

Zoltán Fleck. *Változások és változatlanságok - A magyar jogrendszer a rendszerváltozás után* [Continuity and Discontinuity - The Hungarian Legal System after the Change of the System]. Budapest: Napvilág, 2010. 164 pp.

Reviewed by **György Csepeli, Eötvös Loránd University, Budapest**

By the title of Zoltán Fleck's book, "Continuity and Discontinuity - The Hungarian Legal System after the Change of the System," it deals with the development of the legal system since the regime change that began in 1989. Fleck leaves no doubt that what happened in 1989 in Hungary and all over the former Soviet sphere was essentially positive: an unsustainable economic and social system collapsed, and a new era started which aimed at establishing a system of liberal democracy and market economy. However, in part regardless of the author's intentions, the book now says much more than is indicated by the title. The year of publication was 2010, this review is written in 2013, and the events discussed in the book have reverberations to this day. When the author was writing this book, it was as if he felt the political turnover to come in April 2010 as a consequence of the parliamentary elections resulting in a two thirds majority for the government parties.

In the first chapter, modestly entitled "Framework of the Analysis," Fleck delineates the main controversies of the liberal period, starting in 1989 and ending in 2010, and concludes that the two decades following the regime change of 1989/90 have not fulfilled the people's wish for a just and prosperous society. On the contrary, social inequality has risen, the GDP (Gross Domestic Product) has sunk, citizens' autonomy has not strengthened and no civil society has emerged; instead, local and national politics became overwhelmed by corruption. These dysfunctions made possible the rise of a new authoritarianism and a right wing political extremism. Based on these negative social and economic processes, the author's fears concerning the withering away of liberal democracy seem justified. Trying to capture the future negative scenarios of further transformations of the legal sphere, the author frequently writes that "we do not know what the future will bring." In the year of writing this review we already know that most of his fears have been proven right.

In the second chapter the author gives an accurate and detailed analysis of the legal system of the Hungarian Republic that existed between 1989 and 2011. At the center of this legal system was the Constitution created in 1989 and amended several times during the two decades of the Hungarian Republic. The symbolic or perhaps moral fault of this Constitution was the indication of the year 1949 (the beginning of Communism in Hungary?) in its title. Although the content of the 1989 Constitution has changed completely in accordance with the norms of liberal democracy, the title still falsely suggests continuity with the State Socialist Constitution, a



New articles in this journal are licensed under a Creative Commons Attribution 4.0 International License.



This journal is published by the University Library System of the University of Pittsburgh as part of its D-Scribe Digital Publishing Program and is cosponsored by the University of Pittsburgh Press

negligence (or ignorance) that has proven to be a fatal error. This reviewer tends to agree with the author that it would have been better to create a brand new Constitution in 1989, which could have contributed to the development of constitutional patriotism. According to Fleck, the democratic values of the liberal Constitution have not entered/influenced the minds of the "everyday" people, who have remained untrained in and unaware of the merits of citizens' adherence to democratic norms.

The new Basic Law created in 2011 represents the opposite of the ideals of the liberal period of 1989-2010. The appeal of cultural nationalism has proven stronger than the appeal of the political community of citizens of the Republic, with the very term "Republic" disappearing from the text of the Basic Law. The new Constitution has also severely restricted social rights and the power of the Constitutional Court. Fleck could not, of course, foresee the Basic Law which was to come in 2011, but his study has no doubts concerning the possibility of such a constitutional turnover. Fleck, however, is convinced that the illnesses of the "really existing democracy" (using the term coined by the eminent political scientist Philippe Schmitter, e.g., in his "Twenty-Five Years, Fifteen Findings," *Journal of Democracy* 21.1 (Jan. 2010), 17-28) cannot be cured by centralization and by restriction of autonomies, but only by strengthening the principle of the rule of law, and by strictly applying the system of checks and balances in the political playground.

The author's description in chapter two of the dysfunctions of penal politics as serving populist needs can also be considered a useful and important contribution. He does not at all exaggerate when he diagnoses that a state of "civilization crisis" already existed before 2010 in the Hungarian criminal justice policy and only deepened and increased since then. One might share the regret of the author that the reforms of the criminal justice system have failed and that in this field Hungary stepped further away from Europe than it was before the great change in 1989/90.

The book has a section in chapter two that the reviewer finds particularly important for the understanding of the relationship between law and society. Fleck, however, applies a double standard here. On the one hand he disapproves of political trials against the Communist politicians committing political crimes between 1948 and 1989 (e.g., Béla Biszku). On the other hand he does not approve of the review of lawsuits, again motivated by politics, in the case of perpetrators who allegedly committed their acts between 1941 and 1948 (e.g., László Bárdossy). The importance of this issue is connected to the need to reconstruct collective memory. The question is: what role can be played by the criminal justice system in this process?

The third chapter of the book can ironically be called "a tourist guide to a country called 'Anomie!'" This chapter is replete with sociological information showing the unwillingness of the average Hungarian citizen to adhere to the spirit of the written and unwritten norms of behavior. Instead of blaming the common people for their politically irresponsible behavior, Fleck points to the responsibility of the State, which failed to win the confidence of its citizens.

History has cut the yarn of Fleck's narrative, but life goes on. Hungary has remained a member state of the European Union and the NATO Alliance, but these organizations have no adequate capacity to enforce basic values and principles of democracy in any member country, including Hungary. It seems therefore that in the near future, the "really existing democracy" has no alternative in Hungary of the early twenty-first century.