

I. ARTICLES

CULTURAL AND POLITICAL CHALLENGES IN THE HISTORICAL ROOTS OF LEGAL TRANSPLANTS IN ROMANIA. THE PARADOX OF CONSERVATION THROUGH CHANGE

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Abstract

The paper argues that the Romanian constitutionalism is a result of a multifaceted interaction between historical, cultural, and legal elements that have influenced the evolution of Romanian constitutional reform documents and written constitutions. Despite drawing heavily from foreign legal and cultural frameworks, particularly from France and Belgium, Romania's political ideology and social values have not embraced (profound) liberal transformations. Instead, the core elements of religion and ethnicity played a central role in defining the Romanian nation and political community, underscoring the distinct path chosen by Romania in its process of nation-building.

In the first part of the paper, I will provide a brief explanation of legal transplant phenomenology, which will set the methodological landmarks for evaluating the political and cultural contexts that shaped Romanian constitutional transplants from the mid-18th century to the constitutional moment of 1991. In the second part, I shall explore the concrete Romanian historical landscape to observe the roots of choices and motives for seeking change or/and conservation. In other words, I will address the paradox of how cultural and political challenges influenced the adoption of legal transplants while attempting to preserve traditions through transformation. In the third part, I will challenge the axis of time in a more concentrated manner, using the data and contexts highlighted in the previous sections. The scope is to observe the red wire of Romanian constitutional realism, thus, to evade empty shells of political discourses and written (legal) texts that can be simple depositories of dead words.

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The prevailing method used by the Romanian legal historiography to examine internal constitutional evolutions is still characterized by oversimplification and a lack of critical analysis. When it comes to legal transplants, this approach often leads to conclusions suggesting that the mere presence of foreign institutions and concepts equates to effective or even successful original implementation/adaptation. In the final part (IV), I will try to emphasize the need of adopting a more nuanced approach when it comes to legal transplants, particularly in light of Romania's constitutional history. There is a need for additional contextual and critical analysis that goes beyond surface-level examination and delves deeper into the underlying intentions and desires behind constitutional changes. Such analysis should also assess the outcomes that were subsequently realized as a result of these changes.

Keywords: *legal transplant, legal change, constitutional identity, legal culture, Romanian constitutional realism, nation-building process*

Résumé

L'article soutient que le constitutionnalisme roumain est le résultat d'une interaction à multiples facettes entre des éléments historiques, culturels et juridiques qui ont influencé l'évolution des documents de réforme constitutionnelle roumaine et des constitutions écrites. Bien qu'elles s'inspirent fortement des cadres juridiques et culturels étrangers, en particulier de la France et de la Belgique, l'idéologie politique et les valeurs sociales de la Roumanie n'ont pas embrassé les transformations libérales (profondes). Au lieu de cela, les éléments fondamentaux de la religion et de l'ethnicité ont joué un rôle central dans la définition de la nation roumaine et de la communauté politique, soulignant la voie distincte choisie par la Roumanie dans son processus d'édification de la nation.

Dans la première partie de l'article, je fournirai une brève explication de la phénoménologie de la transplantation juridique, qui établira les repères méthodologiques pour évaluer les contextes politiques et culturels qui ont façonné les transplantations constitutionnelles roumaines du milieu du XVIIIe siècle au moment constitutionnel de 1991. Dans la deuxième partie, j'explorerai le paysage historique roumain concret pour observer les racines des choix et des motifs de recherche de changement ou/et de conservation. En d'autres termes, je considérerai le paradoxe de la façon dont les défis culturels et politiques ont influencé l'adoption de greffes légales tout en essayant de préserver les traditions par la transformation. Dans la troisième partie, je contesterai l'axe du temps de manière plus concentrée, en utilisant les données et les contextes mis en évidence dans les sections précédentes. L'objectif est d'observer le fil rouge du réalisme constitutionnel

roumain, donc d'échapper aux coquilles vides des discours politiques et des textes écrits (juridiques) qui peuvent être de simples dépositaires de mots morts.

La méthode dominante utilisée par l'historiographie juridique roumaine pour examiner les évolutions constitutionnelles internes est encore caractérisée par une simplification excessive et un manque d'analyse critique. Lorsqu'il s'agit de greffes juridiques, cette approche conduit souvent à des conclusions suggérant que la simple présence d'institutions et de concepts étrangers équivaut à une mise en œuvre/adaptation originale efficace, voire réussie. Dans la dernière partie (IV), j'essaierai de souligner la nécessité d'adopter une approche plus nuancée en ce qui concerne les greffes juridiques, en particulier à la lumière de l'histoire constitutionnelle de la Roumanie. Il est nécessaire de procéder à une analyse contextuelle et critique supplémentaire qui aille au-delà de l'examen superficiel et approfondisse les intentions et les désirs sous-jacents aux changements constitutionnels. Une telle analyse devrait également évaluer les résultats obtenus par la suite de ces changements.

Mots-clés : *transplantation juridique, changement juridique, identité constitutionnelle, culture juridique, réalisme constitutionnel roumain, processus de construction nationale*

1. Legal Transplant: Methodological Approaches, Implications, Risks, and Factors Influencing Success and Failure

Legal transplantation can be defined as a transfer of legal concepts, institutions, mechanisms, laws or even a whole political system from one legal system to another. It can lead to either positive or negative outcomes depending on how well the transplanted legal item fits into the new society. To reduce the risks and increase the chances of success, comparative law plays an essential role. It helps to identify potential problems and solutions by comparing legal systems across time and space.¹

Legal transplantation is not always straightforward. The differences in cultural and social values between the donor and the receiving society can

¹ Christoph Engel, *Challenges in the Interdisciplinary Use of Comparative Law*, in (2021) 69:4 *The American Journal of Comparative Law*, pp. 786, 789; Iain Stewart, *Critical Approaches in Comparative Law*, in (2002) *Oxford U Comparative L Forum* 4, <https://ouclf.law.ox.ac.uk/critical-approaches-in-comparative-law/#fn1anc>, accessed 12.05.2023; Reecia Orzeck, Laam Hae, *Restructuring legal geography*, in (2022) 44:5 *Progress in Human Geography*, pp. 832–851, <https://doi.org/10.1177/0309132519848637>, accessed on 04.03.2023.

affect the implementation of the transplant. This is why it is necessary for the host society to be receptive and willing to adopt the new legal information.² The success of legal transplants depends on how well the new legal information is integrated into the existing legal system of the receiving society.³

That is why legal transplant, as a socio-political and legal phenomenon, contains in itself useful lenses for examining the interaction between law and society. It offers concrete examples of how legal systems can be adapted to suit various cultural and societal contexts. Conversely, it also highlights the potential pitfalls of attempting to implement changes that may not align with existing legal frameworks or cultural norms. Therefore, the study of legal transplants provides valuable insights into the ways in which law and culture are interconnected.

To effectively analyse legal transplants, a comparative methodology should use both theoretical and applied exploratory tools.⁴ This approach helps to capture the context that shapes the goals and objectives of the receiving society and the referential society. It also enables the observation of the correlation between the meaning of the transplanted legal object and its origin. Through this process, it is possible to identify the real possibilities and limitations of the transplant, particularly in relation to its purpose and implementation methods. By comparing the performance of the transplant against a referential context and praxis, one can determine whether it has been successful or not and calibrate the meaning of success and failure accordingly.

Also, in the context of legal transplants, it is important to determine the space – time relationship. *In concreto*, spatial translation symmetry and time translation symmetry should not be equated. While the spatial and

² Glenn H. Patrick, *A Concept of Legal Tradition*, in (2008) 34:1 *Queen's Law Journal*, pp. 428, 431 *et seq.*

³ *Ibid.* Although the author does not directly address the concept of legal transplantation, his analysis of traditions as repositories of information that encompass understanding and acceptance suggests a potential extrapolation to the notion of grounding the meaning of legal transplants within a specific society and timeframe. By emphasizing the importance of extensive and effective practice over an extended period, the author's perspective can be applied to strengthen the rationale behind establishing a solid foundation for the meaning carried (information) by legal transplants in a given society.

⁴ Răzvan Cosmin Roghină, *Comparative Law and Legal Transplant. Romanian Struggles with the past and New Directions for the Future*, in (2022), 13:1 *Romanian Journal of Comparative Law*, pp. 64-67.

temporal aspects of legal transplants may influence and reveal the surface layers of the forms, it is the behaviour of individuals, both independently and collectively, that ultimately determines community patterns and shapes the outcomes of legal transplants in time and space.⁵ Analysing a legal transplant that has already been implemented is similar to watching a video in reverse, as we explore the space in the right time,⁶ which is determined by interpretative communities.⁷ However, analysing the parameters of a transplant that has yet to be performed requires envisioning a scenario that must be enacted by legal actors in a given society. For successful implementation, it is vital to assign roles that can be effectively fulfilled by the legal actors involved.

A. Exploring legal transplants. The Intersection of Choice, Capability and Methodology

Applied comparative law, which is a continuation of descriptive (classic) comparative law, provides a systematic and rigorous approach to the study of legal transplants. By evaluating legal culture, social culture, political culture, economic culture, and other core societal values, contemporary comparative law scholars can gain a deeper understanding of the practical interactions between legal systems (law in action dimension). The success of such a scientific endeavour is contingent upon the researcher's capacity for analysis and understanding, which is inextricably linked to his interest in objectively and subjectively enriching his knowledge and values.

In light of this, two distinct approaches to the study of legal transplants can be identified, with one being more complex than the other. The choice of approach ultimately rests with the researcher, who must possess the requisite analytical skills and understanding of cultural nuances to conduct a thorough and insightful analysis.⁸

⁵ *Ibid.* Reinhart Koselleck, *The practice of conceptual history: Timing History, Spacing Concepts* (Stanford: Stanford University Press, 2002), p. 102.

⁶ Roghină, *op. cit.*, *supra*, note 4, pp. 76 *et seq.*

⁷ Dennis Patterson, *Revisiting the Fish-Dworkin Debate*, forthcoming in Thomas Bustamante, Margaret Martin (eds.), *New Essays on the Fish-Dworkin Debate* (Hart Publishing, 2023), Rutgers Law School Research Paper n° 1, SSRN: <https://ssrn.com/abstract=4053948>, accessed 24.02.2023.

⁸ Roghină, *op. cit.*, *supra*, note 4, pp. 67-71.

a) Simplifying the Complexity of Legal Systems: The Issues with the Simple Perspective

When analysing a legal transplant, it is important to consider its selection, implementation, and adaptation within the receiving social context.⁹ The success of a transplant is often linked to its ability to adapt, which can occur through translation,¹⁰ whether it happens before or after implementation. This adaptation is achieved through epistemological interpretation, where any changes made by the host society are viewed as an organic and functional merging of different elements. However, this approach oversimplifies the complex dynamics involved in the interaction between the transplanted legal system and the host society. Merely categorizing the outcome of an interaction as either "original" or "sufficiently integrated" is an inadequate approach. Such a label tells much by providing too little content as evidence. That is why it is useful to examine and assess how the contextual parameters of the foreign legal system were or are to be reconfigured or installed effectively in the receiving socio-legal and political context (thus, cultural).¹¹ Such an analysis helps determine the extent of the receiver's scope and, as a result, the type of adaptation or integration required.

To foster a deeper understanding of transplanted laws, it is also methodologically beneficial to acknowledge the underlying teleology of both the original and receiving societies. By considering the creative perspectives of both societies, a more comprehensive and accurate interpretation of the transplanted law can be achieved. This approach prevents evaluations that are overly subjective or influenced by cultural

⁹ Carlos F. Rosenkrantz, *Against borrowings and other nonauthoritative uses of foreign law*, in (2003) 1:2 I-CON *International Journal of Constitutional Law*, pp. 271 *et seq*; Julio Carvalho, *Law, language, and knowledge: Legal transplants from a cultural perspective*, in (2019) 20:1 *German Law Journal*, 20(1), pp. 21-45.

¹⁰ Carvalho, *op. cit.*, *supra.*, note 9, pp. 24 *et seq.* Legal translation plays a pivotal role as the primary channel for legal transplant during legal reforms in the recipient country. Given that transplantation entails conveying the conceptual framework of the imported law, legal transplant frequently results in a transfer of a foreign adapted legal culture. And here, comparative law has an important role. Also, see Adela Teodorescu Calotă, *The Import of New Disciplinary Approaches in Comparative Legal Research: Legal Linguistics, Legal Translation & Socio-Legal Studies*, in (2022) 13:1 *Romanian Journal of Comparative Law*, pp. 48 *et seq.*; John W. Cairns, *Watson, Walton, and the History of Legal Transplants*, in (2013) 41 *Georgia Journal of International & Comparative Law*, pp. 637-696; Esin Örüçü, *Law as Transposition*, in (2002) 51:2 *International and Comparative Law Quarterly*, pp. 205-223.

¹¹ Rosenkrantz, *op. cit.*, *supra.*, note 9, p. 288.

biases or national pride. A dual theology approach can, hence, prove essential for evaluating the logic of legal transplants and to determine their intended purpose in order to (better) set degrees of success or failure.

For example, the Romanian historical-legal literature towards legal transplants is still oversimplifying the complexity of the issue.¹² This approach also fails to consider certain historical legacies, such as the domestic theory of "Forms without substance" that emerged in Romania during the late 19th century. The theory was developed by Romanian intellectuals who critiqued the notion of constructing or reconstructing Romanian identity through cultural imitation and instead emphasized the importance of acknowledging cultural differences, sociological variables, axiological deadlocks, and the epistemological capabilities of individuals and collectives when adopting or imitating foreign forms or expressions.¹³ The theory underlines that mindlessly imitating foreign cultural expressions can result in losing authenticity and failing to appreciate the distinctive aspects of one's own culture. Therefore, the theory encourages a careful examination and adaptation of foreign influences, ensuring they align with the values and culture of the host society. This approach enables a conscious and deliberate selection of the foreign content, safeguarding its functionality and compatibility with the host society. In essence, the theory suggests that it is unwise to transplant something that is not genuinely understood or that contradicts the host society's fundamental values.

The theory of "Forms without substance" is still relevant in contemporary times and provides a comprehensive perspective on legal transplants that can strengthen modern theories on the subject.¹⁴ Incorporating this theory into the Romanian historical-legal literature can significantly enhance the understanding of legal transplants in a more rational and nuanced manner. However, the current approach in Romania tends to prioritize the power of legal forms to create substance or modify practices rather than considering the belief that practices determine the life and finality of legal forms. Although written laws have the potential to induce social change and

¹² Roghină, *op. cit.*, *supra*, note 4, pp. 85-103.

¹³ Constantin Schifirneț, *Teoria formelor fără fond. Un brand românesc* (Bucharest: Editura Comunicare.ro, 2007).

¹⁴ Manuel Guțan, *Dreptul comparat contemporan și actualitatea teoriei formelor fără fond*, in (2009) 4 *Pandectele*, pp. 39-67; Răzvan C. Roghină, *The Theory of Forms Without Substance a Romanian Legal Transplant Theory Ahead of its Time*, in (2020) 26:40 *Journal of Legal Studies "Vasile Goldiș"*, pp. 142-155.

cultural evolution, it would be an oversimplification to assume that legal documents alone can bring about significant and lasting transformations without considering other factors. A more balanced approach is needed when assessing the impact of written laws.

The Romanian approach towards evaluating its legal system tends to be overly optimistic and overlooks its flaws, leading to an inflated sense of nationalistic pride.¹⁵ This tendency to overvalue achievements and downplay shortcomings often results in an overestimation of the development of Romanian law, especially its written version.¹⁶ Despite the fact that many of the laws are just translations of foreign laws, the Romanian legal system – through its doctrine – is still glorifying itself as having a distinct social and legal identity, which may be true considering the ethnological layers brought to its desired "liberal constitutionalism and democracy"¹⁷ – a Romanian paradox, but not an isolated case in the world.

As already stated, in order to truly comprehend the intricacies of legal transplant, it is necessary to avoid oversimplified viewpoints and delve beneath the surface structure of the law. Merely considering the surface structure of a building, like a tourist, without seeking to understand its construction or history, is insufficient. To fully grasp the complex relationship between law and society, it is important to recognize that legal actors, legal formants¹⁸, and social actors are all living elements that shape and reshape one another, creating a dynamic reflection of values and knowledge.

A simplistic approach that merely considers the literal text of the law and the descriptive viewpoint of comparative law disregards the intricate nature of legal transplants. Although this approach may have informative value, it falls short of providing a comprehensive understanding of legal transplants.

Based on the aforementioned perspectives, which are just some limited insights regarding the problematic, there are some key points that can be highlighted to clarify my understanding of a simplistic approach.

¹⁵ Manuel Guțan, *Transplant constituțional și constituționalism în România modernă 1802-1866* (Bucharest: Hamangiu, 2013), p. 2.

¹⁶ *Ibid.* Roghină, *op. cit.*, *supra*, note 4, pp. 85 *et seq.*

¹⁷ Manuel Guțan, *Is the Constitutional Court of Romania a Flagship of National Constitutional Identity?*, in (2022) 1 *Revista Romana de Drept European*, pp. 32-39.

¹⁸ Rodolfo Sacco, *Legal Formants: A Dynamic Approach to Comparative Law*, in (1991) 39:1 *The American Journal of Comparative Law*, pp. 1-34.

Focusing on the text of the law. This perspective overlooks the significant influence that social and cultural factors have on the implementation and adaptation of legal transplants. It fails to acknowledge the intricate relationship between law and society by portraying legal systems as static rather than dynamic entities with structural variables.

Relying solely on classic comparative law. This perspective provides a limited perspective that overlooks the teleology and development of legal transplants in diverse contexts. For a better (and necessary) understanding we should consider the historical legacies that determine the reception and adaptation of legal transplants. Historical influences are often undervalued, despite their significant role in building the content of the trajectory of legal systems.

Embracing (too much) national optimism and pride. This subjective viewpoint undermines the recognition of the challenges and limitations involved in implementing and evaluating legal transplants.

b) Navigating the Labyrinth of Legal Diversity. The Complex Perspective

In order to build a thorough and effective analysis of legal transplants, it is necessary to take into account the (cultural) compatibility between the transplanted law and the social norms and values of the receiving society (identity).¹⁹ In connection, by carefully assessing the context in which the transplant took place, delving into its intended purpose, and evaluating the subsequent outcomes,²⁰ a typology for the transplant can be established.²¹ To further understand the reasoning behind the final selection of both the source and content of the transplant, it may also be necessary to consider the alternative options that were available. Such an inquiry can help determine whether the chosen approach, *i.e.*, legal transplant detrimental to internal (re)sources, was not only feasible, but also had the capability to

¹⁹ Rosenkrantz, *op. cit.*, *supra*, note 9, p. 289. "The music of law changes... when the musical instruments and the players are no longer the same" (Mirjan Damaška, *The Uncertain Fate of Evidentiary Transplants: Anglo-American and Continental Experiments*, in (1997) 45:4 *The American Journal of Comparative Law*, p. 839).

²⁰ Carvalho, *op. cit.*, *supra*, note 9, p. 22.

²¹ Jonathan M. Miller, *A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process*, in (2003) 51:4 *The American Journal of Comparative Law*, pp. 839–886; Edward M. Wise, *The Transplant of Legal Patterns*, in (1990) 31: suppl_1 *The American Journal of Comparative Law*, pp. 1-20; Carvalho, *op. cit.*, *supra*, note 9.

fulfil the required criteria or desired effects.²² Here it may be added into consideration the historical frequency of past legal transplants on similar issues within the analysed host society.²³ In congruence, the relationship between the teleology of the transplanted law and the praxis of the recipient society must be analysed. This includes an assessment of the functional parameters of the donor society²⁴ to evaluate the realism²⁵ of the transplant in the receiving society.

Consequently, these pivotal analytical benchmarks engage a perspective that recognizes legal transplants as a complex system comprising diverse interconnected elements. Each component possesses distinct dynamics and historical contexts that have the potential to disrupt the process of transfer. The transplant's intrinsic and extrinsic variables must also be linked to the fact that the actors involved in legal transplantation have their own interests and incentives that can significantly impact the logic and content of the transfer process.²⁶ Moreover, the transfer and implementation

²² Manuel Guțan, *Romanian Tradition in Foreign Law Import: Between Necessity and Weakness, in Imperialism and Chauvinism in the Law*. Reports presented to a colloquium on the occasion of the 20th anniversary of the Swiss Institute of Comparative Law. Genève, Zurich, Bâle: Schulthess, pp. 66-67. Helen Xanthaki, *Legal Transplants in Legislation: Defusing the Trap*, in (2008) 57:3 *The International and Comparative Law Quarterly*, pp. 660 et seq.

²³ Carvalho, *op. cit.*, supra, note 9; Lee Epstein, Jack Knight, *Constitutional Borrowing and Nonborrowing*, in (2003) 1:2 I-CON *International Journal of Constitutional Law*, pp. 198 et. seq. p. 209; Daniel Berkowitz, Katharina Pistor, Jean-Francois Richard, *The Transplant Effect*, in (2003) 51:2 *American Journal of Comparative Law*, pp. 163-204.

²⁴ Guțan, *op. cit.*, supra, note 15, p. 424. Xanthaki, *op. cit.*, supra, note 22, pp 664 et seq. Berkowitz, Pistor, Richard, *op. cit.*, supra, note 23, p. 177.

²⁵ Brian Z. Tamanaha, *Understanding Legal Realism*, in (2009) 87:4 *Texas Law Review*, pp. 731-786: "Realism refers to an awareness of the flaws, limitations, and openness of law - an awareness that judges must sometimes make choices, that they can manipulate legal rules and precedents, and that they can be influenced by their political and moral views and by their personal biases (the skeptical aspect)" - p. 732; Also see Paul Negulescu (Romanian professor of constitutional law and administrative law), in his textbook of constitutional law (Bucharest; 1927, p. 227). He highlights the unrealistic nature of the 1866 Constitution, relating it to how it was made (idealistic) and to its concrete results (illusory in the beginning of the import). In short, the realism of the Romanian society could not be connected to the unrealism of the fundamental law of 1866.

²⁶ Paul Blokker, *Constitutional Politics, Constitutional Texts and Democratic Variety in Central and Eastern Europe*, in (2008) *Unpublished*, <http://eprints.biblio.unitn.it/1615/>, accessed 18.04.2023; Robert Elgie, Jan Zielonka, *Constitutions and Constitution-Building: A Comparative Perspective*, in Jan Zielonka (ed.), *Democratic Consolidation in Eastern Europe Volume 1: Institutional Engineering*, Oxford Studies in Democratisation (Oxford: Oxford Academic, 2003), pp. 42-43.

process can also be affected by the different interpretative communities or epistemological groups within the receiving society.²⁷ These groups may have different views or understanding on the legitimacy of change or consolidation, which can further complicate the transfer process.

It may be said, thus, that the variables involved in legal transplantation create a constantly evolving landscape that is subject to feedback loops, not only for legal scholars analysing the transplant but also for those creating and implementing it. To gain a deeper insight into the intricacies and obstacles of legal transplantation, it becomes essential to adopt a more nuanced and dynamic perspective, as this paper aims to highlight in the subsequent sections.

B. When Is It a Success and When Is It a Failure?

Legal transplantation implies an imminent transformation of the ideal model (the so-called donor system).²⁸ The receptive thinking of the host – apparently irrelevant to text-to-text transfer – will become visibly deeply relevant when the legal object is embedded in the cognitive system of society. Consequently, the result will not/cannot be ideal (equivalent to the functional parameters in the reference system), but remains comparable to the referential ideal, against which the intensity of success or failure should be judged, at least in part. I emphasize, therefore, the fact that the initial landmark of the transplant should not be absolute. A legal transplant can be successful even if the "socio-legal thinking" of the receiving system transgresses the positivist interpretation of the transplanted law, and even if at the societal level the meanings of certain transplanted terms or concepts turn out to be recalibrated. The legal transplant can be successful if, *e.g.*, it causes a move away from a reprehensible past. For example, breaking with a totalitarian regime can be politically substantiated by transplanting regulations from mature democratic systems, which

²⁷ Patterson, *op. cit.*, *supra*, note 7.

²⁸ Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergencies*, in (1998) 61:1 *Modern Law Review*, pp. 11-32; *Id.*, *Legal Irritants: How Unifying Law Ends up in New Divergences*, in Peter A. Hall, and David Soskice (eds), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford: Oxford Academic, 2003), p. 418. Even Alan Watson acknowledges, in his "debate" with Pierre Legrand (*The Impossibility of "Legal Transplants"*, in (1997) 4 *Maastricht Journal of European and Comparative law*, pp. 111-124), that the transplanted law is not the same as the one that was in the "previous house" (*Legal History and Common Law for Europe, Mystery, Reality, Imagination* (Arne Longfern Offset AB, Stichelholm, 2001), p. 104).