Iustum Aequum Salutare
XIII. 2017. 1. • 263–269.

# SUMMA

## THEORETICAL PROBLEMS EMERGING IN THE STUDY OF LEGAL CONSCIOUSNESS

István H. Szilágyi

The present study tries to give a survey of the theoretical questions and topics occurring in the research field of legal consciousness. It mainly uses the methodological means of conceptual analysis for outlining a map of the complex relations interplaying between the individual legal consciousness and the legal culture thereby wishes to serve the coordination of the revived Hungarian KOL-researches.

For this, first it takes in account the fields of mutual effects interplaying between the individual and the society: the effect-bundles of socialization, of communication, of law-making and of the individual legal or legally relevant actions. After this it inquires the effects of the mediating social structures – social stratification, societal and professional groups – exerted on individual legal consciousness and on the legal culture giving a distinguished attention to the role of the legal profession here. At last it examines the elements – that is the intellectual, emotional and volitional constituents – of the individual legal consciousness and the very structure of that. As the most radical conceptual correction, the present study argues for the introduction of 'legal culture' instead of 'socio-level (or social) legal consciousness' in the course of the conceptual clarification, and for the distinction between 'laic' and 'professional' within the concept of 'legal culture'.

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## THE ORIGIN OF THE CONTEMPORARY CONCEPT OF LEGAL CULTURE: LAWRENCE M. FRIEDMAN ON LEGAL CULTURE

Balázs Fekete

The aim of this article is to provide a critical analysis of the concept of legal culture as developed by Lawrence M. Friedman; further, it also discusses how to integrate this concept into future studies. The North-American and international jurisprudence started to use this concept due to Friedman's The Legal System: A Social Science Perspective published in 1975, however the original thoughts of Friedman are not as well known today. This article, as a first step, discusses Friedman's concept of

legal system, then, it turns to the concept of legal culture as well that of modern legal culture. It should be admitted that the concept of Friedman is not well-elaborated from various aspects, moreover it gives raise to numerous problems; in sum, it has a rather impressionistic nature. However, this might have been a major reason why it did become a very popular scholarly concept. In conclusion, the article argues that the application of the concept of legal culture in scholarly works may only make sense if it is done with serious methodological reflection as well as discipline.

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## EMPIRICAL STUDY OF LEGAL CONSCIOUSNESS IN HUNGARY FROM 1990

György Gajduschek

The paper attempts to provide a relatively complete, structured inventory of publications that contain some empirical element in the field of legal consciousness or legal culture in Hungary published since 1990 in Hungarian language. The reviewed publications are structured in a logically mixed manner, combining methodological, topical and disciplinary aspects in order to capture main characteristic 'streams' of research in Hungary. Accordingly, first, studies that are based on surveys representative for the Hungarian population (no such survey was carried out for about two decades after 1990) are presented, followed by the overview of a large number of surveys carried out on law students (a typical population for research, presumably due to the lack of resources). The next two sub-chapters review two major issues that were relatively actively researched and generated scholarly discussion; namely: the knowledge of law and the question of why Hungarian people obey the law. The fifth subchapter is devoted to studies of a social psychological character, providing a major added value in the field, not yet fully realized by Hungarian legal scholars. The paper ends with a critical overview, concluding that there has been so far an unbridgeable methodological and thus communication gap between lawyers, who do not understand the 'logic' and methodology of social sciences and social scientists who do not know terminology and major issues in law.

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## WINNING A CASE?
### *Attitudes on Law and Trust from the Aspect of social Stratification*

Péter Róbert – Balázs Fekete

This article aims at presenting how Hungarian people consider their chances to win a case if they suppose that they are right in that case. The study is based on the data

of a representative survey, made in 2015, in which the respondents were asked about their chances to win a case. The respondents had to consider their chances in seven imaginary situations (winning a case against (i.) a neighbor, (ii.) a chief, (iii.) a bank, (iv.) the police, (v.) the tax authorities, (vi) a rich businessman, and (vii.) a politician). The analysis of the data indicates that people's opinion on the chances to win a case correlates with the level of education, the income level, the place of residence, religion, happiness and institutional trust to a considerable statistical degree. In our eyes, cultural – the lack of rights culture – and historical – the former role of state in authoritarian regimes – factors can be found behind these findings.

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## THE PROOFING ATTEMPT AND THE FAITH

Csaba Fenyvesi

What is the connection between the criminaltactical and criminal procedural instition „proofing attemption" (investigation reconstraction) and the faith? The author examines the link trough a literature example. He writes about classification, practial modus, risks of „proofing attemption" and analyses the positive and negative results of the investigation action. The belief is a starting point of the criminal version as well. Later, during the investigation and criminal procedure this belief can be more intensive, more grounded, reasonable and can be reach the high probality, maybe (almost) certainty. One thing is sure: the authorities must not use liferisk modus during the attemption, during the investigation as a reconstruction of the past event.

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## SIRENS ON THE RHINE

András Kecskés – Barnabás Ferencz

The aim of this paper is to showcase the special characteristics of German corporate governance. To do so, the paper outlines the historic factors which determined, and continues to influence the character of German corporations. A summary of the relevant German legislation is given, highlighting key Acts. The German Corporate Governance Code (Deutsche Corporate Governance Kodex) is also analysed, to show the principles upon which German corporate governance is based. It can be concluded that due to EU legislation, the German rules are mostly compliance with European requirements and in certain cases – such as gender equality – the provisions are much more detailed. However, it must be emphasised that "comply or explain" principles still cannot prevail owing to such factors as the provisions of the Code or the attitude of the authorities, which conflicts with Anglo-American practices.

## JOGI ELEMZÉS A LENGYEL ALKOTMÁNYBÍRÓSÁG BÍRÁINAK 2015 TAVASZI VÁLASZTÁSÁRÓL

Mariusz Muszyński

A lengyel alkotmánybíróság összetételének 2015 őszén történő változásával és annak értékelésével kapcsolatos társadalmi vita a Szejm tevékenységének fényében zajlott és nem vette figyelembe a szélesebb politikai kontextust. Az elemzés célja, hogy bemutassa és értékelje az alkotmánybíróság bíráinak a Platforma Obywatelska és Polskie Stronnictwo Ludowe (PO–PSL) kormánykoalíció által 2015 októberében történő megválasztásához kapcsolódó történések láncolatát. Szándéka, hogy bemutassa a kapcsolatot az alkotmánybíróságról szóló törvény 2015 januájában történő elfogadása és az öt bíró azon posztokra történő kinevezése között, melyek 2015 őszén váltak megürültté.

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## PROMINENT ROLE OF CEMETERIES OF RELIGIOUS COMMUNITIES IN THE 11TH – 13TH CENTURY, BASED ON THE CONTEMPORARY BURIAL CUSTOMS AND CANONICAL RULES

Szabolcs Anzelm Szuromi, O.Praem.

The cemetery may be located next to the Church, or around the Church' walls, but the Church building itself could be functioned as burial place too. Based on the analysis of the legislation of the particular councils of different regions is quite clear, that the burial within the Church building only after a long disciplinary crystallization process has become allowed for the 9th century. The norms of the Decretum Gratiani contain that within the Church building the deceased diocesan bishops, abbots and worthy priests or laymen could be buried. The religious burial places – cemeteries – were particularly preferred among the faithful in the High Middle Ages, because there – beside the consecrated status of the place – the deceased could be among the deceased members of those who consecrated themselves as members of religious communities, moreover the active members of the community permanently intervened with daily prayers for them. The more wealthy families, including the rulers, established several monasteries – or gave donations for already existing convents – in order to promote the constant prayerful intervention for the salvation of their own departed. The overview of the history of these numerous monasteries can sufficiently support the extraordinary importance of the cemeteries of religious communities for the contemporary society of the High Middle Ages.

## JULIUS MOÓR AS REFLECTED IN THE DAILY PRESS

Csaba Varga

The philosopher of law Julius Moór (1888–1950), born at Brassó and educated in Kolozsvár (now Braşov resp. Cluj in Romania), became professor at Szeged and in Budapest, respectively. His scholarly achievement and reflections on daily issues, including the danger of bolshevism and national socialism, as well as the position of the Christian teaching, were all reported by the daily press, for his position as metropolitan rector, member of the Parliament's Upper House, president of the Academy of Sciences, made him a public figure. Accordingly, part of his lifetime oeuvre as well as part of scholarly and political reactions to it are to be reconstructed from dailies. In the interwar period his democratism and balanced opinion with search for understanding in the depth were welcome by the leftist press as well. After the war, in the shadow of the coming communist putch in 1948, however, by the same position he became a number one target as ennemy of so called democratic progress. Eventually, his parliamentary speech unveiling the logic behind the tactics of leftist forces ended in his immediate expulsion from academic life and eradication from professional memory. Now press research reveals that the same destiny was shared by his father, a Hungarian pastor of a tiny Hungarian congregation in the Saxonian Transylvanian self-governing Lutheran church community, within the bonds of the Kingdom of Hungary.

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## THE EUROPEAN COURT OF HUMAN RIGHTS AND BLASPHEMY AS THE LIMIT OF FREE EXPRESSION

András Koltay

To date, the ECtHR has delivered judgments in favour of the state against which the application was filed in all cases where the debate was related to insulting a person's religious feelings. In cases of blasphemy, the Court gives an especially broad interpretation to the margin of appreciation principle, and is reluctant to establish any general, uniform European standard in this area. In a specific, especially sensitive area (and blasphemy and the defamation of religions are such areas), the Court decided not to fill the gap in domains where no uniform common European standard exists, and it does not respond to questions in an activist manner instead providing a broader margin of appreciation for Contracting States. This does not mean that it avoids setting certain minimum standards in such questions; the criticism of religions and churches is also protected by the ECHR in order to enhance open public debate. However, as regards the defamation of religions and opinions offending believers' feelings, Contracting States are free to decide on restrictions in their own competences. Many criticise the Court, saying that, by respecting the states' margin of appreciation, it has withdrawn from

certain areas otherwise covered by the ECHR. There have even been accusations of 'cultural relativism', since it is reluctant to establish uniform rules on these questions and, by doing so, it denies 'the universality of human rights'. The jurisprudence relating to the defamation of religions has thus come in for a particularly large amount of criticism. There is clearly also something to be said for the position of the Court, according to which there are certain especially sensitive free speech areas which are difficult to harmonise even in Europe, and where it is more desirable to maintain the competences of Contracting States.

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## DIE SYSTEMATISIERUNG DES KLIMASCHUTZRECHTS

Annamaria Csilla Gyüre

In diesem Aufsatz werden die Elemente des Klimaschutzrechts zu einem System zusammengefasst. Mein weiteres Forschungsthema ist die Regelung des Klimaschutzes, die ziemlich kompliziert ist. Um die Auserkennung in diesem Thema erleichtert werden zu können, skizziere ich das System.

Meine ausgehende Hypothese ist, die rechtliche Instrumente des Klimaschutzes bilden ein System, sie verbinden sich, ihre Kohärenz ist aber nicht vollständig. Dieser Aufsatz blickt aus Späre der eng genommenen und nunmehr klassischen geblickten Gebiete der Regulierung und strebt nach breiterer Perspektive.

Während meiner Arbeit klassifiziere ich Rechtsinstrumenten des Klimaschutzrechts nach verschiedenen Gesichtspunkten (z.B. Chronologie, Methodik der Regelung, Richtung der Regelung). Die Systematisierung hilft erfassen, wie das Recht die Tatsache der Klimaänderung ergreifen kann, mit welcher Weise und mit welchen Instrumenten will er sich in das Leben der Menschen einmengen, um das Klimawandel zu senken. Die Forschung berücksichtigt auf die Ergebnisse der verbindenden Gebiete, sie hat umweltrechtliche Ansicht mit der betonten ökologischen Einstellung. Die Aufstellung der Kategorien zeigt die Leitlinien der weiteren Forschung.

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## THE NOBLE COUNTY IN THE MIRROR OF THE JURISDICTION, IN A VIEW TO THE REIGN OF MATTHIAS CORVINUS AND THE JAGIELLONIAN-AERA

Zoltán Attila Liktor

The noble county played keyrole for more than half thousand years in Hungary's public law system. The power of the noble county developed over centuries, mostly under the reign of Matthias Corvinus and the Jagiellonians. Although in Hungary

the Jagiellonian-age (1490-1526) – unfortunately – lives in the historical memory as subsidence and the decades of decadence, and the Jagiellonian kings as weak-hand rulers and helpless puppets. We examine the age by the contemporary diplomats of the counties and the results of the up-to-date research from the public law's perspective, and a completely different concept emerges against the general one. By our writing, we would like to rebuild – at least on the plane of the public law – the conception of the judgement of the Jagiellonian-area, and within the roll of the noble county, on the basis of contemporary sources of ten noble counties from different parts of the country before Mohacs. We try to present the mutual points and divergent specialities of the public law's development throughout the country by these sources.

## AUTONOMY IN THE PROPERTY RELATIONS BETWEEN SPOUSES

Sarolta Molnár

This paper deals with the underlying theoretical frameworks of spousal property regimes and their consistency with the notion of marriage. Marital agreements are a special 'species' of contracts in the continental jurisdictions therefore comparisons with some of the United States' rules gives a new perspective. It also deals with the practical issues raised by the new register of nuptial agreements in Hungary. The study reflects on the European context of the question briefly as well, to review the possibility of unification in the field.

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## MEGJEGYZÉSEK A BÜNTETŐ TÖRVÉNYKÖNYV SZERZŐI VAGY KAPCSOLÓDÓ JOGOK MEGSÉRTÉSE TÉNYÁLLÁSÁHOZ

Ujhelyi Dávid

Jelen tanulmány a Büntető Törvénykönyv 385. §-ában található, a szerzői vagy szerzői joghoz kapcsolódó jogok megsértése bűncselekmény elméletét és gyakorlatát hivatott bemutatni. Ennek keretében a tényállás és annak története mellett a jelenlegi büntetőjogi védelem és szankciók indokolhatósága, a vagyoni hátrány számításának módjai és az igazságügyi szakértők a büntetőeljárásban betöltött szerepe is megvizsgálásra kerül.