

LEGAL TRADITION OF EASTERN EUROPE. ITS RISE AND DEMISE

TOMASZ GIARO*

The historical foundations of European legal identity are multiple in character. Usually the stress lies on the distinction between the British common law and the civil law of the continent. However, within the latter area the gradually disappearing division between Eastern and Western Europe must also be remembered. In the high middle ages the Christianization and the colonization, which signified the reception of Canon law and German town law, bound the new post-Carolingian Eastern Europe to the West. Only during the early modern times European legal unity was broken up because of the subjugation of South-eastern Europe by the Ottomans and because of the rejection of Roman law in East Central Europe. The rejection of Roman law by Polish and Hungarian noble democracy, unable to confront the absolutism of its neighbours, was followed by the political decline of the region. As a result, legal homogeneity of the continent could be accomplished only during the 19th century, when Western law and legal doctrine were transferred wholesale to the East. Nowadays the tensions between Eastern and Western Europe reveal clearly a vanishing trend.

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* Professor of Roman Law, Law Faculty, University of Warsaw.

I. DISCOVERING EUROPEAN LEGAL HISTORY

In one of its many guises ‘tradition’ may be defined as a simplified history for laymen. In this sense it implies not only simplicity, but also a certain immobility, as in a widespread saying on enlightenment, the Athenian of the 5th century BC as well as the European of the 18th century AD, which replaced tradition with reason. Nevertheless, western legal tradition is doubtless dynamic in character, including the capacity to evolve or even to undergo revolutions. Moreover, it has been continuously manipulated and remoulded. Rediscovering Central Europe, inventing Eastern Europe, imagining the Balkans – these fashionable titles convey the insight that all historical-geographical nomenclature consists of socially-constructed concepts,¹ promoting political projects in a discourse, the nature of which is apparently purely theoretical.

On the other hand, not every historical discourse is necessarily false merely because it is a discourse. At times historical truth may need some discursive support to be established as a rediscovered tradition. The renowned example of a very simplified, indeed distorted, history and in that sense of at least partially invented tradition in the field of modern legal scholarship is Friedrich Carl von Savigny’s foundational narrative of European Legal History. It depicts the torch of ancient legal doctrine passed step by step from medieval Italy, where the ancient Roman law was never forgotten, to humanistic France with its *mos gallicus* and then to Holland as fatherland of Roman-Dutch Law to reach finally its apex in Germany, where during the 19th century the Historical School of Law flourished, followed by the Pandect-science.²

In the same sense the invention of the concept of European legal history and, what is more, of the eponymous academic discipline founded upon the tradition of the old *ius commune*, serves presently to support the legal unification promoted by the main driving forces of European Union.³ The German scholar Helmut Coing, who was the first to define European legal history an autonomous and homogeneous field of research as early as the 1960s,⁴ conceived it already in 1973, immediately after the accession of Great

¹ T. Judt, *The Rediscovery of Central Europe*, in *Daedalus*, 23-54 (119.1, 1990); L. Wolff, *Inventing Eastern Europe* (1994); M. Todorova, *Imagining the Balkans* (1997).

² D. Osler, *The Myth of European Legal History*, in *Rechtshistorisches Journal*, 393-395 (16, 1997).

³ R. Schulze, *European Legal History – A New Field of Research in Germany*, in *The Journal of Legal History*, 289 (13, 1992).

⁴ H. Coing, *Die europäische Rechtsgeschichte der neueren Zeit*, in *Ius commune*, 1 ff. (1, 1967).

Britain and Ireland to the European Communities, as a bipolar discipline based on the contraposition between civil law and common law as both component parts of “European civilization”.⁵ This expression may be explained by the fact that the concept of western legal tradition, nowadays much more widespread, was at that time still occupied exclusively by the Sovietologists.⁶

Presently the wind of change has blown once more. In view of a projected private law code common to the European continent and the British Isles, and let it be only a code of obligations composed of some few legal maxims, the good old English common law is christened a province of the continental *ius commune*. Consequently, the few long-recognized past influences of civilian scholarship on the common law, instead of being defined as what they truly were, i.e. isolated events producing only superficial effects, are emphasized as “many historically-based common features”,⁷ whereas the deep divides between the two opposed traditions are concealed or disavowed.⁸ Given that the discipline of European Legal History as a new field of study is a German invention, some scholars of other nationalities, such as Pierre Legrand and Douglas Osler, are profoundly convinced that also the subsequent discourse which diminishes the historical autonomy of common law, or even definitively denies it at all, flows from German nationalist intentions.⁹

The unquestionable creativity of legal scholarship, which finds its expression already in the choice of its conceptual tools, extends also over legal history, theory and comparative law. For example in the study of circulation of legal models, if we banish the time-honoured concept of ‘reception’ replacing it with ‘transfer’ of legal rules or institutions, the reciprocity of

⁵ H. Coing, *The Roman Law as ius commune on the Continent*, in *Law Quarterly Review*, 505 ff. (89, 1973); Id., *European Common Law*, in M. Cappelletti (ed.), *New Perspectives for a Common Law of Europe*, 31 ff. (1978); Id., *Common Law and Civil Law in the Development of European Civilization*, in Id., K. W. Nörr (eds.), *Englische und kontinentale Rechtsgeschichte*, 31 ff. (1985).

⁶ T. Giaro, *Modernisierung durch Transfer*, in Id. (ed.), *Modernisierung durch Transfer im 19. und frühen 20. Jahrhundert*, 277 (2006).

⁷ R. Schulze, *European Private Law and Legal History*, in Thomas G. Watkin (ed.), *The Europeanisation of Law*, 46 (1998).

⁸ D. Osler, *The Myth* (nt. 2) 405 ff.; P. J. Thomas, *People Take Pictures of Each Other to Prove that they Really Existed*, in *Ius commune*, 239 f. (22, 1995); Id., *Legal Historiography in South Africa*, in *Zeitschrift für Neuere Rechtsgeschichte*, 98 f. (19, 1997); Id., *Deconstruction of Myths*, in *The South African Law Journal*, 784 ff. (116, 1999).

⁹ P. Legrand, *The Same and the Different*, in Id., R. Munday (eds.), *Comparative Legal Studies*, 260 f. (2003); D. Osler, *The Fantasy Men*, in *Rechtsgeschichte*, 179 ff., 189-191 (10, 2007).

influence and the active role of the taker will be stressed.¹⁰ In the same way the option for European Legal History might mean the exclusion of transatlantic American elements in the name of good old Europe, whereas emphasizing western legal tradition for the sake of so-called occidental values, originating from the American Constitution and the French Declaration of the Rights of Man and of the Citizen, might imply the exclusion of Eastern European latecomers. First of all, however, the recent insistence on European Legal History may simply seem an attempt to construct a somewhat broader European legal tradition, including the English common law.

A few questions may be also asked in this connection specifically about the region of Eastern Europe. Is it a truly autonomous area, generated by the historical *longue durée*, or merely a contemporary construct of western hegemonial discourse, born during the enlightenment and perpetuated during the cold war of 1945-1989? An important distinguishing feature of Eastern Europe in the field of legal history is recognized, exactly as in the case of the traditional English legal system, as the non-reception of Roman law.¹¹ In consequence, during the whole period of the old *ius commune* prior to the civilian codifications of the 19th century, there was a general presumption of the binding force of Roman law in the continental West and, to the contrary, only isolated cases of Romanist influence in the East. In such a situation, perhaps it would be better to speak in a more differentiated way about the eastern and western mode of reception of Roman law?

This problem has to be reconsidered in view of the recently relaxed concept of reception. As a matter of fact, even the West never experienced a direct transfer of legal rules from antiquity to the middle ages, but merely a process of intellectualization of local legal orders.¹² Nonetheless, from the 11th century onwards Roman law remained in Western Europe the subject of continuous study and interpretive change according to new social needs, whereas the Byzantine world offers quite the opposite, a static picture. Since the reception bearer was here the Orthodox Church – unlike in the West, where legal and ecclesiastical culture rested upon the relationship of autonomy – the secular Roman-Byzantine law was received in one package with canon law of Byzantium.

¹⁰ T. Giaro, *Alt- und Neuropa, Rezeptionen und Transfers*, in Id. (ed.), *Modernisierung durch Transfer zwischen den Weltkriegen*, 273 ff. (2007).

¹¹ T. Giaro, *Westen im Osten. Modernisierung osteuropäischer Rechte bis zum Zweiten Weltkrieg*, in *Rechtsgeschichte*, 124 (2, 2003).

¹² F. Wieacker, *A History of Private Law in Europe with Particular Reference to Germany*, 96 f., 176 f. (1995).

In East Central Europe, finally, the reception of Latin Christendom, accomplished through the intermediation of Roman Papacy, was accompanied by the rejection of Roman law as the legal system of German Emperors.

However, in order to analyze the European, as well as every other, legal tradition a somewhat broader perspective than that of reception or transfer of legal rules and institutions must be assumed. Legal systems should be primarily considered as normative ensembles opened towards custom and morality, religious beliefs and models of economic rationality, philosophies of political power and practical lifestyles etc. In consequence, it may be taken for granted, following one of the many dependence theories, the most elaborate of which was proposed by the American sociologist Immanuel Wallerstein,¹³ that the European economy as well as European legal systems have been formed by a long history, which still has not reached its final conclusion, as a greater whole, composed of the western centre and the eastern peripheries.

II. EUROPE AS A SYSTEM

During the half millennium from 500 to 1000 Western Europe changed from a simple continuation of ancient Roman civilization to an entirely Christian world. Between the 11th and the 15th centuries, the period characterized by the Christianization and the subsequent German colonization of Eastern Europe, its socio-economic delay from the West was relatively small. Nevertheless, at the beginning of the early modern times South-eastern Europe, which had previously constituted the Byzantine sphere of influence, after the seize of Constantinople in 1453 fell definitively under Ottoman rule, remaining to a large extent cut off from the pan-European circulation of commodities, ideas and legal models. Conversely, in the North the territory eastwards of the rivers Elbe and Leitha was re-feudalised in the 16th century and, together with the recently-discovered America, turned to the agrarian periphery of western proto-capitalism. According to the Polish historian Witold Kula the American slave-system was thus paralleled by Eastern European serfdom, both forming one reservoir of cheap manpower and raw materials for the English-Dutch centre.¹⁴

¹³ C. Goehrke, *Transformationschancen und historisches Erbe: Versuch einer vergleichenden Erklärung*, in Id., S. Gilly (eds.), *Transformation und historisches Erbe in den Staaten des europäischen Ostens*, 656 ff. (2000); P. S. WANDYDZ, *The Price of Freedom. A History of East Central Europe*, 54 ff. (2nd ed., 2001).

¹⁴ W. Kula, *Historia, zycofanie, rozrywki*, 187-188, 192 (1983).

Given that the level of legal science depends heavily on its economic substratum,¹⁵ a highly developed jurisprudence is, in the long term, excluded in a poor country. According to the abovementioned torch principle of Savigny, the European *fax iurisprudentiae* was passed from Italy to France and then to Holland and Germany, following always the wealthiest and mightiest country of the continent. The universities of eastern periphery, although founded at a relatively early date, i.e. Prague in 1348, Cracow in 1364 and Pécs in 1367, did not participate to this western movement of learning (*translatio studii*). During their somewhat phantasmal existence these universities functioned with considerable intermissions, leaving their chairs of Roman law vacant for long periods.¹⁶ Their modest level is confirmed by the mass peregrinations of Czechs, Poles and Hungarians to western universities in the course of academic migrations which lasted until the 19th century.¹⁷

Furthermore, the level reached by the legal science in a specific country determines in the last resort the level of its legal system. Given the absence of urbanization and the correspondingly weak position of the burghers, the late medieval Eastern Europe did not require legal Romanization, driven in the West by the towns which played the role of the second engine of the reception next to the Holy Roman Empire. For that reason, the international circulation of legal models which crossed and merged together with great intensity as early as the middle ages, remained limited in the East to the canon law of the Catholic Church and to the German town law. During the early modern times, European legal unity was broken up because of the subjugation of South-eastern Europe by the Ottomans and because of the rejection of Roman law in East Central Europe. In consequence, a legal homogeneity of the continent could be accomplished only during the 19th century, when western law and legal doctrine were transferred wholesale to the East.

Apart from the identity of the learned laws of Europe, provided by the unique Latin text of the *Corpus Iuris Civilis*, the medieval Christian states

¹⁵ J. Zlinszky, *Two Questions about the Adaptation of Juridical Models*, in *Acta Juridica Hungarica*, 55 (33, 1991).

¹⁶ V. Vaněček, *La penetrazione del diritto romano e canonico nel territorio dell'odierna Cecoslovacchia*, in *Atti del Convegno di Studi Accursiani III*, 1289 f. (1968); J. Sondel, *Zur Bedeutung des römischen Rechts in Polen*, in *Studi in onore di A. Biscardi IV*, 712 ff. (1983); I. Zajtay, *Sur le rôle du droit romain dans l'évolution du droit hongrois*, in *Studi in memoria di P. Koschaker II*, 193 ff. (1954).

¹⁷ V. Vaněček, *La penetrazione* (nt. 16), 1282 f.; R. Taubenschlag, *Einflüsse des römischen Rechts in Polen*, in *Ius Romanum Medii Aevi*, 7 f. (V.7-9, 1962); K. Gönczi, *Katalysatoren der mittelalterlichen ungarischen Rechtskultur*, in G. Brunner (ed.), *Ungarn und Europa*, 45 ff. (2001).

constituted a whole held together by common undertakings such as the Peace of God and the Crusade movements. Even if the Holy Roman Empire was contested not only by France, but also by Poland, Hungary and partially by Bohemia, the spiritual unity of East and West was paradoxically reconfirmed at the Council of Constance (1414-18) through a dispute of Paulus Vladimiri against the Teutonic Knights. According to Paulus, a Polish canonist, rector of Cracow University and founder of the public international law based on the coexistence of Christian and pagan countries, the Christian faith could not justify conversion by war against the infidels who enjoyed a natural right to their own state.¹⁸ The Holy Roman Empire, embracing the most of Central Europe, had been abolished only in 1806 by Napoleon whose Empire was in turn replaced by the Holy Alliance, a pan-European reactionary peacekeeping organization established at the Vienna Congress of 1815.

The influence of Roman law as learned law has been transmitted exclusively by the universities since the middle ages. However, with the exception of Moscow University, founded only in 1755, there were no universities throughout South-eastern Europe and Russia until the 19th century, wherefore the local elites used to study in the West. The oldest Hungarian university, established in the middle of the 14th century in Pécs, was abolished by the Ottoman Turks as early as 1543. The both remaining universities of East Central Europe, Prague and Cracow, afflicted with stagnation, resumed their activity in the realm of legal education, doctoral dissertations included, only during the second half of the 17th century,¹⁹ when also another Polish university, that of Lvov, was founded in Western Ukraine (1661). Those eastern institutions for higher legal learning, somewhat enlivened during the enlightenment of the second half of the 18th century, reached a level comparable to western law faculties due to the imitation of German Pandect-science as late as during the 19th or even in the 20th century.

Therefore, East and West as unequal parts of the European system, the homogeneity of which has always been very relative, must also be opposed to each other. As a matter of fact, it is possible to conceive a legal history of Western Europe without the East, as Raul van Caenegem, Peter Stein and all

¹⁸ S. F. Belch, *Paulus Vladimiri and his Doctrine concerning International Law and Politics*, 257 ff. (1965); K. Pennington, *Between Naturalistic and Positivist Concepts of Human Rights*, available at <http://faculty.cua.edu/pennington/NaturalLawUnenumeratedRights.htm>, 7-9.

¹⁹ J. Klabouch, *Die Lehre von der subsidiären Gültigkeit des Gemeinen Rechtes in der juristischen Literatur der Böhmischen Länder*, *Symbolae R. Taubenschlag* II, 339, 342 f. (1957); A. Kremer, *Z dziejów Katedry Prawa Rzymskiego Akademii Krakowskiej*, in *Czasopismo Prawno-Historyczne*, 60-63 (41.2, 1989).

the occidental narrators of exclusively Western European legal histories do.²⁰ A similar operation has been conducted by Hein Kötz in the last edition of his prestigious “Introduction to Comparative Law” which simply discarded the socialist legal family,²¹ whereby every mention of Eastern Europe disappeared too, the western model being explained in isolation, by itself alone. Indeed, the history of Western Europe is far from supplying the complete story, but it may still be written, whereas on the contrary Eastern European history, which excludes the West, remains an intellectual impossibility, even if it has been to a certain extent endeavoured by a German scholar, Herbert Küpper.²²

In fact, a parallel history confronting East and West shows exactly the same things happen in both parts of Europe, viz. state building and Christianization, feudalization, recording customary law, founding cities and universities, abolition of serfdom, development of capitalism, industrialization, constitutionalist movement and codifications. These processes have, however, always been accomplished earlier in the West, following in the East only after a certain delay. As a result, European history, general as well as legal, is asynchronous, composed of pioneering societies in the West and backward latecomers in the East. This may be explained through the elements of Roman continuity, represented in Western Europe by the Church and ecclesiastic culture, towns and the remaining infrastructure of Roman civilization, such as roads and navigable rivers, all of which were absent from the East. Warlords with political ambitions, such as the first Frankish King Clovis, known in the West already at the end of the 5th century,²³ appear in Eastern Europe, e.g. Boris I in Bulgaria, four hundred years later. Even if this backwardness may be justified, its existence remains a hard historical fact.

III. DIVISIONS OF EASTERN EUROPE

Eastern European legal tradition may be defined as an ‘internal’ or ‘lateral’²⁴ tradition with respect to the wholesale tradition of continental Europe, the East of which is, however, just as little homogeneous as the West. Speaking with more precision, East and West must be distinguished also

²⁰ O. Robinson et al., *European legal history* (3rd ed., 2000); P. Stein, *Roman law in European history* (2000); R. C. van Caenegem, *European Law in the Past and the Future* (2002).

²¹ K. Zweigert, H. Kötz, *An Introduction to Comparative Law*, V (3rd ed., 1998).

²² H. Küpper, *Einführung in die Rechtsgeschichte Osteuropas* (2005), reviewed by Giaro, *Station Sozialismus*, Rechtsgeschichte, 204-208 (9, 2006).

²³ R. C. van Caenegem, *An Historical Introduction to Western Constitutional Law*, 37 f. (1995).

²⁴ On these concepts H. Patrick Glenn, *Legal Traditions of the World*, 319 ff., 321 ff. (2000).

within the tradition of Eastern Europe, which is composed of three sub-regions: Roman Catholic westward-looking East Central Europe and both Christian Orthodox component parts: South-eastern Europe and Russia. East Central Europe, in the cultural sense strongly oriented towards the Latin European model with its Gelasian doctrine of 'two swords', implying a political independence of Church and State, constitutes a transition zone between East and West.²⁵ On the other hand, Russia and South-eastern Europe are decisively eastern in character.

The borderline between Eastern and Western Roman Empire changed to the divide between Eastern and Western Europe, when during the 6th century the Slaves began to settle on the Balkan Peninsula.²⁶ At the end of the 9th century, when the reception of Christendom and – to some extent – of Roman-Byzantine law by Southern Slaves started,²⁷ the Slovenes and the Croats at the western side adopted the Catholic confession and the Latin script, whereas the Serbs at the eastern side the Orthodox confession and the Cyrillic script. The great Church Schism of the 11th century perpetuated the isolation of Eastern Christianity from the West. This isolation received another seal, when South-eastern Europe was eventually seized by the Ottomans who in 1453 subjugated Constantinople, conserving the rule over the whole Balkan Peninsula up until the 19th century.

Russia, which is usually either defined as Eastern Europe in a narrow sense or, on the contrary, excluded from the concept as an extra-European territory,²⁸ remained occupied by the Mongols between 1240 and 1480. It rose to the status of a great power at the expense of Sweden and Poland only following Peter the Great (1682-1725) in the second half of the 17th century. Since that time, Russia developed an absolutist system of even much more stronger nature than in the West, which consisted, exactly as in Prussia, in a reactionary coalition concluded between the monarchy and the high gentry to the detriment of the burghers. As far as foreign relations are concerned, several Russian attempts to establish a political and cultural hegemony in

²⁵ H. J. Berman, *Law and Revolution I. The Formation of the Western Legal Tradition*, 92, 279, 504, 521 (1983).

²⁶ G. Benacchio, *La circolazione dei modelli giuridici tra gli slavi del Sud*, 16-17 (1995); F. Curta, *Southeastern Europe in the Middle Ages 500-1250*, 53 ff. (2006).

²⁷ L. Burgmann, *Das byzantinische Recht und seine Einwirkung auf die Rechtsvorstellung der Nachbarvölker*, in *Südosteuropa-Jahrbuch*, 287 (26, 1996).

²⁸ In the latter sense R. Bideleux, I. Jeffries, *A History of Eastern Europe*, 8 ff. (1998).

Eastern Europe during the 19th century remained limited to Bulgaria, where the Russians were celebrated as liberators from the “Turkish Yoke”.²⁹

The people of East Central Europe who are the Westerners of the European East, first of all Hungarians and Poles, appeared on the stage of history only during the 10th century, adopting Western political and legal institutions,³⁰ among them canon law, as a consequence of the reception of Christendom. The progressive decline of feudalism and the emancipation of towns took place in the West somewhat earlier, i.e. from the beginning of the 11th and mainly in the 12th century.³¹ At that time, the so-called Great Freedom generated in Germany an inner colonization, which extended towards Eastern Europe during the 13th century. Nevertheless, the delay of Eastern Europe from the West still remained relatively small. Within the borders of the Holy Roman Empire the first records of customary law were published during the 13th century, e.g. the mirror of Saxon law (*Sachsenspiegel*) between 1220 and 1230, but the oldest collection of Polish customary law, *Księga Elbląska* (*Elbinger Buch*), belongs to the same movement, dating back to the turn from the 13th to the 14th century.³²

A consequence of German colonization of the European East was another reception, i.e. that of German town law of the Lübeck and particularly of the Magdeburg type, which occurred during the 12th-13th century. As a final result in the course of a process, which may be considered the first Europeanization and a pattern for further colonization, East Central Europe adopted the economic and political models of the West.³³ The eastern border of the Holy Roman Empire moved from the river Elbe to Oder, eastwards from which numerous towns and villages of German law were established, in Lesser or Little Poland (*Polonia minor*) also without any foreign immigration.³⁴ Yet it seems doubtful, whether the *Privilegium Teutonicum*, recorded repeatedly during the 12th-13th century in Bohemia, may be interpreted as testifying to a greater longevity of the legal principle of personality in the East.³⁵

²⁹ G. Castellan, *History of the Balkans*, 323 ff. (1992); M. Karagjozova-Finkova, C. Takoff, *The Bulgarian Legal System*, in Giaro (nt. 6), 129 ff., 137 f.

³⁰ Z. Wojciechowski, *Les racines nationales et les influences de l'Occident dans les institutions politiques de l'ancienne Pologne*, 1 ff. (1933).

³¹ A. Leca, *La république européenne I. L'unité perdue 476-1806*, 289 ff. (2000).

³² K. Tischer, *Das älteste polnische Gewohnheitsrechtsbuch* (1969).

³³ R. Bartlett, *The Making of Europe*, 172 ff., 298-300, 306-314 (1994).

³⁴ L. R. Johnson, *Central Europe*, 37-42 (2nd ed., 2000).

³⁵ Leca, *op. cit.* (nt. 31), 172 ff.; H. Hattenhauer, *Europäische Rechtsgeschichte*, 263 f. (1994).

Whereas in East Central Europe new villages, towns and universities were founded, in the South-eastern part of the continent the late Byzantine state (1261-1453) was engaged in arranging the previous tradition without producing any new legal regulations.³⁶ Also the study of the old ones failed, because universities were known neither in Byzantium nor in its sphere of influence. Equally problematic was the practical effectiveness of Roman-Byzantine law in Eastern Europe. Even if this law, first of all the *Basilica*, compiled at the end of the 9th century, was nothing else than Roman law in Greek elaboration,³⁷ already its normative substrate differed somewhat from the western *Corpus Iuris Civilis*. Objects of reception in Russia and in the Balkan area were, beside the ecclesiastic *Nomocanones*, extracts from extracts, such as the *Ecloga* or the *Prochiron* as well as the Epitomai of the *Basilica*, written in Old Church Slavonic.³⁸

In contrast to the learned Latin law of the West, the use of local language assured to the Roman-Byzantine law received in Eastern Europe a popular character, but at the same time the process of abridging, extracting and simplifying the Greek translations of original Roman texts deprived them almost completely of their dogmatic subtlety. In consequence the East, which did not receive the whole richness of Roman casuistry contained in Justinian's law books, lacked any developed legal doctrine of western type, aside from canon law. The *Corpus Iuris Civilis* remained unknown in Russia until the end of the 17th century.³⁹ As a result, the purely symbolical eastern reception, unable to undertake an autonomous study and adaptation of ancient sources, failed to produce any synthesis between Byzantine and local law.⁴⁰ The latter, largely unrecorded and therefore not Romanized, flourished in its traditional customary form.⁴¹

In the Byzantine world the only reception vehicle was the Orthodox Church which blended statute and law as well as religion and morals, by no

³⁶ D. Simon, *Die Epochen der byzantinischen Rechtsgeschichte*, in *Ius commune*, 94 (15, 1988).

³⁷ M. T. Fögen, *Brüssel, Beirut und Byzanz*, in *Rechtshistorisches Journal*, 356 ff. (12, 1993).

³⁸ L. Burgmann, *Juristische Buchproduktion in Byzanz*, in V. Colli (ed.), *Juristische Buchproduktion im Mittelalter*, 247 ff. (2002).

³⁹ G. Ajani, *Alcuni esempi di circolazione di modelli romano-germanici nella Russia imperiale*, in *Studi in memoria di G. Gorla*, 967 f. (1994).

⁴⁰ T. Ionasco, V. Al. Georgesco, *La réception du droit romain de Justinien*, in *Atti III* (nt. 16), 1235.

⁴¹ M. Andreev, *Sur le problème de la réception du droit romain dans les pays des Slaves du Sud*, in G. Antalfy et al. (eds.), *Einzelne Probleme der Rechtsgeschichte*, 12 (1970); Benacchio, *Circolazione* (nt. 26), 89.

means contributing to an intellectualization of legal knowledge, but rather creating obstacles to this process which eventually remained purely western.⁴² Following the Ottoman conquest of South-eastern Europe, the lack of political autonomy within the Turkish Empire excluded horizontal relations between its provinces. In consequence, their local law was preserved throughout centuries exactly as it was at the moment of their subjugation. This process of „mummification“ of Slavic legal systems⁴³ extended also to the Byzantine law applied primarily in Greece and in Rumanian Principalities. It is sufficient to mention the *Hexabiblos*, a late medieval compilation dating back to the year 1345, which remained unchanged in force in Bessarabia until 1928 and in Greece even until 1946.

The mummification of local law, which affected South-eastern Europe annexed by the Ottomans, meant likewise the lack of any merger between this law and Turkish legal institutions. Of these, scarcely more than some few were received in the Balkans: firstly the faculty of using the mortgaged immovable by the creditor without setting off the fruits against the debt, secondly the *amanet*, a depositary's duty considered roughly equivalent to the Roman *custodia*, and thirdly the *tapija* system of land registry. Unlike in the West, where a synthesis of Roman and local law progressively took place, nothing comparable was possible in the East, where the local system alone was already followed in the ecclesiastical liturgy. In the legal field this induced the practical predominance of Slavic or Greek customary law. For instance the ancient Hellenistic institution of pre-emption (*protimesis*), codified in the *Hexabiblos*, remained applicable in Greece throughout the Ottoman rule and even afterwards, until it was abolished by a modern civil law statute of 1856.⁴⁴

IV. THE DECLINE OF EAST CENTRAL EUROPE

At the turn to the 16th century, when Western Europe definitely took the road of its modern capitalist development, the East experienced a regressive process of re-feudalization, in consequence of which it became an agrarian periphery to the western centre situated in London and Amsterdam.⁴⁵ This

⁴² H. Sundhaussen, *Europa balcanica*, Geschichte und Gesellschaft, 641 ff., 647-648 (25, 1999).

⁴³ Benacchio, *Circolazione* (nt. 26), 70 f.

⁴⁴ S. Vryonis jr., *The Byzantine Legacy in the Formal Culture of the Balkan Peoples*, in J. J. Yiannias (ed.), *The Byzantine Tradition after the Fall of Constantinople*, 21-25, 28 (1991).

⁴⁵ I. T. Berend, *The Crisis Zone of Europe*, 3 ff. (1986); Johnson, *Central Europe* (nt. 34), 90-92.

economic and legal watershed, marked by the ‘second serfdom’ in the East, also displayed certain political consequences. The western market economy was created by the rising merchant class in alliance with the king, whereas in East Central Europe the ruling noblemen of the gentry nations of Hungary and Poland managed to neutralize the royal power in the name of their political freedom (*libertas*).⁴⁶ In Hungary and Bohemia economic dependency led eventually to the political domination of the Habsburgs and, ultimately, to the almost complete disappearance of all geopolitical components of East Central Europe as independent states in the course of a historical process which obviously took place by stages.

Following the severe defeat inflicted in the year 1526 by the Ottoman Turks on Hungarians at Mohacs, a partition of Hungary proved necessary: the North-West including Croatia, called Royal Hungary, was taken by the Habsburgs, whereas the eastern part became the vassal Principality of Transylvania controlled by the Ottomans, and the rest was directly annexed by them. The Ottoman rule in Hungary ended only in 1718, but already in 1687, amidst the Turkish wars, the Hungarian Parliament at its session in Pressburg conferred the crown heritably to the Habsburgs, thus enlarging their Empire. Even if Hungary remained its autonomous legal area, since the influential noblemen managed to preserve the local feudal law, recorded in 1514 by István Werbőczy under the name of *Tripartitum*,⁴⁷ the constitutional position of Hungary within the Danubian monarchy was strengthened only by the Compromise (*Ausgleich*) concluded with Austria in 1867.

Bohemia too was struck by the pan-European political crisis of the 17th century. The same Habsburg expansion, guided by Archduke Ferdinand I (1556-64), who after the battle of Mohacs was elected in 1526 also to the Bohemian crown, inaugurated the almost total loss of independence of the country. Following the defeat, suffered by Bohemian protestants during the Thirty Years War in 1620 in the battle of White Mountain (*Weisser Berg*), the Holy Roman Emperor Ferdinand II (1619-37) released in 1627 the “renewed constitution” (*Verneuerte Landesordnung*). In force of this charter Bohemia too became a hereditary land of the Habsburgs. Subsequently their absolutist rule

⁴⁶ Goehrke, *Transformationschancen* (nt. 13), 665 ff., 673 ff.; J. Bahleke, *Libertas-Vorstellungen in der ständischen Gesellschaft Polens, Böhmens und Ungarns*, in H. Manikowska, J. Pánek (eds.), *Political Culture in Central Europe. 10th-20th Century*, 163 ff. (2005).

⁴⁷ L. Péter, *The Primacy of consuetudo in Hungarian Law*, in M. Rady (ed.), *Custom and Law in Central Europe*, 101 ff. (2003); Rady, *The Prologue to Werbőczy's Tripartitum and its Sources*, *English Historical Review*, 104 ff. (121, 2006).

opened widely the door to a cultural Germanisation and juristic Romanization of Bohemia. The Romanization took the form of a belated reception of Roman law which until then had been to a certain extent successfully opposed by the local *ius bohemicum*.⁴⁸

Poland enjoyed the longest political existence of all East Central European countries, developing *ad extremis* the western constitutional model of estate monarchy (*Ständestaat*), dominated by the gentry. The old Polish *liberum veto*, the legal right of each deputy to nullify all acts of the parliament passed at its session, was based on the Romano-canonical principle, followed also in Hungary, *quod omnes tangit, ab omnibus adprobari debet*.⁴⁹ The same principle, drawn from the *Liber Sextus* of Boniface VIII published in 1298, was equally observed in the *virilium*-election of the Polish king. The right of resistance, long ago extinct in the West but still applied in Hungary as a weapon against the Habsburgs, was in 1573 reconfirmed in Poland by the Henrician Articles (*artykuły henrykowski*). All these institutions, which made the Polish-Lithuanian Commonwealth to a political monstrosity, were severely criticised throughout Europe.⁵⁰ Eventually in the years 1772-1795 the Commonwealth was partitioned by its neighbours, Prussia, Russia and Austria.

From a legal point of view, Eastern European tradition was characterised by a longer persistence of the traditional customary law, strongly differentiated according to feudal estates. At the eve of the partitions, when the modernising effects of the enlightened absolutism had already spread throughout the West of the continent, the Polish legal order still remained largely medieval in character.⁵¹ Local custom was so deeply ingrained there that it even survived the Polish-Lithuanian statehood, remaining in force until the middle of the 19th century.⁵² From the perspective of capitalist calculating reason, several institutions of the old Polish law displayed a somewhat irrational nature, as for

⁴⁸ Wandycz, *Price* (nt. 13), 77-104; Klabouch, *Lehre* (nt. 19), 329 f.; P. Skřejpková, *Neuere Rechtsentwicklungen in der Geschichte der böhmischen Länder*, in Giaro (nt. 6), 224-225.

⁴⁹ T. Giaro, *Europa und das Pandektenrecht*, in *Rechtshistorisches Journal*, 337 (12, 1993); Józef A. Gierowski, *The Polish-Lithuanian Commonwealth in the XVIIIth Century*, 38 f., 125 (1996).

⁵⁰ Gierowski, *The Polish-Lithuanian Commonwealth*, 145 f., but see also 224 f.

⁵¹ L. Pauli, *Polnisches Recht, Handwörterbuch zur Deutschen Rechtsgeschichte III*, 1808 ff. (1984); Id., *Auf dem Wege zur Synthese des altpolnischen Privatrechts*, in *Vorträge zur Geschichte des Privatrechts in Europa*, 207 ff. (1981).

⁵² I. Malinowska-Kwiatkowska, *Customary Law in the Partitioned Poland*, in *Recueils Jean Bodin*, 178 (54, 1989).

example the *łajanie* (objurgation), a singular remedy against the defaulting debtor, based exclusively upon his chivalrous sense of honour, which gave the unsatisfied creditor the right to scold him with impunity.⁵³

The dismemberment of Poland, an unparalleled event in the history of international relations, which in the long term seriously disturbed the European balance of power in favour of Germany and Russia, was vividly discussed in historiography. In the middle of the 19th century, an outstanding Polish legal historian, Romuald Hube (1803-1890), underlined a close interrelation between the presence of Roman law and the strength of state power in a given country. Similarly, during the interwar period a renowned Polish Romanist, Ignacy Koschembahr-Łyskowski (1864-1945), ascribed the partitions of Poland directly to the failed reception of Roman law which would probably help to constrain the Polish anarchy.⁵⁴ In fact, whereas in Western Europe the alliance of monarchy with the economically ascending burghers, reinforced through the royal mercantilism, opened the road to an absolutist system, in Poland and Hungary the supremacy of the gentry led in the last resort to an almost complete suppression of an independent statehood.

The thrive of Polish and Hungarian noblemen's democracy, contemporary to the aforementioned growth of enlightened absolutism in the West, was strictly connected with the rejection of Roman law, firmly condemned by the gentry of East Central Europe as an agency of over-strong government. In both countries, the administration of justice in the realm of the land law was reposed completely in the hands of lay judges recruited from noblemen ranks and trained for their office exclusively in court practice, whereas the learned judge of German type, who was mostly of commoner origin, remained completely unknown. The university courses or other forms of theoretical education in national law were already established in both countries during the first half of the 17th century, which is considerably earlier than in the continental part of Western Europe, as well as in England, even if the latter remained equally unaffected by the reception of Roman law as Eastern Europe.⁵⁵

⁵³ P. Dąbkowski, *O utwierdzeniu umów pod groźą łajania* (1903).

⁵⁴ R. Hube, *O znaczeniu prawa rzymskiego i rzymsko-bizantyńskiego u narodów słowiańskich*, 387 (1868); I. von Koschembahr-Łyskowski, *Zur Stellung des römischen Rechts im ABGB*, in *Festschrift zur Jahrhundertfeier des ABGB*, 293 (1911).

⁵⁵ Giaro, *Europa und das Pandektenrecht* (nt. 49), 334.

However, the sub-region of East Central Europe as a transition zone between East and West was constantly better integrated into the western legal culture than South-eastern Europe and Russia, foremost in the realm of town law, which was imported directly from Germany, as well as in those of Roman canon law and public law, the latter being always most cosmopolitan in character.⁵⁶ Nonetheless, the level of knowledge of Roman law ascertainable in East Central Europe prior to the age of codification, even if recently emphasized by several legal historians in order to enhance the Romanist genealogy of their countries,⁵⁷ was rather comparable to the elitist knowledge of Roman law undoubtedly in existence at the same time in England. Such a modest level of legal scholarship could not initiate the process of gradual restructuring private law, which occurred in the continental West, thus preparing homogenous civil codes, equal for the whole society.

V. THE LONG 19TH CENTURY

During this period, stretching from the French Revolution to the First World War, a decisively stronger inclusion of Eastern Europe into the pan-European system of national legal orders took place. As early as the end of the 18th century, aside from the Polish May-Constitution of 1791 which was the first written constitution in Europe,⁵⁸ Poland, Hungary and Rumania took pride in enlightened codification projects similar to the already promulgated law codes of Bavaria (1756), Prussia (1794) and Austria (1797), whilst other Eastern European countries, such as Russia under Catherine II the Great (1762-1796), at least developed a clear consciousness of the need for reforming their national law.⁵⁹ In this case the need was great, because prior to the 19th century, which brought an extensive transfer of civilian tradition to Eastern Europe, no learned law, no juristic literature and no juristic profession

⁵⁶ Taubenschlag, *Einflüsse* (nt. 17), 13 ff.; Vaněček, *Penetrazione* (nt. 16), 1279 ff.; J. Zlinszky, *Das Recht, erhalten und neu belebt durch römisches Recht*, in *Tijdschrift voor Rechtsgeschiedenis*, 62 ff. (62, 1994).

⁵⁷ B. Szabó, *Die Rolle des europäischen ius commune in der ungarischen Privatrechtsentwicklung*, Festschrift Th. Mayer-Maly, 773 ff. (2002).; Zlinszky, *Römisches Recht in Ungarn*, *ibid.*, 958 ff.

⁵⁸ S. Fiszman (ed.), *Constitution and Reform in Eighteenth-Century Poland* (1997).

⁵⁹ S. Salmonowicz (ed.), *La codification européenne* (1997), *passim*; Zajtay, *Introduction à l'étude du droit hongrois*, 106 ff. (1953); V. Al. Georgesco, *Rumänien*, in H. Coing (ed.), *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte* III.5, 199 ff. (1988); W. E. Butler, *Russian Law*, 24 f. (1999).

were known throughout Russia and South-eastern Europe.⁶⁰ Only in the subsequent period new universities were founded there, whereas the old ones, which already existed in East Central Europe, were revitalised.

The civil law codifications of the 19th century, regarded as the signature of continental legal history, were transferred to the East contemporarily or slightly later with respect to the date of their promulgation in the West. Especially the anti-feudal Napoleonic legislation had immediately a great propagandistic impact and a broad levelling effect on the whole of Europe, but as far as eastern private law is concerned, it firstly affected the Duchy of Warsaw and the Illyrian Provinces.⁶¹ It is noteworthy in this connection that western legal development was always far more continuous in nature, the civil codes merely constituting its organic crowning, whereas in the East the borrowed or imposed codification, or even only a doctrinal reception of western law, came as a deep shock. In consequence, contemporary legal culture of Eastern Europe, in private as well as in public law, hardly contains national elements which go back to earlier times than to the 19th century.

In this respect Romania represents a characteristic example of an Orthodox country which, emerging as an independent state only as late as the beginning of the 1860s, managed to modernize its entire legal system, taking it over in the space of a few years, aside from the Belgian style constitution, from France.⁶² In particular in 1864 a very faithful copy of the Napoleonic civil code was introduced in Romania, imposing modern western rules and institutions upon a patriarchal rural society governed by customary law which was based, particularly in the realm of family and successions, upon traditional oral transmission. This decline of the patriarchal family implied also the disempowerment of the local Orthodox Church, regardless of its merits in preserving national identity during Ottoman rule. The entire legal order and legal professions were thoroughly secularized, even if the first Romanian Constitution declared in 1866 as lawful, in open contradiction to the *codul civil* of 1864, solely confessional marriages.⁶³

In Croatia, a Catholic land granted partial autonomy within the Hungarian half of the Habsburg Empire, the traditional peasant joint family

⁶⁰ Georgesco, *Développement du droit dans le Sud-Est*, in *Handbuch* III.5, cit., 32f.

⁶¹ M. Senkowska-Gluck, *Effects of Napoleonic Legislation on the Development of the 19th-Century Europe*, in *Acta Poloniae Historica*, 185 ff., 192 (38, 1978).

⁶² T. Giaro, *Diritto romano attuale*, in P. G. Monateri et al., *Le radici comuni del diritto europeo*, 138 (2005).

⁶³ Giaro, *Modernisierung durch Transfer* (nt. 6), 212-213.

(*zadruga*) lived forth in the countryside under the rule of the Austrian *ABGB*. The imposition of this civil code, decreed in 1852 by the central government of Vienna, abrogated the archaic Croatian-Hungarian private law of the *Tripartitum*. Nevertheless, even if during the limited constitutionalism, conceded in the Habsburg monarchy in the 1860s, Hungary immediately abolished the *ABGB*, Croatia voluntarily continued to apply it. At the same time, several local norms of rural law were enacted in Croatia, on the one side to support the *zadruga* as a typically Slavic institution, but on the other to restrict the application of this anachronistic fossil. Extensive legislative intervention only occurred in 1889, when the *zadruga* was adjusted to the *ABGB*, even if already in 1902 an amendment to the new regulation was needed.⁶⁴

In Russia, following the judicial reform of 1864, the civil cassation judicature of the Ruling Senate as the supreme court of the country enriched the legal order with some features of judge-made law.⁶⁵ Moreover, in regard to the German-influenced private law of the Baltic Provinces the Senate defended the local code, compiled in 1864 by Friedrich Georg von Bunge, which at the technical-systematic level was much more advanced than the Russian *Svod Zakonov*, even if its content embodied rather local, as opposed to western, tradition.⁶⁶ With respect to the abolition of serfdom and restrictions on sale of peasant land as well as the freedom of testation, the Senate acted as modernizing factor.⁶⁷ In 1885, Roman law became in Russia an important examination matter. As an incarnation of a constant order, subjected only to an imperceptible evolution, it had to raise professional ethics of the jurist and to improve knowledge of the *code civil*, applied in Poland, as well as of the aforementioned Baltic code.⁶⁸

⁶⁴ D. Čepulo, *Building of the modern legal system in Croatia*, in Giaro (nt. 6), 69, 76 f., 86.

⁶⁵ W. G. Wagner, *The Civil Cassation Department of the Senate as an Instrument of Progressive Reform*, in *Slavic Review*, 36 ff., (42, 1983); Butler, *The Role of Case-Law in the Russian Legal System*, in J. H. Baker (ed.), *Judicial Records, Law Reports and the Growth of Case Law*, 337 ff. (1989).

⁶⁶ M. Luts, *Modernisierung und deren Hemmnisse in den Ostseeprovinzen*, in Giaro (nt. 6), 175-190.

⁶⁷ A. Silvestri, *The Contrast between Modernization and Tradition. Land Ownership during the Last Decades of the Tsarist Empire*, in *Review of Central and East European Law*, 1 ff. (19, 1993); G. Hopkins, *Russian Peasant Wills in the Decisions of the Ruling Senate 1861-1906*, in *The Journal of Legal History*, 1 ff. (20.2, 1999); M. Zieliński, *Der Transfer juristischen Gedankenguts innerhalb Europas*, 84 ff. (2007).

⁶⁸ A. S. Kartsov, *Russian Institute of Roman Law at Berlin University*, in *Diritto e Storia*, 1 (4, 2005).

In Russia, Greece and Hungary the reception of western statutes and doctrines during the 19th century was opposed by local conservatives, but in Bohemia it was recognized that the emancipation of Czech professoriate should not necessarily mean a rejection of Austrian and German scholarship. In 1882, Czech professors seceding from the Prague Law Faculty under the leadership of the Pandectist Antonín Randa founded the Czech Faculty, even if provided with identical teaching contents and examination subjects. Only the local student associations and the Legal Society (*Právnícká Jednota*) promoted lectures and handbooks in the Bohemian language. In this situation, the optional course on Bohemian legal history, counterweighing the one-sided German tradition, was frequented with ostentation. Unfortunately, linguistic equality was violated because the final examinations (*Staatsprüfungen*) at the Czech Faculty were held in German, whereas at the German Faculty examinations in Czech were never allowed.⁶⁹

In the central part of Poland, where Napoleon Bonaparte established a satellite state called the Duchy of Warsaw, in 1808 the French *code civil* was introduced and a law school for its implementation founded. The first Dean Jan Wincenty Bandtkie, a strong supporter of the *code* which was opposed by the gentry and the clergy, stressed the Roman influence on the old Polish law and promoted an extensive Romanist education. At the end of the 19th century the *code* remained one of the few distinctive signs of the Polish Kingdom with respect to Russia. Despite Russification following the defeat of the anti-Russian uprising of 1863, some Polish judges and public prosecutors remained in office until the First World War, whilst advocates and notaries were almost exclusively Polish. After Galicia was granted autonomy within the Habsburg Empire in the 1860s, the Universities of Cracow and Lvov (Lemberg) became training centres for Polish judges and legal officials serving Austria-Hungary. The universities were frequented also by Poles from the Russian and Prussian partition, a fact which fostered the unification of Polish law after the First World War.⁷⁰

VI. THE DISAPPEARANCE OF THE EAST

During the interwar-period between 1918 and 1939, the intense circulation of western legal models throughout Eastern Europe, except the

⁶⁹ P. Skřejpková, *Die juristische Ausbildung in den böhmischen Ländern bis zum Ersten Weltkrieg*, in Zoran Pokrovac (ed.), *Die Juristenausbildung in Osteuropa*, 172-175 (2007).

⁷⁰ A. Wrzyszczyk, *Die Juristenausbildung an polnischen akademischen Einrichtungen*, in Pokrovac (nt. 69), 201-249.

newly emerged Soviet Russia, continued.⁷¹ Only following the Second World War the Soviet communism was able to aim at reversing the effects of the antecedent westernization of law in the whole Eastern Europe. However, the legal instruments of Sovietization, mostly imported from the Russian centre, were previously westernized during the pre-revolutionary period of Russian legal scholarship. For instance the famous crux of subjective rights granted to the state-owned enterprises over the portions of national property administered by them was formulated according to the abstract method of Pandect-science rather than in the flexible case-law-mode and, consequently, could never be resolved in a satisfactory way until the fall of real socialism.⁷²

Socialist property, which constituted the heart of the new legal system, was regulated and implemented in the fullest manner in the Soviet Union, particularly following the Stalin's constitution of 1936. The soil and its treasures were declared to be the exclusive property of the state and could be only used by other subjects. Socialist property enjoyed a special protection in civil law, through the ban on execution and prescription, as well as in penal law. USSR citizens owed their property to the state. They were entitled to own only such objects as were deemed necessary to satisfy their personal needs of material and cultural nature. As their individual property a small parcel of land was ceded to them by the *kolkhozes* only for use. Small private enterprise of single peasants and tradesmen, allowed in constitutional and statutory way, in the economic practice was at best tolerated.

For the rest, once Harold Berman extended the concept of western legal tradition not only to East Central Europe, but also to the communist Russia,⁷³ unfortunately forgetting to mention South-eastern Europe, the European character of Soviet law became widely recognized. Given its recently discovered Romanist elements, Soviet civil law was undoubtedly part and parcel of the continental legal family⁷⁴ or, in more metaphorical language, a chapter of western legal history.⁷⁵ Evident elements of continuity between the pre-revolutionary era and the Soviet period were also present in Russian public law, what regards not only constitutional theory which knew the

⁷¹ Giaro, *Westen* (nt. 11), 136-138; Id., *Modernisierung durch Transfer* (nt. 6), 318-322.

⁷² M. Kazimirova, *La révolution du droit en Russie*, in Giaro (nt. 10), 85 ff.; Giaro, *Aufstieg und Niedergang des sozialistischen Zivilrechts*, in G. Bender, U. Falk (eds.), *Enteignung*, 276-280 (1999).

⁷³ Berman, *Law and Revolution* (nt. 25), 539.

⁷⁴ John QUIGLEY, *The Romanist Character of Soviet Law*, in Ferdinand J.M. Feldbrugge (ed.), *The Emancipation of Soviet Law*, 27 ff. (1992).

⁷⁵ A. J. Schmidt, *Soviet Civil Law as Legal History*, in Essays F.J.M. Feldbrugge, 46 (1996).

German concept of *Rechtsstaat* as the continental equivalent of the ‘rule of law’ already during the 1880s,⁷⁶ but also administrative law, where the organizational structure of the government and ministries was taken over from the tsarist times, as well as criminal law which restored the traditional banishment penalty as early as 1922.

With respect to private law of Eastern Europe during communist rule, old civil codes survived somewhere, particularly in Eastern Germany, where the *BGB* of 1896, famously defined a belated child of the German Pandect-science and the national-democratic liberalism, was in force until 1976, as well as in Romania, where the *codul civil* of 1864 was not abrogated even much longer, i.e. until the fall of communism.⁷⁷ Conversely, some formally new civil codes of the socialist countries, in particular those enacted by Hungary in 1959 and by Poland in 1964, substantially shadowed the good old tradition of German Pandectism. Other Soviet Block countries, such as Czechoslovakia and Eastern Germany, may have followed socialist innovations with more faith and hope,⁷⁸ but nowadays they categorically reject them. In consequence, the ongoing differences between legal life in East and West are a matter of legal culture and of juristic style rather than of substantive law.⁷⁹

The discourse on Eastern, or East Central, Europe obviously remains an occidental and, at least partially, an occidentalist one. In the legal field, it is conducted in a language of western experts on ‘law and development’ who continue, quite often in a personal union, the function of former Sovietologists. Nevertheless, local populations of Eastern Europe, lawyers included, wish to be acknowledged simply as European. This is not without reason since, from a global perspective, Eastern Europe is not the East, but – as of many centuries – a periphery of the West. According to general socio-economic experience, the structure of centre and periphery displays a tendency to consolidate to the effect that the centre becomes more and more central, whereas the periphery still more peripheral. This insight proves, however, not to be quite exact with respect to legal families.

⁷⁶ G. P. van den Berg, *Elements of Continuity in Soviet Constitutional Law*, in W. E. Butler (ed.), *Russian Law*, 215 ff. (1977); H. Oda, *The Emergence of pravovoe gosudarstvo (Rechtsstaat) in Russia*, *Review of Central and East European Law*, 373 ff. (25, 1999).

⁷⁷ R. Sanilevici, *The Romanian Civil Code*, in A. M. Rabello (ed.), *European Legal Traditions and Israel*, 355 ff. (1994).

⁷⁸ Z. Kühn, *Development of Comparative Law in Central and Eastern Europe*, in M. Reimann, R. Zimmermann (eds.), *The Oxford Handbook of Comparative Law*, 223 f. (2006).

⁷⁹ R. Mańko, *The Culture of Private Law in Central Europe*, in *European Law Journal*, 527 ff. (11, 2005).

Contrary to the simplifying slogan 'Europe and Roman law', invented and popularized by the Austrian legal historian and a specialist in cuneiform laws, Paul Koschaker, who diminished the area of Europe to its Western component,⁸⁰ the non-reception of Roman law was supplied in Eastern Europe already during the long 19th century, even if this law arrived in the East under the modern form of western codes and legal doctrines. The threefold European legal geography, consisting of the British Isles as well as of the western and the eastern part of the continent, was reduced to a dual system which confronts England with the homogeneous continental area. At present, a further civilization of British law in addition to some influence of common law on the continent, primarily in the field of legal procedure, is occurring, due to the levelling effect achieved by the legislation and jurisdiction of the European Union.

As a typical representative of private law systems of East Central Europe, Polish civil law currently differs in no way from its western counterparts which were its sources in the 19th century and building elements during the legal unification of the interwar-period 1918-1939. Lawyers in Eastern European member states and candidates to the European Union are now primarily kept busy by exactly the same task as in the old member states: the implementation of directives on consumer protection.⁸¹ New problems are posed in the East by the privatization of state property and banking law, commercial securities and company law as well as by unfair competition and antimonopoly law.⁸² In these fields the hitherto weaker consolidation of local tradition in Eastern Europe, as compared to the West, may leave more room for Americanization which, however, affects in principle all European countries,⁸³ western ones included.

To sum up, following the fall of communism, the independent states of Eastern Europe are there again, but their legal tradition prior to the 19th century disappeared long ago. What remains as the nearly exclusive historical common feature of Eastern European countries is the legacy of their

⁸⁰ See Giaro, *Der Troubadour des Abendlandes*, in H. Schröder, D. Simon (eds.), *Rechtsgeschichtswissenschaft in Deutschland 1945 bis 1952*, 31-76 (2001).

⁸¹ L. Vékás, *European and National Models for and in Private Law Codifications in Central and Eastern Europe*, in Essays in Honour of J. Rajska, 476 (2007).

⁸² B. Kordasiewicz, M. Wierzbowski, *Polish Civil and Commercial Law*, in S. Frankowski, P. B. Stephan III (eds.), *Legal Reform in Post-Communist Europe*, 163 ff. (1995); Frankowski (ed.), *Introduction to Polish Law* (2005).

⁸³ Sceptical R. A. Kagan, *Globalization and Legal Change, Regulation and Governance*, 99 ff. (1, 2007).

peripheral or semi-peripheral nature, coupled with their tendency to gravitate around a western centre. Within this subsystem, even the neighbouring eastern peripheries never communicate horizontally with each other, but always vertically with the centre, to which they constantly aspire.⁸⁴ In the realm of civil law Romania and Central Poland, even if both during the 19th century received the French *code civil*, were and still are in principle scarcely interested in an exchange of experiences, seeking rather a direct relationship with France than with each other; the same holds for Bohemia and Croatia, as countries which received the *ABGB*, with respect to its fatherland Austria.

⁸⁴ Giaro, *Modernisierung durch Transfer* (nt. 6), 292.