

**“CUNNING PASSAGES”:
COMPARISON AND IDEOLOGY IN THE LAW AND LANGUAGE STORY**

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Local Puzzles and Beyond

My feeling, in affording the subject of Law and Language, is that we face a mass of “local issues”, and “local puzzles”, but that we still lack a theory to grasp with the bulk of the matter.

In my paper I just try to look around the package of some received ideas. Thus in the first section I cope with two prevailing theories :

1. the theory of the language as a “social glue”, which is dominant and emerging from the present American political debate;
2. the theory of the “analogy” between Law and Language as spontaneously ordered complex phenomena¹.

Then in a second section I try to trace back these ideas in the time of the “Birth of Comparativism” in the early 19th century. In so doing i deal with:

1. the birth of Indo-European Family in Comparative Linguistics, and
2. the birth of Legal Comparativism within the context of the German Legal Historicism, in the same span of time.

Finally I try to show how all these conceptions are nested details of a more general consciousness with broad political implications in terms of projects of governance.

Common Bonds and Social Glues

One of our main received ideas about issues of law and language is that the former is a kind of flag of identities. The self consciousness of a group, or a community, is flagged by the use of a common language as a major part of its heritage, and as a constituent of its cultural peculiarity.

This theory of the language is now quite well exemplified in a number of present debates within the American political culture.

Indeed never before, in its 220-year history, has the United States seen fit to adopt an official language. But now we face a campaign to “officialize” English, resting on the claim that the most successful and dominant world language is threatened in its bastion: the USA.

This English-only movement seemed to come out of nowhere in the early 80s, but quite suddenly official English measures have been adopted by 21

¹ See Walter B. Weimer, *Spontaneously Ordered Complex Phenomena and the Unity of Moral Sciences*, Paper prepared for Committee I of the 12th Int'l Conference on the Unity of the Sciences, Chicago, November 24-27, 1983.

States.

Proponents argue that English has been our “social glue”, our most important “common bond”, which has allowed Americans of diverse backgrounds to understand each other and overcome differences. Today’s immigrants refuse to learn English, unlike the good old immigrants of yesteryear, or, at best, they are discouraged from doing so by government-sponsored bilingual programs. Language diversity inevitably leads to language conflict, ethnic hostility, and political separatism *à la Québec*.

A good example is the Anti-bilingual Education Initiative in California. In November 1997, California’s Secretary of State certified that anti-bilingual activists had collected at least 510,796 petitions from registered voters. The campaign is led by Ron Unz, a Republican candidate for governor in 1994, and a multimillionaire software developer, who plans to dig deep into his own pockets and spend whatever it takes to get the measure passed.

Similar proposals have been debated also in the U.S. Congress, where they enjoyed the support of Republican leaders. “English has to be our common language” said former House Speaker Newt Gingrich. “[O]therwise we’re not going to have a civilization”². Bob Dole, as one of the putative Presidential nominees, argued that “[w]ith all the divisive forces tearing at our country, we need the glue of language to help hold us together”³.

I think that these few examples show fairly well how strong and emerging is the received idea of a link between self-identity and language, as well as between the latter and the group structure.

Issues of language are fought by majorities and minorities by accepting the theory of the language as the glue of the common culture they try to impose or preserve. Thus it is quite clear that issues of language are directly linked with projects of governance or resistance, which according to me can be traced back to the birth of comparative studies, as we shall see in a next section.

Spontaneous Orders

Now I want to investigate a second suggestion, which has been powerfully

² Comments during House debate on H.R. 123, *reprinted in* Congressional Record for August 1, 1996; see also James Crawford, *Legislating Language*, (visited feb 12, 1999) <<http://ourworld.compuserve.com/homepages/JWCRAWFORD/worldpap.htm>>.

³ Sen. Bob Dole, “Remarks Prepared for Delivery at the American Legion Convention”, Indianapolis, Indiana, September 4, 1995, p. 4.

sponsored by Hayek⁴: the theory of the analogy between law and language. Both law and language are *not* the outcome of a conscious design. They just grow within a community or a nation. They both are spontaneous social orders, and besides they both are the most important features of the overall order of society, meaning that social actions are mainly patterned by the conformity of agents' behavior to their often hidden and unexpressed rules. Here I cannot go across the whole and complex Hayek's theory, which is anyway quite well known. According to me, one of his main contributions to legal theory has been to indicate private law as the law of human coordination in society, whereas public law is to be regarded just as the law of a peculiar organization, the "State", acting within the overall order of society. Moreover while public law is consciously designed to reach the time-bound purposes of the State, never a single group of human mind has designed the whole of private law, which is in these terms the outcome of a spontaneous tradition.

It is quite easy to see at a glance the political implications of this theory in terms of the idea of the limited government, and in terms of the intrinsic limitations of human design to cope with the growth of the law, and so to manage project of radical legal reform.

But here I'm interested in noticing the analogy that can be traced between law and the organic nature of language as a typical example of a social order that nobody designed. According to Hayek we are governed by these orders much more than we can control them. Thus we face a perspective suggesting relations between law and language much deeper than expected. Both are unconsciously designed governing patterns, that cannot be handled in their entirety, so that we have a very reduced capacity to promote a conscious change. Law as well as language becomes an outcome of a peculiar process of evolution, proper of one culture, a "social glue" pervading our social life, and defining our social identity.

What I want to do now is to trace back the origin of these ideas to what it seems to me their common origins in the cultural landscape of early 19th cent. German culture, where, I maintain we experienced also the birth of modern comparativism.

Comparative Linguistics: The Coming of Indo-Europeans

In this and the next section I want to sketch out the roots of the previously

⁴ 1 F. von Hayek, *Law, Legislation and Liberty* (Chicago: Chicago Univ. Press, 1973)-

seen conceptions of law and language, giving an insight to their background in the German culture of early 19th century.

Here I try to go across, quite briefly, the birth of Comparative Linguistics especially focusing upon the raise of the grouping of several languages in one bigger Indo-European group, as a cultural artifact based on the very romantic analogies with trees and families⁵.

According to the conceptions shared by scholars at the beginning of Comparative Linguistics, languages are peculiar. That's to say they are attached to a particular place, landscape and climate. They are therefore seen as the individual expression of a specific people to be treasured as such, with a strong emphasis on transmission of "blood" and kinship as correlate of one civilization.

Within this framework and after Schloezer's establishment of the Semitic language family, Christian Rask and Franz Bopp used the same tools to trace the relationships between the phonetic and morphology of most European languages⁶. An Endeavor clearly related to the new systematic racial taxonomy⁷. As the Caucasians had to come from Asian Mountains, the European languages were supposed to have had the same origin, and to be connected with Sanskrit.

We can speak of a real love-affair with Sanskrit⁸. Specifically after that Schlegel argued that there was a categorical distinction between the Indo-European family and all other languages⁹. He attacked heavily William Jones - who in 1786 for the first time put Sanskrit in relation with Greek and Latin¹⁰ - and other contemporaries for having seen relationships between Indian and Semitic languages, that from whence have been continuously denied.

Thus, from our viewpoint, the first big result of comparativism has been the insulation of the Indo-European family from the other languages of

⁵ For a challenge to these analogies see C.P.MASICA, *Defining a Linguistic Area: South Asia* 1-11 (Chicago: Chicago Univ. Press, 1978)

⁶ See H. Pedersen, *The Discovery of Language: Linguistic Science in the Nineteenth Century*, 241-58 (J.W.Spargo transl., Bloomington: Indiana Univ. Press, 1959)

⁷ See S. Timpanaro, *Introduction to Schlegel, Ueber die Sprache und Weisheit der Indier*, xx-xxi (Amsterdam, 1977).

⁸ Cfr. 1 M.Bernal, *Black Athena: The Afroasiatic Roots of Classical Civilization* 227 ss. (New Brunswick, NJ: Rutgers Univ. Press, 1987)

⁹ See Timpanaro, *op. cit. supra* nt. 7, at xii-xxiii; and F. von Schlegel, *Ueber die Sprache und Weisheit der Indier* (Heidelberg, 1808, transl. As "On the Language and Philosophy of the Indians", by E.J.Millington, London, 1949, at 85).

¹⁰ See W.Jones, *Third Anniversary Discourse Before the Asiatick Society (of Bengal)* (1786), in 1 *The Works of Sir William Jones* 25-39 (London, 1807).

Humankind, packing an ideology of the magnificence and uniqueness of Indo-European blends, and specifically of Greek and German, as the “real heir” of the Greek mind. An Ideology that is still pointed at today, by e.g. Merrit Ruhlen, as a major obstacle to the acknowledgment of the existence of “Global cognates” among distant languages, and to a newer systematic of languages, dismantling the old received families¹¹.

A good example of the way scholars are by-passing the methods and results of comparison reached in the last century can be, from our viewpoint, represented by the works of Joseph Greenberg on Native American families¹², in the new scenario emerging from Cavalli - Sforza’s discoveries in the field of human genetics¹³.

Thus what is of major interest for our discussion is the *ideological* dimension of cultural studies in the field of comparative linguistics which have been used to build up an insulated Indo-European consciousness, responding to inner strategies proper of German culture, producing a cultural artifact, that has then been presented as a neutral scientific taxonomy. In this package the tools of comparativism have so been used not just to by-pass a national outlook, but to create an insulated consciousness.

What I want to do in the next section is precisely to see how the same paradigm has been used by scholars in the legal field.

Comparative Law : The Cult of Romans

Ideas do not come together by themselves. They are assembled by real time-bound people, with actual needs and strategies. If we look for the package of ideas lying at the basis of the Western self-consciousness in law, we must appraise the sudden emergence of German legal historicism at the beginning of the last century¹⁴. This is necessary in order to see how it was based on a peculiarly insulated conception of Roman law, and how this conception

¹¹ M. Ruhlen, *The Origin of Language. Tracing the Evolution of the Mother Tongue* 62-76 (New York: John Wiley & Sons, 1994).

¹² J.H.Greenberg, *Language in the Americas* (Stanford, Ca.:Stanford Univ. Press, 1987) . See also now J.H. Greenberg, *Indo-European and Its Closest Relatives: The Euro-Asiatic Language Family* (Stanford, Ca., Stanford Univ. Press.....).

¹³ See L.L. Cavalli-Sforza, A. Piazza, P. Menozzi, *History and Geography of Human Genes* (Princeton, NJ, Princeton Univ. Press, 1994). On the relevance of their studies for today linguistics see Ruhlen, *op. cit. supra* nt. 12, at 147 ss. and 161 ss.

¹⁴ For its impact on America see *The Reception of Continental Ideas in the Common Law World 1820-1920* (Mathias Reimann ed., 1993)

came to be mingled with comparativism, to produce an "Aryan model" of the Western legal tradition. By "Aryan model" I mean a theory of the strong cross-cultural links among different peoples traceable back to a past common Indo-European period, producing a framework of similarities of their various institutions.

Legal historicism was the theory adopted by the most influential German scholar of the time: Carl Frederick von Savigny¹⁵, "[t]he greatest jurist that Europe has produced"¹⁶. His form of historicism was intended to replace a universalistic theory of Natural law as a basis for a rational purposive discourse on the law, a paradigm which dominated the legal debate in the XVIII cent. Enlightenment¹⁷. Law, he maintained, is deeply rooted in local traditions; it is an expression of the deepest beliefs of a people, inseparable from their manners and morals, their customs and history; there is an organic link between law and the essence of a nation¹⁸. For him and his followers the "cult" of Roman law had to supersede a universalistic rational conception of the law¹⁹. Roman law became the alternative to the Law of Reason and it was an alternative embodied within the German legal history. Of course to be a valid alternative Roman law had to be extraordinary. Without plunging into details lying outside of the scope of the present essay, I would stress the Savigny's conception of the *function* of Roman law as a common law for Europe and for Germany in particular²⁰. Of course he had a strategy, and it was to start a process of elaboration of a National German law, which indeed started and ended in 1900 with the codification of a common private law for the whole Germany. He needed a ground to build

¹⁵ On Savigny see W. Ewald, *Comparative Jurisprudence (I): What Was it like to Try a Rat?*, 143 *U.Pa. L. Rev.* 1889 (1995); *Id.*, *Comparative Jurisprudence (II): The Logic of Legal Transplants*, 43 *AM. J. COMP. L.* 489 (1995). At (I) 2012 ss.; see also the Symposium, Savigny in Modern Comparative Perspective, 37 *Am.J.Comp.L.* 1 (1989); and on the whole of the history of the German legal thought in the early nineteenth century see JAMES Q. WHITMAN, *The Legacy of Roman Law in the German Romantic Era* (1990).

¹⁶ Hermann Kantorowicz, *Savigny and the Historical School of Law*, 53 *L.Q. REV.* 326, 326-7 (1973) (quoting Sir John Macdonnell).

¹⁷ See O.F.ROBINSON, T.D. FERGUS & W.M.GORDON, *European Legal History* 242 (2d ed., 1994).

¹⁸ Ewald, *Comparative Jurisprudence(I)*, *supra* note 15, at (I) 2016. In the course of history the German Empire in the Middle Ages adopted Roman law as the general law of the land, and so it became the root of the German unfolding of a proper national law, in this sense the Germans succeeded the Romans, see ROBINSON et al., *LEGAL HISTORY*, *supra* nt. 17, at 188.

¹⁹ See GABOR HAMZA, *Comparative Law and Antiquity* 34-35 (József Szabò transl., Akadémiai Kiadó és Nyomda Vállalat, Budapest, 1991).

²⁰ See Franz Wieacker, *Friederich Carl von Savigny*, *ZSS [Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Rom. Abt.)]* 1955, 85

upon, and the mass of Roman legal texts gave him the blocks for his "scientific" construction of a newer law. The stress on the overall importance of Roman law led him to a conception of Roman law as something more than just positive law, it implied also a given intellectual history²¹, but it was a peculiar history. In order to build a new German law on its basis Roman law had to be studied as a complete and autonomous system to be elaborated and developed according to scientific principles into a modern legal system. It is not hard to see already at work the theory of the renewal of the old, and the projects of governance that are reaffirmed today²². This approach, produced an "ideology" of Roman uniqueness which entails an almost total exclusion of all other laws' importance²³.

The inaugural motifs of my story are then represented by the Thibaut-Savigny debate²⁴ occasioned by the victory of the German States over the armies of Napoleon.

What is interesting in Thibaut's theory is that it was as romantic as that of Savigny. His argument against the adoption of Roman Law embodied in the French codification is not that of modernizing Enlightenment, but the new argument of German Romanticism that Roman law is inappropriate to the national character of the German people.

As we all know Savigny's reply was rooted on the same romantic paradigm, but much more refined, and it involved both comparativism and an ideology of Roman legal uniqueness, and besides it was a theory based on a strong analogy between law and language.

According to Savigny's theory law exists in the consciousness of the people just as language does, and just as language does not depend for its existence upon the activity of the grammarian, so law does not depend on the activity of the codifier. Thus he draws the inference that the attempt to codify the private law from scratch is a fundamental error. Law, as language, he maintained is deeply rooted in local traditions. There is an organic link between law and the essence of a nation. But for him and his followers the

²¹ HAMZA, *Comparative Law*, *supra* note 19, at 35.

²² See REINHARD ZIMMERMANN, *The Law of Obligations : Roman Foundations of the Civilian Tradition* (1990).

²³ As a typical exclusion we can remind, for instance, the complete denial of any possible relevance of Hebrew law, notwithstanding that a large amount of German population was of Jewish origin. While Roman law could hardly be described as the product of the German spirit (*Volksgeist*), it has been a "miracle" of German legal historicism to have denied any non-Roman influence on the development of a German national law: see ROBINSON et al., *supra* note 17 at 262 ss.

²⁴ Upon which see W. Ewald, *supra* nt. 15, at (I) 2013 ss.

“cult” of Roman law had to supersede a universalistic rational conception of the law: Roman law had to become the alternative to the Law of Reason.

What is the most relevant is that this “ideology” of uniqueness has been purported by comparative legal studies. I mean that comparativism has been first used, once again, *not* to by-pass a national view of the law, but to create and support it, as we saw in the field of Linguistics.

It was Eduard Gans in particular²⁵ who conceived his work on the law of inheritance²⁶ in the spirit of "*Universalrechtsgeschichte*", Universal Legal History. He went across Indian, Chinese, Hebrew, Islamic, Scandinavian, Icelandic, Scottish, Portuguese, Attic and Roman law, *among the others*. The introduction to his massive work is a piece of great interest since it is based on a striving incoherence. He remarks that no exclusive importance should be given to any law in respect of other legal systems²⁷, but *then* he purports the special importance of Roman law, because of the *outstanding* role played by Rome in the entire *Universal* history²⁸: it is the more remarkable that the Introduction itself, to a work covering quite all the world, is entitled "Roman History and Roman Law".

How this logic of exclusion came to be mingled with comparativism? Indeed many of the Savigny's admitted followers, such as Anselm Feuerbach, Karl Theodor Puetter, Gans himself and Unger, became of opinion that comparative studies were important in Law²⁹ *as well as* in Linguistics³⁰. It was then a comparativism associated with the strategy of reconstructing the original common Aryan background of Western civilizations.

This trend for comparison gave birth in 1829 to the *Kritische Zeitschrift für Rechtswissenschaft und Gesetzgebung des Auslandes* (Critical Review of Comparative Legal Studies) as the first world journal on Comparative Law, which published twenty six volumes until 1853. From a philosophical standpoint the ideological foundation of Comparative law in connection

²⁵ Eduard Gans is reputed the founder of German comparative law, see Mitchell Franklin, *The Influence of Savigny and Gans on the Development of the Legal and Constitutional Theory of Christian Roselius*, in 1 *Festschrift Rabel* 145 (Tubingen, Mohr, 1954).

²⁶ EDUARD GANS, *Erbrecht in Weltgeschichtlicher Entwicklung [The Law of Inheritance in a World History Perspective]* (Berlin, Maurer, 1824-1835). Following citations are from the first volume.

²⁷ *Id.* at xxiii.

²⁸ *Id.* at xxv.

²⁹ HAMZA, *Comparative Law*, *supra* note 19 at 43.

³⁰ On the relevance of Linguistics and of Herder on the German legal thought see Ewald, *Comparative Jurisprudence (I)*, *supra* note 15 at 2012-2020; and from a more general cultural point of view see also Robert E. Norton, *The Tyranny of Germany over Greece?*, in *Black Athena Revisited* (Mary B. Lefkowitz & Guy McLean Rogers eds., 1996), at 403.

with race can easily be traced back to Hegel's theory of a close link between institutions and race³¹, and so between Roman institutions and their Indo-European background. This "Aryan" approach to comparison relied to a high degree on the findings of Comparative linguistics, where the works of Bopp and Jacob Grimm played a pivotal role in the making of the "Aryan theory"³².

This survey does not intend to jeopardize the scholarship embodied in these works. Certainly the authors engaged in the building up of the "Aryan Theory" were prominent scholars with a solid reputation³³. They were neither outsiders, nor cranks. They knew the job. What we want to do is just to stress the link between issues of race³⁴ and high style legal studies in 19th century Germany where the "Aryan Model" grew more and more involving also studies on the ancient German Law. For instance in Rossbach's work on Marriage³⁵ we find a comparative appraisal of Roman, Indian, Greek and German Law which is a real completion of the Aryan approach. His theory was that the foundations of this part of the law was basically the same within the whole Indo-Germanic family. As we said it is beyond the scope of this work to criticize such achievements of German scholarship, but we may show how much the findings of Rossbach were inspired by the theory itself, and were not the results of independent tests of the theory. His main argument is that, notwithstanding the total lack of empirical evidence, the analogies among the different Aryan laws are evident, *because* of the close

³¹ On Hegel's love for Europe and India and his total despise of Africa see G.W.F. HEGEL, *Lectures on the Philosophy of World History* 154-209 (H.B. Nisbet trans. And ed., 1975). The original work has been published by his disciples after his death in 1831; and on the relations between Hegel and Gans see HAMZA, *Comparative Law*, *supra* note 19, at 39.

³² 1 A.F.SCHNITZER, *Vergleichende Rechtslehre [Comparative Legal Studies]*, 13 (2d ed. 1961).

³³ We can maybe sometimes question such reputations on the basis of modern standards. E.g. in 1847 a German expert in cuneiform texts, Oppert, published a book on Indian Criminal Law, even if India has nothing to do with cuneiform writings, showing a lot of common tracks with Roman Law which were still seriously valued at the end of the century, see the comment on his work in J. (Paris, Larose et Forcel, and Strasbourg, K.J.Trubner, 1899)., *L'Etude du Droit Romain Compare aux autres Droits de l' Antiquite [Roman Law Compared with other Ancient Laws]* 28 (Paris, Larose et Forcel, and Strasbourg, K.J.Trubner, 1899).

³⁴ That the Indo-Europeans were intended as one racial group is out of question, and this is the point I am interested here, whereas it is immaterial the skin-color of ancient peoples, about which see Frank M. Snowden, Jr., *Bernal's "Blacks" and the Afrocentricists*, in *Black Athena Revisited*, *supra* note 30, at 112 ss. Ironically the logic of exclusion can be as well strong as "color-blind".

³⁵ AUGUST ROSSBACH, *Untersuchungen uber die Roemische Ehe* (Stuttgart, C.Maecken, 1853).

bonds of these peoples sharing a common kinship³⁶. All these studies brought at the end of 19th century to different efforts of reconstruction of the "Original Aryan Law" (Urrecht)³⁷ with a strong accent on Aryan ethnical community. These efforts adopted the methods of comparative linguistics but reconstructed the pattern of the Original Law on the basis of the Roman categories. Roman Law was "The Template" toward which the Original Law evolved. Even such an outstanding scholar as Jhering followed the trend in a work of Comparative history of Indo-Europeans³⁸. He clearly identified the Law (in general) with Roman Law³⁹, and traced it and its perfection back to its Aryan roots. For Jhering Roman Law assumed a crucial importance even in the field of Comparative Law grounded on ethnical terms⁴⁰. The Aryan Theory became the key to understanding the Roman Law supremacy and uniqueness in comparison to the other non Aryan laws.

It's important to note that the Aryan Theory survived in our century. Amaduni, a specialist on Armenian Law, stemmed a parallel between Roman and Armenian Law because of a common Indo-European ethnic origin⁴¹. But of course a climax was reached in the political bias of the 1930s. The perfection of Roman Law given for granted, the distinction between Roman and German Law was narrowed down, so that the latter could participate of the qualities of the former, and a new model of an anti-individualistic Roman Law was built in search of a closer adherence to the political inspiration of the Nazi movement⁴². In Schoenbauer's opinion it was even impossible to compare the laws of peoples not ethnically related, such

³⁶ Id., at 37, 192, 198; see also similar remarks in hereinafter HAMZA, *COMPARATIVE LAW*, *supra* note 29, at 44.

³⁷ B.W.LEIST, *Alt-Arisches Ius Gentium* (Jena, Fischer, 1889) and B.W.LEIST, *Alt-Arisches Ius Civile* (2 vols Jena, Fischer, 1892).

³⁸ RUDOLF VON JHERING, *Vorgeschichte der Indoeropaer [The Early History of Indoeuropeans]* (Leipzig, Victor Ehrenberg ed., 1884). This was his last book, and it was indeed edited by Ehrenberg after the author's death.

³⁹ M. Wilhelm, *Das Recht im roemischen Recht*, in *Jherings Erbe, Goettinger Symposium zur 150. Wiederkehr des Geburtstages von Rudolf von Jhering* (Goettingen, 1970).

⁴⁰ See 3 W.FIKENTCHER, *Methoden des Rechts in Vergleichender Darstellung [Comparative Legal Approaches]* 250 (1976).

⁴¹ G. Amaduni, *Influsso del diritto romano giustiniano sul diritto armeno e quantità di tal influsso*, [The impact of Roman law on Armenia] 2 *Acta Congressus Iuridici Internationalis* (Roma, 1935).

⁴² E. Schoenbauer formulated these ideas in a Lecture delivered at the Deutscher Rechtshistorikertag in 1936, cited by M. STOLLEIS, *Gemeinwohlformeln im Nationalsozialistischen Recht [Common Trends in Nazi Law]* 35 (1973).

as the Germans and the Egyptians⁴³.

We must mention the strong challenge to the Aryan Theory that was brought by Koshaker⁴⁴ before the war, and by Condanari-Michler⁴⁵ after it, but we have to mention its success even among cultural comparativists as Dumézil⁴⁶.

Since the historical work represents an attempt to mediate among the "historical field" and an audience⁴⁷, it is not at all surprising that such a mediation was reached in last century Germany around a following model:

1. Romans, Germans and other peoples are all linked by their common Indo-European roots
2. Roman law was part of an Indo-European legal culture
3. Roman law has been the most perfectionated product of this culture
4. Roman law can be the basis upon which to ground a modern German system as the most perfectionated Western legal system.

Rome is the projection of a Myth. Historical consciousness and genealogies associated with have, according to me, a political dimension which cannot be underestimated: there is something worth fighting for. It is indeed quite interesting, in contrast with German professors engaged to the "Aryan Theory", to see for instance Jewish scholars advocating for the presence of Semitic elements in early Rome⁴⁸. It seems to me that this "recall to Rome" is still a way to state who we are, and to refine a picture of ourselves.

But what is the most interesting here, for our present purposes, is that both the projects underlying the birth of comparativism in law as well as in linguistics, have been political projects not directed toward a transnational view of the matters at hand. They have rather been peculiar projects of insulation, and self-definition.

⁴³ E. Schoenbauer, *Zur Frage des Eigentumsueberganges beim Kauf*, [Transfer of Property by Sale] in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Rom. Abt.)* 52 (1932).

⁴⁴ Paul Koschaker, *Was vermag die vergleichende Rechtswissenschaft zur Indogermanenfrage beizusteuern?*, [What We Got from Indo-germanic Comparativism?] 1 *Festschrift Hirt*, 147 (Heidelberg, 1936) according to whom no particular attention should be paid to race in legal history.

⁴⁵ S. Condanari-Michler, *Ueber Schuld und Schaden in der Antike*[Negligence and Damage in Ancient Law] 3 *SCRITTI FERRINI* 28 (Milano, Dott. A. Giuffrè editore, 1948).

⁴⁶ G.DUMEZIL, *LA Religion Romaine Archaique [Early Roman Religion]* 585 (1966) with reference to marriage rites in Rome and in ancient India.

⁴⁷ See HAYDEN WHITE, *Metahistory. The Historical Imagination in Nineteenth-Century Europe* 5 (1973).

⁴⁸ See Reuven Yaron, *Semitic Elements in Early Rome*, in *Daube Noster. Essays in Legal History for David Daube* 343 (Alan Watson ed., 1974).

Received Ideas and Unofficial Projects

I do not want to plunge into further details. My tenet here is that the theory of the language as a social glue, and the analogy between law and language, are at the very root of the conception of romantic *localism*⁴⁹, as well as of a conception of “law as culture”. In my view the two conceptions emerged in the context of German romantic historicism in opposition to the previous “rational universalism” of enlightenment⁵⁰. Comparativism played a pivotal role in this process supporting such cultural projects of insulation and self-definition. Indeed under this conception law and language not only are strongly associated, but they become key features in the process of self-definition of cultural identity, with a strong bias against rational projects of change and social governance.

As a conclusion I would say that my aim is just to challenge these received ideas trying to show the projects-at-work behind: the role of language, and the role of law we normally assume are the result of purposive projects as well as are the historical accounts we use.

According to me what a today comparative lawyer can do, as a comparativist, is to reveal the unofficial⁵¹, and the details of a consciousness, especially in a post-modern world of “contaminations”⁵².

And what about the future?

As Jack Kerouac said once, future is something we are always vaguely planning, and never actually doing. All this I think is peculiarly true for hobos as well as for scholars.

⁴⁹ On the oppositin between localism and universalism in human studies see P.G.Monateri, *"Running on the Horn": the Case of Beni Hamer and Akele Guzai Customary Laws in Eritrea*, 149, in *New Law for New States. Politica del Diritto in Eritrea* (L.Favali, E.Grande, M. Guadagni eds., Torino: Harmattan, 1998) at 149-151.

⁵⁰ See Whitman, *supra* nt. 15, at 54-65.

⁵¹ See Mitchell Lasser, *Judicial (Self-)Portraits: Judicial Discourse in the French Legal System*, 103 *Yale Law Jo.*, 1325 (1995); and P.G.Monateri, *"Everybody's Talking": The Future of Comparative Law*, *Hastings Int'l and Comp. Law Rev.* (1999) [forthcoming].

⁵² See P.G.Monateri, *The "Weak Law": Contaminations and Legal Cultures*, Italian Nat'l Reports to the XVth Int'l Congress of Comparative Law, Bristol, 1998 (Milano: Giuffr , 1998) at 83.