

Supreme Courts and Courts of Cassation

Citation for published version (APA):

Bravo Hurtado, P. (2018). *Supreme Courts and Courts of Cassation: A diagonal symmetry: Comparative law study of the US, England, France and Italy in civil procedure*. [Doctoral Thesis, Maastricht University]. Maastricht University. <https://doi.org/10.26481/dis.20180911pbh>

Document status and date:

Published: 01/01/2018

DOI:

[10.26481/dis.20180911pbh](https://doi.org/10.26481/dis.20180911pbh)

Document Version:

Publisher's PDF, also known as Version of record

Please check the document version of this publication:

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PROPOSITIONS

Supreme Courts and Courts of Cassation: A *Diagonal Symmetry*

A Comparative Study of Adjudication in Civil Matters in the US, England & Wales, France and Italy.

By PABLO BRAVO-HURTADO

1. *Relevance*. Comparing courts of different jurisdictions provides useful insights to improve the Rule of Law.
2. *Problem*. Similarities and differences of two or more jurisdictions could be misunderstood due to the local denominations and hierarchical locations of the comparable courts.
3. *Perplexity*. Neruda's poetic question – A camel asks a turtle: "What do you store under your hump?" – exemplifies the mutual misunderstandings incurred when comparing courts from different jurisdictions.
4. *Solution*. Comparative studies should be open to analysing pairs of courts despite their different local denominations and hierarchical locations.
5. *Horizontal Asymmetry* (3rd vs. 3rd). The supreme courts of the US and the UK perform mainly a judicial lawmaking function; while the cassation courts of France and Italy, particularly their ordinary chambers, perform an error-monitoring function instead.
6. *Diagonal Symmetry* (Thesis). The US and England (UK) *vis-à-vis* France and Italy perform equivalent judicial functions, but at different levels of the court hierarchy.
7. *Diagonal Symmetry* (2nd vs. 3rd). The intermediate appellate courts of the US and England perform an equivalent error-monitoring function as the cassation 'chambers' of France and Italy.
8. *Diagonal Symmetry* (3rd vs. 4th). The equivalent judicial lawmaking function of the US and UK supreme courts is performed in France and Italy by the cassation 'plenary sessions'.
9. *Valorisation*. Policymakers could improve the Rule of Law through the relocation of pre-existing judicial functions at different levels of the court hierarchy.