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On Hungarian Legal Culture

Summary
After the clearing of the nation of legal cultures the author shows the european legal families and legal cultures. After the examination of historical characteristics of hungarian legal cultures he deals with the possibilities and limits of approximation of the EU legal systems and cultures. Finally the paper analysis the impact of EU membership on the hungarian legal cultures.

Keywords: legal cultures, legal families, approximation of EU legal cultures, impact of EU membership

Introduction

It is well-known that between the Middle Ages and the end of the 18th century, the European continent shared a unified law and a single jurisprudence.[1] They were based on the *Corpus Iuris Civilis* and the Corpus Christi Canonici, which were later supplemented by several important legal institutions of territorial rights and customs. These elements constituted the content of the so-called *ius commune*.

However, by the *19th century the term "law" had been used in the sense "the law of the singular a nation state"*. This is to be taken as the root of the problem discussed here, despite the legislative efforts made by the European Community in the past decades towards a unified European law.

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The concept of legal culture and its categories

The relationship of culture and law is characterised by permanent interaction and interdependence.[2] The nature of this relationship could be summed up in two tenets: on the one hand, law is an element of the culture of a society, and on the other hand, there can be no law or legal system unaffected by the culture of the society.

Legal culture, similarly to political culture, is a result of historical development. Political culture can influence or even modify the characteristics of a legal culture (Tarello, 1981). The current state of legal culture is always between tradition and innovation. The development of a legal culture is a long process. It is not simply organic growth – as its task is to preserve the given culture. Having a legal culture is neither insistence upon the given standards, nor change for the sake of change only (Schäffer, 1996).

Legal culture comprises the following: a) written law and "living" (judicial) law; b) institutional infrastructure (judicial system, legal profession); c) the models of legally relevant behaviour (e.g. legal actions); and d) legal consciousness (Visegrády, 2001).

In some respects, legal culture can be divided into two parts: "external" (lay) and "internal" (professional) legal culture (Friedman, 1977, p. 76).

Some even find it apt to talk about *legal "sub-cultures"*. The possible use of the term could be exemplified by the fact that those unwilling to serve in the armed forces are normally found guilty in Northern and South Norway, while acquitted in Western and Central Norway (Podgórecki, 1967).

On a global scale, a possible way of distinction is between *regulative* and *steering* kinds of legal cultures (Kulcsár, 1997, pp. 137–147).

In regulative legal cultures (typically characteristic of the societies of the "Euro-Atlantic" culture), law is accepted as a rule that guides behaviour actually and normatively[3] – but not always to the same extent. In common law systems, for instance, courts have considerably higher prestige than in other countries. Moreover, continental European legal cultures are far from being homogeneous. This is illustrated by two examples: as opposed to German legal culture (traditionally setting high value on law and having sophisticated civil procedures), Dutch legal culture is often characterised by the concept of *beleid*, which means that subjects follow advantageous laws and evade (circumvent) disadvantageous ones at the same time. This might be well illustrated by the fact that until the enactment the Euthanasia Act of 1993 (exceptionally permitting aid to suicide), the Criminal Code had prohibited but the medical institutions had practiced active euthanasia. Besides, the Dutch seek to solve their conflicts out of court.

The legal cultures of the Central Eastern European region could be characterised by a deeply (historically) rooted attitude manifested in faith in legal regulation and excessive expectations concerning legal regulations. This has been accompanied by an inclination to perceive social problems in a certain legal framework. The efficacy of law has also been affected by the fact that (besides overcomplicated legal regulations) the standards of behaviour generated by the actual practice have gained primary significance.

Families of law in Europe

The national legal systems integrated by the European Union belong to different families of law[4] within the regulative legal culture.

Common law systems

Common law systems can be found on five continents and have three representatives in Europe: English law (practiced in England and Wales); Irish law (which is a kind of "modified" English law); and Scottish law (which has of "mixed" character).[5]

English law is described here as it provides the model for all common law systems. The characteristics features of English law are the following:

a) English law *resisted* the adoption of Roman law during the 15th and 16th centuries (unlike continental legal systems) and followed its own independent way of development.

b) English law is *not codified*: most of its rules are not incorporated in statutes.

c) English law is a *judge-made* law.

d) It follows from the previous feature that the rules of English law are *less abstract and generalised* than the rules of continental legal systems, as they always refer back to a decision made in a particular case.

e) English law is an *open system*. It is based upon a method that allows for answering all sorts of legal questions, but does not contain material legal regulations that are to be applied without respect to the circumstances.

f) Last but not least, as opposed to the Roman-German legal systems, English law has a *historical* character, its development has never been interrupted, it has always maintained its unity. For this reason, one cannot talk about old and new English law; every legal regulation, no matter how old it might be, belongs to the present legal system unless it was repelled by a statute or by custom. Moreover, the older the legal regulation, the higher the prestige it has.

Roman-German (continental) legal systems

The Roman-German legal system was the first family of law in the world. Its history dates back to the distant past. It stems from the law of ancient Rome but its long development has resulted in not only the modification of most of its material and procedural rules, but has also significantly altered its underlying concept of law and legal norms since the times of emperors Augustus and Justinian. Although the legal systems classified into this category are descendants of Roman law, they carry on its development and endeavour to bring its institutions to perfection. They have never been mere copies of Roman law, as many of their elements stem from other sources.

In continental Europe every contemporary legal system falls under this category. It does not mean that Roman-German legal systems are not to be found on other continents. Reaching well beyond the boundaries of the former Roman Empire, it has

spread to every Latin American country, most of Africa, the countries of the Middle East, Japan and Indonesia. This expansion is explained partly by the influence of colonisation and partly by the advantages associated with the reception of the legal technique of codification generally applied in Roman legal systems in the 19th century.

The characteristic features of the Roman-German legal systems can be summed up as follows:

a) The pillars of these legal systems are the *written sources of law* (statutes, decrees, ordinances). Statutes are primary to other sources of law.

b) Roman-German law is relatively abstract, in other words, the legal rules are not during making a decision on particular cases (with the intention of their application in further cases, like in Anglo-Saxon legal systems), rather, standards determine certain patterns of behaviour irrespective of the specific circumstances of particular cases.

c) Legal "norms," or standards, are characterised by a kind of *optimum generality*: they are not too general (as excessively general standards would impede the application of law) but general enough to be applied to certain type-situations.

d) *The spheres of the creation and the application of law are strictly separated unlike in common law systems.*

e) In these legal systems lawyers' primary task is the interpretation of legal norms. Every possible specification that has been left out of a legal rule automatically opens the way to interpretation. Thus, in Roman-German legal systems, law consists of not only the legal rules enacted by the legislator but also of *"secondary legal rules"* developed in legal practice.

f) The material of law forms an *independent, closed system,* in which – at least in theory – all sorts of questions could or should be answered by way of "interpreting" existing legal rules.

The Roman-German legal systems could be divided into three families of law.

The following European countries that belong to the *family of Roman law*:

1) France (as the "cradle" of this family of law);

2) Belgium, Luxembourg and the Netherlands (which came to touch with French law as a result of French military expansion);

3) Italy, Spain and Portugal (heavily influenced by the German and the Swiss codes, making them representatives of an intermediary type).

The characteristic features of the family of Roman law can be summed up as follows:

a) The code of central significance is the *Code Civil* (1804) in this family of lawe. This code has a clear-cut structure, free of any feudal elements, any "compromises". It leaves almost no room for judicial discretion; its formulations are concise and simple. It is often called the "most *bourgeois*" civil code that laid the foundations for European codification.

The Code Civil is in force in Belgium, in four Italian regions, two Swiss cantons and with some modifications in Baden. Replicas of the Code Napoleon were enacted in the Netherlands (1838), in Sicily (1812), in Parma (1820), in the States of Sar-

dinia (1837) and in Modena (1842). As an adapted translation of the original, it was instituted in Greece (1841), in the unified Italy (1865) and in Romania (1865). And finally, although not as the exclusive source but as primary inspiration, it influenced the Portuguese (1867) and the Spanish (1889) civil law codification, Just as Louisiana and Quebec in North America.

However, the success of the Code Civil peaked in South America. It was taken over in its original language in Dominica (1825), and later in translation in Bolivia (1831). The creative adaptation of European models (as mediated by French patterns) was first achieved in Chile (1825) that encouraged some countries to follow the lead (Ecuador 1861, Columbia 1873) and others to create their national code based on the Code (Uruguay 1867, Argentina 1869).

In Asia, the Code Civil made an impact on almost the same scale but in a far less homogenous way. Its principles are applied in Japan, and all four French codes were adapted in Turkey. In Egypt, the first codes (1867, 1883) were replicas of the Code Napoleon, the present code (1948) is a developed version based on it (which inspires Syria for adapted reception). The civil codes of Lebanon (1934) and Venezuela (1942) are also of French origin, although both are to be taken as significantly different to it (Varga, 1979, pp. 117–118).

aa) The Code Civil regulates the relationship between the statute and the judge in a rather radical way. Judges are not allowed to interpret the statute "arbitrarily", in matters of legal interpretation they have to turn to the authority of *referé legislative* (established in 1970).

ab) The Code Civil is the code of the "owner". It was based upon the idea of a citizen who makes rational decisions, who is aware of the relevant information and the rules set in law. The Code strives to guarantee the freedom of property and contract as much as possible.

ac) The Code finds a middle way between abstract principles and specific (casuistic) rules. It determined the paradigmatic style for civil law codifications as well as codes on other fields of law for the future.

b) The family of Roman law (unlike Germanic and the common law systems) is characterised by the prevalence of legislature. The influence of Roman law-quite paradoxically because of the early reception of Roman law – is much weaker.

The second family of law within the Roman-German system is the *family of Germanic law*, including law in the following countries:

1) Germany;

2) Austria;

3) Switzerland;

4) The countries of Central Eastern Europe (especially the Czech Republic and Hungary).

As characteristics of this family of law, the following features should be pointed out.

a) With respect to the development of the Germanic family of law, it proved to be a significant factor that, compared to other legal systems, *Roman law* had its *influence felt* rather late (only in the 15th century), but when it did, *it was powerful.*

b) The code of pivotal significance in this family of law is the *Bürgerliches Gezetzbuch* (BGB, 1900), which is a conservative code (unlike the French *Code Civil*).

The BGB was used in the recodification of Greek civil law (1940), and in the codification of contracts in Poland (1933). It provided the basis for the Brazilian (1916), the Mexican (1928), and the Peruvian (1936) civil codes, (*Codigo Civil*) as well as the codification of civil law in Japan (1898), Siam (1925), China (1929), and Thailand (1962). It also inspired the Italian *Codice Civile* (1942), which is quite remarkable, as the *Codice Civile* of 1865 was formulated in the spirit of French legislation (Varga, 1979, pp. 120–121).

ba) The law set out in the BGB is the law of lawyers; it is characterised by a style that strives for accuracy, subtlety and abstraction. Its addressees are not citizens but primarily lawyers (of course, in the sociological sense of the world). Its institutional schemes and terms are artificial; its language is technical (only professionals can understand its true meanings). As its primary focus is not conciseness but accuracy, the code is often very complicated.

bb) The rules of the code are structured in a specific way that more or less follows the structure of the *Institutions* of emperor Justinian (personal and family law, the objects and types of property, the ways of acquisition of property, etc.).

Many think that the *Austrian Civil Code* (ABGB 1811) represents a kind of balance in between the lawyers' of law of the BGB and the application-oriented law of the Code Civil.

The famous *Swiss Civil Code* (ZGB, 1912) has a distinguished position in the Germanic family of law. The ZGB is "deliberately vague" at certain points to allow the judge to search for the solution that is the most appropriate in the given case. The code is characterised by the extensive use of general clauses that are to be interpreted by the judges in the particular cases.

At last, the Nordic family of law covers the following countries:

1) Denmark;
2) Finland;
3) Iceland;
4) Norway;
5) Sweden.

This family of law can be characterised by the following features.[6]

a) It is often regarded as *a kind of an intermediate version between common law and the Roman-German legal systems.*

It resembles the common law systems as it was hardly influenced by Roman law and the wave of codifications in the age of the Enlightenment (e.g. the comprehensive codification of the civil law has not taken place yet). On the other hand, its similarity to the Roman-German systems can also be pointed out: judges do not have a central role in this system and there is no normative precedent-doctrine.

Nordic countries had lived in relative isolation for a long period. Their legal institutions were influenced by French law in the 19th century, German law at the beginning of the 20th century, and common law (especially the law of the USA) mainly

after World War II. However, despite all these influences, they have retained their original character.

b) Co-operation between the Scandinavian countries is manifest in their laws as *they make efforts to integrate the content of their legal systems.* An example includes the Scandinavian Sales of Goods Act, passed in every Nordic country (Sweden adopted it in 1905, Denmark in 1906, Norway in 1907 and Iceland in 1922). The act is influenced by both the British Sales of Goods Act (1893) and the German BGB. Co-operation is facilitated by their common legal and linguistic traditions.

c) Last but not least, it should be mentioned that *judges of higher courts and jurists of high authority play an important role in Scandinavian legislatures.*

A glimpse at the discrepancies between the political cultures of the EU Member States suggests, in my opinion, that political culture reveals the subjective side of politics, and – directly or indirectly – to the political consciousness of citizens. The political culture of a society represents the political system internalised in the knowledge, emotions and evaluations of the population. Just as the political system shapes political culture, the latter – as an essential element of the environment – "conditions" the functioning of the political system including the efficacy of the legal system.

The Hungarian Legal Culture

The main historical characteristics of the Hungarian legal culture

Legal cultures in the societies of Eastern and Central Europe have also been mainly regulative in character, although during their history certain features of a steering legal culture also mixed into them. This may be explained by two reasons.

On the one hand, the legal systems of this region had strong regulative features in some respects, for example, with regard to the inclination to litigate, especially in Hungary. In other respects, however, the willingness to evade the law has not simply existed for centuries but has also become an accepted form of behaviour in legal culture.

Although the idea of the rule of law had an impact on royal law-making – as proven by Hungarian legal history –, until the beginning of the 16th century royal law-making practically created legal rules lasting only for the period of the given king's reign.

Until the 16th century neither court judgments nor charters referred to statutes, but to the ancient custom of the country (*antique regni consuetudo*). This circumstance diverted Hungarian legal development – and legal culture – from Western-type legal systems to some extent, and subsequently this repeatedly raised the question of the need for adaptation (Kulcsár, 1997).

In Hungarian legal culture, the social standing of the court and of judges remained ambivalent for a long time. Judicial organisations were only separated from public administration in 1869 and, at the same time, the independence of the judiciary as a principle was laid down in a statute.

On the one hand, the role of judges has never become so significant and prestigious in Hungary as it has, for example, in Anglo-Saxon systems of law. On the other hand,

the inclination to litigate manifested in Hungarian legal culture indicates the importance of the court as the institution participating in the resolution of legal disputes.

In the socialist era, unrestricted legislation became a dominant feature, the number of bureaucratic type legal instruments of symbolic and technical nature increased quickly, and as a result of the above – normativity was pushed to the background. All this led to a significant decrease in the social prestige of law and the legal profession, which was further damaged by artificially generated political show trials serving political purposes.

Hungarian legal culture after the democratic political transformation

1. Written and living (judicial) law

Looking at the historical past we must consider the question whether the changes within institutional and political cultures are a result of continuity or discontinuity. In Hungary the following spheres may be differentiated:

– political institutions: *discontinuity*, a revolutionary new system of government

– legal system: *continuity*.[7]

Within this field, special attention should be paid to a famous decision of the Constitutional Court (1992), which, among other things, laid down clear statements in the scope of what becomes Rule of Law and the legal importance of a change of regime. "The classification of Hungary under the Rule of Law is both a clarification and a program at the same time. The Rule of Law is established when a constitution enters into force truly and unconditionally. In terms of law, a change of regime means and is only possible if it is made compatible with the country's Constitution and, in respect of any newly adopted legislative acts, concordance is maintained in the complete legal system. Not only the provisions of law but also the operation of government organisations should be in strict harmony with the constitution and then the conceptual culture and value scale of the Constitution also should affect the entire society. This is the Rule of Law; this is how a constitution materialises. The achievement of the Rule of Law is a process. The change of regime took place on a legal basis. The principle of legality requires a state run on the basis of the Rule of Law to unconditionally apply the rules of its legal system to itself. The Constitution, which triggered revolutionary changes in politics, and the fundamental statutes were established in compliance with the principles of the former legal system, technically impeccably, and this is the source of their non-appealable, legally binding nature. The former legal system also remained in effect. In terms of force, there is no difference between the law applied before and after the Constitution. The legitimacy of the various systems in the past 50 years is, in this sense, indifferent, and regarding the constitutionality of the provisions of law, this concept makes no sense. Irrespective of the date of its adoption, every statutory regulation must comply with the new Constitution. There is no dichotomy in constitutional review – and there is no double standard. The date of the adoption of a statutory regulation has relevance on to the extent that previous statutes become unconstitutional when a new Constitution came into effect."

This decision of the Constitutional Court also refers to the importance of changes in the ways of thinking and attitudes within the legal (and therefore political) culture. This democratic political transformation, having taken place by way of a revolutionary act to establish the Rule of Law and on the grounds of legality and continuity, required an enormous amount of legislation. The emphasis in legislation shifted towards the apex of the hierarchy of the sources of law, this is how more than one and a half thousand effective acts of Parliament were drafted (the legal regulations currently in force comprise almost six thousand legal instruments) (Fleck, 2010, p. 55).

Since the beginning of the 1990's the number of acts of Parliament has been increasing continuously. Seventy-five per cent of these acts have been passed since 1990; and consequently, the most important level of the legal system has been replaced since transition to democracy. While Parliament passed 104 and 145 acts in 1990 and 2000, respectively, the number of acts passed by Parliament between May 2010 and May 2011 reached 200, including the new Fundamental Law, replacing the Constitution of 1989. A high level of activity also is seen in delegated legislation (legislation by decree). The judges of the Constitutional Court exercise permanent control over legislation.

As far as "living law" (judicial law) is concerned, its most important scene include courts, which do not merely "carry out" codified instructions, but also interpret,[8] apply and thereby necessarily develop all branches of law. Accordingly, "*praetor ius facit inter partes*". Therefore, permanent and uniform practice at courts, the precedent-setting decisions adopted by Curia (supreme court) to secure the uniformity of law, its decisions made in individual cases and its opinions to promote uniform practice may all be considered sources of law. As an example: 46 criminal, 37 administrative and 24 civil precedents were made between 2008 and 2010.[9]

2. The legal profession

Before the adoption of democracy, in Hungary legal profession had been characterised basically by two features: on the one hand, its prestige had decreased and on the other hand, in spite of the four decades of "socialist" – and under its cover: Eastern – influence, they had preserved continuity of traditional Hungarian legal thinking to a significant degree. This latter characteristic proved to be of key importance during the democratic transformation (Kulcsár, 1997, p. 135). After the first elections, Parliament was filled with lawyers, independent intellectuals and philosophers in large numbers.

Attraction to the legal career suddenly rocketed – in line with Hungary's conversion into a democratic state governed by the Rule of Law. Instead of the approximately 4000 people pursuing a traditional career in law at the time of the democratic political transformation, today approximately 15,000 lawyers are active, including 2800 judges, 1729 prosecutors, about 10,000 attorneys and 313 notaries. The previous four law faculties of law have been expanded to nine at various universities. At the beginning of the 1990's there were 3000 law students; today there are more than 18,000. On graduation most of them choose to become attorneys.

3. Litigation

The inclination to litigate, which had always characterised Hungarian legal culture throughout history, further increased as a matter of course, under the conditions of market economy, and courts had difficulty in coping with the increasing number of cases. While, for example, in 1998 the number of cases filed with local and county courts amounted to 402,884, by 2010 this number had increased to 456,188.

Hungary is closer to the countries of short-term lawsuits, but on average all types of lawsuits take a little more time in Hungary than in Germany (6 months) or in France (4 months). Although Hungary can boast with the second largest judiciary (2800 judges) – in proportion to the population – after Germany, first-instance and second-instance proceedings last one year on average, and at the most overloaded courts the length of proceedings may take as much as two years (e.g. in Pest county) (Pokol, 2003, pp. 46–49).

4. Legal consciousness

Changes in the legal consciousness of the Hungarian population following the democratic political transformation are excellently demonstrated by the main results of the analysis conducted in 1997-98 on a sample of 219 persons (Kormány, 1999).

Among the various branches of law, criminal law was known best and administrative law and procedural law were known the least.

Ninety per cent of the respondents were aware of the fact that the court did not accept unfamiliarity with the relevant legal rules as a legitimate defence. Compared to a survey made in 1965, there was a 15% increase in the number of those who gave correct answers.

A fortunate consequence of Hungary being a democratic state governed by the rule of law is that 30% more people think that it is just to enforce this fundamental principle. In other words, there has been a change in the quality structure of legal consciousness.

Eighty seven per cent of the population involved in the analysis knew that in Hungary acts are passed by Parliament, 10% did not answer the question and 3% gave incorrect answers. At the time of the 1965 survey, only 45% said the legislative body was Parliament. The reason for the remarkable difference also lies in the democratic transition, since the weight and power of Parliament has increased significantly and citizens follow – or may follow – the work of Parliament.

It is regrettable, however, that to the question as to how it is possible – without any preliminary permission – to participate at a public court hearing, the proportion of right answers was altogether 33%. This may be explained by citizens' apathetic attitude to courts and by the fact that confidence in the system of administration of justice has greatly deteriorated in recent years.

Finally, mention should be made of the dichotomy that while three quarters of the 219 respondents recognised the difference between homicide and attempted homi-

cide, they confused legislation with the administration of justice and they were also unable to distinguish between natural and legal persons.

In view of all this, while the consolidation of our legal culture gives reason for contentment, we should not forget about spreading information about law and should improve legal consciousness.

The impact of membership in the EU on Hungarian legal culture

Two questions arise in relation to legislation and Hungary's membership in the European Union. Firstly: Was Hungarian legal culture prepared for accession in 2004? Secondly: Can Hungary make any favourable contribution to the legal culture of the EU?

The law of the EU does not constitute a "European legal culture", but the product of various European legal cultures.[10] The new "European legal culture" is in the process of evolving, as indicated by the proliferation of technical laws and at the same time, by the increasing unification and vertical plurality of the legal system. One must proceed from the fact that, besides national endeavours, several harmonisation factors have always been present in Hungary's legal development of a thousand years. The main forces behind this harmonisation process have been the similarity of Hungary's economic and social structure to the Western-European pattern, and its efforts to catch up with the European standard of living. In this respect, therefore, legal harmonisation during Hungary's accession to the EU was not the first challenge in Hungarian history.

Since the change of regime, several positive trends have been observed in the development of Hungarian legal culture pointing towards conformity with the European Union. These include the lawful performance of the change of regime and the beneficial influence of the consistent practice of the Constitutional Court on Hungary's legal culture. On the other hand, the approximation of laws plays a significant role in consolidating Hungary's regulative legal culture.

Note that the European Union's legal instruments laid down in the White Paper were harmonised by Hungary already between 1990 and 2003.

The further training of judges and civil servants in languages and European law has started, but obviously, the final solution may be expected of the mass employment of the new generation of university graduates.

However, it must be emphasised that Hungary's integration into the European Union does not exclude the preservation of the specificity of the country's legal culture.

Integration has a double aim. On the one hand, it should guarantee the achievement of some common effects; and on the other hand, guarantees need to be built in the procedures in order to ensure that similar premises have similar results. "All this translated into legal terms means that only those elements of our legal culture can – and in some cases: should – be unified that, due to their *sine qua non* role, are instrumental in the fundamental aims to be achieved by all means" (Varga, 1992, p. 446).

Therefore, in the efforts to make Hungarian legal culture conformant with the European Union's, attention should also be paid to fostering Hungary's existing cul-

ture. Hungarian legal culture could also make a contribution to the development of European Union legal order if Hungarian legal policy was able to initiate the adoption and utilisation of some of our legal solutions for improving legal institutions still not elaborated in the Community *acquis*. Such a solution might be, for example, the Hungarian Ethnic Minorities Act.

Chances of and limits to the approximation of legal systems in the European Union

As it is well-known, the European Union launched the most comprehensive legal harmonisation programme of all times. It concerns not only the 27 Member States but – as a point of orientation – the member of EFTA and the countries of Central and Eastern Europe as well. The goal of the Union is not some kind of a "unified law" but the co-ordination of the legal regulations of the Member States, the elimination of excessive deviations with preserving the national legal systems to a certain extent.[11]

The advocates of the convergence of the various legal cultures to the EU point to the common history, common values and traditions.[12]

On the other hand, many hold the view that the common law and the continental legal cultures are so different to one another that there can be no approximation between them.[13]

And finally, according to the third view, the above mentioned conceptions take legal cultures in a formal sense. We would rather need a sociological approach that concentrates upon identities. For example, civil law is often a symbol of national identity or a manifestation of national legal culture. This might explain why the Member States are so reluctant to "harmonize" their civil laws. However, the EU set its heart on this harmonisation (Paasilehto, 1999; De Cruz, 1995, p. 99).

The first question concerns the extent the European Union makes use of the institutions of national legal systems. The incorporation of human rights in Community law is mainly due to the German Constitutional Court. As Community law consists mostly of rules of administrative nature, many of its basic principles trace back to the highly developed administrative law of France and Germany. Recently, however, the European Court has also adopted certain principles – mostly procedural ones – from the "natural justice" of English law. This is how the "right to hearing", the "duty of justification", the "right to due process" became part of Community law. The Community law also borrows from the economic laws of other Member States (Kecskés, 2009, p. 128).

Secondly, we have got to talk about the European Court. This is the forum functioning as a kind of "merger" of Anglo-Saxon and continental legal cultures. Comparative law is a permanently used "instrument" in the hands of the European Court (Kecskés, 2009, p. 127).

The amalgamation of the two legal cultures is also manifest in the fact that the European Court (basically) applies the case law method, but its verdicts do not function as precedents.

The next problem to be explicated concerns common law. *In concreto*, there is an ever more obvious trend that the practice of British courts – although the efforts to

synthesize the Anglo-Saxon and continental legal cultures could also be noticed – assimilates with the American model, where decisions are based upon principles rather than rules (Levitsky, 1994, p. 380).

Finally, we cannot avoid posing the question: Is the Hungarian legal culture mature enough to European integration, or: Can the former contribute to the latter in any respect?

Concluding remarks on the perspectives the ius commune Europaeum

The law of the EU is not a uniform "European legal culture" (Gessner, 1992, pp. 5–18), but the product of various *European legal cultures*. The new "European legal culture" is in the making and is manifest, among others, in the proliferation of technical rules and in the growing unity and vertical plurality of the legal system (Kulcsár, 1997, p. 139). However, the future common law of Europe means much more than growing harmony in different fields and Rules of Law. The "euro-centrism" of European law does not involve that it only relies upon the legal systems of the countries of Western Europe. It is also influenced by the legal institutions of e.g. the USA, Australia and New Zealand. A question of the future is how this complex but homogeneous law can integrate the legal traditions of the countries of Central and Eastern Europe (Burrows, 1996, p. 312).

The key to the future of the *aquis communautaire* is the efficacy of its rules.

It is a complex task to measure this efficacy, and includes – among others – an inquiry into the following factors:

– The way the legislatures of the institutions of the Community reflect the policy of the Community;

– Application of Community law in the Member States;

– Translation of the Community directives into national laws;

– Effectiveness of secondary Community legislatures and national "adoption" in respect to the various systems of public administrative;

– Effectiveness of Community law in respect to the activity of economic and other organisations, or even private persons;

– Legal actions concerning Community law at national courts;

– Enforcement of Community law by national courts.[14]

As far as the perspectives of the approximation of the legal systems are concerned, I join the advocates of the convergence of continental and common law models. Both systems will be modified as judicial law becomes significant besides written law, and statutory law gains strength in relation to case law.

Just as in the past, the European states will undoubtedly follow the same legal principles in the future. European law is rooted in Roman law, the trunk of this tree is the *ius commune*, and its branches that grew in different directions will grow in the same direction as a result of a slow evolution, the unifying will of the European people (Schrage, 1992, p. 407).

Notes

[1] Rousseau was right when he wrote that "Il n'y a plus aujourd' ui de Francais, de Allemands, d'Espagnols, d'Anglais meme, quoi qu'on en dise; il n'e que des Européens.' Rousseau, 1964.

[2] See e.g. Mayer, 1903; Fezer, 1986, p. 22.

[3] Its main characteristics are individualism and rationalism. See Hoecke and Werrington, 1998, pp. 503–505.

[4] See David, 1977; De Cruz, 1995; Zweigert and Kötz, 1996. The description given here of the various families of law in Europe combines the conceptual devices developed by Zweiger, Kötz and R. David. Although Zweigert and Kötz heavily criticised David's analysis, I find it apt to link the two categorisations. Kischel, 2019.

[5] See Visegrády, 1999; as to Irish law, see Doolan, 1986; about Scottish legal culture see Watson, 1974.

[6] Cf. Kondorosi and Visegrády, 2011, pp. 127–137.

[7] Cf. Paczolay, 1993.

[8] Cf. Zirk-Sadowski, 2011.ungary

[9] Cf. Visegrády (under publication).

[10] Cf. e.g. Febbrajo and Sadurski, 2010.

[11] Evans, 1998; Cabero, 1989, pp. 177–180; Cartou, 1994, pp. 155–158; Gulmann and Hagel-Sorensen, 1988, pp. 287–297; Lauria, 1992, pp. 172–190; Kecskés, 2009.

[12] See e.g. Gerven, 1995, pp. 679–702; Joerges, 1997; De Cruz, 1995, pp. 99.

[13] See e.g. Legrand, 1996, pp. 52–81.

[14] See Snyder, 1993, pp. 25–27. On the concept of the efficacy of law, its factors and its measure, see Visegrády, 1997.

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