

NEW VOICES:

CHALLENGING LEGAL CULTURE

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Abstract:

With a view to stimulating discussion regarding one of the most widespread methodological approaches in current legal studies and, in particular, in comparative private law, this paper challenges the notion of legal culture. Although focussing on the link between law and culture can be considered a heterodox approach that contributes to a better understanding of the dynamics of the legal system, this paper argues that the way in which legal culture is mostly understood in the discussions of comparative and European (private) lawyers is biased such that instead of shedding light on the deeper dynamics of the legal system it rather obfuscates them. This is mostly due to a static understanding of legal culture as national legal culture. Rather than erroneous, this conceptualisation appears as insufficient. This hints at the necessity of adopting a dynamic and pluralistic understanding of legal culture that escapes hegemonic consequences.

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I. INTRODUCTION

In academic debates about the relationship between national and supranational law, one increasingly encounters the argument – either explicit or implicit – that the diversity of ‘legal cultures’ existing in various countries represents a constraint on either the feasibility or desirability of greater harmonisation and convergence of national legal systems. Laws are the direct manifestation of the culture of particular communities and as such are necessarily local constructions which should possibly be protected. According to that view, it makes little sense – and it can be even dangerous – to continue imposing

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regulations derived from the supranational level when it is clear that the cultural pluralism existing in different nations will necessary lead to regulatory failure. In this sense, not only positive laws and the practices of legal operators differ, but even the cultural diversity of citizens impacts and indirectly shapes the law.¹ This approach, which is widely used in academic as well as political debates about the Europeanisation of law, is in reality built upon the broader comparative law concept of the impossibility of legal transplants and the legal sociological literature on the distinction between legal and social rules. Applied in the European context, which we can take here as a recurring and revealing example to give substance to more notional considerations, such an approach represents a strong and interesting reaction to the now traditional and ‘orthodox’ view among EU lawyers that law can be used to produce integration of legal systems and shape legal cultures² rather than depend upon them. That view poses virtually no conceptual limits on the possibilities of supranational law and tends to disregard its concrete impact in specific contexts. Indeed, the cultural argument has been of fundamental importance especially in the extensive discussions about the Europeanisation of private law, but re-emerges in different forms also in the debates among public lawyers about the ‘constitutional identities’ of the Member States, let alone in the political discourse. What are, in reality, distinct notions of legal culture and legal identity tend to merge in lawyers’ discussions so that references to legal culture in this sense entail a defence of cultural pluralism and the protection of one’s identity. To cope with this cultural critique, advocates of Europeanisation are most likely to either deny the cultural dimension of legal rules³ or, less frequently, to show that there is also a European dimension to legal culture,⁴ often with a view to support the

¹ For a wide range of contributions dealing with the different links between law and culture specifically in the European context, see T Wilhelmsson, E Paunio and A Pohjolainen (eds), *Private Law and the Many Cultures of Europe* (Alphen aan den Rijn: Kluwer 2007).

² S Weatherill, ‘Review of G Helleringer and K Purnhagen (eds) *Towards a European Legal Culture* (Baden-Baden: Nomos 2014)’ (2014) 51 *Common Market Law Review* 1851.

³ O Lando, ‘The Principles of European Contract Law and the Lex Mercatoria’, in J Basedow (ed), *Private Law in the International Arena / Privatrecht in der internationalen Arena. Liber Amicorum Kurt Siehr* (The Hague: T.M.C. Asser Press 2000) 396.

⁴ V Reding, *The European Law Institute – Tracing the Path towards a European Legal Culture*, speech delivered at the opening of the European Law Institute in Vienna, 17 November 2011; MW Hesselink, *The New European Legal Culture* (Deventer: Kluwer

Europeanisation project. More seldom are attempts to deconstruct the notion of legal culture itself, either in its national or European dimension.⁵ This paper argues that the latter approach is much needed.

To be sure, elaborated in scholarship we find a new deeper heterodox approach to analysing the dynamics of European legal integration that differs from the usual positivist and hierarchical approach. However, even if it is employed to challenge the general orthodox view of EU law, the new emphasis on cultural pluralism and the law is also at closer examination not a new and heterodox approach at all. Certainly, it represents a valuable broadening of the methodology most often employed in the study of law, which has traditionally been positivistic or dogmatic on the basis of the idea that there could be a ‘pure’ theory of law, which does not deny political elements that surround the legal rules but rather neglects them. Nevertheless, this short paper objects that even the employment of the notion of legal culture might lead to more orthodox outcomes than expected, paradoxically impoverishing rather than enriching the legal debate unless particular care is used when referring to the notion of ‘legal culture’.

The aim of this paper is not to attempt to re-establish the supposed primacy of the traditional positivist view, which is focussed only on the law in the books and simplistically (or optimistically) assumes that the legal rule will be followed by its addressees producing social change. Nor does it suggest that law is a ‘technical’ matter independent of culture. Rather, the paper aims to critically address and reconstruct the only apparently heterodox approach focused on legal culture, suggesting that this relies on too static an understanding of culture. The main argument is that such use of legal culture presupposes homogeneity, de facto reproducing hegemony, which also explains its success as an argument to support particular legal-political projects. To show this, references to the evolution of the concept as well as to other disciplinary fields from which the notion is borrowed will be made throughout. The paper therefore initially sketches out the origins and development of the notion and later shows by means of simple

2001).

⁵ For a more critical account of the concept of legal culture, see R Michaels, ‘Rechtskultur’, in J Basedow, K Hopt, R Zimmermann (eds) *Handwörterbuch des Europäischen Privatrechts. Band II* (Mohr/Siebeck: Tübingen 2009) 1255.

examples how this concept might offer a misleading image of homogeneity within communities if interpreted in too static a way. It concludes by addressing the political potential of the references to that notion and suggests a dynamic and pluralist interpretation of culture as a more appropriate tool to describe the multifaceted interrelation between law and society.

II. ORIGINS AND EVOLUTION

To support the claim that the success of the idea of legal culture is not evidence of the development of a new approach to law, it would be sufficient to quickly turn an eye to (not only legal) history. This can also help us understand the ideological connotations of the approach as well as its limits. From history, becomes apparent that a wide range of adherents of extremely diverse methodological and political approaches to legal studies already employed similar arguments, from most recently critical scholars to going back in history communitarians, nationalists, romantics and all the way back to Aristotle at least. However, this does not yet tell us much, and it would be misguided to assume the continuity of an argument through such a long historical period without considering the changing context in which it developed and was employed. For this reason, if it were necessary to pin down a particularly revealing period in history that has most strongly shaped the current understanding of legal culture, one could certainly say that it was Romanticism. In the legal field, it was the German Historical School that mostly contributed to the development of the idea in its modern version,⁶ soon hijacked by nationalist movements linking the specificity of cultural traits with the rising idea of the nation state.⁷

Historians (not *legal* historians) have already explained how the rising nation state has required a nationalisation of culture in the first

⁶ The deeper historical roots are revealed by J Schröder, 'Zur Vorgeschichte der Volksgeistlehre. Gesetzgebungs- und Rechtsquellentheorie im 17. und 18. Jahrhundert (1992) 109 *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 1.

⁷ G Comparato, 'The Long Shadow of the Volksgeist, or: the Nationalist Dimension in European Private Law Debate' (2012) 8 *European Review of Contract Law* 245; H Dedek, 'When Law Became Cultivated: "European Legal Culture" between *Kultur* and Civilization', in G Helleringer and K Purnhagen (eds) *Towards a European Legal Culture* (Baden-Baden: Nomos 2014) 351.

instance, as a (very successful) attempt to delineate some characteristic features holding together its own citizens and differentiate them from those of other nations.⁸ Such a cultural understanding of the nation, or the *Kulturnation* as is well exemplified in the German terminology has been promoted by various means, including the creation of a common national press, a common educational system and, even plainly an ‘invention’ of the national tradition.⁹ In addition, law has been – and still is being – used as an instrument for the State to shape popular culture.¹⁰ It is neither possible nor necessary here to expand upon the huge debates in political science discussing the question of whether culture was plainly invented or whether the nation state just institutionalised a series of existing cultural characteristics. To avoid chicken-and-egg discussions, it suffices here to say that a certain standardisation of culture has been produced by the establishment of the nation state.

In respect of the law, this leads to a particular result. If both the law and culture are nationalised, it is easy to establish their overlap in the form of a national legal culture. These events have led to the almost full alignment of legal culture with the ‘national legal culture’ that is today perceivable in most debates about the law. The increased complexity of the modern (more or less) globalised world and the amplified intersection of very different legal orders and populations have only favoured the re-emerging of these arguments in the legal discourse. In spite of its ‘standardising’ origin, (national) legal culture is now more often than not employed as an argument to protect diversity of identities, which are continuously threatened by new levelling supranational legislation, and in broader terms the idea of cultural pluralism.

What is more, the protection of cultural pluralism goes beyond a simple recommendation; it is rather a normative principle, although quite an unclear and controversial one, within the legal order of the

⁸ AM Thiesse, *La création des identités nationales : Europe XVIIIe-XXe siècle* (Paris: Editions du Seuil 1999).

⁹ EJ Hobsbawm, ‘Introduction: Inventing Traditions’ in EJ Hobsbawm and T Ranger (ed), *The Invention of Tradition* (Cambridge: Cambridge University Press 1983) 1.

¹⁰ See, with a focus on the UK: S Hall, ‘Popular culture and the State’, in T Bennett, C Mercer and J Woollacott (eds), *Popular Culture and Social Relations* (Milton Keynes: Open University Press 1986) 22-49.

European Union that is protected by the provisions of the Treaties concerning respect for the national identities of the Member States. Certainly, it would be interesting, although not particularly enlightening for our purposes, to insist on the particular political circumstances and concerns which surrounded the introduction in the Lisbon Treaties of those provisions that, at least symbolically, safeguard the constitutional specificities of the Member States. It would equally be interesting to consider how these provisions can de facto be contradicted by a series of other provisions in the same treaties.¹¹ However, the point here is rather that the respect of pluralism and *national* identities is also a normative requirement specifically in the European Union.

III. PLURALISM AND HEGEMONY

At any rate, regardless of the contentious historical roots of that concept, one might certainly argue that the idea of legal culture as an expression of pluralism is a valuable achievement in European legal studies. Cultural pluralism would appear as the perfect starting point to reflect seriously about the law in a complex context such as the European one. The EU, we might even say, is characterised on the one hand by an allegedly considerable diversity and, on the other hand, by harmonising tendencies which stand in contrast to that cultural diversity and that at any moment risk annihilating national competences. This being so, what is wrong about continuing the Romantic tradition and accepting that private law – possibly as well as other fields of the legal system – is an expression of a national legal culture, and subsequently employing culture as a methodological instrument to analyse the law? All in all, Romanticism is a magnificent intellectual movement – if we just content ourselves with linking legal culture only to that movement and arbitrarily decide to ignore its links with both earlier and later less marvellous political developments. This might all be true, however, there is something profoundly anti-pluralistic in this defence of cultural pluralism.

An emphasis on national legal culture, in contrast to what one might expect, coincides with a defence of cultural hegemony that disrespects deeper cultural as well as political, social and economic considerations

¹¹ LFM Besselink, 'National and constitutional identity before and after Lisbon' (2010) 6 Utrecht Law Review 36.

that inspire legal rules. In this sense, national legal culture does not help us to reach a deeper understanding of the law, but might rather impede us from doing so. Quite disappointingly, legal science at least in Europe seems to have embraced a rather minimalistic and static notion of culture borrowed from mainstream anthropology, ignoring those trends in anthropology which have discussed the notion of culture in more critical terms or exposed some of its limits.¹²

The problem lies in our very conceptualisation of culture. In particular, this is mostly static and takes culture as self-contained, a ‘monad’ that is internally coherent and discernible from others’ ‘monads’ externally, without questioning its internal structure. This static conception, on the one hand, ignores links, parallels and interrelations between the different cultures represented as the necessary product of a specific historical process.¹³ On the other hand, it denies the existence of a much deeper cultural pluralism within the category that we take for granted. It has already been mentioned in a previous section of this contribution that the definition of culture requires in the first place a process of standardisation; in other words, cultural homogenisation. This process might be spontaneous and endogenous to a particular community, or it might be authoritatively steered by elites or political institutions with a deliberate view to imposing a particular set of values. In this context, cultural homogeneity coincides with cultural hegemony. If this is true, the question that we should ask ourselves while employing the notion of legal culture is whether we are defending pluralism as we claim to be doing, or if we are in fact supporting hegemony.

In political philosophical terms, this aspect can be exemplified in the debates opposing the similar positions of liberal nationalists and communitarians. While the former highlights the homogeneity of the national category, the latter challenges it and rather pleads for policies of recognition. Nonetheless, communitarian policies of recognition in turn get challenged by those who argue that such policies embody the

¹² See U Hannerz, *Transnational Connections. Culture, People, Places* (London: Routledge 1996).

¹³ By the same token, Duve has recently criticised the general approach to European legal history which offers the ‘self-assurance’ that one of Europe’s major achievements is its legal culture, rather pleading for a new combination of a regional focus and global perspectives: T Duve, ‘European Legal History – Global Perspectives’, Max Planck Institute for European Legal History Research Paper Series, No. 2013-06.

same hegemonic practice, disrespecting the values and the views of some categories of people within the recognised community. More specifically, the hegemonic potential of the concept can be highlighted referring to the feminist critique. Especially within the ambit of critical legal studies, feminist authors lamented that legal systems generally embody masculine values imposing its rules and ultimately values on women under the false representation of a homogeneity that in reality preserves the masculine standpoint. Criticising communitarian representations of multiculturalism, feminist scholars have highlighted the risk that policies of recognition in favour of specific minorities contribute to the oppression of women in those communities, making women vulnerable to the injustice perpetrated by the majority values of the group, so that such cultural policies ultimately work ‘to reinforce some of the most hierarchical elements of culture’.¹⁴

Let us then continue employing the gender example to highlight this dimension, as well as the case of family law since its cultural dimension is quite self-evident and even allows us for some audacious historical cross-references, in contrast other fields of private law where the cultural and political dimension is often concealed under a veil of apparent technical neutrality. Gustav Hugo, generally regarded as the founder of the Historical School of Law (the most famous scholar of which was Savigny), made the observation that in countries where the fertility and beauty of women tend to diminish rapidly, polygamy tends to be more accepted in law. This vigorously illustrates the link between culture and the law.¹⁵ Although the concrete link between this cultural factor and the law is not further discussed, one can imagine that polygamy and the beauty of women are correlated in Hugo’s idea since polygyny would simply give the husband the possibility to have a wide range of wives of different ages so as to rapidly ‘replace’ the elder ones. Whatever the concrete reason might be, and even praising the efforts of Hugo to contextualise the law and relativize its underlying values, there is no doubt that by any standard this is to be regarded as quite a sexist practice. Accepting for a moment this explanation, it would clearly appear that this conceptualisation of the law – and in broader terms the legal cultures of all polygyny-permitting countries

¹⁴ A Schachar, *Multicultural Jurisdictions. Cultural Differences and Women’s Rights* (Cambridge: Cambridge University Press 2001) 3.

¹⁵ G Hugo, *Lehrbuch eines civilistischen Cursus, 2.Band* [1799] quoted by J Schröder, ‘Zur Vorgeschichte der Volksgeistlehre’ 31.

completely embodies a point of view that coincides with the prevailing male perspective. The feminist critique would be to ask where the women's perspective is, and question whether we can be sure that what we have identified as legal culture of a country is not just the recognition on anthropological terms of a particular (male) point of view probably not necessarily shared by others (female)?

The aim of this example is certainly not to deem a particular legal regime or rule as more or less appropriate to represent pluralism or, on the other hand, to comply with some supposed universal value which should be embraced by all States. Rather, it aims to show that such a static representation of culture as referred to by a country and in its law in general terms might fail to describe other cultural, social and political dynamics within the society. This contributes to offering an image of homogeneity, while at the same time promoting hegemony. In the example considered, for instance, the existence of a specific and quite early feminist debate in countries where polygyny has been traditionally allowed by law indeed offers evidence of the more intricate and pluralistic dynamics of culture and family law, notably including the continuous cross-fertilisation of different cultures.¹⁶

Outside of the legal field, therefore, these and other considerations have been employed to challenge a certain conceptualisation of culture, as this 'operates in anthropological discourse to enforce separations that inevitably carry a sense of hierarchy'¹⁷, while cultural classifications grouped on the basis of nationality continue show several methodological flaws.¹⁸

IV. RISKS FOR LEGAL STUDIES

Keeping in mind these reservations, and limiting our view to legal studies, we can perceive that this approach might lead to quite peculiar results that are plainly in contradiction with the initial expectation that the employment of the cultural argumentation might offer a heterodox alternative to the positivistic approach. Due to the way in which legal

¹⁶ Q Amin, 'The Liberation of Women' [1899] in *The Liberation of Women and The New Woman. Two Documents in the History of Egyptian Feminism* (Cairo: The American University 2001) 83.

¹⁷ J Abu-Lughod, 'Writing Against Culture', in RG Fox (ed) *Recapturing Anthropology: Working in the Present* (Santa Fe: School of American Research Press 1991) 137.

¹⁸ J Leerssen, 'Over nationale identiteit' (1988) 15 *Theoretische geschiedenis* 417-429.

culture is employed as a tool to explain the rule, it often ends up offering de facto the allegedly anthropological justification for a positive rule, such that anthropology paradoxically pays lip service to legal positivism.

This explains in the first place why scholars, in attempting to elaborate new and more comprehensive categories than those usually proposed by the comparative lawyers often criticised for being positivistic and Western-centric, tend to re-propose those very same comparative law categories when they themselves catalogue legal cultures. They will, for instance, distinguish a German legal culture from a French legal culture, a common-law legal culture from a civil law legal culture¹⁹ or, in broader terms, even Western legal culture from socialist legal cultures.²⁰ Again, a word of caution is needed: This is not to say those cultures do not exist or are wrong conceptualisations of legal diversity, just as it is impossible to say that there is no difference between German and French positive law or the civil-law and the common-law approaches are identical. The point is rather that such a notion of legal culture is of limited use for adding something to what we already know from the study of positive law, other than a certain kind of cultural justification for the status quo which reinforces a particular distribution of power within the community. Rather, culture can become a useful descriptive tool for comparative law when if it is viewed as a dynamic concept, as it might serve for instance to explain the historical continuation of a pre-existing positivistic characteristic. As an example, the extent to which the ‘internal legal culture’ that was widespread in the now extinct socialist legal family has left an impact in the legal culture of certain countries might be investigated, to show whether a certain kind of socialist legal culture survives the death of socialist legal regimes (although in this case we are more precisely in the field of tradition rather than the one of culture).²¹

However, the main difficulty lies not so much in the imprecision of general comparative categorisations (and this would honestly be quite an easy and banal criticism to make), but rather in the capacity of the

¹⁹ For instance, see P Legrand, ‘European Legal Systems Are Not Converging’ (1996) 45 *International and Comparative Law Quarterly* 52.

²⁰ For instance, see HW Ehrmann, *Comparative Legal Cultures* (London: Prentice-Hall 1976).

²¹ R Mańko, ‘Is the Socialist Legal Tradition “Dead and Buried”? The Continuity of Certain Elements of Socialist Legal Culture in Polish Civil Procedure’, in T Wilhelmsson et al (eds), *Private Law and the Many Cultures of Europe* 83.

emphasis on legal culture to obfuscate internal social dynamics. In other terms, the approach poses major problems in addressing the pluralism existing *within* the community. As stated, the standardisation of the national culture has historically been an instrument to promote national unity at the price of the repression of infra-national differences. Legal scholars like to compare law to language, which can be a particularly fitting example to exhibit the popular origin of the law. However, accepting this fitting comparison, another similarity should not be ignored, which is that policies of linguistic unification are an example of the tendency to repress minorities: Education systems in most newly unified countries promoted the standardisation of the national language, which necessarily entails a repression or at least marginalisation of local vernaculars. According to this viewpoint, it is immaterial whether this process happened violently through persecution of linguistic minorities, through the prohibition of employing the language, or more liberally through valuable school education in the common language because the practical result is always a hegemonic one. The very same process might impact countless cultural minorities and their ability to reflect their interests in the rules of the legal order.

Nonetheless, the example of linguistic minorities should not lead us to think that the question is just one of ethnic pluralism within a national state. Quite to the contrary, cultures and identities (a bit imprecisely assuming a certain degree of overlap between these concepts) can be of very different types: They can be ethnic, but may also be related to gender identity (as in the previous example), profession, social status and so on. This would obviously include also the important category of national identity. Each of these categories presents a set of ‘ways of doing things’²², as well as arguably a certain degree of homogeneity of preferences and interests.

This is exactly the kind of pluralism which tends to be neglected by a too static definition of culture understood in ‘geographical’ terms. If one considers more concretely the specific case of the construction of the category of ‘national legal culture’ it becomes particularly clear that such neglect is not an accidental side-effect of standardisation but

²² RE Goodin, ‘Conventions and Conversions, or, Why Is Nationalism Sometimes so Nasty?’ in R McKim and J McMahan (ed), *The Morality of Nationalism* (Oxford: Oxford University Press 1997) 95.

most likely the deliberate objective of the representation of homogeneity within the national community. This was initially the suspicion of early socialists,²³ ie that the emphasis on national distinctiveness between the nineteenth and the twentieth century could be an instrument to downplay social differences and ultimately weaken the labour movement which ideally aimed to unite workers beyond national borders. To put this concern more directly, as Anatole France famously stated speaking about the First World War: ‘*on croit mourir pour la patrie, on meurt pour les industriels*’.

V. IMPLICATIONS

As for legal analysis, these considerations hint at the necessity of articulating further the category of legal culture as a general concept which covers a series of more specific and potentially different cultures. In the first sense, a fundamental distinction to be considered is the one between an internal and an external legal culture,²⁴ which in our context could be further constructed as a distinction between the professional and the societal legal culture. It is, for instance, completely justified to assume a much higher degree of homogeneity within the professional legal culture (the way in which legal operators think about the law) that has been authoritatively created through legal education, as compared to the societal legal culture which should on the contrary characterise a much wider and heterogeneous group of people. This latter is, indeed, made up of a series of further cultures, identities and interests, of disparate national but also social, political and economic nature. Admitting this plurality, it would be flawed to assume the absolute prevalence of any of these cultures, for instance that the ‘national’ segment will always be more important than a social identity. In the same way it would be erroneous to think that social identities will always be more important than national ones. As stated, a dynamic understanding of cultures and identities requires that their interaction, including conflicts and overlaps in specific cases,²⁵ should always be considered.

²³ PJ Proudhon, *Œuvres Choisies* (Paris: Gallimard 1967) 207.

²⁴ LM Friedman, *The Legal System. A Social Science Perspective* (New York: Russell Sage Foundation, 1975) 223.

²⁵ In a recent quite provocative paper on EU law, for instance, a distinction has been proposed between centre, periphery (as geopolitical coordinates building upon national ones), businesses and workers as categories encompassing different ‘interests, demands or claims’ which diverge or converge in concrete legal cases; D

It is important to highlight that these dynamics interest the construction of any legal system and the establishment of any political power. From this point of view, although in the specific European context the cultural argument is most often employed in opposition to the possibility of achieving more legal Europeanisation, even references to a common European legal culture – together with the emphasis on a common European interest – might easily be flawed by the same ideological preconceptions of legal culture when it refers to the nation or to other kinds of communities. In this sense, both at the local and at the supranational level references to common legal culture might easily respond to the very same proposition of promoting the edification of the community, in an attempt that with regard to the construction of the nation state historians have famously qualified ‘nation-building’ and that, in a broader context, we can refer to as ‘community-building’.²⁶

What is then the bottom line of these considerations? That culture should be avoided as a term? That culture by itself does not exist, or is always an ideological construction, so that in the end, modifying Margaret Thatcher’s famous remark, it should be concluded that there is no such thing as ‘culture’, just individuals? At this point, also the critique of (legal) culture faces the risk of becoming ideological – an inherently libertarian proposition meant to delegitimise and loosen community ties leaving the individual alone with her own deconstructed identity, interests and self-centred rationality in a further globalising world where there is increasingly less space for the public sphere. To be sure, Hayek employed arguments to sustain the pluralism of society and its separation from the State²⁷ that paradoxically perfectly echo those now used by progressive thinkers in favour of ‘multiple identities’.²⁸ In this sense, the critique of national culture would have shifted from one end of the political spectrum to

Kukovec, ‘Law and the Periphery’ (2014) *European Law Journal* DOI: 10.1111/eulj.12113.

²⁶ G Comparato, ‘Europe vs the Nation State in Private Law? Legal Cultures and their Community-building Function’, in G Helleringer and K Purnhagen (ed) *Towards a European Legal Culture* 329

²⁷ F.A. von Hayek, *Law, Legislation and Liberty. Vol.3. The Political Order of a Free People* (London: Routledge & Kegan Paul 1979), 140.

²⁸ A Sen, ‘Justice across Borders’, in P De Greiff and C Cronin (ed), *Global Justice and Transnational Politics* (Cambridge: The MIT Press, 2002) 42.

the other, turning from an argument initially employed by socialists against a capitalism-driven State to an argument to advance the neo-liberal liberation of the individual from her community and her inclusion in an increasingly less State-centred global economy.

Rather, what is necessary is to dissect more clearly the idea of legal culture, sidestepping its employment as just a rhetorical expression to cover quite different concepts justified by different political agendas or preconceptions. In order to avoid this, what appears necessary is that culture be rather explored in a dynamic and pluralistic way. At the same time, such a dynamic and pluralistic interpretation of legal culture can help to steer clear of the risk that the notion is employed in an even unconsciously hegemonic way, to support the status quo and justify the prominence position of that cultural segment that has already managed to implant its own values and interests in the legal system. In this sense, clarifying the title of this contribution, the goal here is not much to ‘challenge legal culture’ per se, but rather to challenge the static way in which this is too often employed, in an attempt to problematise it without necessarily discarding it.