■ Zoltán Fleck

Architects of democracy*

Sometimes adapting new ideas is as difficult as inventing them. In the area of theory and sociology of law the situation is even more complicated because almost all important issues may concern political values, ideologies or pure individual interests. But one of the most demanding areas in this respect is the sociology of the legal personnel, since the scientific community at least partly belongs also to this group of people. Identities and sensibilities apart, this short essay might serve as a thought-provoking argumentation for using new perspectives in sociological research of the legal system.

In this short essay I intend to show the relevance of the sociological perspective concerning the role of legal professions. There are also valuable historical analogies, but central European new democracies give rich research field.

Since constitutional institutions are still suffering from weak legitimation and pre-democratic cultural background, professional craftsmanship has to have outstanding effects on the skeleton of the rule of law and democracy. Mostly they are the designer, architects of the future building of democracy. The hindrance of this historical role in some cases is the etatist, predemocratic value system as a consequence of the forty years socialization. The aim of this text is to shed some light to a rather neglected field of legal sociology.

Legal professions during social and legal changes

Péter Esterházy in his brilliant essay, arguing on the human hardships of the transformation in Hungary has written: "Everything has been changed only we remained the same." This

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state of affairs has brought about tremendous strains, paradoxes and burdens which post-communist societies must face, and also some unavoidable disappointments which continue even long after the actual events of the peaceful revolution have ceased.[1] The writer here emphasized the personal and social continuity as well as the permanent responsibility for the past, but we cannot be entirely persuaded about the unchanged character of the actors who had made and suffered these transformations. During large-scale changes social actors usually undergo deep changes too, which in turn have transformed the previously altered environment and introduced yet new changes. These circles are sometimes virtuous, sometimes vicious.

The disappointments in Hungary and other post-communist countries over some inherently unrealizable hopes, such as swift economic success and wealth, a more efficient functioning of the welfare institutions, created a new set of barriers to the social, political and legal development, which allowed the sociological literature on the question of trust in the institutions to flourish. As Krygier added, some fulfilled hopes, after a short time turned out to be "ugly": rule of law is not so nice or important term in the popular understanding, than are material justice or equality. The unintended consequences of transformation are now very clear and painful: the huge social inequalities, poverty, atavistic nationalism, anti-Semitism, and populism, an ineffective state and legal system, etc. The societies that broke away from socialism have found themselves in a state of constant flux full of challenges and transformations which are grasped as crises, and produce anomy, decreasing ethical standards both individually and socially.

Some years after the revolutions towards democracy, but before consolidation of the new values (individual rights, minority rights, constitutional barriers) sensitive intellectuals have noticed a decline in the liberal values and practices, this tendency is summarized as the "velvet restoration" or "post-fascism". The rebirth of egalitarianism, collectivism, anti-liberalism, and even anti-intellectualism seems like a central-European evergreen that has never really disappeared. But these features are not completely unknown in the West either, here too there is a general apathy about, and distrust of traditional politics, as well as emerging intolerance toward strangers. Despite these and other detrimental phenomena, western societies seem to remain solid since they work with impersonal institutions backed by strong traditions. However, even the safety in these traditions could not guarantee these developed societies complete immunity from injurious tendencies as we saw in the case of fierce US hysteria, the Italian populist right and other failings. Democratic processes with long cultural traditions can also be influenced although there is always a much stronger hope of recovery. According to Tismaneanu new democracies are extremely vulnerable to upheaval because institutional, moral, and attitudinal corruptions go hand in hand with a new untried form of governance. The peculiarity of this situation is that a corporatist, authoritarian inclination, as well as a revolt against formal institutions and the reinvention of the pre-democratic traditions dominate the political agenda. While people have lost their illusions about democratization most of them would give up their autonomies and liberties for material benefits, and improved social

[1] Martin Krygier, Parables of Hope and Disappointment, East European Constitutional Review 11\3. (2002 summer)

welfare. This constellation serves as good grounds for paternalist and demagogic political forces seeking charismatic figures in politics to take charge. Ethnocentric argumentation, homogenous and vague collectivity against individual freedom and free thinking are not new additions in this region as the irrational, emotional political style, which emphasizes personal qualities, and authority instead of dense and legitimate institutions, and civic virtue. Weak institutionalization makes the lack of constitutional patriotism more serious: the state as a limited agent with constitutional legitimacy has not yet become an accepted figure for the incompetent and corrupt institutional entities which are full of selfish and unreliable politicians and fruitless ideological debates.[2]

According to a recent survey conducted by the author, the prestige of the parliamentary democracy has diminished: parliament as an institution appeared as an ineffective quarrelling branch without considerable power.

Despite the fact that the more or less successful European unification process largely forced institutional changes, the new member states entered the EU with changed societies too.[3] European monitoring procedures and programs, recommendations and official criteria on institutional stability, democracy, rule of law, human rights, protection of minorities focused on institution-building but meanwhile, and in spite of the social tensions, problems of legitimacy, and bad attitudes toward the legal system — these formal measures partly firmed up both the value system and attitudes of the society. Readers might well find two contradictory evaluations of the transformation of the newly emerged democracies behind these argumentations. Studying the role of the legal institutions and professional lawyers inside these institutions I have found it useful to depart from both institutional optimism and cultural pessimism, and refer to a new starting point for sociological research.[4] This is even more important to get rid of the highly political evaluation of a situation that I call *institutional pessimism*. While institutional optimism and cultural pessimism were divergent perspectives of the scientists and western advisors, this new kind of pessimism stems from inside the core of the nation, as a result of the disappointments that continue years after the change to democratic rule. Institutional pessimism means heavy cynicism over the function of the legal and political institutions and a much stronger reliance on such "irrational" forces as fortune, fate, and personal ability. The social basis of this feeling is understandable: as a lesson from past experience a considerable part of the society thinks that law is synonymous with central command, the legal system is a sheer tool of the rulers or the richest strata of the populace, the function of the legal system is to govern, manipulate society, and society should defend itself. Post-communist societies generally (but with huge differences between

[2] Vladimir Tismaneanu, Discomforts of Victory: democracy, liberal values, and nationalism in post-communist Europe, European University Institute, Florence 2002

[3] Stephan Parmentier, Implications of Enlargement for the Rule of Law and Constitutionalism in Post-Communist Legal Orders, draft paper, http://www.iue.it/LAW/Events/WSWorkshopNov2003/Parmentier_paper.pdf

[4] Martin Krygier, Institutional Optimism, Cultural Pessimism and the Rule of Law in Martijn Krygier & Adam Czarnota, eds. *The Rule of Law after Communism. Problems and Practices in East-Central Europe,* Aldershot, Ashgate/Dartmouth, 1999, 77-105

them) lack social trust and trust in institutions. There is a tendency to view the state and legal institutions as the enemy, antipode of the civil society.[5] This is a strong legacy of the dissident thinking of "antipolitics" which had an anti-positivistic meaning in a legal-theoretical sense.

I strongly feel that in order to understand post-communist societies a more complex relationship between institutions and actors must be construed, which is not new in theoretical sociology, but neither is it so widely used in research.

The relation between actors and structures is a highly complex and constantly debated subject in the theory of social sciences. For sociology of law this challenge touches the very essence of the role and effects of law in society. It is beyond the scope of this paper to assess this long theoretical history, and I also omit any discussion on the new lines in institutionalism, both historical and sociological. Nevertheless it is necessary to acknowledge the relevance of this tradition for further analysis. For the moment let us take one elemental lesson from these theories. Following some attempts to adjust the divergent traditions of social science, we should find the connections and mutual effects of actors and institutions.

Ignoring determinism, working institutions generally give the context and environment for the behavior of the human agents and effectively limit the scope of their actions. But actors working with and inside these institutions can also form those institutions during functioning. Take here only one example: judges sitting in the constitutional courts must conform to the institutional barriers to their actions that are designed by the law-maker. However, during their assessment of a case they also have the possibility of defining their own concept of practice and forming an activist, or a more or less restrained position. This kind of defining activity is not peculiarly eastern or central European and can be found everywhere in constitutional systems. But it plays an astounding role in newly established constitutional courts, which have no or few traditions to fall back on. As is well known, institutional frameworks perform a reflexive barrier to inventive human actions. It is true even during formative years, when human creativity plays decisive roles.

Krygier has argued lucidly about the importance of legal traditions, saying that even in hard cases there are legal answers to legal questions, because after principles run out, legal traditions remain considerable.[6] Nonetheless legal traditions are somewhat problematic in societies such as Hungary, Poland or other post-communist nations. Even so, I strongly agree with the evaluation that lawyers, and especially judges are key players in shaping the legal traditions because of their craftsmanship, skills, methods and competence. This legal group has played such an important role, more so than intellectuals have done in general, in creating national traditions in the 19th century: they have invented and formed the constitutional and legal traditions. Starting from the prescriptive nature of the legal tradition, it is necessary to balance

[5] Adam Czarnota: Meaning of Rule of Law in Post-Communist Society. Rechtstheorie, Beiheft 17 (179—196)

[6] Martin Krygier, Thinking Like a Lawyer, in: Wojciech Sadurski (Ed.) Ethical Dimensions of Legal Theory, Rodopi, Amsterdam-Atlanta, GA, 1991

cautiously between preserving and changing these elements while looking closely at the post-communist developments.

"...the past does not merely speak to the present; it prescribes for it. They are institutionalized: transmission of the law is not left to chance but is organized and regulated by institutions of recorders, transmitters and authoritative interpreters."[7]

It is widely accepted in the social sciences, that the new democracies of Europe have more or less successfully changed their political, economic and legal systems. This is a historically unique venture considering the complex program and relatively short time it has taken to implement it. This is also true of the legal system, some parts of which have been transformed completely, sometimes outside, or contrary to, the traditions, while other parts proved to be more problematic, biased or strongly resisted any changes.

During evaluation of the changes and stability throughout the nation, which remains one of the most important theoretical issues of legal sociology, one can differentiate between at least two types of non-changes. Continuities in the legal system in post-communist societies are conservative or progressive according to the openness for such normative (prescriptive) ends as rule of law, constitutionalism, democracy, etc. Among the positive or *progressive continuities* the most general is the basic structure of the civil law system which, in itself, gives many possibilities for planned legal reforms and promises greater success because of the formal-rational character, reliance on codification and rational law-making.[8] Even during the totalitarian regime and later in the context of post-totalitarian socialism, the positivist feature of the legal system, namely the fact that written regulation must be taken into consideration, offered judges relatively safe protection against the sheer demands of the political elite groups. The institutional basis of the legal system was permanently stable following a short revolutionary period when lay elements in the administration of justice and legal education had been put in place The initial communist ideological assumption of laicization had been strongly limited in all east European countries both by dictatorial Stalinism and by the pragmatic post-revolutionary leadership, with some interesting exemptions in East-Germany.[9] During the period of reform, in those countries where reform has been initiated this institutional tradition served as a useful technique for distancing the government from the communist ideology and lawlessness.

Much better known are the *conservative continuities* or structural remnants that thwarted proposed transformations during the course of the "constitutional revolution". We cannot provide an exhaustive list of the structural obstructions to transformation but some of them must be mentioned here.

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[7] s.n. 86. p.

[8] Charles H. Koch: The Advantage of the Civil Law Judicial Design as the Model for Emerging Legal Systems, Indiana Journal of Global Legal Studies, Vol. 11.

[9] Boros László, Fleck Zoltán, Gyulavári Ágnes, Die Beteiligung von Laien an der Rechtspflege im sozialistischen Ungarn, Ius Commune Sonderhefte (Studien zur Europaischen Rechtsgeschichte), Recht im Socialismus Band 2. Justizpolitik, Hrsg: Gerd Bender, Ulrich Falk, Vittorio Klostermann, Frankfurt am Main, 1999, 147-199

Despite some legislative efforts during the first years following transformation, deregulation was only partly successful: the Hungarian legal system remained simultaneously over- and under-regulated, although many low-level decrees were annulled by legislation, and the Constitutional Court also took part of this process as a constitutional selector of the old legal system. But, as usual, large-scale transformation of the economy, building a democratic political environment, and general modernization encouraged greater law-making activity and, as is well known, speed never serves quality and prudence. (As a law-making factory, Hungarian Parliament has often created regulations which were after a short time proved to be useless or have been modified several times. Technical faults made judges mad or severely skeptic about Parliament.) Despite the notable volume of deregulation, the number of legal norms in operation has enourmously expanded.[10]

From the perspective of constitutional stability and progress the effects of the past on society might be more important, since this issue concerns the effectiveness of the legal system through its position in the norms and institutions of the country. Disregarding the remnants of attitudes and outlooks created by the earlier political system — the lack of good manners and decided lack of trust in the authorities — allowance should be made for a particular form of backwardness, for instance the mentality of legal staff, the professions and, especially the judiciary which had been directly involved with the function of state and law under communism.[11] Quoting only one example: judges sitting on the upper courts often use a logic in cases of freedom of the press, which practically ban the critique of officialdom. In the eyes of these judges the hard critic of state institutions and bureaucrats is something abnormal.[12]

[10] Invalidated legal norms in Hungary, 1990-2004

	1990-2000	2000-2004
Act of Parliament	373	259
Governmental decree	1248	1236
Ministerial decree	3187	2810

Legal norms in operation in Hungary, 1990-2004

1. Acts of Parliament

1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
350	425	494	587	670	765	869	983	1054	1027	1148	1240	1299	1264	1381

2. Decree by Government

1990	2004
1214	2237

3. Ministerial decree

1990	2004
2218	3930

[11] Fleck Zoltán, Judicial independence and its environment in Hungary, in: Priban, Young, Roberts (eds.): Systems of Justice in Transformation, Ashgate, Aldershot, 2003

[12] Fleck Zoltán, Freedom of the press in the civil adjudication, in press

As already seen in the European unification process, and also from a broader view of progress, it became clear after some years that the proper application of the results of new legislation is more challenging than creating new rules.[13]

It would be too undemanding to state that human rights, constitutional values, freedoms are not part of the legal culture, and we should not wait for effective working in this respect. Such a statement is pure cultural pessimism, which can be overcome. But there are factual pitfalls, among other things, attached to the creative application of the legal decrees, with the judicial application of the Constitution and constitutional values, and with the wholesale bureaucratic positivism. This is because legal staff have been trained to apply the written law only, and to evade any political interpretation of higher norms or values. At the same time we must be aware of the fact that this peculiarity of the law in Hungary had an important function in self-defence for the judges under communism. Nevertheless the present state is in some respects confusing in the West also, regarding perhaps the evaluation of judges' work, bureaucratic pressures, and the ability of using European case law. In addition to these challenges the new democracies must face up to some new- born misinterpretations, such as that of the independence of the judiciary, by which some magistrates try to use this constitutional value as an ultimate defence against public criticism and as a safeguard against open debates on verdicts.

Because Hungary and some other former communist countries — with different argumentation and causes — did not change the legal personnel, remnants of old attitudes could not be eliminated by simple administrative changes. Even the former GDR, where scrutinizing legal professions was carried out on a large-scale, did not escape completely from the troubles, and the radical solution asked a considerable price as can be seen from a highly sophisticated portrayal of the events.[14] The purging processes after one and a half decades are not on the scene, but waiting for a generation shift seems also to be a misleading tactic. Evading the fashionable institutional pessimism I think that the implementation of some new techniques of formal education for the professionals is not the only valuable result of the earlier decade, but it is the legal institutional environment itself that creates — albeit slowly — the proper functioning. When properly established, institutions are able to breed well functioning actors. We must go much further in praising the results than the line of reasoning indicated below.

"Administrative and court reform was not very successful during the first decade of transition. Much time and money was invested with disappointing results overall. However, there are reasons for hoping that investment was not altogether lost. Both the EU and the candidate countries have gained considerable experience in how and how not to promote this reform effectively."[15]

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[13] Frank Emmert, Administrative and Court Reform in Central and Eastern Europe, European Law Journal, Vol. 9. No. 3. pp. 288-315. According to a recent survey Hungarian judges practically do not refer to European Court's decisions. (Fundamentum, 2005/2.)

[14] Inga Markovits, Imperfect Justice: An East-West German Diary, Oxford: Clarendon Press, 1995

[15] Emmert, p. 315.

The question of how to ensure the conformity of the legal practitioners, particularly in times of radical political transformations is not new in the history.[16] A newborn political regime (following sharp political-ideological swings) ordinarily had to redefine its relationship to the legal staff. (In the German instance there were at least four good examples of this kind of recasting.) Because bringing in new laws and even introducing an extensive normative change is rarely sufficient to bring lawyers in line with the regime, alternative measures usually have to be established for ensuring conformity. According to Hubert Rottleuthner's enumeration the arsenal ranges from legal education to disciplinary sanctions. Among the tremendous changes in central European legal systems, some are really suitable for strengthening conformity, but one should also take into account the innate ability of the continental judiciary of being able to conform to any regimes.

As for legal training, the autonomy of the universities following democratization increased in importance, as did the law degree, thanks to the growing need for lawyers in a market economy and democracy. Instead of the state controlling entry to the study of law, faculties began to open their doors to ever increasing numbers of students and, consequently, to increasing amounts of money. Under communism less than a thousand qualified lawyers graduated from universities annually, because strict state regulation maximized the possible number of students. Following the system-change the social need for lawyers has grown sharply, the number of law students in Hungary by the year 2002/2003 almost reached an unprecedented 18.000. In addition to the radical changes in the regulation of professions, the emergence of market pressures had the most significant overall structural effects on the legal occupations.

The autonomy of legal science departments at the universities also became limitless, as they continued in their tradition of doing nothing much more than complain about low wages, in the meantime seeking other more lucrative employment. In Hungary the actual decisions on recruitment of personnel, the career and remuneration of judges, as one of the most important tools in ensuring conformity with the radical reforms, were given to the administrative elite of the judiciary. Thus the higher courts and their presidents have strong possibilities of influencing lower ranking judges as well as carrying out judicial practice without effective external control. This situation has corrupted the selection of judges and made a new kind of contra- or biased selection.[17] Not only are formulas, informal binding opinions, legal and ethical measures, appellate or review instances the tools for guaranteeing conformity, but through these, guaranteeing the career expectations of lower ranking judges.

This last example illustrates that institutions matter; the necessity of preserving the institutionalist view is very clear.

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[16] Hubert Rottleuthner, The Conformity of the Legal Staff, in: Karlsson, Jonsson, Brynjarsdottir (eds.), Recht, Gerechtigkeit und der Staat, Duncker & Humblot, Reykjavik, 1993

[17] Badó Attila, Hungarian Lawyers in the Making: Selection Distortion after the Democratic Changes in Hungary (manuscript)

Players, actors, roles: lawyers as active agents

Even from the middle of rapid changes in numerous spheres, one can notice the worldwide transformations of legal professions during the last decades. For those societies that actively changed their political, economic and legal systems, these more general transformations created the background and the context, and it is evident that the adjustment to a changing environment generates new challenges during the process of transformation. Despite the stability of the final values of these transformations (rule of law, rights, democratic way of doing things, etc.), the routes to these aims, and the institutions that could encourage the ultimate success are extremely shaky.

The intensive work carried out in building institutions in the post-communist countries lends considerable significance to pragmatic advisors, legislatures and other designers but little effort has been given to a deeper understanding and analyses of the real activities of the actors involved in these processes. From a legal sociological aspect the highly important players are those in the legal professions who not only helped to create new, or renovate old, institutions, but continue to recreate them in their everyday functioning.

From our perspective the most important roles in the legal system are those which shape the institutional activity of the legal system. Judges, prosecutors, even private attorneys in a system of justice, law professors, academics in legal education, in constitutional court or working as ombudsmen, administrators, bureaucrats creating legal measures and administering legal issues.

Periods of rapid change are rarely advantageous for analysis, but we can safely assume that some deeper scientific research would be very fitting in this case. This research should bravely cross the disciplinary limits using different social sciences (history, social history, legal sociology, jurisprudence). The frame of scientific conceptualization of legal issues should extend traditional limits. This kind of trespass needs brevity and enterprise, although cross-bordering is by no means new in the social sciences. Understanding the legal professions sociologically needs this shift in perspective, especially in the case of societies under the pressure of huge changes. As an evaluative summary of the traditional aspects of legal science one can accept Terence Halliday's argumentation:

"Both social sciences and academic lawyers have directed much greater attention to the recruitment of lawyers, legal education, professional organization, and stratification of the profession than to its work and its wider institutional impact. Seldom do scholars treat lawyers as principals or agents of institutional design, constructing and maintaining general market institutions, state power, or civil society."[18]

Of course there is no space here to run through the roots and results of the cross-disciplinary project, we can only give a brief account, with some possible research topics.

[18] Terence C. Halliday, Lawyers as Institution Builders: Constructing Markets, States, Civil Society, and Community, in: Sarat, Constable, Engel, Hans, Lawrence (eds.) Crossing Boundaries. Traditions and Transformations in Law and Society Research, Northwestern University Press, Evanston, 1998, p. 244.

This fresh line, which assimilates various aspects from history and sociology, assumes the active role of lawyers, it conceptualizes them as agents, not only mirroring the peculiarities of society, economy or state, but constituting the institutions in which they are embedded.

In the field of sociology of lawyers such issues as how lawyers control the market and with what measures they can reach competitive advantages in a free market has taken a dominant position and reached its peak in Richard Abel's monumental works.[19] The problems of market behavior, the control over training and admission to the professions, the role of the state in regulating working conditions were certainly decisive at the moment of transformation of the state in to the new democracies. But it should be more challenging to investigate the market-creation process, while lawyers are playing fundamental roles in designing market institutions, forming the non-economic foundations of economic activity. They consistently do their jobs in the interests of capital or big business by finding new paths for their clients, constituting new forms of commodity exchange, insurances, etc. They are the inventors of institutions and "symbol traders": "Lawyers invent relationships. This is their special skill, their indispensable contribution to capital."[20]

So the market as a relatively new force in the old Eastern Bloc does not only change the setting of the professional work, as one can see, for example, in the case of the attorneys who must face strong market competition after years of security made by a numerus clausus. At the end of the 1980's there were about 2000 practicing attorneys in Hungary, a decade later there were no less than 8000. This enormous growth of lawyers, and the huge increase in students following a legal education is symptomatic of all the new democracies in Central Europe.[21] As a consequence of the "privatization" of this profession after some decades of exclusivity ensured by the state, and due to the strengthened market pressure, attorneys are widely differentiated. Additionally they have had to face the big law and counseling firms of the West that could now enter this new, unregulated market. But lawyers are by no means only pure victims of the market-economy, they have proved to be successful in gathering competitive advantages while themselves creating the conditions. The market is created by lawyers in different ways: during the first years of the transformation (and in Hungary even some years before the political change) they were reformist advisers of the legislator, even advising in the political role of deputies or chief bureaucrats. The privatization of the state property after some years of spontaneity (spontaneity was an euphemistic, but widely used concept on the unregulated, sometimes anarchistic events) and other types of economic regulations, brought about a set of creations and some new market subjects and jurisdictions, new definitions of the legal practitioner, subject (corporation), inventing a new kind of economic citizenship. It is highly important and decisive that the economic reform regulation, which created most of the market players by constructing a new kind

[19] Richard L. Abel, Philip S. C. Lewis, Lawyers in Society, Vol. 1-3., University of California Press, Berkeley, 1988-89

[20] Maureen Cain, The symbol traders, in: Cain, Harrington (eds.) Lawyers in a Postmodern World, Open University Press, Buckingham, 1994, p. 33.

[21] Erhard Blankenburgh et al., Legal Culture in Five Central European Countries, WRR, The Hague, 2000

of economic legal personality, took place before the system-change and this fact also gave strong dynamism to other legal transformations. After the first democratic election in Hungary, but also elsewhere, the Constitutional Court arrived on the scene as a chief designer and tried to reshape the social rights of the citizens, amongst other things. This activity sometimes seriously hindered the further reforms of the hereditary sickness of such institutions as the welfare system. This logic was openly present in the fate of the welfare reform in Hungary: in 1995 Constitutional Court declared unconstitutional the cutbacks of the socialist welfare system.[22]

During the reform, and through the creation of the new market institutions, lawyers also reshaped the market morality, they constructed some relevant concepts, such as dirty money, money laundering, corruption; this adventure seems very dubious and risky because these concepts are strongly value-burdened. Even so, this creativity touched the legitimacy of the new system and gave legal forms to capitalism.

As for the role and function of the state in the legal profession, it is widely known that in Europe and mostly in the continental civil law world, professionalization was guided by government, states intervened strongly and circumscribed the conditions of lawyer's work. The latecomers of Central- and Eastern Europe have experienced all the burdens of this type of state activity: the sometimes brutal force of the modernizers. It cannot be denied that lawyers under totalitarianism served as mere servants of state interest, and sometimes even as protagonists of the state ideology. But it should be clear that in those systems, and especially under socialism, lawyers played a limited role, their work as channeling and transforming central requirements was simply unimportant, while central command had a direct effect on society, at least theoretically. This also means that when the command economy was forced to reform from the end of the 1960's, the lawyers' role turned out to be more important because indirect regulation of the economy did not mean liberalization only, but regulation through legal means. This demanded the attention of well-educated lawyers during the creation and realization of legal regulations.

In the course of creating a moderate (limited) state, defining citizens rights, the writing of a constitution, lawyers in their role as participants of the round-table talks effectively formed the shape of the new democracies, continuing the long tradition of reformist "political lawyering" or lawyers' participation in high politics. In fact, central European transformations were largely concluded through constitutional measures and this feature gave the processes a peaceful, smooth character. The important contribution of lawyers in this process should also be recognized. Along with all compromises and faults, revolutionary law-making surely makes mistakes. In everyday practice different law professionals create and recreate legitimacy for the state and rule of law, from this perspective a judge or a prosecutor becomes inevitable state-stabilizers.

In forming market institutions lawyers have the function of giving rational legitimacy to private interests, since they — in post-socialist countries — have become defenders of individual interests after long decades of working under official

[22] András Sajó, Socialist welfare schemes and constitutional adjudication in Hungary, in J. Priban and J Young (eds.), The Rule of Law in Central Europe, Ashgate, 160-78.

communitarianism. (or at least under such a system where privatism was politically illegitimate). In influencing state affairs lawyers have the duty to form democratic "rules of the game" and, even far more complicated, making the new democratic rules a natural element of social life. Their firm responsibility is to form a constitutional culture. Instead of complaining about the lack of this cultural background the law profession must design constitutional and legal values and legitimize them.

But it is well known that to ensure the stability of these structures some social preconditions are necessary, the most general concept of these is civil society itself.

In the sociology of lawyers the trendy view in recruitment to the legal fields has been set in a traditional class perspective, in which lay the social position of law professionals and its consequences. Inequality during recruitment and the level of meritocracy were the central issues. This research perspective should be continued: today the inner conservatism of lawyers, the structural isomorphism of the ruling class or dominant strata and professions continue to leave room for investigation. The social background of lawyers nowadays is a far more vital topic since different kinds of capital and their fruitful exchanges have proved to be important regulators of the social composition of various professions. Students from lower status families are at a disadvantage when attempting to reach the most prosperous careers. This kind of inequality, despite the official positive discrimination in the socialist period, and despite the democratic rush toward meritocracy in a democratic setting, remains unbroken. What is new is the relatively high salaries of the non-market legal professions (that do not compare with their Western colleagues), such as the judge and prosecutor, which are highly valued symbolically following the transformation to democracy, and some years later this position has been turned to financial advantages. Thus, beside the growing pressure on the market of the professionals, the regulation of judges' careers became one of the most disputed and problematic tasks from a sociological perspective. This was largely due to the administrative elite retaining authority for this issue by keeping to its autonomous administration of the judiciary.

In addition to this view, a much more dynamic relationship has also emerged, where lawyers' participation in creating civility, and a civil society is a relevant task. Lawyers play a variety of relevant roles in the reconstruction of civil society in the new democracies, not only in connection with their own professional associations, assemblies, trade-unions, but attorneys are strongly involved de jure and de facto in every voluntary association.

Some historical investigations have shown that in France, before the Revolution, attorneys, sometimes in collaboration with judges, took part in the formation of an autonomous public, in redefinition of the sovereign authority based over the general public. Across the 18th century, lawyers as the voice of the nation effectively monopolized the language of rights and followed symbolic struggles against absolutism.[23]

[23] David A. Bell, Lawyers and Citizens, The making of a political elite in old regime France. Oxford University Press, New York, Oxford, 1994, Lucien Karpik, Lawyers and Politics in France, 1814-1950: the state, the market, and the public, Law and Social Inquiry, Vol. 13. No. 4. pp. 707-736.

During the highly important and formative round-table talks in central-Europe, attorneys' roles were decisive since they effectively shaped the agenda of the talks and formed the language of political argumentation. Without the involvement of lawyers, attorneys and legal scientists alike the "revolution" would not have become legally driven and peacefully constitutional. By creating the formal legal environment of legislative acts and legalistic argumentation and by articulating the language behind this, they created the solid base for constitutional legitimacy. However natural rights discourse is also incorporated into the constitutions, and it did not lose its anti-formalist, anti-positivist edge that was such an important weapon in the hands of dissidents arguing for ethical progress.[24] After consolidation of the legal system "natural law infection" as a political approach serves the populists more as a basis of the criticisms of rigid, technocratic formal law.

The task in forming legal tradition by shaping institutions and discourse is well known, but poorly implemented in the sociology of lawyers as the function of diffusion of values and concepts stemming from constitutionality, rule of law and rights. The discourse of rights and liberalism, the logic of opposing the state with the help of individual rights revealing of pre-revolutionary France was missing in Germany, where lawyers defined their calling (Beruf) in institutionalizing procedures and Rechtsstaat.[25] In Central Europe intellectuals had always played crucial roles in social changes as enlightened or revolutionary substitutions of the bourgeoisie. When politics turned to strong feudal conservatism as in the interwar period, this role faded before a new wave of modernization. Such oscillations strongly touched upon lawyers in their professional roles, but the strongest impact was that of state-socialism with its anti-legalist ideology to begin with, coupled with its ongoing hypocrisy.

It is reasonable to assume that through post-communist transformations, following many years of restricted importance, Hungarian lawyers had to accept both challenges: positing themselves somewhere between the French (strong emphasis on individual rights as defense against state authority) and German (more energy into forming strict legal procedures, strengthening rational bureaucracy) models. Law-makers widely transformed the written law in the interests of a market economy and the rule of law. The judges, in their highly complex situation, guarded the rights of individuals, ensured the stability of civil relations, and strengthened the legitimacy of the legal way of handling disputes. Attorneys as liberal advocates, among others, identified themselves with the interests of the clients and thus legalized social wants. But every legal professional stressed the legal formalism, underlined the limits of state action, and gave importance to legal tools in general. Before the transformation to rule of law, dissidents' argumentation in central Europe emphasized civic virtue and moral authority against communist rule: in their minds the law should be used as a value-burdened political tool in favor of the oppressed. But this morally valuable activity could not be expected from professional lawyers because of their organizational

[24] Jirí Pribán, The Concept of Legality and Legitimation Demands in the Post-Communist Czech Society, in: Febbrajo, Nelken, Olgiati (eds.) Social Processes and Patterns of Legal Control, European Yearbook in the Sociology of Law, Giuffrè, Milano, 2001

[25] Kenneth F. Ledford, From General Estate to Special Interest: German Lawyers, 1878-1933, New York, Cambridge University Press, 1996

bonds, educational biases and ideological constraints; only dissidents standing outside official placements might be vulnerable to this call. From this perspective the new system is far less heroic.

The task of lawyers to settle disputes and encourage consensus forces them to share the responsibility of a developing community. It is not only a Durkheimian logic on professional communities as social integrators but an empirical experience also in family disputes, small-claim personal suits, and on the political, cultural activities of lawyers in small towns as local experts. This latter activity extends the strict limits of "lawyering".

In societies where the autonomy of voluntary associations based on the interests of professional groups was forbidden for very many years, the shift toward community-like control of the corporate boundaries is demanding. Nevertheless different new challenges have emerged: in the case of attorneys market pressure has grown enormously, judges must face heavy work-loads and need to agitate for salary increases, but in this case the associational life and strength has remained underdeveloped.

While attorneys were able to shape some aspects of the market institutions themselves during the transformation and, with the help of some political capital, they could stand up for their individual interests. Judges and prosecutors are not in positions to articulate their needs individually. These public officers are forced to remain aloof from political argument, only the administrative elite is permitted to speak about professional interests. Nevertheless, the issue of salary is highly politicized, although it remains in the hands of official representatives only. A third way of defending personal interests was chosen by public notaries, they successfully lobbied for strong legal restrictions on admission, thus their offices can be obtained only on a hereditary basis, they have managed to ensure that they can evade all competition.

Every professional association must cope with a new situation in which the state cannot automatically defend their interests, concurrence appeared and conquered authority and clients, public voices openly criticize professional activities, divergent interests questioned the cohesion of community.

Despite the tremendous changes that must be undertaken by the legal professions without the advantage of comprehensive sociological research, a more dynamic account should be of value in completing the scene of the sociology of lawyers in which professionals are active agents. Lawyers now have a particular understanding of the formative years of the new democracies as they work at institution-building activities, when they are creating and upholding not only formal structures, but also institutions. They are effectively taking part in value-formation, socialization, and a set of activities concerning civil society and community in a wider sense.

Social engineering as a realistic image of lawyers' tasks can clearly be seen in an age of massive change. Our time is without doubt suitable for placing significant questions before legal professionals, since they are key players in a set of social changes worldwide and in the post-communist countries in particular. Unfortunately we are far from being rich in empirical sociological research, however the theoretical shift that could help in these investigations took place during the last decade. It is, of course, true that cross-disciplinary researches, which should be used in this case, are among the most complex and time-consuming scientific activities. Here I intended to sign the relevance of this kind of research quoting only some elements of a possible, hopefully comparative, investigation.