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What's Left? Felix Somló's Impact on Legal Theory and on Legal Doctrine

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Abstract. Felix Somló's *Juristische Grundlehre* is, without a doubt, a masterpiece of legal theory and has quickly become a classic of analytical jurisprudence. This paper will investigate what exactly its contribution to legal theory is. It concentrates on the reception of Somló's book in the German post-war legal theory and in doing so, the prevailing Somló-pictures (like 'Somló the Neo-Kantian') will be critically assessed. Some of his genuine ideas are still present, surprisingly even in a more technical field, the German doctrine of administrative law.
Keywords: Somló, analytical jurisprudence, legal interpretation, legal relation, administrative law

1. INTRODUCTION

Without any doubt, the *Juristische Grundlehre* was a masterpiece of legal theory – in its time.[1] It quickly became a classic of legal positivism and of analytical jurisprudence. It received many book reviews, some euphoric, most of them fair and some going deep into details. Also Somló received many congratulations from the *crème de la crème* of the German legal philosophy scene – Julius Binder, Rudolf Stammler, Hans Kelsen and others – after he had sent them a copy of the book.[2] Their letters and postcards are preserved in the national library in Budapest, most of them filed carefully between the pages of Somló's diary. All colleagues appreciated the book. Only Gustav Radbruch and Ernst Rudolf Bierling kept silent apparently, for whatever reason.[3]

It would not be satisfactory to only look back on what merits were attributed to Somló and it is preferable to celebrate Somló's book by stepping into its rich analyses – Can a substantial legacy in legal theory be identified? This is the aim of this paper and due to limited space, only a light indication of the most important points can be given.

The paper has three parts. The first part (section B) will introduce what other writers think about Somló's merits with some corresponding comments. In the second part

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[1] See, for instance, Szabadfalvi (2007b); Szabadfalvi (2010); Szabadfalvi (2007a); Funke (2012). A caveat: My paper relies heavily, but by no means exclusively, on my previous works about Somló. Replications – in substance and with regard to the references – are inevitable.

[2] See Funke & Sólyom (2013) 228 ff.

[3] It can be assumed that Somló sent a copy to Radbruch. Maybe Radbruch was offended by Somló's harsh criticism of *Grundzüge der Rechtsphilosophie,* see Somló (1927) 131 ff. Somló accused Radbruch of having misunderstood the hero of the young Neo-Kantian legal philosophers, Emil Lask (who also was a good friend of Radbruch), and Somló had good arguments for that. This must have been a blow for Radbruch. Even more pejorative reads Somló's comment on Radbruch in his diary (naturally Radbruch could not know that) 'This is not the legal philosophy German legal science is pregnant with. This is only the abort for the mother who wants to give birth to the Messiah.' (entry from the 8th November 1914, see Funke & Sólyom (2013) 111, translation from the German translation). For Bierling, whose contribution to legal theory is often underrated in my view, see below section C.

(section C) a usually overseen quality of the book, which applies not so much to its content, but to its form or its format will be highlighted. Finally section D will direct the reader's attention to a widely unknown Somló who is still present in German legal scholarship. It is not so much legal theory, but legal doctrine, the doctrine of public law that is involved here.

2. PICTURES OF SOMLÓ

There are some repetitive patterns of how Somló's *Juristische Grundlehre* is currently seen in the legal philosophy literature. They produce a certain image, or rather images, of the book. Under a closer scrutiny, such patterns only scratch the surface and do not fully grasp the complexity of the arguments developed in the book.

Checking Wikipedia gives an initial picture that Somló is an Austrian legal positivist, along with Hans Kelsen and Georg Jellinek.[4] The *Juristische Grundlehre* is indeed radically positivistic. Somló is famous for his purely positivistic definition of law – 'Law thus stands for the norms of a habitually obeyed, extensive and persistent supreme power.'[5] What is the point, though, of putting Somló on the record of Austria? More important, the issue of legal positivism does mainly refer to the first part of the book ('the concept of law') and not so much to the second part ('elements and consequences of the concept of law') – the picture is selective. After all, the crucial question is rather *how* the book gains its positivistic nature, and this question is not touched upon by such a labelling.

The second picture is value relativism. For instance, reading Karl Engisch's important introduction to legal philosophy shows that Somló was a representative of value relativism.[6] However, the Author does not think this qualification is very significant as Somló's value relativism was not of an original kind. It was more or less identical with the theories of Gustav Radbruch, Hermann Kantorowicz or Max Weber. In Somló's project, the issue of value relativism would have been a central element of the second part of his legal philosophy, of which the *Juristische Grundlehre* is only the first part, as is known from his correspondence.[7] The kind of epistemological normativism Somló displays in his posthumous *Gedanken zu einer Ersten Philosophie* may actually have involved a new openness toward 'absolute' standards in practical philosophy.[8] Therefore in Somló's oeuvre value relativism remains rather a vague idea.

[4] In English as well as in German, see https://en.wikipedia.org/wiki/Félix_Somló; https://de.wikipedia.org/wiki/Félix_Somló (last updated 8th March 2018, 'Félix' instead of 'Felix' is the original indication respectively).

[5] Somló (1927) 105.

[6] Engisch (1971) 246. Engisch draws upon Carl Emge who in turn referred to Somló (1909/10); see also Somló (1910/11).

[7] In a letter written to the Mohr publisher, Somló outlined two volumes. Volume one: 'Preconditions of legal science' (later on the *Juristische Grundlehre*), volume two: 'Preconditions of politics', which was supposed to embody the *Wertlehre* or legal axiology. However, later on Somló seems to have lost his course, because after having published the 'Grundlehre' he then planned to write a treatise *Ethics* first, which was presumably designed as standing between the two formerly planned volumes. Julius Moór mentions a manuscript 'Grundlegung der Ethik' (Groundwork of ethics) (Moór (1926) 13) which got lost. On all this see Funke & Sólyom (2013) 64, 69 and 85.

[8] See Somló (1926) (with an outline of a treatise on 'Ethics' on p. 106).

The third picture which many writers emphasize is that Somló was a Neo-Kantian.[9] The Author thinks that this statement is true but, as such, does not offer any insight as it is not exactly known what Neo-Kantianism was, or is.[10] Among others reasons, this follows from an inherent feature of Neo-Kantianism as a philosophy of science. Neo-Kantianism does not provide an external ground for academic studies, but the branches of science are referred to themselves. They have to explore their preconditions.[11] Of course Somló wrote the *Juristische Grundlehre* in the spirit of legal philosophers of Neo-Kantianism like Rudolf Stammler, Gustav Radbruch, and not forgetting Emil Lask. In a letter to Georg Lukacs, Somló characterizes his main philosophical sources: 'With regard to its philosophical background the book is located nearest to Windelband and Rickert, also to Lask. From this follows much concordance with Radbruch, but anyway there are deviations in some points, also with regard to Stammler.'[12] Somló developed an original interpretation of the basic ideas of the South-West wing of Neo-Kantian philosophy, namely the idea that legal science was an *empirische Kulturwissenschaft* (empirical cultural studies). He constructed an interesting idea of how the law is not just a natural fact but is still not identical with morality. Thus, to stick the badge of Neo-Kantianism to the *Juristische Grundlehre* does not so much characterize the book but conversely does contribute to the question of what Neo-Kantianism actually meant.[13]

The last picture is that many observers assume Somló had just imported the 19th century English law scholar John Austin's ideas into continental jurisprudence. The writings of the Kelsen-expert Stanley L. Paulson describe Somló as the 'carbon-copy' of Austin.[14] Surely Somló incorporated Austin's idea of a habit of obedience as an essential feature of law into his own concept of law, visible in the cited above definition. The dictum is misleading as Somló was fully aware of Austin's weaknesses, a mere identification of law with facts.[15] It is exactly the Neo-Kantian element of Somló's theory which is relevant here. Furthermore, in contrast to Austin Somló analyzed the concept of law within a framework which is adjusted to the whole legal order, facing all the complex processes of creating and applying the law, and not just like Austin as a set of imperatives. Somló and Austin are worlds apart.

[9] Notably the pertinent papers by József Szabadfalvi, see note 1, and especially Szabadfalvi (2003) 246 ff.; Szabadfalvi (2001) 113 f.; who is not alone anyway, see for instance Sauer (1949) 442. Other commentators emphasize the direct importance of Immanuel Kant, see Moór (1926) 12; Weyr (1920/22) 45 f.

[10] See the explorations in Alexy, Meyer, Paulson & Sprenger (2002); recent evaluations in Makkreel & Luft (2010); Warren & Staiti (2015).

[11] See Lepsius (2007) 331 ff.

[12] See Funke & Sólyom (2013) 63 (translation from the German translation).

[13] Notably, as a Neo-Kantian theory Somló's account is the object of criticism which applies to Neo-Kantian theories of law in general: They represent not really a theory of law, but merely a theory of legal science. We should keep in mind that Somló seems to have abandoned Neo-Kantianism in the last years of his life, see Moór (1926) 13; Funke & Sólyom (2013) 86. A 'third phase' of his research might have had begun.

[14] See Paulson (1992) 316; Paulson (1996) 217; see also Szabadfalvi (2001) 113 Szabó (2015) 429. A fair account of similarities and differences between Austin and Somló in Ződi (2018).

[15] More about this in Funke (2012) 156 f.

3. FORMAT AS A BLUEPRINT

There is a striking quality of the *Juristische Grundlehre* which has actually not yet been put into a standard pattern. The book was a blueprint for the idea of a pure theory of law. This, of course, applies to its content as the book represents an analytic, positivistic theory of law but also to its form.

The substantial analytical quality of the *Juristische Grundlehre* has already been widely acknowledged in legal theory. Two points should be mentioned in this respect: conceptual analysis and the central role of the legal norm. Somló, with a much greater strictness than his predecessors, established a kind of inquiry which only defines und unfolds a single concept – the concept of law. This goes hand in hand with the idea that the concept of law must be grounded on the concept of a norm. Therefore the concept of the legal norm became fundamental.[16] Somló and his followers conceived legal theory as a theory of legal norms.[17] Yet this position is vulnerable as it turns legal theory away from a lot of important issues e.g., justification, argumentation, communication. It may even be observed as something like a reification of the legal norm, which became a little fetish of legal theory.

Nevertheless, the project of purifying legal theory was widely acknowledged. One reason for this is that Somló put his ideas into a particular format[18] – all assembled in one book. The book carries therefore the appealing idea of managing the legal order and of mastering the knowledge of legal science just by reference to it. The book would lay bare the grammar of the legal order and thus could guide every inquiry into that legal order. The whole thing of law, again, packed into one book. Some more relevant features go hand in hand with this: Since the book is a *Lehre* – a lesson, a doctrine –, it conveys an ambivalent status. It has an introductory, explanatory character and is insofar descriptive as well as it gives advice or even instructions and is insofar prescriptive. Everything has to be kept within the two book cover so the author has to make it rather short and thus, the knowledge is presented in a condensed manner. It is understandable that Julius Binder, responding after Somló had sent him a copy of the *Juristische Grundlehre,* is complaining about the 'assertoric character' of the book.[19] Binder is right – he has identified a quality of the book which is intrinsically connected with its format.

However, Somló was not the first. Around the turn of the 20th century, the German law professor Ernst Rudolf Bierling had written a treatise called *Juristische Prinzipienlehre* (Doctrine of juristic principles) which was published in five volumes between 1894 and 1917.[20] The idea of a 'Juristische Prinzipienlehre' is very close to the project which Somló

[16] In his diary Somló noted on the 30.12.1914: 'Idea of a general nomology, as a common basic doctrine for all disciplines dealing with rules' (Funke & Sólyom (2013) 118, translation from the German translation). See then the sketch of a nomology in the first chapter of the *Juristische Grundlehre* (Somló (1927) 55 ff.) and the nice table at 177.

[17] See the shibboleth in Röhl & Röhl (2008) 189: 'The law consists of norms and solely of norms.'

[18] Assessing things this way may sound unfamiliar but it can be a legitimate part of a research agenda in jurisprudence, see Funke (2017b).

[19] Letter from the 30th August 1917, Funke & Sólyom (2013) 228.

[20] Bierling (1894, 1898, 1905, 1911, 1917). These volumes rest on the first elaboration of the issue, published as *Kritik der juristischen Grundbegriffe* (Critique of the basic juristic concepts), Bierling (1877, 1883). Bierling (1841–1919) was a professor for canon law, penal law and criminal proceedings at the University of Greifswald far in the north of Germany. On Bierling see Bahlmann (1995); Yoon (2009); Funke (2009). Bierling's and Somló's theories are compared in detail in Funke (2004) 145 ff., 197 ff.

started with the 'Juristische Grundlehre'. Somló radicalized Bierling's ideas, firstly by a purification of Bierling's investigations, which were infiltrated with psychology and legal doctrine, and secondly by pushing all the knowledge into one volume, compared to the five Bierling needed. Thus the *Juristische Grundlehre* became a blueprint for a pure analytic legal theory. Notably Hans Kelsen's 'pure theory of law', published as a book 17 years later,[21] would not have been possible without Somló's substantial refinement of Bierling's basic idea. Obviously Kelsen was fascinated by the notion of packing all the basic knowledge of legal theory into one book.

It is understandable why Somló meditated in his diary respectfully, soulfully, and regretful about Bierling: 'How good it would have been if I had looked for a mentor in legal philosophy during my studies. Knowing about Bierling and going to Greifswald. I want to get to know this old man now.'[22] Kelsen, in one of the letters he wrote to Somló, identified both, Bierling as well as Somló, as the leading representatives of the German speaking legal theory of their time.[23] This remark surely is not just a compliment, written in adherence to the rules of academic courtesy: Kelsen expresses a justified statement here.

Bierling responded to the publication of the *Juristische Grundlehre* by other means. He wrote an article worth reading about what he conceived as his and Somló's common project: *Zur Verständigung über Begriff und Aufgabe der Juristischen Prinzipienlehre* (Coming to terms about the concept and the task of a Doctrine of Juristic Principles).[24] Here Bierling asks for an agreement, more or less addressed directly to Somló. As far as is known, Somló did not react to this amicable offer.

4. SOMLÓ IN MODERN DAY GERMAN LEGAL SCHOLARSHIP

Somló's *Juristische Grundlehre* is still a prominent reference in contemporary legal scholarship. There are three issues: One is about legal theory in the strong, narrow sense, one is about legal methodology and one touches upon legal doctrine – namely the doctrine of administrative law.

4.1. Legal theory – The essence and substance of law

Adolf Merkl, besides Hans Kelsen, was one of the leading figures of the Vienna school and wrote a good deal. But he did not set many footnotes. Thus it is highly significant when Merkl exceptionally does so. In his groundbreaking paper *Das doppelte Rechtsantlitz*

[21] Kelsen (1934).

[22] Entry from the 28th December 1914, Funke & Sólyom (2013) 118 (translation from the German translation).

[23] 'I think the Hungarian legal science should be proud of your last contribution, since with that piece it places itself besides Bierling besides the best German works on the field of legal theory.' [Kelsen to Somló, 22th November 1916, see Funke & Sólyom (2013) 226]. Some say that Kelsen had helped Somló to publish the *Juristische Grundlehre* [for instance Varga (1985) 32; Gönczi (1995)], but this is most likely a legend. Kelsen had indeed given an opinion about the *Juristische Grundlehre,* but to the J. C. B. Mohr publisher (Tübingen), and it came too late. In the meantime Somló had come to terms with Felix Meiner (Leipzig), where the *Juristische Grundlehre* eventually was published. The comparativist Andreas (Bertalan) Schwarz facilitated the contact to Meiner. We don't have any indication that Kelsen was in touch with Felix Meiner [the whole story is reconstructed in Funke & Sólyom (2013) 84 f.].

[24] Bierling (1917/1918).

(The double face of law) Merkl expresses his gratitude to Somló on the first pages[25] and refers to Somló's idea of a strong separation between formal and material analysis of law. This idea coined Merkl's investigation into the dynamics of the legal order, and later on shaped Kelsen's pure theory of law.[26] Kelsen explicitly picked up Somló's distinction of *Rechtsinhaltsbegriffe* (substantial legal concepts, or doctrinal concepts of law) and *Rechtswesensbegriffe* (formal legal concepts, or essential concepts of law).[27] This distinction is one of the main issues of the *Juristische Grundlehre.* Somló holds there are concepts which, as a part of the concept of law itself, are essential to the law as such. Legal norms cannot give those concepts meaning, because the concepts have their meaning a priori to any particular legal determination. Those concepts are, according to Somló, *mitgesetzt* – they are set automatically with the concept of law.

This distinction is still present today in Germany because there has been a kind of a renaissance of the pure theory of law in recent years.[28] Some scholars aim to develop and defend a conception of law and legal science which is obliged to Kelsen and Merkl, and occasionally they refer to Somló's distinction.[29]

This raises a question which had already been addressed to Somló:[30] Is there actually something like conceptual necessity in law, and first and foremost, is the mere concept of law really essential to every juristic inquiry?[31] These issues cannot be discussed here in detail, but it should be indicated that those essential concepts may simply stem from a universalization of doctrinal concepts. Significant doctrinal concepts have just been stripped off their context[32] and thus, are not essential. General jurisprudence, as the branch of legal scholarship dealing with the basic concepts of law, would then be a mere empirical universalization and eventually would not be a genuine philosophical discipline (or so some arguments run).

Nevertheless those concepts may be helpful in doctrinal issues. This point will be elaborated in section 4.3. However, in section 4.2., another playing field for the distinction of form and content has to be considered – legal interpretation.

4.2. Legal Interpretation

The *Juristische Grundlehre* also deals with the classical issue of legal interpretation. In Chapter 12, *Die Deutung und Anwendung des Rechts* (Interpretation and application of law), the reader can find, *inter alia,* a rich assessment of the problem of gaps in the law.

[25] Merkl (1993a) 229 Fn. 4. See also, for substantial similarities, Merkl (1993b) 446: The legal source as the form of law would at the same time be an issue of the content of the law – this is a genuine idea one can find in the *Juristische Grundlehre.* In a long letter to Somló, Merkl expresses his appreciation of the *Juristische Grundlehre* and announces a review or something similar. Unfortunately such a review has never been published. See also Funke (2004) 228.

[26] Verdross (2010) 1064, characterizing Kelsen's pure theory: 'Hence legal theory can only provide a frame within the *Rechtsinhaltswissenschaft,* viz. the *Rechtsdogmatik* can unfold.' The footnote – 'About that fundamentally' – refers to Somló's *Juristische Grundlehre.*

[27] Kelsen (1925) 5, 18, 375.

[28] See for instance Jestaedt (2013); analysis and critique: Funke (2018).

[29] See Jestaedt (2006) 20 Fn. 58, 78.

[30] Among others: Weyr (1920/22) 115.

[31] See Raz (2005).

[32] However this is an objection which Jestaedt raises against the traditional legal theory, Jestaedt (2006) 78.

These considerations are still recognized nowadays as being helpful.[33] Particular attention attracted Somló's separation of necessary and content-dependent (positive law-dependent) rules for legal interpretation, which of course rests on his differentiation of essence and substance in law.[34] On one side Somló gave a clear account of those necessary prescriptions (like the rules of grammar), which is respected as being impressive.[35] On the other side Somló investigated thoroughly the possibility and the scope of legal provisions about legal interpretation. In the German-speaking literature on legal interpretation the idea of a constitution-based, or statute-based legal methodology is still very prominent.[36] Frequently, Somló provides the keywords here.[37]

4.3. Legal doctrine: Rechtsverhältnislehre in administrative law

In the last fourth of the *Juristische Grundlehre,* in the chapter about *Rechtspflicht und Rechtsgewährung* (legal duty and legal granting), Somló incidentally drops an interesting remark. Concluding an extensive analysis of the legal positions created by legal norms, Somló casually writes that 'The relations set by any legal norms, may they exist between the legal power and the subordinate or among the subordinates, can also be labelled as legal relationships *(Rechtsverhältnisse).*'[38] Depending on the way German public law scholars where socialized, they could almost be electrified by those words and the whole chapter as well. This is also true in particular when they deal with administrative law. For nearly 50 years, the contemporary German doctrine of administrative law has been focused on the question if the norms of administrative law can and should be conceptualized as legal relationships.[39] This question may sound as being unimportant or technical but is an eminent one for several reasons. One reason is that the idea of a legal relationship in administrative law puts the administration and the citizen on one level in a way. Thereby traditional ideas of subordination dissolve. Also a fundamental role of the legal relationship could push aside the classic way of treating administrative law. 'Classic' in this respect means the way administrative law was developed within the monarchic constitution of the 19th century, which guaranteed the *Rechtsstaat,* the rule of law, but did not provide for a democracy. Such a rule of law-administrative law only strives to restrict the administration by a system of legal acts, especially the administrative act. However, the rule of law-administrative law does not ask which individual rights do actually constitute the power of the administration, in relation to the citizens.

Thus it is not by chance that after the Word War II one of the major German contributions to a renewed conception of administrative law heavily draws on Somló. German public law scholar Hans Heinrich Rupp (born 1926) was one of the leading figures in the renewal of the German administrative law doctrine which started in the late 1950s,

[33] Rückert (2017) 969.

[34] Somló could resort to his seminal paper *Die Anwendung des Rechts* (The application of law), Somló (1911).

[35] Somló (1927) 379 ff. 'impressive': Rückert (2017) 970 Fn. 63.

[36] Reimer (2016) 40 ff.; Müller & Christensen (2009) 293; Müller & Christensen (2012) 229; Christensen & Kudlich (2001) 280 ff.; Schenke (2012) 320 ff.; Michael (1997) 45; Engisch (1989) 93. Some even talk of 'Methodenrecht' (law of methods).

[37] See recently Rückert (2017) 970.

[38] Somló (1927) 443 (translation from German, the word 'Rechtsverhältnisse' left in German).

[39] A classic volume is Achterberg (1982); the debate is documented and balanced in Pietzcker (1997); Gröschner (1997); Danwitz (1997).

a process of constructing a forcefully democratic and constitution-based conception of administrative law. In his groundbreaking *Grundfragen der heutigen Verwaltungsrechtslehre* (Fundamental questions of the contemporary administrative law doctrine), a Tübingen *Habilitation* published in 1965, Rupp however especially refers to Somló's subtle analyses of legal positions.[40] In doing so, Rupp without further ado neglects Somló's separation of form and content of law. Looking closely to the relevant chapter of the *Juristische Grundlehre,* Somló himself seems to blur the line here. Somló just gives a clear analysis of how the legal power can establish legal relations to its addressees. Somló demonstrates that the position of a legal duty does not necessarily involve the position of a legal claim or a claim right.[41] Among other things, Somló gives a clear account of fundamental freedoms, as subjective rights.[42] He labels the position of freedom also as the (legal) *Dürfen* (allowed, permitted behavior). Also Somló emphasises that differentiation is required whether a claim aims at an action or at an omission.[43] Finally, Somló stresses that the substantial claim – for omission or remediation of an infringement of liberty – should not be identified with the procedural claim right.[44] These analyses were picked up by Rupp.[45] They enabled him to develop a very rich and complex system of legal positions. It operates as a framework for further analysis of substantial administrative law as well as of the law of administrative adjudication, and even of government liability law. In particular, and most notably, Rupp could develop an elaborated account of judicial review through administrative courts on the one side, and of the claims and rights where this review is grounded, on the other side.

I mentioned that Somló himself crossed the line between essence and content of law. This observation deserves attention.[46] Somló incidentally mentions that he would not talk about the *Polizeistaat,* police state, but about the *Rechtsstaat.* According to Somló, in the *Rechtsstaat* a general directive prevails, under which the state imposes sanctions only when the respective behavior had been forbidden in advance.[47] Certainly the *Rechtsstaat* is a matter of substantial constitutional law, not of the formal concept of law. Apart from the question of the line between form and content, the question of how the *Rechtsstaat* can be interpreted is at stake today, when the doctrine of the legal relationship, *Rechtsverhältnis,* is discussed in German administrative law. What the rule of law really is about depends on how concrete administrative law issues are handled. Therefore it is even the doctrine of government liability law, which seems to be only of technical importance, where Somló can be of great help.

[40] Rupp (1991) 262 ff. About Rupp see Funke (2017a).

[41] On the conceptual level, Somló does not differentiate between claim and claim-right, but he does so substantially, see Somló (1927) 447. See also Funke (2004) 268.

[42] Somló (1927) 451.

[43] Somló (1927) 451.

[44] Somló (1927) 459.

[45] Certainly Rupp ignores Somló's distinction of imperatives and promises and of the respective kinds of norms. I think this is a wise decision since the distinction fails. It mixes up legal statics and legal dynamics (see Funke (2012) 160 f., with further references). An analysis of *given* law cannot reach to any relation between law-subjects and the 'law-giver'. This point is actually a commonplace among the few German writers who have commentated about Somló's idea. By comparison, Wesley Newcomb Hohfeld strictly sticks to legal statics. This restriction makes Hoheld's and Somló's approaches incommensurable in a way [for detailed comparison see Szabó (2017)].

[46] On this, see also Sólyom (2018).

[47] Somló (1927) 456.

So it was not really surprising to find the motto of a recently submitted voluminous Habilitation on government liability law (*Folgen hoheitlicher Rechtsverletzungen. Theorie und Dogmatik des öffentlichen Reaktionsrechts* – Consequences of governmental violations of rights. Theory and doctrine of the public law of state responsibility), written by the Bonn public law professor Heiko Sauer:[48] The motto just replicates the first three sentences of the *Juristische Grundlehre,* and of course the treatise walks in Somló's shoes.

5. CONCLUSIONS

Concluding, with a touch of a celebratory sentimentality, the *Juristische Grundlehre* is 100 years old now but Somló is still with us. His book and its reception prove precisely what Hans Georg Gadamer had said about the hermeneutical significance of temporal distance: 'Time is no longer primarily a gulf to be bridged because it separates; it is actually the supportive ground of the course of events in which the present is rooted.'[49]

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[49] Gadamer (2013) 308.

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