

Influences of Roman Law and Civil Law on the Common Law

*Diana Nestorovska**

Abstract

This essay deals with the influences of the Roman Law and Civil Law on the Common Law. After an introduction to the terminology an examination about the role of Roman Law and Civil Law in the process of the historical development of the Common Law ensues.

The essay aims to examine whether these influences could lead to an eventual rapprochement between the Common Law and Civil Law. The question is: can the two systems harmonize and eventually merge? To answer this question factors that promote harmonization and those who prevent harmonization are being discussed.

* In the final year of a Bachelor of Arts, Bachelor of Law degree at the University of Wollongong, NSW, Australia. This essay was originally submitted as a research paper for LLB337 Comparative Law in spring session 2004; an elective offered by the Faculty of Law, University of Wollongong, NSW, Australia. The author wishes to acknowledge Dr Thomas Musgrave, Sub-Dean, Faculty of Law, University of Wollongong, NSW, Australia, for the original essay question and for his comments on the original research paper. The essay question was as follows:

'Despite the oftentimes fierce, and sometimes even irrational resistance of Common Law practitioners in the past to what they perceived as encroachments of aspects of Roman Law or the Civil Law into their legal system, the English legal system has in fact been influenced in many ways by Roman Law and by the Civil Law. In what ways has the Common Law been so influenced, and what impact has this had on its development and functioning as a legal system? Does the fact that the Common Law has at various times and in various ways adopted elements of Roman Law and the Civil Law into its system demonstrate that the Common Law is capable of mutating into a legal system which can be harmonised with, and eventually merge, with the Civil Law at some point in the future, or are there essential attributes of the Common Law which would prevent such a process from occurring?'