

Rapports généraux de l'AIDC / General Reports of the IACL

Katharina Boele-Woelki
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General Reports of the XXth General Congress of the International Academy of Comparative Law – Rapports généraux du XXème Congrès général de l'Académie internationale de droit comparé



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Ever since its foundation in 1924 the International Academy of Comparative Law has organized Congresses allowing for the exchange of ideas on general aspects of comparative law and on the application of the comparative method to specific subjects. While the Congresses were confined to European venues for the initial decades, they have also taken place on other continents in more recent times. The Congresses of Washington DC in 2010 and Vienna in 2014 were numbered as the 18th and 19th General Congresses of the Academy. The Congresses cover a wide range of subjects from all areas of the law. The topics are meant to mirror and to contribute to modern legal developments of the respective time. The main format consists in sections organized under the scholarly guidance of a General Rapporteur. The General Rapporteurs collect national reports from a large number of jurisdictions which allow them to pinpoint the major legal differences between the national laws covered and to draw conclusions concerning the ongoing legal development in the respective area. The general reports of a Congress have traditionally been collected in a single book which provides a kind of inventory of major legal themes of particular relevance at the time of the Congress.

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Académie internationale de droit comparé
International Academy of Comparative Law



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Diego P. Fernández Arroyo •
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Editors

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Comparative Law - Rapports
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Avant-propos/Foreword

Du 22 au 28 juillet 2020, l'Académie internationale de droit comparé a tenu son 20^{ème} Congrès général à Fukuoka, au Japon. Pendant ces jours ardents de l'été japonais, plus de 800 participants se sont réunis dans la plus grande ville de l'île de Kyushu afin de discuter une variété étonnante de sujets juridiques parmi les plus importants à ce jour. Ces sujets ont été abordés à travers différents formats : rapports généraux/spéciaux, tables rondes, leçons inaugurale/de clôture et ateliers. En outre, deux activités spécifiques ont été organisées à différents instants de la semaine : une série de tables rondes sur la technologie et le droit ainsi qu'un forum pour les jeunes chercheurs.

D'un point de vue académique, le 20^{ème} Congrès général a été un remarquable succès. Trois principaux facteurs y ont contribué. Premièrement, la pertinence des sujets a été assurée grâce à un processus de sélection à travers lequel les membres individuels et personnes morales d'une part, et les Comités nationaux d'autre part ont pu soumettre plus de 300 propositions. Après une présélection effectuée par le Bureau de l'Académie, 90 sujets sont restés en lice. Les participants à la réunion ouverte organisée à Paris en novembre 2015 ont choisi les 36 sujets spécifiques du Congrès. Deuxièmement, afin de traiter convenablement de sujets aussi difficiles, il fallait d'excellents rapporteurs et orateurs. Le Secrétaire général, avec l'aide du Bureau et de nombreux précieux conseillers, est parvenu à trouver les bonnes personnalités pour cela. Nous ne parlons pas seulement de la qualité individuelle, mais aussi de la nécessaire promotion de la diversité. Avec cet objectif en tête, nous sommes parvenus dans plusieurs cas à désigner deux rapporteurs généraux. L'effort en ce sens a été remarquable. Et troisièmement, le Secrétariat — et nommément Alexandre Senegacnik — s'est chargé de mettre en place toutes les activités qui ont mobilisé de nombreuses personnes et a réussi à surmonter de nombreux obstacles organisationnels.

Le succès académique du Congrès de Fukuoka porte plusieurs messages. Le plus évident est celui de l'attractivité continue du droit comparé. L'intérêt des chercheurs de tous les coins du monde est encore plus significatif compte tenu de l'impact juridique notable qui résulte de la montée et prolifération de certains discours nationalistes au cours des dernières années. Un autre message, de nature plus substantielle, est que les différences sont sans conteste le carburant nécessaire au bon fonctionnement et donc au bon

From 22 to 28 of July 2018, the International Academy of Comparative Law held its 20th General Congress in Fukuoka, Japan. During those torrid days of Japanese Summer, over 800 participants gathered in the biggest city of Kyushu Island in order to discuss an amazing variety of legal topics, among the most significant ones of today. These topics were approached through different formats: general/special reports, round-table debates, keynote speeches and workshops. Furthermore, two specific activities were organized during different moments of the week: a series of round tables on technology and the law as well as a forum for younger scholars.

From an academic point of view, the 20th General Congress was a remarkable success. Three main factors contributed to this finding. First, the relevance of the topics was ensured by a selection process through which individual and corporate members, on the one hand, and National Committees, on the other hand, submitted over 300 proposals. After a pre-selection made by the Executive Committee of the Academy, 90 topics remained in the race. The attendants of an open meeting convened in Paris in November 2015 chose the final 36 specific topics for the Congress. Second, in order to appropriately deal with such challenging topics, excellent rapporteurs and speakers were needed. The Secretary-General, with the help of the Executive Committee and many precious advisers, managed to find the right persons for this task. We are not talking only about individual quality but also about the necessity to promote diversity. With this goal in mind, in several cases we managed to appoint two general rapporteurs. The effort in this sense was remarkable. And third, the Secretariat—and in particular Alexandre Senegacnik—took care of setting up all these activities involving many people and succeeded in overcoming many organizational hurdles.

The academic success of the Fukuoka Congress conveys several messages. The most evident one is the continuing attractiveness of Comparative Law. The interest of scholars from all corners of the world reaches an even higher degree of significance in light of the notable legal impact which the rise and proliferation of certain nationalist discourses have had over the last years. Another message, more substantial in nature, is that differences are undoubtedly the necessary fuel for the Academy's

travail de l'Académie. Les comparatistes essaient toujours de les identifier et de découvrir les raisons qui les expliquent. Dans certains cas particuliers, les comparatistes concluent que les différences peuvent être minimisées, même lorsqu'il n'y a pas de réelles différences. Dans la grande majorité des cas cependant, la clé est de trouver le moyen de faire fonctionner ensemble les systèmes juridiques sur la base du respect des différences. Par ailleurs, le fait que tant de juristes aient assisté au Congrès peut suggérer que le droit comparé est plus qu'une discipline et une méthodologie. Il représente un moyen de concevoir les relations entre les juristes et le droit. Il s'agit alors d'un état d'esprit enraciné dans l'ouverture face aux différentes manières d'organiser la coexistence sociale. Il appelle également à un certain militantisme juridique en faveur de l'acceptation de l'altérité.

Vous trouverez dans cet ouvrage 26 rapports généraux. Pour les rendre possibles, les rapporteurs généraux ont travaillé d'arrache-pied depuis leur nomination en 2016 sur la base des rapports spéciaux élaborés principalement selon une approche nationale, mais aussi des perspectives régionales et/ou institutionnelles. Pour ceux qui sont particulièrement intéressés par des sujets spécifiques, l'Académie publie dans cette même série les ouvrages thématiques contenant chaque rapport général conjointement avec les rapports spéciaux respectifs. En outre, un autre ouvrage, qui rassemble d'autres contributions présentées lors du Congrès, a déjà été publié¹.

Tous les ouvrages de la série sont également disponibles en format électronique. Le nombre impressionnant de téléchargements de nos publications électroniques nous invite à être reconnaissants envers nos auteurs et fiers de la contribution de l'Académie à la recherche et à l'enseignement du droit dans le monde entier.

Les activités de l'Académie ont désormais régulièrement lieu sur tous les continents, rompant ainsi avec le traditionnel et principal regard (bien que non exclusif) sur des systèmes juridiques occidentaux et des pays développés. Le dernier Congrès thématique — sur *La mise en œuvre et l'effectivité du droit*² — s'est tenu à Montevideo, Uruguay, en 2016, et le prochain Congrès général se tiendra à Asunción, Paraguay, en 2022. Le prochain Congrès thématique

proper functioning and ultimately good work. Comparatists are always trying to identify the latter and to discover the reasons which can explain these differences. In some particular cases, comparatists conclude that the differences can be minimized, even when there are no real differences. In the vast majority of cases, however, the key is to find the way to make legal systems work together on the basis of the respect for differences. Besides all that, the fact that so many jurists have attended the Congress may suggest that Comparative Law is more than a discipline and a methodology. It represents a way to conceive the relationships between the jurists and the law. It can then be an *état d'esprit* rooted in an openness vis-à-vis the different ways to organize the social coexistence. It further calls for some legal activism in favour of the acceptance of alterity.

You will find in this book 26 general reports. To make them possible, the General Rapporteurs worked hard since their appointment in 2016, on the basis of the special reports, elaborated essentially under a national approach but also regional and/or institutional perspectives. For those particularly interested in specific topics, the Academy publishes in this very same series the thematic books containing each general report jointly with the respective special reports. Furthermore, another book, which gathers other contributions made during the Congress, has already been published.¹

All the books of the series are also available in E-book. The impressive number of downloads of our electronic publications invites us to be grateful to our authors and proud of the contribution of the Academy to legal research and education worldwide.

The activities of the Academy now regularly take place on all continents breaking with the traditional main (although not exclusive) focus on Western legal systems and developed countries. The last Thematic Congress—on *The Enforcement and Effectiveness of the Law*²—was held in Montevideo, Uruguay, in 2016, and the next General Congress will be held in Asunción, Paraguay, in 2022. The next Thematic Congress will take place in 2021 in Pretoria, South

¹ *Current Issues of Comparative Law – Questions actuelles de droit comparé: General Contributions of 2018 Fukuoka Congress – Contributions générales du Congrès de Fukuoka 2018* (Katharina Boele-Woelki & Diego P. Fernández Arroyo (dirs./eds.) Springer, 2019).

² *Enforcement and Effectiveness of Consumer Law* (Hans-W. Micklitz & Geneviève Saumier (dirs./eds.) Springer, 2018); *Comparative Perspectives on the Enforcement and Effectiveness of Antidiscrimination Law Challenges and Innovative Tools* (Marie Mercat-Bruns, David B Oppenheimer & Cady Sartorius (dirs./eds.) Springer, 2018); *Enforcement and Effectiveness of the Law - La mise en œuvre et l'effectivité du droit General Contributions of the Montevideo Thematic Congress - Contributions générales du Congrès thématique de Montevideo* (Nicolás Etcheverry Estrázulas; Diego P. Fernández Arroyo, (dirs./eds.) Springer, 2018).

aura lieu en 2021 à Pretoria, en Afrique du Sud, et aura pour thème *la diversité et pluralité en droit*.

En outre, l'Académie s'est engagée dans l'organisation de nombreuses activités sur des sujets spécifiques dans une perspective juridique comparative (droits humains³, arbitrage international⁴, droit de la famille⁵, droit international public, droit procédural et culture) et dans la promotion d'événements régionaux sur le droit comparé. Des programmes spéciaux pour les doctorants et les juges sont en préparation. De plus, *Blogcomparatum* et la présence croissante de l'Académie sur les réseaux sociaux offrent une myriade de nouvelles sur les réformes législatives, la jurisprudence, les études doctrinales et les événements universitaires. L'Académie a également lancé une série de podcast en 2020 afin de partager la réflexion sur le droit comparé avec un public plus large.⁶

La qualité des rapports rassemblés dans cet ouvrage ainsi que les multiples activités et publications mentionnées ci-dessus montrent que notre Académie est vraiment en bonne santé nonobstant son âge avancé. En effet, elle fêtera avec beaucoup de dynamisme son premier siècle — plus que prolifique — en 2024. Nous exprimons notre profonde gratitude à tous ceux qui ont contribué et contribuent toujours à rendre cela possible.

Paris, France

Africa, and will focus on *Diversity and Plurality in Law*.

Furthermore the Academy has engaged in the organization of numerous activities on specific topics viewed from a comparative legal perspective (Human Rights,³ International Arbitration,⁴ Family Law,⁵ Public International Law, Procedural Law and Culture) and in the promotion of regional events on Comparative Law. Special programmes for PhD candidates and for judges are under preparation. In addition, *Blogcomparatum* and the Academy's increasing presence on social media offers a myriad of news on legislative reform, case law, doctrinal studies and academic events. The Academy has also launched a podcast series in 2020 in order to share the reflexions on Comparative Law with a larger audience.

The quality of the reports gathered in this book as well as the multiple activities and publications referred to above show that our Academy is really healthy notwithstanding her advanced age. Indeed, she will celebrate with plenty of dynamism her first—more than prolific—century in 2024. We express our deepest gratitude to all who have contributed and still contribute to making this possible.

Katharina Boele-Woelki
Diego P. Fernández Arroyo

³ *Les droits humains comparés: À la recherche de l'universalité des droits humains* (Niki Aloupi, Diego P. Fernández Arroyo, Caroline Kleiner, Linos-Alexandre Sicilianos et Sébastien Touzé (dirs./eds.) Pedone, 2019).

⁴ Le premier numéro de *Ius Comparatum*, la nouvelle publication en libre accès de l'Académie est disponible sur le site de l'Académie aidc-iacl.org. The first issue of *Ius Comparatum*, the new open access publication of the Academy is now available on the website of the Academy aidc-iacl.org.

⁵ Il s'agit du sujet du second volume de *Ius Comparatum*. This is the topic of the second volume of *Ius Comparatum*.

⁶ Le podcast est disponible sur le site de l'Académie aidc-iacl.org. The podcast is available on the Academy's website aidc-iacl.org.

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Comparative Law and Multicultural Legal Classes: Challenge or Opportunity?

Csaba Varga

Abstract

Our thoughts are products of our own culture, tradition, and ideal of order, so their understanding and development can only be based upon them. However, cultures, traditions and ideals vary from time to time and from people to people, as each of them has been created and developed to respond to challenges under their own conditions given. Consequently, they are both independent of each other in their genesis and also incommensurable in their historical set; they are not even classifiable but only taxonomisable in a strict sense. Each of us lives and interprets his own world; when comparing, we attempt at putting all of them in a common hat, while none of us can transcend the symbolic paradox of “I interpret your culture through my culture”. A way out, if at all, can only result from their individual parallel characterisation, when we build up some kind of abstract philosophical universality from the ideals of order concerned. In the context of the Self, on the one hand, and of You, on the other, we are expected not only to explain the Other, but also to recognise it by its own right. Accordingly, legal comparison aims at getting knowledge not only of ‘law in books’ and ‘law in action’ but about what is meant by law when it works in the mind. All in all, comparison comprises, in addition to the mere act of taking cognisance, also the acceptance of this Other by its own right, in which no entity involved is simply reduced to anything purely factual (“what is the

law?”), but the actuality of the entire normative process leading to a legal statement (“how do we think in law?”) is considered. Getting to know any foreign law begins with the grouping of laws and, expressed in terms of belonging to legal families, by combining those which are similar and contrasting those which are dissimilar. Their interaction and mixing are part of their life, but establishing their occurrence cannot substitute to the didactic necessity and explanatory power of analysing them in term of legal families as well. When describing them, mere contrast or parallelism is to be completed by showing up the specific field and way of ingenuity each of them may have in comparison to others, as their individual contribution to the cultural production of the humanity.

1 The Self and the External World: The Question of Understanding

Becoming a scholar and/or university professor presupposes professionalisation in and into a fundamentally internationalised vocational order. This is further strengthened when the non-English speaking majority of the world begins to confer—talk or write—about any subject, in English, to an unidentified audience, either now or in the future.

Practically speaking, *choices from the potential of language(s)* are inexhaustible. From this almost infinite repository we then choose when we communicate; when we identify and name both real and virtual objects treated as thought objects; and when we, having described and analysed the world both in the shape we perceive it and as social institutionalisation, start conceptualising some of its selected parts. Apparently, we can move freely at every moment and in all respects, yet from the very start we are to encounter this world as ready-made: fully furnished and

This General Report will be also published, together with the National Reports from each jurisdiction, by Springer Nature Switzerland in a thematic volume.

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arranged in all its parts and as a whole. Consequently, unless we desert it or leave it to become new Robinson Crusoe's, we can have but one option, namely, that by our own laborious work we try to make some refinement of tiny parcels of it so that it will better meet our needs. For whatever we are born into, we are in, and we grow and continue to grow there, in communication with the outer world, all of this is something given to us from the beginning. To use a more accurate expression, we are embedded in our culture, tradition, and orderly arrangement. And this *all* is about the outside world and our own self, in the company of all others. For it is only this *all* that can provide a framework for reflection on ourselves. Because in any of its actual forms of existence this is exactly our world. We live in it and we orient ourselves according to it. In its given state at any time, therefore, it assigns us a normative basis as well.¹

All such cultures, traditions and orders are plural and manifold. They differ from one another because they originate from actual lives—by this we mean the nature of the orders peoples have developed and then conform to, of the challenges they face, of the experiences they have accumulated, and of the kinds of feedback offered whilst their communal actions are taken. Although encounters and communications within and outside any community result in mutual learning processes and thus some movement also towards assimilation and perhaps uniformisation, these are usually balanced by motifs that strengthen (with centrifugal effects counterchecking the centripetal ones) the particularity of the underlying culture, tradition, and order in question.

Well, it is *comparatio* that brings them to some common ground. For by treating them as organic constituents of some, mostly hypothetical, common sets, we will necessarily compare them to each other. In doing so, however, no matter how much we may try to anonymise or depersonalise our culturally bound point of view by living at a cool distance, for want of objectivity in the process, the result of the operation will ultimately be determined—or channelled into a referential framework at least—by ourselves, that is, by the *personal culture* of the one who compares. So, what we tried to push out of the gate is to return through the window. And this is exactly the paradigmatic paradox inherent in any act of collective social understanding: the only thing I can do is this: “*I interpret your culture through my culture.*” For

we are all sitting on an imaginary boat; and we represent humanity, which, we hope, should be able to give account of its own rich diversity.² But, in addition, there is one more circumstance that, as a shortcoming, is common to such operations. “So, they have neither a neutral language, nor a point of reference which could be outside of all what they themselves are or what they can at all sense with their own culture, wanting to learn about it.”

Therefore, by comparing our cultural subjects with ones of other cultures, that is, by the contrast we draw between *our own* and *the other*, *nolens-volens* we are in fact deepening our inner understanding of our own. Because all of our intellectual activity is always based on our own place.³ Consequently, we are supposed to make this more advanced—that is, even more differentiated in a systemic sense, in its internal delineations as well as in its responsive potential⁴—for that we will be able to expose and visualise any outer object (in outlook, aims, and conceptuality) with greater sensitivity and with a deeper understanding.

Now, moving from here to the field of *scholarship and education*: am I talking about a topic, at an international forum, in the context of which I am conferring on phenomena of other cultures as well? Do I introduce my students to the variety of legal traditions, to explore the past and present worlds of law, in a mixed class community in which the concepts that I am referring to—in description, classification, correlation, and the evaluation they all inevitably express—also affect the legal culture(s) whose representative(s) may be present as my student(s) here? Well, the basic situation is not new at all. It has not changed one jot for millennia, since writing was used to record human ideas and cognitive achievements, with their distribution in an either original or translated textual form beyond the given culture as well, arriving at those whose culture is reported on.

To put it briefly, it is about the gap between differing *autochthon* cultures—that is, ones developed to meet differing conditions with different peoples and epochs—and the chances and difficulties of its bridging. This is the problem of “I interpret your culture through my culture” again: the issue of anthropological and cultural knowledge.⁵ Man is typically not a divided being; he is, so to speak, at home just temporarily, in whatever place, living here or there, so he can only open his intellect and empathy to the other. He turns to the other with interest in him, trying to understand him. But

¹ Following the original methodological way of thinking characteristic of *autopoiesis*, Varga (2012a) has, in the process, analysed the connectability of society-wide and individual understandings and language use, including both official and personal association with agents of formalised normativity, including law. His approach—in Varga (1991)—has already been considered to be autopoietic by Benseler (1987).

² Cf. Varga (2012b), p. 270; referring to Cohn (1980), p. 199 and Medick (1987).

³ Sometimes it is made to seem as if recursing to the idea of ‘legal family’ would/could equate to the “exoticization of legal cultures”. Watt (2006), p. 595.

⁴ As defined by Pawelzig (1970).

⁵ Moore and Sanders (2014).

despite his most devoted efforts, in relationship to the other, he cannot be but an *external observer*.

(Perhaps the above dilemma would be more alive and our imaginative power would work even better if, in the light of a brief outlook, it is perceived in another field as well, one that is perhaps the closest to our own here, because this relates to our trial at bridging the gap between our own past and our own present. For in our example the dilemma of how to bridge this gap is more homogeneous, because we are focussing on the same area, that is, the past of our own culture, on the one hand, and its presence just lived through by us, on the other. This will be exemplified by the *historicist movement*, which was born out of the contemporary revival of *early music*.

Properly speaking, this movement is a reaction to the predominance of the vision, musical instruments and playing style characteristic of 19th century romanticism, which also prevailed in early musical performance: it stands for a cleansing and restorative desire to return to whatever available authenticity, that is, a wish to listen to present day performance as if it were for its former audience in its original medium.⁶ Well, today's literature of musicology and performing arts tells things like this: after the old ways have gone, they can no longer be identified. The strain to faithfully evoke old music, led by the desire to achieve authenticity, is a demand as much foggily vague as airy issues in general that simply cannot be approached exhaustively.⁷ Accessing it is thus precluded from the very start.⁸ Not knowing what it might wish to answer, it would only be able to reproduce a certain imaginary ideal.⁹

The cornerstone of such a conclusion is based upon the assertion according to which "the artistic end-product of composing isn't the composition, but rather its performance."¹⁰; and, as far as performance taken in the sense of the composer's true end-product is concerned, "we do not have "performances" but rather "performances of" pre-existing, Platonic [i.e., only imaginarily available – Cs.V.] works."¹¹

⁶ Here we find new unresolved queries, since the aim of modern concert tours was at its original time, as far as a genuine mass of baroque musical pieces is concerned, only a background colouring, subservient to social occasions. In the case of ecclesiastical music, as related to the gist of transcendental events, rites, and the very meaning of the deliverance of the sacrament itself, it was not necessarily more than the church architecture, its interior/decorative artfulness, the ceremonial raiment and choreography taken together, all revolving around one purpose: to prepare or condition ourselves, our soul, our whole being for that "Sursum corda! Habemus ad Dominum."/"We lift our hearts up to the Lord."

⁷ At least the complexity of its demand can be divided into authorial intentions, choices of instruments, techniques of playing, and sounds (Young 2013; Edidin 2008, p. 3), while others (e.g., Kivy 1995) see it as dependent on a whole set of criteria.

⁸ Kivy (1995) does not simply deny its availability but, instead, defines antithetically, on the one hand, the requirement of authenticity drawn from outside of the score, and, on the other, the performer's congeniality, supposing that the consideration of the former results in the latter being forced into a bind. This position is criticised by Jackson (1997).

⁹ "Because the composer's score under-determines the sound of a faithful performance, the authenticity of any particular performance is judged against (the appropriate member(s) of) a set of ideally faithful performances." Davies (1987), p. 39.

¹⁰ Edidin (2008), p. 5.

¹¹ Cook (1999), p. 244.

Suppose we already know everything about the past. Well, could we guarantee the original-sounding experience? Does authenticity make the piece sound as it would have sounded at the time of its composition? The answer may be sobering again. Simply, we cannot really get closer, because "what one hears depends to a large extent upon what one believes. The beliefs of contemporary listeners differ from those of the listeners of past periods."¹²

A direct summation of today's stance of musicology is simply that the ambition itself has ever been controversial.¹³ As musicologists opine, this hope is a task assumed that, ultimately, proves to be impossible to meet.

Nevertheless, from an outsider's position, however, I must note with some regret that in this almost technically sterilised abstract philosophising almost nothing is revealed; not even that moment has arrived which should have been the basis of whatever kind of anthropological approach. This is the discernment that the world view of the humans (and their community) in question alone—their beliefs, the spiritual and socialised order according to which their affairs are arranged, and their desire concerning what to attain and how to attain it, as their reason or purpose of being—can render meaning to music too: when, where, how, and for what purpose to listen to it at all, alongside the expectation of the kind of learning and enrichment that may become music's gift to the listener. Well, in the age in question, people as a whole believed in God, and the musical pieces of Bach, expressive of all his personal life (with generations of predecessors and offspring involved), were expressly theocentric.¹⁴ Moreover, as a natural course of the time, the bulk of his works, and that of others, were not products in want of anything better, the output of carnal fashion, but just his/their artistically expressed humility before God, to be performed as the companion to liturgical occasions—at a liturgical place, in liturgical time, in liturgical environments, in a liturgical role.¹⁵ Once deprived of its natural environment and function, of the worship invoking the religious embodiment of the given transcendental being with ancient rituals and the reinstatement of texts canonised in olden times, all that notwithstanding, we may assume that, as evidenced by the growing interest in and experience of early music's performances nowadays, something surely remains from these works' original messages, interpretable perhaps as a sort of intellectual geometry achieved by musical perfection, but certainly not the believer's humility before his God—although the subject itself has never been anything else but the latter's manifestation. Consequently, no secular imitational musical-reading can be mistaken for a church performance reproducing Bach's image of God in a liturgical context.)

The deeper the abstraction and the deeper the store of analytic instruments we devote to debating the quest of whether or not we can at all understand the other, the farther

¹² Davies (1988), p. 373. But what is meant by faith is for Davies (1987) nothing but an impression of the world, one of habitudes and tastes; exemplified by, in the polarity of past and present, what sounds as dissonant/concordant, what instrument is too rustic, or what musical elaboration (in the case of many operas of the aged Händel) is "lacking in grace".

¹³ Sherman (1998).

¹⁴ Kamp (2006).

¹⁵ While staging Bach as music *in abstracto* for a faith-free performance, Rilling (1995), p. 9, also acknowledges that the genuine context of this specific music was the church's message mediated by services from Sunday to Sunday but newly contextualized.

we shall have departed from the chance of an affirmative answer. Our daily experience is, however, a testimony to ourselves that in the case of interest in, empathy with and alongside ethos shared with the cause, not only can we comprehend each other but we can also mutually enrich each other.

Well, how should we understand the present world congress' topic of—as its official title holds—“Comparative Law and Multicultural Legal Classes: Challenge or Opportunity”? I beheld nothing more than various timid and prudent outlines of guidance when I had to address those who had undertaken the preparing of national reports within the wombs of, and within the organisational framework offered by, the International Academy of Comparative Law.

2 The Genuine Meaning of the Query

Obviously, the topic arises from all of our professional experiences, these being more and more common in today's world, having “*multicultural legal classes*” which themselves represent those various legal traditions, priorities, sensitivities, conceptualisations and options which are taught by all of us to all of them under the aegis of Comparative Law. By this I mean that, perhaps, for each of us, and relative to each other, the internalised ideal of what is understood as order by our audience and students may become confronted, by way of some external forum, with others' differing internalisation, that is, with ours as their teachers and professors, in the same class. Within the same community, in this way—and in a position depending on one's viewpoint—some sort of grouping separating *We* and *You* is going to come between individuals, with different beliefs, experiences and worldviews. As a challenge calling for an answer or offering an opportunity to inspire a further search for a possible common foundation, this is a new situation as compared to the past's homogeneous (or by far more homogeneous) auditoria. That is, the progressive internationalisation of law teaching worldwide has produced multiculturalism in the womb of the institutional education's learning process itself, generating new questions, involving new sensitivities, and time and again, the need for reconsideration and, at times, even re-substantiation of the foundations of the set of conceptualisations made hitherto in our discipline, Comparative Law, especially in various classifications (groupings and, particularly, dichotomisations) and in the grounding and explanation thereof.

In principle, as a scholarly topic to be debated during an International Academy of Comparative Law World Congress, the topic's basics do not differ from the practical cultivation of the scholarly field called Comparative Law and especially its off-spring called Comparative Legal

Cultures. Any of their partial themes and problem areas, approached and elaborated or monographed by any one of us, offering an outcome to the judgment of the world community of scholars, consisting of ““multicultural legal classes” of professionals/cultivators” engaged in comparativism themselves, will have the same perspective, which, too, can also be taken either as challenge or opportunity.

In any case, the topic to be debated at the World Congress is double-faceted.

On the one hand, it calls for the reconsidering of *ontological and epistemological claims*—ideals and reality—of and behind Comparative Law in general and Comparative Legal Cultures in particular. In which sense and how much can they be truly objective? and purely descriptive? Is there evaluation involved from the very beginning? and on behalf of and representing the underlying culture of whom? For example, in the use of characterisers/qualifiers like ‘development’, ‘progress’, ‘more accomplishment, refinement, or elaboration (etc.) in the output’ amongst many other operative key terms—in what sense should these be understood? and from what perspective, and from whose perspective? Or, is Law, as such, an embodiment of an ideal of order, autochthonous practically in all its variations, that withstands any reductive view and excludes any proper comparison which would then project and explain it as the *particular* of something *general*?¹⁶ Or, in the final analysis, what can such a generality be, if it exists or can be presumed at all?¹⁷ Or, to sum up, what is the basis of any comparison? And are we advancing, for instance, as is done in most of the cases, our own arrangement as *tertium comparationis*, only in order to arrive at its deeper understanding through holding it up to the mirror of others' arrangements in the course of comparison?

On the other hand, teaching is characteristically a small community-based interactive process with a relatively vast and historic archive of accumulated experience of teaching practice. I hope that the total sum of these thematic national reports—for the time being expected from Argentina, Brazil, Canada (notably Quebec), Cyprus, the Czech Republic, Germany, Great Britain, Greece, Italy, Japan, The Netherlands, Romania, Singapore, Switzerland, Taiwan, and Turkey (as collected by the International Academy of Comparative Law upon the basis of propositions communicated through the national branches affiliated with the International Academy)—will act as a think-tank about a spectrum of cases, either problematic ones, or ones advancing the mutual learning process, that may contribute to both highlighting the topic and inspiring further debate.

¹⁶ It is not nearly by chance that Rosen (2012), pp. 85–86 notes that “the dichotomy of the particular and the universal is especially harmful to comparative studies, law included.”

¹⁷ For such a philosophical use of the terms ‘general’ and ‘particular’, as well as ‘type’, see Lukács (1967) and, as applied to legal philosophising, Peschka (1989).

As to the *teaching* side of comparative law relative to the complex issue outlined above, the original (anonymous) proposal of the topic proposed and accepted for the program of the International Academy of Comparative Law was meant to address the difficulty in teaching to diverse—mixed—classes, where and when mere classification, inclusion/exclusion, dichotomisation, or just grouping, may make students feel offended or shocked, mostly due purely to their rather distinct self-perception of differences/oppositions and so on. As was evident in the topic's outlining explanation offered to me in the letter of commission by the International Academy of Comparative Law, our teaching may cover issues such as what truly religious laws are, including Islamic law(s), and reaching as far as the intimate relationship between the laws of China, Japan, and Korea. Simultaneously, owing to today's students' heterogeneity as to their cultural background, such classes can easily foster new incentives to learn. At the same time, they may raise open questions calling for answer as well: how to involve students actively as witnesses of what is actually being taught to them? How to optimise the opportunity of having students from different backgrounds to make teaching more alive and involving? Is it efficient to ask someone, for instance, to take the floor in class and speak about the specific institution of his/her homeland as an example of a particular legal approach or technique within a given classification? What about having students interview their classmates and working together to prepare a presentation to be discussed by the rest of the group? And lastly, if not finally, are there strategies advisable by teachers with relevant practice to suggest anything to the rest of the comparatists also working in teaching institutions?

The topic is quite complex in, concurrently, addressing comparative law as an academic subject and comparative law as a teaching subject with specific methods and techniques, that is, mostly theoretical issues, on the one hand, and mere educational (methodical) pragmatism, on the other.

All in all, both elucidation of ontological and epistemological background claims and the highlighting of relevant teaching practices need solid foundation, possibly and preferably within the frame of a hoped-for—particular and, expectedly, sometime synthesised also as general—anthropology of order and ordering.

3 **Comparatio as a Field of Scholarly Activity and as a New, Comparison-Based Form of Legal Education**

In cultural anthropology it has been a fundamental principle since the grounding work of Franz Boas that the task is not simply to theorise, but to locate within context¹⁸—knowing, at the same time, that each culture has its own '*genius*', that

is, an exclusively characteristic set of inventiveness, artfulness and originativeness in problem solving.¹⁹ Well, in a classical formulation, *culture* is neither more nor less than "a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and attitudes toward life."²⁰

Consequently, the knowledge of one's own legal system "creates an *implicit mono-epistemology*",²¹ that is, it "fixes the minds"²² specifically directed toward this—with a force, by the way, that can only be compared to the extent to which our mother tongue, our worldview and specific culture provide us with a stable background: both benchmark and framework. For—as is known—"Grand theories of comparative legal science or comparative legal studies do not change the prior epistemic embedding that has already taken place."²³

In all this, in spite of abstract constructions built in, so-called *science* itself is not something independent or absolute, but part of our being, our knowing self, and thus part of our community existence. And, in such a sense, it can be stated in the form (or, rather, quality and validity) of an "ontological" proposition that science itself is nothing other than "culture in culture [. . . which. . .] walks the royal road to making us."²⁴ For, the so-called *form of life* thematised by Wittgenstein²⁵ is not a simple ancillary to our being, but part of it; it is a direct constitutive component of it. As a given, this is the basis of every cognition, because this form of life "is not true or false, nor is it a style of reasoning. It is what determines what is true-or-false" in a given community.²⁶ In this same sense, therefore, cognising the other and teaching its fruits are in fact an *experiment in epistemic transformation*, "a hidden epistemic curriculum", the task of which is to open our thinking and understanding abilities and skills to allow us to acquire other modes of thought as well, backed by other benchmarks and notional structures.²⁷

¹⁸ Moore and Sanders (2014).

¹⁹ Sapir (1924) as well as Varga (1992a).

²⁰ Geertz (1973), p. 89.

²¹ Husa (2009), p. 914 and Husa (2018). Valcke (2004a), p. 171 has termed it as the 'cognitive structure of law'.

²² Yntema (1958), p. 499.

²³ Husa (2009), p. 918; cf. also Hunter-Henin (2019).

²⁴ de Laet (2012), pp. 424–425.

²⁵ Wittgenstein (1953).

²⁶ Rouse (1987), p. 62, quoting Hacking (1982), pp. 48–66.

²⁷ It is in this sense that Husa (2009), p. 921—taken from Constantinesco (1974), p. 15—quotes the sarcastic observation of Paul Koschaker, according to which, if not leading to a genuine understanding, that is, a "bad comparative law is worse than none" ["Schlechte Rechtsvergleichung ist schlimmer als keine."]. This is what can be opined with unchanged critical power by critics saying that "comparative law's orthodoxy [. . .] can only ever allow one to *identify* the foreign law in force rather than *explain* it in depth [. . . addressing. . .] the question "why?"". Glanert and Legrand (2017), p. 710.

In principle, these differences could even be ephemeral, though gradual, but not just for legal cultures. Simply put, in terms of worldview and approach to any kind and mode of understanding, parallel to the ideals of human life and its reasonableness, one can conceive of cardinal differences the genuine exploration of which can only be unsuccessful when starting it from any side, since they do not even approach one another, since, simply, neither of them has—and, in historical formations, could not have had—any contact with the other. Therefore, in fact, we have no choice but to construct a *philosophical abstraction* out of all of Law's underlying ideals as a *legal-philosophical universality* in which, at the most, all the varieties can be interpreted separately as examples of approximations and experiments made.²⁸

In the two hundred year long process, during which the early nineteenth century French codification, success as a new *gloire française*, was able to inspire exegetical self-closure in law²⁹ and, as an antipode, the need to know the other and thereby also the cult of *comparatio* was, in the nineteenth century, able to engender—certainly not irrespectively of its biological, anatomical, anthropological, linguistic, and other uses, all of which was started under the aegis of the positivistic ideal of science—*comparatio*-based research aims transforming into educational ends, and this has only accelerated over the past few decades. Indeed, exactly half a century ago, as targets to be taught, thanks to the efforts made by the *Faculté Internationale pour l'Enseignement du Droit Comparé*, which began organising the Strasbourg and out-of-Strasbourg sessions, we, then students,³⁰ could feel that national representations lectured by our professors, in parallel amongst them and in their own language, were certainly not supposed to form a comparative synthesis in the heads of their alleged masters, i.e., of our teachers, but instead, if at all, in the ones of their students. Well, just a few years ago, the Anglo-American Atlantic world still perceived nothing more ambitious in all sorts of legal comparison than the chance of an export of its own organisation,³¹ while foreign patterns were best described as mere “tangential and unimportant” exotic colouring.³²

In the meantime, enthusiastic planning as to the prospects for law and legal education in the European Economic Community have brought about surprising results exceeding the thematic level of what actually *comparatio* is. Accordingly, as the ambitious Maastricht colloquium demonstrated nearly three decades ago,³³ whatever law we teach—ours or others’—it will serve as nothing but a field of exercise for the application of any—ours or others’—law in the given circle of cultures. Moreover, we can best prepare for the foreseeable variants or changes of any such laws, if we focus on their roots, that is, their *common developmental identities*, or, to be more precise, on Roman law and legal history as well as on their idealistic and effective social background, processed by and through ample legal philosophical and legal sociological investigations. Since the experiment of the past can in large measure (with the exception of shocks or coercive situations) foreshadow the essential frameworks of the probable movements in the present or near future, with their expectable conceptual connections involved.³⁴

This lesson did not go away without experimentation,³⁵ but ultimately it has been the pressure of globalisation, and in particular the massive advancement of students’ study trips which decided: with all disciplines involved, the number of participants in student mobility worldwide grew to 2.5 million by the end of the past millennium; and “by 2025 that is computed to increase to 7.2 million”.³⁶

What is the result that we reach today? Noting that by now there is “decreasing importance of political geography or state normativity” attached to law,³⁷ the break with the exclusivity of the Kelsenian type normativism—“The law counts only as positive law.”³⁸—has become more decisive. This is a great achievement, although at the same time there has remained a kind of “religiously” inspired “hybris”³⁹ actually permeating the utmost positivistic approach to law in both legal scholarship and education. All in all, students’ migration, on the one hand, and the comparative teaching of legal subjects (if not yet the express introduction of Comparative Law or Comparative Legal Cultures in the curriculum), on

²⁸ Northrop (1952, 1959), as well as Dorsey (1949, 1989–1993).

²⁹ This is exactly what was satirised by the very first comparative journal’s inauguration: “Les études législatives, condamnées par je ne sais quel pédantisme national à s’arrêter aux limites d’un code, n’avaient osé franchir cette démarcation imaginaire, et s’étendre dans des études générales; comme si les productions étrangères avaient été des conceptions barbares dont il fallût éviter le contact; et auxquelles on dût refuser la terre et l’eau. La France surtout doit se reprocher cette faute.” Foelix (1834), pp. 1–2.

³⁰ As to personal experience, I took part in the *Session de Printemps* at Strasbourg in 1968, then in the *Sessions d’Été* courses held at Trento in 1970 and in Amsterdam in 1971.

³¹ Richardson (1988).

³² Brand and Wes Rist (2009).

³³ De Witte and Forder (1992) as well as Ancel (2013).

³⁴ According to a Serbian legal historian, founder of an Alan Watson institute, Avramovic (2010), pp. 20–21, “In reality, nothing is as practical, particularly in a time of rapid social and technological change, as a clear appreciation of the historical, moral and ethical principles that form the basis of the modern legal order. [...] The subject is now more oriented towards a better understanding of the roots of current legal doctrine and of the likely shape of future legal changes.”

³⁵ Varga (2015).

³⁶ Böhm et al. (2002), quoted by Maharg (2007), p. 6.

³⁷ Jukier (2007), p. 1.

³⁸ Kelsen (1934), p. 64.

³⁹ Montoya (2010), p. 548, quoted by Parise (2018), para. I.

the other, have become more and more general all over the world.

And what is the direct goal? This is to understand our own legal system and laws better, through symbolically “expanding” and “broadening” those ideas, conceptualities and institutions which the students themselves may have already learned as representatives of their home arrangement.⁴⁰ And here we have arrived back at Paul Koschaker’s bitter outburst, demanding nothing but “good comparison”, just in order to reassert it.⁴¹ Because the stake is not merely a matter of factuality in taking the cognisance of the other as different, but the very intellectual—and I dare to say, transubstantiating—act of “recognizing the other [...] in its own right”.⁴² In this process, operations with “*distancing/differencing* [...] encompass the willingness and capability to cope with preconceptions and stereotypes, biases and rationalist assumptions that fall within the analytical framework and normative matrix of one’s own (legal) education and experience.”⁴³ In a more straightforward way, it might yet again simply mean that law is rooted in culture, and the law’s actual meaning can at any time be *unfolded from its own cultural contexture* exclusively. And this assessment is not only a foundation stone of legal comparativism; what is more, it provides the master key to the philosophical understanding of legal phenomenon itself, too.⁴⁴ This can only mean, therefore, the observation of the other as shaped under circumstances differing from the observer’s stand, and its understanding in its specific autochthony. This is what comparative literature is used to express, with the purpose “to compare and assess the different understandings”.⁴⁵ This naturally includes the processing of all the relevant cultural backgrounds and environments in order “to embed the black-letter rules within a web of beliefs, ideals, choices, desires, interests, justifications, principles, techniques, reasons, and assumptions. The hope is [...] to understand the legal system from within”.⁴⁶ Or, arguing—alongside Varga’s example⁴⁷—by contrasting Comparative Law and Comparative Legal Cultures as disciplines to one another, the latter, as opposed to the “decontextualised picture” of the former, offers “the multitextuality of the legal cultures”, so practically, the “entire contextual matrix in which the state law operates”.⁴⁸ In this way, the authors just cited evoked the

law itself in its entirety, rather than as law reduced to its mere skeleton or positivistic surface. After all, as their reasoning continued—recalling the creed of their classical ancestor *Montesquieu*: “It is not the body of laws that I am looking for, but their soul!”⁴⁹—“a living body of law is not a collection of doctrines, rules, terms and phrases. It is not a dictionary, but a culture; and it has to be approached as such.”⁵⁰

Well, in order to induce that inner understanding, *comparatio* seems indeed to be one of the best available means in education. For, as we have seen, the bridging of the gap between epistemic *self-centredness* and some kind of *strangeness* as an outer object is referred to here again, as the paradox of “I interpret your culture through my culture”; and, “in Comparative Law, confrontation is itself a purpose.”⁵¹ In this, whatever *A* and its variations are, the artificially posited dichotomy between any *A* and *non-A* are firmly formulated.⁵² For “We know who we are only when we know who we are not and often only when we know whom we are against”.⁵³ Of course, the problematic side of anything *versus* anything else can even gain a dramatic overtone, especially when it is realised that something of our own heritage and something else from a heritage pointedly condemned and repudiated by us are, on final analysis, *the same*—at least and last in one or another sense.⁵⁴

⁴⁸ Puchalska-Tych and Salter (1996), p. 181. It is to be remembered here that, for instance, in the plenary speech (Varga 1989) held at the International Association for the Philosophy of Law and Social Philosophy world congress at Edinburgh in 1989, whilst developing an ontological exposition of law, I described its Soviet-type *simulacrum*, called Socialist law at the time and regarded as an independent legal family, as a ‘wreck law’ from the beginning, featuring—and based upon—something of a differing ontology, since, being overtly and directly a political instrument; also in its textuality it was a lie, or a deceptive form throughout.

⁴⁹ Montesquieu (1951), p. 1025: “Ce n’est point le *corps des lois* que je cherche, mais leur *âme*.”

⁵⁰ Puchalska-Tych and Salter (1996), pp. 181–183.

⁵¹ Fachin (2018), Part I.

⁵² The separation or separability of these is certainly not clear (Legrand 2003). Especially in American literature, authors are used to calling for so-called *canons* as well, often narratively, without genuine definition. According to Balkin and Levinson (2000), p. 9, “Every discipline, because it is a discipline, has a canon, a set of standard texts, approaches, problems, examples, or stories that its members repeatedly employ or invoke, and which help define the discipline as a discipline.”

⁵³ Huntington (1996), p. 21.

⁵⁴ Adding to a politicising fallacy concerning what kind of quality or qualification may be the result of a *comparatio* manifestly to be drawn, I found a fresh example in Whitman (2017), outlining the international historical debate on the far-off effects of American *racial legislation*—making, in facing relevant issues at its time, the United States the leading nation in the world—in a specific relationship with the National Socialist legislation at Nuremberg, having exerted a kind of influence without any doubt and in a documentable way, which was at the same time a kind of reinforcing, one related to both the suggesting of tools and serving with the practical experience of the use of certain instruments. It was the essence of this debate that such a situation was dreaded and horrified (in the vision of a final fight between some *theus* and *antitheus*, or

⁴⁰ Juergensmeyer (2016). Or, in a most simplified formulation, “to understand the familiar and move from”. Jamal (2019), section 4.

⁴¹ Cf. note 11.

⁴² Frankenberg (2016), p. 6.

⁴³ Ibid., 83.

⁴⁴ Varga (2012c).

⁴⁵ Parise (2018), para. III/B.

⁴⁶ Ewald (1994–1995), p. 1948. Or, as summarised by Valcke (2004b), p. 717, “law is more than just the sum of its facts [...]. Law is also [...] the ideas that underlie, animate, and tie these facts together”.

⁴⁷ Varga (1992b).

It is to be noted, however, that the objects of such confrontation are not artificial formations, analogous to abstract geometric or mathematical forms projected or proposed, but living cultures, orderly accomplishments, that is, living and moving *ordo*-ideals of humans' societies, serving as a framework for peoples' thinking, each of them having developed differently—having come from something ingeniously different in the raw—in order to respond to differing challenges, and thus becoming endowed with different skills, sensitivities, and conceptualities within itself. Therefore, as autochthonous formations, they are not strictly commensurable to each other; consequently, they cannot even be classified in the proper (strict) sense, only taxonomised into large(r) groups.⁵⁵ Considering the fact that “Comparing legal systems is like comparing different “world views””, we actually put different modes of thought into a kind of common hat of intellectual understanding, and, to do this, obviously—as an intermediate mediation—a “mutually shared [...] common language is necessary”.⁵⁶ Thereby—since “The goal of legal education is summarised as “learning to think like a lawyer”.⁵⁷—one would need to imitate a most notorious act of Baron Münchhausen, the impossible act of raising oneself by oneself,⁵⁸ because, at least in the spirit of understanding and the ability to demonstrate the corresponding procedure, each of the subsequent steps, at its higher and higher levels, presupposes some kind of a *presumed synthesis*, in which independent beings and views and institutions developed from them are incorporated.

The *comparatio* is performed by and for us, so that we can sense and perceive all that is ours—involving ourselves—more accurately, and backlit. Thereby, at the same time, we open up learning opportunities and draw lessons in all relevant directions.⁵⁹ Simultaneously, surpassing the self-limitation of positivism which can reduce law to a kind of

self-entity, we perceive again the pertinent roots and various human intellects backing the law, in a vista of incomparability characteristic of phenomena produced by culture and tradition, as if we were perhaps transcending the disciplinary borders and level of Comparative Law, in order to redirect ourselves towards Comparative Legal Cultures.⁶⁰

So what is the current goal? Perhaps, it is to encourage “students [to be] able to construct their own legal understanding from various competing and overlapping sources.”⁶¹ Well, providing we take this in a technical sense, as finger-work or exercise for the mind, then the task can certainly be expressed in this manner as well. For me personally, I find it more adequate and complete, and more faithful to what the true devotion to *comparatio* is, to say that this goal is no less than realising the *relative* and both *contingent* and *humanely fallible* character of our own solution, being one among the many concurring alternatives, when the one in question is assessed in the backlight of others' other responses to a similar challenge.⁶² Or, this equates to how we can reaffirm that there are “no right or simple answers”; we may always dispose of “a multitude of formal materials [...] as hypotheses of appropriate legal responses to the common problems people faces.”⁶³

“Multiculturalism—as stated rightly⁶⁴—offers diversity to the classroom, while comparative law offers a forum where contrast can be perceived”. Perhaps the biggest direct advantage of this is that it promises “escape from the arid past of comparative law”⁶⁵ and it offers a natural course for some tacit interaction amongst understandings,⁶⁶ that is, an overall

angelus and *diabolus*) while rejecting even the imaginability of there having been any genuine legal effect or some near-to-borrow situation.

⁵⁵ Varga (2010a).

⁵⁶ Fachin (2018), part I.

⁵⁷ Hunter-Henin (2018), para. 3.b.

In my own use, while arguing repeatedly for the appropriate weigh to be given also to theoretical and historical legal subjects in the curriculum, this expression is clearly a confirmation of the above mentioned Maastricht Conference conclusion, notably, that priority in the educational process should be granted—instead of the changing terms of “What does the law think?”—to answering and teaching the issue of “How do you think like a lawyer?”. In international literature, however, this fine term is often updated to a lesser extent by mere propedeutics, as in case of Schauer (2009). A variation to the above is offered by Ewald (1994–1995), p. 2111, concluding with the quote: “what we need to understand is the *ideas* and the *reasons* for the behaviour. In other words, it seems that what we need to understand is neither *law in books* nor *law in action*, but *law in minds*.”

⁵⁸ Who, among others, “saves himself from drowning by pulling on his own hair” (<https://en.wikipedia.org/wiki/Baron_Munchausen>).

⁵⁹ Heringa (2013), p. 107.

⁶⁰ Glenn (2000).

⁶¹ Husa (2009).

⁶² Or, as formulated a quarter of a century ago, “The comparative study of law is not to be seen as a mere juxtaposition of discrete legal cultures. Rather it is a medium for undermining the pretensions of any tradition claiming to represent eternal verities rather than historical contingencies.” Varga (1992b), p. xx.

As a practicing French lawyer—Lepaulle (1922), p. 858—thanking his complete understanding of his own law for having in the meantime studied another law, ponders the need of the “sense of relativity” after having experienced that “To see things in their true light, we must see them from a certain distance, as strangers”, because “Where one is immersed in his own law, in his own country, unable to see things from without, he has a psychologically unavoidable tendency to consider as natural, as necessary, as given by God, things which are simply due to historical accident or temporary social situations.”

⁶³ Jukier (2007), p. 3.

⁶⁴ Parise (2018), para. III.

⁶⁵ Samuel (2014), p. 36.

⁶⁶ Thiessen (2018), ch. B recalls antecedents of multicultural legal classes in parts of Europe, learning and developing the once *ius commune* from the sixteenth century onwards, revealing that “Roman law itself changed due to the input of multicultural students, who eventually became scholars, lawyers or judges themselves.” As he continues in ch. D, today a similar multipolarity in interactions characterises the countries belonging to the European Union, where its law, as a graduate study, an apparently single subject, is taught, on the one hand, but this

interplay between ‘having a meaning’ and ‘giving a meaning’.⁶⁷ With such a perspective, in principle, the situation with multicultural legal classes is practically the same as the one in place with multicultural legal cases⁶⁸: formal law is being no more than just a first and prime guidance, the actual direction will be channelled and/or detailed by many other factors and circumstances.

This is already reflected in the *language of the law*. A part or branch of the general language of the given community at any given time, the language of law functions and develops as a professional variation to the language in general use. The multiple embeddedness of the language of law into the population’s general language and the law’s technicalities is hidden, to a large extent, successfully, thanks to the utmost formalism of and abstraction in terms and designations used, and, last but not least, also relative to the familiarity we feel when we use our mother tongue. At the same time, legal language is far and away not simply “a sub-system of a national language, consisting of legal terms and phrases and stable conventions for the formulation of legal texts. Moreover, as the collective memory of the lawyers of that system, storing, over many generations, the experience, habits, and world-views of the legal community in question.”⁶⁹ With their styles, implied mentality, and the way they generate and give form to ideas, all languages are also unique.⁷⁰ Or, the language used by law is nothing other than the visible body of the law. This is why, despite seven decades of legal cooperation, the fruits which have been reaped from the standing—legal and political—efforts at building the community of the European Union are, according to the just cited scholarly analyst, not yet a “common legal language” but represent “legal discourse” at the most, which can exclusively be considered “common” in so far as it is indeed factually “inter-lingual and cross-cultural”.⁷¹

The legal classroom itself has become a site of legal plurality through the overlap and interactions between the

different types of legal experiences, cultures, conceptions and orders that the students bring with them.

Comparative legal teaching that includes the exploration and understanding of the full spectrum of the “distinctively legal”⁷² with all its social implication involved, also has to offer an overview, as many demand, of the interplay among transnational relationships, the interaction with other fields, as well as the interpretation adapted to new situations to be gestated in a globalised social context, while being aware of other ways that regulate human behaviour, too.⁷³ In short, as the author continues, it has to take on the form of law students’ preparation to become lawyers *sans frontières*.⁷⁴ On the one hand, and owing to this, “the legal classroom itself becomes a site of legal plurality through the overlap and interactions between the different types of legal experiences, cultures, conceptions and orders that the students bring with them.”⁷⁵ On the other hand, these arenas create different priorities in each of the underlying and/or relevant areas—according to “(1) religion/ethics/values; (2) socio-cultural norms and socio-economic arrangements; (3) state-centric laws of different kinds and the political arrangements sustaining them; and (4) various forms of international law and norms that claim predominance in today’s world.”⁷⁶—as to exactly what of them and how is, from all of those autochthonous cultures, believed and lived as a sacred and non-profane identity core, that is, beyond mere acknowledgment, what of them and how is debatable if it may be debated at all.⁷⁷

Scholarly literature, of course, goes far beyond this, and sometimes it launches global law teaching directly,⁷⁸ destined to become just a preparatory “for global citizenship”.⁷⁹ Or, transnationalisation of education⁸⁰ serves as the means of the “globalisation of the mind”,⁸¹ taken as an instrument of

subject is understood in manners varying from nation to nation, on the other. This exemplification is, however, somewhat misleading. The multiculturalism it refers to is not even nearly the one meant by the present topic. At the same time, the genuine truism it sensitively covers draws us back to the basic autopoiesis backing all human commerce, i.e., exchange of meaning-and-understanding ventures, in general. As to the second example, it is specific in so far as its operation takes place in a bipolar structure from the beginning, given as the foundational setting of European law. Varga (2009).

⁶⁷ Perelman (1962) as well as Varga (1973).

⁶⁸ Van Rossum (2008), Foblets and Dundes Renteln (2009), Kuo (2018) and Songor (2018).

⁶⁹ Kjær (2014), pp. 387–388.

⁷⁰ In addition to the sanctified nature of some (e.g., Hebrew, Latin, etc.) languages, the in-built genius itself is praised by Dauzat (1943). However, this all gets lost in translation together with their own structures and ways of reasoning. Pozzo (2012), p. 102.

⁷¹ Kjær (2014), pp. 393 & 397.

⁷² Selznick (1968).

⁷³ This global interplay may explain why, by now, all legal systems have become “both partners and competitors” to all others. Auby (2017), p. 143.

⁷⁴ Parise (2018), para. I. There is a delusive nominal resemblance to the cosmopolitan movement of the Belgian-initiated *Avocats Sans Frontières* (1992) and the American-initiated *Lawyers Without Borders* (2003), pressing rule of law agendas on various elements of human rights respectively.

⁷⁵ Hunter-Henin (2018), [introduction]; cf. Hunter-Henin (2019), section 2.

⁷⁶ Hunter-Henin (2019), section 2.1.

⁷⁷ Part of such practices is teaching, e.g., the innu legal order under the flag of “décoloniser l’enseignement”, certainly an increasingly general trend now in countries with heritage of indigeneous people(s). Fathally (2018), para. I/B/ii.

⁷⁸ Ost and van Hoecke (2000); Pollock (1890), p. 108: quote by Valcke (2004a), p. 180, note 64.

⁷⁹ Smits (2011).

⁸⁰ Reisman (1996).

⁸¹ Blanc-Jouvan (2008), p. 1084.

hegemonising efforts. Such hegemonistic attitudes (or sometimes mere longings) may span from the dangerously self-deceptive feeling of superiority over others, characteristic of any kind of “missionary approach”, to the pressure of a “geopolitical standpoint”, which latter in today’s globalising world indeed occurs, and not exceptionally.⁸² Inasmuch as we give trust to the characterisation according to which

[W]e have moved from a perception of a palette of disparate and “sovereign” systems tangentially connected to the perception of a single underlying system or structure [...]. Although we still speak and think in terms of sovereignty and think primarily up-from-sovereignty, that view no longer represents a reality where the interconnections, correspondence, collaboration and so forth between systems is so intense that there is in fact only one, global system.⁸³

then the one above testifies to sober realism. However, discussing it would already surpass the scope of the present topic.

However, it should be emphasised that *comparatio* has more than just a *horizontal* plane: i.e., a comparison of independent phenomena; but there is also a *vertical* plane: the comparison of different temporal states of something regarded as one single phenomenon. In addition, studying both is equally indispensable for any understanding beyond the surface and from a point of view irreducible one to the other. For we may learn from *the other* that ours is not necessarily the best of the possible worlds,⁸⁴ that is, all human constructions do (or can) have alternatives. From the forebear of *the self*, however, we can learn how it was from yesterday morning to later yesterday and then to this morning; that is to say, what kind of further moves can be borne by the survival of its self-identity preserved in/through/against continued change and what kind of logic it operates. It is a

⁸² Hupper (2015), p. 424; Varga (2007a).

In such a context, attention is also due to one of the new layers—degeneration—of today’s practice of international relations. “In international relations—holds, for instance, the publisher’s launching of Badie (2017)—some states often deny the legal status of others, stigmatising their practices or even their culture. Such acts of deliberate humiliation at the diplomatic level are common occurrences in modern diplomacy. In the period following the breakup of the famous ‘Concert of Europe’, many kinds of club-based diplomacy have been tried, all falling short of anything like inclusive multilateralism. Examples of this effort include the G7, G8, G20 and even the P5. Such ‘contact groups’ are put forward as if they were actual ruling institutions, endowed with the power to exclude and marginalise. Today, the effect of such acts of humiliation is to reveal the international system’s limits and its lack of diplomatic effectiveness. The use of humiliation as a regular diplomatic action steadily erodes the power of the international system. These actions appear to be the result of a botched mixture of a colonial past, a failed decolonisation, a mistaken vision of globalisation and a very dangerous post-bipolar reconstruction.”

⁸³ Hiscock and Van Caenegem (2010), p. 288.

⁸⁴ As, e.g., Leibniz (1710) may have arrived at such a constataion from his theological teleology: “le meilleur des mondes possibles”. Caro (2014).

sign of our over-politicised present and the overwhelming pressure by the driving forces of globalisation (alongside the latter’s unavoidable insensitivity to the natural course of organic development), if our debates continue to force the former approach in their thematisation; although solid security with some tested foundation can only be hoped for from their unity, namely, the *comparative historical* approach.⁸⁵

4 Centrality of Self-Image, or Our Own Place in the World

It is commonplace in science that reality exists as one totality throughout; its way of being is process-like; and all that take part and are involved in it develop from and through interactions, that is, any of its particles gain their basic definition by the networking nature of the place it is positioned in within and by this totality. However, on the one hand, with its operational moves *comparatio* seems to transcend such a contexture, since it has—as part of the analysis of the overall totality and for the sake of comparability—to posit or hypothesise the subject of analysis as an independent existential entity, identical with an own self; moreover, it needs to be considered both in light of the law’s process-like character and the position it occupies in the total social process any time, to be seen as (as if reduced to) a reified entity. On the other hand, culture as a humanly made “second nature” is a predominantly virtual world, a product of intellectual and conceptual projections. Providing we are comparing them, the creatures of culture-holders as creators, that is, certain *I* and *We* shall be compared with the creatures of some single and plural *You*. This is again a motive to reassert that we resort to comparison in order to gain a functionally and relationally (contextually) deeper picture of ourselves, after we have somehow understood others through an overall confrontation.

Apparently, we earlier set (in vain) that, as a scholarly activity, *comparatio iuris* raises in principle the same cognitive issues as the teaching of its results, since in the latter, the problematic situations that are actually emerging are less due to purely epistemic barriers than simply to the youth of the auditory element, composed of beginners, uninitiated yet into the knowledge in question⁸⁶; moreover, the young people we

⁸⁵ Pringsheim’s classical observation—(1961), p. 78—according to which “comparative law without the history of law is an impossible task” can be interpreted in this sense and manner as well.

⁸⁶ The best approach to “*initiation*” is just to make students active under the teacher’s supervision in a manner such that they themselves can arrive at their own problem-solving, thanks to their own intellectual efforts, and thereby they may acquire the skill and knowledge in question with internal conviction, instead of a merely passive listening to or reading that which is taught *ex cathedra* to them.

As to my personal endeavour, I have been working for a quarter of a century towards free-choice small group seminars on topics treated upon

seek to teach have not even really acquired their domestic law as a basis for comparison; for what they have already learned is rather the surface, i.e., dominant key terminology and institutions, instead of the philosophical depth of its ideals and attempts at implementation. Thus, a huge proportion of the situations to be answered will require, I guess, a purely *pedagogical response*,⁸⁷ since the solution is presumably largely dependent on how much the tutor and the educational material and method(s) offered can be convincing and enthralling in the specific situation.

As a result of worldwide internationalisation, the number and quality of educational institutions where the subject, object, and target community of education are at least partially multicultural have, in the meantime, grown to a considerable extent.⁸⁸ This, however, does not change the general finding that even today's overall panorama proves to bear witness to provincialism⁸⁹; neither does challenge the fact that the interest in the other, if present at all, is mainly due to the openness typical of European continental countries towards the Common Law, a readiness of understanding which, in the opposite direction, is less common practice.⁹⁰ In other words, *comparatio* in legal education, either looking back to historical evolution or overviewing the variety of legal systems is not yet generally widespread across today's world map.

In our worldwide internationalising community, the transition we see in the teaching agenda, for instance, is indicated by semi-solutions where only national law is taught (with neither adaptation nor teaching material available in any universal language) in a national language hardly reaching beyond the given region; moreover, under conditions where both the staff and audience are in no way familiarised with any intermediate language.⁹¹

the basis of the students' own reading and debating a series of relevant papers from week to week. Students are only allowed to take part in these provided that they have actually studied the literature in question; one or two randomly selected students expostulate the subject in the light of their own critical or forward-looking perspectives, or with rather problem-oriented insights; and then each participant has his/her own turn to intervene in succession; and it is only then that I have my own turn, reflecting on what has been told or revisiting concepts if the students seem not to have noted them. After that, the issues are still open to debate for one and a half hours, with half a dozen or a dozen of students Q&A-ing the topic, moderated by me if necessary. It is so successful that even after decades, former participants are grateful for these intellectual and memorable experiences.

Today's literature mostly recommends small group collective presentation; cf., e.g., Jarvis (2014).

⁸⁷ Cf. in depth Petersen (2020) as well as Värvi (2020) in the volume, Part II.

⁸⁸ Fathally (2018).

⁸⁹ This is named 'parochialism' by Jamin and van Caenegem (2016), p. 15.

⁹⁰ This one-way process is named 'commonlawisation' by Jamin and van Caenegem (2016), p. 19.

⁹¹ Mercescu (2018).

(But if that is what it is, it is already a result. I remember the time when having won, with the lead of my friend, Professor Nico Roos of the Maastricht law faculty, the European Economic Community TEMPUS project in 1990,⁹² I visited our Western European partners in the first round. Even for me, caught on the other side of the wall erected by the Cold War and destined to ideological *Gleichschaltung* by alleged proletarian dictatorship for nearly half a century, it was simply shocking to realise that I could find so little English and, besides, scant foreign literature in smaller university libraries far from the capital centres of France and French-speaking countries compared to, e.g., in the Romania of Nicolae Ceaușescu, a country profoundly destroyed spiritually and financially at the time.)

A quarter of a century ago, the Maastricht conference suggested that in point of principle it does not matter what national law within continental European legal education is based on, because with all its positivistic superstructure, it will only serve as a field for exercise, and the conceivable directions and paths of further development would equally be detectable from the same body of experience gained over centuries of a common past. Well, for the teaching (with professional follow-up) of any foreign law as basic curriculum, there is hardly any practical example nowadays, except in branches of some of the biggest—mostly American—educational institutions worldwide.

As an experiment, successful by the way, I elaborated and brought to fruition a program in Budapest, after Pázmány Péter Catholic University and its Law Faculty had been founded just following the fall of Communism, subject to term and final examinations as well, centred upon domestic and universal legal development with its varied background ethos, in the form of teaching Philosophy of Law also involving legal sociological, anthropological and methodological (i.e., juristic methods) perspectives,⁹³ and followed by Comparative Legal Cultures, planned for the first nine terms subsequently.⁹⁴

A few years later when colleagues in practical lawyering expanded upon their positivistic subjects to gain more terrain, the rather fortunate encounter—or even a kind of direct merging—of *Comparative Legal Cultures* with the backgrounding *Philosophy of Law* was also to find a justification. The latter has from the beginning examined the underlying world view, the respective concept of order and the conceptual build-up of each legal system or culture examined, with the regulatory framework required by it, as

⁹² TEMPUS Project No. 02114/1991–1994, with a network of some twenty-five European Economic Community universities in the background.

⁹³ Varga (2010c).

⁹⁴ It was an interesting lesson for me to follow the way of, for example, Professor Marie Sandström (1989, 2004) of the University of Stockholm who, responding to new educational challenges, changed from legal history proper (centred on positivistic description of the historical sequence of institutions mainly) to tracking the historical (intellectual) evolution of legal methodology, in order to save the value of historical investigations, setting it up as a new field of educational interest.

well as the instrumentality assigned to it, and all of this was approached from the specific (local) ingenuity and *ordo-ideal*, characteristic of both past and contemporary cultures.⁹⁵ In this sense it was intended plainly to promote a truly *universal philosophy of law* based upon the strands of social philosophy and theory, already detached from the narrowness of legal philosophising reduced to nationally and/or culturally set boundaries, inherited as the legacy of nineteenth century positivism.⁹⁶

5 The Problem of Legal Families

The primary encounter with the *other*, the outside, or the stranger, brings us into contact with a different legal culture⁹⁷ anyhow, and this is usually referred to in the context of belonging to a given '*legal family*', once the world's known legal systems have been grouped or taxonomised.⁹⁸ So this is what the primary terrain and source of problematising on the quest of "challenge or opportunity" can be.⁹⁹

⁹⁵ Varga (2010a).

⁹⁶ As noted in a previously unpublished paper by your author around 1973—Varga (2001)—, the subjects of so-called "general theory of law"—*contradictio in adiecto* in itself, but cultivated particularly in the once Soviet-dominated world—are usually general within the given domestic law's panoramic view exclusively, totally ignoring the rest of the world.

⁹⁷ In my friendly conversation with H. Patrick Glenn at the 2002 Brussels *Conference on Epistemology and Methodology of Comparative Law*, he criticised my titling of my lecture using the expression 'legal culture', claiming this not to be seen as correct in American usage. As he explained, the very word 'culture' (1) is rooted in German romanticism, which has become suspect, i.e., something is inherently wrong in terms of the influence it exerted on National Socialism; (2) is divisive, because by differentiating sides that turn out to be polarised, it is disintegrative; and (3) is unnecessary, as it does not express more than one aspect of 'legal tradition'. I could only respond here that (1) the term is known to me as Voltaire's teaching in *Candide*'s end-message, rooted in *cultivāre* from *colere/cultus* (Abdi 2014); (2) 'legal cultures' and 'legal traditions' are not synonyms but cover differing directions/contents; because (3) 'culture' is within the womb of that which we interpret as 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. As to the original presentations, see Glenn (2004) and Varga (2007b). As to mere etymological formation, the English *culture* in "[a] figurative sense of 'cultivation through education' is first attested c. 1500. Meaning 'the intellectual side of civilization' this being from 1805; that of 'collective customs and achievements of a people' is from 1867." At the same time, as transformed into English from German, *kultur*, as spelled then, stood, in "1914, originally, [for] 'ideals of civilization as conceived by the Germans,' [as] a word from the First World War and in English always at first ironic" (<<https://www.etymonline.com/word/>>).

⁹⁸ Dölemeyer (2010), p. 32, notes that such grouping is anyhow difficult, because both its object and taxonomisation are in a "constant flux". Even though this is true, the root cause lies in the uncommensurability of the series of othernesses shown by the underlying phenomena of autochthonistic independence from each other. Varga (2012d) and Schenk (2013).

Criticism seems to be the lightest genre in today's fiery flood of publications—especially now, when, on the one hand, based on e-literature we see on the web thanks to computerised writing technologies, it is easier to produce scholarly papers which, on the other hand, are produced en masse (thanks to IT systems required by production technologies, which, as a requirement, have been brought in by the ever increasing number of American-styled institutions of *academia* and *universitas* all over the world)—, particularly when it may also be considered that the object of criticism in the legal field may have no real object that could be defined like a physical object on a factual basis.

For the object of our scholarly interest is a thought projection itself, and there is a rather large spectrum of varieties in—and according to—which the practically infinitely producible sets of such projections can be categorised almost freely. Consequently, out of all their components, there is no one that could qualify as superior or unjudgeable in relationship to any other; the benefit of each legal order or specific legal institution can only be taken as relative; and, on the ultimate analysis, for that we taxonomise some—mostly developmental—correlations and the ensuing and mostly technique-related—mostly functional—connections can be made to be observable with kinds of family resemblances, that is, in a didactic manner, more obviously and more convincingly.¹⁰⁰

Well, it is fashionable today for a number of authors to regard categorisation according to legal families as obsolete,¹⁰¹ or misleading from the very start,¹⁰² perhaps claiming that, all that notwithstanding, it may have kept some didactic benefits at the most,¹⁰³ which must be critically considered,¹⁰⁴ though, for want of anything better, its use can perhaps be *pro tempore* continued.¹⁰⁵

Here, too, as everywhere and anywhere in the evolution of scientific thought, at first it was those criticisms which were granted some correctional acknowledgment, which could be

⁹⁹ Ferreri (2020), section 2.

¹⁰⁰ Varga (2010b).

¹⁰¹ Gordley (1993), Richard (2007), Spamann (2009), Pargendler (2012), Garoupa and Pargendler (2014), Siems (2018), p. 110.

¹⁰² Twining (2009), ch. 3, 63–87, reviewing the entire literary spectrum, evaluates the idea of Woodman (2003) on how the whole business falls to pieces at the very first moment because, he says, it is based on *legal centralism*, a characteristic property of one of the two hemispheres, the so-called West only. However, its reconsideration by Woodman and Bavinck (2009) makes it clear that the controversy is far from the issue of legal families; it is an effort to introduce a broad anthropological notion of law, dissolved by the proponents of legal pluralism in all-inclusive social normativity. Cf., e.g., Varga (2010d).

¹⁰³ David (1964) as well as Zweigert and Kötz (1998).

¹⁰⁴ Legrand (1996); Twining (2000), ch. 5, 163–168; Glenn (2001) and Kennedy (2003).

¹⁰⁵ Kötz (1998).

justified as exceptions in a defensible and separable way. But as an ordinary course of the process getting slowly overwhelmed by the critical impetus, step by step, it started transforming into a self-destruction of all its original performance, mutating into something of a mass of indefinite chains of grades which once used to have some intelligible definite message. Because of the mixed origins and affinities of the legal systems, it is the acceptance of everything mixed/mixing with the tireless furthering of the initial findings into more and more nuanced grades which is today's clear fashion,¹⁰⁶ about which we are by now aware that there is no—and the more we observe legal development from a distance and the more microscopic depths we perceive in it, cannot even be—exception to them. Accordingly, the criticism of criticism seems to be justified this way. Or even more so, since “The widening of the class of mixed systems, however, risks hiding or obliteration of distinctive features that help students to identify the characteristics of various traditions and determine the extent of borrowings or transplantations between systems that have occurred over time.”¹⁰⁷ What this means to us here and now is that having arrived at the truism of stating that for want of original intrinsic *arche*-ancestors, everything as much as everything else would be equally mixed and mixing.¹⁰⁸ So, alongside the desire to seek reasonability (all that notwithstanding), at the end of the path taken we have either to bring something back from the term of ‘legal families’ or we will fall into an amorphous chaos arising from how all relevant entities are both undistinguished in fact and undistinguishable in principle.

Well, as a concrete *educational problem* raised, we may learn that, for instance, students from East Asia learning in Japan find the Davidian “4. Other systems [...] (2) Far East (Chinese law/Japanese law)” specimen of grouping, merging two giant historical blocks with one another, as strikingly Eurocentric and unintelligibly imprecise¹⁰⁹; therefore, a “mixed legal migration” (instead of “legal families”) type of representation is found as more explanatory, alongside so-called “family trees” standing for loose relationships.¹¹⁰ Here, of course, we may even venture to presume that today's introductory use of such a Davidian taxonomic scheme—born in the Cold War era half a century earlier, though featuring classical pioneering significance for orientation in Western Europe and the Atlantic world at its time—as offered to Far-Eastern youngsters, at that time meeting anything genuinely and strangely foreign the first time in their

life, may have been nothing but a provocation with a straightforward pedagogical sense: a provocation of interest in making them discuss who they are and where they live on the globe.¹¹¹ All the more interesting is that the local—indeed, Japanese—initiative to replace this Davidian scheme is hardly different from this; it is just a bit more articulated. I am referring here to the construction of the “*East Asian legal family*”, including Japan, China, Taiwan, and South Korea.¹¹² According to its author, the common denominators are the German Civil Code as received; the geographical neighbourhood being uniquely rice fields; the effect of Confucianism; as well as the Chinese characters used in writing. However, the same author points out that “the People's Republic of China has a radically different political regime from other countries, which requires us to be aware of the difference in the definition of the concept of “law” itself.”, and that several institutions of the last two countries on the country list above are unknown in the first two—and besides, there is little confidence in the impartiality of the judiciary in South Korea.

It also may prove to be equally sensitive to teach other traditions, ones far from Western culture,¹¹³ such as India's highly differentiated complexity, which is not at all easy to follow for any outsider, and which may be capable of causing either harm or resentment amongst any group related to them. And likewise, the same caution is needed when Jewish or Islamic sources of law are taught, with the complexity of religious sources illustrated, or when the multiple layers of, e.g., Turkish family law are analysed.¹¹⁴

Theoretically, this primarily implies that always finding the mean, the *common denominator*, is the hardest job for any grouping. The more general it is, the less it has to say; and the more specific, the more exceptions, perhaps ending eventually in the self-emptying of the framework it has once set.

Personally, I have not encountered such difficulties myself. Perhaps because I have avoided discussing the many past and present legal cultures reviewed according to pedantically lined up classificatory categories or series of

¹⁰⁶ Palmer (2001) as well as Örcü (2007, 2008).

¹⁰⁷ Ferreri (2020), section 2.

¹⁰⁸ Which in itself is not the same as Alan Watson's theory (Varga 1979). His classical work (1974) may have been foreseen by Lowie's—(1920), p. 441—observation, stating that “cultures develop mainly through borrowings due to chance contacts”.

¹⁰⁹ Aoki (2020), section 4.1, as well as Ferreri (2020), section 4.

¹¹⁰ Aoki (2020), section 4.1, with reference to David (1964).

¹¹¹ As confirmed by Hitoshi Aoki, national reporter from Japan, professor at Hitotsubashi University in Tokyo, in his e-mail to the author on February 13, 2018.

¹¹² Igarashi (2003). Cf. also Aoki (2020), section 4.1, as well as Dölemeyer (2010).

¹¹³ It should be noted here that not even the realm of Civil Law as a legal family is necessarily unproblematic either. E.g., Mañko (2018), relating to our region and in replacement of the defunct Socialist legal family, separately proposes two independent families, a Central European one and an Eastern European (Eurasian) one. However, I doubt that anything like that could advantageously override the longstanding dualism of Civil Law and Common Law. At the most, and meaningfully, they could perhaps serve as sub-variants within the former, obviously far from being exclusive for possible subgrouping.

¹¹⁴ Ferreri (2020), section 4, note 26, referring to Sen (2005), Amin (1987), and Örcü (2006).

questions, held universal as catalogued with an abstract systemic outlook from the very start, but I tried explaining them in order to offer an opportunity for philosophising on their respective ideals of *ordo* and their attempts at practical realisation.¹¹⁵ Or, most importantly for me, the discipline of Comparative Legal Cultures has never been understood as just a series of responses to a previously codified list of questions,¹¹⁶ but as the ever continuing questing for building blocks or structuring components—such as intent at embodying or just exemplifying the law, its conceptuality, systemic nature and internal logic (if at all), and justification procedure and so on—all of which may specify the particularly *own genuineness* of any given legal culture, contra-distinguished from all others.

So, no strange situation like this can occur any longer when René David, for instance, questions Common Law with the rigor in line with a system of the sources of law characteristic of Civil Law,¹¹⁷ nor especially when those educated in the spirit of so-called Socialist normativism have been close to presuming legal uncertainty in any place where anything which in their own local order or home culture is identified as law is not then a closed system of posited rules, drafted in abstract conceptuality.¹¹⁸ And if—instead of operating with taxonomic categories, generalised to each and every occurrence and thereby unavoidably denaturing the *similia*'s total sets—we bring ourselves close to mapping the variety of laws *via* differing human mentalities in how they are to secure *ordo* in society, that is, again from a legal-philosophical standpoint; then we will be staggered, also through making our students staggered in the realisation that: *each one is something other*; and moreover, each and every one of them may have the potential of promoting and securing social order effectively in its own way, and in a manner considered fair and just according to its own social arrangement. And what is most important for an all-inclusive social theorisation: we are speaking about phenomena that have their own lives within and which are factors of societies in constant change, therefore they cannot

be aligned into an order of succession—neither in linearity, nor in verticality. Considering that each one is born of an unmistakably different *own medium*,¹¹⁹ and—this being the most important element of an ultimate anthropological truth—none can be ranked compared to the other, because, in functionality, each one can perfectly fit its own conditions. In addition, so-called primitive (in the sense of 'primeval')¹²⁰—legal ethnography and anthropology, especially the ones dedicated to autochthon or tribal laws, have it as one of most telling messages—can, in their own way, feature just as differentiated and complex a construction as modern societies' technical complications do.¹²¹ Therefore, the genuine assessment of individual legal cultures can properly be made primarily within their own sphere only.

It does not make any difference whether I am speaking about once-upon-a-time autochthony or today's tribal law, relevant histories of China, Japan or Korea, classical Jewish or Islamic perceptions of the law, nor about paths leading from ancient Greece to Rome and to its republican and imperial epochs, and thence to the Middle Ages and customary legal arrangement, as well as the Continental European development (including transitions like the exegetic period, the fermentation by free-law movement, then the series of codification and recodification); nor latterly about the English–American one involving the historical variations from writs to precedents alongside historical attempts at codification and substitutive forms nowadays.

The panoramic view of all cases will be the unanimous praise of human ingenuity as a fascinating example of the beauty and truth of what the adage *varietas delectat* stands for. For, from the huge bulk of various cultures, the imaginative and functional variety of *ordo*-ideals becomes exemplified in the teaching I have offered, where such traits are highlighted in any instantial case and through which exactly their own ingeniousness is expressed. For a joint, interrelated discussion in the program, perhaps as influenced by my own professional interest as well, it is only the role of logic in law, on the one hand, and of language, on the other, that are now examined with particular attention, in the latter direction with words used to simply denote or used as abstract conceptual-systemic loci, surveyed especially from

¹¹⁵ Paradoxically, the original idea to develop this search from the considerations above was given to me by the same David (1969).

¹¹⁶ Interestingly, this is exactly what René David's classic work has done in processing his materials, albeit, as an infinitely sympathetic starting point, he himself also confessed that "Quoi qu'il en soit, je me méfie instinctivement des systèmes, des vues de théoriciens, de la pseudo-science. Il n'y a pas pour moi de modèle qui convienne à tous et en tous les temps; je hais tous ce qui est dogmatique, l'esprit de système et le fanatisme." David (1982), p. 10.

¹¹⁷ This was not only the case with René David, but this was, too, about the disfiguring of the politically motivated Soviet-type Cold War denouncement of what was then called "American Fascism", also filtering into legal historical and theoretical approaches. E.g., Eörsi (1953) and Peschka (1965); for the criticism of their misunderstanding of the very nature of law in Common Law tradition, Varga (1970).

¹¹⁸ Cf. Varga (1992b, 2013).

¹¹⁹ What is going to happen if you are to have a mass of borrowing? When, after the collapse of Communism, Hungary had already overcome a number of legal impositions that had started by questioning the continuity of her own traditions, I could mention two countries as a positive example, where whatever effect through pressure by or learning from modelling countries was suffered, all of this was nevertheless adapted and assimilated into local traditions (Japan) or where it has been balanced by most of the country's huge off-centre area, tradition having been resuscitated extensively (Turkey). Varga (1995, 2008a).

¹²⁰ A derivative of the Latin *prīmus/prīmītivus* ['the first/earliest of its kind'].

¹²¹ Cf., e.g., Varga (1994a). For the striking difference between today's position and the distinctions in the almost near past, see Bitterli (1976).

a Jewish and Muslim perspective, as well as Civil Law and Common Law arrangements.¹²²

By the way, such an inquiry has a surprising, almost shocking result as to the rather particular, moreover exceptional character of our own continental heritage, realising its basic build-up as a technically formalised form embodied by a conceptual system,¹²³ while in all the rest there are far fewer meticulously mediated and transmitted complexities also using casual searches for justice, alien to our continental (and abstractly universalising) rule-based conception in all ways. For Western law with the regimes of Civil Law and Common Laws, the most common queries I receive in the course I offer are focussed to either the use of conceptualised language which assigns a systemic locus or the use of available language that merely names loci in relevant legal dictionaries, in a manner just using certain words for want of better; that is, we are considering the pursuit of the exhaustive embodiment of the law in a systemic perspective or one which purely exemplifies something from the body of law on occasions where and when there is a need to do so; or again, a search for systemicity or by which we just gain pragmatic and even random steps forward; that is, the role of logic in the law's operation in the form of either deduction with definitional force or possible reconstructive justification.

In my own program of teaching philosophy of law, in a semester dedicated alone to contemporary trends, in the course of which, in addition to natural law, legal sociology, British analytics and American legal realism taught by my colleagues, I myself have, purporting the students' mastering the ways of how to approach to and think in law, concentrated upon the Vienna school of *normativism*, *Scandinavian realism*, as well as *Marxism*. I have taken them as differing but each by each justified claims of approaching the law from the point of view of, *one*, its own internal connections and the systemicity inherent as reconstructible therefrom, *two*, the nature of its logically built linguistic construction, and *three*, as a kind of natural science, which was just the original inspiration, as alleged creative forces within it, i.e., socio-economic factors. My goal here is to deepen their understanding to the extent that the problematisation itself shall be acquired by students so that they can reproduce it themselves, now as produced by their own way of thinking, both in parallel and in ultimate hypotheses, simultaneously presuming and supporting each other.

¹²² In a pioneering work—Gu (2006)—dedicated to a similar questioning, English law is characterised by “words of authority” (with boundaries of meaning, linear reasoning, and the separation of powers); Islamic law, by “words of interpretative authority” (with fluid meaning, correlative reasoning, and diverse jurisprudence); and Chinese law, by “words of legislative authority” (with boundless meaning, multidimensional reasoning, and boundless power).

¹²³ The central role of what is called *Rechtsdogmatik* is concomitant to it. Nowadays its formal doctrine of the law is not simply preoccupied with the law as prevalent, but it forms the basis of what can in any case be thought of as a law from the beginning—or, in American terms, of what legal imaginability is—and thereby it provides a compositional and classificatory framework for any improvement or development in the future. Varga (2008b).

Well, in a multicultural student community, I have mostly perceived possible deficiencies of their home introduction to the epistemic base. For example, the clear and conceptually systematised scheme of law, which does constitute a solid notional framework for continental European law,¹²⁴ may perhaps remain almost unknown to the average French student, who can only produce various uncertain occasional derivations, because he/she may have heard of but not learned in due depth about things such as Hans Kelsen's reconstruction, at least not in the sense of the basic scheme and internal logic of the build-up and functioning of modern continental European law. As to my next example, the average Russian or Ukrainian law student may try to understand but cannot with full credibility interpret Kelsen's pure notional construction, because due to their post-Soviet overwhelmingly American orientation and language skill, even their professors now teach the structural schemes elaborated by the Vienna school from American sources, independently (and sometimes also possibly unheard) of their roots in classical German philosophy.¹²⁵ Finally, there are English–American and Central European endeavours in which we can paradoxically encounter Common Law and Civil Law ways of thinking merged into one another, just because, following a kind of post-Hartian conceptual pressure, English law, too, is schemed in term of abstracted norms.¹²⁶

Finally, in addition to the complex translation problems regarding differing structures and institutions in various legal families,¹²⁷ a particular branching-off of the analysis of legal families is the situation when just the multicultural discussion will reveal that the king is naked. That is, when either in its name or just instead of differentiating what the particular and what the universal in what Pierre Legrand called *mentalités juridiques* are, allegedly universal standards applied by the World Bank and/or the International Monetary Fund prove, in fact, to be nothing but projections and extrapolations of various American preconceptions. Thus, for instance, one of the most significant formal global ascertainments of the new millennium—“the very first of a series of reports investigating the regulations that enhance business activity and those that constrain it”¹²⁸—was reacted to by the French as a simplifying falsity of the “one size fits all” American mentality, characteristic of the non-European understanding of law as a means of social engineering; and what is more—and on behalf of both financial world powers—the identification of the *Rule of Law* as a global standard¹²⁹ by which, as reacted to by the French, a mere illusion has been drafted again. Although the use of such an operatively undefined and indefinable notion¹³⁰ can freely be transformed by any

¹²⁴ Varga (1994b).

¹²⁵ Тихонравов (2010).

¹²⁶ Varga (2007c).

¹²⁷ Ferreri (2020), section 5, as well as Chromá (2007).

¹²⁸ World Bank (2003).

¹²⁹ Ferreri (2020), section 4, note 24, referring to Kerhuel and Fauvarque-Cosson (2010) and Société (2006).

¹³⁰ Varga (1996).

attemptive global imperialism into an arm or tool equally usable to enable arbitrary claims or actual extortion.¹³¹

International literature is also eager to re-circulate some of the almost anecdotal details as applied to situations in which empathy would be supposed to be assumed from the beginnings by those international students who intentionally enter a (for them) initially strange culture, primarily for learning, under circumstances in which, knowing what they are to meet, they are supposed to have in advance accepted tacitly how they would encounter a host culture, taken as an accumulation of others' historical experience, from which they may and are to learn. The preparedness of the teaching staff to the job is obviously self-evident and therefore not a specific requirement.¹³² But amusement can be had by observing that the method of teaching itself can turn to be problematic. For example, in some traditions, the hierarchical relation between teacher and students may prevent students' direct intervention in class as this may be considered disrespectful¹³³; moreover, "even direct eye contact is considered impolite",¹³⁴ too; and finally, the need for a motherly type care is sometimes also raised.¹³⁵

6 Successes and Results

The final result is clear to us all: by a comparative outlook in education we may enrich our students while we are also enriched.¹³⁶

At the same time, however, does it make a difference whether or not there is a safe basis of knowledge, acquired by students themselves, upon which we can build more? Returning to terms used earlier, can this "able-to-fix-the-mind-mono-epistemology" be shaped so that it may enable further building later on? Our question is like the personal decision about the relationship between mother language and the learning of other languages. When should we start? when the native language is already fixed? or almost in parallel? However, reflected upon the dilemma between our own law and foreign law(s), there is another circumstance to be

considered as well. Namely, "However, there is a price to pay for transnational legal education. [...] The fine and nice national legal doctrine, the sophisticated inner structure of a national legal system might suffer from such an open educational training, which oscillates between abstract theories and concrete problems."¹³⁷ That is, there is also *something to lose* in this global manifestation and self-transformative intent, which in our Western and especially European cultures, i.e., the ones of modern formal law,¹³⁸ is simply the essence of law enforced in the actuality and factuality of everyday practice, as long as our law is exhaustively textualised and posited—at least as far as it reaches its self-imposed and positively postulated boundaries.

On the one hand, in our wishfully imagined Utopianism, we face a future of universal humanity, in which law is already delocalised,¹³⁹ and in which nothing else floats before us except "several orders without hierarchy, integrated in a coexistence of mutual reinforcement",¹⁴⁰ and, at the same time and on the other hand, we are to face the reality of our present as the fruit of experience accumulated for centuries, which at least for the moment may require a sober and down-to-earth reconsideration. For its message is that

Law is a language of its own. Today it is a babel of dialects, where hegemonic dialects try to establish themselves as universal languages. Under these conditions law is a local phenomenon. It seems hard to imagine a world which is built according to the Kantian utopia of cosmopolitan law: too many ordered by global power, too many subversive forces triggered by the global economic system which needs differences in local governments, as each difference gives an opportunity of greater exploitation. [...] The law, like the world, is fragmented into many communicative networks. A supranational legal science does not exist, an overworld does not exist, nor does a superior point of view to observe law. Legal science is just one of the many communicative networks able to order; it deals with the reality of human suffering, not with the heavenly destinies of ideas; it is located in a place whose structures of power it decomposes and recomposes; it is a criterion to connect national debate on local regulatory experience with networks which have the same function in other countries. A super-science, therefore, does not exist; what exists is a continuous contamination between all the scientific networks. [...] [O]rder is not repetition, but an infinite production of sense ever new. Kafka has taught us to hesitate before the doors of law, in the sense of law as a statute [the *lex*]. Law as a whole [the *ius*], though, is an infinite network of doors watching each other, opening each other.¹⁴¹

From this, the only conclusion that can be drawn is that "The important truths about law [...] are universal truths. The most important of these truths might well be that law is

¹³¹ Varga (2016).

¹³² Ferreri (2020), para. 3 refers to Abermann and Gehrke (2016) and exemplifies, among others, by the City University of New York, which shows that faculty members themselves may be differentiated according to racial, ethnic, gender and religious orientation. Edwards et al. (2008).

¹³³ Woo (2001), p. 452; Hoffman (2011) and Emelyanova (2017).

¹³⁴ Zhao (2007).

¹³⁵ "Domestic students with existing networks and forms of social support can be indifferent to the needs of international students or perceive those students as self-ghettoizing with no interest in reaching out. International students can form into nationality groups which may appear exclusive and self-contained from the outside and fail to make meaningful connections with others." Moreover, in cases of social events "an eye to the religious or cultural differences" is pre-advised, especially as to catering and alcohol, amongst others, by Evans (2016), pp. 71 & 72.

¹³⁶ "If common ground is recognized in teaching both groups of students, and if differences are simultaneously respected and cultivated, legal educators will enrich their classrooms and be enriched as teachers." Spanbauer (2007), p. 403.

¹³⁷ Micklitz (2016), p. 59.

¹³⁸ Varga (1996).

¹³⁹ Glenn (2013), p. 36.

¹⁴⁰ Girardi-Fachin (2019), section 3.2.

¹⁴¹ Femia (2015), pp. 13, 14–15 & 16 (with *lexius* added).

fundamentally local—but that truth is none the less universal.¹⁴² That is, it cannot be but “irreducibly diverse”.¹⁴³

Counteracting to these notions, as we have already mentioned, contemporary comparative efforts in scholarship and education alike assume the role of serving long-term political goals in accelerating and deepening globalism, and thereby also providing worthwhile opportunities for certain—sometimes worldwide, sometimes more narrow, regional or even local—hegemonic aspirations.¹⁴⁴ Thus, it is no coincidence that, as a synonym for the comparative approach, some offer, in a plain-spoken manner, denationalisation.¹⁴⁵ Well, it goes without saying that the transnational direction of education identifies some final *convergence in transnational law* as a goal. With a single example, it is entirely convincing to explain that

Law is dependent on politics, and thus legal unification in the strict sense is tied up with the progress of political unification. This point seems obvious, even trivial, but the consequences are not trivial at all. In Europe today the ideal of political unification is dim, and progress has slowed down to a crawl. . . . The so-called functional approach to political integration, which assumes a technological integration, has been, alas, refuted by harsh reality. If legal integration really does depend on political integration, then the chances of legal unification are slender. But does legal unification depend so utterly on politics? Is there another way? Some jurists feel that there is. They look to the legal profession and legal science as a way to promote legal unity.¹⁴⁶

It is known that legal scholarship and education have already contributed to integration, notably in the United States of America, where, in responding to the dilemma of *Union vs. States*, they facilitated practical unification under the auspices of federal law, as just some of its factors. However, the desirability, purpose and prognosticable realities of such a conscious connection would be far beyond the scope of the present investigation.

7 Challenge and Opportunity

The vast topic we have overviewed in the present query has undoubtedly been inherent, though built at first using very basic building blocks, in the vast potential of the *comparatio iuris* movement, as it has been laid down for over one and a half centuries and, then, has been made to flourish by the efforts of a number of generations of its practitioners. And indeed, thanks to them all, we really have enriched human cognition—in our subject, that is, in both legal research and legal education.

This also means that challenge and opportunity have encountered and overlapped each other, and the internationality of the cultivation of comparative law has by now appeared in classrooms and in the daily preoccupation of our students.

My conclusion, however, encourages some modesty at the same time. Let it be said, among other things, that law is not a goal but a means; consequently, it is to be seen through the full extent of its natural surroundings, involving society living with the law and with all the latter’s components. This is why, without the understanding of the given *ordo*-ideal, there is no chance or sense in making any effort to be able to reveal the changing formations, case to case, of its instrumental representation. But if I conceive it and can make it conceived, then the differences between different ages’ laws and peoples’ laws will be more transparent, offering themselves to deeper understanding. By doing so, we shall be in a position to have elevated the frameworks of its interpretation to philosophical heights, and hopefully, provided that it is anthropologically and historically well-founded, it will finally turn out not to be susceptible to sensitivities, at least due to a comparative approach.

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¹⁴² Smith (2010), p. 356.

¹⁴³ Fauvarque-Cosson (2008).

¹⁴⁴ Melkevik (2009).

¹⁴⁵ Heuschling (2017).

¹⁴⁶ Friedman and Teubner (1986).

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