal families. The analysis first distinguishes the concepts of legal system, family, and tradition, and the mechanisms of reception; it then traces the two paths of colonial projection, codification and judicial precedent; and finally examines the mixed and hybrid systems and the post-colonial continuities through which the map of empires became today's map of legal families. How much of this map is, in reality, the map of yesterday's empires? This question will guide the entire analysis.

2. Legal Families, Legal Reception, and Normative Transplant

2.1. Legal System, Legal Family, and Legal Tradition

The notions of legal system, legal family, and legal tradition describe three levels of legal reality, and their delimitation conditions the understanding of how colonial law shaped the legality of the contemporary world.

The legal system represents the effective legal order of a community: the rules in force, the sources of law, the institutions that create and apply them, the jurisdictional and administrative mechanisms that ensure the functioning of the whole. It has a concrete existence, formed within a determinate social and political space. The legal family is situated on a different plane, being a category devised by comparative law in order to group systems sharing essential affinities, by reference to the structure of their sources, fundamental concepts, regulatory technique, the role of the judge, and the formation of legal reasoning. It is precisely its constructed character that limits its claims and, at the same time, explains its usefulness: it orders a diversity that would otherwise be difficult to grasp⁸.

Legal tradition, in turn, expresses the historical dimension of law: the transmission, between generations, of concepts, institutions, social values, and ways of thinking about the legal rule; it can transcend the borders of a state and can survive significant changes in positive law.

From this follows a consequence directly relevant to the present study: belonging to a legal family presupposes a common dominant, formed over time, rather than identity among the systems included. The point bears directly on colonial law. The systems of former colonies did not adopt the metropolitan law to the same degree. Their belonging to a family indicates the dominant structural

tures; Mamdani, *Citizen and Subject*; Gathii, "Africa," 407–428; and Deana Heath, *Colonial Terror: Torture and State Violence in Colonial India* (Oxford: Oxford University Press, 2021).

⁸ Andra Iftimiei, *Drept comparat și sisteme juridice contemporane* [Comparative Law and Contemporary Legal Systems] (Bucharest: Universul Juridic, 2018), 29–30; Bogdan Cristian Trandafirescu, *Teoria generală a dreptului. Curs universitar* [General Theory of Law: University Course] (Bucharest: Universul Juridic, 2025), 64–65, 100–101.

element, without exhausting the entire normative reality.

2.2. Legal Reception and Legal Transplant

The circulation of norms between legal communities long predates the modern state. Roman law was received in Europe after the fall of the Western Roman Empire; the French codes influenced continental and extra-European legislations; the common law followed British expansion. By legal reception we understand the process through which a system adopts and integrates rules, institutions, or techniques of another order without copying it wholesale: the adopted rule enters another system of sources and acquires meaning through the concepts of the receiving environment. The notion of legal transplant shifts the emphasis to the object transferred and its movement between systems. Borrowing has been one of the most fertile sources of legal development. Its thesis nonetheless reaches a point worth dwelling on: if fundamental rules of private law (matrimonial-regime solutions migrating from the Visigoths in the Iberian Peninsula, then from Spain to California) survive in societies entirely different in economic structure, then the relationship between a society and its law can be neither simple nor necessary. Law possesses a considerable autonomy from the social substratum that receives it. This autonomy has a consequence we shall encounter further on. If law does not directly express the “spirit of the people,” then the persistence of a European code in a former colony ceases to be a paradox: it becomes the particular instance of a general rule of legal circulation. Mass codification, undertaken as an effort at accelerated modernization of a legal system, in many situations almost entirely disregards the specificity of local values and traditions, as, for example, the Turkish Civil Code, adopted in 1926 from the Swiss model with minimal modifications, which functioned in a society with no historical connection to the one that had produced it⁹.

Nevertheless, a legal rule cannot circulate like an unchanged object during its journey; its function depends on its position within the system of sources, on the organization of the courts, and on the social context of its application. Identity of text does not guarantee identity of effects. Reception and transplant therefore remain complementary perspectives (one looking at the system that assimilates, the other at the circulation of the legal element), and research must establish, in both cases, who initiated the transfer, what was adopted, and with what results. These questions become decisive when circulation takes place within a colonial relationship.

2.3. The Specificity of Colonial Legal Transplant

Reception may have a voluntary character: a state adopts a foreign code

⁹ Watson, *Legal Transplants*, 95–102, 108, 115–118.

in order to modernize its law. The colonial transplant unfolded within a different framework, in which the power supplying the model controlled the territory, the administration, and normative production, and the choice of applicable law belonged to the metropole. Political asymmetry also determined the selective character of the transfer. Metropolitan law was introduced as a priority into administration, the protection of property, commercial activity, the organization of the courts, and criminal control; local norms survived chiefly in matters of family, succession, and personal status, on condition of compatibility with the metropole's public order. Through this mechanism, normative plurality was reorganized hierarchically: European law occupied the superior position, while custom and religious law were tolerated within a limited field, under the supervision of the colonial courts¹⁰.

The phrase "legal reception" must be used here with caution, for it may suggest a free adherence on the part of the receiving system, even though the transfer rested on the institutional force of the empire; the characterization of imposed transplant captures the origin of the process more accurately. Nor should this be understood mechanically: judges and elites trained in metropolitan law frequently reinterpreted the imported rules, and the resulting practices sometimes departed from the model. The concept of transplant allows, moreover, an observation that reveals the real stakes of the colonial process. Comparative legal literature has noted that societies borrow according to a much more prosaic criterion, the accessibility of the model, rather than according to social criteria: a foreign law is accessible above all when it is written, drafted in an easily understood language, and effectively available. This criterion, neutral in appearance, takes on an entirely different meaning in the colonial context. The metropolitan model was "accessible" because the metropole controlled the official language, legal education, and the courts.

Postcolonial critique shows what that transplant produced in the receiving society: a hierarchization of normativity, in which European law subordinates custom and religious law. The effect of the transplant manifested itself beyond the period of direct domination: the imported codes, judicial institutions, and methods became components of the functioning of the state, and political independence could not, by itself, bring about the immediate replacement of the entire normative order. The Romano-Germanic family spread chiefly through codification, the common law chiefly through courts, procedure, and precedent.

¹⁰ Benton, *Law and Colonial Cultures*, 1–15, 210; Mamdani, *Citizen and Subject*, 16–23, 109–137.

3. The Romano-Germanic Family and Colonial Expansion through Codification

3.1. Codification as a Defining Feature of the Romano-Germanic Family

The formation of the Romano-Germanic family preceded modern colonial expansion by several centuries. Its root lies in Roman law, preserved through the work of Justinian and brought back to the center of European legal life by the medieval universities; from the Roman texts, the glossators, post-glossators, and pandectists drew concepts and principles applicable to a reality different from that in which they had been conceived, building a common law founded on the rationalization of institutions. Modern codification gave this tradition a unified legislative form: the bourgeois revolutions, the assertion of the national state, and the transformation of economic relations called for an accessible and predictable law. The French Civil Code (1804), the Commercial Code (1807), and the great German codifications reorganized private law around general categories; statute law acquired the central position within the system of sources, and the code became the legal expression of the unity of the state¹¹. Codification fixed a distinctive manner of conceiving law: the general and abstract rule, institutions arranged systematically, the solution deduced through interpretation of the norm, the authority recognized to legal scholarship. It was precisely this structure that recommended codification, first as a means of consolidating the European states (unifying territories, suppressing particularisms), and then as an instrument for organizing colonial territories.

3.2. The Code as an Instrument of Imperial Legal Projection

The spread of the Romano-Germanic family beyond Europe did not occur through a single mechanism. The intellectual influence of Roman law, voluntary modernization, and colonial domination acted at times successively, at times concurrently. Colonization matters here because it gave the transfer a scale and an institutional force that the mere circulation of ideas could not have produced.

One of the fundamental features of Romano-Germanic law (the legislative act as the principal source of law, and, among legislative acts, the code as the ultimate expression of systematization) facilitated legal export to the colonies. The legislative act could be transferred, translated, and applied by distant administrations, by officials who did not need to know the tradition from which it had emerged. Unlike case law, which requires a judge long trained in precedent, the code functions in the absence of the one who created it. The most abstract form

¹¹ Trandafirescu, "Perioada marilor codificări," 16–26.

of continental law thus proved to be also the most portable.

The French model offers the clearest example, and its path can be traced step by step. A first diffusion occurred by force of arms: the codes were introduced into Belgium, Luxembourg, the Rhenish states, part of Switzerland, and Italy, as an effect of the Napoleonic conquests, and in Belgium and Luxembourg they remain in force to this day. The same pattern reappears, in a more pronounced form, in the export of continental European law to the colonies: this too was preceded by military conquest or the taking of possession of the territory, and its effective application remained the task of the local colonial authorities, who held the power required to impose it. A second, later diffusion occurred through voluntary reception, owing to the recognized qualities of the code and the ascendancy of French culture: Romania (1864–1865), Portugal (1867), Spain (1889), Egypt (1883). The Iberian and Italian states, themselves possessors of vast empires, transmitted the model further: the Italian code was received in Malta and Venezuela, the Spanish code, *tal quale*, in Cuba, Puerto Rico, and the Philippines. A third wave followed decolonization, the French codes remaining in force in the Maghreb, Indochina, Senegal, Togo, and Madagascar, because they represented relatively modern legislation, and the new states often lacked jurists qualified to draft a new one¹².

This filiation, with its dates, supports a fact that the mere assertion of French influence cannot prove: the Romano-Germanic family spread along traceable paths, through the transmission of determinate texts, rather than diffusely. The dualist conception of private law, enshrined by the French Commercial Code of 1807, offers the clearest illustration. It was adopted by the Dutch code (1811), the Belgian and Egyptian codes (1824), the Turkish code (1830), the German code (1861), and, through the latter, the Austrian code; through the Spanish (1829, 1885) and Portuguese (1833) commercial codes, it penetrated Latin America, where the codes of Uruguay (1869), Colombia (1869), Mexico (1889), Peru (1902), and Bolivia (1934) are of Spanish inspiration, while the Brazilian code is of Portuguese inspiration. A European conceptual distinction thus transmitted itself, through the chain of colonial and postcolonial codes, across an entire continent¹³.

The code performed in the colonies a function different from the one for which it had been created. In the metropole, codification had affirmed civil equality and the legal unity of the nation; in the colonies, the same normative forms coexisted with personal statutes, separate jurisdictions, and exceptional regimes. The declared universality of the code did not mean universality of legal status: settlers benefited from the common law, while indigenous populations remained subject to differentiated regimes.

Algeria illustrates this legal regime well. French technique and institutional structure penetrated the local legal order, while Muslim personal status

¹² Zlătescu, *Geografie juridică contemporană*, 54–56.

¹³ Trandafirescu, “Perioada marilor codificări,” 22–24.

continued to function within a limited field, under the supervision of the administration. It was precisely through this asymmetric arrangement that the Romano-Germanic family took durable root: the Algerian Civil Code of 1975 combined French technique with Islamic norms in matters of personal status, bearing in its very architecture the mark of colonial reception. The same pattern is found in Francophone Africa and in Indochina.

Spain and Portugal projected the Romano-Germanic tradition along an earlier route, extending Castilian and Portuguese law over their overseas territories before the great codifications of the nineteenth century.

3.3. Colonial and Postcolonial Receptions of the Continental Model

Colonization extended the Romano-Germanic family without reproducing metropolitan law, and the degree of penetration varied considerably. Comparative scholarship distinguishes two types of reception: a direct, almost complete one, where the legal elites were of European training (Latin America, Louisiana, Quebec); and a partial, stratified one, in which the European code remained an upper layer placed over a customary normative mass (Francophone Africa). In the first case, the continental model became the common law of the entire society; in the second, it governed administration and the economy, leaving family and communal relations to a tolerated but subordinate normativity, the content and scope of which were fixed by the administration or the courts, and whose application could be refused whenever the local norm conflicted with public order or with the colonial conception of civilization. The imperial legal space was, in Benton's formula, a fabric of overlapping jurisdictions and exceptions, in which each colony constituted a differentiated zone of legality, rather than a smooth space¹⁴.

Colonial codification reduced normative diversity in the fields to which it actually extended, without everywhere creating a single law; it placed local pluralism within a controlled hierarchy, in which metropolitan law became the general reference point, while indigenous norms acquired a conditional validity.

Former colonial states faced, after independence, a structural choice: the immediate abrogation of the codes would have created a normative vacuum; their wholesale retention would have perpetuated an order tied to imperial domination. The frequent solution was provisional continuity, followed by successive reforms. The codes were amended or replaced, yet the basic structure remained close to the continental model: the division of branches of law, the centrality of statute, normative technique, the university training of jurists, and the organization of the courts continued to indicate membership in the Romano-Germanic family, even where customary and religious law returned in certain fields or received broader constitutional recognition.

¹⁴ Benton, *Law and Colonial Cultures*, 31, 141, 210; Benton, *A Search for Sovereignty*, 1–40.

Voluntary reception of the same model clarifies, by contrast, the specificity of the colonial transfer. The Romanian Principalities received French law in 1864–1865 for reasons of modernization and under the ascendancy of French culture, and the new Civil Code of 2009 enshrined, on the Italian model, the unity of private law. Reception was, here, the choice of a sovereign state, organically integrated into an affine legal culture; in the colonies, the same model arrived by administrative means, superimposed upon a subordinate local normativity. The legal form is the same, but the path by which it arrived, and its relationship with pre-existing law, are entirely different.

After independence, the Latin American states adopted national codes of the continental type, combining French influence with the Iberian tradition, because the administration, the legal professions, and the categories of private law were, by their training, of colonial origin; the same accumulation explains, in many African and Asian states, their belonging to the Romano-Germanic family, rather than the simple adoption of a code.

In conclusion, we may state that the political rupture (the attainment of independence) proceeded faster than the change of legal culture. The model received nevertheless remained intact nowhere: reinterpreted, supplemented, and at times contested, it generated systems that belong to the continental European legal tradition without reproducing the law of any metropole.

4. The Common Law Family and Colonial Expansion through Judicial Precedent

4.1. The Common Law as Judicial and Procedural Law

The common law family took shape within a historical framework different from that of continental law. Its origin lies in the activity of the English royal courts and in the solutions elaborated for concrete disputes; the legal rule emerged gradually from judicial practice, retaining a closer connection with procedure and with the circumstances of the case than the general and abstract norm characteristic of the Romano-Germanic family. From this follow the importance of precedent, the particular structure of its concepts, and the central position of the administration of justice, of the rules of evidence, and of the enforcement of judgments¹⁵.

This genealogy also determined the mode of expansion. Whereas the continental model projected itself through a concentrated legislative body, the common law circulated together with the institutions that produced it: courts, forms of action, legal professions, the technique of precedent. Where the continental European metropolises sent a text, Great Britain sent an institution. The distinction

¹⁵ Trandafirescu, *Teoria generală a dreptului*, 77–81, 87–90, 105–109.

should not be absolutized (English law contained numerous statutes, and continental law presupposes its own judicial practice), but it captures the center of gravity of the two traditions: legislative ordering of the subject matter, in one case; the continuity of judicial solutions, in the other.

The British Empire was matched by a principle of projection formulated early on: the English subject “carries English law with him,” hence a legal extra-territoriality in favor of Europeans, coupled with separate jurisdictions for indigenous populations¹⁶.

The introduction of English law did not presuppose the immediate application of all the rules of the metropole; it was sufficient to establish courts modeled on British ones and to gradually integrate the principles of common law and equity. The apparent flexibility concealed an unequal relationship: the colonial judge was trained in the concepts of English law, operated within a hierarchy built by the empire, and evaluated local norms by metropolitan criteria. The common law thus spread through a professional culture capable of reproducing the British model even in the absence of a general codification.

4.2. The British Empire and the Globalization of the Common Law

The British Empire transformed the common law from an insular law into a family present on several continents, through the network of courts, administrations, and legal professions that survived the dissolution of the empire. The transfer was not identical everywhere: the difference lay in demographic proportion rather than in doctrine. In settler colonies, where the indigenous population was numerically marginalized, the common law rapidly took the position of general law; in India and in Africa, the scale and persistence of the local social order indirectly imposed indirect rule: administration through English law, colonial legislation, and conditional recognition of local law¹⁷.

India offers the most revealing case, because here the expansion of the common law reveals a paradox. English law penetrated through courts, procedure, and the training of jurists; at the same time, the administration resorted to codification on an unprecedented scale: the Indian Penal Code (1860), the Indian Evidence Act (1872), the Indian Contract Act (the same year). The principal drafter of the Penal Code, Thomas Babington Macaulay, was the very embodiment of the uncoded tradition; he endowed India with a penal code more systematic than anything England itself possessed¹⁸. The tradition that had rejected

¹⁶ William Blackstone, *Commentaries on the Laws of England*, vol. 1 (Oxford: Clarendon Press, 1765), 104–6; Heather J. Sharkey, “African Colonial States,” in *The Oxford Handbook of Modern African History*, ed. John Parker and Richard Reid (Oxford: Oxford University Press, 2013), 151–170.

¹⁷ Zlătescu, *Geografie juridică contemporană*, 150–157.

¹⁸ Indian Penal Code, Act No. 45 of 1860; Indian Evidence Act, Act No. 1 of 1872; Indian Contract Act, Act No. 9 of 1872; Heath, *Colonial Terror*, 33–36.

codification at home produced it, in the colony, in its most ambitious form.

Codification did not make India a Romano-Germanic system: the codes were interpreted within a jurisdictional order modeled on English law, and judicial reasoning bore the imprint of the common law and of equity. The needs of governance could thus modify the form of the exported law.

Standardization concerned the matters essential to administration and public order (criminal law, procedure, evidence, commerce), while personal status remained tied to religious affiliation. Hindu Law and Mohammedan Law applied in matters of family and succession, but interpretation rested with British judges, who worked with translations, compendiums, and European categories. The administration did not preserve pre-existing traditions; it selected, delimited, and transformed them into rigid normative bodies, redefining religious practices as “personal law” applicable to administratively defined categories.

Expansion also produced autonomous variants: United States law adapted to the federal structure, Canada retained the common law alongside the civil law of Quebec, South Africa combined Roman-Dutch law with British influences in procedure and precedent. The common law family does not form a uniform bloc; it brings together systems linked by origin, method, and professional culture, each with its own solutions.

4.3. Administered Customary Law as a Structural Layer of Colonial Common Law

The British model did not systematically seek the elimination of customs: their retention reduced the costs of governance and allowed local authorities to be used as intermediaries. Recognition nonetheless remained conditional: the norm applied within a field established by the administration and under the supervision of the colonial courts, the repugnancy clauses permitting the exclusion of any custom incompatible with natural justice or with public order¹⁹.

What matters essentially is not so much the control itself (found, in different forms, in all empires) as its structural effect on African common law. The custom applied was not identical to the practice that preceded colonization: the administration selected interlocutors, fixed competences, and transformed flexible rules into apparently stable norms, while traditional authorities received powers they had not previously held. Customary law became, in part, the product of the colonial state. Mamdani described this construction through the bifurcated state: the citizen belonged to the civil order, while the colonial subject was administered through custom and local authority, the separation overlapping the distinction between urban and rural.

English law does not recognize a layer of “administered customary law”

¹⁹ Benton, *Law and Colonial Cultures*, 127–166; Mamdani, *Citizen and Subject*, 16–18, 109–137.

defined by criteria of communal belonging; this is a creation of colonization. African common law systems inherited a structure that the metropole did not have: a general law of English inspiration, superimposed upon a customary law codified and hierarchized by the colonial administration.

After independence, numerous states retained the courts, procedures, and principles they had inherited. This continuity is not explained by inertia alone: the colonial model had formed legal professions, law faculties, and a common administrative language, whose replacement would have called into question the functioning of the newly constituted state. Precedent and procedure remained the central elements of the family, but colonial experience had associated them with codifying legislation, with religious personal law, and with the hierarchical administration of custom. The resulting systems bear the imprint of English law without being copies of it. British colonial law extended the common law on a global scale and, at the same time, compelled it to transform itself.

5. Mixed and Hybrid Systems. The Limits of Pure Classifications

5.1. Bijuralism, Mixed System, and Legal Pluralism

Dividing the law of the world into families presupposes identifying the dominant element of each system. Few contemporary systems reproduce in full the model from which they derive, and the distance becomes greatest where successive colonial dominations have superimposed traditions formed in different historical environments.

Three concepts order these situations: bijuralism, the mixed system, and legal pluralism.

Bijuralism designates the coexistence, within the same state, of two legal systems applied to distinct territories. The classic example is Canada: in Quebec, private-law relations are governed by continental civil law; in the other provinces, by the common law.

The mixed system presupposes a closer connection: the traditions apply to the same territory and act upon the same relations, influencing each other, for example, a continental institution interpreted by common law methods, or a common law rule adapted to civil-law concepts. The result is a structure that can no longer be assigned to either of the originating traditions. South Africa is the clearest example: its law represents a combination with a logic of its own rather than a pure form, Roman-Dutch or English.

Legal pluralism has the broadest scope: the simultaneous existence, within the same social space, of several normative orders (state, customary, religious), each with its own sources of legitimacy and forms of dispute resolution²⁰.

Quebec and Louisiana preserved a nucleus of continental private law

²⁰ Andra Iftimici, *Drept comparat și sisteme juridice contemporane*, 2nd ed. (Bucharest: Universul Juridic, 2020), 294–97.

within a jurisdictional environment dominated by the common law, through the succession of colonial powers. South Africa offers the most instructive mixed structure: Roman-Dutch law, retained in private law after the establishment of British authority; the common law, introduced through legislation, the organization of the courts, procedure, and precedent; African customary law, retained in communal relations. Frequently presented as exceptions, these orders reveal the mechanism by which legal systems are formed: transfers of sovereignty, peace treaties, and territorial reorganizations have left their mark on the structure of the law, and the mixed system is the legal memory of these successions.

5.2. Customary Law and Religious Law under Colonial Administration

Colonial authorities recognized certain customs, but reserved to themselves the power to identify, formulate, and validate them. Traditional law (oral and flexible, transmitted through proverbs, without a class of jurists) was captured in written collections, its interpretation entrusted to state officials and judges. Fixation in writing distorted the norm: a supple custom acquired the form of a rigid rule, and religious law was extracted from its doctrinal environment and reduced to a body of norms applicable to an administratively defined group.

Pluralism was itself a colonial project. Empires formed overlapping jurisdictions, personal regimes, and enclaves of differing intensities of authority; the colonial state used this diversity to administer the territory and differentiate populations rather than eliminating it²¹. India illustrates the pattern through the coexistence of colonial legislation, common law institutions, and Hindu and Muslim personal laws; similar situations formed in Africa, where European law regulated administration, commerce, and criminal matters, while custom remained within the field of family and succession.

Colonial policies were nonetheless not identical. The Portuguese authorities in northern Mozambique treated Islamic practices as local customs rather than as a distinct legal system, and did not elaborate, unlike the British, Dutch, or French administrations, a coherent body of “Islamic law” for the courts. Muslim communities nevertheless continued to follow the Shafi‘i legal tradition, and the local order combined Portuguese law, African customs, and Islamic practices that the administration had failed to systematize²².

Hybridization, however, does not result solely from a deliberate legislative policy; it may also arise from the limits of administration, from the resistance of communities, and from the persistence of normative networks older than the colonial state.

²¹ Benton, *Law and Colonial Cultures*, 127–209.

²² Liazat J. K. Bonate, “Portuguese Colonialism and Islamic Law in Northern Mozambique,” *History in Action* 6, no. 1 (2018): 18–20.

5.3. Hybridization as Mechanism and Structural Effect

A hybrid system arises when the components of an order have been so reshaped through contact that they can no longer be related back to their traditions of origin, rather than constituting a juxtaposition of rules of different origins. Unlike the mixed system (in which institutions of heterogeneous origin stand together while retaining their features), a genuine hybrid is a synthesis from which the initial state can no longer be reconstructed.

The South African trust illustrates the mechanism. It retains the English name and conception, but reception was partial: the office of trustee, as a position subject to public control, derives from English law; the constitution and revocation of the trust remain governed by Roman-Dutch law; and the English rule whereby the beneficiary need not except for the trust to become irrevocable was consciously rejected²³. A hybrid represents a selective recombination rather than a mixture: each institution is split into elements adopted and elements refused.

The encounter of these layers does not take place between equals. In South Africa, Roman-Dutch law, uncoded, was gradually eroded by British common law, applied with the unconditional authority of precedent and sustained by the training of jurists in Britain. The dominant element of a hybrid system is determined by the institutional force of each layer rather than by seniority.

Classifying South Africa within the Romano-Germanic family, India within the common law, or Mozambique within the Portuguese tradition is justified by the identification of a structural dominant, but none of these classifications describes the system in its entirety: the sources, the organization of the courts, private law, and personal status may point to different affiliations. Legal families are tools of orientation: they indicate the principal genealogy, the predominant technique, and the professional culture of jurists; they do not express every normative layer of a society.

Mixed and hybrid systems call for fine and precise distinctions. The legal family designates the dominant outcome of a historical evolution, one that can coexist with institutions from other traditions and can change through case law or reform. Colonial experience multiplied these configurations: empires carried norms across borders, reorganized local rights, and created differentiated jurisdictions, and the layers thus formed survived independence as elements of post-colonial systems. The globalization of legal families extended certain models, but compelled them to function in environments that altered their content and meaning.

²³ Watson, *Legal Transplants*, 55–56.

6. Postcolonial Continuities and the Contemporary Map of Legal Families

6.1. The Persistence of Colonial Codes, Institutions, and Legal Language

Independence changed the holder of sovereignty, while leaving the legal infrastructure standing. The new states retained the codes, courts, procedures, and administrations formed during the period of domination, for their immediate replacement would have paralyzed public life and private relations. Continuity answered a practical necessity, even though the rules retained originated in an order that independence sought to remove.

In the former French territories, continental legislative technique continued to shape the legislator, and the French language remained the language of administration, education, and legal practice. In the Anglophone space, the courts, procedure, and precedent retained their central position. Independence brought new constitutions, without dislodging the professional culture in which judges, lawyers, and officials had been trained²⁴.

Jurists trained in the European categories (property, contract, liability, public authority) continued to read social reality through them. Continuity was uneven from one branch to another: administration, commerce, and procedure proved more resistant, whereas in matters of family, succession, and personal status independence sometimes allowed the return of customary or religious law. The colonial legacy is found in texts as well as in the institutions that produce law, in the training of jurists, and in a silent hierarchy: state law of European origin, tied to administration and the formal economy, and custom, relegated to community and tradition.

6.2. Continuity and Adaptation in the Postcolonial Period

Contracts, property, and the activity of the courts could not be suspended until a new order was elaborated: the postcolonial legislator started from existing law. To this was added path dependence (an installed legal infrastructure sustains itself, for its reform requires resources and qualified personnel that independent states often lacked) and a common language for relations with the former metropole and for international circulation. Stability nonetheless had a price: the postcolonial order risked reproducing institutions cut for purposes other than those of the society that inherited them²⁵.

The postcolonial state also inherited the divisions of the colonial administration. The distinction between citizen and subject, between the urban and rural

²⁴ Sharkey, "African Colonial States," 151–170.

²⁵ Mamdani, *Citizen and Subject*, 16–18, 109–137.

orders, did not disappear with independence. This persistence did not annul the capacity for action of the new states: the inherited law was amended, reinterpreted, and at times replaced, and communities continued to form their own rules. Continuity was a process of selection: some institutions retained for their usefulness, others through inertia; some norms preserved, but with new purposes.

6.3. Legal Families as Historical Dominants

The persistence of colonial structures explains today's configuration of legal families. The states of the former British Empire are placed within the common law because the courts, procedure, precedent, and professional culture bear the imprint of English law; the former French, Spanish, or Portuguese territories relate to the Romano-Germanic family through the centrality of statute, codification technique, and institutional organization. This classification designates a historical dominant, not the complete structure of the system: a state may belong to the common law and still make extensive use of codes, just as a continental system may harbor religious or customary law within personal status.

Belonging to a family concerns legal form, not the quality of the law. Colonialism exported the architecture of the rule-of-law state (codes, courts, procedures), without transferring its substance as well. Law often worked as an instrument of power rather than as a limit upon it: a system may bear the entire structure of the common law or of continental law and still harbor an arbitrary practice. The legal family designates a structural dominant, not a guarantee regarding the content of the order.

The world's legal geography preserves the contour of former empires without reproducing it. National reforms and the new globalization of law (European Union law, international conventions, commercial harmonization) have shifted the boundaries and are increasingly bringing the two families closer together. The colonial origin nevertheless explains why certain sources, institutions, and methods still occupy the dominant position within a system today.

What postcolonial states recover as authentic tradition (custom, religious law) is, to a large extent, the version fixed and rigidified by the colonial administration. The return to traditional law unknowingly reactivates a construction of the colonial state. Imperial experience shaped both the imported law and the form in which it is resisted.

Classifying a legal order requires more than identifying a code or a rule on precedent: one must examine the institutions that apply the law, the training of jurists, the language of legal scholarship, and the relationship between state law and the other normative orders. The legal family is the sediment of a historical evolution, not an invariable model. Colonialism extended the two great European families on a global scale and, at the same time, multiplied their local forms, for the imported model everywhere encountered societies with their own institutions, which reshaped it.

The two great families cover a significant part of the world, yet each comprises systems lying at great distances from their European model of origin; their unity rests on genealogy and dominant structure, not on normative identity. Classification retains its orienting function on a single condition: that it be read historically. Beneath the apparent unity of the legal family lie strata of norms, institutions, and practices sedimented in different periods, carrying the memory of power relations that have outlived empires.

7. Conclusions

The two great European legal families took shape within the historical matrix of the continent. The Romano-Germanic family was forged through the reception of Roman law, through university legal scholarship, and through the great modern codifications; the common law grew up around the English courts, procedure, and precedent. The great geographical discoveries, however, opened a different stage. Colonial expansion sought control of resources, the supply of metropolitan economies, the opening of markets, and the extension of fiscal power. Such an enterprise could not function by military force alone. Economic exploitation, the administration of territories, and the organization of exchange required norms, institutions, and jurisdictions. Together with language, administration, and cultural models, the European powers exported their law as well. The transfer was not requested by the receiving societies; it was imposed through political domination. The colonial period thus became the moment in which European legal traditions exceeded their original space and turned into families of worldwide reach.

The export of European law took place along several paths. The continental model circulated chiefly through the written code, systematic and easily transported from one territory to another. The English model spread through courts, procedure, precedent, and the formation of a professional culture capable of reproducing the metropole's law at great distance from it. The distinction between text and method expresses the center of gravity of the two traditions, without constituting an absolute separation. British codification in India shows that the needs of colonial governance could modify the form of the exported law: recourse was had to the code whenever uniformity and administrative control made it useful.

The resulting legal order was not a copy of metropolitan law. European institutions were superimposed upon customs, religious laws, and local forms of authority. These were retained selectively, fixed in writing, and subordinated to criteria set by the colonial administration. The imported law reshaped local normativities, and these in turn influenced the application and meaning of the European institutions. Mixed and hybrid systems appear, from this perspective, as normal effects of the colonial circulation of law.

Independence changed the holder of sovereignty without being able to

replace, within a short time, the entire legal infrastructure. The codes, the courts, legal language, and professional training had become components of the functioning of the state. Postcolonial states modified, selected, and redirected the inherited institutions, using them for their own purposes.

A system's belonging to the Romano-Germanic family or to the common law indicates its dominant genealogy, the structure of its sources, and its professional culture. It does not express the entire normative reality and offers, by itself, no guarantee as to the quality of the law. The legal systems of the new postcolonial states represent stratified historical formations, in which metropolitan law, local normativities, and postcolonial reforms overlap without ever fully merging.

The contemporary map of legal families preserves the contour of former empires. Without the integration of this history, classifications describe the form of the systems but leave their worldwide spread insufficiently explained.

The contemporary circulation of law unfolds within a framework different from that of colonialism. European Union law, international conventions, and commercial harmonization are making the boundaries of legal families increasingly permeable. What remains current is the question of the authority that selects the models intended for standardization, the mechanisms through which they acquire legitimacy, and the order they consolidate after reception.

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