Cs. Varga*

LAW, LEGAL PROCESS AND THE JUDICIAL MIND

'Judicial mind' in operation, considered differently in Civil Law and in Common Law, is taken as a 'black-box' with the 'magic' role played by legal technicalities, in which manipulation with facts and rules transubstantiates problem solving into justification.

Key words: normativism, legal logic, law as rule and as culture, ontology of law, legal technique

1. Construction and Reconstruction of Legal Reality

For purposes of an ontological reconstruction, the significance of *juristische Weltanschauung* as one of the original components of law's very existence (in addition to objectified embodiments) is definitely shown by the fact that institutionalised social existence, whatever it be, cannot but withstand those kinds of simplification inspired by the Newtonian outlook of the universe (reducing reality to occasional intertwinement of causal series originated by things and powers directed at them), in terms of which we may and must differentiate the 'construction' itself (as given from the outset) from its 'being made to function' as a complementation exteriorly and subsequently added to the former by an individual purposeful or random act; albeit, when we are considering social dynamics with social institutions at work, we are tempted to simplify the analysis by taking the two above components as some bifactoral mechanism that has been organised into a single functional system. As opposed to the physical world, however, in the specifically social world the kinds of phenomena (features and aspects) suitable to be reconstrued from their actual movement as their genuine subsistence can exclusively be thought of as prevailing through having the specific quality of 'social existence'[1].

Consequently, the ontological status of the way in which the jurist approaches law in a manner sanctioned by the approved canons of the profession — describing the kinds of intellectual operations he or she usually performs by referencing the law and the actual ways in which real life situations are judged by justices in law (as if all of it were a simple deduction from the law valid at the time) — is hardly more or less than what is called p r o f e s s i o n a l d e o n t o l o g y. And this is not simply a case of false ideology (as usually treated by Marxism) but a specific procedure of (virtual? real? in any case, actual) reality construction, controlled by the required mental referencing as a mediator wedged in-between[2], as if the same background idea asserted in the professional conceptualisation of norms would also be repeated here as applied to the overall functioning of the normative world. For, in the same way as the norm is neither descriptive — therefore necessarily true/false — nor it is a 'reflection' (the fact notwithstanding that its lingual expression suggests it was exactly some description of ontological relations)[3], this reality construction is not effectuated — 'caused', or made to have no alternatives at all in practical decision making — by the norm (the fact notwithstanding that the normative understanding of norms pictures and officially justifies it as such)[4].

2. Insufficiency of Posited Law

The duality of 'law in books' and 'law in action' (which Roscoe Pound formulated originally as a pioneering category of legal sociology after he had realised that positivation itself cannot

* Varga Csaba — доктор, профессор факультета права Католического университета, директор Института философии права (Будапешт, Венгрия). E-mail: varga@jak.ppke.hu.

automatically be equated to textual effects referenced in implementation) was turned into a genuine paradox when it was also revealed that differing normative orders, heterogeneous to one another to such an extent as to be almost incommensurable when their textures are compared, can, nevertheless, exert quite a commensurable impact as measured by the social effect they may create in societies at by and large comparable levels of civilisation[5].

Accordingly, one may raise the issue whether or not there may be a hidden (and hitherto unrecognised) 'magic' (perhaps exerting influence on/through other — cultural? — paths) similarity (or some mechanism of effects resulting in comparable ends) among such linguistically differently expressed and culturally differently contextualised rules aiming at behavioural regulation and control, or whether the norm(s) posited by them can only qualify as a decisive factor in decision-making by their mere appearance and underlying normative ideology, while in fact other (further) circumstances do play the role of determination in (parts or the over-weighty part of) the actual process[6].

3. Ontological Reconstruction of Judicial Process

The answer is to be searched for in the actual functioning of the 'judicial mind' taken as a 'black-box' (symbol of a self-regulating cybernetic entity), in the case of which, its internal laws remaining unknown, we can only try to reconstruct the regularities at work in it through analysis of its actual data processing, by comparing its in-puts to its respective out-puts[7].

First of all, the judicial mind aims at resolving (by settling) the conflicts of prevailing interests (involving the axiological conflicts behind them) brought before court fora, by asserting whichever alternative of resolution (settlement) it considers the most defensible from amongst (while balancing amongst) all the feasible (or presented) variations — by fulfilling, inasmuch as is available at an optimum level, the 'system of fulfilment' [*Verfüllungssystem*] canonised in the given legal regime — all this being operated by the law's particular technicality that, in each and every case in principle, makes it possible with equal logical chance (that is, in a way no longer limitable or controllable by logic) to select those procedures from the stock of available (incidentally, including even logically mutually contradictory) techniques[8], with the help of which one may argue for the given norm covering or not covering (and, therefore, for the norm to be applied or not applied to) the case at hand, and respectively, by the help of which — in the name of our common respect for the law — either strict or equitable judicial adjudication can be employed almost at pleasure, when the strictness of the wording of the law is also loosened in cases when a programme 'to make the law living and liveable' has been appealed for.

Accordingly, behind the stage appearance and ideology of mere norm application there is always a human being standing at work, with an individual valuation and, further, full human(e)ly personal *facultas*es mobilised when the determination is taken to (and how to) decide. For the hermeneutic definition of the very understanding of norms as a kind of cultural predisposition [*Vorverständnis*] will from the beginning have a selective effect on the judicial ascertainment of both those facts that shall constitute the given case (*Tatbestand*, taken as the legally exclusively relevant set of facts to be judged) and the norm to be applied to them (including its actual meaning reflected in, by being validated in, the given case). On the one hand and always subsequently, the logic of justification cannot but infer the decision from the given normative set by positing that there is an available cluster of norms from which the case-specific and case-conforming selection has been made and, in its turn, the selected norm will have already defined what fact(s) can be taken as relevant for the actual norm application. On the other hand, however, from the point of view of the logic of problem-solving (that is, the genuine logic at work in the actual process), any consideration of either facts or norms can be mar-

shalled at all in simultaneous mutuality of both sides as complementarily reflected upon and through (as tested by) one another.

This is why in an ontological reconstruction of the judicial process, the judicial operation with both legal provisions and so-called facts can only be termed manipulation. On its behalf and as the temporary end product of judicial reality construction, this manipulation will produce so-called case-law, on the one hand, and law-case, on the other. The former represents law as actualised to a concrete life situation, while the latter stands for the legal reconstruction of real life facts that will then be adjudicated in law. It is to be seen that the exclusive reason and genuine roots of both sides lies in their having been mutually reflected — the fact notwithstanding that the official court opinion is to build on the hypothesis (taken as an ideological claim) of their being independently posited and then related to one another.

4. Law as Rule, Law as Culture

In sum, the law-stuff cannot simply be reduced to rule components alone[9]. What is more, similarities and dissimilarities amongst legal arrangements cannot even be reduced to rule contextures termed as *mentalités juridiques* either (using a notion applied until now exclusively to the self-conflicting contemporary European legal set-up, composed of Civil Law and Common Law regimes[10])[11]. The realisation of differing legal mentalities lurking behind in the background is part of a larger problem indeed that can only be revealed, I believe, by future inquiries into what I propose to call the 'Comparative Judicial Mind' within the larger domain of future analyses in the field of what I mean by 'Comparative Legal Cultures'[12].

Unfolding what is inherently working within the judicial 'black-box' promises an answer to the query raised in the former paragraph, namely, whether or not the law as the total sum of enactments is one of the (probably determinative) relatively autonomous components of the complex legal network aimed at the regulation and effective control of behaviours or, simply, one of the (probably determinative) signals of cultural expectations formulated in many ways in the complex social patterning network taken in the largest sense, a total sum that can neither stand for nor substitute for the total complex of social patterning (which is to enclose within one framework both cultural determination and the entire process of becoming determined in interaction).

In sum, comparative analysis of the judicial 'black-box' is faced with a double task: on the one hand—as motivated by pure theoretical interest — it has recourse to historical 'legal mapping', that is, to drawing the available taxonomy of all the variety of past and present legal experiences of *theatrum legale mundi* representing the whole arena of our historical and cultural diversity[13], and on the other hand — for the sake of assuring mutual cognition on behalf of all concerned and out of purely practical interest — it promotes interaction amongst differing civilisational superstructures, with approaches, conceptual sets and institutions, human sensitivities and professional skills included, in order to widen their horizons in a continued learning process.

5. Law Self-resolving in Post Modernism

Up to the point reached here, our developments have been grounded on the widely held assumption of classical legal positivism as the appropriate approach to law traditionalised in western civilisation[14]. However, our inquiry must diversify into further paths of research and extended cores of problematisation, also taking into account the materialisation of the law's own (so called) post modern conditions, under which the new *juristische Weltanschauung* itself will declare (or simply tolerate the hard empirical facts of) the re/dis-solution of legal positivism (taken in narrow terms as rule-positivism) in

a legal regime that asserts itself as thoroughly (α) constitutionalised while also (β) multiculturally (γ) poly-centred under conditions in which (δ) even its eventual codification cannot aim at more than just foreseeing patterns to be considered (δ/1) at the level of principles, (δ/2) as a suggestion of the temporarily best solutions (that may be changed the next time), that (δ/3) openly calls for continuous judicial unfolding and further development (refinement and adaptation); or, summarily expressed, (ε) the final re/dis-solution of classical legal positivism into what adepts now call 'legal socio-positivism' [*socio-positivisme juridique*][15]. Well, the research in question also has to involve foresight into in what way and how such a new setting (with further ongoing moves also to be considered) will have a diverting accumulated impact on the tasks judicial law-actualisation will face in actual court processes.

A further complementary issue and topic of problematisation is set by the emerging international arena as well. This is dedicated partly to those forms that the above re/dissolution may have in the field of international law proper[16] and partly to forms that the structural arrangement and internal organisation of international humanitarian law will probably establish when it is about to reach its relative completion. For, as is well known, its novel developing structure is based increasingly on the call for a mode of thinking that asserts definite (well-circumscribed) value-preferences in military/civil strategic/tactic planning and execution, rather than on traditional schemes of merely issuing rules of behaviour, a regulatory model historically practiced until now in law. Well, the query focuses here on what repercussions this new method of patterning may and probably will have as regards the development of domestic laws and the diversification of the latter's instruments.

6. 'Law' as Metaphor

It can be taken for granted that so long as it is not made clear adequately and to a sufficient depth what law in social existence truly is (that is, what indeed makes it suitable to exert normative effects in the social realms of both the Ought/*Sollen* and the Is/*Sein*)[17], certainly we shall not be in a position to control its conscious planning and shaping, that is, its overall destiny. Until then, we cannot help entertaining ourselves in *re* of law if not in a merely symbolical sense and with a merely metaphorical force, i. e., in the exclusive manner of signalling something as referring to it at the most[18]. When in everyday professional routine we act as jurists, usually we identify what we mean by the law through its eventually objectified phenomenal forms, that is, through the latter's procedurally due formal enactment, its textual wording, as carrier of what we qualify as legal validity[19]; although, when we act as jurisprudents, we are aware of the underlying fact that this is but a simplistically abbreviated expression, and no criteria set by actually canonised states of an ideology (upheld temporarily by the legal profession) are entitled to substitute for scientific description and definition. This is why the subject and main objective of our present interest in the topic is to circumscribe, as exactly as possible, those necessarily fragmentarily objectified items (composing parts) of the law (necessarily withstanding, of course, definitions pointing beyond the limitingly relativising terms of 'in this or that sense' and 'more or less', because the stuff of law, lingually expressed, is the same for law enacted, law enforced, law doctrinally treated in so-called *Rechtsdogmatik*, and law as the scientific object of study), together with the entire social, institutional, and intellectually represented environments of law that, in the final analysis and at any given time, will in their totality create and make up as well as form and shape the law.

7. European Law and the International Rule of Law

For want of a deepened answer to the above, it is by no means unambiguous what we exactly desire when, for instance, we announce our effort to achieve the harmonisa-

tion of laws within the European Union (unifying them by common codification, among other methods)[20], or when, responding to the challenges made explicit by the globalisation process ongoing in our day, we declare our longing for a substantiated respect for 'the rule of law' and 'legality', both through the further shaping of international law and especially within the decision making processes of international organisations (such as the United Nations)[21]. For nowadays more than dreams are at stake on this global terrain. A firm determination is almost reached that, upon the model offered domestically by constitutional courts, some legal/juristic filtering agent should and shall indeed be built in at/around the peaks of large international organisations (amongst which mostly the United Nations Organisation Security Council is specified by the literature), with a clear intent to control and possibly also efficaciously sanction conformity of the course they are actually taking with the ideal of what is now called 'the international rule of law', even if it is by no means thoroughly and reassuringly clarified what exactly is meant by this phrase and how it can be measured within a multi-partnership complex network operated by so various sides and under ever-changing conditions.

8. Law as Subsistence, Law as Conventionalisation

All these developments are preconditions to clarifying the (simultaneously conditioning and conditional) basic issue of in what law does indeed subsist.

The overall query for identifying what, in the final analysis, law consists of and what it is building constantly from can only be detected from its actual operation, that is, from the moves by which it is operated and made to function, that is, from its practical workings (including the ways by which it recurrently reconventionalises its standard or innovative routines), or, in sum, from analysis of the intellectual/mental operations actually effected on/by (while appeals and/or references are being made to) the law. In order to reach an adequate knowledge, we have to reconstruct exactly what it is that, in the final account, is referred to as the law, and indeed, what is the relationship that can be reconstrued through such analyses between its aspects (property, features, etc.) that are referred to as 'the law' and the practical conclusion inferred (stated, motivated, and justified mostly by justices) as 'the conclusion of the law'.

9. Law Embodied by Texts, Law Conceptualised and Logified

A triple set of questions can be formulated here as queries to be addressed with regard to all the legal traditions and arrangements that can be included at all in such an inquiry. First we should consider whether or not their law is exhaustively embodied by their given textual *corpus*es, or are texts, destined only to offer from what to learn the law, mere signals as exemplifications from the law, references to realise how rich the potential hidden in the entire stuff of the law is, or not more ambitious than serving as memo-props or didactic help on desirable or mostly followed practices in the name of the law. Second, the analysis should address whether or not in the medium carrying or lingually manifesting it, the law is also conceptualised, that is, the words used are at the same time defined as systemic and taxonomic locuses of a notional network built at varying (adequate) levels of generality with the claim of exhaustive completeness, or, rather, all these are, for want of anything better, linguistically exhibited for the exclusive sake of making communication possible at all on law, with the type of mere naming that only characterises, instead of creating any classification performed within some relatively closed and internally arranged taxonomy. Finally, we should consider whether or not in the intellectual operational series targeting, in the case at hand, achievement of the mutual reflection of the law and the facts constituting the case of it, the claim is formulated and enforced, with the legal decision being derived

from the law, as a *logical conclusion* of it (parallel to the requirement of its categorically formal and exhaustive after-the-fact justification excluding any alternative to the decision reached), or logic can only and will in fact remain in the background throughout, playing, if at all, some merely controlling function[22].

10. Novation, Resolution, Exception-making and the Moment of Decision

This inquiry can be assured by investigating applied *legal techniques* in quadruple directions that may have developed in each and every legal system to a locally sufficient degree, that is, techniques that, on the one hand, (a) guarantee the need of any given law and order to remain stable and preserved in its identity all along through the continued flow of challenges it is faced with in order to answer it in the meantime, (b—c) produce instrumentalities available as suitable for that change, adaptation, or mere refinement needed at any time to be effectuated, and which, on the other hand, (d) close down the mutual reflection of rules and facts by/upon one another in a way excluding any doubt — mostly through the mere fact (or authority) of the decision taken or the self-comforting cover of its alleged logical certainty.

In accordance with the above, (a) the first of the directions relating to applied legal technicalities moves (by oscillating) between the (frequently simultaneous) opposites of *conservatio/novatio*, with recourse to which partial renewal may, of course, be achieved by interpretation but in most cases only fragmentarily at a given time, as emphatically counterbalanced by the simultaneous conservation of all the other terrains and domains of regulation for a while; (b) the second of the directions (sometimes in parallel to the former) moves (by oscillating) between what is considered *ius strictum/ius aequum* in the given moment of the ever-developing overall regulatory arrangement, which movement (somewhat modelling the former) may venture either to loosen the original (or derivative) strictness of the regulation in question (mostly in its practical legal consequences) or, vice versa, to fix the original (or derivative) equity available in the actual regulation, in each case preserving the prevailing state of strictness/equity of all the other fields; and (c) a two-way option almost depending on free choice as an evergreen instrumental *trouvaille* of legal technicality is realised by the continuing tension between moves targeting *generalisatio/exceptio*, in case of which conservation/novation and/or strictness/loosening are/is either generalised or made to become an exception (whilst we have to be aware of the fact that, logically from the outset, any change as compared to the original state makes it an exception). Finally, (d) for that the law's abstract normative expectations can be related — projected, then ascribed — to actual facts by performing a formal synthesis unifying the heterogeneities of Ought/*Sollen* and Is/*Sein* in the court's *dictum* that normatively judge sheer facts;[23] an artificially formalised gesture is also required (reminding us of the otherwise a-natural effects of, say, *mancipatio* in Roman law, activated — as an institutional act with normative effects — by an easily memorisable formal human gesture as the *sine qua non* complementation that eventually performs it in law), by means of which, either logified subsumption [*subsumptio*] or discretionally decided subordination [*subordinatio*] will finally be declared by mobilising all the available and freely disposable legal techniques for its demonstration [*justificatio/motivatio*]. This will allow us to officially ascertain the ability to equalise (as well as the ability to reflect and ascribe, or the correspondence or similarity) between the two sides, depending on the logical transcription of their connection established.

(It is to be noted that the classical stock of legal technicalities has to be expanded so as to include techniques of argumentation by basic principles and of the constitutionalisation of issues, as well as recourse to filling gaps in the law or case-specific determination of the meaning of so-called flexible or uncertain terms in provisions.)

11. The Task's Horizons

The research hypothesis itself addresses important challenges at the frontiers of the field due to the fact that it is grounded on assumptions going substantially beyond the current mainstream state of the art. Its underlying approach to law through the reinterpreted duality of 'law in books' and 'law in action', between which the judicial 'black-box' (calling for unfolding in the present project) can only erect a bridge opening up quite new horizons, once it is also recognised that the very fact of (alongside the manner in which) exerting social influence constitutes — serving as the basis for — the ontological existence of law.

Thereby, features of law in practice, perceived mostly as either contingently added moments or mere accidents of false consciousness (and, therefore, treated, if at all, epistemologically), are elevated into the unified domain of the law's very ontology. In parallel with distinguishing the logic of problem solving from that of formal justification, the very notion of legal technique and its usual assessment as a mere accompaniment in instrumental complementation is changed to an unconventionally novel one, with a creative or arbitrary potential able to marshal the process up to its outcome. By launching research on 'the comparative judicial mind', the concept of 'legal mentalities' itself (quite *à la mode* now and quite useful in prophesising regarding the con-/dis-verging prospects of Civil Law and Common Law in the European Union) is transubstantiated into a transdisciplinary notion that can only be described by a long series of multidisciplinary investigations.

Such features of law as its exhaustive embodiment in textures, conceptualisation perfected, or thorough logification, have never been systematically surveyed through historico-comparative inquiries. Moreover, neither they indeed nor their varieties in various legal-cultural settings have been notionalised as yet. What I call post modern challenges of and by the law is well cultivated in the literature but without having been generalised as parts (or the over-weighty superior part) in any overall *Juristische Methodenlehre* (or juristic methodology). And almost the same holds true for international law, for neither humanitarian methodology nor post positivism's challenge to international regulation has ever been subjected to legal philosophical reflection, generalisation and application up to now.

European endeavours at unifying/codifying/harmonising member states' laws are mostly politically expressed and sectorally advanced in *travaux* fore-*préparatoires* rather than envisaged in all their possible actual implementations, including their feasible legal-philosophical dimensions. As a matter of due course, 'rule of law' and 'international rule of law' have only been used mostly as catch phrases without theoretical-methodological scrutiny being done in depth, which the present paper proposes to achieve. Accordingly, the conceptualisation itself it is bound to conclude with has to be unconventionally novel.

Or, the impact will be (1) a more differentiatedly complex notion of law in which both the classical positivist and the post positivist positions are transcended by a concept based upon something operated rather than being merely positivated; (2) a *theatrum legale mundi* with a thorough historico-comparative overview of the kinds of judicial minds actively working in all its representative varieties, past and present; and (3) a legal-philosophical substantiation of (a) what can be meant at all (α) by the 'rule of law' and 'international rule of law' and also (β) by unification, codification and harmonisation of laws, especially in a European Union context; as well as (b) what impact so-called post modern conditions of law expressed by the constitutionalisation of issues and argumentation by principles may have on the future of judicial adjudication in view of the self-strengthening re-/dis-solution of classical rule-positivism; (c/α) what impact the specific methodology of international humanitarian law may have on other fields of law, includ-

ing the issue of (c/ß) what impact post modern novelties and humanitarian specificities may have on the understanding and individual identifiability of what is meant exactly by the 'rule of law' and 'international rule of law'.

---

[1] *Varga Cs.* Lectures on the Paradigms of Legal Thinking. Budapest, 1999.

[2] *Varga Cs.* The Place of Law in Lukacs' World Concept. Budapest, 1985. 'Mediation' (Vermittlung) is a key term of G. Lukács' posthumous Zur Ontologie des gesellschaftlichen Seins. For a background see: Marxian Legal Theory / ed. Cs. Varga. Aldershot; N. Y., 1993.

[3] *Varga Cs.* A magatartási szabály és az objektív igazság kérdése (Rule of Dehavior and the Issue of objective truth) // *Varga Cs.* Útkeresés: Kísérletek — kéziratban (Searching for a path: Unpublished essays). Budapest, 2001. P. 4—18.

[4] Cf. in summation of a decade's research: *Varga Cs.* Theory of Juditial Process: The Establishment of Facts. Budapest, 1995. Later on a similar conclusion was reached from the phenomenologisation of the trend called Critical Legal Studies by Conklin W. A. The Phenomenology of Modern Legal Discourse: The Juditial Production and the Disclosure of Suffering (Aldershot, 1998), preceded as a case study by: *Conklin W. A.* Human Rights, Language and Law: A Survey of Semiotics and Phenomenology // Ottawa Law Review. 1995—1996. 27. 1. P. 129—173.

[5] *Zweigert K.* Solutions identiques par des voies différentes (Quelque observations en matières de droit comparé) // Revue international de Droit comparé. 1966. XVII. 1. P. 5—18.

[6] *Varga Cs.* Theory and Practice in Law: On the Magical Role of Legal Technique // Acta Juridica Hungarica. 2006. 47. 4. P. 351—372.

[7] URL: http://en.wikipedia.org/wiki/Black_box_(systems); *Lucas Ch.* Cybernetics and Stochastic Systems // URL: http://www.calresco.org/lucas/system.htm: 'Cybernetics is the science [...] of the black box, in which the how is irrelevant and only the what matters'. Cybernetics Ceremony in Black Velvet // URL: http://sherban-epure.com/sesite2008few/calledpgs/sigg06slideprsnttn.pdf: 'A black box produces an output, when exposed to an input'. *Glanville R.* The Black Box, Design and Second Order Cybernetics // URL: http://209.85.129.132/search?q=cache:CwaqAvc33UUJ:ead.verhaag.net/speaker_info.php%3Fid%3D507+black+box+system+cybernetics&hl=hu&ct=clnk&cd=87&gl=hu: 'Cybernetics has often used the black box as a device that allows explanations to be built of things that cannot be directly observed'. Going into more details: A Time Travel to the Early Theory of Evolution Strategies // URL: http://ls11-www.cs.uni-dortmund.de/people/rudolph/publications/papres/HPS-Rudolph.pdf. There is opinion that 'Since the interrelationships between the variable input parameters and the dependent output behavior are unknown, we encounter a black box situation in the cybernetic sense: In case of a closed system with high complexity the only thing you can do is the measuring of the input/output relations'. *Cruse H.* Neutral Networks as Cybernetic System // URL: http://209.85.129.132/search?q=cache:K-zEvbCSwycJ:www.brains-minds-media.org/289+black+box+system+cybernetics&hl=hu&ct=clnk&cd=75&gl=hu: 'If one was able to look inside the black box, the system might consist of a number of subsystems which are connected in different ways. One aim of this approach is to enable conclusions to be reached concerning the internal structure of the system' (§ 1), for (as continued in § 1.3), 'Taking this input-output relation as a starting point, attempts are made to draw conclusions as to how the system is constructed, i. e., what elements it consists of and how these are connected'. *Kampis G.* Explicit Epistemology // URL: http://hps.elte.hu/~gk/Publications/JapanEE.html. P. 1: 'A "black box" is any system that we examine exclusively by what it reveals about itself in terms of relations to some external states of affairs, called the inputs and the outputs. The usual point in the black box story is that under very mild conditions the "blackness" of the box (that is, that we don't know what's inside) can be undone, and the internal structure of the box can be discovered, thereby yielding, well, a "white box" which is transparent for us'. For its methodological use in jurisprudence cf.: *Varga Cs.* Les bases socials du raisonnement juridique // Logique et Analyse. 1971. 53—54. P. 171—176; *Varga Cs.* On the Socially Determined Nature of Legal Reasoning // Ibid. 1973. 61—62. P. 21—78. См. также: *Simon D. A.* Third View of the Black Box: Cognitive Coherence in Judicial Decision Making // University of Chicago Law Review. 2004. 71. 2. P. 511—584. The demand for a systematic inquiry into the judicial mind, e. g.: *Fikenscher W.* Modes of Thought: A study in the Antropology of Law and Religion. Tubingen, 2004; *Varga Cs.* Structures in Legal Systems: Artificiality, Relativity, and Independency of Structuring Elements in a Practical (Hermeneutical) Context // Acta Juridica Hungarica 2002. 43. 3—4. P. 219—232; *Varga Cs.* Legal Logic and the Internal Contradiction of Law // Informationstechnik in der juristischen Realitat: Aktuelle Fragen zur Rechtsinformatik / hrsg. E. Schweighofer, D. Liebwald, G. Kreuzbauer, Th. Menzel. Wein, 2004. P. 49—56; *Varga Cs.* Change of Paradigms in Legal Reconstruction (Carl Schmitt and the Temptation to Finally Reach a Synthesys) // Scandinavian Studies in Law. 48. P. 517—529; *Varga Cs.* Legal Traditions? In Search for Families and Cultures of Law // Legal Theory: Legal Positivism and Conceptual Analysis, I / ed. by J. J. Moreso. Stuttgart, 2007. P. 181—193; *Varga Cs.* Doctrine and Techniques in Law // Iustum Aequum Salutare. 2008. IV. 1. P. 23—37.

[8] For the foundational outlines cf.: *Varga Cs.*, *Szajer J.* Doctrine and Legal Techniques // Rechtskultur — Denkkultur / hrsg. E. Mock, Cs. Varga. Stuttgart, 1989. P. 136—147.

[9] *Varga Cs.* Is Law a System of Enactments? // Theory of Legal Science / ed. by A. Peczenik, L. Lindahl, B. van Roermund. Dordecht, 1984. P. 175—182.

[10] For the expression and its unfolding as a key term cf.: *Legrand P.* Le droit compare. P., 1999; *Legrand P.* Fragments on Law-as-Culture. Deventer, 1999.

[11] For their internal variety and richness with a partly heterogeneous historico-cultural potential cf.: European Legal Cultures / ed. by V. Gessner, D Hoeland, V. Varga. Aldershot, 1996.

[12] *Varga Cs.* Comparative Legal Cultures? Renewal by Transforming into Genuine Discipline // Acta Juridica Hungarica. 2007. 48. 2. P. 95—113.

[13] *Varga Cs.* Introduction // Comparative Legal Cultures / ed. by Cs. Varga. Aldershot; N. Y., 1992. P. xv—xxiv. Подробнее см: *Varga Cs.* Theatrum legale mundi: On legal System Classified // Европейське право та порівняльне правознавство: зб. ст. / за ред. С. Шемшученко, І. С. Гриценка, О. В. Кресіна. Київ, 2010. С. 24—50.

[14] As mirrored by the development of the idea of law-codification and the adventure of its variegated uses and attempts at implementation cf.: *Varga Cs.* Codification as a Socio-historical Phenomenon. Budapest, 1991.

[15] *Varga Cs.* What is to Come after Legal Positivisms are Over? Debates Revolving around the Topic of ‘The Judicial Establishment of Facts’ // Theorie des Rechts und der Gesellschaft: Festschrift fur Werner Krawietz / hrsg. M. Atenza, E. Pattaro, M. Schulte, B. Topornin, D. Wyduckel. Berlin, 2003. P. 657—676; 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. 2003. 44. 1—2. P. 21—44.

[16] *Koskenniemi M.* The Politics of International Law // European Journal of International Law 1990. I. 1—2. P. 4—32: ‘Social theorists have documented a recent modern turn in national societies away from the Rechtsstaat into a society in which social conflict is increasingly met with flexible, contextually determined standards and compromises. The turn away from general principles and formal rules into contextually determined equity may reflect a similar turn in the development of international legal thought and practice. There is every reason to take this turn seriously — though this may mean that lawyers have to re-think their professional self-image. For issues of contextual justice cannot be solved by the application of ready-made rules or principles. Their solution requires venturing into fields such as politics, social and economic casuistry which were formally delimited beyond the point at which legal argument was supposed to stop in order to remain “legal”. To be sure, we shall remain uncertain. Resolutions based on political acceptability cannot be made with the kind of certainty post-Enlightenment lawyers once hoped to attain. And yet, it is only by their remaining so which will prevent their use as apologies for tyranny’.

[17] In the context of *Lukacs G.* Zur Ontologie des gessellschaftlichen Seins, Phenomena (M/153 manuscript in Lukacs Archieves (Budapest). P. 253 it is of a criterial importance that ‘social being’ as such can only emerge once the phenomenon in question starts actually exerting specific effects on and in society [e. g., ‘Das Sein besteht aus unendlichen Wechselbeziehungen prozessierender Komplexe’].

[18] In addition to the ways in which the law shall be treated and applied (as something ready-made), as a prior issue, the ways in which the law can be produced (e.g., which procedure can result in a law being made, which is fed from what and attains what degree of completion) are becoming conventionalised through the ideology of the legal profession. For we could take it as previously given from our inquiries into the methodology of the formation of legal notions (*Varga Cs.* Quelque questions metodologique de la formation des concepts en sciences juridiques // Archives de Philosophie de Droit. 1973. XVIII. P. 205—241) and into the law’s anthropological foundations (*Varga Cs.* Antropological Jurisprudence? Leopold Pospisil and the Comparative Law. Waseda University. Tokyo, 1998. P. 265—285) that independent of the self-definition and self-provision of the law, there is a constant battle for both its everyday uses and tendential definition ongoing among at least three of its feasible components in mutual rivalry: positing as law / enforcing as law / and popular practicing as law. Accordingly, instead of ‘law’ in general, we can only speak about law with further specification implied, that is, as circumscribing it in and against a multi-factoral continuous movement. Or, in the final analysis, the once simple query for ‘“what” the law is’ is changed now by the sole issue, dialectically hermeneutic and process-like: in which sense the law is properly and actually meant; whether anything meant is meant so either more or less; and if it is meant so at all, then in which phase of either developing to become, or ceasing to have been, a law.

[19] *Varga Cs.* Validity // Acta Juridica Hungarica. 2000. 41. 3—4. P. 155—166.

[20] *Varga Cs.* Codification at the Treshold of the Third Millenium // Acta Juridica Hungarica. 2006. 47. 2. P. 89—117.

[21] Cf. e. g.: *Bryde B.-O.* Konstitutionalisierung des Volkerrechts und Internationalisierung des Verfassungsrechts // Der Staat. 2003. 42. 1. P. 61—75; Legalization and World Politics / ed. by J. Goldstein, et al. Cambridge, 2001; *Pildes R. H.* Conflicts between American and European Views of Law: The Dark Side of Legalism // Virginia Journal of International Law. 2002. 44. 1. P. 145—167.

[22] For some basic hints cf.: *Varga Cs.* Law and the Doctrinal Study (On Legal Dogmatics) // Acta Juridica Hungarica. 2008. 49. 4. P. 253—274; *Varga Cs.* Differing Mentalities of Civil Law and Common Law? The Issue of Logic in Law // Ibid. 2007. 48. 4. P. 401—410.

[23] This is what a Hungarian classic of legal sociology once termed as synopsis for his processual theorising: *Horvath B.* The Base of Law / ed. by Cs. Varga. Budapest, 2006; *Jakab A.* Neukantianismus in der ungarischen Rechtsteorie in der ersten Halfte des XX. Jahrhunderts // Archiv fur Rechts- und Sociaphilosophie. 2008. 94. 2. P. 264—272.