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## TABLE OF CONTENTS

<i>Zoltán Végh</i> : Römisches Recht und Nationalsozialismus	
Gedanken zur Universalität des Römischen Rechtes . . . . .	2
<i>Thomas Gergen</i> : Anfänge und Entwicklung des Copyright-Systems in England und den USA . . . . .	10
<i>Christoph Schmetterer</i> : Die Rechtsstellung der Mitglieder des österreichischen Kaiserhauses von 1839 bis 1918. . . . .	15
<i>Barna Mezey</i> : Rechtsgeschichte an der Juristischen Fakultät in Budapest . . . . .	21
<i>Kamila Staudigl-Ciechowicz</i> : Zur Entstehung der Wiener Kriminologie und Kriminalistik in der 1. Republik . . . . .	29
<i>Claudia Lydorf</i> : Accursius, Bartolus und Baldus und die Auswirkungen ihrer Lehren auf das Privatrecht am Beispiel der Lex Aquilia . . . . .	36
<i>Pál Sárosy</i> : Der auf die Bibel abgelegte Eid im justinianischen Recht . . . . .	45
<i>Karel Schelle</i> : Die Rechtsregelung der Schadenshaftpflichtversicherung im ABGB . . . . .	50
<i>Jaromír Tauchen</i> : Die Grundcharakteristik des Privatrechts im Protektorat Böhmen und Mähren. . . . .	56
<i>Dmitry Poldnikov</i> : Dogma and Legal History in Russian Science of Civil Law. . . . .	61
<i>John E. Fahey</i> : The Secret Poison Plot Adolf Hofrichter and the Austro-Hungarian General Staff . . . . .	66
<i>István Stipta</i> : The Main Tendencies of Hungarian Legal Historiography in the 20th Century and its Present Situation. . . . .	72
<i>Norbert Varga</i> : The Private Law Elements of Citizenship Law in the 19th Century . . . . .	79
<i>Balázs Pálvölgyi</i> : Ethnic Questions in the Hungarian Migration Policy until 1914 – Forming the Main Lines of a State-Backed Action Concerning the Migrants in the United States. . . . .	86
<i>Kamila Kędzierska</i> : Local Administration in the Years 1944–1950 – Overview and Selected Problems Based on the Example of Krakow County. . . . .	92
<i>Zdeněk Koudelka</i> : The Arms of Moravia and Silesia. . . . .	102

## BOOK REVIEWS

Alexander K. Schmidt: Erfinderprinzip und Erfinderpersönlichkeitsrecht im deutschen Patentrecht von 1877 bis 1936 . . . . .	104
Gábor Hamza: Entstehung und Entwicklung der modernen Privatrechtsordnungen und die römischrechtliche Tradition . . . . .	105

## REPORTS FROM HISTORY OF LAW

Internationales Kolloquium: „Kodifikationsgenese des Privatrechts und ihr Gedanken hintergrund“ . . . . .	107
Viva Voce Examination Report. . . . .	107

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## The Main Tendencies of Hungarian Legal Historiography in the 20th Century and its Present Situation

István Stipta\*

### Abstract

The essay analyses first the Hungarian legal historiography in the 20th century. It gives the list of scientific schools of the Horthy era and its most important representatives. In addition, the essay examines the intellectual impacts that shaped the contemporary science of Hungarian legal history. After then, the paper deals with the so called socialist science appearing after World War II. The essay refers to the ideological subjection (determination) of the science and the battle of the old and new approach. The chapter that introduces the present situation of the science of legal history displays the research centers of legal history reawakening from the 1970's. The paper also reviews the process of development of the education and research centers in the provinces. It also introduces the procedure of how the science of history and legal history approached each other. The author endeavors to name each important scholar and to refer to the most remarkable works written by those.

**Key words:** Legal historiography; constitutional and legal history of Hungary; education of legal history; constitutional-historical research centers; legal academies; historical and legal scientists.

The intellectual tendencies of the 20<sup>th</sup> century made their mark upon all areas of academics, even on the science of legal history. The positivist method, which built upon facts, was thrown to the side in favor of one which incorporated the national aspect. This new trend was reflected most characteristically in the works of *Timon Ákos* (1850–1925). Timon had already achieved great results with his early works (*The Urban Patronage*, 1889; *The lectical in Hungary*, 1885, 1908). In his later works, especially his textbook, *Constitutional and Legal History of Hungary, particularly the development in law of western states*, (published in 1902 then again six times between 1902 and 1923) he rejected the notion that the Hungarian legal system had German roots. At the turn of the century he was considered to be the leader of the Nationalist School which, as previously stated was becoming more popular in the field of legal history. In his opinion, the history of our constitution and legal tradition was ‘*the manifestation of our independent national existence because this is where the state constituent strength, cultural ability and world historical significance is reflected. This trend did not find even European tendencies of great importance and considered law as national product*’.<sup>1</sup>

Apart from those of Timon, one additional work, written by *János Király* (1858–1929), a professor at the University of Budapest, is worthy of mention, due to its scientific value. Nearly half of Király’s multi-volume work, *The Constitutional and Legal History of Hungary, particularly the development in law of western states* concerns itself with the western European, specifically

Germanic influence on law in Hungary. However, the other half of his work deals with the Hungarian development in law and reaches only as far back as the date of the Battle of Mohács. The book incorporated the earlier developments of Hungarian legal history and examined them in an in-depth and detailed manner. He generally avoided revealing his opinion and did not over-emphasize the nationalistic qualities as Timon had. Yet, he did exaggerate the Germanic influence on the development of Hungarian Law. In his reviewers’ opinion he applied modern definitions of public law to medieval developments in law.<sup>2</sup>

Besides Timon and Király, Professor *Ignác Kossutány* of Kolozsvár (Cluj-Napoca) University (*The textbook of Hungarian political science and legal history*, Budapest, 1895) and Professor *Mihály Herczeg* of Budapest University, composed significant works on the topic of the legal history of Hungary.

One of the departments of Legal History at the University of Budapest was led, for two decades by *József Illés* (1871–1944). He was a disciple and at first follower of *Imre Hajnik*. His youthful works (*Hungarian community property law of the Árpád era*, 1900, *Contract law in the Árpád era*, 1901, *The rightful intestate succession of the Árpád era*, 1904) are of great value to our legal historiography, and demonstrate the benefits of Hajnik’s positivism, namely his criticism of sources. Hajnik later became an adherent to the traditionalist approach, taking particularly to the values espoused by *Werböczy*. From him comes the statement “the most important ornament and treasure in the litera-

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<sup>1</sup> Horváth Pál: A dualizmuskori jogtörténetírásunk főbb irányai [The main directions of our legal historiography of dualism era]. *Acta Fac. Pol. Jur. Univ. Scient.* Budapest, 1968.

<sup>2</sup> Pauler Tivadar: Adalékok a hazai jogtudomány történetéhez [Contributions to history of domestic legal science]. Budapest, 1978.

ture of Hungarian legal history is the Tripartitum [...] and thus, the product of the development of Hungarian law, which should be known by every Hungarian lawyer.”<sup>3</sup> His great merit is that of leading the famous Illés Seminar, which became known as a center for intense academic education and research. Additionally, this Seminar led to the production of several excellent works in legal history.<sup>4</sup>

The legal historiography before World War I was also enriched by the works of experts working at legal academies as well as those engaged in practical fields. Examples of this include the work of Géza Dombóváry on the system of criminal procedure and penalty in the beginning of the 19<sup>th</sup> century (*Corrective procedure and Penalty system in Pest County in the First Half of 19<sup>th</sup> Century*, Budapest, 1906) as well as the essays of István Zsindely, a teacher of law in Sárospatak, concerning the oldest formula (*The oldest formula collections considering the culture of medieval Hungarian law*. Sátoraljaújhely, 1904) Among them we can also rank the work of Levente Závodszy, who published a collection of the oldest decrees along with his criticisms (*The sources of the statutes and synod resolutions in the era of Saint Stephen and Saint László*, Budapest, 1904).

Finally, the excellent historian Károly Tagányi is worthy of mention. Already at the end of the 19<sup>th</sup> century, he had become one of the most efficient researchers of Hungarian economic history by investigating issues such as that of the community of land in Hungary. His work, entitled “*About the collection of domestic legal customs*” adopted a new scientific trend of which Ernő Tárkány-Szücs later became a proponent. Recently Teodóra Nagy Janka has been active in the area of legal customs of the folk.<sup>5</sup>

### Historiography of the Interwar Phase

Most of the legal historians of the interwar phase prescribed to the school of the history of ideas. Foremost amongst them was Ferenc Eckhart (1885–1957) who beginning in 1929 was head of one of the departments of law at the University of Budapest. Eckhart strongly criticized the Hungarian legal and, particularly, constitutional historiography of the beginning of the century. In his opinion this historiography was the result of ‘*a fantasy subsisting upon national conceitedness*’ with ‘*ignorance not entering into the essence of the things*’. According to Eckhart, there existed two approaches in legal historiography. The first of these was that of constitutional history, which was centered around

the critique of sources and, the second of which ignored critics and applied the ideas of modern or nearly modern principles and theories to the institution(s) of bygone centuries without taking the reality of those eras into consideration.<sup>6</sup>

Criticism of Eckhart and his postulations on the approaches in the field of Legal History aroused a political debate. Certain conservative delegates of the Parliament and even the Minister of Justice weighed in with their opinions of Eckhart, whom they believed to be desirous of establishing a trend in the teaching and studying of legal history which is ‘*unknown to Hungarian legal temper and the general Hungarian legal way of thinking*’. They went further, to remark that ‘he (Eckhart) wishes to eradicate a centuries old tradition which has been time-tested’. Eckhart was additionally criticized by numerous legal historians and constitutional lawyers. However, he upheld his opinion and argued his points based on archival documents, against those whom he viewed as the illusionists of constitutional law.<sup>7</sup>

Eckhart’s academic life began, not in law, but in the field of economic history. His first work, based on research conducted in the archives of Vienna, about the economic policy of the Court of Vienna in the era of Maria Theresa (from the beginning of her reign until the end of it) was supplemented near the end of his life by the second volume which dealt with the end of Maria Theresa’s reign up until 1815 (published in 1957). His other work was a monograph on the Historical-Authenticity Organizations (for the researching and verification of documents and sources) of Hungary which was published in German. Apart from his most well-known essay mentioned above, his other interwar essay on the “*History of the Holy Crown Idea*” (published in Budapest, 1941) proved to be one which gave rise to a plethora of intellectual and political debates. Additionally, his Monograph concerning the history of the Faculty of Law at Budapest<sup>8</sup> filled a gap in Hungarian legal history. In the interwar phase Eckhart did not pen any textbooks, but rather summarized his lessons in one work published in 1946. The textbook, (*The constitutional and legal history of Hungary*, Budapest, 1946) written by a man who had not graduated from any law school, remains to this day the basic handbook of those who are interested in legal history.<sup>9</sup>

The publication of Eckhart’s seminars on legal history provided an opportunity to release works which utilized his archival research. Some examples of works stemming from these edi-

<sup>3</sup> Bónis György: Einflüsse des römischen Rechts in Ungarn. *Ius Romanum Medii Aevi*, V.10., Mediolani, 1964.; Máthé Gábor: Hajnik Imre centenárius munkája a magyar jogtörténet szerepéről [The centenary work of Imre Hajnik on the role of Hungarian legal history]. *Jogtudományi Közlöny* 1970.; Gábor Hamza: Das römische Recht und die Privatrechtsentwicklung in Ungarn im Mittelalter. *Journal on European History of Law*. Vol. 1/2010. No. 1. S. 19–20.

<sup>4</sup> Degré Alajos: A magyar jogtörténetírás keletkezése és fejlődése a dualizmus korában [The establishment and development of Hungarian legal historiography in the era of dualism]. *Értekezések. A Magyar Tudományos Akadémia Dunántúli Tudományos Intézete*, Budapest, 1968.; Eckhart Ferenc: Illés József és a magyar jogtörténet [József Illés and the Hungarian legal history]. Pázmány Péter Tudományegyetem. Budapest, 1927.

<sup>5</sup> Mezey Barna: Jogtörténetírás és a jogtörténet oktatása [Education of legal historiography and legal history]. In: *Magyar jogtörténet*. (Szerk.: Mezey Barna) Osiris. Budapest, 1996.; Teodóra Nagy-Janka: Die rechtshistorische Erforschung der traditionellen völkischen Selbstverwaltungen. In: *The Scientific Publications of Illyés Gyula College of Pedagogy (IPF) Szekszárd*, 1999. 41–54. p.

<sup>6</sup> Bónis György: In memoriam Eckhart Ferenc. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Germ. Abt.). 1970. Bd. 75. S. 596–600.

<sup>7</sup> Degré Alajos: Magyar jogtörténetírás a Horthy-korban [Hungarian legal historiography in the Horthy era]. *Gazdaság- és Jogtudomány*. III. k. Budapest, 1969. 77–100. p.

<sup>8</sup> Eckhart Ferenc: A Jog-és Államtudományi Kar története [The History of the Faculty of Political Science and Law] 1667–1935. Budapest, 1936.

<sup>9</sup> Ödön Both: Wissenschaftliche Forschungsrichtungen auf dem Gebiete der ungarischen Rechtsgeschichte seit 1945. In: *Einzelne Probleme der Rechtsgeschichte und des Römischen Rechts*. Szeged, 1970.

tions are those of *Iván Meznerics*, who wrote about the History of County Criminal Justice in the 16–17<sup>th</sup> century, and *Torday Lajos*, who composed the History of County Civil proceedings in the 16–17<sup>th</sup> century. The list goes on, with a multitude of remarkable essays being penned due to the publication of Eckhart's Seminars. These include those concerning the legal status of the Jews by *István Virág*, as well as the criminal substantive law of the Árpád era by *Géza Hegedűs*, the reform of the organization of the courts at the beginning of the 18<sup>th</sup> century by *György Bónis*, the origin of entitlement by *Antal Murárik*, and landlord jurisdiction of the Árpád era by *Kamill Szoika*.

The study of legal history based on this research is traceable in the editions of Illés Seminar (Illés Szeminárium) too, especially in the works of *Alajos Degré*. The limited research of private law during the interwar phase was conducted by Degré and published in his two monographs concerning Hungarian private law and procedural law (*The material pertaining to procedural law of Quadripartitum*, 1936. *Fishing rights in medieval Hungary*, 1939.). Additionally, an essay of *István Vincze Jr.* on private law (*The difference of Quadripartitum from Tripartitum in the noble private law*, 1935.) also concerned itself with private law during the interwar period. Additional other works are also deserving of mention, such as the Habilitation works on Hungarian hunting rights, *Bálint Kolozsváry* (Professor of Private Law), from Budapest as well as the Habilitation of *Aladár Erdélyi* on 'fidei-commissum'.

Apart from the University of Budapest, the research and education centers of legal history were the legal history departments in country university faculties. In these facilities, the University of Pécs (re-opened in 1923), Szeged, Debrecen as well as three legal academies (in Eger, Miskolc and Kecskemét) legal history education and research in legal history was conducted.

The Department of Legal History at the University of Pécs was led by *Zoltán Kérészy* (1868–1953) whose work covered not only legal history but also canon law and the history of canon law. A certain amount of those works concerning legal history published by *Kérészy* dealt with the organization and meeting of Hungarian feudal Parliaments as well as the establishment of the powers of the Upper House during the Horthy era. His previous works had offered a general survey of feudal legislation. His essay about the powers of the Upper House is rather a legal-political work than a purely legal-historical one. His valuable legal historical monographs are concerned first with the history of the financial administration of the Hungarian Treasury written as a professor in Bratislava (Pozsony), then tackle the problem of the derogation force of legal custom (published in the Polner Memorial Volume). Finally, his monographs deal with the premises of the Municipal Administration Act of 1871 (also published in the Illés Memorial Volume). His work in the field of canon law history is also noteworthy. His essays written in this field concerned the veto rights of the head of state enforceable in the case of conclave (*jus exclusivae*), matters of matrimonial law

including mixed marriage, the Catholic autonomy of Hungary and the legislative privileges of the clergy (*privilegium fori*).<sup>10</sup>

In 1938 the chair of Zoltán Kérészy was occupied by *József Holub* (1885–1962) who began to research the medieval history of Zala County in 1909. The first volume of his work (which was planned as a series), "*The history of County Zala in the Middle Ages*" was published in 1929. The volume deals with the development, structure and people of the *regal comitats* and discussed the structure of the *noble comitats* which developed in the 13<sup>th</sup> century. The author remarkably changed the conception of the contemporary comitat; he refuted the former aspect of county. Even the idea of noble comitat before Mohács known in these days stems from him. In addition to the county system, Holub also changed the conception of the structure of the medieval church as well. His other legal historical works are related to his interest in family law and personal rights. He clarified the role of age in the old Hungarian law and wrote about inheritance with regards to the rights of a son (*Praefectio*). Holub also touched upon other areas such as the unsettled question of *quarta puellaris*, the legal situation of *agilis-es* stemming from noble mothers and the medieval legal status of church nobles. Some of his essays were even published in French in the French legal historical review, *Revue historique du droit français et étranger*.<sup>11</sup>

For most of the interwar period, the head of the department of Legal History in Szeged was *Béla Iványi*. A significant part of his work was the introduction of the *privileges* of the pre-Mohács era in the (formerly) Northern free royal cities of Bártfa (Bardejov) and Eperjes (Prešov). Based on these works he even wrote a study of the medieval legal customs of the city of Eperjes (Prešov). He was incredibly active in the collecting of sources as well as publishing. He published one part of the archives of the Máriássy, Teleki and Bánffy families, and after his retirement he arranged the Batthyány family archives at Körmend, from where he published a large number of works, although surprisingly few were related to legal history. His most significant activity in the field (of legal history) was related to the history of municipal law. He wrote a monograph on the establishment and development of municipal civil law as well as essays which compared the study of law at Debrecen and Buda, examined the efforts of Eger to gain the status of free royal city and looked at the legal routine in the market-town of Gönc.

After Béla Iványi, the Department of Legal history at the Debrecen School of Law was led by *Béla Baranyai*. Baranyai had previously worked in archives and had also helped in managing the Hungarian Historical Institution of Vienna. He was not a productive author; however he was extremely knowledgeable and enjoyed many different areas and aspects of legal history. The results of his work were mostly seen in essays and source-criticism publications on public law and the history of administration as well as his study on the Order of the Dragon of King Zsigmond.

In 1940, the numbers of university researchers and educator places was increased due to the temporary annexation of Kolozs-

<sup>10</sup> Csizmadia Andor: A jogtörténeti oktatás a pécsi tudományegyetemen a két világháború között [Education of legal history at the University of Pécs in Hungary in interwar phase]. *Jubileumi tanulmányok* II. Pécs, 1967. 107–128. p.

<sup>11</sup> Csizmadia Andor: A magyar állam- és jogtörténet-tudomány [The science of Hungarian constitutional and legal history]. In: *Magyar állam- és jogtörténet*. Budapest. Tankönyvkiadó, 1972. 41. p.

vár (Cluj-Napoca) to the rest of Hungary. Between 1940 and 1946 the faculty here was led by György Bónis, who published his monograph “*Feudalism in medieval Hungary*” in Kolozsvár (Cluj-Napoca). In his essays, he discussed certain questions and published sources relating to the development of law in Transylvania.<sup>12</sup> His faculty was one of the famous centers of folk legal customs research at that time. His assistant, Ernő Tárkány-Szűcs, collected legal custom memories with students in Kalotaszeg. Together, they published a few results of their work as well. (The first independent work of Tárkány-Szűcs is “*The folk legal custom of Mártély*”, Budapest, 1943.) Amongst the faculties of legal study of this time, the work of Győző Bruckner, (Professor of law in Miskolc) is worth mentioning. Bruckner concentrated especially on the landownership in Késmárk of the family Thököly, the history of the city of Igló and the trade guilds of Késmárk.

Apart from those works published by professors and researchers at the University level, we also find works concerning legal history written by certain representatives of each area of law as well. While most of these are summaries of legal history which were written not in independent monographs, but in the introduction of monographs on a certain area of law or legal institution, we can find valuable establishments of legal history especially in essays of experts in civil or public law. Examples of these are “*Hunting Rights*” by Bálint Kolozsvári or István Csekey’s work on the history on the right of succession to the throne. Works on legal history include the essays of Károly Baranyai on the old legal customs of Borsod and Sajószentpéter counties; although they are considered to be merely compilations of facts rather than academic work due to the methods of their processing. Among this circle the works of Andor Csizmadia are worthy of mention.<sup>13</sup>

### Changes after 1945

After 1945 the most important centers of research and education for Hungarian legal history were still professorships. The Marxist transformation of the curriculum was begun by Elek Bolgár returning from the University of Rostov, Soviet Union. Márton Sarlós was his follower who endeavored to meet the exigencies of the time while authoring the new text book of the universal legal history of Hungary (the co-author of the first text book of universal legal history was György Bónis in addition to Márton Sarlós). The new curriculum of Hungarian legal history was completed in 1957 following the cooperation and participation of Andor Csizmadia, Pál Maday, Vilmos Sági and György Székely.<sup>14</sup>

In spite of the ideological expectation of the era the education and research of legal history did not sustain serious injuries even after World War II. The stressing of the concept of histori-

cal materialism made legal-historical research almost as distant from politics as possible and thus, constitutional history, being a branch of legal history, even further removed from politics. It cannot be denied that in post-war situation compromises were necessary for maintaining the pre-war status quo in legal history and research. The most important theoretical concession was fulfilling the thematic requirements, specifically with regards to the integration of the idea of class struggle. This attitude was first seen in constitutional history. The division of science led to the legitimizing of certain standards (for example strong critics of the interwar phase, adapting the historical attitude based on class oppression and class struggle) until the end of the fifties and also led to an attempt by historians to circumvent this by “escaping” to researching legal history which dealt with the remote feudal era.<sup>15</sup>

Even without the thorough revelation of the history of science of the era it is understood that legal history was not threatened even in the most tenuous period of the fifties. These disciplines existed even in the Soviet Union serving as a model, for what happened in our country during this time, with regards to their adaptation and integration into the new system. The political demands were fulfilled mostly formally. The introduction of the above mentioned textbook ‘*The universal legal history of Hungary*’ written by György Bónis and Márton Sarlós and the general sections analyzing the (legal) history of certain states contain ideological and political undertones, however the chapters of substance are professional. Even the camp of legal-historical researchers had become divided. Certain (mostly official) researchers of the science of legal history began with research which was politically convertible into reality. At that time the state-supported research begun by analyzing ‘progressive features of the past’ and on the legal history of the years leading to the Hungarian Soviet Republic, labor movements, national movements and the dictatorship of the proletariat. Others started or proceeded further with research on fields being further from official expectations. It was at this time that the large source editions of the era, essays and monographs on medieval law, legal intellectual class and jurisdictional practice were written. The ones who were not involved in politics, the ones who grew up belonging to the earlier Illés and Eckhart school’s, the ones held off of professorship and archive historians stepped out from the shadows and began to study positivist-minded legal history. It was in this circle that men such as Alajos Degré, György Bónis, Győző Ember, József Gerics, and even Ferenc Eckhart himself for a while became well-known. The ideological method on the works of Elek Bolgár, Andor Csizmadia, Kálmán Kovács, Pál Maday, and Márton Sarlós.<sup>16</sup>

The thematic of legal history also changed because of the expectations for historical and legal sciences and the lack of

<sup>12</sup> György Bónis: Hungarian law-Székely law Kolozsvár, 1942; Memories of procedural law in Transylvania. Kolozsvár, 1942.

<sup>13</sup> Andor Csizmadia: Law of Hungarian cities. Ambitions for reforming in municipal administrative law. Kolozsvár (Cluj-Napoca), (1940); Municipal law of Győr in the Árpád era (1940); Administration of Győr before receiving the status of free royal city (1939); Struggle of Győr for the status of free royal city (1943); Enactment of Győr in the parliamentary sessions of 1751 (1940); Corporals in the old Kolozsvár (Cluj-Napoca) (1942).

<sup>14</sup> György Bónis: Fünfundzwanzig Jahre ungarische Rechtsgeschichtsschreibung (1945–1969). *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Germ. Abt.). 1970. Bd. 87. S. 559–569.

<sup>15</sup> Kovács Kálmán: A magyar jogtörténeti kutatások útja és jelenlegi feladatai [The path and current functions of researches on Hungarian legal history]. *Gazdaság- és Jogtudomány*. III. k. Budapest, 1969. 55–76. p.

<sup>16</sup> Both Ödön: Tudományos kutatási irányok a magyar jogtörténet terén [Directions of scientific research in the field of Hungarian legal history] (1945–1969). *Acta Jur. et Pol.* Szeged, 1994.

Medieval Latin knowledge. On one hand, research concerning the era after 1848 was emphasized in favor of the feudal period. On the other hand the special fields of law provided the science of legal history with a significant part of their historical material. In spite of the ideological pressure, scientific monographs of great value and quality were written too. Examples of this are the monographs of *Lajos Hajdu* on criminal institutes of the enlightenment, the freedom of the press, the governmental policy concerning nationalities in 1848, as well as the book of *Andor Csizmadia* about the first representative voting rights in 1848/1849, his essays on the institution of commissaries, and the volume of the University of Budapest on the state and law of the Horthy-era. Many dissertations were written in criminal law. Dissertations were written by *Ödön Both* on questions of the criminal process law of Hungary in the reform era, and by *Béla Sarlós* on criminal law during the revolution of 1848/1849, and by *Lajos Hajdu* on the history of the codification of criminal law. In this era *Ferenc Eckhart* published his monograph on the criminal law of manor courts in the 16<sup>th</sup>–17<sup>th</sup> centuries. On one hand, significant work such as the textbook on the history of the Hungarian court system and process law written by *György Bónis* and *Alajos Degré*, edited by *Endre Varga* was published. On the other hand, *György Bónis* also wrote a monograph of significant value on the court praxis of Buda and Pest.

In this era the field of civil law was not too common among the dissertations serving the basis of scientific assessment. In civil law, there were the works of *Alajos Degré* on the development of feudal custody law, *Vilmos Sápi* wrote about feudal legal relations of agricultural workers, *Pál Horváth* on legal-historical aspects of the medieval village community of land, and *László Révész* on the history of legal relations between smallholder (master) and servant in the 18<sup>th</sup>–19<sup>th</sup> centuries. The essay of *Márton Sarlós* on the free estate shows us the expectations of the era. *Endre Varga's* (1780–1848/49) dissertation illuminates the history of process law concerning the King's court.<sup>17</sup>

The research of legal history still uses the source publications written and published in the 1960's. The largest attempt to collect the sources relevant to Legal-History was the introduction of the manor court material. The result of this was the extensive assembly edited by *Endre Varga* with the title of "Manor court. Process texts in the 16<sup>th</sup>–17<sup>th</sup> century." This work was usefully complemented by the source publication of Slovakian historians concerning Urbariums in the 16<sup>th</sup>–17<sup>th</sup> century and the collection of Urbarium texts in the 16<sup>th</sup>–18<sup>th</sup> century in two volumes published by the Hungarian State Archive under the supervision of *Ferenc Maksay*. In addition to these, the vol-

ume edited by *János Beér* and *Andor Csizmadia* is also worthy of mention here. This volume contains documents dealing with thousand year old legislation complemented by the acts of the Rákóczi Parliaments (legislatures) as well as the different constitutional drafts of revolution eras, which have proven to be particularly useful.<sup>18</sup>

On the ideological level, legal historiography, legal philosophy and the denial of earlier theses concerning social development went hand in hand with the radical reinterpretation of the subject of legal history. As the demands by the political powers that were had to be fulfilled, the legal historians had to put their political differences aside and make a compromise. That way they could be able to continue further research and maintain the right to publication. *Ferenc Eckhart* turned towards the direction of the trend in state politics concerning oppressed social classes, the serfdom, and the later role of manor courts in oppressing the serfdom. *Alajos Degré* wrote about the civil law institution of serfdom, the 'orphan custodian.' *György Bónis* wrote about the public life and work of *József Hajnóczy* in the frame of "progressive feature." They, "the generation of senior legal historians strives for adapting and using the studies of historic materialism both in their own activities, education of scientific replacement and higher education."<sup>19</sup> In accordance with the official opinions however they did it with little success. Their epochal works were criticized because they "reflect(ed) the best traditions of civil researches, however we cannot find a connection to law with economy because of a lack of Marxist aspects, and that is why the legal institutions move in a vacuum most of the time."<sup>20</sup> Researchers and professors of the Marxist concept, the new generation of legal historians, defined the trends of legal history in the second half of the century (*Ödön Both*, *Búzás József*, *Andor Csizmadia*, *Lajos Hajdu*, *Kálmán Kovács*, *Pál Maday*, *Béla Sarlós*, *Márton Sarlós*, *Vilmos Sápi*). The deep source research still belonged to the "seniors", however the political tone was not dictated by them; the trends and opportunities of research in legal history science therefore did not depend on them.<sup>21</sup>

In comparison with the earlier situation, the number of legal historians had expanded by the 1970's. That had multiple reasons. On the one hand, the simple interpretation of historical materialism made it necessary for the ones dealing with positive law and legal sciences to add historical parts and chapters to their scientific works, explanations and interpretations. On the other hand, as the political instructions emphasized the necessity of examining the development of law in the 19<sup>th</sup>–20<sup>th</sup> century in legal history, the scientific research concerning the Middle Ages and early modern times became more devolved

<sup>17</sup> Csizmadia Andor: A magyar állam- és jogtörténet-tudomány [The science of Hungarian constitutional and legal history]. In: *Magyar állam- és jogtörténet*. 5. kiadás. Tankönyvkiadó. Budapest, 1991. 46–47. p.

<sup>18</sup> See: Mezey Barna: „Öszve-szövetkeztetett Szövetségünknek kötele.” A jogalkotás alkotmányos keretei a Rákóczi-szabadságharcban. [The constitutional frames of legislation in the Rákóczi war of independence] Budapest, 2009.

<sup>19</sup> Nagyné Szegvári Katalin: A jogtörténet-tudomány kutatási eredményei és perspektívái a felszabadulás után (Helyzetelemzés) [The results and perspectives of researches on legal history after the liberation (Situation report)]. *Jogtörténeti Értekezések*. Az ELTE Magyar Jogtörténeti Tanszékének Kiadványai. (Szerk.: Kovács Kálmán) Budapest, 1975. 27. p.

<sup>20</sup> Csizmadia Andor: A nemzetközi összefogás hatása a jogtörténeti tananyag fejlődésére [The effect of international cooperation on the educational material of legal history]. *Felsőoktatási Szemle*. 1976.

<sup>21</sup> Mezey Barna: Jogtörténetírás és a jogtörténet oktatása [Education of legal historiography and legal history]. In: *Magyar jogtörténet*. (Szerk.: Mezey Barna) Osiris 1996.

amongst historians. This meant that the brunt of work played a much more important role in constitutional and legal historiography than it had earlier (*Barta István, Bácskai Vera, Benda Kálmán, Bertényi Iván, Borossy András, Elekes Lajos, Ember Győző, Fügedi Erik, Gerics József, Kállay István, Kubinyi András, Mályusz Elemér, Nagy István, Sinkovics István, Szabad György, Trócsányi Zsolt, Varga Endre, Varga Zoltán*). Meanwhile the university system changed, the concept of “one university chair-one professor” ended, and the system of departments based around more professors was developed instead. As the professional scientists of legal history were all the colleagues of the departments of law schools with no exception, by connecting the facts mentioned above we can see the development and emergence of a wide circle of professor-researchers. In accordance with the analysis of *Nagyné Szegvári Katalin* in 1975 the number of people employed in the profession of legal history was 23, out of this there were only 6 who did not work in university departments. The new generation, who had come from within the departments of law included (besides the heads of departments mentioned above) significant professors and researchers such as *István B. Kállay, Pál Horváth, Gábor Máthé, István Nagy, Nagyné Szegvári Katalin, József Ruzsoly, Ferenc Sik, János Szita, Gyula Várgyai*.<sup>22</sup>

### **The Present Situation of Legal Historical Research**

Continuity is a characteristic of the present state of Legal Historiography in Hungary. With regards to the selection of research topics in the field, the political transformation of 1989 did not bring any significant changes. The scientists of courses in positive law have striven more and more to modify the research deadlines and declare the “socialist” era historical. Thanks to this, research in the field of contemporary history increased. The choice of subject was still seriously influenced by the demands of legal-historical education. Among the publications there are many more textbooks, study-aids and lecture notes than earlier. Researchers are, without almost any exception connected to departments, which are uncoordinated most of the time. In the past few years the inclination to reveal archived files as well as archive sources has decreased. This is a natural consequence of the implementation of a system of scientific promotion that expects young teachers to gain an academic degree within five years.

Over the past ten years, a trend of reaching back to the standing values of legal historical science has been undertaken. This endeavor is also reflected due to the amount of respect given to

the great “elders”. Lately a certain cult – meant in a positive way – has developed around *Eckhart, Bónis, and Degré*. The new phenomenon has seen the Scholars of Roman Law’s attachment of traditional legal historical subjects generating debates concerning method and content (*Gábor Hamza, János Zlinszky, Béla Szabó*). In the past ten years there have been more essays on church law and less demands for research in the periods which broke the organic progress (*Károlyi era, Hungarian Soviet Republic*).<sup>23</sup>

By describing research of universal legal history in accordance with eras, it is possible to establish that the antique period remains an unknown area. No one has undertaken research professionally on the archaic society and state system. There are also no Hungarian followers of legal anthropology which has, as of late been becoming fashionable in Germany. Research on the state and legal systems of the Ancient East have remained the privilege of the faculties of the humanities for 25 years, while legal historians have achieved nothing more than one edition of chrestomathy which may be in need of yet another actualization. This does not mean though that there have not been attempts to elaborate on certain questions of the ancient period. These attempts are mostly in connection with scholars of Roman law.<sup>24</sup> *András Földi*,<sup>25</sup> *Gábor Hamza*,<sup>26</sup> and *Éva Jakab*<sup>27</sup> have all done research on questions related to the antique period, mainly Ancient Greek and early Roman legal history.

Research on the Middle Ages is one of the abandoned fields in Hungary. There are only a few, who choose this era as a research subject. This lack is somehow less noticeable, as the examination of the development and history of *ius commune* by scholars of Roman law goes hand in hand with the evaluation of contemporary legal institutions as well. Here also has research on church law history been renewed (which is welcome) and related to the name of *Elemér Balogh*.

There is more constitutional-historical research concerning the modern times from the universal perspective than in earlier periods. Here we can mention the scientific works concerning the issue of development mentioned above, the criminal legal system written by *Barna Mezey* and works which have thematic of the 19<sup>th</sup> century but still touch at least upon at least the basic tendencies of late modern time. In this aspect we can emphasize the work of *István Szabó*,<sup>28</sup> and *Lajos Rácz*. Also the revealing work of codification history by *Mária Homoki Nagy* and *Judit Balogh* should be mentioned here.<sup>29</sup>

In the field of legal history the most popular research subject remains the 19<sup>th</sup> century. This is true also for the topic of uni-

<sup>22</sup> Kovács Kálmán: A magyar jogtörténeti kutatások néhány új jellemző vonása és további feladatai [Few new characteristics and further functions of the researches on Hungarian legal history]. In: *Az állam- és jogtudományok fejlődése*. Budapest, 1975.

<sup>23</sup> Révész T. Mihály: A jogtörténet jelene és jövője [The present and future of legal history]. *Jogtörténeti Szemle*. 1990. 3. sz. 97–102. p.

<sup>24</sup> Andreas Földi-Katalin Nagy-Szegvári: Römischrechtliche und rechtshistorische Forschungen in Ungarn in den letzten Jahrzehnten. *Czasopismo Prawno-Historyczne*. Tom. LVI. 2004. Zeszt 1.

<sup>25</sup> András Földi: Historic and dogmatic problems of the triad of proprietary rights. *Scritti in onore di Generoso Melillo*. I. Napoli, 353–402. p.

<sup>26</sup> Gábor Hamza: Entstehung und Entwicklung der modernen Privatrechtsordnungen und die römischrechtliche Tradition. Budapest, 2009.

<sup>27</sup> Éva Jakab: Risikomanagement beim Weinkauf. Periculum und Praxis im Imperium Romanum. *Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* 99. Heft. C.H. Beck Verlag. München, 2009.

<sup>28</sup> Szabó István: Ausztria államszervezete [State-System of Austria] 1918–1955. Budapest, 2010.

<sup>29</sup> Judit Balogh: Österreichisches Recht in Ungarn und in Siebenbürgen-Westeuropäische Einflüsse auf das ungarische Zivilrecht im 19. Jahrhundert. In: Martin F. Polascek/Anita Ziegelhofer (Hrsg.) *Recht ohne Grenzen- Grenzen des Rechts*. Peter Lang. Frankfurt am Main-Berlin-Bern-New York-Paris-Wien, 1998.



versal legal history. Researchers were first of all interested in the German speaking area; the “elder” generation did researches almost only on this topic. The younger generation of scientists turned to certain questions of Anglo-Saxon law, researching particularly the English-American freedom rights (*Tamás Antal*,<sup>30</sup> *György Képes*,<sup>31</sup> *László Komáromi*,<sup>32</sup> *Norbert Varga*<sup>33</sup>).

It seems to be a new tendency that the bulk of legal history research does not end with 1945. In the past ten years the outlook of universal legal history has increased. This outlook describes the most important legal development processes until the history of the present time. In this area, there are many works following the history of certain branches of law until our time. Concerning the numbers of each publication, there are getting to be more and more summaries of more and more eras. Most of them are written by researchers, and a part of the works appears to be education material.

Research with Hungarian themes concerning the Middle Ages has increased a little bit. This is the result of famous research of the Middle Ages by researchers such as *József Gerics* and *László Blazovich*. This tendency is strengthened by the activity of young researchers with excellent knowledge of Latin such as *Gábor Béli*, *Elemér Balogh*,<sup>34</sup> *Mária Homoki Nagy*.<sup>35</sup> The amount of research being conducted on legal history concerning the modern era has been on the rise. From this aspect the essays of *Lajos Rácz* on Erdély and criminal law works of the research institute in Pécs led by *István Kajtár* are worth mentioning.<sup>36</sup>

The most significant works were the ones with the goal of revealing the 19<sup>th</sup> century. In this aspect the biggest accomplishment was achieved by *József Ruzsoly*, whose method with respect to sources based on archival research should be taken as a guide. Besides this, the young seem to be actively interested in questions of legal history of the Hungarian reform era and civil era. Researching the first half of the 20<sup>th</sup> century is still popular, and lately the revolution of 1956 and the questions of

events after it have showed up as an independent research area. In this field, *Frigyes Kahler* and *Tibor Zimmer* have been actively researching.<sup>37</sup>

Concerning the characteristics of legal-historical research, the majority of works of scholarly character are written in the area of Hungarian constitutional legal history. There are only three legal historian colleagues amongst us, whose works contain questions of universal political science and emphasize other aspects of legal history (*Pál Horváth*, *István B. Kállay*, *Katalin Nagyné Szegvári*, *Béla Szabó*). In comparison to publications of purely universal legal history there are more works of mixed subject areas which examine the European aspects of Hungarian research material. (publications of *Mihály Révész T.*, *Attila Horváth*, *Ildikó Basa*, *Kinga Beliznai*, *Mrs. Csaba Herger*, *Krisztina Delacasse*, *Károly Kisteleki*, *Gábor Schweitzer*, *Levente Völgyesi*). As mentioned above, the majority of scientific works are written in the field of constitutional history, particularly on the subject of administrative law history. The number of works concerning the history of jurisdiction and the structure of jurisdiction are also equally popular.<sup>38</sup>

In the last 25 years there has been a tendency to increase the amount of research in legal history in terms of sheer numbers. From this point of view, the works of the younger generation of researchers are of particular interest. Unambiguously, research in local history has been driven into the background. It is fair to say that this is happening because this area of research does not carry the same prestige as other areas do, but also because it is only related to archival research. In terms of both universal and Hungarian law history, the numbers of works on the history of higher education and law education has increased. This scientific research extends to the examination of contents of students at universities of the Middle Ages (*Béla Szabó*, *Tamás Notári*) and the educational history of the legal academies and universities (*Barna Mezey*, *Pál Horváth*, *József Ruzsoly*, *István Stipta*) too.<sup>39</sup>

<sup>30</sup> Tamás Antal: The Codification of the Jury procedure in Hungary. *The Journal of Legal History*. Print/1744-0564 online. 30:3.

<sup>31</sup> Képes György: Dánia alkotmánytörténete a 13. századtól napjainkig. [The constitutional history of Denmark from 13th century until the present day] *Jogtörténeti értekezések 37*. Gondolat Kiadó. Budapest, 2009.

<sup>32</sup> Komáromi, Laszlo: Popular Rights in Hungary. A Brief Overview of Ideas, Institutions and Practice from the Late 18th Century until Our Days. In: *C2D Working Paper Series 35/2010*. C2D-Centre for Research on Direct Democracy. Zürich. <http://www.c2d.ch>.

<sup>33</sup> Norbert Varga: The Pretences of Loss of Hungarian Citizenship in the 19th Century. *Forum Historiae Iuris* (<http://www.forhistiur.de/zitat/1008varga.htm>), 2010. 1–18. p.; Horváth Pál: Bevezetés az összehasonlító jogtörténet alapelemeibe [Introduction in the main elements of comparative legal history]. Budapest, 1979.

<sup>34</sup> Elemér Balogh: Die ungarische Strafrechtsgesetzgebung im 19. Jahrhundert. *Rechtsgeschichte und Rechtsgeschehen*. (Hrsg.) Thomas Vormbaum. Band 12. LIT Verlag. Wien, Zürich, 2010.

<sup>35</sup> Mária Homoki-Nagy: Anmerkungen zur Entwicklung des ungarischen Privatrechts im 19. Jahrhundert. In: Eva Jakab, Wolfgang Ernst (Hrsg.): „Kauf nach Römischen Recht.“ Antikes Erbe in den europäischen Kaufrechtsordnung. Springer-Verlag. Berlin-Heidelberg, 2008. S. 105–121.

<sup>36</sup> István Kajtár: Strafrechtsrezeption in Ungarn in dem 19. Jahrhundert. In: *Strafrechtsgeschichte an der Grenze des nächsten Jahrhunderts* (Hrsg. Barna Mezey). Bibliotheca Iuridica. *Acta Congressuum* Gondolat Budapest, 2003.; Katalin Gönczi: Die europäischen Fundamente der ungarischen Rechtskultur. *Rechtskulturen des modernen Osteuropa. Tradition und Transfers 4. Studien zur europäischen Rechtsgeschichte*, Veröffentlichungen des Max-Planck-Instituts für europäische Rechtsgeschichte Frankfurt am Main. Band 227. Vittorio Klostermann. Frankfurt am Main, 2008.

<sup>37</sup> István Stipta: Die ungarische Rechtsgeschichte in den letzten zwanzig Jahren (Tendenzen, und die wichtigsten Werke). In: Gábor Máthé-Barna Mezey (Hrsg.) *Das Wesen der Rechtsgeschichte*. Werner Ogris zum 75. Geburtstag. Gondolat Verlag. Budapest, 2010. S. 99–130.

<sup>38</sup> Heka László: A délszláv államok alkotmánytörténete [The constitutional history of South Slavonic countries] Szeged, 2002.; István Stipta: Dejiny súdnej moci v Uhorsku do roku 1918. *Spoločna edícia Katedry štátu a práva Univerzity Pavla Jozefa Šafarika a Katedry právnych dejín Univerzity v Miskolci 1*. Ladislav Szeles-Nica. Košice, 2004. 270 p.

<sup>39</sup> József Ruzsoly: Beiträge zur neueren Verfassungsgeschichte (Ungarn und Europa). *Ungarische Rechtshistoriker*. (Hrsg. Barna Mezey) Gondolat Kiadó. Budapest, 2009.; Stipta István: *Jogtörténet-tudomány* [Science of legal history]. In: *Bevezetés a társadalomtörténetbe*. Hagományok, irányzatok, módszerek [Introduction in social history. Traditions, tendencies methods]. (Szerk.: Bódy Zsombor-Ö. Kovács József) Osiris Kiadó. Budapest, 2003. p. 622–637.