

Contents

<i>Acknowledgements</i>	xv
<i>List of Tables</i>	xvii
<i>Table of Cases</i>	xix
Introduction	1
1. The Study of Transitions: a Disciplinary Crossroads	3
2. A Case Study: the Hungarian Constitutional Court	5
3. Inventing a Method	7
4. Law Importation	10
4.1. Context	10
4.2. Strategy	11
4.3. The Genesis of a New Legal System	11
Part I. IMPORTING WESTERN LAW	13
1. New Constitutions After Communism	15
1. From Communism to Liberal Democracies: Ideological Transitions	16
1.1. A Great Transformation . . .	16
1.2. . . . Taken in Giant Steps	18
2. New Constitutions under the Rule of Law	19
2.1. The Rule of Law as a Founding Principle	20
2.2. Separation of Powers	22
2.3. Individualism	23
2.4. Constitutional Courts	26
3. Hungary	28
3.1. A Gradual Transformation	28
3.2. A Revolution under the Rule of Law	29
3.3. The Amended Constitution: an Interim Compromise	31
3.4. A Powerful Constitutional Court	34
(a) Constitutional Judges	35
(b) Competences of the Court	35
4. Conclusion	37
2. The Importation of Law	39
1. Movement of Law Beyond National Borders	39
1.1. 'Legal Transplants'	40
1.2. 'Transjudicial Communication'	43

2. Exporting Western Law	46
2.1. An Inflation of Metaphors	47
2.2. Many Channels of Exportation	49
(a) International Institutions and Non-Governmental Organisations	49
(b) International Experts	50
(c) Mixed Motives	51
3. Defining Law Importation	53
3.1. Who Imports Foreign Law?	55
3.2. Why Import Western Law?	55
(a) The Failure of Communist Law	56
(b) 'Institutional Optimism'	58
3.3. Measuring the Success of Law Importation	60
4. Conclusion	62
Part II. THE STRATEGY OF IMPORTATION: THE RIGHT TO HUMAN DIGNITY IN HUNGARIAN CASE LAW, 1990-98	63
3. Importing Human Dignity from German Law	65
1. Importing a General Definition: Case 8/1990	66
2. Importing the Various Components of the Right to Human Dignity	68
2.1. The Right to Life and Human Dignity	70
2.2. Human Dignity and the General Personality Right	75
(a) The Right to Free Fulfilment of the Personality	79
(b) The General Freedom of Action	79
(c) The Right to a Private Sphere	81
(d) The Right to Self-Determination	82
3. Conclusion	86
4. Choosing the Right Model	87
1. Prestige	88
1.1. Modern Constitutions	89
1.2. Western Constitutions	92
2. Knowledge	95
2.1. A Matter of Language	96
2.2. Personal Connections: the Availability of Knowledge	99
3. Suitability	101
4. Conclusion	104
5. Instrumentalising the Model	105
1. Importing is not Imitating	106
1.1. Minimal Adjustments	106
(a) The Nature of Human Dignity: a Principle and a Right	107

(b) The Link Between Human Dignity and the General Personality Right	109
(c) Human Dignity for Legal Persons?	112
1.2. Significant Differences	113
(a) Dignity Before Birth	114
(b) Dignity After Death	117
2. Instrumentalising the Model: an Isolated Individual	120
2.1. Importing Rights Without the Corresponding Restrictions	120
2.2. Individualistic Humanity	122
(a) Focusing on Autonomy and Self-Determination	122
(b) Individuals Fighting Against the State	125
3. Conclusion	126
6. Overcoming the Communist Legacy	129
1. Rights Inherited from Communism	129
2. Human Dignity as a Rupture with Communist Law	134
2.1. Setting Aside the Rights Inherited from Communism	134
2.2. Nullifying Communist Rules	140
(a) Freedom of Association	143
(b) Public Prosecutors	144
(c) Social Rights	146
3. Introducing a New Concept of Rights	147
3.1. Reversing the Communist Understanding of Rights	147
3.2. Inherent Individual Rights	148
3.3. Statutory Requirement	150
3.4. Judicial Protection Against the State and Public Bodies	151
4. Conclusion	153
Part III. THE GENESIS OF A NEW LEGAL SYSTEM	155
7. Imported Law: Between Natural Law and Globalisation	157
1. Imported Law as a Modern Substitute for Natural Law	157
1.1. By-Passing the Taboo of Ideology	158
1.2. An Alternative Set of Values . . .	161
1.3. . . . Exterior to the Work of the Court	162
2. Imported Law: an Example of Globalisation at Work?	163
2.1. The Rhetoric of Global Law	163
(a) Universality	163
(b) The Argument of Global Law	165
(c) Taking Part in the Global Development of Law	167
2.2. Global Law or Selected Law?	168
(a) Some Rights are More Global than Others	169
(b) Not Global but German	171

3. From Prestige to Binding Force: Learning the Law	171
3.1. The Neo-Colonialism Hypothesis	172
3.2. The Failure of the Hungarian Constitution?	173
3.3. Learning the Law	174
4. Conclusion	176
8. Conclusion	177
1. Does Law Importation Work?	177
1.1. The Short Answer: Yes	177
1.2. The Long Answer: Caution and Vulnerability	178
(a) Waning Enthusiasm for the West	179
(b) Speaking the New Language of Law	181
(c) Beyond Elite Importers: Sharing the Knowledge	184
2. Faith in Law and the Might of Words	187
3. The Importance of Personalities	188
4. No Big Bang in the Creation of a New Legal System	190
4.1. Importation versus Innovation	190
4.2. Going Towards the Future Without a Past?	191
<i>Select Bibliography</i>	193
<i>Index</i>	211