

New Empirical Study in Comparative Law: “The Reasons Highest Courts Give: England, France, Germany; 1880-89 and 2007-16”

This post has kindly been provided by Markus Lieberknecht (University of Osnabrück).

It is our great pleasure to bring to readers' attention the publication of the article “The Reasons Highest Courts Give: England, France, Germany; 1880-89 and 2007-16”, co-authored by Holger Spamann (Harvard Law School), Stefan Vogenauer and Jasper Kunstreich (MPI Hamburg), Heinrich Nemeczek (Scalable Capital) and Markus Lieberknecht (Osnabrück University), in *The Journal of Legal Studies*.

One of the core debates in comparative law concerns the characteristics, extent, and development of the common/civil law divide. In this context, it is a familiar trope that common and civil lawyers reason differently, but that the systems are converging. However, the empirical basis for such claims is thin to nonexistent. To address this paucity of data-backed research, we present the first systematic quantitative comparison of three paragon jurisdictions of common law (England) and civil law (France and Germany), and across two centuries (1880-89 vs. 2007-16). Specifically, we analyze the use of legal authorities (cases, statutes, and literature) in 40 representative opinions of each apex court in each of the two decades we surveyed.

Our findings challenge some conventional wisdoms. Take the claim of fundamental differences: Our findings suggest that England and Germany differ only in degree, not in kind. For instance, most German opinions were already citing and distinguishing precedent in the 1880s. There is nothing that one court does, that the other does not do at all. Nonetheless, English courts engage with prior cases more closely than the German courts. Overall, the odd one out in this

trio is France, not England. The convergence thesis does not fare well in light of our data either: We observed no such development but instead noted the opening of a new chasm with regard to legal literature, which only the modern German court engages extensively.

Naturally, our study can only pose a challenge, not a refutation, of engrained beliefs that common and civil law systems are fundamentally different but that they have been converging. It is, however, a rather strong challenge, relying on data from the three arguably central jurisdictions on the bread-and-butter object of legal studies (opinions of apex courts). We invite further research based on our sampling and coding scheme, which is scalable and can be applied to other jurisdictions and time periods.

The article – Spamann/Kunstreich/Lieberknecht/Nemeczek/Vogenauer, 55 J. Leg. Stud. 365 (2026) – can be accessed [here](#) or obtained from the author of this post.