GLOBALIZATION IN THE LAW: MAIN TRENDS AND THE CONTEXT OF LEGAL TRANSPLANTS

Leszek LESZCZYŃSKI
Professor at Maria Curie-Sklodowska University in Lublin

I. Basic concepts and assumptions

A. Speaking on the terminology, one may argue that various terms connected with the topic of the conference are acceptable and describe some factors of the phenomenon of globalization in the sphere of law, thought they may underline different aspects of it.

The term "globalization of the law" treats the law (legal rules and normative institutions) as the subject of globalization, showing changes in the shape and contents of legal solutions as the direct effect of globalization. In this light the term "globalization in the law" seems to be the broadest one, bringing the globalization to the legal orders, treating the latter as both the subject of globalization and as the place where the globalization of main cultural and political factors takes place, what as a result leads to the change of the law itself.

Other terms, related to each other (as: "legal globalization" and "globalization by the law") may focus on the law as the instrument of globalization of other social processes and phenomena. Such active role of the law might be somehow controversial, especially if we take international perspective. Various aspects, ways and tendencies of globalization of the law or in the law are rather rooted in and resulted from globalization of other aspects of human and social life, such as culture, morals, economy, human thought, etc. One should be careful with the acceptance of opposite relation. The globalization of (in) the law, as seen from the practical point, seems to be practically more difficult than globalization in other factors, since law, as a matter of fact, is a local phenomenon, depending first of all on the state (sometimes even smaller units), its formal authority, exercised through the formally regulated procedures.

Therefore, the all terms are acceptable and focus on the more or less the same phenomena, though the terms "globalization in the law" and "globalization of the law", bringing the universalization of standards and solutions to the body of law, show the widest spectrum of problems, especially if we understand term "the law" itself in a broader than "the letter of law" sense.

B. Universality and particularity, the two terms relating to globalization, can be viewed as a state or as a process. Viewed as the latter, they will point out to universalisation and particularisation, which, given the practical context in which the law operates and is subject to changes within the terms of reference of contemporary legal cultures and systems, seems only more convenient and realistic. Equally important is the fact that these processes better correspond with the dynamic content of such terms as "convergence" and "divergence". It follows that universalisation

indicates a process of becoming widespread, of borrowing, and, consequently, converging or becoming similar as a result of adaptation to like circumstances. This, in essence, is what the globalization of law is all about. Contrary to this process, particularisation is connected with atomisation, relativisation or separatism of the law, i.e. a certain type of divergence brought about by disparate conditions. In conclusion, complete universality and particularity, and, by extension convergence and divergence, of legal solutions and legal axiology do not really exist. Depending, inter alia, on cultural and political conditions and on the object of convergence, these two tendencies occur in various proportions (i.e. scope and extent).

II. On two roads to globalization in law

A. Irrespective of the areas on which globalization in law can be observed and analysed, such processes occur in a variety of ways.

Participation of states in laying down international law in the form of treaties (international agreements), bilateral as well as multilateral as well as those which regulate the operations of international organisations and those which do not, is by far the closest approach to the juridical concept of the sources and genesis of law. Such participation is also important in terms of generating legal norms, and must not be underestimated even though this road to globalization did not gain popularity until the 20th century[1]. However, on the level of legislation, it is undoubtedly a very effective way. Taking into account the role of legislation and its sources in judicial decisions of national courts, one can actually talk of the universal effect of international solutions due to the ever-widening application and scope of such legislation. On the one hand, such effects are further reinforced due to the formalisation and institutionalisation of supranational law (e.g. acquis communautaire and the laws of other supranational regional organisations), and, on the other, due to the effects of commonly recognised principles that reinforce institutionalised forms of universality (in a clear axiological context) as well as international practices perceived as informal sources of international law.

Besides the way described above, and in part independent of it, there is yet another way in which law becomes global and convergent, both synchronically and diachronically. Coming in different forms and shapes, it refers to borrowing by way of adoption or transplantation solutions of foreign legal systems (and sometimes even cultures), without establishing common norms on the level of international law regulations and/or agreements. In a word, it is a law reception process which occurs in a variety of ways.

B. Irrespective of the two basic ways of convergence and universalisation, such processes can affect various phenomena including technical legal institutions and constructs (solutions), e.g. ways in which legal decisions or detailed procedural solutions are scrutinised as well as certain legal practices which are becoming more common (the role of precedents and judicial decisions in decision making processes). However, the most essential questions of universal (universalised) model of democracy and state under the rule of law are also subject to globalization. The latter leads to establishing uniform principles of law (e.g. the principle of democratic state based on the rule of law, establishing identical or similar political and legal institutions (such as constitutional judiciary, administration or the institution of the

[1] See: R.M.M.Wallace, International Law, London 2002, at. 3-6

ombudsman) and entire branches of the law which function on the national, regional, and international levels (e.g. trade and economic exchange laws or the universal system for the protection of human rights).

The key issue relating to each of these areas and objects of law is a question concerning the scope of universal solutions and of the role of axiology formed along in this process. To a large extent, this question boils down to determining the relation between the acceptance of axiology that has to a certain degree been undergoing universalisation and pragmatism in adopting universal solutions and the shaping of universal tendencies, which, by nature, restrict the scope of universalisation leaving some room for relativisation or maintaining particularities).

III. Classic reception of law and globalization in law

A. Transplants of law seem to occur as a quite universal factor of legal development[2]. It happens much more frequently and influences the legal development much stronger than it is usually stated in the legal theory. This is not only the matter of borrowings from the neighboring countries and societies. The legal transplants mean the borrowings of legal solutions from alien (in geographical, historical or cultural sense) legal orders.

The processes of reception of law are not of the same character. However, it is worth to underline, that any kind of legal transplants must refer somehow to the problem of social change. Taking the assumption that any social development, any existence of social culture must include the occasional or stable changes inside of its organism, the connection between the change of law and the social change must appear inevitably as a background of reception. Legal transplants, being the sign of the change of law, must be therefore related themselves to the social change.

Reception seems to be possible in the course of both evolutionary and revolutionary changes. In the situation of evolutionary, steady and smooth social development the legal transplants would not cause any rapid, sudden interference of foreign solutions. They would concern rather detailed legal appliances accepted because of their usefulness for the hitherto shaped own legal institutions. The situation of deeper social change is more complicated from the point of legal transplants. The events accompanying to that kind of change may have different, sometimes incomparable character and may influence the process of reception in various ways. It does not have to be strictly connected with the depth of social change. Sometimes the revolutionary turnover does not cause revolutionary change in law through its reception. And on the contrary, quite slight political changes may increase visibly pro-transplantation attitudes both in political elite and society. In the latter, the reception itself contributes to further social and cultural changes. The depth of the social change instead, may serve to the "spectaculars" of the process of legal transplants.

B. The abovementioned properties are indicated by three most popular and holistic (as opposed to sectional and fragmented) law reception processes which occur across the world and which generate the most durable results. These processes include (1) reception of Roman law in the 16th c. Europe[3], (2) reception of British

[2] See: A. Watson, *Legal Transplants. An Approach to Comparative Law*, Edinborough 1974, passim,

[3] See: F. Wieacker, *Das romische Recht und das deutsche Rechtsbewusstsein*, Leipzig 1944, at 3-46, G. Strauss, *Law, Resistance and the State : the Opposition to Roman Law in Reformation Germany*, Princeton 1986, at 33-56

law in the American Colonies and later in the USA[4], and (3) reception of German law and then of American law in the 19th and 20th c. Japan[5]. Irrespective of these processes, the adoption of foreign laws continues to occur in various places in the world and refers to specific or somewhat targeted transplantation of certain regulations or solutions (e.g. reception of the Swiss Commercial Code in Turkey[6]) as well as to the imposition of law over entire regions (e.g. the presence of Soviet principles and legal constructs in Central and Eastern Europe after the Second World War) or reinstatement of the colonial laws after gaining independence[7].

In its worth considering three features that characterise all types of reception of law. Firstly, reception can be effected through legislative solutions or through judicial decisions (in the majority of cases an adequate proportion between the two is maintained). Secondly, reception can be enforced (at least to some extent) by external powers or by autonomous decisions ("voluntarily") from the recipient's point of view (although it seems that a certain degree of freedom to adopt law is essential for any reception of law). Thirdly, while reception may refer to the same legal culture, it may also refer to intercultural borrowings.

It follows that the legislative path of law reception, despite its sometimes limited extent, will usually reinforce the presence of axiology (which invariably has a political context) in adopting solutions and in justifying reception per se. Similar effects of substantiating reception effects on the grounds of axiology, which determines the manner of functioning thereof, are caused by reception that occurs within the framework of the same legal culture. However, in this case the results seem relatively more durable (e.g. reception of Roman law in Europe).

In this context intercultural reception (the 19th and 20th c. receptions in Japan) indicate a stronger pragmatic approach and axiological relativism even if some institutions were borrowed along with the axiological justification and, in addition, have a strong theoretical foundation (theory reception[8]). The same applies to pragmatism. Not linked to axiological relativism but to the usefulness of certain solutions which are adopted, it describes reception through judicial decisions (American receptions, and notably one that dates back to the 19th c.). In principle, and in the Anglo-Saxon tradition and practice in particular, judicial decisions seem to confirm that the solutions adopted are not justified so much by axiology as by functional or pragmatic argumentation which covers the very decision to borrow and the manner the borrowing is effected.

In some cases reception is effected somewhat by force. Within the terms of reference of the examples mentioned above, the imposition of home-made solutions while adopting America law in Japan after the Second World War is now a classic example. Such home made solutions also present in the reception of British law in the American Colonies, and in the imposed "reception" of Soviet solutions in East

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[4] See: R. Pound, *The Formative Era of American Law*, New York 1960, passim, D. Flaherty (ed.), *Essays in the History of Early American Law*, Chappel Hill 1969, E.G. Brown, *British Statutes in American Law 1776-1836*, Ann Arbor 1964, G.L. Maskins, "A Problem in the Reception of the Common Law in the Colonial Period", XCVII, *University Of Pennsylvania Law Review* 1949, at 842-844,

[5] See: Z. Kitagawa, Gekusetsu keiju – mimpogaku hatten no ichisokumen, "Shiho" nr 29/1967, s. 251ff., L.Leszczynski, A Pragmatism of the Legal Receptions in Japan: General Observations and the Example of Antimonopoly Law, w: Between Complexity of Law and Lack of Order. Philosophy of Law in the Era of Globalization, red.: B.Wojciechowski, M.Zirk-Sadowski, M.J.Golecki, Toruń-Beijing 2009, s. 390-408

[6] See: S. Togan, V. N. Balasubramanyam, Turkey and Central and Eastern European Countries in Transition. Towards Membership of the EU, New York 2001 (chapter 10, esp. at 222-226).

[7] See:. J. Lewin, *Studies in African Law*, Philadelphia 1971, passim

[8] See: Z. Kitagawa, "Theory Reception – One Aspect of the Development of Japanese Civil Law Science", *Law in Japan. An Annual*, nr 7/1970, at 1-16

and Central Europe following the Second World War assume a strong axiological interference and bind reception with the imposition of a political or ideological "official" axiology. This does not, however, mean that such interferences are permanent in the legal system of the recipient. A pragmatic approach is, after all, reflected in retaining a certain degree of autonomy depending on many additional factors and in the establishment of the official axiology which is distinct from genuine social preferences. The concepts of *honne (ura)* and *tatemae (omote)* in Japan best illustrate this distinction.[9]

The reception of Roman law in 16th Century Germany and all Europe is an example of "pure transplantation", without any political enforcement and any deep social change. Rather cultural ties and evolutionary transition caused the process. The reception of English law in the American Colonies and then in the United States had been the reaction on the emergence of new legal system, strengthened by the cultural ties between the legal tradition. On the contrary, the reception of Soviet-type legal system in Central and Eastern Europe after World-War-II had been caused by deep political and economic change in these countries and influence rooted in the international strength of Soviet Union. And on the contrary, though the newly emerging European democracies after 1989 has been based on no political enforcement from abroad, the purpose of modernization of law rather brought the transplants of the Western legal solutions. All these examples may signal not only different position towards the political influence but also to the continuity and discontinuity in the development of legal system and legal culture.

The relation to the social culture must be treated as the most important factor of legal transplants. There are two model situations : (a) of the continuation of own foundations of social and legal culture, rooted in traditions, customs and common system of values, and (b) of the deep change, being the starting point of the development of new trends in social and legal culture. The former may lead to acceptance or rejection of the reception (depends on the strength of own culture), the latter usually rejects reception as a threat to the independence of development of own culture based on some negation of its main sources (as it happened in American Colonies). In the latter, not each rejection must be successful, since usually the political interference is the factor enforcing the reception itself. In the first situation, the political intervention may of course also happen. Usually political force, if it is really strong, destroys the opposition of autonomous social culture (as it happened after 1945 in Europe). The lack of such interference may cause the peaceful junction of own and transplanted elements both in the letter of law and in the legal practice (as it happened in 16th Century Germany or 19th Century USA), irrespective the strength of the development of own original culture. Sometimes the reception means re-reception from both own traditional rules (as it happens in Central and Eastern Europe, where the new order demand acceptance of the rules that were binding before the World-War-II) and from the legal orders of the developed western world.

The scope of reception is another factor influencing the assimilation of legal transplants in the social environment. The notion "legal transplants" is rather capacious and may embrace the reception of the legal principles, legal institutions, particular legal provisions, elements of legal practice as well as elements of legal culture. It should be mentioned in relation to this, that the process of the transplantation, starting usually from the letter of law, must go deeper into the practical and cultural levels of the legal phenomena. The combination of the units of social

[9] See: C.Nakane, Nihonteki shakai-kozo no hakken, Tokyo 1967, at 27ff.,T.Doi, The Autonomy of Self: The Individual versus Society, New York 1988, passim

culture and of legal culture creates field of various practical consequences. It transmits the contents of reception from *lex* to *ius*, making it deeply involved in the social substance. The cultural interference causes usually the interest of legal doctrine, transplanting then the theoretical justifications of respectable institutions and legal practice. All this gives the character of the full-dimension reception, although it does not make the whole process easier. On the contrary, the cultural involvement of the reception brings many complicated indications. It may accelerate as well as slow down the process.

IV. Exemplification - the Case of Japanese Receptions

A. The Japanese legal receptions are therefore not unique phenomenon of contemporary legal cultures. They could be regarded as one of the most significant examples of the phenomenon of the legal transplants, where both the social change and political involvement as well as cultural background play the fascinating game, creating the unique image of interdependencies between the legal transplants and the development of the own legal traditions. In other words, they create the specific mutual dependence between the idea of continuity and discontinuity in the social and legal development and lead finally to the neutralization of the direct results of the acceptance of foreign laws.

There are three main openings of the Japanese legal system in the history of its development. The first one had happened in the early Middle Ages when some institutions of Chinese law had been imported[10]. The second one had been connected with the consequences of Meiji Restoration in the second half of 19th Century when the European, mostly German legal institutions had been transplanted into the being modernized Japanese legal rules. And finally, the third reception of law occurred directly after World-War-II, when Japan accepted some legal solutions enforced by American authorities.

The two last processes can not be placed in one line with the first one. Not only the time but also the political circumstances, international environment, intention of authorities, etc. have been different in these events.

The "Meiji" and "Post-War" receptions, treated from the point of the above mentioned features differentiating the main types of receptions can be characterized as : (1) modernization-type receptions, since the main their purposes were to reach the essential change in the structure and functions both of the state and the legal system ; (2) receptions happening in the course of social changes, however without being of any revolutionary character ; (3) receptions, in a way, compelled by the foreign forces, and (4) receptions, that linked the systems culturally distant. These features have not appeared in the same scope in both processes. Against this background, the first, "Chinese" reception shows itself as the modernization-type, evolutionary-oriented, voluntary and homogenous from the point of the social and legal culture.

All processes of Japanese receptions have definitely influenced further development of legal system in this country. It has been quite natural in the case of Chinese reception (for the same cultural background of the law). In that perspective the smoothness of the Meiji and Post-War transplants, dealing with the outlying legal systems could surprise. There are admittedly examples of functionality of such

[10] Y. Hiramatsu, "Tokugawa Law", *Law in Japan. An Annual* 14/1981, at 16-21, R. Ishi, "On Japanese Possession of Real Property. A Study of 'Chigyo' in the Middle Ages", *The Japan Annual of Law and Politics* 2/1953 at 160,

"remote culturally transplants"[11] in the world transplants, nevertheless the achievements of these processes in Japan show some distinctively significant proprieties of Japanese society, among which the "pragmatically preservative attitude" must be noticed as uppermost.

B. Two circumstances were conducive to the efficiency of both Meiji and Post-War receptions. The first one consisted in the "foreign dependence" that did not allow to have much choice for the recipient, and the second one - in, corresponding to that, disinclination for the open conflict with these foreign forces. The foreign threat in Meiji reception was definitely more gentle, but efficient enough to influence the idea of modernization of the state, being the main term of the treaties[12]. The mechanism and the formal effect in both cases were similar and, in my opinion, forejudged the acceptance of foreign legal solutions under the compulsion. The indisposition to call the open conflict had been grounded much deeper in Japanese consciousness and could not be tied only with the tactical response to the "proposals". This attitude came to the light clearly in the time after the formal (literal) transplants, since in both cases there were neither big nor effective resistance to that, what had been accepted under the compulsory circumstances. The Constitution Investigation Commission, perhaps the most spectacular "resistance-institution" during the Post-War reception finally failed to be successive[13].

Other circumstances that appeared to be promoting during Meiji reception have not shown themselves in the same role during the Post-War transplants.

Firstly, the intention to modernization of the country resulting from both natural and during the Edo period planned isolation had been the main factor advancing the transformation of Japanese law after the Meiji Restoration. On the contrary, such attitude could not favor Post-War transplants since the Japanese have treated their country modernized enough due to the earlier transformations.

Secondly, the features of Japanese social culture, although obviously different, had been much closer to the properties of the German culture (institution of family, sexes' roles, mentality of individual versus public, etc.) than to the American ones, based on the values of liberalism, individualism, competition and so on.

Thirdly, also the political system of Prussia and then united (1871) Germany grounded in Emperor-type of monarchy with relatively strong power of monarch as well as autocratic-type of government has been fitting to the newly restored authority of Japanese Emperor. Both relative nearness of the social cultures and the same type of political system had certainly foredoomed that the German legal system occurred to be more attractive than French or British one[14].

Fourthly, the joint foreign interests of Germany and Japan in the inter-wars period had to play the role of factor strengthening the hitherto existing ties. Recep-

[11] For example: M.Galanter, *Law and Society in Modern India*, Oxford 1989, at 15-36.

[12] F. Shimomura, "Historical Study of the Treaty Revision in the Early Years of Meiji", *The Japan Annual of Law and Politics* 12/1964, at 97, A. Tanaka, "A Study on the Political History of Meiji Restoration", *The Japan Annual of Law and Politics* 13/1965 at 130-131

[13] K. Takayanagi, "The Conceptual Background of the Constitutional Revision Debate in the Constitution Investigation Commission", *Law in Japan. An Annual*, 1/1967, at 2-23, I. Sato, "Kempo kaisei ron no keifu to genjo", *Jurisuto* 44/1977, at 639, I. Hata, "Japan under the Occupation", *The Japan Interpreter*, 3-4/1976, at 361-377

[14] M. Ishimoto, "A Historical review of the Japanese Science of Civil Law: Its Development and Present State", *The Japan Science Review: Law and Politics*, 4/1953, at 53-75, K. Miyazawa, "Munchen, Japan und die Strafrechtsswissenschaft", *Keio Law Review,* 5/1985, at 31-46

tion of law being the first and foremost cultural phenomenon reacted on and contributed to the development of political tendencies. It could not be repeated directly after the World-War-II, though might play some stimulate role in further developments of relations between Japan and USA.

Fifthly, the effectiveness of the Meiji reception had been deepened by the so called "theory-reception" visible above all in the civil and administrative law. It was able to utilize the achievements of German legal science to the further development of the institutions transplanted to the Japanese legal system.

Sixthly, the scope of the Meiji reception has not transformed many traditional, autonomous institutions of Japanese social culture. There was no "devastating" effects for the social unity, that would treat the modernization as the destruction of the old system. The institutions of family law (*Iye*), the traditions of commercial law, conciliation, mediation[15] and other institutions have been kept despite general changes. The comparison of regulations appearing during Meiji and during Post-War receptions shows the differences in the scale of interference quite clearly. Of course, there is certainly no voluntary reception at all that would destroy the mother-system of law, but the scale of novelty and the attitude to the environment of legal institutions during Meiji reception favored the peaceful transformation in the most prominent way. The Post-War transplants had many much more innovative elements, although reasonable depth of transformations introduced by the occupation authorities either has not allowed to destroy all traditional institutions[16].

All these agents have undoubtedly promoted the process of Meiji reception and brought stability to the legal practice based on the new and alien legal ideas. Perhaps the most important is that they enabled to regard the transplanted laws in the course of the first half of 20th Century as, to the some extent, "own" institutions in the front of the "American" reception. The effect of the direct "theory-reception"[17] has played here the foremost role.

All those agents were, generally speaking, either absent or definitely weaker during the Post-War reception. Neither the will of new modernization, the cultural nearness, model of political system, joint political interests nor "theory-reception" have accompanied the process started by occupation forces in 1945. However, despite the essential lack of these elements at the beginning of the process, under the influence of the "directly compelled reception" in post-war Japan, some changes leading to the utilization of the new transplantation have been starting to appear step by step. First, the new modernization has been matched with the advantages of accelerated economic development of the country, identified by the state administration with the democratization of the social relations. Second, the lack of cultural ties between American and Japanese societies has not prevented the

[15] A.Ishigawa, H.Nagai, "The Role of Conciliation as a Means of Dispute Solution Evading Litigation", *Keio Law Review*, 3/1983, M.Fukushima, "The Formation of the Institution of "Iye" in the First Half of the Meiji Period", *The Japan Annual of Law and Polit*ics, 6/1958, passim

[16] The example of which is, "gyoseishido" (administrative guidance), functioning in 70-ties and 80-ties of XX Century in spite of new (1947) legislation of antimonopoly law (see: W.Pape, "Gyosei Shido and the Antimonopoly Law", *Law in Japan. An Annual*, 18/1985, at 14, J.O. Haley, "The Oil Cartel Cases: The End of an Era", 15 *Law in Japan. An Annual*, 15/1982 at 1-11, J.M. Ramseyer, "The Oil Cartel Criminal Cases: Translations and Postscript", *Law in Japan. An Annual*, 15/1982, at 68, 71; T. Fujita, "Gyoseishido. Rechtsprobleme eines Hauptmittels der gegenwartigen Verwaltung in Japan", *Die Verwaltung* 2/1982, at 226. On some theoretical generalizations dealing with the effects of gyoseishido in the Japanese legal order see: L. Leszczyński, *Gyoseishido w japońskiej kulturze prawnej. Nieformalne dzialania administracji a prawo* [Gyoseishido in the Japanese Legal Culture. Non-formal Activities of Administration and the Law], Lublin 1996, passim, esp. at 253-273

[17] See: Z. Kitagawa, *supra* note 8

attractiveness of the liberal and individualistic, supported by the mass-culture, ideas (especially for the younger generations and not from the beginning). Third, the democratic institutions introduced into the post-war Japanese law, not accepted entirely by the Japanese political elite, started to built new official political discourse, that appeared to be appreciated in the world and better the position of the country. That enabled to take an advantage of the post-occupation alliance with the USA and ascertained the necessity of keeping that tendency. Fourth, the "theory-reception", though incomparable in the scale, after all, could be noticed this time as an element of development of comparative law theory, in which the comparison between German and American style of particular legal institution seems to be inevitable for the worthy dissertation. And finally fifth, the large scope of intervention into the traditional system of legal institutions, regarded almost as a negation of former Japanese development and displaying itself as the less tolerant to the traditions, has been further neutralized by the "wisdom of pragmatism".

In the Post-War reception all agents that had happened directly during the Meiji-reception, have appeared as the double reflection, "negation of the negation" of continuity in the time of existence of new institutions. They neither cause nor support the idea itself but rather act as "eventual intention" at the beginning and after that, as "support of the development" of the whole process. It does not mean however that their potential role must be definitely weaker than the original acceptance of the idea of legal transplants. In the conducive circumstances they may be a "motive-power" of the continuation of transformation.

V. Reception and globalization in law - a few conclusions

A pragmatic approach to the reception of law through judicial decisions, as indicated above, seems to point out to a new and rather significant tendency in the contemporary world which can be aptly described as a separate practice which, to a large extent, replaces classic borrowings of legislative solutions. This type of reception is effected through judicial dialogue, which on a transnational scale can take a few forms : (1) among national and international courts (e.g. the European Court of Human Rights) and supranational (e.g. Court of Justice of the European Union) or between international courts in matters relating to various institutional links (e.g. in the area of protection of the human rights in Europe) and (2) between national courts of different states, (usually courts of the highest instances including constitutional tribunals). They usually represent the same legal culture and have similar legal institutions and constructs, which boils down to the use of "foreign" judicial decisions in making their own. One type of this judicial dialogue is exemplified by the "supranational" development of uniform judicial practices, which comes in the application of equity to *stricti iuris* argumentation[18].

The ways of globalization (converging) in law, as referred to above, also indicate contemporary methods of making legal axiology universal. Naturally, the development of international law is by far the most universal way in which laws converge. Classic receptions mean intentional, usually prompted by legislation, borrowing of legal solutions (and other values as well) developed in other legal systems and their subsequent pragmatic assimilation in a state's own system. Autonomic receptions of judicial decisions, in turn, consist in shaping legal stan-

[18] See: H.E.Yntema, "Equity in Civil and Common law", *American Journal of Comparative Law* 1-2/1967, at 80 ff., K.Zweigert, H.Kotz, *An Introduction to Comparative Law*, Amsterdam 1977, at 196ff, 207ff, 276ff

dards on the level of various institutionalised forms of communication of judicial decisions (on national and supranational levels) or in popularising the practice of reviewing formal legal systems through the application of the equity criterion.

It is worth bearing in mind, though, that the diversity of methods of assimilating solutions and practices in all forms of convergence described above assumes balancing the relation between the universality of effects and the pragmatic use of the same in a state's own normative order and judicial decisions that are subsequently introduced or adopted. Irrespective of various links with axiology, law by nature is a local and technical measure with which to organise and control social life.

Contemporary convergence of cultures and legal systems, with which law acquires some universal features, and which leads to globalization in law and in legal transactions, is not only real and fairly common a phenomenon. It is also a highly attractive proposition containing a strong potential for growth whether perceived as the "expansion of the West" or as "sustainable globalization". Although dependent on the political discourse which can restrict such convergence to retain axiological autonomy and on the doctrine itself, which reinforces the local point of view on the shaping of the post-modernist fragmentation of phenomena, contemporary convergence of cultures and legal systems is important due to the weight of practical judicial arguments put in practice in the courtroom. Equally important is the fact that such convergence increases the efficiency of individual legal systems in the context of international legal transactions.