

In the name of God

**Five Articles on "Discovery"
in Civil Procedure:
Cross-influences between
Anglo-American and continental
European Jurisdictions?**

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European Jurisdictions?

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**"Discovery" in Civil Procedure:
Cross-influences between Anglo-American and
continental European Jurisdictions?
Similarities and Differences of Legal Systems
on "Discovery Rules in Civil Procedure"**

Abstract

In order to determine whether a plaintiff in a civil case is entitled to claim, the underlying facts are often decisive. This article discusses the rules on fact-finding mechanism generally named discovery. These rules regulate how information is gathered, evidence is presented and how a decision on matters of fact is made. Roman – Canonical model and Anglo-American model have similarities and also differences mentioned in this article. But it is important to present their effective means and mechanisms for each other system to study and consider them in future legislations. The procedures that are used to resolve factual questions in civil or continental systems differs greatly from those used in American courts, we aimed to enhance our understanding of those differences and aimed to show these differences evolved throughout time. Often, procedural rules are implemented that were tried and tested elsewhere. Comparative law may serve a useful tool to generate possible legal solutions to pressing procedural problems. In addition, experience in other jurisdictions may be of use to access possible effects of legislative change.

Keywords: Discovery, facts of civil cases, disclosure, access to proof, Federal Rules of Civil Procedure.

1. Introduction

Continental systems (like French system as it is studied in this article), have increasingly required the parties to disclose information and have widened the possibilities for discovery. (Cadiet, 2004)

Rules were introduced to prevent parties from withholding relevant information. (Kohl, 1971)

Parties are required to provide complete and truthful information and they are also required to disclose in their pleadings the evidence they intend to use in support of their factual allegations. Judges have gained more powers to order the parties to produce evidence. (Levy, 1965).

The present U.S. discovery is not noted in one, but in two distinct English procedural regimes: "common law and Equity" (Burbank, 1997). Even if these systems had their own procedure to resolve factual questions. The differences between systems are discussed in table (Cannon, 2006)

the fundamentals of the English rules on discovery were adopted in many North American colonies (Clark, 1935). A system based on English common law was also adopted at the federal level. Discovery in Anglo-American jurisdictions changed radically in the 18th century. (Cook, 1995-1996) Moreover, important changes were made to the rules of evidence. (Dobie, 1938-1939)

More recently the American fact finding arrangement have changes: the 1938 Federal rules of civil procedure merged the procedures of law and equity in federal courts (Flanders, 1978-1979). The new rules on discovery aimed to prepare for trial and ensure that all relevant information

was available to both parties (Froeb, 2006). These rules enabled the parties to conduct a broad search for facts with little court intervention. (Langbein, 1995). By 1970s, Discovery was the new stage in the U.S. process of fact-finding. (Lynch, 1963)

Interrogations, depositions and requests for the discovery of documents are currently used in a large proportion of cases. (Millar, 1926)

The discovery consumes a large proportion of time and resources allotted to litigation. In addition, summary judgments became more widely available. (Millar, 1936-1937)

The developments above had led to a fourth general trend in U.S. litigation: A gradual shift in the roles of parties, lawyers, and judges in the process of discovery. (Millar, 1937-1938)

The role of court in American civil litigation was at the heart of legislative reform. Since 1983, Judges were granted more and wider discretionary powers to manage the litigation process. (74 Harv. L. Rev., 1961).

2. Research questions and general overview

What is the historical background of discovery rules and have there been cross-influences between the procedural systems and what solutions are considerable from U.S. model of discovery? what are the differences between procedural systems on fact-finding?

3. Historical changes in both systems

The action to **produce and exhibit** was one in the nature of a bill of discovery which today is called **discovery**