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PÉTER MEZEI

BÓDOG SOMLÓ*

(1873–1920)

1. Biography¹

The volume containing this study is published on the 100th anniversary of the death of Bódog Somló. On this occasion, this professional biography is pleased to outline Bódog Somló's work in the field of legal theory (sociology and philosophy of law). However, there is no possibility for a detailed and thorough explanation for three reasons.

First, due to the limited space available, the following study will only touch upon the most important stages of Somló's oeuvre, we will not have the opportunity to present many of his works in detail. Bódog Somló's scientific oeuvre is a mixture of less important (unechoed), outdated, and internationally successful items. This study focuses on its merits on the latter, internationally successful items.

Secondly, Somló's significance in the Hungarian legal theoretical thinking cannot be measured merely by his published studies. If nothing else, the role he played in the history of the *Huszadik Század* (*Twentieth Century*) and the *Társadalomtudományi Társaság* (*Society of Social Sciences*), as well as the "Somló affair" ("Somló-affér"), that placed the scientific/academic freedom in crosshairs, must shortly be remembered.

Thirdly, many have already attempted to thoroughly arrange Somló's scientific works, so we also wish to avoid any repetition. Sources, that were considered during the analysis below, were basically published in three waves.²

First, after Bódog Somló's death, his "dearest student from Kolozsvár,"³ Gyula Moór dealt with his intellectual heritage. The second wave is represented by the "Somló Renaissance" appearing in the second half of socialism. At this time, several analyses were published about his life path and his major works. Lastly, after the political changeover, thorough exploration of Somló's works began with the wide range of

* Translated by István Harkai, PhD, Senior Lecturer at the University of Szeged, Faculty of Law and Political Sciences.

¹ A comprehensive understanding of Bódog Somló's biography is only possible by being familiarised with the following sources: SZEGŐ 1976, 420–421. SZABADFALVI 2011, 155–171. SZABADFALVI 2016, 215–221. TAKÁCS 2016a, 191–223. TAKÁCS 2016b, 3–71.

² Comp. especially: SZABADFALVI 2016, 215–216. 6. footnote TAKÁCS 2016a, 218–222.

³ SZABADFALVI 2016, 220.

publication of analyses and manuscripts. This trend has continued to the present day, culminating in the centenary scientific commemoration of the *Juristische Grundlehre* [*Basic Jurisprudence*] in 2017, as the crown of his scientific career.⁴

Taking all of the above mentioned into consideration, I review hereinafter the life path, professional fulfilment of Bódog *Somló*, I describe the essence of his most important works, in order to pay our respect to “the best know figure of the Hungarian legal philosophical tradition”,⁵ who was titled as “one of the most original and interesting figures” of the scientific life of the turn of the century even by the researchers of the socialist era.⁶

Bódog *Somló* was born originally as Felix *Fleischer* on 21 June 1873 in Bratislava, into a civilian family with “medium income and medium education.”⁷ His father, Leopold *Fleischer*, was a railway officer at the Imperial and Royal Austrian State Railways Company (from 1883, it operated under the name Austro-Hungarian State Railways Company); his mother was Jozefin *Weinberger*. His parents were of Jewish religion, so he was registered in the register of births of denomination, but in 1891, *Somló* converted to Roman Catholicism of his own free will. At the same time, he changed his name first to Bódog *Fleischer* and then to Bódog *Somló*. He completed his elementary school in Budapest, and his secondary studies in Zilina, Trencin and Timisoara. Although he did not mention it in one of his biographical articles in 1913,⁸ he started his Hungarian legal studies at the Faculty of Law of the Hungarian Royal University of Budapest. After a semester, and due to his family moving again (this time from Timisoara), he continued and completed his legal studies at the Hungarian Royal Franz Joseph University of Kolozsvár. He obtained his doctorate in legal sciences in 1895, and then his doctorate in state sciences in 1896. During 1895 and 1896 he spent one year in military conscripted service, and he also took eight months in a trainee lawyer position in Kolozsvár. On the proposal of Gyula *Pikler* he spent the autumn (winter) semester of the 1896/1897 academic year in Leipzig, and the spring semester (summer) in Heidelberg, as a state scholarship holder. Following his return to home, between 1898 and 1903 he found a position at the Central Directorate of the State

⁴ To celebrate this properly, the Institute of Legal Sciences of the Research Center for Social Sciences of the Hungarian Academy of Sciences organized a trilingual conference on 10 November 2017 in Budapest. See: <https://jog.tk.mta.hu/esemeny/2017/10/juristische-grundlehre-100> (Last visited on 17 December 2019).

⁵ SZABÓ 2016, 239.

⁶ BODZSONI 1975, 140.

⁷ TAKÁCS 2016a, 192.

⁸ “1. I was born in Pozsony [Bratislava], on 21 July 1873. – 2. I completed the secondary school in Zsolna [Zilina], Trencsén [Trencin] and Temesvár [Timisoara], and my legal studies in Kolozsvár [Kolozsvár], Leipzig and Heidelberg. – 3. I became in 1899 a private lecturer of legal philosophy at the University of Kolozsvár [Kolozsvár], in 1903 a lecturer at the law academy of Nagyvárad [Oradea], and in 1905 a professor of legal theory and international law at the University of Kolozsvár [Kolozsvár], and I still am at the moment. – 4. I am a collaborator to the following journals: *Jogállam* (State of the rule of law), *Huszadik Század* (Twentieth century), *Athenaeum*, *Archiv für Rechts- und Wirtschaftsphilosophie* (*Archive for Philosophy of Law and Economics*), *Grünhuts Zeitschrift für das private und öffentliche Rechte* (*Grünhuts Journal for Private and Public Rights*). – 5. List of my works: *A nemzetközi jogbölcselet alapelvei*. (*Basic Principles of International Legal Philosophy*) 1898; *Állami beavatkozás és individualizmus* (*State intervention and individualism*), 1903; *Zur Gründung einer beschreibenden Soziologie* (*On the foundation of a descriptive sociology*). Berlin, 1909; *Der Güterverkehr in der Urgesellschaft* (*Freight transport in the primitive society*). Bruxelles. 1909; *Az érték problémája* (*The problem of the value*). Budapest, 1911.” See: TAKÁCS 2016a, 191. Partially cited by SZEGŐ 1976, 420–421.

Railway Company in Budapest. He worked first as an assistant draftsman and then as a draftsman from 1901.

In the spirit of his commitment to scientific work (at the same time recognizing the complete absence of interest in practical jurisprudence), he did his best to get a university chair as soon as possible. According to the rules at that time, this could only take place after habilitation. First, he habilitated in legal philosophy in Kolozsvár in 1899, and three years later, he completed another habilitation in political science. However, the title of private lecturer he gained after the habilitation did not mean a full-time university position. His application for the lecturer position (that, in most of the cases, was supported by small slipwind) was refused three times (by the legal academy of Sighetu Marmatiei, Pécs and Bratislava).⁹ However, he – when he still was assistant drafter at the State Railway Company – proved his commitment to sciences early by playing a central role in the launch of the first major Hungarian journal of legal sociology, the *Huszedik század* (*Twentieth century*), in 1900. In 1913, he referred to himself in his above mentioned short lexical biography as a “contributor” to the journals of *Jogállam* (State of the Rule of Law), *Athenaeum*, *Archiv für Rechts- und Wirtschaftsphilosophie* (Archive for Philosophy of Law and Economics) and *Grünhuts Zeitschrift für das private und öffentliche Rechte* (Grünhuts Journal for Private and Public Rights). He also played a central role – together with Ede *Harkányi* and Gyula *Pikler* – in the foundation of *Társadalomtudományi Társaság* (Society of Social Sciences) in 1901, where he also played an active role in several functions until 1913.

Finally, he won the reward of his persistent efforts in 1903, when he took the place of the public lawyer Ernő *Nagy*, who left for Budapest, and started his lecturer work at the legal academy of Oradea in the field of politics, Hungarian public law, and encyclopaedia. Shortly afterwards, in 1905, the University of Kolozsvár offered him the cathedra of the retiring Rudolf *Werner*.¹⁰ At first, he became a public extraordinary, then, from 1909, an ordinary professor. Until 1918, he worked as a professor of legal philosophy and international law in Kolozsvár. He was also an elected Dean of the Faculty in 1916, his mandate was for one year, in line with the contemporary traditions.

In late autumn of 1918 – following the Romanian occupation of Transylvania – he moved to Budapest and left his cathedra in Kolozsvár to Gyula *Moór*. He was appointed (with governmental support) as a professor on 3 December 1918 at the Faculty of Law in Budapest, he took his oath on 20 December. Nationwide politics of at the beginning of 1919 left deep wounds in academic freedom. Zsigmond *Kunfi*, minister for education, appointed seven new professors to the Faculty of Law [among them was Oszkár *Jászi*, who was the editor in chief of *Huszedik Század* (*Twentieth Century*) after Bódog *Somló*], however, the appointments were not in accordance with the university practice (appointment procedure), which led to angry demonstrations at the Faculty of Law. Bódog *Somló* – confronting many of his former friends, among them Oszkár *Jászi* –, opposed, within the framework of protest, the appointment procedure by supporting the principle of university autonomy, and later he kept himself away from faculty council’s work.¹¹

⁹ Regarding these unsuccessful attempts see. TAKÁCS 2016a, 193–194. Regarding his letter to his parents about the second unsuccessful attempt to Sighetu Marmatiei see TAKÁCS 2016b, 35–37.

¹⁰ SZABADFALVI 2016, 217. Rudolf *Werner* was one of those two professors who assessed (appraised) *Somló*’s works so far during his habilitation process in legal philosophy in 1899. See: SZABADFALVI 2016, 216.

¹¹ SZABÓ 2016, 246.

After the revolutionary period elapsed, the Faculty of Law decided to reconsider every appointment that took place between 31 October 1918 and 21 March 1919. The above mentioned seven professors were deprived of their cathedra, however, Bódog *Somló*'s appointment was declared "to be maintained".¹² As a new assault on university autonomy, following the provisions of the government of Republic of Councils of 7 April 1919, every lecture, basic exam, and mid-term exam was terminated temporarily and then permanently. The aim was to demote the Faculty of Law of Budapest to a "vocational training institute."¹³

Somló made his own will in September 1920, wherein – as he was a divorcee and childless – he named the League of Land Protection (Területvédő Liga) as the successor of his possessions. He left his library and manuscripts to Gyula *Moór*. He travelled to Kolozsvár, that was occupied by Romanians, on 26 September 1920, where he committed suicide by his own hand in the Házsongárd cemetery (central cemetery in Romanian), near to the grave of his mother. He was laid to eternal rest at the same place.

Researchers dealing with the oeuvre of Bódog *Somló* have tried to give explanations and make sense of the ending of his life in such a manner. Although a definite answer could be hard to find, several reasons could have contributed to his final decision – especially his life path, the contemporary political difficulties, and his scientific principles –, that can offer a real background for the understanding of his suicide. To be exact, *Somló* did not have a child, and he was divorced from the same woman twice. His brother (Gusztáv) also pushed life away by committing suicide. Kolozsvár, as it was known in the "old order", was lost, moreover, his new position in Budapest did not bring him relief and enough creative freedom either.¹⁴ The revolutionary mood of 1918-1919 did not fit his moral values, and the formation of the (anti-Semitic) Horthy regime was also far from his cosmopolitan, European personality. We do not have conclusive evidence as to whether this new environment, despite his Jewish origin, his early baptism, caused him any tension. From this point of view, it might be particularly interesting, that he left for Kolozsvár on the very same day (26 September 1920) when the famous (infamous) Act of 1920:XXV of the Horthy regime was promulgated, which introduced the *numerus clausus*, i.e. the possibility of participation in higher education in accordance with "nationality proportions". Still, we do not have any reason to believe that this specific act had induced *Somló*'s ultimate aggravation.¹⁵ On the one hand, the Faculty of Law of Budapest had already limited the number of students admitted in 1919 by its own internal "anti-Jewish" decision,¹⁶ on the other hand, *Somló*'s earlier will suggest that he made the

¹² TAKÁCS 2016a, 210–214.

¹³ SZABÓ 2016, 247. As *Somló* succinctly stated in his diary: "[the] Faculty of Law is disbanded". See: Ibid.

¹⁴ Bódog *Somló* made the following entry in his diary on 10 February 1919: "*The world of activity, of action, with the hundreds of demands it makes on those who live in it, with its fundamental irrationality, which demands constant decisions even where it is impossible to make a rational decision, since it is impossible to take all factors into account – this world is my fiercest enemy, even its breeze is a poison to me. This world is the sworn enemy of intellectual concentration, contemplation and self-reflection.*" See: TAKÁCS 2016a, 213. Miklós Szabó has a similar opinion, who captures the essence of *Somló*'s character as follows "*seeking the tranquillity that promises the possibility of cultivating science and fleeing from the (public and private) turbulence that disturbs this tranquillity and makes the life of a scientist impossible*". See: SZABÓ 2016, 242.

¹⁵ SZABÓ 2016, 254–255.

¹⁶ Ibid. 254.

big decision before the *numerus clausus* act was promulgated. What seems to be more relevant is what Péter Takács has convincingly pointed out: the “question of the right acts” has always been in Somló’s academic work.¹⁷ In such a period that was burdened with personal tragedies, in an age fraught with danger, it is feasible, that for Somló, beside the shrinking academic freedom, suicide seemed to be the only “right” solution.¹⁸

II. Academic work

In many ways, the work of Bódog Somló could be called epoch-making, but it would perhaps be more accurate to say that it was “epoch-demarcating”. His name is associated with the establishment of the neo-Kantian school that gained ground in Europe at the end of the 19th century and pushed traditional approaches of natural law and positivist legal philosophy into the background. Prior to this turn in the second decade of the 20th century, Hungarian legal philosophy was largely permeated by naturalistic (natural scientific) positivism, as well as evolutionism; the most important school of legal philosophy was Gyula Pikler’s theory of discretionary law.¹⁹ Somló himself began his academic work at the end of the 19th century under the influence of the latter trends, as well as Herbert Spencer’s individualism. At the same time, it was also confirmed that from 1896 onwards, Somló was reading the works of Immanuel Kant.²⁰ From this broad foundation, Somló finally emerged by means of the publication of his magnum opus of his neo-Kantian position, the *Juristische Grundlehre* [*Basic Jurisprudence*], in 1917. Hereinafter, let us look at the periods of Somló’s scientific activity, his most important works, and the details of the epoch-making “Somló affair.”

Bódog Somló’s creative periods

Among the researchers of Bódog Somló’s academic work, the question of practical relevance often arises, how many eras Somló’s career can (or should) be divided into.²¹ The traditional (in the words of Miklós Szabó “cliché”²²) understanding was started by Gyula Moór. Accordingly, Somló’s career can be divided into two major periods: “Within the 24 years of Bódog Somló’s literary work from 1896 to 1920, two major phases can be distinguished. Both phases, excluding the transition, span roughly a decade of his work. In the first period, Somló was influenced by Herbert Spencer, his scientific interests primarily oriented around sociological questions. In the second phase, he took his stand on the foundation of Kantian philosophy and his scientific interests revolved around the basic concepts of law and, to an ever-increasing extent, philosophical problems.”²³

¹⁷ TAKÁCS 2016a, 215.

¹⁸ For a different understanding, see: *ibid.* 215–218.

¹⁹ For a description of Gyula Pikler’s theory, see: SZABADFALVI 2011, 97–108.

²⁰ SZABÓ 2016, 243.

²¹ BODZSONI 1975, 123–143. SZABÓ 2016, 240–242. TAKÁCS 2016a, 206–207.

²² SZABÓ 2016, 240.

²³ For the preface of Gyula Moór, see: SOMLÓ 1926, 4.

Moór put the shifting period between 1907 and 1910, emphasizing the years of 1909 and 1910, when his work, *A jog értékmérője* (*Measures of the value of law*) was published first in German then in Hungarian language.²⁴ The second phase evolving afterwards was characterized by the adoption of the neo-Kantian position, which was marked by Rudolf Stammler.²⁵ In this period, the most important element of the Somló-oeuvre, the *Juristische Grundlehre* (*Basic Jurisprudence*), was written between 1912 and 1916, and it was published in 1917.

This canon, that was completely accepted during the time of the Socialism,²⁶ has become obsolete in many aspects.²⁷ On the one hand, there are convincing arguments that the two periods of Somló's work cannot be "sharply" separated from each other. Already in the first period, Somló was a significant critic of the discretionary theory of law and significant neo-Kantian impacts can be detected at the end of the first period. Somló's drawing-away from the first period therefore clearly took place on a gradual, step-by-step basis.²⁸

But even more important, however, is the opinion that was emphasized by Katalin Szegő since the 1970s.²⁹ According to this, following the publication of the *Juristische Grundlehre* (*Basic Jurisprudence*), Somló wished to complete value doctrine-related studies, and as a preliminary study of this, he wrote his ethical (philosophical) manuscripts, which Somló referred to under the title of *Prima Philosophia*.

As Mikós Szabó citest: "we have got the basic studies, now we can move on to the study of values/moral philosophy".³⁰ According to Katalin Szegő "we have to notice this second turn, even if it is not that spectacular as the first one, as it is the only way to understand that, in the oeuvre of Somló, two different versions of Kantianism prevailed: the neo-Kantianism of the Baden-type (I also count to this amongst the legal philosophy of Kelsen), as well as the Kantian-inspired critique of epistemology, that is more akin to phenomenology."³¹

To put it differently, the first period, in the light of sociological/positivist thinking, can be considered as the Somló's "doctrine of facts", the second, neo-Kantian era can be seen as Somló's "basic doctrine", that should have been followed by the "value doctrine."³² This third period remained unfinished. He got stuck with his ethical analyses, although according to his letters written to Gyula Moór, the work "was mostly done"³³ by February 1919. However, instead of publishing his manuscripts, he changed and continued to work on his manuscript on state theory, which he had also begun in 1918. He also left these unfinished for posterity.

²⁴ In Hungarian language, see: SOMLÓ 1910.

²⁵ SZABADFALVI 2016, 217.

²⁶ This is based on a detailed – but heavily critical – analysis by Imre Szabó. See SZABÓ 1955.

²⁷ Another, relatively recent study is also known that continues to insist on this double periodization. See: SZEGVÁRI 2004.

²⁸ SZABÓ 2016, 240.

²⁹ "At the end of his life, he was preoccupied with general philosophical questions, especially those of epistemology. The posthumous work testifies to his strong departure from Kantian philosophy, and he tries the Leibniz-Bolzano line of legal philosophy". See: SZEGŐ 1976, 422.

³⁰ SZABÓ 2016, 244.

³¹ SZEGŐ 1999, 12. See furthermore FUNKE – SÓLYOM 2013, 49–89.

³² SZABÓ 2016, 246. and 251.

³³ Ibid. 253.

About his major works

His first, more significant jurisprudential writings were published with the title of *A parlamentarizmus a magyar jogban* [*The parliamentarism in Hungarian law*],³⁴ and *A nemzetközi jog bölcséletének alapelvei* [*Fundamental principles of the theory of international law*].³⁵ The second one also served as a basis for his habilitation in legal theory and largely reflects the influence of *Piklerian* discretionary theory of law,³⁶ although some elements of it have already seceded from it.³⁷ Furthermore, his work *Allami beavatkozás és individualizmus* [*State intervention and individualism*],³⁸ published in 1903, served as a basis for his second habilitation in the field of political sciences. These early works were a faithful reflection of the prevailing scientific epistemology of the era – and for example the first decade of the *Huszdik Század* [*Twentieth Century*] journal as well –, evolutionism, social Darwinism and historical materialism are reflected in them.

In the *State intervention and individualism*³⁹ for example, he did not find the state interventions triggered by monopolistic-capitalistic development to be an attack on individual freedoms. Moreover, going beyond *Spencer's* individualistic theory, he considered that state intervention can be understood as a modern manifestation of the natural law of adaptation. *Somló* considered the “*legislative activity*” as an artificial intervention in the order of nature because of natural development and, at the same time, natural selection. In this way, *Somló* rejected *Spencer's* view that state intervention is an obstacle to natural selection. Ultimately, according to *Somló*, the ideal status is the one, in which the state, with extensive knowledge, intends to intervene comprehensively. The goal is nothing else, but the “*increasing state regulation, combined with increasing political freedom: this is the ideal of development.*”⁴⁰

In the same period, *Somló* – already habilitated but still without a cathedra – published his science-promoting pocketbooks reflecting the ideas of *Herbert Spencer*, with the titles of *Ethika* [*Ethics*] (1900), *Jogbölcsélet* [*Legal Theory*] (1901) and *Szociológia* [*Sociology*] (1901).⁴¹ He published his work of *Jogbölcséleti előadások* [*Lectures on Legal Philosophy*]⁴² – in line with the requirements of the era – as a public lecturer that has already received cathedra.⁴³ In this volume, *Somló* analyses the general/normative characteristics of legal philosophy, endowing it with a sociological character; and he examines the legal theoretical background of criminal law in a separate volume.⁴⁴

³⁴ SOMLÓ 1896.

³⁵ SOMLÓ 1898. Comp. BODZSONI 1975, 125–126. SZABADFALVI 2016, 216.

³⁶ “*The development of international law is not the product of emotions and legal theories, but of pragmatism.*” See SOMLÓ 1898, 49.

³⁷ So, “*from the theory of subjective appropriateness itself, no exact institution can be derived*”. See. *ibid.*

³⁸ SOMLÓ 1903a.

³⁹ Comp. BODZSONI 1975, 127–130. SZABADFALVI 2016, 217. TAKÁCS 2016a, 198.

⁴⁰ SOMLÓ 1903a, p. 175.

⁴¹ TAKÁCS 2016a, 198.

⁴² SOMLÓ 1906.

⁴³ SZABADFALVI 2016, 217.

⁴⁴ Comp. BODZSONI 1975, 131–133. SZABADFALVI 2016, 217.

The end of *Somló*'s first creative period began roughly at the time when he noticeably and knowingly turned against his former mentor, Gyula *Pikler*. As a part of the exchange of ideas in 1907 on the pages of the *Husadik Század* [*Twentieth Century*], *Somló* opted for the thesis of “objective sociology” instead of the discretionary theory of law. *Somló* was therefore sharply criticised by *Pikler*.⁴⁵ The debate between *Somló* and Zoltán *Rónai* in 1910-1911, that also unfolded in the *Husadik Század* [*Twentieth Century*], can be considered similarly significant, in which the parties expressed their different views on the “right law” as a measure of value.⁴⁶ Finally, in 1911 *Somló* delivered a public lecture on the acceptance of the Stammlerian neo-Kantian position and the use of it as the basis for his scientific work.⁴⁷ It brings us to *Somló*'s second great creative period.

The most important element of this period – and at the same time the oeuvre of *Somló* – is the *Juristische Grundlehre* [*Basic jurisprudence*].⁴⁸ In his book, *Somló* analysed the *a priori* concept of law and its conceptual elements, and he also tried to find the *genus proximum* of law. He found it in the “rule” itself. Accordingly, he defined law as an “empirical-intentional normative rule”⁴⁹ and he tried to distinguish it from other types of norms. In this context, he used the term “*Nomologie*” (“*Nomology*”) or the expression of the doctrine of legal norms. This legal norm is issued by the legislative power (“*Rechtsmacht*”). *Somló* – moving away from the legal-sociological point of view⁵⁰ that still characterises the Legal Philosophy lectures – found that the orders of the “legislative power” must normally be implemented; this power factor must be the highest power of all; it must regulate a wide range of life conditions; it must be permanent (i.e., not temporary) in nature; it cannot be bound exclusively to one single person, nor to a smaller group of people (especially if that person or persons are the embodiment of transient power relations); they must operate in an institutionalised form; finally, the recipients must show obedience to the rules.⁵¹ In his hierarchy of sources of law, *Somló* distinguished between expressly declared and non-expressly declared primary law and he also recognized the same forms of secondary law.⁵² He ranked the judicial customary law in the category of non-expressly declared secondary law. There are two ways in which it can evolve: either it enforces and applies social conventional rules (folk customs), or it creates its own practice. However, for primary customary law to emerge (that is of equal validity to the expressly declared primary law, and thus it might even repeal it), a declaration by the legislator is still needed, since such a source of law of this level can only be created by the legislator. What is more, if the judge departs from pre-existing

⁴⁵ For details of the relevant publications see: TAKÁCS 2016a, 202. Footnote 37.

⁴⁶ For *Somló*'s main work in these regards see. SOMLÓ 1910. The bibliographical data of responses and counter-responses see. TAKÁCS 2016a, 203. footnote 38. See: továbbá SZABADFALVI 2016, 218.

⁴⁷ Ibid. 217. Footnote 16.

⁴⁸ In the following, the author of the study has relied on the version of the *Juristische Grundlehre* [*Basic Jurisprudence*] extracted in Hungarian by *Somló* and subsequently republished in 1995 under the title *Jogbölcsészeti* [*Legal Philosophy*]. For an analysis of the volume see in particular BODZSONI 1975, 138–140. SZEGVÁRI 2004, II.2. point; SZABADFALVI 2016, 218–220. TAKÁCS 2016a, 208.

⁴⁹ SZABADFALVI 2016, 219.

⁵⁰ SOMLÓ 1906, 40–77.

⁵¹ SOMLÓ 1995, 23–34.

⁵² Ibid. 97–109.

statutes, this does not repeal the primary law. According to *Somló*, in this case, too, the act of the supreme authority is necessary in this case as well.

Although judges may interpret legal norms contrary to its specific content, so there is an opportunity to apply the law in a different way, but only in that case if there is a specific legal authorisation to do so. He holds that the same applies to the amendment of the law.⁵³

Somló writes the following about legal loopholes: “a gap in the law means that the law needs to be amended.”⁵⁴ However, the silence of the law itself does not necessarily demand the gap to be filled, since, according to his point of view, accepting the theory of the logical closeness of law, the silence of the law also covers a clear regulation. In this case, the judge must dismiss the claim. Therefore, the fact that he recognizes the possibility of the mentioned legal provisions, does not mean that he accepts them. He always concentrated on “legal loopholes” only as a concept of legal policy, it only appeared in his thinking as the disapproval of the law. According to his concept, however, a loophole in law enforcement does not exist, as “it always can be decided on the ground of the existing law, whether a particular case is prohibited, ordered, permitted or legally irrelevant.”⁵⁵ So, if there is a need to amend the law, then there can be different reasons for it. If the law needs to be replaced to be correct, we can speak of a “loophole of correctness”, if, however it must be replaced to become applicable, we can talk about “loophole of application”. According to *Somló*, the latter one has the following variants: “when the judge is able to arrive at the applicable principle with clear logical activity”,⁵⁶ we can talk about “logical loopholes”. He provided the name of a “loophole of alternativeness” for the case where the judge lays down several applicable principles. The third version is the “loophole of assessment”, where the judge is called upon to supplement the law based on a moral assessment. A special case is when there is an actual loophole but there is no authority that could fill that (contrary to the previous ones, where the judge could proceed), so the law remains incomplete. These norms are typically those which regulate the duty of the supreme power.⁵⁷ Since the statute excludes the legitimate solution of the question, the loophole can only be filled through an infringement, i.e., illegitimate means. This is the case of “absolute loophole”.⁵⁸

Following the publication of *Juristische Grundlehre [Basic Jurisprudence]*, prominent Hungarian and European researchers sent letters to congratulate *Somló*, or they wrote positive (of course, in more than one case, mixed with criticism) review about the

⁵³ Ibid. 113–122.

⁵⁴ Ibid. 123.

⁵⁵ MOÓR 1921, 21.

⁵⁶ SOMLÓ 1995, 124.

⁵⁷ Typically, if according to the law, the throne shall remain within one dynasty, but the dynasty dies out, or the ruler does not name a successor before his/her death, although he is obliged to do so. For the examples see *ibid.* 125.

⁵⁸ *Somló* had already published his views on legal loopholes in 1911 in his study *A jog alkalmazásáról [On the Application of Law]*. See. SOMLÓ 1911. This position has not changed substantially since then. On the theory of legal loopholes, see in detail MEZEI 2002, Footnote 19–21. and the related main text; MEZEI 2003, Footnote 25–28. and the related main text; SZEGVÁRI 2004, Footnote 167–170. and the related main text.

volume.⁵⁹ As SzabADFalvi also notes: the monograph “made Somló a must-cited author in the international literature of legal philosophy for decades.”⁶⁰

After the publication of *Juristische Grundlehre* [*Basic Jurisprudence*], Somló – realizing, that the basic doctrine of law is not confined exclusively to substantive law – wanted to extend his volume published in 1917 with an analysis of value doctrine. As, however, he himself referred to it in his letter written to Gyula Moór, elaboration of this “Wertlehre” (Value Doctrine) can only take place after systematic fixation of his own ethical, epistemological thoughts. He referred to his related manuscripts as his “*first philosophy*” (“*Prima philosophia*”). However, in 1918 and 1919 practically everything in his life had changed. After the defeat in the World War (and to escape the impending Romanian occupation) he moved to Budapest, but his scientific creative community was not left undisturbed. By this time, he desisted from finishing his first philosophy.⁶¹ Finally, his notes were edited and published by Gyula Moór in 1926.⁶² This work has remained unrivalled.

Following his move to Budapest, he started to work on the last academic project of his life in the field of state theory. According to the words of Péter Takács “he would have presented the author’s view on the state embedded in the history of state theory”.⁶³ These thoughts of Somló are preserved in his autograph manuscript containing almost 600 pages. The work has never been finished in its entirety and its publication also remained fragmentary until 2016. Somló submitted the sections on Plato and Machiavelli for publication himself, the former one was published during his life,⁶⁴ the latter was only published in the journal of *Társadalomtudomány* [*Social Science*] after his death, following Gyula Moór’s obituary.⁶⁵ Csaba Varga⁶⁶ and Péter Takács⁶⁷ have published further fragments, before the latter published the full manuscript and analysed it in a meaningful way in 2016.⁶⁸ Two excellent studies about Somló’s dissertations in the field of state theory were also published in this same volume.⁶⁹

⁵⁹ See: SZEGVÁRI 2004, Footnote 229–233. and the related main text; SZABADFALVI 2016, 218–219. TAKÁCS 2016a, 208–209.

⁶⁰ SZABADFALVI 2016, 218. For the most important works quoting Somló, see I. SZABADFALVI 2011, 164. Footnote 661. The correctness of SzabADFalvi’s statement is faithfully confirmed by the fact that even the American legal philosopher Lon Luvois Fuller analyses and even criticises Somló’s position in his 1969 work. And criticism is only made of works that are considered by the researcher reflecting on them. See: FULLER 1969, 110–112.

⁶¹ SZABADFALVI 2016, 220. TAKÁCS 2016a, 208. és 214.

⁶² SOMLÓ 1926.

⁶³ TAKÁCS 2016a, 10.

⁶⁴ SOMLÓ 1920, 290–300.

⁶⁵ SOMLÓ 1921, 41–69.

⁶⁶ SOMLÓ 1981, 819–835. SOMLÓ 1985a, 363–373. SOMLÓ 1985b, 778–783.

⁶⁷ SOMLÓ 2016, 75–87.

⁶⁸ TAKÁCS 2016a.

⁶⁹ VARGA 2016, 157–167. TAKÁCS 2016c, 169–187.

Academic-producing work of Somló

Bódog *Somló*, in addition to his scientific achievements, also left an outstanding academic legacy. In this regard, his role in the launching and running of the journal *Huszadik Század* [*Twentieth Century*] and *Társadalomtudományi Társaság* [*Society of Social Science*] mentioned earlier, stands out.

The idea of the journal *Huszadik Század* [*Twentieth Century*] was conceived in 1896, on his return from a study trip to Germany in 1896.⁷⁰ He started the foundation of the journal with friends⁷¹ from Kolozsvár and Budapest in 1899, and the first volume was published in January 1900. *Somló* not only gave the name, but, for a while, he was also an associate editor and then editor-in-chief at the journal. Although the journal started from an essentially radical side, it has always remained open to publish the opinion of opposing views. After he stepped back from editing, *Somló* published (with decreasing intensity) for a while in the journal, but after 1911 he did not maintain any substantial professional relationship with it. Even so, in one decade, more than forty of his writings have been published in the *Huszadik Század* [*Twentieth Century*]. This drawing-away can partially be explained by his distance from the others – and from the scientific public life in general – and partially by the fact that it was at this time that he was gaining increasing international prestige, so his publications were (perhaps the risk might be taken) published by journals more prestigious than the *Huszadik Század* [*Twentieth Century*]. The *Huszadik Század* [*Twentieth Century*] was finally banned in 1919, although, – as Péter *Takács* points out – it would probably have been doomed to disappear even if it had not been banned, since a significant part of the circle of authors/editors had become “regime-extraneous” or had emigrated from the country.⁷²

Somló’s other major academic role can be linked to the founding of the *Társadalomtudományi Társaság* [*Society of Social Science*] in 1901. He worked in this organisation as its secretary (1901–1903), and as a member of the electoral board (1902–1906), then, under the presidency of Gyula *Pikler* (between 1906 and 1913), he served as a vice president of the Society.⁷³ The original membership of the Society was mainly made up of civic intellectuals who embraced Western values, but after a time, adherents of the values of left-wing liberalism, Christian humanism and socialism were admitted. Among the distinctive figures of the Society – at least for a while – fit well together Rusztem *Vámbéry*, Oszkár *Jászi* and his brother, Vilmos, Béla *Kenéz*, Pál *Szende*, Ákos *Pulszky* or even Gyula *Pikler*. However, differences in worldviews led to a serious leadership crisis in 1905 and 1906, in which Bódog *Somló* – repelling the attack on the incumbent leadership – also played an active role in resolving it.⁷⁴ The Society was the

⁷⁰ According to the entries in his diary “we have decided with József Ferencz and Bálint Kolosváry to publish a journal in the field of legal sciences”, that “would publish more interesting news from abroad” and “clearly scientific studies”. Quoted by: TAKÁCS 2016a, 195. Footnote 17. See furthermore SZEGŐ 1976, 422.

⁷¹ Among the latter, the names of Rusztem *Vámbéry* and Oszkár *Jászi* are worth mentioning, from whom he finally diverged at the end of his life for political and moral reasons.

⁷² TAKÁCS 2016a, 195. Footnote 19.

⁷³ SZEGŐ 1976, 423. TAKÁCS 2016a, 196–197.

⁷⁴ For excerpts from the records of the extraordinary general meeting of the Social Science Society, which include *Somló*’s speech that triggered a storm of applause, and *Somló*’s role in the preparations for the

publisher of the *Huszadik Század* [Twentieth Century] until 1919, when the paper and the Society itself were banned.

The “Somló affair”

Bódog *Somló*, beyond his academic results, had a direct impact on the history of Hungarian science and education in at least one other case. We can commemorate the polemics traditionally known as “*Somló affair*”,⁷⁵ as a struggle fought for the preservation of educational and scientific freedom.

The debate was erupted by one of Bódog *Somló*’s lectures in 1903. In his lecture at the *Society of Social Science* on *The theory of social development and some practical applications*, which he later published in the *Huszadik Század* [Twentieth Century],⁷⁶ by expressing his evolutionist position, he broke the spear for the acceleration of social development through state intervention. However, in his lecture, and later in his essay, he also made numerous statements that were controversial for the conservative circles. Thus, for instance “*to recognize the necessary development of society [...] but not do everything possible to ensure that this development, this re-adaptation can take place as quickly and as smoothly as possible, would be like knowing electricity, but not putting it at the service of mankind, it would mean as much as travelling on draught cattle on the winding country road next to a speeding railway.*”⁷⁷ Elsewhere, he criticised education (its conservative methodology) – with words that still deserve attention today. Thus, according to him, school “*almost entirely miss their its task of directing attention forward, towards the hopeful future, but it they only turn it backwards. [...] [The] most of the bitter work of learning is spent mostly on learning such things that are no longer true.*”⁷⁸

The debate about *Somló* – that took place in the academic community for a while –, gained huge publicity thanks to Endre *Ady*, who was working in Oradea at the same time. *Ady*’s article *Merénylet a nagyváradi jogakadémián – Somló Bódog ügye* [Assassination at the Law Academy of Oradea – the case of Bódog *Somló*], published in the *Nagyváradi Napló* [Oradea Diary], was later published in the *Budapesti Napló* [Budapest Diary]. The debate’s growth and importance was unstoppable at both the national – and even international⁷⁹ – scale (and importance), it also formed part of a parliamentary interpellation, and prompted a “confession” from the critical professors at the Academy of Law in Oradea.

Five of the seven other professors of the faculty turned to the Minister of Culture with an inscription, asking him to suspend (dismiss) Bódog *Somló*. The seriousness of the controversy is faithfully confirmed by the fact that the professors from Oradea were even willing to “falsify” the content of *Somló*’s study in their inscription. So, although *Somló*

subsequent duel between the (agitator) Pál *Wolfner* and Gyula *Pikler*, which did not escalate to violence, see. TAKÁCS 2016b, 52–60.

⁷⁵ See in detail: SZEGŐ 1976, 423–425. SZEGVÁRI 2004, Footnote 93–99. and their associated main text; TAKÁCS 2016a, 198–200.

⁷⁶ SOMLÓ 1903b.

⁷⁷ Ibid. 402.

⁷⁸ Ibid. 405.

⁷⁹ SZEGŐ 1976, 423–424.

wrote the following at one place: “therefore, the criminal code must not judge the value of acts merely in relation to the existing society but must be based on the value which they have in relation to the permanent aims of the society. For this reason, the criminal code cannot have the task of attacking everything that is hostile to the existing society, but it can only achieve its aim of defending society if it also respects the efforts to change the existing form of society.”⁸⁰ The professors of Oradea, however, in their inscription cited below, placed the phrase “the existing form of society” after the phrase “the monarchical form of state in our country” in parentheses⁸¹ - almost accusing this young teacher of treason. Similarly, *Somló* was criticised for his “radical”, “anti-religious” and “agitating” opinions.⁸²

Somló, in his letter to Minister Gyula *Wlassich*, respectfully but with scholarly fastidiousness, defended his earlier position.⁸³ In his letter, he found the “imputation”, the attribution of an idea to someone else, the most hurtful on behalf of his critics.⁸⁴ Gyula *Wlassich* finally adopted a position of academic and educational freedom, and did not suspend Bódog *Somló* from his position. Although *Somló* was acquitted of the charges following the ministerial decision, feeling the unfavourable collegial atmosphere around him, he was happy to change his cathedra in Oradea for the one in Kolozsvár in 1905.⁸⁵

III. His selected works⁸⁶

A parlamentarizmus a magyar jogban. [Parliamentarism in Hungarian law]. Gibbon Albert könyvkereskedése. Gombos Press. Kolozsvár, 1896.

A nemzetközi jog bölcseletének alapelvei. [Fundamental principles of the theory of international law]. Franklin. Budapest, 1898.

Der Ursprung des Totemismus. Ein Beitrag zur materialistischen Geschichtstheorie. K. Hoffmann Rechtswissenschaftlicher Verlag. Berlin, 1900.

Ethika. [Ethics]. [Stampfel-féle tudományos zsebkönyvtár 59.] [Stampfel scientific pocket library 59] Károly Stampfel. Budapest, 1900.

Jogbölcsélet. [Legal Theory]. [Stampfel-féle tudományos zsebkönyvtár 75.] [Stampfel scientific pocket library 75] Károly Stampfel. Bratislava, 1901.

Szociológia. [Sociology]. [Stampfel-féle tudományos zsebkönyvtár 79.] [Stampfel scientific pocket library 79] Károly Stampfel. Bratislava, 1901.

Állami beavatkozás és individualizmus. [State Intervention and Individualism]. Politzer. Budapest, 1903. X.

⁸⁰ SOMLÓ 1903b, 403–404.

⁸¹ Citing: TAKÁCS 2016b, 42.

⁸² For the whole inscription see *ibid.* 42–45.

⁸³ Gyula *Wlassich* knew Bódog *Somló* from earlier. *Somló* met the minister in person before applying for the post at the Law Academy in Bratislava, hoping for a helping hand in getting him on the cathedra, but the meeting was presumably unsuccessful. According to *Somló*'s diary entry, the minister “*did not give me much to say.*” Comp. TAKÁCS 2016a, 194. Footnote 12.

⁸⁴ For the relevant part of *Somló*'s letter, see. *Ibid.* 200. Footnote 28.

⁸⁵ SZEGVÁRI 2004, Footnote 99. and the associated main text.

⁸⁶ For a complete list of *Somló*'s scientific works and publications see TAKÁCS 2016a, 225–237.

- A társadalmi fejlődés elméletéről és néhány gyakorlati alkalmazásáról.* [About the theory of social development and some aspects of its practical application] [keynote speech of the Society of Social Science]. Huszadik Század (4) 1903/7. 397–409.
- Jogbölcseleti előadások.* [Lectures in Legal Theory]. 1st brochure: General Part. 2nd brochure: A büntetőjog bölcselete [Theory of criminal law] [For manuscript purposes]. k. n.. Kolozsvár 1906. 1st brochure: 1–134. 2nd brochure
- Az objektív szociológia.* [The Objective Sociology]. *Válasz Pikler Gyulának* [Answer to Gyula Pikler]. Huszadik Század (8) 1907/15. 209–219.
- Viszonzás Pikler Gyulának az Objektív Szociológia dolgában.* [Reply to Gyula Pikler on Objective Sociology]. Huszadik Század (8) 1907/15. 458–471.
- A jog értékmérője.* [Measures of the value of law]. Huszadik Század (1) 1910/22. 1–14.
- A helyes jog* [The correct law]. Huszadik Század (11) 1910/22. 390–395.
- A jog alkalmazásáról.* [On the application of the law]. *Jogállam Jog- és Államtudományi Szemle* (10) 1911/2. 97–103. and 1911/3. 177–189.
- Juristische Grundlehre.* Verlag von Felix Meiner. Lipcse, 1917. X + 556.
- Jogbölcsezet.* [Legal Philosophy]. Somló Bódog egyetemi ny. r. tanár Jogi Alaptan című műve nyomán [Based on the work titled Jogi Alaptan [Basic Studies in Law] of Bódog Somló, public ordinary professor at the University]. Publisher of Károly Grill. Budapest, 1920. 133.
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- MEZEI PÉTER: *A joghézag kérdése régen és ma.* [The question of legal loopholes, past and present]. *Jogelméleti Szemle* 2002/2. <http://jesz.ajk.elte.hu/mezei10.html> (Downloaded: 15.03.2020)
- MEZEI PÉTER: *A bírák szerepe a jogrendszerben – Száz év magyar jogelméleti gondolkodónak felfogásában.* [The Role of Judges in the Legal System - In the Understanding of a Hundred Years of Hungarian Legal Theorists]. *Jogelméleti Szemle* [Legal Theory Review] 2003/1. <http://jesz.ajk.elte.hu/mezei13.html> (Letöltés ideje: 15.03.2020.)
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- SZABADFALVI JÓZSEF: *A magyar jogbölcselet gondolkodás kezdetei – Werbőczy Istvántól Somló Bódogig.* [The Beginnings of Hungarian Legal Philosophy - from István Werbőczy to Bódog Somló]. Budapest, 2011.
- SZABADFALVI JÓZSEF: *A kolozsvári egyetem szerepe a magyar jogbölcseleti gondolkodás megújításában.* [The role of the University of Kolozsvár in the renewal of Hungarian legal philosophy]. *Acta Universitatis Sapientiae – Legal Studies* 2016/2. 213–237.
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- SZABÓ MIKLÓS: „Húsz év” – kettétörve, Somló Bódog színeváltozása. [“Twenty Years” - Broken in Two, Bódog Somló’s change of colour]. Acta Universitatis Sapientiae – Legal Studies 2016/2. 239–256.
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