

## **Thomas Lundmark, Charting the Divide Between Common and Civil Law\***

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Despite its undeniable practical importance, comparative law in many if not most countries has still to reach the gods of academic legal disciplines. Although with all the endeavours in Europe to harmonize and unify private law and most prominently contract law one might expect otherwise, true comparative research that goes to the roots of different legal solutions can be found less and less. Instead we face a shallow comparison that hardly reaches beyond the surface of specific legal solutions. This book is different! It is not about comparison at the level of specific doctrines of private law such as contract or tort law. Instead, it reaches out to the structural level and touches the very core of the different approaches that we can discern between common law and civil law. Lundmark's book offers new and fascinating deeper insights even to a reader who has been engaged in comparative law from an academic as well as from a practical aspect for decades.

Unlike many other books on comparative law, Lundmark neither offers to give a global overview of legal systems and their classification nor does he follow the traditional common law-civil law divide. Rather he scrutinizes in depth four legal systems with which he could familiarize himself personally during the last decades: England and Wales, the United States, Germany, and Sweden. One might regret that the French legal system was not incorporated, but given the aspiration of the author and the profoundness of his analysis, such an expansion indeed would have been impossible.

According to its own introduction, the book is primarily intended for use as a classroom text. The first chapter therefore provides an overview of the discipline of comparative law, including its aims and objectives as well as the different methodological approaches. In and of itself, this chapter is an excellent introduction for anyone interested in comparative law. The second chapter is devoted to the recently hotly debated topic of comparative legal linguistics. The author finds, however, that conceptualism (*Begriffsjurisprudenz*) that still prevails in German law is rather due to the viewing of law as being independent of other

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factors, including politics. This is strongly supported by the author's own field research on how lawyers in the four jurisdictions conceive of the law. Whereas German lawyers tend to consider their legal system rather as being autonomous and content-neutral, American lawyers take the opposite view. His excellent command of legal philosophy and its development allow Lundmark to convincingly explain these differences.

In Chapters 4 to 6, the author examines the legal profession, its historical development, and the ongoing influence on modern legal education, judges, and the judiciary as well as the role of lay judges and juries. Legal training certainly accounts for most of the differences that can still be found between Germany on the one hand and England and Wales, and the United States as well as - to a lesser extent - Sweden on the other. Legal education in Germany - as well as in many other Germanic legal systems such as Switzerland, but also Japan, China, and Korea - is extremely rule-orientated, whereas it is much more practice-orientated, socio-political, and critical in common law legal systems. This approach in turn is reflected in the attitude of many members of the legal profession throughout their professional lives. Major differences exist between the judiciaries. In England and Wales, and in Sweden the judiciary developed as early as in the twelfth and thirteenth centuries; in Germany, however, absolutism played an important role in the development of the judiciary, a fact that can be felt to this very day. Selection and training of judges as well as whether lay judges are employed in the judiciary still reveal more differences between the legal systems. This is a fact that also makes up for major differences between Germany and Switzerland, although other features are comparable.

Chapters 7 to 9 deal with legal rules, legal reasoning, statutes and their construction, and the relevance of judicial precedents. Lundmark convincingly demonstrates that the process of finding the law does not really differ in the four legal systems - contrary to what is advocated by some authors who describe common law reasoning as being analogical and civil law legal thinking as being deductive. However, major differences still exist when it comes to the perception and understanding of statute law. German jurists regard the codification as being exclusive, complete, and enduring. The author explains this phenomenon with the Reception of Roman law that took place in Germany. With law being historically an expression of the will of the absolute monarch, judges still nowadays remain subservient to the will of the legislature. This attitude continues as regards judicial precedents. Although judicial precedents play an important role in all four jurisdictions, their handling differs considerably especially between Germany and England and Wales, and the United States, whereas the Swedish approach seems to be in between.

All in all, Lundmark is able to draw a picture that is far more nuanced than the traditional view of legal families and most of all the supposed divide between Common and civil law. Due to his deep historical, philosophical, and sociological

knowledge he succeeds in drawing links and conclusions that go far beyond anything that has been written in comparative law before. This book is a must not only for students but for any lawyer who is interested in reflecting critically on the different legal systems, their origins, and their possible future development.

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