

Kronieke / Chronicles

Elemér Balogh (1881-1955): The scholar of Roman Law and of Comparative Law

1. Introduction

The oeuvre of Elemér Balogh, who played an essential role in founding the *Académie Internationale de Droit Comparé* (International Academy of Comparative Law), is almost unknown by generations of lawyers nowadays. In spite of the fact that regarding his scientific motivation and the greater part of his publications Professor Balogh (who had to emigrate from his homeland, Hungary) was a scholar of Roman law, the parts of his scientific career dealing with Roman law and other ancient legal systems are also unknown for many legal scholars. In the following, we will present the most important stages of his life and then his scientific oeuvre dealing with Roman law and comparative law. The mere fact that he was invited to attend the fourteenth centenary celebration of the promulgation of Justinian's Digest — where he delivered a lecture titled *La procédure civile sous Justinien* — is an evidence of his high reputation as a Romanist.

2. The beginning of his career

Elemér Balogh was born on 24th July, 1881 in Bajmók (part of former county Bács-Bodrog, in Greater Hungary). He obtained his doctoral degree in law as a student of the Faculty of Law of the Royal University at Budapest on 23rd November, 1903. Already as an undergraduate he won awards for his high-standard essays. He was admitted to the Budapest Bar Association on 8th June, 1906. He made many study trips abroad as a young scholar. He attended courses of the civilist Grünhut and the Romanist Wlassak in Vienna, of Sir John MacDonnel in London, the courses of Girard, Esmein and Weiss in Paris, furthermore of Vittorio Scialoja and Pietro Bonfante in Rome. He also attended courses of Dernburg, Gierke, Hellwig, Kipp, Kohler and Seckel in Berlin. He regarded himself as a disciple of the renowned German Pandectist, Heinrich Dernburg (1829-1907);¹ he acknowledges this in the dedication² of his monograph published in Berlin (1908) dealing with the regulation

1 For an excellent evaluation of Dernburg's oeuvre, see: Süß 1991. Dernburg was one of the outstanding representatives of the "Begriffsjurisprudenz" beside Brinz and Windscheid. See: Földi and Hamza 2007:135.

2 Balogh 1908. We refer here to the fact that Dernburg — during his professorship in Berlin — co-ordinated the research work of many excellent lawyers. For almost ten years — when it was in existence — he was one of the directors (along with Pernice and Eck) of the Russian Imperial Seminar of Roman Law (Russisches Zarisches Römischrechtliches Seminar) in Berlin, founded in 1887, whose aim was the education of Russian Roman law specialists. See: Avenarius 1998:896 ff.

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in the German and Hungarian law related to disappearance (*Verschollenheit*) and declaration of death (*Todeserklärung*).

3. His research principles as reflected in his works

It is not surprising that — as a novice Romanist — Balogh followed the research method pursued by French Romanists at the beginning of the 20th century, because — as we pointed out earlier — in Paris he was a student and for a time a colleague of Professor Paul Frédéric Girard (1852-1926), the world-famous Romanist, who was a follower of Theodor Mommsen.³ Balogh's aim was the absolute pursuance of *clarté*, which was characteristic of the distinguished representatives of the French professors dealing with Roman law. The clear, exact and unequivocal terminology is typical even of his early works.⁴ It should also be emphasized that Professor Balogh recognized and kept in view the important role of the economy in the development of law. In our view this recognition led him to become a highly respected and renowned mediator of comparative jurisprudence, especially in the field of the ancient legal systems. He summarizes his views related to the connection between law and economy in a treatise⁵ published in 1936: he comes to the conclusion that law adopts itself step by step to the economic conditions, and this process is also verifiable in antiquity.

4. His interest in the legal systems of Antiquity

Elemér Balogh deals also with the legal systems of Antiquity. This interest has its basis in close connection with the era of the end of the 19th and the first part of the 20th century: in these decades comparative jurisprudence became conspicuous again, after having been overlooked or even attacked for a period by the members of the Historical School of Law (*Historische Rechtsschule*).⁶ Professor Balogh pursues the work of the members of the 16th-17th century Humanist School in his comparative-law-related studies. In those years it was already obvious that — after several decades of the disclosure of the so-called Syro-Roman law book (1862)⁷ — researching the relationship and the possible interaction between Roman law and other ancient legal systems is necessary. However, this positive alteration of view involves *in se* the evolution of “unscholarly” hypotheses based on speculative assumptions.

3 Girard played a mediatory role in scholarly aspects between the German and French Romanists. He translated Mommsen's *Staatsrecht* into French, and also he initiated the publication in French of *Edictum Perpetuum* of Otto Lenel. When editing *Textes de droit romain* Girard relied on the scientific achievements of Bruns, Mommsen, Paul Krüger and other German scholars. He can be viewed as the “mediator” *par excellence* among the European Romanists.

4 As an example see his work dealing with law of procedure, which was published after completing his university studies. Balogh 1905.

5 Balogh 1936.

6 About the connection between the Historical School of Law and Comparative Law, see Hamza 1998:37-39.

7 Walter Selb dealt with the Syro-Roman Law Book intensively. See Selb 1964a and Selb 1964b.

5. Analysis of the importance of Roman law

In the last decades of the 19th century, the French scholars of Legal History and Oriental Studies took a prominent part in elaborating the above-mentioned “unscientific” theories.⁸ Revillout and Lapouge, who are reckoned as excellent Orientalists in the last quarter of the 19th century, led in developing these hypotheses.⁹ Both of them consider the history of Roman law as a process of consecutive “borrowings”. Elemér Balogh — in contrast with the fact that he became acquainted with the comparison of ancient legal systems (which can often be considered as an ideology) during his study trips in France — abstained from these theories even in his first publications. His aim with the comparison of the ancient legal systems (or their certain institutions) is the exploration and the demonstration of the common features determined by parallel economic backgrounds (not the verification of the hypotheses above).¹⁰ Of course, he does not formulate his target *expressis verbis*. Neither does Professor Balogh deal with theoretical questions of the comparison of the antique legal systems *in abstracto*.¹¹ Yet, this attitude characterizes every piece of his works related to his researches in certain institutes of land, in other ancient legal systems (among the latter topics the Greek “*koinē*” has the highest importance for him). He does not *dethrone* Roman law, contrary to his French precursors, and differs from Ludwig Mitteis by emphasising the distinguished role of Roman law among other ancient laws.¹²

6. Antiquity and modern laws

However, Balogh should not be considered either as a representative of Wenger’s “*antike Rechtsgeschichte*” conception, because he does not compose general formulae related to the theory of antique comparative jurisprudence, and — on the other hand — he never neglects to deal with the relationship between certain institutions of ancient and modern laws, getting across through a series of linked transmissions. His attitude rather suggest the thesis elaborated by Francis de Zulueta (professor at Oxford University) — according to which even the ancient comparative jurisprudence must refer to the modern laws — because Professor Balogh always pays attention to the Roman legal origins of the modern laws. There is no doubt that converting into reality the principles of an ancient legal system is not always possible and it is only achievable by making the necessary corrections. Nevertheless, the statement (primarily made on the basis of the works of Hitzig and Weiss), in pursuant of which the notion of the Attic Law — “*nomoi emporikoi*” — has meaning in the context of the modern

8 See specially Glasson 1880.

9 Hamza 1998:56 ff.

10 Balogh deals with the analogies in certain institutions induced by similarities in economic backgrounds. See Balogh 1953a:261-356; Balogh 1952a:189-198.

11 We emphasize that (similar to Professor Balogh) Walter Selb’s work examining the legal systems in the basin of the Mediterranean Sea does not fulfill its duty to reach stringent theoretical conclusions. See Selb 1993.

12 Balogh 1913:337 ff.

commercial law, is not anachronistic.¹³ Neither is the thesis which says that Theophrastus, a disciple of Aristotle in the 4th century B.C., was the author of the first work dealing with private law, entitled *Peri ton symbolaion*.

7. The ancient legal systems; the importance of economic background

Elemér Balogh recognises the inadequate characteristics framed by Roman (mostly non-legal) sources about the Greek law. Through his researches about Cicero (*De oratore* 1.44.197) he comes to the conclusion that the rhetor's biting remarks in polarized form related to ancient Greek law were put into words for the sake of *eloquentia*, and they were not based on the research of real legal material.¹⁴ Elemér Balogh points out that Cicero cites repeatedly the law of Solon in his other works from a completely different point of view. Elemér Balogh thinks it is not likely that the Attic Laws affected The Law of the Twelve Tables (*Lex duodecim tabularum*). However, Professor Balogh — even in his factual researches related to the relationship between ancient legal systems — keeps away from raising derivative questions involving unsolvable problems. In his works he ignores to deal with the question of sources, instead he uses only the terms “influence” or “mutual effects” as hypotheses.¹⁵ In this aspect, for him it is much more important to discover those economic impulses that led to the development of some institutes, which can be found simultaneously in different ancient legal systems; also, the role played by economic circumstances is in the forefront of his works dealing with certain institutes of Roman law.

Professor Balogh pays distinguished attention to the development of some institutes in the codification of Justinian.¹⁶ Also, he deals with the much-debated question of the periodization of the Byzantine law.¹⁷ It deserves mentioning that he writes an essay about the documents of Coptic law connected with marriage (whose sources are available only within a narrow circle).¹⁸ On several occasions he writes *expressis verbis* about law adapting and assimilating to the economic conditions. Elemér Balogh connects the acknowledgement of direct representation (mainly by *actio exercitoria* and *actio institoria*), with the development of the economic situation and the large-scale evolution of commercial relations. Examining the reasons of this improvement, he emphasizes the unswerving demand of the economy and the maritime trade; so he assigns minor significance to the formal criteria, the family relationships that give the reason to the praetor for forming these actions. Elemér Balogh published studies (mainly during World War I) relating to modern law, in which he deals

13 The most important works of Elemér Balogh dealing with Greek law are the following ones: Balogh 1953:681-720; Balogh 1948:1-27; Balogh 1938:21-70; Balogh and Pflaum 1952:117-124.

14 Balogh 1948:1 ff.

15 We refer to the following works of Balogh dealing with Roman Law in this relation: Balogh 1914; Balogh 1930:623-691; Balogh 1935:216-236.

16 Balogh 1935:267-360.

17 Balogh 1937:151-189.

18 Balogh 1953:331-340.

with the parts of private law being affected mostly by current politics.¹⁹ His work exploring Grotius' view connected with international law is also highly significant.²⁰ Elemér Balogh published a treatise about default interest, which is also exemplary from the point of view of applying the comparative method.²¹

8. Emigration

The scholarly work of Elemér Balogh cannot strictly be separated from the formation of his varied personal path of life. In his book treating the life of political refugees in ancient Greece, this comparison — being so characteristic of his whole oeuvre — dramatically breaks through.²² The scholar, who supports the civil platform in revolutionary Hungary, has thus to emigrate soon after the First World War. The eminent Professor sees himself, and let himself be seen, as sharing the miserable destiny of the ancient Hellenic fugitives. The author of this monograph shares the fate of *Kylon* being the first person to be proscribed (i.e. who became the victim of “*atimia*”), at least according to the available sources. The scholar who praised Timoleon's Sicilian amnesty, however, could never return to his motherland. Indeed, Balogh planned to author a book about universal peace and the problem of refugees, but he never managed to complete it.²³

9. Professorship in Lithuania

In 1922, Elemér Balogh was invited to give courses in Roman law and comparative law at the University of Kaunas in the same year as it was founded. He started his lectures on 15th September, 1922. He was allowed to lecture in German for two years; however, from 1924 he had to teach in Lithuanian. He lectured on Roman Law, Comparative Private Law, and the Regional Law of Klaipėda between 1922 and 1927. His contract with the University of Kaunas expired on 1st September, 1928.

During his stay in Lithuania he published treatises in the journal of the Faculty of law in Kaunas, in the *Zeitschrift für Osteuropäisches Recht* and in *Logos*. These studies cover the fields of Roman Law, Law of Commerce and International Law. It is worth emphasizing that he released the Lithuanian legislation results between 1928 and 1930 with his reviews and comments in an Italian journal called *Rassegna di legislazione Lituana*.

19 See Balogh 1916a; Balogh 1916b.

20 Balogh 1929.

21 Balogh 1928.

22 Balogh 1943:134.

23 It can be concluded from the hint in the introductory part of his monograph dealing with victims of political persecution. The title of this work would have been *World Peace and the Refugee Problem*.

10. Elemér Balogh at universities of three continents

Professor Balogh went in 1928 to Berlin, where he taught Comparative Law at the University of Berlin. He then spent a long time in the United States during 1932 and 1933. He presented lectures at Cornell University, the George Washington University in Washington, Harvard University, the New York University and the Northwestern University in Chicago. In Canada he gave courses at McGill University and the University of Toronto. In Germany, he was no longer allowed to educate after April, 1933. The “*Machtergreifung*” forced him to leave Berlin and Germany in May, 1933. He went to France, where he followed his researches at the Institute of Comparative Law at Sorbonne University with the support of a Rockefeller scholarship. Between 1936 and 1947 he lived in the Union of South Africa, where he taught at the University of the Witwatersrand in Johannesburg as the successor of a Dutch Professor, L. C. Hoffman (who was a follower of Eduard Maurits Meijers [1880-1954]). During the first part of his ten-year South African stay he pursued teaching, then research work. He lectured in Roman Law and Philosophy of International Law. In 1937 he cancelled his professorate in Johannesburg and went to Sweden, where he gave courses at the University of Uppsala and the University of Lund. After his retirement he lived firstly in England, then in Paris (from 1947 until his death on 2nd September, 1955), where he was an active colleague of the *Centre National de la Recherche Scientifique*. This institute entrusted him to author a work which presented comparative law on historical bases. He interrupted first his stay in Paris in 1951 to accept the invitation of the University of Calcutta.

Professor Balogh stayed in The Hague twice, in 1936 and 1949, on the invitation of The Hague Academy of International Law. These invitations and the fact that he was elected as member by many international scientific societies (*exempli gratia* the Athenian Greek Royal Academy; the *Real Academia de Ciencias morales y políticas* in Madrid; the American Aviation Law Academy; the Athenian Greek International and Foreign Law Institute; the *Institut international pour l'unification du droit privé* [UNIDROIT] in Rome, as well the *Instituto Americano de derecho y legislación comparada* of La Habana), show his high international reputation.

11. Conclusion: To the memory of a great legal scholar

One of the remarkable parts of Elemér Balogh's oeuvre is the international coordination and support of comparative law researches: Julliot de la Morandière draws a fine picture of this widespread activity of Balogh:

He was enthusiastic about comparative law; in fact, it's not an exaggeration to consider him as the comparative law itself. He established connection with lawyers in the entire World, and spent time corresponding with them, getting to know each other, making them famous and organizing them in collective tasks. He abandoned even his own scholarly work to motivate them to scientific activity. He took in hand a great task alone without secretariat by initiating and assembling congresses; leaving the detailed organisation to providence. The International Association of Comparative Law was born among these conditions — which may seem disordered for

external viewers. But the faith, which heartened him, manifested in his oeuvre. The comparative lawyers owe a debt of gratitude to him.²⁴

24 The original text in French: "Il avait la passion du droit comparé; ce n'est pas assez dire, il était le droit comparé lui-même. Ayant noué des relations avec des juristes du monde entier, il passait son temps à correspondre avec eux, à les mettre en rapport les uns avec les autres, à faire connaître, à les faire travailler ensemble. Il négligeait ses propres travaux pour animer les travaux des autres. Seul, sans secrétariat, il assumait un travail considérable, il suscitait, il rassemblait des congrès, laissant à la providence le soin de veiller aux détails d'organisation. Dans ce désordre apparent est né et a grandi l'Association internationale de droit comparé, mais la foi qui animait Elemér Balogh se communiquait à son oeuvre. Tous les comparatistes doivent lui en être reconnaissants." Préface de L. Julliot de la Morandière In: *Etudes de droit contemporain. Contributions Françaises aux IIIe et IVe Congrès internationaux de Droit Comparé* I.vol. 1959, IV.

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