

## Comparing Legal Systems

In an article on the origins of judicial review, the American political scientist Martin Shapiro identified four ways in which common and civil law systems are said to differ:

### *Common law*

based on case law

emphasizes supra-statutory or natural legal rights

principal of stare decisis recognized, case-by-case inclusion and exclusion and analogy

adversarial

### *Civil law*

based on statutes

positivism – statutes are sources of rights

lawyer and jurists work from statutory text

inquisitorial

He then observed that: “all these statements are far more false than true.”

Students of comparative law or legal systems, he argues, are of two kinds. Those who are struck by the overwhelming similarity between systems and those who, noting the differences, classify different systems according to their legal family: common, civil, Islamic, and so forth. While an ideal type for each “family” can be constructed, close study of actual systems will show that the range of variation between members of the same family exceeds the variations between families. Further, many systems exhibit a mix of features from two or more families and phenomena that at one level appear quite different will, at another level, appear quite similar. “The seeming clarity and simplicity of families of law, like races of men, slips back into a chaos of detailed similarities and differences here and there.”

Martin Shapiro, “The Success of Judicial Review,” in Kenney, Reisinger, and Reitz (eds.) *Constitutional Dialogues in Comparative Perspective* (New York: St. Martin’s Press, 1999).