

I. C. Teaching of Comparative Law and Comparative Law Teaching
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Teaching of Comparative Law and Comparative Law Teaching

Abstract. In the author's view a dividing line can be drawn between, on the one hand, teaching comparative law as an independent discipline with its own history, methods, goals and functions, and the whole "curriculum" of legal studies based on a comparative attitude and carried out with the comparative method, on the other. The differences between the traditions and present-day practice of universities and law faculties in the Civil Law and the Common Law countries in this field may be interpreted as characteristic for the "style" of the entire legal systems belonging to one of these two big legal families.

Keywords: comparative law, legal education

Legal education has played an important role in the life of peoples for centuries as—according to an apt remark—it informs us about something substantial in regard to legal systems and the societies in which they operate. Legal education "provides a window on the legal system. Here one sees the expression of basic attitudes about the law: what law is, what lawyers do, how the system operates or how it should operate. Through legal education the legal culture is transferred from generation to generation. Legal education allows us to glimpse the future of the society."¹ Thus, the topic that is on the agenda of the Congress of 2002 in Brisbane on the basis of the decision of the International Academy of Comparative Law deservedly commands the interest of the comparatists as the issue of the development or the comprehensive reform of legal education is on the agenda in not one or two countries but all over the world. This is true even if there are substantial differences in understanding the objectives and the methods of legal

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¹ Merryman, John Henry: *Legal Education There and Here: A Comparison*. Stanford Law Review, Vol. 27., No. 3. (1975) 859.

education as well as in respect to organizing and financing it, and not only between particular countries but the traditions and present practices of whole legal families. So we can hardly speak about a uniform system or a universal paradigm of legal education.

The ongoing tendencies of globalization today set new and new challenges for the development of law and jurisprudence, and comparative law either in national or in international framework cannot be reserved from those challenges. While on the first International Congress of Comparative Law (Paris, 1900) ideas concerning the establishment of a future world law were presented as mere hopes, nowadays—after many earlier failures and disappointments—new and new substantial efforts have been devoted to the unification or, at least, the harmonization of law. In a growing number of countries, the activity of comparative lawyers provides the basis and the starting point for a legislation enacting legal rules that promote the accordance of domestic law with other legal systems or with a more general, widely accepted model. On the field of comparative jurisprudence, we witness a growing number of efforts that aim at clarifying the theoretical basis for the international unification and harmonization of law. As a consequence of this, comparative law shows signs of transformation: according to a summarizing evaluation, it is on the way to becoming basically “international” as opposed to remaining “national”. Comparative method that earlier served basically the development and the reform of the domestic legal system, and was applied in the traditional framework of domestic law, now adopts itself to the needs of the new tendencies aiming at the “globalization” of the law with a more comprehensive objective. Even legal thinking—mirroring these efforts—is directed towards the establishment of a universal jurisprudence that centres around a comparative approach and that encourages its representatives to apply new methods, to raise new questions, to assert new points of criticism preparing us to the formulation of a new paradigm of comparative jurisprudence. Thus, it is fully justified to include a topic in the programme of the 16th International Congress of Comparative Law that makes us conscious about the new challenges originating from the objective of the international unification and harmonization of law also in the field of legal education. Legal education situated in a human society going through continuous and profound changes cannot remain intact from the effects of these new challenges. Thus, if we repeatedly raise the issue of what, why, and how we teach it is to be taken as an “evergreen” question even if the efforts of reform—mainly in countries inclined to respecting their traditions—rarely meet the “official” concepts of governments.

Inquiries in this field fit into the framework of comprehensive initiatives that can be witnessed all over the world even with the aim of bringing the

teaching of comparative law to a new, higher level. The recognition that the knowledge of foreign laws plays an indispensable role in solving the problems raised by the ongoing globalization process has taken root both among the representatives of jurisprudence and legal practice. By now, not only the narrow, positivist-normativist view of law and the approach to solving legal problems on this basis that indisputably dominated the 19th century has been outdated for good, but also the “national” character of law and jurisprudence. Consequently, legal education can hardly limit itself to the teaching of domestic law (statutes, legal practice, jurisprudence) as issues raised on an international scale and situated in the framework of globalization require a supranational approach on an international level. Thus, the requirement that lawyers of the future are to be provided an education adapted to the needs of the modern world seems wholly justified. Of course, apart from raising repeatedly the issues of teaching comparative law, it involves in general the issues of law teaching and, possibly, a new approach to it as well.

The changes of the world set an increased challenge to the teachers of comparative law just and now, as age-old traditions of teaching the law will, by all probabilities, suit to the new demands. We have to find and use the methods mainly by ourselves on a relatively new, hardly more than a hundred years old field of research. The achievements of the international movement that unfolded in under the slogan of “droit comparé” or “comparative law” cannot overshadow the fact that—partly owing to the terminology regarded by many as misleading or, at least, unclear—we have to face several questions still to be clarified here. Here, the “common denominator” could be the fact that the comparative law movement gradually expanding to the whole world includes all of those who take the comparative analysis of law and the application of the comparative method to legal phenomena as their task. The “*communis opinio doctorum*” that—at least in its broad outline—can provide the guideline for a legal education that preserves the valuable achievements of the past but takes into account the needs of the new world can be established only with their contribution. It can be hardly contested that putting down this topic in the agenda was a useful initiative even in respect to promoting the international exchange of ideas and experiences.

2. Right for the sake of the success of this endeavour and to avoid the “dialogue of the deaf”, it seems necessary to formulate some preliminary observations in regard to our topic. During the preliminary work following the earlier traditions and preceding the implementation of the general and the national reports to be submitted to the Congress, it became clear that the terminological vagueness concerning the concept of comparative law

(droit comparé), recognized and rightly criticised by many distinguished comparatists,² manifested itself even in the I.C. topic of the International Congress of Comparative Law. For the topic—as it was pointed out by the general reporter of the topic in his notice addressed to the national reporters—includes not one but two topics, although it is hard to draw a clear dividing line between them. The dividing line is seen by the general reporter as follows: the first topic deals with the actual teaching of comparative law in universities and in comparative law institutes, while the second deals with the impact of current global development on the teaching of comparative law.³

One can hardly agree with drawing the dividing line this way. As this dividing line—as it stands out clearly from the French title (*l'enseignement du droit comparé et l'enseignement comparatif du droit*) as opposed to the rather aphoristic English one (*Teaching of Comparative Law and Comparative Law Teaching*)—is supposed to indicate the indisputable difference between teaching in the universities a study or a discipline having become independent under the name of “comparative law” or “droit comparé” on the one hand, and the transformation or the reform of the whole legal education in the spirit of comparativism, on the other. So one aspect of the topic centres around the (partly taxonomic, partly educational-political) issue whether there is anything like an independent discipline called comparative law (*droit comparé*) and whether it can be taught anyway, while the other aspect concentrates our attention to the question of how one could make legal education in the universities “comparative” in its character, how one could turn its “national” attitude into a “supra-national” one.

It can hardly be disputed that different understandings make it hard or even impossible for the general report to achieve the rightly expected synthesis of the national reports. For if we examine the topic only from a “technical” aspect, i.e. from the aspect of the methods applied in teaching comparative law considered as an independent discipline—as it is suggested by the general reporter—it necessarily pushes into the background—in our view—more important issue concerning the ways we could renew the whole legal education in a comparative, supra-national spirit based upon the recognized needs of our time. This aspiration—as it is indicated in the distinction between “Teaching of Comparative Law” and “Comparative Law Teaching”—concerns the “substantial” aspect of the problem well beyond the methodological one. Thus, it presupposes the rethinking of the basic issue of the whole legal

² As to the concept, it was characterized as “strange” (Gutteridge), “unfortunate” (David) or “misleading”.

³ Moens, G. A.: Note to National Reporters on Comparative Law Teaching. 1–2.

education, of the considerations concerning the objectives of the whole “curriculum” of the law faculties well beyond the mere “technical” issues of education—in fact, mainly as opposed to them. If we remain faithful to our starting point which takes the issue of raising and answering the questions of “what?”, “why?”, and “how?” as a permanently current task, we can hardly reach any other conclusion but an examination of this topic of the Congress that expands to these substantial issues.

Yet, the difference in understanding the topic between the general reporter and ourselves raises—in our view—no inextricable difficulty. For according to the information gained from the general reporter, the questionnaire prepared by him and containing points preferred by him merely provides guidelines for national reporters. This allows us to follow the interpretation that we find adequate in formulating the national report. So we sum up our views not only concerning the methodological issues of the teaching of comparative law (*droit comparé*) considered as an independent discipline but also in respect to its renewal in comparative spirit—touching upon the basic objectives of legal education.

II.

3. The application of the comparative method in the 19th century—as it is well known—yielded remarkable results in many fields of scientific study. Although in this respect the study of law showed signs of backwardness not only compared to natural sciences but the study of language as well, the application of the comparative method proved to be a useful analytic tool; and not only in supporting the legal practice but also in the study of law as well. As a consequence of this, the opinion that comparative law (*droit comparé*) is not only the application of the comparative method on the world of law but also an integrated system of knowledge that can legitimately claim to be ranked as an independent discipline named the science of comparative law was put forward.⁴ It is also well known that listing the arguments supporting or refuting the claims concerning the nature of comparative law as being a method or a discipline became a favoured topic in the relevant literature.⁵ Although by this time these disputes have

⁴ This claim is best expressed by the German term “*vergleichende Rechtslehre*”.

⁵ These disputes intensified especially in connection with the appearance and spreading of socialist law and jurisprudence, and often led to the denial of the comparability of legal systems belonging to contrasting social formations.

lost their earlier, often passionate or even personal intonation, the question whether the application of the comparative method as a kind of “panacea” on legal phenomena can bring new scientific findings unattainable by other methods remained current. Thus, the question is whether the comparative activity is characterised by specific criteria that, based upon the peculiarities of the subject and the method, may qualify it as an independent kind of knowledge, viz. an independent discipline. And, if the answer goes in the positive, where one could find the place of this “comparative jurisprudence” in the system of the legal sciences.

Answers to the questions formulated above were given in the 19th century in the English- and the German-speaking world within the framework of the comparative and historical inquiries into ancient law. The primary objective of these inquiries—as it is well known—was to reveal the so called objective laws of development taken as valid (also) in the world of law, or rather—following the pattern of the Darwinian theory of evolution—to extend the scope of these laws of development to social phenomena. Based upon the inquiries into the so called primitive human communities including “ancient law”, Henry Maine could formulate his theory that interpreted the development of society as a progress from “status” to “contracts”.⁶ It can be taken as a result of the impregnatory effect of the points raised by him that a “comparative” as well as “historical” jurisprudence emerged. First in Germany and later all over Europe, those results also led to the establishment of another discipline—both comparative and historical—under the name of legal ethnology.⁷ So Maine’s works created a new and lasting link between law, history and anthropology.⁸ As a result of his works, the comparative method became a distinguished tool for legal studies. Even Maine himself considered that his inquiries radically turned away from the schools that dominated jurisprudence at the time. Maine saw the difference, or even the conflict between analytically and dogmatically oriented comparative law and his new comparative and historical jurisprudence manifested in the fact that whereas the inquiries of the latter concern the historical process or—using a more current term—the dynamics of law, the so-called comparative law analyzes the law given at a certain point of time, namely the static of law. Of course, that excluded the point taken also by Maine

⁶ Sumner, M. H.: *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas*. London, 1861, 170–175.

⁷ Post, A. H.: *Grundriss der ethnologischen Jurisprudenz*. Oldenburg-Leipzig, 1894–1895.

⁸ Pollock, F.: *Oxford Lectures and Other Discourses*. London, 1890, 159.

and his followers as the supreme criterion of scientific quality: the search for the objective laws of development. Thus, comparative law as an application of the comparative method to the legal phenomena of a given period could play only a secondary, supporting role compared to the real science of law, to a jurisprudence historical and comparative in character. This way, in a sense, Maine transcended the standpoint of analytical-dogmatical jurisprudence concerning comparative law. While comparative law—as opposed to the properly so called jurisprudence—could mean only a method for the analytical-dogmatical conception, for Maine, this contraposition manifested itself in the opposition on the one hand of comparative law not worthy of being regarded as an independent discipline and the “real”, historical and comparative jurisprudence centring around the idea of development, on the other. This way, Maine opened a way to recognize comparative law as a science.

Undoubtedly, it was F. Pollock, Maine’s disciple and successor in his scientific efforts who played the decisive role in synthesizing science and comparative law. Already in his inauguration lecture in Oxford, he took an oath continuing the work of his predecessor by pointing out that the theory of development is nothing but historical method applied to the facts of nature and the historical method is the theory of development applied to human societies and institutions.⁹ Connecting comparative and historical research is not only natural and desirable but necessary as well in the field of jurisprudence. The task is not to confront the “static” point of view of comparative law with the “dynamic” approach but to apply in the world of law the two methods—namely the historical and the comparative—jointly, in a mutually complementary way. Jurisprudence itself must be both historical and comparative.¹⁰ Thus, comparative law plays not a “secondary” or “supporting” role: both historical and comparative jurisprudence has an independent place in the system of legal sciences.

4. As opposed to this conception, an alternative way of establishing the scientific nature of comparative law was formulated on the first International Congress of Comparative Law (Paris, 1900). The new approach put forward on the Congress (by E. Lambert) claimed scientific independence for

⁹ Pollock, F.: English Opportunities in Historical and Comparative Jurisprudence. Oxford Inaugural Lecture, 1883. In: *Oxford Lectures and Other Discourses*. London, 1890. 45.

¹⁰ Pollock, F.: The History of Comparative Jurisprudence. *Journal of the Society of Comparative Legislation*. New Series, vol. V., 1903. 914.

comparative law from the aspect of positive law or the disciplines of positive law that are more receptive to the needs of legal practice. Instead of searching for the objective laws of development of society and law, this approach put a practical objective in the centre: the promotion of the convergence of national legal systems by way of revealing the common basis (*fonds commun*) of legal institutions and legal concepts. The concept was underlined by Lambert with a historical analogy: just like before when, in an earlier phase of the development of European law, the integration of French and German local customs resulted in a “*droit commun coutumier*” and the “*Deutsches Privatrecht*” which could provide the basis for codification as a kind of “common law”, we, in a new phase of development based on the particular codified legal systems¹¹ might or rather must establish a “common legislative law” (*droit commun législatif*) The function of comparative law (*droit comparé*) lies in the promotion of this process: comparing the positive law of nations that are on the same level of civilization might reveal the common features of the measures chosen in particular legal systems on the one hand, and the removable differences originating from the contingencies of historical development and not from the political or moral “attitude” of the given nation on the other. This is exactly the long-term objective of comparative law (*droit comparé*).

Lambert’s new conception concerning the nature and the objectives of comparative law that was put forward on the Congress of Paris did not give up entirely the results of the earlier, historical-comparative research. By the term “*droit comparé*” he exerted a dual classification. He distinguished comparative law based on historical and ethnological research and serving exclusively scientific and speculative objectives, searching for the universal laws of the life and providing an independent branch of social sciences on the one hand, and another positive branch of legal sciences on the other concentrating its inquiries on the common elements of legislation in particular states or rather the civilised nations taken as a “common legislative law”. This line of argumentation formulated in his report addressed to the Congress was later rectified by Lambert: he distinguished two independent disciplines that are relative to each other only in the application of the comparative method within the framework of the science named “*droit comparé*”. One forms a part of legal sociology under the name “comparative history” (*histoire comparative*) and searches for the causal relations and

¹¹ Lambert, É.: Rapport général au Congrès International de Droit Comparé tenu à Paris du 31 juillet au 4 août 1900. In: *Procès-verbaux des Séances et Documents*. Tome premier. 32.

regularities of legal phenomena, while the other discipline, under the name “comparative legislation”, deals with the common elements of legal ideas and institutions, and, as a tool of lawmaking and the application of law, serves practical action.¹²

Today, one can definitely point out that the historical way of modern comparative law was determined by the latter meaning both in respect to the theoretical issues and the practical tasks. This latter meaning can provide the starting point in determining the place of comparative law as an independent discipline in legal education.

III.

5. The place and the role of comparative law in legal education is determined by two points. On the one hand, it functions as an invaluable tool of extending the general legal culture and the lawyer’s erudition. On the other, it mediates a kind of knowledge indispensable for practicing any legal profession. The joint and co-ordinate assertion of the two points—as it is well known—takes place in differing ways in different countries and even in different universities. The reasons for these differences are often connected to basic conceptional differences concerning the objectives of legal education.

The priority of one conception that appears in many universities of Europe as a continuation of the common tradition of universities dating back to the middle ages is not to train “technicians of law” in the narrow sense of the term: on the contrary it seeks to provide a comprehensive general education that includes legal culture.¹³ It mediates a kind of universal knowledge beyond “professional” skills. It strives to educate lawyers who are able to recognize problems raised by the practice of their profession in their depth and social context, who are able to be aware of their responsibility and, by asserting a scale of values acquired and strengthened during their studies, to serve the cause of social progress. This might explain why certain subjects appearing in the curriculum do not have an obvious, immediate practical value, and prove their merit only in the long run (legal history, theory of law, philosophy of law, etc.). One can add to this list some social sciences

¹² Lambert, É.: *La fonction du droit civil comparé*. Paris, 914.

¹³ David R.: *Le droit comparé—enseignement du culture générale*. Rapport présenté à la Conférence Commune du Comité International de Droit Comparé at the l’International Bar Association (juillet 1950). In: *Rechtsvergleichung*. Hrsg.: von K. Zweigert und H.-J. Puttfarcken. Darmstadt, 1978. 206.

(economics, sociology, political science) the teaching of which seems to be necessary to understand the social environment of law. In a sense, this paradigm of education—that is characteristic mainly for the universities of the countries of the “civil law”—can be depicted as “non-professional” or “non-technical” for it is in many respects “philosophical” or, at least, “abstract” in nature. It concentrates not on the solution of “concrete” legal issues that are of primary importance for the legal practice, and not on the functioning of legal institutions, but on the clarification of the theoretical issues of law, on the establishment of the theory or the science of positive law. Of course, this does not exclude that one can put an emphasis on the social role of law as an instrument of human coexistence: it takes it as a starting point that this role can be better fulfilled with keeping an eye on universal contexts. Such an attitude—also naturally—presupposes an understanding of the nature of law that goes beyond the traditional positivist view of law, namely understanding law as a sum of rules and procedures. Clearly, this conception of legal education takes law as a science that has had established subjects, systems of terms, categorizations for centuries which, for that reason,—even if time to time requires additions or modifications—can be an independent subject of a legal education that is based upon these traditions.

The other conception that can be witnessed both in the world movement of comparative law and legal education—especially as a manifestation of the paradigm dominating in the United States—puts the primary emphasis on the needs of legal practice. It takes the lawyer—in the spirit of “social engineering”—as a person whose direct and everyday task is to solve the problems raised by the life of the society and who has at his disposal the professional and technical skills necessary to it. Thus, in a sense, the lawyer as an expert plays a key role in the formation of society, in arranging and attaining the necessary reforms. Legal education is also in the service of this cause: its objective is to prepare the young generation of lawyers from the very outset for their future social role, striving to train lawyers who are ready to work as lawyers right after their graduation. This conception pays less attention to the theoretical and the methodological issues of law, it rather puts the emphasis of education on teaching thoroughly the positive law, the actual operation of legal institutions, the role of law in the formation of society. Its function is to study the legal system in action, to evolve a critical view on it, and, moreover, to prepare the necessary reforms—in the form of proposals aimed at improving the system. For this reason, its material can be taken as much less established or “settled”, it is much more open to modifications necessitated by social changes. Using an apt

expression, one could say that the emphasis is on how we teach rather than on what we teach.¹⁴ Instead of the issue of subject, the issue of method comes to the front: how we can develop in the student the ability to distinguish the relevant from the irrelevant, to handle the massive amount of facts before him, to argue in defence of his standpoint, to consider “pro” and “contra” arguments, etc. Education is primarily directed to the development of these skills, contrary to the educational practice dominating the universities of the countries of “civil law” that provides knowledge, mediating a determined material of knowledge.

6. The striking differences of the two conceptions are manifested even in the ways the tasks of legal education are understood and the questions of educational methods adapted to them are answered. The forms of legal education that serve rather practical objectives open the way to comparative law courses that are connected to the subject of particular positive branches or disciplines of law and that study them in a comparative way, by applying the comparative method. They deal with comparative law teaching instead of the teaching of comparative law. As opposed to this, for the conception that sees the function of legal education in mediating a comprehensive legal culture, it seems indispensable to provide a form of legal education (as well) that—being basically theoretical in character—is to clarify the nature, the objective and the method of comparative law. In this respect, it amounts to teaching of comparative law as an independent discipline. This would mean—as it was repeatedly put forward on various national and international fora—to initiate a so called introductory or basic course in legal education.¹⁵

The justification of such an introductory course is provided by the consideration that without it even the above mentioned other conception, namely discussing the material of positive law with a comparative method and view cannot lead to the desired outcome: to discernment relevant to the practice. Without proper theoretical and methodological foundations, students cannot gain a knowledge that allows for or, at least, facilitates the understanding of the substantial issues—concerning the objectives and the social functions of the given legal institution—behind the terminology

¹⁴ Merryman: *op. cit.* 866.

¹⁵ Schmidlin. B.: Der Beitrag der Rechtsvergleichung zum akademischen Unterricht. Eine Stellungnahme zu den Empfehlungen der vierten Europäischen Konferenz der Juristischen Fakultäten. Zeitschrift für Rechtsvergleichung. 18. Jahrgang. Heft 4. 1977. 241.

applied in particular legal systems. In such circumstances, one can hardly hope for the understanding of similarities and differences of institutional and technical measures applied in particular legal systems or in legal families, for the proper interpretation of their social role and function, and for the clarification of their practical consequences (for example, in respect to the various possibilities of the reception and the integration of laws). It hardly requires justification that this point is significant in regard to the tendencies of globalization today.

By now, it has become clear that even law cannot be taught in a “static” way in a world that generates fast changes. The particular legal institutions cannot be elucidated in their present form of appearance. The emphasis is placed right on the “dynamics”, namely the historical transformation and variability of institutions. However, the historical point of view and approach involves taking into account the past experiences beyond the present and the future, and the way of future development can be marked on the basis of the lessons of the past. In the formation of the future, past plays a role, and it is to be taken into consideration by legal education.

If we add to this the insight originating from practical experiences that textbooks of the subjects of positive law are rather lengthy even without references to foreign legal measures, and the fact that the limited time for education is a serious obstacle to referring to foreign law and the points of comparative law in teaching domestic law, the claim that it is necessary to “teach comparative law” in the form of an independent introductory course that goes beyond “comparative law teaching” appears to be legitimate. The justification of such a course—beyond the reference to the necessity of a more comprehensive legal culture as a scholarly argument—is reinforced from the aspect of the practice as well.¹⁶ This leads us to the conclusion that in respect to the spreading of comparative law in university education, we cannot be content with applying the comparative method in the course of particular subjects of positive law. In addition to this and as an establishment of this, we think it is necessary to have a course dealing with the theoretical, methodological, historical issues of comparative law. It follows in a logical way from the independence of comparative law as a discipline.

Such an introductory course—according to an apt definition—is addressed to students who think it is necessary to integrate their knowledge on law into a cultural panorama expanding well beyond their own nation. It

¹⁶ Schlesinger, R. B.: The Role of the “Basic Course” in the Teaching of Foreign and Comparative Law. *American Journal of Comparative Law*. Vol. 19. Number 4. Fall 1971. 616.

mediates a kind of knowledge that, apart from extending their legal culture, provides a more comprehensive foundation to the promotion of their career as lawyers. Accordingly, the course in question may consist of two parts.¹⁷ It introduces the world of comparative law to the students, makes them to understand the nature of comparative law, its objectives and functions, methods and history on the one hand, and gives a general overview of the main cultures or families of law on the other. Of course, within this general framework one can come up with a wide variety of measures concerning the ways of education, so it leaves open the opportunity of asserting the historical traditions of the given country and university or the paradigm dominating the education (or another one deviating from that), or even of attaining certain practical objectives. But all this belongs to the technical-methodological issues of education only indirectly connected to our line of argument.

IV.

7. In Hungary, teaching of law including comparative law has old historical traditions.¹⁸ The European university—as it is well known—is an invention of the middle ages. According to the dominating paradigm of science of the time, it provided the framework for teaching the entirety of the sciences, namely theology, humanities, law and medicine. Lacking any domestic university, the Hungarian students initially attended foreign universities, especially in Padova, Bologna, Pavia and Paris. Later they preferred the Central European universities established in the 14th century (Prague, 1348, Cracow, 1364, Vienna, 1365) but the first initiatives to establish universities in Hungary soon manifested themselves. Although we have only fragments of information on the first attempts to establish universities in Hungary in the middle ages (Pécs, 1367, Buda, 1395, Pozsony, 1467), it seems legitimate to claim on the basis of research in this field that these attempts included legal education following the Bologna model. However, as a consequence of the often stormy turns of Hungarian history of the time, these early initiatives proved rather short-lived.

¹⁷ Hazard, J. N.: Ten Years of International Teaching of Comparative Law. The Strasbourg Experiment. *American Journal of Comparative Law*. Vol. 19. Number 2. Spring 1971. 253.

¹⁸ Török J.—Legeza L.: *Pázmány Péter Katolikus Egyetem* (Catholic University Pázmány Péter), Budapest, 1999. 7.

The same does not apply to the university established in Nagyszombat in the North of Hungary (1635) by Péter Pázmány, archbishop of Esztergom. We have detailed and exact information on it. The university that was originally named *Studiorum Universitas* had only a faculty of humanities in the beginning (1636), and later a further faculty for teaching theology (1638). The faculty of law was organized later (in 1667). On this faculty, besides the domestic customary law, canon law and Roman law were taught which one can interpret as a sign of an effort to create a kind of legal education transcending the framework of domestic law and to assert a more universal view of law if not an early manifestation of the idea of comparative law. Shortly after the foundation of the medical faculty (1769), the university moved to the capital, to the Castle of Buda (1777) by order of empress and queen Maria Theresa. Teaching began in 1780 there. The new order of university was settled by the educational regulation (*Ratio Educationis*) that was in force all over the Habsburg Empire in all types of schools. The regulation strove to assert the ideas of enlightened absolutism even in legal education. In regard to legal education, it was based on the German natural law theory of the time, especially the theory of Christian Wolff mediated by the distinguished professor from Nagyszombat: Karl Anton Martini. These conditions—just like in other European universities—were not favourable to the spreading of the idea of comparative law for the acceptance of the idea of universal natural law put the emphasis on unity—and not diversity—in legal education.

The first steps towards modern comparative law were taken in the first quarter of the 19th century in the so called “reform era” when the interest in foreign laws and the claim to know and possibly take over foreign legal measures manifested itself. Although there were differences in respect to the search for the ways and the methods of social progress (in the sense that the camp of reformers was divided between the revolutionary French and the more moderate, traditionalist English way of development), in the eyes of the representatives—especially the lawyers—of both standpoints, comparative law was a tool of “modernizing” the Hungarian society and its legal system burdened with the remains of the feudal era. It appeared to them that the way of transcending the Hungarian legal system of their age based on customary law and burdened with feudal remnants must lead towards modernization through knowing and comparing foreign laws and drawing lessons from it. In this respect, the results of the French codification that became known very early on provided a mobilizing force. It can hardly be seen as an accident that the French model gradually came to be dominant in the reform movement.

These efforts took root in university education as well. Among the youth of the universities—and especially law students—there was a growing sense of dissatisfaction concerning traditional legal education, and the emotions of the revolution maturing in the entire Hungarian society had a decisive impact on the transformation of university life.¹⁹ It was a generally accepted requirement that university education including legal education should serve basically practical objectives, and, in this respect, the model to be followed (in regard to codification as well) were provided by the developed Western countries, especially France. Of course, it also paved the way to a better understanding of foreign laws and to comparative law in the modern sense of the term. However, the organizational and educational reforms necessitated by these tendencies did not take place in the reform era. Although the government of the revolution that broke out parallel to the revolutionary movements unfolding all over Europe in 1848 took the first steps in this direction, the events leading into an armed conflict had set back for a long time the cause of the reform of university education including legal curriculum. The conditions of the reform were not given until the compromise of 1867 with Austria. However, one can evaluate it as the survival of the efforts of the reform era that on the University of Pest teaching of comparative law was introduced in 1850.

The idea of comparative law, apart from university education, commanded attention to the theoretical aspects of the issue. In this respect, the Hungarian Academy of Sciences founded in the reform era played an initiative role. A lecture given on a session of the department of philosophy and social sciences of the Academy characterized comparative law as one of the most important branches of the science of law which is to study “the legal life of the universal mankind”. According to the lecturer (Gusztáv Wenzel, professor at the Faculty of Law in the University of Pest), such an inquiry, besides pointing to the universal, common features of the development of law, should involve revealing the specific legal measures of the particular nations in order to get to the main principles of law and to promote the unification of “institutions and legal principles differing so much” as manifestations of the idea of law by way of comparing them.²⁰ Perhaps, we might not be wrong in claiming that these ideas already involved an insight that later came to be generally accepted: it sees a difference between historical inquiries directed to the revelation of the universal laws of

¹⁹ Horváth P.: *Frank Ignác*. Budapest, 1993. 107.

²⁰ Wenzel G.: Az összehasonlító jogtudományról (Comparative jurisprudence). *Magyar Akadémiai Értesítő*. 1850. 292.

development forming one main branch of comparative law, and the activity committed to the needs of the practice and directed to the unification of law as the other. A quarter of a century later (1875), in another lecture also given in the Academy, Wenzel already put forward several ideas that are part of the paradigm of comparative law even today. Thus, he emphasized the importance of the distinction between the legal and the non-legal features to be taken into consideration by comparatists claiming that this distinction was to be asserted in comparing whole legal systems as well as their parts. He also pointed out that new scholarly results cannot be brought by comparison unless it takes place between the legal systems of nations comparable in respect to their cultural level.²¹

Among the results on this field, attempts to clarifying the comparability of the Hungarian law with Western legal system deserves special attention. The Hungarian legal system interwoven with feudal elements had several features—i.e. the lack of a written constitution, the delay in civil law codification, the recognition of customary law as a source of law and the role of courts in the developing the law—that resulted in differences not only in respect to the European way of the development of law but compared to other parts of the Austro-Hungarian Monarchy as well. On the basis of these differences, the view that Hungarian law in its entirety and in regard to its historical traditions shows striking analogies to English law was put forward. Some thought that, to a certain extent, Hungarian law is independent of the Continental way of the development of law based upon the traditions of Roman law.²² On the basis of supposing such a “resemblance”—that is otherwise hardly justifiable and was criticized even in Hungarian jurisprudence—, one could reach the conclusion that the Hungarian legal system—just like the English one—belongs to the “self-lighted” (*sui generis*) legal systems that cannot fit into the framework of the comprehensive Roman-Germanic tradition.

In the 20th century in Hungary—already adapting the results of the Congress of Paris that was a landmark in the modern comparative law movement—, there were attempts to define the nature of the science of comparative law using both natural law and positivism as starting points. As a consequence of these attempts, the point of view that understands the science of comparative

²¹ Wenzel G.: *Az összehasonlító jogtudomány és a magyar magánjog* (Comparative jurisprudence and the Hungarian Private law). *Értekezések a társadalmi tudományok köréből*. IV. Köt. II. sz. Budapest, 1876. 24.

²² Grosschmid B.: *Werbőczy és az angol jog* (Werbőczy and the English Law). Budapest, 1928.

law as a branch of the science of positive law became dominant.²³ There were successful initiatives to apply the comparative method to whole legal systems as well as branches of law and legal institutions.

8. At the outset, the so called socialist jurisprudence faced several difficulties in regard to raising the idea of comparative law, and later in respect to making it accepted. As it is well known, the problem lied in the fact that socialist jurisprudence emphasized the qualitatively new character of the socialist type of law which cast doubt on the possibility of comparing the two conflicting types of law. Coupled with the distrust concerning any political ambition associated with the slogan of *droit comparé*, it had excluded all sorts of attempts of rapprochement for a long time. This situation had changed rather slowly but finally there evolved—both among the “Western” and the “Eastern” representatives of comparative law—an almost unanimous agreement concerning the possibility of comparing the law of countries of different social formations.²⁴ In this respect, Hungarian comparatists played a significant and internationally recognized role.

In Hungarian jurisprudence, raising and answering the theoretical issues of the so called socialist comparative law mainly fell on the representatives of the theory of state and law—as a general, fundamental discipline. Professor Imre Szabó whose name is associated with most of the initiatives in this respect, originally joined the dominant, majority opinion in socialist jurisprudence, and understood the comparative activity as one of the methods of revealing the phenomena of state and law.²⁵ Later, he gradually changed his position finally arriving at the conclusion that results gained from the application of the comparative method add up to a general theory of comparative law.²⁶ On Szabó’s initiative, a scientific conference jointly organized by the Hungarian Academy of sciences and the three legal faculties took place in December 1963 where the idea of the necessity of applying the comparative method in socialist jurisprudence and legal education was

²³ Pauler T.: *Észjogi előtan* (Introduction to the law of reason). Budapest, 1873. 36., Somló B.: *Juristische Grundlehre*. Leipzig, 1917. 2., Moór Gy.: *Bevezetés a jogfilozófiába* (Introduction to the philosophy of law). Budapest, 1923. 46.

²⁴ Zweigert, K.—Puttfarcken, H.-J.: Zur Vergleichbarkeit analoger Rechtsinstitute in verschiedenen Gesellschaftsordnungen. In: *Rechtsvergleichung*. 395.

²⁵ Szabó I.: Az összehasonlító jogtudomány. In: *A jogösszehasonlítás szocialista elmélete* (Comparative jurisprudence. In: *The socialist theory of legal comparison*). Budapest, 1975, 31.

²⁶ Szabó I.: Az összehasonlító jog elméleti kérdései (Theoretical questions of comparative law). *Ibid.* 105.

put forward for the first time.²⁷ This concept primarily concerned the legal systems of socialist countries, and manifested itself in the claim that socialist law is to be studied both on the level of “generality” (namely in respect to all socialist countries) and concretized on the particular legal systems. The positive law of the individual countries was understood as “particular” within the “general”. On the conference, it was also emphasized that such a “pan-socialist” approach did not release the jurists from the obligation to study carefully the domestic law.

These results gradually led to the spreading of the ideas of comparative law in legal education. As a consequence of the fundamental turn in the history of the country after 1945, the opportunities of getting informed concerning foreign laws were in the beginning rather limited—and basically limited to the soviet law and its development (this was indicated by the introduction of the new courses of Soviet law in the legal faculties). However, the “melting” in jurisprudence soon resulted in a turn even in university education. Although comparative law as an independent discipline did not become part of the compulsory curriculum of the university, however, there was a significant progress in this respect during the years to come. Thus, on the one hand, there appeared and optional courses discussing particular legal institutions of some branches of positive law from a comparative point of view and with the comparative method. This was undoubtedly an important step towards the teaching of comparative law. On the other hand—especially in the form of optional courses in the framework of the departments of legal theory—the teaching of the so called comparative law as an independent discipline took place in the form of an course. The subject-matter of this introductory course was primarily provided by the products of the international comparative law literature that fit into this function and were at hand, but the experiences stemming from the international educational fora of comparative law were also made use. Accordingly, the programme of the basic course on comparative law is still adapted to the settled and internationally wide-spread educational paradigm on this field in the sense that the course, besides the theoretical, methodological and historical issues, includes the presentation of the main legal families. The main form of teaching is giving lectures by the teacher but the students themselves regularly hold lectures, and—in narrow circle, with the participation of students showing increased interest in comparative law—seminar-like professional discussions also take place. It is worthy of

²⁷ A magyar állam- és jogtudományok és a társadalmi gyakorlat (Hungarian legal science and social practice). *Állam- és Jogtudomány*, Vol. VII. No. 1. (1964) 9.

mentioning that the growing interest in the issues of comparative law and foreign legal systems is manifested in the fact that the students often take advantage of the educational opportunities provided by foreign universities, and many of them attends the postgraduate courses of the International Faculty of Comparative Law in Strasbourg. Of course, it presupposes certain language skills on the part of the students which—partly as a consequence of the favourable political developments of the recent years—is manifested in the achieved results.