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# **Law and History New Studies**

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# Introduction

*David A. Frenkel & Norbert Varga*

Philosophy of Law is usually divided into three main branches: Dogmatic, Ethical and Historical.<sup>1</sup> However, we should add a fourth branch to the three: Sociological.

The dogmatic branch means the pure principle of the law, without any 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 principle coveting the origin of the law and its developments.

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 difference and changes, compare it to other contemporary legislation, either in the same country or elsewhere.

Another method, which should follow the first, is study and research the reasons that caused the legislation and its amendments; to learn what and how political, cultural, economic, moral and social interests and trends 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 into consideration the possible effect of any legislation on the lifestyle, culture, financial, philosophical, moral and social behaviour of the people and the international relations of the country.<sup>2</sup>

Current life, trends and views cause changes in laws, and laws, cause changes in daily life. Law and life are reflections of each other. Law is the mirror of life and life is the mirror of law. Once cannot separate them. Each affects and influences the other. It is impossible to understand law and

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

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

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 with and understanding the law of that time.<sup>3</sup>

History is the present of the past. The present of today will be the past and history of the future. Likewise, future will be the present of tomorrow and the past and history of the future. Time does not stop. 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 foundation.

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

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 on the Law and History issues.

The following will briefly present the different contributions.

The book commences with **Jayoung Che's** essay *Socrates Was Not a Criminal, even if Executed*. In ancient law including Roman and Hellenic codes, the proportion of criminal to civil law is exceedingly different - the civil part of the law has trifling dimensions as compared with the criminal. Criminology was a modern product when the authority of state more or less increased. It did not exist in the free civil society in ancient Greece and partially even in the medieval ages. In ancient Greece, the authority of citizen group was available instead of the modern government. Then freedom means the liberation from the government power, and free citizens constituted a jury of the court instead of bureaucratic judiciary. This conflict of rights among free citizens is often the same as that of our civil trials, and does not refer to the concept of 'crime'. Thus, even though executed, Socrates was never a criminal. *In the structure of political power, ancient Athens are is completely opposite to the bureaucratic modern state. In the latter with a more or less centralized power structure, the judicial bureaucracy plays a role in defining citizens as criminals.* The concept of crime itself is usually connected with the denial of existing social order.

**Norbert Varga** is the author of the next contribution *Provisions on Arbitration Proceedings Set Down in Cartel Agreements Based on the First Hungarian Cartel Act*. The characteristics of the twentieth century cartel movement deemed it contradictory to free trade, because the measures

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<sup>3</sup>Ibid.



that limited fair trade were the direct results of free trade itself, and thus the only way to oppose it and protect the consumers' interests was to guarantee free competition. Specifically, he examines the role arbitration courts played during dispute settlements between concerned parties before the first Cartel Act of Hungary came into effect in 1931.

The third essay *The Status and Organisation of Croatian Townships under the Act on the Organisation of Town Districts of 1895* has been written by **Jelena Kasap & Višnja Lachner**. The authors analyse the legal framework of status and organisation of Croatian townships in the Croatian-Slavonian territory in the period of validity of the Act on the Organisation of Town Districts from 1895. The law had limited active electoral right by abolishing the active electoral right for women that existed under the previous law of status and organisation of Croatian townships.

**Máté Pétervári** is the author of the fourth essay - *The Bankruptcy Act in Hungary in the Interwar Period*. The bankruptcy act in 1881 was a modern regulation, and it was appropriate to the requirements of the economic life. This Act remained in effect until after the Second World War, and it determined the Hungarian economy. The First World War changed the economy and the economic thinking. The author examines how the bankruptcy act functioned in Hungary during the First World War.

*The role of the Budapest Chamber of Commerce and Industry regarding unfair competition* authored by **Bence Krusóczki** is the next essay. It deals with the history of competition law, including the first substantive competition law of Hungary - Article V of 1923, which contained provisions regarding unfair competition. The essay focus on the arbitral tribunals of the Chamber and the practice of the jury since the fact that the duty and practice of these two bodies were highly significant for the application of the law in that era.

The author of the final essay in this volume is **Kristóf Szivós**. In his essay *Tools of the Case Management in the First Hungarian Code of Civil Procedure*, he points out Case management has been recognised as essential to securing the right to a trial within a reasonable time in a number of European jurisdictions. *Much of the control over the proceedings that was with the parties and their lawyers* has over the last decades been transferred to the court. the main aim of the new Code of Civil Procedure of 2016 is to concentrate on the proceedings, which has two addressees: the parties and the court. The author examines the historical basics and tools of this latter legal institution in accordance with the first Hungarian Code of Civil

Procedure, the Act I of 1911 enacted after almost thirty years of codification.

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 volume are those of the authors of the essays and neither represent nor are they intended to represent the views of any other individual or body.