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NEW STUDIES IN HISTORY AND LAW

Edited by

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Introduction

David A. Frenkel
Norbert Varga

According to Salmond, philosophy of Law may be divided into three main branches: Dogmatic, Ethical, and Historical,¹ to which we add a fourth branch: Sociological.

The Dogmatic branch means analysing the pure principles of the law, with no reference to historical origin, development, validity or ethical significance.

The Ethical branch examines the ethical significance of the law which is concerned with the theory of justice and its relation to law.

The Historical branch deals with the general principles covering the origin of the law and its development.

The Sociological branch means that a good practice of law should encompass human nature and sociology of law.

One method of legal research is to interpret and analyse any law from itself, by reading it, compare the various versions of the amendments legislated, analyse the differences and changes, compare it to other contemporary laws, either in the same country or elsewhere.

Another method, which should be added to the first, is study and research into the reasons that caused the legislation and its amendments; to learn what and how political, cultural, economic, moral and social interests and trends influenced and affected the legislation, and, on the other side to learn how the laws influenced them. This is needed not only in order to understand and interpret the law correctly, as binding documents, but also to draw conclusions regarding the need for changing the existing legislation, planning future legislation taking in to consideration the possible effects of any legislation on the lifestyle, culture, financial, philosophical, moral and social behaviour of the people and the international relations of the country.²

Current life, trends and views cause change in laws, and laws cause changes in everyday life. Life and law are reflections of each other. Law is the mirror of life and life is the mirror of law. One cannot separate law and life. Each affects and influences the other. It is impossible to understand law and legal trends of any period, without learning and understanding the real life and trends during the period, not only in a definite geographical location but also the international trends and political pressures. Likewise it is impossible to understand and follow social and political trends, without being acquainted and understanding the law of that time.³

¹Salmond, J. (1947) 10th ed. by Glanville K. Williams. London: Sweet & Maxwell, §§ 1-4.

²Frenkel, D.A. (2015). 'Introduction' in D.A. Frenkel & N. Varga (eds.) *Law and History*. Athens, Greece: Atiner, at 5.

³Ibid.

History is the present of the past. The present of today will be the past and history of the future. We should not ignore nor forget any part of history. The present without past and history is like a rootless tree or a building with no foundations.

This book offers a collection of essays whose research is focusing on the interrelationship between history and law.

The essays are revised versions based on selected presentations at the International conferences organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece. They have been peer-reviewed and selected on the basis of the reviewers' comments and their contributions to the research discussion of the History and Law issues.

The following will briefly present the different contributions.

The book comments with **Vasileios Adamidis's** essay *Manifestations of Populism in Late 5th Century Athens*. In this essay the manifestations of this phenomenon in fifth century Athens are analysed, while pointing to some legal responses to counter it. Despite the rigorous and comprehensive study of Athenian democracy, no systematic application of the concept of populism to classical Athens has taken place. This essay aims to fill this gap. The author's conclusion is that modern political theory on populism can be legitimately applied to contexts other than Western liberal democracies, being particularly suitable for a closer analysis of ancient Athens, while, in return, Athenian legal and extra-legal responses to populism could provide valuable guidance on how to tame this phenomenon.

The second contribution is **Norbert Varga's** essay *The Jurisdiction in the Hungarian Cartel Law: Historical Background*. The practical validation of the Cartel Law in Hungary can be reconstructed based on judicial practice. The existing memorials, essentially, only contain the verdicts of the courts of the first and second instances, and there are only a small number of archive sources which describe the factum in its entirety. Due to this, only the information found in the verdicts' dispositional and justification portions can aid us in the examination of the rules of Procedural Law. All in all, it can be stated, by taking archival sources into account, that the preemptory majority of cartel cases were jurisdictional legal actions. The specialised nature of the procedural rules can be viewed as unique in the history of legal action in Hungary. Apart from the problems in the field of Substantive Law, we can observe the process of the lawsuits and the procedural acts, especially the act of verification. We can observe what data and information the courthouses used in order to reach their decisions.

Dénes Legeza in his essay *Development of the Hungarian 'Work Made for Hire' Provisions* raises many questions which concern the copyright qualification of the works created under employment, including what rights do the employer and the employee have, does the employed author of a work have any moral rights and is the employing company entitled to grant licence to third persons. After clarification of the differences between copyright and author's right systems, the author examines the development of the regulation of this legal field from the Prussian origins, introduces the achievements of judicial practice and

jurisprudence, the ambitions for codification in the sixties, towards to the regulation in force in Hungary.

The next essay in the book is **Máté Pétervári's** *The Establishment of the Districts in Hungary after the Austro-Hungarian Compromise*. After the Austro-Hungarian Compromise of 1867, Hungary regained independence and consequently bourgeois reform of the state started on the basis of the April Acts of 1848. The legislator wanted to create an administrative system which would be able to carry out the acts and decrees on the local levels. The need for modernising the administrative system resulted in reshaping of feudal territorial division, thus redrawing of the districts territories was also put on the agenda during the implementation of the Act. The essay is based on the examination of the archive material of the Hungarian Royal Ministry of the Interior which implied the drafts of the Hungarian counties about the public administration organization and the controlling of the Hungarian Royal Ministry of the Interior. The attribute of the new Hungarian district system on the basis of the Act 42 of 1870 is presented in this essay.

Kristóf Szivós is the author of the fifth essay *The Eventualmaxime in the Hungarian Civil Procedure – A Historical Perspective*. The Hungarian Parliament adopted a new Code of Civil Procedure on 22 November 2016. During the codification proceedings, the gravity of the Hungarian traditions and the achievements of European legal development were emphasised. One of the most notable features of the new Code is the application of the structure of 'divided litigation', which means that the proceedings before the courts of first instance are divided into two parts: the preparatory stage and the main hearing stage. One of the main principles of the preparation is the *Eventualmaxime*, which had not been applied as a main rule since 1911. The essay introduces the historical basics of this legal institution. It examines the theoretical features including analysing the definition and highlights the reasons behind the necessity of the *Eventualmaxime*. The second part, the main hearing stage, will introduce the presence of this principle in the Code of 1868, where it became the main directive principle in the ordinary procedure before the regional courts.

The sixth contribution is **Ivan Kosnica's** *Social Rights in the First Yugoslavia (1918-1941): Tradition, Model and Deviations*. Following T.H. Marshall's conception on gradual development of citizenship rights and an argument about 20th century as a century of social citizenship, the essay highlights development of social rights in the First Yugoslavia. The essay describes the various traditions of social rights on the Yugoslav territories before 1918 and then elaborates thesis about normative model of social rights established in the rules of the first Constitution of 1921 and in laws that implemented constitutional principles. In addition, it points out some deviations from that model, mainly lack of significant rules about social rights in the second Constitution of 1931, non-adequate implementation of regulations on social rights in legal practice, as well as pointing out the important role of municipalities in providing social transfers for the poor in 1930s.

The next essay is *Legal History of the Development of the Process of Forced Execution of Claims in Croatian law* authored by **Jelena Kasap and Višnja**

Lachner. Although modern legal science recognises a specially defined legal institute for enforcing claims that is realised in the framework of a special procedure governed by the Croatian Enforcement Act, the historical context of the development of that institute, although undisputable, was not so uniform. It is well recognised in numerous legal-historical researches that the emergence of the first forms of compulsory settling of the claims can be found in old legal systems, features inherent to that institute suitable for modern legal interpretation begin to be individualised in medieval law. When it comes to Croatian mediaeval law, it should be borne in mind that the determination of that institution cannot be interpreted by means of unique legal source. For this reason, the subject of analysis in this essay will be the provisions of the medieval statutes of Croatian coastal cities and the customary law that was valid in the area of Slavonia and a smaller part of Croatia through the Werbőczy's Tripartitum. The purpose of this essay is to realise the filling of obvious gaps in Croatian legal-historical science when it comes to the development of enforcement proceedings.

In the final essay in this book, **Charalampos (Harry) Stamelos**, in his essay *Ancient Cypriot Kingdoms: Political and Legal Aspects of Their Regimes (1200 BC to 30 BC)*, leads us back to the second and first millennia BC. His essay presents the political and legal aspects of the Ancient Cypriot Kingdoms from 1200 BC to 30 BC. It is about the historic period during which the various Ancient Cypriot Kingdoms had to pay taxes to various rulers: the Assyrians, the Egyptians, and the Persians. Alexander the Great established a system of autonomy, expanding the autonomous systems of the previous rulers. However, in 312 BC under the Ptolemaic rule, Cyprus was one province, whilst various local institutions remained unaltered. Finally, in 30 BC Cyprus became a Roman province. Public law was based on the system of the Kingdoms of Mycenae since the Greek Kings and Princes established the Ancient Greek Kingdoms after the Trojan War in 1.200 BC. As described and explained in the essay, the King had all the powers under his control. However, private law also existed and there is a significant written contract, the *Tablet of Idalion*, being considered as the first written contract in the world. Less evidence exists concerning criminal law.

We hope that the readers will find this collection of essays stimulating and interesting not only in the particular issues discussed but also to acquaint themselves with the history and law field of research.

The views expressed in the essays in this book are of the authors and do neither represent nor are they intended to express the views of any other individual or body.