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## The Dream of Western Law. Legal Layers in Solzhenitsyn's *Gulag Archipelago*

**Abstract.** This essay discusses Aleksandr Solzhenitsyn's *Gulag Archipelago* from the aspect of "law and literature". As a starting point, it argues that its "legal" reading is of a high relevance, since it helps us to better understand both the reality of Soviet law and the achievements of our legal systems. In order to illustrate this, it examines various legal layers embedded in the work: legal history, sociology of the punishment, criminal investigation, organizational sociology and psychology, and legal theory. In addition, the essay also focuses on the role of Western Law as a contrast in Solzhenitsyn's work, and analyzes its metaphorical language about law. To conclude, it argues that this book could caution lawyers of the consequences of a politically-oriented approach to law that disregards the fundamental values of Western law.

**Keywords:** Aleksandr Solzhenitsyn, *Gulag Archipelago*, Soviet law, law and politics, values of Western law, law and literature

“La tâche de l'écrivain ne se borne pas à la propagation d'un système social. La tâche de l'écrivain est de traiter des sujets universel et éternels ...”<sup>1</sup>

### I. Preliminary thoughts

This essay discusses a book which is of both a universal historical value and a manifest literary significance. In addition, its legal dimensions can also be viewed as important. Compared to this unambiguous “law and literature” relevance, it might be slightly surprising that Hungarian scholars, discussing legal questions from a literary point of view,<sup>2</sup> have not taken into account Solzhenitsyn's<sup>3</sup> *Gulag Archipelago* thus far, although it is full of legal problems and law related questions from the outset.

The main aim of this paper is to recommend a law-oriented rereading of this classical book. The legal research of the *Gulag Archipelago* seems to be almost self-evident, as the titles of certain chapters suggest: *The Law as a Child*, *The Law Becomes a Man*, *The Law Matures*, *The Supreme Measure* (Chapters 8, 9, 10, and 11).

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<sup>1</sup> Excerpt from a speech of Solzhenitsyn in 1967. It was held in the Union of Soviet Writers. Source: Alexandre Soljenitsyne, un phénomène nouveau de la littérature soviétique. *Documentation sur l'Europe Centrale*, 11 (1973) 3, 249.

<sup>2</sup> See: Nagy, T.: *Jozef K. nyomában* (Following Jozef K.). Máriabesenyő-Gödöllő, 2010.; H. Szilágyi, I.: *Jog – irodalom* (Law–Literature), Szeged, 2010.

<sup>3</sup> About Solzhenitsyn see the comprehensive work of Scammell. Scammell, M.: *Solzhenitsyn, a biography*. New York–London, 1984. From the aspect of the history of Soviet literature: Loupan, N.: La littérature soviétique d'après-guerre. *Documentation sur l'Europe Centrale*, 14 (1976) 1, 17–31.

What are the main legal points of Solzhenitsyn's book? This essay tries to answer the question by referring to specific sections, but it does not make an attempt at a comprehensive legal analysis. These selected sections can illustrate the richness of the legal elements contained within the entire novel. The reason for this impressionistic approach is rather simple: the abundance of legal elements in Solzhenitsyn's work would require a deeper analysis than this essay tries to achieve. This paper, therefore, does not strive for a general scope, but by analyzing certain excerpts it strives to foster future research.

Furthermore, the author of this paper would like to pay tribute to one of the most important writers of the 20th century. His oeuvre states, in addition to other important things, what a human being can do if he undertakes to represent an elementarily important case, even if he has to work in a completely reticent manner from the very beginning.<sup>4</sup> At this point it should also be emphasized that Solzhenitsyn and his oeuvre had a considerable role in the shading of romantic conceptions about Communism that existed in the public opinion of Western Europe in the fifties and sixties. Together, his documentary work and novels provided invaluable assistance to Western intellectuals who gradually realized a more precise view of the reality of the Soviet world.<sup>5</sup>

## II. Legal layers of the *Gulag Archipelago*

The hypothesis of this essay is that this work of Solzhenitsyn, has numerous legal layers. Therefore, its main aim is to attract attention to the most important ones since their research could also be fascinating to the experts of other fields of study. For a legal analysis the most important part of the three volumes is the first twelve chapters of Part 1, where the reader can discover many associated legal elements. The remaining chapters, generally, have a more reminiscent and commemorative nature.

### 1. *Legal history—towards an unconventional history of Soviet law*

Perhaps the most evident choice, if one wants to learn the legal relevance of the *Gulag Archipelago*, is its analysis from the aspect of legal history. One can easily follow many aspects of Soviet legal history in Part 1 (*The Prison Industry*). For instance, the author presents and analyzes the history of Soviet fake trials from the very beginning by using the

<sup>4</sup> The huge impact of the *Gulag Archipelago* on the Soviet regime can be illustrated with a tiny, however very telling fact. Following its publication (it was firstly published in the West in 1973) the Soviet authorities even deleted the word archipelago from the official Russian dictionary. So, they symbolically declared the non-existence of the entire work. See: La disparition de mot "archipel" du vocabulaire officiel. *Documentation sur l'Europe Centrale*, 14 (1976) 2, 140.

<sup>5</sup> The Western view on Communism is analyzed by Stéphane Courtois, a well-known French historian of Communism, in detail. He also discusses the role of Solzhenitsyn: "In the 1960's and 1980's, Solzhenitsyn's *Gulag Archipelago* and later the 'Red Wheel' cycle on the Russian Revolution produced a quantum shift in public opinion. Precisely, because it was literature, and from a master craftsman, the *Gulag Archipelago* captured the true nature of an unspeakable system". Courtois also mentions Varlam Shalamov and Pin Yathay whose impact can be compared to that of Solzhenitsyn. Courtois, S.: Introduction: The Crimes of Communism. In: Courtois, S. et al.: *The Black Book of Communism. Crimes, Terror, Repression*. Cambridge-Massachusetts-London-England, 1999. 27.

metaphor of waves,<sup>6</sup> furthermore, he also points out the emergence of a special and ordinary criminal justice system.<sup>7</sup> In addition, he offers a complete picture of the practice of courts concerning Art. 58 of the Criminal Code, most usually used for Siberian deportations,<sup>8</sup> as well describes the development of the death penalty.<sup>9</sup> The most fascinating aspect in this legal historical layer, is that Solzhenitsyn presents these problems to the reader not only with an impressive legal and sociological accuracy but also with a scientific accuracy. Moreover, neither the analysis of statistical data nor the legal constructions were unknown fields to him.

A good example of legal historical accuracy is the first part of the chapter which is devoted to the death penalty (11. *The Supreme Measure*). The author provides an overview of the history of the death penalty from the Code of Aleksei Mikhailovic Romanov to 1962. In these pages he also presents many efforts to abolish the death penalty and the crimes sanctioned by this measure. Within the references mentioned in the footnotes, one can even find a monograph dedicated to the death penalty from 1913. The author also cites the Bulletin of the Supreme Soviet of the U.S.S.R. from 1959 that discusses the bases of Soviet criminal justice. Additionally, and this might be the most interesting point, Solzhenitsyn points out the lack of authentic printed information; and this is the reason why he uses the data provided by an “unwritten tradition” stemming from the slaves of the Gulag. Therefore, his analysis, contrary to all efforts, cannot meet all the scientific criteria and cannot be as comprehensive as it would be in the case of a legal monograph.<sup>10</sup>

However, an absolutely different history of Soviet law takes shape, from the imperfect, but extensive data collected and analyzed by Solzhenitsyn, than a law student can get to know from the general manuals of modern legal history. It is a real question whether an interpretation of Soviet legal history based on Solzhenitsyn’s data can overrule this “traditional” and still surviving approach mainly by presenting the “glorious” side of the evolution of Soviet law.<sup>11</sup> It can, however, be an excellent addition to this heavily biased approach. This “unconventional and real Soviet legal history” is legitimized as well as justified by the personal experiences of the author and his fellows and by the sound data collection, contrary to the approach of legal history manuals that are distant to the sociological dimension of law and are also obviously ideologically biased even today.

## 2. *The sociology of the administration of punishment—transformation of the society of Russian prisoners*

It is more than evident that a legal interpretation of the *Gulag Archipelago* cannot stop at the presentation of legal historical dimensions, since Solzhenitsyn’s work also implies countless references to the Soviet system of the administration of punishment. The first volume documents both the history of the Soviet prison system as well as its real

<sup>6</sup> Solzhenitsyn, A.: *The Gulag Archipelago 1918–1956. An experiment in Literary Investigation*. New York, Evanston, San Francisco, London, 1974. 24–60 and 69–92.

<sup>7</sup> *Ibid.* 281–286.

<sup>8</sup> *Ibid.* 60–68.

<sup>9</sup> *Ibid.* 432–440.

<sup>10</sup> *Ibid.* 438.

<sup>11</sup> See Kitekintés a szovjet állam és jog fejlődéstörténetére (An outlook on the development of the Soviet state and law). In: Gönczi, K. et al.: *Egyetemes jogtörténet* (General Legal History). Budapest, 2000. 559–588.

functioning, in detail.<sup>12</sup> It is very interesting, sometimes striking, that Solzhenitsyn contrasts his findings on the everyday life and functioning of Soviets prisons to those of the age of the Tsars. This comparison of the world of Soviet and that of pre-Soviet prisons reveals that the whole prison system of the age of the Tsars, notwithstanding that Communist propaganda tried to depict this political system as fearful and oppressive, was functioning more humanely than the jails of the progressive Soviet system.

The author was familiar with the functioning of this old, Tsarian system through the stories of those leftist prisoners who had personal experience of the reality of the prisons from both ages. Based on these memories Solzhenitsyn formulates an interesting conclusion about the sociology of prisons. During the Tsar regime, those prisoners who were condemned because of obvious political crimes, mainly Esers, Mensheviks, and Communists—in one word: the politicals—, had many privileges making the whole prison life more suitable and easier.<sup>13</sup> However, this privileged situation completely changed in the Soviet era. From the beginning of the twenties, politicals were deprived of all these privileges inherited from the earlier age, likewise the Soviet system also encouraged ordinary criminals to maltreat and misuse them.

Solzhenitsyn's final conclusion is simple and sharp: the society of prisons completely changed in his age compared to the conditions of the Tsarist regimes. The politicals, who were on the top of prison hierarchy, suddenly became the most defenceless group, with whom even ordinary criminals, not only the inspectors of the NKVD, could mistreat at any time. If one accepts that the internal relationships within a prison inform about the given society, since they mirror a radical and polarized picture of the whole society and its mechanisms, then this transformation in which politicals basically lost their top position in the internal life of Russian prisons can infer many interesting features about the real Soviet world. These features may have remained unnoticed without this help.

### 3. Criminal investigation—the psychology of the interrogator and the victim

Besides the two earlier legal layers, the description of the Soviet criminal investigation procedure is also worthy of attention. These chapters are obviously the most shocking parts of the *Gulag Archipelago*. Solzhenitsyn prepared a broad documentation on the basis of personal memories of the techniques of the Soviet interrogators.<sup>14</sup> Each of them had been designed to extract personal confessions, that is, the accused persons had to voluntarily acknowledge that they had committed the given crime. Or, at least, these practices had to force them to undersign their written confession prepared by the investigative authorities.

The author discusses thirty-one techniques used by the interrogators by dividing them into two main categories: psychological and physical methods. However, he also indicates the relativity of this grouping since both overlap each other in many areas. Therefore, it is simply impossible to precisely distinguish them, as the psychological and physical divisions

<sup>12</sup> Solzhenitsyn: *op. cit.* 456–485.

<sup>13</sup> For example decent food, smoking, gardening, reading, regular walking, the free election of spokesmen, free movement among the cells, sending and receiving letters, and finally the option of hunger strike. About these “rights” the author writes: “They all returned to prison with a consciousness of their rights as convicts and a long-established tradition of how to stand up for them.” *Ibid.* 460.

<sup>14</sup> Solzhenitsyn lists thirty-one different techniques of interrogation from “persuasion in a sincere tone” to “bridling” and also indicates that this long list could even be continued. *Ibid.* 103–117.

can only orientate us.<sup>15</sup> The list provided by Solzhenitsyn is really appalling but also illuminating today. It can precisely show the outcome of a situation which exclusively stems from a powerful and strict hierarchy—the relationship of the prisoner and the interrogator—and has no precise limits or these limits are only nominally defined and everyone, even the prisoner, disregards them.

What is interesting about these inhuman and cruel interrogation methods, is that the author does not stop at their “external” and physical description, but he also discusses in detail the psychological effects on the victims. The reader can clearly see both the process of ‘breaking down the victims’ will and the sophisticated “psychological games” by which the interrogator extracts the personal confessions and their signature. On these pages Solzhenitsyn presents the human soul being under serious pressure and its refined maneuvers:<sup>16</sup> what is a human being thinking when he first appear in front of the interrogator; how can someone attempt to lie in a logical order; how do the different techniques of torture affect the human will; how can someone alleviate his conscience when signing the obviously unfounded and false confession that creates serious trouble for others. The author familiarizes the reader with the psychological drama that is happening during interrogations and tortures.

In these sensitive and many times very personal chapters, the author throws a light on the depths of the psychology of criminal investigation by empathically drafting the mental processes of an accused person as being in a hopeless situation. His final conclusion shows the full understanding of this mental state since he argues that, contrary to all, it is not allowed to condemn anyone who confessed or signed their confession since no one can precisely know what happened in the dark rooms of the interrogators.

In addition, Solzhenitsyn also illuminates the psychological state of the interrogators by analyzing their motives in detail. He points out that even these fearless functionaries cannot be regarded as inviolable, since they “tremble” when meeting a prisoner who has absolutely nothing to lose. These kinds of prisoners only want to save their “spirit and conscience”, therefore they are totally apathetic and indifferent to torture practices that break down human will.<sup>17</sup> Indifference to violence and torture, be it mental or physical, is the weakest point of each officer of the NKVD.

#### 4. *Organizational sociology and psychology—the “Organs”*

Following a swift overview of the first part of *Gulag Archipelago* it is obvious that one of the most infamous terms is the expression “organs”. Solzhenitsyn practically used this term with a universal scope, each department and member of the secret police having very different names—only mentioning some of the well-known ones: cheka, GPU, OGPU, NKVD, KB—during the Soviet era. He implied that everyone included in this term “organs”, had, as their main task, to fight against the internal political enemy. It is, indeed, a metaphor about those who had any role in Soviet internal affairs.

Solzhenitsyn’s relationship with this organization was deeply influenced by the fact that the Komsomol authorities wanted to send him to an NKVD school during his university years, but he refused to enter this school and his friends reacted the same way. He described his reasons for this decision when he wrote that he and his friends were intuitively worried

<sup>15</sup> *Ibid.* 108.

<sup>16</sup> For example *Ibid.* 117–121.

<sup>17</sup> *Ibid.* 130.

about these men, and they rejected the idea of joining this organ due to irrational motives being contrary to their manifest interests. But “it was not our minds that resisted but something inside our breasts”, explains Solzhenitsyn, the irrational element is their decision.<sup>18</sup> This existential experience with its emotional background was obviously further deepened by both the personal “meetings” with the “organs” and the stories told by his fellows.

In order to understand the functioning and behavior of the “organs”, the author focused on a psychological explanation and he also discussed in detail how the “organs” selected their functionaries. The service in the secret police, it is argued by Solzhenitsyn, did not at all require a high level of education or training. In place of these the only thing the “organs” expected from the officers was the ability to carry out precisely the orders coming from their leaders. This was intensified by the fact that these, rather unqualified men, mainly the majority of investigators, were in an environment where their inhuman instincts, for instance, thirst for power or wealth, were reinforced and even encouraged.

At this point the arguments of Solzhenitsyn perfectly meet those of István Bibó, the internationally known Hungarian political thinker, who formulated elementary important thoughts about the nature of power. Bibó convincingly argues that power is simply a poison, especially for those who have already broken their relation with the higher spheres of human existence.<sup>19</sup> This situation in the “organs”, the meeting of an artificially increased thirst for power with rather rudimentary personalities, was completed by a special “official” consciousness. The functionaries and officers of the “organs” understood perfectly that it was absolutely impossible to imagine a situation in which they were not right, that is, there was absolutely no control above them except the realization of orders coming from the higher levels. These orders outlined numbers of detentions, judgments or executions that had to be met. Only the orders and these “numbers” could be regarded as some kind of external pressure and “control” of their activities.

The author also explains that there was only one law that could not be breached in the world of the “organs”: no one could harm others in the organization. This was that very simple psychological and sociological “constitution” on which the administration and functioning of the secret police was based. However, and it must be stressed, this organization determined by such simple principles, ruled the whole Soviet society and the everyday life of the citizens. As a state within the state, it basically meant an independent world.

Solzhenitsyn’s analysis of the “organs” could also be important nowadays, since it helps in the understanding of those external factors that can influence the functioning of institutions created by law. In addition, it also explains how these can bias them and turn to a totally contradictory direction. Moreover, it also warns what will happen if an organization based on force, loses control, so it also attracts attention to the elementary importance of law, and, more specially, that of legal guarantees. Chiefly, this argument illustrates the theory of the separation of powers as formulated by Montesquieu. If the setting of Montesquieu cannot function, only the “organs” remain as a way of the administration of power.

<sup>18</sup> *Ibid.* 161.

<sup>19</sup> Cf. Bibó, I.: *Az európai társadalomfejlődés értelme* (The reason of European social development). In: Bibó, I.: *Válogatott tanulmányok*. 3. kötet (Selected Studies. Vol. 3). Budapest, 1986. 7–18. and 44.

### 5. *Legal theory—the relativity of truth*

It may be slightly strange at the beginning, but the author implies claims of a legal theoretical nature in the first part. From a different aspect it is not too difficult to understand this philosophical sensitivity. Solzhenitsyn, being a victim of the secret police and the Gulag industry, would have reflected on the general questions of law with special regard to the social role of law and its internal mechanisms.

The most fascinating element of this theoretical reflection is obviously his comment on Vyshinsky's theses about law. The infamous Soviet jurist, Prosecutor General in the darkest Soviet years, formulated crucial theses about the nature of truth stemming from his Marxist-Leninist profession, and the author analyzes these while discussing the formation of the Soviet system of administration of justice.<sup>20</sup> Vyshinsky argued, when he was analyzing the nature of truth, that absolute truth does not exist according to the principles of "flexible dialectics", but the functionaries had to be satisfied with establishing the relative truth. It logically follows from the conceptual impossibility of absolute truth that the courts are able only to establish the relative truth and, therefore, it is absolutely unnecessary to look for absolute evidence, for instance, witnesses or other factual things, during the criminal investigation. In a given case, following the earlier theoretical arguments, the investigator can establish the relative truth with the help of the personal confession or his political consciousness and moral view.

Solzhenitsyn's brief Vyshinsky analysis is really important, because it perfectly points out how political interests are able to bias a theoretical argument in order to achieve their goals. As a final point, the author reminds us that political interests, if all the other conditions are given, can easily distort any philosophical idea even if they seem to be innocent and neutral.

With these earlier theses developed by Vyshinsky the progressive Soviet administration of justice returned to the medieval system of divine ordeals and other irrational practices, argues Solzhenitsyn. So, the Soviet authorities created a premodern and atavistic system of justice which missed all the achievements of modern, formal law. In the eyes of the author only one absolute thing remained in this "unique" system based on political interests: the bullet they used for execution.<sup>21</sup> In conclusion, this theoretical approach unambiguously points out that the Soviet system of administration of justice can be regarded as a brand new type since it established a totally irrational regime by rejecting the tradition of Western Law based on general human rights and procedural guarantees.<sup>22</sup>

### III. Two remarks

Upon discussing these legal layers the essay wants to discuss some questions related to the general features of law. Basically, I aim to formulate certain general conclusions with the help of Solzhenitsyn's thoughts.

<sup>20</sup> Solzhenitsyn: *op. cit.* 100–101.

<sup>21</sup> *Ibid.* 101.

<sup>22</sup> For a psychological and sociopsychological analysis of the premodern and irrational elements of Communist thinking see: Ignatov, A.: *Aspects de la psychologie de la „nouvelle classe”*. Louvain, 1980.

### 1. *Western Law as a contrast*

All the earlier presented legal layers could show that Solzhenitsyn had a solid legal knowledge since his thoughts and findings are consistently precise and they also reflect a sophisticated legal thinking. This considerable legal background is a bit unusual from the very first moment, since he mostly studied mathematics at Rostov State University, then he fought as a battery commander in World War II, and as such had no special relationship with the law or legal sciences. Conversely, his descriptions, analyses, and arguments show a high level of legal knowledge that cannot be compared to that of the ordinary Soviet citizen.

The most fascinating and the most surprising at the same time, is his way of using contrasting—sometimes directly, in other cases indirectly—the Soviet Law to a qualitatively different type of law. That being said, he never discusses certain provisions and mechanisms of Soviet criminal law in itself, but in the analysis and assessment he always contrasts those with the relevant principles or institutions of Western Law. For instance, in discussing Art. 58 he also adds that not only its formulation was very problematic, but its “broad interpretation” was also a source of trouble. Because of this “broad interpretation” this article was an instrument of clear arbitrariness. This statement implies that there are, or should be, such legal systems where the rules of criminal law cannot be “as broadly” interpreted.

In another part he calls attention to the fact that prior to 1922 the judgments of deporting some one to labour camps were based on the “revolutionary legal consciousness” or on special decisions since there was no new Socialist criminal code in effect. One can infer from this remark that it is absurd in the eyes of the author that someone can be condemned without referring to codified legal rules—so the fundamental principle of *nullum crimen sine lege* appears in the background of this remark. Another example the author stresses are the so-called “troikas”<sup>23</sup> an absolutely unique criminal law institution that united almost every phase of the criminal process: detention, investigation, prosecution, judicature, review, and the execution of judgments. This solution, being obviously unconstitutional in a Western sense, could only appear since its creators did not adhere to certain “obsolete formalities of judicature and obsolete norms”. In the term “obsolete formalities” one can easily discover certain critique and irony concerning the refusal of the principle of separation of powers, an underlying element of Western legal cultures, and the system of procedural guarantees being able to discipline the coercive power implied in law. There are other examples, but, the ones mentioned here are enough to illustrate that Solzhenitsyn had a broad and detailed legal knowledge.

This special writing method stemming from the harsh contrast of these two conceptions of law—the Western and the Soviet—can have a twofold interpretation. On the one hand, it can be approached from the aspect of literature. This approach is highly efficient, as the direct or the foreshadowed contrast helps the reader to better understand the absurdity of the whole phenomenon, that is, the functioning of Soviet criminal justice in political cases, than the simple description or data collection. However, on the other hand, there is another explication from a legal point. It may also be inferred that the author had a proper view about what was the normal Western solution in a given case, and he felt that they were convicted because of the lack of rule-of-law and other traditional limits of arbitrariness. So,

<sup>23</sup> Their official name was OSO (Special Board), a board consisting of three men and mostly concerned with counterrevolutionary cases. They were subordinated to the Minister of Internal Affairs, therefore no appeal jurisdiction existed. Solzhenitsyn: *op. cit.* 285.



these contrasts express a certain state of mind in which they felt a strong deficiency in Western solutions and mechanisms. Solzhenitsyn and his fellows perhaps knew, or at least felt, that their cases could have had substantially different outcomes in other legal cultures—and that could be a infuriating feeling for them.<sup>24</sup>

In conclusion, Solzhenitsyn in these contrasts, by juxtaposing the abnormality of Soviet law to the normality implied in the concept of Western law, is capable of effectively showing it to Western readers, too. And, indeed, that might be one of the main reasons why Western readers really understand these chapters.

How could a mathematician and engineer know so much about the principles of rule-of-law and constitutionalism?—can the readers adequately formulate this question? For the answer this paper has only a hypothesis, and it could even be incorrect. However, only on the level of experiment, it is worthwhile discussing it.

In the first part a secondary figure appears, an Estonian lawyer, Arnold Susi. Solzhenitsyn characterizes him as follows:

“Thanks to his horn-rimmed glasses and straight lines above the eyes, his face became severe, perspicacious, exactly the face of an educated man of our century as we might picture it to ourselves. Back before the Revolution he had studied at the Faculty of History and Philology of the University of Petrograd [...]. Later, in Tartu, he had studied law. In addition to Estonian, he spoke English and German, and through all these years he continued to read the London *Economist* and the German scientific ‘*Berichte*’ summaries. He had studied the constitutions and codes of law of various countries—and in our cell he represented Europe worthily and with restraint. He had been a leading lawyer in Estonia and been known as ‘*kuldsuu*’—meaning ‘golden-tongued’.”<sup>25</sup>

It can be easily imagined, however it cannot be exactly proved, that Solzhenitsyn learnt both the basics of criminal law and jurisprudence as well as the main features of Western legal culture from Susi during their discussions in the prison yard.<sup>26</sup> The following quote may strengthen this idea:

“And he would tell me passionately about his own interests, and these were Estonia and democracy. (...) I nevertheless kept listening and listening to his loving stories of the twenty free years (...). I listened to the principles of the Estonian constitution, which had been borrowed from the best European experience, and how their hundred-member, one house Parliament worked. And, *though*, why of it wasn’t clear, I began to like it all and store it all away in my experience.” (emphasis made by the author).<sup>27</sup>

<sup>24</sup> When Solzhenitsyn discusses that interrogators used the personal confessions of the accused persons as the chief proof of guilt he refers to the Fifth Amendment of the US Constitution ordering: “Nor shall (any person) be compelled in a criminal case to be a witness against himself.” Then he repeats “not to be compelled” in italics in order to emphasize the absurdity of the entire thing. (Moreover, he also mentions the Bill of Rights) *Ibid.* 101. Footnote 9.

<sup>25</sup> *Ibid.* 205.

<sup>26</sup> In his monograph Scammel mentions Arnold Susi and acknowledges his personal influence on him. Scammel argues that this was Solzhenitsyn’s first “meeting” with an educated European that is with the European culture. Scammel: *op. cit.* 157.

<sup>27</sup> *Ibid.* 213.

This legal knowledge, which he gradually learnt during these regular conversations, became for him much more unambiguous that their convictions and judgments were contrary to general legal principles and standards. So, he could also realize the scandalous nature of the whole process in Western terms not only in an intuitive way. In conclusion, Solzhenitsyn's contrasting method stems from his unusual knowledge of Western legal culture and its efficiency is related to his writing skills and personal Gulag experiences.

## 2. Solzhenitsyn's language—access to the personal-psychological dimensions of law?

The earlier analysis leads to the last piece of this essay. One should conceive that the author does not only simply describe the mechanisms and stories of the Gulag, but he also demonstrates these with such metaphors which go far beyond the framework of rational cognition.<sup>28</sup>

The author's metaphorical pictures—for instance:

“[the] great, powerful, abundant, highly ramified, multiform, wide-sweeping 58, which summed up the whole world [...] In all truth, there is no step, thought, action, or lack of action, under the heavens which could not be punished by the heavy hand of Art. 58.”<sup>29</sup>

or

“[you can be] one of the little links of in the *Organs*—that flexible, unitary organism inhabiting a nation as a tapeworm inhabits a human body.”<sup>30</sup>

and

“It ought to have examined that glimmering light which, in time, the soul of the lonely prison begins to emit, like the halo of a saint. Torn from the hustle-bustle of everyday life in so absolute a degree that even counting the passing minutes puts him intimately in touch with the Universe, the lonely prisoner has to have been purged of every imperfection [...].”<sup>31</sup>

—affect emotions and other, mostly unconscious, dimensions of the human mind. These are able to exert influence upon human thinking beyond the frame of reason. That being said, by using these pictures, the author highlights the fundamentally non-logical and non-rational dimensions of law being generally out of the scope of professional legal discourse. And, indeed, it must remind lawyers that law is not only a set of simple paragraphs framed in a comprehensive logical structure, but it also psychologically affects human beings. That is, the law can generate serious psychological reactions determining the entire future life of those who had some kind of access to the judiciary. In conclusion, it should be admitted that the law has a personal-psychological dimension besides its existence as a rule with a

<sup>28</sup> In the contemporary literature of sociology Rudolf Rezsöházy argues that rational cognition cannot be regarded as an exclusive way of cognition. Besides science love, faith, art, and moral also offers many options for cognition, and these spheres have their own internal logic, too. Rezsöházy, R.: *Sociologie des valeurs*. Paris, 2006. 131–134.

<sup>29</sup> Solzhenitsyn: *op. cit.* 60.

<sup>30</sup> *Ibid.* 149.

<sup>31</sup> *Ibid.* 483.

general scope and that these two dimensions are strongly interlinked and cannot be dissociated.

From this aspect, one prominent value of the book is easily identifiable. The literary genius of Solzhenitsyn can produce such a picture of Soviet law and the administration of justice which does not lack this personal-psychological aspect, although the precise rules are also broadly discussed and analyzed. Therefore, his work presents those aspects of the reality of Soviet law that would simply be an impossible task by definition for professional legal literature.<sup>32</sup> Subsequently, the merits of Solzhenitsyn cannot be denied in the description of the reality of law, since he puts together data and professional descriptions with this personal-psychological dimension of law. He also provided a much more complete picture of Soviet law than professional legal monographs and papers could have ever done.

#### IV. One lesson

As a closing remark, a general lesson can also be formulated concerning the *Gulag Archipelago*. This work of Solzhenitsyn should caution lawyers of the consequences of such a politically-oriented approach to law that denies the traditional material and procedural guarantees which emerged in Western law. If the sole standard for law is the accomplishment of political goals and the realization of narrow group interests, only one thing can happen: everything that happened to the people deported to the various “islands” of Gulag.

This warning may further shade our picture about our own legal systems. Nowadays, there is a widespread dissatisfaction with the functioning of traditional legal institutions, and—one should also admit it—has good reasons in the majority of the cases. However, having been familiarized with the legal layers of the *Gulag Archipelago* it seems obvious that the Western legal culture<sup>33</sup> has manifest advantages compared to the alternatives that existed in 20th century. If one contrasts these two approaches to law, that of the Soviet and Western, the predictability and rationality of the Western one will gain predominance. Although, naturally, it cannot be regarded as a perfect one, it can even guarantee such a high level of security for the citizens that it would be impossible in legal systems solely based on the orders and the discretion of the political will.

It highlights that our critiques about the imperfect functioning of our legal systems should endeavor to improve them. Those critical movements that tried swiftly to break down these traditional structures and also aimed to build up a totally new regime were misguided attempts, as the examples of Soviet and Nazi legal regimes show. These approaches turned law away from the generally accepted European values, that is, they made it a slave to political will and intentions.

<sup>32</sup> A similar thesis is also argued by the French historian Stéphane Courtois. He asserts that Solzhenitsyn could describe the reality of Gulag by his literary genius and not by the precise intellectual, logical, and data-based argumentation. And, this literary description shocked mostly the Western public opinion in fact, the discussion of crimes had only a secondary place in the Western understanding of Gulag. Courtois: *op. cit.* 27.

<sup>33</sup> René David, the famous French comparatist argues that the core of Western law is the idea of rule-of-law. See, David, R.: Existe-t-il un droit occidental? In: Nadelmann, K. H.–von Meheren, A. T.–Hazard, J. (eds): *XXth Century Comparative and Conflicts Law. Legal Essays in Honor of Hessel E. Yntema*. Leyden 1961. 56–64.