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# REMEMBERING A JURISPRUDENT'S LIFE UNDER COMMUNISM

## *Philosophising on Law in Hungary*

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### 1. Moral Challenge

It is not necessarily simple to look back on the past from today. And at a distance of just a few years, it seems incredible, bizarre, and also tiringly banal to recall the circumstances surrounding the everydays of social-scientific research shortly after the revolution of 1956 and the subsequent bloody retaliation.

At that time, it was hardly possible to recognise any alternatives at all. Survival was the first and foremost task. Then one was faced with the lack of any sensible objective that could also be assumed as a profession to make some difference in practice, too. Being allowed to publish one's own thoughts was in fact a real privilege or something reserved only for the insiders protected by the Communist authorities. Every single day had its own battle to fight, and its own pitfall as well. As a precondition, the personality involved had to develop a dual identity to comply with his/her own conscience when, after all, he/she had to survive against a merciless tyranny, threatening to crush prospects in case of the slightest political inconvenience. Scarcely anybody dared speak about his/her inner convictions openly, except for with a spouse or perhaps a close friend. At the same time, there was hardly any hope to achieve socially sensible results in public without becoming integrated into some official institution. Consequently, everything (otherwise insignificant matters as well) had its price. Even momentary moods might have gained tremendous purport in such an atmosphere. Anything had to be appreciated as a stand taken. And, vice versa, depending on the changing but cumulatively kept record on you, anything and its opposite could turn out to be problematic.

Life itself turned upside down. It became a muddle with additional meanings attached to each and every moment, transforming the whole to an extremely complex riddle with a very vague chance of any autonomous determination. Everyday life was fragmented into a mere sequence of decisions, at the same time vitally important

on the borderline zones of moral survival, for even seemingly weightless responses could gain additional dimensions by ethical doubts and choices, definitive of the meaning of the very existence of a person, whether or not honestly assumable.

As to my formative years, the era was a hard lesson anyway. One could have a family background due to which an entire family was from the beginning politically stigmatised and discredited as a class-enemy, with social connections suspicious for the secret police, with adherence to Christian values antithetic to the new regime, and with styles not to be assumed in public. All these together might have added up to an overwhelming burden that—depending on personal disposition, psychic resources and inherited behavioural patterns—inspired some to self-torturing, self-reproaching and eventually self-destroying submissiveness, and others, just to the contrary, to a desire to test their irreducible personalities by outstanding performances, with more and even more strenuous work. All in all, this inspired me to endure failures, humiliations and the early realisation of being pushed into the background, and also to try at least to suppress nearly unbearably miserable recurrent feelings with a less timely, almost transcendent perspective in sight. At every moment, it inspired the subject to re-evaluate, almost in a compulsive way, one's actions and life till then, to cherish the ethos of responsibility to be assumed collectively and to weigh and ponder every step morally, even as to the smallest issues of professional activity.

An additional significance was, thus, attributed to each and every component of ordinary life. Therefore, that which was realised as an end-product in character, personality and life-style, was no mere chance at all. Every little action had to be given deliberate consideration, while roles had to be carefully passed through an ethical filter. At times, deep seriousness was behind even seemingly careless laughter. Existence itself was not dreary, but it could at any moment easily take a tragic turn.

It seems to be impossible now to imagine, looking back on the era when my socialisation as a young academic researcher started, how it was possible at all to ponder upon theoretical dilemmas in the extremely restricted intellectual space available. Any plausible explanation can perhaps be furnished by scientific methodology. For—perhaps as a characteristic of abstract conceptualisation, provided that it is sophisticated, thorough and consequent enough—even the slightest analytical proposal for differentiation may modify (by switching off) the course of thinking in ways that turn out later on to be fatal. But we may know from others' narratives that even those ordered by fate to be blind or deaf or mute are not necessarily deprived of the ability to experience (as always, relative) totality. Perhaps nature's compensation is at work there, too, when a politically extorted insensitivity, as brutally imposed upon, is counterbalanced by, for instance, additional sensitivity developing spontaneously as to related topics or aspects of the same scholarly field. Let me assert here as a summary of the experience of the past few decades in Socialist Hungary[1] that the intellect is able to work, if it wants to. As we all know, it is not easy

[1] As yet, there is no reliable description in details, translated into English, of what Communism meant for an intellectual to survive in moral integrity. Even in Hungarian, mostly literary non-fictions do the job, sometimes with scholars remembering.

to dance hamstringed, with hands and feet tied up. But it should be noted at the same time that drifting about, pulled hither and thither helplessly by various currents, as if pulled on strings, is not really what you would call a dance, either.

## 2. Marxisms, Western and Socialist

The ideal of Marxism was a scientific image of society, built on the recognition and formulation of certain laws. Based on archetypes of the early 19th century, it conceived of the world as a unity both philosophically and in theoretical describability. It considered positive description as a task and also adjusted its language to it. It adapted a unified ontology and epistemology to this expectation. The only thing Marxism recognised as existing was what it called reality. It thought context, rule, logic and dialectics—that is, connections—to be drawn from this reality, and cognition, in its turn, to be reality reflected in consciousness. Consequently, it also considered human recognition of any context, rule, logic and dialectic—as far as cognition proves to be correct—to be a reflection (i.e., mirroring) of the external world in consciousness. Substance and phenomenon as much as general and particular and individual, as well as type—all these were regarded as features of reality revealed by theoretical reflection at a level superior to everyday perception. Language and concepts were also treated as fragments of reality reflected. Or, everything we have, either in our hands or in our thoughts, is, therefore, a mere reflection of 'the' objective reality, existing prior to and independent of consciousness. This is the same as saying that in conceptual construction, one postulates an entity in relation to which one's self may play a merely receptive role at the most.

Accordingly, the Marxist theory of law has never been anything more than one of the applications of such an early 19th-century ideal of natural science to a field taken as a mere continuation in extension. It is indicative of such reflex-like methodological roots that even on the rare occasions of its theoretical cultivation, Marxism in law hardly ever transcended the level of obligatory clichés of party-line brochure-writing. Consequently, even at its most sophisticated levels, Marxism remained all along reduced to a chain of applications in that it never conceived of law as a separate entity, but as depending on something external to it, that is, as the mere product (or expression) of something having priority over it.[2]

The history of Marxist legal theorising has been characterised by the dilemma of a theoretical duality. Notably, it either sought—mostly following *Karl Marx* on an *ontological* plane[3]—a specific, instrumental (i.e., transformed at the most) reflection

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[2] Cf., Csaba Varga: Autonomy and Instrumentality of Law in a Superstructural Perspective [1986]. *Acta Juridica Hungarica* 40, 1999/3–4. 213–235. http://springer.om.hu/content/x713702123847t53/fulltext.pdf Csaba Varga: The Legacy of Marxism in Law. *Central European Political Science Review* 44, 2011/44. 78–96.

[3] Cf. Karl Marx: *A Contribution to the Critique of Political Economy* trans. S. W. Ryazanskaya, Moscow, Progress / London, Lawrence& Wishart / New York, International Publishers 1970. 263. Karl Marx & Friedrich Engels: *The German Ideology,.* New York, International Publishers, 1947. xviii + 214 .

of social relationships in jural relations (as testified by early Soviet legal theory, first of all *Evgeny B. Pashukanis*[4], and later by the theoretical scheme elaborated by *Imre Szabó*[5]), or it wanted to trace—inspired, most of all, by *Vladimir Ilych Lenin*, on an *epistemological* plane[6]—a specific, instrumental (i.e., transformed at the most) reflection of reality in the linguistic forms of legal objectivation, in order to apply, as a criterion, the very cognition of reality to its judgement upon law (as in the theory of *Vilmos Peschka*,[7] following *George Lukács'* literary theory of realism,[8] reducing aesthetic qualities to patterns of cognition).

Scientific construction, internal logic and strict coherence, as well as the explanatory force that may manifest itself in responses given to questions that may be raised at all within a theoretical framework, well, all this and other scientific qualities might have characterised such approaches, which themselves were in fact developed in hidden polemics with each other. In sum, there was continuous debate. Moreover, under the official aegis of the indubitable dominance of Marxism, some internal diversity of approaches and views could also evolve.

Only thoughts claiming to belong to (or to be drawn from or inspired by) Marxism (and certainly not disqualified or labelled as its criticism, negation, or transcendence) were allowed to appear at the official fora of scholarship, i.e., at the *Academia*, the *Universitas*, or in the practically exclusively state-owned and party-controlled publishing industry, that is, virtually everywhere—except the rather limited terrain of thought reserved to churches, strictly isolated and never presented in the official guise of scholarship. At the same time, almost any view had a chance to get into the officially acknowledged mainstream, only provided that it was developed and substantiated according to the officially accepted methodology (i.e., palliated with proper socialising empathy, adapted carefully and with appropriate talent). For, it has to be added that the practice in Hungary proved to be rather tolerant despite the party decision formally taken in the early '60s, which ruled out any attempt to pluralise Marxism, that is, to claim the truths of two or more diverging theses on the same subject (to be acknowledged as correct and, therefore, to be tolerated within Marxism)—apart from the party's constraint to react over-sensitively to any gesture bordering on provocation (mostly practised in fact by disappointed

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4 Evgeny Bronislavovich Pashukanis: *Law and Marxism. A General Theory* [Общая теория права и марксизм Москва, Издательство Коммунистическая Академия, 1928.]. Trans. Barbara Einhorn,London, Ink Links 1978. 195 .

5 Imre Szabó: *Les fondements de la théorie du droit* Budapest, Akadémiai Kiadó, 1973. 340. / *Основы теории права*,Москва, Прогресс, 1974. 268 .

6 Vladimir Ilyich Lenin: *Philosophical Notebooks* [Философские тетради (Политиздат 1947)]. Moscow, Progress Publishers,1972. [Collected Works 38] and *Materialism and Empirio-criticism Critical Comments on a Reactionary Philosophy.* Trans. A. Fineberg, Moscow, Foreign Languages Publishing House, 1947. 391.

7 Vilmos Peschka: *Die Theorie der Rechtsnormen,.* Budapest, Akadémiai Kiadó, 1982. 266.

8 George Lukács: *Wider den missverstandenen Realismus* [Against realism misunderstood],. Hamburg, Classen, 1958. 153., and *Essays on Realism.* Trans. David Fernbach, Cambridge, Mass., MIT Press, 1980.- 250.

neophytes, labelling themselves as neo-leftists, anarchists, Trotskyists and Maoists, or simply as authentic Marxists). Or, otherwise expressed, everyone had a chance to try to form an individual opinion at his/her discretion, according to his/her tastes, convictions, intuitions and recognitions. And what made a hard job out of all this was the need actually to find a way to form this hectic complex into systemic ideas acceptable as components of Marxism, taken as an exclusively scientific world-view and conceptual framework.

As every approach and intuition had to be filtered through Marxism's homogenising medium [*Gleichschaltung*], anyone who dared to think quite in terms of his/her profession was left entirely alone because, apart from *Marx*' and *Engels*' own presuppositions and *Lenin*'s conservative simplifications from a century before, he/she was hopelessly deprived of any insight and understanding developed as scholarly foundations by the relevant disciplines, as he/she was isolated from contemporary western scholarship, both in the physical and ideological senses of the word. Philosophy of science, ethics or legal theory—scholars in Socialism encountered nothing but gaps and traps everywhere, as they were compelled to face the bone-dry official version of Marxism in an artificial island in which even its Western European and American variations counted as 'revisionism', and its Yugoslav variant, due to its theoretically humanistic drive, as expressly 'hostile', on the one hand.[9] On the other, representing 'evil' itself, there were the 'bourgeois' or 'imperialist' doctrines, cast by the professional witch-hunters into scientific annihilation in an 'ideological' combat.[10] Any attempt to draw inspiration or—oh, what audacity—to learn from this enemy's territory involved the threat of making oneself excommunicated, not to mention further risks. Because remaining within the bounds of one's own field of expertise could at least involve an ability to assess other opinions and to form an independent judgement on the given subject(s). However, also relying on science-philosophical and methodological foundations taken from this other territory did entail the danger of falling into an abyss, being left without any fixed point where even minor decisions such as the choice between 'us' and 'them' might gain additional significance, elevated to so-to-speak life-or-death issues within the profession.

For the sake of a balanced view, I have to add that all this counted as almost an idyllic status, envied by almost all in the world of the 'actually existing socialism', who were outsiders to Poland, Hungary, and prior-to-1968 Czechoslovakia. In the Soviet Union,

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[9] It is worth noting that ed. Csaba Varga: *Marxian Legal Theory,.* Aldershot, Hong Kong, Singapore, Sydney, Dartmouth & New York, The New York University Press, 1993. xxvii + 530. [The International Library of Essays in Law & Legal Theory, Schools 9] was also pioneering in its collecting together specimens of so-called Western and Socialist Marxisms.

[10] The epoch is characterised by the fact, too, that ed. Csaba Varga: *Modern polgári jogelméleti tanulmányok* [Modern Western studies in legal theory],. Budapest, Magyar Tudományos Akadémia Állam- és Jogtudományi Intézete, 1977. 145., and ed. Csaba Varga: *Jog és filozófia Antológia a század első felének polgári jogelméleti irodalma köréből* [Law and philosophy: Anthology of Western legal theory from the first half of twentieth century],. Budapest, Akadémiai Kiadó, 1981. 383. were the first items in the entire Soviet orbit to translate and/or publish (instead of 'ideologically annihilate') products of 'bourgeois/imperialist' legal doctrines.

for example, there was simply no 'hostile' literature within average reach. Scholars could not even take cognisance of such, which also eliminated the need to bother with its criticism—except to some usual clichés, standing for insensitive political repudiation. The German Democratic Republic chose a solution best suited to the idea of 'scientific socialism': it assigned the theoretical investigation into socialist law to experts of socialist construction (who were expected to rely upon pure and uncorrupted—i.e., 'socialist'—literary sources exclusively), while the job of generating annihilating criticism of 'imperialist' doctrines (including both the rationalism of *Max Weber* and the normativism of *Hans Kelsen*) was assured to especially selected comrades who were commissioned to do it as a special—and exclusive—privilege and duty. Hence, only those few charged with this responsibility were granted access to the literature of 'imperialism' in the closed stacks of some academic research libraries not available to the public. In other countries like Bulgaria or Romania, the situation brought about by overall poverty was relatively simple to handle, with scarcely anything to denounce, as libraries practically had no Western acquisitions. A radical innovation was decided by post-1968 Czechoslovakia: dreading any kind of revisionist disruption, the new leaders there restricted their interest in acquiring literature to that of their Soviet and East German comrades. Openness showed itself only in Yugoslavia and Poland, but as compared to Hungary, the end-result was not necessarily better. In Yugoslavia (similarly to pre-1968 Czechoslovakia by the way), prestigious attempts at humanising Marxism and its socialism were launched, yet social sciences remained so mercilessly doctrinarian that scholars could arrive at a neology from an outdated orthodoxy within a dogmatic Marxism, at the most. Perhaps Polish scholarship alone offered an apparently attractive perspective. Legal academics cultivated almost everything that was known from the West. It turned out only later that all this could only be the result of serious compromises and did have its price to be paid as well. For, while Marxism was the exclusive platform to approach and treat and cover and master all domains in Hungary, academic researchers were at least released from any requirement to become party rank-and-file in person. In Poland by contrast, all professors had to prove their loyalty to the party in order to be admitted at all to join the choir. At the same time, the relevance of Marxism to social scientific thought was also specific in Poland. They themselves also developed a Marxist-Leninist theory of the state and law, but restricted its competence to the field of building socialism, where either ideological issues or problems of law bordering on politics were at stake. In other domains, any scholarly activity could go on almost freely. As a result of the unimaginable corruption of Marxist-Leninist doctrine, a multitude of neophyte schools could, thus, spring up in Poland, where analysis was pursued as in Oxford, logic as in Paris or Brussels. Meanwhile, questions touching upon their national survival fell into total oblivion and their national traditions in the humanities remained traceable, if at all, mostly in their inclination to formalise and quantify issues.[11]

[11] Cf., for the respective surveys by Csaba Varga: Legal Philosophy of the Marxism of Socialism:

Returning to the dilemmas of my search, I might well have stayed on this (continuously crumbling) side of 'our' wing, had I not been overly drawn by the spaciousness of the opposite side. I was not only attracted by the latter's internal diversity and intellectual vivacity, but also most of all by the fact that actually I could not find any reference point on 'our' side to my constantly recurrent questions. And without the outlines of a conceivable answer, not even a question can be formulated in an intelligible way. Instead of reference points, all I found was confusion, while the direction I began to discover in the early '60s (with the help of texts inaccessible to the public, made available only in numbered copies, a few of which I happened to obtain thanks to a sudden and potentially risky yet successful hitch-hike from Pécs to the heights of the Department of Marxism-Leninism of the Ministry of Education in Budapest) moved a long distance from the doctrine taught to us as exclusively true, once developed under the aegis of Marxism back in the late 19th century.

## 3. Legal Philosophising: A Case Study

### 3.1. Approaches to Law

Law? It was obvious to me that I had to look for it and catch it as text, in a conceptualised form. However, for me it was interpretable intelligibly not as pure product or passive mirror of cognition, but as an active response in reaction to practical matters, that is, as the ingenious instrument of human action, which is produced out of theoretical knowledge and practical experience by us, fellow humans. For precisely this reason, the very question what we are to make out of it either in books or in action depends largely on traditions and practical accessibility of patternable instruments made elsewhere and/or at other times by others, as well as on axiological and practical considerations of purposefulness. As a result, I assumed the mainstream socialist approach to be unverifiable and tiresomely barren, which, once the law encountered a linguistically expressed (therefore, in principle, also contextually treatable) texture, assessed it—as a mere reflection of 'the objective reality existing independently of human consciousness'—exclusively according to criteria of cognition, conceiving it necessarily either as a true or false model of reality, irrespective of whether a descriptive statement, a prescriptive will or an ascriptive attribution of some consequences was at stake (i.e., a statement on the surrounding world, the expression of some will aimed at some action or the institutional implementation of qualifications arising from a normative arrangement, or, beyond all of these, perhaps an expression

Hungarian Overview in an International Perspective,. In: *Contemporary Legal Philosophising Schmitt, Kelsen, Hart, & Law and Literature, with Marxism's Dark Legacy in Central Europe* (On Teaching Legal Philosophy in Appendix),. Budapest, Szent István Társulat, 2011., and Development of Theoretical Legal Thought in Hungary at the Turn of the Millennium. In: ed. Péter Takács ,– András Jakab & – Allan F. Tatham (ed.): *The Transformation of the Hungarian Legal Order 1985–2005,. Transition to the Rule of Law and Accession to the European Union*,. Alphen aan den Rijn, Kluwer Law International, 2007. 615–638.

of emotions, a conventional action performed in and by language, introducing or operating a practical institution by 'doing with words', or perhaps nothing more than artistic representation of relevant states of mind).

Consequently, what is addressed thereby is the autonomy of law and the question of whether or not issues of law can be treated as our own within the social contextures conditioning them. As I have presumed, in addition to cognitively reconstructing reflection, linguistic expressions may also serve as instruments of practical intentions. By leaving behind the forced paths of formal semantics and logics, I thought we might arrive at the realisation, while examining the law's meaning and logical context, that the textual embodiment of law is just a medium of mediation which carries different potentials depending on age, culture, and condition. Moreover, law as a text can also help creative decisions to be taken, channelling processes of reasoning, argumentation and justification to given paths with frameworks and references adapted to conceptually given tracks. Otherwise, I have presumed that, on the one hand, logic is different (by being at the same time less and more) than a clearly coercive definition (with specific gaps, transformations, jumps and uncertainties in the legal process, exactly revealed by logical reconstruction). On the other hand, the use of diverse techniques in law may promise different, or outright opposing or mutually excluding, results depending eventually on (perhaps) banal choices that in the last analysis are not predefined by any (legal) text.

Likewise, there is also a duality in answering the dilemma whether or not the concept of a thing can only be defined in one correct way (as an exclusively verifiable conceptual reflection of 'the objective reality existing independently of human consciousness') or, rather, is the concept (with its definition) instrumentalised, that is, adjusted to merely practical human interests and artificial contexts. Accordingly, we cannot speak of a concept or subject taken *per se* on its own, but—for example, in case of law—exclusively of phenomena of one kind or another in some sense or another. Therefore, the concept itself will be selected and defined depending on what I really wish to investigate in or out of it. Of course, it should be made clear what I have shed light on when I picked it out from a set of phenomena involving an infinite variety of aspects and allowing various approaches, and how this is related to other similarly feasible interpretations. Well, such an understanding was from the outset rejected in the then dominant monist world-view (naively realist in searching for mirroring subject-materialities directly in our consciousness), as if it were to stand for pluralism. For the underlying official presumption assumed the subjects and their cognisance to be uniform, unless diversified by the eventuality of human error or ideological ('subversive') misinterpretation. No need to say that my theoretical attempt was by no means pluralistic. My purpose was simply to have analysis, by distinguishing and separately formulating aspects, sides and viewpoints that could be related to the subject, within a given set of phenomena, by presenting their mutual connections on the basis of their underlying complexity.

The principle of historicity in Marxism[12] did not necessarily mean for me either that all we know and the way we know it today should be separated from the phenomena and states that had existed yesterday. For historicity means historical explanation and understanding, nothing more. Irrespective of the survival of names, things may change in character over time. Properly speaking, it is not the thing itself or its concept that develop in time. For what existed yesterday was yesterday and is far from being identical with what prevails today. Moreover, not even events shall be recalled in a way such that something has continued but rather in a way that we have looked for and finally found answers to challenges arising in the course of our practical activity—regardless of whether a brand new solution was initiated or we were inspired by former procedures applied elsewhere, and also regardless of whether we gave our discovery a new name or preferred to adopt (by adapting) earlier names for it.

Monopoly capitalisation must have been a landmark back in its time, as was described by *Lenin* as well, and we had the opportunity to experience the corruptive blessings of the regime of so-called actually existing socialism in Hungary. Yet, I did not think that any of the two should serve as a key to deciphering the secrets of law. Codification, legal reasoning, lawyerly logic, legal ideal—I could hardly have come any further on the way of searching for a common core had I not formulated at least to myself that, notwithstanding its features of barbarism, all in all, Soviet law was in fact more close to French and German arrangements than the Western European legal set-up to the Atlantic one. I did not find the classifications offered by the terms 'law type' and 'legal family' adequate to my purposes and was therefore striving to test the terms of 'modern statehood' and 'modern formal law', by arriving, as one of the grounds of a possible typification, at the notion of legal culture. All this was regarded as outrageous back then, because it presented socialist law in association (and on an equal footing) with so-called bourgeois law. However, for me it meant the only feasible way to examine law in its technicality, knowing that law is reducible to techniques as operated by human motivations.[13]

The following quandary has remained a riddle to me all along. If we transcend the law's self-definition by considering its internal system as filled with and conditioned upon its own socio-historical background, how can we restrict our investigations to some selected (e.g., French or Soviet) embodiment of the law, while speaking of law and theorising on it in general? In other words: does it conform to the principle

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[12] Csaba Varga: History (Historicity) of Law,. In: ed. Christopher Berry Gray (ed.): *The Philosophy of Law An Encyclopedia*. New York & London, Garland Publishing, 1999. 371–373. [Garland Reference Library of the Humanities, 1743] http://www.bookrags.com/tandf/history-30-tf/.

[13] Cf. Csaba Varga: Staatlichkeit und modernes formales Recht. *Acta Juridica Academiae Scientiarum Hungaricae* 26, 1984/1–2. 235–241. via ed. Csaba Varga (ed.)*: Comparative Legal Cultures,*. Aldershot, Hong Kong, Singapore, Sydney, Dartmouth & New York, The New York University Press, 1992. xxiv + 614 pp. [The International Library of Essays in Law & Legal Theory, Legal Cultures 1] up to his *Comparative Legal Cultures* On Traditions Classified, their Rapprochement & Transfer, and the Anarchy of Hyper-rationalism, with Appendix on Legal Ethnography, Budapest, Szent István Társulat, 2011.

of historicity if our analysis accepts certain forms as universally given, without having examined their development in a comparative historical perspective? For that which may seem generally widespread (as the mainstream universalised) today in philosophical reconstruction shall obviously be regarded as the outcome of a particular development historically, and be examined together with other particularities (even if these others have remained mere potentialities). This is why I tried, as the *sine qua non* precondition of any scholarly treatment of legal phenomena and especially of legal forms, to found theory-building on comparative historical surveys of challenges and responses, instead of setting up and constructing theories on sheer conceptual analysis.[14] No wonder then that once I began my monography on *Codification as a Socio-historical Phenomenon*[15] by tracing its relatable functions and manifestations back to the universal comparative history of human institutions, so as to arrive finally at a general theory of codification. In addition, I tried to outline the variety of legal techniques (including presumption and fiction, subsidiaries to *legis latio* in the form of preambles, motives given by the minister having presented the bill, as well as the *travaux préparatoires*[16]) through different ages and cultures in their distinct unity, in order to be able to identify their properties in the end.

It is tradition that forms a community above and despite everything. It is tradition that links generations and cultures together. And tradition is an all but passive medium: it may embody both grass-roots initiatives and framework innovations. The fact that I could arrive at such a conclusion with Marxism in the background is a proof again of the success of (some sort of) tradition.

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[14] Cf., e.g., by Csaba Varga: Varieties of Law and the Rule of Law. *Archiv für Rechts- und Sozialphilosophie* 82, 1996/1. 61–72. {reprinted as The Basic Settings of Modern Formal Law in ed. Volkmar Gessner, Armin Hoeland & Csaba Varga: *European Legal Cultures,* Aldershot, Brookfield USA, Singapore, Sydney, Dartmouth, 1996. 89–103. [Tempus Textbook Series on European Law and European Legal Cultures 1], introducing to Part II on »The European Legal Mind«} and Differing Mentalities of Civil Law and Common Law? The Issue of Logic in Law. *Acta Juridica Hungarica* 48. 2007/4. 401–410. http://akademiai.om.hu/content/b0m8x67227572219/fulltext.pdf and http://law.sfu-kras.ru/viewdownload/30/105-differingmentalitiesofcivillawandcommonlaw.html and http://law.sfu-kras.ru/viewcategory/30.html.

[15] Csaba Varga: *Codification as a Socio-historical Phenomenon* [1991] 2nd {reprint} ed. with an Annex & Postscript., Budapest, Szent István Társulat, 2011. viii + 431. http://drcsabavarga.wordpress.com/2010/10/25/varga-codification-as-a-socio-historical-phenomenon-1991/.

[16] By Csaba Varga & József Szájer: Legal Technique, in hrsg. Erhard Mock & Csaba Varga*: Rechtskultur – Denkkultur Ergebnisse des ungarisch–österreichischen Symposiums der Internationale Vereinigung für Rechts- und Sozialphilosophie 1987*, Stuttgart, Franz Steiner Verlag Wiesbaden, 1989. 136–147 [Archiv für Rechts- und Sozialphilosophie, Beiheft 35] and Presumption and Fiction: Means of Legal Technique. *Archiv für Rechts- und Sozialphilosophie* LXXIV (1988) 2. 168–184.; as well as, by Csaba Varga: The Preamble: A Question of Jurisprudence. *Acta Juridica Academiae Scientiarum Hungaricae* XIII, 1971/1–2. 101–128. and Die ministerielle Begründung in rechtsphilosophischer Sicht. *Rechtstheorie* 12, 1981/1. 95–115.

### 3.2. Arriving at a Legal Ontology

By the end of the Communism imposed upon Hungary, I could eventually return to the ideal of the starting period of my youth, when I had been given the chance of becoming the young friend of two groundbreakers of the time, *Michel Villey* of Paris and *Chaïm Perelman* in Brussels:[17] thinking in the context of law, language, logic, and rhetorics, approaching the legal subject within human understanding, incessantly re- and trans-conventionalised through varying sets of mutual effects. This is to say that such an understanding is going to be taken as a common core: the one to the 'artificial human construction'[18] of which formalisms are used to refer; addressed to which we communicate; relating the network connections of which we may (by the force of logic, if adequately prepared beforehand) draw consequences; and the deepest human fallibility of which we strive incessantly to overcome, by the means of sheer over-ideologisation.

From problematising on that law is objectified, on the one hand, while its ontological existence (i.e., prevalence) is assessed by facts of its actual reference and the latter's impact on the course of events, I could already conclude to the law's simultaneous openness and closedness in autopoiesis,[19] in terms of which law is a patterned standard in need of ulterior justification, on the one hand, albeit its vocation is practical problem-solving in response to daily needs, on the other. Accordingly, both its process and logic are doubled indeed, for its problem-solving will be tested by, and also end in, subsequent justification, nearing to have the rigour of a genuine formal demonstration.

All this has shown that law is to be seen also as a linguistic game, composed of the layers of the respective (but distinct) languages of enacted law, enforced law, legal science, and doctrine of law, as a series in cumulation.[20] And its social ontological perspective has proved that all the law's phenomenal forms—including the ones hitherto treated as part of epistemology—are rooted in the very ontic of the unbrokenly trustable continuity of human praxis. Or, *Friedrich Engels' juristische Weltanschauung* (that is, the lawyerly outlook as professional deontology) is also one of the law's ontic components. And this explains why and how the relative difference

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[17] Detached from Lenin's so-called reflection theory, cf., by the author, A magatartási szabály és az objektív igazság kérdése [Rule of behaviour and the issue of objective truth, 1964] in Varga Csaba: *Útkeresés Kísérletek* – kéziratban [Searching for a path: Unpublished essays],. Budapest, Szent István Társulat, 2001. 4–18 [Jogfilozófiák].

[18] Künstliche menschliche Konstruktionen as termed by Georg Klaus in his *Einführung in die formale Logik* ,Berlin [East], VEB Deutscher Verlag der Wissenschaften, 1959. 72.

[19] See, by Csaba Varga: *Theory of the Judicial Process* The Establishment of Facts [1992] 2nd {reprint} ed. with Postfaces I and II,. Budapest, Szent István Társulat, 2011. viii + 308. http://drcsabavarga.wordpress.com/2010/10/24/theory-of-the-judicial-process-the-establishment-of-facts-1995/ and *Lectures on the Paradigms of Legal Thinking* [1996],. Budapest, Akadémiai Kiadó, 1999. vii + 279. [Philosophiae Iuris].

[20] Cf. Csaba Varga: Law and its Doctrinal Study (On Legal Dogmatics). *Acta Juridica Hungarica* 49; 2008/ 3. 253–274. http://akademiai.om.hu/content/g352w44h21258427/fulltext.pdf.

amongst those judicial minds characteristic of Civil Law, Common Law (and so on) arrangements—together with the canons according to which justification is made (and will be subsequently made accepted) in the given arrangement—is of ontic importance. Moreover, it is such an ontological turn,[21] within which the foundation of Continental legal set-up upon enactment can be understood as the end result at any time of unceasing rivalry for primacy and control of those three layers that work self-imposingly in law: of what has been *enacted*, and/or authoritatively *enforced*, and/or *exercised* in social spontaneity, in their respective quality acknowledged as the law.[22] Accordingly, the essence of law—and of all forms of sociality—lies in (as being founded by) the trustable continuity of the social praxis of humans, through their unending reconventionalisation. Components, configurations, impacts are in a flux in the latter's practice. However—and this is why it is autopoietic—such a trustable continuity will never miss the point to embody what it has ever been.

Law is composed of the dynamism of acts, progressing in competitive processes. This is why law is process-like from the beginning, even if veiled by ideological or deontological simplifications closing the door upon any discussion. Thereby whatever linkage of law to objective (quasi-physical) properties will necessarily loose importance. For independently of what the law is, it is operated by humans. Therefore, on the final analysis formalisms of law cannot be more than a reified idol with human participation and unavoidable individual responsibility for the law's actual working in the background. By referring to it, it is us, humans, that activate law, trans-conventionalising it through the series of their re-conventionalisation. This is why its parts are mostly aspects that can only be differentiated for the sake of, and through, conceptual analysis, that is, in a hypothesised and fully artificial way.

## 4. Conclusion

The relationship between a political regime and the state of the Humanities as an aggregate of various kinds of self-reflection in it may turn to be rather complex indeed. The ways in which ideas are generated are both conditioned by the former and self-conditioning. The variety of feasible responses to *hic et nunc* challenges is almost limitless, so there is high place for personal features, partly in function of purely intellectual capacity and partly drawing from moral virtues, to prevail while working out those paths and frameworks, as well as channels and methodologies, in and within the womb of which such responses are formulated. Moreover, limiting conditions (if there are any at play there and then, unavoidably) offer a chance for a live experience of life situations which are seldom experienced in actual human

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[21] Cf. Csaba Varga: *The Place of Law in Lukács' World Concept* [1981]. Budapest, Akadémiai Kiadó, 1985. 193.

[22] Csaba Varga: Anthropological Jurisprudence? Leopold Pospíšil and the Comparative Study of Legal Cultures [1985]. In: *Law in East and West On the Occasion of the 30th Anniversary of the Institute of Comparative Law, Waseda University.* Ed. Institute of Comparative Law, Waseda University. Tokyo, Waseda University Press, 1988. 265–285.

practice, and also of testing human stands, quite as if a tensile strength test were to take in some laboratory. Accordingly, individual achievements are comparable among others with and without special regard to the underlying political regime—even if, *en masse*, an unfavourable environment may forecast mediocre output as an average.

**ABSTRACT**

The case-study overviews personal reminiscences in summation of what and in which way influenced, limited and, in fact, hindered self-reflection and its scholarly cultivation under Communism. It also outlines the lee-ways following which description, theorisation, and philosophical synthesis of all the elements of the former could be undertaken all the above notwithstanding. In the field of law and of its theoretical investigation, and in an apparently paradoxical manner, just the philosophical and macro-sociological approach to law as experienced with all its deformations (denaturation and degeneration) there and then could lead to a genuinely universal scientific formulation—deeper and broader as compared to the one calibrated to average 'normal' manifestations exclusively, as usual in the western civilisation—and just thanks to the reconsideration of Marxism, by taking its latent ontological potential seriously. Or, the case-study concludes in the realisation that the relationship between a political regime and the state of the Humanities as an aggregate of various kinds of self-reflection in it is rather complex indeed. The ways in which ideas are generated are both conditioned by the former and self-conditioning. The variety of feasible responses to *hic et nunc* challenges is almost limitless, so there is high place for personal features, partly in function of purely intellectual capacity and partly drawing from moral virtues, to prevail while working out those paths and frameworks, as well as channels and methodologies, in and within the womb of which such responses are formulated. Moreover, limiting conditions offer a chance for a live experience of life situations which are seldom experienced in actual human practice, and also of testing human stands, quite as if a tensile strength test were to take in some laboratory. Accordingly, in the final analysis individual achievements are comparable among others with and without special regard to the underlying political regime—even if, *en masse*, an unfavourable environment may forecast mediocre output as an average.