

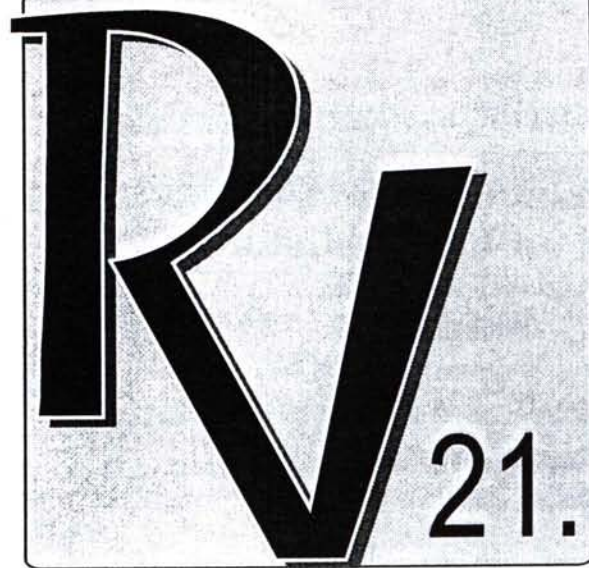


Rechtsgeschichtliche Vorträge/
Lectures in Legal History

The history of the harmonisation of law and
the legal education in Hungary

BARNA MEZEY

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The history of the harmonisation of law and the legal education in Hungary

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The history of the harmonisation of law in Hungary

1. The link which connected Asia with Europe geographically speaking provisionally ceased to exist by the collapse of the Western Roman Empire. The Byzantine Empire was only able to fulfil this function on a provisional basis: subsequently, Europe could only reach the East by remote trade routes throughout the centuries. However, during this period a new historical centre was built on the Western coast of the continent. By the symbiosis of the ancient Roman legacy and the German tribal culture a new feudal society developed which provided for a perspective for the peoples of Europe for milleniums. The centre of the development was what today is France and Germany, the Frank Empire, to which as suburbs were connected Great Britain on the west, the Scandinavian states on the north, the Slavic states and Hungary on the east, and the Balkan states, the divided Italy and the Iberian Peninsula on the south. Those societies which joined the centre dictating dynamic development slightly later in diverse pace though but did follow this historical path. Structural elements of society were built upon oneanother organically roughly throughout half a millenium following a multi-phase development pattern. The societies of Western Europe developed „without any pattern” to follow (having roots and preliminaries at best). They could only pursue their own way. Thus well-defined institutions of society were born without any extra effort in a proportionate way in all areas of society. Therefore there was no need for the use of so called substitutive instruments (e. g. politics, the law) in order to focus society in the right direction. The peripheral areas joining (amongst others, the Central European zone- states situated on the east side of the Elba, until the outer skirts of the Carpathians, and within it the Hungarian line of development), however, as they joined as a periphery to the „western model”, copied its values or adopted them.

The development of the centre emerged as a model and value with regard to this zone, not denying the defence of its particular values and interests. In the

relation of the centre and the periphery the demand of catching-up burst with an overwhelming force. The „pressure for catching-up” accounts for the mechanism of modernization to form society up to the present day. The renewal of the Hungarian state and politics, education and law, which strives for a successful illusion of closing up to the centre is due to this former phenomenon. The harmonisation of law and society is therefore a historical form of existence for Hungarian society, a perpetual historical activity. Amongst the states on the outskirts of Europe, Great Britain became a centre of development (in respect of Anglo-Saxon states) and Spain for some time (with regard to Latin America). The Scandinavian states and Italy joined the centre, even leaving it behind in development. The successful model provides for a new chance for further development for the eastern zone in the 21st century.

2. In Hungarian legal history – strange though it may sound – we can talk about harmonisation of law in the broadest sense from the foundation of the Hungarian State (turn of the 10th-11th century), and from the 13th century in connection with Western-Europe. It was of paramount importance for Hungarian politics to have decided to join the community of Christian states. However, the Hungarian State forming on the verge of two world powers follows a twofold orientation. For centuries both the western and eastern Christianity serves as a model in establishing the state and in law development. Both Rome/Quedlinburg and the Byzantine Empire lends legal institutions to the Hungarian structures of state power, as well as to law making. Dinastic relationships, diplomatic contacts, specific copies of provisions of law link Hungarian constitutional history to the Romano-Germanic Empire and the Byzantine Empire. Many laws of St Stephen I. proved to be literal copies of the laws of different western European states. Béla III. organises the official use of written records based on Byzantine experience. The establishment of the Hungarian Chancery manifested the presence of eastern models.

Finally deciding on the reliance on one or the other model was a deed of the 13th century. The first decline of the Byzantine Empire (1204), the new expansion of nomadic tribes in Euro-Asia and the Mongol invasion (1223-1243) split Europe, the Russian landmass being cut off from the rest of the continent, thus a wall was built roughly on the borders of Central Europe. Simultaneously, on the western part of Europe an expanding wave tried to even the economic and social crisis, which drew the Central European zone closer to the West. Hungary irrevocably joined to the Latin based West. From this time onward Hungary was uncontentionally a state on the periphery of Western Europe and further development, modernisation, the adoption of diverse western institutions (legal, social or economic) became key elements in a virtual Hungarian political dictionary.

If we are looking for the most important elements of modernisation in Hungarian history, our first station is obviously the setting up of a new christian state from a nomadic state. Prince Géza (972-997) and Prince St Stephen (997-1038), – the latter being our first Christian king – established a new state on the model of western kingdoms also to balance out the excellent Byzantine contacts of the tribes who settled in Eastern Hungary. Behind the state and economic reforms of the Anjous (1307-1386) in the 14th century there was the underlying model of one of the most developed western kingdoms: Naples. King Matthias (Hunyadi) (1458-1490) centralised the feudal diet of the nobles according to the renaissance thinking of the West in the 15th century. The Habsburgs did not only try to colonize and take advantage of Hungary, but reformed the state by introducing the most developed models of absolutism, thus modernising both state and law (let it be –though at different levels – under the rude and aggressive rule of Lipót (1657-1705) or the enlightened absolutism of Maria Theresa /1740-1780/ and Joseph II. (1780-1790). Affected by European liberalism the Hungarian Reform Period (1825-1848), and the revolutionary movements of 1848 ripened the Hungarian modell of the development of civil society. The Austrian dictatorship (1849-1867) reacted to the revolution by depriving Hungary of its statehood, but it also modernised its commercial and private law. The dualist state after the conciliation with the Habsburgs, the Austro-Hungarian Monarchy realised the Western European ideal of parliamentarism in the Carpathian Basin from 1867. The country followed a – however narrow – path leading to the development of civil society and the rule of law.

The basis of development of Hungary as being a member of the Christian states of Europe did not solely lie in copying legal principles and formulae of societal structures, but in the adoption of primary methods of socialisation. Joining to the western world did not bring about the mechanical imitation of western structures, though implementing proved fit formulae was an obvious solution for the political elite striving for a stable establishment. The success of further development and the quality of modernisation depended on how could the results of the development of western society be made organic in domestic soil, and how much could the Hungarian intellectuals be drawn into making use of western values and cooperating in their integration. The development of Hungarian law proves that the constitutional and legal mentality radiating from the centre of the continent was not merely accepted by Hungarian society, but it fertilised the life of the state in a number of areas in such a way that it also produced an independent and value-based development.

3. At the turn of the 20th and 21st century Hungary and other Central European countries were once again offered the opportunity to close successfully the process of further development. Globalisation expressly

strengthened the importance of historical centres in the world and enhanced the unification of Europe. The concept of Europe, which may be described in terms of cultural, religious, traditional, political and legal features, also denotes the territory which represents the legitimacy of continental construction of fifteen hundred years. This area corresponds to the realm encompassed by historical Catholic Christianity that implemented Roman Law and was heir to the Greek and ancient Roman development. The applicant countries of today are on that periphery which once was part of the area of influence of the community of European Christian states.

This also results in the fact that there are no substantial differences neither in the traditions nor in the legal and constitutional regulations and values between the centre of Europe and the peripheries. The harmonisation of law thus means a shift of emphasis on the one hand, and the reception of a particular regulation deriving from the essence of European community (structural and political) on the other. The harmonisation of law is in great part a series of technical solutions legally speaking. If any problems arise, they do not touch the structure, system and regulation of law itself, but the economic and social effect of the very strict and unifying European constructions. This, however, is beyond mere legal endeavour.

Legal education

Practical training, university education, and studies at the Academy of Law were the traditional forms of Hungarian and European legal education. Throughout the centuries acquiring the knowledge of the law was only possible in practice. Legal knowledge could be mostly obtained by working beside civil servants, at the Chancery, at various forums of jurisdiction, and in certain clerical positions. It was customary law which was rather characteristic of Hungarian law development than the scientific approach of the west, or the adoption of Roman Law. Being a lawyer in practice meant having a thorough understanding of domestic law and expertise in the application of this legal knowledge. Legal education corresponded to this practice. Although there were some doctors in law in the country who graduated at western universities (mainly clerics), those who primarily shaped Hungarian legal life were in fact trained practitioners. Solely advocates (and even for them only from the 18th century) had to pass an examination proper. Judges were not required to take examinations either (at the time the right of judgement was laid in the hands of the legislator). The Public Prosecutor's Office as such was only founded in the 19th century, and examination requirements can only be mentioned from this

time onward. The importance of practical education prevailed up to the present day. Beside advocates, courts and attorney's offices also required practical examinations to be taken, mostly in their special legal training as an ending mark at the close of university studies. Thus the idea of apprenticeship or pupillage developed, which became institutionalized in Hungarian law in 1891. At the beginning, during the professional practice period, which took two years until the development of civil society, the candidate learnt humbleness, diverse writing techniques, accomplished the tasks of a private secretary, and was taught the system of domestic law. The candidate also learnt about legal authors of outstanding eminence, examined sample documents and the style of court hearings. From the 19th century onward the apprentice did preparatory work at courts or attorney's offices and followed a legal course. The candidate who acquired legal knowledge and passed an examination, after completing the professional practice period and a special exam for judges were ready to be appointed judges or attorneys. The system of practical training which is in effect today is made on the same basis. Accordingly those candidates may sit for their specialised legal exam who previously had completed the professional practice period taking at least three years.

Preliminaries to university education reach back to Kings Anjou Lajos (I.) and Zsigmond in the 14th and 15th centuries who founded universities. Continuous education, however, was only started in the 17th century. At the Hungarian Royal University of Sciences legal education was taken up from 1667, which university had been founded in 1635 and originally had opened its doors at Nagyszombat, but then moved to Buda in 1777, and finally settled in Pest. The university in Kolozsvár was opened in 1872, and from this date on there were two Faculties of Law in the country. Due to the traditions of medieval universitas upon founding a university of sciences one of its faculties was always consecrated to legal studies. After a long period of struggle a decision was made to launch a third university (1911) located in Debrecen this time. A few years later the university in Pozsony (1914) was opened, which after having functioned in Budapest for a short while, was transferred to Pécs in 1921 on a provisional basis. The university founded in Kolozsvár first having moved to Budapest, then eventually settled in Szeged opened its doors during the era between the two world wars (1921). The Faculty of Law in Debrecen was suspended in 1949 by reference to the fact that there is no need for that amount of graduates having law degrees. Thus the Law Faculties of Budapest, Pécs and Szeged remained the centres of higher legal education for decades. Following a long and fiery debate in political and professional circles at the end of the 70s the government instead of reviving the faculty in Debrecen decided to expand the University for Heavy Industry in Miskolc by launching a Faculty of

Law and State Science (1981). The Faculty in Miskolc developed with great dynamism, until in 1994 legal education was once again an alternative working jointly with the university in Debrecen as an affiliate of the University of Miskolc. The political changes in 1989 gave way to denominational legal education. Legal higher education was started at the Károli Gáspár Reformed University (the legal training courses located in Kecskemét, and working jointly with the József Attila University of Sciences of Szeged), and in 1995 at the Pázmány Péter Catholic University (Budapest). Looking back to preparatory work of a decade higher legal education was also started in Győr: in the common Law Institute of Széchenyi István College (having reminiscences of a former Law Academy) and the Faculty of Law of Eötvös Loránd University of Sciences. In September of 1996 The Kossuth Lajos University of Sciences launched its independent legal education within the frame of the Institute of Legal Studies and State Science. From the academic year 1997/98 Károli Gáspár Reformed University has begun its legal education in Budapest as well. In 2002 in respect of a government decision the Széchenyi István College acquired university status, thus for the academic year 2002/03 it could launch university courses in Law and Economics as an independent institution (having ceased the common legal courses with ELTE University). In Hungary in 2002 legal studies can be pursued in the Law Faculties of eight universities.

Law Academies were special institutions of legal higher education, which represented an intermid position between secondary and university education. Their development was due to religious controversy. Protestant students were not allowed to pursue studies at (Catholic) universities within the Catholic Habsburg Empire (of which the Hungarian Kingdom was a special territory). The Protestants thus were compelled to study at protestant universities abroad (in Germany, the Netherlands, Switzerland) absorbing Western-European theoretical and legal knowledge there, and bringing it home to Hungary (this phenomenon was labelled peregrination – visiting universities abroad – in the Hungarian history of education). Those coming home from foreign universities founded protestant academies to mediate what they had learned in Europe to those less fortunate Protestant students who could not afford studying abroad.

As Protestants were not allowed to organize higher education institutions, their attention was focused on developing secondary education. Protestant denominations tried to further develop their secondary schools and introduce theology, humanities and legal studies in the curriculum. Protestants were seldom appointed to high position in a Catholic state, so they preferred to establish a career in the legal profession. On the one hand, it offered professional prestige, and on the other their legal experience could be useful at the local (county) governments.

Legal education was launched in the 17th century in Calvinist and Lutheran schools – having high reputation by then – which were founded in great numbers from the 16th century onward. Nevertheless, the beginnings of legal education (teaching certain legal subjects) must be distinguished from the start of a permanent, independent and organized education of Law (encompassing all branches of law), and furthermore from the development of the independent Law Academies.

The legal framework regulating the operation of Law Academies would have been provided by the provisions of enlightened absolutism. However, this was strongly rejected by both protestant denominations (fearing the role played by the Catholic Church as the Established Church of Hungary). The specialised curriculum set out by the state was also rejected, whose focal concept was that Law Academies would train young people who later could work in the state administration.

Thus the Monarch decided to establish so called State Law Academies, besides which denominational Law Academies continued to work (in Nagyszombat, Győr, Kassa and Nagyvárad). Consequently an issue of educational policy arose, namely, what should the relation be between Law Academies and universities. According to one view the education at Law Academies is independent from university education, and offers a separate training course. Another view considers Law Academies as having a preparatory function prior to university education.

In the course of time this latter concept was predominant. Law Academy studies were supposed to last two years prior to university. The first section (studies at a Law Academy) entitled a graduate student to go into state administration, the second section (university studies) provided for the necessary training to become advocates or public notaries. In reference to the other concept Law Academies as being independent from university educational structure require three years of study and provide training courses for civil servants (preparing judges, experts in public administration). One could enter university after finishing Law Academy studies, and obtain a doctorate, but in this case it did not offer a time allowance. These two concepts competed with each other in state practice, followed one another, but eventually this latter one prevailed.

Law was still taught in seven higher education institutions in Hungary in 1945: at four university of sciences in Hungary. The changes in 1949 which transformed legal education following a soviet type socialist concept, drew up a new concept. With reference to the overproduction of lawyers the three Law Academies were abolished, and the Faculty of Law at Debrecen was suspended.

(This radical destruction, which meant a great reduction in the number of students only manifested the doctrine of Marx on the fading away of the importance of state and law, namely, that while establishing a socialist system there would be less and less need for lawyers and experts in state administration.) Lawyers are trained only at university level in Hungary at present.

Complying to Hungarian traditions, training in Law and State Science is a unified training up to the present day (there is no distinction between Legal Studies as such and studies in State Science). University education corresponds to its universal concept up to the present. In the undergraduate course the European educational traditions – and as such the Hungarian universities – do not follow the American type of education, which require a few years of study in Humanities before specializing on studies in Law. The five-year legal education comprises arts subjects as well synthesizing them in a form that is convenient for the law student. Thus the number of subjects listed in the curriculum is doubled. Beside the strictly speaking legal subjects (Public Law, Criminal law, Civil Law and Theories of Law) the student is required to pursue Philosophy, Sociology, Political Studies and Economics, and furthermore, subjects of a practical nature are also offered, like Rules of Protocol, Rhetorics, Psychology, Negotiating. As a consequence the law degree is one of the most convertible types of university degrees. This complex education enables graduates not only to go into the strictly speaking legal profession (judge, prosecutor, notary public, legal adviser), or into administration (government, positions in ministries, local governments), but lawyers can be found in almost all areas of society (from education to industry or trade, from management to journalism, etc.).

Just as in the case of the polemics between university and Law Academy education the issue of bifurcation is a recurring problem, i.e. separating or not the education of legal professionals (jurisdiction) and those later working in the administration or local governments. The problem is not easy to solve, because a more practical consideration of the issue from the point of view of training may affect the overwhelming prestige of the university degree in society.

The harmonisation of law is a serious issue which arises with reference to education. The implementation of European Law into the national legislation of Hungary as an applicant state may be twofold. (Both approaches are applied at the different faculties.) One way is to introduce a new, separate European Law training course following a relatively independent structure. The other is to teach European Law as already implemented into national law not as a separate subject.

Postgraduate training is accomplished through three parallel courses. There is a three-year PhD course ending with a final examination and submitting, then defending a dissertation as a requirement. There are two- or three-year professional further training courses which are highly specialised (training specialised lawyers). Both types of courses are offered by the Faculty, which was also a primary criterion for accreditation. If a Faculty ceases to teach one of these types of courses it may lose its right to teach legal studies. Finally, the third type of training course is the aforementioned practical training, which is a practical means of expert replacement in the areas of administration or jurisdiction. After obtaining the degree the candidate has to pass a specialised examination organised by the Ministry of Justice following a three-year professional practice period and some occasional courses.

One of the most difficult problems of European universities today – and this is true to Hungary as well – is transformation. Previously, the European universities were the basis of elite education. They intended to give a thorough grounding in the principles of law viewed from an academic rather than a vocational perspective. Subjects were taught by professors of high prestige carrying out important research. Recently (Hungary met this challenge first in the 90s), by a booming increase in the number of students universities are compelled to adopt a different kind of mindset. In line with the concept of university mass education and 'studying for a lifetime' the political aim is today to increase the number of degrees, and continuous specialised training. However, the university is still trying to find its place in this way of thinking about education (15 years ago 7-8 % were admitted to universities, today this is over 30 %, and the government intends to extend it to 50 %).

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