

MODERNITY AND LEGAL UNIFICATION: THE “TURN TO MODERNITY” OF THE PORTUGUESE-SPANISH-IBERO-AMERICAN LEGAL CULTURE IN THE 19TH AND 20TH CENTURIES AND ITS CURRENT CORE VALUES

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Abstract

Our title is also a reference to the fact that European civilisation in Ibero-America, in these two former colonial powers, represented a specific Portuguese-Spanish cultural tradition, imbued with Catholicism, an ideological, missionary evangelisation, crowned by the use of economic coercion.

Centuries of coexistence have given birth to an Ibero-American legal culture that has evolved from the wars of independence in the 19th century to the present day, and which, while it may have its own particularities from country to country, can be seen as a coherent whole in terms of its foundations and main components. It is another question entirely whether, within this structure, we can point out where Ibero (or Hispanic) culture ends and native (Indian) culture begins, from the point of view of, say, customary law. This aspect of the indigenous question began to have an impact on the unfolding of native (indigenous) peoples' movements around the 1992 bicentennial and then, in the 2000s, its thematisation, especially in Bolivia. Among blacks, the continuation of African traditions is not expressed in customary law, but in the world of religion, superstition, nature spirits and creatures, rites, ceremonies, bird feathers, emblems, wood carvings, etc.

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1. Introduction

By the beginning of the 19th century, the pre-modern Portuguese-Spanish legal culture was under complex fire: it was constantly challenged on the ideological side by the Enlightenment, on the practical and political side by the French Revolution, and then by its extended arms, both legally and militarily, the Code Civil (1804) and the arrival of Napoleon's invading army (1808) in the Iberian Peninsula. The result is known here in Europe.

But in Iberoamerica, its mechanism of action was no less underestimated: it reinforced the maturing independence aspirations of the past. The creoles of the Spanish sub-kingdoms, with the exception of Mexico, saw the time as ripe for a real takeover. They did so successfully after a long and short armed struggle,

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while failing to create a single federative/confederative independent state or to carry out any substantial restructuring of the existing colonial administration, in the absence of a modernisation concept. A change of power from above, a replacement of the Spanish elite in the old country, was carried out.

In Brazil, the House of Braganca retained control of the independence process throughout, thus preserving the natural unity of the country and avoiding the separatism and caudillo (civil) wars that characterised the former Spanish colonies, as well as the “Haitization” of the former French colony Haiti (uncontrolled and uncontrollable anarchy, lack of security of life and property). Brazil's 1824 constitution was adopted as a mixture of Anglo-Saxon and French legal concepts.

1.1. The main elements in the development of modern law in the 19th century

Conceptually, the point of departure is the Enlightenment and rationalism, including the rationalist aspect of German philosophy. On the economic policy side, liberalism and the idea of the free market are also complemented by a German (Prussian) approach - Fichte's theory of the closed trading state - which takes the form of the German Zollverein.

On the legal side, what can be described as a turn to modernity, based on the need for unification of the law, which was brought about by the French political-legal revolution, was also achieved by French methods (the introduction of legal codes on the one hand, military conquest in the name of freedom on the other).

In principle, there are three codes that can be considered from a modernity point of view: the Allgemeines Landrecht (ALR) of 1794, the Code Civil (CC) of 1804 and the Allgemeines bürgerliches Gesetzbuch (ABGB) of 1811, but the Code Civile has proved to be the most influential in terms of its innovations and solutions, style and interpretability.

Among the German thinkers, Hegel, Savigny and Thibaut were influencing legal theory, philosophy and history at this time, and the historical-legal school, with its rethinking of pan-dictatorship, made a great step towards the crystallisation of Germanic law by the end of the 19th century.

In the development of Anglo-Saxon common law, the US common law diverged from that of the former mother country at several points and this was the form that the former Spanish colonies, which became Ibero-American, had to contend with later.

By the end of the 19th century, comparative law had emerged as a new science and it became possible to “compare” the legal systems of the modern world, to show similarities and differences.

1.2. The modernisation of Portuguese-Spanish legal culture in nineteenth-century Latin America

Replacing and redesigning the inherited colonial legacy of the independent states has become a daily legal policy issue. One thing seemed certain: Spanish law as a mother law was out of the question, as its transcendence was on the agenda. In addition, a modern civil code was not enacted in Spain until 1889.

Latin American countries have maintained a legal education based on Roman law. The Code Civil was therefore the most appropriate model for the restructuring of the civil law part of the legal system. Several countries introduced it translated from French into Spanish (e.g. Haiti in 1826, Bolivia in 1830, Dominica in 1884).

Uwe Kischel points out that, in addition to simple adaptation, a separate Latin American jurisprudence was already taking wing. (Kischel 2019, p. 585-619; Hamza 2013, 3, p. 205-210)

1.2.1. Legal innovation by Andrés Bello

Andrés Bello (1781-1865) was a multifaceted personality (writer, linguist, lawyer, politician, compiler of the law code, etc.) who was a major legal theorist in Chile from 1828. Based on the Code Civil, he drafted the Chilean Civil Code, which he codified in 1855 after fifteen years of work, so that it could enter into force in 1857, after its adoption in 1856.

Bello, as a Roman jurist, not only sought to overcome the heterogeneous confusion of Spanish colonial law by relying on the Code Civil, but also took into account the more recent Spanish, Prussian-German (Savigny's historical-legal school is called Pandecosticism) and even English legal models.

The Chilean Civil Code served as a benchmark for other newly independent states. Succession and contract law are also regulated in separate books. As a linguist, he took care to pay more attention to the language of the text and included examples as a methodological innovation.

Bello has become an inescapable authority as a legal scholar and codifier, and in our view, he laid the foundations of Ibero-American legal culture as a legal system based on modernity.

Bello also broke new ground in the field of constitutional law. His constitutional concept is twofold: it has a legal-ethical aspect and a political-social aspect. What unites the two sides is social reality with its systems of relations. State power is solid because the legislature, government and the practice of the authorities operate subordinate to the legal order, while on the other hand, citizens, relying on their rights (exercise of freedoms and exercise of liberties), achieve a state of equilibrium from the point of view of society as a whole. This could be called an ideal situation if it were so. Bello's attention, like Rousseau's, does not fail to be drawn to the great inequality of wealth that

is unfolding as a cause of socio-economic tension. It runs through the whole of Latin American history in the 19th and 20th centuries, and has had (and continues to have) consequences to this day.

1.2.2. Augusto Teixeira de Freitas and the new foundations of Brazilian law

Augusto Teixeira de Freitas (1816-1883) was given the official task of drafting a draft - *Esboc* - of the Brazilian Civil Code. The work lasted four years (1860-1864), and the draft was intended to be a comprehensive and complete regulation of 4908 articles, but it remained unfinished. De Freitas was attentive to Bello's Chilean *Ptk* in preparing the draft, but his style is more akin to Germanic abstract and systematic ideas. As a collection of private law, the *Esboço* is also specific and unique in that it is structured as a forerunner of the German BGB, which came into force in 1900: it is divided into general and special sections, each of which has its own general rules, and is therefore a logically coherent work that represents a considerable individual intellectual effort. In this sense, he can be said to be independent of both the Code Civil and the Chilean Civil Code, in which he considered Roman law to be the basis of civil law. Although the *Esboco* did not become a code, its value as a model is undeniable: the civil systems of Argentina and Uruguay drew on these solutions.

1.2.3. Dalmacio Vélez Sársfield's Argentinean Romance civil law reflections

Dalmacio Vélez Sársfield (1800-1875) was a politician and lawyer and the sole author of the Argentine Civil Code (1869), which was passed by parliament and came into force in 1871. A special feature of Sarsfield's work is that he includes a footnote explaining the wording of the law - each article - and giving specific reasons for his choice. This has also facilitated the interpretation of the legal texts and has essentially enforced the principle of the comparative method.

1.2.4. The Brazilian Civil Code and the theoretical work of Clóvis Bevilacqua on law and systems

In 1900, at the time of the epoch of this point, Clóvis Beviláqua (1859-1944) completed his design, which he had been commissioned to do in 1889. It was adopted much later, in 1916, with entry into force in 1917.

Bevilaqua also based his draft on the Roman legal tradition, and included a commentary.

As a result of his legal development and systemisation activities at the end of the 19th century, he classified the state legal systems of the time into three groups (Catalano 1995, p. 45-74):

- 1) those where the influence of canon law and Roman law is negligible;
 - the corresponding geographical area: Northern Europe with the Nordic countries, England, USA and Russia;

- 2) the states which were decisively influenced by Roman and canon law;
 - geographical area: Southern zone of Europe - Portugal, Spain, Italy, Romania;
- 3) states where the Roman and Germanic elements are present in “roughly equal proportions”.

Geographic area is the central band of Europe: France, Germany, Switzerland, Belgium.

Everything would be fine, but he makes a very important addition: 'It is necessary to extend these three groups to include a fourth, which includes the right of the Latin peoples. The French jurist has not paid attention to these, and the Latin American laws cannot logically be included in any of these groups; for, although they are drawn from European sources of a fairly homogeneous character (namely Portuguese and Spanish law), this common material has been worked up in different ways, according to their particular characteristics and by incorporating other European elements, especially French. And even if we disregard the new states of the continent, which are essentially democratic, this fourth group bears traits of a determination courage which does not shrink from the new and a sincerity which increases the hope of the coming of freedom.'

In this way Bevilacqua openly states - following the French comparatist Ernst Gasson, but going beyond him in a theoretical sense - that Latin America constitutes a group of rights.

1.3. The development of Latin American (Ibero-American) law and the expansion of common law in the 20th century, and the impact of these legal cultures on each other

As the US extended its sphere of influence into Ibero-America, common law and the public law institutions that had already been noticed and even tried to be copied by these countries, with little success, emerged as competing law.

The Romano-Germanic-based Ibero-American legal group has taken up the gauntlet against the intrusion of US common law.

European civilisational origins alone have not made and do not make the Anglo-Saxon United States and the Iberian (Hispanic and Luzobrazilian) countries of origin and language deeply rooted culturally close relatives, because the institutions that form the most durable fabric of these societies (the family, the more patriarchal ways of life, the peculiarities of agriculture, trade and circulation, etc.) are the 'children' of Romano-Germanic legal culture and not of the extreme individualism of the common law, which they reject.

1.3.1. Formation and main elements of the Ibero-American legal culture

Ibero-American legal culture is based on the Romano-British-Pre-Columbian cultural blocs. It takes its form from Roman law, which is Latin for

“*ius commune Americanum*”, and Spanish for “*derecho común americano*”. This European Romanist tradition is blended with the customs and institutions of the native Indian indigenous peoples. (Catalano 1995, p. 58) In Brazil, only indirect effects are mentioned in relation to indigenous Indians and African Negroes when the development of the law in their country is discussed. As early as 1896, Bevilaqua drew attention to the specific legal institutions of the native peoples and their study, with little success.

Given the fact that the conquest of the New World was carried out in the spirit of reconquista, the duality of the sword and the cross, and that Catholicism and its institution were state-controlled and financed by the colonial churches, and canon law was part of Portuguese-Spanish law, this issue remained important after independence. This issue is described as the 'Romanist-Canonical tradition' ('*tradición romano-canónica*').

A separate component is the legally protected social order, described in the Civil Code of each state, in which the individual as a citizen is given a much greater role and rights than in pre-Columbian cultures, where the primacy of the community has always prevailed. These civic codes reflect a strong Romanist outlook and, in political terms, carry democratic values.

Last, but not least, it is necessary to talk about those elements that have their origins in the Romanist-canonist tradition of Ibero-American legal culture, but which are problematic areas in contemporary societies (whether we look at them from the point of view of social policy, anthropology, jurisprudence, etc.).

First and foremost is the problem of the demographic explosion, which is linked to the changing values of marriage, cohabitation (without marriage) and the family.

Secondly, there are the cases of state taxes, restrictions on land ownership in the public interest, the unhealthily disproportionate distribution of land tenure in Brazil, the fate of Amazonia and its forests, and environmental protection. The most important task to be resolved, and the oldest problem, should be to rethink the close relationship between land and the family.

A major step forward was the introduction of the Brazilian Civil Code in 2002, which is a good summary of the legal culture of Brazil, now a legal superpower and an emerging regional power.

1.3.2. The “infiltration” of common law into Ibero-American legal culture and their interaction

In several waves during the 19th and 20th centuries, Anglo-Saxon common law came into permanent contact with Ibero-American legal culture, which was modernising from the old Portuguese-Spanish law and moving towards unification.

Historically, the first in line is Quebec, which was acquired by Britain from France during the Seven Years' War (1756-1763). The USA increased its territory through purchases, wars and “altruistic aid” to Anglo-Saxon settlers (see the case of Texas), which had Romano-Germanic legal systems (except Alaska, which was purchased from the Russian Empire in 1867). In 1898, with the war against Spain, Puerto Rico, Cuba and the Philippines fell into its lap. The American common law has also 'attacked' the legal systems of these countries and has put constant pressure on their Roman law-based civil systems.

In the US itself, Louisiana is the exception because of its Roman law structure of private law.

Roscoe Pound, the famous legal theorist and scholar, concluded at the beginning of the 20th century, in pages 2-6 of his *The Spirit of the Common Law*, published in 1921, that the advance of the common law in the codification of other countries was dynamic, a kind of triumph, with the exception of Japan, where they had failed. The strength of the common law is made possible by the specific dispute resolution method already mentioned, the individual legislative activity of the judiciary, and this is the driving force behind the slow but sustained and steady influx of American common law. The other factor is found in the concept of 'extreme individualism' in Anglo-Saxon law. But Roman law is not individualistic.

Comparative categories, penetration (legal penetration, penetration, penetration) and resistance (resistance, resistance). Koschaker called Roman law *Juristenrecht* and contrasted it sharply with common law. The two categories initiated by him and De Francisci were suitable, for example, to show the “legal Americanisation” of Puerto Rico as a penetration effect, and then the resistant factors had to be found and detected: this was found in family law. The basic unit of the societies of Ibero-American legal cultures is the family, while common law is based on the individual, the individual. If Anglo-Saxon law makes a breakthrough here with the pressure of penetration, resistance will diminish and then be transformed to meet the demands of the new penetration. The victorious law will call this modernisation.

The penetration of common law at the expense of the Ibero-American legal culture is most evident in the field of commercial law. It is generally believed and understood that the reception of a foreign legal institution - common law - with all its solutions, instruments and adaptation of legal procedures, has breached the wall of unity of the Romanist legal system.

1.4. The modernisation of the legal cultures of Portugal and Spain in the 19th and 20th centuries

The modernisation of the Portuguese legal system in the area of private law began in 1833 with the adoption of the Ferreira Borges Commercial

Law - Código de comercio - which was replaced in 1888 by a new, modernised law with Italian and Spanish influences.

Preparation of the Portuguese Civil Code - Código civil - began in 1850 and was drafted by Professor António Luis Visconde de Seabra and enacted from 1868. He used the ALR, the Code Civile and the ABGB to draft it.

A new Civil Code was adopted in 1966 and came into force in 1967 (the influence of the German BGB can be seen in the structure and terminology of the code.) Portuguese private law has since followed German rather than Romanist legal solutions.

The transformation of the Spanish legal system has been slow and setbacks due to a series of public law battles. The basic problem and dilemma was that the political-economic objectives of centralisation and unification were in constant conflict with the survival of the political-administrative apparatus of the old system, including local legislation, which remained the 'guarantee' of the fragmentation of the legal system.

The Penal Code was promulgated in 1822, and by 1829 the Commercial Code had been adopted, but the codification of the Civil Code met with even greater resistance than expected. The Civil Code was finally adopted in 1888, came into force in 1889 - and is still in force today.

It is important to note that the Civil Code is not a code, has subsidiarity in certain areas of law (*derecho civil común*) and “applies mainly to matrimonial, succession and property law, as opposed to local (private) law (*derecho foral*), which is also directly based on Roman law and whose organisation into official collections (*Compilación*) continued after the adoption of the 1978 Constitution institutionalising regional autonomy”. (Hamza 2002, p. 159)

We agree with D' Ors' view “that the old European *ius commune* in Spain has contributed to the survival of legal pluralism to this day, in contrast to the French-style centralisation and unification efforts.” (Sanchez-Arcilla Bernal 1995, p. 117) In fact, separatism and regionalism within Spain were also based on legal particularism.

2. The “classification” of the Portuguese-Spanish-Ibero-American legal systems according to legal theory classifications

For the sake of theoretical clarification, an overview of the typology of modern legal systems, perhaps the best known concept of which is the family of laws, seems necessary. Our starting point: René David. (René 1977) His famous work has been revised and refined several times, and his former students have continued to reflect on it and add new insights. We also want to analyse the legal theory of the Zweigert-Kötz authors, Professor Antal Visegrády's insights on legal culture and Kischel's analysis of the civil law of Latin America.

2.1. Theoretical issues and ways of dealing with the grouping of legal systems: families of rights

Since the beginning of the 20th century, the science (theory and method) of comparativism has been on the agenda to examine legal-legal approaches, mainly from a legal-theoretical point of view, operating as legal-legal systems in the societies of modernity and in other traditional (traditional) or religious states. If we wish to sketch out briefly, but in succession (but not necessarily in a way that implies succession), the attempts at classification of comparativism in the 20th century, the first in 1913, is Georges Sauser-Hall (1884-1966). (Visegrády 2016, p. 62) On the basis of the concept of race, he creates four groups: 1) the law of the Aryan (Indo-European) peoples; 2) the law of the Semitic peoples; 3) the law of the Mongoloid peoples; 4) the law of the barbarian peoples.

Shortly afterwards, in 1934, the Argentine legal philosopher Enrique Martínez Paz (1882-1952) also classified legal systems into four categories: 1) Common law - Barbarian-English, Scandinavian, etc. - rights; 2) Barbarian-Romanesque-German, Italian, Austrian-rights; 3) Barbarian-Romanesque-Canonical-Spanish and Portuguese-rights; 4) Romanesque-Canonical-Democratic-especially Latin-American, Swiss and Russian-rights.

The Swiss jurist Adolf Schnitzer (1889-1989) distinguished five legal systems from the historical point of view: 1) the law of primitive peoples; 2) the law of ancient civilisations; 3) European-American law (a) Romanist, b) Germanic, c) Slavic, d) Anglo-American law; 4) religious law; 5) Afro-Asian law.

The Arminjon-Nolde-Wolff trio of authors refer to a typical legal system as national laws, seven in number: 1) French; 2) Germanic; 3) Scandinavian; 4) English; 5) Russian; 6) Islamic; 7) Hindu. René David first formulated his theory of families of law as the great legal systems of the world in 1950. At that time, he identified five groups: 1) Western French and Anglo-American legal systems; 2) Soviet; 3) Muslim; 4) Hindu; 5) Chinese. (Varga 1994, p. 209-211)

By the end of the 1960s, he had come up with a new classification: he reduced the names of the families of rights to four, restructured them and changed them in important respects: 1) Romanist-Germanic; 2) Anglo-Saxon; 3) Socialist; 4) Philosophical or religious.

There are clearly ideological considerations beyond historicity. David's theoretical construction has been subjected to a correction by Swedish jurist Ake Malmström. She also considers that there are four families of law, but that Zweigert's theory of legal competence has led to the creation of new subgroups within them. For the purposes of our study, he is the first to equate the Latin American legal system with the other Western legal families, in a non-Martínez Paz eclectic way. Here are his groups: 1) Western (European-American): a) the family of continental European legal systems; b) the family

of Latin American legal systems; c) the Scandinavian legal systems; d) the Anglo-Saxon family of legal systems; 2) Socialist (Communist) group: a) Soviet law; b) People's democratic legal systems; c) the Chinese legal system; 3) Asian non-communist legal systems; 4) African states: a) Anglophone; b) Francophone legal systems. After 1989, this theoretical construct also became obsolete. We would like to point to two further developments as a realistic process of legal theory and philosophy oriented legal family formation: one is the trend towards mixed legal systems, the other is a legal family that has undergone a particular metamorphosis, changing its name and partly its structure, namely socialist legal systems. Already after 1989/1990, with the disappearance of the Soviet bloc, it was suggested that it might be replaced by a post-socialist family of laws, following the lead of Balázs Fekete. (Fekete 2004, 1, p. 4-21) This expectation was not viable, and the processes of realpolitik and actual legal system-building moved in a new direction, towards illiberalism.

2.2. Zweigert and Kötz: legal powers as “stylistic elements” of legal systems

The theoretical basis of the powers is as well known as the Davidian construction. The German authors came up with the idea in 1971, which they further refined in their 1996 book, that five so-called stylistic elements form the basis of the scope of rights. (Zweigert, Kötz 1996, p. 74-80)

The five stylistic elements are: 1) historical background captured in its development; 2) legal-legal mindset (norms of “what law is”); 3) characteristic legal institutions; 4) sources of law and ways of dealing with them; 5) analysis of ideologies.

Zweigert and Kötz point out that their classification concerns private law and not public law, but they refer to the possibility of a change of jurisdiction. (In David's case, this could be a change of family or a mixed family.)

Mathias Reimann speaks of legal traditions rather than legal families and powers, which is more dynamic in its approach by extending it to economic, religious, etc. factors, so that legal systems can be understood, described and grouped as part of a culture, as an expression of its underlying mindset (mentality). (Reimann 2002, p. 671; Badó, Loss 2003, p. 20)

If we follow Max Weber's guidance, then ideal types, such as the concepts of families of rights and powers, are nothing more than conceptual abstractions, which do not exist in reality because they are neither perfect nor complete due to their constant change (Eliot writes that no concept is ever brought into focus until it is misused - an observation worth considering). (Eliot 2003, p. 9)

The theory of the scope of law, which is more closely associated with Zweigert, the Arminjon - Nolde - Wolff author triad, based on the division of

seven groups of law, divided legal systems into eight legal systems: 1) Romanist; 2) Germanic; 3) Nordic; 4) common law; 5) socialist; 6) Far Eastern; 7) Islamic; 8) Hindu. (Arminjon, Nolde, Wolff 1950, p. 42-47)

In the 1996 German and the 1998 English editions, the authors Zweigert-Kötz emphasise the stylistic elements of the chosen legal system as the “parent system” and, in comparison, speak of an “affiliated” legal system.

It is the mother of French and Italian Roman law, German (Germanic) law, German and Swiss law, and English and American law.

The subsidiary laws, in our case Portuguese, Spanish and Ibero-American, are part of the Roman (Romanist) legal system, which is the mother law, and their development has an impact on their development, and their direction of development determines whether they remain within this circle or go beyond it. This is an important aspect to consider when classifying our study into a legal system or legal scope based on legal theory.

2.3. *Romanist law and its main stylistic elements after the millennium*

In the classification of the states under the Romanist jurisdiction, we find three elements that are specific to them and not to others. These are: 1) the absence of the rule of law, which leaves ample scope for government by decree; 2) the existence of so-called organic laws (*lois organiques*); 3) the existence of a bicameral parliament.

The stylistic elements listed here are of a public law nature, which goes beyond Zweigert and Kötz's theory based on the grouping of private law systems.

A very detailed yet comprehensive description and analysis of the stylistic elements of the Romanist legal system is provided by the Badó-Harkai-Hettinger trio. (Badó, Harkai, Hettinger 2017, p. 145-199)

Among the legal styles, the treatment of the principle of historicity is particularly suitable for delimiting the members (states) of the Romance legal area outside Europe.

To name the historicity that has conquered Ibero (Latin) America for the second time, this time - and not a little exaggeratedly - the system that represents and carries modernity, the Romanist right: the Code Civil (with Napoleon's strong patronage). The direction of the development of Portuguese and Spanish law is relevant to the topic of our study, because, for example, the Spanish Constitution of Cadiz of 1812 (in force until 1814) included the relationship between the mother country and its colonies, which also gave them representation in the Cortes. This liberal constitution was lost, together with the forward-looking legal solutions it contained. The former colonies later sought to transplant and incorporate public law ideas from the United States Constitution, without success.

The Portuguese have also failed to keep Brazil together with the mainland.

The Portuguese Civil Code of 1867 (Código civil) still reflects French and Spanish influences, while the Código civil of 1966, now in force, has more German (Germanist) Swiss and Italian legal features, and therefore the Zweigert-Kötz literature questions its Romanist character, preferring to reclassify it as Germanist.

The legal development of Latin (Ibero) America has favoured the spread of Romanist law, but the legal penetration of common law (see 1.3.2 below) is a common phenomenon and the last millennium has seen a new force in the customary laws of native peoples. Reform efforts in public law are also reflected in the incorporation of new constitutional guarantees for the protection of minorities and human rights.

The Ibero-American countries almost completely reproduce the three specific elements described in the first paragraph of this section, which give the Romanist jurisdiction its Ibero-American character. The question is whether this is already a “big girl” or still a girl branch, or whether we can speak of a young mother branch becoming independent.

If the latter is accepted, then the introduction to the concept and system of legal culture may be of particular importance.

2.4. Portuguese, Spanish and Ibero-American legal systems as legal cultures or legal cultures?

In our study, up to this point, to answer the question posed here, we have consistently held that the legal systems under discussion are part of legal culture. Whether we are talking about legal families, legal powers or now legal culture, we know and accept classifications-classifications because they contain a great deal of truth, are full of theoretical-principled innovations and novelties, while, as a consequence of generalisations and augmented by a series of particularities and differences, they can never be complete.

Taking these into account, we have used and continue to use the concept of legal culture that we find most taxonomically acceptable. In the context of Ibero-America, we wish to nuance our position.

2.4.1. Elements of legal culture in the legal philosophy of Antal Visegrády

We would like to give an overview of Professor Visegrády's work on legal culture, with an increasingly broad and deep theoretical focus on legal efficiency, covering a relatively narrow time span - 1996-2017.

2.4.1.1. The “Principles of Law”

A university note entitled Legal Basics, published in 1996, gives a brief description of legal culture, mentioning four elements: a) the duality of law in books and law in action; b) the institutional system (the court system and the legal profession as infrastructure); c) the models of behaviour with legal

relevance (such as litigation); d) legal consciousness (the legal culture of the individual). (Visegrády 1996)

It links the effectiveness of the law to the latter element, in line with the organisations and the objectives of the legislation.

2.4.1.2. *“Foundations of the philosophy of law and the state”*

In 2001, a textbook with the above title was completed and published and is now a reference work. The author maintains his previous position, does not change the number of elements of legal culture, but adds to its range of interpretation, including the theory of legal transplantation, presenting Alan Watson's model and taking it further. The Chicago study is detailed (the legitimating function of law, the level of public acceptance of the law, is also measured) and the support for legal authorities is presented. He also cited examples from German-speaking countries of the reception of laws when their legal provisions could offend citizens. A specific discussion was given to the students' legal awareness and knowledge of the law in relation to the family, the death penalty and euthanasia.

2.4.1.3. *“The beginnings and new directions of legal thinking in Europe”*

It is a title, published in 2010, co-authored with Ferenc Kondorosi, by Professor Visegrády. (Kondorosi, Visegrády 2010)

Due to the choice of topic, the direction of the discussion is different, but political and legal culture is also discussed in detail here. Here, theories of convergence between EU legal cultures are presented and the 'EUisation' of legal institutions in national legal systems is discussed. He highlights the incorporation into Community law of the decisions of the German Constitutional Court on human rights, as well as the role of the European Court of Justice in 'bringing together' (acting as a 'cohort') the continental family of law and common law. He also talks about the shift of British courts towards the American model in their jurisprudence and about the Hungarian legal culture in the context of legal harmonisation.

It argues that EU law is a product of European legal cultures, which are in the process of evolving. The authors write about the Spanish and Portuguese legal systems - to a good standard, and in an interesting and accessible way.

2.4.1.4. *“Philosophy of law and state”*

In 2016, this book was published with a substantial and aesthetic look. Basically, what is explained under the previous point is presented in a slightly re-focused way. (Visegrády 2016)

2.4.1.5. *“Interpretative framework of legal culture and legal effectiveness”*

Professor Visegrády's paper begins with a reference to Friedmann (who is considered the father of the term legal culture, based on a 1975 book), and then goes on to take up the other positions he considers relevant to his argument. (Visegrády 2017, p. 238-254)

An important recognition is that “There is no country with a single, uniform legal culture. (Visegrády 2017, p. 239) Legal culture has a historical and processual character.

In the second part of his study, he writes about the validity and effectiveness of law in the German-speaking world, combined with a discussion of the theories of twentieth-century legal scholars. He then describes the Anglo-Saxon concepts, followed by the French (Belgian Francophone), and then by an outline of the concepts of legal validity of Scandinavian legal realism. Lastly, he discusses our region, with his usual precise and flowing style, and his thoughtful exposition of the views on the effectiveness of law.

Conclusion

We have undertaken to outline the history of the development of the Portuguese-Spanish-Ibero-American legal culture in the 19th and 20th centuries, and to analyse it from the point of view of legal theory and philosophy.

Most importantly, we consider the transformation into modern legal systems, which was made possible by the mainly Romanist and to a lesser extent German-Swiss legal solutions.

It is also worth noting the efforts that have been made in Ibero-America to create its own legal culture, which has a significant degree of identity or similarity with Portuguese and Spanish, but which has also become part of Ibero-American legal systems through the slow process of recognition of indigenous customary law.

It is a vision of the expansion of the common law and the changes this expansion has brought to the legal system.

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