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**Poverty or Possibility? Eastern Europe and the Development of a Global Historiography
for Women's History**

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Abstract:

This paper argues for a broader conceptualisation of dynamic social change in peripheral regions and a more nuanced reading of patriarchy's various historical forms and responses to those forms. Writing from Eastern Europe, where the field of women's history is still very young, I suggest that here, conditions in the academy are ideal for overcoming problems in the historiography of established women's history. Drawing upon my own research on women's civil status in late nineteenth and early twentieth century Hungary, I outline local legal conditions which rendered the formation of a feminist civil rights movement unfeasible there. Using an interpretive framework borrowing heavily from critical legal theoretical approaches, I suggest that though women's legal status has come to form a dominant organisational concept in readings of women's and feminist emancipationist history, it is a relative concept that loses explanatory power without the coherence given it by 'national law.' If taken seriously, the problems inherent in processes of legal centralisation and national codification in Hungary in the second half of the nineteenth century move the historian towards a more nuanced understanding of law, able to problematise the language of legal reform and the illusion of uniform legal conditions within the nation that it generates. As the nation state continues to weaken as the sole or dominant unit of historical analysis, women's history in Eastern Europe – just beginning to develop an 'historiography of its own' and forced to address, perhaps more openly than Western women's history, the national idea - can lead the way in developing an historiography able to circumvent the exclusive use of organisational categories dependent on national history. This would mark the emergence of a more socially relevant and truly global historiography in the field of women's history.

Introduction: The fable of the thirsty crow

Long ago, there lived a crow of determined character. One hot day the crow was flying over the empty plains of a certain country and felt the fire of thirst in its throat. It had flown this way many times before and knew of a river nearby where it could safely drink. But when the thirsty crow landed beside the river it found not even a trickle of water. It was high summer and all around the land was so hot and dry, the river had not flowed there for many weeks. Even so, and despite the conditions, the thirsty crow insisted to itself, 'I must drink or I will die from the heat of the day.' The thirsty crow desperately hopped about the river bank in search of water, but search as it might, it found none. Just as it was about to give up it saw a stone jar with a wide neck set on a wall beneath an olive tree. At once the crow flew to the lowest branch of the tree so it could look down into the jar and in excitement, saw that there was water inside. Quickly, the bird hopped onto the wall and thrust its head into the jar but alas, the water was too shallow and the jar too deep, the water was just out of reach. Luckily, the thirsty crow was an historian; it knew that if it knocked the jar over, the water would be absorbed into the dusty earth and lost forever. So the thirsty crow became the crafty crow and performed an old trick known since the beginning of the world by all the crafty, thirsty crows. In its beak it carried small pebbles from the ground to the jar. 'By dropping the pebbles into the jar I will make the level of the water rise and when the water has risen enough I will be able to drink,' said the thirsty crow. The thirsty crow dropped one, two, several stones into the water. Again it tried to drink from the jar but to its surprise, the water was still beyond the reach of its beak. So, it brought more stones to the jar, many more stones. One by one the crow dropped them into the jar and then tried to drink the water. But the water did not increase. And the crow could not drink. The crow was at a loss. 'Is it not well known that the stones always make the water rise?' asked the thirsty crow. In accordance with this law it had brought stones, but the water had not risen. The crow could make no sense of it. Crows may be crafty but they know only one trick involving hot days, jars of water and stones. So the crow brought more stones. Many more stones. In fact, so many stones that soon the jar was overflowing with stones but not one drop of water rose up to meet that dry and eager beak. Now that the jar could not contain any more stones the angry and despairing, thirsty crow looked ever further afield for stones to pile around it. The crow was determined not to give in. Soon its ambition for water was forgotten, it cared for nothing but the bringing of stones to the jar. In this way the wall beneath the olive tree grew taller.

I recount this version of the famous ‘fable of the thirsty crow’ - for which I am indebted to a talented writer friend of mine - because it seems to me that it makes very plain what many of us schooled in a rigorous postmodern theoretical scepticism still have trouble accepting in practice: namely that now, even though rejection of nineteenth century paradigms and historical units of analysis - including that of the nation state - has become something of a commonplace, it is nevertheless necessary that we continue to subject each and every historical coordinate we have inherited and often still take for granted to critical scrutiny. The fact that the nation state, the proto-nation state and national movements are no longer automatically seen as ‘natural’ frameworks for historians (Zimmermann 2000) has created an idiosyncratic situation in the academy whereby scholars feel free to analyse the construction of sovereign nation statehood without feeling obliged at the same time to analyse the “social construction of territories, populations and authority claims” that have historically accompanied political and economic assertions of state sovereignty (Biersteker & Weber 1996, 14). In short, are historians really tackling ‘head on’ the implications of a non-national framework for the writing of history? This paper argues that if the nation state is treated as a problematic unit of analysis but the organising categories of (national) statehood are retained then, like the crow in the parable, historians who think they are unearthing data may in fact be burying it underneath a fresh wall of stones.

I turn to my own experiences in order to elaborate the problem in greater detail, writing from Eastern Europe, where the field of women’s history is still very young. Here, historians feel a need to treat the historical weakness of their states seriously (less of a priority for scholars located in the historically ‘strong states’ of the West) and intellectual distancing from ‘the national principle’ has increasingly become a matter of both etiquette and moral urgency in scholarship (often in more pronounced ways than in the West). Therefore, I suggest (albeit

tentatively) that conditions in the academy are ideal for the development of reflexive critical approaches not only to statehood, but to its contingent categories / trajectories: e.g. the gradual emancipation of the citizenry, the proclamation of statutory rights and the development of a rule of law based on coherent legal norms.

Drawing upon my own research on women's civil status in late nineteenth and early twentieth century Hungary, I outline local legal conditions which rendered the formation of a concerted feminist legal reform movement unfeasible. Using an interpretive framework borrowing heavily from critical legal theoretical approaches, I suggest that though women's legal status has come to form a dominant organisational concept in readings of women's and feminist emancipationist history, it is a relative concept that loses explanatory power without the coherence given it by 'national law.' If taken seriously, the problems inherent in processes of legal centralisation and national codification in Hungary in the second half of the nineteenth century move the historian towards a more nuanced understanding of law, able to problematise the language of legal reform and the illusion of uniform legal conditions within the nation that it generates. I conclude that as the nation state continues to weaken as the sole or dominant unit of historical analysis, women's history in Eastern Europe – just beginning to develop an 'historiography of its own' and forced to address, perhaps more openly than Western women's history, the national idea - can lead the way in developing an historiography able to circumvent the exclusive use of organisational categories dependent on national history. This would mark the emergence of a more socially relevant and truly global historiography in the field of women's history.

Law and State in Late Nineteenth Century Hungary

I am a researcher in legal history, focussing on women's civil status in Hungary in the late nineteenth and early twentieth centuries. My research project was devised in order to clarify conditions surrounding the civil legal status of women in Hungary, and thereby shed light on why "the struggle for basic (statutory) civil rights, for women's equal status in private law, played a relatively insignificant role for the women's movement in Hungary in comparison with other countries" (Zimmermann 1999, 297). My job is thus a reversal of the usual task faced by historians of women's / feminist movements. Instead of directing my attention primarily to the campaigns and agendas of women's and feminist organisations, I found myself addressing the lack of such campaigns in a 'high' period of nation-building and reform (1848-1913) through an examination of legal conditions 'on the ground.'

A focus on 'lack' – lack of 'organic' processes of change, lack of civil- or autonomous society, lack of legality and freedom as organising principles etc. – is nothing new to voices from within the discipline of modern Eastern European history, where one dominant interpretative framework has been the persistent comparison of a region named 'Eastern Europe' unfavourably with a region named 'Western Europe,' viewing the latter as a set of "norms to be followed" (Melegh 2002, 7). Within this interpretative framework, it is safe to assert that a preoccupation with Eastern European 'lack' was strengthened rather than weakened with the end of the Cold War and (again, within this dominant framework) the 1980s and 1990s witnessed the historiographic entrenchment of the 'truism' that Western European historical development represents everything that Eastern European historical development was not (Szűcs 1983 exemplifies this genre; for a critique of Szűcs and others see Todorova 1997, esp. 142-143). In the same vein, much of the historical literature on Hungarian legal development adopts this discourse of 'lack' even when dealing with the latter

half of the nineteenth century, which witnessed the implementation of the Austrian civil code in Hungary (briefly operative from 1853 to 1861), the construction of an ‘autonomous’ (national) system of civil courts prior to Hungary’s gaining political independence from Austria in 1867, an increase in statute production after 1867, the emergence of an indigenous legal professional class and the appearance of a dearth of publications in Hungarian on national law. (For a rather odd juxtaposition of the celebratory and self deprecatory when describing nineteenth century Hungarian legal culture – combining a positive view of legal modernisation after 1861 with a negative view of the country’s history of inorganic and restricted legal development - see the introduction to Mezey 2001).

The tendency to read Hungarian legal development in terms of lack, even amid the flurry of economic, social and political changes characterising the late nineteenth century, has largely to do with the fact that no civil code, nor equivalent organisational ‘system,’ was in place for Hungary as a whole at this time (the Austrian code was repealed, as mentioned above, in 1861). Plans to codify the civil law had been instigated by the Ministry of Justice as early as the revolutionary year of 1848, but it took over a century of further revolutions and two world wars before a legal code for Hungary would become operative in 1959. Hungarian civil law from the 1860s until at least 1900 (when the first full draft of a civil code for Hungary was published) has for this reason been characterised as broken and gap-filled - supplemented by ‘pre-1848’ legal norms, parts of ‘foreign’ legal systems (such as the Austrian code), court decisions and a miscellany of laws, decrees and statutes (Béli 1999, 308-312; Zimmermann 1999, 299). Some authors have attributed this lack of a cohesive framework for state law in the period following 1848 to a longer history in Central-East Europe of social stagnation under imperial rule. While (or so the argument goes) in Western Europe legal culture had by the nineteenth century “bourgeoisified [*sich verbürgerlichte*] and stabilised [*sich*

verstaedterte], with the state taking over its further development and implementing the rule of law ever more systematically, the (legal) culture of Central-Eastern Europe remained in a feudal condition of concentrated landed relations, as well as in a defensive relation to the – foreign or foreign-dominated – state” (Küpper 1999, 340). In this reading, it is the perceived weakness of the Central-Eastern European state (sustained by the mutual interdependence of imperial domination and feudal relations) that serves as the explanation for ‘lack’ of a proper legal culture. This view of a weak state in disarray was certainly upheld by the nineteenth century members of the Hungarian National Judicial Commission (*Országbírói Értekezlet*) - formed in the early 1860s and including Justice Minister Ferenc Deák along with other politicians, legally trained men and business entrepreneurs - which worked on a set of Temporary Guidelines to Judicial Practice (*Ideiglenes Törvénykezési Szabályok*) that were distributed to municipal authorities in 1861, upon the repeal of the Austrian civil code. The Judicial Commission saw the immediate “organisation” and “codification” of law as a necessary solution to the perceived reign of legal chaos in Hungary (Mezey 1999, 119-120) following the revolution and independence war of 1848/49, the legal crisis that ensued (from the autumn of 1849 to the July of 1860) with the suspension of Hungary’s political, administrative, economic as well as religious institutions, and given the ambiguous status of the country’s parliament, government, constitution and domestic laws. The Judicial Commission, which was established in response to a demand by the Hungarian House of Representatives for the ‘restoration’ of Hungarian law, can thus be read as the first attempt by an alliance of landowners and bourgeoisie to translate the idea of legality into a formal mechanism of legal ‘norm production’ for Hungary as a unified nation and to assert the new role of the state as an exclusive source of law. In the interest of “legal continuity” (*jogfolytonosság*) and in the absence of “constitutional legislation” and “systematic codification of law,” the Temporary Guidelines were “to serve the national courts as legal

norms for the current transitional period – so that domestic laws may be restored without harm to public credit, private legal institutions and legal procedure” (Temporary Guidelines, I [Civil Law] a). 1. §; as well as the “Justification” of the Temporary Guidelines). By 1881, the role of the state legislature as an “indispensable aid to judicial interpretation of custom” had been announced in statutory law (1881: Law LXVI). These events marked the birth of a national legal formalism in Hungary - part of the ongoing ideological construction of the nation as an independent territory but a legally weak state in need of ‘restoration,’ ‘organisation’ and ‘systematisation’ (i.e. legal codification). Legal texts such as the Temporary Guidelines help explain why nineteenth century Hungarian law is to this day regarded in terms of ‘lack;’ they helped create an illusion of (national) legal progress in motion: a process of moving from weak to strong statehood; from legal chaos to the installation of a legal ‘system;’ from gap-filled legal practice to the restoration of legal normativity in the state.

‘Women’s Legal Status’ – a Valid Unit of Analysis?

What are the implications of the above for the study of women’s legal status in post-1848 Hungary? I believe that in the answer to this question lies a broader question about historiography; about the way nineteenth century women’s / feminist history tends to focus on the ‘visible’ legal claims or rights of women addressed to the ‘male state’ in modern times. This tendency is perhaps an inevitable legacy of the French Revolution, the feminist claims in the state that it engendered, the subsequent politicization of women’s (exclusion from) citizenship and the ensuing anti-feminist backlash that continues to obscure the embeddedness of feminism in Enlightenment thought (Offen 2004, esp. 17-18). It is still necessary that feminist history work to expose the extent that “debate on the woman question was ... implicated in the realm of public opinion (the so-called public sphere) throughout Europe”

(Offen 2004, 15). But at the same time, the globalisation of feminist history – at least where I am writing from - creates a push for a further kind of analysis of ways in which illusions of certainty are created regarding the ('good' or 'bad') status of women in a given historical period. Attention to the ways in which illusions of certainty are constructed may facilitate a more nuanced reading of how modern states may have struggled to produce law, often failing to achieve a consensus regarding the norms underpinning those laws: i.e. often creating legal uncertainty where national history has only tended to read either 'legal certainty' or, as in the Hungarian case, lack of legality altogether. Not enough attention has been paid to the failure of states – East and West - to impose normative legal frameworks for their gender(ed) policies. The thesis proposed here is that in the field of Eastern European women's history, greater emphasis may be placed on the *failures* of states because of the discipline's location in regions of the world perceived as peripheral to the West – i.e. comprised of 'weak states' – with implications that extend beyond these perimeters and have repercussions for the study of 'core' or 'strong' states as well. Thus, I argue, Eastern European historiographic practices in the field of women's history can help contribute to the general (global) shift in historiography away from the dominant framework of the nation state in ways which will be of use to women's historians across the world.

By way of illustration, I turn to the question of state jurisdiction in the sphere of marriage law in nineteenth century Hungary - a choice that is by no means arbitrary. Across Europe, after the Napoleonic Wars and the impact had by the French *Code civil* on European legal cultures (as well as those of Europe's overseas colonies), secular or state marriage law was politicized in transnational debates on 'the woman question' as a clear example of the overlap between state interests and male interests; marriage gradually became recognised as *the* dominant mechanism through which the state engineered women's and men's 'separate spheres,' and

through which women's (subordinated) relational position to men could be emphasised and enforced (Vogel 1998, 30). In Hungary however, for the duration of most of the nineteenth century, prior to the introduction of compulsory civil marriage (*kötelező polgári házasság*) "for all Hungarian citizens" (1894: Law XXXI), the state's power in the legal sphere of marriage was a highly contested terrain. Denominational classifications mapped the linguistic, ethnic and social pluralism that threatened to undermine the new nation that was being carved out from the body of the Austro-Hungarian Empire. Even after the *Ausgleich* in 1867, as the Hungarian state took steps to appropriate the marital relation from the 'legal chaos' that pluralism represented, statutory law was nevertheless forced to recognise a number of distinct matrimonial jurisdictions: the Catholic, Uniate, Greek Orthodox and Transylvanian Protestant churches, as well as the legal jurisdiction of the civil courts for Hungarian Protestant marriages - the latter arrangement being a legacy of the Josephine reforms (1868: Law XLVIII). Law XLVIII, which recognised two different matrimonial systems in divorce cases between spouses of different denominations, was seen to exacerbate rather than mitigate the instability of state law. In 1893 the Hungarian Justice Minister Dezső Szilágyi complained that the policy of keeping a double jurisdiction in mixed marriage cases "cannot be comprehended by national and legal moral reason." (Justification of the Civil marriage Bill; Documents of the Lower House, 59). The instability of the state in the sphere of marriage became the dominant rationale not only for a uniform civil marriage and divorce law, but also for full codification of *family law* (a new concept transforming the legal fabric of late nineteenth century Europe) within the framework of a national civil code for Hungary.

This historical context is crucial when evaluating the use value of the term 'women's legal status' in Hungary with reference to the control of and / or subjection of women in marriage law (the cause that perhaps more than any other created a centripetal force for burgeoning

English, French and even German feminist movements in the mid-nineteenth century). In Hungary, a national ‘marriage system’ (*házassági rendszer* in the Hungarian legal vocabulary) – including some kind of legal consensus on the duties of wives and husbands and their respective rights, including property rights – simply did not exist. Even after 1894, this situation prevailed; the civil marriage law of 1894 referred only to ‘pure marriage’ (*tiszta házasság*) – i.e. the basic rules for sealing and dissolving the marital bond – not to the personal legal relations of the spouses towards each other and marital property relations (Márkus 1903, 84). In this context, what I have referred to as a discourse of ‘lack’ translates into a concrete object of historical inquiry. Andor Máday, a legal commentator and supporter of the left-liberal *Feministák Egyesülete* (Feminist Association), wrote as late as 1913 (as the revised and published version of the 1900 draft civil code was about to be submitted for parliamentary review) that Hungarian law did not “list, in succession, marital rights and duties *as a civil code would*” – that since these were “ruled through custom,” they “therefore had no need of codification” (Máday 1913, 44. My emphasis). And in a more recent version of the same discourse: “In the absence of positive law, relations between the spouses and marital property law [in Hungary] continued to develop on the basis of *custom* – in large measure influenced by feudal and canon law” (Asztalos 1981, 439).

It is not within the scope of this paper to here interrogate the term ‘custom’ - save to say that in the context of marriage law (including marital property law), it seems to have become a convenient way of conveying an illusion of certainty when describing a situation devoid of any such certainty. Regarding women’s disposition of marital property, it seems from the documentary evidence available that state policy, formal legal practices, and dominant arguments published in legal scholarship were not mutually constitutive of one another and often widely diverged; from the outset of the development of a formalist legal culture in

Hungary, statutory law was more concerned with restricting the embezzlement of family resources by husbands than with enforcing a strict gender hierarchy between husband and wife of legal capacity and incapacity along the lines of the French *Code civil* or English Common Law, whereas judicial rulings in Hungary often did try to enforce hierarchical gender codes along these lines. After the legal term ‘common acquisition’ (*közszerzemény*) entered statutory law to denote property acquired in marriage as belonging to both spouses (1840: Law VIII. 8. §; Temporary Guidelines I. [Civil Law] 13. §.), judicial practice of the 1860s and 1870s made the principle of joint disposition over common property legally enforceable only in the event of marital dissolution, giving “the husband ... the right to administrate jointly acquired property in marriage and his creditors [entitlement] to such property unless the woman can confirm her separate dispositional rights” (Leading Decisions of the Hungarian Royal Curia, 24). Statutory laws of the 1880s responded by tightening the law, making the property arrangements of spouses legal only if they had been formalised before a public notary (*közjegyző*) and stipulating that neither spouse could exclude the other from property acquired “in common” (1884: Statute VII. 21 §; 1886: Statute VII. 22 §). So called ‘marriage contracts’ (*házassági szerződések*), made before a public notary, became ‘customary’ means for wives from across the lower to middle class occupational spectrum to secure the property they brought into marriage as their own (including the dowry), over which they had exclusive dispositional powers.

The implications for historiography in the field of women’s, and feminist history

What might a feminist agenda for legal reform look like in conditions such as those for Hungary, where women’s legal status was not a unitary set of claims available to Hungarian subjects through the latter half of the nineteenth century, and into the twentieth? I should say such an agenda would be uncertain, and - and this is really the point I should like to make

clear - legal uncertainty is not the same as 'lack' of legality, since Hungary developed a flourishing legal formalism oriented towards a politics of national codification in the period under consideration. One aspect of legal conditions which I have not had space to elaborate upon here, but is important when speaking of legal uncertainty, is the extent to which laws and legal discourses, debates and practices in Hungary were informed by those of the core, or 'strong' Western European states. It is no coincidence that the legal terminology used in the Hungarian courts to describe women's property in marriage changed after 1870 from 'free property' (*szabad vagyon*) to 'separate property' (*tiszta vagyonekülönítés*), incorporating the terminology of the English Marital Property Act of 1870, which also distinguished a wife's property as 'separate' (Shanley 1993, 50-77; Villányi 1941, 112-113). The fact that 'Western law' was regarded as a model for Hungarian legal development, as I have pointed out elsewhere (Loutfi 2005), raises the question of whether ambiguities in Hungarian law and practice were perhaps also indications of fundamental legal ambiguities – i.e. lack of legal normativity – in the gender orders of Western states. The area needs more research, but it would seem safe to assume at this stage that the study of 'lack' and legal uncertainty in Hungarian legal development and in the development of Hungarian feminism has implications for the study of the same in the 'core' European countries as well. Legal reform campaigns by feminists in Hungary could only really consolidate themselves when a full civil code came up for public review in 1913 and looked set to become law (although it did not, due to the outbreak of war). Prior to this, feminist discourse on women's 'legal status' and/or 'civil rights' was noticeable by its absence, or by its complicity with an 'illusion of legal certainty' to which I have already alluded; articles published in the official organ of the Feminist Association tended to reproduce the vagaries of national legal discourse by implying that a stable set of conditions governing "women legal situation" existed: "In Hungary – even taking into consideration the conservative male suffrage law – laws and customs are, relatively

speaking, much more favourable and humane” (“Women’s Legal Situation in the Civilised World,” in *Woman and Society*, October 1912, 181). On the other hand, it is interesting to note that as a full civil code for Hungary materialised, feminists began to recognise the problem of which I speak here: namely the predominance of legal ambiguity over legal certainty in processes of legal codification and the ambivalences embedded in Western legal traditions that undermined ‘strong’ states as sources of normativity. Writing in 1913, Vilma Glücklich of the Feminist Association noted that the Hungarian draft civil code moved between “two extremes:” between the “shame” of the Napoleonic Code and “humanist and ethical developments” in North America, going on to conclude that “we can trace the numerous points where [the Hungarian draft civil code] moves between two extremes in the legal development of all the modern nations” (*Woman and Society*, October 1913, 192). This observation would seem to suggest that modern nations’ constructed illusions of legal certainty – in codification or in other symbols of legal stability – have really only functioned as screens shielding the truth of legal ambiguity and / or contradiction. Further, and this is a point of real significance, that Hungary’s legal dilemmas were merely reflections of wider dilemmas common to the legal cultures of all modern states.

Conclusions

A legal reform movement requires a certain conviction on the part of its would-be members that an objective basis for legal decision-making exists (Unger 1976, 574-576). If ‘weak states’ are by definition incapable of gaining and retaining hegemonic control of legal decision-making, then it stands to reason that the status, interests and claims of their subjects will not be articulated in relation to a unified state power that represents an overriding source of normativity. Feminist theories have needed the state in order to make tangible the rituals of power and subordination naturalised in biological and essentialising readings of sexual

difference. In modern times and in ‘modern nations,’ the state has represented the concrete source of legal norm production and by focussing on this, feminists have been able to avoid bland explanations for gender inequalities such as ‘nature’ and ‘custom.’ Yet the state itself as a source of real normativity for both law and society remains undertheorised – a situation which needs to be addressed in order to prevent the reification of the state as a stable source of patriarchal power. It is hoped that alternative readings of state agency facilitated by studies in women’s and gender history emerging from the Eastern ‘half’ of the European continent, can help to break down such basic organisational concepts such as ‘legal status’ into the artificial constructs of nation statehood that they are, thereby exposing what may have been the deep failure of states to provide legitimising ideologies for patriarchal power, and the many and conflicting ideologies that constitute state interests and render states themselves unstable.

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