



DATE DOWNLOADED: Sun Jan 28 09:20:21 2024

SOURCE: Content Downloaded from [HeinOnline](#)

#### Citations:

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

#### Bluebook 21st ed.

Csaba Varga, *Encountering Comparative Law in Hungary*, 16 J. COMP. L. 243 (2021).

#### ALWD 7th ed.

Csaba Varga, *Encountering Comparative Law in Hungary*, 16 J. Comp. L. 243 (2021).

#### APA 7th ed.

Varga, Csaba. (2021). *Encountering comparative law in Hungary*. *Journal of Comparative Law*, 16(1), 243-264.

#### Chicago 17th ed.

Csaba Varga, "Encountering Comparative Law in Hungary," *Journal of Comparative Law* 16, no. 1 (2021): 243-264

#### McGill Guide 9th ed.

Csaba Varga, "Encountering Comparative Law in Hungary" (2021) 16:1 J Comp L 243.

#### AGLC 4th ed.

Csaba Varga, 'Encountering Comparative Law in Hungary' (2021) 16(1) *Journal of Comparative Law* 243

#### MLA 9th ed.

Varga, Csaba. "Encountering Comparative Law in Hungary." *Journal of Comparative Law*, vol. 16, no. 1, 2021, pp. 243-264. HeinOnline.

#### OSCOLA 4th ed.

Csaba Varga, 'Encountering Comparative Law in Hungary' (2021) 16 J Comp L 243  
Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

# Encountering Comparative Law in Hungary

CSABA VARGA\*

The moment that the present writer entered the Institute for Legal Studies of the Hungarian Academy of Sciences at Budapest in 1965 may have been a key moment in the commitment to the philosophy of law. Thanks to the strong recommendation by the representatives of my *alma mater* at Southern Transdanubian Pécs – Professor Andor Csizmadia (1910-1985), Dean at the time and the *doyen* of Hungarian legal history, as well as the renowned senior research associate of the Institute who had re-founded the sociology of law in socialist Hungary, Kálmán Kulcsár (1928-2010), the Director of the Institute, Imre Szabó (1912-1991), and major authority in the field of law in the Hungarian People's Republic,<sup>1</sup> received me. As a result, he admitted me to the most authentic and highly regarded workshop of Hungarian jurisprudence. My personal interests were in the philosophical problematization of law, augmented by the desire to work in the inspiring and pioneering vicinity of Kulcsár and Vilmos Peschka (1929-2006) in Szabó's Section of Legal Theory at the Institute.

However, the moment I was appointed, I was immediately traumatized.<sup>2</sup> Because for an internship period, with reference to a practice introduced just in my case and without any certainty about its future, I was ordered to work in the newly-formed Section of Comparative Law.

## RESTARTING COMPARATIVISTICS

What happened there under the aegis of comparative law? Was it legal comparativistics? Not quite; purely documentation: a kind of registration, or

\* Professor Emeritus, Institute of Legal Philosophy, Catholic University of Hungary; Research Professor Emeritus, Institute of Legal Sciences, Hungarian Academy of Sciences.

<sup>1</sup> Imre Szabó, born at Beregszász [*Берегове*, now Ukraine] into a lawyer's family and later moved to Munkács [Mykachevo, now Ukraine]. In order to practice in Transcarpathia, which then was fashioned from territory of the Kingdom of Hungary into a Czech governorate applying Austrian law, he attended Charles Ferdinand University in Prague, which taught only Austrian law. He published much on social and legal theoretical issues before the War, especially in the leftist Transylvanian Hungarian monthly *Korunk* [Our Age] (Kolozsvár [now Cluj-Napoca, Romania]). He fled to Budapest after the communist takeover (1949) and became the head of the Ministry of Justice codification department and of the metropolitan university department of the theory of State and law (1949–1955), and then the founding director of the Institute for Legal Studies of the Hungarian Academy of Sciences (1955–1981). He was awarded the highest State recognition for intellectual achievement – the Kossuth Prize (1953).

<sup>2</sup> Csaba Varga, "Pályakezdés az MTA Állam- és Jogtudományi Intézete Jogösszehasonlító Osztályán" [Entering the Comparative Law Section of the Institute for Legal Studies of the Hungarian Academy of Sciences], *Jogelméleti Szemle*, no. 1 (2010) (available online).

more precisely, positivist data on foreign developments. The said Section was separated in 1963 from the Documentation Department of the Institute, having been established in the 1950s to record the legislation and legal literature of socialist and capitalist countries. They continued to operate in parallel. With the new formation of a research department dedicated to comparative law, Szabó had revived it as a new socialist achievement; when wound up a decade before, the former representatives of university and academic life were allegorically beheaded and a number of the institutions disbanded, including a Budapest University Institute devoted to comparative private law. This all happened during the communist takeover, in which he himself played a leading role.

And now, why? Because, on one hand, it had become fashionable globally to make the world seemingly one with the symbolic catch-word of peaceful coexistence. The role players may have thought that all this would ease the way for the so-called socialist world order to open up to that west previously denigrated during the Cold War. At the same time it would have the benefit that this would help travelling abroad and *vice versa* for scholars' mutual acquaintance, study, and attendance at conferences. But, on the other hand, in contrast to the authoritarian versions of New Deals<sup>3</sup> during the interwar period, that is, those arrangements which had conquered in anticipation of economic development but could not have become a family of law themselves, the role-players saw the opportunity to succeed in that complementation. This, in turn and according to a new *Realpolitik*, offered Soviet law the opportunity to rise from inhumanity, the embodiment of evil, to the *sui generis* heights of human civilization, seeking acknowledgment as an independent type of law. Thus, with an initiative<sup>4</sup> implemented according to the conception of, among others,

<sup>3</sup> Emil Lengyel, *The New Deal in Europe* (1934). Lengyel (Budapest, 1895 – New York, 1985), a law-graduate journalist who emigrated to the United States in 1921 and became a New York University professor, treated fascism, national socialism, and Bolshevism, as well as “other new deals”, Sweden and America.

<sup>4</sup> In the country of the “chain dog”, Josip Broz Tito (as nicknamed by the Muscovite bloc), the Rector of Belgrade University (1956–1978), Borislav T. Blagojević (1911–1985) pioneered in founding and leading his *Institut za uporedno pravo* (1 January 1956), which still publishes its reliable *Strani pravni život / Foreign Legal Life* (1956–). Years earlier he had argued for the need of legal comparison; see his “Le droit comparé – science ou method”, *Revue internationale de droit comparé*, V, no. 4 (1953), pp. 649–671.

When the retaliation in Hungary, taken to an extreme as a reaction against the revolutionary events of 1956, culminated in international criticism, it focused on the Western–Eastern commensurability of concepts such as legality or subordination to the law, and later, the socialist quest for legal comparison rested on similar issues. The Warsaw professor Stefan Rozmaryn (Lwow [now Lviv, Ukraine] 1908 – Warsaw, 1969), drafter of the Polish Constitution (1952), stemmed from the above to arrive at legal comparison. For this dual origin, see János Tóth [(1916–1984), Hungarian émigré, privat-docent, University of Geneva & Legal Officer for Eastern Europe, International Commission of Jurists], “Comparative Law in Eastern Europe”, *Journal of the International Commission of Jurists*, VI, no. 2 (Winter 1965), pp. 245–277, and, as to an early Marxist standpoint, Monique et Roland Weyl, “Y-a-t-il une conception marxiste du droit comparé?”, *La Nouvelle Critique*, no. 127 (June 1961), pp. 140–149.

Properly dedicated to the topic, Czech authors had started problematizing on it, in which Hungarian authors joined at first, having in mind the thesis of intersystemic incomparability. See Rudolf Bystrický, “Za marxistickou srovnávací právovědu” [For a Marxist Comparative Jurisprudence], *Právník* [Prague], CI, no. 8 (1962), pp. 625–637; Jiří Boguszak, “K otázce tzv. srovnávací právovědy” [On the Question of Comparative Jurisprudence], *Právník*, CI, no. 9 (1962), pp. 803–806; Viktor Knapp, “Verträge im tschechoslowakischen Recht (Ein Beitrag zur Rechtsvergleichung zwischen Ländern mit verschiedenen Gesellschaftsordnung)”, *Rubels Zeitschrift für ausländisches und internationales Privatrecht*, XXVII, no. 3 (1962), pp. 495–518; Imre Szabó, “Ellentmondások a különböző társadalmi rendszerek joga között” [Contradictions

Szabó, socialism and its law successfully legitimized itself,<sup>5</sup> maintaining that it was superior to any antecedent in the history of human ennoblement, as it had a vision for the future. The socialist variant of legal comparison was born of this approach, became such, and remained so.

Paradoxically for Szabó, however, the most important thing to say about this new discipline was nothing more than the theoretical exclusion of *comparatio* itself between non-socialist and socialist systems. Given the contradiction between exploitation and its transcendence, these were for him and his comrades inherently mutually excluding qualities, indeed, ones to represent successive types of law. Thus, by its basic understanding, the socialist concept of the comparison of laws simply denied its own self, the meaningfulness of its distinct methodological foundations, even if after some time, it let go of some of it. After all, the so-called linguistic debate<sup>6</sup> staged by Stalin in summer 1950 centered on the Marxist view of society, the relation between its economic basis and institutional superstructure, and thus, among other things, necessarily concluded that any idea on the continuity of laws was from the beginning precluded by their being an element of superstructure. When one economic basis is being replaced by the next, its former superstructure will not continue, but the new basis itself will produce the corresponding new superstructure.<sup>7</sup> However, with such a simplification, this form of revolutionary utopianism would have led to the nihilization of the legal technicality. In consequence, doctrinarian canon-writers were later forced to introduce refinements. It was acknowledged that in respect of law's purely technical moments, there could be the appearance of formal resemblances.<sup>8</sup>

Among the Laws Pertaining to Differing Social Systems], *Állam- és Jogtudomány*, VI, no. 1 (1963), pp. 155-167; M. Svoboda, "Jestě k marxistické srovnávací právovědě" [Once More on Marxist Comparative Jurisprudence], *Právník*, CII, no. 5 (1963), pp. 388-390; Knapp, "K otázce socialistické srovnávací právní vědy" [On the Question of a Socialist Comparative Science of Law], *Právník*, CII, no. 5 (1963), pp. 391-402; Szabó, "Összehasonlító jogtudomány" [Comparative Jurisprudence], in Szabó (ed.), *Kritikai tanulmányok a modern polgári jogelméletéről* [Critical Studies on Modern Bourgeois Theory of Law] (Budapest, 1963), pp. 39-88; Gyula Eörsi, "Comparative Analysis of Socialist and Capitalist Law", *Co-Existence*, no. 2 (November 1964), pp. 139-151; Szabó, "La science comparative du droit", *Annales Universitatis Budapestinensis de Rolando Eötvös nominatae: Sectio juridica*, V (1964), pp. 91-134; S. L. Zivs, "О методе сравнительного исследования в науке о государстве и праве" [On the Method of Comparative Research in the Science on State and Law], *Советское государство и право* [Soviet State and Law], no. 3 (1964), pp. 23-35; S. L. Zivs, "Comparative Research into the Science of State and Law", *Review of Contemporary Law*, XI, no. 2 (1964), pp. 145 et seq.

My first relevant paper (inspired by Jerome Hall) was Csaba Varga, "Összehasonlító jog és társadalomelmélet" [Comparative Law and Social Theory], *Állam- és Jogtudomány*, IX, no. 4 (1966), pp. 732-736; it synthesized comparative studies and jurisprudence, and the department boss would start publishing in a similar direction later; see Zoltán Péteri, "A társadalmiság kérdései a jogösszehasonlításban" [Issues of the Social Nature of Law in the Comparison of Laws], *Állam- és Jogtudomány*, XIII, no. 2 (1970), pp. 230-248.

<sup>5</sup> See, as a symbolic completion or consummation, Imre Szabó, "The Socialist Conception of Law", in René David (ed.), *International Encyclopedia of Comparative Law*, II (1976), chap. 3, pp. 49-84.

<sup>6</sup> In response to so-called questions raised by a working woman, Stalin replied in the newspaper *Pravda*, issues of 20 June, 4 July, and 20 August 1950 (available online); reprinted in V. V. Vinogradov (ed.), *Вопросы языкознания в свете трудов И. В. Сталина* [Questions of Linguistics in Light of the Works of I. V. Stalin] (1952).

<sup>7</sup> Varga, "Autonomy and Instrumentality of Law in a Superstructural Perspective", *Acta Juridica Hungarica*, 40, no. 3-4 (1999), pp. 213-235.

<sup>8</sup> See Alice Erh-Soon Tay and Eugene Kamenka, "Marxism and the Problem of Legal Continuity:

At the same time, this dilemma raised the question of law itself: was it some class essence operated as a tool in the struggle of social classes, or a set of mere techniques suitable for influencing actual behavior? Szabó also defined law as an instrument of the ruling class in general and socialist law as the product of a class committed to overcoming exploitation in particular. Elaborating the notion of socialist law, even in his late ontologization he saw it as the peculiar reflection of qualitatively different relations of production by an economic basis that qualitatively differed from its antecedents. Accordingly, he saw law, at least potentially, as ontological and gnoseological categories. Law had therefore to be interpreted as a component of its superstructure and exclusively in relationship to the economic basis that had created it. In the theory of alternate socio-economic formations, different types (slave-holding, feudal, capitalist, socialist) of law were generated notionally as mere dependencies.

But this was alleviated by the fact that once it had been recognized as a doctrine of the successive types of law, all of the law's technical elements could be taken into account as if the latter were super-superstructural elements of the given superstructure, lending them their "specifically legal" quality. With regard to *comparatio iuris*, this same approach distinguished between "internal" and "external" kinds of comparison, depending on whether one was within the same type of law, in which case comparison would be feasible in terms of the purposefulness and social functioning of the given legal institutions, or one was faced with differing types of law, when nothing but mere technicalities could be found as shared properties, in which case, comparison as such would not be feasible, for it could not reveal anything significant about the respective genuine operation of the law and the latter's underlying reasons and social context.

Perhaps the foremost achievement of Szabó and his domestic and international institutional activity by which he made legal comparison recognized as an orderly and foundational methodological part (in combination with the principle of historicity) of the jurisprudence of Marxism – as already was the case with legal sociology (mainly thanks to Polish and Hungarian efforts) and the issue of human rights (mainly elaborated in our Institute).<sup>9</sup> And part of this achievement was that the same act (albeit in the colors of Hungarian scholarship) helped release the legal science of socialism from the self-imposed quarantine of the Soviet world. Perhaps it is no coincidence that Szabó, a member of the Hungarian Academy of Sciences who had grown up in a partly Slavic language environment as a result of the post-World War I dismemberment of Hungary, owing to which he mastered the Russian language, was elected as the sole jurist, a Foreign Member of the USSR Academy of Sciences in 1976.<sup>10</sup>

Recent Trends in Communist Legal Theory", *ASLP* [Australian Society of Legal Philosophy] *Bulletin*, no. 14 (1980), pp. 30-60, treating Eastern European and Chinese speculations equally.

<sup>9</sup> Varga, "Philosophising on Law under the Umbrella of Marxism in Hungary", *Acta Juridica Hungarica*, LIII, no. 4 (2012), pp. 265-286; Varga, "Philosophy of Law in the Soviet Union and the People's Democracies", *Acta Juridica Hungarica*, LIV, no. 3 (2013), pp. 255-271.

<sup>10</sup> The name of Imre Szabó cannot be found on the List of foreign members. Szabó was firm in his convictions, but inclined to rethink them in the long run if he met thorough argumentation. An example was my discussion paper: Varga, "A jog meghatározásának néhány problémája a szocialista jogelméletben [Vita]" [Some Problems of Defining Law in the Socialist Theory of Law (Debate)] [1966] in his *Útkeresés: Kísérletek – kéziratban* [Searching for a path: Unpublished essays] (2001), pp. 59-64. Moreover, he was disgusted with all kinds of extremism from his youth and willing to compromise within certain limits. In the network of international relations he built, he sought to alleviate the occasional Soviet-type exaggerations, originated in either Moscow or

So what kind of comparativistics had commenced in this Comparative Law Section during the mid-1960s? Recollected personal impressions are about remarkable peers and human qualities. But measuring their scholarly contributions to our Institute's overall excellence as the leading workshop of Hungarian jurisprudence, they were colleagues of uneven talents. Because, on one hand, they already had led exciting and mostly complete lives, remarkable for one or another reason. On the other hand, the almost exclusive virtue of those colleagues, ranging from a retreated leading figure of the old regime foreign office to a fallen communist ambassador, from a blood-soaked judge dismissed (in the mode of "The Moor has done his work – the Moor may go")<sup>11</sup> after the unpleasant side of post-takeover cleansing had been performed to a talented young communist with a Soviet wife also helping, and to an excellent surveyor as well, was the knowledge of some foreign (French, English, German/Czech/Slovak, Romanian, Russian, Bulgarian) language and national legal culture, that is, skills and inclinations in which I did not excel. And, as chief, Zoltán Péteri,<sup>12</sup> then at the Institute for almost a decade and a half, to which he had been invited thanks to his language skills and who had begun publishing on various topics of legal philosophy, Soviet developments in law, State, and trade unions, in addition to socialist legality, political science, and State theory. He now organized the work of his Department, and, as the scientific secretary of the Institute, he was a participant in all Institute initiatives and responsible for scientific reports. In the company of the bosses at the top, he became a representative of comparative law in Hungary at international forums. Without himself comparing anything with anything else at any time, and almost a decade after having become head of department, he began to publish on preliminary general issues of comparative law: theory, history, methodology, and the scientific nature thereof, publishing a dozen studies on legal comparison over the next four decades.

East-Berlin/Potsdam, and to bring about some balance in the end; for example, when he allowed the inclusion of those Yugoslav approaches which "deviated" in their State law structure from the Soviet model to be within the scope of normal scholarly discourse. It is to be noted that such a practice was exceptional in the Soviet bloc at that time.

After my repeated argumentation in support of the project for years, in the end he accepted and supported the appearance of Varga (ed.), *Jog és filozófia: Antológia a század első felének polgári jogelméleti irodalma köréből* [Law and Philosophy: Anthology of Western Papers on Legal Theory from the First Half of the 20<sup>th</sup> Century] (1981). Not even a *simulacrum* appeared in the Soviet empire anywhere anytime, because the "capitalist" or "imperialist" doctrines concerned were generally not to be known, but only to be destroyed by sharp – and class-struggle based – criticism. But when the manuscript had been completed, he had censored out already approved texts which later, at my repeated request, were saved by being published as an in-house (not-for-sale) publication: Varga (ed.), *Modern polgári jogelméleti tanulmányok* [Modern Western Papers on Legal Theory] (1977). This last minute hesitation explains why the main material only came to light later. But once accomplished, he became so enthusiastic that he ordered the publisher to add volumes II and III, containing the Soviet-Russian debates on law of the 1920s (never republished anywhere in the Soviet world) and the post-World War II and genuinely contemporary "bourgeois" products, respectively. The manuscript of both volumes was ready – there had been a huge correspondence with many planned authors, including Junichi Aomi, Norberto Bobbio, and René David, and resumed correspondence with Jerome Hall and Viktor Knapp – with the publisher working on copyright issues, when two impending factors intervened: Szabó's personal withdrawal occasioned by his total loss of sight and the bankruptcy of Akadémiai Kiadó. These stalled the process forever.

<sup>11</sup> Friedrich Schiller, *Fiesco's Conspiracy at Genoa* (1783), scene III/4.

<sup>12</sup> Péteri Zoltán (1930–), CSc (1962). As a department head for half a century, he did not publish own book, only edited a large number of collected articles. He started publishing own book-length works (mostly edited by his students) after he had joined the Philosophy of Law Institute, founded by me at the Pázmány Péter Catholic University in 1995.

Considering the level, quality, and documented authenticity of the knowledge available in Hungarian in the country, it can certainly be asserted that the Comparative Law Department has done an outstanding job<sup>13</sup> by compiling, in a long series of independent volumes, the world's capitalist, socialist, and new State constitutions, electoral systems and parliamentary rules of procedure, criminal and procedural codes, court organization, as well as the important enactments relating to central government and local administration, the regimes of family law, and by describing and evaluating (truly comparing) on a large scale various sub-areas from press law to labor law, from criminal law protection of social ownership to social security. This provided useful material for the Hungarian government<sup>14</sup> – and not by chance, for it all took place in the political backwind of the then short-lived New Economic Mechanism in Hungary.<sup>15</sup>

Terrified of such a documentary perspective, but temporarily forced there, I read materials on the history and so-called theory of legal comparison, studied different (mainly Common Law and Far Eastern) legal families, and, all that notwithstanding, moved ahead in philosophy of law. During this time, it suddenly became clear to me that our official philosophy of law was a prisoner of its own blindness, captive of its over-generalized projections, both at home and in the entire Soviet bloc (with practically the same situation in the Western world, the realms of Civil Law and Common Law). That is to say, it was characterized as a *general* theory of law, while taking a view of its own law based on what Lenin and the like had once understood or misunderstood in places and times of their emigration, which, as compared to Lenin's Swiss model, for instance, may have lagged behind developments there, and also continent-wide in western European law.<sup>16</sup>

I was able to leave this workshop after a year or two, continuing my research within the Department of Theory of Law, but with the ever-deepening experience that law is a local phenomenon, a specific historical evolution of a given place and time *ab initio*, so it is diverse; consequently, it can only be interpreted within a comparative historical framework and context.<sup>17</sup>

What did all this mean for me? First, the realization that there are as many regimes of "law" as there are cultures behind them, and all this can only be reduced to or grouped alongside some common denomination at the level of generalization far beyond the itemized positive laws as a mere abstraction at most. Second, that their diversity is a product of their own development, so

<sup>13</sup> Beyond some editing, the only official task I was given there and then was to survey legal education in the world for the 600th jubilee of the medieval founding of Pécs University (1367), my *alma mater*, for which I borrowed the title from René David (1906–1991): Varga, *A felsőfokú jogi oktatás főbb mai rendszerei* [Major Systems of Higher Legal Education in the World Today] (1967).

<sup>14</sup> For Géza Kilényi (1936–2016), an administrative law specialist, later Deputy Minister of Justice, constitutional judge, and professor of administrative law at Pázmány Péter Catholic University. The late socialist government founded a huge research program addressing challenges facing the State (1981–1990). Practically, this new institutionalization published hundreds of thematic translations and comparative monographs by the Hungarian best specialists.

<sup>15</sup> Available online.

<sup>16</sup> Varga, "Lenin and the Law: A Case-Study on the Borders of Legal Normality", *Central European Political Science Review*, XX, no. 75 (Spring 2019), pp. 131–179.

<sup>17</sup> See details in Varga, "Comparative Law and Multicultural Legal Classes: Challenge or Opportunity?", [General Report] in Varga (ed.), *Comparative Law and Multicultural Legal Classes: Challenge or Opportunity?* (2020).

their grouping can only be grasped historically.<sup>18</sup> The query: “what can we compare and to what?” thus falls again back into the most enigmatic question of legal philosophy, the one on the nature of law, and thereby the ontological and epistemological approaches to it.<sup>19</sup> And third, given the fact that diversity, historicity, and the subjection of law to a service role in a given basis-and-superstructure complex show the phenomenon itself in a context in which law is not its apparent self, but the focal point of influences and embeddings, symbolic expressions, and actively operating social forces in which, ultimately, their specific totality, albeit relative and partial at all times, always prevails, a circumstance that mercilessly shapes into its own image and reinterprets according to its own message what we know simply as positive law, taken as an aggregate of rules and usually viewed as a self-contained phenomenon.

It made my job easier that these three insights seemed inherent in Marxism, at least they could be deduced therefrom as such. As a university student at Pécs, I had already used counter-evidence, logically arguing that law equals a mere rule of some given game: so it is hardly more than one means to elicit a certain targeted effect; thus, no “reflection” of “objective reality existing independently of our consciousness” according to our dogmas (made an official doctrine by Lenin’s *Materialism and Empirio-criticism*)<sup>20</sup> is realized in and by it; consequently, treated as a logical statement, it cannot be true or false.<sup>21</sup> However, my boss, Professor Szabó, no matter how I argued, considered my stand to express a dangerous revisionism, and I had to realize that the dominant doctrine could not allow such an evasion: it demanded a conformist response.<sup>22</sup>

By the way, as the legal philosopher of Marxism, Vilmos Peschka tried to answer the underlying issue epistemologically, using the cliché of literary realism elaborated by George Lukács (1885-1971):<sup>23</sup> law is a reflection of reality transformed at the level of the particular;<sup>24</sup> and as the cultivator of socialist legal theory, Szabó (following Evgenii Borisovich Pashukanis (1891-1937)) sought a response via an ontological approach: law itself is the transformed socio-

<sup>18</sup> Varga, “Taxonomy of Law and Legal Mapping: Patterns and Limits of the Classification of Legal Systems” *Acta Juridica Hungarica*, 51, no. 4 (2010), pp. 253–272.

<sup>19</sup> “In mathematics, definition belongs *ad esse*, in philosophy *ad melius esse*. It is a difficult task to construct a proper definition. Jurists are still without a complete definition of the idea of right”. Immanuel Kant, *Critique of Pure Reason* [1781] (trans. J. M. D. Meiklejohn).

<sup>20</sup> V. I. Lenin, *Materialism and Empirio-criticism: Critical Notes Concerning a Reactionary Philosophy* [1909] (1927).

<sup>21</sup> Varga, “A magatartási szabály és az objektív igazság kérdése” [Rule of Behavior and the Question of Objective Truth] [1964] in Varga, *Útkeresés* (2001), pp. 4–18, with the only available socialist reference to Georg Klaus, *Einführung in die formale Logik* (1958).

<sup>22</sup> As a matter of fact, it was never repealed what was called in 1953 “a guidepost for lawyers of the law of continuous approximation to the Soviet example” by Viktor Knapp, “Zákon stálého přibližování sovětskému příkladu – ukazatel cesty československých právníků” *Právník*, no. 3-4 (1953), pp. 220-221, quoted by Iván Halász, “The Institutional Framework and Methods of the Implementation of Soviet Legal Ideas in the Czechoslovakia and Hungary during Stalinism”, *Journal on European History of Law*, 6, no. 2 (2015), pp. 29-37, at 32-33. This is the reason why Vilmos Peschka, “Marxista és szocialista jogelmélet” [Marxist Theory of Law and Socialist Theory of Law], *Jogtudományi Közlöny*, XXIII, no. 4 (1968), pp. 165-172 separated genuine philosophizing from ever changing political adaptations.

<sup>23</sup> J. V. Payip, *Continuity in Georg Lukács Theory of Literary Realism* (1976) (University of Edinburgh Ph.D.).

<sup>24</sup> Vilmos Peschka, *Die Eigenart des Rechts* (1989).

economic relationship.<sup>25</sup> Subsequent developments, however, reinforce my earlier intuition. Accordingly, nearly a decade and a half later, in the legal ontology I ventured to synthesize mostly Lukács' posthumous ontology of the social being,<sup>26</sup> law is no longer simply a rule, but involves, *inter alia*, the deontology of the legal profession (derived from the notion of "legal worldview" formulated by Friedrich Engels (1820-1895), that is, the ideological definition of the (continental, Anglo-American, etc.) conception and operation of law – a phenomenon hiding the complexity of its being a partial totality, which necessarily carries with it all of its social deposits and dependencies. Professional deontology is not simply a false form of consciousness to be examined and criticized epistemologically, but is itself an ontological category, a part-part component of social being. And with this, as a synthesis of the philosophy of and comparative investigations into law, I arrived, as matters stood in the 1980s, at an understanding legal cultures as autochthonous and ultimately incommensurable phenomena themselves.<sup>27</sup>

## ENCOUNTERS

Szabó was an inaccessible, authoritative being. He expressed his opinion almost declaratively. Although in the narrowest of professional matters he was willing to listen to, and even debate, dissents from uncontroversial points, pushing the boundaries further would have been dangerous; he could, and in fact, did close the debate at any time. But he was always polite and attentive. He was a personality who, though sometimes cholerically captivated, was a balanced, kindly gentleman type in his true self. Sometimes he was happy to tell stories; and although one might ask him to do so subtly, one did not interrogate him. From 1968 on, I took part in three sessions of the *Faculté internationale pour l'Enseignement du Droit comparé* in Strasbourg, and from 1971 on, at practically all of the world congresses of the *Internationale Vereinigung für Rechts- und Sozialphilosophie* (IVR), and at the Legal Theory Section of the Hungarian Association of Lawyers sessions (using the service car in the company of Director Szabó);<sup>28</sup> as the youngest member of a small professional community, mostly four from our Institute, I was often in his sometimes fearful and testing company, traveling, staying in a hotel or walking and dining together; and mostly the boss took the floor, and mostly with memorable stories.

From his stories – beyond his early years and memories of subsequent events – a broad panorama unfolded. Although at that time he did not know many

<sup>25</sup> Szabó, *Les fondements de la théorie du droit* (1973); Szabó, *Основы теории права*, ed. V. A. Tumanov (1974).

<sup>26</sup> Varga, *The Place of Law in Lukács' World Concept* [1981/1985] (3d {reprint} ed. with Postscript; 2012), based on Georg Lukács, *Zur Ontologie des gesellschaftlichen Seins* (1984).

<sup>27</sup> Varga, "»Jogi kultúra« és »jogi kultúrák«: A jog alakváltozatai és felfogásmódjai" ["Legal Culture" and "Legal Cultures": Variations in the Shapes of Law and in its Understandings] (available online).

<sup>28</sup> In the Legal Theory Section of the Hungarian Lawyers' Association in my capacity as secretary (1971-1990), as well as in the Hungarian National Section of the International Association of Philosophy of Law and Social Philosophy (IVR) in my capacity as secretary (1975-2006), then chairman (2006-2016), I organized all nation-wide events, including such services as the international heralding of news, adding new Hungarian items to international bibliographies, as well as annotating Hungarian contributions both in the semi-annual *IVR Newsletter* (?) – No. 40 (2009) and in *Current Legal Theory International Journal for Documentation on Legal Theory* [Katholieke Universiteit te Leuven] I (1983) – XVI (1998).

details about his Hungarian ancestor in comparative legal studies in the early twentieth century, Elemér Balogh (1881-1955), except that the latter had founded the *Association internationale de Droit comparé* in The Hague in 1923 and had become its perpetual secretary general.<sup>29</sup> He had perhaps even less information concerning András Bertalan Schwartz (1886-1953) and his comparatist work, except to have heard about a Hungarian private lawyer, author, and teacher who had turned up in many parts of Europe while based in Istanbul for the rest of his life.<sup>30</sup>

But he knew more about two Hungarians who had fled from Szabó's own communist regime: Zsolt Szirmai (1903-1973) and Imre Zajtay (1912-1983), whom he also met personally. It was surprising to me that whereas the communist Szabó detested deviationist leftists in general and dissidents in particular, he spoke to me in a voice of understanding about them. Even though Szirmai became a key person of the opposite pole, the founder of the then unique *Documentation Office for Eastern European Law* (1953) and its *Law in Eastern Europe* monograph series (1958), and the backbone of the exceptionally reliable *Review of Socialist Law*, founded by his successor (1975),<sup>31</sup> in contrast to the Zajtay, who, from 1965 as

<sup>29</sup> Elemér Balogh, with a Budapest degree, applied unsuccessfully for private-professorship at Debrecen, despite the 1,500 pages of scientific oeuvre he had already published, much of it in Germany, because he faced gossip-level political accusations at the end of the Great War; so he emigrated. Then he was based at Vienna (1919-1922), Kaunas (1922-1928), Berlin (1928-1933), Paris (1933-1936), and finally, Johannesburg (1936-1947). He taught comparative law in Lithuania (what is more, in Lithuanian since 1924). He founded and edited, among others, *Actorum Academiae universalis jurisprudentiae comparativae / Mémoires de l'Académie internationale de Droit comparé* I (1924) – III (1953). According to one obituary by Murray Seashengood, "Elemér Balogh: In Memoriam", *Tulane Law Review*, XX, no. 2 (1955-1956), pp. 315-318, he wrote fifty-four books, in order of frequency, in German, French, Hungarian, English, Italian, Spanish, Lithuanian, as well as Afrikaans languages. See Gábor Hamza, "Elemér Balogh (1881-1955): The Scholar of European Reputation of Roman Law and of Comparative Law", *Studia Iuridica Caroliensia*, III (2008), pp. 69-76.

I remember the early 1970s, when, perhaps assuming his Jewish roots and pacifist leftism, Szabó commissioned our law bibliographer, Lajos Nagy (1911-1986), to acquire more data (from the scarce sources we might have then had) about him. His contemporaries praised his organizational skills, huge correspondence, and tireless one-person institutionalism; for instance, John Henry Wigmore (1863-1943) observed in the *American Bar Association Journal*, XXIII, no. 10 (October 1937), p. 783 – that "no other living person could have had the range of knowledge and the executive diligence to bring together such a world-wide gathering of representative jurists".

<sup>30</sup> András Bertalan Schwarz, with a degree in Budapest, had been a student of Ludwig Mitteis (1859-1921) in Leipzig, then taught at Freiburg am Breisgau and Zurich, eventually in Istanbul from 1934 (where his introductory lecture was on "La réception et l'assimilation des droits étrangers").

See his Ernő Zitelman [Ernst Zitelmann], *Törvényhez kötöttség és bírói szabadság* [Limits of the Law and Judicial Freedom], transl. Bertalan Schwarz in *Magyar Jogászegyleti értekezések*, XXXIV/7, No. 272 (1907); Andreas B. Schwarz, *Grundzüge der englischen Rechtsquellenlehre: Zwei Abhandlungen* [Das englische Recht und seine Quellen / Equity] (Mannheim, 1931); *Das schweizerische Zivilgesetzbuch in der ausländischen Rechtsentwicklung* (Zürich, 1950); *Rechtsgeschichte und Gegenwart: Gesammelte Schriften zur neueren Privatrechtsgeschichte und Rechtsvergleichung*, ed. Hans Thieme and Franz Wieacker (Karlsruhe, 1960). See Gábor Hamza, "András Bertalan Schwarz (1886-1953)", *Journal on European History of Law*, III, no. 1 (2012), pp. 58-61.

He nurtured his old relationships in Hungary throughout. An off-print of his "John Austin and the German Jurisprudence of his Time", *Politica*, no. 2 (August 1934), pp. 178-199 has survived in the legacy of the metropolitan legal philosopher Julius (Gyula) Moór (now in my own collection, to be bequeathed to the Library of Parliament in Budapest together with my professional library of some ten thousand items).

<sup>31</sup> Zsolt Szirmai, with a Budapest degree, practiced law in the capital and authored some ten articles in *Jogtudományi Közlöny*, becoming a member of its editorial board (1946-1947). By 1952 he had been a privat-docent at the University of Leiden, with professorship of Eastern European

co-editor of *La Revue internationale de Droit comparé* and from 1976 as its honorary editor-in-chief (in the company of Marc Ancel), withdrew from politics.<sup>32</sup>

In the strange air of the age, so to speak, as an irony of history, Professor István Szászy (1899-1976)<sup>33</sup> visited our Institute frequently. He was the first in Hungary to have established a comparative private law department at the metropolitan university, which had been liquidated by the Szabós of the epoch a decade and a half earlier. And now, invariably unemployed, but revived as a Phoenix, unexpectedly he became the most famous Hungarian jurist in the international arena, maintaining his modesty to such a degree that he initiated conversations with me as well, with eloquence, cheerfulness, and helpfulness. Later, when gift books from America began to arrive slowly at our Institute, we realized that the son<sup>34</sup> of the interwar *doyen* of Hungarian private law, Károly

Law gained in 1961. His successor, F. J. M. Feldbrugge (1973–1999), founded the *Review of Socialist Law* (1975–1991) [from 1992: *Review of Central and East European Law*]. See Donald D. Barry, F. J. M. Feldbrugge, and Dominik Lasok (ed.), *Codification in the Communist World: Symposium in Memory of Zsolt Szirmai (1903–1973)* (1975).

<sup>32</sup> Imre Zajtay, with a law degree in Budapest, had a government grant to study in Paris (1936–1938), where he became a student of Henri Lévy-Ullmann (1870–1947). After the war, he drafted procedural reforms in the Budapest Ministry of Justice, and organized bilateral Austro-Hungarian and Franco-Hungarian legal cooperation (with the active participation of Ludwig Adamovich (1890–1955) and Alfred Verdross (1890–1980). In 1948 he left for Paris, where his doctoral-supervisor was René David. Under the auspices of UNESCO, in the company of Ronald H. Graveson (1912–1991), F. H. Lawson (1897–1983), André Tunc (1917–1999), and Konrad Zweigert (1911–1996), he became the Secretary General of the *Internationale Vereinigung der Rechtswissenschaften* (1957–1965). After having worked at the *Institut de Droit comparé* and then the *Centre National de Recherches Scientifique* in Paris, he became a professor in Mainz (1961) and Hamburg (1970). See his *Introduction à l'étude du droit hongrois (La formation historique du droit civil)* (1952) and *Beiträge zur Rechtsvergleichung: Ausgewählte Schriften*, ed. Karl F. Kreuzer (1976). Also see Ronald H. Graveson, Karl Kreuzer (ed.), André Tunc, Konrad Zweigert (ed.), *Festschrift für Imre Zajtay* (1982) [including Karl Kreuzer, "Imre Zajtay – Leben und Werk", pp. xi–xxii].

I visited him twice in Paris, where he lived in retreat, and after mutual inquiries I left him each time with some gifts of books or off-prints.

<sup>33</sup> István Szászy, with a Budapest degree combined with studies in Paris (1926–1937), became a judge assigned to the International Law Department of the Ministry of Justice in Budapest, then a government-invited member of the International Mixed Court in Egypt (1938–1941). Later in Kolozsvár [now: Cluj-Napoca, Romania] (1942–1945) resp. in the capital (1945–1950), he acted as a university professor and founder of an Institute of Private Law and Comparative Law. It was he who had recommended Imre Szabó, a lecturer, to be appointed a university professor at the faculty council on 14 September 1949, whereas exactly one year later, with the impersonal and short-lived laconicism typical of the time, the minutes of the faculty council meeting only recorded that he asked for "leave to retire" which, on 25 October, was "noted" (because at the time of the political persecution launched against Prince Primate József Mindszenty (1892–1975), he had refused to sign in support of punishing the Cardinal). However, thanks to his tireless work, the relative political easing of the 1960s would make him perhaps the most sought-after Hungarian jurist internationally, becoming a member of the *Institut de Droit international* and a lecturer at the *Académie de Droit international* in The Hague.

See his *A magyar magánjog általános része különös tekintettel a külföldi magánjogi rendszerekre* [General Part of Hungarian Private Law, with Special Regard to Foreign Systems of Private Law] (1947–1948). 2 vols; *Private International Law in the European People's Democracies* (1964); *International Civil Procedure: A Comparative Study* (1967); *International Labour Law: A Comparative Survey of the Conflict Rules Affecting Labour Legislation and Regulations*, ed. Louis A. de Pinna (1968); *Conflict of Laws in the Western, Socialist and Developing Countries* (1974). See László Réczei, "István Szászy (1899–1976)", *Acta Juridica Academiae Scientiarum Hungaricae*, XIX, no. 3–4 (1977), pp. 303–306; László Burián, "Szászy István 1899–1976", in Gábor Hamza (ed.), *Magyar jogtudósok* [Hungarian Jurists] (2001), II, pp. 148–168.

<sup>34</sup> Szladits Károly [Jr.], with a degree in law from Budapest and Paris, as well as an LL.M. from the London School of Economics in the University of London, started organizing the Columbia University Parker School of Foreign and Comparative Law in 1950. In 1979 he became an adjunct

Szladits (1871–1956), that is, Charles Szladits, Jr. (1911–1986), who had started his career as a well-known expert in English law in the same capital university before the war, now worked at Columbia University as the world's leading legal bibliographer and main provider of data for our field.

Beginning in 1968, I began to attend sessions of the *Faculté internationale* in Strasbourg, as well as the Institute of State and Law of the USSR Academy of Sciences in Moscow,<sup>35</sup> where I could consult the ideological critics Vladimir Aleksandrovich Tumanov (1926–2011)<sup>36</sup> and Samuil Lazarevich Zivs (1921–1999)<sup>37</sup> as well, whose specialist's job was to unmask "imperialist law". Regardless of the fact Zivs built his ideological counter-offensive on ample material and in a particularly comparative way, all his business seemed disgusting to me, like the noncovert operation by an agent whom I should avoid as much as possible. Tumanov, in contrast, gave me the impression of dangerous character due to his restrained style and manner, yet he won me over with his impeccable rhetoric, determined speech, and intelligent and quick relevant-to-the-matter reactions. I spoke to him many times, interested in understanding the rationale of the Soviet best expert position rather than cooperating or sharing anything with him. That is to say, the feeling of aloofness did not really disappear either then or later, but I could feel the genuine humanity in him, which I did respect given my ignorance of the local conditions as a nonparticipant external observer.

All that notwithstanding, although I have a number of Tumanov's books, I never read them: I have never aspired to be a Soviet intermediary to an abnegated culture we have never belonged. The perfect opposite was the Lenin-bearded overdrive, vice-rector of the Moscow Institute of International Relations, M. A. Krutogolov (), who was seen by many in Strasbourg as a downright provocateur.

professor emeritus (his wife, Lola L[eontin] Szladits, emigrated from Hungary in 1950, became the Curator of the Berg Collection of the New York Public Library, an Anglo-American literary (manuscript) collection founded by the Berg brothers who were famous medical doctors from poor Hungarian emigrants in 1862; she was a well-known and esteemed figure).

See Szladits, *Az angol jog kútfoi* [The Sources of English law] (1939); Szladits, *Az angol jogi trust-intézmény* [The English Institution of Trust] ([1939]); Szladits, *Guide to Foreign Legal Materials* French, German, Swiss (1959); *A Bibliography on Foreign and Comparative Law Supplements* 1960/1961–1964, 1966/1967–1970, 1974, 1979–1982 (1963/1992). George A. Berman, "Charles Szladits (1911–1986)", *American Journal of Comparative Law*, XXXIV (1986), pp. 822–827.

<sup>35</sup> Later I was expected almost yearly to appear in Moscow or its twin, the European hard line capital of East Germany, to meet the same comrades at the *Berliner Rechtstheoretische Tagungen*, organized for the whole socialist bloc.

<sup>36</sup> Tumanov had been a critic of bourgeois legal theory at the Institute of State and Law of the USSR Academy of Sciences (1959–2004). At the end of his active life, he became the Chairman of the Russian Constitutional Court. See Tumanov, *Буржуазная правовая идеология: К критике учений о праве* [Bourgeois Legal Ideology: On the Critique of Doctrines on Law] (1971) (also in Hungarian (1977)); Tumanov, *Сравнительное правоведение: Сб. статей* [Comparative Jurisprudence: Collection of Articles] (1978) (with articles, among others, by Szabó, Péteri, and Attila Harmathy); Tumanov, *Избранное* [Selected Works] (2010).

<sup>37</sup> Zivs was the critic of imperialist State life at the Institute of State and Law of the USSR Academy of Sciences. It is characteristic of the level of his political involvement in changing winds prevailing at any time then that in 1982 he wrote a book denouncing Amnesty International; moreover, he accepted the vice-chair of the shameful quasi-public forum of Soviet anti-Zionism ([Антисионистский комитет советской общественности] 1983–1992). See Zivs, *Кризис буржуазной законности в современных империалистических государствах* [The Crisis of Bourgeois Legality in Contemporary Imperialist States] (1958); Zivs, *Развитие формы права в современных империалистических государствах* [The Development of the Form of Law in Contemporary Imperialist States] (1960) (also in Hungarian (1962)).

He always turned up there, always in sight and mostly intervening; I tried not to face him.<sup>38</sup> From the opposite side, sometime later, the greatest experience came: getting to know the world-famous Soviet law expert John Hazard (1909-1996),<sup>39</sup> who thereafter I met several times around the world, Budapest included. I appreciated his immense knowledge and his lightness in explanation, coupled with the discipline of an American instructor. At a given moment we were just talking, but suddenly he is running to the airport because he has to give a lecture at Columbia University in a few hours. And he says: he will come again, but so as not to conflict with his university obligations, because only the latter may have priority.

The relentless – Bolshevik-type – intellectual execution of the heritage and traces of past Hungarian legal philosophizing which Szabó performed as a class warrior with his highly rewarded book in 1954,<sup>40</sup> exempted neither past representatives, nor his “bourgeois” contemporary compatriots, that is, those withdrawn into interior emigration and forced into silence or those surviving professionals who could resume their job after their forced departure to the West. I nevertheless sought to contact them<sup>41</sup> (a separate file had been kept on me by the political police throughout my career under socialism because in my pre-university past I had been accused of “plotting against the regime” through a simple Catholic youth *pastoratio*), partly in my unquenchable desire to acquire and deepen my knowledge *sine ira et studio* and partly to preserve their past or present oeuvre in our historical memory and, if the time would come, their official (re-)acknowledgment in and by Hungary.

I came across a further worthy Hungarian personality: namely, the world’s (perhaps) number one journal in our profession, *The American Journal of Comparative Law*. Already known to me from literary references, it could not be found in any Hungarian library. But I learned from domestic library acquisition documentation that the Ministry of Foreign Trade, which was then adjacent to

<sup>38</sup> The present writer only learned when preparing this article that Krutogolov was his country’s leading French public law specialist, translator of half a dozen important French books between 1957 and 1977 (including René David’s *Les grands systèmes de droit contemporains* in 1967), and also an editorial board member of the leading Soviet monthly of our field, Советское государство и право [Soviet State and Law]. In 1968, leaving a country with vivid memories of several hundred political executions in retaliation for our 1956 revolution (all in all, 700 garroted, 65,000 perished in the Soviet Gulag, and 70,000 imprisoned as a net sacrifice to post-World War II communism tested in Hungary) and the impending sinister effects of the Siniavsky–Daniel trial for Hungary as well, his message about Soviet democracy as the sole true fruition of the democratic ideal was counter-effective; even if I noticed the memento of French revolutionary nostalgia in the Paris metro announcing that “despite all that, the Soviet ice ballet is the best in the world!”.

<sup>39</sup> Hazard studied in Moscow from 1934 to 1937; after serving in the Department of State during the War, he became a Columbia University professor, was among the founders of its Russian (now: Harriman) Institute, and editor-in-chief of the *Parker School Journal of East European Law* I (1994) – V (1998). His books are reliable foundations of contemporary legal Sovietology, amongst the most authentic living sources. See John N. Hazard, *Recollections of a Pioneering Sovietologist* (1984; 2d rev. ed.; 1987).

<sup>40</sup> Szabó, *A burzsoáz állam- és jogbölcsélet Magyarországon* [The Bourgeois Philosophy of State and Law in Hungary] (1955). In its revised edition of 1980, he became more irreconcilable, stating that where and when Marxism had come into being, no other doctrine could be valid (characteristically in this era, Szabó was honored by Kossuth Prize for this work. See note 1 above).

<sup>41</sup> Among those who pushed into silence or becoming a non-person in Hungary at that time, I published a lot (in chronological order of authors) from the legacy of Felix (Bódog) Somló, Julius (Gyula) Moór, Barna Horváth, István Bibó, József Szabó, István Losonczy, and even from the manuscripts of the progressive leftist Aladár Halász.

us, had a full set hidden away. The international law department there had its own budget in western currency (at a time when *academia/universitas* had not); they had subscribed and allowed me access for a couple of days or weeks. The imprint included a name, Vera Bolgár (1913-2003),<sup>42</sup> who, as assistant to Professor Yntema (1891-1966), in fact edited the Journal for the first decade and a half. I started to correspond with and received books from her.<sup>43</sup> When she eventually visited her native town by booking a room in the elegant Grand Hotel on Margaret Island in Budapest, we strolled for hours in the intimacy of the island or she visited our home; she played a lot with my young son. In the format of off-prints, I received practically her entire oeuvre: dozens of papers, true masterpieces of the exploratory comparison of legal regimes, which stood for the harmonious unity of a European-educated worldview, German precision, and a seemingly light-hearted but rarely deeply Anglo-American presentation.

## ACHIEVEMENTS

Although I read and enjoyed so-called introductions to comparative law with their explanations of its history, subject matter, method, and scientific nature, the Soviet pattern of inherent Germanism was alarming. This was the case when

<sup>42</sup> Vera Bolgár was a descendant of an upper-middle class Jewish family in the capital, related to but broken from the branch of Elek Bolgár [Breuer] (1883–1955) after he had become a Muscovite (and, in post-World War II years, several times minister, then professor of both history and legal history). Her fiancé, a mathematician, died at Buchenwald *Konzentrationslager*; she did not remarry. After the war, she started lawyering at the headquarters of Manfréd Weiss Steel and Metal Works at Vörösmarty Square in the heart of Budapest. As a would-be assistant to Professor Barna Horváth (1896-1973) in Szeged, she did in fact never get to Szeged because of the acceleration of events. Finally, independently of the identical decision by her superiors, Barna Horváth and József Szabó of Szeged, she emigrated by swimming across the Danube to reach Bratislava and flee to Austria. During her wanderings in the United States, thanks to Max Rheinstein (1899-1977), she was brought to the attention of Hessel E. Yntema (1891-1966) of Michigan, who had been looking for international and multilingual European-type staff for the editorship of *The American Journal of Comparative Law*. She remained at the University of Michigan throughout, eventually as a professor.

See Bolgar, "Comparative Law in Legal Education", *New York Law Forum*, I, no. 4 (December 1955), pp. 389-405; Bolgar, "The Concept of Public Welfare: An Historical-Comparative Essay", *The American Journal of Comparative Law*, VIII (Winter 1959), pp. 44-71; Bolgar, "The Magic of Property and Public Welfare" / "La Magia de la Propiedad y el Bien Comun", *Inter-American Law Review* / *Revista Jurídica Interamericana*, II (July-December 1960), pp. 283-298 / pp. 299-316; Bolgar, "The Magic of Freedom", in *XX<sup>th</sup> Century Comparative and Conflicts Law: Legal Essays in Honor of Hessel E. Yntema* (1961), pp. 453-462; Bolgar, "The Public Interest: A Jurisprudential and Comparative Overview of the Symposium on Fundamental Concepts of Public Law", *Journal of Public Law*, XII (1963), pp. 13-52 / "L'intérêt générale dans la théorie et dans la pratique", *Revue internationale de droit comparé*, XVII, no. 2 (1965), pp. 329-363; Bolgar, "The American Journal of Comparative Law 1952-1966: In Memoriam", *American Journal of Comparative Law*, XV (1966), pp. 21-59; Bolgar, "The Present Function of the Maxim Ignorantia Iuris Neminem Excusat: A Comparative Study", *Iowa Law Review*, LII (February 1967), pp. 626-656; Bolgar, "The Contract of Adhesion: A Comparison of Theory and Practice", *American Journal of Comparative Law*, XX (Winter 1972), pp. 53-78; Bolgar, "Abuse of Rights in France, Germany, and Switzerland: A Survey of a Recent Chapter in Legal Doctrine", *Louisiana Law Review*, XXXV (1975), pp. 1015-1058; Bolgar, "The Constitutional and Legislative Status of National Trade Union (Labor) Organizations", in *Law in the U.S.A. in the Bicentennial Era – Section IV: Constitutional, Administrative and International Public Law = American Journal of Comparative Law Supplement*, XXVI (1978), pp. 349-358; Bolgar, "The Fiction of the Corporate Fiction: From Pope Innocent IV to the Pinto Case", in Ronald H. Graveson, Karl Kreuzer, André Tunc, Konrad Zweigert (eds.), *Festschrift für Imre Zajtay* (1982), pp. 67-95. See Alfred F. Conard "Vera Bolgar, 1913–2003", *American Journal of Comparative Law*, LII (Winter 2004), pp. 5-7.

<sup>43</sup> One was H. L. A. Hart, *The Concept of Law* (1961), the only specimen of a pioneering opus that could be found in Hungary at the time.

there was hardly any intellectual challenge to a group of third rank aggregate of rules, called the “law of court organization”, or “law of agrarian cooperation”, and so on, being proclaimed to be autonomous as an instructional subject, or branch of law, or discipline as the result of a policy decision; almost at once, Soviet or satellite legal scholarship was activated to justify this with a mass of quasi-scientific scriptures on the attributable history/subject/method/science of the given field. I personally thought that I would like to see the product first, and then I could decide what position the given field deserved on my own intellectual imaginary board.

The launch by Imre Szabó of his Institute brought to fruition the renewal of style and depth of jurisprudential research in Hungary. This required consulting literature in several languages and using the comparative historical approach. The approach was evident on a large scale in our Institute and universities, pervasive in dissertations, monographs, and articles and in our extensive and regular reviewing of or commenting upon foreign books and serials published in our Institute journals;<sup>44</sup> the publication and wide international distribution of our works in foreign languages to an unprecedented extent in the then socialist world,<sup>45</sup> in parallel with the translation of some of the most painfully missing intellectual products of the Western world;<sup>46</sup> and encouraging a multitude

<sup>44</sup> Our Institute published the quarterly *Acta Juridica* (see note 45 below) and *Állam- és Jogtudomány* [Science of State and Law] (1957–) (with summaries in Russian and French), and cared for *Jogi Tudósító A nemzetközi sajtóból* [The Legal Messenger: From the International Press], I (1970) – XLII (2011), published by the State central news agency (MTI). The last contained translations of articles from foreign dailies, weeklies, and monthlies of general interest by MTI journalists, and articles *in extenso* from professional journals by us, as well as the elaboration of current topics (by me, for example, on the continuity of law, civil disobedience, and legal borrowing). In sharp contrast, only new laws, socialist, capitalist, and new States, were registered or interesting scientific literature bibliographically processed by our Documentation Department in the supplement – *Dokumentációs Szemle* [Documentary Overview], No. 1 (1970) – No. 149 (1983) – to the monthly national academic journal *Jogtudományi Közlöny* [Journal of Legal Science].

<sup>45</sup> This was an explicit profile of Akadémiai Kiadó. Under its auspices, the quarterly *Acta Juridica Academiae Scientiarum Hungaricae* has published papers in English, Russian, French, or German (with abstracts in other languages) since 1956 [from 1991, *Acta Juridica Hungarica*]. As for the legal profession, the Hungarian Lawyers’ Association published both the semi-annual *Hungarian Law Review* and *Revue de Droit hongrois*, as well as *Обзор венгерского права* (1961–1986) [preceded by *Обзор венгерского законодательства* edited by Imre Szabó, No. 1 (1952) – No. 4 (1956)], in addition to the independent volumes of important laws such as the Constitution, codes, and basic enactments in Russian, English, French, and Spanish.

<sup>46</sup> As a precursor, Marc Ancel, “Az összehasonlító jog modern koncepciói” [Modern Conceptions of Comparative Law], *Állam- és Jogtudomány*, VI, no. 4 (1963), pp. 435–443, and, as a breakthrough, René David, *A jelenkor nagy jogrendszerei: Összehasonlító jog* [Les grands systèmes de droit contemporains, 5<sup>e</sup> éd. (1977)].

I note here that the latter’s translation into Russian of David, *Основные правовые системы современности*, transl. M. A. Krutogolov and V. A. Tumanov) (1967) was far ahead of the Hungarian, although there have been many cases when the first foreign echo in form of translation of legal classics happened to be Hungarian. For example, Henry Maine, *The Ancient Law* (1861), was not only translated but thoroughly commented upon by the contemporary philosopher and sociologist of law, Ágost Pulszky (1846–1901) in 1875. Hans Kelsen, *Grundriss einer allgemeinen Theorie des Staates* (1926) was translated with an extensive preface by the contemporary leading legal philosopher, Julius Moór (1888–1950), and early foreign support the latter granted to the former was appreciated so highly that Kelsen drafted his first intellectual autobiography for exactly this purpose (1927). My own editing of Kelsen, *Reine Rechtslehre* (1934), even if belated in a Hungarian context (based on the manuscript translation completed by Kelsen’s contemporary student, István Bibó (1911–1979), in 1937), is a relatively early occurrence in the region’s translation history (1988). The second and final (posthumous) edition of Hart, *The Concept of Law* (1961) was negotiated by me with the author at Oxford, with translation and publication made as part of my project (1995). See Sir Henry Sumner Maine, *A jog őskora, összeköttetése a társadalom alakulásának*

of study and conference trips (with own or exchange funding); and last but not least, the organization of bilateral or multilateral international meetings (which started with the French, the Germans and the English), followed by the complementary joint publication of their results.

At the same time, in the field of comparison I could only think that the cause of *comparatio iuris* is not advanced by scholarly reflection *on* comparative law, but by comparison itself, that is, by the genuine works *in* it – the more so because he who thinks in the exploration of the contexts of his subject, that is, in the latter, does not take either his task or considerations or the latter's justification from the former, but expands them from his own subject in a suitable methodological complexity. And the launch momentum given by Szabó generated excellent works, mostly from our Academy Institute workshop. And it might be added: their authors were hardly inspired by our theorized reflections on the comparison of laws;<sup>47</sup> with knowledge of *dramatis personae*, I can say with confidence that they did not necessarily read them; and that is so even more today.

These monuments of the rebirth of the comparison of laws in Hungary, significant for involving enduring values, were predominantly created on the basis of civil law issues, and practically all as a product of comparative-historical research. Chronologically, the first was a *magnum opus* by a researcher who specialized in European Community law and private international law; it reviewed the development of tort liability.<sup>48</sup> It was followed by the *doyen* of socialist civil law, the epitome of lifetime's work, with thoughtful insights which were instructive even if the reader disagrees with the author's basic position which, in addition to my recognition of the values inherent in this great book, I have always considered to be a species of enlightened Stalinism.<sup>49</sup> Also exploring the foundations of civilistics, the next treatise, authored by a representative of the rising generation, reviewed the modern development of civil law liability, and then, in another masterpiece, the history and institutionalization of personal rights.<sup>50</sup> My own basic work as the next undertaking, was partly a universal comparative history of codification with a complex socio-legal approach, from the

történetével, s viszonya az újkori eszmékhez, transl., introduction, and notes by Ágost Pulszky (1875); Hans Kelsen, *Az államelmélet alapvonalai* (transl. and preface Gyula Moór) (1927); Hans Kelsen, *Tiszta jogtan* [Reine Rechtslehre, 1934], transl. István Bibó [1937]), ed. Csaba Varga (1988); H. L. A. Hart, *A jog fogalma*, transl. Péter Takács (1995).

<sup>47</sup> See Szabó, *A jogösszehasonlítás szocialista elmélete* [Socialist Theory of the Comparison of Laws] (1975); as edited by pupils: Zoltán Péteri, *Jogösszehasonlítás: Történeti, rendszertani és módszertani problémák* [Comparison of Laws: Historical, Systemic, as well as Methodological Issues] (2010).

<sup>48</sup> Ferenc Mádl (1931-2011) was an international private law professor, President of the Republic (2000-2005); see Mádl, *A deliktualis felelősség a társadalom és a jog fejlődésének történetében* [Delictual Responsibility in the History of Social and Legal Evolution] (1964).

<sup>49</sup> Gyula Eörsi (1922-1992) was the head of department at our Institute and Rector of Eötvös Loránd University; see Eörsi, *Comparative Civil (Private) Law: Law Types, Law Groups, the Roads of Legal Development* (1979), preceded, by the way, by his survey *A skandináv jogról és jogtudományról* [On Scandinavian Law and Legal Scholarship] (1974). See Szécsényi-Nagy Kristóf, "Az összehasonlító polgári jog és a jogösszehasonlítás Eörsi Gyula életművében" [Comparative Civil Law and the Comparison of Laws in Eörsi's Oeuvre], *Állam- és jogtudomány*, LI, no. 1 (2010), pp. 115–120.

<sup>50</sup> László Sólyom (1942–) acted as a senior research fellow at our Institute, then became a professor of civil law, and President of the Republic (2005-2010); see Sólyom, *The Decline of Civil Law Liability* (1980); Sólyom, *Die Persönlichkeitsrechte: Eine vergleichend-historische Studie über ihre Grundlagen* (1984).

earliest Chinese and Mesopotamian occurrences via the collections of customary laws, as well as modern Continental and Anglo-American developments, up to socialism and ending with the latest sequels in Africa and Asia, and partly a grand theory of the legal-philosophical topic of the objectification of law, developed from its historical involvement.<sup>51</sup> Finally, two overviews by our outstanding university Romanist have to be mentioned.<sup>52</sup>

Decades have since elapsed, and most Hungarian publications in the field would need to be listed if we highlighted comparative treatments of the law in the Hungary. In order to compile my short (below the academic paper level) relevant writings published from 1966 to 1994 in a *facsimile* edition, I needed half a thousand pages.<sup>53</sup> And the seed once sown has since become a crop, which slowly has grown into a crop culture that encompasses our present-day scholarship.<sup>54</sup> More monographs have been devoted to the comparison of laws in general and its key topical aspects in particular.<sup>55</sup> Both international and domestic collections of papers have been published *en masse*,<sup>56</sup> and the *festschriften* contain rich comparative material.<sup>57</sup>

<sup>51</sup> Varga (1941–) *Codification as a Socio-historical Phenomenon* (1991; 2d ed.; 2011).

<sup>52</sup> Hamza (1949–), head of the Roman law department of the Eötvös Loránd University; see Hamza, *Comparative Law and Antiquity* (1991); Hamza, *The Subsequent Fate and Continuity of Roman (Civil) Law from a Historical-Comparative Perspective* (2016).

<sup>53</sup> Varga, *Jogi elméletek, jogi kultúrák: Kritikák, ismertetések a jogfilozófia és az összehasonlító jog köréből* [Legal Theories, Legal Cultures: Criticisms and Overviews within the Circle of Philosophy of Law and Comparative Law] (1994).

<sup>54</sup> For example, Balázs Fekete, *Paradigms in Modern European Comparative Law: A History* (2021).

<sup>55</sup> Varga, *Comparative Legal Cultures: On Traditions Classified, their Rapprochement and Transfer, and the Anarchy of Hyper-rationalism* (2012).

<sup>56</sup> For the outside world, socialist comparative law in Hungary was represented by Imre Szabó and Zoltán Péteri (eds.), *A Socialist Approach to Comparative Law* (1977) in the same manner as the regime of socialism faced human rights by József Halász (ed.), *Socialist Concept of Human Rights* (1966).

See Varga (ed.), *Comparative Legal Cultures* (1992); Volkmar Gessner, Armin Hoeland, and Csaba Varga (eds.), *European Legal Cultures* (1996), as well as Varga (ed.), *Comparative Law and Multicultural Legal Classes* (2020); Balázs Fekete (ed.), *A jogösszehasonlítás elmélete: Szövegek a jelenkori komparatiztika köréből* [The Theory of the Comparison of Laws: Contemporary Texts] (2006); Attila Badó (1965–) (ed.), *Internationale Konferenz zum zehnjährigen Bestehen des Instituts für Rechtsvergleichung der Universität Szeged* (2014).

As collections of reports to the international congresses of the *Académie internationale de Droit comparé*, see Zoltán Péteri (ed.), *Studies in Jurisprudence for the Sixth International Congress of Comparative Law* (1962); Péteri (ed.), *Études en droit comparé / Essays in Comparative Law* (1966); Péteri (ed.), *Droit hongrois – droit comparé / Hungarian Law – Comparative Law* (1970); Péteri (ed.), *The Comparison of Law / La comparaison de droit: Selected essays for the 9th International Congress of Comparative Law* (1974); Péteri (ed.), *Comparative Law 1978 / Droit comparé 1978: Selected Essays for the 10th International Congress of Comparative Law* (1978); Péteri (ed.), *General Reports to the 10th International Congress of Comparative Law / Rapports généraux au 10<sup>e</sup> Congrès international de droit comparé* (1981); Péteri and Vanda Lamm (eds.), *Legal Development and Comparative Law 1986: Selected Essays for the 12th International Congress of Comparative Law / Evolution du droit et droit comparé* (1986); Péteri (ed.), *Legal Problems of Transition in Hungary: Hungarian National Reports Submitted to the Fifteenth International Congress of Comparative Law (Bristol, July 26 – August 1, 1998)* (1998).

<sup>57</sup> For example, comparatists such as Gianmaria Ajani, Attila Badó, Xavier Blanc-Jouvan, Attila Harmathy, István H. Szilágyi, Heinz Schäffer, Miklós Szabó, Csaba Varga, Antal Visegrády contributed to István H. Szilágyi and Máté Paksy (eds.), *Ius unum, lex multiplex – Liber amicorum studia Z. Péteri dedicata: Studies in Comparative Law, Theory of State, and Legal Philosophy* (2005); Chongko Choi, Volkmar Gessner, János Jany, David Nelken, Esin Örüçü, Zoltán Péteri, Antal

At the Pázmány Péter Catholic University, since the establishment of its Faculty of Law (1995), comparative law and comparative legal cultures have been taught as one of the sub-subjects of the nine-semester philosophy and theory of law;<sup>58</sup> an independent Institute of Comparative Law was established at the University of Szeged (2002) with a broad educational (graduate and postgraduate) profile; and, on the Swiss model, the Ministry of Justice established the Ferenc Mádl Institute for the Comparison of Laws (2019) with nearly half a hundred staff, to pursue topics relevant to legislative plans and challenges.

Perhaps it can be asserted that when we practice and cultivate legal scholarship in Hungary today, we shall find ourselves in the realm of *comparatio iuris* as well – in addition, of course, to the historical approach and all other methods, insights and approaches.

## THE ISSUE OF COMPARATIVE LEGAL CULTURES

In the worldwide movement of comparative law, a new trend has formed since the early 1990s, researching the wider framework and context historically and comparatively within which law can be analyzed and compared more meaningfully. I have been involved in such efforts almost from the beginning, encouraging a synthesis between legal philosophy and the comparative study of law. Conceptualizing its subject-matter, the old terms legal cultures/traditions have been re-used as adapted to their new environment.<sup>59</sup>

In addition to the views formed about society and the order that can be desired and ensured in and by it, entire *worldviews* are placed on a common platform of investigation. Their most common feature is their mutual difference, which precludes commensurability and even contrastive evaluation, for what they can represent cannot be more than their *autochthonous* nature: as part of world civilizations at a given place and time, it is the particular conditions and individual experiences of peoples that have formed their ideas of order; any effect of interaction or learning process, which nevertheless can perhaps be detected in their formation, cannot be more than of subordinate importance to their root autochthonality.<sup>60</sup>

This implies that the scale by which we measure their success is provided by criteria they will have supplied themselves, regardless of how differentiated and/or autonomous they are – although, as recent anthropological micro-analyses

Visegrády to Péter Cserne, István H. Szilágyi, Miklós Könczöl, Máté Paksy, Péter Takács, Szilárd Tattay (eds.), *Theatrum legale mundi: Symbola Cs. Varga oblata* (2007); and Marie-Eve Arbour, H. Patrick Glenn, Bernard S. Jackson, Sofia Popescu, Teruji Suzuki to Bjarne Melkevik (ed.), *Standing Tall: Hommages à Csaba Varga* (2012).

<sup>58</sup> Varga, “The Philosophy of Teaching Legal Philosophy in Hungary”, in Imer B. Flores and Gülriz Uygur (eds.), *Alternative Methods in the Education of Philosophy of Law and the Importance of Legal Philosophy in the Legal Education: Proceedings of the 23rd World Congress of the International Association for Philosophy of Law and Social Philosophy »Law and Legal Cultures in the 21<sup>st</sup> Century: Diversity and Unity« in Kraków, 2007* (2010), pp. 49-60, and *Iustum Aequum Salutare*, V, no. 2 (2009), pp. 165-184.

<sup>59</sup> See as an *Ideengeschichte* type overview of the related concepts, Varga, “»Jogi kultúra« és »jogi kultúrák«” (2020).

<sup>60</sup> The Greek *autochthōn* = *auto-* + *chthōn* [earth], meaning “native to the soil”, was introduced as a term for legal comparison by H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (2000).

demonstrate, even their most ancient, primitive, and prototypal forms may have developed an astonishingly complex internal structure and feedback capability. Moreover, typically for them, we can find in each some approach, combination, or technical solution to be so surprisingly original and prodigiously effective that we may be inclined to generalize it as the specific genius of the given arrangement.<sup>61</sup>

I have called such large units legal cultures. That is, meaning neither what I may study in close proximity nor what I perhaps compare with some neighboring phenomenon, but the types or individual carriers of whole sets produced by universal human development, serving as fundamental legal patterns.<sup>62</sup> Accordingly, the characterization of “legal cultures” is mostly done by generalizing or exemplary description<sup>63</sup> of features identifiable, more or less, as ideal types.<sup>64</sup> That is why I was able to record sometime around 1990 that “Comparative legal cultures are examined by a field of scholarship, which is situated at the line bordering comparative law and historical jurisprudence”.<sup>65</sup> At the same time, these complex phenomena called “legal cultures” are not only products, that is, mere outcomes or imprints of other phenomena, but also productive forces themselves, able to create some own social reality. That is, they have an *ontological* status as well, serving also as *epistemological* filters in and for the cognition of law.<sup>66</sup>

And what is all of such use for? It is used to outline the potentials of law known so far – ideals of order, ways of proceeding and thinking, peculiar language and objectification, among others – for elaborating a genuinely universalizable *general theory of law* and – by transcending the hitherto narrow and formal representation of law in usual legal comparison, reduced to the linguistic form of mere rules – to be able also to show why in some cultures it is worth talking about rule-based law, whereas in others it is not.

<sup>61</sup> Varga, “Comparative Law and Multicultural Legal Classes”, in Varga (ed.), *Comparative Law and Multicultural Legal Classes* (2020).

<sup>62</sup> Close in meaning but used mostly within a Civil Law and Common Law context, the term “*mentalité juridique*” was introduced by Pierre Legrand, “À propos d’une réflexion sur la comparaison juridique”, *Revue internationale de droit comparé*, XLV (1993), pp. 879–888; and Legrand, “European Legal Systems are not Converging”, *International and Comparative Law Quarterly*, XLV (1996), pp. 52–81, at 60 et seq. He defined it as “the framework of intangibles within which an interpretive community operates, which has normative force for this community [...] and which, over the *longue durée*, determines the identity of a community as community.” Pierre Legrand, *Fragments on Law-as-Culture* (1999), p. 27.

<sup>63</sup> Acknowledged by Jaakko Husa, “Legal Culture vs. Legal Tradition – Different Epistemologies?”, *Maastricht European Private Law Institute Working Paper*, no. 18 (2012), p. 22, as not a single occurrence but a type of relative occurrences.

<sup>64</sup> According to an early formulation, these are “historically conditioned, deeply rooted attitudes about the nature of law and about the proper structure and operation of a legal system”. John Henry Merryman and David S. Clark, *Comparative Law, Western European and Latin American Legal Systems: Cases and Materials* (1978), p. 29.

<sup>65</sup> Varga, “Introduction”, in Varga (ed.), *Comparative Legal Cultures* (1992), p. xix.

<sup>66</sup> “In short, we create our experience, knit together disparate ideas and actions, and in the process fabricate a world of meaning that appears to us as real”. Lawrence Rosen, *Law and Culture: An Invitation* (2004), p. 4. Thereby a “collective programming of the mind [emerges] which distinguishes the members of one group or category of people from another”. Geert Hofstede, *Cultures and Organizations: Software of the Mind* (1991), p. 5.

As was said more than two decades ago by the French specialist David Bell of Oxford and Cambridge – to whom legal culture is “a specific way in which values, practices, and concepts are integrated into the operation of legal institutions and the interpretation of legal texts”<sup>67</sup> – the problematization of David Nelken is hardly more than resuming “The work [...] which Varga, in particular, is developing and whose work is being published by the same publisher [...], though is not referred to directly in the work under review”.<sup>68</sup>

Instead of following the image Nelken had suggested as a targeted sociological indicator, the comparative theoretician, Jaakko Husa, continued this implicit debate by explaining that

However, not all the uses of ‘legal culture’ or definitions of it are stemming from sociological legal world-view purely. There are also more demanding and more subtle ways to understand the concept. Varga has also connected uses of up-to-date comparative concepts, as ‘legal culture’ and ‘legal tradition’, with transcending the limits of legal positivism so that law’s internal description of itself is replaced by an external description of law. To simplify a great deal, epistemic point of view from which law is conceived has shifted from inside to outside. Here we find different socio-historical, sociological, and cultural anthropological frameworks. For Varga the shift in comparative law seems to be, rightly so, a shift from positivistic epistemology into wider socio-historical framework. He defines ‘legal culture’ in a manner that seems to contain elements from multiples fields that study law, not just juristic studies, but sociology, philosophy, history, and philosophy.<sup>69</sup>

For, as Husa quoted from me in furtherance of his argument:

the law’s formal objectification (enactments, decided cases, etc.) can be meaningfully interpreted only within its informal contexture. This environment is called legal culture; it is embedded in general societal culture. Legal cultures include ethos, values, conceptual and referential frames related to law, judicial skills and habits, as well as ideology and deontology of the legal profession, among others. It is this component that gives law a life, makes it dependent from local histories and domestic culture, defines its orientation, shapes its receptiveness and responsiveness, and, in case of eventual reform, backs or withstands to it.<sup>70</sup>

According to such a “broad definition”, he continued,

‘legal culture’ conceived in this manner is not rigid, it is rooted in social habits, it describes how law is felt, it is not only descriptive because it

<sup>67</sup> John Bell, “English Law and French Law: Not so Different?”, *Current Legal Problems*, XLVIII (1995), p. 70.

<sup>68</sup> John Bell, [review of David Nelken, *Comparing Legal Cultures*], *International & Comparative Law Quarterly*, XLVII (1998), p. 248, with reference to Varga (ed.), *Comparative Legal Cultures* (1992) and Gessner, Hoeland, and Varga (eds.), *European Legal Cultures* (1996).

<sup>69</sup> Jaakko Husa, “Legal Culture vs. Legal Tradition – Different Epistemologies?”, *Maastricht European Private Law Institute Working Paper*, no. 18 (2012), p. 7.

<sup>70</sup> Varga, *Transition to Rule of Law: On the Democratic Transformation in Hungary* (*Philosophiae Iuris*, Budapest: ELTE “Comparative Legal Cultures” Project, 1995), p. 85 (available online), quoted by Husa, “Legal Culture vs. Legal Tradition” (2012), note 69 above, p. 7.

contains the element of potential (in objectified elements of law i.e. enactments, decided cases etc.), it is formed in social co-operation, it is conceptualization of law in broad sense, it tells about the legal *mentality* of a society or a group.<sup>71</sup>

Quotes me again, he said:

the comparative study of legal cultures has from the very start been interested in the genesis and formation of the law's various phenomena and operations, that is, in how law evolved within various civilizations, producing various cultural responses in human efforts at problem solving, with varying moral and religious foundations and value preferences in successive ages in a way rebuilding again and again. Or, this is also an interest in the history of ideas, manifesting itself in the general frame of the history of civilizations, dedicated to societal problem-solving capacity even when we are making formal and homogenized instruments and institutions,<sup>72</sup>

as any such intellectual reconstruction is done "in the context of the cultural response we offer in law to the various challenges, characteristic of the given human community and civilization".<sup>73</sup>

More specifically, as Anita Frohlich explained some fifteen years later, "Csaba Varga's starting point, in turn, is the heterogeneity of laws. For him, legal systems are intrinsically diverse. Consequently, any classification into any specific group – it being civil, common, or mixed – is artificial in nature and only serves to facilitate the comparative task".<sup>74</sup> However, as she continued in another article

Csaba Varga employs the term legal culture in order to establish a new interdisciplinary area of research (he calls it 'comparative legal cultures') that intends to study legal systems not only from a legal stand point, but also from a sociological, philosophical, historical and anthropological perspective. According to Varga 'the term 'legal cultures' [...] stands for an operative and creative contribution, through social activity rooted in underlying social culture, to express how people experience legal phenomenon [...], how and into what they form it through their co-operation, how and in what way they conceptualize it, in what a spirit, frame and purpose they make it the subject of theoretical representation and information.<sup>75</sup>

Thus, in the final analysis, *legal culture* is nothing more than the ideal of order (involving the underlying mentality) on the basis of which (*a*) as a global force

<sup>71</sup> Husa, *ibid.*, pp. 22 and 23.

<sup>72</sup> Varga, "Comparative Legal Cultures? Renewal by Transforming into a Genuine Discipline", *Acta Juridica Hungarica*, 48, no. 2 (2007), p. 104, quote by Husa, note 69 above, p. 12.

<sup>73</sup> Varga, *ibid.*, p. 99, quoted by Husa, note 69 above, p. 14.

<sup>74</sup> Anita Frohlich, "Mixed Legal Systems in a Cultural-Traditional Context" (available online).

<sup>75</sup> Anita Frohlich, "What is Legal Culture?" (2014), referring (also by Husa, p. 7) to Varga, "Legal Traditions? In Search for Families and Cultures of Law", *Acta Juridica Hungarica*, XLVI, no. 1-2 (2005), p. 182.

within the given society as a whole and (b) by resolving basal conflicts (c) in its quality of standing for the supreme and ultimate regulator and pressuring power within the given society,<sup>76</sup> law is created, maintained, and managed.

Owing to the above, on one hand, the discipline of comparative investigations into legal cultures is indefinable, but, on the other, it has the virtue of being ready to identify the organizing core (or specific genius) of each variant differently in differing cultures, as one of the distinctive features by which individual legal cultures may have contributed to the almost endless variety developed in and by law. As another author<sup>77</sup> also quotes me,

the starting point is no longer either the law of a nation or its sectoral history, but the cultural medium in continuous formation, in which references, as the fixed and fixing points of human thinking and action – beliefs and values, preferences and aims, traditions and skills, methods and procedures – may have developed in a given (and not another) way, that is, the medium in which a certain (and not another) notion of order and the associated (and not another) store of instruments (with a proper conceptual scheme and the role it may attribute to abstract logic) could evolve. If, in an inverse move, we start thinking from the endpoint, this explains why the comparative study of legal cultures neither supposes any kind of codified list, nor any set of questions, nor taxonomy, nor previously established methodology, regarding (or following) which the discipline of comparative legal cultures and its focus on the whole variety of cultures and ages should provide a response. Just to the contrary. According to its inherent approach, out of itself and through its in-built learning processes, each culture generates proper (general and sectoral) formations, frameworks and schemes, often ones and in manners characteristic exclusively of it – approaches and problem-sensitivities, organizational principles and notional distinctions, institutionalizations and procedural paths, methods and skills – which are suitable, in their systemic totality, to define the specific character of an order which is going to be described by us *a posteriori* as a legal one, particular to the given culture.<sup>78</sup>

With all such and similar impetuses, the comparative investigation into laws and legal cultures has become commonplace for Hungarian legal scholarship during the last half century. Thanks to the above, the field is enriched, and we approach the position when our global world will be seen as one big unity, even if its differing parts are analyzed differently. Within that view, the historical

<sup>76</sup> Such triple criteria were advised as a perhaps universal definition of law by Varga, "Anthropological Jurisprudence? Leopold Fospířil and the Comparative Study of Legal Cultures", in [Waseda University Institute of Comparative Law] (ed.), *Law in East and West: On the Occasion of the 30th Anniversary of the Institute of Comparative Law, Waseda University* (1988), pp. 265-285.

<sup>77</sup> Fernanda Mambrini Rudolfo, *O modelo garantista na interpretação e na aplicação dos direitos fundamentais: Um estudo comparado do posicionamento processual penal do Supremo Tribunal Federal Brasileiro em 2015 e 2016* [diss.] (Florianópolis: Universidade Federal de Santa Catarina, 2017), p. 322.

<sup>78</sup> Varga, "Comparative Legal Cultures?", note 72 above, p. 34 (available online).

and comparative approaches are taken complementarily by legal scholarship in perhaps a truly universal way of how the laws of mankind are processed, analyzed, and theorized.