



The Department of

Sociology and Social Anthropology

cordially invites you to

What is Wrong with the Hungarian Legal System and How to Fix it

Public Lecture by

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as part of our Public Seminar Series

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Institutions are made up of the interplay of three components: (1) formal rules, (2) actual practices and (3) narratives. However, lawyers in post-socialist countries do not see law through institutionalist lenses, but often nurture a false and simplistic idea of the law: they consider it to be the sum of rules, disregarding often the actual practices of the rules' addressees and narratives attached to the law (encompassing everything from the *raison d'être* and goal of the institution, its symbolism, the public discourse surrounding it, and social attitudes towards the institution). This restricted view makes Hungarian lawyers blind and to a certain extent also defenceless against recent authoritarian tendencies. Institution-building has been a moderately successful feat in Hungary. To put it more pessimistically, it has partially failed since the end of socialism, in particular when it comes to actual practices and narratives. In the Hungarian context, consideration of the problems of institution-building suggests two general conclusions: on the one hand, the lack of unison among the individual elements (rules, practices, narratives) renders institutions less stable and consequently less capable of inducing compliance with the law; on the other, the institutions that have been established have failed to deliver prosperity to the political community. This paper describes the constitution-making of 2010/11 from the perspective of institution-building. This institutionalist view of the law yields two main specific findings: (1) Historical experience shows that besides honest determination, the radical institutional overhaul of a complete legal system can only be successful in the presence of external pressure, the effect of which has unfortunately decreased with Hungary's accession to the EU. That is, institution-building should go hand-in-hand with effective international and EU obligations undertaken in more sober political moments to guarantee that the political community will not later enter into a self-destructive mode. (2) Taking elements beyond mere rules more consciously into account, such as actual practices and narratives in the realm of legislation, the application of the law and legal training would ideally result in the gradual reinforcement of substantive cultural elements. This, however, requires political action, more precisely the adjustment of formal rules. Since this is not in the interest of the incumbent decision-makers, overcoming the impasse seems unlikely for the time being.

András Jakab is currently Professor of Austrian Constitutional and Administrative Law at the University of Salzburg (since 2017). He is also an Honorary Fellow of the Pázmány Péter Catholic University. Formerly he held different research and teaching positions in Budapest (Calvinist University Károli Gáspár in Budapest, 2001-2003; Pázmány Péter Catholic University 2010-2011 and 2016-2017; Hungarian Academy of Sciences 2013-2017), Madrid (Centro de Estudios Políticos y Constitucionales, 2008-2010), Liverpool (University of Liverpool, 2006-2008), Nottingham (Nottingham Trent University, 2004-2006) and Heidelberg (Max Planck Institute for Comparative Public Law and International Law 2003-2004 and 2011-2016). He held a number of visiting and temporary positions in Milan, Luxembourg, Vienna, Heidelberg and Budapest.

His main research areas are Constitutional Law, European Law, Legal Theory, Comparative Law. His recent publications include *European Constitutional Language* (as author, Cambridge University Press 2016); *The Enforcement of EU Law and Values* (as editor, co-editor: Dimitry Kochenov, Oxford University Press 2017); *Comparative Constitutional Reasoning* (as editor, co-editors: Arthur Deyvre and Giulio Itzcovich, Cambridge University Press 2017).