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Women's Movements

Networks and Debates in post-communist Countries in the 19th and 20th Centuries

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Legal Ambiguity and the "European Norm"

Women's Independence and Hungarian Family Law, 1880–1913

Introduction: Are "European Norms" Applicable to Europe? Turning the Postcolonial Argument on its Head

Revolutionary upheavals on the European continent of the late 18th century accompanied the rise of a political science of gender relations that associated sexual equality in both the civil and the political spheres with rising chaos and social instability and saw the legal regulation of women's activity as a solution to social problems. This science was the predecessor of family law (*droit de famille*; *Familienrecht*), a distinct branch of civil law emerging in the late 19th century but with its roots firmly in natural law theories of the 17th century, which sought to identify – in ideal-types of spousal, parental, and ward-guardian relationships – the laws governing relations between individuals and their social structures.[1]

By the late 18th century, stabilization of social relations had become a major political project in legal thought, emphasizing the negative consequences of material change and flux upon social life and setting up "the social" as a threatened ideal state in need of protection. Borrowing from Karl Mannheim, one may observe that the social appears in discourses of stabilization as an ideal – the "community", the "folk", the "state" – which becomes "perceivable morphologically ... as an inner form".[2] In the modern stabilization programs of European civil law this inner form was the ideal state of "the family", which civil legal systems had to protect as the basis of social (increasingly national) life. We see protection of "the family" as a specific objective of 18th and 19th century states with different political and legal traditions – Prussian, French, Austrian, English – and one which assumed a fixed, essentialist definition of the familial. On post-revolutionary French law for example, Wolfram Müller-Freienfels comments: "French families were to be the basic cells of which the French nation was to be composed and they were conceived to be firm units".[3]

1 For a historical overview of the development of European family law see Wolfram Müller-Freienfels, The Emergence of Droit de Famille and Familienrecht in Continental Europe and the Introduction of Family Law in England, in: Journal of Family History, 28, 1 (2003), 31–51.
2 Karl Mannheim, Ideology and Utopia, New York 1991, 210, (first edition, 1928).
3 Müller-Freienfels, Emergence, see note 1, 49.

In the early 19th century, there was an attempt to establish a normative version of family relations on the basis of the civil marriage contract, in which the rights and duties of spouses towards each other and towards their children provided an ideal model of nuclear self- sufficiency based on spousal and parental responsibility. At the same time, parental authority was subsumed under the authority of the male party in marriage (the legitimate father) and within many European systems "paternal" authority was hierarchically positioned over and above the legal parental powers a woman may have held as either a marital partner or as a single parent. The construction of a unitary form of familial authority was reflected in marital property relations as well; such laws deprived married women of the legal capacity to administrate household affairs, including their own or "common" marital property, and were justified on the grounds that any other type of arrangement would destroy the spousal unity and social stability that "the family" represented. "To listen to [English] Members of Parliament", writes Mary Lyndon Shanley, "one would have thought that never again would parents and children sit around the dining table or the family gather about the hearth, if wives were to possess the right to control their own property."[4] Even though laws prescribed a division of labor between spouses, this division was unified administratively through the legal category of the husband, who, as a wage earner, bore the financial responsibility for the running of the household, the education and legal affairs of his wife and children, the administration of marital property, and the material support of the whole family. The legal category of "wife" was thus rendered immobile and interiorized, but most of all, financially dependent. The Prussian *Landrecht* (ALR) of 1784, the French *Code civil* (Cc) of 1804, and the Austrian *Allgemeines Bürgerliches Gesetzbuch* (ABGB) of 1811 gave a husband the right to his wife's person, on the basis of which he might legally prevent her from taking up paid work.[5] The codes also permitted a certain degree of overlap between 'individual' and 'common' property in marriage whereby the *duties* of the husband as head of the household gave him usufructuary rights to the so-called 'common property' of the two spouses. English *Common Law* placed women "in the same category of legal incompetence as children, minors and idiots".[6]

Yet Ursula Vogel has noted that while European legal projects such as the Prussian, Austrian, and French codes sought to establish spousal unity, male authority, and female dependence as the basis of a stable family life, the codes nevertheless contained points of ambivalence regarding a wife's potential income or independent activities outside the household. The codes contained possibilities for wives to partially overcome their dependence by allowing for a separate marriage contract which might secure a woman's property or her interest on property.[7]

4 Mary Lyndon Shanley, Feminism, Marriage and the Law in Victorian England, Princeton 1993, 46.

5 (Prussian) ALR: II.I. 1958196; (Austrian) ABGB: 92; (French) Code Civil: Art. 216. See Ursula Vogel, Gleichheit und Herrschaft in der ehelichen Vertragsgesellschaft – Widersprüche der Aufklärung, in: Ute Gerhard ed., Frauen in der Geschichte des Rechts. Von der frühen Neuzeit bis zur Gegenwart, München 1997, 265–292, 276.

6 Ursula Vogel, Is Citizenship Gender-Specific?, in: Ursula Vogel and Michael Moran eds., Frontiers of Citizenship, London 1991, 50–85, 62.

The ambivalence surrounding women's status can be interpreted as a conflict between the two value systems: modernity and *ancien régime* – both incorporated into the rigid legal orders of a changing social world.[8] I prefer, however, to see ambivalence surrounding women's independence in marriage as a fundamental contradiction peculiar to the laws of modern states. On this view, the patriarchal value of women's dependence that seems to have been "normative" for Europe in the 19th century can in fact be seen as only one of a variety of normative prescriptions. The very idea of the normative in family law evaporates.

The validity of such an approach is suggested upon the examination of 19th century legal norms in countries located outside of core industrial (West) European states, attempting to import "European norms" into their own emerging legal frameworks in the process of their incorporation into a Europe-dominated world system of nation states. The problems these countries had establishing "European norms" indicate the concept's instability. In recent times much of the historical literature on parts of the world located "outside" the core Western European states has been dominated by a postcolonial approach which rests for its entire argument upon a "normative" Europe. Dipesh Chakrabarty has made a division between European and "non-European political modernity".[9] But this approach does not address divisions within Europe (of "West" and "East") and assumes that "the European" is a site where modernity is normative and uniform – rendering it devoid of ambiguity and diverse modern projects. I believe that the deceptive paradigm of "Western Europe" as a normative model for Europe obscures our understanding of European as well as non-European modernities. Within this framework, I explore the ambiguities that surround aspects of women's independence in Hungarian family law, from the emergence of the concept of Hungarian family law in the 1880s to the first comprehensive draft code of family law in 1913. I conclude that legal codification processes in Hungary of the late 19th and early 20th centuries, whilst adhering to patriarchal principles similar to those of (earlier) Prussian, French, and Austrian civil codes, were at the same time influenced by arguments which equated women's civil rights with a progressive nation state. Hungarian codifications of civil law did not merely reproduce "Western patriarchal models", but rather reflected

7 See Vogel, Gleichheit, see note 5, 276. A similar possibility existed in England; wealthy women could have property put into trust in their name under Equity law.

8 For an example of this approach see Ursula Vogel, The State and the Making of Gender. Some Historical Legacies, in: Vicky Rendall and Georgina Waylen eds., Gender, Politics and the State, London 1998, 29–44.

9 Dipesh Chakrabarty, Provincializing Europe. Postcolonial Thought and Historical Difference, Princeton 2000, 22.

the ambiguous dynamics of a "European norm" that could not become normative and which produced the transnational 19th century political debate of the nature and structure of "the family" (and gendered roles within it).

The Legal Ambiguity of "Europeanness" in Hungarian Family Law

1848 marked the formal recognition of an independent Hungarian state and 1849 the capitulation of this state to the Russian army and its reincorporation into the Austrian Empire. But in the ten years of neo-absolutism that followed, a radically new legal framework for Hungary was constructed along national lines under the auspices of the Vienna administration. Between 1849 and 1861 the Justice Ministry in Vienna allowed Hungarian legal professionals to establish new judicial organs in Hungary and by 1854 the reorganization of the Hungarian court system was well under way, with uniform national courts replacing the older forms of jurisdiction of free towns and noble regional courts. The process culminated in Hungarian judicial independence being granted and in the "restoration" of the pre-1848 Hungarian legal system in 1861, some years prior to the country's "compromise" with Austria in 1867. In 1868/69 further reforms continued earlier trends: a newly professionalized judiciary was subordinated to a disciplinary committee of senior court officials selected by the Upper House – a committee *not* subject to the executive power – and higher judicial organs were reorganized into a national system of appellate courts.[10]

The year 1861 thus marked the watershed of a curious parallel process whereby an emerging Hungarian judiciary was developing an independent Hungarian legal culture, whilst at the same time paying lip service to the central Austrian administration. In 1861 Imperial Austria's own civil code of 1811 (*Allgemeines Bürgerliches Gesetzbuch* – ABGB) was repealed in Hungary, having only been in force there since 1853. With the repeal of the ABGB an independent "Hungarian" legal system was officially recognized, and in the professional legal circles of the 1860s more and more emphasis was being put on "old Hungarian law" or "customary law" (*magyar szokásjog*). By the early 1880s, a collection of national laws had been published and the role of the state legislature was formally relegated to a secondary legal role: the judicial interpretation of "custom".[11] In legal scholarship the national idea was further confirmed as an organic expression of customary law through the influence of the German Historical School on Hungarian scholarship. "Foreign" (i.e. non-Hungarian) legal sources were constructed as complementary models which would

10 See Stipta István, A magyar bírósági rendszer története (The History of the Hungarian Judicial System), Debrecen 1997.

11 1881: Statute LXV1, § 4.

enable the restructuring and modernization of the customary law in keeping with general ("European") trends. In this way, the idea of "old Hungarian law" could retain its sense of national distinctness from Austrian law whilst at the same time borrowing elements of Austrian – as well as French, Prussian, or English – law in order to be compatible with so-called European standards. The effect of all this was to create a thoroughly ambiguous relationship with "Europeanness", which could be represented as a negative legacy of "Western" imperialism, imposed on ancient Hungarian institutions, as well as a positive model for restructuring old national law along modern lines.[12] One of the ways "Europeanness" as a positive legal influence could be embraced in Hungary was through the adoption of the continental system of codification, which, as Csaba Varga observes, enabled emerging nation-states in the late 19th and early 20th centuries – located "beyond" the core Western European states – to incorporate their newly acquired national identities into a wider identity based on (Western) Europeanness and modernity:

> The transplants of laws through codification bear the promise of an *optimum bourgeois development* in the image of these codes. They are the media of modernization and capitalist development, indeed *Europeanization* of the legal systems in question. [13]

Although Hungary did not possess a fully operative civil code until 1954, plans to codify the law were announced in the 1840s, and in the late 1860s a flurry of legal scholarship attempting to clarify and collate existing legal practices within a national framework, as specific forms of *Hungarian* law, accompanied the formal recognition of the country's semi-independence from Austria. The entire spirit of late 19th century Hungarian legal culture was embedded in the recognition that Hungary did not have – but was working towards – a civil code. As part of the codifying dynamic towards consolidation, homogeneity, and clarity in the civil law, publications on Hungarian civil law – including family law – became a regular subject of debate

12 This version rests as the dominant historical account of modern Hungarian legal development today; in an introduction to the historical sources of Hungarian law, Barna Mezey emphasizes the imperialism of "Western" law as a synthesis of feudal and canon laws which could only be resisted in the East through an emphasis on traditional or customary law as a primary legal source, shaped by medieval scholars unacquainted with European legal systems. By the revolutionary 19th century however, traditional laws were developed within the framework of European legal science: namely codification, specialization, and bourgeoisification of law. See Barna Mezey, A magyar jogtörténet forrásai (The Historical Sources of Hungarian Law), Budapest 2001.

13 Csaba Varga, Codification as a Socio-historical Phenomenon, Budapest 1991, 125. It was "the export and import of civil (private) law", the transplantation of legal norms embedded in a particular German or French bourgeois transformation to other contexts as "universal expressions" of law that created the impetus for what Csaba Varga refers to as "the world-wide spread of codification." (Varga, Codification, ibid., 117.) During the late 19th and early 20th centuries, French, German, and Swiss legal codes "spread" into the former Polish Kingdom and Baltic States (under Russian jurisdiction), Romania, Egypt, Hungary, Greece, Turkey, China, Japan, Siam, and parts of South America.

in the capital's legal circles from the early 1880s. Such publications focused on the customary aspects of Hungarian family law alongside discussions of codification of basic legal principles governing family relations; these were responses to both the renewal of a national campaign for a Hungarian civil marriage law (initiated in the early 1870s) and a general intensification of national codification efforts at around the same time.[14] Legal debates on the family were dominated by the demand for national codification and it was generally held that the imminent realization of a civil marriage law would be the first step towards the full codification of family law. Within this kind of debate, "European" trends provided guidance as to how Hungary should proceed in its quest for legal uniformity and systematization. In his justification of the submitted bill on civil marriage (1893) the then Minister of Justice, Szilágyi Dezső, stressed that the move was in tune with "European developments" (including Austria and the majority of Western European states) and that codification and legal unity was a laudable feature of Western Europe which would not compromise the moral integrity of marriage, pointing to the examples of France, Italy, and Belgium where "civil marriage does not remove morality or religious commitment; in fact it nourishes them in a free environment where church and state exist separately".[15] "Europeanness" was employed to suggest a model of *general* legal development, in tune with modern needs and able to combine legal reform with moral integrity and religious tradition.

But in the legal scholarship on family law, certain particularities of (old) Hungarian laws on the family were seized upon in order to illustrate precisely the opposite: the inadequacy of the European norm as a model of legal development. Mihály Herczegh's *Hungarian Family and Inheritance Law* (1885) can be seen as typical of a push in the late 19th century legal scholarship for the recognition of the special

14 In 1873, pro-independence MP Dániel Irányi submitted a proposal for a civil marriage law, supported by the then minister of religious affairs Ágoston Tréfort, who established a committee in June of that year to work on relations between the Catholic Church and the state. The committee's official report was in favor of introducing compulsory civil marriage for all Hungarian citizens. This accompanied attempts at full codification of "Hungarian family law" among independent judicial circles (Béni Grosschmid provided a draft codification of family law of which the parts on marriage became law in 1894). Irányi resubmitted his proposals throughout the 1870s, and in April 1880, the Lower House accepted his motion for civil marriage law, instructing the Justice Minister to introduce a bill for discussion before the end of the Parliamentary session in 1881. With the submission in 1881 of a government bill on Jewish-Christian mixed marriages – the so-called "Jewish Marriage Bill" which became the subject of a heated debate in the Lower House – a renewal of the civil marriage debate occurred, resulting in a 1893 civil marriage bill that would finally become law in 1894. See Gábor Salacz, A magyar kulturharc története, 1890–1895 (The History of the Hungarian Kulturkampf, 1890–1895), Pécs 1938; Barna Mezey ed., Magyar jogtörténet (Hungarian Legal History), Budapest 1999, 126.

15 Justification of the bill on civil marriage, submitted November 29th, 1893, in: Documents of the Lower House, XV (1892–1897), 26, 80, 83.

nature of Hungarian family law – as something to be protected from the European norm rather than reformed in accordance with its dictates.

> In other spheres of the civil law, such as property and contract, real estate, bankruptcy, exchange, commercial and in other exceptional laws, we follow the more cultured [*miveltebb*] nations of Europe in accordance with the situation and the circumstances ... Only concerning the legal rules of family and inheritance law should we not fail to observe national law [*nemzeti jog*].[16]

Here Herczegh implies that in the spheres of family and inheritance law Hungary is properly advanced and can afford to remain independent of European developments; in other spheres, he concedes, "we follow ..." – meaning "we follow" the European norm. Although marriage, for example, is written into a modern civil contract in Herczegh's work as part of what he calls a "Vision in the Direction of Civil Marriage" (a sub-heading recognizing the imminence of a national civil marriage law and the move toward codification of family law along European lines), on the specific legal standing of women in marriage Herczegh refers to an early compilation of feudal statutes from the 16th century as a primary source of Hungarian "custom", stating on the basis of the feudal law that "Women, as family members, receive the name, title, and civil status of their husbands but they do not come under their guardianship, on the contrary, through marriage they become *independent*".[17] He stresses their independence, not only as individuals in marriage but in marital property relations. The "Hungarian system" of marital property belongs, writes Herczegh, to a system of "separate property". Again, on the basis of the feudal / customary law, he sets out the basic principles of the Hungarian marital property system which he describes as "more moral" than the Roman system on account of its emphasis on "mutual sympathies" rather than property as the main factor of happiness in marriage:

> In essence this means that the woman, having become independent through marriage, may *freely dispose* of her dowry and entire property – even during the marriage. The property of the spouses is entirely *their own* – and not only do they possess the property itself, they also possess dispositionary and usufructuary rights to it. The spouses have no *legal* right to each other's property. Only love, mutual trust, and the recognition of spiritual superiority enables one spouse to have the other take over the *administration* of property (be that the man or the woman) and be happy with their decisions in that area. This system is built upon the principles of *individual independence* and *free property*, and does not recognize the husband's guardianship authority (mundium) over his wife; accordingly, the husband only has the right to *administrate* or enjoy *usufructuary rights* over his wife's property *if she has given him those rights*.[18]

16 Mihály Herczegh, Magyar családi és öröklési jog (Hungarian Family and Inheritance Law), Budapest 1885, V.

17 Herczegh, Magyar családi, see note 16, 15. Emphasis in the original.

18 Herczegh, Magyar családi, see note 16, 16–17. Emphasis in the original.

Similarly, in another important work of the 1880s on marital property law legal scholar György Jancsó posited a sharp divergence between "European" and "Hungarian" systems on the basis of their different treatment of women as property-holders within marriage. In a section entitled simply, "The Systems of Marital Property – Basic Principles", Jancsó identifies the two principles which define the "ethical character of marriage" in a given marital system: "equality" (*egyenjogúság*) and "sexual subordination" (*nemi alárendeltség*) – and goes on to stress the intimate link between a nation's "moral quality" and the nature of its marital property laws.[19] Whilst reluctant to identify the "Hungarian system" with an unqualified principle of sexual equality in marriage, Jancsó nevertheless makes concessions to this principle as part of his open deviation from the "European norm" (subordination of women in marriage). European systems are defined either through the Roman legal principle of *manus* (the husband's authority over his wife) and its dotal system, whereby a woman's property automatically becomes her husband's upon marriage, or through the German legal principle of *mundium*, whereby authority over a woman is transferred from the guardianship of her father to the guardianship of her husband upon marriage.[20] The Hungarian system, by contrast, is a "mixed" – *vegyes* – system (ironically, in Herczegh's work the marital property system is described as "a pure Hungarian system" – *tiszta magyar rendszer*). Jancsó notes a combination of elements from various systems at work in Hungarian marital property law but again, the Hungarian system is distinguishable by virtue of its historic legacy of customary laws favorable to women: "Our laws have never recognized the principles of Roman *manus*, German *mundium* or any similar legal relation between a husband and wife."[21] The author then presents this historic legacy as operative in Hungary at the time of writing: "Upon marriage the Hungarian woman was completely legally capable and became independent of sexual guardianship; this is also true today."[22]

So common is the recurring theme of Hungarian women's legal independence (particularly in marriage) as a point of continuity between the historic Hungarian nation and modern Hungary, that it may be said to form a dominant theme in the literature on civil legal spousal relations in late 19th and early 20th century Hungary. Women's legal independence is not only promoted in this literature as a value in and of itself, but as a signifier of national superiority within a comparative European framework. Lőrinc

19 György Jancsó, A magyar házassági vagyonjog (Hungarian Marital Property Law), Budapest 1888, V–X; 6–7.

20 Jancsó, magyar házassági, see note 19, 10–18.

21 Jancsó, magyar házassági, see note 19, 45.

22 Jancsó, magyar házassági, see note 19, 42.

Tóth, writing in 1886, put it succinctly thus: "No women are allowed such complete, almost unrestricted rights and legal capacity as Hungarian women."[23]

Women's Independence and Legal Change

Of course the reality of women's legal independence in marriage was far from being as unambiguous as the authors above would have it. A cursory look at the situation regarding marital property gives us some indication of the changing form of women's legal independence in the (not yet) codified laws of late 19th century Hungary. With the formal separation of the public administration and the judiciary in 1861, a set of temporary rules was published in Hungarian (*Ideiglenes Törvénykezési Szabályok*) which made provisions for a marital property system based on "common acquisition" but did not specify a hierarchy in the administration of that common property.[24] This was the job of judicial practice which, at least initially, absorbed the continental (here Austrian) model of spousal unity in the authority of the husband: "the husband has the right to administrate jointly acquired property in marriage and his creditors are entitled to such property unless the woman can confirm her separate dispositionary rights."[25]

23 Lőrinc Tóth, A magyar nőkről (On Hungarian Women), Appendix to Pál Gide, A nők joga (The Rights of Women), Budapest 1886, 340–408, 399. For examples of other works operating in this tradition see also Dell Rezső Ádámi, Magánjogi codificátiónak és régi jogunk (Codification of Our Civil Law and Our Old Law), Budapest 1885; Mor Katona, A mai érvényű magyar magánjog vezérfonala (Leading Principles of Hungarian Civil Law Today), Pozsony 1899; Bálint Kolosváry, A közszerzemény biztositása (Safeguarding Common Acquisition), Budapest 1899; Bálint Kolosváry, A magyar magánjog (Hungarian Civil Law), Budapest 1903; Andor Máday, A magyar nő jogai. A multban és jelenben (The Rights of Hungarian Women, Past and Present), Budapest 1913.

24 Ideiglenes Törvénykezési Szabályok, Part I. (Civil Law), § 13. Prior to 1861, marital property was for the most part regulated by custom or in accordance with various statutes of the towns, most of which were heavily influenced by Austrian law. Thus, many statutes recognized 'common acquisition' in marriage which came under the dispositionary power of the husband as head of the household, with mutual inheritance rights of marital property granted each spouse (the so-called 'widow's right'). Separate legal institutions enabled women to bring separate property into marriage and maintain entitlement claims upon it: the engagement gift (jegyajándék), the bridal trousseau (kiházasitás), the dowry (hozomány), and also the customary payment for a wife's 'fidelity' in marriage (hitbér: compensating a faithful wife for her loss of virginity in marriage), a fixed sum payable to a woman upon her husband's death on the basis of her social rank, or else established by the spouses in an earlier written agreement. Marriage laws regulating enserfed peasants (jobbágyok) in the pre-1848 period recognized the rights of each spouse to property acquired in marriage. See Mezey, Magyar jogtörténet, see note 14, 112–113; Gábor Béli, Magyar jogtörténet. A tradicionális jog (A History of Hungarian Customary Law), Budapest-Pécs 1999, 32–63.

25 Leading Decisions of the Division of Cassation and the Appellate Division of the Hungarian Royal Curia (1869–1881), XIV, 24.

The use of European models to establish a tradition of male authority and women's dependence within the family may be detected throughout the early stages of legal development in the 1860s and 1870s; in statutory law it was certainly a key factor strengthening "paternal powers" within the family in the Law on Guardianship of 1877 – the first significant piece of Hungarian "family law".[26] But since no legal tradition against married women as legal actors vis-à-vis their own property was formally in force, the same transnational forces pushing for reform of Western European marriage laws also made themselves felt in uncodified Hungarian law. From the 1870s, incorporating the modified terminology of English legislation (after the English Marital Property Act of 1870), a wife's property was increasingly referred to as "separate" (*tiszta vagyonelkülönítés*) rather than "free" (*szabad*) as it had been prior to the English reform (in keeping with Austrian civil law). This change in terminology accompanied the courts' recognition that "the family" might be better protected if property could be protected from the destructive effects of what the future Minister of Justice, Szilágyi Dezső, in 1877 called "market forces" and the "personal immorality" of male heads of households.[27] Separate property referred to any personal articles, property (moveable or real), and cash belonging to a wife that did not come into the marriage as part of the dowry.

The dowry (*hozomány*) was directed towards the running of the common household and though the husband generally had usufructuary rights to it, it was, nevertheless, also regarded as the property of the wife, which she could theoretically claim at any time.[28] Statutes promulgated in the 1880s made the private property arrangements of spouses legal only if they had been formalized before a public notary (*közjegyző*) and stipulated that neither spouse could exclude the other from property acquired "in common".[29] Examination of late 19th and early 20th century "marriage contracts", as they were called, suggests that while the general tendency was to itemize the separate property of the woman (usually household articles) and the dowry – stating in writing the dowry's ownership rights in the wife and usufructuary rights in the husband – family arrangements could be extremely diverse.

One Fanni Mohr, having married in 1895, had left her husband, taken out divorce proceedings against him, and demanded the return of the real estate that formed her

26 See Anna Loutfi, Patriarchal Legalist Utopia and Legal Culture in Late Nineteenth Century Hungary. A discussion of processes of "national selection" at work in the 1877 Law on Guardianship, in: History Yearbook of the Hungarian Demographic Research Institute, Budapest, (2004), 5–22.

27 Dezső Szilágyi [opposition MP, later Hungarian Minister of Justice], Debate in the Lower House of the Hungarian Parliament over the Bill on Guardianship Law: Parliamentary Sitting of June 15, 1877, Minutes of the Lower House, XI (1875–1878), 102.

28 See László Villányi, Magánjog rövid tankönyve (A Short Study of Private Law), Budapest 1941, 110–122.

29 1884: Statute VII, § 21; 1886: Statute VII, § 22; see Béla Sarusi Kiss, Közjegyzőknél őrzött házassági szerződések (Marriage Contracts under Supervision of the Public Notary), unpublished manuscript, Budapest 2000.

dowry. In 1905 however, she then entered into a contract of reconciliation with her husband, the tradesman Jakab Weisz, on the basis of which she stepped down from all claims to her property in marriage and any claim on common acquisitions, acknowledging that "as the main provider (*Haupterwerber*), Mr Jakob Weisz shall be considered exclusive owner of all marital moveable and immoveable property" and renouncing "irrevocably" her right to full compensation of the dowry and dispositionary rights regarding her separate property. In its language of natural rights and the wife's voluntary consent to her own dispossession, the agreement meets all the criteria of a classic patriarchal marriage contract in the French and German natural law codification traditions.[30] On the other hand, exceptional arrangements stand out such as those of one couple in Sopron[31], where in 1895 the husband (a lower crown court judge) handed over his future real estate inheritance from his mother to his wife as a dowry in marriage.[32]

In his analysis of early 20th century marriage contracts, Gábor Gyáni also observes variations in type – pinpointing three case studies of marital property arrangements which he labels "intellectual partnership", "patriarchal marriage", and "upper bourgeois patriarchy".[33] Whilst the last two types of contractual arrangement – which use marriage as a means of transferring the material resources of the woman to the man and thereby restricting her financial independence – are presented by Gyáni as more typical in early 20th century Hungary than the first type (a more egalitarian arrangement), it is nevertheless undeniable that the language of companionship and partnership had, at least in theory, already come to dominate the scholarship on Hungarian marital property law in the 1880s – if we remember Herczegh's "Hungarian system" built on the principles of "love", "trust", as well as "individual independence".

In 1895, when civil marriage became law in Hungary, the wording of the new statute did not outline in any detail the nature of the relationship between the spouses in marriage, nor did it elaborate upon the marital property system to be operative in Hungary; the Minister of Justice, Szilágyi, merely commented that "current civil law remains in force regarding regulation of these areas."[34] But current civil law was

30 Document signed before public notary Béla Gászner between spouses Weisz Jakab and Fanni Mohr (1905), Budapest Metropolitan Archive, fond VII. 11. d. 1356. Ursula Vogel notes the way that in natural law arguments marriage as a "voluntary association between two 'citizens' – two agents capable of valid contractual undertakings – turns into a permanent house arrest for one of them". Vogel, Citizenship, see note 6, 73.

31 A town located near the Austrian border, in western Hungary.

32 See Peter Güntner, A városi társadalom rétegződése Sopronban a szézad fordulón (Urban Social Stratification in Sopron at the Turn of the Century), PhD Dissertation, Budapest 2000, 48.

33 Gábor Gyáni, Hétköznapi Budapest: nagyvárosi élet a századfordulón (Everyday Budapest: Life in the Capital at the Turn of the Century), Budapest 1995, 14–20.

34 Report of the Justice Committee on its review of the 1893 civil marriage bill, January 3–4, 1894, in Budapesti Hírlap, January 3, 1894, 2–3; January 4, 1894, 3–4.

in fact caught between two European norms: the first norm was the legacy of a firm belief in spousal unity in the figure of the husband as the symbol of a stable family life – the legacy of the late 18th and early 19th century waves of codification and legal systematization; the second norm was a less certain approach to the family – also apparent in the European civil codes – which saw it necessary to prescribe a degree of female independence within marriage and to implement certain restrictions on male authority. In Hungary, this latter approach was gaining ground in legal scholarship but had little impact at the legislative level – primarily because Hungarian law was mainly located in the practice of the courts and because regulation of the family was for the most part considered part of the grand project of codification – to be continually postponed for a later date.

Feminism and Legal Change

The ambiguities across Europe surrounding women's independence certainly did not make it easier for any detailed codification of family law to be completed in Hungary and so the rules governing women's economic lives in relation to their families oscillated in an uneasy compromise between women's total or partial dependence in marriage. In the absence of comprehensive systematization of the civil law, the courses that legal cases could take depended on a variety of factors, including the social class and financial circumstances of the concerned parties and local factors such as the religious and regional backgrounds of spouses, shaping their education and expectations concerning married life and marital roles.

From the 1880s and after, the minimal arrangements of the 1895 civil marriage law, the various (limited) opportunities that existed for women as independent financial actors within "the family" were translated by legal scholars, as we have seen, into a celebratory nationalist discourse of Hungarian women's civil rights rooted in tradition. These scholars employed a liberal (and feminist) vocabulary of companionship and mutuality to describe an ideal model of spousal relations existing in Hungarian law. This discourse had a significant impact on the legal thought of the emerging liberal feminist movement of the early 20th century,[35] which recognized two points of departure regarding the "civil rights" of women in Hungary: the first was connected to existing reality, the second to the possibilities of future legal reform. In the first place, the reality was that, whilst legal codification was not in force, laws working against women's interests in marriage were less binding in the

35 In 1904, Hungary saw the formation of two organizations that would come to constitute the liberal feminist wing of the Hungarian women's movement: *Magyarországi Nőegyesületek Szövetsége* (Union of Hungarian Women's Associations) and the *Feministák Egyesülete* (Feminist Association).

formal legal sense; in the second place, it was not probable that much change could be achieved if local laws and customs were "relatively speaking, much more favorable and humane" in comparison with other European laws.[36]

Civil laws were a subject of debate and discussion, but regarding a coherent campaign against civil legal relations – particularly concerning women's marriage and property rights – they were "contained" by the more powerful discourse of Hungarian women's existing civil rights strategically employed by some feminists in order to counter anti-feminist accusations that feminism was unpatriotic and foreign to Hungarian tradition.[37] The first feminist campaign to address concrete conditions in the civil law could only occur when Hungarian civil law was itself about to become concrete in the form of an operative code. This looked set to happen in 1913, when a fully drafted code came before parliament (having been up for public debate since 1911). The new code displayed both tendencies of the "European norm". The code attempted to install a statutory gender order of female dependence in marriage with the husband as head of the family obliged to provide for his wife and children, and domestic household work defined as a wife's family "duty". On the other hand, the language of companionship and mutuality in marriage that had been visible in the legal scholarship from the 1880s also appeared: the husband was bound to "respectfully take into consideration" his wife's advice in family matters and the wife was not obliged "unconditionally" to respect her husband's decisions.[38]

This ambiguity surrounding male authority and female independence in marriage was summarized by Andor Máday, a (male) feminist legal scholar whose book on Hungarian women's legal situation came out at the same time as the draft code: "*De facto* the power of the husband as the head of the family does not restrict his wife's individual legal capacity, only the sphere of her activity and even then only in such measures as are in the interest of family unity".[39] In spite of its ambiguities, the code represented a concrete gender order to which feminists could respond equally concretely, demanding that the code be based on an unambiguous recognition of sexual equality. They set out proposed modifications where the code restricted women's individual property rights and asserted that the dowry should be clearly understood

36 So wrote the Hungarian feminist Sándor Szegvári in her review of the International Council of Women's Pamphlet: Women's Legal Situation in the Civilized World, in: A nő és a társadalom (Woman and Society), VI, 10 (1912), 181–182, 181. *A nő és a társadalom* was the journal of the *Hungarian Feminist Association*.

37 This point is made by Susan Zimmermann, Die bessere Hälfte? Frauenbewegungen und Frauenbestrebungen im Ungarn der Habsburgermonarchie, 1848 bis 1918, Wien/Budapest 1999, 305–307.

38 § 25 of the draft code.

39 Andor Máday, A magyar nő jogai (Hungarian Women's Rights), Budapest 1913, 38–39.

to form part of a woman's "separate property".[40] The draft code, however, never became statutory law, and the duality of the forces shaping women's legal status, *de facto* and *de jure*, continued to mark the Hungarian legal system well into the 20th century.[41]

In one sense, it could be argued that the discourse of Hungarian women's traditional civil rights energized and stabilized feminist arguments which, being located in a political movement of the "non-Western" world, faced the double burden of trying to address sexual inequality in the language of a Western Euro-centric international movement, whilst retaining national(ist) support for their cause at home. Yet within this very same dualistic framework of (Western) Europe and Hungary as two distinct but overlapping models of progress, the discourse of women's rights in Hungarian tradition proved at the same time a tiring obstacle to Hungarian feminists who had to cut through the airy, chivalrous language of the legal world in order to address the everyday economic, social, and political disadvantages which faced women in Hungary, as elsewhere. And so, while some lawyers – and feminists – chose to see Hungarian conditions as favorable in a wider European context (a sign of social modernity and progress embedded in the national idea), others complained that such an outlook was in fact a sign of Hungary's backwardness in the race to be part of (Western) Europe. In these kinds of arguments, Europe was no longer an external condition to an internally progressive Hungarian nation state, but an internationally valid set of standards which Hungary had to incorporate. In 1908, Hungarian feminist leader Rozika Schwimmer countered the idea that "what educated Western women strive for, Hungarian women have possessed since ancient times".

> We have been resting on the achievements of our predecessors and have said that now we may calmly watch the struggle of women in other countries. Today we have to acknowledge with shame that on the international scale we are falling lower and lower ... If we keep wasting time like the hare who slept through the race, trusting in his own speed while the hedgehog with its determined pace reaches its goal, then we will not only fall behind the women of the west but also the women of the east.[42]

40 Birálatok a polgári törvénykönyv tervezetéről. A FE jogi bizottságának tagjaitól (Report on the draft civil code by the legal committee of the Feminist Association), in: A nő és a társadalom, VII, 10 (1913), 169–172, 171–172.

41 The first codification of family law in Hungary was the Soviet family code of 1952 (a családjog törvény), the first Hungarian statutory law to state unambiguously the principle of sexual equality. § 23 of the code read that "in married life both spouses possess equal rights and duties."

42 Rozika Schwimmer, A magyar nő külömb helyzete (The Special Position of Hungarian Women), in: A nő és a társadalom, II, 12 (1908), 194–196.

Conclusion

In February 1907, an article entitled *Feminism as Class Struggle*, written by a young freelance Budapest-based doctor of political science and legal practitioner named Andor Máday, appeared in the journal of the liberal wing of the Hungarian feminist movement: *Woman and Society*. In this article, in keeping with the late 19th century spirit of feminism, Máday stressed the separate interests of women as a class – distinct from the interests of either proletarian or bourgeois men. In order to illustrate the specific nature of women's oppression as a class, Máday turned to civil legal restrictions of women in French marital property law. In depriving wives of their property rights, argued Máday, French laws treated married women as a distinct legal category regardless of their social class; "bourgeois" or "proletarian", women were dependent financially on their husbands.[43]

The odd fact that Máday's article rallied the troops for Hungarian feminism by referring to French civil law suggests two locations – Europe and Hungary – which converge in Máday's writing. I have tried to suggest that this convergence is a typical phenomenon in the treatment of women's status in Hungarian civil law and can be explained with reference to the ambiguity of what I have called the "European norm", a receptacle for at least two normative definitions of women's status within the family. This norm makes it difficult to historically define the nature of women's civil legal status in semi-independent Hungary, where from the 1860s European civil laws had been regarded as models for the emerging national infrastructure. The vulnerable national borders of Hungary, which were defined across the pluralistic societies of a former empire and were undergoing processes of "Magyarization" in the period I have covered here, made national identity an easy and available vehicle for arguments emphasizing women's independence in the absence of reformed "European" law, although reformed European law such as English marital property law did enter judicial practice in Hungary. Thus it came to be that "Hungarian family law" as a scholarly enterprise – in the absence of both a code and, therefore, in the absence of a vocabulary and political tradition of legal reform – used the national tradition to emphasize values such as companionship and mutuality in marriage, as well as independence for women as an indication of an economically progressive society. This served as both a strategic tool and an obstacle in the articulation of a Hungarian "civil rights" feminism.

43 Andor Máday, A feminizmus mint osztály-harc (Feminism as Class Struggle), in: A nő és a társadalom, I, 2 (1907), 18–19.