

## **COMMON LAW AND CIVIL LAW TODAY – CONVERGENCE AND DIVERGENCE**

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The common law legal system has always represented an unknown and fascinating theme for everyone who came from the continental law system. Even though this system is studied in every basic law school curriculum, it is very hard to present all finesses of the interaction and intersections of two legal systems to a scholar. This is why the editor of this volume decided to use a very original point of view. This unveiling of the relationship between common law and civil law started with making different and concrete questions. The answers to these questions indicated all of the layers and depth present in such a relationship. In this way, the editor showed all of the different ways to get to the same target. Common law and civil law are both becoming closer, and there will be logical consequences of evening out of these two legal systems due to similar criteria present in these two legal systems.

This international collection of papers was made as a result of an international conference which was organized by the Southern European Center for Legal Research (SECLR). In Čanj (Montenegro), in May 2017, the authors from 13 different countries expressed their opinions on common law and civil law, referring to a large number of open and unresolved questions.

Based on a brief overview of the content, the reader can conclude that a lot of energy has been invested in compiling this volume, especially given the quality of systematization of important, key issues. This volume is divided into three parts and consists of 22 articles. The first part discusses the common law/civil law dichotomy in the international legal systems and theory. The second part focuses on case-law and arbitration, while the third part analyses the elements of common law and civil law in various legal systems.

The first part, also named, “International and European Law” consists of 8 papers that elaborate on the essential questions of International and European Law. In this regard, within the first three articles, particular attention has been paid to the determination, acceptance and implementation of international and human rights law in the common and civil law legal systems. The authors come to pessimistic conclusions: instead of having international law being a “bridge“ between two legal systems, it, due to the lack of neutral fundamental principles, only deepened the mutual misunderstanding that culminates in the practice of international courts. The practice of the International Institute for the Unification of Private Law represents one of the brighter sides in reconciling the relationship between common law and civil law. In addition, it is important

to mention that the global phenomenon of internationalization of constitutional law and constitutionalization of international law is pervasive today. Furthermore, the first part discusses the political aspects related to common law and civil law systems. Finally, the analysis of the European security policy points out that at the level of security policy, there are still many differences between the European and American approaches.

The second part, called “The Role of the Judicial Bodies“, begins with the analysis of the importance of the International Court of Justice (ICJ), primarily because of its important role in resolving conflicts between countries. In this way, the ICJ “tests“ the limits of international law and knowledge of common law. Furthermore, it analyzes the praxis of The Court of Justice of the European Union (CJEU), jurisdictional disputes in investment law and the European Court of Human Rights (ECHR). The authors are questioning the role of the ECHR on the convergence between common law and civil law systems, especially considering legal systems in the UK, Ireland, Germany and France. From this, we can conclude that with the force of precedent, the ECHR can succeed in “molding“ legal systems and providing *erga omnes* effect of their verdicts. Furthermore, this part analyzes the influence of the individual and overcoming social interests when they appear to conflict, as well as the importance of verdicts in Strasbourg on making a uniformed understanding of verdicts. In the end, from all that was said, we can summon that the ECHR “hid“ its own international court origins and started to look more like an international constitutional court.<sup>1</sup>

The third part, named “National implication“, analyzes various branches of law (criminal law, intellectual property law, contact law, legal history) within different legal systems. In that way, many similarities and differences between common law and civil law are highlighted. First, one of the authors analyses the question of how common law and civil law jurisdictions establish criminal responsibility for collective group crimes. Specific attention is paid to the British Jogee case on JCE and the Dutch Nijmegen scooter case. Then, one of the papers aims to describe and examine the new trend of Taiwan’s legal development, especially Information Technology Law in that Asian country. Reviewing the development of legal history and the formation of its economic market, we can conclude that Taiwan has been strongly touched by foreign influence. The next topic in this part is reserved for the comparative analysis of the conception of a contract in German and English legal systems. The next two papers analyze institutional transplants in Serbia, especially through the example of comparative analysis of the supreme audit institutions in the United Kingdom

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<sup>1</sup> Krisch N. (2008). The Open Architecture of European Human Rights Law: *Modern Law Review*, 71/2, 184.

and Serbia.<sup>2</sup> At the end of this volume, the research is focused on a study of the relationship between the Russian legal system and one of the most significant trends in Modern International Law – the phenomena of regional integration. For the Russian Federation, regional integration found its expression as the Eurasian integration process. That process is characterized by attempts at the integration of states which are connected by a common history, economic and demographic links within the post-Soviet space to create new associations by building common institutions and norms.

The greatest value of this collection of papers rests in the fact that it confirms the actuality of certain universal topics, which do not lose their significance but ask for constant care and elaboration. Common law and civil law, as well as their relation, represent lasting questions and challenges. The answers to these issues may be brilliant at a certain level, however, they are usually temporary and imperfect, always subject to criticism and re-examination. Several very important innovative answers are offered in some contributions, raising the rank of the collection as a whole very high and making it important literature for readers of different orientations.

In the end, the collection of papers “Common Law and Civil Law Today – Convergence and Divergence” represents an excellent and comprehensive academic study that explores the capacities, effectiveness, and eventual challenges of this legal dichotomy. From its carefully selected authors to its comprehensive collection of articles, this edited volume is an essential resource for students, researchers and practitioners working or studying within both legal systems. Therefore, it can be used both as a scientific contribution and a practitioner’s manual.

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<sup>2</sup> For more details see: Watson A. (1993). *Legal Transplants: An Approach to Comparative Law*. Athens, GA: University of Georgia Press.