CONNECTICUT JOURNAL OF INTERNATIONAL LAW

Transatlantic Reflections: Law and Lawyers Between Europe and America

Clifford J. Hendel

Volume 27 Spring 2012 Number 2

TRANSATLANTIC REFLECTIONS: LAW AND LAWYERS BETWEEN EUROPE AND AMERICA

Clifford J. Hendel

Author

Clifford J. Hendel, J.D., University of Connecticut School of Law, 1983, has a practice focused on international transactions and international arbitration, both as counsel and as arbitrator. Dual-national (American and French), trilingual (English, Spanish and French) and quadri-qualified (as an attorney in New York, an abogado in Madrid, an avocat in Paris and a solicitor in England and Wales), he began his career as a law clerk to U.S. District Court Judge Hon. Peter C. Dorsey in Hartford, Connecticut. He has subsequently practiced in New York and Paris as associate and of counsel of White & Case, a global firm based in New York, and since 1997 as a partner of Araoz & Rueda Abogados, a Madrid firm with a broad-based business and contentious practice.

About the Reflection

This reflection was prepared for an October 28, 2011 panel discussion hosted by the University of Connecticut School of Law at the Institute of Advanced Legal Studies in London, United Kingdom.

CONNECTICUT JOURNAL OF INTERNATIONAL LAW

REFLECTION CONTENTS

INTRODUCTION

When Professor Mark W. Janis of the University of Connecticut School of Law contacted me with a kind invitation to join a panel dealing with practical matters (or matters of practice) in lawyering on either side of the Atlantic, my first thought was that of any practicing lawyer: re-cycle one or two short pieces that I had written over the years containing certain ruminations on some of the essential differences between the common law, as practiced in the United States where I was educated and learned the skills of the trade, and the civil law, as practiced in Spain where I have spent most of my career.

But then I realized that the large part of today's audience was likely to consist of civil lawyers. Lawyers who knew much more about civil law than I ever will. Lawyers who have a good foundation in common law as well, in large part of course due precisely to their LL.M. studies at American law schools such as the University of Connecticut School of Law.

My second thought was to re-direct my comments, leaving the civil law largely aside, and address instead differences between American and English practice. This second thought had a shorter shelf-life than the first, for the good reason that my knowledge of English law and practice is actually quite limited. While I am qualified as an English solicitor and have been involved in many transactions and several contentious matters involving English law, unlike some of my colleagues on today's panel, I have never practiced in the United Kingdom or with an English firm.

My final thought took me back to my first. In the end, I will re-cycle some previously expressed comparative reflections on common law versus civil law practice as I have experienced them over the course of my career. To the extent that members of the audience find any of my remarks to be over-simplifications of the issues, I beg your apologies from the outset. And a word of warning: while I have lived and practice for a great many years now in Continental Europe and have become formally admitted to practice in two civilian jurisdictions (France and Spain), I am not and never will be fully fluent in civil law and civil law practice. I will always speak with an accent, to use a helpful metaphor.

I. GLOBALIZATION AND CONVERGENCE REGARDING SUBSTANTIVE LAW

Much has been written in recent years about globalization of legal rules and legal practice. And much has been said about the convergence of the law as understood and practiced in the world's two principal legal systems.

Insofar as substantive rules of law are concerned, my experience suggests that there has indeed been substantial convergence, particularly in areas involving business law. Certain important concepts may differ to greater or lesser degrees from system to system and, indeed, within each system. But by and large, a commercial contract, which is enforceable in a common law jurisdiction, will in all likelihood be enforceable in a civil law jurisdiction and vice versa. Similarly, the

remedies available for breach of such a contract are likely to be comparable if not identical.

An example may be helpful to show how underlying conceptual divergences tend to converge in practice in the commercial and contractual contexts. Traditionally, the common law adopted a robust *caveat emptor* approach to the sale of goods: common law lawyers, judges and authors often denigrated the civil law for its supposedly paternalistic protection of buyers. While this traditional common law approach may have been useful and appropriate in a non-industrial or industrializing world (say, where the object of the sale was a horse), it does not work in the modern world of mass production of sophisticated products (like automobiles or iPhones). So the common law, by the judicial and legislative creation of concepts such as implied warranties of merchantability and fitness for a particular purpose,[1] now can fairly be said to operate similarly to the civil law in this area insofar as actual, on-the-ground, practical results are concerned.

This growing convergence is surely due to a number of factors including a kind of cross-fertilization of legal rules which today's flat world makes not only possible but necessary, the adoption and implementation of what are perceived as best practices, competition to attract investors and investment, and direct harmonization from supranational bodies. Think, for example, of securities laws or antitrust laws, where American rules have set a global and globalizing standard.

As my example about the law of the sale of goods shows, I do not mean to suggest that this has been, or must be, a unidirectional process. On the contrary, in certain areas of substance and especially in the organizational or structural question of code-based versus precedent-based law, the common law system has been the one to move; think, for example, of the uniform law and Restatement initiatives in the United States,[2] the increasingly federal and codified American legal framework generally, together with the international uniform law initiatives of UNCITRAL,[3] UNIDROIT,[4] and particularly the CISG (Vienna Convention on the International Sale of Goods),[5] in which convergence and harmonization are the principal objectives. In certain other areas – family law, data protection law, and labor law, for example – perhaps areas in which social or politico-ideological aspects, rather than commercial or economic aspects, predominate, little or no convergence is immediately obvious.

My point is simply that the legal world is increasingly, but not completely, flat and that the two major legal systems are increasingly finding common ground. Insofar as substantive law is concerned, convergence occurs particularly in areas of law impinging most directly on business and trade. If you were to compare, say, a

---

1. *See generally* 17A C.J.S. *Contracts* §456 (2012).
2. *See, e.g.*, RESTATEMENT (SECOND) OF CONTRACTS (1981).
3. *See* U. N. COMM'N ON INT'L TRADE LAW, http://www.uncitral.org/uncitral/en/ index.html (last visited Apr. 13, 2012).
4. *See* INT'L INST. FOR THE UNIFICATION OF PRIVATE LAW, http://www.unidroit.org/ (last visited Apr. 13, 2012).
5. *See 1980 – United Nations Convention on Contracts for the International Sale of Goods (CISG)*, U. N. COMM'N ON INT'L TRADE LAW, http://www.uncitral.org/uncitral/uncitral_texts/sale_goods/1980CISG.html (last visited Apr. 13, 2012).

stock purchase agreement or a syndicated loan agreement used on one side of the Channel with one used on the other, you would find them almost indistinguishable; the detailed representations and warranties, for example, characteristic of the common law versions of stock or asset purchase agreements are now used as a matter of course in their civil law variants.

II. THE LIMITS OF CONVERGENCE—DIVERGENCE IN HOW LAW IS CONCEIVED AND HOW IT IS TAUGHT AND LEARNED

But there are limits to this convergence, or more accurately, perhaps, to conceptions and mindsets which will limit or prevent convergence and can limit or prevent mutual understanding. As I see it – and this is probably the area where I expose myself most clearly and justifiably to the charge of over-simplification – these limits stem in large part from fundamental conceptual differences between the two major legal systems. Surely, there are many such fundamental conceptual differences; for my purposes, I will discuss only two.

a) Conception of the Law Itself

The first conceptual difference involves the very conception of the law. The civilian system is, to a significant extent, based on a top-down structure in which the legislator has delineated, in a Cartesian, orderly, and essentially scientific, logical way, the rules which judges are to apply in order to resolve disputes. Their decisions do not create law and, except to a limited extent, do not constitute precedent: law is akin to science, but with heavy moral and philosophical overtones.

The classical common law conception of law is based on a bottom-up structure, where judges uncover law and apply it to particular fact situations, with their decisions standing as precedent for the cases that follow. At least for the legal realists, such as Oliver W. Holmes, law is no more and no less than "[t]he prophecies of what the courts will do in fact, and nothing more pretentious [than that]. . . ."[6]

b) Conceptions of How Law is Taught and Learned

A second conceptual difference involves the way law is taught and learned. As Lawrence Friedman has noted, lawyers in the early days of the common law came out of the Inns of Court, which had no connection with universities, Roman law or the general legal culture of Europe.[7] Their training was eminently practical: it could be said that they learned to act like lawyers. Since the late nineteenth century, American legal education has been based on the Socratic method: to think like a lawyer.

---

6. Oliver W. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 461 (1897).
7. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW (3d ed. 2005).

Traditional civilian legal education is conceived in quite a different way. The focus is much more on learning the law than learning to think like a lawyer or act like a lawyer. Rote learning of vast quantities of legal texts (provisions of the basic civil and commercial codes, generally closely based on the Napoleonic codes promulgated in France in the waning years of the eighteenth century) has traditionally formed a large portion of the curriculum. Court decisions do not constitute a material focus of study; doctrine or scholarly works are instead the building blocks (in addition to the codes and laws themselves) of civilian legal education. So oriented, the course of study tends to be quite a bit longer than in the United States (typically, five years, although recent European efforts, referred to as the Bologna Plan, are geared at reducing/harmonizing the length of university studies throughout Europe and adding practical and participatory elements to the historically theoretical and passive system of learning).[8]

III. THE LIMITS OF CONVERGENCE

A. How Diverging Fundamental Underlying Conceptions in Conceiving the Law and Teaching and Learning the Law Create and Perpetuate Unbridgeable Chasms in Doing (Practicing) Law Under the Two Legal Systems

How do the civil law approaches to law and legal education outlined above affect the actual practice of law in civil law jurisdictions? At the risk of gross over-simplification, the following characteristics seem to be of more-or-less general application from the perspective of a common law lawyer looking at the practice of law in a civil law jurisdiction:

> Drafting: Civilian lawyers, able to rely on code provisions and fond of Cartesian reasoning based on legal texts, pay notably less attention to precision of drafting than do their common law counterparts. The civil law system does not place the same premium on the precision of the written word as does the common law system, which traditionally has no code-based fallback, serving not only to fill gaps but also to spell out invariable terms, say, of contracts. The civilian lawyer tends to view the common lawyer's lengthy, carefully crafted contracts as reflections of an unnecessarily punctilious and obsessive approach to practice.
>
> Role of the lawyer: Civilian lawyers tend to have a somewhat less intimate, more distant relation with their clients than do common law lawyers. Traditionally, they are seen to be less quick to put themselves in the client's skin, and more inclined to limit their advice and involvement to purely legal matters rather than legal-commercial or commercial

8. *See University: Bologna Reform*, EU-STUDENT, http://www.eu-student.eu/the-bologna-plans-main-features/ (last visited Apr. 13, 2012).

matters. The comparison of a typical common law lawyer's legal opinion to that of a civilian lawyer can be telling: rather than a user-friendly and forceful (so far as the circumstances warrant) defense of the client's position, the civilian's opinion is often viewed by the common lawyer or common law-based client as a clumsy, scholarly and equivocal document of limited practical assistance.

Law firm size and lawyer specialization: Civilian lawyers tend to stress the professional aspects of their calling and minimize its commercial/business aspects, whereas for most common law lawyers, law is a business. This distinction may both explain and be explained by the smaller size and less specialized nature of civilian jurisdiction law firms as compared to the more corporate organization of common law firms and the higher degree of specialization of their lawyers.

B. How Fundamentally Different Legal Institutions and Core Principles Put Limits on Convergence

Certain bedrock principles of a given legal system or legal institutions intrinsic to a particular system operate to limit convergence. I will draw on my Spanish experience to identify a few examples.

Three areas or concepts which are omni-present in Spanish practice, and which inevitably give rise to confusion on the part of common lawyers or their clients, are (i) the concept of public faith, (ii) the question of corporate functioning and capacity, including the sometimes nettlesome question of powers of attorney, and (iii) certain basic matters of Spanish litigation and civil procedure.

1. To the common lawyer, one of the principal features of the Spanish legal system which is hardest to come to grips with involves the question of public faith in legal matters. As with other Latin legal systems, the Spanish legal system reserves a significant role to public or quasi-public officials, such as notaries and registrars. In fact, the Spanish system probably takes this role to its highest level in Europe. While a full discussion of the meaning of public faith and the role of the Spanish notary and registrar in providing it is beyond the scope of this presentation, a useful shorthand is to say that they filter documents and transactions to ensure their efficacy; once documents and transactions have successfully passed their filter, they are entitled to greater or lesser degrees of presumed and occasionally unimpeachable validity, on which third parties in good faith can rely and which can have certain effects important in all matters of legal and commercial intercourse, including, in particular, judicial proceedings.

Just as the common lawyer has trouble understanding this system of public faith, the civilian lawyer has equal difficulty in fathoming how any legal system can function (as does the largely self-regulatory common law system) without an extensive system of public registers and documentary and transactional gatekeepers like the Spanish notary and registrar. To a large extent, what the Spanish system accomplishes by public faith – a functional and secure bedrock for the legal system – the common law system accomplishes by what can be referred to as private faith, i.e., the conduct and expectations of conduct of individuals and collectives, most particularly.

Two everyday examples highlight the differences: A civilian lawyer might have difficulty conceiving of having a document signed in escrow, in advance of its release at a subsequent closing. But entrusting such a document – or, heaven forbid, the purchase price or other closing consideration – to counsel (including opposing counsel) is standard practice for the common lawyer. The involvement of a Spanish notary can help to give similar effect to a Spanish transaction involving multiple, but theoretically simultaneous, steps. Another example: one of the important benefits of public faith in Spain is that it provides what the Spanish lawyer refers to as certainty of date; for example, a notary's intervention on a document is conclusive proof of the date on which the document was executed, disabling any attempt of a party or a witness to claim later that it was executed on a different date. Now, this may be a minor benefit, but my take on it – and I suspect, that of any common law lawyer – is that the date of a document, like any other fact potentially in dispute, can and should be established the same way as any other fact put into dispute, i.e., by evidence. In any case, my common law experience and instincts tell me that generally innocuous and essentially incontrovertible facts of this sort are only rarely put into dispute. But where, as in Spain, the only or best way to establish this fact is via notary, and this route has not been taken, the temptation to presume or argue the lack of veracity of the fact – i.e., essentially, to presume or engage in fraud – is great. In other words, it is the very absence of a system of public faith which puts such a premium on *private* faith in the common law system. It is not that common lawyers are more honorable or honest than civilian lawyers, it is simply that the legal system in which they operate has no institutional provider of *public* faith to grease the wheels of legal and commercial intercourse, so they must provide the service themselves (whether acting as escrow agent at the closing of a transaction, or refraining from making dubious arguments, or permitting the presentation of dubious evidence as to such trivia as the date of a document when in truth the question is not fairly open to legitimate dispute). In both systems, comparable results are achieved; but the means to these similar results are quite different, sometimes

inexplicably different in the eyes of lawyers schooled in the opposite legal tradition.

2. A classic area of conceptual confusion between Spanish and common lawyers (and, really, little more than a variation on the theme of public and private faith) involves questions of corporate authority.

For the Spanish lawyer, signing authority is established by the presentation of a formal power of attorney, which has passed the filter of a Spanish notary and – depending on the nature of the power, general or specific – the additional filter of the Commercial Registrar. To open a bank account, sign a contract, or otherwise commit a legal entity, this kind of power of attorney, and only this kind of power of attorney, will suffice. Spanish executives are thus required to carry with them dog-eared powers of attorney, perhaps granted years ago, in order to evidence their due capacity.

The Spanish lawyer (indeed, the Spanish system) accordingly expects the same kind of evidence of capacity from non-Spanish parties. The fact that a common law executive's authority is often really one of apparent authority based on his/her corporate office, or one supported or evidenced by an opinion of counsel in a significant transaction, or even one which is the subject of board approval evidenced in the company's customary form for the same, is wholly irrelevant. What the Spanish system requires is to mimic its own requirements. Thus, the common law executive must arrange for a formalistic power of attorney to be executed in the presence of a United States notary (who has no legal training, of course, and only certifies signatures), who must certify as to the existence of the company and the authority of the signer (matters completely beyond the competence of the United States notary). Without such a power, and the apostille of the Hague Convention to certify that the notary is a notary, the power will have no utility in Spain. Clearly, experienced Spanish lawyers, notaries, and registrars know that this manner of proceeding (having the U.S. notary sign things that he/she is unable to assert, let alone understand) is a bit of a scam, but it works.

3. A third example of core confusion and discrepancy which will be an obstacle to convergence are the enormous and irreconcilable differences between Spanish and common law (or at least, U.S.) approaches to litigation and civil procedure. In fairness, many or most of these differences probably stem from peculiarities in the common law (especially, the American variant) system, not the civil law system. A sampling of these differences would include mentions of the following:

- The United States jury system, particularly in civil cases, is unknown in Spanish law and practice; thus, there is little or no distinction between issues of fact and issues of law, little or no need for rules of evidence and limited restrictions on the ability of appellate courts to review determinations of fact, as well as determinations of law.

- While the classic distinction between the common law adversarial system and the civil law inquisitorial system may be oversimplified, it remains an essentially accurate depiction of the contrasting situations, and one which has many consequences. One everyday consequence concerns deadlines: United States counsel can stipulate with each other and waive filing and other deadlines as matters of mere professional courtesy; this is not so in Spain, where deadlines – usually (even, unreasonably) tight – are cast in cement, with lawyers and parties having submitted to the court system, retaining no ability to set the pace of the proceeding.

- Another distinction gives rise to the familiar characterization that, while the common law judge is blind and illiterate (preferring live, oral evidence), the Spanish or civil law judge is deaf and dumb (preferring written evidence and tending to discount oral testimony).

- U.S.-style discovery and deposition practice is entirely unknown in Spain. It is hard for a Spanish lawyer to understand why damaging documents need to be preserved and ultimately disclosed to the other side in a litigation. And it is equally hard for a Spanish lawyer to envision and participate effectively in an unscripted witness examination or, especially, cross-examination, the traditional form of Spanish witness testimony being a stilted, formal series of questions yielding answers of either yes or no, and nothing more.

- An anecdote from a Spanish arbitration in which I was recently involved suggests another, perhaps disturbing, difference in the approach to litigation, or indeed, to the very purpose of litigation. For a variety of reasons, the large number of fact witnesses that the parties planned to call to testify seemed quite unnecessary to me. They were both redundant of one another and redundant of testimony already heard by the same tribunal in a parallel case involving the same parties and contracts and the same witnesses. In order to accelerate things, and particularly in order to allow for a more effective and productive witness hearing, i.e. to

> better identify what really happened and what the consequences should be, I proposed that there only be one fact witness for each side, chosen by the other side, and that the two witnesses so-chosen testify simultaneously in a free-flowing discussion in the presence of the arbitrators. This is a variant of a form of testimony referred to as witness conferencing, and which is occasionally used in international arbitrations, although generally with expert witnesses rather than fact witnesses. Opposing counsel did not object. But the arbitral panel was uncomfortable with the idea, the Chair in particular. In our rather informal discussion about the pros and cons of the idea, the Chair said to me "Cliff, your proposal shows your Anglo-Saxon [i.e., common law] background and mentality; what you think this procedure is searching for is the material truth." What I understand he meant to say was that, in his Spanish mind at least, a legal proceeding really did not involve a search for the material (real) truth, but rather something different, a kind of formal (or immaterial?) truth. I was tempted to ask him to explain the different types of truth that he was referring to, since I had trouble distinguishing between material truth and any other truth, but prudently, I held my tongue.

These are just a few examples; surely there are a great many more. My point is that certain core principles or institutional features are so ingrained and pervasive within a legal system, and so embedded in the legal mindset of the practitioner, that the legal world may never be flat enough to change them.

C. *Some Mysteries and Some Areas of False Convergence*

I must confess that there are some areas of divergence – or of only limited convergence – the origins of which I am not really able to identify or explain. I suspect that they all have their origin in the slightly more paternalistic approach of the civil law, as mentioned earlier. Among the questions that I have often asked myself (and among the areas in which my advice to clients may well have been less than perfect) during my years in Continental Europe are the following two:

- A first question: why are civil law courts so quick to delve into questions of the parties' intent (or legislative intent), or to presume that they know such intent, when the words of the contract or piece of legislation seem to leave no doubt? Two recent examples illustrate my perplexity:

- A 2009 Spanish high court, in an annulment action involving an arbitration award finding a breach of contract and awarding damages, vacated the award since the contract only referred in its arbitration clause

to matters involving the interpretation of the agreement, not its breach, performance, etc. This result, which to me seemed right and proper, has triggered a maelstrom of criticism in Spanish legal circles: "everyone knows," it is said that by using the term *interpretation*, the parties could not, and thus did not, really mean to subject only certain of their disputes to arbitration, but rather, all of them. To me, probably due to my common law formation, this strikes of re-writing the parties' agreement. As Holmes said, *"[T]he making of a contract [*and surely the same is true regarding its interpretation*] depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs – not on the parties' having meant the same thing but on their having said the same thing."*[9] The Spanish Civil Code recites that when the text of an agreement is clear and unambiguous, its plain meaning shall prevail; but even the Spanish Supreme Court has expressed the – surprising, to me – view that only rarely will contractual text be so clear and unambiguous as to make it unnecessary to delve into the parties' subjective intent. Holmes would turn over in his grave.

- Another example: I recently found myself twice in a minority position as member of a Court of Arbitration for Sport arbitral tribunal dealing with a pure matter of legislative construction, i.e., the interpretation of a regulation of the International Federation Association of Football (FIFA).[10] The other two members of the panel were civil lawyers. First (and this may not have anything to do with common/civil law convergence or divergence, but it is a good story), I was outvoted with respect to the necessity or convenience of hearing fact witnesses proposed by the parties. Since the facts were clear and not in dispute, I didn't see the need of holding a time-consuming and expensive hearing in Lausanne, Switzerland, to decide a purely legal issue, especially with the respondent team and its lawyers and witnesses coming all the way from Argentina and the three members (and secretary) of the tribunal all coming from abroad. But the majority felt that since one of the parties had asked for a witness hearing, a denial of the request might risk annulment by the Swiss Supreme Court on grounds of inhibiting the party's right of defense; something tells me that the general lack in the civil system of a filter akin to the common law summary judgment may also underlie our different perspectives on the issue. In any case, in the end, the lawyers came alone unaccompanied by any witnesses. So the hearing consisted of opening statements, a cigarette break, and then closing statements (like a sandwich with nothing between the two slices of bread). Second, and this is more to

9. Holmes, *supra* note 8 at 464.

10. *See generally* Scott Appleton, *Sporting Chance*, INT'L BAR ASS'N, http://www.ibanet.org/Article/Detail.aspx?ArticleUid=1a43e1e6-e207-4aa7-a21f-6d0435bba7e7 (last visited Apr. 13, 2012) (explaining the arbitration system and process as related to sports generally).

> the point, my initial view on the merits differed from that of my colleagues: I was inclined to interpret and apply the clause of the relevant FIFA regulation narrowly, like the Spanish court did in the criticized annulment action that I mentioned a moment ago, on the basis of what it said (and would thus have required FIFA to amend it if they had really meant something different). But ultimately my colleagues persuaded me to join with them: we issued a unanimous decision, based on what we thought FIFA meant to say in the regulation, although they didn't really say it.
>
> - A second question: why does almost every civil law commercial litigation seem to degenerate into a competition to establish your own client's extreme good faith and the extreme bad faith of the other party?

No matter how long I have lived and practiced in civil law Europe, the answers to these questions (why the emphasis on subjective intent and why the stress on questions of good faith and bad faith) remain mysterious to me.

I close with an example of what I would call false convergence. I recently was involved in a French law international arbitration involving a penalty clause. Any common law lawyer will know that penalty clauses are unenforceable, unless they constitute reasonable pre-estimations of foreseeable damages, in which case they are considered enforceable liquidated damages clauses and not unenforceable penalty clauses. The civil law tends to limit or moderate penalty clauses to the extent that they are manifestly disproportionate in the circumstances. So far, so good: one could begin to see a certain convergence here (as in the case of implied warranties in the sale of goods mentioned earlier), where the practical application of the two concepts under the respective systems would seem to point toward converging results.

But no: unfortunately for my client (and for me), French law, for purposes of evaluating the existence of the disproportionality of penalty clauses looks – as understood by my tribunal at least – principally, and even nearly exclusively, at the relation between the amount of damages actually incurred and those set out in the penalty clause. The practical result is to moderate, or limit, penalty clauses to the amount of actual damages, which, to me at least, seems to defeat the very purpose, gutting the penalty clause of any real force or effect. All of which makes the French position much less stringent and much less predictable than under the common law position, which actually prohibits penalty clauses.

CONCLUSION

The globalization of legal practice, the use of technologies, the requirements and expectations of sophisticated and demanding clients, and a host of similar reasons have triggered an increasing approximation of legal practices throughout the world, and this, independent of traditional civil and common law distinctions. The increasing, and increasingly visible, presence and attractiveness to young

civilian lawyers of international firms and the increasing practice of civilian law graduates to do LL.M.'s abroad, and even to work for a year or two with firms in one or another of the leading common law jurisdictions, are both causes and consequences of this globalization.

These and related factors, over time, will no doubt facilitate mutual understanding of fundamental differences in legal systems. But these differences will surely remain and impose limits on convergence between the systems.