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GLOBAL FUTURE, SYSTEMIC CHALLENGES
Changes in the Profiles of Law?

Law is only distinct in so far as there is an institutional claim that posits distinctiveness a notional *sine qua non*. As an agent in action, however, law is never detached from the human component and the latter's sociality.[2] At the same time, as an aggregate of abstract conceptual categories, the law reflects intersubjective relations as *universally* typifiable *social* relations transformed into jural relations, which serves self-justification within its own system of fulfilment as a quasi-logical consequence and its perpetuation/enforcement with questioning excluded. Thereby social order is mediated by legal order as the final and supreme factor of social integration.

What needs (re)solution here, according to whatever general standard, is a conglomerate of human interests, with arising tensions and opposition amongst them. **Karl Marx** and **Carl Schmitt** equally described how human interests, even particular ones, have ever been asserted as universalised ones in history and how laws, both ancient and more contemporary ones, got a stamp of legitimisation by referring to their godly roots or natural law foundation or, par-

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[2] *Варга Ч.* Загадка права и правового мышления: избр. произведения / ред. М.В. Антонова. СПб.: Алеф-Пресс, 2015.

ticularly in present times, being sprung/deduced from human rights. Human manipulation and ideological intervention notwithstanding, our intellectual world is ours: we are at home in it and routinised within it. It gets perceived and cognised via presuppositions mediated by socialisation and education ceaselessly,[1] the framework of which is pegged out by universalised moral principles, lived through as the natural condition of human existence, and is also shaped by *human imagination* within the bounds of what is conceived as *normality*.

Globalism is a politically motivated process the new potentialities of which are afforded by the contemporary scientific and technological revolution. Without prophesising on its possible outcomes in perspectives of a coming world economy and world society, it can be taken for granted that our present-day law's conceptual network, axiomatised by conventionalised principles within an ideally coherent system, will be wholly or partly shaken with consequences unforeseen.

Challenges in Need of Direct Response

Technological development ceaselessly raise challenges that are to be responded instantly. Biotechnics, nanotechnics, physical and chemical reconsiderations on both macro and micro level from armament to pharmacology and, last but not least, social explosion that may arise from new achievements of information technology, that is, a series of new actors/factors may become the source of new dangers, crying, as imminent calls, for regulation on a global scale – such as what to do with space or atomic garbage or with technologies that make information multiplication and distribution uncontrollable, for instance.

Accordingly, foundational values and basic principles are eminently targeted, with an urge to reconsider them, their *reflective equilibrium*, and the new – still toleratable – balance amongst them, with no hope of much reliable prognostication. Well, how to react if, by inventing easy-to-use facilities, personality can be manipulated, programmed, changed all through? if abortion can be achieved through (as replaced by) organic regression? if undetectable arms will be developed with long delayed or very far reaching effect? if chemical, radioactive or cyber warfare is made available on a mass scale, which is easy to operate by one single person in isolation, under conditions when there will remain no genuine chance to identify the wrongdoer?[2] if life expectations of human groups, either genetically specified or otherwise targeted, can be worsened or changed, almost at please and with no trace posteriorly successfully detectable? or, if there will be no reason any longer for copyright regulation at all, as technological innovation will by itself exclude any chance of control?

As known, technology is used to be seen as merely instrumental and, as such, quite neutral a function. However, lessons that can be drawn from 20th century brutalities show parallelity between the technological achievement of producing big earth moving machines like bulldozers, on the one hand, and genocides perfected on almost an industrial mass scale, on the other, so that the apparently deep human inclination to murder fellow creatures for political reasons could only materialise at a time when bulldozer machines were already invented and thereby it became possible to take over and move any amount of physical weigh to another place and reassemble it at please, involving the burial of human bodies, their concealment deep in the soul or dissipation in water streams. Perhaps it is not by chance that visions on the philosophy of history like **Oswald Spengler's** *The Decline of the West* have for long been associated with the idea of technological self-development, with technical processes becoming autotelic as a factor in the death of subsequent civilisations.

Who will then decide in technologically relevant issues? Following the direction of the development of post *legal positivism* having transformed into *legal socio-positivism* (transubstantiating judicial process into a multi-actor intercultural and multi-criterial discourse),[3] decision will certainly be done or prepared at least by experts' panels, presupposing not more demand on behalf of lawyerly assistance than mere channelling, drafting, and internal coherence testing – only provided that it will not be followed by American-type re-juridification again, wedging the lawyers' cast in the process again, in order to regain for the latter the monopoly of control, diverting the whole, socially all-inclusive process into American-type jurispathy.

New Dimensions of Law

Due to ongoing technological revolution, the legal phenomenon may gain *new dimensions* if it is given, among others, multiplied presence, qualitatively higher level of orderliness (as arranged "in books") and/or more centralised focus (as practiced "in action"), and – either as the main goal or as a side effect – technics enhancing/intensifying the scope and depth of its regulation.

How was the law objectivated and legal knowledge distributed in earlier times?[4] *Codex Hammurapi* once carved; the *Leges Duodecim Tabularum* versed for and memorised by pupils like the child **Cicero** was expected to do; the *Magna Carta* placarded on church gates once a year; the pre-revolutionary French *cahiers de doléance* as penny literature printed and sold at markets; and all the empiredom's laws card-indexed by the once All-Soviet Institute of Legislation, in order to enable the office establishing authoritatively what exactly and with what wording was in force; ending in the Austrian *eGovernment*, which is to give a computerised and, thereby, automated answer. What about the future of the laws' coherence? and of the new instru-

[1] *Varga Cs.* The Paradigms of Legal Thinking [1996/1999] 2nd ed. Budapest: Szent István Társulat, 2012. [Philosophiae Iuris] & <http://mek.oszk.hu/14600/14657/>.

[2] For the British S[pecial]A[ir]S[ervice] Gibraltar action practically executing three I[rish]R[epublican]A[rmy]/A[ctive]S[ervice]U[nit] agents on March 6, 1988, see <http://en.wikipedia.org/wiki/Operation_Flavius> & <http://en.wikipedia.org/wiki/Death_on_the_Rock>, with complaint dismissed by the European Court of Human Rights, see McCann and Others v United Kingdom Series A, No 324, Application No 18984/91(1995) in <http://www.leeds.ac.uk/law/hamlyn/gibralta.htm>. As to practically undetectible wrongdoing, with effect of troubling (to crashing) basic working systems, cf. <http://en.wikipedia.org/wiki/Cyberwarfare> and Johann-Christoph Woltag Cyber Warfare Military Cross-border Computer Network Operations under International Law (Mortsel: Intersentia 2014) xviii + 314 p. [International Law 14].

[3] Cf.: *Varga Cs.* Comparative Legal Cultures On Traditions Classified, their Rapprochement & Transfer, and the Anarchy of Hyper-rationalism. Budapest: Szent István Társulat, 2012. [Philosophiae Iuris] & http://mek.oszk.hu/15300/15386. P. 124.

[4] Cf.: *Varga Cs.* Codification as a Socio-historical Phenomenon [1979/1991]. 2nd ed. Budapest: Szent István Társulat, 2011. VIII + 431 p. & <http://mek.oszk.hu/14200/14231/>.

mentalities making laws and legal changes globally radiated? in a form and with means enabling law to rule society with supreme normative force? while closing any channel through which *mores*, tradition, and common sense could any longer infiltrate it?

As known, the increasing brutality of warfare and the awakening conscience as the best humane reaction have eventually given birth to what is called international humanitarian law. Contrary to the way human conduct is processed in especially criminal law, here it is not facts legally defined that do constitute a case in law, but intent and foresight at the time of tactical planning and commanding execution of military operations, which get posteriorly reconstrued and assessed, judged in law.

Or, what role law is dedicated to play at all? As we, in sociology of law in Hungary, back in times of communist dictatorship, already professed, the law's exclusively effective – optimum – job cannot be more than the reassertion of ongoing social processes by the law's specific means and authority, that is, a final, symbolic, authoritative stamping. Albeit law is mostly – or too frequently at least – forced into the ugly and impossible role of a *Mädchen für alles*: to act as a demiurge, a substitute to all other means of social reform, taking on what is hardly more than political voluntarism.[1] Albeit making laws – instead of genuine all-social reforms made – is sham action. Otherwise speaking, it is bound to fail while it degrades the law's prestige, too, at least on the long run.

And in what normative environment and with which expectations is law called to work? For millennia, in integral social organicity, law used to serve cementing community as (*a*) a frameworking ethos, (*b*) a prime agent of accumulation of societal experience of transcendence, institutionalised step by step, and (*c*) the final support of morality, which function became lately assisted also by (*d*) the lawyers' professional deontology, classically named as *juristische Weltbild*. As known, all this has subsequently been denied by the post-1968 Western world, with the very idea of social normativity dissolved under the aegis of libertinist individualism and with only law to remain as reduced to the role of a mediator amongst duellers, under conditions of social atomisation with neutral look at law-breakers and law-enforcers alike, just as if none of them were else and more than rivalling partners in a sporting event.

Changes in Law

It goes without saying that basic changes in how humans are organised into society and in the technology/culture by which their conduct can be influenced, may provoke basic changes in law as well.

In the future, possessing already a kind of information technology that enables it to process and taxonomise the whole variety of opinions of millions and to call, directly, masses for public actions, civil society may grow up to the point when, replacing state machinery, it takes power on politically organised society. For nowadays, by the way, as especially American research in social sciences has shown, random representation of civic opinion is used to prove more prudent, grounded, responsive and responsible as compared to so-called expert opinion, on the one hand. And, though random reaction is characteristically fuzzy, or, properly speaking, spread and scattered, in statistical probability their effect is by far foreseeably certain, on the other.

Hardly can anyone foresee now what technics for influencing human behaviour will be operated in the future. But perhaps it is enough to recall how much modifications in the implementation of social changes have been assisted by the mass media, new phenomenon of the 20th century, and how extensively the full instrumentality of mass manipulation has been recoursed to in both dictatorial and democratic regimes of the same century and afterwards. The same holds for social normality as well. For even our present image of personality has already been shocked by such novations like organ transplantation and biotechnics, and the mere technological potential of causing public danger, thanks to means easily available now or in the future, is in itself a challenge to classic freedoms, which already need to be heavily narrowed, or limited, by antiterrorist measures.

Still in its quality of a distinct phenomenon, law, tending also to preserve its own systemicity, develops mostly by changing the volume or extension of its rule-based regulation through narrowing or enlarging (via analogy) the scope it applies to. Any of the components will easily be shaken, as scientific-technical revolution may equally shape organic reproductive processes, disperse information in the electronic space, create virtual realities by projection (I mean here artificial reasons particularly, mastering us already in the field of finances, economic organisation, rule by law, and so on), up to annihilating life on earth – within the limits drawn by the law's general structure and abstract conceptuality.[2]

Change of Paradigms in the Understanding of Social Order

In the meantime, there has been a change of paradigms in our very understanding of the nature of sociality, of the way action is followed by reaction in the social space of normativity. Until the middle of the 19th century, the physical world outlook (once built by **Nicolaus Copernicus** and **Isaac Newton**) was adapted to social world, too: we were to search for causes and effects (and isolate them for analytic purposes as much as possible) in the chain of processes. However, the investigation into individual factors (i.e., causes/energies/effects) in those chains of (quasi-)causality was then replaced in thermodynamics and sciences of elementary particles by the turn of the 19th to 20th centuries, by a vision built on the average of what can be experienced in case of statistic masses and their probabilities. This led to the imagination of half closed, half open systems, exemplified by so-called autopoietic processes, in which the coordinates (or laws) of any ongoing operation are getting defined through (while and for) the operational process itself, that is, individually for each case. Accordingly, the idea of "order out of chaos", unthinkable beforehand for both scientific and theological reasons, became the explanation for micro-physics, and – gradually – for anthro-

[1] Cf., e.g.: *Varga Cs.* Law and Philosophy: Selected Papers in Legal Theory // Comparative Legal Cultures. Budapest, 1994. XI + 530 p. [Philosophiae Iuris] & <http://mek.oszk.hu/15300/15333/#> P. 43–76.

[2] Legal machinery permits both discretionary answers and mutually contradictory conclusions to be drawn from the same wording, once there is support by sufficiently motivated legal reasoning, digging deep enough in what is meant by law. См.: *Варга Ч.* Право, юридический процесс и судейское сознание // Российский юридический журнал. 2011. № 4. С. 14–24.

pology, sociology, and the legal field as well.[1] Moreover, treating law as just one of the considerations rather than the sole *definitivum*, it became identified as the operational principle making the European Union work as well: the union and the national states, i.e., union laws and domestic laws challenging / responding to one another, and creating eventually thereby, from apparent diversity (close to sheer anarchy for micro-analysis), an unprecedentedly high level of law and order (at macro-level).[2]

Accordingly, oriented toward individual actors/acts and their inherent teleology, classical legal positivism is to respond to classical physical world outlook, while the "order out of chaos" vision — with a concept of order extended from micro-physics to the universe of the humans' world — corresponds to the stand taken by contemporary anthropology, sociology, and international legal scholarship. In neo-**Kant**ianism, methodological purity was a *sine qua non*. Now, in the legal regime of the European Union, member-states continue following the old paradigm whilst their interaction both amongst them and with the European Union law proper, exhibits the new paradigm's features.[3]

It might be seen as symptomatic that in the twentieth year of the *Internationales Rechtsinformatisches Symposia* at Salzburg, there is a standing section devoted to *Science Fiction & Utopia*. For since the time of **Aldous Huxley's** *Brave New World* (1931), the world may have changed, but the past's vision of **Arthur Koestler's** *Darkness at Noon* (1940) so much as the totalitarian technicality forevisioned by **George Orwell's** *Animal Farm* (1945) have proved to be underestimated, compared with the hidden moves of contemporary historical reality.

Law tends to be conservative but, as known, within its own system of justification, optional technics with contradictory outcomes tolerate, permit, and sometimes expressly call for complete turns, with genuine volte-face, in judicial interpretation and construction. In accordance with it, possible renewals of law will mostly be the result of what we do perceive of as prerequisites of social/societal existence. This is to say that our present-day preference of preserving free choice to stately and individual entities will necessarily be counter-balanced (if not overruled) by the priority of what the security of bare community existence demands under new conditions. Perhaps the centuries old fight for liberty in modern times will also be remembered with resignation and nostalgia, as a failed Golden Age Two.

In contemporary public speech, buzzwords like 'natural law', 'constitutionality', 'human rights', and 'the Rule of Law', are highly popularised and defended as highest-valued goals themselves, although none of them can be an exception to the main ontological rule. For they stand for nothing but *instrumental values* within the realm of law. Consequently, their genuine value is a function of what fundamental values they mediate. Or, in the subsequent era of scientific-technological revolution, they may also be exposed to transformation hitherto unimagined/unimaginable.[4]

Summing up, even some decades ago visions of future could be outlined through present tendencies extrapolated, for the future would only be what present tendences, their varying shifts of emphasis had accumulated. As to the present – the fact notwithstanding that the 20th century inter-war period was already imprinted with the widespread feeling of *Weltkrise* –, not event directions can be taken as granted. The future will emerge from actions still to be carried out. In conclusion, a long series of alternatives is the only help to preview anything from the future.

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[1] Cf. *Varga Cs.* The Paradigms of Legal Thinking.

[2] *Варга Ч.* Порядок из хаоса? Философия создания и применения европейского права // Коммуникативная теория права и современные проблемы юриспруденции: к 60-летию Андрея Васильевича Полякова / ред. М.В. Антонов, И.Л. Честнов. СПб.: Алеф Пресс, 2014. Т. 2. С. 54–77; Правоведение. 2014. № 6. С. 218–235.

[3] Or, a normative piece of information is issued by a union agency and, then, reacted to by some domestic agency, which then gets reacted/disputed/retorted to by any union or state level agency calling on domestic/union reconsideration, which latter will be responded to by a second union agency piece of information – which looks like a game itself, played/playable to infinity.

[4] *Varga Cs.* Theory of Law Norm, Logic, System, Doctrine & Technique in Legal Processes, with Appendix on European Law. Budapest: Szent István Társulat, 2012. [Philosophiae Iuris] & <http://mek.oszk.hu/15400/ 15409>. P. 189–201.