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CONDITIONS OF LEGAL TRANSPLANT: A STUDY WITHIN THE SCOPE OF THE PHILOSOPHY OF LAW

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ABSTRACT. It is challenging to establish conditions for a flexible and uncontrolled legal phenomenon, such as the phenomenon of legal implantation, because it is changing by changing its constituent elements. Yet, we have tried to establish two conditions: general conditions close to the legal transplant process, which can apply to almost all legal transplants. We called these conditions (verification conditions). Once these conditions are met, we are facing an integrated legal transplant. These conditions include; the first condition indicating there should be a transition of the legal base from one country to another. The value of this requirement is excellent in terms of the distinction between legal transplantation and other transfers of legal rules between countries. The second requirement of verification is that the legal law transferred is foreign of foreign origin, i.e., foreign from the receiving legal environment. The third condition is that the legal transplant should occur in the receiving state's legal system. As for the second type of conditions, which we called (conditions of success), they are conditions related to the success of the legal transplant and achieving its desired objectives, and this type of conditions falls under it a lot of sub-conditions, so we tried to put titles for these conditions characterized by the capacity of the meaning, to understand many details, which can not be searched to make them independent addresses, These conditions are: the condition of legal participation and legal harmony, and this condition represents the fundamental foundations of the legal families, and the second condition is the cultivation of laws that have proved successful in the exporting country, and the importance of this condition lies in avoiding going into the experience of new statutes or has not yet succeeded. This condition is urgent in the success of the legal transplant process in terms of the political will of the law to be implanted in terms of identifying its pros and cons, in addition to the awareness of this political will with the needs, problems, and desires of its society, which makes it choose the right lawyer for its social environment.

JEL Classification:
K12, K13, K20

Keywords: legal transplant, the phenomenon of legal implantation, Iraqi law

Introduction

The legal ¹ transplant is not the result of the moment when the term legal transplantation was coined in the 1970s by the Scottish jurist ²Watson, but rather a milestone in the depth, influence, and influence of human thinking for centuries since the first time the laws emerged in Mesopotamia and were influenced by heavenly ³messages. After being saturated with the Law of The Armenians, European schools developed legal thought to regulate the interlocking human behavior. The legal transplant is flexible and close to the circumstances of its constituent elements ⁴, namely, the state issuing the law, the legal rule to be implanted, and the receiving form ⁵. The legal process may reach the cultivation of a complete legal system such as the drafting of constitutions for some countries⁶, the drawing of the legal systems of the occupied states during the period of the colonial expansion of the European states, and the dominance of the victorious states in the world wars on most countries, including The Arab countries, especially Iraq, and drawing the legal systems of those countries in line with their expansionist objectives and controlling their capabilities and natural and human resources, to the terms of globalization produced by the twenty-first century. ⁰⁷ The United States⁸ and other terms mainly were to control the world. In the face of this great diversity of legal transplants, the conditions of each operation had to be necessarily followed by an unspecified difference in the conditions of each operation⁹.

To be informed of the idea of legal transplantation, two types of conditions had to be established: general conditions relating to the legal transplant process regardless of its success or failure, i.e., the needs that we have, we are facing an integrated legal transplant, in addition to another type of conditions that relate to the success of the legal transplant, i.e., the available conditions, i.e., we are facing a successful legal transplant, and this is what we will address in two requirements: The first requirement is to discuss the

(1) why He was Over there Consensus on term Transplantation Legal where Had been Over there discussion raging between Jurisprudents Law , Only We Adopted in Looked Being Term First For this. The idea Who she radiated under Named since 1970s Century past And in detail. More Consider :Gunther teubner ,Legal Irritants (Good Faith In British law or How Unifying law Ends Up In New Divergencies (1998) 61 The Modern Law Review, pp. 10- 13.

(2) look : John W . Cairns ,Watson ,Walton ,and the history of legal transplants , 2013, p <https://digitalcommons.law.uga.edu/gjicl/vol41/iss3/5/>.

(3) Dr. Amer Suleiman, Iraqi School in our ancient history study, Mosul University, Ibn al-Ether Printing House, 2009, p. 106, where the doctor refers in his book to the influence of Hammurabi law, especially in the texts related to personal status and the prohibitions in the message of the Prophet Ibrahim al-Khalil (peace be upon him). So did Dr. Abdul Aziz Saleh, the Old Near East, Part 1 (Egypt and Iraq), Cairo, 1967.

(4) (Beata kviatek ,Explaining legal Transplants (transplantation of EU law into Center Eastern Europe) , 2015, p21, https://www.rug.nl/research/portal/files/19622154/Complete_thesis.pdf

(5) Our use of the term receiving country instead of the term importing country ‘ Because the term importing country refers to the nature of one type of legal implant, namely voluntary legal implantation, which is the import of the law by the state by choice, without including the other type of legal implantation, which is the case of legal implantation imposed or involuntary.

(6) Paddy Bertrand State imported, alienate System Political Translate Nice vulva Dar World Third Cairo Edition First, 1996، 180ص.

(7) And globalization. in Finer Definitions she (rape cultural And aggression. symbolic on Other Cultures He takeover Cultural Western Bank on Other Cultures by means of investment Earnings science Culture in Field Contact) Consider : د. Ahmed Al, Sawi , Values Religious And culture. Globalization , Cairo , 2005 , 68 ص , margin (2) .

(8) Alan Fransworth, Amarka Law Myths Mother Facts Translate .muhammad And a float, 1.ط. Enterprises University For studies و Publishing و Distribution .Lebanon ,208، 8 ص .

⁹(Beata Kviatek, Explaining legal Transplants, on .cit , p.21

conditions for the realization of the legal transplant, with the second requirement to be devoted to discussing the needs for the success of the legal transplant.

Conditions for legal transplant verification

The conditions for achieving a legal transplant are the conditions under which we are faced with a legal transplant - regardless of the success or failure of the legal transplant - in the sense that the definition of legal transplantation by jurists is common: 10 (transfer of a legal rule or system from one country to another). The following conditions are:

1. There should be a transfer of a legal base from one country to another.
2. The legal base should be foreign from the country is cultivated.
3. The transplant should be carried out in the legal system of the receiving state.

We will look into each condition in an independent branch.

Transfer of legal equipment from one country to another

One of the first conditions to be met in the legal transplant is that there should be a transfer of the base or the legal system from his country of origin to another country. 11 It is the transfer of the law from the territory of the exporting or selected country to the territory of the receiving state. So, the legal transition between the territory and the center in a state with a political system is based on provinces such as Iraq or between one state and another state in a state with a federal 12 system such as the United States of America. Therefore, such a transition is not a legal transplant. Although however, there is legislation on the territory differs from the status, and each state has the legislation that distinguishes it from others. Therefore, this legal transition is not a transplant because it is not certified to move from one country to another.

But is every crossing of the law from one country to another according to this requirement a legal transplant? The answer is certainly not 13. Although the process of transferring the direction from one country to another is the backbone of the legal transplant, without which there is little use to discuss other conditions, whether other verification conditions or conditions of success in the first place, but not every transition of the law from one country to another can be counted as a legal transplant, there is a transition of the law from one country to another that cannot be counted as legal implantation. Similarly, the national support rule's application of foreign law cannot be regarded as legal implantation. However, we are facing a transfer of foreign law from one country to another, but within the scope of private international law. The law of transition will not become part of the national law in force of the receiving country. Still, it will be

⁽¹⁰⁾ look :Irma journal , legal transplants and comparative law , (international law journal) , 2004 , p264, available at ssrn (:http://ssrn.com/abstract=2017940) .

⁽¹¹⁾ John Gillespie , Towards a discursive analysis of legal transfers into developing east Asia ,p663.

⁽¹²⁾ In the same regard, which refers to the nature of these political systems and the laws they adopt and their differences among them, considers: Aouni Mohammed Fakhri, Rome Convention of 1980 on the law applicable to contractual obligations, distribution of sabah library – Baghdad, 2007, p. 165 and 166.

⁽¹³⁾ (Siems Mathias M. , The Curious case of over fitting transplants Essays in Honour of mark van Hoecke ,oxford , Hart publishing , 2014 , p133-146.

applied within narrow limits permitted by national law whenever necessary.¹⁴ The law moving from his country to the country where it uses remains purely foreign law without being integrated with national law or becoming part of it.

This transition has other forms other than being imposed or voluntary. The legal transition can be horizontal, which transfers the law from one country to another, or a vertical transition when the law is transferred from an international organization to any country ¹⁵. Finally, a third picture of the legal transition from one legal system to another can be added, namely, the full legal transition or the partial legal transition process, ¹⁶ where the full legal transfer is a complete copy and paste of foreign law, where legal rules or the legal system are transferred from their country to the receiving country in a replica, for example, the cultivation of the Belgian Constitution in Romania in 1866.¹⁷ The partial legal transfer process is usually voluntary, taking into account the harmonization and harmony between the rule chosen to cultivate it with the legal, social and economic environment of the importing country ¹⁸.

Is the legal rule planted foreign in origin?

The second condition of achieving legal transplantation is that the legal rule, legal system, or even the legal principle transferred from one country to another is foreign from the country in which it is cultivated. Can we ask about the possibility of transferring a legal base from one country to another without being in the face of a legal transplant? The answer here is yes, so the process of transferring that rule from one country to another does not have its entrances to the legal ¹⁹ transplant process. The legislation of many Arab and Islamic countries stipulates that Islamic law is a significant source ²⁰ of legislation.

Is the transplant done in the legal system of the receiving state

After we mentioned the two previous conditions and that the first forms the backbone of the legal transplant, while the second form the basis of the first condition, we reached the third condition, which constitutes the desired result of the legal transplant, without instilling what was transferred from a legal rule or a foreign legal system in the

⁽¹⁴⁾ D. Hafiza Al-Haddad, Summary in Private International Law, First Book (General Principles in Conflict of Laws), Al-Halabi Human Rights Publications, 2013, p. 71 and beyond.

⁽¹⁵⁾ John Gillespie, on. cit, p 663.

⁽¹⁶⁾ Maria Paula Reyes Gaitan, The challenges of legal transplants in a globalized context .dissertation submitted to the university of Warwick, 2013, available at [ssrn\(:http://ssrn.Com/abstract = 2530811\)](http://ssrn.Com/abstract = 2530811).

⁽¹⁷⁾ Jean- Louis Halperin, The Concept of law : A Western Transplant, Theoretical Inquiries in Law, p13, <https://www.7.tau.ac.il/ojs/index.php/til/article/view/714>.

⁽¹⁸⁾ Maria Paula Reyis Gaitan, The challenges of legal transplants in a globalized, on. Cit p12.

⁽¹⁹⁾ Dr. Mohammed Hussein Mansour, the entrance to the law (for the legal rule), al-Halabi Human Rights Publications, 2010 P. 179.

⁽²⁰⁾ See: Article (2) first of the Constitution of the Republic of Iraq (2005), which stipulates (Islam is the official religion of the state, which is the main source of legislation) as well as the Constitution of the Arab Republic of Egypt for 2014 amended in Article II of it, which stipulates (Islam is the religion of the state, the Arabic language is its official language, and the principles of Islamic law is the main source of legislation), as well as article 3 of the Yemeni Constitution of 1991 amended, which stipulates : (Islamic law is the source of all legislation).

legal system of the receiving country will not achieve the legal transplant. There is a doctrinal difference in the need to mention this requirement (21) there are scholars of comparative law who consider that this requirement is not needed because it is achieved in the first condition, which is the process of transferring, which is the process of instilling the legal base transferred at a stage of the process of moving the legal base from its parent state to the receiving state Q This legal rule in the legal system of the receiving state (22). We, in turn, go with this last trend, and what reinforces this view is that many transfers of the law do not take place despite the realization of most of its conditions, as if the foreign legal base was transferred from its home country and drafted within a bill in another country. Still, this bill has not been approved or has not been passed because of the procedures for adopting this law adopted in The receiving region (23). So, the process of transferring the legal base from one country to another, instilling it in the legal system of the receiving country, and putting it into practice, is the so-called legal transplant. The transfer of the legal rule without being part of the legal system is nothing but a failed legal implant attempt.

Conditions for the success of the legal transplant

Talking about the conditions for the success of the legal transplant requires us to start setting a standard for this success. Since the success of each order depends on achieving its goal, the criterion for the success of any legal transplant is to achieve the goal or purpose. The purpose of each legal transplant is also closely linked to the will based on this legal transplant. 24 We will try to accommodate these objectives in the context of our research on the conditions of success of the legal transplant. We have set out three conditions with broad implications to include a number of details that cannot be mentioned in titles of independent titles conditions.

Requirement of participation and legal harmony

First of all, we should know that legal participation and legal harmony are not one of the conditions for the success of the legal transplant, each of which has its legal nature on the one hand and its legal implications on the other. However, they have a common denominator in the success of the legal transplant process, which makes us discuss them in one subject. Legal (legal family) one²⁵ or even between different ones.

Therefore, countries with single legal participation, i.e., those that are from one legal school, have high rates of legal transplant success since their laws converge in their sources, philosophies, and other fundamental foundations, which affect their social,

⁽²¹⁾ It was expressed by the jurist (Jia Naria Ajani) in general terms and narrow terms and contradicted by the jurist David Nelkin in this and in more detail seen: Beata Kviatsek, Explaining legal Transplants, by .cit t,p62

Beata kviatsek, Explaining legal Transplants, on .cit ,p105, 106 . ⁽²⁾

⁽²³⁾ D. Ismail Fazel Halvas , Lnature Legal Decisions Iraqi House of Representatives – Comparative study, Doctor's Letter, 2015, p. 57 and beyond, available on the Internet https://www.nahrainuniv.edu.iq/sites/default/files/Combined_301.pdf

⁽²⁴⁾ Sometimes the national will is misleading, biased or influenced by the foreign methods and strategies used to gain and support those wills and control their spirit and mind, and therefore the legal transplant process is voluntary and national, but what it achieves is mostly foreign to the fancy for more detail: Paddy Bertrand State imported, alienate System Political Former source, p. 186 and beyond.

⁽²⁵⁾ Dr. Hamid Shawsh, Comparative Legal Systems, Bidagujieh Press, 2018, p. 1.

religious, moral, and cultural rewards, and the most honest example is the cultivation of Romanian law in most European countries with one legal participation except England, where it belongs to a different legal school, the Anglo-Saxon school, and the rest of Europe, most of which embrace The Germanic Latin School with Roman roots (26). This difference in ideological reference, which was one of the main reasons in the Cold War between socialism and capitalism, was the main driver of pushing the great powers in Europe and America to race to bring about changes in the fundamental foundations and general principles of other countries of the world and to keep them in line with one of the ideologies²⁷. Eastern after the victory of capitalism, where most of its countries shifted from socialism to capitalism and the free market (28). Of course, this ideological transformation is necessarily followed by transformation and change on many levels, first and foremost the legal level²⁹. Therefore, changing state policy's fundamental principles and general principles and making it within a certain ideology achieves legal participation, which represents the basis of legal³⁰ transplants. This is about legal participation.

The concept of legal harmony can be defined as a state of compatibility or disagreement between two legal texts or between two legal systems, and the concept of lawful harmony between opposing legal texts and systems is activated by trying to overcome the main differences and provide minimum consensual standards between those texts or systems (31). The process of starting the legal harmony between the law of the exporting country and the law of the receiving land is known as the appropriateness, and this is done through the elements of harmonization, which are represented by strict knowledge of foreign law, the accuracy of choice in addition to bringing about the necessary change in foreign rules cultivated³² under the legal system of the receiving state () or vice versa by adapting the legal system of the receiving state to be consistent with the foreign rules cultivated. Western Europe on Eastern European countries wishing to join the European Union (33).

Therefore, legal participation may not be sufficient on its own to make the cultivation of the legal base a success unless accompanied by a legal harmony between the foreign legal base and the legal environment received in terms of its cultural, social, religious, and other outcomes of the legal system in that receiving country. For example, the cultivation of some legal rules relating to sexual freedom (homosexuality) of the European origin³⁴ In Islamic countries, it is doomed to failure, despite the existence of

(26) د. Hamid To snuff, Systems Legal Comparison , Previous source , 31 ص.

(27) Dr. Mohamed Murad, Europe from the French Revolution to Globalization - Economy –ideology – Crises, Lebanese House of Manhal, 2010, p. 217 and 218.

(28) د. Khalil husein , Issues International Contemporary Former source, p. 36 and 37.

(29) Some countries have even used the shock system, a sudden shift from the socialist system to the capitalist system without introductions or gradualism, which happened in Poland, for example, and its orientation towards the cultivation of German law and influenced by German culture in more detail see: Beata kviatek, Explaining legal Transplants, op .cit ,p148 ,149 .

Holger Spamann , Contemporary legal transplants-legal Families and Diffusion of (corporate) law , (5) Harvard law school Public Law & Legal Theory Working Paper Series no.09-33,p45,46 ,the Harvard John M. Olin Fellow's Discussion Paper Series http://www.law.harvard.edu/programs/olin_center.

(31) Dr. Mahmoud Al-Alona, Dr. Alaa Hammad, Dr. Razan Barghouti, Practical Guide to Reviewing and Analyzing Legislation, Law Institute / Birzeit University, 2017, p. 12.

Berkowitz ,K.pistor, and J. Richard," Economic Development, legality, and the Effect", Working (7) Paper Number 308 February 2000, p.11.

Esin Knitter, The Enigma of comparative law Variations on a Theme for the twenty- first Century (1) The International Criminal Law Review, volume 5, issue 3, 2005, p 102 .

(34) On the contrary, the existence of legal participation along with legal harmony among most European countries has enabled the cultivation and success of these rules. After the confession, In it and legislate it in

legal participation among each other due to the lack of legal harmony between these legal rules and the environment to be cultivated.

Transplantation is a successful law

It may seem that the requirement of the successful law to be implanted is a condition related to one type of legal implantation, which is legal implantation, which is carried out by the national will. Still, the mother is not realistically so, as legal transplants and even imposed the processes of marriage and profiling often precede ones by the state issuing its law. To market it as being at the top of the pyramid for successful legal systems may not be needed when it is actually at the top of the pyramid in terms of quality realistically, and this is what European countries have done to cultivate their laws in Asia, Africa and America (35). The requirement of successful law may be a condition imposed by the foreign will to indirectly plant its regulations, as in the case of requiring some international companies or some countries to amend the law of nations wishing to have services that companies or governments will adopt because the laws of those countries are late and do not provide them with legal and economic space in carrying out their work, so they must replace them with laws that appear to be quality and modernity. But the fact is that they lift the restrictions on these companies and countries and neglect legal protection from politics, economy, and national culture (36). Some countries require other countries to amend some of their laws as a condition for entering into economic or political agreements, arguing that the laws of some countries wishing to engage in their agreements are not at the level of the requirement and do not harmonize with the content of You have agreements (37).

This condition (successful law) for foreign will is necessary for the success of the legal planting process. It is a condition that addresses the minds and affects them and gains supporters and sponsors free of charge that makes the successful cultivation of its law easier and faster. This ensures that the legal transplant will be successful for the exporting country by achieving its various objectives and objectives. Moreover, the legal implant imposed by foreign will is exceptionally successful once the transplant of foreign legal restrictions has been completed in the system of the receiving state 38 .

As for the national will, the condition of the success of the law to be implanted is logical because resorting to the transfer of a foreign legal base and planting it into the legal system of another country is not a matter of perfection, but a matter of need and feasibility imposed by the realities of society and filling the shortage suffered by the legal system of that state (39). In addition, whether or not the legal rules that come from national legislation may not be fully guaranteed, especially in countries with political problems

Law dutchman year 2002, To be grown. Go away that in Belgium year 2002, And Canada. Spain year 2005, And finally. France Without finding cultural, social or religious consequences see: Dr. slave Hamid ToDonnie , Aquaculture Legal between Tradition , Exclusion International Law and Business Magazine Issue November 15, 2014, p. 4.

⁽¹⁾ Jean-Louis Halpern , The Concept of Law: A Western Transplant ?, on. Cit, p 335, 342 ,

⁽³⁶⁾ Dr. Khalil Hussein, Contemporary International Issues– Study of topics in the new world order, Dar Al-Manahl, Lebanon, 2007, p. 480.

Beata kviatek, Explaining legal Transplants, op .cit ,p165,166. ⁽³⁾

Beata kviatek, Explaining legal Transplants, op .cit ,p105. ⁽⁴⁾

George Mousourakis ,legal transplants and legal Development :A Jurisprudential and Comparative ⁽⁵⁾

Law approach ,Academia kiado ,Budapest ,2013 ,p220.

and internal divisions, or countries that leave the newly undead regime⁴⁰, as they do not have long experience in this area (41). Since those who are responsible for the process of legal reform or the law-making authority cannot assess the success of these foreign legal rules or their lack of success in their legal and social environment, they usually resort to the search for a successful foreign law model that is characterized by quality, stability and the ability to face crises and problems they face. The most common, and also to avoid the possibility of failure, which is usually costly in all respects (42), and to avoid trying legal rules that have not yet been successful even if they are the national source.

Thus, the purpose of this requirement for the national will is to shorten time and expenditures and to avoid the potential failure that may result from the experience of legal rules that are of quality, success, and prior experience.

The existence of a conscious national political will

The primary purpose of the law is to meet the needs and desires of society and the safety of the community and to move it towards development and advancement⁴³, but although legal planting may be the solution to many of the problems suffered by the state or legal planting may be the only way to achieve modernity and development in most political, economic and even social fields, all of this remains just desires and aspirations far away. Therefore, for verification, unless accompanied by the existence of an authentic national political will familiar with the foreign law to be implanted in the most accurate details in terms of pros and cons and its ability to adapt and adapt and harmonize with the environment and conditions of its society, otherwise the inaccuracy in the knowledge of foreign law may result in the cultivation of legal rules incompatible with the new national cultural and legal environment, which necessarily leads to the destruction of justice and well-being for all strata of society (44). Therefore, in addition to the national political will of the law to be cultivated, it must be aware of the needs and problems of its society, the nature of its legal and cultural environment, and the ability of its law to embrace the new legal rules without dissonance and intersection and to be accurately aware ⁴⁵ of the structure of its society, That is, if their choice is correct for these foreign legal rules to be cultivated, not all foreign legal rules can be valid for agriculture in a new legal and social environment (46). For some of the problems suffered by society, however, its mobility encounters social and religious obstacles, so the national political will is familiar with the law to be cultivated, and its full briefing on the needs of its society and its social and religious composition enables it to make the legal transplant a successful and fruitful process.

⁽⁶⁾ Mathias Siems, Malicious Legal Transplants, European University Institute ;Durham University ; European corporate Governance Institute (ECG), 2018, p22.

⁽¹⁾ Mathias Siems, Malicious Legal Transplants, by .cit ,p12

K. V. Wallendael, "Legal transplants: profitable borrowing or harmful dependency? The use of ⁽²⁾ legal transplant framework for the Adoption of EU law: the case of Croatia" in: Evolving "the relations, Revolutions Research Center, Poznań, 2014: pp. 75-98, p.78-79 dependency

⁽⁴³⁾ D. Abdul Hay Hijazi, Entrance to the Study of Legal Sciences, Kuwait University Publications – Faculty of Law and Sharia – Special Law, 1972, p. 142.

Watson Alan, legal transplants and European private law, vol 4.4Electronic Journal of comparative ⁽²⁾ Law, (December 2000), <<http://www.ejcl.org/ejcl/44/44-2.html>>,p2.

A. Watson, Sources of Law, Legal Chang and Ambiguity, University of Pennsylvania Press ⁽³⁾ Philadelphia, 1998, p.36,109.

Beata kviatek, Explaining legal Transplants, op .cit ,p71. ⁽⁴⁾

In addition, the political will, which is complete and conscious, and constitutes the proper implementation of successful legal cultivation in the form that serves the state and achieves the objectives and desires of the group, is at the same time the real obstacle to the realization and success of the objectives and policies of harmful legal planting⁴⁷ adopted by foreign countries by various means to influence the choice of national political will for the model to be cultivated. This will is keen to revive its federal law with modern legal rules after it is consistent with its legal environment. Although it uses foreign legal regulations, it is eager to adhere to its social, cultural, and religious roots ⁴⁸ .

In the face of this national will, there is also a foreign will that seeks to cultivate its legal bases to enjoy political and economic benefits in that country, and since the original national intention represents an obstacle to the foreign will as mentioned above, the last resort to several ways to reach its goals and desires in transplantation its legal bases. Including the provision of unrestricted fellowships or missions to students of law, politics, and economy of the target country or the opening of branches of its legal universities in that country, in any case, these means result in the cultivation of jurists, academics, and intellectuals (49) from the same target country who carry the thought and ideologies of the foreign state and have full conviction in the preference of foreign law over their national law, where they will form a public opinion in their society. The impact will be even more significant if they hold judiciary, legislature, or even executive branch positions. They will be the national will later, so it will be easy to cultivate foreign legal bases, even if they are harmful.

Conclusion

It is not easy to set single and specific conditions for the legal transplant, as it is a flexible process. Its requirements are close to its components: from the exporting country, the cultivated law, and the receiving state, each legal transplant has its conditions, which are different from others, but we have developed two conditions that can apply to most legal transplants in theory. The requirements of the legal transplant are not only related to the receiving state, but even the law-issuing country seeks to meet them, whether the conditions for success, whether the legal transplant is voluntary or imposed. The legal system of the receiving government should be unable to find solutions to a problem so that the solution is in the legal system of the exporting country. It is not reasonable to plant a member of his body. However, his original member does not have a defect, and unfortunately, this happened with Islamic law here. However, it can manage things together, left by the Iraqi legislator, and imported Western technologies. Although the ideas and remedies contained in foreign legal rules may be the best solution to the facts and problems suffered by countries, these rules may be able to operate in the receiving countries at least in the receiving countries in a way that originated in it, or it may be quite the opposite, so the legal transplant is crucial and dangerous, so we recommend the competent authorities to legislate the laws, including: -

1- Choosing the right time for legal transplantation, for example, legal transplants in times of political instability or self-confidence, are at risk of failure.

Mathias Siems, Malicious Legal Transplants , op .cit ,p117. ⁽⁵⁾

Maria Paula Reyes Gaitan , The challenges of legal transplants in a globalized context by .cit ,p36· ⁽¹⁾

Jean-Louis Halpern , The Concept of Law: A Western Transplant ?, op . cit, p352. ⁽²⁾

2- Knowledge and understanding of the technical and technical aspects of the legal transplant process and follow-up its results and effects on the community.

3- The legal transplant should not affect society's religious, cultural, and social roots, which make up its original identity.

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