

SWS: Common Law – Civil Law: The Great Divide?

Abstract

Common Law and Civil Law are typically presented as antagonistic players on a field claimed by different legal systems: the former being based on precedent set by judges in deciding cases before them, the latter being founded on a set of rules expected to govern the decisions of those serving as a mouthpiece in applying them. Perceived in this manner, Common Law and Civil Law differ as to the (main) source(s) of law, about who is to create, about who is (merely) to draw from them, about whether the law works itself pure each step of the way or whether the law's purity may only be tarnished when confronted with a contingent set of facts.

These differences have deep roots in (legal) history, roots that allow us to trace them back to distinct traditions. Still, it is questionable whether the divide thus depicted is as great as it may seem: Inter-national and supra-national legal systems indifferent to national peculiarities seem to level the playing field. A normative understanding of Constitutions seems to grant ever-greater authority to High Court decisions based on thinly worded maxims in countries that adhere to the Civil Law tradition. The challenges contemporary regulation faces seem to ask for ever-more detailed statutes governing the decisions of judges in the Common Law tradition.

These and similar observations ask for a structural re-assessment of the role of judges, the power of precedent, the

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limits of legislation and other features often thought to be so different in Common and Civil law systems.

The workshop is dedicated to this reassessment.

Keywords

Common Law, Civil Law, Judges, Statutes, Sources of Law

Organizers

Frederick Schauer, University of Virginia School of Law

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Otto Pfersmann, École des Hautes Études en Sciences Sociales

Christoph Bezemek, University of Graz

Participants (in alphabetical order)

Stefan Arnold, University of Münster (The Chain Novel of Civil Law – Dworkin, Brandom and the Rational Practice of Law outside of Common Law Systems)

Nicoletta Bersier, Thémis, Geneva (The Civil Law as Foundation of the Common Law: Roscoe Pounds looks at the Origins of the Common Law)

Christoph Bezemek, University of Graz (Progress in Purity v. Purity in Progress. On: “The Law works itself pure”.)

Katya Kozicki, Universidade Federal do Paraná (The Role of Precedent in Mixed Common Law-Civil Law Jurisdictions)

Luan Luna, University of Cariri (The Legislator on Judges and Precedent: The Example of Brazil)

Ana Margarida Simões Gaudêncio, University of Coimbra (Presumption(s) of Correctness(?): Comparing the Methodological Relevance of Judicial Precedents in Civil Law and in Common Law Systems)

Otto Pfersmann, École des Hautes Études en Sciences Sociales (tba)

William Soares Pugliese, Universidade Federal do Paraná (The Role of Precedent in Mixed Common Law-Civil Law Jurisdictions)

Armando Romero, Universidad Católica San Pablo (Structural changes in the Civil Law legal systems of Latin America: Some Consequences of the Latest Practice of the Inter-American Human Rights Court)

Frederick Schauer, University of Virginia School of Law (Common Law, Civil Law, and the Data of Legal Philosophy)

Alexander Somek, University of Vienna (A Post Mortem on Legal Science?)

Tomasz Stawecki, Warsaw University, Poland (“Two faces of judicial decision making. On the concept of judicial precedent in the Civil Law countries”)

Władysław Pęksa, Jagiellonian University Cracow (The Division between the Civil Law and the Common Law Tradition in Legal History)

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Igor Maestrelli Zarnicinski, Universidade Federal do Paraná
(The Role of Precedent in Mixed Common Law-Civil Law
Jurisdictions)

Schedule

Panel 1 Tue 9 Jul 2 pm – 4 pm (4.A07):

Władysław Pęksa, Jagiellonian University Cracow, The
Division between the Civil Law and the Common Law
Tradition in Legal History

Nicoletta Bersier, Thémis, Geneva (The Civil Law as
Foundation of the Common Law: Roscoe Pounds looks at the
Origins of the Common Law)

Stefan Arnold, University of Münster (The Chain Novel of
Civil Law – Dworkin, Brandom and the Rational Practice of
Law outside of Common Law Systems)

Panel 2 Tue 9 Jul 4:30 pm – 6:30 pm (4.A07):

Frederick Schauer, University of Virginia School of Law
(Common Law, Civil Law, and the Data of Legal Philosophy)

Luan Luna, University of Cariri (The Legislator on Judges
and Precedent: The Example of Brazil)

Alexander Somek, University of Vienna (A Post Mortem on
Legal Science?)

Panel 3 Fr 12 Jul 2 pm – 4 pm (HS 3)

Otto Pfersmann, École des Hautes Études en Sciences Sociales (tba)

Ana Margarida Simões Gaudêncio, University of Coimbra (Presumption(s) of Correctness(?): Comparing the Methodological Relevance of Judicial Precedents in Civil Law and in Common Law Systems)

Tomasz Stawecki, Warsaw University, Poland (“Two faces of judicial decision making. On the concept of judicial precedent in the Civil Law countries”)

Panel 4 Fr 12 Jul 4:30 pm – 6:30 pm (HS 3)

Katya Kozicki, William Soares Pugliese, Igor Maestrelli Zarnicinski, Universidade Federal do Paraná (The Role of Precedent in Mixed Common Law-Civil Law Jurisdictions)

Armando Romero, Universidad Católica San Pablo (Structural Changes in the Civil Law Legal Systems of Latin America: Some Consequences of the Latest Practices of the Inter-American Court of Human Rights)

Christoph Bezemek, University of Graz (Progress in Purity v. Purity in Progress. On: “The Law works itself pure”.)