

Foreword

by Professor GUIDO ALPA

of the University Rome, La Sapienza

President of the Italian Bar Council

Member of the Accademia Virgiliana, Mantua

Corresponding Fellow of the British Academy

“To understand a book you must understand its author”. A psychological and sociological approach towards understanding multi-layered scholarly works

The title of this book might lead its reader to treat it as a kind of intellectual autobiography in which the author recounts his own initiation into the study and then the teaching of law - comparative law in particular - an area in which, in the course of a long career, he earned from many countries some of their highest State and academic honours. Yet, in reality, this book offers much more to its reader than the material usually found in autobiographies. For, taking as his cue the events of his own life as a scholar and as a man of the world, the author shows us how to focus our sight through which we should observe the world around us and highlight the most significant aspects of life which help reveal the values, ideas, and attitudes of those considered to be ‘different’ from us.

As a scholar the author is well known both in the Continental legal world as much as the Anglo-Saxon one in which he spent most of his professional life. He thus worked on topics traditionally seen as being handled differently by the various legal families but now, in no small measure thanks to his efforts, can be sensibly studied in juxtaposition and with profit to both sides. He is, moreover, a writer who emerges through his published work not only as a author prolific but also as one possessed with a breadth of interests that cannot but impress. Those who have also been exposed to him as a speaker – and in his long career he has lectured in over twenty eight universities in three Continents - he has also proved himself an enjoyable, exciting, indeed fascinating, performer.

In the present book Basil Markesinis goes beyond the categories applied routinely when classifying autobiographies because, using the technique of the “ego-narrator”, he ends up with a prolonged and fine essay on the “character” and the “identity” of different individuals, scholars, communities, countries. His thoughts on all these matters, though presented lightly and often with a dry sense of humour, in reality draw on his own vast experience of living and working in different law faculties, cities, and countries. Thus, above all, this is an essay on the use of the criteria for comparison, on preconceived ideas, on their prejudices and findings and in a broader sense on the cultures which characterize jurists, intellectuals, representatives of the world of politics and economics, and which furnish the wider context within which all of the above carry out their research, make decisions, and deal with the consequences of their actions.

It could be argued that in some ways this book could be placed among the autobiographies of the Enlightenment and the Romantic Period. For the journey which its reader takes, chapter by chapter, resembles the *grand tour* that nobles, poets, artists, and intellectuals of the past centuries took in countries rich in history and art as part of acquiring a broader and more humanistic education.

In that sense it acquires a defined flavour, appearing in the guise of re-telling gained experiences and achieved results during a lifetime of study, teaching, contemplation and cultural exchanges with colleagues, students, remarkable contemporary politicians and judges with whom his peregrinations brought him into contact. Yet, “didactic” could be seen as somewhat ‘condescending’ even though in fact this book and its author are anything but that. For the text is infused from beginning to end by the author’s desire to discover what is good in each country and system and to praise it unreservedly attaining a degree of understanding and displaying a measure of tolerance which is seldom found in the works of cosmopolite authors.

If the book is also seen as a journey down memory lane, then it must be noted that this route has led to the formulation of important findings. It thus shows how legal and other books must be understood by making a concerted effort to understand their authors but also the character and the identity of the *raconteur*. Both these identities are formed at a particular historical moment but are also destined to change. This constant change affects peoples dreaming, ideas, behavior, and affects, arguably encourages, convergence even though the externalization of the behaviour, views, and underlying values, may differ.

This is an interesting, perhaps, even a remarkable assertion namely, that the ‘substance’ is increasingly similar while the way it is externalized accounts

for most of the perceived differences. Yet equally important is the emphasis laid on the fact that the observatory of the other worlds we build at the beginning of our lives is, itself, constantly changing, thus altering our view about the world and people who surround us. And if we fail to change the angle of observation then, over time, it ends up distorting things and thus hampering us from understanding the world around us in its ever-changing reality.

Character and identity are complex concepts, puzzling and, in a certain sense, ambiguous: they constitute the tools to distinguish individuals, communities, jurisdictions, but because of this require a capacity of analysis free from prejudiced positions and attentive to their development. Only by building, with study and careful observation, this capacity of analysis, may we notice phenomena that would otherwise elude detection, and which demonstrate how reality evolves constantly - in this phase of human life - towards uniform attitudes or, at least, convergent patterns of behaviour in which characters and identities tend to resemble one another rather than diverge as they did in days gone by.

In attempting to document and describe such changes, the author is aided in his complex task by *the many advantages he has which make him so 'unique' in so far as he has accumulated such a wide panorama of people, customs, and human attitudes*. Indeed, born a Greek, but of Venetian origin from his father side, and English from his mother's, he started life as a genuine cosmopolite. The multiple genes were subsequently strengthened by studies in Athens, Paris, Leiden, Cambridge (England), until he finally settled in England permanently at the age of twenty four and since held tenured posts in Cambridge, University College London, and Oxford. Miraculously, he also found time to hold *tenured* chairs at Leiden (in the Netherlands) and Austin Texas, besides teaching as Guest Professor full courses at the Universities of Cornell, Michigan, Paris I and II, Rome, Siena, Gent and Munich.

Knowing several languages and possessing a vast culture, it was thus *natural* for him (though no less meritorious) to see everything in such a versatile way, not unilateral, not preconceived, not biased, not judgmental. In other words, the discovery of the parameters of the "precomprehension" to which we have been introduced by Gadamer, Esser and by the Scandinavian and North American realists, is for him not an attainment, which is achievable with great effort, but part of his constitution, to which accumulates all the wealth of readings and studies over the years.

In short, the classical Greek culture known in the original language, the classical Latin and Italian culture, the pragmatic English culture, and then the rational French, the dogmatic – in the sense of prone to theorizing - German,

allow him not only to attain the original and exceptional results in his studies of comparative law, but also to build an innovative method, compared to traditional ones and allow a much better understanding of the reality, in which these jurists (and, in general, intellectuals) live and work.

However, as already stated this book is not an essay on law but on cognitive theories, an amalgam of these different experiences which have convinced him that they help produce and explain the technical variations which one finds among the different legal systems of the world. So the teaching of law was, for him, only the occasion, the starting point, a small part of the context in which his theories are set in examining the character and identity, in which history, sociology, economics are combined, and on the way in which these factors change, depending on the angle of view taken into account, on the experience that settles over time, on the moral commitment used in discussion with other persons. These are the students, which should be taught to see things with a critical eye so they can move forward in the understanding of their meaning, and the readers, to which must be shown the interpretive criteria in order to inform them about the meaning of the pages written and theories upheld. Only by studying according to this method, may one overcome misunderstandings, beliefs, prejudices rooted in the mentality of jurists and average persons: all these factors are obstacles to that natural convergence, designed to create a cultural dimension that allows to achieve inner peace.

A second perspective, drawn from these pages is part of the debate on self-knowledge and on the identification of *the other*. In this dimension as well, it is important to consider each judgment within the historical moment it is made and reflect on the necessary change, made over time and because of multiple factors, to *the self*, which ends up by having repercussions on the perception of the “*other than the self*” also.

A third view is given by the equal weight all opinions have, but the fact remains that the true thinker must divest himself of all the slants that are not relevant, strike directly at the heart of the dilemma facing him, and taking a decision for which he will have to bear the price.

Thus freedom of conscience, courage to decide, duty to seek the scientific truth, are the ethical principles that the interpreter must meet so as to be recognized as a reliable scholar: only in this way the soul of the author may be understood, and for this reason the author talks of the windows which shed light on an author's soul.

Consequently, the intellectual autobiography becomes a way to understand not just ourselves but also the environment in which we live and those

who work around us, the countries where we have lived or spent time in, and the cultural habits, different ways of thinking and writing, together with the manners, the moods, styles of life, character and family origins, but also the sexual identity and the role played by the sex differences in the social, political, educational environment.

Basil Markesinis carries out this fascinating hermeneutic experiment not only on himself, but also on other characters who – by free choice, or for political reasons or in order to survive - belonged to the ranks of refugees, exiles, migrants, expatriates, and those who, due to reasons of different nationalities within their families, either have taken up the plurality of national heritage, either modeled themselves in compliance with a real dualism, a dual nationality, and ends up studying the effects all of the above factors have on individuals as well as on us who observed them or deal with them on a daily basis.

The two chapters that conclude this work, thus round off the author's overall design: the effect this cognitive theory might have on European unity - a unity based on the differences, which, however, should tend to melt down and to bring together the Member Countries - and the tribute to the jurists, academics, precisely “foreign” ones, who have earned his admiration even his gratitude for helping him learn to think and reason.

I do not want to go further in revealing the contents of the book, written in a manner which strikes European leaders as both simple and elegant despite the vast wealth of references and allusions to music, poetry, literature, history, and politics, reflecting not only a cultured life constantly fed by new ideas and new materials, but also the appreciation of the life styles of different cultural worlds.

I would like to point out that for some years now, Basil Markesinis is not only known as the Master of Comparative Law but also for works that cross the boundaries of the law, approach key issues for the present culture and society, to know the man, his history, his models. I will mention here his most recent *Magnum Opus* – lavishly illustrated - “The Duality of Genius,” which talks about the darker sides of “great achievers”, linking their “flaws” with their creativity”.

I do not know if this vocation, that goes alongside with his studies in law, has been stimulated by the long years of the study of legal subjects or if it runs in his veins and forms part of his DNA waiting to be externalized, used, and expressed for the benefit of others who have not had a similar exposure to so many cultures which he has had. Either way, the fact is we learn from him or, better still, he makes us think.

A personal postscript

In the controversy between Proust and Saint-Beuve, that is between the genius author of “*In Search of Time Lost*” and the lofty and in his time highly fashionable literary critic, the first appears as the defender of the separation between the work and its author, almost as if once the work is created it acquires a life of its own and the features of the author were entirely indifferent to his literary creation, while the second is a follower of the opposing theory, that sees in the work the result of the intellectual activity of the creator and therefore reflected in it the traits of his personality. I have long felt great affinity to Sainte-Beuve, without, however, detracting anything from the greatness of Proust. Well, this book by Basil Markesinis seems emblematic of the Sainte-Beuve theory: each page reflects its author, his extraordinary culture which engages so smoothly and effortlessly in the discourse as if the Greek tragedies, Mozart’s music, Dante’s or Goethe’s rhymes could constitute the natural substratum of each reflection, whether it is dedicated to the law or other science.

His subtlety of analysis, geared towards explaining in all its folds the cognitive theory, is applied to the phenomena of the real life and, is a pleasant play for the mind. The way the author adaptes to the mentality, the tastes, the inclinations of the person he’s addressing, without, of course, losing his critical capacity, is a sign of superior intelligence, a rare and wonderful talent. If, in addition to these qualities, may be added, as in my case, the privilege of being his friend and thus sharing with him and his lovely family moments of leisure, as well as opportunities for collaboration and research, which re-affirm the charm which oozes out of these pages and makes clear why, among the factors characterizing a human being, he lists generosity, humor and family. This book is his forty-first monograph: an ode to the generosity with which he dispenses his knowledge in that graceful, mild and soft manned, way that make him one of the most internationally respected and appreciated of contemporary jurists and intellectuals and reveals him as the most European of contemporary Europeans who, nonetheless, has not lost his love and loyalty to his three countries to which he has been most attached: Italy, Greece and England.

Rome, 1st of June 2012