



Taking of Evidence in Europe: The Approach of Civil and Common Law Legal Traditions

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Relevance of the 'Big Divide'

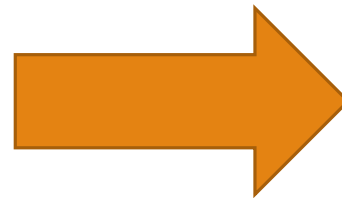
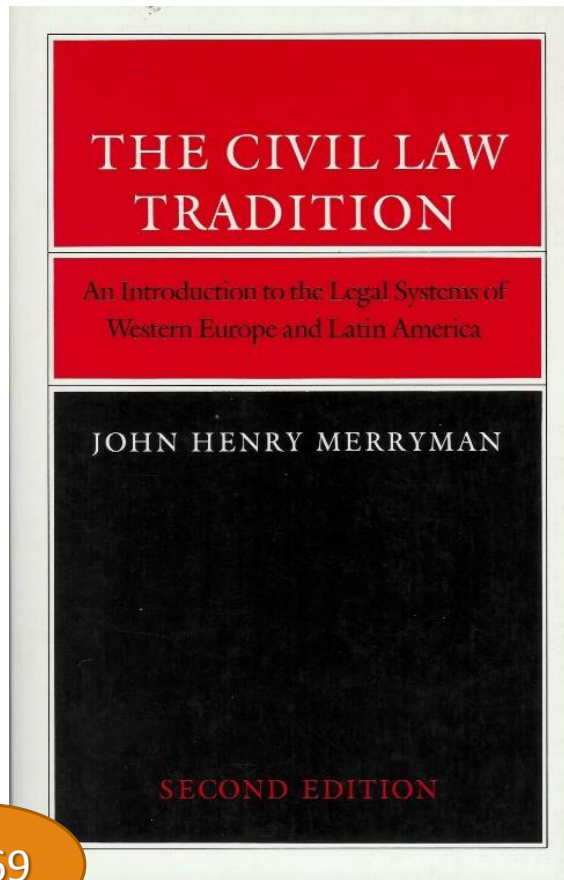
Are systemic differences between the approach to evidence in Common and Civil law countries an insurmountable obstacle for the approximation of the laws and regulations of the Member States?

- Taking of evidence is deeply entrenched in legal traditions!
- Multiplicity of the legal traditions in Europe vs. perspective of belonging to a single legal family: (future) dominance of Civil Law?

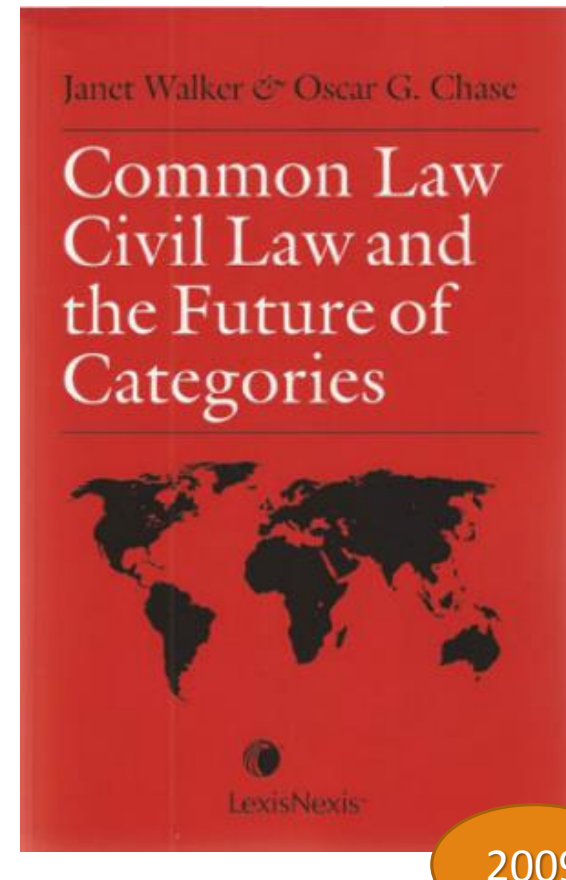
The historical differences of Common and Civil Law approaches have determined rather different rules and structures of taking of evidence!



Are differences of legal families disappearing?



THIRD LEGAL TRADITION?



Issues to be studied and the stages of evidence-taking process

Introduction of evidence

- Obligation of disclosure (discovery)? Need to specify and procure?

Selection of evidence

- Taking of evidence ex officio? Admissibility criteria? Proportionality or 'material truth'?

Presentation of evidence

- Form (oral or written); Concentration; Adversarial/Inquisitorial?

Assessment of evidence

- Standard of proof: certainty/balance of probability?

Frontloading? Case-management?



Prospects for the approximation: the forces of convergence

EUROPEAN LAW: INDIRECT INFLUENCE ON APPROXIMATION

- General direction of EU civil procedure: ‘simplification’ and ‘acceleration’ (2002 Evidence Regulation)
- Emergence of proportionality as a guiding principle: Small Claims Regulation – correlation of evidence and the social/financial value of the claim
- Duty to disclose information between the parties: EAPO

THE PRACTICE OF TRANSNATIONAL LITIGATION AND ARBITRATION

- Internationalization of commercial dispute resolution
- Silent harmonization of arbitration practices: transnational rules of evidence

ONGOING REFORMS OF NATIONAL PROCEDURAL LAW AND INTERNATIONAL PROJECTS AND INITIATIVES

- The international echo of Woolf reforms and the EU assistance in accession process
- Transnational Rules of Civil Procedure: UNIDROIT and ALI/ELI; UNCITRAL



Thank you for your attention!
Najlepša hvala za vašo pozornost!

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