

# SARADŃA PRAWNOG FAKULTETA U NOVOM SAĐU SA INOSTRANCTVOM

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УДК

Предато:

BIBLID: 0550-2179,37(2003),1-2;p.273-283

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## NEO-KANTIAN LEGAL PHILOSOPHICAL THINKING IN HUNGARY

Three great periods are to be distinguished (natural law, legal positivism, Neo-Kantianism) – considering the most outstanding representatives–in the history of legal philosophy in Hungary until the mid-twentieth century. When we describe the Hungarian tradition of legal philosophy, two general remarks are to be mentioned.<sup>1</sup> Firstly, we have

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<sup>1</sup> See from the literature on the subject of History of hungarian legal philosophy: *Tivadar Pauler*, Adalékok a hazai jogtudomány történetéhez [Studies on history of Hungarian jurisprudence], Budapest, Magyar Tudományos Akadémia, 1878; *Bódog Somló*, Die neuere ungarische Rechtsphilosophie, in: *Archiv für Rechts- und Wirtschaftsphilosophie*, 1 (1907-08) pp. 315-323.; *Ferenc Finkey*, A tételes jog alapelvei és vezéreszméi [Principles and ideas of positive law], Budapest, Grill Károly Könyvkiadóvállalata, 1908; *Barna Horváth*, Die ungarische Rechtsphilosophie, in: *Archiv für Rechts- und Wirtschaftsphilosophie*, 24 (1930) pp. 37-85.; *Gyula Moór*, Was ist Rechtsphilosophie? in: *Archiv für Rechts- und Sozialphilosophie*, 36 (1943) pp. 3-49.; *Imre Szabó*, A burzsoá állam- és jogbölcselet Magyarországon, Budapest [The bourgeois philosophy of state and law in Hungary], Akadémiai Kiadó, 1955; *Tibor Hanák*, Az elfelejtett reneszánsz. A magyar filozófiai gondolkodás századunk első felében [The forgotten renaissance. Hungarian philosophical thinking in the first half of our century], Bern, Európai Protestáns Magyar Szabadegyetem, 1981; *Péter Szilágyi*, Fejezetek Az ELTE Állam- és Jogelméleti Tanszékének történetéből [Chapters from history of ELTE's department of theory of law], Budapest, ELTE Állam- és Jogtudományi Kar, 1984, pp. 105-153.; *Mihály Samu – Péter Szilágyi*, Az állam- és jogelmélet oktatásának története egyetemünkön [Teaching history of theory of state and law in our university], in: Horváth Pál (ed.): *Az Állam- és Jogtudományi Kar szerepe a magyar jogtudomány fejlődésében*, Budapest, ELTE Állam- és Jogtudományi Kar, 1985, pp. 313-392.; *Loss-Szabadjalvi-Szabó-H.Szilágyi-Zódi*, *Portrévázlatok a magyar jogbölcseleti gondolkodás történetéből* [Portrays from the history of legal philosophy in Hungary], Miskolc, Bíbor Kiadó, 1995; *József Szabadjalvi*, *Jogbölcseleti hagyományok* [Traditions of legal philosophy], Debrecen, Multiplex Media – DUP, 1999; *Péter Szilágyi*, *Jogbölcselet* [Legal philosophy], in:

to describe a widely known thesis proposing that Hungarian legal thinking is characterized by a lack of originality. Due to Hungary's geographical situation and historical-cultural ties, German and Austrian orientation has been strong. Besides this influence, however, the attitudes of philosophers of law have certainly been influenced by other trends of legal philosophy, such as French or, even to a larger extent, English ones. Secondly, the specific feature of the historical development of this region of Eastern Europe has to be outlined, which has exerted a dual impact on jurisprudence and philosophical disciplines of law. In Hungarian legal thinking the doctrine of 'Corpus Iuris' as a feature of legal conservatism as well as an up-to-date interpretation of the most current European legal philosophical trends for Hungarian jurisprudence and legal education have simultaneously been experienced. The most remarkable Hungarian philosophers of law have mostly been characterized by this specific feature.

The period after the turn of the 19th and 20th 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 emphasizing views of epistemology, methodology and modern value doctrines. This process in Hungarian legal philosophy is connected to the activity of *Bódog Somló* (1873-1920), whose oeuvre resulted in abolishing the previous falling behind in the development and foundation of Neo-Kantian legal philosophy in Hungary.<sup>2</sup>

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 Gyula Pikler's theoretical attitude based on natural science and psychology<sup>3</sup> and partly materialistic philosophy of history. He focused his attention on naturalist sociological problems. During this period Somló became, besides Ágost Pulszky and Gyula Pikler, the third outstanding representa-

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Magyarország a XX. században. V. köt., ed. István Kollega Tarsoly, Szekszárd, Babits Kiadó, 2000, pp. 39-47.; *László Percz*, A belátásos elmélettől a mezőelméletig. A magyar jogfilozófia fél évszázada: Pikler, Somló, Moór, Horváth [From theory of discretion to theory of law field], in: *Századvég*, (1998) pp. 73-94.

<sup>2</sup> *Bódog Somló's* main works of legal philosophy: *Állami beavatkozás és individualizmus* [Stateintervention and individualism], Budapest, Politzer, 1903; *Jogbölcsélet* [Philosophy of law], Pozsony, Stampfel, 1901; *Jogbölcséleti előadások* [Lectures on jurisprudence], Kolozsvár, Sonnenfeld, 1906; *Masstäbe zur Bewertung des Rechts*, in: *Archiv für Rechts- und Wirtschaftsphilosophie*, 3 (1909-10) pp. 508-522.; *A jog értékmérői* [Values standards of law], in: *Huszadik Század*, 11 (1910) pp. 1-14.; *Das Wertproblem*, in: *Zeitschrift für die philosophie und philosophische Kritik*, (1912) pp. 66-95.; *A jog alkalmazásáról* [About legal application], in: *Jogállam*, 10 (1911) 2-3, pp. 97-103. and 177-189.; *Die Anwendung des Rechts*, *Zeitschrift für das privat und öffentliche Recht der Gegenwart*, 38 (1911) pp. 55-74.; *A szokásjog* [The legal custom], in: *Farkas Lajos emlékkönyv*, Kolozsvár, Stein J., 1914, pp. 339-369.; *A helyes jog elméletéről* [On the theory of right law], Kolozsvár, 1912-13; *Juristische Grundlehre*, Leipzig, Verlag von Felix Meiner, 1917 [2. ed: 1927, and reprinted: Aalen, Scientia Verlag, 1973]; *Jogbölcsészlet* [Legal philosophy], Budapest, Grill Károly Könyvtudományi Intézet, 1920; an essay of Pikler and Somló: *Gyula Pikler – Bódog Somló*, *Der Ursprung des Totemismus*. Ein Beitrag zur materialistischen Geschichtstheorie, Berlin, K. Hoffmann Rechtswissenschaftlicher Verlag, 1900

tive 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 Bódog Somló, besides Rudolf Stammler, Gustav Radbruch, Hans Kelsen and Alfred Verdross is regarded as a great representative of European Neo-Kantian philosophy of law.

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 monopole capitalism of that time demanded a revision of the functions and institutions of law, state and politics. In his *Jogbölcseleti 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.<sup>4</sup>

Somló's work resulted in propagating the mentality of Neo-Kantian tendency in legal philosophy in Hungary. 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.<sup>5</sup> At the beginning of the 1920s Barna Horváth called Moór the founder

<sup>4</sup> Prima philosophia. Gedanken zu einer erster Philosophie, Berlin und Leipzig, Walter de Gruyter & Co., 1926

<sup>5</sup> Gyula Moór's main works of legal philosophy: Stammler "Helyes jogról szóló tana", Budapest [Stammler's "rightlaw theory"], 1911; A jog fogalma és az anarchizmus problémája Stammler jogfilozófiájában [The concept of law and problem of anarchism in Stammler's legal philosophy], in: Athenaeum, (1911) 4, pp. 1-35.; Die Reform des ungarischen Schwurgerichtes, in: Der Rechtsgang, 2 (1914) 2, pp. 142-204.; Macht, Recht, Moral. Ein Beitrag zur Bestimmung des Rechtsbegriffes, Szeged, 1922; Bevezetés

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 Rudolf Stammler and Bódog Somló. Hans 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.<sup>6</sup> 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 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

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a jogfilozófiába [Introduction to philosophy of law], Budapest, 1923; Eine Rechtsphilosophie des "kritischen Relativismus", in: Archiv für Rechts- und Wirtschaftsphilosophie, 17 (1923-24) pp. 84-102.; Das Logische im Recht, in: Internationale Zeitschrift für Theorie des Rechts, (1927-28) 3, pp. 157-203.; Zum ewigen Frieden. Grundriss einer Philosophie des Pazifismus und des Anarchismus, Leipzig, 1930; A jogi személyek elmélete [Theory of legal entity], Budapest, Magyar Tudományos Akadémia, 1931; Reine Rechtslehre, Naturrecht und Rechtspositivismus, in: Gesellschaft, Staat und Recht. Festschrift gewidmet Hans Kelsen zum 50. Geburtstag, Wien, 1931, pp. 58-105.; Creazione e applicazione del diritto, in: Rivista Internazionale di Filosofia del Diritto, 14 (1934) pp. 653-680.; Das Problem des Naturrechts, in: Archiv für Rechts- und Sozialphilosophie, 28 (1935) 3, pp. 325-347.; Szociológia és jogbölcselet [Sociology and legal philosophy], Budapest, 1934; Reine Rechtslehre. Randbemerkungen zum neuesten Werk Kelsens, in: Zeitschrift für öffentliches Recht, 15 (1935) 3, pp. 330-343.; Jogfilozófia [Philosophy of law], Budapest, Magyar Élet, 1936; Öffentliches und privates Recht, in: Revue Internationale de la théorie du droit, 12 (1938) 1, pp. 9-21.; Das Rechtssystem, in: Revue Internationale de la théorie du droit, 1 (1939) pp. 1-13.; Der Wissenschafts-Charakter der Jurisprudenz, in: Zeitschrift für öffentliches Recht, 20 (1940) 1, pp. 20-37.; A jog mivolta az újabb kultúrfilozófia megvilágításában [The nature of law in light of the new tendency in cultural philosophy], in: Athenaeum, (1942) 3, pp. 237-252.; Recht und Gesellschaft, in: Zeitschrift für öffentliches Recht, 21 (1942) 5, pp. 537-567.; Was ist Rechtsphilosophie?, in: Archiv für Rechts- und Sozialphilosophie, "Ungarn-Heft", 37 (1943) pp. 3-49.; A szabad akarat problémája [Problem of free will], Budapest, 1943; Újkantianizmus és újhegelianizmus a jogfilozófiában [Neo-Kantianism and neo-Hegelianism in the philosophy of law], in: Magyar Jogi Szemle, (1943) 3, pp. 71-85.; A jogbölcselet problémái [Problems of philosophy of law], Budapest, 1945; Tegnap és holnap között [Between yesterday and tomorrow], Budapest, Révai, 1947

<sup>6</sup> Cf. *József Szabadfalvi*, Moór Gyula Kelsen-interpretációja [Gyula Moór's Kelsen-interpretation], in: Hans Kelsen: Az államelmélet alapvonalai, Miskolc, Bíbor Kiadó, 1997, pp. 105-121.

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, Bódog 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.<sup>7</sup> His career was first promoted by Gyula 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*' according to Hans 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, psychologism, etc.) and their relation to each other were regarded as a breakthrough 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. Barna Horváth's susceptibility to empirism can be attributed to two reasons. On one hand, he as practising lawyer realised contradictions in norms and reality, which

<sup>7</sup> *Barna Horváth's* main works of legal philosophy: Die Idee der Gerechtigkeit, in: Zeitschrift für öffentliches Recht, 7 (1928) pp. 508-544.; Természetjog és pozitivizmus [Natural law and legal positivism], in: Társadalomtudomány, 8 (1928) pp. 212-247.; Gerechtigkeit und Wahrheit, in: Internationale Zeitschrift für Theorie des Rechts, 4 (1929) pp. 1-54.; Die Gerechtigkeitslehre des Sokrates und des Platon, in: Zeitschrift für öffentliches Recht, 10 (1930) pp. 258-280.; Die Gerechtigkeitslehre der Vorsokratiker, in: Studi Filosofico-Giuridici dedicati a Giorgio Del Vecchio, Modena: Societa Tipografica Modenese, 1930, pp. 336-372.; Die Gerechtigkeitslehre des Aristoteles, Szeged, Szeged Városi Nyomda, 1931; Hegel und das Recht, in: Zeitschrift für öffentliches Recht, 12 (1932) pp. 52-89.; Bevezetés a jogtudományba [Introduction to jurisprudence], Szeged, Szeged Városi Nyomda és Könyvkiadó Rt., 1932; Rechtssoziologie. Probleme des Gesellschaftslehre und der Geschichtslehre des Recht, Berlin-Grünwald, Verlag für Staatswissenschaften und Geschichte G.m.b.H. 1934; Sociologie juridique et Théorie Processuelle du droit, in: Archives de Philosophie du droit et de Sociologie Juridique, 5 (1935) pp. 181-242.; Macht, Recht, Verfahren, in: Archiv für Rechts- und Sozialphilosophie, 30 (1936) pp. 67-85.; A jogelmélet vázlata [Sketch of legal theory], Szeged, Szeged Városi Nyomda és Könyvkiadó Rt., 1937; Der Sinn der Utopie, in: Zeitschrift für öffentliches Recht, 20 (1940) pp. 198-230.; Der Rechtsstreit des Genius. I. Sokrates, in: Zeitschrift für öffentliches Recht, 22 (1942) pp. 126-162.; Der Rechtsstreit des Genius. II. Johanna, in: Zeitschrift für öffentliches Recht, 22 (1942) pp. 295-342.; Der Rechtsstreit des Genius. II. Johanna, in: Zeitschrift für öffentliches Recht, 22 (1942) pp. 395-460.; Prolegomena zur Soziologie, in: Archiv für Rechts- und Sozialphilosophie, "Ungarn-Heft", 37 (1943) pp. 50-67.; Angol jogelmélet [English legal theory], Budapest, Magyar Tudományos Akadémia, 1943

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, *vica 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 professional 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.

Barna 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.

From the late 1930s we can see attempts by a new and highly talented generation, mostly by the students of Gyula Moór and Barna Horváth. The first publications by Moór's students *József Szabó*<sup>8</sup> and *Kornél Solt*<sup>9</sup> and by Horváth's students *István Bibó*<sup>10</sup>,

<sup>8</sup> *József Szabó*, *A jog alapjai* [The foundations of law], Budapest, Magyar Társadalomtudományi Társulat, 1938; *A jogászai gondolkodás bölcselete* [Philosophy of lawyer's thinking], Szeged, 1941; *Hol az igazság? A bírói lélektan problémái* [Where is the justice? Problems of judge's psychology], in: *Társadalomtudomány*, 22 (1942) 1, pp. 1-55.; *Wahrheit, Wert und Symbol im Rechte*, in: *Archiv für Rechts- und Sozialphilosophie*, "Ungarn-Heft", 37 (1943) pp. 101-121.; *Der Rechtsbegriff in einer neutralistischen Beleuchtung*, in: *Österreichische Zeitschrift für öffentliches Recht*, 1 (1948) 3, pp. 291-331.

<sup>9</sup> *Kornél Solt*, *A normatív tényálladási elemek problémája* [The problem of normative elements], Budapest, Szent István Kiadó, 1940; *A desuetudo problémája* [The problem of desuetudo], in: *Magyar Jogi Szemle*, (1944) 3, pp. 82-94.

<sup>10</sup> *István Bibó*, *Kényszer, jog, szabadság* [Compulsion, law, liberty], Szeged, Szegedi Városi Nyomda és Könyvkiadó Rt., 1935; *Le dogme du "bellum justum" et la théorie de l'infaillibilité juridique. Essai critique sur*

*Tibor Vas*<sup>11</sup>, *Vera Bolgár* and *István Losonczy*<sup>12</sup> from Pécs are considered as attempts to definitely discredit the Neo-Kantian model. 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 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.

Before accounting on the events after the 'year of change', we are to outline the contemporary system of international connections of the Hungarian philosophy of law and a few, internationally recognised results which can be regarded as examples for those being concerned with legal philosophy in Hungary.

Only our Neo-Kantian legal philosophers, who were in everyday working contact with their European colleagues, managed to gain international reputation. A good example of this is the connection between Hans Kelsen—an exceptional personality of the 20th-century philosophy of law—and Hungarian philosophers of Neo-Kantianism, which is revealed by, for example, the correspondence of Somló and Kelsen and the friendship between Moór and Kelsen or, in spite of a critical attitude, by the relationship between Horváth and Kelsen. This latter is illustrated by the fact that Barna Horváth's study trip to England in 1928/29 was parallel promoted by Moór and Kelsen as colleagues. Two of Kelsen's translations can also provide example for this connection through correspondence on the occasion that in 1927 Gyula Moór translated his *Allgemeine Staatslehre*<sup>13</sup> into Hungarian, and in 1935/37 István Bibó translated his *Reine Rechtslehre*<sup>14</sup>. Another fact is also to be mentioned that in 1935 while Gyula Moór was dean of the faculty of law Rudolf Stammler—the founding father of Neo-Kantian legal philosophy—was awarded

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la théorie pure du droit, in: *Revue Internationale de la Theorie du Droit*, 10 (1936) 1, pp. 14-27.; Rechtskraft, rechtliche Unfehlbarkeit, Souveränität, in: *Zeitschrift für öffentliches Recht*, 17 (1937) 5, pp. 623-638.

<sup>11</sup> *Tibor Vas*, 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 observational theory], Kecskemét, Szellem és Élet, 1937

<sup>12</sup> *István Losonczy*, Über die Möglichkeit und den Wissenschaftscharakter der Rechtswissenschaft, in: *Zeitschrift für öffentliches Recht*, 17 (1937) 2, pp. 145-194.; A funkcionális fogalomalkotás lehetősége a jogtudományban [Possibility of functional concept-making of jurisprudence], Budapest, Királyi Magyar Egyetemi Nyomda, 1941; Jogfilozófiai előadásainak vázlata [Sketch of legal philosophy lectures ], Pécs, 1948

<sup>13</sup> *Hans Kelsen*, Az államelmélet alapvonalai [Characteristic features of state theory], trans. Gyula Moór, Szeged, 1927, the original work: *Hans Kelsen*, Grundriss einer allgemeinen Theorie des Staates. Als Manuskript gedruckt, Wien, 1926, See about Moór-Kelsen's correspondence: *Csaba Varga*, Documents de Kelsen en Hongrie: Hans Kelsen et Julius Moór, in: *Droit et Société*, (1987) 7, pp. 337-352.

<sup>14</sup> *Hans Kelsen*, Tiszta Jogtan [Pure theory of law], trans. István Bibó, Budapest, ELTE Bibó István Szakkollégium, 1988, See about events and correspondence of translation: *Csaba Varga*, Bevezetés Hans Kelsen: Tiszta Jogtan c. művéhez [Introduction to Hans Kelsen's Pure theory of law], and *András Lengyel*, Bibó István Kelsen-fordítása [István Bibó's Kelsen-translation], in: *Délmagyarország*, 26 October 1991

doctor of honour at the university of Budapest. Then mainly the students of Moór and Horváth held close contacts with Alfred Verdros of Vienna.

It seems to be evident, however, that this sort of close and often friendly contact could be gained only by scientific achievement, that is our Neo-Kantian theorists were supposed to appear on the scientific 'market' with internationally recognised works. Among them the most outstanding was Bódog Somló's *Juristische Grundlehre* (1917)<sup>15</sup> and Barna Horváth's *Rechtssoziologie* (1934)<sup>16</sup> which have been widely cited and are found in large Western-European libraries. Besides this, studies written by the above mentioned authors and mainly by Gyula Moór in German were occasionally referred to by European contemporaries during the period between the two World Wars. A point of interest in Somló's work is that the first edition in 1917, published by Meiner in Leipzig, was promoted by Hans Kelsen. Due to favourable welcome and wide interest, the same publishing company published the work ten years later again, then in 1973 Scientia Verlag found Somló's main work worth having a third edition too. No one of Hungarian studies in legal philosophy has achieved such success. Only Barna Horváth's work mentioned above is similarly widely known since after being published at the famous publisher in Berlin in 1934, it drew the attention of colleagues in Europe and overseas. His considerations were analysed and criticised by such remarkable jurists as Darmstaedter, Lacambra, Gurvitch, Pound, Timasheff, Verdross, Fikentscher, Tammelo, Marcic and others. Despite being criticised, his legal theory has proved to survive and the first part of his *Rechtssoziologie* together with other studies published earlier in German was republished in Berlin in 1971.<sup>17</sup> Manfred Rehbinder, the editor of the volume wrote in his foreword: 'This is one of the most remarkable and most highly balanced theories, whose knowledge is needed for any reasonable argument on fundamental questions.'<sup>18</sup> The interest of Horváth's legal theory cannot be proved more effectively but by the fact that his *Rechtssoziologie* has even been translated into Japan. A similar interest in any Hungarian author's work in legal philosophy has only been expressed when *Die Bedeutung der transzendentalen Logik in der Rechtsphilosophie* by Tibor Vas, published in German in 1935, was also translated into Japan.

International recognition can also be promoted if researchers of a specific branch of science publish their views on current topics of interest in a special issue of a reputable international journal. This occurred when in 1943 the 'Ungarn-Heft' of *Archiv für Rechts- und Sozialphilosophie* journal published two-hundred pages by contemporary jurists belonging to the first line of Hungarian legal philosophy. Among the authors Gyula Moór, Barna Horváth, József Szabó and József Hegedűs, representing Hungarian jurisprudence and legal theory, are worth mentioning.

The changes in 1948/49 produced a far-reaching effect on the tradition of Hungarian legal philosophy. Gyula Moór, the doyen of this era was forced to retire from the univer-

<sup>15</sup> *Bódog Somló*, *Juristische Grundlehre*, Leipzig, Verlag von Felix Meiner, 1917 [2. ed: 1927, and reprinted: Aalen, Scientia Verlag, 1973]

<sup>16</sup> *Barna Horváth*, *Rechtssoziologie. Probleme des Gesellschaftslehre und der Geschichtslehre des Recht*, Berlin-Grünwald, Verlag für Staatswissenschaften und Geschichte G.m.b.H., 1934

<sup>17</sup> *Barna Horváth*, *Probleme der Rechtssoziologie*, Berlin, Duncker und Humblot, 1971

<sup>18</sup> *Ibid.*, p. 6.

sity of Budapest in 1949, and before the administration of the new era and the official science policy could finally abandon him, he died at the beginning of 1950. Barna Horváth—who would have become the head of Moór's department in consolidated conditions—was forced to emigrate in his full creative power at the very end of 1949. After a short stay in Austria (Salzburg), where he was supported by Alfred Verdross, he took his chance in the New World. In the USA it was not easy to get a university lecturer's job even at that time. Even Roscoe Pound intervened on the famous Hungarian colleague's behalf so that he was given a suitable post. Finally, in the early 1950s he was granted the post of visiting professor at the Graduate Faculty of Political Science, the New School of Research in New York, where he lectured on political science, legal theory and international law. Although his legal theory was deeply influenced by English-American pragmatism and the processional legal attitude, he was not able to leave behind his Continental attitude, he lost the fight, which was traditional at the universities of the USA, for acquiring students. It was not only Barna Horváth who felt estranged in these conditions, but other emigrant colleagues from Europe as well, for example Kelsen or Kantorowitz. In the meantime Horváth travelled to Europe several times and taught as visiting professor in Zurich, Vienna, Berlin, Freiburg, Copenhagen and Genova. He had a lot of publications in the 1950s and '60s, although the majority of these were reviews. In his studies mostly published in English, he tried to make his synoptic theory and thoughts elaborated before the War 'digestible' for the American audience.<sup>19</sup> The foreign language was only one of the reasons for his lack of success, a more fundamental problem was the divergent model of pursuing jurisprudence.

Transformations after the 'decisive year' have brought about far-reaching changes in the lives of his students who stayed in the country. József Szabó and István Bibó, having been promoted to the post of university professor in Szeged after the war, were removed from the university chair. In addition, József Szabó after an unsuccessful attempt to emigrate, was sent to prison for two and a half year and then he earned his living by teaching and translating foreign languages. He could regain his university post only after the revolution in 1956, but in 1960 he was retired. István Bibó's scientific career was also broken. After the years in prison due to his political role in 1956, Bibó could only work as a librarian until he retired.

Others, like István Losonczy, altered their careers, and he, for example, became professor of criminal law instead of legal philosophy at the University of Pécs. Kornél Solt, who with the reference by his master, Gyula Moór had a good chance to apply for the university chair of legal philosophy at the university of Debrecen, worked as a practising lawyer in spite of a promising university career, although he later published several theoretical studies. The highly talented Tibor Vas is also to be mentioned here, who as a

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<sup>19</sup> *Barna Horváth*' main works from the 50s and 60s: *Between Legal Realism and Idealism*, in: *Northwestern University Law Review*, 48 (1954) pp. 639-713.; *Rights of Man: Due Process of Law and Exces de Pouvoir*, in: *The American Journal of Comparative Law*, 4 (1955) pp. 539-573.; *Field Law and Law Field*, in: *Österreichische Zeitschrift für öffentliches Recht*, 8 (1957) pp. 44-81.; *Moral, Recht und Politik*, in: *Österreichische Zeitschrift für öffentliches Recht*, 14 (1963) pp. 218-252.; *Comparative Conflicts Law and the Concept of Changing Law*, in: *The American Journal of Comparative Law*, 15 (1966-67) pp. 136-158.; *Twilight of Government of Laws*, in: *Archiv für Rechts- und Sozialphilosophie*, 64 (1968) pp. 1-26.

Horváth student was a great promise for legal philosophical studies. The year of change for him resulted in a change of paradigm in legal philosophy. As a result, he became one of the most devoted theorists of the Marxist legal doctrine and extensively criticised his predecessors and teachers.

The final ‘attempt’ was made by Imre Szabó’s volume *A burzsoá állam- és jogbölcselet Magyarországon* (The bourgeois state and legal philosophy in Hungary) published in 1955.<sup>20</sup> In this work, which mostly provides demagogue Marxist criticism of Hungarian ‘bourgeois’ legal philosophy—mainly of its past half-century—claiming that it was reactionist, 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 unvaluable. 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.

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.<sup>21</sup>

<sup>20</sup> *Imre Szabó, A burzsoá állam- és jogbölcselet Magyarországon* [The bourgeois philosophy of state and law in Hungary], Budapest, Akadémiai Kiadó, 1955

<sup>21</sup> See from the literature on the subject: *András Karácsony, Jog és erkölcs. Kelsen és Verdross szerepe Bibó jogfelfogásának alakulásában* [Law and morality. Kelsen and Verdross’s influence to Bibó’s comprehension of law], in: *A szabadság kis körei. Tanulmányok Bibó István életművéről*, ed. Iván Zoltán Dénes, Budapest, Osiris Kiadó, 1999, pp. 166-187.; *Lajos Cs. Kiss, Szabadság és kényszer. Horváth Barna szellemi pályája* [Liberty and Compulsion. Barna Horváth’s intellectual career], in: *Barna Horváth, Angol jogelmélet*, Budapest, Pallas Stúdió – Attraktor Kft., 2001, pp. 569-611.; *Loss–Szabadfalvi–Szabó–H.Szilágyi–Zódi, Portrévázlatok a magyar jogbölcseleti gondolkodás történetéből* [Portrays from history of legal philosophical thinking in Hungary], Miskolc, Bíbor Kiadó, 1995; *Endre Nagy, Bevezetés Horváth Barna: Demokrácia és jog című tanulmányához* [Introduction to Barna Horváth’s Democracy and Law], in: *Medvetánc*, (1985) 2-3, pp. 294-303.; *Elhajló pályaképek. Bibó és Horváth Barna [Divergent careers. Bibó and Barna Horváth]*, in: *Iván Zoltán Dénes* (ed.), *A hatalom humanizálása*, Pécs, Tanulmány Kiadó, 1993, pp. 84-90.; *Péter Paczolay, Moór Gyula jogfilozófiája* [Gyula Moór’s philosophy of law], in: *Jogtudományi Közlöny*, 44 (1989) 10, pp. 505-512.; *Béla Pokol, Moór Gyula és Horváth Barna jogkoncepciója* [Legal theory of Gyula Moór and Barna Horváth], *Magyar Jog*, 53 (1998), pp. 257-263; *Kornél Solt, Moór Gyula jogfilozófiájáról* [About Gyula Moór’s philosophy of law], in: *Holmi*, 6 (1994) 12, pp. 1850-1862.; *Felix Somló, Schriften zur Rechtsphilosophie* (Ausgewählt und eingeleitet von Csaba Varga), Budapest, Akadémia Kiadó, 1999; *József Szabadfalvi, Moór Gyula pályakezdése* [The beginning years of Gyula Moór’s career], in: *Jogtudományi Közlöny*, 44 (1989) 10, pp. 497-504.; ”Demokrácia és jog”. Adalékok Horváth Barna

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