Iustum Aequum Salutare
XII. 2016. 3. • 241–249.

ABOUT IMRE BÉKÉS'S EARLY ESSAYS

István Ambrus

In my study I would like to commemorate Imre Békés who was the Professor of criminal law at Eötvös Loránd University and Pázmány Péter Catholic University and died 5 years ago.

Criminal lawyers often use his textbooks and monographies about negligence in criminal law, but only a few writers refer to his early essays written between 1954 and 1962, that's why I concentrated on these articles.

The 1950's was a very dark, antidemocratic, dictatorical era in the history of Hungary, when the communist ideology wanted to eliminate the earlier legal thinking. Imre Békés's essays from this period are very important, because he always recognised and emphasisedthe principle of legality in criminal law.

These articles are about for example corruption, ruffianhood, daubery, and the new Criminal Code.

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INTERNATIONAL LAW AND THE COMPETITION OF LEGAL SYSTEMS

Tamás Ádány

Law and economics has focused mainly on competitive interactions among legal systems of various nations. However, *the* law of nations themselves – or as it is more frequently identified today – international law has also a systemic character in itself. With all its undoubted oddities, it is still a legal system on its own right, therefore a question emerges: what part international law does play in this competition of legal systems? With its defected efficiency can it show some regulatory functions? What are the limits thereof? Can international law be a competitive participant and not just a regulator?

The present paper attempts to find answers to these questions by examining the regulatory structures of international law, understanding the will and consent of states as the driving force behind mandatory inter-state regulations.

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THE CHANGING ROLE AND STRUCTURE OF THE IMF

The creation of IMF was internationaly one of the most important legal event after the II. World War

Katalin Botos

Its aim was to create the conditions for a more intensive foreign trade. After the fall of the gold standard, trade was shrinking. The dollar-gold system has successfully helped the evolution of international trade. The new basis for the system was the dollar. The exchange rates were fixed but adjustable. The IMF offered credit lines for the countries in balance of the payments crisis. The IMF had to provide liquidity for the international markets. The so-called Triffin dilemma had shown that this is only possible, if the balance of payments of the US is in the negative. That is, when the US is less competitive than the partner economies. The Articles of Agreement's First Amandement created the composit currency, the artificial international money, the SDR. Losing competitiveness, the US devalued the dollar and stopped converting it to gold. The Second Amandement in Kingston has finished the first successfull period of the IMF. The „non –system" since then is the period of seeking its role in the world economy. After introduction of floating currencies, it is surveillance, and offering conditional credit for those in need, and also offering technical expertise for even those who doesn't need credit. But it cannot help to avoid regular monetery crises. Conditions of the IMF were called straight-jacket, a uniform to fit for all. The changed world economic power relation were not reflected in the structure of quotas and governance. In 2010 mayor changes were introduced, but the US stopped the changes, because it diminished the role of the largest shareholder: the US itself. In 2016 the latest Amandement of the Agreement came into force, after ratification by the US Congress The quotas are dubbled, and the new shares of the emerging countries reflect realities better.

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THE ROLE OF PRIVATE INTERNATIONAL LAW IN THE COMPETITION OF JURISDICTIONS

László Burián

The study deals with those legal institutions which have an immediate influence on the competition of jurisdictions. Its starting point is that it is the task of the choice of law rules to regulate the competition of jurisdictions and to designate the applicable law. In connection with the freedom of choice it also reflects to the problem of the designation of a set of rules which do not belong to any jurisdiction. It is important that the designation of the applicable law can not be separated from the forum. The choice of law rules of the forum – whether autonomous or not – play a distinguished role in this process. Before examining the different choice of law institutions it deals with the mechanisms which may guarantee the priority of the application of the substantive law of the forum (the so called overriding mandatory rules) and examines how a collision of the overriding mandatory rules of the lex fori and the lex causae can be dealt with. It also touches the problem of the application of the overriding mandatory rules of a third state. The analysis goes beyond the positive rules and deals with the policies of the souvereign states which have an infuence on the difference of the connecting factors in national conflicts law rules. The study pays attention to the mechanisms through which parties may influence the applicable law (forum shopping and fraude a' la loi) and examines the effects of the unification of the choice of law rules of the EU on this institutions.

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CONSTITUTIONAL PROCEDURE LAW, PROCEDURES UNDER CONSTITUTIONAL LAW AND PROCEDURAL CONSTITUTIONALITY

Nóra Chronowski – József Petrétei

There is no conceptualised 'constitutional procedure law' comparable with the procedural rules and codes of civil, criminal or administrative law. However, the constitutions do contain procedural provisions, some of them are direct procedural norms, and others are indirect ones. Direct procedural rules of the constitutions serve as basis for decision-making by direct application of the constitution (e.g. the election of the head of state, or the vote of no confidence in some constitutions). Further norms of the constitutions – although they are not expressly procedural rules but – require and presuppose adequate procedures for their enforcement thus they have indirect procedural character (e.g. fair trial or habeas corpus). The study tries to define the specific features of constitutional procedure law, and systemize the constitutional procedures along

their functions and their relations to the basic constitutional principles, such as rule of law, democracy, sovereignty and respect of fundamental rights. The conclusion is that procedural constitutionality is determined by the correlation of the aforementioned principles, and the postulate of rationality, fairness and expediency.

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LAND AS A SPECIAL THING THAT IS SUBJECT TO OWNERSHIP AND POSSESSION

Alex Ember

In this paper we provide a historical overview of the legal development of property rights focusing on the Hungarian legal system. We focus on the land as the main and primary subject of property rights and follow up as the term expands from its agricultural use into real property. The paper analyses the historical development of the 'agricultural land'-related rights starting from the original interest in territories. I scrutinize the age of feudalism as being responsible for the separation of different rights from the land-related interests so in particular the land-related ownership (dominium directum) and the land-related use (dominium utile). This basic legal concept being conserved for centuries to come served as the precursor of modern day possession and ownership in continental legal systems. I follow the property law related development through the legal turmoil of the age of reforms to show how land and its legal aspect as a special subject of property developed in Hungary once the long lasting rules of the Middle Age were abandoned. In fact the land was one of the most important aspects of 19th century Hungarian economics and remained to be a key aspect of political and society reforms through the 20th century before arriving to Act number LV of 1994 on Agricultural Land.

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A *IUS NATURALE* SZEREPE AZ ÓKORBAN ÉS A MAI JOGI OKTATÁSBAN

Erdődy János

Mint az ismeretes, a *ius naturale*-ra történő hivatkozások számos alkalommal fordulnak elő a Digestában, ekként a *ius naturale* mint normaréteg a *ius civile*, a *ius gentium* és a *ius praetorium* mellett a római jog egyik legfontosabb forrásának tekinthető. Némely alkalommal előfordul, hogy főleg a késő császárkor forrásai a *ius naturale* és a *ius gentium* fogalmait szinonimaként kezelik, jóllehet maguk a klasszikus jogászok nagyon pontosan meghatározták mindkettőt, ezáltal téve lehetővé a két normaréteg határozott megkülönböztetését. A *ius naturale* fogalmának alkalmazási köre kettős: egyfelől

említhetők azok a források, amelyek a *ius naturale*-t körülírják vagy definiálják, míg másfelől találhatunk olyan forrásokat is, amelyekben a kifejezés magyarázó, illetőleg példálózó jellegű. Mind a *natura*, mind pedig a *ius naturale* alkalmazási körének kettős volta a sztoikus filozófiára vezethető vissza, amelynek hatása igen jelentős volt a jog viszonylatában, illetőleg tágabban az élet számos egyéb területén is.

Ami a *ius naturale* napjaink jogi oktatásában betöltött szerepét illeti, érdemes hivatkozni XVI. Benedek pápának a német Bundestag előtt 2011-ben mondott beszédére, amelyben a Királyok Könyvét (1Kir 3, 9) idézte. Az itt használt „értelmes szív" kifejezés, amelynek végső célja a jó és rossz megkülönböztetésének képessége a jogász számára is elsődleges jelentőségű kell, hogy legyen. Ezáltal válik ugyanis lehetővé, hogy Ulpianus szavainak megfelelően megvalósuljon a jogász legfőbb feladata: *aequum ab iniquo separantes, licitum ab illicito discernentes*.

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COMPETITION BETWEEN LEGAL ORDERS AND EVASION OF LAW FROM THE POINT OF VIEW OF NATURAL LAW, JUSTICE, AND THE COMMON GOOD

János Frivaldszky

In the present paper we would like to underline the instrumental character of the concept of 'competition' in the field of legal systems. Competition, we argue, can have a value only in cases when it is related to substantively reasonable purposes and to justice. Is this not the case, then the paradigm of competition can only serve as an accurate description of deformed legal practices (such as the extreme forms of ‚forum shopping' or ‚asylum shopping'). Some of these practices are in clear opposition to the basic prescriptions of natural law, and therefore lack validity. Others are "merely" unjust, and need to be corrected in accordance with the 'nature of things' and justice. Nevertheless, there are also some welcome developments in the field of international commercial law, such as the institutions of 'hardship' and 'gross disparity', which allow for the application of commutative justice.

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THE MEANING OF "HUMAN AND CIVIC RIGHTS" IN CONNECTION WITH THE ENLARGEMENT OF THE POZSONY BRIDGEHEAD

Gábor Hollósi

Following WWI, a Czechoslovakian bridgehead was formed on the right bank of the Danube River at Pozsony (Bratislava) for strategic purposes against Hungary.

Thus Pozsonyligetfalu was absorbed by Czechoslovakia. At the post-WWII Paris peace talks, the Czechoslovakian delegation suggested that for reasons of national defense the enlargement of the Pozsony bridgehead would be necessary, which would involve incorporating five Hungarian villages. The Hungarian villages of Dunacsún, Horvátjárfalu, Oroszvár, Rajka and Bezenye were all in the draft, but in the end only the first three were handed over to Czechoslovakia. The Paris Peace Treaty, signed on February 10th, 1947, used the "full human and civic rights" phrase in connection with the populations of the three ceded villages. In our study we examine the parties' various interpretations of the contents of the above-mentioned phrase in the peace treaty using the minutes of the Hungarian-Czechoslovakian Boundary Commission and the related archival documents of the Ministry of Foreign Affairs. We are curious to know if citizenship, native-language instruction and access to social security were considered within the scope of the "full human and civic rights"? Are human rights to be considered as an internal affair of a state? Was the still-evolving Universal Declaration of Human Rights of the UN used as a reference document? We take a look at these questions – among others – in our historical review.

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THE SEVENTH BOOK – THE SEVENTH SEAL, MAN- AND FAMILY-IDEAL OF CIVIL CODE AT THE END OF LIFE.

Balázs Landi

János Zlinszky, together with Lord Atkin, believed that the only thing that could become an alternative to "over-technologized" law was a foundation of general moral commands. They judgement of liability, or mandatory care and its limits uses biblical terminology. A multiple transpositioning of "Love thy Neighbour" leads us to declaring what a liability for rationally foreseeable damages really is. Our investigation connect the high abstraction level of the man- and family-ideal of Code Civil, as a gauge of behaviour with the assertion medium of law (and ethics). In other words, it uses history of law and sociology of law to investigate the extent to which law enforcers follow or violate the law by adherence or non-adherence to a prescribed conduct. Our investigation powerfully demonstrate the close connections between the wealth of legal concepts and even their "disfigured" condition and the effectiveness of actions that deliberately and consciously influence the shaping of legal policy and legislation.

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DEVELOPMENT OF MINORITY RIGHTS IN TURKEY IN PARTICULAR THE MINORITY CONCEPT OF THE LAUSANNE PEACE TREATY

Krisztina Siska

On 24 July 1923 in Lausanne the Contracting Parties have signed the Peace Treaty that guaranteed the independence of Turkey and shaped the foundational legal framework of its minority rights.

The Treaty was criticized mainly by England and the United States. According to George Curzon British Foreign Secretary the Lausanne Peace Treaty created so poor political minority concept that required the world to pay heavy price for the next 100 years.

Some of the historians, however, defended the human rights aspects of the contract.

In my essay I study the minority provisions and its interpretation of the Lausanne Treaty concerning 39-45. Articles. I emphasize that in relation to the Turkish legal developments the key is understanding and reconnecting it to the Ottoman legal developments. In my opinion the forceful separation of these two can lead to erroneous conclusions especially in examination of the events of 1922-23 in Turkey.

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SOME THOUGHTS ON THE NEW CZECH PRIVATE INTERNATIONAL LAW CODIFICATION

Sarolta Szabó

This article provides an overview of the most important developments in the new Czech Private International Law Act that was adopted in 2012, effective as of 2014. This recent Czech codification reflects some modern trends in conflict of laws such as a general escape clause or the wide range application of the habitual residence as a connecting factor which can be interesting in the Hungarian point of view, because the recodification of the Hungarian private international law Code has started last year. So this article draws attention to some selected issues of the new Czech Private International Law Act that are worth considering to the Hungarian draftsmen.

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LAW MARKET, REGULATORY COMPETITION

Ákos Szalai

The legal systems, or more precisely people running these systems (lawmakers, regulators, judges and state bureaucracies) are competing with one another because the persons, the subjects of the law are able to choose among them. They are able to choose when they decide where they settle, where they invest. They have the option to choose of law; they are not obliged to contract, to form a company, to get married under their home law. Due to their options to exit or enter legal systems must interact – they can attempt to attract people, investments, legal businesses; or on the contrary, they can attempt to scare away some of them. However, these options to move, to choose law are not totally free, these choices are regulated by the competitors, i. e. the legal systems. The latter are able to constrain the choices of law, the free movements of capital and persons, they can make exit or entry more costly. Such regulatory competition occurs even if mobility, the free choice of law is costly or absolutely forbidden, because the popularity, legitimacy of the legal systems, the acceptance of the local law-makers can depend on their relative success – and the voters, their subjects compare the legal systems even if they do not want or are unable to exit. This is the form of competition without exit, through voice; without vote-by-feet, through the classic form of vote.

The literature usuelly concludes that such law market creates a race-to-the-bottom in standards, but the economic analysis of law identifies an opposite potential outcome as well: the race-to-the-top. Competition may result not in deregulation but strong regulation – under some well-defined circumstances. The article aims to present these circumstances, to identify the conditions determining the expected outcome of the regulatory competition.

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DIE GRAUSAMKEIT ALS SEPARATIONSGRUND IN DER PRAXIS DER KIRCHENGERICHTE

A. Éva Tamási

Eines der interessantesten Untersuchungsgebiete der Kirchenrechtsgeschichte ist die Untersuchung der Gerichtsbarkeit des Heiligen Stuhles in Ehesachen und die Sondierung der Tendenzen in dem Gerichtspraxis. Vor der Einführung der bürgerlichen Eheschließung in 1895 lag die Beurteilung und Erledigung von einigen Rechtsstreitigkeiten bezüglich der Ehe in den Händen der Kirchengerichte. Man kann behaupten, dass laut der katholischen Kirche eine gültig geschlossene und beigewohnte Ehe unauflösbar ist, so ging es in den meisten Prozessen vor dem Heiligen Stuhl um die Separation, also um die Trennung von Tisch und Bett. In unserer Arbeit werden wir uns innerhalb der Separation mit der am meisten vorkommenden Fall, also mit

der groben und grausamen Behandlung, mit der Grausamkeit befassen und werden untersuchen, wie dies in der Praxis der Kirchengerichte vorgekommen ist. So bildet die Untersuchung der kirchenrechtlichen Aspekte, die der Praxis der Gerichtsbarkeit der Kirchengerichte im 19. Jahrhundert und um die Jahrhundertwende den Kernpunkt unserer Untersuchung. Da wir aber nicht nur vor dem Heiligen Stuhl solche Fälle antreffen können, sondern auch vor den weltlichen Gerichten, werden wir bei den relevanten Punkten kurz die ehemaligen zivilrechtlichen Regelungen und die Praxis der Zivilgerichte analysieren.