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Abstract:

The term of “legal transplant” is commonly used in the field of comparative law even though the exact meaning of this notion is still disputable. The term became popular due to Alan Watson’s works and is closely related to Watson’s view that creation of law often does not simply mirror the socio-economic factors (e.g. religious beliefs) of a given society. For this reason, the borrowing (i.e. “legal transplant”) of legal norm or even a legal order from other societies may be the most effective way of developing law in the area of private law. Consequently, for Watson, socio-economic factors affect the shape of law to the very limited extent.

In legal history, there are a few cases which seem to support Watson's opinion and are classified as typical examples of effective legal transplants. One of the most notable is the legal reform in the Republic of Turkey after WWI. In that period, Turkey adopted a number of legal codes of foreign origin. One of the most notable was the Swiss civil code of 1907 that was “translated” into Turkish and promulgated in 1926.

For this reason, current Turkish legal system constitutes an interesting source of knowledge on the long-term fate of legal transplants. It allows to check how legal transplants can work and develop; in particular to verify if they follow the similar path as the original legal act, find their own way or even return to some local pre-transplantation patterns.

The area of primary interest is family law, because this branch of private law is commonly recognised as the field in which local socio-economic factors tend to affect the shape of law widely. For this reason, this manuscript is focused on betrothal as one of the most specific institutions which, in fact, in many legal systems is treated merely as a legal relict and as a matter of custom that is not regulated by statutory law. However, both the Turkish Civil Code

and the closely related Swiss Civil Code contain the separate regulation of betrothal; though the approach to this institution significantly differs in these two legal systems.

Thus, the comparative analysis, depicting the differences between the past and present regulation of betrothal and betrothal-related aspects in Swiss and Turkish civil law may give an insight in the functioning of legal transplants.