

**FORMAL CONVERGENCE, PRACTICAL DIVERGENCE:
THE TAKING OF EVIDENCE IN INTERNATIONAL COMMERCIAL
ARBITRATION
(A FRANCE–UNITED STATES PERSPECTIVE)**

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Abstract

This thesis examines the taking of evidence in international commercial arbitration by comparing the United States and France, taken as the leading representatives of the common law and civil law procedural cultures. It focuses on the three mechanisms in which the tension between the two traditions is most visible: document production, witness examination and expert evidence. Its starting point is a paradox. Instruments such as the IBA Rules on the Taking of Evidence present themselves as a neutral compromise designed for parties “from different legal traditions”, yet practice suggests that the resulting convergence runs almost entirely in one direction.

The study is structured in two parts. Part I establishes the formal convergence achieved at the level of texts. It analyses the IBA Rules as a centrist, transactional compromise, and the Prague Rules (2018) as a civilian counter-model whose very existence shows that this neutrality was contested. It then follows the codification into each mechanism: document production administered through the Redfern Schedule, written witness statements followed by cross-examination under tribunal control, and a choice between party-appointed and tribunal-appointed experts. Part II confronts these texts with practice. It draws on the literature and on an original research interview with Professor George A. Bermann (Columbia Law School). It shows that convergence is real but asymmetric: civil law practitioners have adapted to common law methods far more than the reverse. Building on Bermann’s distinction between willingness and comfort, and on Pierre Legrand’s concept of legal *mentalité*, it argues that divergence has not disappeared. It has moved from visible procedure to professional reflexes. The thesis then examines the structural, normative, cultural and sociological sources of the common law’s prevalence, including the position of Anglo-American firms, the dominance of English and the composition of the elite that drafts arbitral soft law.

The thesis concludes that practical divergence does not mean two traditions operating side by side in the hearing room. It means the gap between the neutral promise of the harmonising texts and the asymmetric reality of a convergence running towards the common law. This, in turn, questions the neutrality that the autonomous culture of international arbitration claims for itself.