



COLLECTIO
IVRIDICA
VNIVERSITATIS
DEBRECENIENSIS
VIII.



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Outlines of the Development of the Legal Philosophical Thought in Hungary

(From the Beginnings to the World War II)

The traditions of Hungarian legal philosophy followed the various periods of the Continental legal philosophical thinking until the mid-20th century. The oeuvres of the most significant legal philosophers are not restricted to the interpretation of the achievements of the more developed legal cultures, but are also reflected in independent theoretical efforts.¹

¹ See from the literature on the subject of history of Hungarian legal philosophy: Tivadar PAULER, *Bevezetés az észjogtanba* [Introduction to natural law], Pest, 1852; Rudolf WERNER, *A bölcsészeti jogtudomány történelme. Kiegészítéssel Schilling természetjogi művéhez* [History of law philosophy. Addition to Schilling's book of natural law], Budapest, Franklin Társulat, 1875; Tivadar PAULER, *Adalékok a hazai jogtudomány történetéhez* [Contributions to the history of Hungarian jurisprudence], Budapest: Magyar Tudományos Akadémia 1878; Felix SOMLÓ, *Die neuere ungarische Rechtsphilosophie*, Archiv für Rechts- und Wirtschaftsphilosophie, 1 (1907-08) 315-323; Ferenc FINKLEY, *A tételes jog alapelvei és vezéreszméi. Bevezetés és a jogbölcsészet kifejlődésének története* [The principles and ideas of positive law. Introduction to the the history of legal philosophy], Budapest, Grill Károly Könyvkiadóvállalata, 1908; Barna HORVÁTH, *Die ungarische Rechtsphilosophie*, Archiv für Rechts- und Wirtschaftsphilosophie, 34 (1930-31/1), 37-85; Imre SZABÓ, *A burzsoá állam- és jogbölcselet Magyarországon* [The bourgeois philosophy of law and state in Hungary], Budapest, Akadémiai Kiadó, 1955, 1980²; LOSS, SZABADFALVI, SZABÓ, SZILÁGYI, ZÓDI, *Portrévázlatok a magyar jogbölcséleti gondolkodás történetéből* [Portrays from the history of legal philosophy in Hungary], Miskolc, Bíbor Kiadó, 1995; Csaba VARGA, *Philosophy of Law in Central and Eastern Europe: A Sketch of History*, Acta Juridica Hungarica, 41 (2000/1-2), 17-25; József SZABADFALVI, *Transition and Tradition. Can Hungarian Traditions of Legal Philosophy Contribute to Legal Transition?*, Rechtstheorie, 33 (2002/2-4), 167-170; SZABADFALVI, *Reevaluation of Hungarian Legal Philosophical Tradition*, Archiv für Rechts- und Sozialphilosophie (ARSP), 89 (2003/2), 159-170; SZABADFALVI, *Neo-Kantian Legal Philosophical Thinking in Hungary*, Зборник Радова / Recueil des Travaux (Novi Sad) 37 (2003) 1-2, 271-281; SZABADFALVI, *The Spirit of the Common Law in the Hungarian Legal Philosophical Thinking*, HJEAS: Hungarian Journal of English and American Studies, 9 (2003/2), 199-208; SZABADFALVI, *Short History of Legal Philosophical Thinking in Hungary until the Mid-Twentieth Century*, Acta Iuridica Cassoviensia - Univerzita P. J. Šafárika v Košiciach - Právnická Fakulta) 25 (2004), 36-45; SZABADFALVI, *The Role of the Hungarian Legal Philosophical Tradition in the Renewal of National Legal Culture = Právná kultúra a európsky integračný proces* (historické, politicko-právne a filozofické aspekty práva a

1. Developments of the end of the Middle Ages

When trying to find the earliest documents in Hungarian legal philosophy, we must trace back to the end of the Middle Ages and the early new age. A proof of natural law doctrine in the Middle Ages is *Tripartitum* (1517) by István Werbőczy (1458–1541), comprising „the law of the country”, which describes in its prologue the concepts of justice, law and its divisions as well as the different types of statutes in a theoretical way.² That book was issued in more than five dozen publications including abridged and popular ones; however, there is still very little known about the origins of the legal knowledge of the author, who created the most important work for determining Hungarian legal attitude and legal culture up to the mid-19th century. The only fact that can be proven is that he spent one semester at the University of Krakow in the last decade of the 15th century and he acquired his language command of Latin, Greek and German in church schools. No document has emerged describing his Western-European (Italian) study trip. His philosophical and theological attitude is basically characterized by the adoption of the scholastic natural law discipline of the Middle Ages originating from Greek-Roman traditions; nevertheless, the ideas elaborated in his main opus do not constitute a single, coherent natural law doctrine.

Directio methodica,³ published a century later (in 1619) by János Kitionich (1561–1619), was a collection of contemporary criminal proceedings. Similarly to Werbőczy, this collection drew on Roman law sources and cited works by Cicero, Gellius, Ovidius, Livius and Varro. In that age it was not without

pravnej kultúry)/ Law Culture and European Integration Process (historical, political-legal and philosophical aspects of law and legal culture) Zborník vedeckých prác riešiteľov projektu VEGA a konferenčných príspevkov účastníkov vedeckej konferencie „Právna kultúra a európsky integračný proces” ed. Jan ČIPKAR (Košice: Právnická Fakulta UPJŠ v Košiciach) 2004) 236-248; SZABADFALVI, *A cselekvőségi elmélettől az újrealizmusig* [From the theory of freedom of action to new realism], Budapest, Gondolat Kiadó – Debreceni Egyetem, 2004); Andreas FUNKE, *Allgemeine Rechtslehre als juristische Strukturtheorie: Entwicklung und gegenwärtige Bedeutung der Rechtslehre um 1900*, Tübingen, Mohr Siebeck, 2004; András JAKAB, *Neukantianismus in der ungarischen Rechtstheorie in der ersten Hälfte des XX. Jahrhunderts*, Archiv für Rechts- und Sozialphilosophie (ARSP), 94 (2008/2), 264-272; Csaba VARGA, *Philosophising on Law in the Turmoil of Communist Take-over in Hungary (Two Portraits, Interwar and Post-war)* = The 2005 ALPSA Annual Publication of the Australian Legal Philosophy Students Association, ed. Max LESZKIEWICZ, Brisbane, 2005, 82-94; SZABADFALVI, *A magyar jogbölcséleti gondolkodás kezdetei* [The beginnings of Hungarian Legal Philosophical Thinking], Debreceni Szemle, 16 (2008/4) 468-480.

² István WERBŐCZY, *Tripartitum opus juris consuetudinarii regni Hungariae*, Vienna, 1517.

³ János KITONICH, *Directio methodica processus iudiciarii juris consuetudinarii inclityi regni Hungariae*, Tyrnaviae, 1619.

precedent that authors of Roman or even Justinian law were cited as sources in adjudicating legal disputes.

An important institutional transformation occurred in the history of Hungarian legal philosophical thinking with the establishment of the University of Nagyszombat (Trnava) with its faculties of theology and arts in 1635, and the addition of a faculty of law (*facultas juridica*) in 1667. While earlier attempts to establish universities had not influenced legal philosophy in any way, education in the first legal institution of higher education had a strong influence on the further progress in legal thinking. Practical aspects were emphasized when the faculty and its structure of instruction were launched. The founders did not follow either the Western-European or even the Austrian example; rather, their primary aim was to meet the practical needs of the Hungarian world of law. Two of the four professors of the faculty lectured in „national” law (*jus patrium*), while the other two professors held lectures in Canon law and Roman law.⁴ In Hungarian higher legal education the traditions of theoretical education as part of Roman law and practice-oriented had been combined before the reforms of Enlightened absolutism emerged. The teaching of natural law doctrines mostly depended on the professors’ free will. Consequently, it was merely by chance that generations of lawyers were not provided with legal philosophical knowledge.

A good example of interpreting natural law doctrines was a work published in 1640 by György Illyésházy (1625–1689),⁵ a three-volume work discussing natural law by Márton Szentiványi (1633–1705),⁶ an essay on natural law published in 1694 by András Lehotay (?–1734).⁷ Some time later, however, Lehotay’s former colleague László István Kregár (?–?) described that era in his own lectures in natural law, saying that it is „a dictate of reason originating from God which orders everything that is good from inwards and prohibits everything that is evil.”⁸ All this reflects the decisive feature of scholastic natural law thought.

⁴ Tivadar PAULER, *Adalékok a hazai jogtudomány történetéhez* [Contributions to the history of Hungarian jurisprudence], Budapest, Magyar Tudományos Akadémia, 1878, 1-2; Tivadar PAULER, *A budapesti Magyar Kir. Tudomány-egyetem története* [History of Hungarian royal university], Budapest, Magyar Királyi Egyetemi Könyvnyomda, 1880, 22-23.

⁵ György ILLYÉSHÁZY, *Disputatio de iustitia originali*, Trenchinii, 1640.

⁶ Márton SZENTIVÁNYI, *Curiosiora et selectiora variarum scientiarum miscellanea* I-III., Tyrnaviae, 1689-1709.

⁷ András LEHOTAY, *Dissertatio iuridica de statu hominum, consistente primo in libertate, et huic opposita servitute*, 1694.

⁸ István László KREGÁR, *Tractatus theoreticopracticus in tripartitum juris Hungarici decretum*, Tyrnavie, 1749.

2. Developments in the 18th century

The compulsory and indisputable cornerstone for those times, considering its theoretical basis, was the doctrine elaborated in Hugo Grotius's (1583–1645) work *De jure belli ac pacis* (1625). Legal philosophy as an independent discipline was established through a legal concept, which was on its way to becoming free of Christian theology, and which originated natural law doctrines from human nature. The doctrines of Grotius became fruitful in the contemporary German philosophy of law from the second half of the 17th century. Among the distinguished figures of the rationalistic explanation of natural law were Samuel Pufendorf (1632–1694), Christian Thomasius (1655–1728), and Christian Wolff (1679–1754), considered the most reputable follower of the philosophical and legal concepts of Leibnitz, all of whom deserve mention for having exerted the greatest influence on the evolution of Hungarian legal philosophy. As jurists and university professors, they established and practised natural law as an independent legal discipline separate from philosophy and theology.

Among these eminent philosophers, Wolff's oeuvre must be emphasized since he, as the leading theoretician of Enlightened Absolutism of the Prussian Frederick the Great, considered all kinds of radical attempts to be faulty. In the contemporary system of Enlightened Absolutism these concepts were regarded as part of the official legal ideology. Wolff's natural law doctrine had a profound effect on Hungarian legal philosophy for over one and a half centuries. These popular and respected thoughts have become known as the Leibnitz-Wolff school of natural law.⁹ The most prominent figure of this school, from a Hungarian point of view, was Karl Anton Martini (1726–1800),¹⁰ who in 1753, being in Maria Theresa's confidence, was appointed professor of the then established department of natural law in Vienna, the centre of the Habsburg Empire. In his works he provided an excellent compilation through summarizing the theses of his predecessors (Pufendorf, Wolff). In the second half of the 18th century he was considered without a doubt as one of the most talented jurists of Austria. Hungary, being part of the empire, was not independent from Austria in terms of its economy, politics, or culture and science. Consequently, the first attempts to create Hungarian theoretical legal thought were connected to the Wolff-Martini doctrines.

⁹ Ferenc FINKEY, *op. cit.* (note 1), 126.

¹⁰ Karl Anton MARTINI, *Positiones de lege naturali*, Viennae, 1767, Budae, 1795; *Erklärung der Lehrsätze über das Naturrecht*, Wien, 1787.

Further published contemporary works in legal philosophy are regarded as simple explanations of the doctrines of Martini endowed with „Aristotelian respect”. Major works were written by Ferenc Roys (1713–1768),¹¹ György Zsigmond Lakits (1739–1814),¹² and Ádám Brezanóczy (1751–1832).¹³ It is worth mentioning that works opposing the official legal ideology, regarded as being of radical attitude, were also published in the late 18th century. As examples opposed to Wolff-Martini’s concept, the books written by János Filó (1722–1786)¹⁴ and János Adámi Nepomuk,¹⁵ which include scholastic ethical discussions, are worth a mention.

Besides the early products of the national theoretical literature of law, the importance of the very first work in jurisprudence in the Hungarian language is to be emphasized. An extensive volume entitled *Báró Martini természet törvényéről való állatásainak magyarázatja* (An explanation to the arguments in the law of nature by Baron Martini) was nothing else but a translation published in 1792 of the second volume of Martini’s *Positiones de lege naturali* in German, produced by Sámuel Dienes,¹⁶ who had been a student of Heidelberg University and was then working in the chancellery of the royal court in Transylvania. The name of János Újfalusy Nepomuk (1790–1849), who has become a well-known philosopher as an interpreter of Martini’s doctrines, must also be mentioned here. His book published under the title *A természeti hármias törvény* (The triple law of nature)¹⁷ is considered the last one among the works that interpreted Martini’s view without any criticism in the Hungarian legal professional literature. The real importance of this work lies in the fact that, besides the overwhelming Latin professional literature, it opened the opportunity to discuss natural law in the Hungarian language and attempted to introduce the discipline into the Hungarian legal education.¹⁸

¹¹ Ferenc ROYS, *Ethica et jus naturae in usum auditorum philosophiae conscripta cum appendice seu dissertatione* I-II., Viennae, 1755, 1761.

¹² György Zsigmond LAKITS, *Institutio elementorum juris naturalis in usum gymnasiorum et scholarum*, Budaë, 1778.

¹³ Ádám BREZANÓCZY, *Explanatio juris naturae, publici universalis et gentium* I-II., Posonii, 1795.

¹⁴ János FILÓ, *Jus naturae pro novello in vinea domini operario deductum ex demonstrato sine hominis*, Budaë, 1781.

¹⁵ János ADÁMI, *Systema anti-philosophicum de origine civitatis*, Posonii, 1801.

¹⁶ *Báró Martini természet törvényéről való állatásainak magyarázatja, melyet német nyelvből magyarra fordított és a maga költségén kiadott Dienes Sámuel* [An explanation to the arguments in the law of nature by Baron Martini], Bétsben [Vienna], 1792.

¹⁷ Nepomuk János ÚJFALUSY, *A természeti hármias törvény* [The triple law of nature], Pest, 1825.

¹⁸ Publications of legal philosophical writings in Hungarian was not rare before this time, particularly in the institutions of the Reformed church. Even prior to Újfalusy there had been philosophical works of law published, such as the textbook in legal philosophy written by

For the monarchs of Enlightened absolutism the doctrines of state, power and law created by Martini were quite acceptable in all respects, and this is why it was not by chance that natural law doctrines were included as compulsory disciplines in the curricula of legal faculties. These legal philosophical dogmas allowed the training of loyal state officers, in addition to supporting further extension of the monarchs' powers. Upon these considerations Maria Therese established – on the heel of the examples of Freiburg (1716) and Prague (1748) – a faculty at the University of Vienna in 1753, and also had education in natural law for first-year law students launched in Nagyszombat (Trnava). In the first Hungarian faculty of law the professor of Roman law was obliged to teach this subject, and given a salary nearly double that of his colleagues. The first lecturer meeting the requirements was Mihály Szedmáky in 1761.¹⁹

An independent department of natural law in Nagyszombat had not been established until 1770. According to the regulations of the council of the governor-general, „the institutions of Vienna University shall serve as the directive rule in every respect”, which means that the institution in Vienna was to be used as a model concerning both the course material and the topics for discussion. The regulation clearly defined which of the works written by Martini had to be taught and it also emphasized the importance of Grotius' major work.

The first professor of the department of natural law was Johann Heinrich Van der Hayden from the Netherlands, who had graduated from the University of Vienna. He was followed by József Fülöp Stuhr (?–?) for a short period of time. From 1775 natural law was taught by Antal Demién (1744–1833)²⁰ for a quarter of a century. According to contemporary records, natural law education was not highly respected, and few students attended the course. It was not by chance that the first Ratio Educationis of 1777 ordered departments of natural law to be established in further five royal academies of law with the aim to change this situation. The monarch made a decision in the same year to transfer the seat of the university to the royal palace in Buda, which finally moved to Pest (Budapest). In the first half of the 19th century Mihály Hirsch (1750–1809)²¹ and then for nearly two decades Pál Markovics (1758–1832)²² were well-known professors of legal philosophy in university education. Their lectures in legal philosophy mainly advocated Martini's

János Sz. Szilágyi, who will be discussed below. This can be considered as the first work which aimed to establish jurisprudence in the national language as opposed to the Latin language.

¹⁹ Tivadar PAULER, *Adalékok a hazai jogtudomány történetéhez* [Contributions to the history of Hungarian jurisprudence], Budapest, Magyar Tudományos Akadémia, 1878, 281.

²⁰ Antal DEMIÉN, *Dissertatio inauguralis ex jure Hungarico de eo*, Tyrnaviae, 1776.

²¹ Mihály HIRSCH, *Positiones ex iure digestorum et iure criminali*, Tyrnaviae, 1775.

²² Pál MARKOVICS, *Praelectiones academicae de iure naturae* I–II., Pestini, 1811–12.

doctrines. Nevertheless, the first representatives of the national discipline of philosophy of law gained distinction in adapting the general doctrine of natural law concepts to Hungarian circumstances. The explanation embracing the social contract between modern state and law, even through an interpretation by Martini, had the force of revelation in contemporary Hungary.

3. Kantian legal philosophy

Education based on natural law concepts had become more and more anachronistic by the end of the 18th and the early 19th centuries due to the fact that these concepts were opposed to the original ideas of Enlightenment and those of the French Revolution. In the second decade of the 19th century a new concept of philosophy appeared in the Hungarian literature of philosophy. In contrast to the conservative legal theory, Kantian philosophy and legal doctrines came into prominence.

The first work to be mentioned in a chronological order is a summary in Latin by János Sámuel Fuchs (1770–1817)²³ and another work, referred to above, written by János Sz. Szilágyi (?–1854) in 1813, *Oskolai tanító könyv a tétető (practica) philosophia második része: Természeti törvény tudomány (Jus naturae)* (The second part of a school textbook in practical philosophy: natural law doctrine), which was the first publication to discuss the whole system of the Kantian doctrine in the Hungarian language.²⁴ Other philosophers such as Zsigmond Carlowszky (1772–1821)²⁵ and Mihály Greguss (1793–1838)²⁶ also taught natural law based on the Kantian concept in the Lutheran College of Eperjes (Presov).

The works published in the first third of the 19th century, as is true of the whole period of the national philosophical thinking, basically served the purposes of education in law and partly in philosophy, and were only secondarily aimed at the renewal of scientific considerations in the philosophy of law. From this point of view, the writing by Mihály Szibenliszt (1783–

²³ János Sámuel FUCHS, *Elementa juris naturae*, Leutschoviae, 1803.

²⁴ János Sz. SZILÁGYI, *Oskolai tanító könyv a tétető (practica) philosophia második része. Természeti törvény tudomány (Jus naturae) vagy: azon törvényeknek és jussoknak tudományos előadása, melyek a jözan okosságából veszik eredeteket, egyenesen* [The second part of a school textbook in practical philosophy: natural law doctrine], Szigeth, 1813.

²⁵ Zsigmond CARLOWSZKY, *Jus naturae* [Manuscript, Eperjes 1811]. Eperjes, Kollégiumi Könyvtár [Library of Presov College] Fq 532 – Prot. Kol.

²⁶ Mihály GREGUSS, *Az észjogtudomány esedezőlevele* [Letter about natural law] [Manuscript from 1837]. Országos Széchényi Könyvtár: Kézirattár [National Széchényi Library: Archives of Manuscript] Quart. Hung. 3652. 8-17.v.

1834)²⁷ in Latin as a translation of and partly a commentary on a work by Franz Zeiller and Franz Egger,²⁸ professors in Vienna, cannot be regarded as an original opus. This work replaced the book by Martini and was used as a textbook at the University of Budapest and in the royal academies of law. The main achievement was that it was the first time criticism had been provided on Martini's natural law doctrine in an official textbook. The purposes of education were also served by a book published in Latin and written by István Bánó (?–1862) based on Zeiller, Egger and Szibenliszt.²⁹ Antal Albélyi's (1794–1875) introduction to the philosophy of law³⁰ and a book by Gyula Gerlóczy (1837–1893) based on a work by Antal Bauer were used for twenty years from the early 1860s together with the textbooks by Tivadar Pauler as compulsory legal literature.³¹

Among the contemporary authors of Kantianism, Imre Csatskó (1804–1874) professor of the academies of law in Kassa (Kosice) and Győr, later judge of the royal court, must be mentioned. In his introduction to natural law – although with strong reference to foreign, mainly German professional literature (Zeiller, Likawetz, Gross and Krug) – he created a coherent theoretical system. His main work in legal philosophy was published in 1839 under the title *Bevezetés a természeti jogba és a tiszta általános természeti jog* (Introduction to natural law and the pure general natural law).³² In his work he discusses in detail, among other topics, the sources, classification, ideas and use of natural law, as well as the connection between natural law and related principles, and furthermore provides a review of the bibliography of the professional literature of that time. He is concerned with the „original” human rights and obligations.

²⁷ Mihály SZIBENLISZT, *Institutiones iuris naturalis* I-II., Jaurini, 1820-23. See about Szibenliszt's oeuvre: Anna PETRASOVSKY, *Szibenliszt Mihály általános államtana* [Mihály Szibenliszt's general theory of state], *Publicationes Universitatis Miskolcensis. Sectio Juridica et Politica*. Tom. XXV/1 (2007), 121-139.

²⁸ Franz ZEILLER, Franz EGGER, *Das natürliche öffentliche Recht* I-II., (ien, Triest, Geistinger, 1809.

²⁹ István BÁNÓ, *Elementa jurisprudentiae naturalis secundum vestigia celeberrimorum Franc. Nob. de Zeiller ac de Egger, aliorumque de jurisprudentia meritissimorum virorum conscripta*, Claudiopoli, 1836.

³⁰ Antal ALBÉLYI, *Philosophiae juris paecognita*, Comaromii, 1831.

³¹ Gyula GERLÓCZY, *Alkalmazott észjogtan kérdések- és feleletekben. Dr. Bauer Antal jogrendszer alapján és több forrás után* [Practical natural law: on the basis of Dr. Antal Bauer], Pest, Emich, 1862. Revised edition: *Természeti jogtan a vizsgálatra vagy szigorlatra készülőké és a művelt rend számára* I-II. [Studying for natural law examination], Budapest, M. Kir. Egyetemi Nyomda, 1877/80, 1883².

³² Imre CSATSKÓ, *Bevezetés a természeti jogba és a tiszta általános természeti jog* [Introduction to natural law and the pure general natural law], Győr, 1839.

Due to the book by Csatskó, the Kantian concept gained ground in Hungarian legal thinking. The elaboration of an official legal concept and also the textbooks used in legal higher education at that time are connected to Antal Virozsil (1792–1868), professor of legal philosophy at the faculty of law in Budapest. Virozsil can be regarded as a renowned philosopher of law in the second third of the 19th century, whose main merit was that he taught philosophy of law in the Kantian attitude at the only university of Hungary. His works were used in legal higher education, in addition to the officially accepted textbooks by Martini, as handbooks written mostly in Latin or German. A three-volume book by Virozsil published in 1833 is considered as the first original work in the Hungarian philosophy of law.³³ However, his main work is *Epistome juris naturae, seu universae doctrinae juris philosophicae*³⁴ the Hungarian translation of which was published in 1861.³⁵ Virozsil's oeuvre is characterized by a special contradiction. Though his theory followed Kantian doctrines, including the idea of freedom, his conclusions adopted a number of statements according to absolutist power and the existing status quo. He attempted, after the example of the French revolution, to describe all the threats that can occur in the establishment and maintenance of civil order as a result of misinterpreted natural law ideas. This attitude appeared in complete accordance with the Habsburgs' striving for power in the 1830s.

In spite of the fact that Virozsil's philosophy of law had a restraining influence, the Habsburg monarchy, after the Hungarian revolution and war of independence of 1848–49 was suppressed, decided on further restrictions on legal education. In the new curriculum launched in 1855, political powers wanted this discipline, aiming to communicate potentially dangerous views to be relegated to the background. Instead of legal philosophy, the history of law was emphasized, particularly the teaching of the history of Austrian and German empires and laws. However, in 1860 university autonomy and the freedom of education that had been abolished in 1848 was restored. Legal philosophical education was then renewed and German ceased to be the language of instruction.

A prominent philosopher of neo-absolutism during the two decades after the Austro-Hungarian Compromise in 1867 was Tivadar Pauler (1816–1886), who is considered as the last significant philosopher of the Kantian doctrine. Pauler became renowned as a professor of academies of law in Zagreb and Győr, and later as a professor of legal philosophy and criminal law at the

³³ Antal VIROZSIL, *Jus naturae privatum, methodo critica deductum* I–III., Pestini, 1833.

³⁴ Antal VIROZSIL, *Epistome juris naturae, seu universae doctrinae juris philosophicae*, Pestini, 1839.

³⁵ Antal VIROZSIL, *Egyetemes természet- vagy észjog elemei* I–II. (trans. József MÁRKI and Pál HOFFMANN) [Elements of general natural law], Pest, Heckenast, 1861.

University of Budapest. Through his works written in Hungarian and published beginning in the early 1840s, he became the doyen of Hungarian theoretical legal thought by the mid-19th century. Among his main works the first to be mentioned is *Az észjogtudomány fejlődése s jelen állapota* (The development of the discipline of natural law and its present status), which was published in seven pieces in *Tudománytár*, the most important scientific journal, between 1842 and 1843.³⁶ In this work Pauler, similarly to Csatskó, determines the discipline of philosophy of law as a major part of „practical philosophy”, which has a profound effect on the legal life of European societies, with particular reference to public and private law as well as to the regulation of criminal law. In this early work Pauler introduced the history of theoretical legal thinking starting from Greek philosophy to contemporary trends in Hungarian and European legal philosophy. This historical overview was later repeated in his book entitled *Bevezetés az észjogtanba* (Introduction to natural law)³⁷ in 1852 as well as in its further extended publications. In the preface to his study he unambiguously explains his theoretical view, which is based on Kantian philosophy. According to his statement about legal order originating from reason independent of any positive legislation, there exist eternal and intangible truths which are assigned as standards in social conditions through the order of reason.³⁸

Pauler evolves his views on Kantian philosophy in his work entitled *Észjogi alaptan* (Natural law doctrine)³⁹ in 1854, following his introduction to natural law, then in 1864 his monograph *Észjogi előtan* (Natural law studies)⁴⁰ was published, which was a combined version of the two previous works.⁴¹ In the preface to his work he pronounces that „there exist standard and unchangeable legal ideas, comprehensible by reason, which create the cornerstones for all societies.”⁴² Although Pauler followed the Kantian system

³⁶ Tivadar PAULER, *Az észjogtudomány fejlődése s jelen állapota* (1-7 parts) [Development and actual condition of natural law theory], *Tudománytár* 6 (1842/12), 351-371; *Tudománytár* 7 (1843/3), 188-194; *Tudománytár* 7 (1843/4), 233-254; *Tudománytár* 7 (1843/7), 26-49; *Tudománytár* 7 (1843/8), 77-94; *Tudománytár* 7 (1843/9), 147-163; *Tudománytár* 7 (1843/10), 208-215.

³⁷ Tivadar PAULER, *Bevezetés az észjogtanba* [Introduction to natural law], Pest, Emich, 1852.

³⁸ Tivadar PAULER, *op. cit.* (note 36), 6 *Tudománytár* (1842) 12, 352.

³⁹ Tivadar PAULER, *Észjogi alaptan* [Natural law doctrine], Pest, 1854.

⁴⁰ Tivadar PAULER, *Észjogi előtan. A szerző észjogi bevezetése és alaptana* [Natural law studies: author's introduction and doctrine of natural law], Pest, Athenaeum, 1864², 1873³.

⁴¹ Other important PAULER's legal philosophical studies: *A végszükség joga* [Law of emergency], *Új Magyar Múzeum*, 3 (1853), 10, 469-478; *Az elévülés észjogi alapja* [Natural law bases of lapse], *M. Akad. Értesítő*, 3 (1959), 65-98; *Az álladalom jogalapjáról* [The legal ground of the state], *M. Akad. Évkönyv*, 8 (1860), 30-62; *Adalékok a hazai jogtudomány történetéhez* [Contributions to the history of Hungarian jurisprudence] (Budapest: Magyar Tudományos Akadémia 1878)

⁴² PAULER, *Bevezetés az észjogtanba, op. cit.* (note 37) [1873] IV. o.

when determining the concept of law, its main idea and the related issues, he was not a follower without any criticism. Besides describing his counter arguments, he included into his own concept the theses considered acceptable by him. In this way, positive evaluations of the ideas of Ahrens, Stahl, Haller and even Hegel occur in his writings.

From the beginnings of the 19th century the attempts of Hungarian legal philosophical thinking can be detected in Pauler's oeuvre, which involves a move towards legal positivism gaining more and more importance in Western Europe. Another special feature of his legal concept is that he tries to combine Kantian doctrines with the views of the historical school of law, which emphasizes historical and national traditions. A good example for this is his work *Büntető jogtan* (Criminal law doctrine)⁴³ published in two volumes in the mid-1860s, which is considered by most experts to be Pauler's main work, raising the Hungarian criminal law discipline to the academic standards of Western Europe.

Having introduced theories and authors closely connected to Kantian philosophy, we now turn to the Hungarian translations of German and French Hegelian legal philosophical works influencing legal philosophy in Hungary, which were used as handbooks in education between the 1850s and 1880s.⁴⁴ These are the works by Heinrich Karl Gross, Heinrich Ahrens and J. A. Schilling, legal philosophers of Erlangen and Leipzig, which had been translated into Hungarian. The book by Gross was translated by Ágost Greguss (1825–1882),⁴⁵ Ahrens was translated by Ferenc Magyar (1809–1882)⁴⁶ and later by Imre Bihari (1829–1882),⁴⁷ and Schilling's monograph was translated by Rudolf Werner (1838–1907)⁴⁸ Works created by András Vandrák

⁴³ Tivadar PAULER, *Büntető jogtan* [Criminal law doctrine] I-II (Pest: Pfeiffer 1864-65, 1869-1870², 1872-1873³)

⁴⁴ See about this Ferenc FINKEY, *op. cit.* (note 1) 174.

⁴⁵ Heinrich Karl GROSS, *Bölcsészeti jogtudomány vagy természetjog* (trans. Ágost GREGUSS) [Philosophical jurisprudence or natural law], Pest, Heckenast, 1854. Original publication: *Lehrbuch der philosophischen Rechtswissenschaft, oder des Naturrechts*, Tübingen, 1802.

⁴⁶ Heinrich AHRENS, *Természeti jog vagy jogfilozófia, e tudomány állása szerint Németországban* (trans. Ferenc MAGYAR) [Natural law or legal philosophy: position of this discipline in Germany], Eger: Egri Érseki Főtanodai Könyvnyomda, 1850.

⁴⁷ Heinrich AHRENS, *Természeti jog vagy jogbölcsészet* (trans. Imre BIHARI) [Natural law or legal philosophy], Pest, Athenaeum, 1872.

⁴⁸ J. A. SCHILLING, *A természetjog vagy bölcsészeti jogtudomány kézikönyve. Összehasonlító tekintettel a tételes jog intézkedéseire* (trans. Rudolf WERNER) [Handbook of natural law or legal philosophy], Pest, Franklin Társulat, 1869. Further editions: *A bölcsészeti jogtudomány kézikönyve. Összehasonlító tekintettel a tételes jogi intézményekre* (trans. Rudolf WERNER) [Handbook of legal philosophy], Budapest, Franklin Társulat, 1874², 1880³)

(1807–1884)⁴⁹ and Ferenc Thót (1817–?)⁵⁰ exclusively for teaching purposes must be emphasized, as summaries of works by Ahrens. The original books earlier had had a great influence on German, French and Italian legal philosophical thinking, and exerted a similar influence in Hungary as well. Hegelian views were gaining followers, namely the legal philosophical outlines by János Warga (1804–1875),⁵¹ and the Kantian philosophical essays written by Gábor Szeremlei (1807–1867),⁵² Nándor Kacziány (1822–1908),⁵³ and László Wekerle (1840–?).⁵⁴

The last original natural law theory, which had been overshadowed by the early 19th century, had a major role in legal education as well as in scientific works in Hungary, even at the end of the century. Aladár Schmierer (1836–1898)⁵⁵ is considered a delayed representative of Kantian doctrine. Another fact to be mentioned is that in 1881, when Ágost Pulszky had lectures in legal philosophy in the approach of legal positivism at the faculty of law in Budapest, a renowned publisher decided to issue a textbook written by an author under the pseudonym „Thomasius” in the spirit of Pauler, for use by students preparing for examinations.⁵⁶ The last representative of Kantian legal philosophy was János Csarada (1850–1923), who lectured in legal philosophy at the faculty of law of Budapest from the end of the 19th century to 1920, in turn with Gyula Pikler, the main figure of the Hungarian sociological legal positivism. This fact is proved by a textbook of university lectures.⁵⁷ The Kantian views introduced by Csarada may have been a highly contrastive phenomenon parallel to the concepts of Pikler. Even in his book published in a number of issues entitled *Az észjog compendiuma* (The compendium of natural law) for those preparing for examinations as advocates or judges as well as for

⁴⁹ András VANDRÁK, *Bölcséleti jogtan (Észjog)* [Philosophy of law: natural law], Eperjes, Rosenberg, 1864.

⁵⁰ *Jogbölcsészet*. Ahrens H. után hallgatói részére vezérfonalul dolgozta THÓT Ferencz [Philosophy of law: on the bases of H. Ahrens] (Debrecen 1879)

⁵¹ János WARGA, *Az észjog alapvonatai* [The bases of natural law], Tudománytár (1834/4), 27-46; Tudománytár (1835/5), 83-90; Tudománytár (1835/7), 100-118; Tudománytár (1835/8), 136-141.

⁵² Gábor SZEREMLEI, *Az új philosophia szellemvilági fejletében* [Developments of new philosophy], Pest, 1841; *Jogbölcsészet* [Philosophy of law], Sáros-Patak, Nádaskay, 1849.

⁵³ Nándor KACZIÁNY, *Társadalmi észjog* [Social natural law], Budapest, 1873.

⁵⁴ László WEKERLE, *Az észjog vezérelvei* [Principles of natural law], Budapest, Aigner, 1877.

⁵⁵ Aladár SCHMIERER, *Jogbölcsészeti jegyzet* [Lectures on legal philosophy], Budapest, Politzer, 1898⁵.

⁵⁶ THOMASIVS, *Észjog. Kérdések és feleletekben* [Natural law: questions and answers], Budapest, Eggenberger, 1881.

⁵⁷ János CSARADA, *A bölcséleti jog jegyzetei* I-II., [Lectures on philosophical law], Budapest, Politzer, 1900.

practicing lawyers, Csarada explained theoretical knowledge from an earlier standpoint of Kantian philosophy.⁵⁸

To summarize, it may be stated that the above mentioned authors and works in the Kantian spirit have not created a reputable scientific achievement. Nevertheless, as opposed to the natural law doctrine of Wolff-Martini, these philosophers had a modernizing influence in the first third of the 19th century on Hungarian legal thinking, including statutory law disciplines not closely related to legal philosophy.

4. The historical school of law

The historical school of law hardly had any influence on legal philosophers in Hungary in the first half of the 19th century, a time when it was strongly supported, even by political means in Germany.⁵⁹ The legal concept of the historical school during the Age of Reform is represented only in the oeuvre of Ignác Frank (1788–1850). It was the legal philosophical basis of Hungarian private law discipline that was mainly influenced by the historical views, which resulted in the previously decisive natural law and Kantian doctrine being surpassed. Frank, in his *Észjogtani vázlat* (Natural law outline), preserved only in manuscript, rejected the then prevailing Martini doctrines, and partly accepted Kantian views, e.g., he did not trace back human rights to a natural state, but to the „everlasting, unchangeable source”, and partly adopted the historical legal attitude that was becoming a decisive factor in German legal thinking. By way of illustration, the right to property, in his view, is not derived from natural law but from the statutory legal institutions of nations.⁶⁰ Later, Frank as a contemporary to Friedrich Carl Savigny, became an advocate of the historical school of law, emphasizing that Kant’s legal concept is not only without reason but also a dangerous trend in legal philosophy, consequently, it should be abolished and be replaced with Roman law in legal education. Regarding his view on rejecting codification in law, he appears as an indisputable follower of Savigny. Although Frank accepted and advocated the so-called organic theory of the formation of law, his theory is free from the national romantic attitude highly characteristic for the German historical school of law. It may be stated

⁵⁸ N. B., *Az észjog compendiuma. A jogbölcselet történetének rövid vázolata* [The compendium of natural law], Budapest, Politzer, 1896, 1900², 1904³.

⁵⁹ Elemér PÓLAY, *A pandektisztika és hatása a magyar magánjog tudományára* [The pandectists and its influence to the Hungarian civil law], Acta Universitatis Szegediensis de Attila József nominatae. Acta Juridica et Politica. Tom. XXIII. Fasc. 6. (1976), 90 et seq.

⁶⁰ PAULER, *Adalékok...*, *op. cit.* (note 19), 161.

that Franks' oeuvre – similarly to the following generation of Hungarian legal philosophers – is not to be considered as one of basically legal philosophical obligation. These views are revealed in his discussions in statutory law (private law).

Pál Hoffmann (1830–1907), who published his book entitled *A jog lényege* (The essence of law)⁶¹ in 1864, which included critical remarks on the Kantian school prevailing in Hungary at that time, and mainly on Pauler's views, is regarded as a follower of Savigny and the German historical school. Reason as legal source is considered, in his conception, to be an indispensable means of knowledge and to play an important role in defining the content of laws; nevertheless, no legal content derives from reason itself.⁶² In this way, reason is a suitable means for discovering the legal content, but cannot be considered as a real source of law.

Hoffmann was the first philosopher to propagate the theory of law of the German historical school of law as well as the program declaration included in *Vom Beruf* from Savigny. In his opinion, pursuant to Rudolf Jhering, all views that stood in opposition to Savigny were „mere argumentations”.⁶³ His theological views on the genesis of law come from an interpretation of Georg Friedrich Puchta's views.⁶⁴ In his discussion on the authority which creates the law, a well-known conception occurs. Hoffmann uses the concept „national spirit” as a synonym to „Volkgeist”, from which, as the main legal source, law stems. Law, he concluded from this, has a dual life: „one embodied in the legal conditions and the other as an idea in the nation's consciousness.”⁶⁵

Among the most remarkable representatives of the historical school of law was Gusztáv Wenzel (1812–1891), philosopher, the most eminent student of Frank. As a devotee of the historical school, he held the view that the requisites of legal history and legal philosophy interrelated to each other can achieve prosperity in jurisprudence.⁶⁶ In his writings on legal history and comparative law he enthusiastically advocated the views of Savigny and his followers from the mid-19th century. In public opinion Wenzel's oeuvre has contributed to the full acceptance of the „historical-legal trend” as well as to the reviving idea of national Romanticism in the 1860s and '70s. He writes about the role of custom in the formation of law, and about the view saying

⁶¹ Pál HOFFMANN, *A jog lényege. Bevezetés a jogtudományba* [The substance of law: introduction to the jurisprudence], Pest, Eggenberger, 1864.

⁶² *Op. cit.* (note 61) 30.

⁶³ PÓLAY, *A pandektisztika...*, *op. cit.* (note 59), 114.

⁶⁴ HOFFMANN, *A jog lényege*, *op. cit.* (note 61), 8 et seq.

⁶⁵ HOFFMANN, *A jog lényege*, *op. cit.*, 44.

⁶⁶ Gustáv WENZEL, *Az 1848 előtti magyar magánjog* [Hungarian civil law before 1848], Budapest, Magyar Királyi Egyetemi Könyvnyomda, 1885, 10-11.

that the existing law „stems from the intellectual life of the people”.⁶⁷ He accepted the conception of Savigny, „the first legal philosopher of the era”,⁶⁸ on the issue of organic formation and development of law, consequently he held a view opposed to codification. Nevertheless, by consciously applying the comparative method, which was rather a particular feature of the historical jurisprudence as seen by Maine,⁶⁹ Wenzel became the apostle of the developing new discipline in Hungary.⁷⁰

The historical school of law gained followers mainly among the advocates of the science of written law, in the first place those of private law, and later, from the mid-19th century, among legal historians.⁷¹ The reason why professors of private law were oriented towards the solutions considered successful in the past was that civil law efforts failed to achieve codification and the rules of customary law proved to be vital. After the war of independence was suppressed, enthusiasm for the past and the „ancient” Hungarian legal institutions became an instrument for preserving the national character. In this way the presence of the historical legal attitude was not rare in the national professional literature even at the turn of the past century.

5. Positivist legal theory

Towards the turn of the century the bourgeois ambitions were not satisfied any longer either by the model of reasonable natural law or classical natural law ideas. In the Central-Eastern-European region and also in Hungary positivism, revealed in evolutionist-reformist explanations and aimed at modelling the world of experience, has gained ground. The attitude of legal positivism came into full power in the Hungarian literature of legal philosophy with the work of

⁶⁷ Gusztáv WENZEL, *A magyar magánjog rendszere I* [System of Hungarian civil law], Pest, Athenaeum, 1872², 76; Gusztáv WENZEL, *Az 1848 előtti...*, *op. cit.* (note 66), 78.

⁶⁸ Gusztáv WENZEL, *Az ausztriai általános polgári törvénykönyv magyarázata* [Explanation of Austrian general civil law code], Bécs, 1854, 4-5.

⁶⁹ József SZABADFALVI, *Historical jurisprudence, avagy a történeti jogtudomány mint a jog »kultúrtörténeti« megközelítése* [Historical jurisprudence as a „cultural-historical” approach of law] = Historical Jurisprudence – Történeti jogtudomány, ed. József SZABADFALVI, Budapest, 2000, 14-35.

⁷⁰ See about this Gusztáv WENZEL, *Az összehasonlító jogtudomány és a magyar magánjog* [Comparative law and Hungarian civil law], Budapest, M. Tud Akadémia, 1876.

⁷¹ Vilmos PESCHKA, *A magyar magánjogtudomány jogbölcséleti alapjai* [Legal philosophical bases of science of civil law in Hungary], *Allam- és Jogtudományi Intézet Értesítője*, 2 (1959/1-2), 43-44.

Ágost Pulszky (1846–1901).⁷² At the beginning of his career he was mainly influenced by the English historical school of law and anthropologist theory, which resulted in his translating Henry Maine's *Ancient Law*⁷³ and he also wrote – similarly to his contemporary, Friedrich Pollock⁷⁴ – over a hundred-page notes to the Hungarian edition. His remarkable work titled *A jog és állambölcsészet alaptanai* (The fundamental doctrine of philosophy of law and state) was published in 1885. His book, collection of university lectures, was published in English in London in 1888.⁷⁵ Pulszky's achievement is considered a milestone in Hungarian scientific life, since his major work established ground for legal positivism in Hungary. In his positivist view he accepted „life interest”, determining the idea of evolution, as a driving force as well as „theory of freedom of action” reflecting the classical liberal attitude to law, which claims that the greatest individual freedom, „possibility for acting” is to be ensured by the state and law. Pulszky in due time realised the importance of social, economic and political changes at the end of the 19th century, and also their role in the scope of the activity of state. In his view, the increasing role of state was mostly apparent in the changes of economic conditions, in social policy and health service. Clearly perceiving tendencies in the development of contemporary capitalism, he outlined the idea of early social state beyond the classical liberal theoretical trend. He also paid attention to the conflict of nationalities beyond the boundaries of contemporary state. His work has influenced several branches of social science, in this way Pulszky's oeuvre is recognised not only by philosophy of law but by theory of state, politics and sociology as well. From the end of 1880s his active political role turned him away from science therefore his life-work is considered incomplete. Outstanding representatives of Hungarian progress after the turn of the

⁷² Ágost PULSZKY's main works of legal philosophy: *A jog és állambölcsészet alaptanai* [The fundamental doctrine of philosophy of law and state], Budapest, Eggenberger, 1885; Pulszky's other works of legal philosophy: *A római jog, s az újabbkori jogfejlődés* [Roman law and modern legal development], Pest, Eggenberger, 1869; *Az angol jogbölcsélet történetéhez* [On history of English legal philosophy], Budapesti Szemle, 7 (1875), 126-148; *A jog és állambölcsészet feladatai* [The tasks of philosophy of law and state], Budapest: M. Tud. Akadémia, 1888.

⁷³ Henry MAINE, *A jog őskora, összeköttetése a társadalom alakulásának történetével, s viszonya az újkeleti eszmékhez* [Ancient law, its connections with the early history of society and its relation to modern ideas], A Magyar Tudományos Akadémia megbízásából fordította, bevezette és jegyzetekkel kísérte PULSZKY Ágost [Ágost Pulszky translated, wrote introduction and notes on Hungarian Academy of Sciences's authority], Budapest, Magyar Tudományos Akadémia, 1875.

⁷⁴ Friedrich POLLOCK, *Introduction and Notes to Sir Henry Maine's Ancient Law*, London, Murray, 1908.

⁷⁵ Ágost PULSZKY, *The Theory of Civil Law and Society*, London, T. Fisher Unwin, 1888.

century were among his students, for example Gyula Pikler and Bódog Somló, who later accomplished significant works of legal philosophy and Oszkár Jászi – politician and scientist – who, as bourgeois radicals, were fighting for a new, modern, 20th century Hungary devoid of any feudal constraints. They believed that a wide scope of social, political and legal modernisation can base the establishment of a Western-European model of evolution.

The positivist doctrine reached the peak of its history in Hungary at the turn of the century by the work of Gyula Pikler (1864–1937).⁷⁶ He approached problems of state and law from the viewpoint of sociology based on natural sciences. He viewed legal philosophy as the natural science of law. Pikler's positivism conforms the theory by Comte, since he treated law as fact of society. Herbert Spencer's influence is revealed in his ideas of concluding law from the evolution laws of society. He believes that people act not by instincts but by purposeful discretion (theory of discretion), and according to this, people realise and develop norms and institutions satisfying their needs more and more perfectly. In this way people establish society, institutions and law which are considered rational and purposeful by them. The first ones, who recognise purposeful discretion, are the most outstanding members of a society, the so called educated classes. From the 1910s Pikler was mainly concerned with biological and psychological reasons behind the phenomena of society. Consequently, he became estranged from questions of law and legal philosophy, and while changing his field of interest in science, he carried out experiments in psychophysics and sense physiology. Its consequences were mostly published in German.

6. Neo-Kantian legal philosophy

The period after the turn of the century brought a significant change in the history of both European and Hungarian philosophy of law. As a result of neo-Kantian philosophy having been established on the Continent, the traditional approaches of natural law, legal positivism and also of historical theory were surpassed. Jurisprudence was seeking new ways emphasising views of epistemology, methodology and modern value doctrines. This process in Hungarian legal philosophy is connected to the activity of Bódog (Felix) Somló

⁷⁶ Gyula PIKLER's main works of legal philosophy: *Bevezető a jogbölcséletbe* [Introduction to philosophy of law], Budapest, Athenaeum, 1892; *Az emberi egyesületek és különösen az állam keletkezése és fejlődése* [The origin and development of human association and state in particular], Budapest, Politzer, 1897; *A jog keletkezéséről és fejlődéséről* [About the origin and development of law], Budapest, Politzer, 1897.

(1873–1920),⁷⁷ whose oeuvre resulted in abolishing the previous falling behind in the development and foundation of neo-Kantian legal philosophy in Hungary.⁷⁸

Somló is regarded as the most well-known representative of Hungarian legal philosophy. His relatively brief career of a quarter of century is divided into two stages. His study *A jog értékmérői* (Value standards of law) published in 1910 is a work signing the boundary of a period. The first stage of his activity is viewed as full acceptance and declaration of Herbert Spencer's doctrines, and he also declared Pikler's theoretical attitude based on natural science and psychology⁷⁹ and partly materialistic philosophy of history. He focused his attention on naturalist sociological problems. During this period Somló became, besides Pulszky and Pikler, the third outstanding representative of Hungarian positivist philosophy of law. In the second stage of his scientific career came the neo-Kantian turn, which established the most prospering period of Hungarian legal philosophy so far, lasting until the middle of the century, until the Marxist theory of law gained ground. While earlier Somló had considered legal philosophy and legal sociology as equal, the neo-Kantian model caused him to separate these two areas of the investigation of law. The outcomes of this period are his works which founded Somló's scientific reputation as legal philosopher in Hungary and mainly in German-speaking territories. Hungarian jurisprudence can be proud of the fact that Somló, besides Rudolf Stammler, Gustav Radbruch, Hans Kelsen and Alfred Verdross is regarded as a great representative of European neo-Kantian philosophy of law.

⁷⁷ Bódog SOMLÓ's main works of legal philosophy: *Allami beavatkozás és individualizmus* [State intervention and individualism], Budapest, Politzer, 1903; *Jogbölcselet* [Philosophy of law], Pozsony, Stampfel, 1901; *Jogbölcseleti előadások* [Lectures on jurisprudence], Kolozsvár, Sonnenfeld, 1906; *Masstabe zur Bewertung des Rechts*, Archiv für Rechts- und Wirtschaftsphilosophie 3 (1909-10), 508-522; *A jog értékmérői* [Value standards of law], Huszadik Század 11 (1910), 1-14; *Das Wertproblem*, Zeitschrift für die philosophie und philosophische Kritik (1912), 66-95; *Die Anwendung des Rechts*, Zeitschrift für das privat und öffentliche Recht der Gegenwart 38 (1911), 55-74; *A helyes jog elméletéről* [On the theory of righting Recht], Kolozsvár, Ajtai, 1912-13; *Juristische Grundlehre*, Leipzig, Verlag von Felix Meiner, 1917. [2. ed: 1927, and reprinted: Aalen: Scientia Verlag 1973]; *Jogbölcselet* [Legal philosophy], Budapest Grill, 1920; *Schriften zur Rechtsphilosophie*, Ausgewählt und eingeleitet von Csaba VARGA, Budapest, Akadémia Kiadó, 1999.

⁷⁸ József SZABADFALVI, *The Role of Bódog Somló in the Revival of Hungarian Legal Philosophy*, Archiv für Rechts- und Sozialphilosophie (ARSP) 93 (2007/4), 540-550.

⁷⁹ Cf. common essay of Pikler and Somló: Gyula PIKLER, Bódog SOMLÓ, *Der Ursprung des Totemismus. Ein Beitrag zur materialistischen Geschichtstheorie*, Berlin, K. Hoffman, 1909.

In his works published around the turn of the century, he criticised the contemporary „official” scientific ideal from the standpoint of natural scientific positivism and evolutionism. His positivist theoretical attitude at that time was completed by public-scientific activity. One of his major works in this period was his book titled *Állami beavatkozás és individualizmus* (State intervention and individualism) published in 1930. An increased role of state along with the evolution of monopolist capitalism of that time demanded a revision of the functions and institutions of law, state and politics. In his *Jogbölcselsei előadások* (Lectures on legal philosophy) published in 1906 a large number of theses from his major work *Juristische Grundlehre* – although the earlier positivist view remains unchanged – are revealed. By distinguishing pure and applied (normative) sciences, he founded the starting-point of his neo-Kantian philosophy, which is concerned with the investigation of two issues: 1. determination of preconditions (concept) of law (basic doctrine of law), 2. research of correct law (value doctrine of law). His turn towards neo-Kantian philosophy took place when dealing with the issue of correct law – under the influence of Rudolf Stammler – then it was completed in his comprehensive book published in German under the title *Juristische Grundlehre*, in 1917. In Somló’s main work, according to contemporary neo-Kantian philosophy, an analytical analysis of the concept and conceptual elements of law – regardless its content – is given. He was urged by enthusiastic welcome to his book, to investigate the value doctrine of law in a similarly comprehensive way. In order to do this, he establish an independent philosophical thesis (epistemological approach), which was published as posthumous fragments only after his early death, in 1926.⁸⁰

Somló’s work resulted in propagating the mentality of neo-Kantian tendency in legal philosophy in Hungary.⁸¹ Somló’s influence can clearly be captured in his kindest student’s, Gyula Moór’s (1888–1950) activity, who was the most recognised Hungarian legal philosopher between the two World Wars, professor of the universities in Szeged and later in Budapest.⁸² At the

⁸⁰ Felix SOMLÓ, *Prima philosophia: Gedanken zu einer erster Philosophie*, Berlin und Leipzig, Walter de Gruyter & Co., 1926,

⁸¹ Additional remarkable legal philosopher after the turn of the 19th-20th centuries: Gyula Teghze (1867–1937), József Hegedüs (1886–?), József Ruber (1890–?)

⁸² Gyula MOÓR’s main works of legal philosophy: *Stammler „Helyes jogról szóló tana”* [Stammler’s theory of righteous law], Budapest, Pfeifer, 1911; *A jog fogalma és az anarchizmus problémája* [The concept of law and the problem of anarchism in Stammler’s legal philosophy], Athenaeum 20 (1911), 4, 1-35; *Macht, Recht, Moral. Ein Beitrag zur Bestimmung des Rechtsbegriffes*, Szeged: Szeged Városi Nyomda, 1922; *Bevezetés a jogfilozófiába* [Introduction to legal philosophy], Budapest, Pfeifer, 1923; *Das Logische im Recht*, Internationale Zeitschrift für Theorie des Rechts 2 (1927-28/3), 157-203; *Zum ewigen Frieden. Grundriss einer Philosophie des*

beginning of the 1920s Barna Horváth called Moór the founder of a „new Hungarian legal philosophy”. Moór created something new in his comprehensive attitude, which was by some critics called, not without reason, an eclectic theory.

Being attached to neo-Kantian philosophy of law, Moór was mainly influenced by Stammler and Somló. Kelsen’s theory must also be mentioned as a permanent base of comparison to Somló’s philosophy of law even if they often had divergent views.⁸³ When forming his own philosophical system, Moór is characterised by a complex approach to the problems raised by his philosophical and legal philosophical antecedents that exerted influence on him. In his first comprehensive work published in 1923 he mentions three independent fields of investigation: 1. definition of the concept of law (fundamental doctrine of law), 2. scientific investigation of general causality in law (sociology of law) 3. the question of correctness of law (value doctrine or legal axiology). In this basic work he worded the ‘methodology of statutory law’ as the fourth field of legal philosophy in a wider sense.

From the late 1920s on Moór wanted to elaborate his legal philosophical system on the basis of paradigms of „Baden” or „value doctrine school” represented by Wilhelm Windelband and Heinrich Rickert, seeking new paths in neo-Kantian philosophy. Meanwhile Moór was seeking connection between

Parifismus und des Anarchismus, Leipzig, Verlag von Felix Mainer, 1930; *A jogi személyek elmélete* [Theory of legal persons], Budapest, Magyar Tudományos Akadémia, 1931; *Reine Rechtslehre, Naturrecht und Rechtspositivismus* = Gesellschaft, Staat und Recht. Festschrift gewidmet Hans Kelsen zum 50. Geburtstag, Wien: Verlag von Julius Springer, 1931, 58-105; *Creazione e applicazione del diritto*, Rivista Internazionale di Filosofia del Diritto 14 (1934), 653-680; *Das Problem des Naturrechts*, Archiv für Rechts- und Sozialphilosophie, 28 (1935/3), 325-347; *Szociológia és jogbölcselet* [Sociology and legal philosophy], Budapest, Királyi Magyar Egyetemi Nyomda, 1934; *Jogfilozófia* [Philosophy of law], Budapest, Magyar Élet, 1936; *Der Wissenschafts-Charakter der Jurisprudenz*, Zeitschrift für öffentliches Recht 20 (1940/1), 20-37; *A jog mivolta az újabb kultúrfilozófia megvilágításában* [The nature of law in the light of the new philosophy of culture], Athenaeum, 28 (1942/3), 237-252; *Recht und Gesellschaft*, Zeitschrift für öffentliches Recht, 21 (1942/5), 537-567; *Was ist Rechtsphilosophie?*, Archiv für Rechts- und Sozialphilosophie 37 (1943), 3-49; *Újkantianizmus és ijhegelianizmus a jogfilozófiában* [Neo-Kantianism and neo-Hegelianism in legal philosophy], Magyar Jogi Szemle (1943/3), 71-85; *A jogbölcselet problémái* [Problems of legal philosophy], Budapest, Magyar Szemle Társaság, 1945; *Tegnap és holnap között* [Between yesterday and tomorrow], Budapest, Révai, 1947; *Schriften zur Rechtsphilosophie*, Herausgegeben mit Bio- und Bibliographie versehen von Csaba VARGA, Budapest, Szent István Társulat, 2006.

⁸³ Cf. József SZABADFALVI, *Egy kortárs magyar jogfilozófus reflexiói – Moór Gyula Kelsen-interpretációja* [Reflections of a contemporary Hungarian legal philosopher – Gyula Moór’s Kelsen-interpretation] = Hans Kelsen jogtudománya. Tanulmányok Hans Kelsenről, ed. Cs. KISS Lajos, Budapest, Gondolat Kiadó – MTA Jogtudományi Intézet – ELTE Állam- és Jogtudományi Kar, 2007, 747-761.

the world of reality (Sein) and that of value (Sollen) – which as the central problem of neo-Kantian legal philosophy – instead of strictly separating the two spheres as some thinkers did by stating an antagonism between them. Consequently, he interpreted law as phenomenon belonging to the realm of „reality of values”. In the 1930s he thought he could mostly rely on Heinrich Rickert’s philosophy, but then at the beginning of the 1940s he turned to neo-Hegelian philosophical theses of Nicolai Hartmann. In the works published in the early 1940s he saw the opportunity to renew the philosophy of law in a „new tendency of cultural philosophy”, which was a sort of synthesis of neo-Kantian and neo-Hegelian philosophical thoughts. In consequence, he sees in law not only a system of statutes containing abstract regulations but also the realities of human activities in which the intellectual content of law becomes reality. It is regrettable that because of the war and the years of upheaval following it, he had no opportunity to elaborate his system of legal philosophy based on new philosophical ideas. The most everlasting and also the most cited part of Moór’s work is the investigation of the concept of law. It is the issue that brought his teacher’s, Somló’s most considerable influence. Among abundant theories of power and force, Moór carried out a sophisticated investigation of the concept of law by transferring the idea of social reality to the realm of law and thus he opened up new possibilities for the investigation of characteristic features of the regime behind law.

From the early 1930s, in the prevailing neo-Kantian philosophy Barna Horváth (1896–1973) created a new colour in the Hungarian traditions of legal philosophy.⁸⁴ His career was first promoted by Moór in the 1920s and then became famous as professor of Szeged University, In his view of legal theory, which he preferred calling legal sociology or even „pure legal sociology”

⁸⁴ Barna HORVÁTH’S main works of legal philosophy: *Die Idee der Gerechtigkeit*, *Zeitschrift für öffentliches Recht* 7 (1928), 508-544; *Természetjog és pozitivizmus* [Natural law and positivism], *Társadalomtudomány* 8 (1928), 212-247; *Gerechtigkeit und Wahrheit*, *Internationale Zeitschrift für Theorie des Rechts* 4 (1929), 1-54; *Hegel und das Recht*, *Zeitschrift für öffentliches Recht* 12 (1932), 52-89; *Bevezetés a jogtudományba* [Introduction to legal scholarship], Szeged, Szeged Városi Nyomda és Könyvkiadó Rt., 1932; *Rechtssociologie: Probleme des Gesellschaftslehre und der Geschichtslehre des Recht*, Berlin-Grunewald, Verlag für Staatswissenschaften und Geschichte G.m.b.H., 1934; *Sociologie juridique et Théorie Processuelle du droit*, *Archives de Philosophie du droit et de Sociologie Juridique* 5 (1935), 181-242; *Macht, Recht, Verfahren*, *Archiv für Rechts- und Sozialphilosophie* 30 (1936), 67-85; *A jogelmélet vázolata* [Outlines of legal theory], Szeged, Szeged Városi Nyomda és Könyvkiadó Rt., 1937; *Der Sinn der Utopie*, *Zeitschrift für öffentliches Recht*, 20 (1940/2), 198-230; *Prolegomena zur Soziologie*, *Archiv für Rechts- und Sozialphilosophie* 37 (1943), 50-67; *Angol jogelmélet* [English legal theory], Budapest, Magyar Tudományos Akadémia, 1943; *Field Law and Law Field*, *Österreichische Zeitschrift für öffentliches Recht* 8 (1957/1), 44-81; *The Base of Law / A jog alapjai*, ed. Csaba VARGA, Budapest, Szent István Társulat, 2006.

according to Kelsen's terminology, his originality was mainly revealed in his so called synoptic attitude and the functionally related processional legal view. He has created something new by conforming two paradigms that were considered antagonistic in contemporary legal philosophy. A parallel existence of neo-Kantian (Lask, Rickert, Verdross, Kelsen, etc.) and pragmatic-empirical attitudes (Pound, American realism, etc.) and their relation to each other was regarded as a break-through not only in Hungarian but also in European legal thinking. The consideration of these two influential paradigms is not by chance. While between the two World Wars neo-Kantian paradigm is to be considered evident in Middle Europe, pragmatism appeared as a new idea mainly in the Hungarian public view of legal philosophy. Horváth's susceptibility to empiricism can be attributed to two reasons. On one hand, he as practising lawyer realised contradictions in norms and reality, which was neglected by neo-Kantian philosophy. On the other hand, during his journey to England in the late 1920s, Anglo-Saxon legal culture made a great impact on him.

The synoptic method elaborated by Horváth is an original interpretation of one of the fundamental questions of neo-Kantian legal philosophy, namely the connection between value and reality. The most significant representatives of „contemporary” Hungarian philosophy of law, including Moór, Somló and Horváth, all concerned themselves with finding a solution to this problem. Horváth's starting point was the essence of legal activity, and considered law as a pattern of thoughts in a judge's mind, which is nothing else in this way but a „reflexive theoretical product”. The procedure by a lawyer becomes synoptic through his applying a legal case to a legal norm, and at the same time, *vice versa*, relating a legal norm to a legal case. The lawyer, therefore, relates normative matters of fact to real matters of fact. In order to do this job, the lawyer needs a knowledge of facts selected according to legal rules, and also a knowledge of laws selected according to matters of fact. While a practising lawyer focuses his attention mainly on a legal case, a theoretical lawyer concentrates on statutes of law, but both consider the legal case and the law at the same time.

According to Horváth's processional legal attitude, closely related to his synoptic method, law cannot simply be regarded as norm but as an abstract behavioural pattern and relating actual behaviour, or in other words, a connection between norm and behaviour, which is the procedure itself. Procedure is the „genus proximum” of law. That is to say, a continuous relation (of synoptic structure) of a legal case to the legal norm will create a procedural process. In Horváth's opinion, law as the most developed social

procedure establishes the most advanced stage of procedures by establishing the most developed procedural institution.

Horváth's role lies in the fact that traditional German-Austrian ties of the 20th century neo-Kantian Hungarian legal philosophical thoughts were „tailored” by him through transferring Anglo-Saxon theories of jurisprudence and created new perspectives for further development in Hungarian legal theory. Regretfully, the Second World War and the following political changes forced him to emigrate in 1949 and there he did not have the opportunity to continue developing his theory.

7. Criticism of the neo-Kantian paradigm

From the late 1930s we can see attempts by a new and highly talented generation, mostly by the students of Moór and Horváth. The first publications by Moór's students József Szabó and by Horváth's students István Bibó, Tibor Vas are considered as attempts to definitely discredit the neo-Kantian paradigm.⁸⁵

József Szabó (1909–1992)⁸⁶ graduated from the faculty of law at the University of Szeged and he was a student of Moór, an outstanding legal philosopher of neo-Kantian philosophy in the inter-war period. Szabó was a prominent representative of the gifted and promising generation, who achieved brilliant careers during the Second World War, and who were involved in the intellectual and scientific renewal of the country after the war. After graduation he became acquainted with Horváth, founder of school and an exceptional personality of Hungarian legal philosophy. Horváth's personality and his legal philosophical approach representing the influence of Anglo-Saxon jurisprudence and legal culture gave rise to Szabó's enthusiasm. It was the period in the Hungarian legal philosophical thinking when, besides the achievements of Austrian, German and French legal philosophy, those of English and American jurisprudence were also considered. Apart from this,

⁸⁵ *Die Schule von Szeged. Rechtsphilosophische Aufsätze von István Bibó, József Szabó und Tibor Vas*, Herausgegeben mit Bio- und Bibliographie versehen von Csaba VARGA, Budapest, Szent István Társulat, 2006.

⁸⁶ József SZABÓ's main works of legal philosophy: *A jog alapjai* [The bases of law], Budapest, Magyar Társadalomtudományi Társulat, 1938; *A jogász gondolkodás bölselete* [Philosophy of juristic thinking], Szeged, 1941; *Hol az igazság? A bírói lélektan problémái* [Where is the truth? Psychological problems faced by judge], *Társadalomtudomány* 22 (1942/1), 1-55; *Wahrheit, Wert und Symbol im Rechte*, *Archiv für Rechts- und Sozialphilosophie* 37 (1943), 101-121; *Der Rechtsbegriff in einer neurealistischen Beleuchtung*, *Österreichische Zeitschrift für öffentliches Recht* 1 (1948/3), 291-331.

Alfred Verdross, professor of international law and legal philosophy at the University of Vienna greatly influenced him, and they became friends for life. Szabó's papers were frequently published in the *Österreichische Zeitschrift für öffentliches Recht*, a journal edited by Verdross

As a result of Horváth's aim to establish a school, the „school of Szeged” was founded, and it included, besides Szabó, István Bibó, who later abandoned legal philosophy, and also Tibor Vas,⁸⁷ who became Marxist in the 1950s and renounced the mentality of the school. Szabó's legal philosophical thinking bears the strongest marks of the master's irradiative influence. He began to elaborate his independent legal philosophical doctrine in the late 1930s. He was also deeply involved in issues on constitutional and international laws.

In his writings on legal philosophy Szabó attempts to discredit the neo-Kantian model by using the outcomes of criticism, according to David Hume, and the American legal realism. Szabó, in his works published in the early 1940s, attempted to create a „neo-realistic” approach to the concept of law. Applying the method common in Anglo-Saxon professional literature, he modelled the essence of legal thinking with describing legal cases. With this kind of approach, he seemed to discover a number of similar features between English and Hungarian „traditional” legal attitudes. Citing the ideas of Jerome Frank, Edward Robinson and Thurman Arnold, the most outstanding personalities of American legal realism, Szabó abandoned belief in legal security, which was, in his opinion, revived by a faulty logical philosophy of law. In his theory he also used Frank's doctrine of „fact-sceptics” and „rule-sceptics”. Szabó claimed that in law enforcement it is not merely the legal norms one is to consider when looking for justice, since the statement of facts is as important a precondition for a righteous judgement as the interpretation of the corresponding law. He believed that legal decisions are influenced by „psychological circumstances”.

When reading Szabó's works, one can clearly perceive the ideas of American legal realism. At that time, in the early 1940s, this kind of theory was considered rather exceptional in the Hungarian literature of legal philosophy. The influence exerted by the classical representatives of legal realism is undeniable. When appreciating Szabó's work one can suggest that, in a similar way to the evaluation of Horváth's work, he also gave particular pragmatic explanations to the classical neo-Kantian problems. Doing so, he created the possibility for a prolific interrelation of two legal cultures, and abolished the

⁸⁷ Tibor VAS's (1911–1983) main works of legal philosophy: *Die Bedeutung der transzendentalen Logik in der Rechtsphilosophie*, Szeged, Szegedi Városi Nyomda és Könyvkiadó Rt., 1935; *A tiszta jogtan és a szemléleti jogelmélet* [The pure theory of law and the synoptic legal theory], Kecskemét, Szellem és Élet, 1937.

previous one-sided Austrian and German orientation in the Hungarian legal philosophical thinking. This is considered very important even if we sometimes come across rather eclectic explanations. Neither the master nor his student is an exception to this. Regretfully, however, Szabó was not able to work out further systematic explanations to his theory of legal philosophy called „neo-realistic”.

István Bibó (1911–1979) graduated as a Horváth’s student – a representative figure of Hungarian neo-Kantian legal philosophy – from the faculty of law at the University of Szeged. Bibó was a prominent representative of the generation, who had a successful career during World War II and the subsequent period, and he was involved in the intellectual and scientific renewal of the country after the war.

Bibó, as a law student and then as a member of the „school of Szeged” established by his one-time professor, was concerned with legal philosophy and issues of international law. In the early 1930s he visited, on several occasions, the university of Vienna where he listened to lectures delivered by Alfred Verdross, Adolf Merkl and Felix Kaufmann, and later he, as student of the Institut des Hautes Études Internationales in Geneva, became acquainted with Hans Kelsen, Paul Guggenheim, Maurice Bourquin and Guglielmo Ferrero. Subsequent to his study trip in Switzerland, he translated, with the approval of the author, Kelsen’s work titled *Reine Rechtslehre* into Hungarian.⁸⁸

With the aim of working out his own system of legal philosophy, he published his work under the title *Kényszer, jog, szabadság* (Compulsion, law, liberty)⁸⁹ in 1935. He started to elaborate his own theory with thoroughness and moderation contrary to his age. From the starting point of the neo-Kantian paradigm, Bibó examined the functional link between constraint, liberty and law, and completed this with Henry Bergson’s thoughts on spontaneity as well as with Nicolai Hartmann’s theses on ontology and ethics. One of the cornerstones of his theory was his independent criticism of Kelsen’s doctrine and that of Horváth’s legal attitude. Nevertheless, Bibó considered his master’s „synoptic” method suitable for solving the essential neo-Kantian problem, the contradiction between „Sein” and „Sollen”, in which the law of spontaneity plays a major role. Besides this, he borrows his one-time professor’s idea of objectivism, which he uses as a key concept in his doctrine.

Bibó claims that there exists a certain balance of the elements of constraint and freedom in the experimental material of law. As a result of the

⁸⁸ Hans Kelsen, *Tiszta jogtan* [Reine Rechtslehre, 1934], trans. István Bibó, Budapest: ELTE Bibó István Szakkollégium, 1988.

⁸⁹ István Bibó, *Kényszer, jog, szabadság* [Compulsion, law, liberty], Szeged, Szegedi Városi Nyomda és Könyvkiadó Rt., 1935.

old legal philosophical debate on constraint, Bibó claims that the essence of law is to be found in constraint, either physical or intellectual. In his argument, it is the degree of objectivity that makes the legal sanction different from sanctions of other social norms. An essential thesis of his, saying that law is considered as one of the most objective constraints, is based on this approach. The other key paradigm of his legal philosophy declares that law is to be viewed as the most essential tool of ensuring human freedom, since the area left free from constraint is „the realm of the most objective freedom”. According to his comprehensive definition, law provides the most objective constraint parallel with the most objective freedom. Completing his frequently cited thesis on the Janus-faced law, Bibó argued that the real power of law is ensured by this dual tension, and this fact makes law different from all other social rules.

In the second half of the 1930s Bibó attempted to describe certain issues of legal philosophy. His problem-raising appeared as criticism of Kelsen's theory, which exerted an effect of revelation at that time.⁹⁰ In this latter work he attempted to find new paths in elaborating his legal philosophy by extending and making radical changes in his one-time professor's synoptic doctrine. Regrettably, from the early 1940s Bibó abandoned legal philosophy and became more and more deeply involved in issues of political sciences and historical philosophy.⁹¹

They represent a new generation, who had the opportunity to make Hungarian legal philosophy a part of European standard in the international culture of legal philosophy so as to make it conform challenges of the period after World War II, since they had a comprehensive knowledge of German jurisprudence, of English-American, French, etc. literature and they could also improve their predecessors' professional connections abroad. However, this „challenge” was turned to a different direction as a result of the widely known

⁹⁰ See István BIBÓ, *Le dogme du »bellum justum« et la théorie de l'infailibilité juridique: Essai critique sur la théorie pure du droit*, *Revue Internationale de la Théorie du Droit* 10 (1936/1), 14-27; *Rechtskraft, rechtliche Unfehlbarkeit, Souveränität*, *Zeitschrift für öffentliches Recht*, 17 (1937/5), 623-638.

⁹¹ The name of István Losonczy (1908–1980) must be mentioned in this time, who began his career as a legal philosopher, and greatly contributed to the Hungarian philosophical literature of law in the 1940s. See István LOSONCZY, *Über die Möglichkeit und den Wissenschaftscharakter der Rechtswissenschaft*, *Zeitschrift für öffentliches Recht* 17 (1937/2), 145-194; *A funkcionális fogalomalkotás lehetősége a jogtudományban* [The feasibility of functional concept-building in jurisprudence], Budapest, Királyi Magyar Egyetemi Nyomda, 1941; *Losonczy István egyetemi tanár Jogfilozófiai előadásainak vázlatja* [The outlines of Professor István Losonczy's lectures on legal philosophy], Pécs 1948; LOSONCZY István, *Jogfilozófiai előadások* [Lectures on legal philosophy], Budapest, Szent István Társulat, 2002; *Abriß eines realistischen rechtsphilosophischen System*, Budapest, Szent István Társulat, 2002.

political events in Central-Eastern Europe. The left-wing (communist) overtake of power in Hungary in 1948/49 hampered not only political, economic and cultural boom after the war, consequently obstructing the establishment of the Western-European model of development, but – as we could realise later – resulted in a four-decade detour in the evolution of Hungarian legal philosophy.

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The final „attempt” was made by Imre Szabó’s volume *A burzsoá állam- és jogbölcsélet Magyarországon* (The bourgeois philosophy of state and law in Hungary) published in 1955.⁹² In this work, which mostly provides demagogue Marxist criticism of Hungarian „bourgeois” legal philosophy claiming that it was reactionary, extremist, ideological and supportive to the current regime. He accepts only some of the finds of positivist legal attitude at the turn of the century, which declared the idea of bourgeois radicalism and thus suggested a „progressive” view close to historical materialism. This „critical” approach as a result of the mentality of class fight have determined the dogmatic starting points for about thirty years whose acceptance has only provided access to the above mentioned authors and their theories. Marxist legal theory of the Soviet type was not concerned with traditions, which was regarded as valueless. In the second edition of his work in 1980 Imre Szabó confirmed his previous statements, moreover he was even more confirmed in his views as a result of the past decades.⁹³

The mid-1980s signalled the revival of Hungarian legal philosophy. By this time the Soviet type Marxism has lost ground in legal philosophical literature. Further confirmation of the previously unquestionable paradigms have not put researchers’ existence into risk any longer. For jurists concerned with legal theory, it was only a choice of values to decide which paradigm would be fundamental for them. One of the forms of finding new ways was provided by studies in Hungarian traditions of legal philosophy before the year of change, which were carried out by the concerned researchers still alive and the younger generations who view this kind of tradition as a neglected value and take responsibility for the rehabilitation of their predecessors’ work.

⁹² Imre SZABÓ, *A burzsoá állam- és jogbölcsélet Magyarországon* [The bourgeois philosophy of state and law in Hungary], Budapest, Akadémiai Kiadó, 1955.

⁹³ Imre SZABÓ, *A burzsoá állam- és jogbölcsélet...*, *op. cit.* Budapest, Akadémiai Kiadó, 1980, 21.