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Researching Living Law (or Legality) with Narrative Life History Interviews: Empirical investigation of the concept of 'living law'. Methodological problems of the research on legal consciousness III.[2]

In the following I will use the logic elaborated above to show through discussing a specific life story how a narrative life history interview combined with hermeneutic case reconstruction can be used to capture the concept of legality broadly defined.

The interview analysed below was conducted in four sessions, and the recording is roughly 15 hours in length. The occasion emerged as a result of my efforts to contact persons who had initiated proceedings with the Equal Treatment Authority and whose cases had resulted in determinations that discrimination had taken place. Staff members of the authority provided me with contact information for two 'complainants'. One of them was Tamás, who was the subject of the life history interview I discuss here. Tamás is a middle-aged blind man who had been living with a severe visual impairment since birth, but had recently completely lost his sight. Before that happened, he had worked as a journalist, among other things. Before the interview began, we discussed the objective of the research and I told him that I am partaking in a research project dealing with legal consciousness and strategies concerning the use of law, and I also informed Tamás that the method for recording the interview diverges from the customary.

And that is indeed what transpired: During the interview, which took place over four sessions, for the most part Tamás talked without being prompted. In line with the interview technique, there were hardly any instances of clarifying questions once he concluded the main narrative. I was not able to determine whether the conversation had a therapeutic effect but – this being the first interview I conducted – I was surprised by the torrent of well-crafted stories I encountered in the interview situation. What I see manifested in the fact that the main narrative was so full of detail and comprehensive is that in this fateful period of his life – he had recently lost his sight completely - Tamás had a great need for summarising his life history as a coherent stream, to take stock. Moreover, the well-formed character of the narrative indicated to me that in Tamás's previous work as well – primarily in journalism, but in his other professions as well – the fact that he had a good way with words played a role: When his attention turned inward, towards his own history, this level of linguistic refinement was not manifest. In the narrative that followed the first question there were scant signs of reservation and he did not tend to delve into generalities, which is markedly different from those who do not earn their living working with language. Instead, well-rounded stories followed one another. I do not only detect this 'professionalism' in the fact that my questions harking back to previous points proved mostly fruitless (in other words that Tamás, like a good journalist, practically interrogated himself), but also the somewhat defensive style in which the story was sealed, closed off: With surprising (or unusual) rigidity, the narrated life resisted efforts to complement it; it presented a closed autobiography that is nigh ready for publication. Returning to the

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therapeutic effect for a moment: The notion of Tamás writing his life story (thus far) did indeed arise towards the end of the conversation.

I. Course of life (biography)

Tamás's family, his mother and his father all hail from a small town in East Hungary. Tamás was born in December 1969 in a Transdanubian town, where his father worked as a professional soldier and non-commissioned officer.

His family belongs to the 'lower social classes,' as he put it. His mother was a beautiful and talented girl, his father went to trade school and then became a paramedic. Their relations were not free of complications, and 'by that time his father drank a lot'. His mother did not want to marry him, but after his father attempted suicide in response, they were married.

Conceiving also proved difficult: They were accompanied by the nagging attention of the boy's parents, which was only exacerbated by his mother's miscarriage before Tamás's birth. In Tamás's rendering, his birth almost seems like a story out of a fairytale. Outside conditions were not particularly favourable either: 'There was a massive snowstorm, and back then an armoured vehicle was breaking through from the housing project to the hospital'. Tamás was born prematurely, and according to 'family lore' he seemed so unlikely to survive that a death certificate and a toe tag had already been drawn up. Ultimately, he survived, but once he was sent home 'the doctor said upon seeing my eyes that I should not even have been allowed [...] that I should not have been allowed to be born'. He was born with a special eye disease, which is called cat eye syndrome.

They lived there until he was roughly five, and then in 1975 they moved back to his parents' hometown in East Hungary. At this new place children 'ridiculed' him because of his eyes, even though this had not happened where they had previously lived. His little sister was born in '1976-77'. The constant fighting between his parents and their 'drinking' marked his childhood. Then 'alcohol played an increasingly greater role in their life, I had to start going to the pub for them at age eight, or maybe I was seven when I started going to the pub for them'. His school grades were not good, considering that he went to a school that made no allowances for his visual impairment. 'Well, I was awful at maths, I received failing grades and I was always beaten at home for this'. He sought to 'make up for this with the sighted' and wanted to be involved in parties with his classmates.

This was also when his treatment for his eye condition commenced. In seventh grade his eyes were operated on, and that was when a series of trials began with optometrists who sought unsuccessfully to help him with his congenital eye condition.

This was also when he joined the county organisation of the blind and the visually impaired, still in his hometown. When he had to choose how to continue his education after elementary school, the idea of him going to a grammar school did not arise, he was 'oriented' to attend a technical school, and he ended up going to a vocational school for 'antique restoration' and became a boarding school student in Miskolc. This training did not match his abilities, there was too little intellectual challenge. When he was 16, he was conscripted to serve in the army.

After completing vocational school he returned to his family and started to work. The working conditions and his colleagues were just as unbearable to him as living with his parents once again proved to be, which is why he escaped from home at age 18. He was helped in this by a cousin: 'And then we planned that I would move in with him, that's where I lived, and then I rented a sublet. Two weeks later I hooked up with the most beautiful girl in the college, a jazz dancer.' That is when his independent 'young adult' life

commenced with his girlfriend. He applied for studying to become a special needs educator, but he was rejected due to his disability. For a little while thereafter he gave up on continuing his studies because he felt he had to support his girlfriend, and thus he started working in a bakery. Owing to his cousin and his girlfriend, he became involved in a very active group of college friends. In the meanwhile, he graduated secondary school in 1990.

Subsequently, in the same year he began working in Budapest, in a public day-care centre for children with disabilities. Then he worked in a drug outpatient clinic and an institution providing care for homeless persons. In the meanwhile he himself also lived in a homeless shelter between 1994-1995. He divorced his first wife in 2001, they have two children (he did not discuss the story of their marriage). That is when he began to work as a freelance journalist for newspapers. Subsequently he took a job with a domestic NGO, which deals, among other things, with assisting homeless persons. That is where he met his second wife, and they still live together. They have one child. Then he worked as a journalist again, for a national newspaper, but as his sight deteriorated he found it increasingly difficult to perform his work.

Though he has been legally blind since age 16, only recently did he find himself compelled to live a lifestyle 'in accordance' with the official designation. He moved from Budapest to a rural town with his wife. During this time – the period closest to the narrative – there were several proceedings that he initiated on the grounds that as a person with disabilities he was not treated in a proper way.

II. Life story

In analysing the narrated life I would like to primarily highlight elements associated with the use of law and everyday legal consciousness. Rather than going into a detailed analysis, I would like to provide a 'taste' of the interpretive possibilities therein.

The way in which Tamás experienced his condition plays a substantial role in the themes around which his narrated life story is structured. The relevant stories, starting with his birth all the way to the various treatments and his interaction with the healthcare system, delineate a history of suffering. At each and every turn Tamás was left to his own devices, and the fact that he survived after birth and retained some sight were subsequently regarded as 'miracles'. 'I was very proud, very conceited about the fact that to this day one eye works excellently, it still has not disintegrated. I should not have been able to see with this eye. This much they said clearly, all kinds of professors […] still, I could see with it and I used it.' To this date his experiences with doctors are marked by painful and faulty treatments and false promises.

This is connected with another thread in the story: That he has not received adequate treatment for his condition since childhood. What he says about this betrays ambivalence: For one, he has - in part - escaped the stigma accompanying disability, which now presents him with so many constraints. At the same time, the failure to give him proper treatment has accompanied him throughout:

Legally blind, legally handicapped, legally blind, this works to this day, even at the present day, blindness is defined as a level of visual impairment or a type of disease. Everywhere in the world. I have always been very wary of this, but gradually it has snuck into the back of my mind, under my armour, my protective gear, and it has led to the realisation that this is a far worse situation in terms of the ability to see as compared to what (...) I had information about, what I know. This was stunning, which

is obviously why I was in denial. If I had known this at the time, then it would not have been too late to shift me into an identity of being visually impaired, and then I would have made out fine. [...A] teaching diploma (3) would have worked easily, or a humanities or social science diploma, for example in a humanities field, such as sociology, which... Well, whatever. But no. But that's what it said there, that I am legally blind. Yet the way this worked was that the railway person looked into the... Why don't you also forge a stamp along with this the next time, you little monkey. Or he would say: You made a good deal buying this. I started hearing this as a child up until the moment I started using the white cane (…) Actually, from the moment when that disability ID arrived, because how this worked was that based on the medical reports the doctor of the Miskolc association [the county office of the Hungarian Federation of the Blind and Partially Sighted] looked at it and said: Look, here, you're legally blind. Are you using any aides? Why not? What I was supposed to be wearing was the white symbol cane. The white symbol cane is different from the white cane that is used as a mobility tool. It's a more bulky instrument that signals to the population that this guy can't see as much as others. From then on, I should have. (…) but I didn't.

Apart from the above, what was - naturally - also decisive was how his family lived, and how they related to him. A fundamental experience for Tamás was that he was a burden for his parents, especially his mother. Later, when his sister was born, this impression was only further reinforced.

*To this day * I don't know if this is something the doctor came up with or whether it came to my parents. It was allegedly my father's mother who kept nagging the family, my father and my mother, saying that this child has ended up such a cripple and how it should not have been allowed to live. […] What is also part of the story, however, is that my mother wanted to elope with her lover/when my grandfather heard this ((he laughs)) then he [...] slapped my mother around hard in the housing project's stairway, up to the second floor, saying 'you won't go anywhere, my dear, save to hell'. So my mother did not go, but from that day forth until to this very day she harboured ill-will towards me, subconsciously as well as = as well as conscious -- I don't know, I am not a psychologist, so I can't explain this. But the / point is ((he laughs)) that this has left a mark on my life, concerning the things happen and how they happen. And of course I can recall a lot of things that are not exactly the product of a peaceful and serene, a blessed, childhood, quite the contrary.*

In recounting his life, the idea of some type of escape crops up on several occasions, even before he actually did run away from home. He refers to opportunities when he could have attended schools for blind and visually impaired persons, but also the idea of escaping the stifling and abusive environment at home through a romantic relationship.

His independent life begins with an escape. At this point the fabric of the story is considerably more disparate, less composed than in the context of his childhood. The narrative is dominated by elements connected to his workplace. His independent life as an active adult, full of work, successes and failures, receives significant emphasis in this story. Relations of a private kind are relegated to the background. While the story of his first great love is part of the period around his first escape, private issues appear only fragmentarily in the first decade after his move to Budapest, up until he met his second wife. The latter appears as a story of a great love affair based on mutual redemption, and pivots the narrative into the present, the period characterised by the total loss of sight. The

interim period is marked by changes in jobs, shifting back and forth between journalism and the NGO sector.

Experiences with the law crop up in different guises in this story. For one, they come up in the abovementioned disability-related discrimination cases. Up until very recently, he had treated these instances of discrimination as 'natural', even severe violations of the law such as his experience with college applications, not to mention the 'everyday' harassment at work or by officials. The law comes up in a different form during the narrative, such as the restrictive regulatory framework concerning the journalistic profession, the proceedings to publish corrections and the problematic cases, and along the lines of the legal disputes arising in connection with the tension between publicity and privacy, and the protection of reputation. In terms of the experiences with the law, we observe a fluctuation reflecting successive periods in his life: During the more defenceless and vulnerable periods (childhood and total blindness), the theme of lacking legal protections is more pronounced, while in the active adult period the law creates conditions wherein the individual sometimes fares well and sometimes does not. Still, the defencelessness of his childhood does not return: acquiescence does not mesh with the self-image that he developed based on his 'full life' as an adult. The most recent period in his life was marked by a conscious and deliberate use of the institutions of legal protections, which can in some sense be interpreted as the match for his previous professional life; it similarly mobilises significant energy and it simultaneously manifests the themes of protection and the quest for justice, as well as the notion that in addition to attaining justice for himself, these proceedings also serve the interests of persons with disabilities in general.

It is my hope that this brief analysis has offered a glimpse into how the material of a single life history allows for the possibility of a thorough, varied and diverse description of 'living law'.

III. Conclusion

Law in society/law in context is both a currently popular and long-established subject, as I sought to show through presenting Ehrlich's theory and its comparison with the legal theories of his contemporaries. Ehrlich's main thesis was that focal point of the origins of law was always in society and would always remain there. This approach, stemming from the school of historical legalism,[3] is still relevant today. As Sándor Loss put it: 'We talk of legal pluralism as if we had just invented the wheel, whereas Ehrlich had described just this - though using different words - over a hundred years ago'.[4]

Previously I have shown in detail how Ehrlich expands the concept of law to encompass views about law held in everyday life, by those engaged in everyday interactions. One of the most controversial aspects of his theory is that he left the process of selecting norms bearing a legal character from the general class of norms regulating the internal order of groups of humans (associations) up to the legal sentiments and presumptions of laypersons. This 'weakness', mentioned as the *opinio neccessitatis* problem[5] in academic literature, is in my view one of the most captivating and pertinent ideas in Ehrlich's work. It is precisely this definition of social law that connects the

[3] Which in Ehrlich's age and for a long time afterwards inspired legal ethnography research aimed at discovering the *Volksgeist.* The objective of this research was to incorporate the legal folk customs they found into codifications of the law. See above.
[4] Cited in Badó 2005: 137
[5] Hertogh 2009

research on living law with the research on legal consciousness: by shedding light on the processes whereby laypersons attribute legal-type meanings to their everyday actions and continuously reproduce and reshape 'living law'. It was in support of this view that I reviewed legal consciousness investigations as they are used in the contemporary sociology of law, since in this respect their main tenets are easily reconciled with Ehrlich's concept of living law.

Even for Ehrlich the question of what research topics and what methodologies follow from such a redirection in the focus of the scientific investigations of law was of central importance. Defining the subject matter seemed easiest then and does so today, too. If we look at legal phenomena starting from Ehrlich's programme, also considering the phenomenologically inspired constructivist approaches accumulated since then, then the pair of concepts used by Ewick and Silbey, namely law and legality, seem suitable for capturing the phenomena under investigation. At the same time, I would like to point out that it is precisely its vague nature which makes the concept of legality so suitable for ensuring that the legal aspects of everyday life do not remain hidden from the researcher's gaze, and that they become accessible for and susceptible to analysis, through preserving the vocabulary and concepts used by the persons involved in the research.

In my opinion it is worth recalling at this point what András Sajó, with decades of experience as a researcher, observed about the process of how 'legal' opinions and opinions about the law are embedded in individual life stories and how they exist in interaction with events. At this point we inevitably run into the problem of narrativity. In order to escape the limited nature of legal consciousness research, which has generally characterised the KOL research projects (and more or less all research projects conducted in Hungary on this topic), and which has stemmed from the fact that in planning the data collection for the research and in analysing the data researchers relied on the formal concept of official law, we must expand the concept of the law to enable it to encompass the understandings of the law held by laypersons, the persons who use the law.

As I previously noted, in an environment wherein scholars were educated in the spirit of legal positivism it is not easy to acquiesce to such a 'loose' concept of the law. Yet this theoretical conclusion is still easier to reach than it is to actually find the appropriate methodology. This is all the more so since legal consciousness research tends to provide a good framework for research projects focusing on living law, but their methods do not really appear persuasive. As I argued before, the crux of this problem is rooted in the narrativity of legal types of opinions and knowledge, in the fact they are associated with narratives and experiences. With the introduction of interviews, we can investigate the place of law in everyday life rather than amassing unverified assumptions about living law that have no stakes. The main idea I advance in this study is that the type of narrative life history interview discussed above is a methodology that is compatible with the concept of living law, or, if you prefer, with the notion of legality.

Narrative life history consistently applies throughout the entire research process the constructivist position that the researcher cannot sensibly strive to learn some presumed 'objective social reality'. The narrative we attain through the interview is in many respects the purest source available about an actor's motivations, emotions and opinions. It allows for far greater understanding than other methods, including those aimed at learning about life histories; it comes closest to a psychoanalytic therapy situation. Yet no matter how 'deep' this empirical material is, we cannot hope to merge the results from tens or even hundreds - indeed, even an entire representative sample - of interviews. A 'merger' of results becomes possible by way of establishing similarities in how people act in similar situations, by identifying typical strategies they follow. We can compare our insights gleaned from analysing interviews with our knowledge concerning the interviews'

structure. From these elements we can then create our own narrative regarding the subject at hand, which does not imply, however, that we captured or described social reality. A consistent application of this insight matches the idea of 'living law'.

As far as potential future research is concerned, I feel that the present study raises many more questions than it answers.

It may be said regarding Ehrlich's oeuvre that both domestically and internationally it has not been studied exhaustively, our knowledge about it is still fragmentary, and in many respects superficial or distorted. The assessment of his oeuvre is mostly limited to those of his works available in English, which is dismal, especially considering his significant contribution on legal logic,[6] but in general as well: On the whole, he has received far greater attention in common law countries than on the European continent, but for the reasons outlined in the introduction a rediscovery of his oeuvre is in the fundamental best 'interest' of the continental sociology of law. Moreover, Ehrlich's life also offers an exciting area of research, and there are many basic unanswered questions in this context, and the sources contradict one another. Researching his life story on the basis of identifiable original sources would be of fundamental importance for both for the social history of the Jewish community of Bukovina in Ehrlich's time as well as for legal sociology.

Hungarian sociology of law is facing a similar challenge of 'establishing a new tradition', and in my view an important aspect of this involves an examination of works by major scholars of the early 20th century - such as for instance the sociological period investigated by Bódog Somló -, including a systematic analysis and review of these works, as well as an analysis of legal ethnography research. Just as in the case of Ehrlich, for Somló, too, an examination of the epoch he lived in and his life history would be crucial. Writings published on this topic have barely began scratching the surface of the issue.[7]

Naturally, the main idea of this study may be summarised as a proposal for further research, for my main thesis concerns a simple insight, namely that legal consciousness, the use of law, and opinions about the law ought to be researched by using narrative life interviews (as well). As I have shown, the Hungarian traditions of researching 'legal consciousness' are rather poor in terms of qualitative research, or are at the very least one-sided; though one could also argue that they completely miss the point and are blinded precisely to what they seek to investigate. In any case, what Ehrlich had to say about this subject in the early 20th century remains surprisingly pertinent today. The discursive analysis of legal documents may be similarly relevant in this regard as the methodological innovation that I described in detail in the present study. In addition to comprehensive analyses about opinions concerning the law and patterns of the use of law, many specific problems and the operation of legal institutions can also be analysed with this method, including experiences with and strategies to tackle discrimination and prejudice, and the relevant 'solutions' applied by official law in the context of equal treatment. An especially relevant research topic is the comparison of the opinions held by professionals about the law with those of laypersons. In fact, comparing the opinions and everyday uses of the law of practically any groups in society might be an interesting and insightful area of analysis.

[6] Ehrlich 1918, also see Ziegert 1998

[7] See for example Fleck 2011, Szegvári 2004

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