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ARTICLES

LAW, LEGAL CULTURE AND LEGAL TRADITION

Or the Foundational Concepts of Comparative Historical Investigations

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Abstract

Historically, the word 'legal culture' was used to describe the environment of law, then served as a sociological exploration of one of the components of law, more recently as an indicator, and finally as an ideal type. In law, separating any domain "external" from anything "internal" is excluded from the beginning. Legal culture substantiates any legal phenomena along with the specific way of approaching to – whilst thinking and arguing in – them. Within this notional sphere, 'legal tradition' is a species of legal culture in which the past is considered as having some kind of binding or justifying force. Or, 'legal culture' is neither a mere environmental element or a surplus added to law, but an ontic part of the law. In consequence, not even the genuine meaning of law can be explained from within, but from the contextualising positions of its underlying culture only, for "extra culturam nihil datur".

Keywords: impossibility of anything "internal" and "external" in law, word/conceptuality, culture as the fulfilment of law, comparative legal cultures, "extra culturam nihil datur"

1. Science-philosophical presuppositions

Reality is one and unitary, indivisibly cohesive in its entirety. Man is also one and organic, indivisibly coherent as a whole. Man, in his encounter with reality, intellectually processing his sensory experiences, by means of linguistic means highlights from the context of reality what happens to be relevant to him. At the same time, as he

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builds a community with his peers, he builds institutions from patterns he learnt from appropriate or desirable behaviours, institutions from which to raise additional kinds of a normative superstructure.

In the worldview of some cultures, reality, with man in it, is the same process-like continuum into which any logic based on the exclusion of distinctions or contradictions can only be introduced artificially, which then gets thrown off by the exclusivity of uninterrupted transitions. In contrast to this *Far Eastern* outlook, the *Western* (purely Germanic) philosophical tradition of analysis considers discrete, that is, detached, more precisely separated things[1] in those objects of investigation with names already given, and in their movement it discovers "laws" built into the things themselves. Such a *continental* tradition, when it constructs its namings as a set of concepts, envisions the latter themselves as pieces of reality and perceives their logic as a connexion representing reality, while their levels from the general to the concrete are thought as and formulated in deductive schemas. In contrast, the *English* view, which is, based solely on everyday recurring experience, averse to abstract linguistic operations, sees in conceptuality nothing more than the expression of the result of repeated scientific observations. Accordingly, the logic will simply stand for reasserting the connection between those statements formulated (that is, prepared for the purpose) to draw a conclusion in this area. And finally, once any repetition is called a "law", it is nothing more than a casual linguistic turn to generalise a set of experiments inductively assembled.[2]

Our language, including that of science, is uncertain and diffuse; but its apparent inadequacy is also its strength. As the sole means of human communication and its recording, in the long term and with a view to the universality of its use, its "movement [with the drive for unambigousness and the impossibility of eliminating ambiguity on principle – Cs.V.] becomes in its contradictoriness the basis of the specific and inexhaustible fertility of language."[3] Our terms used in our linguistic communication are always *faute de miex*, that is, in the absence of anything better: not necessarily as conceptualized notions, but necessarily as names that make what is communicated meaningful, intelligible, all in all, understandable to the other party in a given situation. Such a role is played by both fictional and symbolic explanation, and parable and analogy as well.

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1 Philosophically, in English, *discrete* (the Latin *discernere* 'separate' from the Latinic French *discrētus*).

2 For details, see Csaba Varga: *The Paradigms of Legal Thinking.* [Philosophiae Iuris] Budapest, Szent István Társulat, enlarged 2nd ed., 2012. http://mek.oszk.hu/14600/14657/; cf. as well Yiftach Fehige (ed.): *Science and Religion East and West.* Science and Technology Studies. Abingdon & New York, Routledge, 2016.; Fritjof Capra: *The Tao of Physics: An Exploration of the Parallels between Modern Physics and Eastern Mysticism*. 3rd ed. Boston, Shambhala Publications, 1991.; Robert William Bennett: *Philosophy and Quantum Physics East and West.* [Harvard University Thesis] 1962. [Harvard University Library Hollis number 990037711700203941].

3 Quoting from George Lukács's posthumous *On the Ontology of Social Being* in Csaba Varga: *The Place of Law in Lukács' World Concept.* 3rd ed. with Postface. Budapest, Szent István Társulat, 2012. 154. http://mek.oszk.hu/14200/14249/.

Now, by bringing the rethinking of linguistic transmissions, representations, and/or outright embodiments[4] into the realm of law, it is realized that fruitless debates can arise from the ambiguity of different conceptualities hidden by a given set of signs[5] as well as from the fact that although all norms are linguistically expressed, only in some of them the words used represent conceptualized expressions at the same time, and only in the latter can we form an aggregate of norms (which is a logical category) from the rules that otherwise carry norms (which is a linguistic category), that is, an aggregate of norms that can also be treated logically.[6]

So there is no royal way. Our words do not stand alone. We can use a certain (and not another) term to mark the subject of what we have to say in the most understandable way. But we can also use it (and nothing else) because the context or internal logic of our explanation, or its expressive or explanatory force, justifies approach and naming from a given point of view. Or, to sum in principle, the many different uses of 'legal culture(s)' in various works may be equally justified. The only precondition is that the meaning of the use in the given way will be clear in our explanation, and that it is precisely this given use of the term that will best serve us by strengthening the explanatory power of our wording.

However, all this is only about vocabulary. Because, by using a given *word*, however, we express *conceptuality* only if that concept or the object behind it has already been placed, through a series of distinctions standing for logical denial, in the classificatory system of our world' components, composed of the logically consistent separation of logically consistently defined elements. Of course, this will be nothing more than a projected reality, a conceptualized model for describing reality. It does not in any way ensure the full conformity of some given *res* and *intellectus*, and much less their identity, but it can offer a useful tool for further investigation. Therefore we may freely use the words like 'culture' or 'legal culture', and this freedom can of course result in language usage habits or simple fashions as well.

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4 During my university studies, I was interested in the connection, and the possible/impossible overlap, between concept, language, logic, and rhetoric in law, for normativism and Marxist theorising presupposed their identity; all that notwithstanding my presupposition suggested possibly diverging fields. See Csaba Varga: A magatartási szabály és az objektív igazság kérdése. [Rule of behaviour and the quest of objective truth]. [1964]. In: Útkeresés. Kísérletek – kéziratban. [Searching for a path: Papers in manuscript]. [Jogfilozófiák] Budapest, Szent István Társulat, 2001. 4–18. http://mek.oszk.hu/15300/15346.

5 E.g. – in this early time, treating exclusively but sufficiently the positivistic/doctrinal and the historical and current sociological, ending by the synthetic approaches – Csaba Varga: Quelques questions méthodologiques de la formation des concepts en sciences juridiques. *Archives de Philosophie du Droit* 18, (1973), 205–241. & In: Csaba VARGA: *Law and Philosophy. Selected Pepers in Legal Theory.* ELTE "Comparative Legal Cultures" Project, Budapest, 1994. 7–33. http://mek.oszk.hu/15300/15333/#, to which literary encouragement was given by a single commentary in Alf Ross: *Towards a Realistic Jurisprudence. A Criticism of the Dualism in Law.* Copenhagen, Munksgaard, 1946. 13.

6 E.g. Csaba Varga: Differing Mentalities of Civil Law and Common Law? The Issue of Logic in Law. *Acta Juridica Hungarica* 48, 4. (2007), 401–410. http://real-j.mtak.hu/762/1/ACTAJURIDICA_48.pdf., https://doi.org/10.1556/AJur.47.2007.4.5.

2. The early occurences of 'culture'

It is certainly instructive to have a history of ideas look over the antecedents of our subject, and to scrutinize the messages that can be updated today.Well, so to speak it is now a scholarly cliché to recall that connecting *law to culture*[7] has been stimulated primarily by research in comparative studies, anthropology, and sociology.[8] In this context, a single statement (on behalf of a philosophical analyst of comparative legal studies may be sufficient to exemplify the organic encounter of law and culture in greater unity and necessity: "Comparative analysis must take into account that the law is infallibly situated in a language, invariably stems from a tradition – or, in short, inevitably participates in a culture and necessarily manifests itself culturally (for how could law ever be outside culture? *Extra culturam nihil datur*)."[9]

As a derivative of the Latin *colere/cultus*-rooted *cultīvāre* ['cultivate'], standing for cultivation [e.g. ăgrĭcultūra; *agriculture*], the word itself appears in English from 1691, meaning the effect of education, from 1796 and under German influence, meaning the new status achieved thereby, and from 1867, standing for the indication of the assessed level of the latter.[10] The particular German influence appeared in the cult of the *Kultur* by Herder: this is the man-made world, the later Marxian *second nature*, which is culture itself (at least insofar as its being organised by culture borrows coherence within a single vast unit to it, making it a simulacrum of real nature, on the one hand, and at the same time, however, confronted with the enlightenedly extended French universalism of *progrès*, this is the definite defense of the achievements of any place and time.[11]

Montesquieu's classic work still reduced the term to the sense of a land's cultivation or being cultivated [*culture de terre*].[12] In the middle of the 19th century, a Hungarian

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7 For the background notions, see Csaba Varga: Comparative Law and Multicultural Legal Classes: Challenge or Opportunity? In: Csaba Varga (ed.): *Comparative Law and Multicultural Legal Classes: Challenge or Opportunity?* Ius Comparatum – Global Studies in Comparative Law. Cham, Springer, 2020. The General Report, 3–42. Or, as a fine remark defines, "Culture is nothing more than the regulator of a common order" for the cooperation of those belonging to a given community. László Ódor: A nemzet fogalma, avagy multikulturalitás a XXI. századi Európában. [Concept of the nation, or multiculturalism in the 21st century Europe]. *Hitel* 21, 2. (2008), 193–202. http://epa.oszk.hu/01300/01343/00073/pdf/20080227-14758.pdf, 201.

8 Sally Engle Merry: What is Legal Culture? An Anthropological Perspective. *Journal of Comparative Law* 5, 2. (2010), 40–58.

9 Pierre Legrand: *Le droit comparé.* Que sais-je? 3478. 5e éd. Paris, Presses Universitaires de France, 2015. 82. [„L'analyse comparative doit tenir que le droit se situe infailliblement dans une langue, relève invariablement d'une tradition – bref, participe inévitablement d'une culture, se manifeste nécessairement culturellement (comment le droit serait-il jamais hors culture: *extra culturam nihil datur*)."]

10 For the first two data, see Philip Durkin (ed.): *The Oxford Handbook of Lexicography*. Oxford, Oxford University Press, 2016. 243–244., and for the third one, https://www.etymonline.com/word/culture.

11 David Danby: Herder: Culture, Anthropology and the Enlightenment. *History of the Social Sciences* 18, 1. (2005), 55–76. https://doi.org/10.1177/0952695105051126.

12 Nearly three dozen times in Montesquieu: *De l'esprit des loix.* Genève, Barillot & Fils, 1748.

author commenting on the need for legal comparatism notes that in isolation of ancient autochthony any such interest is missing, as "In the earliest age […], when every people had a legal life based on separate national and religious principles, this science lacked the most necessary condition."[13] Savigny, on the other hand, has been reflecting on, among other things, the "parallel path of culture and law" for a decade, which he would the explain in his *Volksgeist* doctrine.[14] And although the French mentality invariably resembles the Germanic romanticism conceived behind *Kultur* (moreover, at the end of the 19th century, therefore, it practically even refused to use the term himself, stubbornly depriving itself of any similar initiative in the absence of an acceptable name for overcoming the institutionally embodied and politically advantageous progress of the German Imperial *Kulturdiplomatie*[15]), by the end of the century a separation will be formulated, as product of Germanic neo-Kantianism, between fact and value, causation and validity, *Sein* and *Sollen*, that is, between *Natur*- and *Kulturwissenschaften*, simply *per definitionem*[16] and not as a product of deeper insight[17] – and law will evidently be classified as a phenomenon of culture.

All of this is by no means underestimated for our interest today, yet it is of subordinate importance. Because those taking part in it did not do much more than search for the place of law (in company of social phenomena in general and all virtual projections by the humanities) in the world of *science* proper or its *simulacra*. Consequently, from today's perspective, it cannot even be considered a prehistory in the strict sense. The task was simply to identify a category – *Kultur*[18] – for objects not classifiable as part of

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13 Gusztáv Wenzel [on comparative jurisprudence]. *Magyar Academiai Értesítő* 10, 5. (1850), 292–296., 293. & 295. [„A' legrégibb korban […], midőn minden népnek külön nemzeti és vallásos elveken alapuló jogélete volt, e' tudománynak legszükségesebb feltétele hiányzott."]

14 [„Parallelgang von Cultur und Recht"] By Friedrich Carl von Savigny: *Vom Beruf unsrer Zeit für Gesetzgebung und Rechtswissenschaft.* Heidelberg, J. C. B. Mohr, 1840. 38. – Einleitung. In: Max Weber: *Wirtschaft und Gesellschaft.* Vol. 3. Recht. (ed. Werner Gephart – Siegfried Hermes) Tübingen, J. C. B. Mohr, 2000. 24. claims this expression as part of a longer quote, but I could not find it in the work –, on the one hand, and Friedrich Carl von Savigny: *System des heutigen römischen Rechts.* Vol. I–VIII. Berlin, Veit und Comp., 1840–1849., on the other.

15 For a lot about the issue, see Aurélien Sauvageot: *Souvenirs de ma vie hongroise.* Budapest, Corvina, 1988.

16 Cf. https://de.wikipedia.org/wiki/Geisteswissenschaft; and more amply Heinrich Rickert: *Kulturwissenschaft und Naturwissenschaft,* 7. durchges. u. erg. Aufl.Tübingen, J. C. B. Mohr, 1926., showing also the context Otto G. Oexla (ed.): *Naturwissenschaft, Geisteswissenschaft, Kulturwissenschaft. Einheit – Gegensatz – Komplementarität?* Göttinger Gespräche zur Geschichtswissenschaft 6. Göttingen, Wallstein Verlag, 1998. and Thomas Gutman: *Recht als Kultur?* Über *die Grenzen des Kulturbegriffs als normativer Argument.* Würzburger Vorträge zur Rechtsphilosophie, Rechtstheorie und Rechtssoziologie 50. Baden-Baden, Nomos, 2015. ch. III, para. 1: »Kulturphilosophie«, 27–32.

17 As perhaps Zoltán Péteri: A jogi kultúrák összehasonlításának előtörténetéhez. [For the prehistory of the comparison of legal cultures]. Állam- és Jogtudomány 48, 4. (2007), 509–526. makes it conceivable.

18 Providing that the surplus created by man in the world of the divine creature can be called second nature, then indeed culture is the product itself. And the mental substance, which in the categorisation of *Natur*- and *Kulturwissenschaften* will replace the latter as *Geisteswissenschaften*, stands perhaps for the producer.

the nature, into which their objects could almost automatically be sampled. Or, their interest was only classifying; not revolving about exploring the nature of the object in question.

3. 'Legal culture' as a simply visual expression

This or similar tradition may fit into the use of 'legal culture' as a more expressive rather than theoretically elaborated term, so in want of better, but, I think, completely satisfactory and defensible.

3.1. As a cultural history of law

One branch of this practice, known as cultural history in its cultivaton for several decades, may have been given a legal specification at a further breakdown. When it came to fashion, weird lawsuits and strange legal customs were recorded as *legal cultural histories*. Already in the period between the two world wars, their eccentricities[19] led to a genuine interest in the past, just as the wealth of the Storno collection at Sopron (Hungary) or the Esterházy collection in the Forchtenstein Castle at once Fraknó (now in Burgenland, Austria) gave way to the real natural or artistic values of humanity. For these were mostly the useless testimonies of natural oddities, of infinite human *trouvaille*, or of the pride and arrogance of immeasurable wealth.[20]

At first, these legal memories were only collected and then purposefully treated,[21] whereas recently specialization in the field of architecture, art, signs and symbols, and ritualism has been undertaken to map and process the legacy of our heritage. As there is a call for "*legal cultural history* [...] to analyse law in culture and culture in law",[22] it will examine both governmental and court architecture and behavioural culture, including professional and lay (moreover, so-called folk) legal style.[23] It is the examination of the

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[19] See, e.g., the huge corpus collected only from oddities, extremes, curiosities and rarities of István Ráth-Végh (1870–1959); as background also Istvánné Ráth-Végh: *Férjem története.* [My husband's story]. Budapest, Gondolat, 1970.

[20] E.g., the kinds of https://en.wikipedia.org/wiki/Fabergé_egg as "symbols of the splendor, power and wealth of the Romanov dynasty and the Russian Empire"; and also https://en.wikipedia.org/wiki/Forchtenstein_Castle and https://esterhazy.at/en/forchtenstein-castle.

[21] E.g. Jacob Grimm: *Deutsche Rechts Alterthümer.* Göttingen, Dieterichen Buchhandlung, 1828. https://reader.digitale-sammlungen.de/de/fs1/object/display/bsb10623104_00005.html and Hans Fehr: *Das Recht im Bilde.* Kunst und Recht I. Erlenbach-Zürich, etc., E. Rentsch, 1923.

[22] István Kajtár: Jogi stílusunk kultúrtörténeti gyökereiről. [On the cultural-historical roots of our legal style]. In: Gábor Hamza – István Kajtár – János Zlinszky (ed.): *»Exige mentis opus doctae, Methodoque reducta...«. Tanulmányok Benedek Ferenc tiszteletére.* [Studies in Honour of Ferenc Benedek]. [Acta Iuridica auctoritate Universitatis Pécs publicata 123]. Pécs, 1996. 124.

[23] As an outstanding oeuvre, see István Kajtár: *Bevezetés a jogi kultúrtörténetbe.* [Introduction to the law's cultural history]. [Dialóg Campus szakkönyvek / Institutiones juris I] Budapest–Pécs, Dialóg Campus, 2004.

various manifestations of legal socialisation, somewhat in mutual complementation of the movements dedicated to law and literature or law and art.[24]

3.2. As the fulfilment of law

By ensuring social order, law is also a humaniser of social existence. However, in terms of actual functioning, the self-image of law, abstracted by formal features, and the reality of its practice, may differ. As a result – I wrote three decades ago –

> "If 'legal culture' is not a contentless concept denoting its absence as well, the bare fact of issuing texts with the stamp of positive law and the extent to which it effectively builds a legal culture can be largely divorced. For the basic issue is not simply how much does the law raise a filter enforced in the name and for the sake of the ruling power but how much can it transform into a genuine social institution that may frame, mediate and measure in all directions. At the same time, 'legal culture' does involve the practical entourage, i.e., the sociological components of law and, as a specific culture of a particular sub-field, it refers directly to the general culture of political and human (etc.) relations in society."[25]

Well, I put it this way in 1988, in the dictatorship called Socialism, when I received the honourable invitation to give a plenary presentation to around a thousand participants at the XIVth World Congress of the International Association for Philosophy of Law and Social Philosophy to be held in Edinburgh in August of the following year. I was already thinking that I will talk about the rudimentary and degenerate nature of what is juridicity in socialist law, hesitating, of course, considering our political position and my own delicate situation if such a topic is taken. Because our so-called law is, from the outset, a cover-up scenery of all-pervading interest-driven politics, and thus largely a misleading lie, a mere disguise, it separates formal from substantive legal reality.[26]

However, the idea may have seemed attractive in conceptual terms, as it had proved productive after a decade, under balanced circumstances. Because a German philosopher, Georg Mohr, has resonated with this 'legal culture' idea that it is nothing

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[24] Overviewed by Csaba Varga: Irodalom? Jogbölcselet? [Literature? Philosophy of law?]. *Magyar Napló* 19, 8. (2007), 17–22. as well as *Iustum Aequum Salutare* 3, 2. (2007), 119–132. https://ias.jak.ppke.hu/20072sz/11.pdf.

[25] Csaba Varga: Rechtskultur – Denkkultur: Einführung zum Thema. In: Erhard Mock – Csaba Varga (ed.): *Rechtskultur – Denkkultur*. [Archiv für Rechts- und Sozialphilosophie, Beiheft 35] Stuttgart, Franz Steiner Verlag Wiesbaden, 1989. 9–13., 12–13., quoted by Georg Mohr: Zum Begriff der Rechtskultur. In: Werner Goldschmidt (ed.): *Kulturen des Rechts*. Hamburg, Meiner, 1998. = *Dialektik,* 3. (1998), 9–29., 14.: [„allgemeine politische und Alltagskultur der Gesellschaft" „als eine eigene Kultur eines spezifischen Teilgebietes […] auch unmittelbar auf eine allgemeine politische (usw.) Kultur der Gesellschaft" as a „gemeinsames gesellschaftliches Unternehmen"].

[26] Csaba Varga: Liberty, Equality, and the Conceptual Minimum of Legal Mediation. In: Neil Maccormick – Zenon Bankowski (ed.): *Enlightenment, Rights and Revolution. Essays in Legal and Social Philosophy.* Aberdeen, Aberdeen University Press, 1989. 229–251.

more than the "integrative overall connection of all behaviour-regulating norms, insofar as they are under the demand of just social organization or are at least relevant in this respect",[27]

3.3. As the sign of being cultured in law

There is also a viable use of the concept of legal culture marking the state or quest of being cultured in law,[28] whereby the term refers to basic legal literacy as, frequently, in titles of publications that are intended to provide it in form of popular handbook or legal encyclopedia.[29] For instance, in our socialist era, it was especially fashionable to understand thereby the differentiatedly structured state of the law's environment like legal awareness and knowledge of law, obediance to law, legal dogmatics, etc.

3.4. As the status of law and of its use

Finally, in want of any other classification, we can include those uses here that simply describe the spirit of some legal order,[30] compare entire legal systems[31] – sometimes showing the difference between extremes such as the one between legal nihilism and the ethos of a "nation of lawyers"[32] – or analyse, within a given culture, some perhaps

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[27] Mohr (1998) op. cit. 42–43. („integrative Gesamtzusammenhang aller verhaltensregulierenden Normen, sofern diese unter der Forderung gerechter sozialer Organisation stehen oder wenigstens im Hinblick darauf relevant sind."). However, the infertility of this approach has already stifled its author in a utopia of the global domination of human rights a decade later, when, as he believes, the legal culture will indeed be in its own place. Cf. by Georg Mohr: Was ist eine Rechtskultur? In: Hans Jörg Sandkühler (ed.): *Recht und Kultur. Menschenrechte und Rechtskulturen in transkultureller Perspektive.* Philosophie und Transkulturalität 13. Frankfurt am Main, etc., Peter Lang, 2011. 9–20. and – offering a catalog of the various uses of the term – Rechtskultur. https://www.unesco-phil.uni-bremen.de/Texte%20zur%20Vorlesung/Rechtskultur.pdf {In: Stefan Gosepath – Wilfried Hinsch – Beate Rössler (ed.): *Handbuch der Politischen Philosophie und Sozialphilosophie.* Vol. II. Berlin & New York, de Gruyter, 2008. 1980–1987}.

[28] https://moly.hu/konyvek/h-szilagyi-istvan-fekete-balazs-nagy-tamas-szerk-iustitia-mesel as well as Ernő Király: Jogi kultúra és kulturált jog. [Legal culture and cultured law]. *Korunk* 39, 6. (1980), 401–404. http://epa.oszk.hu/00400/00458/00510/pdf/EPA00458_Korunk_1980_06_401-404.pdf.

[29] As a representative publication of the Institut Michel Villey (Paris), see, e.g., Denis Alland – Stéphane Rials (dir.): *Dictionnaire de la culture juridique.* [Quadrige-Lamy] Paris, Presses Universitaires de France, 2003.

[30] Dominique Lefèbvre: L'esprit de la culture juridique française. *Revue Juridique Themis* 12, 44. (1962), 255–271.

[31] E.g., Koichiro Fujikura: A Comparative View of Legal Culture in Japan and the United States. *Law in Japan* 16, (1983), 129–134. or Herbert Küpper: A magyar jogi kultúra egyes jellegzetességei összehasonlító perspektívából. [Characteristic features of Hungarian legal culture in a comparative perspective]. In: András Jakab – György Gajdischek (ed.): *A magyar jogrendszer állapota*. Budapest, MTA TK JTI, 2016. 131–141. https://jog.tk.mta.hu/uploads/files/06_Herbert_Kupper.pdf.

[32] Hungary from her time of Habsburg subjection is used to be called a *Juristennation*, perhaps commemorating the fact that domestic sovereignty could only be defended against imperial limiting manipulations by arguing in terms of conventions between the two sides. Cf., among others, Angelika Nussberger: Rechtsstaatlichkeit und Rechtskultur: Zu unterschiedlichen Leitbildern und Traditionen

productive contradiction stretching at a particular stage of its development,[33] or specify, within a dominant culture, a subculture to be considered and managed in one way or another because of the stubborn presence of something that – either needing to be protected[34] or remaining problematic[35], but – is ubiquitous.

4. The concept of 'legal culture' as a component of a given legal system

According to his profession and basic oeuvre, Lawrence W. Friedman is an American legal historian, well-entrenched in both sociological and theoretical approaches to law, who owes the first and still valid formulation of the 'legal culture'.

For the first time in 1969, he spoke of the (1) cultural, (2) structural, and (3) substantive components of any functioning legal system, which, according to him, is composed of (*1*) "values and attitudes which bind the system together, and which determine the place of the legal system in the culture of the society as a whole", (*2*) "[t]he institutions themselves, the forms they take, the processes that they perform", based upon "laws themselves", of course, as well as (*3*) the law stuff itself – all of them adding up to "a totality which […] we will call the legal system […] in which structural, cultural, and substantive elements interact with each other".[36] In his monographic work in 1975, confirming the foregoing, he writes of legal culture as an endless process of input/output interactions that already borrow law "life and reality".[37] Then, from the 1990s onwards, he begins to refine it. According to him, he adds to what he opined

bei der Umgestaltung der Rechtssysteme in Russland und Ungarn. *Studia Iuridica Auctoritate Universitatis* Pécs *publicata* 135, (2005), 116–130.

33 E.g. Paul-Ludwig Weinacht: Montesquieu und die Doppelte Rechtskultur im Alten Frankreich: Gewohnheitsrecht und Gesetzesrecht. *Der Staat* 36, 1. (1997), 118–132., presenting the conflict between the regime of customary laws and legislation serving the centralisation of the state.

34 Such is, e.g., Harvey J. Kirsh: Conflict Resolution and the Legal Culture: A Study of the Rabbinical Court. *Osgoode Hall Law Journal* 9, 2. (1971), 335–357., 357., concluding that "The role remaining for State-law is to encourage the development of legal sub-systems which are solidly grounded in value structures sufficiently recommended to sub-system participants, to permit the legal sub-system to function in its integrating-reinforcing role." https://doi.org/10.60082/2817-5069.2321

35 Such is, e.g., Keith S. Rosenn: Brazil's Legal Culture: The Jeito Revisited. *Florida International Law Journal* 1, 1. (1984), 1–44. Its description is given by Phenor J. Eder: Law and Justice in Latin America. In: *Law: A Century of Progress 1835–1935: Contributions in Celebration of the Anniversary of the Founding at the School of Law of New York University*, vol. I. New York, New York University Press, 1937. 39–82., 42–43.: "civil servants, be they small or powerful, create their own law. Although this law does not happen to correspond with the original law, it meets with general approbation, provided that it is dictated by common sense." And Charles Morazé: *Les trois* âges *du Brésil: Essai de politique.* Cahiers de la Fondation nationale des sciences politiques. Paris, Colin, 1954. 195. will also add that it is "an ingenious maneuver that renders the impossible, possible; the unjust, just; and the illegal, legal."

36 Lawrence W. Friedman: Legal Culture and Social Development. *Law & Society Review* 4, 1. (1969), 29–44., 34. https://doi.org/10.2307/3052760

37 Lawrence M. Friedman: *The Legal System: A Social Science Perspective.* New York, Russel Sage Foundation, 1975., passim, ill. 15. Or, https://en.wikipedia.org/wiki/Legal_culture will define legal culture as "temporary outcomes of interactions and occur pursuant to a challenge and response paradigm".

back in 1990, "legal culture […] acts as the immediate source of law, the impetus for legal stasis or change."[38] In 1992, however, in order to capitalise on this insight by helping sociological investigations, he distinguishes between internal (professional) and external terrains of "opinions, attitudes, values, and expectations with regard to law and legal institutions".[39] He confirms the quantifiability of empirical data that can be drawn, for, as he continues 1994, "We can measure [legal culture] directly, by asking people questions; or indirectly, by watching what people do and inferring their attitudes from what we see."[40]

But in the end, he virtually renounces it because, as he expresses his failure, the definition of 'legal culture' as an object of inquiry is too general and ambiguous; it cannot help having various uses. Having no proper criteria, it cannot be defined and used in empirical research for operational purposes; as to a final judgment, it covers "a troublesome concept".[41]

At the same time, this practically self-defeating morphosis, expressive of developments in the history of ideas, is apt to explore the possibilities – as well as the limitations – of using the term 'legal culture' itself. Because in our case a historian studied the formation of American law, wherein he perceived the determinative or shaping force of the play of various factors and interactions repeatedly. By generalisation, he set up a three-component concept of law with an infinite and never-ending inner dynamism, independent of whether or not some temporary apparent immobility of equilibrium or just the opposite, an express change may have been the case. However, once all of this from the ontic of law itself was exposed to the legal environment in order that, by accepting the duality of "law and society", he may quantify from the side of the latter, quite rightly he became uncertain of the benefit of using the term 'legal culture' any longer.

So, is that what is at stake here really a simply "unreflected" term,[42] that is, an expression used as a word for denoting a subject rather than a concept? Or, rather, an "umbrella term"[43] taken as a *Mädchen für alles* typed all-encompassing panacea with some Jolly Joker role, extended to infinity by all sorts of the -isms enthusiasts?

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[38] Lawrence M. Friedman: The Concept of the Self in Legal Culture. *Cleveland State Law Review* 38, 4. (1990), 517–534., 534.

[39] Lawrence W. Friedman: Legal Culture. (1992.) https://www.encyclopedia.com/politics/encyclopedias-almanacs-transcripts-and-maps/legal-culture.

[40] Lawrence Friedman: Is There a Modern Legal Culture? *Ratio Juris* 7, 2. (1994), 117–131., 119. https://doi.org/10.1111/j.1467-9337.1994.tb00172.x

[41] Lawrence Friedman: The Place of Legal Culture in the Sociology of Law. In: Michael Freeman (ed.): *Law and Sociology*. Oxford, Oxford University Press, 2006. 185–199. https://doi.org/10.1093/acprof:oso/9780199282548.003.0011

[42] Balázs Fekete: A kortárs »jogi kultúra« fogalom eredete: Lawrence M. Friedman a jogi kultúráról. [Origins of the contemporary notion of »legal culture«: Lawrence M. Friedman on legal culture.] *Iustum Aequum Salutare* 13, 1. (2017), 37–53., 37.

[43] Balázs Fekete: Inconsistencies in the Use of Legal Culture in Comparative Legal Studies. *Maastricht Journal of European and Comparative Law* 25, 5. (2018), 551–564. https://doi.org/10.1177/1023263X18796978

5. 'Legal culture' as a sociological indicator

By examining how society is built up with the prevalence of which interrelations, sociology is based on the presentation and analysis of structural and behavioural patterns, and thus uses the term 'culture' as a key concept. Though all symbolic, 'culture' does not stand for a closed and formalisable system of code or norms but for a network of meanings whose research is interpretation. After all, it is nothing more than [part of a distinctive way of imagining the real".[44] It is not by chance, therefore, that it has been used as an indicator in descriptions and explanations, for example in the legal field as "the entirety of practices and values related to acceptance, evaluation, criticism, and implementation of the legal system in force".[45]

In sum, it is clear that we are speaking here on what interrelationship can be found between the two subjects reflected to one another, or, otherwise speaking, on the way in which individuals in society relate to the law that defines society as a whole, while working with a degree of autonomy and automatism.

5.1. Erhard Blankenburg

As a prominent figure in the cultivation of his interest, a German legal sociologist in Amsterdam,[46] Erhard Blankenburg, began to use legal culture as an indicator to compare legal systems by developing appropriate correlations.[47] Sample With a companion, he soon built a set of criteria from which he could describe his own legal culture with quite diverse components, such as norms and institutions, compliance with law, and legal/non-legal consciousness.[48] For a later comparative analysis he have already categorised those specific elements like legal consciousness and legal behavior, as well as institutional features and substantive law.[49] Over time, he completely re-profiled the potential constituents in a now truly broader but commensurable (Central

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[44] By Clifford Geertz: *The Interpretation of Cultures: Selected Essays.* Harper Torchbooks. New York, Basic Books, 1973. and Clifford Geertz: *Local Knowledge: Further Essays in Interpretive Anthropology.* New York, Basic Books, 1983. 184.

[45] Adam Podgórecki: *Prestiż prawa.* [The prestige of law]. Warszawa, Książka i Wiedza, 1966. 179–180.

[46] The recently deceased philosopher of law, Werner Krawietz informed me at Münster years ago that as heralds of the New Left, German legal sociologists had succeeded to earn recognition of this specific quality as a general guideline of university accreditation. However, individual universities as autonomous units resisted to receive them, so legal sociologists had to go abroad if they were to get professorial stall.

[47] E.g., Erhard Blankenburg: Cultures juridiques comparées. *Droit et Société,* 16. (1990), 321–330. https://www.persee.fr/doc/dreso_0769-3362_1990_num_16_1_1093 shows marked differences indeed, with Austria and Belgium having a tenfold increase in the frequency of litigation and the size of the legal profession, and a thirtyfold surplus in terms of appeal, as compared with Japan. https://doi.org/10.3406/dreso.1990.1093

[48] Erhard Blankenburg – Freek Bruinsma: *Dutch Legal Culture.* Deventer & Boston, Kluwer Law and Taxation, 1991. 52.

[49] Erhard Blankenburg: Patterns of Legal Culture: The Netherlands Compared to Neighboring Germany. *American Journal of Comparative Law* 46, 1. (1998), 1–42. https://doi.org/10.2307/841077

European) context, in which he was specifically interested in law-related training and vocation, as well as legal aid, in addition to civil, criminal, administrative, and constitutional justice.[50]

5.2. David Nelken

David Nelken, a legal sociologist based in England and Italy, took a more theoretical course. He also began to use legal culture as an indicator, selecting key concepts – like the role of judges/lawyers, the understandings of rule of law and due process, or the notion of contract – "to construct a typology of »ideal types« of relevant features of legal culture".[51] In his further work, he clarified that "legal culture [...] points to differences in the way features of law are themselves embedded in larger frameworks of social structure and culture which constitute and reveal the place of law in society".[52] Accordingly – he concluded – "Legal culture, in its most general sense, is one way of describing relatively stable patterns of legally oriented social behaviour and attitudes."[53]

But once "break up the concept" is needed[54] as it has been emphasised in the ensuing debate, why is it at all, why are we talking about it, and what good is it? Well, these discussions have already warned the author of the inherent weakness of the concept he developed, namely that

> „The concept of culture is not so much a way of identifying highly specified and tightly bounded units of analysis, then, as a heuristic device for suggesting how individual decision-making is conditioned by the language of normative discussion, the set of historical reference points, the range of solutions proposed in the past, the institutional norms taken for granted, given a particular context of repeated social interaction."[55]

That is, the 'legal culture' he has introduced can be used, suggests some meaningful connection as well; in practice, moreover, it has become fashionably suggestive of deeper meanings; but it can do so too loosely in occurrences so that, by now, „similar

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[50] Erhard Blankenburg: *Legal Culture in Five Central European Countries.* The Hague, 2011. [wrr Working Documents W111] https://www.wrr.nl › binaries › wrr › documenten › publicaties › 2000/12/18 – with the present author also contributing to it.

[51] David Nelken: Disclosing/Invoking Legal Culture: An Introduction. *Social & Legal Studies* 4, 4. (1995), 435–452., 443. https://doi.org/10.1177/096466399500400401

[52] David Nelken: Towards a Sociology of Legal Adaptation. In: David Nelken – Johannes Feest (ed.): *Adapting Legal Cultures*. Oñati International Series in Law and Society. Oxford & Portland, Or., Hart Publishing, 2001. 7–54., 25.

[53] David Nelken: Using the Concept of Legal Culture. *Australian Journal of Legal Philosophy* 29. (2004), 1–26. http://www.austlii.edu.au/au/journals/AUJlLegPhil/2004/11.pdf 1.

[54] Franz Von Benda-Beckmann – Keebet Von Benda-Beckmann: Why Not Legal Culture. *Journal of Comparative Law* 5, 2. (2010), 104–117., 105.

[55] Jeremy Webber: Culture, Legal Culture, and Legal Reasoning: A Comment on Nelken. *Australian Journal of Legal Philosophy* 29, 17. (2004), 27–36., 32. http://www.austlii.edu.au/au/journals/AUJlLegPhil/2004/17.html

concepts are used in different contexts of meaning in different disciplines of the legal science."[56] In other words, it meant a lot by having meant less and less in any genuine sense. From which Nelken had to draw the lesson that his concept proved to be, again, "highly controversial".[57]

5.3. Roger Cotterrell

However, the ultimate blow to the idea of a 'legal culture' to be usable in sociological contexture was stroken by the excellence of English macrosociological legal theory, Roger Cotterrell. Because, however, he sees the effort itself at naming the entire environment of law by 'legal culture' as an impressionistic total visualisation, the fact notwithstanding that by definition it involves "underlying values or principles of legal system [...], traditions, shared beliefs, common ways of thinking, constellations of interests or patterns of allegiances of lawyers, lawmakers, and citizens".[58] And as if he were exclaiming the king naked, he identifies that this is, in fact, 'legal ideology' behind the law, some elements of which, in order to give it meaning, might be best approached through ideal types.[59]

So, if I consider the law itself and the social environment interacting with it as separate entities, then the latter, expressed by the category of 'legal culture', will prove to be both uncertain and tautologic[60] – only provided that this latter is intended to cover

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[56] Anna Kociołek-Pęksa – Władysław Pęksa: Between History and Sociology: Remarks on Differences in Perceiving legal culture as a Subject of Interest by Various Disciplines of Jurisprudence, Particularly Sociology of Law and the Disciplines of the History of Law. *The Lawyer Quarterly* 6, 4. (2016), 209–225. https://tinyurl.com/ykjbc9da 225.

[57] David Nelken: Thinking about Legal Culture. *Asian Journal of Law and Society* 1., 2. (2014), 255–274. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2466424 255., https://doi.org/10.1017/als.2014.15

[58] Roger Cotterrell: Comparative Law and Legal Culture. In: Mathias Reimann – Reinhard Zimmermann (ed.): *The Oxford Handbook of Comparative Law*. Oxford, Oxford University Press, 2008. 709–752., 710. https://doi.org/10.1093/oxfordhb/9780198810230.013.22

[59] Roger Cotterrell: The Concept of Legal Culture. In: Roger Cotterrell: *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory.* Burlington, Ashgate, 2006. 81–96., 83. and 89–91. https://doi.org/10.4324/9781351217989-6

[60] Benda-Beckmann – Benda-Beckmann op. cit.

the other side of the law's total presence[61] or to fulfil the role of an indicator, that is, an analytical concept[62] in sociological description.[63]

I am to note that the genuine quest here is not entirely new: it has already been answered once, about four decades ago, Moreover, in a domestic debate, when the issue of conceptual unity versus separability has been raised in terms of the dilemma of how to interprete the domains 'within the law' and 'outside the law'.[64] And the answer was definite in so far as it referred to the although differentiable but inseparable unity of the entire field operated, influenced or suffered by law.[65]

"Legal cultures" as expressions of the order ideal behind the use of the instrument of law.

6. 'Legal cultures' as expression of the various ideals of order that may stand behind resorting to the means of law

When as a result of readings and study trips abroad, the richness of the variety of laws and legal regimes opened up to me and I could not only intellectually encounter historical layers of them as superimposed from the past in their "progress" towards future (as French and Soviet revolutionary utopianism dictated[66]), but also take notice

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61 Towards the end of communism in Hungary, humanisation of socialist law was promoted via legal policy and legal culture projects in the Budapest university. Doing so, Mihály Samu: A kultúra és a jog: a jogi kultúra. [Culture and law: legal culture]. *Jogtudományi Közlöny* 42, 8. (1987), 405–414., 408., 409. & 410–411. wrote that "law and legal culture form an integral unity, not in relationship of the whole and the part, but as two sides of reality".

62 E.g. Thomas M. Franck: The Legal Culture and the Culture Culture. *Proceedings of the American Society of International Law Annual Meeting* 93, (1999), 271–278. https://doi.org/10.1017/S0272503700067768. H. Patrick Glenn: Are Legal Traditions Incommensurable? *American Journal of Comparative Law* 49, 1. (2001), 133–146. https://doi.org/10.2307/840924.; H. Patrick Glenn: Concept of Legal Tradition. *Queens Law Journal* 34, 1. (2008), 427–445.; Menachem Mautner: Three Approaches to Law and Culture. *Cornell Law Review* 96, 4. (2011), 839–867. https://scholarship.law.cornell.edu/clr/vol96/iss4/25/; Ralf Michaels: Legal Culture. In: Jürgen Basedow – Klaus J. Hopt – Reinhard Zimmermann – Andreas Stier (ed.): *Max Planck Encyclopedia of European Private Law.* Oxford, Oxford University Press, 2012. 7. http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3012&context=faculty_scholarship

63 Nevertheless, its unspecified use is still alive today, for example in a problematization according to which "Legal culture is functionally equivalent to a virtual bridge that makes it possible to analyse the fundamental subject matter of sociology of law: the reciprocal connections between law and society." Alberto Febbrajo: Introduction. In: Alberto Febbrajo (ed.): *Law, Legal Culture and Society: Mirrored Identities of the Legal Order.* Studies in the Sociology of Law. London, Routledge, 2018. i.

64 Gyula Eörsi: Jogelméleti torzó. [A torso of legal theorising]. Állam- és Jogtudomány 23, 3. (1980), 353–380. attempted to conceptualise mechanisms of action inside and outside the law, while Vilmos Peschka: Lehet-e a jognak ontológiája? [Can there be an ontology of law?]. Állam- és Jogtudomány 23, 3. (1980), 382–406. argued for law as a single ontic entity.

65 Csaba Varga: Domaine »externe« et domaine »interne« en droit. [trans. François OST]. *Revue Interdisciplinaire d'Études Juridiques* 14, 1. (1985), 25–43. https://tinyurl.com/2p3vaupd

66 See, among others, Pál Angyal: A haladás problémája az emberi gondolkodás történelmében. [The quest for progress in the history of human thought. *Társadalomtudomány* 8, 3–5. (1928), 140–161.; Jules Delvaille: *Essai sur l'histoire de l'idée de progrès jusquà la fin du XVIII^e siècle.* Paris, Alcan,

of their diversity in our present world, I began to look for the genuinely real and deep roots of differences and also of the conceptualisation of which I could assume that it might give account of this richness as the embodiment of own variations.

Initially within the circle of legal theory purely, I tried to unravel the mystery of the distinction between Civil Law and Common Law as a difference between legal methods.[67] Then it turned out that the real and quested subject here is neither simply law nor thinking *in* law but also–and above all – thinking *on* and *about* law.[68] It means that we are to face a notion of the idea and ideal of social order – including underlying philosophies with manners of conceptualisation, understandings of logic with apperception of human experience, and involving also where and how the people concerned may or must operate by generalisation, speak of laws and act sharply or in a rounded way – that ultimately dominates the whole outlook of various peoples' various cultures.[69]

Once we look over the families of Civil Law and Common Law as great heirs of the once Bologna reception of Roman law and start examining those enormous blocks of legal arrangements that have historically appeared and/or are emerging anywhere in the world, what we can learn therefrom can only be clearly expressed by the idea and ideal of what order is meant to be served and secured, and which way it needs to be formulated.[70]

In addition to the views formed about society and the order that can be desired and ensured in it, whole *worldviews* are placed on a common platform of investigation here. Their most common feature is their mutual difference, which precludes commensurability and even contrasted 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 concerned peoples' particular conditions and individual experiences that have formed their ideas of order; and 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 nature's autochthonality at the most.[71] This

1910.; Bernard James: *The Death of Progress.* New York, Knopf, 1973.; Pierre-André Taguieff: *Le sens du progrès: Une approche historique et philosophique.* Paris, Flammarion, 2004.; Sylvie Mullie-Chatard: *De Prométhée au mythe du progrès: Mythologie de l'idéal progressiste.* L'ouverture philosophique. Paris, Harmattan, 2005.

67 For the first time in Csaba Varga: A »*Jogforrás és jogalkotás«* problematikájához. [To the problem of {Vilmos Peschkas} »Source and the making of law«]. *Jogtudományi Közlöny* 24, 9. (1970), 502–509. (http://mek.oszk.hu/14500/14525/, 215–222.)

68 This is the difference and ultimate unity of thinking in and on law, cf. Varga (2012) op. cit.

69 Ibid.

70 Csaba Varga (ed.): *Comparative Legal Cultures*. The International Library of Essays in Law & Legal Theory, Legal Cultures 1. Aldershot, Hong Kong, Singapore, Sydney: Dartmouth & New York, The New York University Press, 1992.

71 With H. Patrick Glenns introduction of the concept of autochthonity [from the Greek composition of *auto-* + *chthőn* [the land] into legal comparatism, professional interest has shifted to the originality inherent in any culture, however latent. A few decades earlier, Alan Watsons legal history research (which I was well acquainted with, as he started a correspondence with me during his professorship at Edinburgh on the possible rationale for the codification/non-codification of English law) drew attention

implies that the very scale by which we can measure their success is provided by criteria they will have supplied themselves, regardless of how much differentiated and/or autonomous they are – albeit, as recent anthropological micro-analyses are used to reveal, even their most ancient and prototypal forms may have developed surprisingly complex an internal structure and feedback capability. Moreover, typically we can find in each of them some approach, combination or technical solution to be so surprisingly original and prodigiously effective that we shall be easily inclined to generalize it as the specific genius of the given arrangement.[72]

In my own research, I have called such large units legal cultures. Neither what I may study in close proximity nor what I perhaps compare with some neighboring phenomenon, but the individual carriers of whole sets produced so far by universal human development to serve as fundamental legal patterns.[73] The characterization of these 'legal cultures' is thus done by generalizing or exemplificative description[74] of features identifiable as ideal types.[75] That's 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."[76] However, these are not only products, that is, mere outcomes or imprints of other phenomena, but also productive forces able to create social reality. That is, they have an *ontological* status as well, serving also as *epistemological* filters for the law's cognition.[77]

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to the generality of human pattern *imitatio* and, owing to this, the possibility of an "always the same while always different" kind of legal development. Cf. Csaba Varga: Jogátültetés, avagy a kölcsönzés mint egyetemes jogfejlesztő tényező. [Transplantation of law, or borrowing as a universal pattern of developing the law]. *Állam- és Jogtudomány* 23, 2. (1980), 286–298. (http://mek.oszk.hu/14500/14525/, 191–203.)

72 Cf. Varga (2020) op. cit. https://doi.org/10.1007/978-3-030-46898-9

73 The expression *mentalité juridique* is used in this sense by Pierre Legrand: À propos d'une réflexion sur la comparaison juridique. *Revue internationale de droit comparé* 45., 4. (1993), 879–888. https://www.persee.fr/doc/ridc_0035-3337_1993_num_45_4_4773 and Pierre Legrand: European Legal Systems are not Converging. *International and Comparative Law Quarterly* 45, 1. (1996), 52–81. https://pierre-legrand.com/european-legal-systems.pdf, 60. et seq. According to his definition – Pierre Pierre Legrand: *Fragments on Law-as-Culture.* Deventer, Kluwer, 1999. 27. – this is "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*."

74 As acknowledged by Jaakko Husa: Legal Culture vs. Legal Tradition – Different Epistemologies?. *Maastricht European Private Law Institute Working Paper,* 18. (2012), 1–30. https://ssrn.com/abstract=2179890 22. as well: it is not a legal culture described in itself, but a "concept of legal culture (or rather cultures)" is the case here.

75 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 – David S. Clark: *Comparative Law, Western European and Latin American Legal Systems: Cases and Materials.* Contemporary Legal Education. Indianapolis, Bobbs-Merrill, 1978. 29.

76 Csaba Varga: Introduction. In: Varga (ed., 1992) op. cit. xv–xxiv, xix, quoted in https://en.wikipedia.org/wiki/Legal_culture.

77 "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.* Princeton, N.J., Princeton University Press, 2004. 4. Thereby also "the collective programming of the

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

As has been voiced 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"[78] – 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."[79]

Instead of the image Nelken had advised as a targeted sociological indicator, the comparative theoretician Jaakko Husa continued the 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."[80]

For, as he quotes from me for furthering his exposition,

> "the law's formal objectification (enactments, decided cases, etc.) can be meaningfully interpreted only within its informal contexture. This

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mind which distinguishes the members of one group or category of people from another" is achieved. Geert Hofstede: *Cultures and Organizations: Software of the Mind.* New York, McGraw-Hill, 1991. 5.

78 John Bell: English Law and French Law: Not so Different? *Current Legal Problems* 48. (1995), 63–101., 70. https://doi.org/10.1093/clp/48.Part_2.63

79 John Bell: [review on David Nelken: *Comparing Legal Cultures*]. *International & Comparative Law Quarterly* 47, 1. (1998), 246–248., 248., quoting both Varga (ed.,1992) and Volkmar Gessner – Armin Hoeland – Csaba Varga (ed.): *European Legal Cultures*. Tempus Textbook Series on European Law and European Legal Cultures I. Aldershot, Brookfield USA, Singapore, Sydney, Dartmouth, 1996.

80 Husa (2012) op. cit. 7.

> 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."[81]

According to such a "broad definition",

> "'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 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 conceptualisation of law in broad sense, it tells about the legal *mentality* of a society or a group."[82]

All in all, then, he continues, quoting from me again,

> "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 civilisations, 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 civilisations, dedicated to societal problem-solving capacity even when we are making formal and homogenised instruments and institutions"[83] 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 civilisation".[84]

More specifically, "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

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[81] Csaba Varga: *Transition to Rule of Law: On the Democratic Transformation in Hungary.* Philosophiae Iuris. Budapest, ELTE "Comparative Legal Cultures" Project, 1995. & http://mek.oszk.hu/14700/14760/, 85, quoted (in a shortened form) by. Husa (2012) op. cit. 7. note 28.

[82] Husa (2012) op. cit. 22., 23.

[83] Csaba Varga: Comparative Legal Cultures? Renewal by Transforming into a Genuine Discipline. *Acta Juridica Hungarica* 48, 2. (2007), 95–113., 104. http://real-j.mtak.hu/762/1/ACTAJURIDICA_48.pdf https://doi.org/10.1556/AJur.47.2007.2.1 quoted by Husa (2012) op. cit. 12. note 51.

[84] Varga (2007) op. cit. 99. quoted by Husa (2012) op. cit. 14. note 64.

their co-operation, how and in what way they conceptualise it, in what a spirit, frame and purpose they make it the subject of theoretical representation and information."[85]

Thus, *legal culture* is ultimately nothing more than the ideal of order (involving the due mentality) upon the basis of which (*a*) as a global force 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,[86] law is created, maintained and managed.

Owing to the above, on the 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. After all, as a further author[87] also quotes from 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, organisational principles and notional distinctions, institutionalisations

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85 Csaba Varga: Legal Traditions? In Search for Families and Cultures of Law. *Acta Juridica Hungarica* 46., 3–4. (2005), 177–197., 182. https://doi.org/10.1556/AJur.46.2005.3-4.2. The same development of mine is quoted by Husa (2012) op. cit. 7.

86 For the first such formulation of this threefold criterion – and, at the same time, universal – definition of law, see Csaba Varga: Anthropological Jurisprudence? Leopold Pospíšil and the Comparative Study of Legal Cultures. In: Institute of Comparative Law, Waseda University (ed.): *Law in East and West. On the Occasion of the 30th Anniversary of the Institute of Comparative Law, Waseda University.* Tokyo, Waseda University Press, 1988. 265–285. (http://mek.oszk.hu/15300/15333/#, 437–457.)

87 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.* Florianópolis, Universidade Federal de Santa Catarina, 2017. 322.

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."[88]

7. 'Legal cultures' or 'legal traditions'?

It was at the turn of the millennium that the great old figure of comparatism, H. Patrick Glenn, published not only the most modern, but at the same time perhaps the most comprehensive and in-depth overview of the legal systems and their thought patterns that ever existed under the title of 'legal traditions'[89] – certainly as not the first using such title, but definitely creating a naming fashion. Considering his chosen subject, he opines that "A given tradition emerges as a loose conglomeration of data, organized around a basic theme or themes, and variously described as a 'bundle', a 'toolbox', a 'language', a 'playground', a 'seedbed' a 'ragbag' or a 'bran-tub." As to its character, "Tradition is unquestionably normative. It tells us how we should act. Its normativity derives from the collective judgment, exercised over time, that the content of the tradition is of value and should be of contemporary application."[90]

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88 Varga (2007) op.cit. 5–113. http://real-j.mtak.hu/762/1/ACTAJURIDICA_48.pdf) {reprint in Csaba Varga: *Comparative Legal Cultures: On Traditions Classified, their Rapprochement & Transfer, and the Anarchy of Hyper-rationalism.* Philosophiae Iuris. Budapest, Szent István Társulat, 2012. http://mek.oszk.hu/15300/15386, 34. [„No entanto, nem todos os usos ou definições da »cultura jurídica« são decorrentes puramente da visão sociológico-jurídica do mundo. Há também maneiras mais exigentes e sutis de se entender o conceito. Varga também conectou usos de conceitos comparativos atualizados, como »cultura jurídica« e »tradição jurídica«, que transcendem os limites do positivismo jurídico, de modo que a própria descrição interna do direito seja substituída por uma descrição externa do direito. Para simplificar uma grande questão, o ponto de vista epistêmico a partir do qual a lei é concebida mudou de dentro para fora. Aqui encontramos diferentes quadros antropológicos, social-históricos, sociológicos e culturais. Para Varga, a mudança no direito comparado parece ser, com razão, uma mudança da epistemologia positivista para o quadro social-histórico mais amplo. Ele define a »cultura jurídica« de uma maneira que parece conter elementos de múltiplos campos que estudam o direito, não apenas estudos jurídicos, mas sociologia, filosofia, história e filosofia."]

89 H. Patrick Glenn: *Legal Traditions of the World: Sustainable Diversity in Law.* Oxford & New York, Oxford University Press, 2000. [5th ed. (2014)].

90 H. Patrick Glenn: *Legal Traditions of the World: Sustainable Diversity in Law.* Oxford & New York, Oxford University Press, ²2004. 15. and H. Patrick Glenn: Legal Traditions and Legal Traditions. *Journal of Comparative Law* 2, 1. (2007), 69–87., 73.

The term 'tradition' itself derives from the concept of *traditio* in Roman law.[91] Its usual undertandings emphasize, on the one hand, its value for a group's ability to define its identity[92] and, on the other, its being activated by a retrospective confirmation.[93]

The difference between *legal culture* and *legal tradition* is often blurred[94] or narrowly interpreted, as if any tradition could be universal as a historical generality, that is, one from which culture could emerge only occasionally, in the case of expedient construction, and as a result.[95] However, the situation is exactly the opposite and, especially in terms of law, "'culture' is within the womb of that which we interpret ourselves and our world, whereas 'tradition' is only one form of culture, the one in and for which the past has strong significance for the acceptance – or, obliquely, the justification – of any direction/contents taken."[96]

Well, appearing together at the *Epistemology and Methodology of Comparative Law* conference at the European Academy of Theory (Brussels) in the fall of 2002, Glenn came to me before my presentation as a friend, but during our conversation he strongly objected to my use of the term for it is, so to speak, divisive, and not politically correct, for growing out of Germanic romance, it served as one of the fetishes of the Third Reich. Yet for both of us, one of our great American ancestors of our father's age made it clear for quite a few decades then that these are two concepts that are not equivalent, not even assigned to one another, but coming to a possible variety. Because – writes Merryman – "The legal tradition relates the legal system to the culture of which it

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91 According to https://www.thefreedictionary.com/tradition, "from Old French, from Latin trāditiō, trāditiōn-, from trāditus, past participle of trādere, *to hand over, deliver, entrust*: trā-, trāns-, *trans-* + dare, *to give*".

92 "[T]he traditions are above all not simple routines […], but knowledge or actions that carry value and meaning for a particular human group." https://www.scienceshumaines.com/culture-et-tradition_fr_12538.html (mars/avril/mai 2002). [„[L]les traditions ne sont surtout pas des routines quelconques […], mais des savoirs ou des actes porteurs de valeur et de signification pour un groupe humain particulier."]

93 "What we call tradition is therefore not simply a given but ultimately the product of a recreation: each heir thus constructs retrospectively what has been transmitted to him. In this respect, we could say that the tradition was presented on the model of »reverse filiation«, the son begetting and choosing his own father." Philippe Simay. In: Michel Bley (dir.): *Grande dictionnaire de la philosophie*. Paris, Larousse, 2003. https://gallica.bnf.fr/ark:/12148/bpt6k1200508p/f1054.item.r=tradition. [„Ce que l'on nomme tradition n'est donc pas simplement un donné mais *in fine* le produit d'une recréation: chaque héritier construit ainsi rétrospectivement ce que lui a été transmis. On a pu dire à ce titre que la tradition se présentait sur le modèle de la »filiation inversée«, le fils engendrant et choisissant son propre père."], referring to Jean Pouillon: *Fétiches sans fétichisme.* Bibliothèque d'anthropologie. Paris, Maspero, 1975.

94 According to https://fr.sawakinome.com/articles/public/difference-between-culture-and-tradition.html and http://www.differencebetween.net/miscellaneous/difference-between-culture-and-tradition/, „Rechtskultur steht in gesellschaftlichen, religiösen und ideologischen Traditionen."

95 H. Patrick Glenn: The Nationalist Heritage. In: Pierre Legrand – Robert Munday (ed.): *Comparative Legal Studies: Traditions and Transitions.* Cambridge, Cambridge University Press, 2003. 76–99., 78. et seq. will connect the concept of legal culture to the Western idea of the state. https://doi.org/10.1017/CBO9780511522260.004

96 Varga (2020) op. cit. 23., note 97. https://doi.org/10.1007/978-3-030-46898-9

is a partial expression. It puts the legal system in to a cultural perspective".[97] For, in contrast to him, in my lecture material, which Glenn may have read in advance, I spoke exactly about the fact that

> "'*Legal tradition*' as a concept can be interpreted exclusively within legal culture. Tradition is the awareness of an earlier inherent pattern of culture, taken as the source of and inspiration to community identification, with the demand for continuity as an encouraging or justifying power. Thus, 'legal tradition' itself is a relational concept, the issue of a specific relation. For tradition as such is neither a piece nor an aspect of the past. Moreover, in itself it is not a longing for external or internal certainty, nor a search for confirmation nor showing of a way out. It is just the encounter of the two sides involved, notably the selection of a segment of the past or the qualification of a feature attributed to it, in order that the present, viewed from a future's perspective, can be linked to the past as worthy of continuation, because of the latter's inherent values."[98]

Interestingly, as a summary of his problematising at the same conference, the renown comparative legal historian, Alan Watson, happened to conclude a categorical identity between 'legal culture' and 'legal tradition'.[99] A decade later, the aforementioned Finnish Jaakko Husa had devoted a separate paper to resolving the hidden polemics between me and formerly Nelken and then Glenn, moreover, he defended my position in the end. Accordingly – he draws the conclusion now – "it seems even viable to conceive 'legal tradition' as a part of 'legal culture' so that it is – quoting again from me – »awareness of an earlier inherent pattern of culture, taken as the source of and inspiration to community identification«".[100]

We may have to find it amusing, but Husa – realising Glenn's self-guided sensitivity to political correctness – ultimately even feels motivated to protect me, without the

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97 John H. Merryman: *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America.* Stanford, Stanford University Press, 1969. 2.

98 Csaba Varga: Legal Traditions? In Search of Families and Cultures of Law. *Acta Juridica Hungarica* 46, (2005), 3–4., in his *Comparative Legal Cultures* On Traditions Classified, their Rapprochement & Transfer, and the Anarchy of Hyper-rationalism (Budapest, Szent István Társulat, 2012.) 253. [Philosophiae Iuris]. https://mek.oszk.hu/15300/15386/ 83–84.; továbbá Елена Николаевна Трикоз: Всемирный конгресс компаративистов в Японии. [World Congress of Comparative Law Scientists in Japan]. (г. Фукуока, The IACL World Congress – 2018): тематический обзор Вестник Российского университета дружбы народов Серия: Юридические науки 22, 4. (2018), 602–609., 608–609. https://doi.org/10.22363/2313-2337-2018-22-4-602-609.

99 Alan Watson: Legal Culture v Legal Tradition'. In: Mark Van Hoecke (ed.): *Methodology and Epistemology of Comparative Law.* Oxford & Portland Oregon, Hart Publishing, 2004. 1–6.

100 Husa (2012) op. cit. 25., quoting the definition of Varga (2005) op. cit. 185. It seems that later it has also been accepted internationally beyond the disciplinary sphere of law, according to which "traditions are part of the culture"; cf. https://fr.sawakinome.com/articles/public/difference-between-culture-and-tradition.html and http://www.differencebetween.net/miscellaneous/difference-between-culture-and-tradition/.

slightest sign of narcissism. So he poetically asks, addressing Glenn, "Moreover, why could this sort of 'culture' not be handed down like a tradition or why it could not be tolerant in its relation to other cultures?" And the answer will be given in a note, according to which

> "E.g., in Varga ('Comparative Legal Cultures?' [2007]) it is easily read that »comparative legal cultures« approach is openly critical against »ethnocentrism in scholarship, cultural imperialism in politics, and neo-colonialism in practices«. This approach appears sincerely to be, too, tolerant: since »we also have to recognise individual and collective accomplishments in all human attempts at creating order, and provided they have produced values, we have to appreciate and try to preserve these as such«".[101]

By this development we have come forth and back to the simplest basic truth of a sober approach capable of seeing things as they are.

Our summary is thus: law is a cultural product; its features and modes of operation are both cultural and culturally dependent; its actual meaning, and thereby its very existence as well, cannot be explained from within, but derives from the underlying culture, from its contextualizing positions; as a result, its identity, its change, its relation to other phenomena is nothing but the outgrowth of culture-created connections; or, in short, *„extra culturam nihil datur"*.[102] In consequence, only provided that it is carried on by the law, whatever legal culture conceived in whatever way can be nothing more or else than a part of the law's ontological being.

8. Conclusion

The names, understandings, and uses taken as terms in the context of 'legal culture' / 'legal cultures' in this paper may, in principle, be appropriate and defensible in their own approach, interpretation and scope of application in so far as they were grounded in depth and with sufficient clarity and unambiguity in the given subject matter.

After all, it is not reality that has names and concepts, but it is our naming, ending by conceptualization,[103] by the medium of which we can look at some manifestation of reality – highlighted from its infinite and inexhaustible depth and variability for the

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[101] Husa (2012) op. cit. 23. & note 97., (Varga (2007) op. cit. 95–113. http://real-j.mtak.hu/762/1/ACTAJURIDICA_48.pdf) in Varga (2012) op. cit. 48.

[102] This is used recurring by Pierre Legrand: The Impossibility of »Legal Transplants«. *Maastricht Journal of European & Comparative Law* 4, 2. (1997), 111–124., 120. https://doi.org/10.1177/1023263X9700400202 and also in Legrand (2015) op. cit. 82.

[103] By definition, a *concept* is nothing else than a word denoting an element definitively contradistinguished in a system of thought that in principle encompasses the totality of the world. It is opposed to any other naming which cannot be but a mere *word* or *designation* that, in absence of anything better, still results in conventionality in communication. Even often in philosophical treatises, this difference is not necessarily made in English.

sake of our analysis only – for that we can describe this manifestation and possibly highlight other manifestations and aspects as well.

This is an issue already answered philosophically on some conceptual foundations. Accordingly, on the one hand, there are pieces of reality which are artificially separated, between which we can draw sharp delimitations in relation to each other and thus we can live with clear-cut definitions, and these are the so-called *class concepts*, and on the other hand, there are also so-called *order concepts* that can be characterised only and at most, in the depth required by the given study.[104] Or, concepts we use can be used either in classification or exclusively for ordering. In another attempt at separation, the former is considered *postulation*, as opposed to the latter as a directly conceived *concept of intuition*, in which the hoped-for success of the transmission of an idea communicated primarily in communication will be a decisive factor in its selection or use.[105]

The development of science most often follows one of the most central elements of any scholarly work, *analysis*, that is, experimental conceptualisation following new realisations, and, then, cumulative notional differentiation drawn from the verification/falsification of the said experimental conceptualisation from various sides. It was once a new insight to construct link between law and culture, but the assumed approach to and perception of its self-existence proved unsustainable, despite attempts to break down its unspecified generality into components assessed as sociological factors.[106] With regard to the present subject, thus, a conceptualisation is proved to be operatively usable at the present time, which sees no more than the historical and developmental group characteristic of given regimes of law, specifying them in contradistinction to any other legal arrangement.[107]

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104 Carl G. Hempel – Paul Oppenheim: *Der Typusbegriff im Licht der neuen Logik: Wissenschaftstheoretische Untersuchungen zur Konstitutionsforschung und Psychologie.* Leiden, Sijthoff, 1936.

105 Filmer Stuart Cuckow Northrop: *The Logics of the Sciences and the Humanities.* New York, The Macmillan Co., 1947. & https://archive.org/details/in.ernet.dli.2015.46373, 82.: "meaning proposed for it theoretically by the postulates of the deductive theory in which it occurs."

106 At the end of the 19th century and in parallel with the problematisation on *Recht und Kultur*, the widely overused term *Volksgeist* also arrived at a dead end. Namely, in want of specification it become a mere reference to the laws background without any descriptive force as, in the eyes of the late 19th-century German classic – Rudolf Stammler: Über die Methode der geschichtlichen Rechtstheorie. In: Rudolf Stammler – Theodor Kipp: *Festgabe zu Bernhard Windscheids fünfzigjährigem Doctor-Jubiläum. Zwei Abhandlungen.* Halle, M. Niemeyer, 1888. 1–63., 6. –, outright "mysticism". Some authors experimented with making the concept legal culture operational. As a modern legal historian – Hans-Peter Haferkamp: Pandectists between Norm and Reality. In: Yasutumo Morigiwa – Michael Stolleis – Jean-Louis Halperin (ed.): *Interpretation of Law in the Age of Enlightenment: From the Rule of the King to the Rule of Law.* Law and Philosophy Library 95. Cham, Springer, 2011. 107–121., 114–115. explains, it was Wilhelm Arnold by his *Cultur und Rechtsleben.* Berlin, Ferdinand Dümmler, 1865. and *Cultur und Recht der Römer.* Berlin, Ferdinand Dümmler, 1868. who brake it down into factors. The *Vorrede* and *Einleitung* to his first work based on the undoubtable fact that choice for law are in principle infinite, but in the end some choice still will made. And what will it be? Well, nothing more than what the underlying living conditions [*Lebensverhältnisse*] dictate.

107 For an earlier version of the present paper, see Csaba Varga: Jog, jogi kultúra és jogi hagyomány, avagy az összehasonlító történeti vizsgálódás kulcsfogalmai. [Law, Legal Culture and Legal Tradition, or the

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