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JUDIT TORMA
THE HUMAN SIDE OF LAW.
INTERDISCIPLINARY DISSERTATION ON THE THEORETICAL AND
PRACTICAL CONNECTIONS OF LAW AND PSYCHOLOGY
Theses of PhD Dissertation

Ferenc Deák Doctoral School of Law

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I. The goal, hypotheses and the research questions of the doctoral dissertation

"While law is the science of regulating human behavior, psychology investigates what regularities apply to human behavior."¹ In other words, while the law tells us how we should behave by establishing normative rules, psychology research why we behave the way we do. The two sets of behavior often do not coincide. Even though, the two scientific fields have been discovered one another for at least one hundred and fifty years, their connection often still has a novel effect. This is partly due to the fragmentation of the field and the lack of theoretical frameworks, which also manifests itself in a kind of conceptual ambiguity.

According to Thomas Kuhn,² we can distinguish interdisciplinary (developing at the border of two sciences), multidisciplinary (comprising several scientific fields) and transdisciplinary (filling the gaps of one or more sciences) types of fields in the border sciences. In the multidisciplinary sciences, none of the participating scientific fields stand out significantly and intensive knowledge flows between the fields are typical. In interdisciplinary sciences, however, in practice, the original disciplinary fields are often blurred and - following Kuhn's biological analogy - a new hybrid is created. Cognitive science can be considered such an interdisciplinary field, for example, in which the boundaries of the original psychological, neurological and computer science fields have become blurred (in a scientific publication, we would no longer be able to say, for example, which part of a computer behavioral model is based on purely psychological, which neurological and which computer science theory). In its current form, law and psychology uses the theoretical and methodological frameworks of psychology. Presumably, the reason for this is that the number of researchers with academic knowledge in both law and psychology is still small. Although the development of legal psychology is usually associated with

¹ Cominelli, L.: *Cognition of the Law. Toward a Cognitive Sociology of Law and Behavior*. Springer. 2018. 196. o.

² Kuhn, T. S.: *A tudományos forradalmak szerkezete*. Osiris Kiadó. 2000.

the 1908 publication of Hugo Münsterberg's book *On the Witness Stand*, it has not generally developed in the last 110 years.

Although the development of legal psychology is usually associated with the publication of Hugo Münsterberg's book *On the Witness Stand* in 1908, in the last 110 years, the generally accepted scientific thinking framework that could have linked law and psychology more closely did not develop. Based on this, I formulated the following three specific goals in my dissertation:

- 1) comprehensive and systematic study of the scientific interaction of law and psychology;
- 2) mapping the theoretical framework of legal psychology; and
- 3) research the practical, tangible interactive element of law and psychology.

I did not have a separate hypothesis formulated for the first goal, here I carried out the work in an exploratory manner and my goal was to get the most complete picture possible of the initial foundations, history and current state of the field of science. In this research, as a somewhat unexpected result, I encountered the fragmented nature of the field and its strong applied scientific approach, which seems to have resolved somewhat only in recent years.

I reached the second goal based on the first research. My preliminary expectation was that there is a theoretical basis for legal psychology, i.e. there is a "psychological minimum" in legal theory and legal practice that shows the directions for further research. Instead, I found isolated psychological legal theories, which can be used as a historical starting point, but which do not appear either in modern legal psychology or in modern legal theories.

In my third research goal, I looked for the practical side of law and my premise was that the most typical bearer of law, the judge, is not free from internal conscious, intuitive, and unconscious psychological processes just like anyone else. These

psychological processes determine your thinking, decisions and (non-legal) judgments. According to my hypothesis, these internal processes also affect his work, i.e. they influence his legal judgments and decisions. I started to plan the research again in an exploratory way, but during the preliminary research I found data that modified the original idea and directed my attention to the issue of legal and judicial mental health. The conduct of the research, which for reasons beyond my control could not be completed as planned, was therefore continued with the hypothesis that the work of judges and adjudicators entails a much greater psychological burden than recognized by society, and that the judges themselves are often not aware of this.

II. Research phases, research methods and data processing

For the first and second goals of my research, I conducted an exploratory systematic literature review, while to achieve the third goal, I planned an empirical research with a confirmatory nature. Most of the data were processed using general research methods, which included analysis, induction, deduction and synthesis. I organized the collected domestic and foreign literature into categories (general legal psychology; legal theory and legal psychology; and legal psychological explanations of judicial decision-making) and analyzed their content in a matrix system. The variables of the matrix are the unfolding of the historical thread; identification and separation of the theoretical and practical threads found in legal psychology literature; and finding the foundations of trends related to legal decision-making.

In the legal psychology literature research, I strove to elaborate not only established, mainstream theories and works, but also results that, in terms of their classification in the history of science, do not belong closely to the literature of legal psychology, but can be classified there in terms of their topic - and the aspects laid out in the dissertation. During the research, I had to separate, although the international literature was of great help, I had to create a separate category for the results from the Anglo-Saxon and continental legal systems. During the literature research, I obtained the authoritative source works by Internet free-word searches, library research (electronic journals, periodicals, academic books), and Internet archival research. For the historical investigation, I acquired antiquarian works available on the Internet, in libraries, and in bookstores. In secondary source processing, I returned to the source work to verify the accuracy of the notice.

In the empirical research, I planned to use a semi-structured interview and a classic projective test, Jung's word association test, with the test subjects. I originally planned to recruit the examinees from the entire domestic judiciary on a voluntary basis. I wanted to include at least 50 people in the research and planned to use a

matched control group. I planned to analyze the results of the interviews using a qualitative procedure, while the data obtained from the word association test were analyzed using statistical procedures. The application submitted to the National Judicial Office for a research license on August 6, 2020 was rejected by the OBH. For this reason, I used a modified research methodology to achieve the third research goal.

Based on the new methodology, I used the snowball method to find colleagues who had already left the judiciary. Given that the representativeness or sample size of the research could no longer be planned or guaranteed in this way, I therefore slightly changed the research question and the function of the research. Instead of explanatory research, I conducted exploratory research here as well, and the immediate goal became the development of a research tool adapted to judges and judicial work, which I plan to use in my postdoctoral research. I gave the changed research the name preliminary research, and I recorded the semi-structured interview and the abbreviated version of the word association test with the 5 former judges who applied for the research. Due to the small size of the sample, I analyzed the results according to qualitative aspects without statistical procedures. The abbreviated word association procedure and the analysis aspects of the interviews were as follows:

1. identification of the types of responses to keywords
2. identification of additional associations found in glossaries
3. identification of conscious and unconscious elements that can be identified in interview answers

To complement the preliminary research, I also carried out a secondary analysis of three judicial decision-making researches (questioning techniques; judicial heuristics; judges' attitudes towards social justice). The analysis included conscious and unconscious beliefs related to judicial work according to three categories: the first category is conscious and presumably learned elements in research; the second

category is the conscious, but presumably intuitive, experientially formed elements in research; and the third category is unconscious elements in research

III. Summary of research results, scientific and practical usability

1) Systemic review of legal psychology

The science of legal psychology presented in the dissertation is the XX. has come a long way since the beginning of the century. Although there is no established theoretical or "psychological minimum" that would frame legal psychology, however, the proliferation of applied fields and the international career of judicial expertise - which has now become an integral part of legal practice - have led the field of science to become more and more independent.

The early systematics of legal psychology approached legal psychology on the basis of fields of application and completely ignored the necessity of the theoretical foundation of the field. Craig Haney's classic system classified legal psychology into three areas, according to who, what, and how psychology is used within the law. The groups thus separated are (a) psychology in law, (b) psychology and law, and (c) psychology of law.

In his 2002 summary book, James Ogloff did not set up a new systematics, but used Haney's systematization. Based on the summary of the book, it is clear which are the areas of research and application where legal psychology achieved serious results in the 2000s: children's participation in the legal process; expertise in forensic psychology; reliability of testimony; operation of juries and juries; expertise in civil litigation and compensation cases.

In the 2010s, based on the processing of the works of Kapardis and Bartol, this division already became six elements: children's participation in law enforcement (victim, witness, perpetrator); reliability of testimony and lie detection; police psychology; examination of legal decision-making; expert support for civil litigation; forensic expert activity in criminal proceedings.

Finally, based on the processing of the 2023 Oxford Handbook of Legal Psychology, we returned to the threefold division: (a) horizontal or general areas of legal psychology (training and expert and scientific activity in practice); (b) applied legal psychology fields (practically all the fields listed in the works of Ogloff, Kapardis and Bartol belong to this field, except research related to legal decision-making); and (c) experimental legal psychology research (fields that have become significant in academic research emerge as independent fields).

2) Developing modern psychological jurisprudence

From a psychological perspective, law can also be understood as a system, namely a cognitive, thinking system. This thinking system has a) normative thinking elements, b) deliberative elements, c) decision-making elements, d) analytical and analogy-seeking elements, and e) intuitive or otherwise known as heuristic elements. There is another element of thought, the language system f), which on the one hand forms a separate system as part of the previous elements, and on the other hand represents a special quality of thinking along the lines of the laws of linguistic thinking.

This possible point of reference could be the development of law as a system of thought. For my part, the basis of this idea is that if we accept that law is a mental construction, then its various elements can be described by cognitive processes. This thinking system - as I have already listed above - has a) normative thinking elements, b) deliberative elements, c) decision-making elements, d) analytical and analogy-seeking elements, and e) intuitive or otherwise known as heuristic elements. There is another element of thought, the f) language system, which on the one hand is part of all the previous systems, on the other hand it forms a separate system itself.

The normative thinking element follows a formal logic and includes the creation of laws, the assignment of the facts of a legal case to legislation, the application of procedural rules, the process of drafting a decision, or the preparation of a justification. The deliberative element comes into operation during the judgment of

the legal case, still follows formal logic and is in principle part of the rational decision-making mechanisms, as long as the legal practitioner is able to follow the steps of formal logic in a linear order and his thinking does not suddenly jump to a conclusion.

The decision-making element comes into operation at certain moments of the application of the law and not only when the final decision contained in the decision is made. Such a moment, for example, when the facts of a legal case must be reconstructed on the basis of (sometimes different) narratives about the past. Then the legal practitioner must decide for each factual element whether it will be part of the factual situation or not. In this process, we can find apparently explicit thinking elements for the simpler facts (for example, was it morning or evening, was there a man or a woman present), but since the law enforcer is already moving in a limited information field, a large proportion of heuristic elements enter the thinking. Paradoxically, the same heuristic elements are present in the assessment of simple cases that do not require special consideration. In such cases, the legal practitioner does not follow formal logical thinking step by step, but relies on a collection of previous experiences to quickly jump to the solution, otherwise known as acting routinely.

The analytical and analogy-seeking thinking element comes into play when applying legislation to a legal case. With the exception of routine cases, this is again a moment that requires formal logic, in which case heuristics appear as a disturbing circumstance and can sometimes be seen in action in the justification (e.g. backward-constructed justification).

Intuitive or heuristic elements can be found throughout the system, so the question is more about the proportion of heuristic elements in each thinking element, and not whether they are present or not. In a limited information field, such as when reconstructing a factual situation or when too much information is available, or when relatively little time is available for a decision, heuristic thinking is automatically

activated for evolutionary and other biological reasons. In order for this not to cause an anomaly in the legal thinking system, formal thinking must recognize the effect of heuristics in the logical chain - the heuristic itself, since it takes place very quickly, we can relatively rarely catch it in the act - and, if necessary, must correct it.

The linguistic system is a special part of the entire legal thinking system. It can be understood as a linguistic representation of individual thinking elements, such as the law-making phase or the use of procedural rules in courtrooms. However, since heuristic thinking elements are often created without linguistic representation, we can therefore treat the language system as one of the elements of the thinking system. Whether there is a formal thinking process independent of language, or whether formal thinking always requires linguistic representation, we do not yet know exactly. For a long time, researchers thought that the linguistic representation of thinking, the so-called internal monologue is part of consciousness and the workings of the mind. These theories seem to be overturned today, but it can be assumed that normative, deliberative and analytical elements are always part of formal thinking in legal thinking. For this reason, it is also necessary to deal with the schema element of the language system, which can divert formal thinking and function as a kind of noise in legal thinking.

3) Proposal for an institutional psychological support of the judiciary

The mental health of lawyers is rarely dealt with in the literature. In recent years, the pandemic has drawn attention to this problem again. On the international scene, in countries that apply the Anglo-Saxon legal system, mental health support training is already included in the legal education in some places. A study was published in Australia in 2019, which involved 150 judges and court workers and showed that although judges have fairly good coping strategies when they have to deal with everyday stress, they show a much higher level of psychological trauma compared to the average population.

The resulting anxiety and long-term stress make them just as vulnerable as professionals dealing with people in crisis situations (e.g. paramedics, accident responders, police officers, firefighters).

The danger of early burnout was confirmed by the judges themselves in the research analyzed in the previous chapter. As a judge, you can often meet people in crisis situations, often people with a very difficult fate, or just people who are in conflict with each other, who are in the most difficult period of their lives. The judge has to put up with all of this, moreover, in such a way that it cannot be seen if an event has touched him more deeply. From a psychological point of view, this is an extremely difficult work environment, which would require at least as much psychological attention and support as the labor groups given in the above example. In a certain sense, psychologists are also exposed to difficult, often upsetting human fates and pathological family conflicts involving children, but they have the possibility of regular supervision and psychological support at a professional level. Then why not the judges? The following four specific proposals still need to be developed, but this is no longer the goal and task of this dissertation:

1. In order to protect mental health, judges should also be taught - just as psychotherapists learn at the beginning of their training - how to manage the boundaries of their self, which can help them manage the boundaries of involvement and maintain mental balance.
2. This initial training should be supported by regular supervision sessions, which the judges could use at least every six months, but also in the interim in case of crisis.
3. During the professional review periods, it is also recommended to carry out a psychological screening similar to the psychological fitness test, the purpose of which is not to determine fitness, but to screen for and treat possible burnout or other psychological problems caused by the time spent on the field.

4. Regular group sessions should be organized with the possibility of voluntary participation, where the members of the judicial faculty could process the stress caused by work in a safe environment under the guidance of group therapy specialists.

The results of the research represent the unity of the three research goals separately, but there is also a common, fourth result, which means the direct utilization of the research results. This is the fourth result of the legal psychology training course launched at the University of Miskolc's Faculty of State and Law, in which I participated as part of my doctoral research.

The specialist legal training in legal psychology, launched in September 2021, sheds light on the relationship between law and especially legal practice and psychology from many perspectives. For the designers of the training, international examples served primarily as models. Bringing the two sciences together in practice is made very difficult by the completely different professional jargon and way of thinking. Psychologists who practice legal psychology are often criticized for not fully understanding the priorities of their legal colleagues, who, in turn, do not understand the way of thinking of their psychologist colleagues.

One consequence of this is that the results of psychological research can only be applied within certain limits in the field of law. For this reason, one of the main aspects of the training was to bring the two ways of thinking to a common denominator. We assigned psychological theories and practices to different legal fields and branches of law, and grouped them in such a way that each of the two semesters was given a horizontal guiding idea. The topic of the first semester concerned the legal representation of people with intellectual and mental challenges, while the topic of the second semester was the various forms of discrimination. The areas of law within which we displayed the individual psychological practices were criminal law, guardianship cases, consumer protection and competition law, labor law, and family law. Another horizontal topic was the part of the training dealing

with legal decision-making, and within that, the operation of organizations, work psychology, and decision-making psychology.

We started the training with introductory subjects, one of the most important of which was the Psychology Foundations subject, where we introduced the students to the most important psychological concepts used during the training. As part of the training, the students met with practical specialists such as forensic psychologists, forensic psychiatrists, prison psychologists, family psychologists, or experts in polygraph examinations. Through this, students can become familiar with the work of forensic experts, the working mechanism and areas of application of the methods and tests they use, and they also get help in better understanding the expert opinions of psychologists. Another practice-oriented part of the training was for the students to get to know psychology in practice. We made this possible in the framework of a training, where in the framework of group sessions combining the methods of psychodrama and sociodrama, they could deal with their own professional role perception, the impact of the given legal organizational system on their own work and the importance of mental hygiene during their work.

A more abstract and difficult part of the training was to bring the approach of the two sciences closer to the students. While law is a normative science, its foundations are provided by philosophy, including ethics and logic, while psychology, although it also has philosophical foundations, is an emphatically empirical, experiential science. Based on this, we considered bridging the ideological and methodological difference between the two scientific fields to be one of our important tasks, so we asked the students to prepare an empirical thesis. Through the completed works, the students could experience for themselves how to approach questions related to law in an empirical way and to interpret an empirical research result.

IV. Author's own publications related to the theses

Torma Judit: Jogpszichológiai képzés nemzetközi összehasonlításban. Miskolci Jogi Szemle: A Miskolci Egyetem Állam- és Jogtudományi Karának Folyóirata. 2022

Torma Judit: Child Interviewing in Legal Cases. A European Perspective. European Integration Studies (EIS) Miskolci Egyetem Állam- és Jogtudományi Kar, 2022/1. 2020/2021 II.

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Torma Judit: Minimum Age of Criminal Responsibility in Member States of the European Union. A legal and psychological assessment of moral development theories and the minimum age of criminal responsibility. The Journal of Faculty of Law Oradea 2020/2. 2020/2021 II.

Torma Judit: A jogászi szakma rétegződése. Studia Iurisprudentiae Doctorandorum Miskolciensium- Tomus 19. 2019/2020. I

Torma Judit: Jog, nyelv, pszichológia: A jog és nyelv kutatásának pszichológiai vetületei. Magyar Jogi Nyelv. 2020/1. 2019/2020 II.

Torma Judit: Empirical research methods in sociology of law. Konferencia kiadvány: Doktoranduszok Fóruma, Miskolc, 2018. november 22.

Torma Judit: Research of Judicial Decision-making. Konferencia kiadvány: Doktoranduszok Fóruma, Miskolc, 2017. november 16.

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Miskolci Doktorandusz Konferencia, Miskolc, 2017. október 27.