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IS A WORLD-WIDE CONCEPT OF CRIMINAL LAW POSSIBLE IN A MULTI-CULTURAL WORLD?

1. INTRODUCTION

Change lies in the very nature of all things – that is a certain conclusion which must occur during an observation of our contemporary reality. Our world is constantly transforming, evolving and becoming a more and more complex organism, as a result of multiple political, cultural and technological processes. All sciences must embrace rapid progress if they want to remain up-to-date and accurate. However, due to being on the front line of change, the tasks for social studies in this realm seem particularly challenging and demanding. Obviously, law is in constant development and in the 21st century we can observe many modifications and metamorphoses in the once solid and only ostensibly irrefutable world legal order. But what direction is the law going in? Are those who predict imminent creation of a supranational global system of law right? Or are their visions only a product of utopian thinking, so well-known in history, and real development in this matter needs an unpredictable amount of time?

The paper strives to describe some problematic aspects of globalization and harmonization concerning criminal laws around the world. First, it offers a closer look at the relationship between law and culture, focusing on problems revolving around how culture views aspects of criminal law. Later, it examines actual trends of globalization and their direct impact on the various legal systems. Finally, the author gives an account of the current condition of international criminal law, its challenges and prospects. Last but not least, the key question is answered: is a universal, world-wide concept of criminal law – covering different cultures and societies – really possible?

2. LAW AS A PART OF CULTURE

2.1. CULTURE AND ITS LEGAL ASPECT

The first and obvious obstacle while thinking about the possibility of establishing a universal order of law is, without a doubt, the contingencies of culture. Law functions in a bilateral relation with culture because, in spite of being one of its components, it also contributes to the development thereof. The world is full of cultural diversity, but nevertheless similarities between people from different parts of the globe are discernible. Anthropologists confirm that we have the same needs of communication, production, consumption, procreation, and common need for keeping order and harmony using an instrument of law for this purpose¹. So why has all diversity never truly vanished and keeps existing throughout history?

From ancient times humans have been creating a mosaic of various cultures, often consisting of people whose beliefs and ways of thinking do not fit with each other². Levi Strauss believed that culture is “neither natural or artificial” and that it is “made up of rules of conduct”. According to Strauss, some of them are “instincts inherited from genotype”, and others “the rules inspired by reason”. However, the most important issue for him is that humans are not even conscious of the rules which they are following, because these rules are likely a product of cultural evolution of humans³. Convergence of cultures and legal systems surely can be accomplished by a tool of axiology – crucial here is an exact division between universalism and particularism. In the light of that, academics point out two ways of convergence between legal systems – one by tools of creating new laws and regulations (on a supranational level) and one by multidimensional borrowing and transplanting a foreign legal solution from various systems⁴. Most important, from a philosophical point of view, are two conceptions referring to cultural divisions and pluralism of societies. The first one is cultural relativism, in which every culture is equally valuable, and there is no true objective. That is the basis of the ideology of soft multiculturalism which accepts the necessity

¹ R. Tokarczyk, *Współczesne kultury prawne*, Warszawa 2005, p. 67.

² B. Wojciechowski, *Interkulturowe prawo karne: filozoficzne podstawy karania w wielokulturowych społeczeństwach demokratycznych*, Toruń 2009, p. 23.

³ L. Strauss, *View from Afar*, “The Unesco Courier” 2008, issue 5, p. 34, at <http://unesdoc.unesco.org/images/0016/001627/162711e.pdf> (visited November 27, 2016).

⁴ L. Leszczyński, *Konwergencja w prawie a uniwersalizacja aksjologii prawne. Przykład recepcji prawa i dialogu orzeczniczego*, (in:) O. Nawrot, S. Sykuna, J. Zajadło (eds.), *Konwergencja czy dywergencja kultur i systemów prawnych*, Warszawa 2012, pp. 104–105.

to make culturally relative judgments⁵. In that case, talking about expanding a culture is impossible without the danger of being trapped in a paradox – an inability of saying, at the same time, that relativism should be tolerant of diversity of culture and believing that it is a system of values which should be adopted across the world⁶. An alternative point of reference here is universalism, in the meaning that there is a common moral code for every culture (for example in Europe it may be the Christian set of values)⁷. When we want to talk about a possibility of forging cultural integration of the world – universalism is surely a more optimistic conception. However, it also raises serious doubts and questions⁸.

Another important aspect of the cultural background of the law, worthy of consideration, is the problem of colonialism. For the notion of colonialism highlights possible dangers coming from integration between cultures. Lauren Benton believes that it shaped a framework for the politics of legal pluralism. He observes that when a new legal system is forced upon a conquered territory, it must be done with extreme caution, with efforts to retain some elements of existing institutions because it is crucial to preserve social order and prevent possible rebellion⁹. But it still remained an instrument of legal contest, transferring specified cultures to other places, together with legal standards and concepts, so we can see colonialism as an important step in the evolution of legal standards in the world, creating larger patterns of a global structure¹⁰. Society never lives in complete isolation, the dominant culture always exerts indirect influence on peripheral ones, creating room for mutual assimilation. To make a cultural exchange successful, traditions of two interacting cultures must not be radically different from each other on a basic axiological level¹¹. The importance of culture in constructing law on an international level is clearly borne out by the example of European law. Europe's integration is undoubtedly built on the foundation of culture in which we reduce "some cultural continuum" to an aggregate of diversity, defining the European culture as multicultural and polycentric¹².

⁵ B. Wojciechowski, *Justifying Punishment in Multicultural Societies*, (in:) B. Wojciechowski, M. Zirk-Sadowski, M. J. Golecki (eds.), *Between Complexity of Law and lack of order. Philosophy of Law in the era of globalization*, Beijing, Toruń 2009, p. 262.

⁶ B. Wojciechowski, *Interkulturowe prawo karne...*, p. 25.

⁷ L. Rosen, *Law as culture*, Oxford 2008, p. 197.

⁸ *Ibidem*, p. 198.

⁹ L. Benton, *Law and colonial cultures. Legal Regimes in World History 1400–1900*, Cambridge 2002, p. 3.

¹⁰ *Ibidem*, p. 8.

¹¹ B. Kruszewska, *Wpływ kultury na aksjologię porządku polityczno-prawnego*, Olsztyn 2010, p. 124.

¹² J. Helios, W. Jedlecka, *Kultura jako czynnik legitymizujący prawo europejskie*, (in:) O. Nawrot, S. Sykuna, J. Zajadło (eds.), *Konwergencja czy dywergencja kultur i systemów prawnych*, Warszawa 2012, p. 191.

Some academics have even attempted to reconstruct the influence of popular culture on law. It may look like an over-interpretation but after reconsideration, the thought that there exists a path between local and global identities established by pop culture deserves some attention. For Thilo Tetzlaff, this connection is achieved by transmitting cultural icons which are shared to a greater extent for people around the world. He postulates that more energy should be expended not towards an intuitional and organizational focus, but centred around the autonomy of people. In that world, universalism of normative standards can only arise from singular decisions¹³. In a bigger picture, law can also be seen as an instrument of social control, but Lawrence Rosen has posed a question of how a moral code can become part of a larger culture and find its reflection in many different legal systems¹⁴. By doing that and seeing law as a culture, some myths of immanence can be replaced by a perfectly legitimate argument: something may not be right for you in an absolute sense but it can be good for us, in terms of common good.

Legal institutions are definitely a part of a bigger culture, in a universal sense. They can be seen as “a marvellous entry to the study of most important of human features – culture itself”¹⁵. Rosen sees that also as an invitation to “thinking about what and who we are” and this is borne out by the example of European (and a large percentage of other) societies which become more multicultural, and the character of national states becomes – in some places fast, in others rather slowly – more transnational.

2.2. RELATIONSHIP BETWEEN CULTURE AND CRIMINAL LAW

Culture is an internal consistent conglomerate of accepted and routine types of behaviour¹⁶. So if we approach the law as a cultural phenomenon in all aspects, if we appreciate the diversity that permeates our world, we can examine the cultural background of criminal law, especially that concentrated around the concepts of crime and punishment. Every moral, social and political theory must be based on a reflection about the nature of human beings. The criminal law is no different – significant questions such as the proportionality of punishment, estimating the social harmfulness of a crime, the placement of guilt, engage with social and cultural views on justice. Penal culture is extremely important in every society, as it gives us an image of its approach to classifying and singling out socially unwanted acts. Penalization of specific crimes tells us a lot about moral

¹³ T. Tetzlaff, *Why Law Needs Pop: Global Law and Global Music*, (in:) M. Freeman (ed.), *Law and popular Culture*, Oxford 2005, pp. 317–318.

¹⁴ L. Rosen, *Law as...*, p. 24.

¹⁵ *Ibidem*, p. 198.

¹⁶ M. Filar, *Współczesne kultury prawne*, (in:) M. Filar, J. Utrat-Milecki (eds.), *Kulturowe uwarunkowania polityki kryminalnej*, Warszawa 2014, p. 45.

values of a given community. Also, a reflection on criminal punishment must be based on the complexity of human life and always be rooted in the specific cultural circle. The most important concept here is proportionality, one which draws an impassable barrier of criminalization. Proportionality partially depends on the moral and ethical basis of the legal culture of a society¹⁷. Every penal system needs widespread approval so the reflection about the philosophy of criminal justice is in fact a reflection about the definition of ourselves and society, as well as our cultural and political identity¹⁸.

Condition of every community, its lasting and survival depend on mechanisms of cultural reproduction and preservation. In that way, criminal law delineates the boundaries of tolerance of diversity and imposes a particular vision of the common good on every member of society¹⁹. Criminal law, as it corresponds with themes such as punishment, guilt and retribution, simply cannot be morally indifferent, so every concept of a morally neutral universal criminal code is – from the very beginning – doomed to sore failure. If one wishes to have a precise image of cultural differences around the world, in different societies and groups, one must consider one's views on such controversial topics as death, life, sexuality and others. Cases concerning human sexuality and relations with both genders will surely make it almost impossible to establish a world-wide criminal law applicable world-wide, also in the future²⁰. If we stated that universal criminal law should protect only fundamental values – how do we want to marshal a particular sanction? Could it really be believed that it would cross beyond the boundaries of various communities with specific lifestyles? The answer shall not be pessimistic, but the existence of a pan-human criminal law ground here seems highly questionable²¹. To honestly consider universalism of criminal law, it is necessary to think about the dangers emerging from current trends. It can be taken for granted that changes in culture make a serious impact on criminalization, for example the modern obsession with risk and safety and the urge to distance ourselves from the source of dangers lead to the progressing depersonalization of crime²².

Some scholars also raise an alarm that populist punitiveness (understood as a tendency to widely use harsh instruments of criminal justice in order to limit and prevent unwanted processes), especially present in the USA, may lead, they

¹⁷ M. Królikowski, *Sprawiedliwość karania w społeczeństwach liberalnych. Zasada proporcjonalności*, Warszawa 2005, p. 154.

¹⁸ *Ibidem*, p. 163.

¹⁹ M. Peno, *Filozoficzne podstawy karania – uzasadnienie istnienia kary we współczesnych społeczeństwach demokratycznych*, (in:) O. Nawrot, S. Sykuna, J. Zajadło (eds.), *Konwergencja czy dywergencja kultur i systemów prawnych*, Warszawa 2012, p. 245.

²⁰ M. Królikowski, *Sprawiedliwość karania...*, p. 48.

²¹ M. Peno, *Filozoficzne podstawy karania...*, p. 250.

²² E. Claes, M. Królikowski, *Criminalisation, plurality, constitutional democracy*, (in:) B. Wojciechowski, M. Zirk-Sadowski, M. J. Golecki (eds.), *Between Complexity of Law and lack of order. Philosophy of Law in the era of globalization*, Beijing, Toruń 2009, p. 227.

warn, to cultural and systemic changes creating too-loose legal and axiological legitimism²³.

Surely, it is worth noticing that criminal law works at the margin of people's behaviour. Normatively, criminal law is used to stop harmful social practices – like the Hindu rite of *sati*²⁴ (the practice of self-inflicted widow death on the funeral pyre). The custom was criminalized by the British government in 1821 and could be seen as an example of colonial adjustment of foreign law to European standards, but – as contemporary historical accounts tell us – *sati* could have been merely an expression of rebellion against British domination. And it shows us how easily criminal law can be used in a political sense.

The literature also points out a ritual function of punishment, which relies on condemnation by the structure of authority. Moreover, punishment always has a religious aspect, in the same way as religion creates a cultural framework. It plays a crucial role in stabilizing and guaranteeing a legal order – because it protects a universal set of principles and values. It seems that in the multicultural world, with differing lifestyles, beliefs and preferences, there is a need to establish a mutual place, some kind of a constructivist community, and it is the criminal law where the desirability of conjuring up such a community is stronger than anywhere else. If something is an offence to the foundation of a culture, criminal law cannot resign itself to merely relying on the relativism of values. The author sees punishment as a useful institution which can create symbols and patterns inside a framework of cultural boundaries²⁵. But how can that important role of penal law in a pluralistic and multicultural society be safely achieved? We need to state that some values deserve protection but rather than restrictive criminal law what is needed is a far-reaching social and interpersonal reaction which satisfies more than the simple idea of revenge²⁶. Only such an approach is liable to contribute to real preservation of multiculturalism.

Another danger, well-known for many years, is an outcome of advancing globalization, processes of migration and mixing of cultures – justice systems often must confront cases often underpinned by different systems of cultural values. It is a long-known tendency by which criminal law cannot pass indifferently. Legal problems often are an outcome of adjustment processes of immigrants from other cultural spheres into the legal system. The important issue here is a problem of “cultural defence” which helps to resolve a conflict between the rule of law and values coming from another culture. There are two possible ways of dealing with such a conundrum – one, when we simply state that everyone must submit to the

²³ J. Utrat-Milecki, *Kara w nauce i kulturze*, Warszawa 2009, pp. 233–240.

²⁴ H. Stacy, *Criminalizing Culture*, (in:) L. May, Z. Hoskins (eds.) *International criminal law and philosophy*, Cambridge 2014, p. 76.

²⁵ B. Wojciechowski, *Justifying Punishment...*, pp. 286–289.

²⁶ *Ibidem*, p. 291.

current law²⁷. In that case of simplification, we strip people of their identity but preserve the authority of the law and the state. On the other hand, we can present a more modern view and demand from the court consideration of a person's cultural belief²⁸. If one wonders about the importance of that dilemma – what kinds of criminal cases may be in dispute here – it is enough to mention the Japanese custom of parent-child suicide, or the tradition of marriage by capture still alive in many communities. So, the stakes are high and the judicial system should act here – because the matter is delicate – with extreme prudence and caution, not to start an ideological war²⁹.

In spite of almost 30 years since the signalization of that problem, it has not lost its topicality. One problem in contemporary Europe is crimes committed by members of other cultures, for instance the phenomenon of honour killing³⁰. Such murders often go unpunished because instruments of criminal justice may not be employed in this regard, or criminal justice is not enough to prevent harm arising from cultural practices which are deeply rooted in foreign traditions³¹. Criminalization can have an impact on social and cultural transformations and in an unstable, globalized world it may be a remedy for growing anxiety. But we need to remember that people are at the same time social beings (so they create moral values which underpin the society), as well as rational beings as they look for opportunities to cooperate if they can benefit therefrom³². So, the areas where criminal cooperation can be achieved with benefits surely are the places where we will see growing integration of penal systems.

3. LEGAL ASPECTS OF GLOBALIZATION

3.1. GLOBALIZATION OF LAW

The current time of progressing globalization seems to inspired by Kant's idea of the state of the future, where all wars have vanished and freedom is the most precious value spread all over the world. But what is globalization at its core? The increasing speed of changes happening in the world seems as an undisputable

²⁷ M.-M. Sheybani, *Cultural Defense: One Person's Culture is Another Crime*, "Loyola of Los Angeles International and Comparative Law Review" 1987, issue 9, p. 779, at <http://digitalcommons.lmu.edu/ilr/vol9/iss3/8> (visited November 27, 2016).

²⁸ *Ibidem*, p. 781.

²⁹ M. Filar, *Współczesne kultury prawne...*, p. 46.

³⁰ H. Stacy, *Criminalizing Culture...*, p. 87.

³¹ B. Wojciechowski, *Justifying Punishment...*, p. 288.

³² M. Królikowski, *Sprawiedliwość karania...*, p. 154.

fact, some even believe that they are faster than the evolution of our cognition³³, so are we able to find a satisfying meaning for that word? Globalization can be seen as a multidimensional process occurring on almost every level of human activity, sometimes defined as a process of becoming “worldwide” or “global”³⁴. It is also defined by the internationalizing of social relations, a new phase of modernization and development of capitalism. The spheres where it develops are various: from markets, economics, technology, research, consumption, lifestyle to legal regulation³⁵. In some respects, globalization means a break between the law and the state, with a view to establishing normative legal standards on a global scale³⁶. That observation seems to make sense due to the fact that legal culture is always a tool conducive to modernization and one that bridges gaps between the development levels of civilizations³⁷. So – another question arises – how that development affects the law?

We can discern three main trends of globalization, observable in the integration of legal orders – European, American and international (through bodies like the UN)³⁸. Progressing internationalization and unification of the law is here an unavoidable, albeit weak, conclusion. To precisely distinguish between concepts it is important to mention that internationalization of law can take the form of cooperation, harmonization or unification³⁹. Every unification, the concept with the most direct power, brings legal systems closer to each other but does not necessarily amount to full integration. Still, unification steadily becomes a more important trend, especially – like we have observed for many years now – at a time of peaceful coexistence. Among obstacles to unification are prejudices and noticeable reluctance of lawyers to adjust to new legal standards⁴⁰, hence legal education, as a factor that facilitates unification, plays an important role. If it is based on a common set of ideals, institutions, principles – unification is just simpler⁴¹. Possibilities of harmonization of law are real, particularly within a regional dimension, where countries are bound by common culture and tradition, which is perhaps why Europeanization remains the main example of fast

³³ M. Szyszkowska, *Prawo jako czynnik kształtujący nową świadomość obywateli w dobie globalizacji*, (in:) T. Giaro (ed.), *Prawo w dobie globalizacji*, Warszawa 2011, pp. 15–16.

³⁴ C. Nowak, *Wpływ procesów globalizacyjnych na polskie prawo karne*, Warszawa 2014, p. 35.

³⁵ Z. Galicki, *Globalizacja stosunków międzynarodowych a uniwersalizm prawa międzynarodowego*, (in:) T. Giaro (ed.), *Prawo w dobie globalizacji*, Warszawa 2011, pp. 103–104.

³⁶ B. Kruszevska, *Wpływ kultury na aksjologię porządku prawnego*, (in:) T. Giaro (ed.), *Prawo w dobie globalizacji*, Warszawa 2011, p. 123.

³⁷ *Ibidem*, p. 130.

³⁸ R. Tokarczyk, *Komparatystyka prawnicza*, Warszawa 2008, p. 234.

³⁹ C. Nowak, *Wpływ procesów globalizacyjnych...*, p. 35.

⁴⁰ R. Tokarczyk, *Komparatystyka...*, p. 216.

⁴¹ *Ibidem*, p. 229.

diminishing of differences between nations⁴². But as the reality of cooperation shows us, it should be concluded that every instance of acculturation needs both systems involved to take a step back, for without that exists a serious danger that transplantation of foreign legal tissue would be rejected by one of the legal orders⁴³. Globalization and reflection thereupon are without doubt present in legal discourse. But what about the problem of unification? Scholars venture to say that problems of unification do not have a proper place in international discourse, and states should concentrate more on finding meeting points between one another. Unification can be seen as a remedy for maintaining world justice, prosperity and peace. But even if it fails to fully achieve its goals it also plays a positive part, it helps one reflect on the differences and similarities between legal systems, which may conduce to adopting best possible solutions⁴⁴.

There is no homogeneous system of international law, for it contains elements extracted from different systems as well as bilateral sub-systems or under-systems with various levels of legal integration. As a result, it represents fragmentation to a larger extent than consistent unification⁴⁵.

3.2. COMPARATIVE LAW AND DANGERS OF COMPARISON

In order to reach closer for a fitting answer, it is absolutely imperative to analyse the law comparatively, because only through the lens of actual differences between systems can jurists predict the possibilities and trends of further globalization. One of the main reasons for comparing legal cultures is a search for similarities and differences⁴⁶. Our times, often named the “age of comparison”⁴⁷ and the reality surrounding us often look like “consisting of sets of particles bound together in an endless interconnection by the chain of causality or quasi causality”⁴⁸.

The main current legal cultures in the world are civil law, common law, legal cultures related to Judaism, Christianity, Islam, Hinduism, Buddhism, Confucianism, animism and European law. Distinctions between systems are not strict and rigorous, as they often interfere with each other by virtue of blurred boundaries

⁴² M. Wąsowicz, *Globalizacja prawa czyli renesans metody porównawczej w prawie*, (in:) T. Giaro (ed.), *Prawo w dobie globalizacji*, Warszawa 2011, p. 64.

⁴³ M. Rogacka-Rzewnicka, *Zjawisko integracji prawodawstwa w sprawach karnych i jego oddziaływanie na politykę wewnętrzną krajową*, (in:) M. Zubik (ed.), *Prawo a polityka*, Warszawa 2007, p. 159.

⁴⁴ R. Tokarczyk, *Komparatystyka...*, p. 234.

⁴⁵ Z. Galicki, *Globalizacja stosunków międzynarodowych...*, (in:) T. Giaro (ed.), *Prawo...*, p. 146.

⁴⁶ R. Tokarczyk, *Współczesne kultury...*, (2007), p. 110.

⁴⁷ C. Varga, *Comparative Legal Cultures*, New York 1992, p. 31.

⁴⁸ *Ibidem*, p. 77.

concentrating around moral and religious concepts. If we look beyond our closest cultural references, we can see constant exchange between legal systems. A good example is Canadian law – a meeting point between the traditions of common law and continental civil law, a legal order transformed by perpetual interplay between the systems⁴⁹. In addition, the phenomenon is strengthened by there existing two official languages in Canadian legal circulation. All this has not led to harmonious convergence but to an emergence of a habit of creating legal pronouncements in a neutral or “bi-juristic” language⁵⁰. Universal axiology in law cannot be used as a bunch of ethical postulates regulating the behaviour of subjects coming from different cultures. The world is not monocentric, instead it is torn between a variety of cultures and conflicts, a circumstance which often rules out any possibility of cooperation. Significant here is the example of criminal law in Japan which is often pointed to as a perfect adjustment of local standards to a wider pattern. The reform of the legal system in Japan, with its practical approach, closed off their regulation from western legal concepts while not abandoning respect for local tradition and beliefs⁵¹. The complete otherness of the Japanese society, a mix of religious systems – most of which do not share the European dichotomy of evil and good – did not hinder changing the law. The reason why that was possible partially lies in the Japanese “culture of shame” where every conflict represents something negative. But the price of transition and low criminal rates is also high. In Japan, we can observe a phenomenon of not executing a law, thus abandoning the principle of legalism in favour of opportunism, where crimes are not sanctioned by proper punishment (regardless of harsh institutions written into relevant legislation)⁵². Another seemingly marginal example of a legal culture can be Tibet. Suffering from many historical storms, its law has been almost entirely imposed by China and for people living in Tibet it is a symbol of oppression, and a constraint upon their tradition and culture. Chinese authorities are also, at the same time, extremely tolerant of criminal actions⁵³. Fortunately, Tibet’s culture still has contact with other cultures through the government in exile – and that interplay cuts both ways⁵⁴.

The trend of harmonization and accommodation of legal differences is likely to continue because contacts between citizens and different countries become

⁴⁹ *Ibidem*, p. 130.

⁵⁰ A. Doczekalska, *Wielojęzyczność prawa a konwergencja kultur prawnych w Europie i Kanadzie*, (in:) O. Nawrot, S. Sykuna, J. Zajadło (eds.), *Konwergencja czy dywergencja kultur i systemów prawnych*, Warszawa 2012, pp. 180–181.

⁵¹ J. Widacki, *Przestępczość i wymiar sprawiedliwości karnej w Japonii. Zarys problematyki*, Lublin 1990, p. 5.

⁵² J. Izydorczyk, *Kulturowe uwarunkowania stosowania prawa karnego w Japonii*, pp. 77–85, at http://archiwum.ivr.org.pl/darmowe-artykuly/pl_005_6.pdf (visited November 27, 2016).

⁵³ D. Ferenc-Kopeć, *Kultura prawna Tybetu na tle kultur prawnych buddyzmu, konfucjanizmu i hinduizmu*, *Przemyśl* 2005, pp. 251–255.

⁵⁴ *Ibidem*, p. 345.

more intensive⁵⁵. But a question arises – in a theoretical sense – as to what would happen after absolute internalization of all standards and cultures occurs? Jarrod Wiener has commented on the danger of a “hollowed out state”, “incapable of exercising authority in a globalized system”. He has warned of risks associated with creating a law which is detached from local values, one that, due to its universalism, is not capable of representing any code of values. It could be “a symphony for the devil”, he adds, or “a new kind of Leviathan, an empire of Law built of postmodern hegemony”⁵⁶. An extinction of all the differences and varieties.

4. INTERNATIONAL CRIMINAL LAW

4.1. CRIMINAL LAW AND LEGAL HARMONIZATION

Law and legal systems are linked to the cultures they function in, and globalization processes certainly affect that relationship. But there is another question that is pertinent for the purposes of this article, that is: how reluctant criminal law, with all its specificity, is to such changes. Even though more success has been observed within private law, international cooperation in the field of criminal law has been more fruitful than that in labour, administrative or constitutional law⁵⁷. What are the reasons for that state of affairs? Criminal law has a public character and belongs to the *dominium* of state authority. The possibility and severity of the usage of criminal penalties also demand prudent action. It is hard to tell at this point if the modern penal culture has universalistic and international ambitions. Perhaps dreams about a universal criminal law applicable worldwide or at least Europe-wide are exaggerated wishes⁵⁸. The source of that pessimism seems plain, as states are not ready to give up their sovereignty, a concession that international criminal law demands.

For now, no indications signal an optimistic beacon for rapid structural changes in criminal proceedings around the world. Some hope may lie in the replacement of traditional criminal proceedings by private practices (settlements being one example) in the field of resolving conflicts⁵⁹.

⁵⁵ S. Zamora, *Nafta and the harmonization of domestic legal systems: the side effects of free trade*, “Arizona Journal of International and Comparative Law” 1995, Vol. 12, pp. 401–427.

⁵⁶ J. Wiener, *Globalization and harmonization of Law*, London 1999, p. 198.

⁵⁷ J. Warylewski, *Wybrane zagadnienia problemów wymiaru sprawiedliwości karnej w Polsce wobec różnicowania kulturowego społeczeństwa*, pp. 225–226, at <http://apcz.pl/czasopisma/index.php/SIT/article/view/SIT.2014.033/5082> (visited November 27, 2016).

⁵⁸ M. Filar, *Współczesne kultury prawne...*, p. 46.

⁵⁹ *Ibidem*, pp. 287–296.

4.2. INTERNATIONAL CRIMINAL LAW – CONDITION AND CHALLENGES OF THE FUTURE

The most active forum in the realm of harmonization of criminal law is international criminal law, widely understood. But what is its current state and upcoming challenges related to the process of globalization? The first foundation for international criminal justice systems was laid in Nuremberg and since then the scope of criminal law has been expanding through various conventions and international treaties making relevant cultural and social changes. For example, more than half of the nation states of Africa have adopted criminal legislation to sanction the practice of genital cutting⁶⁰.

Every development in international criminal law comes from the intensification of globalization and a need to combat transborder crimes and organized groups, one that becomes more and more problematic for individual states. Globalization opens up new opportunities for transnational crimes – new markets for stolen goods, new supply lines for drugs⁶¹ – and it is logical that when crimes are international, control and prevention thereof must also be international⁶². The number of normative regulations in that realm is growing, and new crimes are invented due to dependencies related to technology as well as social and economic life, e.g. market crimes. Developments in technology have given rise to a chance for more integration in the criminal justice system. Making access to and processing of information faster and cheaper will support, in the opinion of some, integration between criminal agencies⁶³ that can prove useful in order to stave off the threat of cyber-terrorism⁶⁴.

The most significant challenges of the modern world, which can result in expanding the borders of an international jurisdiction, are also related to regular terrorism. One may propose to recognize some acts of terrorism as crimes against humanity and subject them as such to the jurisdiction of ICC⁶⁵. The question of jurisdiction is highly controversial. The core rationale for crimes against humanity seems indisputable but in reality, jurisdiction does not reach far enough and produces a plethora of shortcomings. It seems that it will remain unchanged until the concept of sovereignty is seriously revolutionized⁶⁶. But conversely, some

⁶⁰ H. Stacy, *Criminalizing Culture...*, p. 75.

⁶¹ J. Gerber, X. Hu, *Transnationalization of formerly local crime*, (in:) E. W. Pływaczewski (ed.), *Current problems of the penal law and criminology*, Warsaw 2014, p. 373.

⁶² *Ibidem*, p. 380.

⁶³ A. Pattavina, *Information technology and the criminal justice system*, Thousand Oaks, London, New Deli 2005, p. 261.

⁶⁴ A. Podraza, P. Potakowski, K. Wiąg, *Cyberterroryzm zagrożeniem XXI wieku. Perspektywa politologiczna i prawna*, Warszawa 2013, p. 50.

⁶⁵ K. Wiąg, *Terrorism and criminal law*, Lublin 2012, p. 85.

⁶⁶ W. Lee, *International Crimes and Universal Jurisdiction*, (in:) L. May, Z. Hoskins (eds.), *International criminal law and philosophy*, Cambridge 2014, p. 48.

crimes (following the implementation of a tribunal's statute by a given state) – may be prosecuted, even when they are not crimes under national jurisdiction⁶⁷. Harmonization in that field in the European Union is slowly progressing – as fast as the need for preventing international criminality increases⁶⁸ – firstly in the third pillar (Police and Judicial Co-Operation in Criminal Matters) and from 2009 in the area of freedom, security and justice. The compromise around the European Arrest Warrant is a good example of a consensus between civil law and common law, even though the Court of Justice of the European Union does not often decide in criminal matters (the first sentence was delivered in 2005)⁶⁹.

What holds back the process of internationalization? In international criminal courts and tribunals, parties typically come from different legal cultures and they must find some common ground within the dogmatic language to come to any kind of agreement about proceedings and the elements of criminal responsibility⁷⁰. Other deficiencies of tribunals include the need to conduct proceedings in multiple languages and the question of financing⁷¹. An optimistic and good prognostic for further development is the fact that in the 1950s the inception of any international system of criminal law was not even a subject of daring consideration⁷². Inevitable growing of mutual dependence between states, an increase in the amount of criminal regulation on the worldwide level – these are all products of globalization. Changes touching criminal law are only a small fraction of that universal process transforming legal system into a complex pluralistic web, but evolution of the national state model does not detract from the fact that it is still the states that play the main role in every international system. And regardless of the fact that there is much negative influence of globalization on the criminal law (e.g. the danger of “hypercriminalization”⁷³) – the main goal is to establish an order of universal values, a universal human rights system whilst boosting the reassuring role of criminal law – seems like an effort worth risking for the sake of the future of internationalization⁷⁴.

⁶⁷ K. Kittichaisaree, *International criminal law*, Oxford 2001, p. 326.

⁶⁸ H. Tendera-Właszczuk, *Ewolucja i ocena funkcjonowania trzeciego filaru Unii Europejskiej*, Kraków 2009, pp. 214–216.

⁶⁹ Judgment of the Court of Justice of the European Union of September 13, 2005, *Commission v Council* C-176/03, ECLI:EU:C:2005:542.

⁷⁰ M. Królikowski, *Podstawy prawa karnego międzynarodowego*, Warszawa 2008, p. 26.

⁷¹ K. Stasiak, *Trybunały umiędzynarodowione*, Lublin 2012, p. 120.

⁷² J. Nowakowska-Małusecka, I. Topa, *Międzynarodowe i europejskie prawo karne: osiągnięcia, kierunki rozwoju, wyzwania*, Katowice 2015, p. 88.

⁷³ C. Nowak, *Wpływ procesów globalizacyjnych...*, p. 380.

⁷⁴ *Ibidem*, pp. 378–381.

5. IS A WORLDWIDE SYSTEM OF CRIMINAL LAW POSSIBLE?

The conclusion that there can be no global system of criminal law is safe to achieve. Differences in cultural background and everything that comprises a culture are not insignificant and simple to overcome. These questions, in turn, are linked to the process of globalization. Significant transformations are being effected by the so-called information revolution. People from different ethnic and cultural groups become more similar to each other, start to have common habits, they watch, read and have access to the same content – but certainly the boundaries shaped by culture, history and social diversity still exist.

Existing institutions of international criminal law prove that there is a slight possibility of evolution in the direction of assimilation. But not revolution – and this is what it would take to create a global system of criminal law. In areas where criminal cooperation is useful (drug market, financial crimes, searching for serious criminal offenders), there can be observed constant heading in the direction of making it tighter, whilst where it seriously interferes with state sovereignty changes are extremely cautious. Nonetheless, evolution of supranational legal order is more spontaneous than if it were to be precisely programmed⁷⁵.

It seems that there are no strong conclusions here – internationalization is occurring at the same time as part of the globalization process and as a result of diminishing diversity of people. There are many possible outcomes and dangers, but it is difficult to predict tendencies in the development of international criminal law. It may transpire that one global system of criminal law improves the efficiency of the whole system and it represents a normal consequence of progress (at least if it happens in the near future or in the next millennia). But on most views, the scenario that people are able to find one universal system of values and justice is improbable.

Summary

The article tries to provide an answer to whether it is possible and viable to establish a universal criminal law applicable worldwide. The author focuses on the relationship between culture and law. Special attention is devoted to the area of criminal law and the influence of cultural backgrounds in different societies, which makes an impact on controversial topics, and sometimes becomes a subject matter of penal law. The article considers issues linked to philosophy of law and comparative law, seeking answers

⁷⁵ G. Skąpska, *Law in postmodern society*, (in:) B. Wojciechowski, M. Zirk-Sadowski, M. J. Golecki (eds.), *Between Complexity of Law and lack of order. Philosophy of Law in the era of globalization*, Beijing, Toruń 2009, p. 69.

in various doctrines and worldviews. It contains some reflections about globalization, considering it as a material process related to the evolution of legal orders. In conclusion, the author sets out to describe the evolution that has led to the creation of the existing system of international criminal law, and attempt to predict the future of legal cooperation in criminal matters.

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