

REMARKS ON A COMPACT GUIDE TO THE WORLD HISTORY OF CIVILIAN TRADITION*

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Gábor Hamza, Member of the Hungarian Academy of Sciences has published in 2009 the third revised and considerably enlarged edition of his *magnum opus* in German.¹ In the present review I try to introduce the book which, if we also consider its Hungarian² and French³ editions, can be regarded as the fifth, revised and enlarged edition of a work that is in a continuous evolution.

The book that I am describing is more voluminous than any of its preceding editions. Having 828 pages, it is twice as long as the Hungarian edition of 2002, which was the most comprehensive of all the editions published so far. The bibliography section increased to even a higher degree: in some chapters it grew five to six times. Given such a quantitative leap, it is no exaggeration to refer to this book by comparison to its predecessors as an *opus novum*.

If we say that Professor Gábor Hamza's book is outstanding by international standards that is an understatement. I am convinced that it is fair to say that it is one of its kind by world standards. To start with, it is rare for a single author to

* The present book-review is based upon a paper read at the Hungarian Academy of Sciences on 10th November 2009.

¹ Gábor HAMZA, *Entstehung und Entwicklung der modernen Privatrechtsordnungen und die römischrechtliche Tradition*, Eötvös Universitätsverlag, Budapest 2009, 828 p. ISBN 978-963-284-095-6. The previous editions of this work in German are as follows: G. HAMZA, *Die Entwicklung des Privatrechts auf römischrechtlicher Grundlage unter besonderer Berücksichtigung der Rechtsentwicklung in Deutschland, Österreich, der Schweiz und Ungarn*. Andrassy Gyula Deutschsprachige Universität, Budapest 2002, 282 p.; G. HAMZA, *Wege der Entwicklung des Privatrechts in Europa. Römischrechtliche Grundlagen der Privatrechtsentwicklung in den deutschsprachigen Ländern und ihre Ausstrahlung auf Mittel- und Osteuropa*. Schenk Verlag, Passau 2007, 264 p.

² G. HAMZA, *Az európai magánjog fejlődése. A modern magánjogi rendszerek kialakulása a római jogi hagyományok alapján* [= Trends of the Development of Private Law in Europe. The Role of the Civilian Tradition in the Shaping of Modern Systems of Private Law], Nemzeti Tankönyvkiadó, Budapest, 2002, 362 p.

³ G. HAMZA, *Le développement du droit privé européen. Le rôle de la tradition romaniste dans la formation du droit privé moderne*, Publications de la Faculté de Droit de l'Université Eötvös Loránd, Budapest 2005, 228 p.

publish such a voluminous scholarly work in a foreign language. As for the volume and colourfulness in the number of languages and geographical expansion of the literature consulted, the present, third German-language edition of Gábor Hamza's book might aspire to feature in the *Guinness World Records*. It also merits a reference in *World Records* because as many as 86 of the world's countries and related fields of law are addressed in this book in separate chapters. The history of the legal system of all the countries of Europe and the Caucasus region, including the Channel Islands, the Isle of Man and Iceland (53 countries and related fields of law), nearly every country of North, Central and South America (24 countries), nine countries of Asia and Africa have independent *sedes materiae* in this book.

To provide some examples: the book carries a three-page chapter about the internationally little-known history of the legal system of Albania, and that description relies on 26 references in the literature in English, French, German and Italian. The most recent reference about Albania dates to 2007. Turkey is covered by a chapter of six pages of text and five and a half pages of bibliography, in which some 140 relevant references are listed and the most recent among them dates to 2008. The chapter on the German history of law in the Modern Age has the richest bibliography with about 200 items. Note that the total number of bibliographical references does not reach 200 in numerous PhD dissertations. All in all the author refers to nearly 3000 works in English, French, German, Italian, Spanish, Catalan, Portuguese, Dutch, Russian, Polish, Czech, Slovak, Romanian, Ukrainian, Serbian, Croatian, Slovenian, Latin, Ancient Greek and Modern Greek, not to mention the works in Hungarian. I stop there because the author only reads in further European languages with more or less reliance on dictionaries...

But what is the topic in which the author has invested so much energy, expertise and time that could be easily compared to several years of work by a research institute and could perhaps put to shame the output of an entire research institute? What is this book about? As its title shows, the intention of the author is to demonstrate – with respect to all the countries of Europe and numerous ones outside it, right from the earliest antecedents, which in the case of a lot of countries means ever since the early Middle Ages – in a compact manner but as illustrated with concrete facts and data of the history of law the way in which the tradition of Roman law has come down to us in the history of the private law and jurisprudence or, in the case of countries where it would be unjustified to speak of the survival of Roman law, about the past and present influence of the tradition of Roman law on the development of the law of those states.

To the best of my knowledge, no one has ever written such a comprehensive survey of comparative history of law. Or to put it in another way, Professor Gábor Hamza has invented a new genre of scholarly works on law which –

and I hope the honourable author will not be affronted by it – I would call an almanac of the history and geography of law. The subject of this book goes beyond the history of law as it also delves into the science of geography. Works of geography and, to be more precise, works of human geography aspire systematically to present the countries of Earth as grouped according to continents and within them, smaller geographical units. Understood in a Lessingian sense, the *a priori* of Gábor Hamza's book is space rather than time. Suffice it to examine the structure of this book to see that point: although the first three parts follow a chronological order (the age of Justinian, the Middle Ages and the Modern Age) but inside those sections the material is treated mostly according to a geographical principle. The structure of the fourth part of the book presents the history of private law of countries outside Europe purely on a geographical basis.

In the 17th and 18th centuries certain representatives of natural law attempted to associate jurisprudence with mathematics; in the 19th century the historical school of law efficiently connected jurisprudence with historiography; during the 20th century emphasis was laid on sociological, psychological, philosophical and last but not least economic aspects of jurisprudence (cf. the economic analysis of law) and now we can notice that stress has shifted on the geographical aspect.

Not that emphasis on the geographical aspects were new in the history of jurisprudence. On page 407 of his book, Gábor Hamza refers to *De usu et auctoritate iuris civilis Romanorum in dominiis principum Christianorum*, a work by Sir Arthur Duck, an English legal scholar, from 1648. That book surveys the European Christian countries of the 17th century and examines the differences in the recognition of the tradition of Roman law among them. In the 18th century Gottfried Achenwall, a professor of Göttingen developed the scholarship of statistics in order to carry out a systematic description of the countries of Europe. Also in Germany during the 19th century attractive full-colour maps (*Rechts- und Gerichtskarte*) were issued in order to illustrate differences in the practice of civil law in the various provinces.

Interest in the geographical approach is not without precedent in contemporary jurisprudence either. The development of the European Union and globalization prompt increased attention to comparative studies of the legal systems of countries, which encourages the spread of the geography of law approach. The purpose of the Common Core Project, which is coordinated by the University of Trento and was launched under the aegis of an American professor, Rudolf Berthold Schlesinger in 1993, is to make a precise and reliable map of the European law of property and the law of contracts ("*una affidabile «mappa» geografica del diritto privato europeo*").⁴ Unlike other European projects, like

⁴ G. BENACCHIO, *Diritto privato della Unione europea*, 5th ed., Padova 2010, 193.

the Lando Committee, the Common Core Project does not aim at elaborating a uniform text. Instead, it seeks to offer clear and reliable descriptions of the national legal institutions, the sum total of which form the substantive content of the European legal culture.

Alongside its strong geographical interest, Professor Hamza's work has the distinguishing characteristic – which sets it apart from all other similarly ambitious comparative histories of private law – of tracing the effects of Roman law. Gábor Hamza can briefly and vividly present the history of the private law of so many countries both because of his exceptional erudition and ability of synthesis and analysis and because he has a special interest in how the Roman law tradition has influenced the evolution of private law in the countries concerned. This focus on the Roman law roots makes the brief essays – which describe the private law systems of some ninety, highly different countries – relatively self-contained and uniform and certainly more easily comparable. As the examination of the survival of Roman law traditions is the centrepiece of the book, the author does not have to face the dilemma of – using the phrasing of Leibniz – whether to place the emphasis on the external or internal history of law.

Evident is the question how could Professor Hamza process single-handed such a vast amount of foreign sources and secondary literature that have been published in dozens of languages. Having been working at the same department for over thirty years, I can testify that – instead of collecting these most diverse materials from secondary sources or relying on the contribution of associates and subordinates or simply retrieving materials from the Internet (although his research efforts nowadays rely also on the opportunities offered by the Internet) – over the past two decades Gábor Hamza travelled to a large number of countries on four continents in order to collect indefatigably and with arduous effort, *an Ort und Stelle* and *höchstpersönlich* in libraries of universities, research institutes and other major libraries source materials and literature on several countries of Europe and countries overseas, and wherever possible, in the original language. This book is, then, *liber unius hominis* – apart from the obvious fact that a small team of associates took part in ensuring the high quality of the text linguistically and preparing the typescript for printing.

Now that I have mentioned associates, let me add that Professor Hamza used his extensive travels abroad both for library research and consultation with local experts – partly in connection with the presentations he delivered there – especially with leading experts and researchers on private law, Roman law and the history of law as that was his method of ensuring the correctness of his observations.

My impression is that quite a few legal scholars at home and abroad would have found Professor Gábor Hamza's herculean task intimidating but Gábor Hamza has been, so to say, predestined to fulfil this unique mission. Never in my life have I heard of legal scholars of our time who would speak so many

languages at such a high level and be versed in history so profoundly. That encyclopaedic knowledge served as *sine qua non* for writing this ambitious work. Yet knowledge alone would not have been sufficient: it had to go hand in hand with perseverance and commitment. Insatiable scholarly curiosity (*insaziabile curiosità intellettuale*, as an Italian researcher once commented about him) is characteristic of Professor Hamza and is the driving force behind this project.

Hungarian jurists can be proud of the fact that this book has been published in Hungary and written by a Hungarian university professor. Let us recall at this point that in recent decades scholarly research has been taking place in Hungary under adverse conditions. Notwithstanding those adverse circumstances, which have meant a handicap in international competition, outstanding Hungarian accomplishments do see the light of day.

I have discussed the merits of the book. It is undeniable that, when viewed from another angle, those strengths may make the book prone to certain shortcomings. In the case of a book that covers such an enormous field in space and time it is inevitable that an extremely rigorous reader can find inconsistencies in some places. A very demanding reader who peruses the bibliographical lists, which introduce each chapter, might be dissatisfied because the lists each for the private law of Honduras, Guatemala, Ecuador and Bolivia are by no means rich, and the literature of the past ten years are absent from the bibliographical lists of Malta, Monaco, Andorra, Armenia, Costa Rica, El Salvador, Dominica, Nicaragua, Panama and Venezuela. It is to the author's credit however that in the case of the remaining 72 countries the bibliographical lists include works published in recent years, in fact some published as recently as the past one or two years.

It would be unrealistic to expect such a monumental and complex work to have chapters that are of the same quality. I hasten to add that the problem would not have been solved even if the staff of an entire research institute had produced the book instead of a single author, and it does not seem necessary to explain why. As the great Roman writer of epigrams, Martialis, has put it: *Sunt bona, sunt quaedam mediocria, sunt mala pura, quod legis hic, aliter non fit, Avite, liber*. No book can ever be perfect. Gábor Hamza's work is not a so-called "closed work" just as the medieval codices on canon law that Professor Anzelm Szabolcs Szuromi has recently analysed in his academic doctoral (DSc) dissertation are not. This is a work in a continuous process of evolution. We have every reason to congratulate the author. We wish that he should continue his impressive efforts in this field. Thanks to those efforts, the Roman law tradition, which is the primary foundation of the *ius commune Europaeum*, has received an exceptionally comprehensive documentation and a scholarly confir-

mation. Familiarity with the Roman law tradition can be important for legal scholars of Europe nowadays also because in China – as it is attested in the chapter on China on pages 708 to 711 in Professor Gábor Hamza's book – interest in Roman law has surprisingly and dramatically increased over the past two decades, and apparently that interest is here to stay. As a consequence of that development, today classical Roman law is exerting a remarkable impact on legislation in the field of civil law in the People's Republic of China. If nothing else, that phenomenon alone is noteworthy as regards the continued influence of Roman law.