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## Philosophy of Law in the Soviet Union and the People's Democracies

**Abstract.** The fate of Marxism in the Soviet Union and the people's democracies as the former's extension owing to post-WWII occupation was from the beginning sealed by Bolshevism, that is, the politico-ideological domination and use of the scholarly domain as well, made to self-close in a merely justificatory role. There may have been attempts at opening, even if only conceivable within—i.e. preserving at the same time—this framework function. In the present conspectus, the limiting positions are occupied by the Soviet Union and the German Democratic Republic, completed by after-1968 Czechoslovakia, as well as Yugoslavia and pre-1968 Czechoslovakia, representing the substitute-to-religion dogmatic side, exclusively politically motivated in the former and subordinated to a humanising tendency in the latter case, on the one hand, and Poland, dedicated to a purely analytical approach, in which Marxism has simply no relevance, on the other. Hungary, treated in an earlier paper by the author, was in-between, taking Marxism seriously but mostly as a methodology, and thereby able to foster live debates. All that notwithstanding, there has been quite a few progressive moves also in Romania and Bulgaria in this specific academic field. Turning topoi of the discussions were, chronologically but recurrently, the exclusivity of Vyshinsky's socialist normativism, the consequences ensuing from the law's superstructural nature, the discontinuity vs. continuity of law in historical development, and, in the background, the dilemma of the ontological/epistemological understanding of Marxism, the latter standing for a rigid Leninist reducibility of law to its material substratum as the product of sheer reflection, and the former enabling to develop the law's relative autonomy as in Lukács' posthumous ontology. On the final analysis, all these forced paths made a whole region's efforts to be belated as compared to international developments, the fact notwithstanding those outstanding achievements were born especially on the fields of legal ontology and sociology, as well as the legal methodology and particularly that of the comparison of laws.

**Keywords:** Marxism, Vyshinsky, socialist normativism, legal theory, legal sociology, comparative law, Leninist theory of reflection, relationship to western legal philosophies

### Preliminaries

In the Soviet Union, it was *Andrey Vyshinsky* and his normativism (made sacrosanct after the conclusion of the infamous all-federal “debate” in the Soviet Academy's Law Institute in 1938) that institutionalised Stalin's regime in the field of law. In addition to suppressing all the initiatives born since the 1920s (by having both *Stuchka* and *Pashukanis* physically liquidated), the regime excluded codification renewals as well, efforts launched by many Soviet-Russian civilist lawyers.<sup>1</sup>

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<sup>1</sup> Cf. Varga, Cs.: *Codification as a Socio-historical Phenomenon*. 2nd {reprint} ed. with Annex and Postscript. Budapest, 2011. and <http://drcsabavarga.wordpress.com/2010/10/25/varga-codification-as-a-socio-historical-phenomenon-1991/>. Ch. VIII para. 2, 216 et seq. As a tactic concession, after 1941 Stalin took a number of measures, although as mere lip-service, in order to increase the chance that war efforts, having started from a weakened position, might transform into an all-popular patriotic cause for the defence of the Soviet homeland, thanks to the regime's temporarily

In contrast to all this, in Central and Eastern Europe proper,<sup>2</sup> prior to the ideological *Gleichschaltung* carried out in the wake of the Muscovite territorial and political conquest after World War II, a variety of local versions was cultivated: neo-Kantianism was discussed everywhere in the region (to the West from the Baltic countries and from Bulgaria/Romania, in the vast area of German cultural influence), complemented by French institutionalism and solidarity theory (mostly in the Francophone Balkans). Mention is also to be made of the psychological trends (e.g. *Leon Petrazycki*) mainly in St. Petersburg and the sociological theories of Russian scholars formulated in the course of their emigration (e.g. *Pitirim A. Sorokin* and *Georges Gurvitch*, who once edited an independent Russian journal of jurisprudence during their interim period of voluntary exile in Riga).<sup>3</sup>

Amidst such active professional lives, Budapest could not gain a central role compared, for instance, to Brno—with *František Weyr* and his journal<sup>4</sup>—, which provided the internationally acknowledged second most significant workshop of *Hans Kelsen's* Viennese normativism. At the same time, however, besides *Leon Petrazycki's* foundation of a new school after he had returned to Warsaw, Budapest and Szeged in Hungary also worked their way up to be equal partners to the Vienna school of positivism.

### Stalinism and Post-Stalinism

The world-revolutionary imperial attitude of the Soviet Moloch evoked similar reactions on behalf of its Cold War adversaries. As a consequence, Western and Atlantic literature, in a way typical of big powers' politicised attitudes, identified Soviet legal theory with anything of Socialism's *Marxism*<sup>5</sup>—practically all along.<sup>6</sup>

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encouraging religious and national sentiments. Meanwhile, however, he rigorously kept basic strategy unchanged in view of preventing any concession from spreading over to ideological areas, compromising his terroristic rule.

<sup>2</sup> For an overall—but sketchy—survey of the entire region, spanning over their whole modern period of one the the half centuries, see Varga, Cs.: *Philosophy of Law in Central and Eastern Europe: A Sketch of History*. *Acta Juridica Hungarica*, 41 (2000), 17–25.

<sup>3</sup> *Zakon i sud: Vestnik Russkogo iuridicheskogo obshchestva* [Statute and court: Review of the Russian legal community]. [Riga] I–VIII (1929–1938). [Reprint: Riga, 2000.]

<sup>4</sup> *Internationale Zeitschrift für die Theorie des Rechts* [Brünn], I–XII (1926–1938). Cf. also <[http://cs.wikipedia.org/wiki/František\\_Weyr\\_\(právník\)](http://cs.wikipedia.org/wiki/František_Weyr_(právník))>.

<sup>5</sup> With the collection of Varga, Cs. (ed.): *Marxian Legal Theory*. The International Library of Essays in Law and Legal Theory: Schools. Aldershot, etc. and New York, 1993, I attempted a late breakthrough.

<sup>6</sup> First of all, Aleksandrov, N. G.: *Sushchnost' prava* [The essence of law]. Moscow, 1950; Sergei Sergeievich Alekseyev–S. S.–Kerimov, D. A.–Nedbailo, P. E.: *Metodologitsheskie problemi pravovedeniya* [The methodological problems of jurisprudence]. *Pravovedenie*, (1954) 4. 15 et seq. and Sheindlin, B. V.: *Sushchnost' sovetskogo prava* [The essence of Soviet law]. Leningrad, 1959. As a collection, cf. Hazard, J. N. (ed.): *Soviet Legal Philosophy*. Twentieth Century Legal Philosophy Series 5, Cambridge (Mass.), 1951. The Yugoslavian pattern, as exemplified by Lukić, R. D.: *Teorija države i prava* [Theory of state and law]. I–II. Beograd, 1954. [reprint: Beograd, 1995], followed a most severely dogmatic path.

*Separation from Vyshinsky's Theory*

It is illustrative of the force of Soviet homogenisation that Vyshinsky's so-called Socialist normativism,<sup>7</sup> a positivist extremity with the underlying doctrine of arbitrary will (ideologised as transforming the "objective" necessities of the economic basis into the state's legal superstructure) remained uncriticisable, free from any frontal attack for a long period.<sup>8</sup> Even after his personal downfall, rather than being verbally contradicted, it was only challenged indirectly and sideways, *à propos* of an apparently peripheral issue, formulated in the manner of an officious follower's zealous humility. Notably, it was questioned: how much is a norm's legal quality affected if it would not result in a jural relation—no matter how partial the field and exceptional the occurrence is.<sup>9</sup> As dams are likely to burst at a minor crack or mole-hill, it was such an innocent and marginal query into which the until then suppressed dilemmas of the acceptability of judicial law making and the legal nature of customary law—along with the justifiability of a sociological approach and the recognition of values as external yardsticks—did in fact stream.<sup>10</sup>

No one may dare to claim that legal thinking could have taken a different path. Albeit there was no expressed political manifestation to force implementation of Vyshinsky's doctrine in Hungary, still the neophytes' political oversensitivity in making the domestic scene harmonised could result in a local variant and nothing else. Only the residue of some critical details allowed methodological supplements and additions that were able to build in some potential for transcendence in the long run.

<sup>7</sup> Following Vyshinsky, A. Y.: *Voprosy prava i gosudarstva u K. Marksa* [Questions of law and state at Marx]. Moscow, 1938, see Vyshinsky, A. Y.: *Voprosy teorii gosudarstva i prava* [Questions of the theory of state and law]. Moscow, 1949. See also Stalgevitsh, A. K.: K voprosu o ponyatii prava [To the issue of the notion of law]. *Sovetskoe gosudarstvo i pravo*, (1948) 7, 49–63 and Strogovich, M. S. et al.: *Teoriya gosudarstva i prava* [Theory of state and law]. Moscow, 1949.

<sup>8</sup> See, e.g. Kelsen, H.: *The Communist Theory of Law*. New York and London, 1955; Lapenna, I.: *State and Law: Soviet and Yugoslav Theory*. London, 1964, and Stoyanovitch, K.: *La philosophie du droit en U.R.S.S. (1917–1953)*. Bibliothèque de Philosophie du Droit IV, Paris, 1965.

<sup>9</sup> Kechekian, S. F.: Normy prava i pravootnosheniya. *Sovetskoe gosudarstvo i pravo*, (1955) 2, 23–32; Piontkovskiy, A. A.: Nekotorye voprosy obshchei teorii gosudarstva i prava [Some issues of the general theory of state and law]. *Sovetskoe gosudarstvo i pravo*, 1956/1, 14–28 as well as Stalgevitsh, A. K.: Nekotorye voprosy teorii sotsialisticheskikh pravovykh otnoshenii [Some questions relating to socialist legal relationships]. *Sovetskoe gosudarstvo i pravo*, (1957) 2, 2 et seq., in criticism of which Farber, I. E.: K voprosu o ponyatii prava [To the issue of the notion of law]. *Sovetskoe gosudarstvo i pravo*, (1957) 1, 38–50 proved a rear *echelon*. See also Kerimow, A. A.–Gläss, H.–Leymann, J.–Wiese, A.: Über den Begriff des sozialistischen Rechts. *Staat und Recht*, (1958) 11, 1150–1154 and Zhogin, N. V.: Vyshinsky's Distortions in Soviet Legal Theory and Practice. *Soviet Law and Government*, 4 (1965) 2, 48–56.

<sup>10</sup> For example Iavich, L. S.: A Contribution to the Question of the Methodology of Jurisprudence. *Soviet Law and Government*, 2 (1963) 2, 11–16 and Strogovich, M. S.: Problems of Methodology in Jurisprudence. *Soviet Law and Government*, 4 (1966) 4, 13–22. The early and pioneering achievement by Veingold, Yu. Yu.: *Pravo kak sotsiologicheskaya kategoriya* [Law as sociological category]. Frunze, 1962, remained unheard off and unshared by in its temporary Soviet medium.

*From Ideological Self-closing to Apparently Scholarly Opening*

The instances that can be presented for an overview organised by countries representing characteristic attitudes<sup>11</sup> provide a telling example of switches between extremities.

As to ideologically thoroughly closed societies, a strict functional division prevailed in the *German Democratic Republic*. It separated—both institutionally and bibliographically, that is, in view of researchers' and researches' profiles, library collections, and the passes permitting access thereto—the building of Socialism (allowing nothing but Socialist works for inspiration), on the one hand, from the criticism of “Imperialism”, on the other. Only the latter justified the study of “bourgeois” literature, and only with the aim of “annihilating” it. Accordingly, thinking about Western sources from the end of 19th century (including *Max Weber*, of course) was short-cut by their being castigated as “the enemy”, without the chance of being considered as a referential impetus for building Socialism.

In the *Soviet Union* (where, for a long while, the Hungarian *Imre Szabó* was the only jurist member of the Soviet Academy of Sciences after *Vyshinsky's* death in 1953)—anything of Western literature being scarce and practically unavailable, and, moreover, regarded as irrelevant to progressive thought (the way in which Cyrillic script separates from Latin culture)—, no formal division was institutionalised. According to the well-established practice, monographs prepared within the confines of the Institute of State and Law of the Soviet Academy of Sciences [*Институт государства и права Академии Наук СССР*] did entail rare historical and contemporary references to Western literature (mostly as embellishment, without any serious intention of analysis or debate, and taken from a rather meagre choice, merely to subject them to superficial rejection by some catchphrases),<sup>12</sup> upon the basis of a Socialist comparative platform (with a mere glance at theory and practice in the so-called peoples' democracies), that is, only to serve as a far-away memento of scholarly ideals.

After the intervention in 1968, in *Czechoslovakia's* law libraries only sources in Slavic languages remained freely available in addition to domestic publications (e.g. even from Hungary, mostly titles published in Russian were available).

As to *Romania* and *Bulgaria*, no official discrimination was present, since overall poverty had already resulted in the practical lack of either Western resources or non-*Marxist* literature. So anything diverting from Balkans-style Socialism could provide additional colours at the most, without genuinely expanding the field of topical discussion.<sup>13</sup>

In fact, it was only *Yugoslavia* and (especially the Czech and Moravian areas of) *pre-1968 Czechoslovakia* that could present a visible exception, with *Marxism* cultivated by

<sup>11</sup> Cf., as a bibliographical background material, Knapp, V.: *La philosophie du droit dans les pays Socialistes*. In: Klibansky, R. (ed.): *Contemporary Philosophy. A Survey*. Firenze, 1971. 156–169.

<sup>12</sup> For example Tumanov, V. A.: *Contemporary Anti-Marxism and the Theory of Law. Soviet Law and Government*, 8 (1969) 1, 3–20.

<sup>13</sup> Except for some theoretical and critical papers written by A. M. Naschitz with a passion of radicalism yet preserving theoretical ambitions all along, e.g. *Critica unei »critici« burgheze a teoriei marxist-leniniste a statului și dreptului: cu priviere la lucrările lui H. Kelsen: Teoria politică a bolșevismului și Teoria comunistă a dreptului* [Criticism of a bourgeois »critic« on the Marxist-Leninist theory of state and law]. *Studii și cercetări juridice*, (1958) 2, 29–58. and *Filozofia existențialista a dreptului – filozofie a pseudodreptului și a lichidării legalității: In legatura cu lucrarea lui G. Cohn: »Existențialismul și știința dreptului«* [Existentialist philosophy of law as the philosophy of pseudo-law and of the liquidation of legality]. *Studii și cercetări juridice*, (1961) 1, 25–54.

scholarly ambition. However, even this school of thought was not ready for confrontation with open-ended competition. Scholars concentrated all their efforts on building up a genuinely *Marxian* theory seen as its renewal (as theoretical pluralism within *Marxism* was accepted there in view of fostering internal debates), as a genuine “renaissance of *Marxism*”. Hence, they needed nothing specific besides Western *Marxism*. In total, however, by rejecting external criticism and building from inside exclusively, they proved to be far more unyielding and dogmatic than their Soviet forerunners did.<sup>14</sup>

This is why true openness could be encountered in *Poland* alone. There, in a successful continuation of local tradition as to psychological, logical and analytical directions, conceptual analysis was given priority in both social theory and sociology, as well as in political science and jurisprudence. As a consequence, *Marxism* itself as a *per definitionem* ideological and policy-oriented approach was excluded from the competing approaches that required exactness in cool detachment as a scientific ideal. As a perhaps paradoxical after-effect, theoretical jurisprudence there became increasingly sterile and at the same time irrelevant to public debates. Having transformed into a local school or branch of the then mainstream Western European and mainly Anglo–American analytical-conceptual directions, Polish legal theorising narrowed down, with practically nothing locally timely to say—in addition to suffering self-closure in professionalism, being only preoccupied with itself. Unlike in Hungary, Polish Communist party rank-and-file university staff was often the force cultivating legal theory, like conceptual mathematics at a high intellectual level, when jurisprudence proper was at stake, and who used *Marxism* without much critical distance when theorising departed from sheer legal conceptuality to arrive at fields marked by class struggle ideology, especially in the theory of the state. In such a strange symbiosis, *Marxism* could return to becoming overtly predominant, at least in the sense that for issues where the subject concerned was manifested as an aspect of power, in a political context, or as ideology and/or social practice (e.g. legal policy or law on the state and state administration), *Marxism* still prevailed full-fledged, all liberal appearances notwithstanding.<sup>15</sup>

<sup>14</sup> There were exceptions nevertheless. These included the integral publication of T. Živanović’s non-Marxist oeuvre—*Sistem sintetičke filozofije prava* [The system of a synthetical philosophy of law]. I–III. Belgrad, 1922, 1951, 1959–, and, above all, O. Weinberger’s stand of a revolutionising force—*Die Sollsatzproblematik in der modernen Logik*. Praha, 1958—which, stirring up huge debates even with its repercussions, pointed out that ought-propositions are not cognitive categories and, therefore, are not to be characterised by either truth or falsity. By the way, it is just this sensitive issue that became the critical test of the Leninian so-called reflection theory all through the Socialist world. For my attempt similar to the one above, rejected in my homeland for reasons of prevailing dogmatism as unacceptable from the outset, see Varga, Cs.: *A magatartási szabály és az objektív igazság kérdése* [Rule of behaviour and the question of objective truth] {a collection of papers from 1964 to 1994, bound to remain unpublished mostly for political reasons}. [1964] In: Varga, Cs.: *Útkeresés: Kísérletek – kéziratban* [Searching for a path: Unpublished essays]. Jogfilozófiák, Budapest, 2001. 4–18. The query was positively answered—exclusively from the viewpoint of formal logic, by the way—by Loeser, F.: *Zur Frage der Wahrheit in der Moral*. *Deutsche Zeitschrift für Philosophie*, 9 (1963) 9, 1104 et seq.

<sup>15</sup> This resulted in a practical division of labour according to personal gifts and chosen career paths. For instance, in Poland, Z. Ziembinski, A. Podgórecki and J. Wróblewski, as well as K. Opalek and M. Borucka-Arctowa rarely abandoned the proper terrain of theoretical or empirical scholarship, while the oeuvre of the then-director of the Institute of Legal Sciences of the Polish Academy of Sciences, A. Łopatka, scarcely treated any genuinely scientific problem at all.

Unfortunately for *Hungary*,<sup>16</sup> the country did not have any comparable social scientific tradition. A fundamentalist past that had once used axiological approaches in building up feasible teleologies was bound to return again. All in all, there were theoretical manifestations with diverse stands and approaches (including international trends domesticated and alternatively formulated), only to collide both excitingly and edifyingly within the all-covering umbrella of *Marxism*. The play was often on an ideological razor's edge. There is no need to emphasise that this involved risks, but it was usually done in a way that carried timely messages for society (even if indecipherably sometimes, when they were over-coded by caution).<sup>17</sup> Appearing explicitly dramatic at times, it guaranteed both the weight and seriousness of theoretical issues with a direct impact upon society, not infrequently stirring up wide intellectual circles and public opinion as well.<sup>18</sup>

### *From Political Ideology to Genuine Scholarship*

Thereby an exceptional balance could be achieved in Hungary through the parallel fulfilment of expectations representing two extremes in apparent mutual exclusion of one another. For in this Soviet world empire, the actual choice ranged from

<sup>16</sup> For the overview's Hungarian part in details, cf. Varga, Cs.: Philosophising on Law under the Umbrella of Marxism in Hungary. *Acta Juridica Hungarica*, 53 (2012), 265–286.

<sup>17</sup> In Hungary, it was by no mere chance, therefore, that besides Hegel, Thomas Mann became the stylistic ideal, as a prerequisite of survival, for the theoreticians at the Institute for Legal Studies of the Academy of Sciences. Thanks to this, censors of the Communist Party central cultural bureau (headed by György Aczél and contributed to by, among others, Ildikó Lendvai, later faction leader, then president, of the Socialist Party that governed the country for twelve years since the fall of Communism in 1990) preferred in fact withdrawing us from their range of actual control to bothering with our overcomplicated abstractions. At the same time, for the Institute staff, any participation in debates in the public fora of journalism was strictly prohibited, as the only available means of corporate self-defence from political control.

<sup>18</sup> As to Hungary, research in the law on the state by, e.g. Ottó Bihari and István Kovács, were often in the focus of international press interest—true, not without political overtones but still within a scientific context. Owing to his commitment to modernisation and wide personal reputation in sociology, pieces by Kálmán Kulcsár were much sought-after in the broadest intellectual circles. As to personal memory, my collection on *Jog és filozófia: Antológia a század első felének polgári jogelméleti irodalma köréből* [Law and philosophy: An anthology of the first half of 20th century western legal theories]. Budapest, 1981 with translations of R. Stammler, E. Ehrlich, F. Kantorowicz, L. Petrazycki, M. Weber, F. Somló, Fr. Gény, G. del Vecchio, G. Radbruch, H. Kelsen, B. Cardozo, R. Pound, J. Frank, K. Olivecrona had aroused nation-wide intellectual interest (relaxing the practically absolute isolation of law from topics debated in general public fora at the time). It was only subsequently, after the collapse of the regime, that I could gain some idea of how many people, in addition to practicing lawyers, studied my legal-philosophical treatment on Lukács–Varga, Cs.: *A jog helye Lukács György világképében*. Gyorsuló Idő, Budapest, 1981, in English, *The Place of Law in Lukács' World Concept*. [1985] 3rd [reprint] ed. with Postface. Budapest, 2012 and <<http://drcsabavarga.wordpress.com/2012/03/13/the-place-of-law-in-lukacs-world-concept-19852012/>>.–, and mostly without (at least not exclusively) the aim of obtaining *par excellence* law-related knowledge but owing to its widely known intention to use Marxism as a Trojan horse in an eventual and latent transcendence of Marxism.

- a *directly ideological and political servicing* (characteristic of the East German,<sup>19</sup> Soviet<sup>20</sup> and post-1968 Czechoslovakian patterns); via
- the emergence of some *reconciliation*<sup>21</sup> (representing the Romanian<sup>22</sup> and Bulgarian patterns) and via
- the undivided assumption of some scholarly ethos, yet only in view of, and through, the consistent political enforcement of the superiority of the *Marxism of Socialism* (as in the Yugoslavian<sup>23</sup> and pre-1968 Czechoslovakian<sup>24</sup> patterns); up to
- ensuring *scholarly self-development* in parallel with *preserving ideological semblance* (characteristic of the Hungarians); and to
- attaining personal (topical or disciplinary) *separation of politics from scholarship*, that is, of legal theory as ideology and, respectively, as conceptual analysis, in addition to an empirical sociological description of facts (as in the Polish as well as the pre-1968 Czech and Moravian patterns).

<sup>19</sup> For example *Rechtsbegriff und Rechtsnorm: Internationales Symposium des Instituts für Staats- und Rechtstheorie vom 12. bis 14. 5. 1966*. in Jena. *Wissenschaftliche Zeitschrift der Friedrich-Schiller-Universität Jena: Gesellschafts- und Sprachwissenschaftliche Reihe*, 15 (1966), 405–476. and Gollnick, R.: *Internationales Symposium in Jena zum sozialistischen Rechtsbegriff. Staat und Recht*, (1966) 8, 1336–1345.

<sup>20</sup> Nedbailo, P. E.: *Primenenie sovetskih pravovykh norm* [The application of Soviet legal norms]. Moscow, 1960, as the initiation of comparativism, Zivs, S. L.: O metode sravnitel'nogo issledovaniya v nauka o gosudarstve i prave [On the method of comparative investigations in the science of state and law]. *Sovetskoe gosudarstvo i pravo*, (1964) 3, 23 et seq.; Kazimirchuk, V. P.: *Pravo i metody ego izucheniya* [Law and the methods of its research]. Moscow, 1965; Babiy, B. M. (ed.): *Konkretno-sotsiologicheskie issledovaniya v pravovoi nauke* [Concrete-sociological research in legal science]. Kiev, 1967; Jawitsch, L.: *The General Theory of Law: Social and Philosophical Problems*. Moscow, 1981. Developments are always uneven. For the sake of balance it has to be pointed that the Soviet Union was also the scene of both pioneering and progressive initiatives in, e.g. launching research on the law's logical and linguistic aspects and a Marxising re-foundation of legal axiologism. See, e.g. in result of the debate on the magisterial book of Drobnitsky, O. G.: *Mir ozhivskhikh predmetov: Problema tzennost' i i marksistkaya filosofiya* [The world of revived objects: The problem of value and Marxist philosophy]. Moscow, 1967; Balakhina, I. F.: *Problemy tzennost'e – vnimanie posledovatelei* [The problem of values]. *Voprosy filosofii*, (1965) 9, 153–154.

<sup>21</sup> For example Cosmovici, P.: Traits spécifiques du concept du droit relevés par la science juridique de Roumanie. *Revue roumaine des sciences sociales: Série de Sciences juridiques*, 22 (1978), 51–63.

<sup>22</sup> An outstanding example is provided for this by laying the foundations of the way how legal technique is to be understood. Cf., by Naschitz, A. M.–Fodor, I.: *Rolul practicii judiciare în formarea și perfecționarea normelor dreptului Socialist* [The role of judicial practice in formation and perfection of Socialist legal norms]. București, 1961, and *Conștiința juridică Socialistă* [Socialist legal consciousness]. București, 1964, as well as *Tehnica legislativă și metodologia în drept* [Legislative technique and legal methodology]. *Studii și cercetări juridice*, 13 (1968) 1, 45–57.

<sup>23</sup> For example Lukić, R. D.: *Teorija države i prava*. II: *Teorija prava*. Beograd, 1957. 42–47. restricted “regulation in a legal form” to cases alone where antagonistic class conflicts were at stake. For differing directions, see, e.g. Perić, B.: *Pravna znanost i dijalektika: Osnove za suvremenu filozofiju prava* [Legal knowledge and dialectics: Foundations of contemporary philosophy of law]. Zagreb, 1962, and 6. izd. Biblioteka Udžbenici 156, Zagreb, 1990.

<sup>24</sup> For example Lakatoš, M.: *Otázky tvorby práva v socialistické společnosti* [Questions of law-making in socialist society]. Praha, 1963.

Remarkably, although the *Polish* pattern inspired many contemporaries struggling for their way on more difficult paths<sup>25</sup> and impressed them with the promise of safety closed in positivism and the ethical quality of the stance eventually taken, its final achievement, permeated with the ideal of some “self-interested scholarship”, proved to be of a dubious value. For its cultivation consumed its initial energies. Opposed to Muscovitism without any social embedment of its own, it withdrew to the status of a specimen of West-inspired counter-epigonism, confined to peripheral stakelessness.

For, at a time when ambitions to scholarly autonomy were to be appreciated properly, debates generated at the price of hard labour under repressed conditions could nevertheless lead to individualistic paths beaten successfully—even if contradictorily, but in a way best suited to their underlying conditions. “For—as noticed earlier<sup>26</sup>—, despite being disabled and hamstrung, the greatest available variety of trends of thought could evolve in our country under the order superimposed on us from above both as a strait-jacket and as a protective shield; moreover, there was not one of these designated as a focus from which one had to step out and back, in contrast to Hartianism as a compulsory garment in the otherwise most liberal Great Britain.”

Just to recall few examples from countries with limited favourable conditions: the locally important *Romanian* programme announcement<sup>27</sup> or the *Bulgarian* and *Romanian* debates on legal continuity<sup>28</sup>—albeit scarcely transcending the intellectual level of the Hungarian debate a decade earlier, i.e. at Stalinism’s peak—were proved definitely most inspiring by their impacts on their respective environments. Or, the *Yugoslav* and *pre-1968 Czechoslovakian* debates conducted under the pretext of “humanising” *Marxism* could eventually only contribute to the

<sup>25</sup> Polish theoretical legal thought in general and Ota Weinberger’s logical-cybernetic path in Prague in particular had a rather attractive call in Hungary. It is by no means mere chance that I published two dozen review articles on Polish books during that period while I dedicated hardly half a dozen reviews to all other Socialist titles. Cf. Varga, Cs.: *Jogi elméletek, jogi kultúrák: Kritikák, ismertetések a jogfilozófia és az összehasonlító jog köréből* [Theories and cultures of law: Reviews in legal theory and comparative law]. Jogfilozófiák, Budapest, 1994.

<sup>26</sup> Varga, Cs.: The Hart-phenomenon. *Archiv für Rechts- und Sozialphilosophie*, 91 (2005) 92, note 46.

<sup>27</sup> In fact, Ion Gheorghe Maurer [member of both the National Assembly and the Communist Party Central Committee for three decades, then Head of State and Prime Minister for one and a half decades, simultaneously with his directorship at the Institute for Legal Research of the Romanian Academy of Sciences] outlined—in Maurer, I. G.: Cuvînt înainte [Introductory words]. *Studii si cercetări juridice*, (1956) 1, 1–47.—the foundations of Sovietised Rumanian legal Marxism with thirty references to, or quotations from, the French scholarship, which was an act unheard-of in this very epoch. In an altered political atmosphere, his successor, Ionascu, Tr.–Dezvoltarea Stiintei juridice Socialiste în Republica Populară Română [Development of socialist legal sciences in the People’s Democracy of Romania]. *Revista Română de Drept*, (1964) 8, 34–56—, could also rely on domestic literature alone, without referring to Soviet authors.

<sup>28</sup> Cf., primarily, Ionascu, Tr.–Barasch, E. A.: Les constantes du droit: Droit et logique. *Revue roumaine des sciences sociales: Série de sciences juridiques*, 8 (1964) 2, 129–143. and Nenovski, N.: *Priemstvenostta v pravoto* [Continuity in law]. Sofia, 1975, and *Preemstvennost’ v prave* [Continuity in Law]. Moscow, 1977. For a Western reflection, see also Tay, A. E.–S.–Kamenka, E.: *Marxism–Leninism and the Heritability of Law*. and Münzel, F.: Chinese Thoughts of the Heritability of Law. *Review of Socialist Law*, 6 (1980), 261–291.



further survival of the hegemony of *Marxism*.<sup>29</sup> Nevertheless, they did open gaps and break splits in a monolith such that new trends were introduced and antagonisms revealed, in addition to the very fact that debates had occurred, generated in a more or less academic manner. Through accumulation, they sowed the seeds of later development.

Otherwise speaking, Polish works—remarkable scholarly achievements—may have happened to presume less courage than apparently poor Romanian or Albanian ones. There were in fact also monographic accomplishments of standing academic import in East Germany, the Soviet Union or Romania. All in all, the Socialist output touched on foundational issues of the philosophy and methodology of jurisprudence in general,<sup>30</sup> and of legal logic,<sup>31</sup> cybernetics<sup>32</sup> and further key topics<sup>33</sup> in particular, in addition to local

<sup>29</sup> It was by no mere chance that the Budapest school of Lukács' disciples (Ágnes Heller, György Márkus, Ferenc Fehér, and so on), media favourites for international leftist progressives of the age, joined unconditionally in these trends. In legal theory, this was represented by the new dogmatism in Yugoslavia and sporadically cultivated in Czechoslovakia. By contrast, this had no professional echo at all in Hungary despite a few accidental references by Vilmos Peschka, who was motivated by a moral espousal of a trend officially rejected.

<sup>30</sup> Opałek, K.: *Problemy metodologiczne nauki prawa* [Methodological problems of legal sciences]. Warszawa, 1962; Peczenik, A.: *Wartość naukowa dogmatyki prawa: Praca z zakresu porównawczej metodologii nauki prawa* [The scientific value of legal dogmatics]. Kraków, 1966; Nowak, L.: *Próba metodologicznej charakterystyki prawoznawstwa* [The methodological characteristic of legal knowledge]. Uniwersytet im. Adama Mickiewicza w Poznaniu: Prace Wydziału Prawa 38, Poznań, 1968.

<sup>31</sup> Grzybowski, St.: *Wypowiedz normatywna oraz jej struktura formalna* [Normative expression and its formal structure]. Zeszyty Naukowe Uniwersytetu Jagiellońskiego: Ropzprawy i Studia XXXIX, Kraków, 1961; Gregorowicz, J.: *Definicje w prawie i w nauce prawa* [Definitions in law and in the science of law]. Łódzkie Towarzystwo Naukowe: Wydział I/52, Łódź, 1962; Perelman, Ch. (ed.): *Études de logique juridique. III: Contributions polonaises à la théorie du droit et de l'interprétation juridique*. Travaux de Centre National de Recherches de Logique, Bruxelles, 1969; Grahn, W.: *Die Rechtsnorm: Eine Studie*. Methodologie der marxistisch-leninistischen Rechtswissenschaft 6, Leipzig, 1979.

<sup>32</sup> As a forerunner, see, e.g. Andreev, N. D.–Kerimov, D. A.: O vozmozhnostiyakh kibernetiki pri reshenii pravovykh problem [On the potential use of cybernetics in solving legal problems]. *Voprosy filosofii*, (1960) 7, 106–110; Kerimov, D. A.: Kibernetika i pravo [Cybernetics and law]. *Sovetskoe gosudarstvo i pravo*, (1962) 11, 98–104; by Knapp, V.: *O možnosti pouziti kiberneticheskikh metod v pravu* [On the possible uses of cybernetic methods in law]. Praha, 1963, and De l'application de la cybernétique au domaine du droit. *Revue de Droit contemporain* [Bruxelles], (1962–63) 2, 13–34; Gavrilov, O. A.: O vozmozhnosti ispolzovaniya metodov kibernetiki v normativnoy deyatelnosti [On the possibility of providing cybernetic methods in practical law-making]. *Sovetskoe gosudarstvo i pravo*, (1965) 10, 119–123; Benjamin, N.: Zur Anwendung mathematischer Methoden in der staatlichen Leitung und Rechtspflege. *Staat und Recht*, (1965) 6, 899–921; Kudryavtsev, V. N. (ed.): *Voprosy kibernetiki i pravo* [Issues of cybernetics and law]. Moscow, 1967, and Eliás, J. (ed.): *Kybernetika a právo: Buletín o aplikaci kybernetických metod ve vede o státu a právu a v právní praxi* [Cybernetics and law: Bulletin on the application of cybernetic methods on the fields of state and law and also in legal practice]. I–. Praha, 1967. Later works went more in details as e.g. Kiszka, A.: *Model kybernetický powstawania i działania prawa* [The cybernetic model of law]. Prace Wrocławskiego Towarzystwa Naukowego A/133, Wrocław, 1970. and Polevoi, N. S.–Vitruk, N. V. (ed.): *Osnovy primeneniya kibernetiki v pravovedenii* [Foundations of the application of cybernetics in jurisprudence]. Moscow, 1977.

<sup>33</sup> Ziemiński, Z.: *Normy moralne a normy prawne: Zarys problematyki* [Moral and legal norms: Outlines]. Uniwersytet im. Adama Mickiewicza w Poznaniu: Prace Wydziału prawa 6,

sociological-ethnographical descriptions<sup>34</sup> and the history of relevant ideas.<sup>35</sup> There were also initiatives breaking new paths worthy of international attention, like *Anita M. Naschitz's* attempt to found the Marxist variant of axiology and natural law<sup>36</sup> and *Maria Borucka Arctowa's* efforts, providing, for ever-changing law, a quasi natural-law foundation by defining life conditions in society that can be taken as minimum and optimum at the same time.<sup>37</sup>

*Socialist Jurisprudence Recognised Internationally as an Independent Trend*

Owing to some internationally renowned prominent representatives (such as *Imre Szabó*, *Viktor Knapp*<sup>38</sup> and *Hermann Klenner*<sup>39</sup>), Socialism's Marxism eventually legitimated its existence as a trend of legal theorising acknowledged worldwide.<sup>40</sup> However, as a counter-balance (by marking its almost exclusive political acceptance) the Western Cold War practice also continued. Separated from Western Marxism, Western interest in regional theoretical developments remained unduly selective, in striking disrespect of the genuine merits of scholarly achievement. Only Soviet and ideologically biased authors could come into its focus. Authors like *Kerimov*,<sup>41</sup> *Tumanov*, *Nedbailo* and others, or the Polish Academy of Sciences Institute of Law director, *Adam Łopatka*, the East German *Karl A.*

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Poznan, 1963; Studnicki, Fr.: *Przeptyw wiadomości o normach prawa* [New developments on legal norms]. *Zeszyty Naukowe Uniwersytetu Jagiellońskiego CXIX: Prace Prawnicze 22*, Kraków, 1965; Borucka-Arctowa, M.: *O społecznym działaniu prawa* [On the social effect of law]. Warszawa, 1967.

<sup>34</sup> For example Vulcanescu, R.: *Etnologie juridica* [Legal ethnology]. Bucuresti, 1970; Krstić, D.: *Pravni običaji kod Kuća* [Legal customs of Kuća]. Srpska Akademia Nauka i Umetnosti, Balkanoloski Institut 7, Beograd, 1979.

<sup>35</sup> Zor'kin, V. D.: *Pozitivistskaya teoriya prava v Rossii* [Positivist legal theory in Russia]. Moscow, 1978; Piatkina, S. A. (ed.): *Istoriya russkoi pravovoi mysli: Biografii, dokumenti, publikatsii* [The history of Russian legal thought: Biographies, documents, publications]. Moscow, 1998.

<sup>36</sup> By Naschitz, A.: Wert und Wertungsfragen im Recht. *Revue roumaine des Sciences sociales: Série de Sciences juridique*, 9 (1965) 1, 3–23, and »Le problème du droit naturel« à la lumière de la philosophie marxiste du droit. *Revue roumaine des Sciences sociales: Série de Sciences juridiques*, 10 (1966) 1, 19–40.

<sup>37</sup> Borucka-Arctowa, M.: The Conception of Legal Consciousness as a New Approach to the Problems of Natural Law. In: Łopatka, A. (ed.): *Contemporary Conceptions of Law*. Warsaw, 1979. 153–170.

<sup>38</sup> For example Knapp, V.: *Filozofické problémy socialistického práva* [The philosophical problems of socialist law]. Praha, 1967. See also Knapp, V.: Legal Sciences. In: *Main Trends of Research in the Social and Human Sciences*. Paris and The Hague, 1978. part II.

<sup>39</sup> For example by Klenner, H.: The Marxist Conception of Human Rights. *Retfærd* [Copenhagen], (1977) 6, 8–20, and *Vom Recht der Natur zur Natur des Rechts*. Berlin, 1984.

<sup>40</sup> For example by Wróblewski, J.: State and Law in Marxist Theory of State and Law. *Wayne Law Review*, 22 (1976) 3, 815–839; Problems of Legality in Marxist Theory. *Archiv für Rechts- und Sozialphilosophie*, 62 (1976), 497–515, and The Philosophical Problems of Legal Theory in Marxist Interpretation. *Archivum Iuridicum Cracoviense*, 11 (1978), 41–56.

<sup>41</sup> With a military procurator's past in [East-]Germany but with an ability to communicate in Russian exclusively, cf. e.g. Kerimov, V. A. (ed.): *Pravo i kommunizm* [Law and communism]. Moscow, 1960.

*Mollnau*<sup>42</sup> or the Bulgarian academician *Popov*,<sup>43</sup> who were by no means excelling outstandingly, were favoured by this.

Notwithstanding all that, as to the internal development of legal theorising in the region, remarkable works and noteworthy contributions emerged, owing to which possibilities opened up for genuinely progressive strategic steps as well. Indeed, scholarly advancement is indicated by collections<sup>44</sup> and journals launched in the period,<sup>45</sup> as well as by individual accomplishments that soon became internationally acclaimed, like the treatise of *Radomir D. Lukić*,<sup>46</sup> or the theoretically founded and sophisticatedly developed re-institutionalisation of legal sociology in the Socialist orbit by *Kálmán Kulcsár*.<sup>47</sup> Other examples include the legal philosophy that *Vilmos Peschka* dogma-critically developed from the tenets of *Marxism* using Hegel and *Lukács* as bipolar frames, or the re-introduction of legal comparatism with theoretical foundations and methodological outlines on its Socialist specificities,<sup>48</sup> extended to the whole region, by *Imre Szabó* and *Zoltán*

<sup>42</sup> Mollnau, K. A.: *Vom Aberglauben der juristischen Weltanschauung*. Berlin [Ost], 1974, and *Zur Kritik der bürgerlichen Ideologie* 53, Frankfurt am Main, 1975.

<sup>43</sup> Popov, P. N.: *Kritika na sovremennia burzhoazen praven normativizma* [Criticism of contemporary bourgeois legal normativism]. Sofia, 1964.

<sup>44</sup> From among the early festschrifts, see Vintu, I.–Naschitz, A. M.–Nestor, I. (ed.): *Études juridiques en l'honneur du Professeur Trajan A. Ionesco*. Special issue of *Revue roumaine des Sciences sociales: Série de Sciences juridiques*, 12 (1968) 1. For collections at an international level, cf. *Archives de Philosophie du Droit* 12: *Marx et le droit moderne*. Paris, 1967, and Reich, N.: *Marxistische und sozialistische Rechtstheorie*. Studien und Texte zur Theorie und Methodologie des Rechts 12, Frankfurt am Main, 1972, and at a national one, Łopatka, A.–Szklenik, A. (ed.): *Law and Future of Society*. Warsaw, 1977; Kerimow, D. (ed.): *Contemporary Conceptions of Law / Die marxistische Konzeption des Rechts*. Probleme der modernen Welt 26, Moskau, 1979.

<sup>45</sup> For example *Archivum Iuridicum Cracoviense*, I– (1968–).

<sup>46</sup> By Lukić, R. D.: *Théorie de l'Etat et du droit* [1951]. *Philosophie du Droit* 13, Paris, 1974, and *La giustizia e l'oggettività del diritto*. *Rivista internazionale di Filosofia del Diritto*, XLI (1964) VI, 679–688; as well as Lukić, R. (ed.): *Sur la philosophie du droit*. Beograd, 1978.

<sup>47</sup> As to Adam Podgórecki, cf. his *Zalozenia polityki prawa: Metodologia pracy legislacyjnej i kodyfikacyjnej* [Legal policy: Methodology of legislation and codification]. Warszawa, 1957, *Socjologia prawa* [Legal sociology]. Seria Sygnaly, Warszawa, 1962, *Prestiż prawa* [Prestige of the law]. Warszawa, 1966, and *Zarys socjologii prawa* [Outlines of legal sociology]. Warszawa, 1971, ending by *Law and Society*. International Library of Sociology, London–Boston, 1974, compelled to emigrate to Canada in 1977 with his wife, the sociologist Maria Lós.

<sup>48</sup> In the Muscovite empire, re-orientation followed slowly and gradually, as started in Czechoslovakia. Cf. e.g. Bystrický, R.: *Za marxistickou srovnávací právovědu* [For a Marxist comparative jurisprudence]. *Právník*, (1962) 8, 625 et seq.; Boguszak, J.: *K otázce tzv. srovnávací právovědy* [To the question of comparative jurisprudence]. *Právník*, (1962) 9, 803–806; Knapp, V.: *Verträge im tschechoslowakischen Recht (Ein Beitrag zur Rechtsvergleichung zwischen Ländern mit verschiedenen Gesellschaftsordnung)*. *Rabels Zeitschrift für ausländisches und internationales Privatrecht*, 27 (1962) 3, 495–518; Svoboda, M.: *Jestě k marxistické srovnávací právovědě* [Once more on a Marxist comparative jurisprudence]. *Právník*, (1963) 5, 388; Knapp, V.: *K otázce socialistické srovnávací právní vědy* [To the question of a socialist comparative science of law]. *Právník*, (1963) 5, 391–402. It was followed by Zivs, S. L.: *O metode sravnitel'nogo issledovaniya v nauka o gosudarstve i prave* [On the method of comparative research in the sciences of state and law]. *Sovietskoe gosudarstvo i pravo*, (1964) 3, 23 et seq.; Kanda, A.: *Základní problémy srovnávání právních systémů různých ekonomických soustav* [Foundational problems of comparing legal systems pertaining to differing economic regimes]. *Právnícké Studie*, (1965) 4, 699–720; Chikvadze, V. M.–

*Péteri*<sup>49</sup> and—at last but not least—the historico-comparative private-law elaboration of *Gyula Eörsi*, formulating pioneering recognitions, rich in insights of a thought-provoking depth, testifying to an imposingly profound erudition.<sup>50</sup>

### *Alongside with Western Trends*

An integration that may ensure the place of legal philosophising within the orbit of Socialism's *Marxism* as one of the internationally renowned contemporary trends, each of them serving as the imprint of underlying cultural aspirations with the potential of equal representation in scholarship, may have been a great advance indeed. In addition to Hungary's launch of a new school of theoretical legal thought—in which *Szabó* (all along regarded as an equal partner in science-political games) had still preserved his authority both formally and informally notwithstanding the fact that in legal philosophy it was *Peschka*, and in legal sociology, *Kulcsár*, who marked Socialism's *Marxism* as a professional direction in law—the accomplishments made in Poland and pre-1968 Prague were equally worthy of recognition.<sup>51</sup> All this could not change the mainstream, of course. The political treatment of anything of *Marxism* in the Soviet Union and the German Democratic Republic was still not capable of transcending the horizons drawn by “class struggle” and “ideological combat” against the phenomena of “anti-*Marxism*”.<sup>52</sup>

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Zivs, S. L.: Sravnitel'noe pravovedenie v praktike mezhdunarodnaya nautshnaya sotrudnichestva [Comparative jurisprudence in the practice of international scientific cooperation]. *Sovietskoe gosudarstvo i pravo*, (1966) 2, 12–21; Posch, M.–Petev, V.: Vergleichung in der Rechtslehre. *Staat und Recht*, (1966) 1, 89 et seq.; by Knapp, V.: Quelques problèmes méthodologiques dans la science du droit comparé. *Revue roumaine des sciences sociales: Série de Sciences juridiques*, (1967)1, 76 et seq. and Některé metodologické problémy srovnávací právní vědy. *Právník*, (1968) 2, 91 et seq.

<sup>49</sup> Starting with Péteri, Z. (ed.): *Studies in Jurisprudence for the Sixth International Congress of Comparative Law*. Budapest, 1967, and Péteri, Z. (ed.): *Études en droit comparé – Essays in Comparative Law*, the Hungarian contributions to the international congresses of comparative law have regularly been published up to the present day. As the first distinctively scholarly position of Socialist comparatism, see Szabó, I.–Péteri, Z. (eds): *A Socialist Approach to Comparative Law*. Budapest–Leyden, 1977.

<sup>50</sup> Cf. Eörsi, Gy.: *Comparative Civil (Private) Law: Law Types, Law Groups, the Roads of Legal Development*. [1975] Budapest, 1979.

<sup>51</sup> Kowalski, J.: *Funkcjonalizm w prawie amerykanskim: Studium z zakresu pojecia prawa* [Functionalism in American law]. Warszawa, 1960; Opałek, K.–Wróblewski, J.: *Współczesna teoria i socjologia prawa w Stanach Zjednoczonych Ameryki Polnocnej* [Theory and sociology of law in the USA]. Warszawa, 1963; Kryštufek, Z.: *Historické základy právního pozitivismu* [Historical outlines of legal positivism]. Praha, 1967; Tille, A. A.: *Sotsialisticheskoe sravnitel'noe pravovedenie* [The socialist comparative jurisprudence]. Moscow, 1975, as well as Tille, A. A.–Shvekov, G. V.: *Sravnitel'ni metod v yuridicheskikh distsiplinakh* [Comparative method in legal disciplines]. [1973] Moscow, 1978.

<sup>52</sup> Tumanov, V. A. (ed.): *Protiv sovremennoi pravovoi ideologii imperializma* [Against contemporary legal imperialism]. Moscow, 1962, and Tumanov, V. A. (ed.): *Protiv sovremennoi burzhuaiznoi teorii prava* [Against the contemporary bourgeois theory of law]. Moscow, 1969; as well as, by Tumanov, V. A.: Contemporary Anti-marxism and the Theory of Law. *Soviet Law and Government*, 8 (1969) 1, 3–20, and *Contemporary Bourgeois Legal Thought: A Marxist Evaluation of the Basic Concepts*. Theories and Critical Studies, Moscow, 1974, as well as *Pensée juridique bourgeoise contemporaine: Appréciation marxiste des conceptions fondamentales*. Moscow, 1974, and *Bürgerliche Rechtsideologie*. Berlin, 1975.

## Disintegration

### *Mere Epigonism*

The Soviet,<sup>53</sup> East German<sup>54</sup> and Czechoslovakian<sup>55</sup> legal theories were summations of dogmas and ideological statements in want of any genuine innovation and, therefore, discouraged any monographic research with new scholarly recognitions. They, thus, became increasingly relegated to producing text-books alone, in addition to articles published in the official periodicals of the profession (like *Советское государственное и право* [Sovetskoe gosudarstvo i pravo, Moscow], *Staat und Recht* [Berlin] and *Právník* [Prague]).

### *Directions in Competition...*

At the same time, some divisions began to mark the scene. First of all, authors independent of *Marxism* won international fame (foremost *Jerzy Wróblewski*, followed—to a much lesser extent, due to his ‘detours’ in political science—by *Kazimierz Opalek* and—although not competing with the former in productivity or ingenuity, yet remaining the most spiritually intact of them—*Zygmunt Ziemiński*), in company with survivors who had never been *Marxists* themselves as, for instance, the Moravian *Ota Weinberger*. Curiously enough, some magisterial oeuvres of Socialism’s *Marxism* (such as the ones by *Peschka* and *Kulcsár*, the Polish *Stanisław Ehrlich*<sup>56</sup>—with a wide reputation already in political sociology—and *Gerhard Haney*<sup>57</sup>—perhaps with less outstanding and lasting personal accomplishments yet standing out from the East German bloc with his unconditional humanism) could join the former, as entitled to equal respect. Those emerging by unfolding research as independent authors could also awaken international attention.<sup>58</sup>

### *In Parallel with »Bourgeois« Trends*

Thereby, a kind of natural co-existence started to be welcome again in both international co-operation<sup>59</sup> and national self-representation<sup>60</sup>—with only the Soviets, East Germans, post-1968 Czechoslovakians, Bulgarians and Romanians remaining outside, persisting with

<sup>53</sup> For example as a belated recognition, Strogovich, M. S.: *Judicial Law: As Subject, System, and Discipline. Soviet Law and Government*, 19 (1981) 3, 21–35.

<sup>54</sup> See, as one of the nonetheless most known products of East Germany, Haney, G.: *Der materialistische Rechtsbegriff* (Ein Diskussionsbeitrag). In: *Festschrift für Erich Buchholz*. I. Berlin, 1987. 62–71.

<sup>55</sup> For example *Law, Culture, Science and Technology*. Prague, 1987, with Cuper, J.: *Types of Metascientific Reflection in Marxist–Leninist Science of State and Law*. 102–128.

<sup>56</sup> By Ehrlich, St.: *Le positivisme juridique, la sociologie du droit et les sciences politiques*. Accademia polacca di scienze e lettere / Biblioteca di Roma / Conferenze 28, Wrocław, 1965, and *Studia z teorii prawa* [Studies in legal theory]. Z prac Katedry Teorii Państwa i Prawa Uniwersytetu Warszawskiego 4, Warszawa, 1965.

<sup>57</sup> By Haney, G.: *Sozialistisches Recht und Persönlichkeit*. Berlin [Ost], 1967, and *Sotsialisticheskoe pravo i lichnost’* [Socialist law and personality]. Moscow, 1971.

<sup>58</sup> For example Popescu, S.: *Conceptii contemporane despre drept* [Contemporary conceptions on law]. București, 1985.

<sup>59</sup> For example *Synthesis Philosophica* [Zagreb], III (1988) 1. A special issue on Contemporary Philosophy of Law. 223–331.

<sup>60</sup> See the periodical (collection-like and short-lived, on account of the early death of its founding editor-in-chief *Jerzy Wróblewski*), characterised by an expressedly Western European ideal of style, of *Studies in the Theory and Philosophy of Law* [Łódź], I–V (1986–1989).

confrontation without critical depth.<sup>61</sup> As a memento of Soviet imperialism, the *Baltic* countries remained a still unknown dark spot on the map of Europe. Their local literature could not even pass the internal Soviet borders, and their representatives were excluded even from Socialist internationalism.<sup>62</sup> As to *Albania*, even textbooks remained unknown. Providing elementary information, its Tirana-based journal *Drejtësia Popullore* [People's law] had a table of contents in French, and library research could find some references—especially to crime-prevention and vendetta—in Kosovo's Serbian language literature.

### *An Own Trend*

Despite any emphatically independent presence,<sup>63</sup> the past still haunts us. Until the Cold War's complete end, each step forward, independent of whether or not it was promising in itself, remained Janus-faced and ambivalent. For instance, the co-operative acknowledgement of the intellectual output of the region at once became devalued by the *Realpolitik* of a world split into two, which perceived the Soviet Union as the sole representative of Socialism for the Western academic community, thereby also discouraging exactly the creative and reformatory innovations, achieved at the price of great risk, in the Socialist bloc's inner and outer peripheries, to such a degree that the issue had to be raised whether or not any respect could be achieved for immanent scholarly values in a world so politically torn apart. Or, otherwise formulated, whether or not this is the over-politicised and simplifying way of thinking, characteristic of great powers, that may have also captivated the free world's scholarship to such a degree that this could deform it into one of the last buttresses of the world's bipolar division by dedicating all their interest to the Soviets, leaving unnoticed achievements in Central Europe, a bloc of some one hundred million inhabitants.<sup>64</sup>

<sup>61</sup> For example Radev, Ya.–Tumanov, V. (ed.): *Problemy gosudarstva i prava v sovremennoi ideologicheskoi bor'be* [Problems relating to the state and law in the contemporary ideological fight]. Sofia–Moscow, 1983.

<sup>62</sup> The richness of the problems covered by their literature during the Soviet period became cognisable only afterwards, insofar as this can be judged at all from the few hundred multiplied specimens of their publications in the Russian language that could, after independence was regained, become available in Hungarian libraries (due to my initiative and thanks to the libraries of the University of Tartu and the Latvian Academy of Sciences in Riga). For, during the Soviet era, neither the world's richest specialised collection at the Leyden Institute of Socialist Law nor the legendarily richest-in-its-Baltic-profile private library of Professor Dietrich A. Loeber [Kiel] had had reliably full documentation.

<sup>63</sup> For example Ziemiński, Z. (ed.): *Polish Contributions to the Theory and Philosophy of Law*. Poznan Studies in the Philosophy of Sciences and the Humanities 12, Amsterdam, 1987.

<sup>64</sup> Until my own compilation [note 5], there was scarcely any monograph or anthology processing Western and so-called Eastern Marxism in one corpus. As against the previous decades' clearly ideological attitudes in referring to the underlying authoritarian and totalitarian political scheme—mostly as “Communist” or “Soviet” in, e.g. Bodenheimer, E.: *The Impasse of Soviet Legal Philosophy*. *Cornell Law Quarterly*, 38 (1952) 2, 51–72.; Kelsen, H.: *The Communist Theory of Law*. New York–London, 1955; Lapenna: *State and Law*, and Stoyanovitch: *La philosophie du droit en U.R.S.S.* [both in note 8]; Pfaff, D.: *Die Entwicklung der sowjetischen Rechtslehre*. *Abhandlungen der Bundesinstitute für ostwissenschaftliche und internationale Studien* XIX, Köln, 1968; Cerroni, U.: *Il pensiero giuridico Sovietico*. Roma, 1969–, the designations were to develop into “Marxist” and “Socialist” or, rarely, “Marxist–Leninist”, as in, e.g. Reich, N. (ed.): *Marxistische und sozialistische*

*In Progression*

The stressed discontinuity of the pre-Socialist past—and, in the Soviet Union, the total neglect of the academic accomplishments (in St. Petersburg, Kazan, Odessa, etc.) of the whole development of legal-theoretical thought in the Tsarist era prior to the Bolshevik revolution—with the official negation of any connection (in terms of the history of ideas) to Western thought<sup>65</sup> seemed finally to come to an end. Following more than half a century of almost complete disinterest in both Roman law and the Western history of political and legal ideas, eventually the memory of the former civilisational achievements—with an aspiration to revive them—reappeared along with a sense of the continuity and scholarly cultivated preservation of the past across various historical eras.<sup>66</sup> This had

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*Rechtstheorie*. Studien und Texte zur Theorie und Methodologie des Rechts 12, Frankfurt am Main, 1972; Kühne, D.: *Der marxistisch-sozialistische Rechtsbegriff: Eine kritische Stellungnahme*. Münsterische Beiträge zur Rechtswissenschaft 11, Berlin-München, 1985; Mazurek, P.: Marxistische und sozialistische Rechtstheorie. In: Kaufmann, A.-Hassemer, W. (ed.): *Einführung in die Rechtsphilosophie und Rechtstheorie der Gegenwart*. 4th ed. Uni-Taschenbücher 593, Heidelberg, 1985. 327–343; Troller, A.: *Das Rechtsdenken aus bürgerlicher und marxistisch-leninistischer Perspektive*. Zürich, 1986. and Petev, V.: *Kritik der marxistisch-sozialistische Rechts- und Staatsphilosophie*. Münsterische Beiträge zur Rechtswissenschaft 37, Berlin, 1989.

<sup>65</sup> Just as recalling how in the history of commerce in books, the printing of pamphlets as part of the market of pulp literature increased the spread of French Enlightenment ideas and disseminated new insights, it is useful to remember that academic publishing during the Tsarist era was limited to a few hundred copies; the basic classics of Western thought were neither translated nor made available in Soviet times; and even the elementary foundations of Western philosophy were exclusively taught in specific faculties. As a result, there emerged an acutely differing civilisation in the Soviet Union, distinct from the Western one, both in terms of the underlying mentality and of the intellectual framework. The only sources for comprehension of the Western world were afforded by quite sporadic and disdainful references in the usual textbooks on historical materialism. Even in Hungary, very few of those privileged had the possibility to arrive, on the field of the history of politico-legal ideas, from the rudimentary rejection—by, e.g. Antalffy, Gy.–Papp, I.–Popovics, B.: *Lectures on the History of Political and Legal Thinking*. *Acta Universitatis Szegediensis: Acta juridica et politica*, Szeged, 20 (1973) 6—to, by Seidler, G. L.: *Myśl polityczna starożytności* [The political thought of the Antiquity]. Kraków, 1961, *Myśl polityczna średniowiecza* [The political thought of the Middle Ages]. Kraków, 1961, and *Doktryny prawne imperializmu* [The legal doctrines of imperialism]. Kraków, 1957, and Lublin, 1979, attempting at a genuine (though Marxising) description, sophisticated enough to be withdrawn from circulation and reprinting programs rather soon.

<sup>66</sup> Vladik Sumbatovic Nersesians of the Institute of State and Law of the Soviet Academy of Sciences was literally the only one in Soviet Russia for decades to cultivate jurisprudence based on the history of ideas, whether Western or Eastern. This took place under conditions in which Roman law was practically unknown and the pre-Bolshevik centuries of the history of the Russian state and law were referred to only occasionally, in philological studies carried out on the history of institutions or, let's say, of typography. Cf., e.g. Nersesiantz, V. S.: *Istoriko-pravovie issledovanixa: Problemi i perspektivi* [Legal-historical inquiry: Problems and perspectives]. Moscow, 1982, *Pravo i zakon: Iz istorii pravovykh uchenii* [Right and law: From the history of legal teachings]. Moscow, 1983, and *Political Thought of Ancient Greece*. Moscow, 1986.

already begun through analysis of its issues within their own environment<sup>67</sup> as well as through publication of compendia synthesising the merits of past research that were worthy of continuation.<sup>68</sup>

## Transition

Obviously, the more the motive forces of the one-time Communist political and ideological unification, with its dictatorial superstructure's institutional fora of control, became shaken, the more diverse the conditions specific to the countries involved became. In the diversity thus emerging, the desiderata listed below have turned into a common prerequisite (although far from being fulfilled everywhere in a balanced manner):

- in order to substantiate a brand-new start, one is expected to exert an ideological and political criticism of the Communism's anti-human tendencies,<sup>69</sup> while outlining the potentialities offered by the Rule of Law;<sup>70</sup>

- in order that re-continuation of the broken past can be considered at all, it is necessary to survey the historical preliminaries to recent ideas<sup>71</sup> and institutions; in the context of the above;

<sup>67</sup> For example *Wissenschaftliche Zeitschrift der Friedrich-Schiller-Universität Jena*, 28 (1979). Special issue on Wert und Recht.; Ceterchi, I.–Popescu, S.: Droit et valeur. *Revue roumaine des Sciences sociales: Série de Sciences juridiques*, 28 (1984) 1. 13–20.; Nenovski, N. K.: *Pravo i tsennost' i* [Law and values]. Sofia, 1983. and Moscow, 1987.

<sup>68</sup> For example Knapp, V.: *Teorie práva* [Theory of law]. Právnícké učebnice, Praha, 1995.

<sup>69</sup> Above all, Nersesiants, V. S.: *Nash put' k pravu: ot sotsializma k tsivilizmu* [Our road to law: From socialism to civilism]. Moscow, 1992.

<sup>70</sup> For example Mollnau, K. A.: Sozialistischer Rechtsstaat (Versuch einer Charakterisierung). *Neue Justiz*, 43 (1989) 10, 393–397; Omel'tshenko, O. A.: *Ideya pravovogo gosudarstva: Istoki, perspektivy, tupiki* [The idea of the legal state: Sources, perspectives, topics]. Moscow, 1994; Nersesiants, V. S. (ed.): *Preemstvennost' i novizma v gosudarstvenno-pravovom razvitii Rossii* [Standing and novel elements in the development of state and law in Russia]. *Novoe v iuridicheskoi nauke i praktike*, Moscow, 1996.

<sup>71</sup> For example in Russia proper, Kuznetsov, E. A.: *Filosofiya prava v Rossii* [Legal philosophy in Russia]. Moscow, 1989; Al'bov, A. P. et al. (ed.): *Russkaya filosofiya prava: Filosofiya very i npravstvennosti: Antologiya* [Russian philosophy of law: An anthology of the philosophy of justice and morality]. Sankt-Peterburg, 1997; as well as Azarkin, N. M.: *Istoriya yuridicheskoi mysli Rossii: Kurs lektsii* [Lectures on the history of legal thought in Russia]. Moscow, 1999, and, as monographised, Il'in, I. A.: *Filosofiya prava: Npravstvennaya filosofiya* [Philosophy of law: Moral philosophy]. Moscow, 1993; in Estonia, Gryazin, I. N. (ed.): *Istoricheskoe v teorii prava* [Historicity in legal theory]. *Studia Iuridica (Historia et theoria)* 3, Tartu, 1989, and Gryazin, I. N.–Järveldaid, P. M. (ed.): *Vneteoreticheskie formy otrazheniya prava* [Theoretical forms of legal mirroring]. *Studia Iuridica (Historia et theoria)* 5, Tartu, 1990, with a commemorative elaboration on Ilmar Tammelo (128 et seq.) and Vasily Ivanovitch Sinaisky (136 et seq.), as well as Järveldaid, P. (ed.): *Ilmar Tammelo: Varased tööd (1939–1943)*. Eesti õigusteaduse allikad 1, Hamburg, 1993; in Bulgaria, reimpression of Ganev, V.: *Kurs po obshchta teoriia na pravoto: Uvod metodologii na pravoto* [Course-book on general theory of law: Methodological introduction to law]. 5th ed. Sofia, 1995; and, in Romania, Berceanu, B. B.: *Universul juristului Mircea Djuvara* [Mircea Djuvara's legal universe]. București, 1995.



– as a part of raising the issue of “what is to remain from *Marxism?*”<sup>72</sup> and, under the circumstances of an allegedly “constitutional” (in fact, shamelessly “velvet”) recommencement<sup>73</sup> (when prominent figures withdrew in discreet silence without facing their personal involvement<sup>74</sup>), some extended research ought to be carried out on the lessons to be drawn,<sup>75</sup> maybe in parallel with studies on National Socialism and other forms of 20<sup>th</sup> century totalitarianism.<sup>76</sup>

<sup>72</sup> For example with a dramatic *cesura* drawn by the transition, Klenner, H.: Was bleibt von der marxistischen Rechtsphilosophie? In: *15th World Congress on Philosophy of Law and Social Philosophy: Plenary Lectures*. Göttingen, 1991. 113–131. Reprint: *Neue Justiz*, 45 (1991) 442–445; Lotze, L.: Wege und Irrwege der marxistischen Rechtstheorie. *Archiv für Rechts- und Sozialphilosophie*, 78 (1992), 396–406, and Varga, Cs.: Introduction. In: Varga, Cs. (ed.): *Marxian Legal Theory*. [note 5.] xiii–xviii. Cf. also, by Klenner, H. *Recht und Unrecht*. Bibliothek dialektischer Grundbegriffe 12, Bielefeld, 2004. and *Historisierende Rechtsphilosophie: Essays*. Haufe-Schriftenreihe zur rechtswissenschaftlichen Grundlagenforschung 21, Freiburg in Breslau, 2009. It is to be noted that from the German Democratic Republic, only Hermann Klenner (Berlin) and Gerhard Haney (Jena) had the intellectual integrity of continuing their scholarly undertakeable work. The afterlife of the rest is mostly unknown.

<sup>73</sup> Cf., by Varga, Cs.: *Transition to Rule of Law: On the Democratic Transformation in Hungary*. Philosophiae Iuris, Budapest, 1995. <<http://drcsabavarga.wordpress.com/2010/10/24/transition-to-rule-of-law-on-the-democratic-transformation-in-hungary-1995/>>. and *Transition? To Rule of Law? Constitutionalism and Transitional Justice Challenged in Central and Eastern Europe*. PoLiSz Series 7, Pomáz, 2008. <<http://drcsabavarga.wordpress.com/2010/10/25/varga-transition-to-rule-of-law---constitutionalism-and-transitional-justice-challenged-in-central-and-eastern-europe-2008/>>.

<sup>74</sup> From the German Democratic Republic, only Hermann Klenner (Berlin) and Gerhard Haney (Jena) had the intellectual integrity of continuing their scholarly undertakeable work. The afterlife of the rest is mostly unknown.

<sup>75</sup> For example by Tille, A. A.: *Pravo absurda: Sotsialisticheskoe feodal'noe pravo* [The law of the absurd: The socialist feudal law]. Moscow, 1992 and *Sovetskii sotsialititsheskii feodalizm: 1917–1990* [Soviet socialist feudalism]. 2nd ed. Moscow, 2005.

<sup>76</sup> During the last of the Austrian–Hungarian IVR Symposia we organised with Ota Weinberger at Graz/Leibnitz, I discussed at length with Hubert Rottleitner of the Free University of Berlin the whys and hows of erecting an institute specialised in carrying out such parallel investigations. The double standard in rejecting red/brown dictatorships has blocked, however, any progress in this direction.