9 Roman law and socialism

Life and work of a Hungarian scholar, Elemér Pólay

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Introduction

A human being, as Aristotle emphasised, is a social being (*zoon politikon*). His life and work can be realised within the framework of a particular social system; in the 20th century in Europe, this meant enormous challenges for many legal historians. Elemér Pólay, the most significant Hungarian Romanist in the 20th century (also my teacher and ‘Doktorvater’) suffered a turbulent fate—but tried to remain human (and professional) in a cruel and inhuman world.¹

Over 1915–1988, the beginning and the end of a scholar’s life. The 73 years cover a bloody period: the traumas of two world wars, the Soviet-type revolution of 1919, the Treaty of Trianon and the subsequent general depression, the communist dictatorship of the 1950s, the uprising of 1956, and the ‘goulash communism’ of the 1960s. Elemér Pólay’s life and work evolved in this socio-political environment, and he was forced to be a part of this world. His person and his internationally significant professional aspirations must be examined in this context to gain a true picture of him.

Early life, National Socialism and the communist takeover

Elemér Pólay was born on August 23, 1915 in Sombor, in South Hungary (Délvidék, today in Serbia). His father was a high school teacher who was forced to flee with his family after the Treaty of Trianon (a treaty that cut off two-thirds of the territory of Hungary after World War I) (Molnár, 1999, p. 184). They settled in Miskolc; Pólay became a pupil at the renowned Royal Catholic György Fráter Gymnasium.² At the end of each school year, the high school published a bulletin and old copies testify to students’ performances. Almost every year, Pólay was among the best, decorated with awards and closing the school year as top in several subjects (reading, grammar, literature, translation, geography, drawing, and even physics). In addition, his final report in algebra underlined that Pólay was a model of accuracy.

A note from the 1931–1932 school year reveals that he was also involved in the activities of youth associations. He was a member of the *Vörösmarty* self-education group, where he regularly read from his literary work. In his last school

year, he won prizes for his dissertations on history and Hungarian literature in the self-education competition. He was one of three students who graduated with honours from the class.

Pólay completed the high school curriculum with excellent results in all subjects, but his personal interest focused mostly on Latin and history. However, he chose law (persuaded by his family) rather than humanities, and in 1933 he enrolled at the Miskolc Law Academy.³ Once there, Zoltán Sztéhló's strictly pandectist lectures introduced him to the world of Roman law, which fascinated the young student from the beginning. He therefore decided to write his doctoral thesis on Roman law.

From this time on, newspaper articles and documents from Miskolc testify that Elemér Pólay was also an active member of the National Hungarian Protestant Student Association, which sought to educate its young members in social responsibility. For example, the Dean of the Law School, E. Somos, opened the Student Union's Jubilee Congress at Eastern 1936 and gave a lecture entitled 'Pro liberis' on the plight of the children of poor Hungarian families. Pólay attended the Congress as youth president of the Miskolc Association and also gave a presentation. Perhaps his work in this student association, and the experience he gained there influenced him in the choice of his early research topics on the social role of law (*Datio in solutum*, 1938, and *Relationship Between Land Ownership, Population Density and Population Growth*, 1938) (Pólay, 1938a; Pólay, 1938b).

At that time, the Miskolc Law Academy could only grant a diploma (graduation certificate), while the doctoral degree had to be obtained at the Law Faculty of one of the Hungarian universities by passing the *rigorosum*. Pólay chose Pécs and applied for both doctoral examinations at Erzsébet University: in 1937 he obtained his doctorate in law and in 1938 in political science.⁴

Two scholarships to the Law Academy of Miskolc, rewarding his outstanding student performance, proved to be decisive for his entire life and career. First, he received a two-month scholarship to Berlin and then another for a whole year, 1938, for Roman law studies at the Friedrich Wilhelm University.⁵ His teacher was Paul Koschaker, a highly educated professor of Austrian descent who had graduated in law from Graz and was also promoted there (*sub auspiciis Imperatoris*) (Beggio, 2018, pp. 33–49). He initially taught in Innsbruck and Prague and later received a university chair in Leipzig. He was appointed to Berlin in 1936, where, besides Roman private law and Roman legal history, he became an expert in cuneiform law and early Eastern legal cultures. Koschaker was the father of 'ancient legal history' who pointed out many Eastern influences in Greek and Roman law (Ries, 1980, p. 608). Koschaker's personality and research had a profound effect on Zoltán Sztéhló, professor of Roman law at the Law Academy in Miskolc and also on Pólay, his pupil. This fertilising effect is reflected, for example, in the choice of topics in Pólay's scientific articles from 1936, which dealt with criminal law in Hammurabi's Law collection (*Miskolci Jogászélet* (MJ) XII 1936, pp. 3–4, pp. 53–58) and the irrigation culture of ancient Egypt (*A Földgömb* VII, 1936, 6, pp. 218–223).

The illuminating year in Berlin along with the influence of Koschaker's ideas led to a long study with the initially confusing title 'The German Nationalist Socialist Conception of Law and Roman Law' (*A német nemzeti szocialista jogfelfogás és a római jog*, 1938). But already the first few lines emphasize the author's true creed:

'National socialism,' says Wilhelm Coblitz, the leader of the German *Reichsrechtsamt*, 'sees it as a historic task and a primary duty to give the German people a German law.' This sentence sheds light on why the question of the status of Roman law is topical in the National Socialist German Empire. (Pólay 1939, p. 125)

It is surely not a mere coincidence that Paul Koschaker published in 1938 an 86-page monograph under the title *Die Krise des römischen Rechts und die romanistische Rechtswissenschaft*. His 'pamphlet' (*Kampfschrift*) was the first volume of the series *Schriften der Akademie für Deutsches Recht* (edited by Dr. Frank, the president of the *Akademie für Deutsches Recht*); it contained an expanded version of Koschaker's lecture at the Berlin Academy in December 1937 (Beggio, 2018, p. 173ff., esp. pp. 181–186). At that time in Germany, the lectures of many renowned legal historians were suspended or outright banned, and many renowned professors were dismissed, often prompting them to leave the country as soon as possible (it suffices to refer to the fate of Fritz Schulz, whose unfortunate encounters with the Nazi administration have been documented in detail by Ernst 2004, pp. 105–203). Roman law, in the eyes of National Socialist politics, embodied a liberal, non-national civil law—which they wanted to replace with a truly 'national' law based on Germanic folk customs. Many young docents had become advocates of National Socialist ideas, such as Franz Wieacker or Ernst Schönbauer.⁶ However, Koschaker consistently stood up for the importance of the Roman legal tradition in European private law systems—and this was the very message that Pólay, his eminent pupil, brought back to Hungary.

After returning from Berlin, Pólay became a trainee lawyer, practising law in several places, and from 1940 on he worked as a court clerk and later as a clerk in Debrecen. In 1942 he was called to be a royal district judge for the Debrecen district (Molnár, 1999, p. 184). The schedule of the councils of the Royal Court of Debrecen for 1942 mentions Elemér Pólay as counsellor in the 1st Civil Council, which was competent to deal with 'matters of inheritance, trust, damages and other obligations, protection and resettlement cases, under the chairmanship of Lajos Oláh.'⁷ Between 1945 and 1949, Pólay served as a county court judge in Miskolc and was soon appointed as a counsellor. His involvement in teaching Roman law can be traced from 1945 on: first at the Law Academy of Miskolc as a lecturer, but soon as head of the department of Roman law at Miskolc. In 1946 he graduated from the University of Debrecen with a habilitation and became a private teacher qualified in Roman law (Szabó, 2015, 39–46). His habilitation work, *The Role of the Praetor in the Development of Roman Private Law*, was published in Miskolc in 1944.

In 1949, his dynamic university and judicial career was at risk. In autumn 1949, the law academies were abolished throughout the country (among them also the Law Academy of Miskolc). Furthermore, the Faculty of Law and Political Science of the University of Debrecen was suspended. The professors lost their positions; some of them managed to find positions in the Law Faculties of Budapest, Szeged or Pécs—Géza Marton, for example, a famous professor of Roman law at Debrecen went to Budapest. Others had to change their teaching and research field for political reasons—Lóránd Boleratzky, for example, a professor of Protestant Church Law, was relocated to the Department of International Law in Budapest.

Pólay succeeded in gaining a position as judge and university professor in Szeged. The official documents of his appointment have been preserved in the archives of the Court of Appeal.⁸ A note from the Minister of Justice to the President of the Szeged Court of Appeal dated August 6, 1949 states:

Dr. Elemér Pólay, Judge of Miskolc, was transferred to the Szeged Court at his own request. I hereby notify Mr. President, as a further measure, that I have served him with the transfer document at the same time through the Chairman of the Debrecen Court of Appeal. From the order of the Minister: Dr. György Ruttkai, Public Prosecutor. (*Igazságügyminiszter* ('Minister of Justice'), 14.754/1949.I.M.E.)

A few weeks later, Pólay was already in Szeged and at work, as evidenced by the report of Dr. Dezső Kiss, Judge President, dated 29 August:

With reference to the order of the Minister of Justice, dated August 6, 1949 [...] and to the decree of the President of the Szeged Court of Justice, dated August 11, 1949, I declare that Dr. Elemér Pólay, judge, appeared before me and began his service today.

At the same time, he was also appointed a lecturer in the Faculty of Law at the University of Szeged in the department of Roman Law. In the archives of the Court of Appeal, four short official papers testify to subsequent developments. A year after his move to Szeged, on September 28, 1950, Dr. Imre Lakatos, President of the Supreme Court, wrote to the President of the County Court:

Dr. Elemér Pólay, judge of the County Court of Szeged was appointed by the Minister of Religion and Public Education for the Chair at the Faculty of Law and Political Science, University of Szeged, with this in mind the Minister of Justice removed him from the judiciary on the 25th of September of the current year, by resolution No. 26.320/1930.I.M. I call on Mr. President to relieve this judge of his position so far and to report the day of his release to me immediately.⁹

This change took place on September 30, 1950. Elemér Pólay became a full university professor (*ordinarius*) in 1951 as head of the Department of Civil Law.

From then on, after eight years practising as a judge, his career focused solely on university teaching and research. His rich scientific oeuvre was marked by the publication of seven monographs, each of them critically analysing ancient sources and scholarly work in Roman law, and by about 140 studies published in Hungarian and also in several foreign languages. He gave presentations in about 31 international conferences; his work was known and respected by the international community of legal historians. All those who knew him felt the tragedy of his sudden death on November 30, 1988. It is characteristic of his unbroken professional interest that he attended a scientific conference in East Berlin just before his death.

The Faculty of Law in a socialist state and the uprising of 1956

Elemér Pólay's career shows the peculiar ups and downs of a Central European scholarly life, drifted and battered by every storm of the twentieth century—but as the Hungarian poet, Endre Ady, has said, despite his heavy fate he remained 'still victorious, new and Hungarian.'

It is not easy for me to paint an objective picture of him, as my memories date back to my first entry into the Faculty of Law in Szeged. Being admitted to the Department of Roman Law as an undergraduate student, I was assigned to the committee under the chairmanship of Pólay. As a freshman, I diligently attended his lectures: all the students admired, respected, and loved him for his imposing knowledge, his consistent treatment of students, and his general humanity. A few years later, after my graduation, I sat anxiously in the dean's office and listened to his persuasive arguments about the necessity for having a new assistant position for Roman law—for me.

Recently, a colleague of mine, Béla Szabó, reported on Pólay's Debrecen years (see Szabó, 2015, p. 39ff), and his outstanding scientific achievements have been praised in several studies. But what do we know about his achievements in Szeged? What is the relationship between his significant work and its socio-historical context? To what extent does Pólay's teaching and research reflect the external political constraints of the 1950s? After all, Pólay might well have said along with Miklós Radnóti (a famous Hungarian poet of Jewish origin, killed in a concentration camp) that

I lived upon this earth in such an age
that idolized the sly police informers,
whose heroes were the killers, spies, the thieves—
and the few who held their peace or only failed
to cheer were loathed like victims of the plague.¹⁰

Below, I recall a few moments of his rich life on the basis of some accidentally surviving documents I was able to find at the Department of Roman law, in the archives of the faculty, of the university, and the city of Szeged.¹¹ Turning the

dilapidated pages of the Szeged daily newspaper *Délmagyarország*, we find the following small announcement: ‘The next lecture of the Soviet law course in Szeged will be held by Dr. Elemér Pólay, university lecturer, 30 May, in the Great hall of the University, Dugonics Square, with the title “The Soviet Family Law.”’ The date is May 27, 1951. This lecture was jointly organized by the Hungarian Lawyers’ Association and the University of Szeged. According to *Délmagyarország*, the ‘Soviet law course in Szeged’ continued for many years as a hallmark of legal activities in the city. The clear emphasis on Soviet law can be seen in a note from the Hungarian Academy of Sciences, which, even in 1955, strongly emphasized that ‘it is the duty of the political and legal sciences to deepen the knowledge of the Soviet state and law, to make it known, and to know, process and utilise the results of Soviet law and legal science.’ The writing, preserved purely by chance in the archives, comes from the proposal for the second five-year plan and was signed by Gyula Eörsi.¹²

The ‘Journal of Jurisprudence’ (*Jogtudományi Közlöny*) regularly informed the legal community about continuing legal education (for lawyers rather a re-education or brainwashing) in major cities across the country. Page 36 of the January 1952 issue of a report on the Second Soviet Law Course of the Szeged Local Group of the Hungarian Lawyers Association underlines that ‘the organizers of the Szeged course have emphasised in their circular the utmost importance of thorough knowledge of the Soviet legal institutions for any worker who contributes in any way to the application of our socialist law.’ Below it is posted the 1951–1952 schedule of the Soviet law course in Szeged, with names well known at the faculty, among them Pólay. In this academic year, Pólay hosted the first conference of the Civil Law department and gave a lecture on Soviet inheritance law on May 15 (*Jogtudományi Közlöny*, January 1952, p. 37). In April 1953, the official reports of the Hungarian Lawyers’ Association recorded that the Szeged local group started, ‘in addition to the series of professional training courses, a [new] Soviet law course in co-operation with the Szeged Section of Legal Sciences of the Hungarian-Soviet Society. The course consists of four civil law, criminal law and kolkhoz law lectures.’ The opening lecture of the course was given by Pólay with the following remarkable title: ‘The Development of Soviet Civil Law in the Light of Comrade Stalin’s Teachings on Foundation and Superstructure.’ The programme, published in the April 1953 issue of the *Jogtudományi Közlöny*, shows that all senior lecturers and professors were forced to produce lectures on highly political topics. János Martonyi (at that time already ‘Candidate’ of Law¹³ and a full university professor), for example, had to present a paper about ‘Issues of Discipline and Control in the 19th Congress of the Communist Party of the Soviet Union.’ These lectures were, of course, promoted by the local newspaper, highlighting the contribution of ‘the best professionals, many of whom have been awarded the title of Candidate.’

The spirit of the age is well represented in the introduction of the ‘Annales’ (*Évkönyv*) of the Law Faculty, dated 1953:

Comrade Stalin teaches that the superstructure, once it has become a powerful actor, will actively contribute to the creation of the basis [...] to do its utmost to help eradicate the old basis and the old social classes. This teaching also sets the course for superstructure-type legal studies. We need to cultivate jurisprudence in such a way as to be a real promoter of the construction of the new order, of the socialist order. (Schultheisz, 1953, p. 3)

Parerga... blinks of light on the frozen air of the 1950s, when cruel pressures settled on civilian life, guiding personal fates with ‘cunning fear.’ But Elemér Pólay found—even in this fearful world—strength and faith to carry out excellent university teaching and scientific research. There are however ten years of silence in his publication list, no studies being published between 1944 and 1953. His habilitation dissertation (enrolled 1944 but defended 1946 at the University of Debrecen) was published as a monograph in 1944 (Pólay, 1944, p. 175 and Pólay 1943, p. 24), and just prior to that, a comprehensive study on ‘Interest in Roman Law.’ The next publication, however, was not published until 1953, when Pólay tried to settle at the Faculty of Law in Szeged, after his judicial career had ended abruptly (under political pressure). It is something to respect that, in the oppressive atmosphere of the 1950s, he wrote valuable, enduring studies on Roman law, such as his paper on warranty for latent defects (Pólay, 1953) or on Roman wills (Pólay, 1956).¹⁴ Despite political hardships, he enjoyed notable popularity as a university professor in the city’s cultural life. One example of this is that the local daily newspaper published a photo-report on him, examining civil law at the Law Faculty (*Délmagyarország*, January 16, 1954, p. 4).

On the other hand, the boxes of the Csongrád County Archives also contain a ‘Report on University Teachers,’ dated 1950, where handwritten notes are slipped between typed pages to indicate where and when a professor of the faculty has graduated in law, which languages he or she speaks, and whether the professor in question had ever been abroad. ‘Travelling abroad’ was divided into two categories: the Soviet Union or Western countries. In this era, the authorities had dangerous biographical data regarding Pólay’s studies as a graduate student in Berlin, at the Faculty of Law of the Friedrich Wilhelm University, with Paul Koschaker.¹⁵ Koschaker himself was convinced that the two most important pillars of European culture were Roman law and Christian religion.

In contrast was the cold and tight Hungarian reality, the constant ideological struggle of the 1950s. The work plan of the Methodological Committee of the Szeged Faculty of Law for 1955–1956 aimed at ‘improving the moral-political education of students, their ideological training and the struggle to counter bourgeois views.’ But even in 1961 (on February 22), a dispute was organised at the faculty on the standard Marxist subject of ‘Fighting Bourgeois Nationalism and Cultivating Proletarian Internationalisation.’ According to the attendance sheet, the meeting was led by Pólay and attended by all lecturers in the

departments of civil law, Roman law, and criminal law. The focus of the ideological struggle was on the nationalist views of 'Hungarian cultural dominance' and 'we are a lawyer nation.'¹⁶

'Hungarian cultural dominance' was one of the characteristic issues of official Hungarian pre-war politics. The 1961 meeting found that one of the main features of this was the denial of foreign influence on Hungarian legal development. It is obvious that the university teachers were expected to take this issue seriously and reflect deeply on the demands of communist propaganda. The lecturers themselves sought to formulate their reflections on a professionally tolerable level. The lecturers stated that 'the teaching of the department of Roman Law strongly emphasises the fact that Hungarian legal development is far from being solely based on specific national customs, but that the reception of Roman law can be demonstrated in Hungary as well.' The protocol continues in a similar tone; it is typical that the empty headlines dictated by official politics are referred to by the educators with feigned seriousness though responded to with genuine professional arguments. The following note from the meeting interestingly echoes the veiled ideological struggle:

The nationalist view of the relationship between Hungarian and Soviet law is also implicit in the opinion that 'codification work is superfluous, because, in the end, we are mechanically subsuming Soviet law.' Our departments also regularly fight against this [nationalist] distortion by showing specific regulations that are appropriate to our circumstances, with regard to responsible custody and other institutions in civil law.¹⁷

At this very meeting, the department of Civil Law was represented by Béla Kemenes, who was one of the leading figures of the (just finished) first codification of Hungarian civil law (Act IV of 1959).¹⁸ This Hungarian Civil Code showed surprisingly little Soviet legal influence.

The uneasy meeting must have been, of course, protocolled, and it had to be forwarded to the leading organs of the university and the Communist Party. This was not of course an exceptional case, but the usual way of faculty life. Faculty councils were obliged to regularly discuss the guidelines of the current congresses of the CPSU (Soviet Communist Party) and the MSZMP (Hungarian Socialist Workers' Party).

On December 16 and 17, 1955, at the enlarged Faculty Council, the leading members of the Law Faculties in Szeged and Budapest, together with the lawyer members of the Hungarian Academy of Sciences, discussed the draft of the nationwide obligatory manual 'Civil Law, Part One, General Rules' written by Miklós Világhy.¹⁹ In addition to the professors, representatives of the Supreme Prosecutor's Office and the Central Arbitration Committee, as well as invited judges and lawyers, also took part in the debate. The article on the event highlights that 'the academic depth and success of the debate was greatly facilitated by Elemér Pólay, in his keynote study "The System of the General Part of the Hungarian Civil Law Textbook."' It is worth quoting some of the

professional-scientific arguments and politically coloured opinions: 'Critics have uniformly found that the manual is generally firmly rooted in Marxism-Leninism'; 'there is a consistent Marxist-Leninist view of content and method'; 'the author's position is in line with the party's policy, clearly outlining the perspective of socialist legal development'; 'he puts bourgeois views under creative criticism.' However, Szilbereky (professor of civil procedure) made some harsh criticisms: the role of civil law was not emphasised enough in the development of a socialist society. Nizsalovszky and Beck Salamon (professors in Budapest) accused the author of vulgarising Marxism. These were politically rather dangerous attacks.

One feels somewhat uneasy when browsing through such archival materials. It is miraculous that, in such a class warrior milieu, some of the old professors attached to civic values may have somehow survived. Hidden away from the official worker-peasant revolutionary policy, there was still a strong cohesive force of a well-educated, humanist civil society. One could even teach Roman law, in a pandectist or historical spirit, in an almost ideologically free manner. Literature could be promoted, ordinary people educated—well-educated experts from the old world (if not resistant) were needed. The existence of civil society is well illustrated by a photo from the local newspaper: Pólay is shown in the jury of the Petofi Literary Competition for law students.²⁰

Pólay was respected and highly estimated in university and city circles. Between 1955 and 1957, he was deputy rector for science and education at the university of Szeged. In the Csongrád County Archives there are hardly any documents on the university's life in 1956.

These few uninteresting official records for this year suggest that the wind of uprising was not felt until the last minute. There are also only a few reports in the local newspaper *Délmagyarország*, about the university. For example, on March 3, 1956, it records that the 'Free University' (lectures popularising science among lay audience) would resume its lectures after a period of extreme cold; later on, there is a report that Elemér Pólay, Deputy Rector, would give the first presentation titled 'Legal Protection of the Family and the Child.' On March 27, Pólay can be seen in a photo talking to the Soviet delegation on 'The Soviet University Days.'

In the spring of 1956, the National Conference of Law Students was organised in Szeged: on April 26, the conference was opened by Dean I. Kovács and L. Németi, who, although only a young assistant professor, nevertheless held an important position as the secretary of the faculty representatives of the communist party. Pólay as deputy rector acted as a chairman of the Section for Civil Law (see e.g. *Délmagyarország* April 25, 1956, p. 3). October 5, 1956, Pólay presented the work plan of the Scientific Committee to the Faculty—university routine as usual. In the archives, the only datum concerning the actions of the revolution is the announcement on October 22: 'Until the introduction of a new regime for foreign language teaching, students will be exempted from attending Russian language classes.'²¹ What the archive does not say is that on October 16th, 1956, the students of the University of Szeged held a great assembly at the

Auditorium Maximum, where they formulated 12 points that were transferred by a delegation to all other universities in the country. On October 23, there were violent demonstrations in Budapest and other big cities—the uprising had broken out (Perbíró, 2002, p. 19).

During these turbulent weeks, there is some correspondence preserved between Rector D. Baróti and the dean of the Law Faculty, E. Schultheisz, for example, on rethinking the teaching of Marxist-Leninist subjects. Unfortunately, most of the documents have been lost and the important events can only be reconstructed from other sources. In fact, as Deputy Rector, Pólay was in a very dangerous position. Even in the summer of 1957,²² the local newspaper summarised the events at the Law Faculty as follows, including also Pólay's name and his activities:

At the Faculty of Law, Baróti and Fodor's loyal counter-revolutionary associates, György Bónis and Elemér Pólay, insisted on the removal of certain communists. The Baróti-Fodor group delegated Associate Professor József Perbíró to the City Council to influence the counter-revolutionary movements in the city (*Délmagyarország*, June 25, 1957, p. 3).

Bónis, Perbíró, and his other colleagues lost their jobs or ended up in prison, but Pólay was somehow able to avoid their fate. Furthermore, he remained head of the department for Roman law until he became Professor Emeritus in 1988. Although after 1951 he also headed the Department of Civil Law, he had to give it up, and from 1961 on he headed only the Department of Roman Law. His family and immediate co-workers always felt that he had never lived without fear.

His expertise was, nevertheless, appreciated, and he was allowed to continue his teaching and research. As early as 1958, at the request of the National Museum, he was already working on the *locatio conductio* contracts on waxed tablets from Dacia and soon extended his work to all Latin documents from the Roman Empire found in Transylvania. During the late 1950s, he also explored the relationship between Roman imperial law and local law, enthusiastically writing papers and reaching very high international standards of legal history. However, the atmosphere, the university faculty environment, and the political vulnerability did not change much in the late 1950s or early 1960s. Reports on the ideological development of university teachers continued to be made. Teaching and research work were carried out under strict control of the Communist Party, shadowed by work plans and reports.

Let us take a seemingly politically neutral topic, the expansion of the departmental library. In 1962, the department of Roman law ordered books and journals to a total of HUF 3,332 (800 HUF for domestic literature, 800 HUF for literature from the socialist bloc, and 1,529 HUF for literature from the West).²³ Alongside Pólay's own hand-typed order, there is a disapproving circular from the state's 'Culture Foreign Trade Company':

When reviewing the orders for foreign papers received in 1962, we found that the order for scientific books and journals of the People's Republics, and especially of the Soviet Union, was, although showing some increase, far from satisfactory. The majority of our clients still prefer Western press products.

It is well known that Pólay regularly published in foreign languages (in German, Italian, English) and tried to stay in the mainstream of international scientific life, for which up-to-date knowledge of the specialised literature would have been essential. It is almost inconceivable how he was able to keep up with international scientific life, despite such limited opportunities.

In 1963, the local newspaper reported on his scientific journey to Italy: 'Dr. Elemér Pólay, Professor at the József Attila University of Szeged, head of the Roman law department, travelled to Italy; he was invited by the University of Bologna. The professor from Szeged is attending scientific sessions on Roman law in Bologna and Florence' (*Délmagyarország* October 19, 1963, p. 6). This was without a doubt his first trip to the West and the first international conference he had been allowed to participate in since World War II.

The distorted optics of Hungarian universities is well illustrated by the clearly forced tone of Pólay's proposal for the designation of a new member of the department. On December 6th, 1960, as the head of the department, he commended a 'young meritorious applicant' for the position of assistant professor to the Faculty Council: 'Born in 1935, from a working peasant family [here the original text has been revised]. His father and family were actively involved in the struggles of the Soviet Republic and were therefore severely disadvantaged in the years of the counter-revolution.'²⁴ How could the former vice-president of the National Protestant Student Association of Miskolc survive and keep in with such people in this twisted world?

There is also an official letter among the old records of the department, dated 1961, signed by János Molnár, Deputy Minister, addressed to György Antalffy, Rector of the University of Szeged, on the aims of education at the Law Faculties. Its emphasized elements are the following:

The Faculties of State and Law Science need to train communist practitioners who are familiar with the fundamental objective laws of society as revealed by Marxism-Leninism, with the theoretical foundations of state and law [...] and who are able to participate in the enforcement activities of socialist law and legality [...]. Philosophy, political economy, and scientific socialism must be taught in order to establish and consolidate the communist worldview.²⁵

Socialist history of Roman Law

The last part of my article deals with two further topics: with the preparation of the famous Hungarian textbook of Roman law (written by Pólay and Brósz) and

with Pólay's arduous pursuit of doctoral degree from the Hungarian Academy of Sciences.²⁶ Rather unexpectedly, these two topics are related.

The Roman law textbook, published jointly by Róbert Brósz and Elemér Pólay, has since its publication become a legend. Even Wikipedia points out that generations of students have been socialised into the world of law and order with the 'yellow book' (decorated with a photo from Accursius' *Glossa ordinaria*). The first edition was published in 1974 under the supervision of the state textbook publisher. The original advertising emphasised that it was a modern work, combining the latest achievements of modern Roman law studies with socialist aims, and it 'presents, from an exciting point of view, the nature and evolution of the Roman legal superstructure and demonstrates the decisive nature of economic life' (Brósz and Pólay, 1974, 1). Under the Marxist 'cover,' however, there was indeed a modern textbook of high quality.

The origins of the textbook date back to the early 1960s. The 30807/1960/III resolution of the Ministry of Culture (including 260 appendices), addressed to all rectors and to the deans of the Law Faculties in all universities, called for proposals for a curriculum reform.²⁷ The task was to compile and discuss training aims and methods by the Faculty Councils at each Faculty. At that time, educational reforms began directly from the initiative of the resolutions of the Hungarian Revolutionary Worker-Peasant Government.

On February 21, 1961, Pólay submitted three densely typed pages for the planned reform of Roman law education.²⁸ Among its goals were the break with the pandectist system, the validation of the historical approach, the separation of medieval terms from the original Latin terminology, the re-thinking of the chapter on the history of Roman law, and so on. He presented many ideas that were realised in the 1974 edition of the new textbook. Most of the goals listed by Pólay were not particularly socialist programmes but rather followed recent trends in Western legal history. He stressed, for example, the significant views of Wolfgang Kunkel and Dieter Nörr (then professor at Münster).

At that time, Pólay already had a close professional relationship with Dieter Nörr, as evidenced by letters in the department's folders. For example, on October 25, 1971, he wrote to Dieter Nörr:

Dear Dieter, please allow me to contact you with a request [...]. For a long time, I haven't received any message from you. Unfortunately, there was no possibility for me to take part in the German Legal History conference in Salzburg last year [...]. Most likely, you were in Salzburg. How are you? [...] Now, together with colleague Brósz, we are writing the new textbook on Roman law, and just recently I gave my monograph on the contracts of the Transylvanian wax tablets into print. After five years, finally it will be published [...].²⁹

First of all he asked for help, for any possible financial support for a few months' research stay in Germany for his pupil, Imre Molnár. But the very personal,

friendly lines quoted above also reveal his sad personal isolation and his continued desire to belong to the community of international scholars.

Finally, a few words about Pólay's rough path to the doctoral title at the Hungarian Academy of Sciences (DSC, Doctor Scientiarum). The annual Plan Completion Report of 1960 of the department of Roman Law emphasized that 'the first draft of a 25-print-sheet monograph' on 'Differentiation Processes in Roman Law' was finished and included by the academic publisher in its 1962 publication plan.³⁰ The departmental documents provide insight into some details concerning the creation of this immense work. We have, for example, Pólay's report, written in 1961, addressed to the rector, Dr. György Antalffy: 'On July 6, 1961, I applied to Comrade Rector for a 1,000 HUF domestic scholarship to cover the costs of my stay in Budapest for the sake of finishing my doctoral dissertation (bibliography research and consultations with Dr. Világhy Miklós).' With the very poor salary of a university professor, he could hardly afford a week's stay in Budapest. He did in fact receive the amount he applied for, and on January 12, 1962, he announced that he had completed his task.³¹ His dissertation was at long last finished and he had signed a contract with the academy publishers.

Perhaps the quotations above, either from the contemporary press or from official papers of the universities and of the faculties, make it quite clear that in the early 1960s, official politics expected scholars to have Marxist-Leninist content and methods in their publications. According to the official order of the deputy ministry, quoted above, the purpose of cultivating legal history was to 'present the most important political and legal institutions in their development, according to Marxist history,' to explain 'the most important elements of the social experience accumulated in public and legal life, and thus contribute to a better understanding of the socialist legal system.'

Completing a doctoral dissertation for the Hungarian Academy of Sciences was a heavy task that led Pólay to inevitably provide a Marxist cover for the history of Roman private law. Indeed, when perusing the typewritten original manuscript (the only one was kept in the department's library), we see that the table of contents indicates this endeavour: 'I. Differentiation of the law of the slaveholder state' and 'II. Production conditions, forms of ownership and class struggle in the slaveholder society of Rome.' The titles of the chapters are in line with the 'customs of the age,' and certainly when reading the work, the first 50 pages are clearly marked by Marxist-Leninist historiography.

The Marxist-Leninist reinterpretation of world history was a combative research programme, strictly conducted from Moscow. This is reflected, for example, in the organisation of an extensive international project in which Pólay was invited to contribute. On November 14, 1962, he wrote the following letter to the Department of Social and Historical Sciences of the Hungarian Academy of Sciences:

I received the attached letter from the Executive Director of the Institute of Ancient Science of the German Academy of Sciences (GDR) inviting me to

participate in the publishing committee of a volume entitled 'Society and Law in Greek-Roman Antiquity.' Besides myself, the committee members would be a Polish and a Bulgarian professor, and the presiding Professor Irmscher. The purpose of this volume is to prove that ancient science is developing well in the socialist states. In my response to the letter of invitation, I expressed my willingness to be a member of the committee. I sincerely ask you to take note of my announcement.³²

With permission, Pólay also asked whether several colleagues in other departments could write studies for this volume.

It is well known that Joseph Vogt, a member of the Mainz Academy of Sciences, started a large-scale scientific project in the Federal Republic of Germany in 1950 with the support of the DFG to combat Marxist historiography (*Forschungen zur antiken Sklaverei*).³³ Ownership of slaves and the socio-economic integration of slaves into ancient societies had become one of the cornerstones of the ideological struggle in Hungary and beyond the Iron Curtain.³⁴ In the light of all this, it is less surprising that Pólay (in consultation with Miklós Világgy) wrote the first 50 pages of his doctoral dissertation for the Academy in a class warrior spirit, based mainly on Soviet historiography: 'Production conditions, forms of ownership, class struggle in slaveholder Rome.'³⁵ To illustrate the obligatory spirit of this age, I will provide just a few typical phrases:

The fundamental aim of our work is to show [...] what changes in the superstructure have resulted in changes in the base and how the development of the superstructure has affected the base. [...] The law of the slaveholder society [...] is focused on a single legal institution, on the property on slaves (Pólay, Diss., pp. 3–4, 6). [...] It can be stated that there are two forms of ownership in Rome, namely ownership of slaves and common ownership. [...] The class struggle was carried out not only between slaves and freemen, but also between freemen. Differences in property as well as differences of origin and nationality were also strongly reflected in the inequality of rights in the area of law. (Pólay, Diss., pp. 49–50)

These first 50 pages, based strongly on Marxist ideas, represent about 10% of the 531-page dissertation. The following chapter discusses the separation of law from other social norms in ancient Rome (*ius, fas, mos, ius fetiale* and *ius gentium*) as the law of peace and war (Pólay, Diss. 53–154). The author then analyses the heyday of Roman law in the chapter 'Developing the perfect law for simple production of goods.' The author touches on the delicate balance and layered formation of the *ius civile*, *ius Latii*, foreign rights, *ius strictum*, *ius aequum*, *ius naturale*, and *ius praetorium* in the latent legislative process of law enforcement. A separate subchapter deals with the slow and gradual separation of the norms of *ius publicum* and *ius privatum* and the codification of the late 6th-century Emperor Justinian (Pólay, Diss. pp. 344–401, pp. 402–446.)

Concluding remarks

Turning over the yellowed pages of Pólay's archived dissertation for the Hungarian Academy of Sciences, with corrections in Pólay's own hand, the reader feels appreciation and respect: it is a thoughtful, well-grounded work that reflects on the results of contemporary international science. They show a sincere commitment to scientific research, a passionate desire for knowledge, and an infinite power to radiate knowledge from the pale pages. The 'internal emigration' of the creative mind: a distinguished lawyer, a dedicated university professor, and a well-educated European scholar seeking and finding refuge in the relatively small, secluded, elegant, and exclusive world of Roman law, seeking protection against historical storms, injustice, humiliation, inhumanity.

The manuscript of Pólay's dissertation for the academy was never published in Hungarian as a book.³⁶ Why? The authorities no doubt judged that there was too much 'bourgeois literature,' and it seems likely that despite the first 50 Marxist-Leninist pages, he delivered a too honest piece of professional work.

But his manuscript did at least meet the expectations of the Hungarian Academy Sciences: in 1964 Pólay was awarded the degree of DSc.³⁷ But afterwards, as the years went by, certain circles blocked his further career, not considering him worthy of a membership in the academy. Seven monographs, 140 scientific studies, and an international reputation were not considered sufficient for a membership in the Hungarian Academy of Sciences. Perhaps the shadow of the deputy rector's post of 1956 was never forgiven, nor his bourgeois origins and Western education.

This is also indicated by the fact that the Agitation and Propaganda Committee of the Central Committee of the MSZMP (Hungarian Socialist Workers' Party) even dealt with Pólay at its November 1986 meeting (just two years before the collapse of the communist world). Evaluating the initial experiences of OTKA (Hungarian Research Funds), Pólay's research was discussed extensively (his project on 'The Advancement of Roman Legal Thinking'). It is ironic to discover his name on the agenda as the main topic of the meeting was to reflect on and consider ways to take more decisive actions against democratic opposition!³⁸

Notes

- 1 Pólay was the most prominent Hungarian scholar of Roman law after the Second World War, both nationally and internationally. Of his generation of Roman law professors Pólay was the only one who, with great difficulty, obtained all (also the newly introduced Soviet-type) scientific degrees and titles and was constantly present also in international discussions. It is worth to mention, that at that time the significance of Roman law extended far beyond the boundaries of the discipline—it conveyed the dogmatics of private law to generations of lawyers at a time when civil law education was rather manipulated through Soviet patterns.
- 2 Most of the students were Roman Catholic; but the report states that Lutheran, Greek Catholic, or Israeli boys were admitted to the high school as well.

- 3 On the structure, teaching, and scientific achievements of such law academies, see Stipta, 2019, p. 203–244.
- 4 According to contemporaries, Lutheran students mostly chose Pécs to take doctoral examinations.
- 5 A detailed analysis of Pólay's life is also given in Molnár (1999), pp. 7–12.
- 6 For the life and academic work of renowned Roman lawyers in dictatorships, see the work of the research group led by Kaius Tuori, 'Reinventing the Foundations of European Legal Culture 1934–1964.' See also Tuori, 2017.
- 7 *Igazságügyi Közlöny* (Justice Bulletin), 1942, *Személyi hírek* (Personal news).
- 8 My thanks to my colleague, Tamás Antal, for the copy.
- 9 *Ibid.*; in 1950 the Hungarian courts were reestablished, and filled with trustworthy communists.
- 10 Radnóti Miklós, *Töredék* (Fragment), dated May 19, 1944, shortly before he was killed in a concentration camp.
- 11 Henceforth Arc. Dprtr. Roman L. Szeged., Arc. Fac. L. Szeged, and Arc. C. Csongrád. For an overview on Roman law in the so-called socialist countries, see the chapter by Adrian Schmidt-Recla in this volume.
- 12 Arc. C. Csongrád. There is not a great deal of material, only six boxes or so about the Faculty of Law. Until 1951, Eörsi served as Chief Justice of the Ministry of Justice, first in the private law and then in the law-making department. In 1951 he was appointed consul for New York and Washington. He returned home in 1952 and became head of the Legislative Preparatory Department of the Ministry of Justice, leading the department until 1957.
- 13 An academic degree, introduced by the communist government, following the Soviet model.
- 14 Pólay (1953), p. 21; he deals with the same topic in his thesis for his 'candidate' degree at the Hungarian Academy of Sciences (see Pólay, 1955). At the same time, he was also occupied with the law of succession; see Pólay, 1956, p. 3.
- 15 New colleagues, recruited from the worker class, usually spoke no foreign languages and had never visited a Western country. One can imagine their attitude towards Pólay.
- 16 Arc. Fac. L. Szeged.
- 17 *Ibid.*
- 18 For the development of Hungarian civil law, see the chapter by A. Földi in this volume.
- 19 Arc. Fac. L. Szeged; teaching and textbooks were regulated and strictly controlled by the ministry, and the universities had no autonomy to purchase teaching material on their own.
- 20 Report in the local newspaper *Délmagyarország*, with a photo of Wagner Márton.
- 21 Arc. Fac. L. Szeged.
- 22 It is well known, and the revolution was soon suppressed. On November 4, 1956 the Soviet troops started their invasion of Budapest.
- 23 Arc. Fac. L. Szeged.
- 24 Arc. Fac. L. Szeged; the report refers to the Soviet-type revolution of 1919 in Hungary, which stayed in force for 133 days—and was admired by the communist government of Hungary. On the Horthy government, see Romsich, 2018.
- 25 Arc. Fac. L. Szeged.
- 26 At that time, scientific degrees were only granted by the Hungarian Academy of Sciences. The universities had no autonomy and the academy controlled, according to Soviet patterns, all higher education and scientific research in the country.
- 27 Arc. Fac. L. Szeged.

- 28 Ibid.
- 29 ‘Lieber Dieter, sei es mir gestattet mit einer Bitte an dich zu wenden [...]. Seit langem habe ich von Dir keine Nachricht bekommen. Leider es gab mir keine Möglichkeit voriges Jahr an dem Deutschen Rechtshistorikertag in Salzburg teilnehmen zu können [...]. Aller Wahrscheinlichkeit nach warst Du in Salzburg. Wie geht es Dir? [...] Jetzt schreiben wir mit Kollege Brósz das neue Lehrbuch des röm. Rechts und eben in diesen Tagen habe ich meine Monographie über die Verträge der siebenbürgischen Wachstafeln in Druck gegeben. Nach fünf Jahren wird es doch endlich erscheinen [...].’
- 30 Arc. Dprt. Roman L. Szeged; the book was actually published in 1964, but only in German.
- 31 Arc. Dprt. Roman L. Szeged.
- 32 Ibid.
- 33 See www.sklaven.adwmainz.de for further information.
- 34 See the article by Rudokvas and Erkkilä in this volume.
- 35 The main sources of Marxism-Leninism were Maskin (1951) and Maskin (1953).
- 36 A German translation was published in Hungary; see Pólay (1964a).
- 37 For the contemporary scientific qualification system; see Pólay (1964b), pp. 586–590.
- 38 I would like to thank my colleague Béla Révész for this information.

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