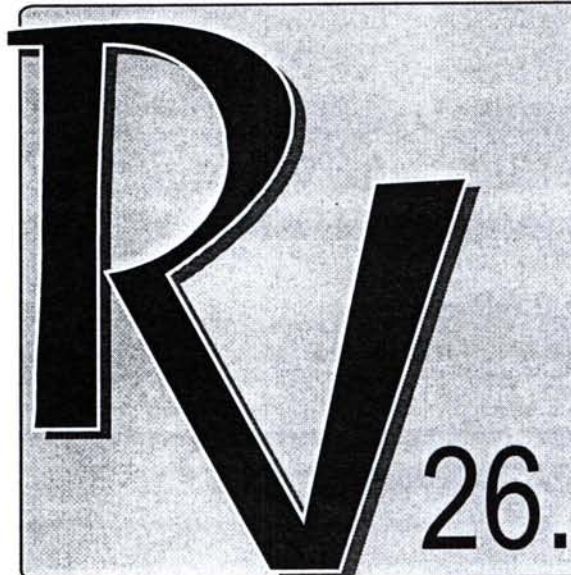


Rechtsgeschichtliche Vorträge/  
Lectures in Legal History

On legal culture

ANDRÁS KARÁCSONY

Budapest  
2004



Rechtsgeschichtliche Vorträge/  
Lectures on Legal History

On legal culture

ANDRÁS KARÁCSONY

Budapest  
2004

---

## Rechtsgeschichtliche Vorträge/ Lectures on Legal History

---

Publication  
Legal History Research Group of the  
Hungarian Academy of Sciences  
at the Department of Hungarian Legal History  
Eötvös Loránd University



Edited by:  
Prof. Dr. Barna Mezey

© András Karácsony, 2004

Technical editor:  
Ágnes Horváth

ISSN 1218-4942

## On legal culture

András Karácsony  
Eötvös Loránd University Budapest

In the frame of my lecture I intend to examine a problematic issue, namely, legal culture. My basic question is: How the legal culture of the European societies contributed to the survival of legal traditions in the changing world of law. My examples are drawn from the history of Hungarian politics and law. Thus I would like to demonstrate that despite the fact that in certain periods of the historical development Hungary was far from the mainstream European political thought, its legal culture has always been European, consequently we managed to find our way back to the European traditions. An important reason for the necessity of research concerning legal culture is the challenge of legal harmonization, which for many years has been the most important task in Hungary. The success of this attempt is not merely a legislative question, but another question can be raised; are there links between the Hungarian legal culture and European traditions? In culture, especially in legal culture, hundred- in some cases thousand-year experience manifests. This experience is not a well-planned process, it comes into existence as a consequence of different contradictory wills. Legal culture generally contains emotional as well as rational elements. When we talk about law as a cultural phenomenon, that is to say: legal culture, in that case we do not mean current legal norms. Definitions of legal culture and law itself can easily be separated. Law refers to the hierarchy of legal norms; in this territory we can observe decisions with the goal of putting an end to conflicts. Contrary to this, legal culture is not a hierarchic system: emotional, behavioral aspects, value systems constitute its essence. Legal culture is a wider category compared to law, which contains also the environment of current legal norms. Before we examine a legal culture we should consider the following factors:

Legal cultures are historical entities. From methodological point of view, the change of legal institutions can be analyzed partly by the historic approach, partly by the methods of comparative law. The former method is suitable to point out the linkages between national law and other legal cultures. In this respect we face flexible legal culture if there is at least one example for reception. I have to note that a reception can not only be a consequence of an independent decision; sometimes invading forces initiate new legal regulation as it was the case in Hungary during the eighteenth and nineteenth centuries under the Habsburg rule. Those legal systems in the case of which there are no examples or there are merely rare occasions for reception can be labelled as non-flexible legal systems. A legal culture demonstrates

reception can be labelled as non-flexible legal systems. A legal culture demonstrates the attitude of people towards law. In a society citizens' attitudes to legal norms are called the non-professional component of legal culture. This element varies from country to country. In the ancient Rome, law primarily served as a mean of dispute settlement, consequently professional lawyers were authorized to practice it. In the ancient Athens, however, the role of law was not so important, decisions were made not by professionals. Once law appears in the pantheon of the widely accepted principles within a society, its general acceptance and respect is more obvious.

Faith in law often overloads law itself, thus it can indicate that the role of further norms (for instance moral norms) is not adequate. The overloading nature of Hungarian law exemplifies this phenomenon; high level litigation supports the theory that law has traditionally enjoyed priority and wide respect concerning conflict resolution in our country. A further dimension of our legal culture is the attitude of law professionals towards law itself. When we discuss this issue we do nothing but analyze specialists' (professionalists') legal culture. Attitudes of everyday citizens and professionals should not diverge seriously – despite the fact that their knowledge regarding law significantly differ – otherwise disorder is more likely to emerge in functioning of law. One of the basic indicators of law is the relationship between its acceptance and the acceptance of those general principles and values which stand behind the legal system. If not only legal norms are advocated by the majority of the society but also the aforementioned principles, we talk about an orientative legal culture. Whereas, when merely legal norms are accepted, regulative legal culture can be observed. Where law bears an orientative function, law and moral, religious, political elements are interrelated entities. In regulative legal cultures the emphasis is on the explicit legal norms.

The precondition for this later type of legal culture is rational legal regulation, professional institutional legislative background. European as well as Hungarian legal culture belongs to this type. The history of Europe shows us that the contradictions between respect of legal traditions and the changing dynamics has merely been partial. An explanatory reason for this phenomenon can be the multi-level nature of the European legal tradition, where changes have never been too radical, and resulted in moderate, partial change.

^ This multi-level structure consists of the following elements:

- In the first place we have to mention the traditions of the ancient Greek philosophy. In Greek political-philosophical thought the demand for systematic scientific analysis appeared in an early stage, and remained an important element. Besides, methodology played also a key role (we can think about the philosophy of Plato or Aristoteles for example). As greek tradition influenced on philosophy,

European disciplines also affected on legal philosophy and special law disciplines that emerged in the eighteenth-nineteenth centuries.

- Secondly, the jewish-christian religious tradition has had a twofold importance, regarding law. Partly, by the fact that it created a general theoretic sphere, which is important for law; partly, by the canon-law which appeared and had a significant effect on European law in the Middle Ages.

- Thirdly, traditions of Roman law. Although national legal systems as well as concrete legal framework had not been influenced equally by Roman law, (we can observe an ongoing debate concerning the effects of Roman law on British common law) in certain respect the aforementioned traditions are generally acknowledged. Formal legal thought, legal and non-legal elements, professional role-casting demonstrate the presence and importance of Roman law.

- Since the late Middle Ages legal thought has been characterised by the approach that law is a coherent entity, the meliorist attitude towards law, and the idea that law can be developed and emancipated from politics. Moreover, another important feature of the heritage of the Middle Age is the divergence between the idealistic approach and reality, that contributed to the continuous correction of law. It is important to distinguish two categories: modernity and modernization. Modernity is linked to the West-European social-legal historical traditions. It means that changes have been spontaneous and these changes have originally been integrated into the existing legal framework. Contrary to this, modernization – which has been rather considered to be a feature of the historical development in Eastern-Central Europe including Hungary – basically meant a model-adherent strategy. Deliberate state intervention, quick, radical and comprehensive changes constituted its main characteristics. The last two centuries of the Hungarian history of law can be described by the aforementioned category; modernization. The success of this process, in the epicenter of which legal harmonization has been a stabile component, depended on its intention: it has been merely successful if there had been no tendency to demolish the existing structure and traditions, but it had tried to build upon national legal traditions. On examining model-adherent changes (modernization and harmonization of law) we have to keep in mind that a simple examination of a more developed structure can have an effect on a given legal framework. Certainly, this only happens when the legislature is open to consider and adopt certain new dimensions.

In this case sciences of law influence legislature generally through comparative law. Historical experience has proved that the success of the adoption is correlated with the state of external environment (politics, economy); changing circumstances have positive effects on legal adoption. Thus, different changing intentions generally support each other.

People tend not to look for new alternatives unless there are no adequate means to be used or legal problems are followed by other inadequate mechanisms in other spheres (for instance economic difficulties).

Finally, in the closing section of my lecture, I would like to outline how Hungarian legal culture affected on planned reforms in the second part of the XX. century. I must stress two breaking-points.

The first one is the period of 1945-48, when pre-socialist arrangements took place. The second is the change of regime, social-political transition in 1989-90.

From 1948 political actors decided to break with the existing legal framework and traditions. Under the socialist regime the importance of law – as a mean used by political actors – on the one hand increased, but on the other lost its previous prestige. During this period laws played a merely symbolic role, whereas other low-hierarchical legal norms determined everyday-life of citizens. The orientative dimension increased in the case of this legal culture.

Despite the fact that the introduction of socialist law in Hungary during the communist era was based on the Soviet model, this did not mean the disappearance of European (Roman-German) legal traditions. Hungary has managed to keep – to a certain extent – continuity, the traditions of Hungarian legal heritage, which helped the 1989-90 transition to be made easier, as political decision-makers turned to this legacy and re-established certain elements of the previously existing components. As a result of the above mentioned reason, political changes in 1989-90 were followed by legal changes which, thus, easily fulfilled the high expectations of the citizens. The new framework has been built upon an old traditional base, there was no need to create completely new legal institutions, as socialism kept a part of the Hungarian legal heritage.

Social prestige of law partly increased (in terms of the demand for constitutionalism), partly decreased in relation to the economic sector. Slow legal procedures, difficulties concerning the execution, sudden changes does not support the faith in the legal framework in Hungary. I hope that this closing part of my lecture has clearly demonstrated that the ability to survive of old legal traditions is considerable and this may either restrict or support deliberate legal changes.

*Edited text of the 3. Chinese-Hungarian Scientific Conference held in Xian 1st of November 2002.*

## Rechtsgeschichtliche Vorträge/ Lectures on Legal History

Publication List of the Eötvös Loránd University Budapest  
Hungarian Legal History Department

1. **Kurt Seelmann:** Hegels Versuche einer Legitimation der Strafe in seiner Rechtsphilosophie von 1820, Budapest 1994
2. **Wolfgang Sellert:** Der Beweis und die Strafzumessung im Inquisitionprozeß, Budapest 1994
3. **Wilhelm Brauner:** Grundrechtsentwicklung in Österreich, Budapest 1994
4. **Barna Mezey:** Kerker und Arrest (Anfänge der Freiheitsstrafe in Ungarn), Budapest 1995
5. **Reiner Schulze:** Die Europäische Rechts- und Verfassungsgeschichte – zu den gemeinsamen Grundlagen europäischer Rechtskultur, Budapest 1995
6. **Kurt Seelmann:** Feuerbachs Lehre vom "psychologischen Zwang" und ihre Entwicklung aus Vertragsmetaphern des 18. Jahrhunderts, Budapest 1996
7. **Kinga Beliznai:** Gefängniswesen in Ungarn und Siebenbürgen im 16-18. Jahrhundert (Angaben und Quellen zur Geschichte des ungarischen Gefängniswesens) Budapest 1997
8. **Michael Köhler:** Entwicklungslinien der deutschen Strafrechtsgeschichte, Budapest 1998
9. **Attila Horváth:** Die privatrechtliche und strafrechtliche Verantwortung in dem mittelalterlichen Ungarn, Budapest 1998
10. **Allan F. Tatham:** Parliamentary Reform 1832-1911 in England, Budapest 1999
11. **Arnd Koch:** Schwurgerichte oder Schöffengerichte? C.J.A. Mittermaier und die Laienbeteiligung im Strafverfahren, Budapest 2002
12. **Strafrechtliche Sanktionen und Strafvollzug in der deutschen Rechtsgeschichte Die Entwicklung des Strafsystems und der Straftheorie in Europa Deutsch-ungarisches strafrechtsgeschichtliches Seminar I.**
13. **Strafrechtliche Sanktionen und Strafvollzug in der ungarischen Rechtsgeschichte Die Entwicklung des Strafsystems und der Straftheorie in Europa Deutsch-ungarisches strafrechtsgeschichtliches Seminar II.**
14. **Markus Hirte:** Poenae et poenitentiae – Sanktionen im Recht der Kirche des Mittelalters, Budapest 2003
15. **Werner Ogris:** W. A. Mozarts Hausstandsgründung, Budapest 2003
16. **Hoo Nam Seelmann:** Recht und Kultur, Budapest 2003
17. **Arnd Koch:** Die Abschaffung der Todesstrafe in der DDR, Budapest 2003
18. **Kurt Seelmann:** Gactano Filangieri, Budapest 2003
19. **Elisabeth Koch:** Die historische Entwicklung der Kodifikation des Privatrechts, Budapest 2003
20. **András Karácsony:** Relationship between state disciplines, political- and legal sciences in legal education, Budapest 2004
21. **Barna Mezey:** The history of the harmonisation of law and the legal education in Hungary, Budapest 2004
22. **Gizella Föglein:** Conceptions and Ideas about National Minorities in Hungary 1945-1993, Budapest 2004
23. **József Ruszoly:** István Csekey und die ungarische Verfassung, Budapest 2004.
24. **Attila Horváth:** Rechtswissenschaft in den sowjetischen Staaten, Budapest 2004.

25. *Mária Homoki-Nagy*: Die Kodifikation des ungarischen Zivilrechts im 19. Jahrhundert, Budapest 2004.

**In preparation:**

Barna Mezey: Einführung in die ungarischen Aufklärung

Michael Anderheiden: „Selbstverschuldete Unmündigkeit“ Philosophische Erläuterungen zur Aufklärung

Angela Augustin: Strafbarkeit des Betrugs in England des 18. Jahrhunderts

Harald Maihold: Strafen am Leichnam

Attila Barna: Verwaltungsreformkonzeption des Josephinismus in Ungarn