A Pluralistic Model of the Responsiveness of Law: The Case of Hungary

Márton Matyasovszky-Németh and Áron Fábián

Abstract The present chapter seeks to show that the application of traditional doctrinal legal methodology is not sufficient to understand the responsiveness of law. Indeed, it is necessary to draw on the methodological tools of socio-legal studies to accurately model how the law responds to social change (legal responsiveness). We attempt to outline a pluralistic theoretical framework to dislodge the commonplace notion that law merely mirrors society. This would enable jurisprudence to move beyond debates about the concept of law and take account of both external and internal legal culture, as well as the omnipresent phenomenon of legal pluralism, which we believe is essential for describing the responsiveness of law. To demonstrate the value of such an approach, we describe multiple areas, including technology and artificial intelligence regulation, which are increasingly focal topics for legal studies.

1 Introduction

The present chapter seeks to show that the application of traditional doctrinal legal methodology is not sufficient for understanding the responsiveness of law. Indeed, it is necessary to draw on the methodological tools of socio-legal studies to model the responsiveness of law accurately. In this paper, we attempt to outline a pluralistic theoretical framework to dislodge the commonplace notion that law merely mirrors society. This would enable jurisprudence to move beyond the currently jejune debates associated with the concept of law and take account of both external and internal legal culture, as well as the omnipresent phenomenon of legal pluralism, which we believe is essential for describing the responsiveness of law.

M. Matyasovszky-Németh · Á. Fábián (✉)
Centre for the Theory of Law and Society, Faculty of Law, Eötvös Loránd University, Budapest, Hungary

Institute of Advanced Studies, Kőszeg, Hungary
e-mail: m-nemeth.marton@kancellaria.elte.hu; fabian.aron@bibokoll.elte.hu

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Although it might not always be glaringly obvious, contemporary legal studies is permeated by numerous serious methodological debates. This is true both of jurisprudence[1] and, even more so, of the so-called doctrinal study of law.[2] While a refreshing debate on doctrinal legal research has emerged in recent years both in Hungary[3] and internationally, especially in the United Kingdom and the Netherlands,[4] this has done little to dispel questions about the methodology of such research. Thus, the methodological underpinnings of contemporary legal research—although mostly surrounded by eerie silence—remain an open question that needs to be answered.[5]

This is not to say, of course, that doctrinal research is not the dominant strand within legal studies, both in the United States and Europe.[6] However, there is a growing demand for legal research to use, at least in part, empirical methods.[7] Of course, dealing with law as a social phenomenon (from a social sciences perspective) is nothing new. Sociology of law, legal anthropology, and criminology have centuries-old traditions.[8] Moreover, they have long been an integral part of Hungarian jurisprudence, and there is also a wealth of Hungarian literature dealing with the social aspects of law.[9] Typically, however, as recent literature highlights, such social science perspectives are often relegated to the status of 'auxiliary science' in Hungarian legal studies. This classical disciplinary demarcation seems to have been loosening recently, a phenomenon to which jurisprudence must necessarily react.

Thus, alongside the predominance of doctrinal jurisprudence, socio-legal research is becoming increasingly important, partly because of changes in the academic field and partly due to the methodological uncertainties mentioned above.[10] Some authors are more pessimistic about the future of doctrinal jurisprudence, arguing that it should increasingly be replaced by a kind of social jurisprudence.[11] Others, such as Mátyás Bódig, take the view that doctrinal jurisprudence has an 'indestructible epistemological core' that cannot be replaced but can only be

[1] Cotterrell (2014), pp. 41–55; Leiter and Matthew (2017).

[2] Bódig (2016).

[3] Szabó (1999), Bódig and Ződi (2016), Jakab and Menyhárd (2015).

[4] Bódig (2016).

[5] van Hoecke (2011), Smits (2017), pp. 207–228; Bódig (2021).

[6] Gestel et al. (2017), pp. 1–28.

[7] Diamond and Mueller (2010), pp. 581–599; Langbroek et al. (2017); Tyler (2017), pp. 130–141; Jakab and Sebők (2020).

[8] Jakab and Sebők (2020), p. 14.

[9] For an overview, Jakab and Sebők (2020), pp. 14 and 17.

[10] Jakab and Sebők (2020), pp. 14–16.

[11] As Oliver Wendell Holmes famously pointed out in 1897: 'For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics.' Holmes (1897), p. 469.

supplemented by social science methods.[12] However well-founded the doubts about doctrinal jurisprudence may be, there is perhaps no doubt about the need to clarify the methodology and the criteria for answering the research questions associated with jurisprudence.

This is particularly so when we ask questions—as the authors in this volume do—about the capacity of the legal system to respond to the social reality that surrounds it. Such research questions stress both the need to understand the social processes that form the background of the legal system's normative rules and how these may be evaluated.[13] We can, therefore, distinguish between a descriptive question (why and how does the law respond to social reality?) and a normative question (how may we evaluate such changes?). To answer these questions, it is necessary for doctrinal jurisprudence to complement its 'inside' view of law with social science methods. Without this, we may observe the reactions of the legal system, but it is difficult, if not impossible, to evaluate their justification or aptness. It is therefore necessary to describe the relationship between law and social change, which is thus also relevant to doctrinal jurisprudence.

2 Law and Social Reality

One of the quintessential theoretical frameworks for describing how law and social reality relate to each other is the metaphor of 'mirroring': law reflects social reality, or a specific part of it, in some way. Brian Z. Tamanaha has pointed out that much of modern legal theory can be fitted into this theoretical framework.[14] For example, authors in the natural law tradition interpret law as a reflection of morality or reason.[15] Similarly, authors in the legal positivist tradition base their concept of law on a reflection of commands or social conventions.[16] Thus, for example, H.L.A. Hart derived his concept of law from the conventions (secondary rules) of (at least a certain part of) society.[17] In his analysis, Tamanaha goes into even more detail on the relationship between the two major competing traditions of legal philosophy and the metaphor of mirroring, which also creates a basis for his case against it.[18] It should be stressed, however, that Tamanaha does not claim that law *never* mirrors social reality. He merely argues that this is *not necessarily* the case: one can imagine several degrees of mirroring, which can best be judged using

[12] Bódig (2021), pp. 157–171.
[13] Bódig (2021), pp. 197–215; van der Burg (2018).
[14] Tamanaha (2001), pp. 11–76.
[15] Tamanaha (2001), pp. 16–22.
[16] Tamanaha (2001), pp. 2–27.
[17] Tamanaha (2017), pp. 71–77.
[18] Twining (2003), pp. 207–209.

qualitative empirical means.[19] It follows that there is good reason to consider how law interacts with the underlying social reality, especially when it responds to changes in the latter.

One would be right to interject that this framing of legal philosophy does not take account of 'third-way' theories that seek to go beyond legal positivism and natural law and which are typically subsumed under the umbrella of socio-legal research. However, as Tamanaha points out in several pieces of work, theories that focus on law as a social phenomenon have played a significant role in legal theory since the nineteenth century.[20] Such theories are necessary if only because: '(1) theories of law are themselves subject to surrounding social-legal influences, and (2) theories of law are involved in the social construction of law.'[21] It is, therefore, necessary to incorporate the insights associated with theories that approach law from a social science (or theory) perspective when discussing the adequacy of the metaphor of mirroring.

Even when jurisprudence reflects on the relationship between law and society, it often does so in a one-sided way. Drawing on Brian Tamanaha, we have shown that major authors in the Hungarian legal theoretical tradition, like the international literature, often rely implicitly or explicitly on the metaphor of reflection.[22] In what follows, we will argue that this metaphor is inadequate and that we should provide a different description of the relationship between law and society. Only on the basis of this description can we formulate a theory of the responsiveness of law.

3 The 'Folk Concept' of Law as a Means of Moving on from the Mirroring Thesis

As we have alluded to in the introduction, to make the responsiveness of law researchable, one cannot simply apply a well-worn doctrinal methodology firmly embedded in internal legal culture. Indeed, the doctrinal methodology takes for granted an analytical concept of law, which, according to Tamanaha, approaches law from a functionalist or a formalist point of view.[23] Tamanaha starts from the so-called 'folk concept' of law, which includes all social phenomena perceived as law by a social group.[24] In his view, there is no single valid definition of law, and, therefore, a theory of law based on social reality can provide valid answers to the

[19] Tamanaha (2001), pp. 230–231.

[20] Tamanaha (2017) ch. 1; Tamanaha (2015).

[21] Tamanaha (2017), pp. 32–33.

[22] Fábián and Matyasovszky-Németh (2022), pp. 67–72.

[23] Tamanaha (2017), p. 48.

[24] According to Tamanaha's *labelling theory*, whatever different social groups label law is law. Tamanaha (2017), p. 117.

functioning of law primarily on the basis of this diverse, plural concept of law.[25] Tamanaha argues that 'Form-and-function-based analytical concepts of law inevitably clash with folk concepts because how people perceive law cannot be captured by functional analysis [. . .].'[26] According to Tamanaha, 'People and groups have conventionally identified and constructed multiple forms of law [. . .], and each of these forms of law comes in a range of variations. These forms of law arise and change over time in connection with social, cultural, economic, political, ecological, and technological factors.'[27]

Recognizing and researching the 'folk concept' of law should not, of course, mean a complete rejection of the analytical concept of law. To clarify, we are not questioning the merits of doctrinal jurisprudence but merely wish to emphasize that in order to describe the responsiveness of law, the traditional tools of doctrinal jurisprudence need to be supplemented. For this, socio-legal research should inevitably free itself from the constraints of the analytical concept of law and use the freedom offered by the 'folk concept' to describe the functioning of modern law that is in correlation with socio-political reality.

Of course, the visceral doubts of practicing lawyers, doctrinal legal scholars, and legal philosophers of positivist (or even natural law) inclinations regarding the 'folk concept' of law are understandable. Their hitherto used concept of law is at odds with this approach. One need only open the textbooks used in legal education today to see that law students acquire, even in the first semester of their legal studies, the idea that law is essentially and primarily positive state law. However, one would be remiss to deny that law should no longer be understood exclusively as state law—that is, how the vast majority of jurists have understood it since the nineteenth century—thanks to the rise of positivism.[28] Based neither on internal nor external legal culture can one claim that, in their everyday life and work, they think only of state law, and maybe of international and European law, when they think of law. If this were the case, how would one account for rules created by various international organizations, health experts, and the non-binding rules of the Operational Task Force set up during the state of emergency in Hungary at the time of the COVID-19 pandemic? And what would one make of wearing masks on public transport before the mask mandates were imposed simply because others were also wearing them?[29] Of course, it is conceivable that some proportion of people made a sharp distinction between positive law, morality, and other norms, but the majority of society (and the legal profession), at least in Hungary, did not.[30]

[25] Tamanaha (2017), p. 76.

[26] Tamanaha (2017), p. 48.

[27] Tamanaha (2017), p. 80.

[28] Michaels (2017), p. 91.

[29] Fekete (2020).

[30] Roth (2021), pp. 159–160. Roth cites cases related to the legal concept during the COVID-19 epidemic as examples. One such case is when fundamentalist Protestant communities in the

4 Legal Pluralism and the Responsiveness of Law

If in researching the responsiveness of the legal system we use the folk concept of law instead of an analytical concept, we must necessarily reject the mirroring thesis and should base our account on legal pluralism instead. Thus, it would be insufficient simply to provide a doctrinal analysis of specific legislative or jurisprudential changes to account for the responsiveness of law to social changes.

Although theories of legal pluralism, like theories built on the mirroring thesis, are diverse, we can identify some basic features that widely characterize legal pluralism. According to Ralf Michaels, legal pluralism rests on the following three pillars: '1. Not all law is state law: some law does not emerge, directly or indirectly, from the state. Put differently, some non-state normative orders deserve to be called law. 2. There is necessarily a plurality of laws: law is not one, but many. 3. These different laws interact; there are overlaps and conflicts between laws that cannot be resolved through appeals to either hierarchy or objective delimitation.'[31] John Griffiths' *What is Legal Pluralism?*[32] is widely considered to be the cornerstone of contemporary theories of legal pluralism.[33] Griffiths attempted to summarise what might be meant by legal pluralism. He argued that applying an approach based on legal pluralism can combat the 'ideology of legal centralism [which] has not only frustrated the development of general theory, it has also been the major hindrance to accurate observation.'[34] Griffiths' conception of legal pluralism is perhaps overly radical, but it illustrates the tendency in legal theory that led to the general acceptance of Bodin's, Hobbes', and others' monistic conceptions of law while ignoring social phenomena. On the contrary, as rightly emphasized by Ehrlich, law is a much more colourful *social* phenomenon than the totality of state law.[35]

Griffiths' article proved to be programmatic and revolutionary in its time because it made a radical break with how legal pluralism had been used in previous decades—that is, to describe the law of colonial societies.[36] He achieved this by using Sally Falk Moore's concept of a semi-autonomous social field to describe legal pluralism as a system of norms that parallel state law.[37] This neutralized the frequent criticism of legal pluralism as having over-extended the concept of law and recognized as law all normative systems outside state law.[38] So, Griffiths let the genie of legal pluralism out of the bottle. Indeed, the evolution of the conceptions of legal

Bijbelgordel, the Netherlands, followed religious rules as opposed to legislation and guidance because they did not recognize the legal validity of the epidemiological restrictions.

[31] Michaels (2017), p. 92.

[32] Griffiths (1986).

[33] Dupret (2007), pp. 297–300; Tamanaha (2021), pp. 169–209.

[34] Griffiths (1986), p. 4.

[35] Tamanaha (2021), pp. 8–9.

[36] Tamanaha (2021), p. 171.

[37] Szilágyi (2000), p. 27.

[38] Tamanaha (2021), p. 187.

pluralism after Griffiths shows that the meaning of the pluralist conception of law varies from one author to another, but certain commonalities can be found.[39]

In what follows, we attempt to outline the diverse theories of legal pluralism and the debates that have arisen in relation to it. It is also worth noting at this point that a multitude of approaches to describing how the law responds to social change may emerge from the dual foundations of the folk concept of law and legal pluralism. For example, according to Masaji Chiba, most of the conflicts between theorists of legal pluralism are caused by the distinction between state law and 'minor law'.[40] Chiba explains that both concepts have undergone significant changes, but it is now accepted that minor law can take many forms that are almost impossible to catalogue. He also points out that minor law includes legal systems other than state law, which, like local or regional systems of norms, substantially determine and transform them in some cases (e.g., European Union law or human rights law).[41] Another common feature of these theories is the extension and modification of the concept of legal pluralism, which, according to Chiba, necessarily goes hand in hand with the phenomenon of legal pluralism—a dynamic phenomenon in constant flux.[42] Chiba points out that while almost all studies on legal pluralism may generate new debates, it is this multiplicity of uses that brings us closer to the complex social reality of law.[43]

5 Global Legal Pluralism

The systematization of legal pluralism is by no means an easy task, and many approaches have been proposed since Griffiths' study in 1988. Paul Schiff Berman's classification, modeled on Cotterrell's, is one of the most well-known because it is easy to operationalize for both doctrinal jurisprudence and socio-legal studies.[44] Berman distinguishes between substantive and procedural legal pluralism. According to Berman, substantive legal pluralism can be linked to multiculturalism, which aims to justify the coexistence of different normative systems in a given field. On the other hand, procedural legal pluralism does not set a priori goals but merely seeks to describe the interaction of different mechanisms, institutions, and discourses.[45] According to Cotterrell, these can take place at different levels: intranational, transnational, and supranational. Berman argues that this division makes it easier to deal with the phenomenon of global legal pluralism, which moves away

[39] Chiba (1998).
[40] Chiba (1998), p. 229.
[41] Chiba (1998), pp. 233–234.
[42] Chiba (1998), p. 240.
[43] Chiba (1998), p. 242.
[44] Berman (2014), p. 257.
[45] Berman (2014), p. 256.

from the nation-state level and takes account of transnational socio-legal processes.[46] The introduction of the notion of global legal pluralism may be very useful for research on the responsiveness of law, as it poses a number of challenges for anyone wishing to understand the responsiveness of law, ranging from social media platforms to epidemiological rules to the internal law of transnational organizations.

An exciting discussion of the phenomenon of global legal pluralism is provided in Boaventura de Sousa Santos' seminal work *Toward a New Legal Common Sense*.[47] Santos argues that the theory of legal pluralism has historically been represented as a counter-hegemony to the established social order and legal structures.[48] He also points out that the theory of pluralism had already manifested at the end of the nineteenth century in reaction to the legal positivism present in both common law and continental traditions, the main objective of which was the codification of state law and the rejection of law outside the state, guided by the idea of creating a civil state based on legal certainty.[49] It is perhaps no coincidence that legal pluralism became a popular research topic in socio-legal studies in the context of the turbulent social changes of the 1960s.[50] The importance of the theory of pluralism was later reasserted when it offered an alternative to the cosmopolitan global legal order in the 1990s and again in the 2010s.[51] Sousa Santos believes that legal pluralism is important because it can bring underrepresented 'practices' of legal discourse—typically the Global South's narratives of law—into the dominant legal epistemological space.[52]

A less critical reading of global legal pluralism is given by Günther Teubner in *Global Bukowina: Legal Pluralism in the World-Society*,[53] where he argues that only legal pluralism can provide an adequate theoretical framework for the study of global law by focusing on the discourses that occur therein. Teubner argues that living law, as described by Ehrlich, has also developed globally, primarily with the emergence of the new *lex mercatoria*.[54] Teubner argues that global law is a distinct legal order that cannot be understood from the perspective of state law, as it has widely divergent characteristics and is closely coupled to different economic and social contexts.[55] Teubner's idea mirrors theories of legal pluralism, which describe the concept of law as a complex phenomenon determined by social and cultural contexts. Both reject the idea of the universality of Western law and treat it as a

[46] Berman (2014), pp. 268–269.
[47] de Sousa Santos (2020).
[48] de Sousa Santos (2020), p. 99.
[49] de Sousa Santos (2020), p. 101.
[50] de Sousa Santos (2020), p. 102.
[51] de Sousa Santos (2020).
[52] de Sousa Santos (2020), pp. 112–113.
[53] Teubner (1997).
[54] Teubner (1997), p. 1.
[55] Teubner (1997), pp. 1–3.

normative system with limited scope.[56] Teubner's theory of global legal pluralism is also unique in that it describes the functioning of a 'global Bukowina' based on Luhmann's systems theory. Thus, Teubner, following Luhmann, argued that global free law is also a self-reproducing system with its own mode of communication and ability to determine whether a situation is legal or illegal under global law.[57]

On the other hand, the concept of global legal pluralism has been criticized in recent years.[58] One of the foremost critics of Santos' and Teubner's theories, William Twining, argues that the notion of legal pluralism as a system of coexisting norms in constant competition or struggle is flawed, as the relationship between these systems is generally much more complex.[59] Twining argues that the '[...] terminological uncertainties [associated with global legal pluralism] can be viewed as symptomatic of a discipline trying to face up to a new and rapidly changing scene. [...] However, the many extensions and applications of the idea of legal pluralism to new phenomena and situations are so many and varied that it is difficult to construct a coherent answer to the question: what is the relevance of classical studies of legal pluralism to the emerging field of "global legal pluralism?"'[60]

In his recent theoretical work on legal pluralism,[61] Tamanaha also criticizes the theory of global legal pluralism because, in his view, '[a]fter telling us to center on coexisting public and private and hybrid regulatory bodies and their interaction, they have little to say beyond paying attention to the complexity and interaction, or advocating flexibility, negotiation, and other general advice with thin content.'[62] Instead, Tamanaha proposes a systematic discussion of the role of legal pluralism in history, as well as a history of the idea of legal pluralism. However, he does not merely collect and file the writings of authors on legal pluralism. Going beyond mere systematization, he develops a unique theory on this basis, in which he further elaborates his thesis of the folk concept of law developed in his earlier works, applying it to the plural conception of law.[63]

Tamanaha distinguishes between two conceptions of legal pluralism: abstract and folk legal pluralism.[64] According to Tamanaha, social scientists' and legal philosophers' conceptions of abstract legal pluralism are always based on an artificially distilled analytical concept of law.[65] These theories of abstract legal pluralism may start with the view that law is a kind of 'normative ordering within social groups' or

[56] Teubner (1997), pp. 14–16.
[57] Teubner (1997), p. 10.
[58] Tamanaha (2021), pp. 157–161; Twining (2009), p. 277; Twining (2010), pp. 511–514.
[59] Twining (2009), p. 277.
[60] Twining (2010), pp. 512–513.
[61] Tamanaha (2021).
[62] Tamanaha (2021), p. 168.
[63] Tamanaha (2021), p. 12.
[64] Tamanaha (2021), pp. 10–15 and 169–209.
[65] Tamanaha (2021), p. 11.

that law is 'institutionalised norm enforcement'.[66] Tamanaha argues that theories of abstract legal pluralism cannot adequately describe legal pluralism because they all start from an abstract, artificial notion of law and end up with the conclusion that legal pluralism is nothing more than the 'multiplicity of a single form of law'.[67] For this reason, abstract theories always work with either a concept of law that is too broad or too narrow and fails to represent socio-legal practice adequately. Tamanaha summarises this problem as follows: 'These theories share three essentialist assumptions: (1) law is a singular phenomenon with (2) a particular set of defining or essential features that provides the basis for (3) an objective or universal science or theory of law.'[68] Abstract legal pluralism, then, cannot describe multiple sets of norms existing simultaneously as valid law in a social space, but rather how the analytic concept of law created by the author operates in an artificially delineated space.

Folk legal pluralism, based on the folk concept of law, thus frees scholars committed to socio-legal research from producing analytic concepts of law detached from social reality and from spending their time defending the merits of these concepts of law.[69] This also enables research into the responsiveness of law to be freed from several artificial presuppositions at once: first, one does not have to insist that law mirrors society; second, one does not have to defend the view that state law is the only normative system in society; and, finally, one is not forced to explain every socio-legal phenomenon one encounters in the course of their research using an artificial legal concept. Folk legal pluralism thus offers the possibility of observing and describing the normative systems that prevail in different communities as they operate in everyday life. Again, it should be stressed that this latter view does not dismiss the methodology of doctrinal jurisprudence and its usefulness; it merely seeks to shed light on another neglected slice of socio-legal reality. For, when examining the responsiveness of law, it is just as important to look at how the state legislature reacts to a social phenomenon as it is to look at how external legal culture shapes our everyday lives.

Cotterrell, partly in agreement with Tamanaha, believes that legal pluralism offers lawyers an opportunity to avoid having to engage in systematic theorizing, which is less relevant for practice, and instead provides them with a way to approach the complex reality of law and respond to different changes in the law.[70] According to Cotterrell, legal studies could facilitate this rapprochement by becoming more closely linked to the social sciences without losing its specific methodology.[71] Although Cotterrell does not provide a detailed guide that would fully convince every lawyer of the importance of legal pluralism, he does draw attention to an

[66] Tamanaha (2021), p. 11.
[67] Tamanaha (2021), p. 11.
[68] Tamanaha (2021), p. 174.
[69] Tamanaha (2021), p. 206.
[70] Cotterrell (2017), p. 30.
[71] Cotterrell (2017), p. 39.

important point when he urges an ever-closer relationship between legal practice, jurisprudence, and the social sciences. We agree with Cotterrell that legal pluralism may make the legal profession aware that, in addition to what they are taught at university, there is a complex and diverse world of law, which is very often not the same as state law, but which nevertheless contributes a great deal to the everyday functioning of different communities.[72]

To provide some examples of the potential benefits of research based on global legal pluralism, let us briefly highlight some areas of increasing importance to practitioners where such an approach might lead to relevant results. One of these is global *lex mercatoria*, i.e., the law of international economic relations mentioned above.[73] This heightened interest is apparent from the growing number of authors who apply an interdisciplinary methodology to describe *lex mercatoria* as a socio-legal phenomenon.[74] On the other hand, there is also a growing social science scholarship on related issues, such as the role of international organizations[75] or international arbitration[76] in shaping *lex mercatoria.* Thus, as *lex mercatoria* becomes more and more plural, the role of jurisprudence based on the folk concept of law becomes increasingly important since the analysis of state law can provide a less and less accurate account of the law of international economic relations.

Another critical area where jurisprudence needs to build strongly on the folk concept of law is issues related to information society.[77] One of the characteristics of information society is the emergence of ever-larger platforms that typically provide services across borders.[78] This phenomenon is predominantly encapsulated by various social media platforms. These entities and their day-to-day functioning are difficult to understand solely through a lens of the doctrinal jurisprudence of state law. Research that takes legal pluralism into account can better capture the quasi-legal systems that these platforms create for their users.[79] In addition, we seek to answer the question of how state law can respond to technological advancement, without which the response of the legal system can be disintegrative rather than effective.[80] A recent issue that highlights how pluralistic approaches are necessary for understanding the legal response to technological change is the newly emerging

[72] Cotterrell (2017), p. 39.
[73] Toth (2017).
[74] Calliess and Zumbansen (2010).
[75] Block-Lieb and Halliday (2017).
[76] Ali (2020).
[77] Ződi (2018), ch. 6.
[78] Lobel (2016), p. 87; Cohen (2017), p. 133.
[79] Land (2020).
[80] Parker and Braithwaite (2005).

field of artificial intelligence (AI) regulation.[81] Onur Barkiner, for example, highlighted that the European Union's AI Act is built on a plurality of understandings of the dangers and benefits of AI.[82] Thus, the legal response to emerging information technology phenomena must also build on socio-legal insights.

These are just a few examples of areas of law whose changes are best understood through legal pluralism. But the list is far from exhaustive. Even in areas of law where legal scholarship has traditionally focused on state actors and the law they make (such as public international law or constitutional law), we can find very promising pluralist research.[83] Legal pluralism should thus no longer be seen as the playground of a few legal anthropologists, sociologists of law, or researchers in atypical fields of law. A shift of emphasis is taking place that is permeating legal scholarship at large.

6 Conclusion

Before concluding, let us briefly allude to the state of legal studies in Hungary. Although the influence of theories of legal pluralism and the application of the folk concept of law is not prevalent in the Hungarian jurisprudential tradition, we can find authors who have worked to explore facets of socio-legal reality that transcend doctrinal jurisprudence, as well as legal sociological research based on the mirroring thesis. One such pioneer was Ernő Tárkány Szücs, who, in the last chapter of his book on Hungarian legal folk customs, looked at the existence of such folk customs in the late 1970s.[84] Tárkány Szücs found that layers of 'up' and 'down' existed in legal culture, or as he calls them, 'legal folk customs', even under the socialism of his time. This was mainly due to the fact that '[t]he old traditions are no longer known, and the new laws are not yet known [...]. Although the social and economic transformation has been followed by the laws, they have not been mastered and understood by the broad masses of our people [...]'.[85] Thus, contrary to the mainstream academic opinion of his time, the post-war political and economic transformation did not result in a 'socialised legal consciousness', but rather increased the division between internal and external legal culture and cemented the existence of legal pluralism.[86]

In recent years, however, we have witnessed significant advances in research on legal consciousness with the revival of research on legal consciousness and legal culture. In 2018, two monographs on Hungarian legal consciousness were

[81] Smuha (2021).
[82] Barkiner (2023).
[83] Mégret (2020); Teubner (2012).
[84] Tárkány Szücs (1981), p. 813–833.
[85] Kulcsár (1981), p. 822–823; Tárkány Szücs (1981), p. 830.
[86] Tárkány Szücs (1981), p. 820.

published.[87] Both works also sought to identify why the regime change's legal and institutional shocks were not absorbed and why the new legal discourse did not adapt to legal consciousness and legal culture. Notably, the two independent research projects used different methodologies: the first relied on a primarily quantitative methodology, and the second relied on a qualitative, narrative methodology. The two works may have influenced the academic acceptance of legal pluralism and the folk concept of law, even though neither piece of research explicitly considered this as its aim.

From the point of view of how the law responds to social change, however, we think it is time to revisit the research project that has been repeatedly brought to the surface by Hungarian legal anthropologists, both in legal theory and in empirical research on legal culture. The most important task would be to get legal scholars to accept that the theoretical findings of socio-legal research do not challenge doctrinal jurisprudence but are merely aimed at creating a body of knowledge about law that reflects the diversity of socio-legal reality. We believe that research based on this premise, which we strongly recommend, can complement and enhance jurisprudence. Only this approach can reveal indispensable factors without which we cannot obtain a complete picture of how the legal system responds to the constant shifts in today's dynamically changing world.

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