

## THE PHILOSOPHY OF TEACHING LEGAL PHILOSOPHY IN HUNGARY

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### I. The State of Teaching Legal Philosophy

Legal philosophy as an educational subject is either simply in decay or just getting questioned as to its genuine and sufficient *raison d'être* in several quarters of continental Europe nowadays, the fact notwithstanding that Europe now—in the process of internal unification as coupled with the formative progress of worldwide globalisation—has to face repeatedly new and shattering challenges that call for deepened self-reflection.

For legal philosophising is almost dead since the professorial rivalry has broken out after the early death of Michel Villey and his most successful compromising efforts in the after-war France; is restricted to serve as mere propedeutics in Austria and forced to withdraw almost systematically in Germany; is exhausted by internal faculty fights for sheer survival in the Nordic countries—so (and in a rather paradoxical manner) it can feature up solid and reliable marks of flourishing exclusively in the peripheries of Europe taken in a geographical sense: Italy, Spain, and what is called Central Europe, the latter being exemplified particularly by Hungary and Poland, where it is rewarded to be seen as the genuine subject suitable to initiate students into the very depth—why and how—of thinking in and on law. For, following this sketchy survey, Belgium together with Holland and the Baltic with Portugal—the genuine edges of Europe proper—are among those on midway to successfully withstand the push by subjects of positive law, for replacing a general theoretical perspective with the potential that the latter disciplines can offer in problematising and problem solving on their respective fields.

Moreover, on the European continent and *en guise* of a leeway, the struggle for survival often results in amalgamation of legal philosophy with (as reduced to or justified through) circles of topics alien to or just neighbouring the very subject, standing for the timely mainstream of public debates—on human rights, or biogenetics, or legal informatics.

In the common law world, jurisprudence is taught as it has been during the last half of the century, that is, in the narrow sense of the subject, except to those seats of

learning in the United States of America and especially the United Kingdom, where Oxford, Cambridge, Edinburgh, and some institutions in London excel in the weigh and depth devoted to its diverse aspects. Substitution of legal philosophising to mainstream currents of publicly shared interest in so-called feminist jurisprudence, law and society, law and economics, as well as law and literature is very much present in English-speaking countries, too.

Latin America, Mexico, Japan and Korea, on the one hand, and Québec, Israel and Turkey, on the other, seem to continue the practice once taken from the old continental pattern of philosophy/theory of law, cultivated to an adequate depth within the curricular structuring of studies, mostly with emphasis added to juristic methodology and the search for paths granting it more universal a framework under the aegis of comparative jurisprudence.

Having in view the fragility of our present epoch, it is high time to overview where and for what the teaching of legal philosophy stands nowadays, and which kinds of approaches, methods, and alternatives to usual *ex cathedra* performances and all-inclusive textbooks it uses. Considering also the challenges by the European developments of progressing unification and worldwide trends of globalisation, it is worth surveying how much the teaching material itself is prepared to reckon with them, in forms of either the subject's specific concerns or those challenges themselves being mirrored in the background literature at least.

## II. The Philosophy of Teaching Legal Philosophy

In an educational context, legal philosophy is conceived either as an independent *academic subject* with an exclusively own and peculiar subject matter covering a special field of knowledge that needs to be learned and mastered by future professionals, or as perhaps one of the most adequate media in order to teach the artful *skill* of how to think reasonably in a conventionalised manner in law and also in a scholarly way on law. In the first case, legal philosophy is a domain of *positive knowledge* that may need the lexical learning of data for that the whole field can finally be acquired. In the second case, legal philosophy is only a temporary and instrumental *survey and exercise* of those most eminent approaches to and standingly canonised paths of thought in law, through the intellectual encounter of which the student may prepare to get in—by familiarising him/herself with—the professional tradition itself. Or, the first alternative stops at the outer *appropriation* of some external body of knowledge while the second one aims at an *inner initiation* to a profession by making disciples prepared to its active mastery.

Knowing that there is no clear-cut borderline between the two understandings as they are rather methodological types of how to transform the preoccupation of a hundred of past and present scholarly generations into a curricular subject in a manner suitable to be taught for adepts of a size of and with methods available in class-rooms, I have ever opted for the second choice. On its turn, any choice has consequences in how the teaching subject will be structured, summed up in books and lectured, as well as how it has to be re-reflected in so-called repetitions and presented while examinations.

For a *positive body of knowledge to be acquired* needs exhaustive treatment in textbooks, with as many representatives and currents (schools and directions) overviewed (defined and described) as they are remembered by the academic community, as having contributed to theoretical legal thought with remarkable achievements. I guess this is the organisation of learning which classes itself—getting arranged systematically as spanning from the diversity of naming the discipline itself, via the history of relevant ideas, to systematic parts (such as law-making, law-application, legal relations, legal consciousness, and so on)—amongst the firsts to be forgotten about once the students will have taken exams from them, in order to never crop up again in their mind in any form and under any conditions for the rest of their professional life. For it defines itself from the beginning as part of a learning for its own sake in a *l'art pour l'art* manner, without the methodological force of catalysing and channelling towards solution (or, at least, conceptualisation) those dilemmas the students are to encounter at any future time and, more importantly indeed, without the potential of a genuine enigma raised and maybe also formulated when practical challenges with no adequate frameworks of contextualisation are to be met at whatever time.

As opposed to the above, *initiation to thinking and arguing in and on law* is to my conviction an exercise once started and never to end. Accordingly, with time and age progressing, it can also mature without becoming obsolete or dated in any of its components. For the only chance it can have is to superimpose layers and levels of understanding later to come upon it, by synthesising them within (as integrated into) it at increasingly higher (meta-) levels. Otherwise speaking, this perspective of teaching legal philosophy promises a gapless process of self-enrichening. In accordance with its underlying basic ethos, legal philosophising understood this way is a devotion for life, that is, a call for self-dedication to problem solving through contemplation to be restarted repeatedly. Accordingly, the most education in legal philosophy can endeavour at all is exclusively highlighting crucial points, dramatic examples, as well as settings and crossings, insights and the latter's limitation by scholarly criticism, through and by the exemplification of which the characteristic dilemmas of legal thinking can be shown. That is, everything is exemplary in it, standing for representing acute problems once encountered. And considering the fact that most of its components revolves around the imagination of law and the implementation into practice of such an imagination (relating all them to further mental representations activated through thought processes), all its domains are so rounded and thoroughly interrelated that any contribution to and exemplification of it may in fact shape, by either corroborating or just re-questioning, all or part of the rest. This is why for the curriculum<sup>1</sup> in theoretical

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<sup>1</sup> For earlier relevant publications by the author, cf. *A felsőfokú jogi oktatás főbb mai rendszerei*. [The main systems of legal education today] Budapest: Magyar Tudományos Akadémia Állam- és Jogtudományi Intézete, 1967, 210.; *A jogi képzés formái a Szovjetunióban*. [Forms of legal education in the Soviet Union] *Állam- és Jogtudomány* X (1967) 4, 538–552.; *A jogelméleti oktatás helye a jogászképzés főbb rendszereiben*. [The place of legal theory in the main systems of legal education] *Állam- és Jogtudomány* XI (1968) 3, 484–495.; *A felsőfokú jogi képzés csehszlovákiai rendszeréről*. [On higher legal education in Czechoslovakia] *Állam- és Jogtudomány* XII (1969) 3, 531–539.; *Egy sajátos diszciplína felbukkanása*:

legal subjects<sup>2</sup> I devised when the Faculty of Law of the Catholic University of Hungary<sup>3</sup> was founded fourteen years ago, the emphasis was always put on readings rich in raising queries and formulating dilemmas rather than on sheer—even if vast—compendia summarising factual data, compounded of sheer names, schools and notional nets, as if taken from some perfected taxonomy. This is why instead of any ideal of totality or all-covering, only representativeness has ever been accentuated, in the sense that we had better to see a problem through one glass (as if we ourselves were from the outset in a tirelessly resumed try at fighting it), as compared to having and memorising a mere list of those who have encountered and tackled the problem at any (past or present) time. And finally, this is why the opportunities for problem solving are continuously enlarged by both texts selected for reading and class lecturing (with repetitions) within sizeable smaller groups, being aware of the fact that a number of well-selected examples may gradually grow into a lawyerly world concept as rounded and perfected, while a sheer catalogue of names and concepts enlisted may not. Otherwise expressed, the gist of teaching how to think in and on law is to share the very sensation of actually doing it in person, by preparing the students experiencing it themselves and by provoking them to sense a difference made in their relevant skills—sensitivities and abilities—before and after.

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Az európai jog oktatásának néhány kérdése. [The emergence of a specific discipline: What to teach in European law and how?] *Iskolakultúra* [Pedagógusok szakmai-tudományos folyóirata] XVIII (2008), 11–12, 83–88., as well as Elsőként oktatnak természetjogot Magyarországon... Kiválósági hely lett a katolikus egyetem jogbölcseleti intézete. [Natural law is taught the first time in Hungary... The Institute for Legal Philosophy of the Catholic University has been granted the title of »Place of Excellence«] [interview by -et-] *Új Ember* [Catholic weekly] LXII (July 30, 2006) 31 [No. 3024], 3, and <<http://ujember.katolikus.hu/Archivum/2006.07.30/0305.html>> and Place of Excellence: »Kiválósági hely« lett a Pázmány Péter Katolikus Egyetem Jog- és Államtudományi Karának Jogbölcseleti Tanszéke' [The Institute for Legal Philosophy of the Pázmány Péter Catholic University has been granted the title of »Place of Excellence«] [interview by Zsolt Pál Dorogi] *Ítélet* [Judgement, by the Faculty of Law of the Pázmány Péter Catholic University] 2006/október <[www.swys.hu/ITELET\\_06\\_10.pdf](http://www.swys.hu/ITELET_06_10.pdf)>, 6–7.

<sup>2</sup> For a literary background in recent overviews, see, e.g., as the proceedings of an international colloque held in Paris in 1994, *L'enseignement de la philosophie du droit* dir. MICHEL TROPER-FRANÇOISE MICHAUT, Bruxelles: Bruylant, 1997, 170. [La pensée juridique] as well as, from the English–American literature, from the *Journal of Legal Education* 4 (1951–52): ALBERT A. EHRENZWEIG: The Teaching of Jurisprudence in the United States., and R. H. GRAVESON: The Teaching of Jurisprudence in England and Wales., as well as WOLFGANG FRIEDMANN: Vitalizing the Teaching of Jurisprudence., 117 et seq. and 127 et seq., as well as 392 et seq., respectively; DENIS BROWNE: Reflections on the Teaching of Jurisprudence. *Journal of the Society of Public Teachers of Law* 2 (1952–54), 79 et seq.; from the *Journal of Legal Education* 15 (1962–63): THOMAS A. COWAN: Notes on the Teaching of Jurisprudence., and WALTER PROBERT: Some Reflections on the Teaching of Jurisprudence. 1 et seq. and 255 et seq., respectively; R. B. SEIDMAN: On Teaching Jurisprudence in Africa. *Journal of the Society of Public Teachers of Law* 9 (1966–67), 145 et seq.; and lastly, R. B. M. COTTERRELL–J. C. WOODLIFFE: The Teaching of Jurisprudence in British Universities. *Journal of the Society of Public Teachers of Law* 13 (1974–75), 73 et seq. and A. HILAIRE BARNETT–DIANNA M. YACH: The Teaching of Jurisprudence and Legal Theory in British Universities and Polytechnics. *Legal Studies* 6 (1985), 151 et seq.

<sup>3</sup> For an earlier experience of the same tradition, see, e.g., MIRIAM T. ROONEY: Jurisprudence – A Teaching Problem. *Catholic Lawyer* 4 (1958), 172 et seq.

If teaching legal philosophy is not reduced to a textbook intended to be exhaustively memorised but rather aims at helping students in their own approach to the enigma of the whys and hows of the law's very existence, this necessitates class lectures as *ex cathedra* quasi theatrical performances<sup>4</sup> to be complemented with a series of open-ending attempts at genuine problem-solving (or, I would rather say instead: problematising) through so called exercises and repetitions, in the course of which students themselves are expected to discuss readings by excelling from amongst them preferably in the way of how to raise questions and formulate tentative answers themselves.

### III. Programme at the Catholic University of Hungary

In the following, the programme of teaching theoretical subjects in law in Hungary will be shown as exemplified by the university<sup>5</sup> that has went the farthest in the country to substantiate its pioneering aims through a genuinely demanding (and repeatedly reconsidered<sup>6</sup>) reform program. Graduate and postgraduate courses—also offered in English from the year 2008 on—will be surveyed in the subsequent paragraphs, rather sketchily in cases of theoretical subjects in law in general but mostly in details in so far as legal philosophy proper and its neighbouring domains are concerned in particular.

#### 1. Graduate Studies

In the model program,<sup>7</sup> *Introduction to law and notions in law* (semester 1) is followed by *Theory of the state I–II* (semesters 2–3), then concluded by *Theory of law I–II* (semesters 5–6), all mandatory, with two hours of lecture per week in each case. Both

<sup>4</sup> In lectures, I am highlighting only turning points of problem solving, showing mostly dilemmas and wide intellectual (historical and cultural) contexts within which a reasonable answer can be formulated.

<sup>5</sup> In Hungary, faculties of law have some discretion in how to fill the commonly agreed and governmentally approved curricular framework in legal education. The most demanding curriculum in teaching philosophy of law from among the nine working faculties in Hungary has to this very day been developed by the Institute for Legal Philosophy within the Catholic University of Hungary, which I happened to design by reshaping it repeatedly for fourteen years from now, since the Faculty of Law of the Pázmány Péter Catholic University was founded. The other faculties—in Budapest (Eötvös Loránd University), Szeged, Pécs, Miskolc, Budapest (Károli Gáspár Reformed Church University), Debrecen, Győr (in chronological sequence of their law programme established)—have their own programme, varying in subjects, timing, topics and teaching materials, as well as in underlying philosophies as well. (It is to be noted that the law departments of both the Central European University and the Andrásffy Gyula German Speaking University—both in Budapest—offer exclusively specialisation programs for post graduation.) For their characterisation from one single aspect, see JÓZSEF SZABADFALVI: Teaching the History of Legal Philosophical Thinking in Hungarian Legal Education. *Rechtstheorie* XXXVII (2006) 1, 109–120.

<sup>6</sup> For a preceding stage, see, by the author, 'The Teaching of Legal Philosophy in Hungary' *[Internazionale]V[ereinigung für]R[echts- und Sozialphilosophie] Newsletter* (February–July 2004), No. 33 <<http://www.ivr2003.net/bologna/newsletters/33.pdf>>, 23–24.

<sup>7</sup> Within certain limitations, credits allow individual study plans. The Catholic University has the average total number of 4 000 (decreasing up to 2500) graduate students in law, whose studies are programmed as classed within five years. Semesters span from September to January and from February to June.

Theory of the State and Theory of Law are complemented to by repetitions, one hour per week,<sup>8</sup> and all are ended by oral colloquies.

a) *Basic Subjects*

As to *Theory of law I.*, it introduces to the fundamentals of law and legal thinking, the basic notions of our approach to and understanding of law, covering the *paradigms of legal thought* and a number of complementing *systematic issues*, in addition to some selected *readings*, mostly highlighting aspects of the main topics in the light of recent international literature.

Accordingly, it deals, firstly, within the *paradigms of legal thought*, with the *Methodological directions in thinking* (through the example of legal development [by the classical Greek antiquity and especially *dikaion* justice, the Roman praetorian law and Justinian's codification, the Enlightened absolutism and the French *Code civil*], of geometry [of Euclid, as challenged by Bolyai/Lobachevsky, and ending in Einstein's revolution], as well as of the potentialities—in human thinking making use of texts—of Autonomy with fertilising ambiguity [exemplified by the New Testament's parabolic argumentation, Cicero's rhetorical testimony, Augustine's confessional style, the Talmudic lesson of tradition accumulated, Orthodox Christianity, and Modern "irrationalism", all leading to problematise Beyond conceptual strait-jackets and to the correspondence between Patterns of thought and patterns of law, exemplified equally by autochthonous anthropological and Far Eastern (Chinese and Japanese) patterns, as well as by some early tendencies of the Calvinist Reformation] and of Heteronomy with axiomatic intents [Thomas Aquinas, Grotius and Leibniz]; with an overview on the Dilemma of the evolution of thinking; the *Science-theoretical questions raised by the philosophy of history*; the *Paradigms of thinking* (the Paradigm of paradigms [Conventionality, Cultural dependency and the Nature of paradigms], Basic notions [Need for a change of paradigms, False alternative of objectivism and subjectivism {with an interim response afforded by Cognitive sciences}] in the understanding of Facts [what are facts?, with the overall Connection of the infiniteness of the world and *taleshēs*, and J. Israel on the dialectics of language and practical human existence] and Notions [what are notions?, with a glance at Watson on the motives of legal development], annexed by the Dilemma of what is to mean to have norms at all); the *Dilemmas of meaning* (with its theories called Lexical [including the Debate between Szabó and Wróblewski], Contextual [with the Dilemma of easy case and hard case, as well as the notion of Normality at Foucault and Szász included], Hermeneutical [with the Dilemma of the *Missionaries in the Boat* and the Enigma of having texts amidst tradition and change in law], Open textured, and Deconstructive), followed by the Social construction of meaning (Speech-acts and Social institutionalisation) and the

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<sup>8</sup> Repetitions with mandatory participation are held in small groups, preferably of 15 students in the maximum. They themselves are credited, and active presence on with prior preparation to them and a small memorandum on one of their discussed topics is a *sine qua non* precondition of any exam to pass in the relevant parts of Theory of the State and Theory of Law. A number of students are deeply motivated to excel in them, as those with the best achievements may be honoured with the best or next-to-best note, in substitution to an ordinary colloquy note as well.

Systemic response given by autopoiesis; and finally, the *Paradigms of legal thinking* with the Nature of law (Taken as a process, Having a composite multifactorial structure, and Continuously building from acts) and the Nature of legal thinking itself.

The main topic is extended to, secondly and as complemented by, *systematic issues of Approach to and understanding of law* (whether or not there is “Outside” and “inside” of the law; Rule, fact and principle in the notion of law; the Distinctive features of law), the *Construction of law* (Ambivalence of rationalism, Limits of a systemic approach to/in law, the Want of logical consequence in the normative sphere, Utopias of rationality in legal development, Validity and its senses in law, Graduality in law), the *Law’s functioning* (Interconnection between law-making and law-application, and the Social conditionality of reasoning in law), and the *Effects and social limits of law* (Law serving as programme and as a model).

The teaching material relevant to the above is also made available in English, for the first part, in form of a textbook—Csaba Varga *Lectures on the Paradigms of Legal Thinking* (Budapest: Akadémiai Kiadó, 1999.) vii + 279. [Philosophiae Iuris], 9–217.—, and, for the second part, in a series of articles—Csaba Varga *Law and Philosophy Selected Papers in Legal Theory* (Budapest: ELTE “Comparative Legal Cultures” Project, 1994.) xi + 530. [Philosophiae Iuris]—, from which few selected titles<sup>9</sup> are to be studied in addition to some further papers.<sup>10</sup>

As to the third part, the *readings* do include Michel Villey’s ‘Histoire de la logique juridique’ [1967],<sup>11</sup> Chaïm Perelman’s ‘Désaccord et rationalité des décisions’ [1966],<sup>12</sup> George Lakoff’s ‘Cognitive Science and the Law’ [1989],<sup>13</sup> H. L. A. Hart’s *The Concept of Law* [1994],<sup>14</sup> Stanley B. Fish’s ‘Fish v Fiss’ [1989]<sup>15</sup> and Werner Krawietz’s ‘Die Lehre vom Stufenbau des Rechts – eine säkularisierte politische Theologie?’ [1984],<sup>16</sup> all accessible in Hungarian translation, too.<sup>17</sup>

<sup>9</sup> ‘Domaine »externe« et domaine »interne« en droit’, 99–117.; ‘Law and its Approach as a System’, §§4–6: 243–255.; ‘The Nature of the Judicial Process’, §2.3: 308–314.; ‘On the Socially Determined Nature of Legal Reasoning’, §1: 317–332. and §3: 337–362.; ‘Is Law a System of Enactments?’, 391–398. [also in his *Lectures on the Paradigms...*, Appendix II: 231–237.]; ‘Anthropological Jurisprudence?’, §§1–2: 438–450.

<sup>10</sup> By the author, ‘Validity’ *Acta Juridica Hungarica* 41 (2000) 3–4, 155–166. and <<http://www.ingentaconnect.com/content/klu/ajuh/2000/00000041/F0020003/00383612>> and <<http://springer.om.hu/content/mk0r8mu315574066/fulltext.pdf>>.

<sup>11</sup> In *Annales de la Faculté de Droit et des Sciences économiques de Toulouse XV* (1967) 1, 65–82. and ‘Questions de logique juridique dans l’histoire de la philosophie du droit’ in *Études de logique juridique II: Droit et logique / Les lacunes en droit*, publ. Ch. Perelman, Bruxelles: Bruylant, 1967, 3–22. [Travaux du Centre National de Recherches de Logique].

<sup>12</sup> In *Archivio di Filosofia* ed. Enrico Castelli, Roma: Istituto di Studi Filosofici, 1966, 87–93.

<sup>13</sup> [multipl.] [Berkeley: University of California, 1989] 49. [Yale Law School Legal Theory workshop on April 27, 1989].

<sup>14</sup> (Oxford: Clarendon Press, 1961), ch. VII §1: 120–132. [Clarendon Law Series].

<sup>15</sup> In his *Doing what Comes Naturally*. Change and the Rhetoric of Theory in Literary and Legal Studies. Durham–London: Duke University Press, 1989, 120–140.

<sup>16</sup> In *Rechtssystem und gesellschaftliche Basis bei Hans Kelsen*. hrsg. WERNER KRAWIETZ–HELMUT SCHELSKY, Berlin: Duncker and Humblot, 1984, 255–271 [Rechtstheorie, Beiheft 5].

<sup>17</sup> The first five above titles in *A jogi gondolkodás paradigmái*. Szövegek. [Paradigms of legal thought: Texts] ed. CSABA VARGA, Budapest: [AkaPrint], 1996, [reprint Budapest: Szent István Társulat, 2003])

As to *Theory of law II*, it covers the problematisation characteristic of some selected *main recent trends and directions of legal philosophising* and a number of complementing *systematic issues*, in addition to quite a few selected *readings*, partly exemplifying and partly adding to the central topic.

Accordingly, it does include, firstly, as a *contemporary overview of how to think on and in law*, after an introduction (to Philosophico-methodological approaches and One- and multi-factored explanations) is made, Classical positivism (Bentham and Austin), Marxism (its Understanding of law in general and Russian-Soviet legal theorising, with Selected problems of Socialisms' Marxism in particular), Vienna school (Kelsen's *Hauptprobleme der Staatsrechtslehre* and *Grundriß einer allgemeinen Theorie des Staates* and Kelsen's *Pure Theory of Law* and its late revisions), Scandinavian realism (Hägerström and Lundstedt and Olivecrona and Ross), Existentialism (legal hermeneutics, Maihofer, and "the nature of things"), Modern analytics (Hart and Dworkin), Modern natural law (Radbruch) and Natural law today (Fuller),<sup>18</sup> as well as, secondly, as complementing *systematic issues*, the Ontological foundation of law, Ex post facto legislation, Law and values, Law and morality, the Internal morality of law, Codification and its limits, Rationality and codification of law, Legal technique, Presumption, Fiction (with Understanding and Kinds of fictions), Kelsen's doctrine on law-application (Theory of gradation, constitutivity and procedurality, as well as Self-transcendence and the issue of "who watches the watchmen?"), and the Types of openly creative law-application.<sup>19</sup>

As to its third part, the *readings* are extended to a cross-selection of international literature in both more details of and complementation to the above topic—including Rudolf Jhering's *Der Kampf ums Recht* [1872],<sup>20</sup> Eugen Ehrlich's *Freie Rechtsfindung*

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iii + 71. [Bibliotheca Cathedrae Philosophiae Iuris et Rerum Politicarum Universitatis Catholicae de Petro Pázmány nominatae Budapest, III Fasciculi 2] and the last one in *Jog és filozófia*. Antológia a XX. század jogi gondolkodása köréből. [Law and philosophy: Anthology of the 20<sup>th</sup>-century legal philosophy] ed. CSABA VARGA, 3<sup>rd</sup> enl. ed. Budapest: Szent István Társulat, 2001, [reprint 2003] xii + 497. [Jogfilozófiák].

<sup>18</sup> Using CHERTES–FRIVALDSZKY–GYÖRFI–H. SZILÁGYI–VARGA: *Jogbölcselet XIX–XX. század: Előadások* [Lectures on philosophy of law: 19<sup>th</sup> to 20<sup>th</sup> centuries], ed. CSABA VARGA, Budapest: [Szent István Társulat], 2003, 186. and *Jogbölcselet. Kiegészítő előadások*. [Supplementary lectures in philosophy of law] with JÁNOS FRIVALDSZKY *Igazságosság és jogi igazságosság* [Justice in general and justice in law], TAMÁS GYÖRFI *Jog és erkölcs* [Law and morality] and ATTILA CHERTES *Jog és érték* [Law and value], Budapest: [Szent István Társulat], 2003, 51. [both in the series of Bibliotheca Cathedrae Philosophiae Iuris et Rerum Politicarum Universitatis Catholicae de Petro Pázmány nominatae].

<sup>19</sup> By CSABA VARGA, from his *Law and Philosophy*, 'Reflections on Law and on its Inner Morality', 77–89.; 'Presumption and Fiction', 169–185.; 'Legal Technique', §II: 190–197.; 'Logic of Law and Judicial Activity', §4: 277–281. and 286–288.; 'Towards the Ontological Foundation of Law', 375–390.; from his *Codification as a Socio-historical Phenomenon*. Budapest: Akadémiai Kiadó, 1991, ch. X, 273–317.; 'Ex Post Facto Legislation' in *The Philosophy of Law* An Encyclopedia, ed. CHRISTOPHER BERRY GRAY (New York–London: Garland Publishing, 1999, 274–276. [Garland Reference Library of the Humanities, 1743]; 'Law-application and its Theoretical Conception' *Archiv für Rechts- und Sozialphilosophie* LXVII (1981) 4, 462–479.; from his *Theory of the Judicial Process*. The Establishment of Facts. Budapest: Akadémiai Kiadó, 1995, Appendix II: 165–201.

<sup>20</sup> Adapted from its trans. Cézár Szilassy, (Budapest: Franklin, 1907) 107.

und freie Rechtswissenschaft [1903],<sup>21</sup> Hermann Kantorowicz' *Der Kampf um die Rechtswissenschaft* [1906],<sup>22</sup> Rudolf Stammler's *Richtiges Recht* [1908],<sup>23</sup> Hans Kelsen's 'The Pure Theory of Law and Analytical Jurisprudence' [1941] and 'Positivisme juridique et doctrine du droit naturel' [1963],<sup>24</sup> Gustav Radbruch's 'Gesetzliches Unrecht und übergesetzliches Recht' [1946],<sup>25</sup> Lon L. Fuller's 'The Case of the Speluncean Explorers' [1946],<sup>26</sup> Ronald Dworkin's 'Is Law a System of Rules?' [1967],<sup>27</sup> all made accessible in Hungarian translation<sup>28</sup> as well—, followed by papers of Csaba Varga—explaining on the *Exposé des motifs ministériel* and its role in the law's interpretation, as well as the Preambles in western constitutions and the Preamble in general (notion, contents, functions, normativity) (available also in English in his *Law and Philosophy*<sup>29</sup>), as closed by Law in transformation?<sup>30</sup>—on the specific uses of legal technique while offering a kind of perspective.

#### b) *Facultative Seminars*

Students holding any specific interest in either Theory of the State or Theory of Law may take *facultative seminars*,<sup>31</sup> in the course of which they themselves are expected to prelegate and discuss on readings relevant to the subject.

The menu offered by the Institute for Legal Philosophy includes—from the Theory of law part—Comparative Law (Introduction and Families of Law);<sup>32</sup> Law and Language; Basic Issues of Contemporary Anglo-American Legal Theorising; The "Death" of Legal Philosophising in a Post Modern Age; Hungarian Legal

<sup>21</sup> [Vortrag] (Leipzig: Hirschfeld, 1903), from his *Recht und Leben* Gesammelte Schriften zur Rechtsstatsachenforschung und zur Freirechtslehre. hrsg. MANFRED REHBINDER, Berlin: Duncker and Humblot, 1967, 252., 170–202. [Schriften des Instituts zur Rechtssoziologie und Rechtsstatsachenforschung der Freien Universität Berlin 7].

<sup>22</sup> [Gnaeus Flavius] (Heidelberg: Winter, 1906) 49.

<sup>23</sup> [Vortrag] in his *Rechtsphilosophische Grundfragen*. Vier Vorträge. Bern, 1928, 51–82.

<sup>24</sup> In *Harvard Law Review* (November 1941), from his *What is Justice? Justice, Law, and Politics in the Mirror of Science: Collected Essays*. Berkeley–Los Angeles: University of California Press, 1960, 266–287., and in *Mélanges en l'honneur du Jean Dabin*. I. Brussels: Bruylant and Paris: Sirey, 1963, 141–148., respectively.

<sup>25</sup> In *Süddeutsche Juristen-Zeitung* (August 1946), No. 5, reprinted from his *Rechtsphilosophie* 5. Aufl. (Stuttgart: Koehler, 1956), 347–357.

<sup>26</sup> In *Harvard Law Review* 62 (February 1949) 4, 616–645.

<sup>27</sup> In *University of Chicago Law Review* 35 (1967), 14 et seq., reprint in *The Philosophy of Law* ed. Ronald M. Dworkin (Oxford: Oxford University Press, 1977), 38–65 [Oxford Readings in Philosophy].

<sup>28</sup> All in *Jog és filozófia* [note 17].

<sup>29</sup> 'Die ministerielle Begründung in rechtsphilosophischer Sicht', §§II–III: 128–139. and 'The Preamble: A Question of Jurisprudence', §II: 141–167.

<sup>30</sup> 'Átalakulóban a jog?' [on Philippe Nonet and Philip Selznick *Law and Society in Transition* (1978)] *Állam- és Jogtudomány* XXIII (1980) 4, 670–680.

<sup>31</sup> This optionality works within a mandatory framework in terms of which each semester a minimum number of facultative seminars have to be taken and passed with successful exam for that the semester can be concluded.

<sup>32</sup> By Zoltán Péteri, based upon RENÉ DAVID *Les grands systèmes de droit contemporaines*. Droit comparé, 2<sup>ième</sup> éd., Paris: Dalloz, 1966, 640. [Précis Dalloz] {trans. Lajosné Nagy, Budapest: Közgazdasági és Jogi Kiadó, 1977) 494.} and KONRAD ZWEIFERT–HEIN KÖTZ: *An Introduction to Comparative Law*. trans. Tony Weir, 3<sup>rd</sup> rev. ed. Oxford: Oxford University Press, 1998, xxvi + 714.

Philosophy; Codification;<sup>33</sup> European Constitutional Philosophy; Theory of Basic Rights; Moral Dilemmas in Constitutional Adjudication;<sup>34</sup> Law and Justice in Interpersonal Relations;<sup>35</sup> Law, Arts and Narration; Law and Literature;<sup>36</sup> Legal Anthropology;<sup>37</sup> Legal Conditions of the Domestic Roma Minority;<sup>38</sup> Law and Economics.

As to curricula exemplified and surveyed in details, the series of so-called research seminars on *Transition to rule of law* is one of the recurrent optional subjects.

*Transition to rule of law I* (Basics)—with the aim at introducing to specific problems arising from transitions to democracy from dictatorship, as a case-study, and their potentialities under limiting conditions (as discussed in common upon selected students' presentation of given texts, previously studied by all participants), clarifying foundational issues in a historico-comparative manner by the example of the Hungarian transition in replacement/change of the previous regime within an international perspective—covers the topics of Statutory denial of law [*gesetzliches Unrecht*] (in the legal arrangements of both National Socialism and Socialisms), Extraordinarity of the challenge in transition after Soviet-type Socialisms and Debates on civil disobedience, all upon the reading of Csaba Varga *Transition to Rule of Law* On the

<sup>33</sup> Using, by the author, *Codification as a Socio-historical Phenomenon*. Budapest: Akadémiai Kiadó, 1991, viii + 391. and 'Codification at the Threshold of the Third Millennium' *Acta Juridica Hungarica* 47 (2006) 2, 89–117 and <<http://www.akademiai.com/content/cv56191505t7k36q/fulltext.pdf>>.

<sup>34</sup> By TAMÁS GYÖRFI, within the framework of which the argumentative strategy in American, German and Hungarian constitutional adjudication cases relating to Abortion, Euthanasia, Capital punishment, Freedom of religion and of expression, as well as Equality and discrimination, and Affirmative action are surveyed through the study of 64/1991 (XII. 17.) *ABh.* [= Hungarian Constitutional Court decision]; 48/1998 (XI. 23.) *ABh.*; *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern PA. v. Casey*, 505 U.S. 833 (1992); 39 *BVerfGE* 1, 1975; 88 *BVerfGE* 203, 1993; *Cruzan v. Director, MDH*, 497 U.S. 261, 343 (1990); 23/1990. (X. 31.) *Abh.*; *Gregg v. Georgia*, 428 U.S. 153 (1976); 4/1993. (II. 12.) *ABh.*; 8/1993 (II. 27.) *ABh.*; 10/1993 (II. 27.) *ABh.*; *Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972); 93 *BVerfGE* 1, 1995; *Lynch v. Donnelly*, 465 U.S. 668, 701 (1984); *Reynolds v. United States*, 98 U.S. 145 (1978); *Sherbert v. Verner*, 374 U.S. 398 (1963); *Brandenburg v. Ohio*, 395 U.S. 444 (1969); 36/1994 (VI. 24.) *ABh.*; as well as *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), *Gratz v. Bollinger*, 539 U.S. 244 (2003) and *Grutter v. Bollinger*, 539 U.S. 306 (2003) in addition.

<sup>35</sup> By JÁNOS FRIVALDSZKY, showing the classical view of law with legality presupposing a just order of human co-existence in which humans, unless the legal is not replaced by the political in interpersonal dimensions, are taken as altruistically consensus-oriented.

<sup>36</sup> By ISTVÁN H. SZILÁGYI, covering the Movement, Law in/as literature, involving Historical and Anthropological perspectives, with special regard to Socrates, Shakespeare, Marquez and Eco), based upon IAN WARD: *Law and Literature*. Possibilities and Perspectives. Cambridge: Cambridge University Press, 1995, xiv + 264.

<sup>37</sup> By ISTVÁN H. SZILÁGYI, overviewing its trends and history as well as social control, order and disputes, views on humans, and also ethnographical folk-law research, based upon his *A jogi antropológia főbb irányai*. [Main trends in legal anthropology] Budapest: Szent István Társulat, 2000, 173. [Jogfilozófiák] and *Jog és antropológia*. [Law and anthropology] ed. ISTVÁN H. SZILÁGYI, Budapest: Szent István Társulat, 2000, viii + 366. [Jogfilozófiák], as well as MAX GLUCKMAN: Natural Justice in Africa. *Natural Law Forum* 9 (1964), 25–44. and STANLEY DIAMOND: The Rule of Law versus the Order of Custom. *Social Research* 38 (1971), 42–72. (reprinted in *Comparative Legal Cultures* and translated in *Összehasonlító jogi kultúrák* [note 52]).

<sup>38</sup> Partly based upon Angus [M.] FRASER: *The Gypsies*. Oxford: Blackwell, 1992, ix + 359. [Peoples of Europe].

Democratic Transformation in Hungary (Budapest: ELTE “Comparative Legal Cultures” Project, 1995.) 190. [Philosophiae Iuris].

In continuation, *Transition to rule of law II* (Systematic Issues)—by concentrating upon the treatment of the criminal past by coming to terms with it in/by law, as well as the contemporary meaning of the “rule of law” with the issue of constitutionality implied—covers the themes of the Dilemma of facing the past in law, Rule of law (understanding, ethos-centeredness, openness when responding to given challenges, and its uninterrupted formation) and the Quest for legality and constitutionality (or law as an art of balancing—through mediating amongst—values in conflict), using Csaba Varga *Transition? To Rule of Law?* Constitutionalism and Transitional Justice Challenged in Central and Eastern Europe (Pomáz: Kráter, 2008.) 292. [PoLiSz Series 7] and *European Legal Cultures* ed. Volkmar Gessner, Armin Hoeland and Csaba Varga (Aldershot–Brookfield, USA–Singapore–Sydney: Dartmouth, 1996.), Part V: »Transition to the Rule of Law«, 413–490. [Tempus Textbook Series on European Law and European Legal Cultures I] as stepping stones for deliberations.

In closure, *Transition to rule of law III* (Globalism)—dealing with the impact of globalism on and its intertwinement with the processes and new challenges of transition in the region, in both global and local contexts—reviews the Chances of transfer of laws and pattern-borrowing in a globalising world (problematizing upon aggregates of rules set in texts as the mere skeleton of any living—liveable—law, arising from the mass of conventionalisations through tensions of everyday life) and Post modernity and the new a-historicism (in example of claims based upon universal principles as confronted with the historically particular rootedness of human ideals), after the reading of *Coming to Terms with the Past under the Rule of Law* The German and the Czech Models, ed. Csaba Varga (Budapest, 1994.) xxvii + 178. [Windsor Klub]<sup>39</sup> with quite a few mostly western views<sup>40</sup> is made.

*Law and language* aims—through the study of basic contemporary writings relating to the interconnection between law and language—at researching the Grounds of such a

<sup>39</sup> Documenting the whole body of *travaux préparatoires* to, and the Acts I and II on, statutory limitations in Germany and the Law on the illegality of the Communist regime in Czechoslovakia with the latter’s Constitutional Court assessment.

<sup>40</sup> By GIANMARIA AJANI: La circulation des modèles juridiques dans le droit post-socialiste. *Revue internationale de Droit comparé* 46 (1994) 4, 1087–1105. and ‘By Chance and Prestige: Legal Transplants in Russia and Eastern Europe.’ *The American Journal of Comparative Law* XLIII (Winter 1995) 1, 93–117.; PAUL H. BRIETZKE: Designing the Legal Frameworks for Markets in Eastern Europe. *The Transnational Lawyer* 7 (1994), 35–63.; ARMIN HÖLAND: Évolution du droit en Europe centrale et orientale: assiste-t-on à une renaissance du »Law and Development«? *Droit et Société* (1993), No. 25, 467–488.; JEANE J. KIRKPATRICK: Introduction. to her *Dictatorship and Double Standards*. Rationalism and Reason in Politics. New York: Simon and Schuster, 1982, 1–18.; EWA ŁETOWSKA–JANUS ŁETOWSKI: Poland: In Search of the »State of Law« and its Future Constitution. In their *Poland*. Towards the Rule of Law. Warszawa: Wydawnictwo Naukowe Scholar, 1996, 10–22. [Institute of Legal Studies of the Polish Academy of Sciences]; UGO MATTEI: *Introducing Legal Change*. Problems and Perspectives in Less Developed Countries. [manuscript] [World Bank Workshop on Legal Reform, Washington D.C., 14 April 1997] Berkeley–Trento, 1997, 19.; JUAN E. MÉNDEZ: Accountability for Past Abuses. *Human Rights Quarterly* 19 (1997), 255–282.; STANISLAW POMORSKI: Meanings of Decommunization by Legal

*sine qua non* association, the nature of the Juridical construction of reality, the essence of Conceptualisation in and by law, as well as the Enigma of interpreting the law, in order to finally arrive at a deeper understanding of what law and language genuinely are. The introductory lecture is followed from the next week on by the participants' summarising and discussing the relevant texts, upon their previous study on behalf of all the participants. The underlying texts include Wesley Newcomb Hohfeld's 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' [1913],<sup>41</sup> H. L. A. Hart's *Definition and Theory in Jurisprudence* [1953],<sup>42</sup> Alf Ross' 'Tű-Tű' [1951],<sup>43</sup> A. W. B. Simpson's 'The Analysis of Legal Concepts' [1964],<sup>44</sup> Karl Olivecrona's 'Legal Language and Reality' [1962],<sup>45</sup> Arthur Kaufmann's 'Gedanken zu einer ontologischen Grundlegung der juristischen Hermeneutik' [1982],<sup>46</sup> Emilio Betti's 'Di una teoria generale della interpretazione' [1965],<sup>47</sup> Peter Goodrich's 'Historical Aspects of Legal Interpretation' [1986]<sup>48</sup> and Owen M. Fiss' 'Objectivity and Interpretation' [1982],<sup>49</sup> made available also in Hungarian translation.<sup>50</sup>

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Means. *Review of Central and East European Law* 22 (1996) 3, 331–337; VLADIMIR SHLAPENTOKH: *Russia*. Privatization and Illegalization of Social and Political Life. Michigan State University Department of Sociology: 25 September 1995, 44. [CND (95) 459]; DENIS SZABO *Intégration normative et évolution de la criminalité*. [manuscript] Paris: Institut de France, September 16–17, 1995, (Montréal 1995)—all available in the author's translation in *Kiáltás gyakorlatiasságért a jogállami átmenetben* ed. CSABA VARGA, Budapest: [AKAPrint], 1998, 122. [A Windsor Klub könyvei II]—, as well as RICHARD H. FALLON, JR.: »The Rule of Law« as a Concept in Constitutional Discourse. *Columbia Law Review* 97 (January 1997) 1, 1–56.; ROBERT NISBET: *The Quest for Community*. San Francisco: ICS Press, 1990, 3–65.; SUSANNE KARSTEDT Coming to Terms with the Past in Germany after 1945 and 1989: Public Judgments on Procedures and Justice. *Law and Policy* 20 (January 1998) 1, 15–56. and Dr M. A. SMITH: *Russia's State Tradition*. Camberley–Surrey: Royal Military Academy Sandhurst, June 1995, 12. [Conflict Studies Research Centre E78]—to be made also available in the author's translation in *Kiáltás gyakorlatiasságért... 2<sup>nd</sup> enl.* ed. CSABA VARGA, Budapest: Szent István Társulat, 2009, {in press}.

<sup>41</sup> In *Yale Law Journal* 23 (1913), 16–59., from its corr. ed. New Haven–London: Yale University Press, 1964, part I: 23–64.

<sup>42</sup> [An Inaugural Lecture] (Oxford: Clarendon Press 1953), from his *Essays in Jurisprudence and Philosophy*. Oxford: Clarendon Press, 1983, 21–48.

<sup>43</sup> In *Festschrift til Henry Ussig* (Borum and Illum 1951), from *Harvard Law Review* 70 (1957), 812–825.

<sup>44</sup> In *The Law Quarterly Review* 80 (1964), 535–558.

<sup>45</sup> In *Essays in Jurisprudence*. To Honor of Roscoe Pound ed. R. A. Newman. Indianapolis–New York: Bobbs-Merrill 1962, 151–191.

<sup>46</sup> In *Europäische Rechtsdenken in Geschichte und Gegenwart*. Festschrift für Helmut Coing zum 70. Geburtstag. hrsg. N. HORN, München: Beck, 1982, 537–548.

<sup>47</sup> In *Rivista giuridica umbro-abruzzese* 41 (1965), 9–34. and 'On a General Theory of Interpretation: The raison d'être of Hermeneutics.' *The American Journal of Jurisprudence* 32 (1987), 245–268.

<sup>48</sup> In *Indiana Law Journal* 61 (1986), 331–354.

<sup>49</sup> In *Stanford Law Review* 34 (1982), 739–763.

<sup>50</sup> *Jog és nyelv* [Law and language] ed. MIKLÓS SZABÓ–CSABA VARGA, Budapest: Osiris, 2000, vi + 270.

c) *Closing Subjects*

In the first half of the closing year (semester 9), there are two further courses offered by the Institute for Legal Philosophy which, in one way or another, are mandatory to all students.

Both of them end by an exam essay to be written on topics selected to each examinee individually as communicated on the spot by the Institute.

One of them is *Natural Law* (by JÁNOS FRIVALDSZKY), obligatory to all to treat the philosophical foundations of any legal arrangement and regulation. It covers the Features of classical natural law, especially at Thomas Aquinas and in the Modern age, including Law and Equity, and Morality, its Interpersonal logic, and Legal sociology, and the Nature of things, and Norm-positivism, and Political philosophy and Subsidiarity, and Nature, and the Social doctrine of the Church, based upon the textbook by János Frivaldszky *Klasszikus természetjog és jogfilozófia* [Classical natural law and legal philosophy] (Budapest: Szent István Társulat, 2007.) 476., with some additional reading, available also in Hungarian translation.<sup>51</sup>

The other is the mandatory optional selection from within either Comparative Legal Cultures or Sociology of Law, or Political Sociology (Sociology of the State).

As to *Comparative Legal Cultures*, conceived of as a kind of synthesis between legal theory and classical comparative law, it is to introduce disciples to a disciplinary interest in diverse traditions underlying individual families of law, including their respective modes of thinking, with due respect to historical and contemporary alternatives, the di-/con-vergence of civil law and common law, as well as to transfers of law *en masse* as a challenge by both the European Union and the progressing globalisation processes, in order that the own legal arrangement can be seen as contrasted with other arrangements in a historico-comparative context.

Its topic is composed of, as *Introductory part*, Law as culture, the Limits of classical comparative law and the own field of comparative legal cultures, Western legal culture (roots and alternatives), Variations for cultures of law, Rule of law?

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<sup>51</sup> In *Természetjog*. Szöveggyűjtemény. [Natural law: Texts] ed. JÁNOS FRIVALDSZKY, Budapest: Szent István Társulat, 2006, 329. [Jogfilozófiák], including MICHEL VILLEY: Observations d'un historien sur le droit naturel classique. *Archiv für Rechts- und Sozialphilosophie* 51 (1965) 1, 19–34.; VIKTOR CATHREIN: *Moralphilosophie*. Freiburg, 1890, part I, book 5, ch. 5, §§1–3.; JACQUES LECLERQ: *Leçons de droit naturel*. I: Le fondement du droit et de la société. Namur: Wesmael-Charlier, 1933, pp. 60–62. [Études morales, sociales et juridiques]; JACQUES MARITAIN: *Les droits de l'homme et la loi naturelle*. [1943] Paris: Hartmann, 1947, ch. I: 53–113.; SERGIO COTTA: Il concetto di natura nel diritto. *Studium* [Bimestrale di cultura] 83 (1987) 4–5, 533–545. and *Il diritto nell'esistenza*. Milano: Giuffrè, 1991, 244–251.; ALFRED VERDROSS: Was ist Recht? Die Krise des Rechtspositivismus und das Naturrecht. *Wort und Wahrheit* [Wien] VIII (1953) 8, 587–594.; JOHANNES MESSNER: *Das Naturrecht*. Handbuch der Gesellschaftsethik, Staatsethik und Wirtschaftsethik. [1955] Innsbruck, etc.: Tyrolia Verlag, 1966, 304–312.; DANIEL MARK NELSON: *The Priority of Prudence*. Virtue and Natural Law in Thomas Aquinas and the Implications for Modern Ethics. Pennsylvania State University Press, 1992, ch. V: 128–154.; XAVIER DIJON: *Droit naturel*. I. Paris: Presses Universitaires de France, 1998, 19–38.; et FRANCESCO D'AGOSTINO: *Il diritto come problema teologico*. Torino: Giappichelli, 1995, 143–167.

mania of law? (on the boundary of rationality and anarchy in the United States of America), and Post modernity (exemplified by the experience of Canada); as *European Union part*, Comparative judicial mind, Common law and civil law (encounters), Preservation and change (case-studies in Jewish, Islamic, and Far-Eastern legal cultures), as well as *EU-convergence I*: Idea of law and methods underlying the attempts at common codification, *II*: Style of common jurisdictions and *III*: the dilemma of some *sui generis* law in common or national particularisms in competition to prevail within the Union; and finally, as *Global part*, Commensurability and sustainability of the diversity of legal cultures and judicial minds, as well as Transfers of law *en masse* and the Perspectives of globalism.

As teaching material, two collections of texts—*Comparative Legal Cultures* ed. Csaba Varga (Aldershot–Hong Kong–Singapore–Sydney: Dartmouth and New York: The New York University Press, 1992.) xxiv + 614. [The International Library of Essays in Law and Legal Theory, Legal Cultures 1]<sup>52</sup> and *European Legal Cultures* ed. Volkmar Gessner, Armin Hoeland and Csaba Varga (Aldershot–Brookfield USA–Singapore–Sydney: Dartmouth, 1996.), Part I: »Common Traditions« and Part II: »The European Legal Mind«, 1–166. [Tempus Textbook Series on European Law and European Legal Cultures I]—with a number of further articles<sup>53</sup> are to be studied.

#### d) *Written Memoranda and the Thesis*

During one of the terms of the 2<sup>nd</sup> to the 4<sup>th</sup> years, a *written memorandum* of 15 printed pages at least, on any topic from within the circles of basic graduate teaching

<sup>52</sup> A. M. HONORÉ: Legal Reasoning in Rome and Today. *Cambrian Law Review* (1973), 58–67. and BERNARD RUDDEN: Courts and Codes in England, France and Soviet Russia. *Tulane Law Review* 48 (1974) 14, 1010–1028., also available in Hungarian translation of the partly reduced and partly enlarged version of *Comparative Legal Cultures*, published as *Összehasonlító jogi kultúrák*. ed. CSABA VARGA, Budapest: [Osiris], 2000, [reprint 2006]) xl + 397. [Jogfilozófiai].

<sup>53</sup> JULIUS GERMANUS Das islamische Recht. *Acta Juridica Academiae Scientiarum Hungaricae* 16 (1974), 1–25. and PETER G. SACK Law and Custom: Reflections on the Relation between English Law and the English Language. *Rechtstheorie* 18 (1987), 421–436 {available in translation in the above [note 52] collection}, in addition to papers by CSABA VARGA—[‘Comment to The Notion of Legal Culture’] in *Changing Legal Cultures* ed. JOHANNES FEEST–ERHARD BLANKENBURG, Oñati: International Institute for the Sociology of Law, 1997, 207–217. [Oñati Pre-publications 2] and ‘Comparative Legal Cultures: Attempts at Conceptualization’ *Acta Juridica Hungarica* 38 (1997) 1–2, 53–63.; ‘Comparative Legal Cultures? Renewal by Transforming into a Genuine Discipline’ *Acta Juridica Hungarica* 48 (2007) 2, 95–113 and <<https://commerce.metapress.com/content/gk485p7w8q5652x3/resource-secured/?target=fulltext.pdf&sid=54jelq45>> and <<http://www.akademiai.com/content/gk485p7w8q5652x3/fulltext.pdf>>; Legal Traditions? In Search for Families and Cultures of Law. *Acta Juridica Hungarica* 46 (2005) 3–4, 177–197 and <<http://www.akademiai.com/content/f4q29175h0174f11/fulltext.pdf>> and <<http://www2.law.uu.nl/priv/AIDC/PDF%20files/1A/1A%20-%20Hungary.pdf>>; Theatrum legale mundi: On the Classification of Legal Systems. In *Ius unum, lex multiplex*. Liber Amicorum: Studia Z. Péteri dedicata. (Studies in Comparative Law, Theory of State and Legal Philosophy), ed. ISTVÁN H. SZILÁGYI–MÁTÉ PAKSY (Budapest: Szent István Társulat, 2005, 213–244. [Philosophiae Iuris / Bibliotheca Iuridica: Libri amicorum 13]; Meeting Points between the Traditions of English–American Common Law and Continental-French Civil Law (Developments and Experience of Postmodernity in Canada). *Acta Juridica Hungarica* 44 (2003) 1–2, 21–44. and <<http://www.akademiai.com/content/>

subjects has to be prepared. Its title can be freely selected from the list preably postered by all chairs or as agreed upon individually by the authorised staff. Yearly some average of 15 memoranda is written from the field of legal philosophy proper. It happens that an excellent outcome is subsequently published in the national professional press.<sup>54</sup>

In order to start the closing state examinations during the 10<sup>th</sup> semester, a *thesis* of the minimum volume of 50 printed pages, developing its freely chosen topic through the consultation of international literature in several languages, is also to be submitted. Of the average of ten theses per year submitted to the Institute for Legal Philosophy, logic in law and electronic processing in view of legal automatisisation, paradoxes of rationality in law, classical Jewish legal thought, Islamic and Japanese arrangements with their modernisation prospects, quest for communitarian background, universality and particularity of human rights, globalisation and legal imperialism, search for substantivity in law, “say it with music” on the terrain of law, “styles” of law and legal mapping, in addition to rule of law and to transition to the rule of law—these are only some of the recurrent topics for students to prefer.

Theses are to be defended before a jury composed of three members of the Institute, one of them submitting a previous criticism upon the thesis in question. Its author presenting his/her aims, methodology and working hypothesis, the procedure follows by open discussion and ends by the jury assessment with a written justification to the note granted.

The best(s) of the theses can be further elaborated and detailed in case its author wishes to present it at the next conference of the National Scientific Students’ Circle, where, during the past decade, several papers submitted on behalf of the Institute for Legal Philosophy won high-ranking decoration for their achievement in legal theory.

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x39m7w4371341671/fulltext.pdf>; Codification on the Threshold of the Third Millennium. In *Legal and Political Aspects of the Contemporary World*. ed. MAMORU SADAKATA, Nagoya: Center for Asian Legal Exchange, Graduate School, Nagoya University, 2007, 189–214. and La Codification à l’aube du troisième millénaire. In *Mélanges Paul Amselek*. org. GÉRARD COHEN-JONATHAN–YVES GAUDEMET–ROBERT HERTZOG–PATRICK WACHSMANN–JEAN WALINE, Bruxelles: Bruylant, 2004, 779–800.; as well as Transfers of Law: A Conceptual Analysis. In *Hungary’s Legal Assistance Experiences in the Age of Globalization*. ed. MAMORU SADAKATA, Nagoya: Nagoya University Graduate School of Law Center for Asian Legal Exchange, 2006, 21–41. and Reception of Legal Patterns in a Globalising Age. In *Globalization, Law and Economy / Globalización, Derecho y Economía*. Proceedings of the 22<sup>nd</sup> IVR World Congress, IV, ed. NICOLÁS LÓPEZ CALERA, Stuttgart: Franz Steiner Verlag, 2007, 85–96. [ARSP Beiheft 109]—collected in Hungarian in his *Jogfilozófia az ezredfordulón*. Minták, kényszerek – múltban, jelenben. [Philosophy of law at the turn of millennia: patterns and forced paths in the past and present] Budapest: Szent István Társulat, 2004, 450 [Jogfilozófiák].

<sup>54</sup> E.g., on Islamic conception of human rights in *Jogtudományi Közlöny* [Journal of legal science], on legal semiotics also in *Jogtudományi Közlöny*, on failure in Hungary and success in Germany of facing with the past in law, in *college*, as well as on the misconceived understanding of law and rule of law as reduced to legal voluntarism and textual positivism for the sake of legal certainty in the Hungarian transition process in *Válóság* [Reality], *Magyar Szemle* [Hungarian review], *Iustum Aequum Salutare*, *Közjog* [Public law], and *Társadalomkutatás* [Social research].

## 2. Postgraduate Studies

In the model program,<sup>55</sup> three semesters are reserved for classroom specialising courses held from within, among others, legal philosophy as well. Such courses are optional with the outcome that at least a dozen of (usually deeply motivated) students will, when planning for their paths of credit earning, actually make a choice for it.

Topics in legal philosophy are selected with the view of covering broad fields and timely new challenges and developments, so that doctoral students may sum up and synthesise their graduate studies in legal theorising at the same time. Six times two hours' lecturing being reserved for each of them, the course is organised in a way that except to the convening occasion with a full introductory and exploratory lecture by the present author, the next five times will rather be dedicated to the students' own presentation of readings and active debating upon issues with their professor's moderation.

Accordingly and in sequence, *Modernisation, Transition to Rule of Law and Globalism* (semester 1) is followed by *Theory of the Legal Process with Comparative Judicial Mind* included (semester 2), to be ended by *Directions of Today's Legal Thinking* (semester 3), all to be closed by oral examination.

In the course of *Modernisation, Transition to Rule of Law and Globalism*, theories of modernisation developed in Hungary during the last period of Socialism, local and western views on democratic transition, rule of law conceptions of Western Europe and the Atlantic world, recent debates on the universality of human rights, as well as the challenges of globalisation are confronted within a legal philosophical and macro-sociological perspective to the contemporary issue of the transition to rule of law in the Central and Eastern European region, with special regard to the responsibility to be borne by the state, the dilemma of legal borrowing, as well as to the abstract universalism and the historical particularity of actual challenges and responses (with the dysfunctionality of the temptation of doctrinarism in any strongly principled stand) within the understanding of the meaning(s) of the rule of law, and also to the encounter of globalism with some post modern trends (e.g., constitutionalisation, rights language and extra-judicial mediation) are overviewed, as compared to contemporary experience relating to ongoing processes in Latin America, Africa and Asia.

As to its teaching material, in addition to the stuff of the same course, one of the following titles is to be read: Kálmán Kulcsár *Modernization and Law* (Budapest: Akadémiai Kiadó, 1992.) 282., Béla Pokol *The Concept of Law* (Budapest: Rejtjel, 2001.) 152., *European Legal Cultures* ed. Volkmar Gessner, Armin Hoeland and Csaba Varga (Aldershot, etc.: Dartmouth, 1996.), Part III: »Totalitarian Legal Culture«, 167–241. and Part V: »Transition to the Rule of Law«, 413–490. [Tempus Textbook Series on European Law and European Legal Cultures I].

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<sup>55</sup> Within certain limitations, credits allow individual study plans. The Catholic University has the average total number of one hundred postgraduate students in law, whose studies are programmed as classed within three years in a distribution that the first three semesters are dedicated to courses and preparation for thesis-writing and the second three ones solely to actual thesis-writing. Semesters span from September to January and from February to June.

In the next course on *Theory of the Legal Process*, in wake of legal philosophising receptive of post Wittgensteinian language philosophy, official judicial expectations regarding both the establishment of facts and the operation with norms (to be fulfilled properly according to juristic professional ideology) are confronted with actual (and therefore theoretically reconstruable) processes taking place within the law's formalism, with special regard to the connections between law and language, and logic, and intellectual representation. As the inquiry concludes, it is responsively purposeful human thinking committed to values and justifications through given referential channels that stand behind all the variety characteristic of diverse thought patterns and types of reasoning, making a difference among themselves mostly in their respective cultural appearances exclusively.

For reading, it makes use of, in addition to Csaba Varga *Theory of the Judicial Process The Establishment of Facts* (Budapest: Akadémiai Kiadó, 1995.) vii + 249. and his 'Doctrine and Technique in Law' *Iustum Aequum Salutare* IV (2008) 1, 23–37. and <<http://www.jak.ppke.hu/hir/ias/20081sz/02.pdf>> and in <[www.univie.ac.at/RI/IRIS2004/ArbeitspapierIn/Publikationsfreigabe/Csaba\\_Phil/Csaba\\_Phil.doc](http://www.univie.ac.at/RI/IRIS2004/ArbeitspapierIn/Publikationsfreigabe/Csaba_Phil/Csaba_Phil.doc)>, an individual selection for one of the texts offered in the menu.<sup>56</sup>

In the last course relating to *Directions of Today's Legal Thinking*, main currents that nurture legal thought in our age are overviewed. It is meant to get thoroughly acquainted with (a) foundational conceptions of law patterning our century's legal thought (through the analysis of Kelsen and Hart), and (b) important schools, authors and problematics hitherto inaccessible in Hungarian language (as, e.g., historical jurisprudence, Scandinavian realism, Losonczy's realism, or social theory constructivism), as well as (c) critical reflection upon both earlier (Schmitt) and contemporary western and Atlantic trends, as extended to (d) the features of the mainstream with some future prognosis.

The teaching material spans from—as exemplified by—*Historical Jurisprudence* ed. József Szabadfalvi (Budapest: [Books-in-Print], 2000.) 303., Hans Kelsen *Tiszta Jogtan* [Reine Rechtslehre, 1934] trans. István Bibó, ed. Csaba Varga (Budapest:

<sup>56</sup> MIKLÓS SZABÓ: Szó szerint... A jog és a nyelv interferenciájáról. [Word for word... Or, on the interference of law and language] In *Jog és nyelv*. ed. MIKLÓS SZABÓ–CSABA VARGA, Budapest: [Books-in-Print], 2000, 1–54. [Jogfilozófiai]; MIKLÓS SZABÓ: *A jogdogmatika előkérdéseiről*. [On the presuppositions of legal dogmatics] Miskolc: Bíbor, 1996, vi + 309. [Prudentia Iuris 6]; *European Legal Cultures*. ed. VOLKMAR GESSNER–ARMIN HOELAND–CSABA VARGA, Aldershot–Brookfield USA– Singapore–Sydney: Dartmouth, 1996, Part I: »The Common Traditions«, 3–86 and Part II: »The European Legal Mind«, 89–166. [Tempus Textbook Series on European Law and European Legal Cultures I]; as well as, by CSABA VARGA: Heuristic Value of the Axiomatic model in Law. In *Auf dem Weg zur Idee der Gerechtigkeit* Gedenkschrift für Ilmar Tammelo, hrsg. Raimund Jakob–Lothar Philipps–Erich Schweighofer–Csaba Varga (Münster, etc.: Lit Verlag 2009), 127–134 {in press} & 'The Quest for Formalism in Law: Ideals of Systemicity and Axiomatisability between Utopianism and Heuristic Assertion' *Acta Juridica Hungarica* 50 (2009) 1, 1–30 and in <<http://www.akademiai.com/content/k7264206g254078j/>> and 'Legal Logic and the Internal Contradiction of Law.' In *Informationstechnik in der juristischen Realität*. Aktuelle Fragen zur Rechtsinformatik 2004. Hrsg. ERICH SCHWEIGHOFER–DORIS LIEBWALD–GÜNTHER KREUZBAUER–THOMAS MENZEL, Wien: Verlag Österreich, 2004, 49–56. [Schriftenreihe Rechtsinformatik 9]; and HESSEL E. YNTEMA: Equity in the Civil Law and the Common Law. *The American Journal of Comparative Law* 15 (1967), 60–86. {available both in English and in translation in the collections in note 52}.

ELTE Bibó István Szakkollégium, 1988. [reprint Budapest: Rejtjel, 2001.] xxii + 106., *Scandinavian Legal Realism* ed. Antal Visegrády (Budapest: Szent István Társulat, 2002.) xxxviii + 159., István Losonczy *Abriss einer realistischen rechtsphilosophischen Systems* [1948] ed. Csaba Varga (Budapest: Szent István Társulat, 2002.) 144. and *Hayek és a brit felvilágosodás* Tanulmányok a konstruktivista gondolkodás kritikájának eszmetörténeti forrásairól [Hayek and the British Enlightenment: Studies on the historical sources of the criticism upon constructivist thought] ed. Ferenc Horkay Hörcher (Budapest: Pázmány Péter Katolikus Egyetem, 2002.) xvii + 112. [all from the series of *Philosophiae Iuris*]; via H. L. A. Hart *A jog fogalma* [The Concept of Law, 2<sup>nd</sup> ed.] trans. Péter Takács (Budapest: Osiris, 1995.) 375., Ferenc Hörcher *Prudentia iuris* Towards a Pragmatic Theory of Natural Law (Budapest: Akadémiai Kiadó, 2000.) 176. [*Philosophiae Iuris*] and Vilmos Peschka *Appendix "A jog sajátosságához"* [Appendix to "The particularity of law"] (Budapest: Közgazdasági és Jogi Könyvkiadó, 1992.) 170. [*Jog és jogtudomány* 1]; up to, by Csaba Varga, 'Change of Paradigms in Legal Reconstruction (Carl Schmitt and the Temptation to Finally Reach a Synthesis)' in *Perspectives on Jurisprudence* Essays in Honor of Jes Bjarup, ed. Peter Wahlgren (Stockholm: Stockholm Institute for Scandinavian Law, 2005.) [= *Scandinavian Studies in Law* 48], 517–529. and *Rivista internazionale di Filosofia del Diritto* LXXXI (ottobre–dicembre 2004) 4, 691–707, and 'The Hart-phenomenon' *Archiv für Rechts- und Sozialphilosophie* 91 (2005) 1, 83–95., presupposing the students' previous study of and active debating upon most of the texts.

### 3. Conclusion

The implied target of why to teach legal philosophy cannot be less than preparing future members of the legal profession to the ways of why and how to think in and on law. To be sure, it is by far not so called *juristische Methodenlehre* to be at stake here alone. For what is usually called juristic methodology is just a modest part of the enterprise itself: its parcel formalised and logified so that the conventionally accepted ways—or canons<sup>57</sup>—of operations within the bounds of the law can eventually be met. Or, to think in and on law is a methodical reflection itself that can perhaps be best acquired through getting familiarised with outstanding instances of legal philosophising, taken from exemplary patterns either in abstract philosophical conceptualisation or as actuated by any dilemmas at hand. For the teaching aims at initiation into the working within the law's homogenised intellectual virtuality of those students who are prepared to face stands for or against which they are also ready to argue rationally and with personal conviction at any future time. For it is to be noted that any such learning process starts with the readiness of doubting ready-made clichés through critical reflection and ends by reaching a personal decision, both responsive and responsible. The best way of familiarisation with professional dealings is reading as much as students can, transforming formal learning into a devotion intellectually joyful and an experience successfully fed back hopefully in practice.

<sup>57</sup> A. M. HONORÉ: Legal Reasoning in Rome and Today. *Cambrian Law Review* (1973), in particular para. III, 64 et seq.

As to the selection for reading, the mainstream Western European and English–American contemporary literature can serve as a *sine qua non* only provided that it will not exhaust the list of titles to be dealt with and will then be complemented by classics of land marking German legal philosophising as well as domestic authors and ones taken from our neighbourhood in Central Europe and the Balkans as well.

Or, global learning with local focus—this might be the ideal stuffed with historical sensitivity drawing from own past and caring for future, while offering an open and global perspective, with a dialectical interplay between the universal and the particular (the abstract-general and the concrete-individual) to be re-assessed again and again.

#### IV. Perspectives

Students assembled in our law schools with commitment to play a role in public life are to know from the beginning that any land marking ending of the system of “actually existing socialisms” (having paralysed the society for half a century, disintegrating its micro-textures and deforming the very roots of its ability to self-control and regeneration) requires lawyers who are also aware of the lasting foundations of law behind the facade of its ever changing formalisms. Therefore it is no longer sufficient to teach those laws which are applicable in Hungary and in the European Union. Instead, the historical and theoretical matrix of law in constant formation, its philosophical and economic milieu with the theological and moral motives behind it are also to be taught. For the dilemmas having for thousands of years shaped the lawyers’ minds (with the implied teleology of individual legal arrangements) in this worldly *ordo* are also to be revealed from behind the flux of everyday routine. Or, the educational vocation is by far not to simply prepare subordinate employees with procedural skills as technicians trained to executing administrative tasks. Philosophical and historical subjects in law have to cast light on those considerations that motivate the order itself, to provide guidance in matters vague and undecided, to stuff pioneering initiatives both on unbeaten paths and in pondering on how to change the prevailing.

The objective is to initiate to what is behind timely routine, to help exploring our world by forming visions and elaborating conceptions on it through weighing pros and cons when taking creative and responsible decisions. The goal is to enable forming independent opinions, orientating our selves, making choices, and launching innovations in facing the challenges of the epoch (too controversial, burdened by the chance of fatal errors, in an age when superpowers tend to claim the right for themselves to define what is ultimate wisdom and what will be the destiny of mankind), issues which should be—albeit are in fact scarcely—done personally in our brave new world democracy.

A vocational credo<sup>58</sup> resulting in a scholarly conclusion<sup>59</sup> has summarised this way the adventure of getting acquainted with the philosophy implied by teaching legal philosophy in Hungary:

<sup>58</sup> In extensive quote from the author’s ‘Búcsúírás’ [Farewell notice] in Pázmány Péter Katolikus Egyetem Jog- és Államtudományi Kar 2003-ban végzettek évkönyve. [Yearbook of those graduated in 2003] Budapest: Alumni, 2003, 119–122.

<sup>59</sup> By the author, *Lectures on the Paradigms...*, para. 7: »Concluding Remarks«, 219.

“We followed a path that led to law from the paradigms of legal thinking, and from the self-assertion of legal formalism to its overall cultural determination. Yet, our human yearnings peeked out from behind the illusory reference of our security and we could discover reliable, solid grounds only in the elusive continuity of our social practice. In the meantime it proved to be a process that we had thought to have been present as a material entity and what we had believed to be fully built up proved to build continuously from acts in an uninterrupted series.

What we have discovered about law is that it has always been inside of us, although we thought it to have been outside. We bear it in our culture despite our repeated and hasty attempts at linking it to materialities.

We have identified ancient dilemmas as existent in our current debates as well. We have found long abandoned patterns again. We have discovered the realisations of common recognitions in those potentialities and directions in law, which we believed to have been conceptually marked off once and for all.

However, we have found an invitation for elaboration in what has revealed itself as ready-to-take. Behind the mask, and in the backstage, the demand for our own initiation, play, role-undertaking and human responsibility has presented itself. We have become subjects from objects, indispensable actors from mere addressees. And, we can be convinced that despite having a variety of civilisational overcoats, the culture of law is still exclusively inherent in us who experience it day by day. We bear it and shape it. Everything conventional in it is conventionalised by us. It does not have any further existence or effect beyond this. And with its existence inherent in us, we cannot convey the responsibility to be borne for it on somebody else either. It is ours in its totality so much that it cannot be torn out of our days or acts. It will thus turn into what we guard it to become. Therefore, we must take care of it at all times since we are, in many ways, taking care of our own.”

After the fall of Communism, having joined the European Union and living as subject to, and preferably also as a factor shaping, globalism in progress, the law’s reduction to national boundaries and positivated exclusivity has been shaken anyhow in our region, too. Law is not any longer the entity that classical positivism used to teach to be.<sup>60</sup> Mixed forms are established as core elements of the juridicity. Law is dissolved in new forms of sociality. Prevailing *mentalités juridiques* actualise it to respond to new challenges under the coverage of new formalities. Therefore to grant the lawyer a vision of the contexture—potentials and limitations—within which he/she can operate by drawing from is the very last and lasting task of legal education; a task that can only be filled adequately by historical and theoretical approaches to law under timely conditions.

The strength and weakness of what we can do now lie exactly in how we can respond to the actual *Weltgeist*, by transforming it into a renewed *esprit juridique* by the time ahead of us.

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<sup>60</sup> Cf., by the author, ‘What is to Come after Legal Positivism is Over? Debates Revolving around the Topic of »The Judicial Establishment of Facts.«’ In *Theorie des Rechts und der Gesellschaft*. Festschrift für Werner Krawietz zum 70. Geburtstag. Hrsg. MANUEL ATIENZA–ENRICO PATTARO–MARTIN SCHULTE–BORIS TOPORNIN–DIETER WYDUCKEL, Berlin: Duncker and Humblot, 2003, 657–676.