Chapter 3

Equity in “Space”. The Treatment of Equity in Different Legal Systems and Codes of Law

As important as the examination of equity through time is that examination which takes into consideration the other great coordinator in the study of phenomena: space. Equity varies according to which legal system is being treated of. RENÉ DAVID sets out as the best known, contemporary, legal systems, the following: “Western” Law, with two groups, these he designates the “civil law” group and the “Anglo-American” group. Then, there are: “Soviet” law; “Islamic” law; “Hindu” law; and “Chinese” law.

In dealing with equity, we might group legal systems by planes, in line with the three-dimensional scheme followed in this study. On the plane of facts, we would place the “equity” of Anglo-Saxon systems, with its roots clearly in the factic, with judge made law; on the most properly legal plane, that of norms, we would situate the family of Roman-German systems. Finally—and by way of questioning rather than affirming—might we speak of such legal systems as the Islamic and the Judaic as being on the plane of values? And, might this even also hold for the Soviet system—as a sort of negation of all value, value being of the superfluous superstructure, and hence to be abolished? We are aware that the three part division does not provide any absolute precision, and is never 100% adapted to reality, still we consider it does have a certain approximation to the real state of affairs amongst our chosen legal systems. Anglo-American legal systems tend to the factic. Continental systems, of a legalistic type, have a normative slant, par excellence. And—very close in semblance to the axiological of law—we indeed find Islamic or Judaic law, with the religious aspect very much in evidence. In what follows, we analyze these three types of system, and their different variants, beginning with Anglo-American “equity”.1


1. **Factual Plane: Anglo-American Equity**

1.1. **Introduction**

Although it is certain that Anglo-Saxon systems, as opposed to those we call “Continental”, reveal a minimum common denominator, an identical hard core, nevertheless, an in-depth analysis into the reality of the case allows us to appreciate clear differences amongst the various countries this block represents, since it is not possible to talk of any uniform Anglo-Saxon culture. There exist many sorts of “common law” systems, if we not only consider the English system, but also the Scottish, the Irish, and all the different States of the United States, the systems found in the ex-colonies Canada, Australia or New Zealand.

We might say that to the “common law” family belong, with certain exceptions, almost all the English-speaking countries. For their importance, and each with its own peculiar characteristics, we should basically highlight two systems: English law—historically occupying the most relevant position—and United States’ law—an offshoot of the plant, the ancient Metropolis, England, and of enormous importance in our time.

In turn, within English law, one must make a series of observations regarding its sphere of application. English law is limited to England and Wales. It does not cover Scotland—where a hybrid system is in place, which is, in part, similar to Continental law—or Northern Ireland, or the Channel Islands, or the Isle of Man.

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