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Comparison of Euro-Atlantic Legal Cultures: Short debrief

[Porównanie euroatlantyckich kultur prawnych – krótkie podsumowanie]

Abstract

The article compares the main features of Euro-Atlantic legal cultures: *civil law* (known also as continental legal culture or statutory law culture) and Anglo-Saxon *common law*. The analysis was conducted from the perspective of the continental culture. An attempt has been made to capture the most important differences between these legal cultures. The fundamental question is: why did England, while being so close to European legal culture, ultimately move so far away from it? And neither the process of globalisation nor the process of cultural convergence has changed this. At the same time, however, these very phenomena determine the importance of the interaction of civil law and common law for almost every modern lawyer. Those who work in international business must therefore be familiar with the peculiarities of these two cultures that dominate the Euro-Atlantic legal space. The topic is also relevant for legal doctrine because of the aforementioned convergence, i.e. the mutual shaping of civil law and common law.

Keywords: common law, civil law, civil law tradition, legal theory, legal anthropology.

Introduction

The term of legal culture is ambiguous and is sometimes used interchangeably with the order or system of law. However, it can be easily sharpened. By adopting the basic criteria for the analysis of law, the legal systems of different countries can be assigned under these categories. It is important

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not to treat the concept of legal culture in a strictly anthropological sense, but to adopt only the criteria of legal theory and philosophy.[1] These are: the dominant philosophy of law, the accepted conception of the sources of law (including its creation), the model of the application of law and certain additional features, such as legal propaedeutics, characteristics of legal reasoning or historical genesis. However, the first three factors are the most important and are responsible for the possibility of carrying out a typology into state law and common law cultures. Both, in turn, belong to the notion of Euro-Atlantic legal cultures, although their presence extends far beyond this region of the world. Rather, the name corresponds to their historical origins, as they originate in Europe, Britain and North America and have been adopted almost throughout the world as a result of colonisation or civilisational reception.

Given the concept of legal cultures thus defined, it is still possible to single out the legal culture of Islam.[2] Specific, on the other hand, is the Judaic culture, which is not found outside the State of Israel (it has not been recycled anywhere and is specific to Judea).[3] The legal culture of the Maghreb states, on the other hand, has a disputed status.[4] The degree of reception by the States of north-west Africa of the culture of statute law is so high that it has lost its specificity in this respect. On the other hand, it seems reasonable to continue to maintain the distinctiveness of the Far Eastern legal culture (Japan and some East Asian states), but the region is nevertheless highly differentiated in terms of the adopted conception of the sources of law and the model of its application. A separate issue is the axiology of law and the role of normative orders other than law. Traditionally, Far Eastern culture has been singled out based on the important role of customary rules for law. The relationship of law to social norms, and not, as in Euro-Atlantic cultures, to morality, was therefore crucial.

All these issues cannot be resolved in such a short paper. They are also debated in the literature and the understanding of these concepts depends on the legal culture, legal doctrine, ideology, etc. (As an example of this discussion could be signaled the question of the limits of judicial interpretive activism in civil law and, in common law, the relationship between statute law – quantitatively increasing its reach all the time – and judicial law.) The term of legal culture should be understood by narrowing interpretation of this concept and listing legal cultures based on the precise criteria indicated

[1] Different in the sociological field: R. Cotterrell, The Sociology of Law: an Introduction, London 1984, p. 25.

[2] S. D. Blanch, *Thinking about Islamic Legal Traditions in Multicultural Contexts*, 'Griffith Law Review' 2023, 32, 2, pp. 215–235.

[3] M. Bussani, U. Mattei (eds), Contents. Toc. In The Cambridge Companion to Comparative Law, v–vi. Cambridge Companions to Law, Cambridge: Cambridge University Press, 2012, pp. 278–294.

[4] L. Rosen, *Law and Custom in the Popular Legal Culture of North Africa*, 'Islamic Law and Society' 1995, 2, 2, pp. 194 and 195.

above. This is important because there is often a vague, imprecise use of the concept of legal culture in the literature.[5]

This article will focus on a comparison of the basic features of Anglo-Saxon and continental legal culture. This paper has a reporting and overview character. It may also serve as a teaching aid for law students or on related courses. As this is not an issue paper, limited use has been made of the IMRAD structure. Instead of a separate, general characterisation of the civil and common law cultures, it has been written by chosen comparative study based on the basic subject criteria already indicated. However, the question of the origins of Anglo-Saxon culture has been dealt with in a special way, as it was a combination of specific historical events that was responsible for its emergence and the maintenance of its own identity by England and then the British Dominion.

Genesis

The first difference of a fundamental nature between civil and common law is the question of their birth. Continental culture is much older. Its birth is linked to the rise of Roman jurisprudence, which the Romans themselves dated to around the second century BC.[6] This is the heyday of the Republic after Hannibal's final expulsion from Italy. Despite the destruction he wrought on the Iberian Peninsula, Rome ultimately emerged victorious from this war. In addition, it became the sole power of the western Mediterranean, which tied in the next hundred years with Rome's rapid economic development, which in turn was consolidated by the destruction of Carthage in 146 BC.[7]

The concept of positive law – therefore rules distinguished from morality and religion – was already known.[8] Without it, the first ancient political organisms would not been established. It is difficult to evaluate the emergence of law as a cultural phenomenon. It is probably varied from one region of the world to another, but one thing is certain – law as a social phenomenon appears with the emergence of the first political organisms (it is not yet appropriate to call them as states) after the Neolithic Revolution. At first, it took the form of a custom sanctioned by coercive power, which made it law and differentiated it from other customary rules. With the invention of writing

[5] M. Van Hoecke, *European Legal Cultures in a Context of Globalization* [in:] T. Gizbert-Studnicki, J. Stelmach (eds), Law and Legal Cultures in the 21th Century: Diversity and unity, Warszawa 2007, pp. 82 and 83.

[6] S. Camilleri, *The Growth of Civil Law*, 'The Law Journal' 1946, 1, 5, pp. 191–193.

[7] R. T. Ridley, *To Be Taken with a Pinch of Salt: The destruction of Carthage*, 'Classical Philology' 1986, 81, 2, pp. 140–46.

[8] Example: Sophocles, Antigone, https://mthoyibi.wordpress.com/wp-content/uploads/2011/05/antigone_2.pdf.

by the Sumerians around 6,000 BC, it took on a written form. In the developed despots of antiquity, state law was already known, although it did not formally resemble its contemporary understanding (lack of procedures for its creation, limited role of promulgation, etc.). In antiquity, customary law dominates, but lawmaking was known to all ancient great civilisations.

Of the ancient civilisations, however, only the Romans produced jurisprudence – a legal doctrine. Moreover, they recognised that what binds a political community together is law, as Cicero emphatically expressed in his timeless work *Res Publica*. The sources of Roman law were not homogeneous.[9] In addition to classical statute law, the Romans treated as law the acts of lawmakers (the so-called Praetorian law) and even the works of eminent jurists, which, when sanctioned by the emperor, acquired the status of universally binding law. Gradually, however, Roman law became codified statute law, based on the prototype of the systematic principle. There is not space here to discuss this process in greater detail and we are condemned to simplifications. The peak of Roman jurisprudence is reached by Justinian, already after the fall of the Western Roman Empire with his Code (528–534 AD). It would become the basis of private law throughout the Christian world till the Napoleonic codification, updated in 1583 as the *Corpus Iuris Civilis*. Roman law and its medieval reception were responsible for the unitarianism of thought in the Christian world and is a fundamental feature of the European legal tradition.[10] For the English, it is such a special feature that they have given a name to this legal culture precisely by emphasising this role, as civil law, by which, in essence, is to be understood what is referred to in the culture of statute law as the Romanist tradition. In English it's just civil law tradition.

Anglo-Saxon culture was born with the rise of English statehood.[11] In 1066, the Norman prince William invaded Britain, and that same year defeated the combined forces of the local kingdoms at the Battle of Hastings.[12] Wiliam did not at first regard England as a permanent conquest, although the impetus for the invasion was that the magnates of England ignored his fief rights, bequeathed to him by King Edward the Confessor of England. In the end, however, after an unsuccessful uprising by those magnates who remained alive after the slaughter at Hastings, William carried out a thorough pacification of the country.[13] During his reign he reorganised the ruling class in England,[14] made new feudal grants and by the 14th century the country's power elite spoke French.

[9] R. Domingo, The New Global Law, Cambridge 2011, p. 18.
[10] S. Camilleri, *The Growth*..., p. 194.
[11] G. B. Adams, *The Origin of the Common Law*, 'The Yale Law Journal' 1924, Dec., vol. 34, 2, pp. 115–128.
[12] M. Sugar, *How the Battle of Hastings Was Lost*, 'Mental Health, Religion & Culture' 2006, 9, 2, pp. 141–154.
[13] T. Manteuffel, Historia powszechna. Średniowiecze [Universal History: Middle Ages], Warszawa 1996, p. 115.
[14] The property and cattle cadastre for the whole of England, drawn up in 1086, played an important role, https://books.google.pl/books?id=lGtm6GSJzQC&dq=doomsday+book&pg=PP1&redir_esc=y#v=onepage&q&f=false [accessed: 26.12.2024].

This situation resulted in a dualism of power, into a locally derived establishment in the provinces and an essentially occupying central authority. Indirectly, this had the effect of detaching thinking about the state and law in unitary terms and the state was conceptually linked to political power, which in the case of England came from conquest. Over the course of the next three centuries of the Middle Ages, there is a reduction in royal power in England (symbolised by the *Magna Carta* – 1215). English rulers were also accused of being more interested in their fiefdoms on the continent (Normandy was a rich province of France) than in their possessions on the island during the first centuries of their reign. England's cultural identity and the crown's attachment to its new fiefdom does not take place until the Hundred Years' War, but unlike on the Continent, where France would be at the forefront of transforming the state monarchy into its *absolute* variety, while in England the absolutist tendencies were short-lived, impermanent and essentially not as strong as on the Continent.

Some argue that if it were not for Roman law, Europe could be England.[15] This is a simplification, for what characterises the ancient political organisms that grew up around the Mediterranean, however, is statute law, whereas in Britain, throughout the Dark Ages, customary law prevailed. The phenomenon of law therefore developed differently in the British area than in continental Europe. Above all, it must be remembered that Roman culture did not have the same impact on the Celtic tribes inhabiting Britain as it did on the Continent.[16] Here, despite infighting and disputes, Roman law was recycled along with the achievements of Roman civilisation. This was facilitated by the ease of communication of the continental territories and the English Channel played an effective barrier to weakening trends in civilisational development (the geographical barrier also excluded Britain from the medieval influence of the papacy and empire and later the 15th and 16th century religious wars.)

Britain became a Roman province late and with much resistance. The first invasion was made by Julius Caesar in 55 BC, but he did so only at the urging of Germanic tribes conspiring with the Romans, who were beset by invasions by the Celts of Britain (the Celts being the indigenous people of Britain.) After the pacification of the south coast, the Romans left the island. It was only for political reasons and not out of military or economic necessity that the invasion of Britain was undertaken by the Caesar Claudius in 43 AD, who, according to legend, was elevated to the imperial dignity by the Praetorians themselves after the assassination of Caligula. Claudius was not considered a contender for the throne and survived a brutal power struggle after the death of Augustus. He was a cripple and a stammerer. He was more interest-

[15] T. Tulejski, *Sir John Fortescue i narodziny angielskiej teorii konstytucyjnej* [Sir John Fortescue and the Birth of English Constitutional Theory], „Przegląd Sejmowy" ['Parliamentary Review'] 2021, 5, 166, p. 135.

[16] P. A. Brunt, *Reflections on British and Roman Imperialism*, 'Comparative Studies in Society and History' 1965, 7, 3, pp. 267–288.

ed in history than politics (we only know his works from handwriting, they have not survived.)[17] Legend has it that he hid behind a curtain while the Praetorians were murdering Caligula's supporters in the palace. The soldiers, however, decided that the emperor was needed because of his opposition to the return of the republican system. So, they put Claudius on the throne – by today's standards – as a 'technical emperor.'

This one to gain a dubious reputation decided to conquer Britain, which had been a challenge for the Empire for a century. So, the invasion came from political rather than economic or military necessity. Britain was inaccessible to the Romans coming from the warm coast and the local population had either fled north (present-day Scotland) or would not submit to Romanisation. It took nearly a century for the Romans to reach the present-day Scottish border and eventually Emperor Hadrian ordered the construction of a wall separating the northern barbarians from the provinces (Hadrian's Wall) in the middle of the second century AD.

In summary – Roman influence in Britain was negligible and the local population did not adopt Roman culture to the same extent as the continental tribes. What was assimilated were the achievements of material culture (who wants to carry water on their back if they can build an aqueduct.) In contrast, the immaterial culture of Rome, including law, was not assimilated. The Empire did not regard Britain as a strategic province. It was not attractive for economic reasons and its remoteness and geographical peculiarities, including its climate, resulted in difficulties in victualing troops. The native population, hostile to the Romans, caused numerous tensions with the occupying power. Eventually, at the beginning of the fifth century, the Romans left Britain.

In the early Middle Ages, Britain became the object of numerous invasions. The Celts in the 5th v. were conquered by the Jutes, Angles and Saxons, Germanic tribes who expanded into the island after it was abandoned by the Romans. However, they soon lost their cultural link with the mainland to form the Britons – Germanised because of the invasion of the Celts, who remained in the south (the Celts of the north – the Scots – consider themselves the correct indigenous people, as they were not conquered by the Romans or the Germans.) In the subsequent Dark Ages, Britain did not develop a strong political body as in the continent did the Frankish state. It was dominated by kingdoms, which varied in number from several to a dozen during the Dark Ages. At the turn of the eighth and ninth centuries Europe experienced migrations of tribes from the north (Vikings.) This was in fact a diverse population. And so, the Normans quickly Romanised, while in Britain the matter was more complicated. In 878 there is a Viking invasion, against which the

[17] B. M. Levick, *Antiquarian or Revolutionary? Claudius Caesar's conception of his principate*, 'The American Journal of Philology' 1978, 99, 1, pp. 79 and 80.

Anglo-Saxons unite (the first king – Alfred.) However, this is more of a union against a common threat and not the building of a unified (according to medieval realities) state as in the case of the Franks.[18]

In summary, centralist and state-building tendencies did not emerge in Britain during the Dark Ages to the same extent as on the Continent. Additionally, the peculiar genesis of the English state, created because of foreign invasion, did not produce the conviction, common on the Continent over time, that the phenomena of law and state were linked. There was a rapid decentralisation of power in England, exacerbated by the absence of absolutism, except for brief episodes. Above all, however, unified Roman law, including the Justinian codification, which provided a single reference point for private law in continental Europe, did not take hold in England. English law was uncodified, based on custom and when it emerged as common law – in the 12th century – its 'writing down' took place primarily in the form not of general rules but of judicial decisions in relation to specific problems. Their replication in similar cases developed the precedent model of law application.

Precedent vs. Syllogistic Model of Law Application

The fundamental difference between Anglo-Saxon and continental legal culture is the developed model of the application of law and legal reasoning more broadly. These stem from the difference in the accepted system of sources of law.

In continental Europe, with the end of the Middle Ages, statute law displaces custom as a source of law.[19] As already signaled, this was facilitated by the role of the codification of private law and the continued reception of Roman law. Thinking in terms of statute law as an important source of law was thus present in the Continental European area basically from antiquity. This trend, in a centuries-long perspective, was exacerbated and petrified by the transformation of medieval state monarchy into absolute monarchy. The strong monarchical power successfully sought to unify the sources of law. Above all, customary law as such, which is not publicly promulgated, was on its target. The judge, treated as a royal official, therefore ruled over time solely based on statute law, which dominated the catalogue of sources of law in civil law – according to *la bouche de la loi* doctrine.[20] In the Enlightenment, on the other hand, the formalisation of

[18] J. Donne, G. Herbert, R. Lovelace, Ch. Marlowe, A. Marvell, J. Milton, Sir P. Sidney, E. Spenser, Sir T. W. Elder, Medieval, https://sites.udel.edu/britlitwiki/medieval-and-renaissance-literature/ [accessed: 03.01.2025].

[19] T. Tulejski, *Sir John*..., pp. 141 and 142.

[20] I. Barwicka-Tylek, A. Ceglarska, *Does* la bouche de la loi *Have Anything to Say in Democracy? An exercise in legal imagination*, 'Studia Iuridica Lublinensia' 2022, vol. 31, 2, pp. 85–99.

the process of law application results in the formation of the syllogistic model of law application. Beccaria wrote of it thus:

In every case of a crime, the judge should carry out the following correct reasoning (*sillogismo*): the larger premise is the general law, the smaller premise is the illegal or lawful act, and finally the conclusion is freedom or punishment. If the judge, whether under duress or of his own free will, wishes to carry out even just two reasonings instead of one, the road to uncertainty will open up. There is nothing more dangerous than the generally accepted axiom that one must be guided by the spirit of the law. It is tantamount to removing the dyke holding back the turbulent stream of arbitrary views.[21]

In continental legal culture, the model of the application of law grew out of a uniform catalogue of sources of law. It is also often referred to deducting reasoning (thinking from the general to specific), which symbolises the fact that the major premise of the syllogism is the general abstract norm interpreted from normative acts, the minor premise is the assertion of fact carried out on the basis of legally defined evidentiary reasoning and the conclusion is the concrete-individual norm resulting from the congruence or incongruence of the assertion of fact with the assertion of law.[22]

Anglo-Saxons note that continental culture tends to generalise rules, whereas in common law culture the reasoning goes from the specific to general (induction.)[23] The precedent model of law application is responsible for this, being "the life blood of legal systems."[24] It was developed in the late medieval period and refers to something that has happened or that was done in the past, and that serves as a model for future conduct. In the case of the *ratio decidendi*, the precedent set is the principle or reasoning that has been established in a single case that serves as an example or rule to be followed in subsequent cases.[25] Hovewer the *ratio decidendi* (also known for short as the "ratio") refers to the "reason for the decision" and is a principle in common law that demonstrates the reason for a case.[26]

The difference in developed legal reasoning *vis-à-vis* civil law culture is due to the complex structure of legal sources in common law culture. It is about the validation aspect. In the civil law culture, as a result of the development of a homogeneous catalogue of sources of law, validation reasoning boils down

[21] C. Beccaria, O przestępstwach i karach [On Crimes and Punishments], 1766, Polish ed. 1: E. S. Rappaport (transl.), Warszawa 1959, pp. 61–63.

[22] L. Duarte d'Almeida, *On the Legal Syllogism* [in:] D. Plunkett, S. J. Shapiro, K. Toh (eds), Dimensions of Normativity: New essays on metaethics and jurisprudence, New York 2019; online edition, Oxford Academic, 21.02.2019, https://doi.org/10.1093/oso/9780190640408.003.0015 [accessed: 02.01.2025].

[23] J. Wróblewski, *Precedens i jednolitość sądowego stosowania prawa* [Precedent and Uniformity of Judicial Application of the Law], „Państwo i Prawo" ['The State and the Law'] 1971, 10, p. 525.

[24] L. Goldstein, *Introduction* [in:] Precedent in Law, Laurence Goldstein (ed.), Oxford 1987, p. 1.

[25] J. L. Montrose, *The* Ratio Decidendi *of a Case*, 'The Modern Law Review' 1957, vol. 20, 6, pp. 587–595, JSTOR, http://www.jstor.org/stable/1091093 [accessed: 02.01.2025].

[26] C. Manchester, D. Salter, Exploring the Law: The dynamics of precedent and statutory interpretation, London 2006, pp. 8 and 9.

to the selection of a normative act and its editorial fragments as the basis for a decision to apply the law. The main focus is on the interpretation of the selected provisions, which is carried out within the framework of judicial or administrative discretion (depending on the type of law application in which the decision is made.) This is carried out on the basis of the interpretative tradition developed in civil law culture, in Poland on the basis of theories of law interpretation more or less applicable by legal practice (semantic by J. Wróblewski, derivational by M. Zieliński, derivational-validation by L. Leszczyński, etc.)[27]

In common law culture, however, the validation stage in legal reasoning becomes fundamental. The choice of the appropriate source of law is therefore not determined by the general norm, which, because of interpretation, is deemed to cover the subject matter of the case to be decided, but by the characteristics of the factual situation, which is decided on the basis of previous decisions in similar cases. This is why legal reasoning, above all analogy, is so decisive in legal education in common law countries. These conditions are obviously present within the judicial type of application of law, but they radiate in all legal reasoning in the common law culture.

A judge in Anglo-Saxon culture, when qualifying a case for adjudication, has three options to choose from. In the first, he qualifies it for adjudication on the basis of state law; in the second, he qualifies it on the basis of a previous decision in a similar case. The third form is classical jurisprudence, i.e. the formulation of a new norm, but one that is individually binding in the case being decided. Of course, this is a model arrangement. In individual common-law countries, the scheme is sometimes more complex, in particular with respect to the question of the reciprocal bindingness of the courts of each type of previous decision. These issues are detailed and there is neither the need nor the space to go into them in such a short paper.

It is important to remember that *ratio decidendi* involves the choice of the source of the law and how it is to be understood. This is how English private law was developed. And not, as on the Continent, by way of a codification movement. In general, the establishment of common law accelerated after the Second World War and is sometimes pointed to as part of the convergence of Euro-Atlantic legal cultures.

The motives for the decision therefore involve replicating the source of the law and, secondarily, the way it is understood. With precedent being a conservative doctrine.[28] Formally, precedents from decades or even centuries ago are in force and the lack of application is due to a change in the realities of civilisation. If necessary, the court may instead invoke the procedure for

[27] A. Kotowski, Wykładnia sądów kasacyjnych w świetle empirycznych badań orzecznictwa [Interpretation of Cassation Courts in the Light of Empirical Case Law Research], Warszawa 2020.

[28] H. L. A. Hart, Law, Liberty and Morality, Stanford, California, 1963, p. 8.

breaking precedent (overruling), but the courts of appeal in common law are the guardians of precedent and rigorously assess such actions. Historically, the radicalism of the doctrine of precedent has been responsible for the emergence of alternative methods of dispute resolution.

However, the precedent model of applying the law has many advantages. It is beneficial for commerce and business, where predictability of judicial decisions is important. The institution of *de iure* (legally binding) precedent was the cause of the expansion of common law with the development of the British dominion as a maritime trading empire from the mid-16th century through the height of its power in the Victorian era. It is estimated that, just before the outbreak of the First World War, "about two-fifths (c. 19 million tons) were British flagged."[29]

Common law lawyers sometimes emphasise the greater decision-making uncertainty that in civil law arises from the principle of judicial independence. This in turn is the opposite of de jure precedent. The advantage of common law remains the possibility for the court to be legally bound by a precedent not previously issued in a specific case (in civil law, the binding of a precedent occurs, as a rule, only in a given proceeding, as a result of a cassation ruling by the appellate court and the referral of the case back to the court of first instance.)

As already mentioned, the spread of common law around the world accompanied the commercial expansion of the British Dominion. Contracts made in different parts of the globe would have to be drawn up under a uniform law. This, in turn, was the common law with the doctrine of precedent, whereby traders or carriers taking such large risks in ocean shipping could mitigate them in the legal field by preparing the contract well and securing themselves with binding precedents. In a civil law culture, by contrast, a party is always exposed to the court's decision-making autonomy in interpreting the law. Also, the lack of uniformity of the civil law culture, despite the role Roman law played in it, was not conducive to embedding international trade in this legal culture. To this day, the trade of multinational corporations is mainly conducted in common law.

Additional Differences

The remaining differences between civil and common law culture boil down to more specific, but equally important, issues. In fact, if we compare

[29] M. B. Miller: *Sea Transport and Supply* [in:] 1914–1918 [online], International Encyclopedia of the First World War, ed. by Ute Daniel, Peter Gatrell, Oliver Janz, Heather Jones, Jennifer Keene, Alan Kramer, and Bill Nasson, issued by Freie Universität Berlin, Berlin 2016-08-24. DOI: 10.15463/ie1418.10950.

the basic common-law issues, they all present distinctions between the two. Identity occurs within the accepted axiology of law. A common feature of Euro-Atlantic legal cultures is to link the law to the value of the absolute good and to derive from it a series of related values, which take the form of principles of law whose object of protection is primarily the human being and the properties belonging to him (life, dignity, property, etc.)[30] The conception of law in terms of egalitarianism and utilitarianism is common in the Western world.

The second common issue is the opposition of law to other normative orders. This is an important feature that distinguishes Euro-Atlantic legal cultures from Islamic cultures, which treat religious norms as a source of law in their own right. Social custom (norms of custom), on the other hand, show a validating connection with law in Far Eastern cultures. In civil law, the process of emancipation of law from other normative orders has continued with varying intensity over the centuries. It culminated, however, during the late Middle Ages and culminated in the developed Middle Ages. The following can be cited as cut-off dates, albeit conventional: the sudden coronation of Charlemagne by the Pope Leo III in Rome on 25 December 800, without the agreement of Charles, making the clerical authority the dispenser of the imperial crown, the papacy movement and the theocratic tendencies of Gregory VII and finally his conflict with Emperor Henry IV, ending with the Concordat of Worms in 1122.[31]

Then, during the late Middle Ages, a strong scholarly movement emerges in Western Europe leading to the development of the legal basis for a secular, strong central authority. With the transformation of state monarchy into absolute monarchy, law becomes a social phenomenon linked to state political power. It is to this day contrasted with other normative orders.

In common law, the process was more complex. Because, when equity and justice require it, courts are entitled to treat moral values as sources of law in their own right, as Dworkin put it in the form of principles in his integral theory of law, the social phenomenon of law is not as strongly opposed to morality as in the culture of statute law. Nonetheless, it also treats the law as a separate normative order and its validating relationship with morality occurs only at the level of legal principles concerning the fundamental values of a democratic society.

Apart from these two issues, numerous differences are easily diagnosed between civil and common law. Continental legal culture is dominated by a positivist narrative within the philosophy of law. In common law culture, it is a non-positivist form with an important role for legal realism. It has already

[30] Y. Dror, *Values and the Law*, 'The Antioch Review' 1957, 17, 4, pp. 440–454, https://doi.org/10.2307/4610000 [accessed: 02.01.2025].

[31] T. Manteuffel, Historia..., pp. 90 and 167–174.

been signalled that legal reasoning is subject to differentiation. In civil law, lawyers tend to generalise rules, as a result of the centuries-old tradition of state law. Legal thinking is sometimes summarised as proceeding from the general to the particular, reflecting a subsimilar model of law application. The reasoning carried out in doctrinal interpretation must mirror that of judicial operative interpretation.

By contrast, the common law in the private law area is dominated by the search for the most optimal solution in relation to the contextual case. As a result of the invocation of the *ratio decidendi*, the inference and legal qualification of the case is multiplied (duplicated.) This gives rise to reasoning from the particular to the general.

The study of law in the legal cultures under discussion took a different form. First of all, in civil law jurisprudence is much older and goes back to the aforementioned ancient Roman law. The systematisation and unification of legal concepts in the common law culture, on the other hand, comes only with the achievements of Jeremy Bentham and, above all, John Austin, thus at the turn of the 18th and 19th centuries. Of course, the modern study of law in civil law is also only in the 19th century, or more precisely its second half, i.e. the rise of continental, originally Prussian legal positivism.

Generally speaking, common law culture has long been alien to this systematisation of legal concepts, with which the concept of a system of law is associated. Treating the law as a set of rules with strong content and formal relations based on a uniform axiological foundation is rather a civil law concept. Systemicity of law as a paradigm of legal thinking is an element of civil rather than common law. By contrast, the precedent culture speaks of legal order, which does not emphasise such strong formal relations between rules. This is of course due to the dualistic structure of the sources of law and the law-making powers of the courts, which makes law a catalogue in its own way. Even Herbert Hart, an advocate of the formalisation of legal reasoning, treated law as a union rather than a system of rules.[32]

Another issue is the propaedeutic of law. It could be assessed as a not important matter, but it shows how legal reasonings are taught from the beginning of legal education. It also reveals the overall conception of law, as how the curriculum, the individual didactic contents and the order in which the academic subjects are taught are arranged reflects the adopted structure of jurisprudence and reflects in some way the specifics of legal practice. Of course, we are condemned to major simplifications when analysing these issues, as higher education is organised on a country-by-country basis. However, it is possible to look for some very general characteristics.

[32] H. L. A. Hart, The Concept of Law, Sec. Ed., Oxford 1964, pp. 79–99.

Thus, in general, continental culture is dominated by theoretical (dogmatic, doctrinal) teaching, while common law is dominated by a practical approach. In civil law, legal studies in public universities are often free of charge (this is the case in Poland, for example), while in common law the opposite is true – universities operate entirely on a commercial basis. This gives rise to a greater emphasis on practical teaching, as the graduate of the course has specific expectations of the studies so that the investment he or she has made pays off. At least in the European Union area, the teaching of law follows a uniform pattern. It is a 10-semester course of study, organised in two semesters per year. The first year consists of introductory subjects such as introduction to legal studies, legal reasoning (logic for lawyers), Roman law and legal history (general, national, doctrines, etc.) The crux of legal studies, however, is the dogmatic disciplines, therefore correlated with the different branches of law. These usually occupy min. 3 years of legal studies. At the end of their training, students usually choose specialisation subjects. The teaching of law is primarily reduced to knowledge of the regulations in force and secondarily to the training of legal skills and reasoning, the learning of which is mostly postponed to the practical apprenticeship stage.

It is also noted that law as a social phenomenon is perceived differently in the compared legal cultures. Lawyers from continental cultures tend to generalise, treating law as a coherent set of norms and contrasting the process of law-making with other forms of the phenomenon of law; primarily its application and interpretation. Legal doctrine also plays a very important role in civil law, which has a centuries-old historical tradition.

Common law, on the other hand, is characterised by a practical way of thinking, less focus on the doctrinal basis of the law and not treating it as a coherent, uniform set of norms. There is also a perceived greater difference between public and private law. The former is nowadays closer to its counterpart in continental culture, but private law has basically no tradition of codification. It has developed 'bottom-up', as a result of judicial decisions.

Perhaps the most significant difference, however, is the archetype of law. That is, its historically established social vision, common belief, idea. The different historical origins of civil and common law are revealed here. As already mentioned, continental culture was dominated early on by statute law, created exclusively by the political sovereign. The saying about the genetic connection between state and law, 19th century legal positivism only made use of, but as an archetype of law it is strongly fused with continental culture. In common law, by contrast, the social phenomenon of law is not so strongly linked to the idea of the state.

Conclusions

The fundamental question of the future of Euro-Atlantic legal cultures is related to the already mentioned phenomenon of convergence – that is, the interpenetration of their characteristics. In the area of the European Union, the evolution of state law culture has been weakened by the UK's exit from the Union, although it has indirectly accelerated federation processes in the legal field. Britain, with its different understanding of legal institutions in civil law and its greater economic liberalism, could not accept the strongly etatist proposals of the current European establishment (interference in the market in connection with the Green Deal, reduction of the competitiveness of its own industry, etc.)[33] With Brexit, the institutional link between the established law culture and common law disappeared.[34] Convergence processes are therefore now embedded solely in general-civilisational processes, namely globalisation and the communications revolution.

Only a decade ago, with the popularity of the concept of multicentrism, legal theorists wondered whether the 21st century would see a gradual unification of Euro-Atlantic legal cultures.[35] Brexit was, of course, not the only event to undermine this process, but a significant one – even if treated as a local and essentially symbolic in nature. Consideration of the evolution of state law and common law cultures must also be limited to the geographical space of the Western world (mainly Europe, North America.) More broadly, the process is too complex to make generalisations. The basic conclusion of the comparative study comes down to the observation that, despite the identical axiological perspective of the layer and role of law, the other features of the civil and common law cultures differ significantly. In my opinion, with the progressive federalisation of the European Union, the convergence processes will weaken or be muted by political measures. The construction of a single European state, which is explicitly declared by the European establishment, is favoured by a monocentric catalogue of legal sources, with a single law-making centre located in the European institutions.[36] The current emancipation of the judiciary is treated instrumentally in Europe, especially as the election of judges of the CJEU or the ECtHR takes place according to political procedures. It is justifiably questionable that these courts pronounce on the standards of independence and independence of national courts by themselves being appointed on the basis of non-transparent, discretionary political decisions. With the above in mind, I would be inclined to take the view that the convergence of

[33] M. Van Hoecke, *European*..., pp. 89 and 90.
[34] M. Van Hoecke, *European*..., p. 87.
[35] As a mix of civil law and common law, H. Schepel, R. Wesseling, *The Legal Community: Judges, lawyers, officials and clerks in the writing of Europe*, 'European Law Journal' 1997, 3, 2, p. 165.
[36] Law is an object but also as an instrument of European integration. R. Dehousse, The European Court of Justice: The politics of judicial integration, New York 1998, p. 1.

civil and common law cultures will at least weaken rather than accelerate in the coming decades, and there is no prospect of convergence within the next century.

Porównanie euroatlantyckich kultur prawnych – krótkie podsumowanie

Abstrakt

W artykule porównano główne cechy euroatlantyckich kultur prawnych: kontynentalnej (prawa stanowionego, ang. *civil law*) i anglosaskiej (*common law*). Analizę przeprowadzono z perspektywy kultury kontynentalnej. Starano się uchwycić najważniejsze różnice pomiędzy tymi kulturami prawnymi. Zasadnicze pytanie jest następujące: dlaczego Anglia, będąc tak blisko europejskiej kultury prawnej, ostatecznie tak bardzo się od niej oddaliła? I nie zmieniły tego ani proces globalizacji, ani proces konwergencji kultur. Zarazem jednak te właśnie zjawiska decydują o znaczeniu interakcji *civil law* i *common law* dla każdego niemal współczesnego prawnika. Ci, którzy pracują w międzynarodowym biznesie, muszą być więc zaznajomieni ze specyfiką tych dwóch kultur, które zdominowały euroatlantycką przestrzeń prawną. Temat ten jest również istotny dla doktryny prawa – ze względu na wspomnianą już konwergencję, czyli wzajemne kształtowanie się prawa cywilnego i *common law*.

Słowa kluczowe: *common law*, *civil law*, tradycja *civil law*, teoria prawa, antropologia prawa.

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