The Revival of Comparative Law in a Socialist Country
The Impact of Imre Szabó and Gyula Eörsi on the Development of Hungarian Comparative Law[*]

Balázs Fekete[**]

Abstract

This article discusses the revival of comparative law in Hungarian Socialist jurisprudence. Prior to World War II, the development of comparative law generally had followed international trends; however, it was disrupted at both a personal and an institutional level at the end of the 1940s due to the Marxist-Leninist turn of legal thinking that accompanied the introduction of a Communist regime in the country. Nonetheless, this rejection of comparative law was gradually replaced by a more open attitude that strongly supported participation in the international comparative-law movement from the 1960s. Imre Szabó and Gyula Eörsi played a prominent role in this transformation. They legitimized the use of comparative methods in socialist jurisprudence and, also, created a plausible conceptual framework for Socialist comparative law.

Key words

classification of legal systems, comparative law, history of comparative law, legal theory

1. Introduction: Hungarian Comparative Law in the First Half of the Twentieth Century

Comparative law has played a role in Hungarian jurisprudence since the second half of the nineteenth century. Henry Sumner Maine's *Ancient Law*, for instance, already was translated into Hungarian by Ágost Pulszky in 1875.[1] Pulszky also wrote a lengthy commentary on Maine's work in which—having overviewed the relevant English, French, and German literature—he provided a detailed explanation of both English legal concepts and recent academic developments for Hungarian readers.

The 1900 Parisian International Congress of Comparative Law fundamentally transformed comparative law. There, Édouard Lambert and Raymond Saleilles had suggested that comparative-law thinking had to focus on the laws of so-called 'civilized nations' as well as on private-law problems instead of producing a comprehensive historical study—as had been carried out by Maine or Josef Kohler.[2] As a consequence, Hungarian comparatists also

[*] This article was prepared with the support of a grant from the Foundation Pro Renovanda Cultura Hungariae. An earlier Hungarian version has been published in the Liber Amicorum dedicated to Professor Vanda Lamm. See Balázs Fekete, "A jogösszehasonlítás kezdetei a szocialista jogtudományban", in Tamás Nótári and Gábor Török (eds.), *Prudentia Iuris Gentium Potestate. Ünnepi tanulmányok Lamm Vanda tiszteletére* (MTA-JTI, Budapest, 2011), 133-144.

[**] LLM (K.U. Leuven), Phd., lecturer in law, Pázmány Péter Catholic University; research fellow, Hungarian Academy of Sciences.

[1] Ágost Pulszky, *A jog őskora* (Akadémia, Budapest, 1875, translated from *Ancient Law*, John Murray, London, 1861).

[2] See Édouard Lambert, "Conception générale et définition de la science du droit comparé, sa méthode, son histoire; le droit comparé et l'enseigment du droit", in *Congrès international de droit comparé. Tenu á Paris du 31 juillet au 4 août 1900. Procés-verbaux et documents* (LGDJ, Paris, 1905), 26-60; and Raymond Saleilles,

changed the scope of their research from historical problems to questions of comparative civil law. The leading scholar of this era was unquestionably István (Étienne) Szászy. He published widely in several foreign languages throughout his career[3] he also worked together with Lambert as an arbitrator in Egypt at the end of the 1940s.[4] However, World War II and the resulting political transformation dramatically changed the direction of this development.

2. The Establishment of Modern Comparative Law in the Socialist Hungary

The Hungarian Workers' Party, (Magyar Dolgozók Pártja) led by Mátyás Rákosi, seized all political power in 1949. This comprehensive change was symbolically crowned by the enactment of a new constitution in the same year.[5] This, however, marked not just the beginning of a new era in Hungarian politics but, also, seriously affected other spheres of life. In the field of legal and political theory, Socialist professors began concentrating on the establishment of a true Marxist legal theory in conjunction with leading an ideological fight against the emblematic authors of the earlier non-Socialist era.[6] This ideological fight was fraught with theoretical—though also frequently personal—debates that were devoted to the creation of an official, authoritative Marxist-Leninist legal and state theory and to proving the superiority of this new approach.

This intellectual atmosphere was not favorable to the continuation of earlier initiatives in the field of comparative law, and the new political regime also took steps to put an end to the study of comparative law in Hungary. For example, the Comparative Law and International Private Law Department—which had been created in 1945 as part of the Law Faculty at the University of Budapest—was closed down in 1951[7] and the department head, the internationally known comparatist, Szászy, was forced to retire in 1950.[8]

"Conception et objet de la science du droit comparé", in *Congrès international de droit comparé. Tenu á Paris du 31 juillet au 4 août 1900. Procés-verbaux et documents* (LGDJ, Paris, 1905), 167-189.

[3] See, for example, Stefano di Szászy, *Il diritto internazionale privato nella legislazione e nella giurisprudenza ungherese* (Cedam, Padova, 1934); Étienne de Szászy, *Les Conflicts de lois dans le temps: théorie des droits privés* (Sirey, Paris, 1935); and Étienne de Szászy, *Le statut personnel des non-musulmans en Egypte et sa réforme* (Imprimerie nationale, Cairo, 1939).

[4] See Lambert's introduction to the comparative international private-law manual of Szászy. Étienne de Szászy, *Droit international privé comparé. Traité de legislation comparé avec reference spéciale au droit égyptien ét musulman* (Libraire judiciaire, Récueil Sirey, Alexandrie, Paris, 1940).

[5] "A magyar népköztársaság alkotmánya" (18 August 1949) Act No.XX, *Magyar Közlöny: Törvények és rendeletek tára* (20 August 1949) No.175.

[6] See József Szabadfalvi, "Viszony az elődökhöz", 45(4) *Világosság* (2004), 5-22, at 6-10 (concerning Imre Szabó, see 10-15). The proceedings of a discussion, held on 29 January 1955, of Szabó's book *A burzsoá állam- és jogbölcselet Magyarországon* (The Bourgeois Political and Legal Theory in Hungary) also is an interesting document from this era, especially the chapter criticizing Gyula Moór, the leading non-Marxist legal philosopher of the interwar period. See "A Horty-fasizmus állam- és jogbölcselete. Az ELTE-ÁJK tanácsülésén 1955. január 29-én rendezett vita Szabó Imre készülő könyvének IX. Fejezetéről", proceedings of the discussion held on 29 January 1955 about Chapter 9 of Szabó's book, available at <http://jesz.ajk.elte.hu/varga19.html#_ftn5>.

[7] István Sinkovics (ed.), *Az Eötvös Loránd Tudományegyetem története (1945-1970)* (ELTE, Budapest, 1970), 329-330. For a detailed discussion of the first years of the post-World War II period at the Law Faculty of the Univeristy of Budapest, see Gábor Schweitzer, "A 'Pázmány'-tól az 'Eötvös'-ig. Adalélok a budapesti jogi fakultás történetéhez", in *id., A katedrán innen és túl* (Publikon Kiadó, Pécs, 2011), 185-207.

[8] Although Szászy was forced to leave academic life, he was able to continue his work by publishing scholarly monographs in foreign languages from the 1960s. See, for example, István Szászy, *International Labour Law: A Comparative Survey of the Conflicting Rules Affecting Labour Legislation and Regulations* (Akadémiai Kiadó, Budapest, 1968). On the pre-World War II history of Hungarian comparative law, see Balázs Fekete, "Két vázlat a magyar összehasonlító jogi gondolkodás tablójához", 46(1-2) *Állam- és Jogtudomány* (2005), 143-169.

Consequently, at the start of the 1950s, the former tradition of comparative law—as established by István Szászy and Miklós Ujlaki[9]—was disrupted at both the institutional and the personal level. It appeared that the newly emerging people's democracy did not need comparative law at all. The general scholarly interest in foreign law was being satisfied by annotations and review articles about Soviet law, and the academic interest in comparative law simply disappeared from the developing Marxist-Leninist legal literature.[10]

2.1. Peaceful Coexistence and Legal Propaganda: The Socialist Legitimization of Comparative Law

Following the first ten years of Socialism, the strict rejection of comparative law in the Eastern Bloc began to gradually diminish.[11] The first sign of this process was the establishment in 1955 of the Belgrade Institute of Comparative Law in Yugoslavia under the leadership of the rector of Belgrade University, Borislav T. Blagojevic.[12] The main task of this institute was to collect data and information about foreign law, as well as to carry out comparative research on various fields of law. It also published monographs of a comparative nature dedicated to special legal problems as well as Serbian and international legal journals.[13] In addition, Marxist scholars also began publishing articles discussing the Marxist perspectives of comparative law and examining opportunities for carrying out independent scholarship on Socialist comparative law at the beginning of the 1960s.[14] In general, these papers set forth a prejudiced (from the point of view that they declared the superiority of Socialist legal institutions over Western institutions) form of comparative law, and their authors also hoped that the use of a comparative method would lead to the partial convergence of Socialist legal systems in the future.[15]

---

[9] Ujlaki's main research activity was the comparative analysis of the legal development of neighboring countries. See Miklós Újlaki, *A Magyar magánjog módosulásai Csehszlovákiában* (Grill Károly Könyvkiadóvállalata Budapest, 1931); *id*. *Az utódállamok jogegységesítési törekvései és a magyar magánjog* (Városi Nyomda, Szeged, 1936).

[10] Imre Szabó, "Az összehasonlító jog Magyarországon", in Imre Szabó (ed.), *Szocialista jogelmélet – népi demokratikus jog* (KJK, Budapest, 1967), 196-218, at 216.

[11] The reasons for the Soviet rejection of comparative law were summarized and documented by Constantinesco. See Léontin-Jean Constantinesco, *Traité de droit comparé III. La science des droits comparés* (Economica, Paris, 1983), 139-141. As an illustration of this general rejection, one could mention that one of the leading personalities of Socialist comparative law, Viktor Knapp, from Prague, explicitly rejected Dietrich André Loeber's theses on the possible comparability of Socialist and Western legal systems. See: Dietrich André Loeber, "Rechtsvergleichung zwischen Ländern mit verschiedener Wirtschaftordnung", 26 Rabels Zeitschrift (1961), 201-229. [Do you have a citation to this work of Professor Loeber in your manuscript? If not, please insert one for the benefit of your eager reader.]. Despite this, he later rejected his original position and accepted that they were comparable. See Ulrich Drobnig, "Jogösszehasonlítás különböző gazdasági rendszerek jogrendje között", in Balázs Fekete (ed.), *A jogösszehasonlítás elmélete* (Szent István Társulat, Budapest, 2006), 159-166, at 160.

[12] Director Blagojevic published widely both in Serbian and in foreign languages. Most of his major international publications discussed important aspects of his era's comparative-law scholarship. See, for example, Borislav Blagojevic, *Legal Aspects of New International Economic Order* (Belgrade Institute of Comparative Law, Belgrade, 1979); *id.*, *La méthode comparative juridique* (CEDAM, Padova, 1973); or Borislav Blagojevic *et al.*, *Introduction aux droits socialistes* (Akadémiai Kiadó, Budapest, 1971).

[13] Up until the transition from Socialism that got under way in 1989, no fewer than 120 Serbian monographs had been published by the institute on various legal problems. For more about the institute, see its homepage at <http://www.comparativelaw.info/indexe.html>.

[14] Szabó cites the articles of L. R. Bystricky and M. Weyl and R. Weyl published in 1961 and 1962. These authors studied several options for a Marxist approach to comparative law in Szabó's view. Imre Szabó, "Az összehasonlító jogtudomány", in Imre Szabó (ed.), *Kritikai tanulmányok a modern polgári jogelméletről* (Akadémiai Kiadó, Budapest, 1963), 41-88, at 74.

[15] *Ibid*.

As a result, a rather limited debate about the possible roles of comparative law emerged in the Socialist bloc during the 1960s, and articles by Hungarian scholars—Imre Szabó and Gyula Eörsi—were published in this intellectual environment. One should note from the outset, however, that these papers represented a rather different approach compared to the general Eastern one that comprehensively rejected the Western—the so-called bourgeois in Socialist terms—heritage of comparative-law thinking. These scholarly papers and their positive attitude toward comparative law—which even encouraged active participation in international initiatives of a comparative-law nature—played a prominent role in changing the Socialist Bloc's attitude to the field of comparative law.[16]

Szabó and Eörsi tried to legitimize the application of comparative methods and the participation of Hungarian scholars in international academic life in a variety of ways. This legitimization was necessary since they were attempting to integrate into Hungarian academic life a field of study that had strong and manifest Western roots—in addition to being positioned very far from the closed and ideologically determined Marxist-Leninist idea of scholarship.

As a starting point, Szabó and Eörsi emphasized that comparative law could fruitfully be used for Socialist legal propaganda.[17] In 1962, Eörsi pointed out that Western academic public opinion shared many "primitive prejudices" about Socialist law that were ridiculous in the eyes of Socialist lawyers.[18] In addition, he also argued that these unfavorable theses had to be dispelled by means of intensive foreign academic activity. He gave comparative law a prominent role in this respect since Marxist lawyers were able to use international congresses on comparative law as a forum to question these prejudices and to contribute to the formation of a more precise Western picture of Socialist law. Eörsi argued that the atmosphere of such congresses was favorable for debates that started from different ideological positions, and that Socialist lawyers were politely welcomed at these events without enduring any undue provocation.[19] Subsequently, international forums on comparative law became exceptionally efficient events for the promotion of Socialist legal propaganda. In addition, the participants did not have to accept any common theoretical bases in order to take part in the debates at such forums; thus, they did not have to set aside their main Marxist principles in order to attend and participate.[20]

In addition to serving propagandistic purposes, however, there was another reason for legitimizing Socialist comparative law. This was the very popular idea of *peaceful coexistence.* This term appeared in world politics in the second half of the 1960s and stemmed from the certainty that neither of the two main blocs—the West and the East—would disappear in the near future. Therefore, it became an accepted fact that it was necessary for the two blocs to find a way to coexist and to start a dialogue. This idea of peaceful coexistence had many dimensions, including in the area of jurisprudence. The fact that

[16] Drobnig, one of the leading scholars of German comparative law, explicitly recognized this. Cf. Drobnig, *op.cit*. note 11, 160.

[17] Obviously, the aim of Socialist legal propaganda was deeply rooted in the Marxist approach to academic thinking that regarded scholarship as a tool of ideology. Concerning the role of legal scholarship after 1948, Szabó concluded: "We must fight in order to defeat the surviving scholarship of the past, that is, the bourgeois approach, and we must build Socialist scholarship and jurisprudence." Cited by Szabadfalvi, *op.cit*. note 4, 8. Unless otherwise noted, all translations from Hungarian to English in this work are those of the present author.

[18] Eörsi explicitly mentioned some of these prejudices: the rejection of the legal nature of Socialist legal systems and the coupling of Socialist systems with despotism (or even with Fascist systems) or a demonstration of the similarities between Western and Socialist legal systems at an institutional level. See Gyula Eörsi, "Részvételünk 'összehasonlító jogi' rendezvényeken", 12(1-2) *Az MTA társadalmi-történeti osztályának közleményei* (1962), 105-115, at 112–114.

[19] *Ibid*., 112.

[20] Szabó, *op.cit*. note 10, 74-75, footnote 28.

comparative law was given a prominent place in this process was natural from the point of view of legal scholarship.

In Szabó's eyes, one could study the economic and commercial relations of various countries or the rules regulating cultural cooperation from a comparative perspective in order to achieve the goal of peaceful coexistence. Furthermore, in-depth research or even the comparison of legal systems that are based on different social systems could be justified in the name of peaceful coexistence; according to Szabó, this could lead to comparative research on democratic institutions.[21] It is clear that, during the second half of the 1960s, the goal of peaceful coexistence opened numerous new channels for legal studies, mostly in the area of comparative law; it also is clear that this would have been hardly imaginable during the preceding fifteen years due to the ongoing ideological fight between the Eastern and Western Blocs.

There was only one limitation for Socialist lawyers that never could be overlooked while conducting research or engaging in cooperation dedicated to peaceful coexistence: the limit of ideological consistency. Szabó formulated this as follows: "in theoretical questions, Socialist jurisprudence cannot give up its theoretical-scientific position".[22] That is, Socialist lawyers never were able to withdraw from their theses the ideal essence of Socialist law and, consequently, always had to be devoted to these ideas in their research. It also was a consequence of the limit of ideological consistency that peaceful coexistence did not imply the slow convergence—or a possible synthesis—of legal systems related to different social systems; rather, it only meant peaceful competition among scholars representing different conceptual bases.[23]

So, argued Szabó, theoretical Marxist positions could not be given up in international dialogue. As for the scholarly attitudes of Szabó and Eörsi, it also should be mentioned that they both applied not only the vocabulary but, also, the entire conceptual framework of Marxism. They maintained classical positions, *e.g.*, that the economic setting determines all other relationships in a given era—including the features of legal systems—or that the Socialist social system was a qualitatively new form of social organization. In this sense, their frequent references to Marxist bases reflected well-founded beliefs. However, it would be unjust to label them as simple epigones of Marx or Engels, as many scholars from the Eastern Bloc indeed were. Instead, they made intense efforts to establish independent Socialist scholarship of comparative law. Although their approach to comparative law was clearly and devotedly a Marxist one, they did try to escape the shortcomings of a purely ideological doctrine.

In conclusion, both the goal of legal propaganda and the principle of peaceful coexistence guaranteed the starting points—in Hungarian jurisprudence of the 1960s—on which an efficient argument about the justification and utility of comparative law could have been based. Szabó and Eörsi, as important figures in the field of Hungarian comparative law and general academic life in this era, exploited this opportunity and opened a new and internationally recognized phase in the development of Hungarian comparative law.

3. Conceptual Bases of Socialist Comparative Law

3.1. The Critique of the 'Bourgeois' Approach

[21] Imre Szabó, "Jogtudomány és békés együttélés", in Imre Szabó (ed.), *Szocialista jogelmélet – népi demokratikus jog* (KJK, Budapest, 1967), 183-196, at 194-195. See, also, Gyula Eörsi, "Jogösszehasonlítás és békés együttélés", 7(3) *Állam- és Jogtudomány* (1964), 380-393, at 387.
[22] Szabó, *ibid*., 184.
[23] See Eörsi, *op.cit*. note 21 , 392.

The practical legitimization of comparative law was not enough to completely restart comparative legal studies. To do this, a coherent conceptual framework also was needed; a framework that, on the one hand, differed greatly from the Western approach to comparative law and that, on the other hand, could be accepted by Western scholars as a real starting point for scholarly discussions. Accordingly, this future theory of Socialist comparative law could not be simply based on the principles of Marxism-Leninism, since it would have been easily discredited as unscientific in the eyes of Western comparatists. At the same time, it had to remain openly Marxist in order preserve a semblance of being different from the Western line of thought.

Therefore, the task for these authors was not simply to establish a Socialist framework for a Socialist form of comparative law. In addition, they had to gain comprehensive knowledge of comparative law itself, since the Western conception of comparative law could only be rebutted in this way, at least from a scholarly point of view. Therefore, the conceptual bases would have to be created from two directions simultaneously. *First*, the history of comparative law had to be understood and re-evaluated from a Marxist perspective. Then, *second*, the starting points of a theory of Socialist comparative law had to be established with special regard to the problem of the comparability of legal systems that have different socio-economic backgrounds.

The classic Marxist thesis—that the development of social science is fundamentally dependent on socio-economic relations—offered an excellent starting point for the discovery of general laws behind the history of comparative law.[24] On the basis of this approach, it was almost certain to connect the structure of the world economy prior to World War I—in Marxist terms: monopolistic capitalism and the existence of a dynamic and comprehensive world trade—with the boom in comparative law that happened in the same period. It seemed to be evident from a Marxist perspective that modern comparative law was created by both the emergence of a 'bourgeois world market' and the practical claims of swiftly developing world trade. The knowledge of foreign law, therefore, became indispensable for the various international transactions that were occurring. In addition, the process through which monopolistic capitalism gradually acquired a cosmopolitan, supranational nature also suggested the unification of divergent national legal provisions and the transplantation of given legal institutions in order to enhance the efficiency of general exploitation.[25] All in all, Marxist scholars argued, behind the impressive emergence of comparative law in the second half of the nineteenth century, one could find the interests of monopolistic capitalism and the world market, Moreover, the successes of comparative law could be recognized as repercussions of this economic process.

This inherently socio-economic approach—emphasizing the role of economic factors—was refined by the acknowledgment of the fact that the general tendencies of the development of social science in the nineteenth century also stimulated the emergence of comparative law. In this regard, Szabó *first* stressed the gradual spread of the comparative method in general scientific thinking and, also, pointed out the importance of the use of the historical method stemming from the idea of evolution.[26] As a result, he took a view of the emergence of comparative law as a distinct field of legal studies that was not exclusively economic since, besides the basic causes of economic development, he also connected the dynamic development of comparative law to the general tendencies of the history of ideas.

It is clear that both Szabó and Eörsi regarded comparative law as a scientific movement, the successes of which were related to the transformation of nineteenth-century capitalism in a monopolistic and international direction. Furthermore, they also suggested that the

[24] *Ibid*., 380.
[25] Eörsi, *op.cit*. note 18, 107-108; and Szabó, *op.cit*. note 10, 50.
[26] Szabó, *op.cit.* note 10, 43-44.

comparative-law movement evidently served the interests of those Western countries that had a leading role in the world trade of this era. In conclusion, Szabó and Eörsi asserted that comparative law had been a tool of bourgeois jurisprudence up until the 1960s. However, they felt that a coherent critique of this bourgeois approach could lead to the conclusion that the jurisprudence and legal scholarship of Socialist countries, based on fundamentally different socio-economic conditions, could also successfully apply a comparative method.[27]

3.2. External and Internal Comparative Law

There was another step that was indispensable to the successful completion of comparative-law-related research following the historical critique of the prevailing Western conception. This required a conceptual framework in which legal systems based on both similar and different socio-economic backgrounds could be compared without major difficulties. In addition, research on Western legal systems could not revert to the formulation of ideologically based prejudices as had occurred during the era when comparative law had been generally rejected by the Socialist Bloc. If Socialist comparative law could not meet these criteria, it would be stuck at the level of narrow provincialism, *i.e.*, the eventual comparison of the legal systems of the Socialist Bloc. Needless to say, this would have drastically decreased opportunities for a potential dialogue with the comparatists of the Western world.

For Szabó, the starting point for solving this problem was the concept of law type developed by Marxist-Leninist jurisprudence. This concept united those legal systems that were based on the same socio-economic background; thus, legal systems belonging to different socio-economic systems could be delimited on this basis.[28] For instance, the bourgeois and Socialist law types could easily be contrasted since both were based on fundamentally different socio-economic backgrounds: the bourgeois one on private property; conversely, the Socialist one on the societal ownership of the means of production. Subgroups based on various secondary features could even exist within a given legal type. Szabó called these law system-forms.[29] The most significant achievement of this concept was that it made it possible to differentiate between the essential features of legal systems (the socio-economic background) and secondary features (legal techniques). Law types were created on the basis of essential features, while law system-forms were established on the basis of secondary characteristics.

Upon successfully making a plausible distinction between the two important law types—the Bourgeois and Socialist—one could also find an answer to the question of how this insight could be applied to Socialist comparative law. According to Szabó, by using the law type as a conceptual starting point, the two main areas of comparative law could be identified: the comparison of legal systems belonging to the same law type and that of legal systems pertaining to different types. Szabó called the first 'internal comparative law'[30] and argued that comparatists could consistently reach conclusions on the similarities since there were no essential differences among legal systems within the same type.[31] The second area was called 'external comparative law',[32] which involved the comparison of legal systems with different socio-economic backgrounds, *i.e.*, a detailed study of bourgeois and Socialist laws, two contrasting systems from both a historical and logical point of view. Szabó suggested that the

[27] *Ibid*., 88.
[28] *Ibid*., 66.
[29] *Ibid*.
[30] Imre Szabó, "Az összehasonlító jog elméleti kérdései", in Imre Szabó (ed.), *A jogösszehasonlítás szocialista elmélete* (Akadémiai Kiadó, Budapest, 1975), 87-133, at 99. On the methodology of internal comparative law, see *id.*, "A szocialista jogok belső jogösszehasonlítása", in Imre Szabó (ed.), *A jogösszehasonlítás szocialista elmélete* (Akadémiai Kiadó, Budapest, 1975), 229-236.
[31] Szabó, *op.cit.* note 10, 70.
[32] Szabó, "Az összehasonlító jog elméleti kérdései" *op.cit.* note 30, 98.

Socialist law type was at a higher level of legal development; it had surpassed the bourgeois law type from a historical perspective. Moreover, Szabó asserted that there also was a logical contrast between the two since the Socialist system was determined by the relations of production—which were based on social property—contrary to the bourgeois legal systems, which were based on the concept of private property.[33] Evidently, a comparison would lead to the recognition and stressing of differences in comparative law.

Taken together, internal and external comparative law formed so-called 'general comparative law'. The most important feature of general comparative law was that it involved, in essence, a comparison of the legal systems inside and outside of the Socialist Bloc.[34] Furthermore, it is also relevant that—even though he stressed the methodological differences between internal and external comparative law—Szabó's arguments never created an ideological differentiation that would impede real research by being unscientific in nature. Thus, by separating internal and external comparative law on the basis of legal types, Szabó created a coherent theoretical background for Socialist comparative law that was a plausible alternative in the eyes of Western comparatists and, also, similarly saved Socialist comparative law from ideological and dogmatic paralysis. His theory seemed to be a scientific and non-vulgarized Marxist one in Hungary; however, it could also be accepted in the Western world, as it did not seem to be ideologically overloaded and therefore simplistic.[35]

By focusing on the concept of the law type and by equating the significance of internal and external comparative law, Szabó found that narrow path that made it possible to meet the expectations of Hungarian and Western academic and political life. Needless to say, it was a difficult task since most of these explicit and implicit expectations were contrary to one another.[36] It is very likely that this was one of the main reasons that Szabó was accepted as an equal academic partner in the Western world.[37]

3.3. Perspectives of Comparative Civil Law

[33] Szabó, *op.cit.* note 10, 69.

[34] Szabó pointed out that this approach had certain points in common with René David's concept of micro and macro comparative law. The main difference was that David used the concept of legal families while Szabó established his theory on the concept of law type. Szabó could not agree with the use of the concept of legal families since it was not based on the determining nature of the economy; thus, it did not suit the Marxist approach. See Imre Szabó, "Egy összehasonlító jogi munkáról", 8(2) *Állam- és Jogtudomány* (1965), 243-249.

[35] Szabó's concept of comparative law was first published in French in 1964 and also was published later in English. Thus, his oeuvre was accessible in Western languages beginning in the second half of the 1960s. See Imre Szabó, "La science comparative du droit", 6 *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominate - Sectio Iuridica* (1964), 91-134; and *id.*, "Theoretical Questions of Comparative Law", in Imre Szabó and Zoltán Péteri (eds.), *A Socialist Approach to Comparative Law* (A.W. Sijthoff and Akadémiai Kiadó, Leiden and Budapest, 1977), 9-44. Book reviews about the latter volume emphasized Szabó's chapter, including a detailed discussion of, and commentary on, the content. See John N. Hazard, "Book review", 3(4) *Review of Socialist Law* (1977), 500-508; Jorge L. Carro, "Book appraisal", 70(3) *Law Library Journal* (1977), 391-392; and Marc Ancel, "Compte rendu", 30(2) *Revue internationale de droit comparé* (1978), 923-925.

[36] Academics in the Socialist Bloc always had to prove their Marxist-Leninist commitment and the perceived superiority of their way of thinking in international academic life because of the internal logic of Marxist thinking. This did not facilitate the formation of a fruitful dialogue with Western scholarship in the social sciences since Western academics envisaged the social sciences as more or less value-free fields of study. Thus, the two approaches were qualitatively different, and, therefore, Socialist academics had to make considerable intellectual efforts to join Western academic life.

[37] This point can be illustrated by Szabó's international appearances. He was the chair of a panel at the Centennial Conference of the *Société de legislation comparée* that discussed the comparison of legal orders from different socio-economic backgrounds in 1969 in Paris. He wrote a chapter about Socialist law in a volume discussing the various concepts of law in the world in a series of the *International Encyclopedia of Comparative Law*. He was a professor at the *Faculté internationale de droit comparé* in Strasbourg and was nominated as president of the *Académie internationale de droit comparé* for four years (1978-1982) at the tenth International Comparative Law Congress in Budapest.

In addition to Szabó's research, comparative-law problems also appeared in the oeuvre of Gyula (Iulius) Eörsi, who was a leading figure in Hungarian private-law studies in the same era. Contrary to Szabó, Eörsi started to discuss certain questions of comparative law in the framework of private law; but his insights had a much more comprehensive outlook than an ordinary comparison of private-law institutions. Dealing with private-law comparison, Eörsi also formulated several conclusions with a broad conceptual relevance. His earlier work had already shown that a discussion of foreign law was never an exotic element in his academic thinking,[38] but he consciously began to apply a comparative method during the 1960s.

3.3.1. First Attempts

A symbolic first attempt at comparative private law was Eörsi's school textbook published in 1950 in Szeged.[39] Its aim was to offer the reader a comparative presentation of Western private-law institutions: principles, personal rights, forms of legal personality, property, and shares were discussed in detail. Through this comparative analysis, Eörsi attempted to reveal both the mechanisms of exploitation in the very nature of capitalism and the class dependence of private law.[40]

Although the ideological nature of his coursebook is self-evident—and because of this, one could regard it as a means of internal legal propaganda on behalf of Socialism rather than as a work with real academic value—two elements should be emphasized. *First*, despite all its ideological features, it can clearly be seen that the author was not unfamiliar with the basics of Western comparative law, as he provides a criticism of the theses of Lambert and Saleilles.[41] *Second*, this work also provides an important insight into the question of how his thinking about comparative law evolved, since one can find many ideas in an embryonic form in the book that would only be explained in more detail in his later publications. The connection between the development of comparative law and the claims of nineteenth-century capitalism, for example, and his taxonomy of Western private laws on the basis of the capitalist transformation, first appeared in this textbook.[42]

At the beginning of the 1960s, Eörsi published novel articles dedicated to special questions of comparative law. His article about the prohibition of torts is of special significance. This paper could indeed be regarded as the first real achievement of Socialist comparative civil law in Hungary. In this longer piece, Eörsi presented opportunities for the comparative method in Socialist jurisprudence. He demonstrated the usefulness of comparative law[43] by engaging in comparative research on two qualitatively different levels. He first compared the various rules related to torts in French, Swiss, English, German, and Austrian law—emphasis should be placed on the fact that Eörsi not only analyzed the pure legal rules but, also, examined the relevant case law in detail—and then he also studied the Hungarian and Soviet provisions. In both cases, he provided certain theses about the main features of these regulations on a

[38] Eörsi's first volume was published in 1947 when he was 25 years old. Dedicated to the problems of the transfer of ownership, he referred explicitly to the Code Civil, the Sale of Goods Act, and certain sections of the Swiss Law of Obligations, while also citing relevant foreign literature. See Gyula Eörsi, "A tulajdonátszállás kérdéséről", in Tamás Sárközy and Vékás Lajos (eds.), *Eörsi Gyula emlékkönyv* (HVG-ORAC, Budapest, 2002) 292-299.
[39] Gyula Eörsi, *Összehasonlító magánjog* (V.K.M. III. sz. Jegyzetkészítı Iroda, Szeged, 1950).
[40] *Ibid*., 3.
[41] *Ibid*., 3.
[42] *Ibid*., 2 and 4-8.
[43] Gyula Eörsi, "A károkozás tilalma és megengedettsége a szocialista és burzsoá jogban" 5(2) *Állam- és Jogtudomány* (1962), 287-313, at 287.

comparative basis, and compared these general theses and formulated conclusions about the reasons for the differences between Western and Soviet tort law.

The article provided a rather nuanced picture of comparative law compared to his textbook of 1950. It was refined and well conceptualized and, also, provided an adequate picture of the perspectives that a comparative method could offer to Socialist comparative civil law.

3.3.2. The Marxist Approach to the Classification of Legal Systems

The original version of Eörsi's monumental work on comparative civil law was published in 1975. His treatise—which ran to more than 600 pages—provided a detailed explanation of his view of comparative law in general and of comparative civil law in particular.[44] The most important parts concerning general questions of comparative law were the chapters in which he discussed the problem of classifying the world's legal systems. Eörsi criticized the prevailing Western approaches to taxonomy from a Marxist point of view and suggested a different approach stemming from Marxist premises. As a result, Eörsi's conception took shape from a deep and passionate debate with 'bourgeois' scholars and their theories and offered a conceptually well-founded Marxist alternative to the classification proposals of his time. Moreover, Eörsi committed himself to certain important points in one of the essential questions of post-World War II comparative law.

As a starting point, while recognizing that the approaches of David and Zweigert[45] were not inadequate, Eörsi also stressed that both suffered from two important deficiencies. The first was that the Western authors' classification was a philosophical one since certain deficiencies could be traced back to the limited nature of their conceptual bases. While discussing the Western attempts at classification, Eörsi unambiguously pointed out that he could not accept approaches of jurisprudence that delimited the phenomenon of law from social processes.[46] In Eörsi's view, law was not just a collection of norms but, rather, a social phenomenon; therefore, for Eörsi, jurisprudence could not exist purely as a theory of norms. Instead, Eörsi argued that jurisprudence should be a field of social science that is capable of interpreting and integrating into the framework of general studies on law those phenomena that affect law from outside, *e.g.*, the economy, social processes, or even history.[47] Hence, Marxist jurisprudence—regarded as a social science that is able to deal with law as an essentially social phenomenon—would necessarily arrive at different conclusions about the classification of the world's legal systems in comparison with the leading Western scholarship.

According to Eörsi, the second problem of Western classificatory attempts—this was partially related to the first deficiency—was that they were unable to reach those fundamental factors that determine the main features of legal systems. They simply stopped at research into secondary or other factors instead of conducting an in-depth study of the essential questions, *i.e.*, a discussion of the effect of society and the economy on legal development.[48] Eörsi suggested that Western authors were generally satisfied with the study of intellectual and

---

[44] Gyula Eörsi, *Összehasonlító polgári jog* (Akadémiai Kiadó, Budapest, 1975); and *id.*, *Comparative Civil Law* (Akadémiai Kiadó, Budapest, 1979).

[45] Essentially, both authors tried to classify the world's legal systems on the basis of legal (*e.g.*, unique features of legal thinking, special legal institutions, and peculiarities of legal development) and ideological (*e.g.*, the nature of the social system, the characteristics of the dominant ideology, and the role of law in social relations) features. However, they almost completely ignored economic phenomena. See René David, *Traité élémentaire de droit civil comparé* (LGDJ, Paris, 1950), 214-224; and Konrad Zweigert and Hein Kötz, *Einführung in die Rechtsvergleichung. Band I: Grundlagen* (J. C. B. Mohr (Paul Siebeck), Tübingen, 1971), 67-80.

[46] Eörsi, *Comparative Civil Law*, *op.cit.* note 44, 44 and 46.

[47] *Ibid*. 47.

[48] *Ibid*., 46.

institutional dimensions of law and, therefore, essentially disregarded economic phenomena altogether. They simply neglected the totality of the economy and society. This extensive negligence of economic factors made a real classification of legal systems that is based on economic and social factors impossible, argued Eörsi from a Marxist point of view.

Eörsi concludes that Western classificatory attempts were basically unable to recognize the importance of economic and social relationships—with special regard to the significance of property and its consequences—that essentially determine the phenomenon of law. They were therefore based on secondary factors instead of real causes.[49] Both the 'style elements' (*Stilelemente*) of Zweigert[50] and the legal-family conception of David came from some kind of intellectual eclecticism; thus, they were unable to grasp the main engine of legal development: the transformation of the forces of production. According to Eörsi, they necessarily offered an incomplete view of the world's legal systems.

Eörsi based his conception on two different units similar to those of Szabó. He made a distinction between law types and law groups. A law type was a high-level abstraction that expressed the legal peculiarities of a given economic system, while a law group reflected the particularities of individual legal development at a lower level of abstraction. A law type grasped law at a high level of abstraction and in a comprehensive manner, *e.g.*, focusing on the following questions: which social class owns the means of production, which form of ownership is dominant, and to which kind of production and organization system is this related?[51] Conversely, a law group was a collection of legal systems of a given law type that shared common secondary factors.[52]

Eörsi classified the legal systems of the Western world by analyzing the features of capitalist transformation. Within the Socialist law type, he also created two law groups on the basis of pre-revolutionary economic traditions.[53] In conclusion, Eörsi classified the legal systems of his era into two law types and various law groups:

I. Socialist law type:
1. European Socialist law group; and
2. Far Eastern Socialist law group.
II. Bourgeois law type:
1. The legal group of the early bourgeois transformation (English and Nordic laws);
2. The legal group of the consistent bourgeois transformation (French and Swiss laws, and those legal systems that followed the English, French, and Austrian models); and
3. The legal group of delayed bourgeois transformation (the Prussian, Austrian, and German laws).

It is clear that, while Eörsi's approach was based on a systematic Marxist critique of Western authors, it was also qualitatively different. Emphasis should also be placed on the fact that, even though there are certain points in this concept that are obviously different from Western approaches, they have numerous common characteristics. For example, Eörsi's classification is exclusively based on private law; it focused on the legal systems of the era, *i.e.*, it did not deal with ancient systems; it mostly dealt with European and North American legal systems, and it also relied on a multi-level classification, dividing legal systems into major families and

[49] *Ibid*., 42-46.
[50] Zweigert and Kötz, *op.cit*. note 45, 72-79.
[51] Eörsi, *op.cit*. note 44, 49-52.
[52] *Ibid*, 100-106.
[53] *Ibid*., 203-204.

various sub-groups.[54] As a result, one could say that, while Eörsi's classification was clearly Marxist in nature, it was consistent with the comparative law of his time. Moreover, his approach contributed many insights that led to a better understanding of the comparative-law problems of the era.[55]

4. The Effect of Szabó and Eörsi

The works of Szabó and Eörsi made it possible to carry out comparative-law research in Hungary following a break of more than ten years. Due to their overwhelming success and reputation abroad, the utility of comparative law was no longer in doubt. At the Legal Institute of the Hungarian Academy of Sciences, a department of comparative law was created in the 1960s.[56] In addition to organizing work on documentation,[57] it also organized and coordinated Hungarian participation in international congresses of comparative law which were held every four years. Furthermore, the department also ensured the publication of the Hungarian national reports in foreign languages in cooperation with the publishing house of the Hungarian Academy of Sciences (Akadémiai Kiadó).[58] In addition, the application of a comparative method gradually became more important in all aspects of academic legal thinking in Hungary. This could be seen in the form of presentations of foreign legal solutions or in the application of a historical-comparative approach.[59]

Instead of disappearing from Hungarian legal thinking because of the unfavorable events of the 1950s, comparative law, in fact, lived on during the following decades of Socialism due to these two well-known Marxist scholars. Their work also ensured that Hungarian comparative law did not restart from a vacuum following the political transition of 1989.

---

[54] For a general discussion of the theory of multi-level classification, see the seminal article of Åke Malmström, "The System of Legal System: Notes on a Problem of Classification in Comparative Law", 13 *Scandinavian Studies in Law* (1969), 129-149.

[55] Constantinesco, in his book dedicated to the problems of classification, analyzes and criticizes Eörsi's concept, and even though he had a very critical attitude toward Socialist comparative law (for instance, he refers to Szabó as a simple epigone of Marx), he recognized the scientific and polemic value of Eörsi's work. See Constantinesco, *op.cit*. note 7, 145. The book reviews dedicated to Eörsi's [please make clear who it is to whom you are referring here when you write 'his', presumably Eörsi] work unambiguously praise it. See, André Tunc, "Compte rendu", 32(2) *Revue internationale de droit comparé* (1980), 468-471; and Peter B. Maggs, "Book review", 8(4) *International Journal of Law Libraries* (1980), 178-179. []

[56] For more on the creation and the early years of the Department of Comparative Law, see Zoltán Péteri, "A jogösszehasonlítás kelet-közép-európai centruma", 51(1) *Állam- és Jogtudomány* (2010), 71-80. [This is a minor point; but nevertheless not unimportant: are these all of the book reviews dedicated to his (again presumably Eörsi's) work? Or are these ones which you have selected as being among the most representative?] Thanks for mentioning it, I only know these book reviews, so I deleted "for example" (even there might be other ones in the European literature).

[57] For example, the Department of Comparative Law published the Hungarian translations of the Socialist constitutions. See Attila Rácz (ed.), *Új szocialista alkotmányok* (Magyar Tudományos Akadémia Állam- és Jogtudományi Intézete Jogösszehasonlító Osztálya, Budapest, 1966).

[58] See the volumes comprising the Hungarian national reports submitted to the international congresses of comparative law published every four years: *Studies in Jurisprudence for the 6th International Congress of Comparative Law* (Akadémiai Kiadó, Budapest, 1962); Zoltán Péteri (ed.), *Études en droit comparé/Essays in Comparative Law* (Akadémiai Kiadó, Budapest, 1966); *id.* (ed.), *Hungarian Law–Comparative Law/Droit hongrois–droit comparé* (Akadémiai Kiadó, Budapest, 1970); *id.* (ed.), *The Comparison of Law/La comparaison de droit* (Akadémiai Kiadó, Budapest, 1974); Imre Szabó and Zoltán Péteri (eds.), *Comparative Law/Droit comparé* (Akadémiai Kiadó, Budapest, 1978); Zoltán Péteri and Vanda Lamm (eds.), *Legal Development and Comparative Law/Évolution du droit et droit comparé* (Akadémiai Kiadó, Budapest, 1982); and *id.* (eds.), *Legal Development and Comparative Law/Évolution du droit et droit comparé* (Akadémiai Kiadó, Budapest, 1986).

[59] For a general discussion, see Csaba Varga, "A szocializmus marxizmusának jogelmélete", 54(4) *Világosság* (2004), 89-116, at 96. A monograph by Varga can be mentioned as an example, as it discusses the phenomenon of codification in a preeminently historical-comparative context. Csaba Varga, *A kodifikáció mint társadalmi-történelmi jelenség* (Akadémiai Kiadó, Budapest, 1979).

Instead, Hungarian comparative law was able to draw on the academic and institutional heritage of an earlier era, even though Marxism—as a comprehensive scientific basis—had more or less been rejected in recent jurisprudence.