Eötvös Loránd University
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PhD Dissertation

The Study of Folk Law in Hungary. Károly Tagányi’s Program on Collecting Living Legal Folks Customs

— PhD thesis —

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The study of folk law and legal ethnography

The study of folk law is an utterly interdisciplinary research area – fitting into those of Ethnography, Law, History and Sociology – which was not institutionalized in Hungary. However, it can boast of some remarkable results, based mainly on individual scientific achievements. My dissertation focuses on the history of study of folk law in Hungary from collecting inheritance customs and law at the turn of the century to publishing of Ernő Tárkány Szücs’s synthesis, titled *Magyar jogi népszokások*, which is regarded as a milestone. Besides the expression ‘study of folk law’ there are further definitions applied to the same phenomenon, all of which are connected to more or less institutionalized sciences, such as ethnography of law, ethnology of law, anthropology of law, juridical anthropology, ethno-jurisprudence, legal anthropology.

The term ‘study of folk law’ I chose to use was introduced by László Papp in his studies of methodological and historical research published in 1948 (*A magyar népi jogélet kutatása* and *Vezérfonal a népi jogélet kutatásához*). According to him the study of folk law aims at ‘exploration of external social facts of legal relevance and internal mental and psychological manifestations’ connected to them. In his opinion, the study of folk law covers a field similar to the science of legal ethnography, which is a separate part of ethnography; it has the same definition for law: it refers not only to written law but is used in ‘more general’ terms. Papp takes difference between the study of folk law and that of legal ethnography: legal ethnography lacks a practical aim. While legal ethnography considers studying tiny phenomena in detail, the study of folk law takes into consideration ‘practical and utilitarian aspects’ of legislators and appliers of law. Disregarding the vagueness of the terminology, I still chose the definition ‘study of folk law’ as the title of my research-historical review for ‘practical and utilitarian aspects’, that is supporting legislation, emerge from time to time as an aim of these studies or justification of their very existence – both pro and con. In my opinion, the variety of studies presented in my dissertation is best reflected by this ‘neutral’ definition disconnected to any institutionalized discipline.

Examples of integrative application of ‘folk law’ and ‘study of folk law’ can be found in international literature as well. A collection from 1995, edited by Alison Dundes Renteln and Alan Dundes is the most significant one in this field, although some further attempts have been taken since then. The collection, which includes more then fifty studies from all over the world, uses ‘folk law’ both in its title and contents (*Folk Law. Essays in the Theory and*
Practice of Lex Non Scripta) to describe general, more heterogeneous researches worldwide. The conceptual vagueness of the term ‘folk law’, used in the title of my dissertation, as well as its underlying meaning – the concept of folk law, folk and law and the actual subject of the studies – is only partly clarified with the help of the researchers when discussing their studies. The conceptual vagueness and the concomitant pressure for definitions is one of the characteristic features of those studies. The lack of consensus or fruitful relationship between ‘initiated lawyers’, ethnographers and sociologists, and the lack of co-operation between law, ethnography and sociology may be regarded as a symptom of the fact that the widely referred interdisciplinarity is not-well-functioning in Hungary.

If some form of interdisciplinary consensus develops concerning the relevance of folk law studies, it connects these studies to a certain discipline, in our case, ethnography or occasionally the ‘related’ anthropology as it is demonstrated by a newly published volume of studies (Jogi néprajz, jogi kultúrtörténet. Budapest, 2009).

Accepting this consensus concerning the usage of the term ‘legal ethnography’, aligning to international trends, I think research history requires a more integrative and general terminology.

Resources

Research history has remarkable traditions: besides the works of folk law researchers, both published and those remained in manuscripts, results of different fields of sciences, such as reviews of the legal theory, sociology of law, and ethnography and also reviews concerning certain counties and settlements, are available. At the same time, foreign examples, trends and descriptions of international practices in general provide a closer understanding of research history. In my review, besides a huge number of published resources from different areas (books, essays, articles, reports, necrologies, book reviews, and several course books) I am frequently supported by unpublished resources as well, including legacies of researchers (Ernő Tárkány Szűcs, György Bónis, and particularly Károly Tagányi’s legacy in National Széchényi Library’s Manuscript Collection, the files of Népi jogéletkutatás 1939–48. I–II, in the State Archives of Hungary, research reports, correspondences, documents of Hungarian Ethnographical Society (HES) in the Ethnological Archives of Museum of Ethnography, and further topic related resources at the Manuscript Department of the Hungarian Academy of Sciences.
**Objectives**

With an eye on the characteristics of the study of folk law, my review is mostly based on individual scientific results, which are connected to each other via references, reviews and quotations, friendships (Miklós Mattyasovszky and Károly Tagányi) and often master-pupil relations (Károly Tagányi–Ferenc Eckhart–György Bónis–Ernő Tárkány Szücs) bring together the oeuvres. It is my main concern to document how this research tradition was bequeathed – from hand to hand – in Hungary.

My research history offers original aspects at two points. One of them is focusing on Károly Tagányi’s program through which I intend to emphasise the excellence of his oeuvre and program, as well as the fact that it provides a new resource in many areas of social science. Its significance has rarely been realised and acknowledged. While the only part of the oeuvre dealing with family law and inheritance law was published, Tagányi’s program can be compared to Tárkány Szücs’s synthesis, titled *Magyar jogi népszokások*. Tagányi can be regarded as the first representative of Legal Ethnography with scientific aim and his program can be considered as one of the most important, standard starting point.

The other new aspect is that of the rather complicated, from time to time changing relationship of politics and science which appears throughout my work unavoidably. The findings are highly informative: researches are mainly politics-generated, just the motivations are completely different at Ignác Darányi’s time at the turn of the century, at prime minister, Pal Teleki’s time at the end of the 1930’s, or after 1945. The research historical review in Hungary lacks the analysis of the relationship between science and politics. The topic has been mentioned at a general level. On the basis of my researches, I think it is rather superficial to record the pure fact that Hungarian social science is politically and ideologically overloaded. The prevailing politics – though with shifting emphasis – has always strongly influenced the ’study of folk law’, researches were subordinated to the aims of direct legal politics and at the time of the autarchy of state law were almost entirely neglected, especially presentology. Impacts of legal politics overrode the aspects (starting points) of Ethnography and History of Law, it was the political support that enabled the expansion of researches at the end of the 1930’s that prevented their professionalization at the same time.
As I have earlier set as my starting point, it is indispensable to get acquainted with the scientific oeuvres, the circumstances of collecting and the methods used by the researchers of folk law – especially as often these are the sole documents of certain social phenomena. With my research history, which is based mainly on Tagányi’s oeuvre, I am seeking to outline the influence of careers, considerations and external events on the individual scientific achievements.

A further characteristic of national researches on folk legal customs should be pointed out, namely that fact that most of their results remained in manuscripts. Fortunately, the first reviews of research history have been published, and, as a result of researches with definite aims, the manuscripts of each research from different legacies are becoming known. My dissertation fits into this discovery work with Károly Tagányi’s ouvre in its focus.

**Károly Tagányi’s scientific program on the gathering living legal folks customs**

Thanks to Károly Tagányi, the first synopsis of the research of legal folk customs appeared early in the 20th century. His book titled “A hazai élő jogszokások gyűjtéséről” (1919) intended to launch a program, based on a broad international research-historical review and has remained a cornerstone and reference source of many researches until today. Though the Historian-Archivist, Tagányi is not referred to as one of the most influential scientists at the turn of the century, his results were integrated by a number of research areas, among others history (historiography, cultural history, local history, economical history, social history) ethnography, legal history, history of sociology, linguistics, to mention just the most important ones.

He is an undeservingly forgotten scientist whose topic was far more universal than that of his contemporaries, his conception was very different from that of the most contemporary historians. He was a scientist committed to his work. In the 19th century, with his extraordinary talent and erudition he tried to establish research trends, started in Europe at the time, in Hungary. However, his different attempts – from adapting modern classification principles of archival science through the scientific establishment of local history to implementing economical history, and his program relying on international research history discussed in detail below – proved to be ahead their time and thus had no followers for long. Considering his publications and focusing on the so-little-known details of his oeuvre, such as his debate on toponyms and their ‘Magyarization’, his elaborated arguments in his Karácsonyi-Tagányi polemics and his initiatives aiming at writing a Hungarian economical
history, I am trying to demonstrate his versatile research talent and show how he got to formulate his program. His most important innovation was to include ever more resources in his researches. He considered data collection – and, being an archivist, the classification of data – as a first step, which, ‘at the time of scientific division of work’, stands apart of both processing and analyzing data. His respectable work of collecting and classifying data, his archival reviews and principles of archival science proved to be outstanding not only on account of its novelty. His principles, though decades later and not directly through his work, became the main classification principle of archival science. Of his data processing attempts, his work titled “A földközösség története Magyarországon” should be emphasized as it made him qualified to the Academy membership, as well as his introductory essay to “Erdészeti oklevélktár” has similar significance. At the time these works were published (1894-1896), Tagányi already regarded ethnological collections as a new resource base. Though never taking part in it himself, with a wide international perspective he kept track of the results of the new science emerging at the time, and combined with his archival researches, he built them in his works. His “A hazai élő jogszokások gyűjtéséről”, a program composed particularly for ethnographers, was a result of a decades’ long collecting work. However, only its first part could be published, its further volumes, like the majority of Tagányi’s works, have remained in manuscript until today. Even his published legacy has not been taken into account, in fact, the processing of oeuvre has not even started.

The task of processing his legacy does not evidently belong to the scope of any discipline and, consequently, its processing is rather fragmental. I consider as one of the most important results of my dissertation that I started the systematic processing of Tagányi’s legacy and made a list of his published works.

Hopefully, the latter might serve as a starting point and inspiration for further thorough studies of his oeuvre.

Tagányi’s career starts at the end of 19th century parallel to the beginning of ethnographical researches in Hungary. Tagányi started to collect customs as a historian and archivist taking a fundamentally positivist viewpoint towards history, much characteristic of his age, with a strong economical-historian interest. First examining the social-historical questions of the Árpád-era, he went on to elaborate a ‘comparative ethnological legal and social science’. The historian Tagányi’s adventures in the fields of ethnography, at the peak of which he became the head of the Hungarian Ethnographical Society (1920 – 1924), increased his isolation within the science of history.
About forty years after publishing of his first historical study in 1880, on 28th March in 1917, at the board meeting of Hungarian Ethnographical Society, the historian and archivist, Károly Tagányi, then a well known expert, delivered a lecture on living Hungarian folk customs, which was considered by Antal Herrmann as ‘epoch-making’ from the viewpoint of the development of Hungarian ethnography. The extended material of the presentation was published soon with the title of ”A hazai élő jogszokások gyűjtéséről” (On Collecting Living Legal Folk Customs) in “Ethnography” (1917–18), then in a book in the series of Néprajzi Könyvtár in 1919, even later, in 1922 in German. At the beginning of 1919 Tagányi was retired as a chief archivist. He devoted the rest of his life to ethnography. Tagányi’s program, proposing to collect living, unwritten, informal legal customs, folkways, formalities and symbols, is purely scientific. We can clearly say it from collecting inheritance customs at the turn of the century, which had a practical aim: incorporation of legal customs into legislation. The program, despite its fragment-like characteristics, is a coherent ‘literary guide’ defining the targets and methods of research. Tagányi prepared an extensive questionnaire, which was addressed to ethnographers. It surveyed the most recent ethnological literature, took into consideration data from throughout the world, and mainly intended to raise problems. Although the lecture was composed with thorough professional knowledge of ethnology, linguistics and legal history, evoked hardly any reaction. Collecting legal customs, unlike Tagányi’s other research areas, did not become an accepted research subject.

In my essay I present the reception of Tagányi’s program, review its continuation with a special emphasis on the details complementary to the published chapters on family law and inheritance law, which were written by Tagányi and have remained in manuscript until now. My dissertation forms a picture of the reception, influence and continuation of Tagányi’s program.

After publishing the first volume of his book, he kept on working. At the Manuscript Department of the National Széchényi Library, in Tagányi’s dossier (Quart. Hung. 2278. Tagányi Gyűjtemény. Jog és szokásjog. Ősi jogi és szokásjogi általánosság – bibliográfia. Hazai jog és jogszokások. Birtok – büntető – házassági és kötelmi jog. Magyar jog külföldi hatása) besides published records, manuscripts and proof-sheets of chapters on family law and inheritance law, the material of the planned continuation can also be found. As later researchers of folk law did not know either these files, particularly significant in the research of legal customs, or Tagányi’s legacy in general, they could not rely on them for their work. He collected material to three further parts; the working title of the second part on property law was II. Dologjog, vagyonjog, vagyonjogi igazság szokásai, birtokjog. According to his
plans, the third part would contain legal customs of equity law, and the fourth titled *Büntetőjog, perjog, kiegyezési rendszer* would have contained the legal customs of criminal law, procedural law and, with a recent term, mediation procedure. Besides hundreds of records, he also formed the final, conclusive part of his book on legal customs in which he summarized the aims of research and gave detailed instruction on the practice of collecting.

His aim was to make records necessary for his topics; he did not intend to publish them. However, his remarkably rich data collection is a valuable source and undoubtedly worth publishing. Due to the research historical emphasis of my dissertation, the abundance of data and to the questions and problems raised during processing, my study is going to present only the collection of sources: which topics, with what emphasis and depth he processed. At the same time, I make a suggestion on what and in what form would be worth publishing from the manuscripts.

**Research history between two reviews**

One of the most definitive clues in my dissertation, just like in the research history between the two most important reviews on the study of folk law in Hungary, is the so-called 'Tagányi effect': how well-known and valued he was, and to what extent his results referred to by later researchers.

A few years after Tagányi’s death, at the end of the 20’s two other programs were announced, being based mainly on German Künssberg’s results. The legal historian and dean of The Academy of Law in Miskolc, Győző Bruckner drew the attention to the importance of ethnological sources that might serve legal historiography, 'folk traditions of legal reference'. The ethnographer, Ákos Szendrey, started collecting and systemizing legal folk customs due to Tagányi’s call, keeping track of foreign ethnological researches. Beside the introduction of their programs, Bruckner wrote a short case-study on ancient Hungarian folk law and Szendrey on the legal customs of the Székelys.

Apart from these few sparse attempts, the research of folk law as a program only started at the end of the 30’s, within the framework of an institute (Országos Táj- és Népkutató Intézet) ran by István Győrffy. He organized a work group in 1939 with the participation of Bónis György, Fél Edit, Szendrey Ákos and Papp László to collect 'folk customs and legal folk-traditions'; later on Károly Viski and Miklós Hofer joined their work. They elaborated a detailed work plan and a general questionnaire which (according to the plans) was to be a basis for a country-wide research. To accomplish these grandiose plans,
Győrffy asked the Ministry of Justice for support. First, they received only external support but, after Győrffy’s sudden death in 1939, the ministry took over managing of the research, which was accompanied by downplaying professional aspects, as it can be amply documented. Despite these facts, this period can be considered the ‘golden age’ of the study of folk law in Hungary even due to its size: data were collected from 137 civil parishes, in the form of partly or fully completed questionnaires. ‘Country-research movement’ research camps were organized in Garam Valley (1941) and Kalotaszeg (Transylvania) with György Bónis as their leader and mentor. Ernő Tárkány Szücs’s career also started in Transylvania at the beginning of the 40’s. He became a committed collector of legal folk customs as György Bónis’ disciple. Edit Fél studied the legal customs of families in Martos in Komárom county and László Papp concluded a study in Kiskunhalas (1941). The results of this collecting work can be learned from short monographs. Although this field work was based on the same questionnaire, as a result of some important persons’ influence in collecting, there were significant differences in the results and conclusions providing a base for the development of legal ethnography in Hungary. László Papp’s book on Kiskunhalas (1942-43) triggered a debate in the paper titled Társadalomtudomány, in which researchers of folk law redrafted their point of view under the pressure of the first, external critique formed on the basis of rights theory. Besides the results of the questionnaire survey, I find especially significant and exemplary the analysis by Ernő Tárkány Szücs on the legal folk life of Márteley and Edit Fél’s analysis presenting the legal customs of families at Martos.

The war made the collecting work impossible, moreover, the majority of the collection was also lost. Despite this, Papp and Bónis, the two decisive participants went on working. Papp refined the aim and method of the study of folk law, while Bónis, besides writing new, programming articles, with his disciples restarted collecting legal customs. This time he did researches within the framework of the University of Szeged in Alföld (1948). A new workshop was also set up in the Sociography Institute of the Academy of Law in Eger for collecting legal customs (1947). It was at the same time that István Imreh, a disciple of József Venczel, gave out his first publications. He connected to Tagányi’s oeuvre in studying village communities grown from rural communities.

After 1948, in the system of the state socialism there was no place for the study of folk law. Researches were made totally impossible: first as a consequence of a compulsory adaptation of the Hegelian criticism that mocked at work of Carl von Savigny as well as that of the historical-legal school, considered the predecessor of the research of legal folk customs; while after 1956 because of announcing the collecting work ‘Hungaro-centric’.
Legal theory, due to its ideological and maintenance role, has a central significance in jurisprudence; therefore, via the obligatory adaptation of Soviet dogmas reducing legal system to the norms of the state, it questioned the research subjects, as well as the very existence of folk law. Only much later, with the expansion of legal sociology emphasising the plurality of legal systems, did this approach fade away. I believe that legal ethnography cannot lack the conceptual basis having crystallized through the theory-forming efforts of legal theory and legal-sociology; that is why I refer to the most important results.

Ernő Tárkány Szücs, an emblematic figure of the Hungarian and European legal ethnography, continued his researches even in this period, on his own this time, processing both the results of the previous period, and new themes connected to folk law in his archival researches. With easing the pressure of ideological criticism, he gradually had more opportunities for publishing. While at the end of the 40’s his writings on legal folk customs could appear only in “Puszták Népe” (a paper of Vásárhely, edited by Szücs himself). A decade later, towards the end of the 60’s, he came published thematic monographs, based on archival researches, about townmen’s wills (Szücs Tárkány 1961, 1966) and ownerships of branded cattle (1965). At the end of the decade a study of his appeared, which was the first to review the results of European legal ethnography (1967). It is characteristic of this period that his studies with a view to Europe could appear in Hungarian only about a decade later in the periodical “Létünk” in Újvidék, Yugoslavia (1975, 1976) where there had been academic traditions of collecting South Slavic legal customs (pravnih običaja) since the end of the 19th century, disregarding political systems. From the middle of the 70’s on, Tárkány Szücs, then as an associate of the Ethnological Institute of Hungarian Academy of Sciences (MTA) published his studies presenting the legal folk customs of marriages, markets, and mining. He also published his memories on Hungarian and foreign researchers of folk law, which have special significance in historical research. Ernő Tárkány Szücs could publish the results of researches of decades as late as in 1981. His book, titled “Magyar jogi népszokások”, a research historical review, is a synthesis of the results of his researches on the study of folk law in Hungary until that time on the one hand, and collecting work of the author on the other. It has been published twice and fulfilled the hope of researchers of folk law. His works are widely used by the representatives of different social sciences, the thick volume can be found on the shelves of law offices, it is an important part of Ethnographic collections, and, though usually in historical introductions, legal experts and legal-sociological works also refer to it.
My publications on the topic:

