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DEVELOPMENT OF THEORETICAL LEGAL THOUGHT IN HUNGARY AT THE TURN OF THE MILLENNIUM

The overall picture about the development of theoretical legal thought in the Central and Eastern European region with Hungary included is rather paradoxical indeed. Namely, there has been neither a major breakthrough nor shifts of emphasis in the past one to two decades. However, the evolution of tendencies perceptible anyway does indicate the potentiality for a strong impulse that may grow to changes with milestone significance in the near future.[185]

(1) *International environment.* As known, the period between the end of the Second World War and the turn of the millennium became increasingly dominated by an analytical approach worldwide – first in the Atlantic world, then also spreading slowly to Europe.[186] Accordingly, Anglo-American analytical jurisprudence (in tandem with its somewhat parallel European equivalent) is the direct legacy of the turn of the millennium for our present day. Therefore, it is no mere chance that for the recent time we can mostly encounter the immeasurable sprawling of these, by their growing into the only preferable way of thinking about law. In result of this, impoverishment and depletion of all the other directions are to follow, exemplifying the aggressiveness of any kind of imperialism in this easy victory (that may make us prey to some kind of a scholarly vogue), indicating some deep uncertainty at the same time.

Because, despite the general intellectual revival following the Second World War with the demand to face (by looking back on) law itself as a potential source of danger – in the course of which, first, revival of the law's ontological foundations and epistemological properties could be re-formulated with some natural law perspective in describing its borderlines; then, these ontological and epistemological approaches became unified, in order to culminate later on in a clash between formalism and anti-formalism in the context of law and language, law and logic, law and rhetoric – well, following the subsequent internal self-emptying of formalism and exhaustion of anti-formalism,[187] all such progress has suddenly become (in a typically European continental way) relegated to the

185. For the literature in Hungarian, *see* the version of the present paper in A. Jakab and P. Takács (eds), *A magyar jogrendszer átalakulása 1985/1990 – 2005* (Transformation of the Hungarian Legal Order 1985/1990–2005), (ELTE ÁJK – Gondolat, Budapest, 2007). The recent survey has been subsidied by the project K62382 (AJP 2005) of the Hungarian Scientific Research Fund (OTKA).

186. *See* e.g., E. Pattaro (ed.), *A Treatise of Legal Philosophy and General Jurisprudence* (Springer, Dordrecht, 2005), Volumes I–V, or the immense ongoing undertaking of A. Peczenik (ed.), *IVR Encyclopaedia of Jurisprudence, Legal Theory and Philosophy of Law*: <http://www.ivr-enc.info/en/index.php>

187. More precisely, after the death of Villey and Perelman without having established proper schools or institutional continuation, in want of appropriate successors.

background with striking rapidity, just to yield to that new kind of denaturation (perhaps at the same time also as a particularly perverse fulfilment) by the advance of analyticalism.

For it occurred the first time in the European history of ideas that a space, apparently emptied out by itself, was filled by the direct theoretical influx of an Anglo-American legal thought. Although, due to the fact that – figuratively speaking – Michel Villey and Chaïm Perelman have been replaced by H.L.A. Hart and Ronald M. Dworkin in determining the tone of ongoing debates, the effect of post-Second World War continental natural law and anti-formalism, limiting and even alleviating the earlier predominance of legal positivism, could even further intensify, on the one hand. However, this became realized under the aegis of linguistic analysis alien to the continental legal perspective by its origins, having also emerged in Anglo-American jurisprudence as a by-product of the intention at formalizing ethics, and thus, later on, only transferred in a by far not organic way to the field of law, on the other. Nonetheless, this analytical image of law, due to its mere artificiality and inner tendency to simulate law in a virtualized manner (instead of actual investigation into the subject matter), required and also cultivated legal sociology as a specific requisite to legal theory, as an indispensably auxiliary discipline in the macro- and micro-level research of legal reality, in which – let us recall here – a worldwide and emphatic co-operation between continental and Anglo-American legal scholarship could well have developed since the emergence of legal sociology, that is, for nearly a century now. Although the analytical study of law has in the meantime (by overestimating its own potential) gained predominance in most of Western Europe,[188] it has still proven short-lived (at least in its form known until now) in historical dimensions.

Its striving for exclusivity at the fora of legal theorizing with a profoundly sterile predominance was met with rejection by those of the professional community teaching practical subjects of positive law (as perceivable now in the Nordic and Western European restriction of legal theoretical and philosophical subjects in the university curricula, assessable as a compulsive reaction). Meanwhile, the fora of the theoretical inquiries about law seem to join forces in the hope of some re-orientation with new beginnings.

In summary, the international reality of the turn of the millennium[189] is hardly more than a cavalcade of basic ethoses and approaches, in which the American scene is continuing to be dominated by the re-consideration of the feasible contents and ways of the judicial development of law through principles drawn from the constitution with human rights ideologies in the background, while the European

188. In which, of course, with basic definitions unchanged, features of the one-sidedness are being gradually eroded, moreover, with a demand for and also attempt at universality (by metamorphizing into a comprehensive general theory) also assessed.

189. Cf., e.g., in a bibliographical elaboration, the series of *Current Legal Theory* <http://www.cirfid.unibo.it/cult> or, in the mirror of a series of personal self-reports, L.J. Wintgens (ed.), *The Law in Philosophical Perspectives. My Philosophy of Law* (Kluwer, Dordrecht, 1999).

stand stresses a pretended harmony of post-modernity, nurturing itself from the cacophony of manifold ambiguities and vaguenesses.[190]

(2) *The situation in Hungary.* By the end of the communist party rule, theoretical legal thought in Hungary[191] had undergone substantial changes: it definitely became open as it continuously adapted itself to its international environment in a permanent dialogue less in debate with than in an increasingly creative participation to (and as an acknowledged part of) it. In all this, in parallel with the total rejection of the imposed political regime of socialism,[192] a kind of continuity and permanence reasonably could yet prevail, without an expressed break or division. For its once decisive authors had gradually risen anyway to great old names in the representation of the past and, thereby, also to antecedents in a sequence of the historical generation of ideas. Its most creative authors were writing opuses of synthesis in reconsideration of their established views, surrounded anyway by international attention; and its mid-generation was to experiment with its own ways to make it possible for a fresh Euro-Atlantic way of thinking to be cultivated as well in the domestic medium, especially in the classical fields of legal philosophy, sociological jurisprudence and linguistic-logical reconstruction. Moreover, in addition to the emergence of works preparing for the future, attempts at re-integrating the past (once spectacularly renounced by the communists' alleged revolutionary discontinuity) may have also started.

This way, irrespective of the nature and success of the political change in the country anyway, there was no need for any spectacular shift in theoretical legal thought. Even if it may seem alien to scholarship's self-esteem and sublime intellectuality, let me make the following remark: as a result of the mere fact that academic publishing had finally become the exclusive matter of financing

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190. An especially instructive example is offered by the destiny of Peczenik who could first, as the President of the International Association for Philosophy of Law and Social Philosophy (IVR), build up his own memorial then had to live to see, before his sadly early death, the teaching of theoretical legal subjects being questioned by all the three faculties in Sweden. For the a propos of such faculty boards' re-evaluation was just his speciality on the field, namely, philosophizing and theorizing on law reduced to the long-term sterility of mere conceptual analysis.

191. Cf., e.g., V. Peschka, 'Gyula Eörsi: Philosopher of Law' (2002) 43 *Acta Juridica* 43, as well as C. Varga, 'The Place of Law in Lukács' Ontology', in L. Illés *et al* (eds), *Hungarian Studies on György Lukács* (Akadémiai Kiadó, Budapest, 1993), Volume II, pp. 563–577; C. Varga, *'O espaço do direito na ontologia de Lukács'* (2003) 18/39 *Novos Rumos* 4; and C. Varga, 'Autonomy and Instrumentality of Law in a Superstructural Perspective' (1999) 40 *Acta Juridica* 213.

192. E.g., C. Varga, 'Liberty, Equality, and the Conceptual Minimum of Legal Mediation', in N. MacCormick and Z. Bankowski (eds), *Enlightenment, Rights and Revolution. Essays in Legal and Social Philosophy* (Aberdeen University Press, Aberdeen, 1989), pp. 229–251; as well as C. Varga, 'Law as a Social Issue', in S. Wronkowska and M. Zielinski (eds), *Szkice z teorii prawa i szczególowych nauk prawnych. Professorowi Zygmuntowi Ziembinskiemu* (Wydawnictwo Naukowe Uniwersytetu im. Adama Mickiewicza w Poznaniu, Poznan, 1990), pp. 239–255.

(freed from administrative constraints and privileged positions characteristic of the dictatorial regime which used to select according to non-academic merits from the outset) and due to the statutory re-framing of the status of universities with the first grades of academic (scientific) qualification relocated under their responsibility, they could after all become (again) the fundamental workshop for the cultivation of scholarship, in parallel with the doubling of the number of faculties of law within a few years. Well, in contrast to the past regime spanning half a century, all this has offered entirely new and hitherto unknown prospects for both preparing own textbooks and publishing a wide number of papers at the growing fora of publication.[193]

Or, new vistas were opened during the last two decades to be overviewed here, first of all in (a) the publication of own textbooks, lectures and notes varying now from one alma mater to the next one, with the need also to regularly revise, rewrite and enlarge them; in (b) the cultivation of scholarship expanding to newer fields, from among which (1) the investigation into the connections between law and language and logic and rhetoric could result in the reformulation of earlier results with an increasingly synthesizing force; (2) the Anglo-American type of conceptual analysis (hardly practised in Hungary till then) entered the scene with the downright claim to found an exclusive school within an unprecedentedly short period of time; and (3) after an almost complete silencing for more than half a century, the idea of natural law started to vindicate its own place under the sun through a series of published historical overviews and monographical papers; in (c) the key subsidiary and apparently marginal fields, there came (1) a disciplinary re-start of (A) the classical cultivation of the history of ideas, (B) legal anthropology gained new force and a somewhat independent form, (C) legal sociology became a nation-wide movement indeed, while (D) in the field of legal comparativism, foundational works have been born, and all this – if the projected researches would in fact start and produce substantial results – (2) might augment the circle of problems covered by theoretical legal investigation with newer topics, such as (A) the research into the doctrinal bases of law, (B) the enquiry from the case-historical and narrative aspect of 'law and literature' and, by (C) expressing our day's preference to economism and the drive to quantify, the theorizing in terms of 'law and economics'.

(a) Two major circumstances brought new perspective, internal encouragement and special dynamism into textbook-writing. The first is that in a country of ten million inhabitants, there are now eight faculties of law offering their own programmes for quite an extended and deepened teaching in legal theory as a basic

193. Just to give a hint of the abundance unseen till then, it may suffice to refer to the presence of a journal initiated and edited in chief by B. Pokol – *Jogelméleti Szemle* (Review of Legal Theory), (2000 –) published electronically <http://jesz.ajk.elte.hu>–as well as the series of books *'Jogfilozófiák'* in Hungarian and *'Philosophiae Iuris'* in Western languages, launched and edited by C. Varga (now in the Institute for Legal Philosophy he founded at the Catholic University in 1995 which has been awarded – as the first ever had at department level in Hungary – 'A Place of Excellence' by the National Accreditation Committee), and the series *Prudentia iuris* launched and edited by M. Szabó at the University of Miskolc.

course.[194] The second is that with a new system of academic qualification introduced, most faculties launched doctoral schools which, within the perspective of Ph.D thesis-writing, may have added – as an extra impulse – the preparation of teaching aids. Besides summarization and recapitulation in textbooks,[195] sophisticated elaborations of partial topics as well as foundational translations[196] and re-editions have been produced for study purposes either in the compulsory main subject of legal theory (following propedeutics) or the specialist seminaries attached to it, as well as in doctoral courses, re-systematizing of or problematizing on legal theoretical thought, which are expected to superimpose to one another.

(b) Obviously, only just a few major fields can be mentioned to indicate the transformation of the fields of scholarship cultivated, in addition to the fortunately growing number of either *festschrift* volumes of essays in honour of eminent personalities or proceedings of conferences held either on anniversaries or in international or domestic workshops, on the one hand, and to endeavours at laying the foundations,[197]

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194. For a description of courses, *see* C. Varga 'The Teaching of Legal Philosophy in Hungary' (2004) *IVR Newsletter* No. 33, pp. 23–24: <http://www.ivr2003.net/bologna/newsletters/33.pdf> It is to be noted that by the academic year starting in 2006, natural law was also transformed into an obligatory subject, and comparative legal cultures as well as sociology of the state (political sociology) are classed within optionally obligatory subjects.

195. E.g., B. Pokol, *The Concept of Law: The Multi-layered Legal System* (Rejtjel, Budapest, 2001); C. Varga, *Lectures on the Paradigms of Legal Thinking* (Philosophiae Iuris, Akadémiai Kiadó, Budapest, 1999).

196. E.g., M. Szabó (ed.), *Bevezetés a jogbölcseleti gondolkodás történetébe* (Introduction to the History of Legal Philosophical Thought), (Miskolci Egyetem Jogelméleti és Jogszociológiai Tanszék, Miskolc, 1991), for the most part translated from E. Bodenheimer, *Jurisprudence* (Harvard University Press, Cambridge, MA, 1981). As the collection of foundational texts in philosophy of law, *see* e.g., C. Varga (ed.), *A jogi gondolkodás paradigmái* Szövegek (Texts to the Study of the Paradigms of Legal Thinking), (Bibliotheca Cathedrae Philosophiae Iuris et Rerum Politicarum Universitatis Catholicae de Petro Pázmány nominatae III/2, [ETO Print], Budapest, 1998) as well as C. Varga (ed.), *Jog és filozófia: Antológia a XX. század jogi gondolkodása köréből* (Law and Philosophy: Anthology of Legal Theorizing from the First Half of the 20th Century), (Szent István Társulat, Budapest, 2001). As a collection of specific papers, *see* e.g., M. Bódig and M. Szabó (eds), *Logikai olvasókönyv joghallgatók számára* (A Reader of Logic for Students of Law), (Bíbor Kiadó, Miskolc, 1996); J. Szabadfalvi (ed.), *Mai angol-amerikai jogelméleti törekvések* (Current Anglo-American Trends in Legal Philosophy), (Bíbor Kiadó, Miskolc, 1996); C. Varga (ed.), *Comparative Legal Cultures* (Dartmouth, Aldershot - New York University Press, New York, 1992) and translated in a new, enlarged composition in C. Varga (ed.), *Összehasonlító jogi kultúrák* (Osiris, Budapest, 2000); B. Fekete (ed.), *A jogösszehasonlítás elmélete: Szövegek a jelenkori komparatisztika köréből* (The Theory of Comparative Law: Texts from Contemporary Legal Comparativism), (Szent István Társulat, Budapest, 2006). As an author-focussed translation, *see* e.g., J. Hervada, *Introducción crítica al derecho natural* (EUNSA, Pamplona, 1993) available by K. Hársfai (trans.), *Kritikai bevezetés a természetjogba* (Szent István Társulat, Budapest, 2004).

197. E.g., on the one hand: B. Pokol, *Komplexe Gesellschaft: Eine der möglichen Luhmannschen Soziologien* (Mobilität und Normenwandel Volume 8) (Brockmeyer, Bochum, 1990), B. Pokol, *Complex Society: One of the Possible Luhmannite Theories of Sociology* (Co-ordination Office for Higher Education, Budapest, 1991); B. Pokol, 'Law as a System of Professional Institutions' (1993) 8/2 *Connecticut Journal of International Law* 507; and B. Pokol, 'Law as a Professional System of Institutions' (1990) 21 *Rechtstheorie* 272; as well as, on the other

clarifying key problems,[198] collecting authors' own papers,[199] on the other. Let me highlight some of them below.

(i) Investigation relating to law and language,[200] law and logic[201] as well as rhetoric, seems to occupy a special place from the outset. Namely, no matter how

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hand: P. Cserne, 'From Law to Social Science and Back Again – the First Step: Remarks on the Juristic Origin of Some Weberian Concepts', in I. H. Szilágyi and M. Paksy (eds), *Ius unum, lex multiplex: Liber Amicorum: Studia Z. Péteri dedicata* (Studies in Comparative Law, Theory of State and Legal Philosophy), (Szent István Társulat, Budapest, 2005), pp. 457–472; A. Karácsony, *'Gesellschaftstheorie und Recht'* (1998) 37 *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae: Sectio Juridica* 27.

198. E.g., I. Balogh, *'Begründungsprobleme der Gerechtigkeitstheorie'* (2006) 92 *Archiv für Rechts- und Sozialphilosophie* 28; T. Földesi, 'Civil Disobedience: The "Step-brother" of Civil Rights' Annales 32 (1991), 21–37. Takács, 'Begriff des Gemeinwohls' in (2002) 41/42 *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae: Sectio Juridica* 177; A. Tamás, 'The Law as a Command in the Pure Theory of Law and Technical Theory of Jurisprudence', in K. Tóth (ed.), *Emlékkönyv Antalffy György egyetemi tanár oktatói működésének 40. és születésének 70. évfordulójára* (Festschrift for Professor György Antalffy's 40th Anniversary of Teaching and 70th Birthday), (Acta Universitatis Szegediensis de Attila József nominatae, Szeged, 1990), pp. 225–239; A. Tamás, 'The Law as a Modernization Technique' (1990) 31 *Acta Juridica* 263; A. Tamás, 'The Technical Element in Law' (1990) 5 *Publ. Univ. Miskolc*: *Sectio juridica et politica* 81; A. Tamás, 'Regulation by Law and Regulation by Government in the Rule of Law and the Technical Theory of Jurisprudence', in K. Tóth (ed.), *Kovács István-emlékkönyv (Festschrift István Kovács)* (Szeged, 1991), pp. 383–396; A. Tamás, 'Law Making and Administration', in G. Bándi (ed.), *Ünnepi kötet Boytha Györgyné tiszteletére* (*Festschrift)* (Pázmány Péter Katolikus Egyetem Jog- és Államtudományi Kar, Budapest, 2002), pp. 108–114; C. Varga, *Codification as a Socio-historical Phenomenon* (Akadémiai Kiadó, Budapest, 1991); as well as C. Varga, 'La Codification à l'aube du troisième millénaire', in G. Cohen-Jonathan *et al* (eds), *Mélanges Paul Amselek* (Bruylant, Bruxelles, 2004), pp. 779–800; C. Varga, 'Codification at the Threshold of the Third Millennium' (2006) 47 *Acta Juridica* 89; C. Varga, 'The Basic Settings of Modern Formal Law', in V. Gessner, A. Hoeland and C. Varga (eds), *European Legal Cultures* (Dartmouth, Aldershot, 1996), pp. 89–103; C. Varga, 'Central and Eastern European Philosophy of Law', 'Codification', 'Ex Post Facto Legislation', 'History (Historicity) of Law', 'Legal Ontology (Metaphysics)' and 'Validity', all in C.B. Gray (ed.), *The Philosophy of Law. An Encyclopedia* (Garland Publishing, New York/London, 1999), pp. 98–100, 120–122, 274–276, 371–373, 617–619, and 883–885, respectively; and K. Kulcsár 'Politics and Legal Policy', in P. Koller, C. Varga and O. Weinberger (eds), *Theoretische Grundlagen der Rechtspolitik. Ungarisch – österreichisches Symposium der Internationalen Vereinigung für Rechts- und Sozialphilosophie 1990* (Franz Steiner Verlag Wiesbaden, Stuttgart, 1992), pp. 17–27; M. Samu, 'Legal Policy and Its Axiological Background', in Koller, Varga and Weinberger (eds), pp. 95–102; and P. Szilágyi, *'Zur theoretischen Grundlegung der Rechtspolitik der Gesetzgebung'*, in Koller, Varga and Weinberger (eds), pp. 104–109.

199. E.g., C. Varga, *Law and Philosophy. Selected Papers in Legal Theory* (Philosophiae Iuris, Budapest, 1994).

200. C. Varga, *Theory of the Judicial Process: The Establishment of Facts* (Akadémiai Kiadó, Budapest, 1995) – with preliminary inquiries such as C. Varga, 'Judicial Reproduction of the Law in an Autopoietical System?' (1991) 11 *Rechtstheorie* 305 and (1990) 32 *Acta Juridica* 144; C. Varga, 'Institutions As Systems: An Essay on the Closed Nature, Open Vistas of Development, As Well As the Transparency of the Institutions and Their Conceptual Representations' (1991) 33 *Acta Juridica* 167; C. Varga, 'An Investigation into the Nature of the Judicial Process' <http://www.univie.ac.at/RI/IRIS2006/papers/varga.pdf> Then, with

pioneering a role it once used to play from the end of the 1960s in the theoretical loosening of the positions of classical positivism (or, in Hungary, of socialist normativism), including their transcendence by developing new paradigms,[202] today it still represents the memory of some connection to the European past because, even if detached by its framework of interpretation, it can still be correlated to the law's one-time comprehension by ontologies and epistemologies while,

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preliminarily published papers, such as C. Varga, 'Changing of Paradigms in the Understanding of Judicial Process', in W. Krawietz, M. Samu and P. Szilágyi (eds), *Sonderheft Ungarn: Verfassungsstaat, Stabilität und Variabilität des Rechts im modernen Rechtssystem,* Internationales Symposium der Budapester Juristischen Fakultät (Duncker & Humblot, Berlin, 1995), pp. 415–424; C. Varga, 'The Judicial Process: A Contribution to Its Philosophical Understanding' (1994) 36 *Acta Juridica* 145, and (1998) 69 *Archiv für Rechts- und Sozialphilosophie Beiheft* 206; C. Varga, 'The Mental Transformation of Facts into a Case' (1991) 77 *Archiv für Rechts- und Sozialphilosophie* 59; C. Varga, 'The Non-cognitive Character of the Judicial Establishment of Facts' (1990) 32 *Acta Juridica* 247, and (1994) 53 *Archiv für Rechts- und Sozialphilosophie Beiheft* 230; C. Varga, 'Descriptivity, Normativity, and Ascriptivity: A Contribution to the Subsumption/Subordination Debate' (1992) 54 *Archiv für Rechts- und Sozialphilosophie Beiheft* 162; C. Varga, 'The Judicial Establishment of Facts and Its Procedurality', in W. Krawietz and J. Wróblewski (eds), *Sprache, Performanz und Ontologie des Rechts. Festgabe für Kazimierz Opalek zum 75. Geburtstag* (Duncker & Humblot, Berlin, 1993), pp. 245–258; C. Varga, 'On Judicial Ascertainment of Facts' (1991) 4 *Ratio Juris* 61; C. Varga, 'La nature de l'établissement judiciaire des faits' (1996) 40 *Archives de Philosophie du Droit* 396; and C. Varga, 'What is to Come after Legal Positivisms are Over? Debates Revolving around the Topic of ''The Judicial Establishment of Facts''', in M. Atienza *et al.* (eds), *Theorie des Rechts und der Gesellschaft. Festschrift für Werner Krawietz zum 70. Geburtstag* (Duncker & Humblot, Berlin, 2003), pp. 657–676.

201. M. Szabó, 'Law as Translation' (2004) 91 *Archiv für Rechts- und Sozialphilosophie Beiheft* 60; and M. Szabó, 'Practical Equivalence' (2005) 97 *Archiv für Rechts- und Sozialphilosophie Beiheft* 187; C. Varga, 'The Context of the Judicial Application of Norms', in W. Krawietz *et al.* (eds), *Prescriptive Formality and Normative Rationality in Modern Legal Systems. Festschrift for Robert S. Summers* (Duncker & Humblot, Berlin, 1994), pp. 495–512; C. Varga, 'No Logical Consequence in the Normative Sphere?' (1995) 60 *Archiv für Rechts- und Sozialphilosophie Beiheft* 31; C. Varga, 'Law, Language and Logic: Expectations and Actual Limitations of Logic in Legal Reasoning', in C. Ciampi *et al.* (eds), *Verso un sistema esperto giuridico integrale* (Cedam, Padova, 1995), Volume I, pp. 665–679; as well as C. Varga, 'Legal Logic and the Internal Contradiction of Law', in E. Schweighofer *et al.* (eds), *Informationstechnik in der juristischen Realität. Aktuelle Fragen zur Rechtsinformatik 2004* (Verlag Österreich, Wien, 2004), pp. 49–56; and C. Varga, 'Rule and/or Norm, or the Conceptualisibility and Logifiability of Law', in E. Schweighofer *et al.* (eds), *Effizienz von e-Lösungen in Staat und Gesellschaft. Aktuelle Fragen der Rechtsinformatik* (Tagungsband der 8. Internationalen Rechtsinformatik Symposions, IRIS 2005) (Boorberg, Stuttgart, 2005), pp. 58–65.

202. C. Varga, ' ''Law'', or ''More or Less Legal''?' (1992) 34 *Acta Juridica* 139, as well as C. Varga, 'Norms through Parables in the New Testament: An Alternative Framework for Time and Law', in F. Ost and M. Van Hoecke (eds), *Time and Law. Is it the Nature of Law to Last?* (Bibliothèque de l'Académie Européenne de Théorie du Droit, Bruylant, Bruxelles, 1998), pp. 213–224; C. Varga, 'Measuring through Patterning in Law: Development of an Idea in Europe' (1998) 39 *Acta Juridica* 107; C. Varga, 'Patterns of Thought, Patterns of Law' (1997) 38 *Acta Juridica* 93; C. Varga, 'Paradigms of Legal Thinking' (1999) 40 *Acta Juridica* 19; and C. Varga, 'The Nature of Law and Legal Thinking', in P. Mares and J.-P. Clero (eds), *La notion de justice aujourd'hui* (Valahia University Press, Târgovişte, 2005), pp. 112–124.

perhaps up to the present day, it is the most powerful trend that has proved most effective in describing the whys and hows of the law's actual construction and operation by looking behind the law's ideologically postulated formal construction and operation, in order to reconstruct their genuine components.

(ii) The analytical trend in legal scholarship – borrowed from the Anglo-American mainstream with presuppositions characteristic of a definite political philosophical viewpoint and cultivated mostly in frameworking interpretations, whose Hungarian reception has practically no reflection to either its continental parallels or to its further developed variants (continental or realized elsewhere) – has obviously arrived from outside, with proper claims, approach, methodology, sources, and conceptual world. However – as this became clear in, e.g., Poland, in competition with Marxism nearly for three decades now – this analytical trend not only had a fermenting effect but was also able to challenge the typically continental patterns of thought accustomed in Hungary by raising new questions. With this, it can reach (if it has not already reached) not only its conceptual world and to some extent also its underlying political and philosophical worldview being adapted but also becoming itself the natural subject of legal discourses.[203]

(iii) Together with all the 'bourgeois' legacies cultivated as legal philosophy mostly along new-Kantian methodological confines between the two World Wars in Hungary, it was natural law that suffered the greatest losses of the Muscovite-style of ideological homogenization in Hungary, stricken, in addition to being silenced, by another circumstance as well, notably, that natural law as such hardly existed for almost one whole century in Hungary, because even its earlier cultivation, both in the pre-war and inter-war periods, was done rather theologically than as an organic part of legal philosophizing. All that notwithstanding, today it occupies an in-between position, because both in general and in its having covered by lawyers, it is part of the international catholic intellectual revival and also of a reconsideration of basic issues demanded by the age. At the same time it is also activated both as the ever-green historical counter-pole to legal positivism (under general criticism and attack now)[204] and as the literally ultimate promise of offering some axiological foundation and point of reference, suitable to define (upon its tradition lived through millennia) reliable criteria so wanted for our world having lost its direction and being endangered from several sides.

(c) On the auxiliary and marginal areas, (A) history of ideas was so to speak never regularly cultivated in a classical sense earlier in Hungary. Our related scanty literary outputs, starting from, say, the end of the 19th century, is scarcely more than a set of occasional digressions, anniversary commemorations or prefaces. In contrast, what is about to come to fruition at present (and perhaps in the hope of a better future) already now shows the signs of a certain abundance.

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203. E.g., M. Bódig, 'The Political Character of Legal Institutions and Its Conceptual Significance' (2005) 46 *Acta Juridica* 33.
204. E.g., F. Hörcher, *Philosophiae Iuris. Towards a Pragmatic Theory of Natural Law* (Akadémiai Kiadó, Budapest, 2000); and S. Tattay, 'Are Legal Semiotics and Natural Law Irreconcilable?', in Mares and Clero (eds), above, pp. 101–110.

Namely, researchers have started becoming specialized in studying certain historical trends and schools from antiquity[205] to the early modern[206] and modern age,[207] in addition to reconsidering contemporary development – mostly through Western[208] and Central and Eastern European[209] or domestic[210] antecedents – ,

205. E.g., A. Földi, *'Zum Begriffsgeschichte der Verantwortung'*, in H. Szilágyi and Paksy (eds), above, pp. 89–116; T. Nótári, *'Summum ius summa iniuria:* Comments on the Historical Background of a Legal Maxim of Interpretation' (2004) 45 *Acta Juridica* 301; T. Nótári, 'On Some Aspects of the Roman Concept of Authority' (2005) 46 *Acta Juridica* 95; T. Nótári, 'The Scales as the Symbol of Justice in the Iliad' (2005) 46 *Acta Juridica* 249; M. Szabó, 'Formal Justice and Positive Law: The Graeco-Roman Heritage', in O. Péter and B. Szabó (eds), *Bona discere. Festgabe für János Zlinszky zum 70. Geburtstag* (Bíbor, Miskolc, 1998), pp. 253–267.
206. E.g., S. Tattay, 'Natural Law and Natural Rights in Ockham's Legal Philosophy', in H. Szilágyi and Paksy (eds), above, pp. 539–555.
207. E.g., A. Karácsony, 'Legal Hermeneutics in German Jurisprudence since the Early 17th Century' (2004) 44 *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae: Sectio Juridica* 189.
208. In a classical sense, M. Bódig, 'Hart's Jurisprudence: Its Relation to Philosophy' (2001) 42 *Acta Juridica* 1–23 pp.; C. Varga, *'Hans Kelsens Rechtsanwendungslehre: Entwicklung, Mehrdeutigkeiten, offene Probleme, Perspektiven'* (1990) 76 *Archiv für Rechts- und Sozialphilosophie* 348–366; C. Varga, 'Kelsen's Theory of Law-application: Evolution, Ambiguities, Open Questions' (1994) 36 *Acta Juridica* 3–27 pp.; C. Varga, 'Change of Paradigms in Legal Reconstruction (Carl Schmitt and the Temptation to Finally Reach a Synthesis)', in P. Wahlgren (ed.), *Perspectives on Jurisprudence. Essays in Honor of Jes Bjarup* (Scandinavian Studies in Law, Volume 48, Stockholm Institute for Scandinavian Law, Stockholm, 2005), pp. 517–529; and C. Varga, 'The Hart-phenomenon' (2005) 91 *Archiv für Rechts- und Sozialphilosophie* 83–95 pp.; as a contemporary overview A. Visegrády, 'Legal Theories at the Turn of the Third Millennium', in G. Andrássy and A. Visegrády (eds), *Közjogi intézmények a XXI. Században. Jog és jogászok a XXI. század küszöbén* (Institutions of public law in the 21st century: Law and lawyers at the threshold of the 21st century), (Pécsi Tudományegyetem Állam- és Jogtudományi Kara, Pécs, 2004), pp. 43–52; G. Monori, 'Feminist Jurisprudence in the 21st Century', in Andrássy and Visegrády (eds), ibid, pp. 55–68.
209. C. Varga, 'Philosophy of Law in Central and Eastern Europe: A Sketch of History' (2000) 41 *Acta Juridica* 17.
210. E.g., P. Szilágyi, *'Die Anfänge der ungarischen Rechtsphilosophie'* (2003) 43 *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae: Sectio Juridica* 21; J. Szabadfalvi, 'Short History of Legal Philosophical Thinking in Hungary until the Mid-Twentieth Century' (2004) 25 *Acta Iuridica Cassoviensia* 36; J. Szabadfalvi, 'Revaluation of Hungarian Legal Philosophical Tradition' (2003) 89 *Archiv für Rechts- und Sozialphilosophie* 159; J. Szabadfalvi, 'The Role of the Hungarian Legal Philosophical Tradition in the Renewal of National Legal Culture', in J. Čipkar (ed.), *Law Culture and European Integration Process* (Právnická fakulta UPJŠ, Košice, 2004), pp. 236–248; J. Szabadfalvi, 'Transition and Tradition: Can Hungarian Traditions of Legal Philosophy Contribute to Legal Transition?', in W. Krawietz and C. Varga (eds), *On Different Legal Cultures, Pre-Modern and Modern States, and the Transition to the Rule of Law in Western and Eastern Europe* (Duncker & Humblot, Berlin, 2003), pp. 167–185; J. Szabadfalvi, 'Portrait-sketches from the History of Hungarian Neo-Kantian Legal Philosophical Thought' (2003) 44 *Acta Juridica* 245; J. Szabadfalvi, *'Wesen und Problematik der Rechtsphilosophie: Die Rechtsphilosophie von Gyula Moór'* (1998) 15 *Publ. Univ. Miskolc*: *Sectio juridica et politica* 209; J. Szabadfalvi, 'Some Reflections on the Anglo-Saxon Influence in the Legal Philosophical Traditions' (2001) 42 *Acta Juridica* 111; and J. Szabadfalvi, 'The Spirit of the Common Law in the Hungarian Legal Philosophical Thinking'

including both reprints (at times enlarged into collections)[211] and translations,[212] moreover, at times also original texts editions.[213] In laying social theoretical foundations for legal philosophical thought, a key role may be played

(2003) 9 *Hungarian Journal of English and American Studies* 199; C. Varga 'Philosophising on Law in the Turmoil of Communist Take-over in Hungary (Two Portraits, Interwar and Post-war)' (on Moór and Losonczy), in M. Leszkiewicz (ed.), *2005 ALPSA Annual Publication* (Brisbane, 2005), pp. 82–94; Á. Zsidai, *'Die Erscheinung der Perspektive: Synoptische Rechtstheorie von Horváth Barna'* (2004) 44 *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae: Sectio Juridica* 207; A. Karácsony, 'In the Attraction of Natural Right: Bibó István's Conception of Law' (2002) 41/42 *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae: Sectio Juridica* 223

211. For re-editing pieces of international literature, *see* H. Kelsen, *Az államelmélet alapvonalai* (*Grundriβ einer allgemeinen Theorie des Staates*, 1926), G. Moór (trans.), J. Szabadfalvi (ed.) (Bíbor Kiadó, Miskolc, 1997); and C. Varga (ed.), *Marxian Legal Theory* (Dartmouth, Aldershot – New York University Press, New York, 1993); for re-editing from the domestic legacy (in a chronological order of sources): F. Somló, *Schriften zur Rechtsphilosophie*, C. Varga (ed.) (Akadémiai Kiadó, Budapest, 1999); J. Moór *Rechtsphilosophische Aufsätze*, C. Varga (ed.) (Szent István Társulat, Budapest, 2006); B. Horváth, *Schriften zur Rechtsphilosophie*: Volume I, *Prozessuelle Rechtslehre* (1926–1948); Volume II, *Gerechtigkeitslehre* (1926–1948); Volume III, *Papers in Emigration* (1949–1971) – C. Varga (ed.) (Szent István Társulat, Budapest, 2007) (in preparation); C. Varga (ed.), *Die Schule von Szeged. Rechtsphilosophische Aufsätze von István Bibó, József Szabó und Tibor Vas* (Szent István Társulat, Budapest, 2006).

212. As dedicated to trends and schools and topics, e.g., J. Szabadfalvi (ed.), *Historical Jurisprudence* (Osiris, Budapest, 2000); A. Visegrády (ed.), *Scandinavian Legal Realism* (Szent István Társulat, Budapest, 2003); J. Frivaldszky (ed.), *Természetjog. Szöveggyűjtemény* (Natural law texts) (Szent István Társulat, Budapest, 2004); M. Szabó and C. Varga (eds), *Jog és nyelv* (Law and Language), (Jogfilozófiák, Budapest, 2000); I. H. Szilágyi (ed.), *Jog és antropológia* (Law and Anthropology), (Osiris, Budapest, 2000); P. Takács (ed.), *Joguralom és jogállam* (Rule of Law and Rechtsstaatlichkeit), (Osiris, Budapest, 1995); P. Paczolay (ed.), *Alkotmánybíráskodás – alkotmányértelmezés* (Constitutional Adjudication – Constitutional Interpretation), (Osiris, Budapest, 1995); in personal oeuvres, St Th. Aquinas, *A természetjogról* (On Natural Law), C. Varga (ed.) (Szent István Társulat, Budapest, 2007) (in preparation); J. Frank, *A bíráskodás az értelem ítélőszéke előtt. Válogatott írások* (Selected Texts on Courts and Trial), A. Badó (ed.) (Szent István Társulat, Budapest, 2006); H. Coing, *Grundzüge der Rechtsphilosophie* (1993) B. Szabó (trans.), *A jogfilozófia alapjai* (Osiris, Budapest, 1996); H.L.A. Hart, *The Concept of Law* (1994) P. Takács (trans.), *A jog fogalma* (Osiris, Budapest, 1995); F. Horkay Hörcher (ed.), *Hayek és a brit felvilágosodás. Tanulmányok a konstruktivista gondolkodás kritikájának eszmetörténeti forrásairól* (Hayek and the British Enlightenment: Historical Sources on the Criticism of Constructivism), (Jogfilozófiák, Budapest, 2002); L. Cs. Kiss and A. Karácsony, *A társadalom és a jog autopoietikus felépítettsége. Válogatás a jogi konstruktivizmus irodalmából* (The Autopoietical Construction of Society and Law: From the Literature of Legal Constructivism), (Osiris, Budapest, 1994), as well as D. Némedi (ed.), *Válogatás Niklas Luhmann írásaiból* (Luhmann selected), (Szociológiai füzetek, Művelődési Minisztérium Marxizmus–leninizmus Oktatási Főosztálya, Budapest, 1987); and J. Bangó and A. Karácsony (eds), *Luhmann-könyv* (Luhmann-book), (Rejtjel, Budapest, 2002) 253; Z. Grocholewski, *La filosofia del diritto di Giovanni Paolo II* (1991) P. Szabó (trans.), *II. János Pál jogfilozófiája* (Szent István Társulat, Budapest, 2003).

213. E.g., H. Kelsen, *Reine Rechtslehre* (1934), I. Bibó (trans.) (1937) and C. Varga (ed.), *Tiszta jogtan* (Jogfilozófiák, Eötvös Loránd Tudományegyetem Bibó István Szakkollégium, Budapest, 1988. Repr. Rejtjel, Budapest, 2001); C. Varga (ed.), *Aus dem Nachlaβ von Julius Moór* (Philosophiae Iuris, ELTE 'Comparative Legal Cultures' Project, Budapest, 1995); and

by (B) anthropology and (C) sociology. As to legal anthropology, the very start of its cultivation is remarkable itself.[214] On the other hand, legal sociology is refounding itself to become an independent discipline by elaborating monographs[215] and papers[216] in addition to textbooks and the launching of its own periodical.[217] However, it is still far from that flourishing which proved to be an effective force forming society at the time of socialism through both theoretical (macro-sociological) and concrete-empirical (micro-sociological) investigations. Lastly, (D) legal comparativism is scarcely more today than a respectable subject to

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C. Varga, 'Documents de Kelsen en Hongrie: Hans Kelsen et Julius Moór' (1987) 7 *Droit et Société* 337; B. Horváth, *The Bases of Law* (1948), C. Varga (ed.) (Szent István Társulat, Budapest, 2006); I. Losonczy, *Abriβ eines realistischen rechtsphilosophischen Systems*, C. Varga (ed.) (Szent István Társulat, Budapest, 2002).

214. E.g., I. H. Szilágyi, 'Let Us Invent Hungarian Legal Anthropology', in Krawietz and Varga (eds), above, pp. 187–196; and I. H. Szilágyi, 'The Roma Way – Comparative Legal Studies: Comparative Law, Sociology and Anthropology', in H. Szilágyi and Paksy (eds), above, pp. 129–148, as well as I. H. Szilágyi and S. Loss, 'Opening Scissors: The Legal Status of the Gypsy Minority in Nowadays Hungary', in Krawietz and Varga (eds), *ibid.* pp. 483–494.
215. First of all, K. Kulcsár, *Modernisation and Law* (Akadémiai Kiadó, Budapest, 1992) p. 282.
216. E.g., A. Badó, J. Bóka and Z. Nagy, *Hungarian Lawyers in the Making. Selection Distortions after the Democratic Changes in Hungary* (Acta Universitatis Szegediensis: Acta juridica et politica 63/1, Szeged, 2003); A. Sajó, *'Subjektive Rechte im Bewusstssein der Ungarn'* (1990) *Zeitschrift für Rechtssoziologie,* pp. 91–100; A. Sajó, 'Social Change and/or Legal Change', in V. Ferrari (ed.), *Laws and Rights* (Giuffrè, Milano, 1991), pp. 935–953; A. Sajó, 'The Role of Legal Profession in Social Change in Hungary', in K. Rokumoto (ed.) *The Social Role of the Legal Profession* (International Centre for Comparative Law and Politics, Tokyo, 1993), pp. 141–150; and A. Sajó, 'Contemporary Problems of the Judiciary in Hungary', in Rokumoto (ed.), *ibid.* pp. 131–139; A. Sajó, 'The Role of Lawyers in Social Change (Hungary)' (1993) 25 *International Law* 137; and A. Sajó, *'L'industrie d'État du changement et l'effort stabilisateur du droit'*, in R. Lukic (ed.), *La modernization du droit* (Académie Serbe des Sciences et des Arts: Colloques scientifiques LII: Classe des Sciences sociales 11, Beograd, 1990), pp. 33–49; C. Varga, 'The Law and Its Limits' (1992) 34 *Acta Juridica* 56; A. Visegrády, *'Die Probleme der Effektivität des Rechts',* in L. Korinek (ed.), *Tanulmányok Földvári József tiszteletére* (*Festschrift József Földvári*) (PTE, Pécs, 1996), pp. 170–179; A. Visegrády, *'Zur Effektivität des Rechts'* (2002) 82 *Archiv für Rechts- und Sozialphilosophie Beiheft* 51; A. Visegrády, 'Measurement of the Effectiveness of Legal Rules', in G. Hamza *et al.* (eds), *Iura antiqua – iura moderna. Festschrift für Ferenc Benedek zum 75. Geburtstag* (Pécsi Tudományegyetem Állam- és Jogtudományi Kar and Dialóg Campus, Pécs, 2001), pp. 265–275; A. Visegrády, 'Judicial Practice as an Element of Legal Development', in Krawietz, Samu and Szilágyi (eds), above, pp. 425–432; A. Visegrády, 'Rule of Law and Efficiency of the Legal System', in Krawietz and Varga (eds), above, pp. 331–340; 'Legal Cultures and Effectiveness of Law' in (2003) 21 *Publ. Univ. Miskolc*: *Sectio juridica et politica* 301; A. Visegrády, 'Legislation and Jurisprudence', in N. Chronowski (ed.), *Ádám Antal-jubileum* (*Festschrift Antal Ádám*) (PTE, Pécs, 2005), pp. 211–218; A. Visegrády and I. Kajtár, *'Rechtstheoretische und rechtshistorische Erläuterungen zur Effektivität des Rechts'* (1990) 31 *Acta Juridica* 293, and A. Visegrády and M. Schadt, 'The Development of Legal Knowledge of University Students', in T. Mihály and C. Herke (eds), *Tanulmányok dr. Földvári József professzor 75. születésnapja tiszteletére* (*Festschrift József Földvári*) (PTE, Pécs, 2001), pp. 117–127.
217. E.g., the annually published *Kontroll* (2003 –) with rotating university backgrounds and chairs to edit it.

teach,[218] which (despite partial analyses on the field[219]) is still waiting for being recapitulated in textbooks and for a re-start of preparing for monographs (as widely done in the socialist past as acknowledged internationally) by academic encouragement. Nevertheless, it is now widely recognized that comparativism is simply an old-new *sine qua non* and, after proper university fora will have been formed, its cultivation shall also become regular. As a result of all this, (b) research may fortunately expand to further areas which (A) at last attempt to lay foundations for the doctrinal study of law,[220] (B) realize interdisciplinarity between living law and philosophical jurisprudence within the (American-type) informality of 'law and literature' (having by now also penetrated Europe), or (C) try to find more guarantee for plannability and foreseeability in the intermediate sphere of 'law and economy'[221] (just as once legal behaviourism hoped to realize the indexation of foreseeability through the statistics of judicial behaviour).

From among all these directions with re-starts and attempts, mutual influences and intertwinings, it is the repeated debate on law taken as language and logic (in a continuous struggle with the tradition of legal positivism) that comes

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218. Cf., e.g., Z. Péteri, 'Teaching of Comparative Law and Comparative Law Teaching' (2002) 43 *Acta Juridica* 243.

219. B. Fekete, 'Legal Assistance and the Transplant of Constitutional Models: A Hungarian Case-study from the Early Socialist Era', in M. Sadakata (ed.), *Hungary's Legal Assistance Experiences in the Age of Globalization* (Nagoya University Graduate School of Law Center for Asian Legal Exchange, Nagoya, 2006), pp. 235–248; A. Harmathy, 'Comparative Law and Changes of the Law' (1999) 40 *Acta Juridica* 159; Z. Péteri, *'La modernization et le droit socialiste hongrois',* in Lukic (ed.), above, pp. 25–32; Z. Péteri, 'Law and the Legal Families of the World: The Problem of Classification', in Sadakata (ed.), *ibid.* pp. 113–123; and Z. Péteri, 'Law Teaching as a Form of Legal Assistance', in Sadakata (ed.), *ibid.* pp. 275–285; B. Pokol, 'Forms of Judicial Power', in *Nagy László-jubileum* (László Nagy Festschrift), (SZTE, Szeged, 2004), pp. 351–384; B. Pokol, 'Statutory Interpretation and Precedent in Hungary' (2000) *Osteuropa-Recht,* 262; B. Pokol, *'Rechtsauslegung und Präjudizienrecht in Ungarn'* 2000/4 *Zeitschrift für öffentliches Recht* 87; C. Varga, 'Meeting Points between the Traditions of English-American Common Law and Continental-French Civil Law (Developments and Experience of Postmodernity in Canada)' (2003) 44 *Acta Juridica* 21.

220. E.g., M. Paksy, *'Quelques réflexions sur la jurisprudence relative à l'article 4 du Code civil français',* in Mares and Clero (eds), above, pp. 75–85; and M. Paksy, *'Conservatisme juridique? Essai sur la critique positiviste et antipositiviste de la méthode 'génétique' de l'interprétation',* in H. Szilágyi and Paksy (eds), above, pp. 475–498; V. Peschka, 'The Retroactive Validity of Legal Norms' 40 (1999) *Acta Juridica* 1; B. Pokol, 'The Structure of Legal System' (2002) 43 *Acta Juridica* 219; C. Varga, 'Validity' (2000) 41 *Acta Juridica* 155; A. Rácz, 'The Binding Force of Legal Rules: Their Validity, Effectiveness, and Applicability' (1995–1996) 37 *Acta Juridica* 37.

221. E.g., P. Cserne, 'The Normativity of Law in Law and Economics' (2004) *German Working Papers in Law and Economics* No. 35: <http://www.bepress.com/gwp/default/vol2004/iss1/art35>; A. Sajó, 'Diffuse Rights in Search of an Agent' (1990) *International Review of Law and Economics* 41; A. Sajó, 'Marxism and Rights in the Economy', in L. Swindler (ed.), *Human Rights* (Paregon House, New York, 1991), pp. 232–246; A. Sajó, 'Law and Economics in Hungary', in B. Bouckaert and G. De Geest (eds), *Encyclopedia of Law and Economics* (Elgar, Cheltenham, 2000), Volume I, pp. 240–243; A. Sajó and P. Behrens, *'Die ökonomischen Grundlagen des Rechts: Politische Ökonomie als rationale Jurisprudenz'* (1989) 75 *Archiv für Rechts- und Sozialphilosophie* 258.

out as the most innovative in effects, as it resulted (nearly one and a half decades ago) in recognizing law first as a process, then (searching for the societal embedding of processes) as a culture, having generated by today the law's investigation in a deeper medium, in the historico-comparative examination of legal cultures themselves. That is, the rejection of positivism's tightfistedness and the relevant studies in classical legal comparativism (attempting at some self-transcendence) could after all establish a new interest, namely, the investigation within the perspective of comparative legal cultures, already involving (as both a promise and as a perspective) the aspiration for comparative judicial mind, that is, the comparison of how justices arrive at judicial conclusion in different cultures with differing ideas on which ways law and order is to be standardized and reached.

(3) *Outlook I: The historical-comparative study of legal cultures and of the lawyerly way of thinking.* The comparative study[222] (assuming also historical explication) of legal cultures[223] may even reverse the order accepted so far in the cultivation of universal jurisprudence. Because it can be justifiably proposed that at the intersection of legal history, legal theory, legal anthropology and comparative law, it is individual legal cultures (i.e., sets of traditions organized – despite their specific and growing interactions – into autochtonous blocs) that need to be characterized first, so that the formalistic envelope usually examined by comparative law, that is, the positivated institutional superstructure, can be built in these.

The actual novelty in all this is the recognition of the presence of paradigms perceivable locally in a given time and space, that is, the presumption that in principle every viable culture generates (or may generate) some kind of geniosity mostly characteristic of it alone, with kinds of technical procedure promising very much potentially and also performing much in fact, which guarantees (systematically and with the required particular balance) both the synchrony and the optimally achievable success of preservation and renewal at any time. That is, the once usual extensive (quasi-questionary) description reduced normally to the mere listing (in a catalogue-like manner) of data, as some specific legal mapping, can and shall be replaced by a characterization aiming at highlighting the specificities and the potentially fertilizing force of *la mentalité juridique*[224] developed in a given

222. E.g., C. Varga (ed.), *Comparative Legal Cultures* (Dartmouth, Aldershot - New York University Press, New York, 1992); Gessner, Hoeland and Varga (eds), above; followed by C. Varga, 'Comment to the Notion of Legal Culture', in J. Feest and E. Blankenburg (eds), *Changing Legal Cultures* (Oñati Pre-publications – 2, International Institute for the Sociology of Law, Oñati, 1997), pp. 207–217; C. Varga, 'Comparative Legal Cultures: Attempts at Conceptualization' (1997) 38 *Acta Juridica* 53; C. Varga, 'Varieties of Law and the Rule of Law' (1996) 82 *Archiv für Rechts- und Sozialphilosophie* 61.

223. As preliminary studies, *see* e.g., K. Kulcsár, 'Political Culture – Legal Culture, Conflicts and Harmony: A Study on East-Central Europe' (1991) 12 *Rechtstheorie* Beiheft 321; M. Samu, 'Culture and Law: Legal Culture' (1991) 40 *Archiv für Rechts- und Sozialphilosophie Beiheft.* 77; as well as A. Sajó, 'Authoritarian Law', in A. Sajó (ed.), *Out and into Authoritarian Law* (Kluwer Law International, The Hague, 2002), pp. 1–22.

224. The term was introduced as a key term by Pierre Legrand.

culture according to changing criteria in function of timely challenges and tradition continued.

Thus, investigations for an ontology of law carried out within my researches on George Lukács[225] have already presented the prevailing lawyerly ideology as an ontological component of the given legal reality, and the developments on the paradigms of legal thinking[226] have tried, at the level of analysis at least, to uncover law from its dys-anthropomorphizing and depersonalizing formalistic envelope by presenting it in its own complexity, involving its application, too, as a directly social human product in the shaping of which both the entire society in general and especially its lawyerly élite in particular (and, after all, every single addressee actually contributing to the hermeneutic process of shaping the public understanding of law) take part with full responsibility.

A possible and desirable research in this circle will above all contrast the positions of legal positivism (classical comparative law) to the stand taken after the disintegration of positivism (comparative legal cultures). Within such a context, even the selection of either 'legal culture'[227] or 'legal tradition'[228] as a key term will be a crucial issue, together with the dilemma of how far the hitherto properly working genealogical category of 'legal family' remains (or may remain) an operative concept in future development with growing unification and globalization as future trends.

This will presumably involve the assumption of definite attitudes in extremely topical debates (forecasting developmental tendencies) such as, e.g., the convergence between civil law and common law within the European Union (as a prerequisite to a genuine unification or, at least, an important stepping stone in advance); the codification of the law common for the European Union (especially as to its means, methods and techniques for judicial actualization); as well as the description of the process actually going on under the aegis of the interpretation and application of the provisions of national legal orders in the jurisprudence of the common judicial fora of the European Union. The last concern to be addressed in this circle is globalism and its legal treatment, with particular attention to the effect of its foreseeable developmental perspectives on the sustainability of the diversity of legal cultures and ways of thinking having evolved so far mostly within national bounds.

For what is just going on either within re-considerations after the European Union's completed and forthcoming enlargements or under the aegis of globalization (and whose starting point, even if of a symbolic value, is the efforts at constitution-making at the level of the Union, together with present-day failures) will

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225. C. Varga, *The Place of Law in Lukács' World Concept* (Akadémiai Kiadó, Budapest, 1985; reprinted 1998).
226. Varga, *Lectures* (note 195) with preliminary papers (note 202).
227. E.g., C. Varga, 'Legal Traditions? In Search for Families and Cultures of Law' (2005) 46 *Acta Juridica* 177.
228. Most recently, e.g., J. Husa, 'Emancipation or Deprivation for the European Legal Mind? The Contribution of the Legal Tradition Approach' (2006) 13 *Maastricht Journal of European Law* 81.

presumably determine the fate of mankind for centuries. A clarification of the mutual relations of such great trends is a task to be carried out by the profession, along with meditation on the issue of what is referred to by scholarship as the sustainability of diversity in law and legal traditions.[229]

All this may provide foundations for yet another topic of research, founded on the dilemma raised once by Zweigert,[230] who was the first, four decades ago, to problematize on the chance of *solutions identiques* through *voies différentes* in law, for the first sight involving an apparent paradox.

Well, exactly such is the direction already raised in international literature as a potentiality one decade ago (highlighted by me, as it happens) under the name of the 'comparative judicial mind', aiming at mutually contrasted comparative examinations – firstly, through the accepted judicial ways of thinking and argumentation (or, in English, canons); secondly, through legal techniques applied[231] – of the factors that may allow legal statements with similar conclusions to be drawn from dissimilar laws, on the one hand, and assure (in most of them) the adaptation to changing conditions at all times, by responding reliably and flexibly to new challenges through a practical development of the law, on the other. At the same time, this same examination may afford ontological reconstruction as well, expecting to inform on the very nature of law: how and with what technical instruments (in addition to the posited legal text) will the actors' own professional values, skills, conceptual sensitivity, paths, lawyerly ideology (etc.) contribute to the actual shaping of the specific culture of the given legal order and its preservation and renewal through changes of times.

Some research of a comparable scope took place nearly one century ago, in the decades between the inquiries of François Gény in France (around the turn of the 19th and 20th centuries) and of Jean Dabin in Belgium (between the two World Wars), approaching law in an ontological perspective (describing the construction of its proper existence) through a focus on conceptual patterns, transformations and jumps – that is, techniques applied – in the actual process of its application.[232] Present-day trends in hermeneutics, legal semantics and pragmatics (with language taken as metaphor, as symbolism, as medium of post-Wittgensteinian speech-acts in the background) all point to the promise and necessity of an examination of such kind. However, up to now, nothing of the kind has taken place in the law. For it is only the United Kingdom and some sporadic irradiations where attempts can at all

229. As of a landmark value, *see* H.P. Glenn, *Legal Traditions of the World. Sustainable Diversity in Law* (Oxford University Press, Oxford/New York, 2000).

230. K. Zweigert, *'Solutions identiques par des voies différentes (Quelques observations en matières de droit comparé)'* (1966) XVIII *Revue internationale de Droit comparé* 5.

231. Cf., e.g., C. Varga and J. Szájer, *'Fiction', 'Présomption'* and *'Technique juridique',* in A.-J. Arnaud (ed.), *Dictionnaire encyclopédique de Théorie et de Sociologie du Droit* (2e éd. corrigée et augmentée, Librairie Générale de Droit et de Jurisprudence, Paris, 1993), pp. 259–261, 470–472, and 605–607, respectively, as well as M. Maczonkay, 'Pragmatic Legal Reasoning and Its Antecedents in Roman Law', in Hamza (ed.), above, pp. 169–186.

232. Cf., e.g., C. Varga, 'Doctrine and Technique in Law', in *www.univie.ac.at/-RI/IRIS2004/Arbeitspapierln/Publikationsfreigabe/Csaba_Phil/Csaba_Phil.doc.*

be encountered at offering explanations in terms of legal semiotics or as based on a comparison of, e.g., English and German juristic methods.

In so far as we reflect such methodological insights onto the present facts of the European Union and the conceivable perspectives of globalization taking place, research should cover the effects of the law commonly codified by the Union, its judicial and administrative application by the common fora of the Union with repercussions on the chances of survival of the historical particularities and relative autonomy (differing conceptuality, structure, problem-sensitivity, technical store of instruments, as well as skills) of individual national legal systems.

However, formulated from the opposite direction, all this is to raise the issue whether or not, and in what sense and extent, the law of the European Union is going to be (i.e., to become or to embody) some independent sui generis formation or, otherwise speaking, how far its making, together with its administrative usage and judicial application, will be a scene, medium and issue of competition of the (above all) English, French and German internal (domestic) traditions (each of them in a constant fight to expand their respective influences) for a genuinely international (i.e., EU-level) recognition. This is a complex issue in itself, with a number a topics to be treated. Firstly, there is the issue of whether the parallelity between the so far separate mentalities of continental civil law and Anglo-Saxon common law will be preserved or they will rather intermingle with one another eventually. Secondly, the patterns, techniques and chances of the common European law's codification. Thirdly, the patterns actually followed in the jurisprudence of the common judicial fora of the European Community. And, in general, the mapping of the legal traditions which make up the European Union, with the description of their respective weighs and interrelationships as well as of the chances of their survival despite their continuous transformation and metabolism (with special regards to their respective sources of the law, conceptuality and techniques, as well as judicial methodology).

There is a particular stress on being sensitive enough while responding to the concern of sustainability, that is, the prospects of an alternative between remaining roughly the same in mutual interaction or assimilating incessantly to the rest (with the issue of the pressure and/or predomination by certain actors) and of what role some historically-evolved traditions may eventually play in forming this, by defining its basic directions and (besides adaptation) becoming a factor of stability and strength at any time.

Reverting to the initial ideas, those issues that may need further elaboration in the near future do include, primarily, the definition of the law's identity and, thereby, also of the criterion of juridicity by either the exclusivity of some or the plurality of all its aspects and contexts (above all, whether the understanding of law and juridicity is being reduced to some posited text or becomes dissolved in the facts of legal practice, the so-called 'judicial event'), and, arising from these, also the explanation of the role law-applying may play in terms of either creative responsibility or executory mechanicity, with the variety of factors in the making and eventual shaping of the law, the relative autonomy of their paths, as well as,

simultaneously, the doctrinal frames and relatively open chances of legal development, with the significance attributed to the law in resolution of social conflicts involved.

(4) *Outlook II: The paradigmatic enigma of the transition to rule of law.* The seemingly temporary topicality of the problems indicated above[233] is in the last analysis also telling about the very existence and ultimate meaning and self-

233. For the related problems, *see* comprehensively, C. Varga, *Transition to Rule of Law. On the Democratic Transformation in Hungary* (Philosophiae Iuris, Budapest, 1995); and, partially, C. Varga, 'Transformation to Rule of Law from No-law: Societal Contexture of the Democratic Transition in Central and Eastern Europe' (1993) 8/2 *Connecticut Journal of International Law* 2 487; C. Varga, 'The Building up of a Rule of Law Structure on the Ruins of a Regime Based upon the Denial of Law in Central Europe', in L.E. Kotsiris (ed.), *Law at the Turn of the Twentieth Century* (Sakkoulas, Thessaloniki, 1994), pp. 219–239; C. Varga, 'The Transformation of Legal Culture in the Central European Transition', in *Rättsliga kulturer och normativa strukturer* Nordiskt Rättssociologiskt Forum, 25–27 augusti 1995 (Lund, 1995), pp. 1–18; C. Varga, 'Constitutionalism, the Rule of Law, and the Challenge of Transition', in I. Grudzinska Gross (ed.), *Constitutionalism & Politics* (Slovak Committee of the European Cultural Foundation, Bratislava, 1994), pp. 151–154; C. Varga, 'Local Legal Tradition in Question', in V. Dvoráková and E. Vorácek (eds), *The Legacy of the Past* (University of Economics Department of Political Science, Prague, 1994), pp. 315–325; C. Varga, 'Complexity of the Challenge Facing Central and Eastern Europe', in Gessner, Hoeland and Varga (eds), above, pp. 415–429; and C. Varga, *'Nedelitel'né právo a právna štátnost* (1992) 75 *Právny obzor* 92. *See also* P. Paczolay, 'Constitutional Transition and Legal Continuity' (1993) 8/2 *Connecticut Journal of International Law* 559; A. Sajó, 'Legal Socialization in Hungary and the Transition from State Socialism' (1994) 14 *Comparative Social Research* 97; A. Sajó, 'The Limited Impact of Communist and Democratic Socio-legal Experiences' (2000) 41 *Acta Juridica* 119; and A. Sajó, 'Pluralism in Post-communist Law' (2003) 44 *Acta Juridica* 1; as well as Z. Péteri (ed.), *Legal Problems of Transition in Hungary*: Hungarian National Reports Submitted to the Fifteenth International Congress of Comparative Law (Bristol, 26 July – 1 August 1998) (MTA Jogtudományi Intézete: Working Papers 11, Budapest, 1998).

For the ideal of the rule of law, *see* in (1995) 26 *Rechtstheorie* 3: P. Paczolay, 'Constitutional and Legal Change during the Transition from Socialism to Democracy in Hungary', in Krawietz, Samu and Szilágyi (eds), above, pp. 265–290; M. Szabó, 'New Constitutionalism Based on an Old Notion: The Rule of Law in the Mirror of the Decisions of the Hungarian Constitutional Court', in Krawietz, Samu and Szilágyi (eds), above, pp. 291–303; P. Szilágyi, *'Verfassungsstaatlichkeit und Veränderung des Rechts in Ungarn',* in Krawietz, Samu and Szilágyi (eds), above, pp. 305–328; A. Tamás, 'Constitutionalism and Changing Law', in Krawietz, Samu and Szilágyi (eds), above, pp. 329–338; and M. Samu, *'Verwirklichung der Volksmacht im Rechtsstaat'*, in Krawietz, Samu and Szilágyi (eds), above, pp. 349–363; as well as M. Szabó, 'Transition into the Rule of Law: Deconstruction, Reconstruction, Construction', in Krawietz and Varga (eds), above, pp. 283–295; and P. Szilágyi, 'The System of Sources of Law and the Rule of Law in the Flow of the Change of Regimes', in Krawietz and Varga (eds), above, pp. 397–410; also A. Sajó, 'New Legalism in East Central Europe: Law as an Instrument of Social Transformation' (1990) 17 *Journal of Law and Society* 329.; A. Sajó, 'Rule by Law in East-Central Europe: Is the Emperor's New Suit a Straightjacket?', in D. Greenberg *et al.* (eds), *Constitutionalism & Democracy. Transitions in the Contemporary World* (Oxford University Press, Oxford, 1993), pp. 321–335; and A. Sajó, 'On Old and New Battles: Obstacles to the Rule of Law in Eastern Europe' (1995) 22 *Journal of Law and Society* 97; as well as M. Szabó, 'The ''Rule of Law'' and the ''Socialist Legality''' (1994) 9 *Publ. Univ. Miskolc*: *Sectio juridica et politica* 195.

identity of law. It is to be remembered that dictatorships born in Europe and the Far East between the two World Wars (with the regime of national socialism in the lead) raised already somewhat similar questions. However, these last ones may have arisen mostly from doctrinal interest. For the regimes concerned were either terminated by war victory, only to be replaced by a new regime due to intervention by the authorities of military occupation rather than to democracy only lately and gradually superimposed (in Germany, Italy and Japan), or they expired in a peacefully old age, bearing their own democratic transcendence in themselves, nurtured by a kind of underlying social concord (Spain, Portugal).

In contrast to instances from the inter-war period, the collapse of communism took place everywhere in the region imbued with aspirations to a democratic rule of law and with the determination for developing also its cultural medium – even if its low intensity, counter-run by bygone habits and burdened with growing uncertainty (especially intensified eastwards), resulted in the partial revival of centuries-old local traditions (reactivating, in the east proper, also Byzantine and Mongolian roots). All in all, from a lawyer's perspective, this was not only the encounter of value-negation (from the aspect of a democratic constitutional arrangement) with a (new) value-assertion but this also amalgamated otherwise antagonistic positions, in terms of which the democratic change of regimes was directly prepared by the preceding dictatorial system while the new democratic attitude to the criminal past also had to be defined partly by the former (dictatorial) system. Because the new cannot raise itself out of nothing. Even if it has plenty of external patterns to draw from, it has to define itself – its ethics, its initiatives and the latter's ways and boundaries – in relationship to its own predecessor. In the strain of the sine qua non of judging the past while taking a stand between this age-old pair of opposites of any western legal philosophizing, justice and legality, it cannot avoid the necessity of deciding either for one of them or for a compromise of balancing in-between them, which are mutually excluding in face value yet in fact complementary sides, serving and thereby also reciprocally presupposing one another. For, as we know, past law also had had a kind of positivity, on the one hand, while the transition from it was required exactly by the affirmation of democratic values, inescapably reclaiming for judging and condemning the same past, on the other. Then again, we can see that inequitable, unfair, moreover, overtly unworkable responses can and could be given to this complex intellectual and moral challenge, in so far as one of those particular positions is absolutized (in a way unsuitable to verification, because withstanding interpretability in a logic of problem-solving but solely

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For its inter-relations to constitutionality, *see* A. Bragyova, 'Constitutional Review and Democracy' (1999) 40 *Acta Juridica* 125, as well as M. Bódig, 'Legislation and the Limits of Law', in Krawietz and Varga (eds), above, pp. 141–150; T. Győrfi, 'The Constitutional Limits of Legislative Power', in Krawietz and Varga (eds), above, pp. 355–368; and F. Hörcher, 'The Question of the Limitation of the State by the Law: A Comparison of Kelsen's and Hayek's Approach', in Krawietz and Varga (eds), above, pp. 369–380. For a critical assessment, cf., A. Sajó, 'Universal Rights, Missionaries, Converts and "Local Savages"' (1997) 6 *East European Constitutional Review* 44; and A. Sajó, *'Was macht der Westen falsch bei der Unterstützung der Rechtsreformen in Osteuropa?'* (1997) *Kritische Justiz* 496.

accepting it in a logic of demonstration, that is, in the very formal, artificially constructed world of the law, where any conclusion and its opposite with a variety of in-between compromise solutions can be upheld, if met – by chance – by the final legal force). And this practical outcome of rejecting the very chance of facing with the past in law hardly indicates anything else than (in want of the above material comprehension) the one-sidedness of some inequitable blindness, issuing from the primitive condition in which the question itself was in fact posed polarizingly, to the exclusive alternative of taking a stand between some either/or.[234]

What follows as a symbolic message from all the above, from the necessary failure of seeking merely formal solutions, is just the need for reconsidering law by recognizing that its positivation cannot be more than a surface phenomenon exclusively. It becomes conspicuous only in borderline situations (away from everyday routine) that anyone positing it posits it based on definite value-choices. And such value-choices refer back to society as to the source of everything societal, as to its hermeneutical medium, and also as to the subject owing to whom the law gets actualized and reactualized, conventionalized and reconventionalized. Obviously, any agent is in principle free to deviate from values generally followed, moreover, to effect an operation bound to failure. Any choice can indeed be done by free will. The only option excluded is to claim to have been acting under some external constraint. For, in the final analysis, the only thing the law has is its own formality, that is, its being objectivated in/as a text. Accordingly, the law itself has no coercive force either, as it does not assert itself through any mechanicity, with no alternative offered. Or, this is to say that the agent is free to choose any solution he finds conclusive (and can turn to be successful if there is no legal objection to it and/or if the society's legal institutionalization will not reject it), however, his responsibility is as undivided as if he had taken any other choice. It usually becomes clear in borderline situations that in respect of the requirements of the law's formal positivity, on the one hand, and the (final and instrumental) values to be protected in and by the law, on the other, it is not strain or tension that is at stake (and even less a case of contradiction) but – putting it briefly – the sensitive relationship between goals and means.

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234. Focussed on just one but crucial segment of the problem, cf., e.g., C. Varga (ed.), *Coming to Terms with the Past under the Rule of Law. The German and the Czech Models* (Windsor Klub, Budapest, 1994). As to details, A. Bragyova, 'Legality and ex post facto Political Justice' (1991) 32 *Acta Juridica* 179; and A. Bragyova, 'Constitutional Law as Limit to Legal Change: The Constitutional Court and the Backward-looking Laws in Hungary', Paper presented at *The Role of Judicial Review Bodies in Countries in Transition* (International Symposium, Nagoya University Centre for Asian Legal Exchange, 29–30 July, 2005), pp. 1–11; A. Sajó 'Legal Consequences of Past Collective Wrongdoing after Communism' (2005) *German Law Journal* 425; C. Varga, 'Do We Have the Right to Judge the Past? Philosophy of Law Considerations for a Period of Transition' (1992) 23 *Rechtstheorie* 396; C. Varga, 'The Dilemma of Enforcing the Law', in A. Aarnio *et al.* (eds), *Rechtsnorm und Rechtswirklichkeit. Festschrift für Werner Krawietz zum 60. Geburtstag* (Duncker & Humblot, Berlin, 1993), pp. 427–435; Á. Zsidai, 'Systemwandel und Beseitigung von Ungerechtigkeiten: Politik im Grenzbereich von Recht und Moral', in Krawietz, Samu and Szilágyi (eds), above, pp. 493–506; and Á. Zsidai, 'Minerva's Wingless Owl: Thoughts about the Transparency Investigation in Hungary and the Change of Function of the Historical Office', in Krawietz and Varga (eds), above, pp. 341–352.

In such relationships, there may be goals in a merely instrumental role as compared to ultimate material goals, but differentiations like this can only stratify the instrumental side.[235] Consequently, call-words (ideals and values) of our culture, homogenized under the aegis of law in everyday social heterogeneity, like democratism, human rights, constitutionality, or legality – well, all these are to be interpreted within such a framework, even if some of them are placed at the highest level(s); otherwise speaking, even if they seem to be ultimate goals viewed from lower levels of institutionalization, while they obviously cannot claim to have anything more than the role of serving (viewed from the aspect of the ultimate material goals to be achieved). Henceforth, their suitability in their concrete actuality can quite well be questioned and alternative solutions and new balances within their circles can equally be searched for.[236]

Or, by summing all this up,[237] we can tell scarcely more: No matter how carefully we tend and protect the treasure we used to be deprived of during the imposed regime of socialism, that is, the prestige of law, after all we have to realize that all this – together with our own legal culture in general – is only destined for man. It must not serve itself and must not turn into anti-human fetishization either.

Nevertheless, the above claim does involve its reverse as well, because the very fact of presenting ultimate values in the context of goals and means raises necessarily the theoretical dilemma of whether or not our ideals are universal indeed or depend on the here and now at any time, which, historically speaking, can only be particular and concrete.[238] All the issue is now further coloured by the phenomenon of globalism, obviously insisting on the ways and means of the universal expansion of the American pattern of democracy (complemented to by the ideology of human rights and the rights language) to be widely accepted.[239] Evidently, this is the key issue of the overall legal transfers. For the ever growing

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235. Cf., e.g., C. Varga, *'Buts et moyens en droit',* in A. Loiodice and M. Vari (eds), *Giovanni Paolo II. Le vie della giustizia: Itinerari per il terzo millennio* (Omaggio dei giuristi a Sua Santità nel XXV anno di pontificato) (Bardi Editore – Libreria Editrice Vaticana, Roma, 2003), pp. 71–75; and C. Varga, 'Goals and Means in Law' in (2005) *Jurisprudencija* (Vilnius) No. 68(60), 5–10, and <http://www.thomasinternational.org/–projects/step/conferences/20050712Bp/varga1.htm>; as well as C. Varga, 'Law, Ethics, Economy: Independent Paths or Shared Ways?' <http://www.thomasinternational.org/projects/step/conferences/20050920barcelona/varga1.htm>

236. Cf., e.g., C. Varga 'Rule of Law – At the Crossroads of Challenges' (2005) I *Iustum, Aequum, Salutare* 73.

237. C. Varga, 'Rule of Law between the Scylla of Imported Patterns and the Charybdis of Actual Realisations (The Experience of Lithuania)' (2005) 46 *Acta Juridica* 1; C. Varga, 'Transition to Rule of Law: A Philosophical Assessment of Challenges and Realisations in a Historico-comparative Perspective', in Sadakata (ed.), above, pp. 185–214; and C. Varga, 'Legal Renovation through Constitutional Judiciary?', Sadakata (ed.), *ibid.* pp. 287–312.

238. In its first formulation, cf., e.g., C. Varga, *'Le droit en tant qu'histoire',* in Lukic (ed.), above, pp. 13–24.

239. E.g., A. Sajó (ed.), *Western Rights? Post-communist Application* (Kluwer Law International, The Hague, 1996); and A. Sajó (ed.), *Human Rights with Modesty: The Problem of Universalism* (Martinus Nijhoff Publishers, Leiden/Boston, 2004).

catalogue of failures accompanying them worldwide[240] seems to indicate something of which even our legal sociology of the late socialist period was quite aware. Notably, there are no entities in law reducible to mere formalities as replaceable freely, at will. For all appearances notwithstanding, anything formalized in law is at the same time contextualized in the legal system, conditioned by a given medium of interpretation, with meanings attributed to in the given culture. And it is for this very reason that a purely technical term borrowed from an external system can turn to be as alien and destructive in a medium unfamiliar to it[241] as an understanding and arrangement of democracy exported into some differing historical context and cultural ideal of order.

(5) *Incongruity in practice.* The medium conditioning theoretical legal thought is necessarily shaped by the field of studies in positive law that on their turn dialogize with legal practice on a day-to-day basis. However, transition to the rule of law, once having promised an easy victory in Hungary (to be fully achieveable through just reiterated magic formulas in theory and practice) has by now, viewed from inside the European Union, become the subject of harsh external criticism,[242] as all we in Central Europe are being called to account for the want of the paradigmatic change in legal practice that has been successfully implemented in Western Europe since the Second World War, that is, for the lack of shifts of emphasis from rules to principles, of the practical dissolution of the law's positivity – or, briefly, of all the developments whose recognition and also theoretical implementation with us are for the time being embryonic at the most.

For that what had once solidified as ideals for our 'actually existing system of socialism' could hardly be more than a Russian vision on Western Europe, as seen for instance by Lenin in his emigration (searching for its improvement by drawing back to the Byzantine and Mongolian tradition of a well-centralized state) and turned into brutal reality by Stalin's regime.

All in all, although the official slogans of socialist legality and its theoretically refined normativism discredited themselves for the Hungarian legal profession, nevertheless these remained the very pattern which even the bravest actors of that era dared only to criticize, that is – and all that notwithstanding – these were the only ones available to provide a basis even for any re-organization or theoretical renewal whatsoever.

So, that what had taken place in Western Europe following the Second World War might be perceived by the contemporary legal profession (with its most

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240. Cf., e.g., C. Varga, 'Transfers of Law: A Conceptual Analysis', in Sadakata (ed.), above, pp. 21–41.

241. Cf., e.g., C. Varga, 'Structures in Legal Systems: Artificiality, Relativity, and Interdependency of Structuring Elements in a Practical (Hermeneutical) Context' (2002) 43 *Acta Juridica* 219; and reproduced in O. Moréteau and J. Vanderlinden (eds), *La structure des systèmes juridiques* (Collection des rapports, XVI[e] Congrès de l'Académie internationale de droit comparé, Brisbane, 2002) (Bruylant, Bruxelles, 2003), pp. 291–300.

242. In a most powerful overview, cf., e.g., Z. Kühn, 'Worlds Apart: Western and Central European Judicial Culture at the Onset of the European Enlargement' (2004) 52 *American Journal of Comparative Law* 531.

enlightened representatives included) here with a shudder at the most, even with bewilderment and – despite the geographical proximity – only from a great and unbridgeable distance (as symbolized by the Iron Curtain). Or, the role of principles, the fertilizing potential that can be drawn from general clauses, the strength of definitions that can be developed out of the nature of things and, above all, the underlying democratic and responsive human attitude could hardly accumulate here to a full sense of professional culture in local minds.

The suspicion inspired by such absurd and at times expressly destructive pernicious slogans as the 'disintegration of imperialism', the 'escalating crisis of legality', the 'legal uncertainty' having allegedly become predominant in Anglo-Saxon case law and statements on 'the ruling class withdrawing its rule itself' (etc.), must have prevented any attempt to see clearly from becoming besmirched. At the same time, what the regime of socialism imposed upon the region as its adequate legal arrangement was hardly more than the European ideal (by then already shaken and collapsed) of the early 20th century. Moreover, what we are mostly just about to restore from our own past as memories of civic ideals is exactly what was left behind (convincingly as its pre-history, that is, once and for all) by Western Europe six decades ago, when it started to recommence after the Second World War – independently of whether or not we are to remember it with nostalgic esteem. So, our Western European and Atlantic companions in the EU and NATO may have good reasons to realize that we, recently-joined full members of the Union – Poland, Czech Republic and Hungary (etc.) – walk about at the fora established in Luxembourg, Strasbourg and Brussels in a rather strange attire, one they may remember only from the times preceding their grandparents' age.

(6) *Perspectives.* Our ways of cultivating law by erecting theories are rich in approaches and views, trends and methods, and abound in debates and outcomes. Hungarian legal theorizing is rather open to the outside world but is more receptive in adopting Anglo-American patterns than duly reflecting on the developments of either continental companions in the Union or the neighbouring Central and Eastern European region.[243] Thus, for example, it still fails to realize that actual motions of the law both in the Union[244] and as covered by globalization

243. The overly significant role played in science organization by the Hungarian Academy of Sciences and its Institute for Legal Studies during socialism may have fulfilled functions that can scarcely be exploited now in a democracy arising from the diffuse eventualities of spontaneity. For these could once include an established framework for practical education preparing for scientific research, extensive and systematic legal bibliographizing, profound and regular critical reviewing of domestic and foreign legal literature, presentation of Hungarian legal scholarship abroad with a comprehensive international academic co-operation, regarding which the network of contacts and partnerships in our neighbourhood and wider region as well was almost perfect and smoothly working. Nevertheless, compared to the level of international integration at the time, even our Western European and Atlantic presence might have been more powerful than today, in the epoch of globalization, when international representation unorganized is almost equalling to national interests relinquished.

244. E.g., as preliminary studies, M. Szabó, 'Tradition of a Common European Legal Culture', in Čipkar (ed.), above, pp. 192–195; C. Varga, 'European Integration and the Uniqueness of National Legal Cultures', in B. de Witte and C. Forder (eds), *The Common Law of Europe and*

trends[245] do have and need to have own particular legal theories. It also fails to realize that from now on our foreseeable future depends less on merely own will than on the balanced encounter of our domestic law and legal vision with their European surroundings.[246] The future of legal positivism (with our image of the law's self-identity included) depends on the relative strength of trends prevailing within the Union and on our ability to influence them. Or, the genuine place our law, jurisprudence and theoretical legal thought may occupy under the sun, will henceforth be determined by our actual performance in the Union. And, in a Union-level co-operation, the issue of who will have proven to be great or small will exclusively depend on their respective ability to exert a pressure in or a decisive effect on a game, in which all players have mostly equal access proving their conclusive force.

Or, there is an elementary interest in developing theory, the more so because what will eventually certainly remain is the human factor with the chance of mastering the law by developing deeper insights and more responsive commitment to values that may inspire man to make the most out of the instruments at his disposal.

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the Future of Legal Education (METRO, Kluwer Law, Deventer, 1992), pp. 721–733; and C. Varga, 'On the European Identity in Law', in Gessner, Hoeland and Varga (eds), above, pp. 3–3; A. Visegrády, 'Some Problems of the Judge-made Law in Central-Eastern Europe' in *Tanulmányok Benedek Ferenc tiszteletére* (Studies in Honour of Ferenc Benedek), (Studia Iuridica auctoritate Universitatis Pécs publicata 123, Pécs, 1996), pp. 303–309; A. Visegrády, 'Legal Cultures in the European Union' (2001) 42 *Acta Juridica* 203; and A. Visegrády, 'Political and Legal Cultures of the New Democracies of Central and Eastern Europe', in S. Milacic (ed.), *La réinvention de l'État* (Bruylant, Bruxelles, 2003), pp. 123–139.

245. E.g., B. Fekete 'The Fragmented Legal Vocabulary of Globalisation' (2004) 45 *Acta Juridica* 323.

246. E.g., C. Varga 'Legal Scholarship at the Threshold of a New Millennium (For Transition to Rule of Law in the Central and Eastern European Region)' (2001) 42 *Acta Juridica* 181, reproduced in W. Krawietz and C. Varga (eds), above, pp. 515–531.