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Law and Literature in Hungary – An Introduction

Abstract. This paper aims to give a concise review of contemporary Hungarian researches carried out in the field of “law and literature”. It evokes the preliminaries from previous century’s in Hungarian legal philosophy, and it discusses the recent achievements by taking a closer look on the results of three subsequent symposia organized in 2006, 2008 and the previous year. In conclusion, the paper outlines the possible directions for further development of certain aspects of legal education and the critical potential of “law and literature” studies.

Keywords: law and literature, Hungarian jurisprudence, legal education

The recent development of “law and literature” studies, as occurred in the past decade, is not without antecedents in Hungarian legal thinking—as it is not either in the American¹ or in the other European national jurisprudences.² Hungarian legal philosophy was flourishing during the early 20th century due to the oeuvre of such internationally renowned scholars as Felix Somló or Julius Moór. In this period, Barna Horváth’s work,³ *Der Rechtsstreit des Genius*,⁴ published in 1942, became a groundbreaking piece in the Hungarian study of “law and literature”.⁵

The theme of “law and literature” as a research subject reappeared on the horizon of the Hungarian legal thinking nearly a half century later, in the middle of the 1990’s. During these years Hungarian legal scholars were beginning to look for new impulses following the enforced hegemony of the “socialist legal science”. As a first sign of interest a

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¹ About the origins and the “returns” of “law and literature” in the history of American jurisprudence see Ferguson, R.: *Law and Letters in American Culture*. Cambridge (Mass)–London, 1984; Duxbury, N.: *Patterns of American Jurisprudence*. Oxford, 1995; Weisberg, R.: Coming of Age Some More: “Law and Literature” Beyond The Cradle. *Nova Law Review*, 13 (1988), 107–124; Smith, J. A.: The Coming Renaissance in Law and Literature. *Journal of Legal Education*, 30 (1979), 13–26.

² For a survey tracing “law and literature” in the European national jurisprudences see Varga, Cs.: Literature? A Substitute for Legal Philosophy? [2007]. In: Varga, Cs.: *Contemporary Legal Philosophizing*. Budapest, 2011 [forthcoming].

³ For a concise curriculum vitae of Barna Horváth see Varga, Cs.: Barna Horváth. In: Horváth, B.: *The Bases of Law/A jog alapjai*, Budapest, 2006. xvii–xviii.

⁴ Horváth, B.: *Der Rechtsstreit des Genius*: I. Sokrates; II. Johanna: a) Der Tatbestand, b) Das Verfahren. *Zeitschrift für öffentliches Recht*, 22 (1942) 1, 126–162; 2–3, 295–342; 4–5, 395–460.

⁵ Cf. H. Szilágyi, I.: Barna Horváth’s *Genius*. In: Cserne, P.–H. Szilágyi, I.–Könczöl, M.–Paksy, M.–Takács, P.–Tattay, Sz. (eds): *Theatrum Legale Mundi. Symbola Cs. Varga oblata*. Budapest, 2007. 189–202.

propedeutical piece of Maria Aristodemou,⁶ providing a comprehensive survey of the aspirations and themes of the field, was published in a reader edited by József Szabadfalvi.⁷

The present author started his studies in this field of study in the second part of the 1990's because it offered new possibilities to combine the history of Hungarian political and legal thinking with the anthropological perspective—his previous research themes. The subject matter of an experimental course emerged, which, connecting Horváth's legal philosophical concept of drama with Victor Turner's anthropological ideas of "social drama" and with the Geertzian methodology of "thick description", arranging all these around the analysis of Gabriel García Márquez's *Chronicle of a Death Foretold*.⁸

In the first years of the 21st century, Tamás Nagy, one of the most influential author in the field up to now, began his researches. As a starting step, he methodologically mapped the American tradition of "law and literature" from the time of the antebellum up to the Posner-debate.⁹

A group of younger scholars—Balázs Fekete, Miklós Könczöl, Máté Paksy, Szilárd Tattay—, members of the Department of Legal Philosophy in the Pázmány Péter Catholic University Faculty of Law participated in the organization of the *I. Law and Literature Symposium* in May 2006 in Budapest. Interestingly, although the majority of the participants could have been seen as "hard core" legal philosophers, a significant part of the presentations mixed a legal or political philosophical viewpoint with a historical perspective.

Thus, Attila Simon rethought Sophocles' drama, he analysed it with the fine tuned means of the post-modern literary hermeneutics in his "Antigone's and Kreon's Law". The study not only painted a nuanced picture of the antique political and legal thinking for its reader, but also familiarized them with the eternal tension of community life stemming from the ever present threat of using violence and power on the one hand, and the unforeseeable consequences of the enforcing actions on the other hand.¹⁰ In his reading of Thomas Mann's *Magic Mountain*, Balázs Fekete brought to the surface those contradictions which were perceived by the writer between the heritage of the traditional, middle age thinking and that of the enlightenment, and which were dramatised by the spiritual duel of Naphta and

⁶ Aristodemou, M.: Studies in Law and Literature: Directions and Concerns. *Anglo-American Law Review*, 22 (1993), 157–193.

⁷ Szabadfalvi, J. (ed.): *Mai angol-amerikai jogelméleti törekvések* [Current Trends in Anglo-American Legal Theory]. Miskolc, 1996.

⁸ For a summary of the theoretical and didactic outcomes of this seminary course see H. Szilágyi, I.: The Chronicle of a Death Foretold: A Retrospection. In: Mittica, M. P. (ed.): *ISSSL Special Issue. Dossier on Law and Literature*. Bologna, 2010. 105–127. [<http://www.lawandliterature.org/index.php?channel=PAPERS>]

⁹ See Nagy, T.: Néhány eljárás: Kafka-olvasatok a jogirodalomban [Several processes: Kafka-readings in the jurisprudence]. *Jogelméleti Szemle*, (2001) 3 [<http://jesz.ajk.elte.hu/nagy7.html>]; Narratív tematika a kortárs amerikai jogelméletben [The narrative theme in American jurisprudence]. *Acta Universitatis Szegediensis, Acta Iuridica et Politica*, Tomus LXIII, Fasc. 15, Szeged, 2003; Az amerikai jogelmélet és intézményrendszerének kapcsolata [The relationship of the American jurisprudence and its institutional system]. *Acta Universitatis Szegediensis, Acta Iuridica et Politica*, Tomus LXVI, Fasc. 15, Szeged, 2004; Jog és irodalom az antebellum korszakának Amerikájában [Law and literature in antebellum America]. *Jogelméleti Szemle*, (2005) 4 [<http://jesz.ajk.elte.hu/nagy24.html>].

¹⁰ Simon, A.: Antigóné és Kreón törvénye [Antigone's and Kreon's law]. *Iustum Aequum Salutare* III, (2007) 2 [hereafter: *IAS*]. 71–94.

Settembrini.¹¹ Szilárd Tattay interrogated Umberto Eco's *The Name of the Rose*—as if he started an investigation as a detective—to what extent William Occam's person and philosophy could be recognized behind the character of the novel's protagonist, brother William.¹² As for Tamás Nagy, he discussed the constellation of law and literature in antebellum America.

Another part of the presentations were inspired by the “law as literature” perspective. Ferenc Horkay Hörcher analysed the problem of the poetic justice on the basis of Martha Nussbaum's theory,¹³ furthermore the present author discussed Barna Horváth's conception of “law as drama”.¹⁴

Critical voices about the goals of “law and literature” were not absent either. In his provocative speech, Csaba Varga emphasized partly that the “law and literature” was not an American “discovery”—as a rich scholarly literature had already existed in the European national jurisprudences. And, similarly to Richard Posner,¹⁵ he also fervently criticised the feminist and the narrativist trends of “law and literature”.¹⁶ While Lajos Cs. Kiss, basing his arguments primarily on the German social theoretical traditions, called attention to the limits of the efforts aiming to connect the law and literature.¹⁷

Péter Sólyom introduced a theme which was considered by the skeptics as the only relevant context in which to study the relationship of law and literature:¹⁸ namely, when writers of literary works are tried for offence against public morality, for libel or for defamation.

The following year the papers presented at this symposium were published in the journal of the Law Faculty. The event also stirred interest outside of the academic circles focusing strictly on legal theory. At this time we began to establish an informal framework for the symposium. According to our plans, symposia should be organized every second year, each time at another place, and the presentations and other invited author's articles should subsequently be published next year. It was also agreed that, since “law and literature” is an extraordinarily suitable field for interdisciplinary studies, we should not only invite scholars from different legal disciplines, but also researchers coming from the field of literary science and other humanities.

The *II. Symposium* was organized in the spirit of these principles and it took place in Sikfőkút in October 2008, hosted by the Doctorate School of the Faculty of Law of the Debrecen University. The composition of the group of new participants fortunately mirrored

¹¹ Fekete, B.: A századforduló szellemi körképe a *Varázshegyről* [The spiritual panorama of the turn of the century from the *Magic Mount*]. *IAS*, 19–30.

¹² Tattay, Sz.: A rózsza neve: Ockham. Nominalizmus és természetjog Eco regényében [The name of the rose: Ockham. Nominalism and natural law in Eco's novel]. *IAS*, 111–118.

¹³ H. Hörcher, F.: A költői igazságszolgáltatásról [On the poetic justice]. *IAS*, 43–56.

¹⁴ H. Szilágyi, I.: Horváth Barna génusza. *IAS*, 31–42. For the English version see *op. cit.* in note 5.

¹⁵ Both Posner's and Varga's approach can be characterised by the attitude of “cultural conservatism”. Cf. Seaton, J.: The Two Branches of Law and Literature Movement: A Critique of Stanley Fish. *Legal Studies Forum*, 15 (1991) 65–73.

¹⁶ Csaba, V.: Irodalom? Jogbölcelet? [Literature? Legal Philosophy?]. *IAS*, 119–132. For the English version see Varga: *op. cit.* in note 2.

¹⁷ Cs. Kiss, L.: Megjegyzések a jog és művészet viszonyához [Some remarks on the relation of law and art]. *IAS*, 13–18.

¹⁸ Cf. Posner, R.: *Law and Literature: A Misunderstood Relation*. Cambridge, 1988. 319–352.

our efforts to encourage an interdisciplinary approach: legal philosophers, legal historians, legal sociologists, political philosophers, civil lawyers and literary scholars could exchange views in these two days. The papers were published in 2009, in a volume entitled *Iustitia Goes on Excursion*.

Let us now take a closer look at the contents of the book in order to illustrate the diversity of the subjects!

The series of studies is opened by Tamás Nagy's essay that enlightens the legal layers of *The Stoker* by Péter Hajnóczy, the literary genius' of the socialist era plagued by misfortune, and compares those with the findings of the contemporary sociographical literature.¹⁹ Ferenc Horkay Hörcher examined the problem of breaching the rules in the dynamics of man–woman relationship by the discussion of another 20th century Hungarian literary classic's, Géza Ottlik's short story.²⁰ Attila Horváth contextualized the highly celebrated *Strange Marriage* by Kálmán Mikszáth, one of the most well-known novelist of the 19th century, within the legal and political relations of the novel's birth, and opened up the inherent political content of the authorial intent.²¹ Balázs Fekete analysed, in turn, the legal historical, legal sociological, criminological and legal philosophical aspects of Alexander Solzhenitsyn's *The Gulag Archipelago*.²² Ferenc Tallár demonstrated how little of the reality can be grasped by the narratives born in the legal procedure by discussing the trial scene in Fyodor Dostoyevsky's *Brothers Karamazov*, a classical piece of the "law and literature" canon.²³ Dorottya Somlai characterized the sociological conditions of the 19th century French jurisdiction and legal profession, on the basis of Honoré de Balzac's novel-cycles.²⁴ Miklós Könczöl offered the "naturalist's perspective" for the analysis of the legal phenomena after the reading of Gerald Durrell's two novels.²⁵ The present author accounted for his experiences gained during the ten-year teaching of "law and literature".²⁶ János Jany revealed the meaning of a 6th century Persian tale, the *Dymnah's Trial*, written in Pehlevi by the means of thorough legal historical investigations.²⁷ Béla P. Szabó discussed a drama

¹⁹ Nagy, T.: Egy arkangyal viszontagságai a szocializmusban. Hajnóczy Péter A fűtő című elbeszélésének egy lehetséges olvasata [The vicissitudes of an arcangel in the time of the socialism. A reading of Péter Hajnóczy's *Stoker*]. In: Fekete, B.–H. Szilágyi, I.–Könczöl, M. (eds): *Iustitia kirándul* [Iustitia goes on excursion]. Budapest, 2009 [hereafter: *Iustitia*]. 9–40.

²⁰ H. Hörcher, F.: Csalás és megcsalás. A szabályok áthágása és a férfi–nő kapcsolat természete Ottlik Géza *Hamisjátékosok* című elbeszélésében [Fraud and cheating. The transgression of rules and the nature of the man–woman relationship in Géza Ottlik's *Cardsharpers*]. In: *Iustitia*, 41–52.

²¹ Horváth, A.: Mikszáth Kálmán "különös" házassági históriája [Kálmán Mikszáth's "strange" history of a marriage]. In: *Iustitia*, 53–58.

²² Fekete, B.: A nyugati jog vágyálma. Jogi rétegek Szolzenyicin Gulág szigetcsoport című művében [The dream of the western law. Legal layers in Solzhenitsyn's *Gulag Archipelago*]. In: *Iustitia*, 59–72.

²³ Tallár, F.: Regényköltészet Szkotoprígonyevszkban. A tárgyalás témája Dosztojevszkij *Karamazov testvérek* című regényében [Novel-poetry in Skotoprígonyevsk. The theme of trial in Dostoyevsky's *Brothers Karamazov*]. In: *Iustitia*, 73–80.

²⁴ Somlai, D.: Jog a realista regényben. Két Balzac-regény jogszociológiai aspektusai [The law in the realist novel. The legal aspects of Balzac's two novels]. In: *Iustitia*, 81–100.

²⁵ Könczöl, M.: Két per leírása Greald Durrellnél [The description of two trials by Greald Durrell]. In: *Iustitia*, 101–110.

²⁶ H. Szilágyi, I.: Egy előre bejelentett gyilkosság krónikája: visszatekintés [The chronicle of a death foretold: a retrospection]. In: *Iustitia*, 111–132. For an English version see *op. cit.* in note 8.

²⁷ Jany, J.: Dymnah pere [Dymnah's trial]. In: *Iustitia*, 133–152.

about Papinianus, written by Andreas Gryphius, in his lengthy study. He considered one by one the different meaning-variations of the history of Papinianus' facing the will of Caracalla. He discussed the "messages" that can be drawn by a legal historian striving for objectivity, by the 17th-century drama writer, by the 17th-century audience, and by today's lawyers from this drama based on the clash of law, political reason and ethical obligations.²⁸ Márton Falusi treated the changing roles of law and literature in the legitimizing of power after the 1989's political changes in Hungary.²⁹ Péter Cserne investigated the altering meanings of the *contra proferentem* rule in the world of the civil law pointing out how the different legal-political aims influenced the interpretation of the rule in different historical periods and in different national legal systems.³⁰ Finally, János Frivaldszky analysed the relationship between the medieval jurisprudence and rhetoric in the light of the recent Italian legal philosophical findings.³¹

The present author held his inaugural lecture in 2009 at the Law Faculty of the Pázmány Péter Catholic University giving a comprehensive account of the research topics related to the field of "law and literature".³²

One may call 2010, with some exaggeration, "the year of law and literature". The *III. Law and Literature Symposium* took place at Piliscsaba in April. The host institution was the Faculty of Humanities of the Pázmány Péter Catholic University, in this way expressing, in a symbolic form, too, the participants' commitment to the interdisciplinary approach. One interesting feature of the program was that the discussed literary works nearly perfectly drew the picture of the modern history of the Hungarian literature.³³ A pleasing part of the symposium was the presence of Anna Kiss. She, as a criminologist, had started her researches in the field of "law and literature" almost a decade earlier, independently from the above sketched efforts of the legal philosophers. She also tried to integrate "law and literature" into the way criminal law is taught. She published her experiences in a monography in 2008 entitled *Literary Heroes Fallen in Crime*.³⁴

Three books also appeared in 2010 which practically summarized the outcomes of the researches of the past decade. An unusual reader on criminal law was edited by Anna Kiss.

²⁸ P. Szabó, B.: Papinianus a színpadon. A jog mártírja vagy modern példakép? [Papinianus on the stage. A martyr of law or a modern model?]. In: *Iustitia*, 153–198.

²⁹ Falusi, M.: Jog és irodalom Magyarországon 1990 előtt és után, avagy egy termékeny diszciplináris hasonlat [Law and literature in Hungary before and after 1990, or a fruitful disciplinary simile]. In: *Iustitia*, 199–208.

³⁰ Cserne, P.: Szerződésértelmezés hermeneutika és jogpolitika között. A *contra proferentem* szabály [Interpretation of contracts between hermeneutics and legal policy. The *contra proferentem* rule]. In: *Iustitia*, 209–228. For an English version see Cserne, P.: Policy considerations in contract interpretation: the *contra proferentem* rule from a comparative law and economic perspective. In: Radhika, G. (ed.): *Contract Theory–Corporate Law*. Hyderabad, 2009. 66–104.

³¹ Frivaldszky, J.: Jogtudomány és diszkurzivitás a középkorban a kortárs olasz jogfilozófiai kutatások fényében [Jurisprudence and discourse in the Middle Age in the light of the current Italian legal philosophical researches]. In: *Iustitia*, 229–270.

³² H. Szilágyi, I.: Jog és irodalom. (Habilitációs előadás) [Law and literature. (Inaugural lecture held at the Faculty of Law, Pázmány Péter Catholic University, 12 May 2009)]. *Iustum Aequum Salutare*, 6 (2010) 1, 5–27.

³³ The list of the Hungarian masters' name treated in the lectures is eloquent: Dániel Berzsenyi, Ferenc Kölcsey, János Arany, Imre Madách, József Eötvös, Gyula Illyés, Géza Féja, Péter Hajnóczy.

³⁴ Kiss, A.: *Jog és irodalom. Bűnbe esett irodalmi hősök* [Law and literature. Literary heroes fallen in crime]. Budapest, 2008.

It contained documents, taken from the various phases of the criminal process, which were based on the storylines of literary works.³⁵ Just like Tamás Nagy in his *Tracking Josef K.*,³⁶ the present author published his collected essays under the title of *Law–Literature*.³⁷

Now, let us cast a glance on the above enumerated literary achievements from a more general angle, and investigate the general features of the state of art of the Hungarian research in “law and literature”.

The first striking feature is the dominance of the historical perspective. This is quite understandable, since the socialist era inflicted an artificial break in the Hungarian legal culture, as well in the literature. The endeavours to find the cut up threads of the traditions naturally appear in this post-colonial situation, and the “law and literature” field can be an excellent area for these efforts.³⁸

As for the *strictu sensu* legal philosophical studies, it can be clearly seen that the “law and literature” researches promotes the reception of the “linguistic turn” of philosophical thinking.

Looking for positive trends, we can additionally point out that scholars of more and more legal disciplines are interested in the possibilities offered by “law and literature”, and the interest in the involvement of “law and literature” in the legal education is also increasing.³⁹ This kind of course is present in the curriculum of three out of nine Hungarian law faculties at the moment, but this number will probably grow thanks to the increasing number of the books suitable for educational purposes.

At the same time, it is a huge problem that those currents of “law and literature” which have the highest critical potential are absent from the contemporary Hungarian research, especially minority consciousness and the feminist perspective. However, the “legal storytelling” could have an important role, for example, in calling the attention of the Hungarian lawyers to the disadvantaged legal position of the Roma minority. So the greatest challenge of the following years will be to integrate the critical thinking into “law and literature”.

³⁵ Kiss, A. (ed.): *Bűntények a könyvtárszobából* [Crimes from the library room]. Budapest, 2010.

³⁶ Nagy, T.: *Josef K. nyomában – jogról és irodalomról* [Tracking Josef K.–on law and literature]. Máriabesnyő–Gödöllő, 2010.

³⁷ H. Szilágyi, I.: *Law–Literature*. Szeged, 2010.

³⁸ About the importance of “law and literature” in a post-colonial situation see Lenta, P.: Is There a Class in This Text? Law and Literature in Legal Education. *The South African Law Journal*, 119 (2002), 841–865.

³⁹ On the educational ambitions of “law and literature” see Ward, I.: The Educative Ambition of Law and Literature. *Legal Studies*, 13 (1993), 323–331; White, J. B.: *From Expectation to Experience. Essays on Law and Legal Education*. Ann Arbor, 2000.