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COMPARATIVE JURISPRUDENCE AS SCHOLARSHIP AND PROFILE OF EDUCATION*

Abstract. Our thoughts are products of our culture, tradition, and ideal of order, so their understanding and development can only be based upon them. However, cultures, traditions and ideals vary from time to time and from people to people, as each of them has been created and developed to respond to challenges under their own conditions. Consequently, they are not only independent of each other in their genesis, but are also incommensurable in their historical set, which equals to saying that they are not even classifiable but only taxonomisable in a strict sense. Each of us lives and interprets his own world: when we compare, we attempt at putting them in a common hat, knowing that no one can go beyond the symbolic paradox of "I interpret your culture through my culture". A way out from this trap can only result from their individual parallel characterisation after we have built up some kind of abstract philosophical universality from the ideals of order concerned. Then, in the context of the Self and of You, we are expected not only to explain the Other, but also to recognise it by its own right. In its due course, legal comparison aims at getting knowledge not only of 'law in books' and 'law in action' but about what is meant by law when it works in our mind. Therefore, beyond the mere act of taking cognisance, comparison comprises also the acceptance of this Other by its own right, in which none is simply reduced to anything purely factual ("what is the law?"), but the actuality of the entire normative process leading to a legal statement ("how do we think in law?") is considered. Getting to know foreign laws begins with grouping of laws and, as expressed in legal families, by combining those which are similar while contrasting the dissimilar. Interaction and mixing amongst them is a natural sequel, but their establishment cannot be a substitute to the didactic necessity and explanatory power of analysis in term of legal families. When describing them, mere contrasting shall be consummated by presenting the specific ingenuity of each of them as a characteristic individual feature specific to them.

Keywords: anthropological cognition; implicit mono-epistemology; cultural contex ture; classification/taxonomy; ideals of order; legal families; ingenuity of cultures.

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The Self and the External World: the Question of Understanding

All cultures, traditions and orders are plural and manifold. They differ from one another because they originate from actual lives – the nature of orders peoples have developed and do conform to, of the challenges they face, of the experience they have accumulated, and of the kinds of feedback whilst their community actions are made. It is *comparatio* that brings them into some common ground. For by treating them as organic constituents of some, mostly hypothetical, common sets, we will necessarily compare them to each other. Doing so, however, no matter how much we may try to anonymise or depersonalise our culturally bound point of view by living with cool distances in want of objectivity in the process, the result of the operation will ultimately be determined – or channelled into a referential framework at least – by ourselves, that is, by the own culture of the one who compares. So what we tried to get out of the gate is to return through the window. And this is exactly the paradigmatic paradox inherent in any act of collective social understanding: the only thing I can do is that "I interpret your culture through my culture." However, there is a circumstance that, as a shortcoming, is common to such operations. For there is neither a neutral language, nor a point of reference which could be outside of all what we are or what we can at all sense with our own culture, wanting to learn about it.

Therefore, by comparing our cultural subjects with ones of other cultures, that is, by the contrast we draw between the own and the other, *nolens-volens* we are in fact deepening our inner understanding of our own. Because all our intellectual activity is always based on our own ground. Consequently, we are supposed to make this more advanced – that is, even more differentiated in a systemic sense, in its internal delineations as well as in its responsive potential – for that we shall be able to expose and visualise any outer object with greater sensitivity and in a deeper understanding.

Now, going from here to the field of *scholarship* and *education:* am I talking about a topic, at an international forum, in context of which I confer on phenomena of other cultures as well? Do I introduce my students to the variety of legal traditions, to explore the past and present worlds of law, in a mixed class community in which all that I am referring to – in description, classification, correlation, and the evaluation all they inevitably express – also affects the legal culture(s) whose representative(s) may be present as my student(s) here? To put the basic situation briefly, it is about the gap between differing *autochthonous* cultures – that is, ones developed to meet differing conditions with different peoples and epochs – and the chances and difficulties of its bridging. This is the issue of anthropological and cultural knowledge. Since

man and human community, despite most devoted efforts, in relationship to the other cannot be but an external observer.

The deeper abstraction and the deeper store of analytic instruments we devote to debating the quest of whether or not we can at all understand the other, the farther we shall have departed from the chance of an affirmative answer. Our daily experience is, however, a testimony to us that in case of interest in, empathy to and ethos shared with the cause, we can not only comprehend but also mutually enrich each other.

Comparativism as a Field of Scholarly Activity and as a New Approach in Legal Education

In cultural anthropology it has been a fundamental principle since the grounding work of F. Boas that the task is not simply to theorise, but to locate within context – knowing, at the same time, that each culture has its own *"genius"*, that is, an exclusively characteristic set of inventiveness, artfulness and originativeness in problem solving[1]. Well, in a classical formulation, *culture* is nothing less or more than 'a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and attitudes toward life'[2].

Consequently, the knowledge of the own legal system "creates an *implicit mono-epistemology"* – with a force, by the way, that can only be compared to the extent to which our mother tongue, our worldview and specific culture provide us with a stable background: benchmark and framework – for '[g]rand theories of comparative legal science or comparative legal studies do not change the prior epistemic embedding that has already taken place'[3].

In this all, in spite of abstract constructions built in, so-called science itself is not something independent or absolute, but part of our being, our knowing self, and thus part of our community existence. And, in such a sense, it can be stated in quality and validity of an "ontological" proposition that science itself is nothing else than 'culture in culture [...which...] walks the royal road to making us'[4]. For, the so-called *form of life* thematised by Wittgenstein[5] is not a simple ancillary to our being, but part of it; it is straightly a constitutive component of it. As given, this is the basis of every cognition, because this form of life 'is not true or false, nor is it a style of reasoning. It is what determines

[1] As an early statement for it, see: E Sapir, 'Culture, Genuine and Spurious' [1924] 4(29) American Journal of Sociology 401-29; Чаба Варга, 'Порівняння правових культур і правового мислення' (2013) 3-4 Право України 22-31.
[2] Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (Basic Books 1973) 89.
[3] Jaakko Husa, 'Turning the Curriculum Upside Down: Comparative Law as an Educational Tool for Constructing Pluralistic Legal Mind' [2009] 7(10) German Law Journal 913-26, 914, 918.
[4] Marianne de Laet, 'Anthropology as Social Epistemology' [2012] 3-4(26) Social Epistemology 419-33, 424-5.
[5] Ludwig Wittgenstein, *Philosophische Untersuchungen* (Basil Blackwell 1953).

what is true-or-false' in a given community[6]. In this same sense, therefore, cognising the other and teaching its fruits are in fact an *experiment in epistemic transformation*, the task of which is to open our thinking and understanding ability to acquire other modes of thought as well, backed by other benchmarks and notional structures.

In principle, these differences could even be ephemeral, though gradual, but not just for legal cultures. Simply put, in worldview and approach to any kind and mode of understanding, in the ideals of human life and its reasonableness, one can conceive of cardinal differences the genuine exploration of which can only be unsuccessful when starting from any side, since they do not even approach the other, since none of them simply has – and, in historical formations, could not have had – any contact with the other. Therefore, in fact, we have no choice but to construct a *philosophical abstraction* out of all the law's underlying ideals *as a legal-philosophical universality* in which, at the most, all their varieties can be interpreted separately as examples of approximations and experiments made.

Just a few years ago the Anglo-American Atlantic world still perceived nothing more ambitious in any sort of legal comparison than the chance of an export of its own organisation[7], while foreign patterns were best described as a mere "tangential and unimportant" colouring exotic[8]. In the meantime, however, enthusiastic planning as to the prospects for law and legal education in the European Economic Community have brought about surprising results exceeding the thematic level of what actually *comparatio* is. Accordingly, as the ambitious Maastricht colloquium demonstrated nearly three decades ago[9], whatever law we teach – ours or others' – it will serve as nothing but field of exercise for the application of any – ours or others' – law in the given circle of cultures. Moreover, we can best prepare for the foreseeable variants or changes of any such laws, if we focus on their roots, that is, their *common developmental identities*. Since the experiment of the past can in large measure (with the exception of shocks or coercive situations) foreshadow the essential frameworks of the probable movements in the present or the near future, with their expectable conceptual connections involved.

[6] Ian Hacking, 'Language, Truth, and Reason' in Hollis Martin and Lukes Steven (ed), *Rationality and Relativism* (MIT Press 1982) 48-66.

[7] E.g., The Rt. Hon. Sir Ivor Richardson, 'Educating Lawyers for the 21st Century' [1988] 2(6) Journal of Professional Legal Education 111-6.

[8] E.g., Ronald A Brand and D Wes Rist (ed), *The Export of Legal Education: Its Promise and Impact in Transition Countries* (Ashgate 2009).

[9] Bruno De Witte and Caroline Forder (ed), *The Common Law of Europe and the Future of Legal Education / Le droit commun de l'Europe et l'avenir de l'enseignement juridique* (Kluwer Law and Taxation Publishers 1992).

What is the result by today? There is "decreasing importance of political geography or state normativity" attached to law[10], on the one hand, and a break with the exclusivity of the Kelsenian type normativism – "The law counts only as positive law"[11] – has become more decisive, on the other; albeit there has remained a kind of almost religiously inspired hybris actually permeating the utmost positivistic approach to law in both legal scholarship and education. And, on the final analysis, both students' migration and the comparative approach to legal subjects has become more and more general all over the world.

And what is the direct goal? This is to understand our own legal system and laws better, through symbolically expanding and broadening those ideas, conceptualities and institutions what the students themselves may have already learned as representatives of their home arrangement. The stake now is not merely a matter of factuality in taking the cognisance of the other as different, but the very intellectual – and I dare to tell, transubstantiating – act of 'recognizing the other <...> *in its own right*'. In this process, operations with

> <...> distancing/differencing <...> encompass the willingness and capability to cope with preconceptions and stereotypes, biases and rationalist assumptions that fall within the analytical framework and normative matrix of one's own (legal) education and experience[12].

In a more straightforward way, it might simply mean again that law is rooted in culture, and the law's actual meaning can at any time be *unfolded from its own cultural contexture* exclusively. And this assessment is not only a foundation stone of legal comparativism; what is more, it provides the master key to the philosophical understanding of legal phenomenon itself, too. It can only mean, therefore, the observation of the other as shaped under circumstances differing from the observer's stand, and its understanding in its specific autochthonity. This naturally includes the processing of all the relevant cultural backgrounds and environments in order 'to embed the black-letter rules within a web of beliefs, ideals, choices, desires, interests, justifications, principles, techniques, reasons, and assumptions. The hope is <...> to understand the legal system from within'[13]. Or, arguing with contrasting Comparative Law and Comparative Legal Cultures as disciplines to one another, the latter, as opposed to the "decontextualised picture" of the former, offers "the multitextuality of the

[10] Rosalie Jukier, 'How to Introduce Similarities and Differences and Discuss Common Problems in the Classroom' (*International Associations of Law Schools Conference*, Sozhou China, October 17-19, 2007) <https://www.mcgill.ca/centre-crepeau/files/centre-crepeau/Jukier_simms_diffs.pdf> (accessed: 01.02.2019).
[11] Hans Kelsen, *Reine Rechtslehre Deuticke* (1934) para. 28 at 64.
[12] Gunter Frankenberg, *Comparative Law as Critique* (Elgar 2016) 6, 83.
[13] William Ewald, 'Comparative Jurisprudence (I): What was it like to Try a Rat?' [1994-1995] 6(143) University Pennsylvania Law Review 1948.

legal cultures", practically the "entire contextual matrix in which the state law operates". In this way, the law itself will be revealed in its entirety indeed, rather than as reduced to its mere skeleton or positivistic surface. After all – recalling the creed of the classical ancestor Montesquieu: "It is not the body of laws that I am looking for, but their soul!" – "a living body of law is not a collection of doctrines, rules, terms and phrases. It is not a dictionary, but a culture; and it has to be approached as such"[14].

Well, in order to induce that inner understanding, *comparatio* seems a best available means in education. For the bridging of the gap between epistemic *self-centredness* and some kind of *strangeness* as an outer object is referred here again. In this, whatever *A* and its variations, or the artificially posited dichotomy between any *A* and *non-A* are firmly formulated[15]. For 'We know who we are only when we know who we are not and often only when we know whom we are against'[16]. Of course, the problematic of anything versus anything else can sometimes gain a dramatic overtone, especially when it is realised that something of our own heritage and something else from a heritage pointedly contemned and repudiated by us are, on final analysis, *the same* – at least and last in one or another sense[17].

It is to be noted, however, that the objects of such confrontation are not artificial formations, analogous to abstract geometric or mathematical forms projected or proposed, but living cultures, orderly accomplishments, that is, living and moving *ordo-ideals* of humans' societies, serving as a framework

[14] Based on the collection of Varga (1992), Bogumila Puchalska-Tych & Michael Salter 'Comparing Legal Cultures of Eastern Europe: The Need for a Dialectical Analysis' [1996] 2(16) Legal Studies 181-3 doi 10.1111/j.1748-121X.1996.tb00001.x; resp. Montesquieu, 'Dossier de l'Esprit des Lois' in Caillois R (ed), *Oeuvres complètes*, II (Gallimard 1951) 1025 [Ce n'est point le corps des lois que je cherche, mais leur âme].
It is to be remembered here that, for instance, in the plenary speech I held at the International Association for the Philosophy of Law and Social Philosophy world congress at Edinburgh in 1989, whilst developing an ontological exposition of law, I described its Soviet-type *simulacrum*, called Socialist law at the time and regarded as an independent legal family, as a wreck law from the beginnings, featuring – as based upon – something of a differing ontology, since, being overtly and directly a political instrument, also in its textuality it was just a lie, or a deceptive form, all through.
Cf. Csaba Varga, 'Liberty, Equality, and the Conceptual Minimum of Legal Mediation' in Neil MacCormick & Zenon Bankowski (ed), *Enlightenment, Rights and Revolution* Essays in *Legal and Social Philosophy* (Aberdeen University Press 1989) 229-51; reprint 'What is Needed to Have Law?' in Csaba Varga, *Transition to Rule of Law On the Democratic Transformation in Hungary* (ELTE "Comparative Legal Cultures" Project 1995) 38-61.

[15] The separability of which is by far not exactly clear. See, e.g., Pierre Legrand, 'The Same and the Different' in Pierre Legrand and Roderick Munday (ed), *Comparative Legal Studies: Traditions and Transitions* (Cambridge University Press 2003) 240-311.

[16] Samuel P Huntington, *The Clash of Civilizations and the Remaking of World Order* (Simon and Schuster 1996) 21.

[17] To a politicising fallacy in what kind of quality may be the result of a *comparatio* manifestly to be drawn, I have found a fresh example in a monograph outlining the international debate on the far-off effects of American racial legislation – making, in facing relevant issues at its time, the United States the leading nation in the world – in a specific relationship to the National Socialist legislation at Nuremberg, having exerted a kind of influence without any doubt and in a documentable way, which was at the same time of a reinforcing character and one of both suggesting tools and serving with the practical experience of the use of certain instruments. It was the essence of this debate that it was dreaded and horrified while rejecting even the imaginability of having had genuine legal effect or some near-to-borrow situation. Cf. James Q Whitman, *Hitler's American Model: The United States and the Making of Nazi Race Law* (Princeton University Press 2017).

for peoples' thinking, each of them having developed differently – having come from something ingeniously different in the raw – in order to respond to differing challenges, and thus creating different skills, sensitivities, and conceptualities within itself. Therefore, as autochthonous formations, they are not strictly commensurable to each other; consequently, they cannot even be classified in the proper sense, only *taxonomised* into large(r) groups[18]. Different modes of thought are actually put into a kind of common hat of intellectual understanding, and for doing this, some mutually shared common language is necessary[19]. Thereby – since the eventual goal of legal education can be summarised as *"learning to think like a lawyer"* – one is to imitate a most notorious act of Baron Münchhausen, the impossible act of raising himself by himself.

The *comparatio* is done by and for us, for the sake that we can sense and perceive all what is ours more accurately in backlight. Simultaneously, surpassing the self-limitation of positivism reducing law to a kind of self-entity, we perceive again the pertinent roots and various human intellects backing the law, in a vista of incomparability characteristic of phenomena produced by culture and tradition, as if we were somewhat transcending the disciplinary borders and level of Comparative Law in order to redirect ourselves towards Comparative Legal Cultures.

So what is the near goal? It is the realisation of the *relative* and both *contingent* and *humanely fallible* character of all our own solutions as representations of concurring alternatives.

Multiculturalism in the classroom may also exemplify the interplay between 'having a meaning' and 'giving a meaning': formal law being no more than just a first and prime guidance, and the actual direction is channelled by further factors as well[20].

This is already reflected in the *language of the law*. Its multiple embeddedness into general language and legal technicalities is hidden to a great extent, thanks to the utmost formalism of and abstraction in terms and designations used. At the same time, legal language is by far not simply

> <...> a sub-system of a national language, consisting of legal terms and phrases and stable conventions for the formulation of legal texts. Moreover,

[18] Чаба Варга, 'Theatrum legale mundi: Про класифікацію правових систем' (2012) 3-4 Порівняльне правознавство 17-37.

[19] Melina Girardi Fachin's national report from Brazil, Part I. As to the transformative levels of thinking and arguing when deciding a legal conflict is at stake, see Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2005) as well as Csaba Varga, 'Koskenniemi and the International Legal Argument As Founded in the Law's Ontology' 2015 Hungarian Yearbook of International Law and European Law (Eleven International 2016) 331-55.

[20] Cf. Ch Perelman, 'Avoir un sens et donner un sens' [1962] 5(20) Logique et Analyse 235-50 as well as Csaba Varga, 'On the Socially Determined Nature of Legal Reasoning' (1973) Logique et Analyse 21-78, 61-2.

as the collective memory of the lawyers of that system, storing, over many generations, the experience, habits, and world-views of the legal community in question[21].

Or, the language used by law turns to be the visible body of the law.

In a multicultural environment, 'the legal classroom itself becomes a site of legal plurality through the overlap and interactions between the different types of legal experiences, cultures, conceptions and orders that the students bring with them'22. This involves differing priorities and includes the differentiation of what from the autochthon culture is believed and lived as a sacred and non-profane identity core, that is, what remains as debatable at all.

Laws and Ideals of Order in Comparison

It is commonplace in science that reality is one totality all throughout; its way of being is process-like; and all that take part as involved in it develop from and through interactions, that is, any of its particle gains its basic definition by the networking place it is positioned in/by this totality.

However, on the one hand, when individual laws are at stake, *comparatio's* operational moves seem to transcend such a contexture, since it has to posit or hypothesise the subject of analysis as an independent existence, identical with its own self; moreover, it needs considering both the law's process-like character and the position it occupies in the total social process any time, to be seen as (as if reduced to) a reified entity.

On the other hand, for ideals of order in the foundation of the various legal regimes I elaborated an experiment in initiation in Budapest, after Pázmány Péter Catholic University and its Law Faculty had been founded just following the fall of Communism, subject to term and final examinations as well, centred upon domestic and universal legal development with its varied background ethoses, in form of teaching Philosophy of Law with legal sociological, anthropological and methodological (i.e., juristic methods) perspectives involved, and followed by Comparative Legal Cultures, planned term to term for the first nine terms subsequently. A few years later when colleagues in practical lawyering pressed their positivistic subjects to gain more terrain, the rather fortunate encounter – or even a kind of direct merging – of *Comparative Legal Cultures* with the backgrounding *Philosophy of Law* was to find a proof. Since the latter has from the beginning examined the underlying world view, concept of order and conceptual build-up of each legal system or culture examined, with the regulatory framework required by it as well as the

[21] Anne Lise Kjær, 'A Common Legal Language in Europe?' in Mark van Hoecke (ed), *Epistemology and Methodology of Comparative Law* (Hart Publishing 2014) 387-8.

[22] Myriam Hunter-Henin's national report from the United Kingdom.

instrumentality assigned to it, all approached from the specific (local) ingenuity and *ordo*-ideal, characteristic of both past and contemporary cultures[23]. In this sense it was intended plainly to promote a truly *universal philosophy of law* based upon the stands of social philosophy and theory, already detached from the narrowness of legal philosophising reduced to nationally and/or culturally set boundaries as the legacy of XIXth century positivism[24].

The Problem of Legal Families

The primary encounter with the other is contacting a different legal culture anyhow, which is usually referred to in context of belonging to a given *"legal family"*, once the world's known legal systems have been taxonomised.

Well, it is fashionable today to regard categorisation according to legal families as obsolete or misleading from the very start. Here, too, as everywhere and anywhere in the evolution of scientific thought, at first those criticisms were granted some correctional acknowledgment, which could be justified as an exception in a defendable and separable way. But as an ordinary course of the process getting slowly overwhelmed by the critical impetus, step by step it started transforming into a self-destruction of all its original performance, converting into something of a mass of indefinite chains of grades what once used to have some intelligible definite message. Because the mixed origins and affinities of the legal systems, the acceptance of everything mixed/mixing with the tireless furthering of the initial findings into more and more nuanced grades is today's fashion[25], about which we are by now aware that there is no – and the more we observe legal development from distance and the more microscopic depths we perceive in it, cannot even be – exception to them. Accordingly, a criticism of criticism seems to be justified even more so, since

<...> [t]he widening of the class of mixed systems, however, risks hiding or obliteration of distinctive features that help students to identify the characteristics of various traditions and determine the extent of borrowings or transplantations between systems that have occurred over time[26].

[23] Cf. Csaba Varga, 'The Philosophy of Teaching Legal Philosophy in Hungary' [2009] 2(5) Iustum Aequum Salutare 165-84.

[24] As noted in a previously unpublished paper by the author around 1973, the subjects of so-called "general theory of law" – *contradictio in adiecto* in itself, but cultivated particularly in the once Soviet-dominated world – are usually general within the given domestic law's panoramic view exclusively, totally ignoring the rest of the world. Cf. Csaba Varga 'Összehasonlító módszer és jogelmélet' in his *Útkeresés Kísérletek – kéziratban* (Szent István Társulat 2001) 95-101.

[25] E.g., Vernon V. Palmer, *Mixed Jurisdictions Worldwide: The Third Legal Family* (Cambridge University Press 2001); Esin Örücü, 'What is a Mixed Legal System: Exclusion or Expansion?' (2008) 12 Electronic Journal of Comparative Law 1.

[26] Silvia Ferreri's national report from Italy, para. 1.

In person, I have not encountered difficulties myself. Perhaps because I have avoided discussing the many past and present legal cultures reviewed according to pedantically lined up classificatory categories or series of questions, held universal as catalogued with an abstract systemic outlook from the very start, but I tried explaining them as an opportunity for philosophising on their respective ideals of *ordo* and their attempts at practical realisation. Or, the discipline of Comparative Legal Cultures has never been understood as just a series of responses to a previously codified list of questions, but as the ever continued questing for building blocks or structuring components – such as intent at embodying or just exemplifying the law, its conceptuality, systemic nature and internal logic, if at all, or justification procedure and so on – that may specify the particularly *own genuineness* of any given legal culture, contradistinguished from all others.

So, no such a strange situation can occur any longer when René David, for instance, questions Common Law with the rigor of a system of the sources of law characteristic of Civil Law, or when especially those educated in the spirit of so-called Socialist normativism have been close to presuming legal uncertainty anywhere where that what in the own local order or home culture is identified as law is not a closed system of posited rules, drafted in abstract conceptuality[27]. And if – instead of operating with taxonomic categories, generalised to each and every occurrence and thereby unavoidably denaturing the *similia's* total sets – we approach to mapping the variety of laws via differing human mentalities in how they are to secure *ordo* in society, that is, from a legal-philosophical standpoint again, then we will be staggered ourselves through making also our students staggered to realise that: *each one is something other*; moreover, each and every of them may have the potential of promoting and securing social order effectively in its own way, and in a manner considered fair and just according to its own social arrangement.

And what is most important for an all-inclusive social theorising: we are speaking about phenomena that have their own life within and as factors of societies in constant change, therefore they cannot be lined into an order of succession – neither in linearity, nor in verticality. Considering that each one is born from an unmistakably different *own medium*, none can be ranked compared to the other, because, in functionality, each one can perfectly fit its own conditions. In addition, the so-called primitive or tribal laws can, in their

[27] This same, too, disfigured the politically motivated Soviet-type Cold War denouncement of what was then called "American fascism", filtering into legal historical and theoretical approaches as well. Cf. René David, *Les grands systèmes de Droit contemporains (droit comparé)* (Dalloz 1964); Csaba Varga, *Comparative Legal Cultures: On Traditions Classified, their Rapprochement & Transfer, and the Anarchy of Hyper-rationalism* (Szent István Társulat 2012).

own way, feature just as differentiated and complex a construction as modern societies' technical complications do[28].

It does not make a difference whether I am speaking about once-upon-the-time autochthonity or today's tribal law, relevant histories of China, Japan or Korea, classical Jewish or Islamic perceptions of the law, and then paths leading from ancient Greece to Rome and to its republican and imperial epochs, then to Middle Ages and customary law's arrangement, as well as the Continental European development (including transitions like the exegetic period, the fermentation by free-law movement, then the series of codification and recodification) and the English-American one (involving the historical variations from writs to precedents alongside with historical attempts at codification and substitutive forms nowadays), the panoramic view of all cases will be the unanimous praise of human ingenuity as a fascinating example of the beauty and truth of what the adage *varietas delectat* [i.e., variety is delighting] stands for. For such traits are highlighted in any instantial case by which exactly their own ingeniousness is expressed. It is only the logic's role in law, on the one hand, and the language, on the other, that get examined with particular attention, with variations when words are used simply to denote or as genuinely abstract conceptual-systemic loci – surveyed especially from Jewish and Muslim to Civil Law and Common Law arrangements. By the way, such an inquiry has a surprising, almost shocking result as to the rather particular, moreover exceptional character of our own continental heritage, realising its basic build-up as a technically formalised form embodied by a conceptual system[29], while in all the rest there are far less meticulously mediated and transmitted complexities using also casual search for justice, alien to our abstractly universalising rule-based conception in all the ways.

Finally, a particular branching-off of the query of legal families is the situation when just multicultural discussion will reveal that the king is naked. That is, when instead of differentiation between the particular and the universal in what Pierre Legrand calls *mentalités juridiques*, allegedly universal standards applied by the World Bank and/or the International Monetary Fund prove to be, in fact, nothing but projections and extrapolations of some American preconceptions. Thus, for instance, one of the most significant formal global ascertainment of the new millennium[30] was reacted by the French as a simplifying falsity of the "one size fits all" American mentality with the non-European understanding of law as a means of social engineering and, what is more – and on behalf of both financial world powers – by taking

[28] As a background, cf. e.g., Чаба Варга, '"Право" или "нечто более или менее правовое" (антропологические рассуждение о том, то есть право)' в Чаба Варга, *Загадка права и правового мышления* (2015) 185-94.
[29] Cf. Чаба Варга, 'Правова доктрина: методологія та онтологія' (2011) 8 Право України 99-108.
[30] '[World Bank] Doing Business 2004 Understanding Regulations (September 2003)' *(Oxford University Press)* <http://www.doingbusiness.org/reports/global-reports/doing-business-2004> (accessed: 01.02.2019).

the *Rule of Law* as its global standard, a mere illusion has been drafted again[31]. Perhaps just because the use of such an operatively undefined and indefinable notion can freely be transformed by any attemptive global imperialism into an arm equally usable for arbitrary claims or actual extortion[32].

Successes and Results

The final result is clear in that thanks to the comparative outlook in scholarship and education, we may enrich our students while we are also enriched.

At the same time,

> [h]owever, there is a price to pay for transnational legal education. <...> The fine and nice national legal doctrine, the sophisticated inner structure of a national legal system might suffer from such an open educational training, which oscillates between abstract theories and concrete problems"[33].

That is, there may be *something to lose* as well, which in our Western and especially continental cultures of modern formal law is nothing but the essence of law.

Facing the wishfully thought Utopianism in which law is "delocalised" as melted in 'several orders without hierarchy, integrated in a coexistence of mutual reinforcement'[34], a sober and down-to-earth reconsideration can only hold that:

> Law is a language of its own. Today it is a babel of dialects, where hegemonic dialects try to establish themselves as universal languages. Under these conditions law is a local phenomenon. It seems hard to imagine a world which is built according to the Kantian utopia of cosmopolitan law: too many ordered by global power, too many subversive forces triggered by the global economic system which needs differences in local governments, as each difference gives an opportunity of greater exploitation. <…> The law, like the world, is fragmented into many communicative networks. A supranational legal science does not exist, an overworld does not exist, nor does a superior point of view to observe law. Legal science is just one of the many communicative networks able to order; it deals with the reality of human suffering, not with

[31] Anne-Julie Kerhuel & Bénédict Fauvarque-Cosson, 'Is Law an Economic Contest? French Reactions to the Doing Business World Bank Reports and Economic Analysis of the Law' [2010] 4(57) The American Journal of Comparative Law 811-30; *Les droits de tradition civiliste en question A propos des rapports Doing Business de la Banque Mondiale* (Société de Législation comparée 2006).

[32] Cf. Чаба Варга, 'Глобальные вызовы, правовое государство и национальные интересы: Дебаты об универсализме/партикуляризме евроатлантической цивилизации' в Запесоцкий А (ред), *Современные глобальные вызовы и национальные интересы: XVI Международные Лихачевские научные чтения (19–21 мая 2016 г.)* (Санкт-Петербургский гуманитарный университет профсоюзов 2016) 46-50.

[33] Hans-Wolfgang Micklitz, 'The Bifurcation of Legal Education – National vs Transnational' in Gane C and Huang R (ed), *Legal Education in the Global Context* (Surrey and Burlington, VT 2016) 44-60, 59.

[34] H Patrick Glenn, 'Quel droit comparé?' [2013] 1-2(43) Revue de Droit de l'Uuniversité de Sherbrook 36; resp. Melina Girardi Fachin's national report from Brazil, Part IIa.

> the heavenly destinies of ideas; it is located in a place whose structures of power it decomposes and recomposes; it is a criterion to connect national debate on local regulatory experience with networks which have the same function in other countries. A superscience, therefore, does not exist; what exists is a continuous contamination between all the scientific networks. <…> [O]rder is not repetition, but an infinite production of sense ever new. Kafka has taught us to hesitate before the doors of law, in the sense of law as a statute [the lex]. Law as a whole [the ius], though, is an infinite network of doors watching each other, opening each other[35].

And, from this, the only conclusion that can be drawn is that 'The important truths about law <...> are universal truths. The most important of these truths might well be that law is fundamentally local – but that truth is none the less universal'[36].

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ПОРІВНЯЛЬНЕ ПРАВОЗНАВСТВО ЯК ГАЛУЗЬ ДОСЛІДЖЕНЬ ТА ОСВІТНЯ СПЕЦІАЛІЗАЦІЯ*

Анотація. Наші думки є результатом нашої культури, традицій та уявлення про ідеальний порядок, а отже, їх розуміння та розвиток можуть базуватися тільки на цьому. Однак культури, традиції та ідеали у різні часи та в різних націях є різними, оскільки кожна з них створювалася і розвивалася у відповідь на виклики, що виникали саме в їхніх умовах. Отже, вони є не тільки незалежними одна від одної у своїй генезі, а й не можуть бути порівняні в історичному контексті, і з цієї причини також випадає стверджувати, що вони не піддаються класифікації, а можуть лише бути систематизовані у вузькому розумінні. Кожен із нас живе у власному світі, інтерпретуючи його: коли ми порівнюємо щось, ми намагаємося помістити це у загальні рамки, усвідомлюючи, що неможливо вийти за межі символічного парадоксу "я поясню вашу культуру через мою культуру". Вихід із цієї пастки може бути знайдений тільки через індивідуальну паралельну характеристику після побудови певної абстрактної філософської універсальності на основі відповідних ідеалів порядку. У контексті "я" і "ви" ми повинні не тільки надати пояснення для "інше", а й визнати його у власному праві. По суті, юридичне порівняння має на меті отримати знання не тільки про "закон у книгах" і "закон у дії", а й про те, що закон означає, коли він діє в наших думках. Отже, крім простого акту пізнання, порівняння також включає в себе прийняття такого "іншого" у його власному праві, в якому жодне з них не зводиться до чогось суто фактичного ("що таке закон?"), але, натомість, враховує актуальність всього нормативного процесу, який веде до правового твердження ("як ми мислимо в праві?"). Ознайомлення з іноземними законами починається із групування законів та (що набуває свого вираження у формі правової сім'ї) з об'єднання схожих із них і протиставлення тих, що мають відмінності. Взаємодія і змішування між ними є природним процесом, але їхнє становлення не може замінити дидактичну необхідність та пояснювальний потенціал аналізу в контексті правових сімей. При їх описі просте протиставлення має завершуватися представленням унікальності кожного з них як характерної індивідуальної риси, що властива кожному з них.

Ключові слова: антропологічне пізнання; імпліцитна моноепістемологія; культурний контекст; класифікація/систематизація; ідеали порядку; правові сім'ї; унікальність культур.

* Версію, скорочену з монографічного матеріалу, автор підготував як загальний звіт до теми "Порівняльне право і багатокультурні правові класи: виклик чи можливість" 20-го Світового конгресу Міжнародної академії порівняльного правознавства (Фукуока, Японія, 22–28 липня 2018 р.). Для деяких додаткових матеріалів див. також: Чаба Варга, *Загадка права и правового мышления: избранные произведения* (Антонова М ред, Алеф-Пресс 2015).