Book Review: Balázs Fekete, Paradigms in Modern European Comparative Law. A History

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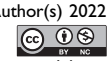

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BALÁZS FEKETE, *Paradigms in Modern European Comparative Law. A History*. Oxford: Hart Publishing, 2020, pp 224, ISBN 9781509946921, £70 (hbk).

As an academic discipline, comparative law has been going through a blooming season for quite a few years now. Several impactful research monographs, special issues of renowned journals, and acclaimed stand-alone essays have been published in as well as translated into English and other European languages. In a review of three recent important comparative law works, Mark Van Hoecke has observed that 'we may well be witnessing the rebirth of the discipline as a genuinely field of research' (2017, 280). What characterises this new comparative legal scholarship is that:

> Apparent certainties are no longer taken for granted, if not heavily criticized. These certainties include the acceptance of the "functional method" as the only or at least predominant method for comparative research, the "country and Western" approach, which leaves aside non-State legal systems and non-Western legal cultures, the idea that comparative research would consist in simply describing (aspects of) two or more legal systems, a uniquely doctrinal approach with little attention to law's context, and a more or less fixed taxonomy of "legal families". They have been replaced by a more scholarly approach to comparative law, starting from research questions and hypotheses, using methods, including those from the social sciences, which seem appropriate to find answers to those research questions and to test the hypotheses. This new approach is clearly characterized by pluralism - pluralism as to the kinds of legal systems compared (not just State law) and a methodological pluralism.[1]

Van Hoecke is one of the two General Editors of the book series within which Fekete's *Paradigms in Modern European Comparative Law* (hereinafter, PMECL) has been published. His remarks ought therefore to be given proper consideration as indirectly, they set the perimeter within which Fekete's book falls. Fekete's monograph can indeed be safely placed alongside all those recent works which shed new, and much-needed, critical light on the nature, aims, benefits, structure(s), and limits of comparative law *qua* scholarly endeavour.

PMECL is divided into five main chapters. In addition to these, the book also features a foreword by Van Hoecke, and an acknowledgement, author's note, introduction, and a concluding chapter by Fekete. As the author himself outlines in the opening note, some chapters (i.e. Chapters 2, 3, 5, and 5) are based on previously published material.

The latter includes the author's 2011 Hungarian monograph on a similar subject, and two research articles.

PMECL set itself the task of 'studying comparative law thinking with a historical scope' (2020: 3). Specifically, it employs Thomas Kuhn's paradigmatic reading of science's historical development to shed new light on comparative law's modern experience, i.e. from 'from the mid-eighteenth century to the second decade of the twenty-first century' (2021: 5). Adopting this approach, PMECL, itself an exercise in comparative analysis, identifies and unfolds three paradigms which have shaped comparative law's recent history. Overall, Fekete's appraisal is analytically solid and his argument persuasive. PMECL shows a great deal of jurisprudential, historical, and philosophical knowledge on all the themes it covers. It is carefully researched and pleasantly written. Prospective readers can rest assured that there is much to learn from it.

Arguably, the most relevant chapter is the very first one. It is there that Fekete sets out the substantive and methodological boundaries of his investigation and claims, while also specifying in what ways his trajectory of inquiry sets itself apart from similar historical accounts. Two elements of this analysis emerge as particularly significant and therefore, are worth mentioning in this review. First, the employment of Kuhn's views implies subscribing to his criticism towards linear histories of scientific development. Fekete is clear that this critical move away from 'descriptive linearity' (2020: 2–3) is all the more important if we are to fully appreciate modern comparative law's history, including its hidden nuances. Secondly, and relatedly, Fekete spends much efforts in clarifying what methodological adjustments are required to employ Kuhn's method, conceived for the natural sciences, to comparative legal scholarship (2020: 14ff). In so doing, Fekete also considers the criticism which over the years has been moved towards Kuhn's views, as well as the various specifications and integrations that Kuhn himself was compelled to make in the 1969 Postscript to his *The Structure of Scientific Revolutions* by way of replying this his detractors. As Fekete holds, the move from the natural to the social sciences is not an easy one. Its feasibility cannot just be assumed; rather, 'it must be proved or rejected in the context of a given subfield' (2020: 19)—law, or comparative legal studies, included. Accordingly, key-Kuhnian terms such as 'science', 'paradigm', and 'paradigm shift' are sapiently outlined and contextualised for the purposes of the book (2020: 21ff). Of particular relevance in this telling discussion is the notion of 'parallel paradigms' (2020: 22–24). In a key passage, Fekete states that due to 'the ineherent multi-dimensionality of the subject-matters of social and human sciences' (2020: 24), one ought 'to accept the possibility that paradigms in social or human sciences may coexist with each other' (ibid.). This means that the application of Kuhn's views to comparative law's development is best carried out when one recognises that 'scientific communities in the same field of scholarship may simultaneously work in various conceptual frameworks that diverge substantially but share all necessary components of scientific paradigms' (ibid.). This light lets comparative legal studies emerge as a collective intellectual endeavour, however diverse and specialised.

Having set the analytical stage in the first Chapter, Fekete divides the modern history of comparative law into three stages or indeed, paradigms, in the remainder of the book. These are 'Historical and Comparative Jurisprudence' (Chapter 2); *Droit Comparé* (Chapter 3); and 'Post-World War II Comparative Law' (Chapter 4). Taking a step

further, Chapter 5 asks whether recent trends in comparative law can be said to having generated, or being in the process of generating, a new paradigm shift in the Kuhnian sense of the term. The Chapter ultimately argues that while ascribing to comparative law's recent transformations the status of scientific paradigmatic shift might sound appealing, there are several reasons to refrain from doing it. This is not to deny the 'very impressive phase of theory-building' (2020: 163) that comparative law has been witnessing over the past few decades. Nor the argument conceals the fact that, since 'the late 1990s' (2020: 161), there have been 'many challenges to the conventional setting of the [Post-World War II] paradigm' (2020: 162). However, these challenges and the changes they have triggered notwithstanding, a paradigmatic shift cannot be said to have taken place. To this conclusion, Fekete also arrives through a telling analysis of 'certain typical scholarly (mis)treatments of [the concept] of legal culture' (2020: 149). Comparatists will find the pages where Fekete outlines 'the cultural turn in comparative law' (2020: 140) and reflects on its misuses compelling, having legal culture quickly become a sort of scholarly dogma. Equally interesting are Fekete's reflections on the pluralist (or 'integrationist', 'tolerant'; 2020: 158) wave which comparative law (and jurisprudence more generally: see e.g. Twining, 2009; Roughan and Halpin, 2017) has been enjoying for quite some time now.

As mentioned, Fekete's analysis is overall analytical solid and intellectually rewarding. There are, however, some small points of criticism that may be raised at it, at least in the eyes of this reviewer. One is that, arguably, more should have been said on Karl Popper's views on science. As Kuhn significantly departs from Popper's understanding of scientific development, readers would have possibly benefited from a more detailed engagement with Popper's views. I am particularly referring to Fekete's statement that Popper (and Imre Lakatos) 'regarded the history of science as liner and progressive progress, aiming at the discovering of truths' (2020: 14). Yet, in *The Poverty of Historicism*, Popper maintained that 'for strictly logical reasons, it is impossible for us to predict the future course of history' (2002: xi). This is mainly because, he continued, '[w]e cannot predict, by rational or scientific methods, the growth of our scientific knowledge' (2002: xii). Now, the latter idea, which also animates the whole of Popper's *The Open Society and Its Enemies*, seems incompatible with the liner, progressive understanding of human and scientific development that Fekete ascribes to Popper. Further clarification on this preliminary analytical point would have therefore been beneficial.

The same may be said in relation to the passage on Gottfried Wilhelm Leibniz. Discussing the 'Modern Precursors and Pre-Paradigm Period' of comparative law (2020: 31ff), Fekete affirms that Leibniz can be considered as one of them; and that he 'opposed the era's dominant natural law orientation, and he did so from a methodological perspective' (2020: 34–35). In particular, Leibniz 'rejected the tools of both deduction and abstraction in legal scholarship …' (2020: 35). To many, if not most, jurisprudents this statement might sound puzzling as Leibniz is conventionally portrayed as having employed an axiomatic-deductive Euclidean or Cartesian *mos geomtricus* as part of his jurisprudential studies (see e.g. Kelley, 1990, 214). 'Abstraction and universalism' are also said to be part of Leibniz's jurisprudential endeavours (ibid.). In light of this, as in the case of Popper, further clarification regarding the author's views on Leibniz would have been welcome.

A third, equally small, critical point could be raised in relation to the very categorisation of comparative law's third paradigm. Calling it 'Post-World War II Comparative Law' might not convince some as it appears a temporal classification more than anything else. That being said, it should be noted that in no way this labelling affects Fekete's brilliant discussion in this Chapter. In fact, Fekete's analysis on comparative law's post-world war development is insightful from many perspectives of inquiry. Worth mentioning, in particular is the discussion of functionalism as it clearly sets out this important method's nature, purpose, and dynamics in a manner which shows the inadequacy of established misconceptions on what it is and entails (2020: 116ff, 158).

These small observations do not impinge on Fekete's insightful analysis. PMECL is a brilliant book which deserves serious attention from comparatists and scholars employing comparative legal methods. Comparative law has proven to be a very dynamic – if not restless – discipline with no clear substantive and methodological confines. While this may be seen as an advantage, it has also affected the discipline's ability to reach its 'maturity' (Örücü, 2007, 44). It cannot be doubted that Fekete's meticulous and innovative historical appraisal of comparative law's modern development represents an important step towards the formation of a discipline fully aware of, and confident in, its value and potential.

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Note

1. Ibid. 280.

References

Kelley DR (1990) *The Human Measure. Social Thought in the Western Legal Tradition*. Cambridge, MA: Harvard University Press.

Örücü E (2007) Developing comparative Law. In: Örücü E and Nelken D (eds) *Comparative Law: A Handbook*. Oxford: Hart Publishing, 43–65.

Roughan N and Halpin A (eds.) (2017) *In Pursuit of Pluralist Jurisprudence*. Cambridge: Cambridge University Press.

Twining W (2009) *General Jurisprudence. Understanding Law from a Global Perspective*. Cambridge: Cambridge University Press.

Van Hoecke M (2017) Is there Now A comparative legal scholarship? *The Journal of Comparative Law* 12(1): 271–280.