The Modernity and Legal Unification of the Portuguese-Spanish-Ibero-American Legal Culture in the 19th and 20th Centuries

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ABSTRACT *The topic of legal culture*[1] *is much broader and more comprehensive than its richness of thought could be perceived in the context of an article. Connecting law to the concept of culture is a relatively recent phenomenon.*
The concept of culture dating from the middle of the 19th century and still accepted today is that culture means everything that has been created through the physical and mental work of human society. At the beginning of the 20th century, German jurist Kohler regarded contribution to the advancement of culture as the most important task of law and jurisprudence. For him, law is a creative science which evolves to satisfy the needs of society. Professor Radbruch from Germany defined law as a cultural power, a component of culture. Zjelmann saw the main value of comparing laws in that it allows law to be perceived as a cultural phenomenon.

KEYWORDS *Ibero-American legal culture, Ibero-American legal systems, legal developments in Latin America, Spanish-Portuguese family of laws*

1. Introduction

Legal culture is still an intensively researched term of arts. Perceptions can be divided into at least three types. L. Friedman separates "internal" legal culture, which means the set of attitudes and values of the legal profession, from "external" legal culture, which is the attitude and set of values of the laity, society.
The other group of authors, such as Nelken, is a proponent of a broader definition, including both the law and the tendency to sue in the concept. Finally, there are those who suggest a different concept than "legal culture".

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[1] Antal Visegrády, *Jogi kultúra, jogelmélet és joggyakorlat* (Budapest: Aula Kiadó, 2003), 122.

Cotterrell replaced it with the notion of "legal ideology". According to him, ' [l]egal ideology consists of the elements of value and cognitive ideas assumed, expressed and formed in the practice of the development, interpretation and application of the legal doctrine in the legal system."
Upendra Baxi differentiates between "residual", "emerging" and "dominant cultures". The first is a remainder of the past, but it is also actively involved in the cultural processes of the present. The emerging culture is associated with emerging strata or groups, but is usually difficult to define, slow in development and subordinate to the dominant culture. Applying this theory to legal culture, the author emphasizes that residual elements are active, expressing living experiences and even values. The situation of the dominant culture is unstable compared to the other two, the situation may change. There is also a viewpoint that sees a danger in introducing into legal culture an anthropological element that is difficult to define in law.
As for the latest developments, the concept of "comparative legal cultures" has emerged, which, according to its representatives, can serve as a primary means of exploring more deeply the connections and interconnections at work in the creation and operation of many factors of law. The evaluation of this new Janus faced (double sided) trend can be a way out of the uncertain situation associated with the paradigm shift in the field of comparative law, and, on the other hand, it can contribute to the integration of comparative law into the broader framework of legal history, legal ethnology or sociology of law.
There is a constant interaction and a multifaceted relationship between culture and law, which can be summarized in two basic theorems: on the one hand, law is one of the components of the culture of a given society, and on the other hand, there is no law or legal system that is not influenced by the culture of the given society.
Legal culture consists of the following elements: 1) the written law and the law in force ("law in books" and "law in action"); 2) institutional infrastructure (court system, legal profession); 3) models of legally relevant behaviour (e.g. litigation) and 4) legal awareness.
In broad lines, a distinction can be made between so-called regulatory and indicative legal cultures. The former covers Western cultures, where the acceptance of law takes place as a rule of conduct indeed, in a normative sense, but by no means to the same extent. In the common law system, for example, the authority of the court is more preeminent than in other countries. However, European or so-called continental legal cultures are not uniform either. Just to note two examples: in contrast to German legal culture, which traditionally values law and is at the forefront of civil litigation in Europe, Dutch legal culture is characterized by the legal term 'Beleid' (the English 'policy'), which means following favourable laws and avoiding harmful laws (circumvention). An utmost example of this is that until the enactment of the Euthanasia Act of 1993, according to which in exceptional cases medical assistance with suicide is permitted and is not punishable, although the Criminal Code had banned it, medical practice continued to provide assistance with suicide. The Dutch are working to resolve their conflicts out of court.

In indicative legal cultures – such as the Asian and African legal cultures – the law is not necessarily normative in the true sense of the word, nor is it perceived as such by society. Laws traditionally had an informative and indicative significance, and this social attitude is only reinforced by the increase in the number of unenforceable, often symbolic, laws. A separate scientific trend, the so-called "Law and Development" deals with the problem of how modern legal acts and legal institutions are introduced/ taken over in the legal cultures in question and function differently from regulatory legal cultures. The legal culture of the Central and Eastern European region is characterized by a historically developed legal approach, the essence of which is a belief in legal regulation, or excessive trust in legal regulation. Simultaneously, there has been and still is an approach to social problems within a certain legal framework. The effectiveness of the law was also influenced by the growing importance of norms of behaviour developed by real processes due to untraceable legal regulations.

At the same time, studies on the legal culture of Hungarian society indicated knowledge and approval of legislation embodying traditional values (e.g. in 1976: 83% of the respondents said that an increase in the number of divorces was "unfavourable". However, the divorce rate is very high in Hungary. All this sheds light on the contradictions in the legal culture.

To sum it all up, a legal culture that shapes the behaviour of organizations and citizens in line with the objectives of the legislation enhances the effectiveness of the law, otherwise it reduces the effectiveness of the law. There is no country with a single, unified legal culture. This is because there are many different cultures in each country, due to the complexity of societies (communities, groups). Another view speaks directly of legal "subcultures". A noted example is the legal-anti-culture of criminals and the legal culture of law enforcement. The latter is well illustrated by the fact that the courts condemn conscientious objectors in northern and southern Norway, while acquitting them in western and central Norway. Although legal cultures in the same society lead to different behaviours, relevant research has also shown that age, gender, income, nationality and race etc. are determining factors, this is why they are correlated with an attitude towards the law.

Legal culture has developed historically just like political culture and the latter influences and may even shape the characteristics and realization of the former. Legal culture is always between tradition and innovation. The development of a legal culture is a long-term process, involving not only intrinsic growth, but also the task of nurturing an existing culture. Hence, a legal culture is not only adherence to what has developed, but also a change for the sake of change.

An interesting and valuable explanation for the development of legal cultures is given by Alan Watson's theory of transplantation. Many case studies show the mystery and novelty of the similarity of legal development in the most diverse socio-economic formations and legal arrangements from the ancient Middle East to present-day New Zealand, rather than in original ingenuity, lies in taking over what is already known elsewhere and, at most, thinking it further. Transferring of law is a universal development factor for the legal system. In his

recent work, Watson explains that his studies of the history of law have convinced him that, since the rulers of the Western world had little interest in private law, this task gradually fell into the hands of a non-legislative elite (e.g. Roman jurists, medieval English judges and continental legal professors). These legal developers then developed their own legal culture, detached from social reality, which determined, on the one hand, the parameters of their legal thinking and, on the other hand, the nature of the legal system they considered worthy of lending and the extent of lending. This culture differs from society to society, but it does have common historical characteristics. Thus, law and legal culture do not develop mechanically from economic, social and political relations!

We can also give a modern example for all this. In Austria, in 1977, the institution of the ombudsman was taken over from the Scandinavian legal system and transformed into a parliamentary oversight body called the "People's Advocacy", in accordance with Austria's political system. Despite the different circumstances, the institution has survived its "transposition" into the Austrian legal system and has proved its worth over time.

In our previous studies we have tried to prove with arguments that the Portuguese and the Spaniards (the collective term for Castilians, Aragonese, Catalans, Basques, Gallegos, etc.)[2] have created an independent legal culture, while Roman law, for example, has become the preserved principle of this modernity!

We also want to point out that European civilisation in Ibero-America, under 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 matter 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 thematization, especially in Bolivia. Among blacks, the continuation of African traditions is expressed not in customary law, but in the world of religion, superstition, nature spirits and creatures, rites, ceremonies, bird feathers, emblems, wood carvings, etc.

[2] It is not our intention to blur or confuse the existing and perceived ethnic differences that so characterise Spain, as we shall see, a legal system that is becoming modernised and unified is becoming Spanish, so that it can leave behind legal particularism and replace it with regionalism and autonomous legislation – a process that is fraught with setbacks and setbacks, and the best evidence for this argument is to be found in the texts of the constitutions.

2. The transformation of the pre-modern Portuguese-Spanish legal culture into a modern legal system during the legal unification efforts of the 19th and 20th centuries

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 Ibero-America, its mechanism of action was no less underestimated. It reinforced the maturing independence aspirations of the past. The creoles of the Spanish viceroyalties, with the exception of Mexico, saw the time ripe for a real takeover. They did so successfully after a long and short armed struggle, 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 Bragança retained control throughout the independence process, thus preserving the natural and political 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 constitution of 1824 was adopted as a mixture of Anglo-Saxon and French legal concepts.

2. 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 side of the economic policy, the idea of liberalism and the free market is 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 the 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 the point of view of modernity: the Allgemeines Landrecht (ALR) of 1794, the Code Civil (CC) of 1804 and the Allgemeines bürgerliches Gesetzbuch (ABGB) of 1811, but the Code Civil has proved to be the most influential in terms of its innovations and solutions, style and interpretability.

Among the German thinkers, Hegel, Savigny and Thibault 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-America, 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.

2. 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 and translated it from French into Spanish (e.g. Haiti in 1826, Bolivia in 1830, Dominica in 1884).
Uwe Kischel[3] points out that, in addition to simple adaptation, a separate Latin American jurisprudence has already taken off.

2. 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 did not and do not make the Anglo-Saxon United States and the countries of Iberian (Hispanic and Luzobrazilian) origin and language deeply rooted cultural cousins, since the institutions that form the most durable fabric of these societies (the family, the more patriarchal way of life, the specificities of agriculture, trade and traffic relations, etc.) are the

[3] Uwe Kischel, *Comparative Law* (Oxford: Oxford University Press, 2019), 585–619.; Gábor Hamza, "Andrés Bello, the humanist thinker and codifier and the development of private law in Chile," *Jogelméleti Szemle*, no. 3 (2013): 205–210.

"children" of the Romano-Germanic legal culture and not of the extreme individualism of the common law, which they reject.[4]

2. 3. 1 Formation and main elements of 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, in Latin "ius commune Americanum", in Spanish "derecho común americano". This European Romanist tradition is blended with the customs and institutions of the native indigenous peoples.[5] 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 the concubinage 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-canonica").

A separate component is the social order, described and legally protected 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, they 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.).

[4] However, it may also be true that, from a modernisation perspective, American common law is more pragmatic in its approach to litigation, more attentive to the discovery of facts arising from the conduct of life and more reflective of templates for behaviour. From this perspective, Ibero-American countries are seen as a hybrid of Westernised civilisation rather than being solely Western (perhaps because they are not Anglo-Saxon, though of Germanic origin.)

[5] "The differences within the unit are partly due to the historical circumstances that preceded the codifications (Spanish or Portuguese conquest, the existence of indigenous communities or the existence of pre-Columbian institutions), and partly to centrifugal tendencies that emerged in parallel with the emergence of independent nation states and codified state legal systems (e.g. in the Pacific and Andean states, civil law codes show the influence of the Codigo of Andrés Bello, in the Atlantic equatorial states, the influence of the Esboço of Teixeira de Freitas and the Codigo of Vélez Sársfield (72), and partly the influence of the various European codes" – writes Catalano. Ibid. 58.

First and foremost, there 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 for the public interest, the unhealthily disproportionate distribution of land tenure in Brazil, the fate of Amazonia and its forests, and the 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.

2. 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 the 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 Louisiana is the only exception because of its Roman legal 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 advancement of the common law in the codification in 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.
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: these were found in family law. The basic unit of the societies of the 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 a general opinion and perception that the reception of a foreign legal institution – common law – with all its solutions, instruments and adaptation of its legal procedures, has breached the wall of unity of the Romanist legal system.

2. 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 comerco – 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 it was drafted by Professor António Luis Visconde de Seabra and enacted from 1868. He used the ALR, the Code Civil and the ABGB to draft it.
A new Civil Code was adopted in 1966 and came into force in 1967[6] (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 with setbacks due to a series of public law battles. The fundamental 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 effect 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"[7].

[6] The Civil Code was also enacted in Portugal's colonies, and after 1974, when Angola, Guinea-Bissau, Mozambique, São Tomé and Príncipe and Cape Verde became independent, it was maintained in force as their own code.
[7] Gábor Hamza, *Az európai magánjog fejlődése* (Budapest: Nemzeti Tankönyvkiadó, 2002), 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."[8] Indeed, separatism and regionalism within Spain were also built on legal particularism.

3. The "classification" of the Portuguese-Spanish-Ibero-American legal systems according to the classifications of legal theory

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 is René David.[9] His famous work has been revised and clarified several times, and his former students have continued to reflect on it and add new insights. We will also analyse the legal theory of the authors Zweigert-Kötz, Professor Antal Visegrády's insights on legal culture and Kischel's analysis of the civil law of Latin America.

3. 1 Theoretical issues and ways of dealing with the grouping of legal systems: families of law

Since the beginning of the 20th century, the science (theory and methodology) of comparativism has been on the agenda to examine, mainly from a legal-theoretical point of view, legal approaches operating as legal systems in the societies of modernity and in other traditional or religious states. If we wish to sketch briefly the 20th century attempts of comparativism to classify the law in a schematic way, yet in their succession (but not necessarily in a sequential way), the line opens with Georges Sauser-Hall (1884-1966)[10] back in 1913. Based on the notion 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 Martinez Paz (1882-1952)[11] also classified legal systems into four categories: 1) Common law-Barbarian-English, Scandinavian, etc.-laws; 2) Barbarian-Romanesque-German, Italian, Austrian-laws; 3) Barbarian-Romanesque-Canonical-Spanish and Portuguese-laws; 4) Romanesque-Canonical-Democratic-above all Latin American, Swiss and Russian-laws.

[8] José Sanchez, and Arcilla Bernal, "The survival of the Roman legal tradition and the reception of the common law (ius commune) in Spain," in *Tanulmányok a római jog és továbbélése köréből. (Kézirat)*, ed. Hamza Gábor (Budapest: Nemzeti Tankönyvkiadó, 1995), 117.
[9] René David, *A jelenkor nagy jogrendszerei* (Budapest: *Közgazdasági- és Jogi Könyvkiadó*, 1977).
[10] Antal Visegrády, *Jog és állambölcselet* (Budapest: Menedzser Praxis, 2016), 62.
[11] Ibid.

Swiss jurist Adolf Schnitzer (1889-1989)[12] 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[13] understands 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.[14]
By the end of the 1960s, he had come up with a new classification. He reduced the names of the families of law 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 systems 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-Martinez 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 family formation in legal theory and philosophy. One is the trend towards mixed legal systems, the other is a family of socialist legal systems, which has undergone a metamorphosis of its own, changing its name and partly its structure. 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.[15] This expectation was not viable, and the processes of realpolitik and actual legal system-building moved in a new direction, towards illiberalism.[16]

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[12] Ibid.
[13] Visegrády, *Jog és állambölcselet*, 63.
[14] Ibid. For the grouping of legal systems see Csaba Varga, *Law and Philosophy* (Budapest: Publications of the Project on Comparative Legal Cultures of the Faculty of Law of Lorand Eötvös University in Budapest, 1994), 209–211.
[15] Balázs Fekete, "A jogi átalakulás határai: egy jogcsalád születése 1989 után Közép-Kelet-Európában," *Kontroll – Jogtudományi folyóirat* 2, no. 1 (2004): 4–21.
[16] Now – it seems – such a political system might have a better chance with legal systems that "faithfully" model it: with China, Russia, Turkey in the lead, because each of them has a different religious background (e.g. Confucianism and leftist ideologism;

3. 2 Zweigert and Kötz: legal powers on the basis of the "stylistic traits" 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,[17] that five so-called stylistic elements form the basis of the grouping of laws.

The five stylistic elements are: 1) historical background captured in its development;[18] 2) 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 is for private law and not public law, but they refer to the possibility of a change of group (in David's case, this can be a change of family or a mixed family).

Mathias Reimann[19] talks about legal traditions instead of families of laws and groups of laws, adopting a more dynamic 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 the underlying mindset (mentality).

If we follow Max Weber's guidance, then ideal types such as the concepts of families of laws and groups of laws are nothing more than conceptual abstractions, which do not exist in reality as such, 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[20]).

The legal theory of groups of law, which is more closely associated with Zweigert, based on the division into seven groups by the Arminjon – Nolde –

Orthodox Christianity and Slavic missionary consciousness or Islamism and resurgent Turkish regional power ambitions).

[17] Konrad Zweigert, and Hein Kötz, *Introduction to Comparative Law in the Fields of Private Law (3rd edition)* (Tübingen: Mohr, 1996). But in the 1998 English edition, the socialist jurisdiction has already been removed, while the Far Eastern, Islamic and Hindu jurisdictions have not "earned" the inclusion! The categorisation as a grouping provided an opportunity for Siems (Mathias Siems, *Comparative Law* (Cambridge: Cambridge University Press, 2014), especially 74–80.) and Kischel to further discuss these issues and the latter's position will be discussed in more detail later.

[18] Here we refer to the fact that development in the philosophical and legal-philosophical sense is a "one-way crystallization", which can be development (progress), regression (decline), a cycle or a dead end – in the light of subsequent historical processes. The Hegelian Aufhebung (Aufhebung, abolishing, preserving) can be a good example of a substantive demonstration of the discrepancy between the original meaning of an earlier stylistic element and the concept it currently carries.

[19] Mathias Reimann, "The Progress and Failure of Comparative Law in the Second Half of the 20th Century," *American Journal of Comparative Law* 50, (2002): 671.

[20] Eliot Thomas Stearns, *A kultúra meghatározása* (Budapest: Szent István Társulat, 2003), 9.

Wolff author triad,[21] divided legal systems into eight groups: 1) Romanist; 2) Germanic; 3) Nordic; 4) common law; 5) socialist; 6) Far Eastern; 7) Islamic; 8) Hindu.
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 "affiliated" legal systems.
Mother laws are, for example, French law and Italian law in the Romanist group, German and Swiss law in the Germanic group, and English law and American law in the common law group.
Affiliated laws, in our case, Portuguese law, Spanish law and Ibero-American laws, are part of the Roman (Romanist) legal system, which is the mother law, and its development has an impact on their development, and their direction of development determines whether they remain within this group or go beyond it. This is an important aspect to consider when providing a classification in our study into a legal system or group of law based on legal theory.

3. 3 The Romanist legal field and its main stylistic elements after the millennium

In the classification of the states in the Romanist group, we find three elements that are specific only to them and not to others. These are: 1) the absence of the rule of law, which leaves ample scope for governance by decree; 2) the existence of the so-called organic laws (lois organiques)[22]; 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 group of laws is provided by the Badó-Harkai-Hettinger trio.[23]
Among the legal styles, the trait of granting priority to the principle of historicity is suitable for delimiting the members (states) of the Romanist group outside Europe.
To name the historicity that has – with no small exaggeration - conquered Ibero (Latin) America for the second time for the Romanist group, this time a system representing and carrying modernity, was the Code Civil (with Napoleon's powerful midwifery). The direction of development of Portuguese and Spanish law is important for the topic of our study, because, for example, the Spanish

[21] Pierre Arminjon, Boris Baron Nolde, and Martin Wolff, *Traité de droit comparé I.* (Paris: LGDJ, 1950), 42–47. The seven groups: 1) French; 2) Germanic; 3) Scandinavian; 4) English; 5) Russian; 6) Islamic; 7) Hindu.
[22] Organic laws are designed to unburden the constitution. Their classic home is France, but they are also included in the laws of Romania and Spain.
[23] Attila Badó, István Harkai, and Sándor Hettinger, "A romanista jogkör stíluselemei a 21. században," In *Összehasonlító módszer az alkotmányjogban,* eds. Lóránt Csink, and Balázs Schanda (Budapest: Pázmány Press, 2017), 145–199.

Constitution of Cadiz of 1812 (in force until 1814) regulated the relationship between the mother country and its colonies,[24] and also gave them representation in the Cortes. This liberal constitution, with its forward-looking legal solutions, was lost. The former colonies later sought to transplant and establish ideas in public law from the Constitution of the United States of America, but 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 I.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 group 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.

3. 4 Portuguese, Spanish and Ibero-American legal systems as a legal culture or legal cultures?

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

[24] The colonial territories were New Spain (Mexico), New Galicia (audiencia in the north of Mexico), Yucatan (Mayan peninsula in the southeast of Mexico), Guatemala, the eastern and western provinces, Cuba, Florida, Santo Domingo, Puerto Rico, New Granada (a sub-kingdom of present-day Panama, Colombia, part of Venezuela and Ecuador), Venezuela, Peru (a sub-kingdom), Chile and Rio de la Plata (a sub-kingdom of present-day Argentina, Uruguay).

Taking these into account, we have used and continue to use the taxonomically most acceptable concept of 'legal culture'.[25] In the context of Ibero-America, we wish to nuance our position.

4. 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 efficiency, with an increasingly broad and deep theoretical focus on legal culture, covering a relatively narrow time frame, i.e. 1996-2017.

4. 1 The "Principles of Law"

A university compendium entitled Legal Basics[26], published in 1996, gives a brief description of legal culture, mentioning four elements: a) the dichotomy 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 (e.g. litigation); d) legal awareness (legal culture of the individual). It links the effectiveness of the law to the last element, in line with the organisations and the objectives of the legislation.

4. 2 "Foundations of the philosophy of law and the state"

In 2001, a textbook with the above-mentioned title was completed and published, and is now a work of reference. 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 devoted to students' legal awareness and knowledge of the law in relation to the family, the death penalty and euthanasia.

[25] There is a sea of literature on the concept of legal culture, just to mention a few examples: Jorge Sánchez Cordero (Mexican), Manuel Gutan (Romanian), Fernando Hinestrosa (Mexican), Georg Mohr (German), Kaarlo Tuori (Finnish), Zsolt Nagy, Balázs Fekete, Zoltán Péteri, Csaba Varga, Antal Visegrády.

[26] Antal Visegrády, *Jogi Alaptan* (Pécs: Magánkiadás, 1996), 101.; Ferenc Kondorosi, and Antal Visegrády, *A jogi gondolkodás kezdete és új irányai Európában*, Budapest: Magánkiadás, 2010), 202.

4. 3 "The beginnings and new directions of legal thinking in Europe"

My co-author Professor Visegrády's work was published in 2010, and its co-author was Ferenc Kondorosi.[27] 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. They highlight the incorporation of the human rights decisions of the German Constitutional Court into Community law, 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. They also talk about the shift of British courts towards the American model in their jurisprudence and about Hungarian legal culture in the context of legal harmonisation.
The work argues that EU law is a product of European legal cultures, which are in the process of being shaped and formed. The authors write about the Spanish and Portuguese legal systems – to a good standard, and in an interesting and accessible way.

4. 4 "Philosophy of law and state"[28]

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.

4. 5 "A framework for understanding legal culture and legal effectiveness"[29]

My co-author 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 consider the other positions he deems relevant to his argument.
An important recognition is that "there is no country with a single, uniform legal culture".[30] 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) concepts, and then by an outline of the concepts of legal validity of Scandinavian legal realism.

[27] Kondorosi, and Visegrády, *A jogi gondolkodás kezdete és új irányai Európában*, 202.
[28] Antal Visegrády, *Jog és állambölcselet* (Budapest: Menedzser Praxis, 2016), 229.
[29] Antal Visegrády, "A jogi kultúra és a joghatékonyság értelmezési keretei," *JURA* 23, no. 2 (2017): 238–254.
[30] Ibid. 239.

Lastly, he discusses our region, with his usual precise and flowing style, and his thoughtful exposition of the views on the effectiveness of law.

5. Uwe Kischel: Latin America – a Spanish-Portuguese family of laws?[31]

Uwe Kischel's book entitled *Comparative Law* was published in 2019. On pages 585-619, he looks back at the legal systems of Latin America in its colonial past, and moves forward to search for legal models for the independent states during the 19th century, in which the constitutional solutions of Romanist French law and the American version of common law came to the fore. In addition to the French Code Civil, these former colonies were also interested in these French versions of the republican polity. In the 20th century, US interest in the "backyard" also increased, but it was mainly to promote attempts to infiltrate common law. A paradigm shift between the two halves of the Americas, Anglo-Saxon and Ibero-American, began to take place in the 1980s, bringing about a major change in the human rights and customary law situation of indigenous peoples.

Kischel looks at both the generations of fundamental rights and the possibilities for their judicial enforcement, namely their enforceability.

The book draws attention to the particular social consciousness that the Spanish colonial authorities had a habit of using the phrase "se obedece, pero no se cumple", i.e. "obey the law, but don't follow it". This is how the legal text became a written form and the legal reality became a question of fact, with a deep gulf between them, representing one of the hallmarks of this legal culture. This problem was not the same for all the viceroyalties and audiencias, and was not present at the same time, but it persists to this day and has a negative impact on these societies. It is interesting to note that, given the difficulty of effectively transposing written law into these cultures, this is compounded by the very crude language used in the commentaries to describe the phenomena, and is presented as a genuine "culture of indispensability" or "lawlessness". The problem becomes apparent when a minister can publicly state: "Who cares about the constitution. It's just a piece of old paper." Therefore, reforms and complaints achieve nothing. A specific terminology, impunidad, develops for this situation. The elite, even at the level of generality, is not afraid of accountability and becomes immune to criminal law and to prosecution. The aforementioned deep chasm creates parallel worlds with rules and behaviours that govern and influence them. And people live their lives adapting to this duality. Large sections of the population are turning to evasion of the law because they do not trust the courts to apply the law, and there is a growing sense of human injustice.[32] The written laws that guarantee judicial

[31] Kischel, *Comparative Law*, 590.

[32] The trio of authors Badó-Harkai-Hettinger (p. 27) reaches the same theoretical conclusion about the mechanisms of the influence of the branches of power on society:

independence in all Ibero-American countries do not in any way guarantee the required degree of practical and effective independence, and their ineffectiveness is well known.

5. 1 Low prestige of the judiciary

The third branch of power is a living legacy from colonial times of failure. While the inquisitorial process has a very different content in Romanist France or German criminal procedure, in the vast majority of Ibero-American countries we are dealing with "authentic inquisitorial elements". The suspects were often imprisoned, their detention on remand prolonged and only with great difficulty were they able to regain their freedom. The whole thing was shrouded in mystery. Neither the issue of legal protection nor the principle of freedom of speech were raised. The reforms in the field of criminal law were based on German law. In Ibero-America, as with all reforms, when legal reform is undertaken, successful change – change in itself – is only possible as a result of a sustained political effort, and this has an impact on the change in legal culture. Complicating factors are mistrust and a lack of financial resources.
In the field of justice, we can talk about a major change after 1992, but the situation is still not reassuring. What we are seeing is the infusion of socio-cultural rights into constitutions (the literature speaks of social

"Latin American countries are mostly characterized by a strong, interventionist executive. However, using the terminology of the World Bank, the implementation of "good governance" is particularly deficient in the field of law. The often very weak or possibly non-existent legislature has left a deep wound in the legislative process. Make no mistake, Latin American countries have no shortage of elegantly drafted codes, constitutions and other legislation. The Chilean Civil Code, the work of Andrés Bello, is considered by some to be literary in its wording and structure. In Latin America, this legislative technique has a long history. Nevertheless, an examination of Latin American legal systems reveals that, in many respects, the law does not reflect the heterogeneous social realities of each nation, with many sections of the population choosing to evade the law and the courts applying it in a way that creates social injustice. The dysfunctional relationship between law and society seems to be deepening, exacerbated by the population explosion, the rural-urban migration and the debt crisis of the 1980s. The executive has repeatedly taken the place of the legislature in Latin America, and the executive has regulated by decree the conditions of life that require regulation by law. This was compounded by the fact that executive power was often concentrated in the hands of military regimes, which allowed laws to be promulgated without transparency and accountability. Thus, the legislature was not, and could not be, in a position to do its job in a way that took account of social needs and context. The legislature has a history of inefficiency and lack of parliamentary debate. Weak or non-existent legislative power has resulted in law that does not reflect social reality. Latin American states do not necessarily share the ideals of the civil law system. If we take into account the pace of development of Latin American societies and the heterogeneity of the population, we can conclude that, in its purest form, the objectives of a civil justice system in the strict sense cannot be achieved in Latin America." Badó, Harkai, and Hettinger, "A romanista jogkör stíluselemei a 21. században," 178–179.

constitutionalism), but this also opens the way to judicial interpretation of the law, which is a solution of case law, i.e. it loosens up the civil law system, so that the new constitutional norms open the way to the penetration of common law. It also disrupts the uniform regulation of traditional areas of private law.
Therefore, public and private law do not form a stable legal system, because none of the political, economic and social situation and environment allows it (although international conditions have changed very favourably). Stability is also counteracted by the extent and entrenchment of corruption and drug trafficking, which influence the functioning of all parts of the state, albeit in different ways and at different levels, depending on the country. "There is a statistical correlation between the level of mistrust in a particular country and the objective level of income inequality, as well as the extent to which citizens perceive this inequality as unfair. In other words, the greater the inequality, the greater the mistrust."[33]

5. 2 Judicial enforcement of fundamental rights

Following the American example, the use of the judicial route was introduced in the mid-19th century and became the trigger for case law adjudication. In the 20th century, there was a move towards a more European model of constitutional adjudication, with separate constitutional adjudication and, from time to time, independent constitutional courts. Constitutional courts are often "activist", seeking to establish and challenge the unconstitutionality of a given piece of legislation by means of abstract judicial interpretations of the law. This marks a paradigm shift. It is also the case – for example in Chile – that the right of judicial review extends only as far as the law has not become final. In other countries, such as Mexico, the time limit is 30 days (Art. 105, para. 2 of the Constitution); in Nicaragua, 60 days (Art. 12 of the Ley de Amparo); in Peru, it is up to 6 years (Art. 100 of the Constitutional Code of Procedures); and there are states where there is no time limit and also states that allow a certain number of citizens or parties to have access to judicial review.
We should also mention Brazil, which has also built its own constitutional system. As Gábor Hamza has already stressed, Brazil is not only an emerging economic power (the so-called BRICS countries, i.e. Brazil-Russia-India-China-Southern-Africa), but also a legal power.
The judicial route initially took the form of an empowerment and any federal court could review the constitutionality of laws in any particular case and, if necessary, revoke their validity. This already required the decision of a plenary session of the Court or a special body created for this purpose, under Article 97 of the Brazilian Constitution, which required an absolute majority of votes. At the top of the Brazilian judicial hierarchy is the Supremo Tribunal Federal (STF) (Supreme Court of Justice). The STF can call on the upper house of the legislature, the Federal Senate, to revoke the law, the latter not being bound by the STF and thus free to decide at its own discretion.

[33] Kischel, *Comparative Law*, 605.

Another way to challenge the law is to file a direct complaint of unconstitutionality (ação directa de inconstitucionalidade) under Articles 102(1)(a) and 103 of the Constitution. This provision provides for the possibility for a limited number of constitutional bodies to lodge a complaint without a time limit, either on the grounds of a law being challenged or on the grounds of the failure to adopt a law. However, the decision taken in this procedure is already valid erga omnes (against everyone). A subtype of this complaint, governed by the same constitutional provisions, is the complaint for a declaration of constitutionality (ação declaratória de constitucionalidade). This serves the purpose of compensating for the shortcomings of indirect judicial review, namely, the uncertainty generated in the legislative system, because the regulation does not have an erga omnes effect, the power of decision is not limited to one court, an STF provision that a law is unconstitutional is not linked exclusively to federal status. The ação declaratoria does not allow the STF to make an abstract decision that has general effect and thereby provide legal certainty.

Brazilian law does not allow for a constitutional complaint, modelled on the German model, where a citizen is allowed to bring a violation of his fundamental rights before the Constitutional Court after having exercised his right to a remedy before the ordinary court. This fully clarifies the fact that the STF is, in any case, the highest judicial forum on all issues, making a special form of constitutional complaint unnecessary. However, there are special procedures which allow for the bringing of personal fundamental rights cases before the STF. These include the so-called habeas corpus, which applies to proceedings concerning detention, the Mandado de Segurança, as a comprehensive complaint for all violations of personal rights (not just those guaranteed by the Constitution), and the Mandado de Injunção, which applies to complaints of maladministration in certain areas, such as social rights. These specially designed procedures are apparently absent from civil law and are called injunctions even in Brazil. That being said, the entire system of legal protection of constitutional rights cannot be understood only by reference to foreign legal systems, but can be approached through its own – Brazilian – terminology.

5. 3 One component of Ibero-American legal culture (legal systems): customary law

Customary law is an important element of legal culture and has a special place in American Indian history as a source of law. Kischel devotes a great deal of space to the present-day law of the Indians (indigenous, native, ameroind) and their ancient customs. Also worth noting here is the book *Civilization of the South American Indians: With special Reference to Magic and Religion (Classic Reprint)* by Rafaël Karsten (1879-1956), republished in 2018, which provides an inescapable factual record and helps to better understand Indian customs.

6. Our position on the classification of Portuguese, Spanish and Ibero-American legal cultures

In our view, the following "classifications" could be considered:

- the establishment of a separate Spanish-Portuguese family of laws;
- the Portuguese-Spanish jurisdiction (including Ibero-America), which was separated from the Romanist jurisdiction and made autonomous;
- Portuguese-Spanish legal culture, which includes Ibero-American legal systems;
- there is a separate Portuguese-Spanish and an Ibero-American legal culture;
- finally, it can exist as a Portuguese-Spanish-Ibero-American legal culture (where the divergence of the individual legal elements does not reach the level necessary to become autonomous).

If we look at this range of possibilities and take into account the results of studies into legal theory and the philosophy of law, we can make the following observations on the above:

- the notion of a family of laws as elaborated by René David, which is questioningly assumed by Uwe Kischel as "A Spanish-Portuguese Legal Family?", is not, in our view, met by the Spanish-Portuguese legal systems either as such or together with the Ibero-American legal systems;
- the move away from the Romanist group of laws, the fading of the "French model", is a real process, but the influence of German and Swiss law has increased and after 1978 Spanish jurisprudence and judicial practice has also gained in prestige in Ibero-America.

  In our view, the best position for this hypothesis is to leave Ibero-American law within the scope of the Romanist group of law, pointing out that it is subject to increasing German and common law influence;
- the common basis of the last three classifications: the approach from the aspect of legal cultures, which has been considered as a corollary throughout the discussion;

  in this way, legal culture is considered the most flexible concept when performing a "taxonomy".

6. 1 On Portuguese-Spanish-Ibero-American legal cultures

We have tried to map out the components, first, of the Portuguese-Spanish and then, after colonialism and independence, the Ibero-American legal culture.
Consequently, we can imagine several kinds of discontinuities in the life of these legal cultures. From the point of view of modern legal systems, it seems easy to distinguish between pre-modern and modern. If we approach them from the point of view of their development, their enrichment in terms of content,

form and legal technique, and their changes, we can draw almost any number of epochs.

The emphasis on change is also important because there are elements of these legal cultures which are not currently in the foreground (such as canon law), elements which are in a "state of flux", so to speak, i.e. they are sometimes in the foreground and sometimes in the background, apparently dormant. Ibero-American customary law cultures and the Visigoth-Germanic legal influence of the Spaniards fall into this category.

The Portuguese-Spanish legal culture, in addition to the aforementioned Visigoth (and Swabian) influence and adoption, incorporated Frankish law into its early system (especially in Catalonia) and the Bourbon rule of the 18th century paved the way for the "gift" of the Code Napoleon, delivered by an armed invasion in 1808, and its rapid reception. Legal modernisation came from outside and proved overwhelming. The same thing happened in Ibero-America. Here, the accumulation of antagonisms between society and the law, leading to the development of a complex system of extra-legal norms, whether in the acquisition of property, trade or the settlement of disputes "in the field of governance at the community level", is seen as an aggravating factor.[34] These negative consequences show the low effectiveness of formal (written) law.[35]

Nor can we ignore the "strong opposition to custom in the field of formal law". For example, one of the most important principles in the drafting of the Chilean Civil Code was the primacy of written law. According to Juan G. Matus Valencia, "custom does not have the force of law except in cases where the law expressly so provides". This attitude is the prevailing view even in the revision of the civil codes in Latin America today. Article 1 of the Peruvian Civil Code expressly prohibits the application of customary law that is contrary to the law. This section of the law has important implications both for customary law traditionally established in indigenous circles and for modern customs in the informal sector. Indigenous societies have a centuries-old history of normative legal institutions, which are at best reluctantly and sporadically recognised by the formal legal system. In the 20th century, with the rise of the informal sector, there has been a proliferation of uncodified, unwritten principles.

The informal sector exists in many Latin American countries, and governments have enacted legislation outside the scope of the legal codes, tacitly acknowledging that the codes do not reflect real social conditions. In Brazil, for example, with the adoption of the Microenterprise Law, the legislature has

[34] Badó, Harkai, Hettinger, "A romanista jogkör stíluselemei a 21. században," 187.

[35] "The Latin American countries can be described in terms of the conflict between law and society as follows: first of all, there is a conflict between the customary law of the informal sector and formal law. Secondly, there is also a conflict between the bureaucratic ideal of the civil judge, adopted as a model, and the heterogeneous and changing social reality. Thirdly, formal law is often widely eschewed in favour of transactions that are beneficial to society or the economy. Lastly, the de facto legitimacy of non-constitutional governments and the long tradition of their legislation continues in the Latin American region." Ibid.

created a registration requirement for illegal businesses created in the grey economy to bring them back into the legal, white economy. Merryman sees this as a form of "legal micro-legislation". These "laws" do not come out of the hands of law professors writing law books in a vacuum, but are the result of a compromise between heterogeneous forces in societies with great potential that threaten the status quo.

Latin Americans have ambivalent feelings about the law. In some respects they ignore it, but in others they still have an idealistic view that legislation can solve all problems.[36]

The real power is the executive, and most constitutions empower governments to regulate areas of life by decree and thus override judicial decisions, so that judicial power and control can only be apparent. There is also a need to improve the quality of the administration of the judiciary, which involves a reform of the appointment and promotion system. A sign of this is the creation of judicial councils along European (Spanish-French) lines (such as the National Council for the Judiciary (OIT) in Hungary, now called National Judicial Office (OBH)).

Judicial councils, as self-governing bodies, can only carry out their functions effectively and autonomously if the whole judiciary is restructured.

7. Conclusion

In our study, 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. The most important thing is their development into modern legal systems, and it was the mainly Romanist and to a lesser extent German-Swiss legal solutions that made this possible. The efforts that have been made in Ibero-America to create its own legal culture are also worth to be noted, and this legal culture has a significant degree of identity or similarity with Portuguese and Spanish legal culture, but through the slow process of recognition of indigenous customary law, it has also become part of the Ibero-American legal system. There are visible signs of the expansion of the common law and the changes this expansion has brought to the legal system. We compared the models of classification of legal systems accepted in the literature based on David, the authors Zweigert-Kötz and the patterns of legal cultures. We have highlighted the work of Professor Antal Visegrády from Hungary and that of Professor Uwe Kischel from abroad – both authorities on legal theory and philosophy – and presented their main conclusions. We have focused on the analysis of Ibero-American legal systems, relying heavily on the insights of Professor Kischel. Finally, we have taken a stand on the classification to be adopted in our study and have clearly voted in favour of the definition and classification "Portuguese-Spanish-Ibero-American legal culture."

[36] Ibid. 188–189.