



ORIGINAL PAPER

Diverging Paths of Justice: A Comparative Insight into Legal Traditions and Court Systems in Romania, the UK, and the US

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Abstract :

In examining the legal systems of Romania, the United Kingdom, and the United States, one is immediately struck by the divergent paths through which justice is administered and law is interpreted within these jurisdictions. This paper delves into the foundational differences in legal traditions and systems, specifically, the civil law system of Romania contrasted with the common law traditions of the UK and the US, exploring how these differences impact the interpretation of laws, the roles of judges, and the overall legal processes. For legal practitioners, scholars, and students, understanding these comparative dynamics is crucial for navigating the increasingly interconnected global legal landscape, offering insights into how different societies organize their judiciary to uphold the rule of law.

Keywords: *legal traditions, court structures, judicial policies, teaching legal English.*

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Introduction

In a world where legal principles increasingly transcend national boundaries, a comparative analysis of different legal traditions offers valuable insights into how societies understand, interpret, and apply the concept of justice. Romania, with its civil law tradition rooted in Roman and Napoleonic influences, contrasts markedly with the common law systems of the United Kingdom and the United States. These legal traditions not only inform the foundational principles of each system but also shape judicial structures, procedural rules, and approaches to legal interpretation. This paper will explore the implications of these differences by examining three areas: the historical and philosophical foundations of each system, the structural organization of courts, and the role of judges within the judicial process. By doing so, it aims to illuminate how legal traditions influence the operation of justice and the protection of rights across distinct jurisdictions.

The importance of this comparative analysis extends beyond academic interest, as globalization and transnational legal practice require an appreciation of diverse legal frameworks. Legal rules, as Pierre Legrand (1997) argues, "are always embedded in a specific cultural matrix, meaning that attempts to transfer them across jurisdictions ignore the depth of local legal traditions" (p. 117). This idea suggests that understanding the nuances of each system is essential, as legal principles are not simply interchangeable across borders; they are deeply interwoven with the unique historical and social contexts in which they developed. For instance, while Romania's civil law system emphasizes codification and systematic regulation, the common law systems of the UK and the US rely heavily on precedent and judicial discretion. This fundamental distinction affects not only substantive law but also procedural dynamics, evidentiary standards, and the role of legal professionals within each system.

As legal traditions increasingly interact in a globalized world, it becomes crucial to recognize the resilience of each system's foundational principles. Kelemen (2011) notes that "as legal traditions come into contact through globalization, the resilience of foundational principles in each system highlights the importance of comparative legal studies" (p. 45). Comparative analysis enables legal practitioners, scholars, and policymakers to understand the distinct philosophies and structural choices that underpin each tradition, fostering cross-border legal strategies that respect and accommodate these differences. By gaining insight into how legal systems like those in Romania, the UK, and the US interpret and administer justice, we can enhance judicial cooperation and promote a deeper respect for the plurality of legal traditions worldwide.

Historical Background and Evolution of Legal Systems

Romania: Roman Law Foundations, Napoleonic Code Influence, Post Communist Legal Reforms

Romania's legal tradition has deep roots in Roman law, a foundational influence on much of Europe's legal landscape. As Stein (1999) notes, "Roman law has left an indelible mark on European legal traditions, including Romania's" (p. 47). This influence dates back to the Roman conquest of Dacia in 106 AD, after which Roman customs, laws, and language permeated the region. Roman legal principles, particularly those governing property rights and contractual obligations, laid a foundation for Romania's legal system, which persisted even after the Roman Empire's fall (Westrup, 1950).

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In the 19th century, as Romania sought to modernize its legal system, it turned to the Napoleonic Code as a model. The Romanian Civil Code of 1865 was closely modeled after the French civil code, reflecting the wider European trend towards codification. According to Merryman and Pérez-Perdomo (2007), “the civil law tradition values codified statutes, reducing the interpretive role of judges” (p. 112), which was in line with Romania’s goal of creating a systematic and predictable legal framework. This civil law orientation emphasized codified rules and principles, underscoring a legal structure where judges applied written law consistently rather than relying on judicial discretion.

Following the collapse of communism in 1989, Romania underwent significant legal reforms to align with European standards, especially as it prepared to join the European Union in 2007. Abraham (2016) explains that “the transition from a communist to a democratic state required Romania to overhaul its legal system, embedding principles of human rights and judicial independence in the 1991 Constitution.” This post-communist period saw extensive reforms to various codes, including the Civil and Penal Codes, aimed at harmonizing Romanian law with the EU’s legal framework and integrating principles of human rights and judicial independence.

United Kingdom: Development of Common Law, Historical Precedents, Influence of Statutory Law

The United Kingdom’s legal system is one of the oldest and most influential common law systems globally, characterized by its reliance on judicial precedents and the principle of *stare decisis* (Holdsworth, 1922). The development of English common law began during the reign of Henry II in the 12th century, when royal courts were established to create a unified system of justice across the kingdom. Holmes (1881) observes that “the common law, by its very nature, evolves through a continuous process of judicial interpretation,” and this evolution has allowed English law to adapt over centuries while maintaining a stable framework.

Statutory law also became increasingly important in shaping UK law, particularly during the 19th-century legal reforms. The Judicature Acts of 1873–1875 were landmark statutes that merged common law and equity courts, thereby streamlining judicial processes. According to Slapper and Kelly (2014), “the Judicature Acts marked a critical point in English legal history, integrating previously separate courts and reinforcing the significance of statutory law” (p. 89). Although the role of legislation grew, case law and judicial precedents continue to serve as the bedrock of the UK legal system.

A unique aspect of the UK system is the balance between parliamentary sovereignty and judicial interpretation. Unlike Romania’s system, which prioritizes codified statutes, the UK allows judges more latitude to interpret laws dynamically. For instance, in the landmark case *Donoghue v. Stevenson* (1932), the House of Lords established the foundational tort principle of “duty of care.” Lunney and Oliphant (2017) explain that this case illustrates how “the common law is shaped by judicial reasoning and interpretation, adapting to changing societal values” (p. 125), highlighting the judiciary’s role in shaping legal principles within the UK’s common law framework.

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United States: Adaptation of English Common Law with Distinct Federalism and Constitutional Focus

The United States inherited the English common law tradition through its colonial ties to Britain. However, following independence in 1776 and the subsequent ratification of the U.S. Constitution in 1787, the American legal system began to diverge, embedding unique principles of federalism and constitutionalism. According to Friedman (2005), “while early American courts initially followed British precedents, the creation of the U.S. Constitution introduced a distinct legal framework that emphasized checks and balances” (p. 103). This divergence led to the development of a dual court system, where federal and state courts operate independently, each with the power to interpret the Constitution and statutory laws within their jurisdiction.

One of the most significant developments in American law is the principle of judicial review, established in the landmark case *Marbury v. Madison* (1803). McCloskey (2016) describes this decision as “a cornerstone of American constitutional law, empowering the judiciary to invalidate laws that conflict with the Constitution” (p. 76). Judicial review enshrined a system of checks and balances unique to the American judiciary, giving courts a crucial role in protecting constitutional rights and ensuring that all laws align with constitutional principles.

Federalism also plays a critical role in shaping the U.S. legal system. Unlike the centralized judiciary of the UK, the U.S. has distinct legal jurisdictions within each state, allowing for significant variation in state laws. Elazar (1987) explains that “federalism enables states to develop their own legal norms and practices, fostering diversity within a unified legal framework” (p. 54). This decentralized approach allows for state-specific laws on issues like criminal penalties, civil procedures, and contract law, adding complexity to the U.S. legal landscape. For example, Maddex (2005) notes that “state constitutions often reflect regional priorities and values, leading to variations in case law across the United States” (p. 38), which further distinguishes the American system from other common law traditions.

Court Structures and Jurisdiction

The structural organization of courts in Romania, the United Kingdom, and the United States reflects each country’s unique approach to legal administration, judicial hierarchy, and legal tradition. These systems demonstrate how historical and legal philosophies shape court structures, judicial responsibilities, and the overall delivery of justice.

Romania: A Hierarchical Civil Law System

Romania’s court system is rooted in the civil law tradition, reflecting its history of codification and Roman legal foundations. The court structure is hierarchical, consisting of four main levels: lower courts (*judecătorii*), tribunals (*tribunale*), courts of appeal (*curți de apel*), and the High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*), which serves as the highest appellate authority. The High Court is tasked with ensuring uniform interpretation and application of the law across the country (Merryman & Pérez-Perdomo, 2007).

Romania also has a Constitutional Court (*Curtea Constituțională*), a separate body from the general judiciary, which exclusively handles constitutional matters. The Constitutional Court reviews the constitutionality of laws, governmental acts, and treaties, ensuring that Romania’s legal framework aligns with its 1991 Constitution and

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European Union standards. Unlike courts in common law systems, Romanian judges focus on applying codified statutes with limited interpretive discretion, reflecting a top-down approach to legal consistency (Stein, 1999).

The systematic structure of Romanian courts promotes cohesion and predictability in judicial decision-making. Each level of the hierarchy plays a defined role, with lower courts addressing routine legal disputes and higher courts resolving complex appeals or legal questions. The emphasis on codification and binding statutory interpretation ensures uniformity in the application of laws across the nation (Abraham, 2016).

United Kingdom: A Multi-Jurisdictional Common Law System

The United Kingdom's court system is more complex than Romania's due to its common law heritage and the presence of distinct legal jurisdictions for England and Wales, Scotland, and Northern Ireland. Each jurisdiction has its own court structure and legal traditions, though they share a common highest appellate court: the Supreme Court of the United Kingdom. Established in 2009, the Supreme Court replaced the House of Lords as the ultimate authority on legal appeals within the UK (Slapper & Kelly, 2021). However, unlike Romania's High Court of Cassation and Justice, the UK Supreme Court does not have the power to invalidate parliamentary legislation, as the UK lacks a single codified constitution (Dicey, 1885). Instead, courts interpret and apply statutes passed by Parliament, which retains ultimate legal sovereignty.

The UK legal system relies heavily on judicial precedent (*stare decisis*), a hallmark of the common law tradition. Appellate courts, including the Supreme Court, set binding precedents that lower courts must follow, ensuring consistency while allowing flexibility to adapt legal principles over time (Holdsworth, 1922). This allows the UK judiciary to balance legal stability with the capacity to respond to societal changes, as seen in landmark cases like *Donoghue v. Stevenson* (1932), which established modern tort principles (Lunney & Oliphant, 2017).

The separate jurisdictions within the UK highlight the system's regional diversity. For example, Scotland retains distinct rules for civil and criminal law, while Northern Ireland's legal system has its own courts and procedures. Despite this complexity, the unified appellate structure ensures a degree of consistency across the UK, albeit within a flexible, precedent-based framework.

United States: A Federal Dual-Court System

The United States operates a dual-court system, reflecting the country's federalist structure. There are two parallel systems of courts: the federal courts and the state courts, each with its own hierarchy. At the apex of the federal judiciary is the Supreme Court of the United States, which has ultimate authority to interpret the U.S. Constitution and resolve disputes between federal and state jurisdictions. Established by Article III of the U.S. Constitution, the Supreme Court also holds the power of judicial review, enabling it to strike down laws deemed unconstitutional, as established in *Marbury v. Madison* (1803) (Friedman, 2005).

Below the Supreme Court are the U.S. Courts of Appeals (13 circuits) and the U.S. District Courts, which serve as trial courts for federal cases. Federal courts handle cases involving constitutional questions, federal laws, or disputes between states. Each state, meanwhile, has its own court system, typically including trial courts, appellate courts, and a state supreme court. State courts primarily address issues under state law,

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such as criminal cases, family law, and property disputes, leading to significant variation in legal standards and procedures across states (Elazar, 1987).

This decentralized structure allows states to retain autonomy in their legal systems while operating under the framework of federal law. For example, states differ on matters such as sentencing guidelines for criminal offenses or contract law requirements. Maddex (2005) notes that “state constitutions often reflect regional priorities and values, leading to a diversity of laws and practices across the country” (p. 38). While this fosters innovation and regional responsiveness, it also requires coordination between federal and state courts to resolve jurisdictional conflicts.

Role and Responsibilities of Judges

The role of judges within each legal system is fundamentally shaped by the underlying legal tradition, which influences how they interpret laws, administer justice, and interact with other branches of government. These differences are particularly evident in the civil law tradition of Romania compared to the common law traditions of the United Kingdom and the United States. The divergence in judicial roles reflects each system’s philosophical approach to law, affecting judicial training, decision-making authority, and the relationship between the judiciary and the legislature.

Romania: Judges as Enforcers of Codified Law

In Romania’s civil law system, judges are primarily seen as interpreters and enforcers of codified law. The civil law tradition, which has roots in Roman law and was later influenced by the Napoleonic Code, emphasizes legislative supremacy—the idea that the law is complete and self-contained, requiring judges to apply it as written. As noted by Merryman and Pérez-Perdomo (2007), “the civil law tradition assumes that legal codes contain all necessary rules, and judges are bound to these statutes rather than to precedent” (p. 34). Consequently, Romanian judges are expected to strictly adhere to statutory codes, with limited scope for creative interpretation or judicial innovation.

Judicial training in Romania focuses on ensuring that judges understand and apply the codes systematically and consistently. According to Fletcher (2002), “the civil law system relies on judges who act as administrators of the law, ensuring that it is applied uniformly across cases” (p. 82). This training reflects the role of judges in civil law systems as technical appliers of the law rather than as interpreters who shape its development. Unlike in common law systems, judicial decisions in Romania do not create binding precedents. Instead, decisions are generally case-specific, and while higher court rulings are respected, they do not carry the binding force typical of common law systems.

This approach reflects a civil law philosophy that values legal certainty, consistency, and predictability over judicial discretion (Zweigert & Kötz, 1998). Romanian judges are primarily administrators of legislative will, applying laws uniformly without overstepping legislative intent. This systematic approach aligns with the civil law tradition’s emphasis on a structured and hierarchical legal system, where judges play a secondary role to the legislature in shaping legal norms.

United Kingdom: Judges as Interpreters and Developers of Common Law

In the United Kingdom, judges play a more dynamic role, largely due to the common law tradition’s reliance on judicial precedent. The principle of *stare decisis*, or adherence to precedent, requires judges to consider past judicial decisions when making

their rulings, ensuring that similar cases yield similar outcomes. However, UK judges are not merely passive followers of precedent; they also have the authority to interpret and adapt legal principles to meet new circumstances. According to Slapper and Kelly (2021), “the flexibility of common law allows judges to interpret statutes within a broader social context, often applying purposive or contextual methods” (p. 142).

British judges use a variety of interpretive approaches, such as the purposive approach, which looks at the intent behind legislation, and the contextual approach, which considers broader social implications. This judicial discretion allows for legal continuity, while also enabling the judiciary to adapt the law to evolving social norms. *Donoghue v. Stevenson* (1932), a seminal case in tort law, illustrates this flexibility, as it established the modern principle of “duty of care,” which has since been foundational in UK law (Lunney & Oliphant, 2017).

The role of UK judges as interpreters and developers of the law reflects the common law system’s emphasis on adaptability. While they respect legislative authority, judges in the UK actively participate in shaping legal doctrines through their rulings, often responding to complex societal issues. This dual role—following precedent and exercising interpretive discretion—allows UK judges to influence the gradual evolution of legal principles.

United States: Judges as Custodians of Constitutional Principles

Judges in the United States share many similarities with their British counterparts in their reliance on precedent and judicial discretion. However, American judges, especially those in the federal judiciary, hold an additional power that profoundly shapes their role: judicial review. Established by the landmark case *Marbury v. Madison* (1803), judicial review allows American judges to interpret the U.S. Constitution and to invalidate laws or executive actions deemed unconstitutional. This authority positions the judiciary as a co-equal branch of government alongside the legislative and executive branches, granting American judges significant influence over public policy and the protection of individual rights (Friedman, 2005).

In the U.S., the Supreme Court has the power to set binding precedents on constitutional matters, shaping the legal landscape on issues ranging from civil liberties and federalism to economic regulation. According to McCloskey (2016), “the power of judicial review has made the U.S. Supreme Court one of the most powerful judicial bodies in the world, capable of influencing both national policy and individual rights” (p. 48). This role is particularly prominent in cases related to civil rights, such as *Brown v. Board of Education* (1954), where the Supreme Court’s ruling against racial segregation in schools transformed American society.

The combination of statutory interpretation, common law development, and constitutional adjudication makes the role of U.S. judges particularly powerful and distinct. U.S. judges are not only interpreters of statutory law but also protectors of constitutional principles, with the ability to shape national policies through landmark rulings.

Comparative Analysis: Judicial Roles in Civil Law vs. Common Law Systems

The different roles of judges in each system reflect broader legal philosophies about the nature of law and the function of the judiciary. In Romania, the judge’s role as a strict interpreter of codified law aligns with the civil law tradition’s emphasis on

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legislative supremacy and systematic legal order. Romanian judges are primarily administrators of legislative will, ensuring that laws are applied uniformly and consistently without overstepping the boundaries set by the legislature. This approach reinforces a view of the judiciary as a technical body focused on precise application rather than interpretation or policy-making (Merryman & Pérez-Perdomo, 2007).

In contrast, the roles of judges in the UK and the US embody the common law values of adaptability and judicial discretion. In the UK, judges actively participate in shaping the law through their interpretations and rulings, contributing to the evolution of legal principles over time (Dicey, 1885). British judges are respected for their ability to interpret statutes within the broader context of common law principles, adapting to new social realities while maintaining continuity with established doctrine. In the US, judicial discretion is even more pronounced, with the power of judicial review granting American judges a central role in constitutional interpretation and public policy.

This comparison highlights how legal traditions influence the scope of judicial authority and the relationship between courts and legislatures in each jurisdiction. In civil law systems like Romania, where the legislature is the primary source of law, the judiciary's role is more constrained. Judges are expected to apply the law as written, with minimal room for interpretation or innovation. In common law systems like those of the UK and the US, however, judges have the freedom—and sometimes the obligation—to interpret, adapt, and even develop the law to address changing societal needs and values. This flexibility allows the judiciary in these systems to respond dynamically to complex legal issues, fostering a legal environment that balances continuity with adaptability.

The roles and responsibilities of judges in Romania, the UK, and the US demonstrate the impact of legal traditions on judicial function. While Romanian judges are seen primarily as enforcers of codified law, judges in the UK and the US actively shape the law through interpretation, precedent, and constitutional review. This divergence illustrates the broader philosophical distinctions between civil law and common law systems: the former values certainty and legislative supremacy, while the latter embraces judicial creativity and adaptability. Understanding these roles is essential for grasping the unique ways each system approaches justice and the rule of law.

Conclusion

This paper has explored the divergent paths taken by Romania, the United Kingdom, and the United States in developing their respective legal systems. The analysis reveals that while Romania adheres to a civil law tradition, emphasizing codified statutes and limiting judicial discretion, the UK and US are guided by common law principles, where judicial precedent and interpretive flexibility play pivotal roles. These distinctions reflect not only differences in legal philosophy but also varying historical, cultural, and political influences that have shaped each country's approach to justice. In Romania, the legal system emphasizes predictability and consistency, with judges strictly applying legislative codes. Conversely, the UK and US legal systems prioritize adaptability, allowing judges to interpret and develop the law to respond to evolving societal needs.

Understanding these differences is increasingly important in today's globalized legal landscape. For international legal practitioners, knowledge of both civil and common law systems is essential as cross-border transactions, multinational litigation, and international treaties become more prevalent. Legal professionals who understand

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these comparative nuances can navigate foreign jurisdictions more effectively, bridging gaps between civil and common law traditions to provide more comprehensive advice and representation. For instance, a lawyer advising a multinational company must be aware of how judicial discretion might affect the interpretation of contract law in a common law country versus a civil law jurisdiction.

Looking to the future, globalization and the rise of transnational legal issues are likely to encourage some degree of convergence in legal practices. The growth of international organizations, like the European Union and the United Nations, has already fostered a degree of harmonization in areas such as human rights, commercial law, and environmental law, where international treaties and conventions create a shared legal framework. While the foundational principles of civil and common law are unlikely to merge fully, there is potential for procedural and substantive elements to align more closely. For instance, international arbitration has developed rules that blend civil and common law traditions, offering a flexible approach that can accommodate diverse legal backgrounds. Such convergence may serve as a model for other areas of law, especially in fields heavily influenced by global commerce and technology, where uniformity can reduce legal uncertainty and enhance cross-border cooperation.

In summary, examining the legal systems of Romania, the UK, and the US underscores the value of a comparative perspective. As legal practices evolve alongside global interconnectivity, a comprehensive understanding of diverse legal systems is vital, offering practitioners the tools to navigate an increasingly interconnected world with nuanced, adaptable, and informed strategies. This evolving global legal environment may not fully unify civil and common law traditions, but it certainly points towards a future where legal professionals and systems are better equipped to address the complexities of an interconnected global society.

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