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## THE PRESENT AND FUTURE OF LEGAL HISTORY

MIHÁLY T. RÉVÉSZ

The search for new roads of legal history in the system of social sciences, the questioning of its possible functions in the process of training lawyers may virtually be traced back to the early history of this branch of science. This profession, looking back on a history of over two centuries, has frequently come into the foreground of interest. In order to raise its standard or just to destroy the the walls of legal history rising, significant – scholars of renown and well-known politicians have frequently met in the arena of discussion.

Naturally, we have neither space nor hope here to provide even a sketchy picture of the chapters of the tribulations of legal history or recapitulate the lines of the indictments, frequently heard and on occasion bordering on mazochism, of some famous or infamous representatives of this profession, always modest as regards the number of its cultivators. Still, just to demonstrate the tone of these manifestations, the attitude of self-reproach, allow me to quote here some ideas of Professor Lajos Hajdu, the outstanding researcher of some decades of the 18th century, published not long ago. He utilized the preface to his work entitled "Crime and punishment in Hungary in the last third of the 18th century" for sharing with the wider circle of readers his devastating opinion about the standard scientific values, or rather lack of values, of research in legal history in Hungary. Bemoaning the unrevealed character of "the legal applications and litigations of Hungarian historical past", the scholar rendered a diagnosis of the symptoms of the patient (i. e. the science of legal history), indicating the viruses causing the disease as well. "With the appearance of studies, written for anniversaries without allowing them the proper time for ripening, the thorough research of the ranges of the enormous mountains situated below the pinnacles (the weekdays of historical past ripening holidays) was pushed into the background." "Many consider the investigation of the rich material of archives an outdated activity too" – Lajos Hajdu meets out the condemning sentence and adds immediately that "expectations" also push those engaging in this profession full of pitfalls towards investigating the questions of state history and legal history of

the turning points, significant politically, having occurred in the recent past. "The legal historian of today resembles the astronomer who can primarily see the Moon because it is closest to us, is also familiar with a few commonplaces about the whole of the Solar System, but the galaxy is outside his sphere of interest because "it is far away" and "its influence is not direct."

The train of thought cited only in a summarized manner may well discourage the "legal historian of today" and prod him to conduct a severe but objective self-examination. Is the sky above this profession really that dark? Has the past period of forty years really allowed time to the professional researchers of legal development in Hungary for undertaking the investigation of "the state and legal history of the revolutionary periods, the outstanding days of history only?"

Trying to find a more equitable answer to these delicate questions in the following, I feel myself forced to outline, though in a brief and sketchy manner, the chief results of the development of legal history writing in Hungary following 1945 as well as point out the deficiencies I have discovered and, at the same time, refer to the research tasks waiting for the handful of legal historians in Hungary to be carried out.

### 1. The phases of development of the science of legal history in Hungary

The development of the science of legal history in Hungary in the course of the four decades following the liberation of the country may be divided into two main periods:

- a) the period between 1945 and 1956
- b) the period of legal history from 1956 up to our days.

a) In this branch of science too, legal history writing after the liberation was characterized by Marxist methods gaining ground gradually. This period saw the results of the activities of well-trained and full-fledged scholars of the profession who were striving at scientific accomplishments worthy of their earlier achievements too by incorporating the doctrines of historical Marxism in their works. It is sufficient to refer here to the monographies of Ferenc Eckhart, György Bónis and Győző Ember. Besides a high level of literary activities, this generation of scholars also had time and energy to start establishing a group of researchers-teachers of legal history and their methodical preparation for scientific research.

Naturally, in this period legal history science was not free from the influences of the schematic, simplifying approach of the personality cult, cheap vulgarization, either. However, our field of science is characterized not merely by these deficiencies but rather by the tendency of making up for the losses, elaborating the topics neglected beforehand, and primarily analysing the legal material introducing the situation of the classes and strata participating in production in the earlier social formations. That is how this branch of science focused its interest on the state and legal

history of the Age of Reforms, the revolution and War of Independence of 1848 - 49, the operation of the state and legal institutions of the Hungarian Republic of Councils, as well as the system of legal concepts of Hungary in the age of enlightenment.

b) The social crisis of 1956 had an adverse influence on the development of legal history writing in Hungary too. However, political and economic consolidation established more favourable conditions for this field of science too. The co-operation increased between legal historians and specialized lawyers, the claims for dogmatic views fashionable in the previous years were eliminated, and the authorities responsible for science and the management of higher education assisted legal historians with enhanced attention and financial support.

It is to be mentioned that this period was characterized by a kind of change in generations as well. It was at this time that the leading positions in legal history were held by Andor Csizmadia in Pécs, Ödön Both in Szeged, Kálmán Kovács and Pál Horváth in Budapest. These four outstanding personalities of this field of science, though not to the same extent and not with the same intensity in each field, contributed significantly to deepening the results of this profession and widening the field under examination.

Especially outstanding were the rich, diverse literary activities of Professor Csizmadia who parted with our circle for good not long ago. He undertook and accomplished the monographic elaboration of significant fields such as the relationship between the state and the church in Hungary, the development of Hungarian public administration in the Modern Age, suffrage and electoral practice of 1848, the problems of governing and social administration prior to 1945. These works made Andor Csizmadia a well-known scholar all over Europe and justly raised him to leading positions of different international scientific bodies.

It was also in the recent past that we had to part with György Bónis too who enriched the storehouse of Hungarian legal history writing with an unparallelly rich and exemplary life work. The scholar priding himself on more than half a dozen large monographies reached if not exceeded the heights achieved by Eckhart earlier especially with two works of his. Here I have in mind first of all his work devoted to the legal experts in Hungary at the time prior to the Turkish invasion as well as his investigations centered upon introducing the main components of Hungarian law in the Middle Ages, about which it may be stated even ten years after its appearance, moreover perhaps for a long while to come, that it represents a "peak" hardly attainable for the cultivators of the feudal age of legal history.

When listing the results, mention must be made of the successful experiments performed by Pál Horváth in establishing and introducing the research methods of comparative legal history as well as his significant achievements in science history.

But Ödön Both and Kálmán Kovács also did a lot for the reliable, uniquely precise elaboration of the history of the development of certain

institutions of Hungarian feudal, and especially bourgeois legal development. Professor Kovács's activities in the field of organizing scientific institutions as well as his efforts of widening the circle of the new generation and preparing them, deserve mentioning too.

The list of the outstanding achievements is incomplete without the handbook of Hungarian state and legal history, born as a result of the joint efforts of Andor Csizmadia, Kálmán Kovács and László Asztalos, the success and values of which have been judged as high by almost all the members of this profession and its having been translated into Russian and published in that language also indicates that, for the first time since the publication of the textbook of legal history written by Timon at the beginning of the century, our profession has managed to exceed the narrow linguistic borders. The opus written with Marxist pretensions, introducing the trends of state and legal development in Hungary over a thousand years, has fulfilled an important service for almost one and a half decades in the education of the Hungarian legal experts but, originating from its handbook form, it offers a rich and highly informative material to the reading public interested in history as well.

In addition to these decisive personalities of our branch of science, quite a few outstanding contributors to the profession have grown up and ripened in the past decades. Among them we have to mention Lajos Hajdu, quoted above already, who elaborated with great care and considerable professional knowledge the reforms of administration "dreamed" for Hungary but hardly carried out by Josephinism, as well as the efforts made to create the code of criminal law in 1975.

I also have to mention the works of Mrs. Nagy, Katalin Szegvári, betraying extensive theoretical knowledge and skills of abstraction, written with a method of analysis, which, among other things, describe the development of the legal situation of women, not referring in detail to those significant revelations of hers which enriched our scientific results achieved in the research of the *numerus clausus* in Hungary.

Professor of arts studies, István Kállay has revealed significant, new laws of development for the science of legal history too as well as moments unknown before. He has described almost all the institutions of feudal private law in Hungary in several richly documented works. His life work's influence, certainly giving rise to debates at times as well as provoking new ideas, will hopefully result in giving an impetus to the students of legal history of the feudal age. The interest taken by historians in legal history, the side glances of legal historians investigating the questions of the history of constitution and public administration in the last century — whom I myself would not call beginners — at the fields of political history, sociology history, ethnography history, the history of the working class, represent new moments in our science. In this phenomenon I see the recognition of the modern claims of inter- and multi-disciplinarity, and I am happy to experience that here the desire of Professor Eckhart, the founder of a school, is being realized, who demanded more than half a century ago the elimination of the "ramification of historical science and

legal science" and also wished to see legal history making use of the results of historical science.

The receding of ramification is to be seen, on the one hand, in the works of József Kardos, Gyula Vargyai, Pál Pritz, and primarily Ferenc Pölöskei, who have not only enriched historical consciousness in Hungary but exerted an inspiring influence on the researchers of legal history with their activities and presence. However, the initiators of the other side of the integration process come from among the cultivators of our profession.

A survey of the activities of the generation which is now in the stage of ripening demonstrates their intention of a diverse approach to the institution or era investigated by them. Thus, for example, our colleague Lajos Rácz, when demonstrating the changes in forms of the Hungarian state in the Middle Ages or describing the scope of the power of the Transylvanian princes, consciously relied on the results of the investigations related to the history of the ancient Hungarians as well as of ethnographical science, and utilized the methods applied in the related professions.

Professor Gábor Máthé acted in a similar manner when, in his monography on the bourgeois development of the judiciary in Hungary, in addition to providing a picture of the formation of the history of offices in the strict sense of the word, he drew an exciting picture of political history, related to certain political secrets of the pro-Deák government.

A similar attitude, i.e. the demand to demonstrate the complex questions of political history related to the bourgeois electoral practice in Hungary, led the quill of Professor József Ruszoly when writing his work of great significance entitled *Electoral jurisdiction in Hungary 1848 – 1948*.

It may seem to be a subjective self-revelation, but I myself have set out on the road of diversity and versatility mentioned above as well. A proof to that effect could be my monography which appeared last year in which, when investigating the freedom of the press in the period following the Austro-Hungarian Compromise of 1867, I made use of the research methods and views of approach of press history, political history, as well as the history of the working class. I did so in the hope that, in addition to *Klio*, I might do a service to several fields of the social sciences bordering on legal history.

While surveying the group of researchers in Hungarian legal history, I finally have to speak about the young generation preparing for the profession of scholars which are active in the departments of legal history in Budapest as well as in the country, who have already proved their being cut out for becoming scholars with a number of valuable studies so far too. However, in connection with them and especially the youngest ones, I consider it necessary to point out that when preparing them for a scientific career, in the future we shall have to create even favourable conditions for them making a few of them suitable for doing research in legal development in Hungary in the feudal age too. And while not yet speaking about the tasks of the profession in the near future, I made mention of that fact in a breaking down the existing forms for it may hardly

be denied that the main army of professional legal historians investigating this period have not yet contributed to Hungarian and international scientific life with new scientific discoveries. (Although significant works have been born in this field too, they are mostly connected to the name of Professor Bónis working actively almost up to our days as well as of the unforgettable Alajos Degré.)

## 2. The tasks of legal history writing today and its possible methods

It may be seen from the sketchy survey presented above, very far from the claim of driving at completeness, that the present level of legal history science is not lagging behind the scientific level attained earlier, and we may justly hope that in the future too this field will not be characterized by stagnation either. All that, however, does not mean that in the decades to come we do not have to do everything within our reach to indicate, moreover describe in detail some ranges of Hungarian legal development dating back a thousand years which have so far not even been outlined. In our state and legal history in the feudal period — as we know since Ferenc Eckhart — there really were a great number of white spots. A summarizing monography of the history of Hungarian feudal private law but in the bourgeois era has not yet been written up to the present day, just like no one has yet undertaken to deal with the development of a significant dimension of criminal law either. We might add to the deficiencies the fact of the elaboration of procedural law with gaps in it. Seeing the tasks to be carried out, however, I must warn the profession, science policy apprehensive about it, and, last but not least, the public opinion expecting an extension of the knowledge related to historical past, to refrain from setting gigantic aims or entertaining false illusions. In the coming years or even decades, only the initial steps may be taken along this road full of pitfalls, the road of familiarizing ourselves and others with Hungarian legal life in the feudal period.

The team of legal historians undertaking to elaborate the state-political system of the bourgeois era — taking into account the enforcing of human rights as well — are definitely in a more favourable situation than the researchers of the feudal period. And the explanation for this is not merely a lower degree of language difficulties — for here it is just the amplitude of resources that might be brought up as a hindering obstacle — but the richness of the information available pertaining to this period and topic. However, the richer literary output related to this period may not make the legal historian exempt from an even more complete and diverse investigation of the history of constitution, public administration, law. Politics, and thus science politics too, do not urge the monographic elaboration of these topics for astronomical considerations. Bringing the example from Kepler's science, I myself also believe that the task of the legal historian, i.e. the astronomer is not merely to summarize the knowledge pertaining to the Moon but learn as much as possible about the galaxy

without commonplaces too, not forgetting about the whole of the Solar System either.

But once we are concentrating in the Solar System, I personally believe — and that is strictly my own conviction, or *ars scientiae*, to use a high-brow expression, — that one of the most urgent tasks to carry out is just to analyse the sunspots, i. e. reveal the political and legal structure of this century. I myself have centered my investigations on introducing some questions of constitutional law in the latest hundred years of the Hungarian past because I am convinced — and I am not the only one of this conviction — that “the operation of the political or legal systems of our society in the past and in the present — and thus the events of our age — could hardly be understood without the historical analysis of the phenomena of political and legal culture.”

Continuing the above argument in thought might evoke the feeling in some of you that the utilization of historical knowledge is the factor of decisive importance for me when outlining the scientific tasks. I admit that such principle was not alien to the leading figures of Hungarian historical science earlier, and neither was it alien to the general staff of legal historians. But even if in our days our approach, having changed significantly, does have priorities when appointing the task to be solved, they can in no way suppress the importance of the other problems to be tackled by this field of science.

The new style of Hungarian scientific public thinking may be justified not merely by the diversity of the strategic objectives of the individual fields of science. A proof of the change in views is also the variety of the methods used, also present in the Hungarian legal history writing of today. There is perhaps only one momentum to be found in all the volumes of legal history writing born in the past forty years: all the works have approached the institutions appointed for their investigation by utilizing the means of Marxist social science.

I myself who consider not this time to be the most suitable forum for proclaiming my Marxist conviction would rather stand up for an even more forceful utilization of the comparative method in addition to the manifestation of the application of the Marxist approach. To reach that goal, it is, of course, necessary to familiarize ourselves with each other, each other's mentality, the past of our legal institutions as well as the results achieved by our branch of science.

I believe that this noble objective has been served usefully up to now too by the international roles undertaken by Hungarian legal historians, our scientific activities, open to Europe and observant to it, performed in the past three decades.

PAST AND PRESENT OF THE HUNGARIAN LEGAL HISTORY

RÉVÉSZ T. MIHÁLY

Résumé

Das Essay widmet sein Interesse der Entwicklung nach 1945, den Suchen nach Wege und der Bekanntmachung der wichtigsten Ergebnisse der ungarischen Rechtsgerichtswissenschaft. Es darstellt die wichtigsten Epochen der Erstarkung nach dem Weltkrieg, die wichtigsten Wegzeichen dieser Wissenschaft. Das Essay erkennt, dass die Rechtsgeschichtsschreibung nach der Befreiung unseres Vaterlandes durch die graduelle Verbreitung der marxistischen Methoden gekennzeichnet wurde; und es schreibt respektierend über die Ergebnisse der damals tätig gewesenen Wissenschaftler-Generation.

Über die Periode nach 1956 schreibend, erwähnt der Verfasser den Generationswechsel, welcher in den Kommandantenposten der vaterländischen Rechtsgeschichtswissenschaft eingetreten ist, und welcher bedeutsame Ergebnisse mit sich gebracht hat. Die Bilanz der wissenschaftlichen Produktion summierend, setzt das Essay fest, dass das heutige Niveau der Rechtsgeschichtswissenschaft im Vergleich zu dem früher erreichten Niveau nicht hinterbleibt.

Die Aufgaben der Rechtsgeschichtswissenschaft zusammenfassend, setzt der Verfasser fest, dass in den folgenden Jahren, bzw. Jahrzehnten die vielen sog. „weissen Flecken“, die bisher kaum bekannten Epochen der vaterländischen Rechtsentwicklung liquidiert werden müssen. Darunter steht z.B. das ausgedehnte Erfassen der Geschichte des feudalen Zivil-, bzw. Strafrechtes; die Darstellung der Entwicklung des materiellen Rechts und die des Verfahrensrechtes in der bürgerlichen Epoche; bzw. die Untersuchung der Veränderung des Systems der verfassungsgeschichtlichen Institutionen in den letzten hundert Jahren.

LE PASSÉ ET LE PRÉSENT DE L'HISTOIRE DU DROIT HONGROIS

par

T. MIHÁLY RÉVÉSZ

Résumé

L'étude consacre son attention au développement de l'histoire du droit de Hongrie, après 1945 à la recherche des voies et de la présentation de ses principaux résultats. Elle présente les phases principales et les essentielles indications de l'affermissement de ce domaine de l'histoire suivant la guerre mondiale. L'étude admet que l'histoire du droit d'après la libération ait été également caractérisée par le gain de terrain graduel des méthodes marxistes et elle parle avec reconnaissance des résultats de la génération des savants agissant à ce temps-là.

En parlant de la période suivant 1956 l'étude mentionne l'alternance de la génération survenue dans les positions de commandement de l'histoire du droit hongrois, alternance ayant apporté des résultats considérables. En dressant le bilan de la production scientifique l'étude établit que le niveau actuel de l'histoire du droit n'est pas inférieur au niveau scientifique atteint plus tôt.

En réassumant les tâches de l'histoire du droit l'auteur établit qu'il sera justifié de liquider aux années et aux décennies suivantes « toutes les tâches blanches », toutes les phases mal connues du développement du droit hongrois, parmi lesquelles on pourrait trouver l'oeuvre grandiose de la carte de l'histoire du droit privé et du droit pénal féodaux, la présentation du développement des droits matériels et procéduraux bourgeois ou l'examen des changements du système des institutions constitutionnelles du dernier siècle.