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Ideas of natural law in Hungary, past and present†

1. Introduction

In Hungary, natural law has never been the "official" legal doctrine nor has it been officially condemned (as in Italy or Spain). It is no surprise that no one in the profession has ever talked about its rebirth either (like in Germany). At the same time and remarkably enough, a great number of concepts in earlier and present Hungarian codes and statutes have a long-standing natural law pedigree. One can even find natural-law-related arguments in the case law of civil and constitutional adjudication, and it is a commonplace to say that natural rights theories also widely permeate the current legal-political debates in the country. These facts, however, do not imply that either legal practitioners or politicians today are committed to one or another school of natural law, since huge a many "jusnaturalist" concepts, moral principles and natural rights have in the meantime become "positivized" in our statutes, codes, and the Constitution itself.

2. Natural Law in the Legal Culture of the Middle Ages

When the Hungarian state was founded one thousand years ago, the establishment of Roman Catholicism furthered the influence of Canon-cum-Roman law on local customs. Not independently from such an environment, the figure of the "right judge" was also canonized, for instance, in the 15th century redaction of a law-book of Buda,[1] making justices to take oath for assisting the right whilst blocking and breaking any attempt at its denial.[2] Certain legal historians go as far as to prove that during the Middle Ages *ius commune* enjoyed higher a prestige among legal sources cited before local courts than customary law did. Still, they are quick to add that the former's tacit presence was far from equalling to its full reception.[3]

The famous *Tripartitum opus iuris consuetudinarii inclyti regni Hungariae* (1517),[4] a scholarly systematization of customary private, administrative, constitutional (etc.) laws, drafted by István *Werbőczy* (1460/70–1541), assistant judge at the Royal Court, adopted a great number of termini from the available aggregate of *ius commune*, starting with *ius naturale*. It is, however, still debated whether these *ius commune* references to *ius naturale* are substantive or just formal. The *Tripartitum* is rather a kind of compilation of the local customs (*iura propria*). It was intended to become law, but in fact and in a formal-normative sense it did not. Some scholars are to suggest all this notwithstanding that it even reversed the then prevailing hierarchy of legal norms, by ordering the judge to refer to the body of the then prevalent *ius commune* exclusively as a subsidiary source.

The term *ius naturale* appears distinctively in the very first of the Prologue's chapters in Werbőczy's text. It declares that "justice is a virtue, namely a moral one. Law is what implements this virtue. Jurisprudence is the knowledge of this law. / Then, justice is the highest good among virtues, the law is the middling, and jurisprudence is the least. Then, justice renders everyone his right; law promotes this; and jurisprudence instructs how to do this."[5] However, its definition of law as "the establishment of the people, something decided together by the greater born and the common people."[6] is rather positivist. On its part, enacted law has to be in harmony with divine law, which is of particular importance for practical implementation, since "once laws have been established, one cannot later depart in judgment from them but should judge according to them."[7] Moreover, even the maxim of *salvo semper divino naturalique iure* will be reminiscent of another article of the introductory part, stipulating that "Regarding natural or divine law, statutes cannot overturn them altogether, but they can make distictions".[8] Everything considered, Werbőczy had to be aware of the fact that there is no sanction invalidating whatever law if it is held contrary to natural law.

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3. Social Contract Theories in the Epoch of the Enlightenment

The Habsburg regime of the "Enlightened Absolutism" introduced the axiomatic rationalist doctrine of natural law as the official theory of law in Hungary, when the *Ratio Educationis* (1777) obliged all legal faculties of the Empire to teach Carl Anton *von Martini*'s *De lege naturalis positiones*,[9] a textbook based on Christian *Wolff*'s concept of natural law. Until the Neo-Kantian and Neo-Scholastic trends took over at the turn of the 19th to 20th centuries, legal theory had remained dominated by natural law doctrines elaborated in *Martini*'s spirit, although national traditions (especially owing to the continued impact of the *Tripartitum*) could moderate its influence.[10]

Speaking in more precise terms, such rationalistic natural law doctrines were present in both legal philosophizing and political theorizing in at least two of their contemporary versions: conservative and radical. From the last decades of the 18th century, both versions, equally based on the hypostatization of a social contract concluded, opposed sharply to one another.[11] On the one hand, the non-egalitarian variant, supported by both the Hungarian nobility and the House of Habsburgs, was used basically in order to provide justification for the prevailing constitutional order. On the other hand, some radical thinkers inspired by Rousseau's ideas and the main ideology of the French Revolution, opposed the constitutional framework on grounds developed by Werbőczy. Some radicals even preached disobedience (up to lead to revolution), justified by reference to natural law. It is to be noted, however, that such mostly political doctrines, usually published in the form of pamphlets or *livres de circonstance*, were not elaborated to the sufficient depth for having any significant influence on the contemporary legal mind.

Although the natural-law-inspired Austrian Civil Code (1811) had of course some (partly conservative, partly purely *rechtsdogmatische*, i.e., conceptual) influence on private law at its time, it did – especially by the Viennese imperial gesture of its imposition upon the country between 1853 and 1861 – provoke express and overall hostility against any form of rationalist natural law among those who were decided to defend national legal-cultural traditions. Consequently and all through later on, the inspiration to modernize domestic (local) law having been drawn more from German than from Austrian sources (laws and doctrines), scholars of the country preferred teaching in the spirit of either the *Historische Schule* [historical school] or the *Begriffsjurisprudenz* [conceptual jurisprudence] to becoming rationalist natural lawyers themselves.

4. The Interwar Period: Scholastic and Neo-Kantian Legal Philosophers' Natural Law

From the turn of the 19th to 20th centuries, Neo-Scholastic natural law with close links to both Catholic theology and the social teaching of the Church did enjoy a spectacular renaissance.

Besides authors of more partial and limited influence,[12] Alexander [Sándor] *Horváth* (1884-1956), an internationally reputed Dominican theologian, published quite a few comprehensive monographs and a series of articles on Saint Thomas *Aquinas* and his natural law doctrine.[13] While he had to set up a Scholastic vocabulary in Hungarian for himself and for posterity, he was also eager to link his doctrinal work to current historical-political situations and contexts directly. Among others, during the disintegration of the Austro-Hungarian Empire, he argued for a natural law foundation of the concept of national self-determination, by presenting Aquinas' organic theory of the state as susceptible to harmonize with local tradition.[14]

Nevertheless, Horváth was not a paradigmatic conservative in a political sense. His Scholastic theory on social justice led him to criticize capitalism as an economic and social order, arguing that no society can be just when mere parts of an organic unit (composed of all those living in a society) can promote and even pressurize their own separate interest(s) independently from – moreover, running counter – the common good of the whole society. This realization provided a basis for his argument against property right as a natural right. Interpreting Thomas Aquinas in an hitherto unusual manner, he argued that individual property is by far not necessarily and absolutely justified by natural law (pace *Locke* and, later, Jacques Maritain). According to Horváth, political and economic collectivism can as well be in harmony with the requirements of natural law and justice. This is so because in the perspective of the whole, human labour has primacy over the right to property. As a human activity, labour, too, is defined by its specific goal, which is the common good itself. Consequently, redistribution of all its outcome is both necessary and (at least) morally obligatory according to the principles of social justice. This is why Horváth ended by declaring that no Christian social order could be built upon capitalism proper, if not on its ruins alone.[15]

From the first decades of the 20th century, variants of Neo-Kantianism formed the leading school(s)

in the country's legal philosophy. This dominance was in line with the trends in the international (and especially the German-speaking Central and partly also Eastern European) professional community, in our case coupled with the succession of the country's prime legal philosopher's renown from master to student, until the Communist take-over (in 1948) swept away anything worth of surviving the past.[16] Within the methodological bounds of Neo-Kantianism in legal scholarship, natural law stood for one of the key problems to "solve", with the issue reconceptualized now either in terms of "axiology" or as the enigma of "ideal law".

Our "continental Austin", Felix [Bódog] *Somló* (1873–1920) was in favour of an English-type legal positivism, which he elaborated within a Neo-Kantian framework. In his magisterial chef-d'oeuvre *Juristische Grundlehre*,[17] he was strongly opposed to the idea of natural law, meaning thereby the projection of some eternal and objective legal order above the realm of positive law. This is the reason why Rudolf Stammler's theory of "natural law with variable contents" could be so influential on both *Somló*'s personal development and the paths Hungarian legal philosophizing was to take later. In Somló's understanding, "natural law" presupposed an absolute and self-evident system of principles, while the rules of any system of positive law, emanating from the legislator's will, could only be held as contingent. For him, first, among normative systems the very distinctive feature of positive law was exactly its being enacted by the will of a supreme legislative authority, and second, instead of any feasible substantiation by values, such a law-making supremacy could only be based on the sociological recognition of the very fact(s) of habitual obedience.[18] Or, as it is to be seen, the *manqué* of natural law arguments or a theory of authority to justify the legislative supremacy is quite apparent here.

In contrast to Somló's pre-Kelsenian analytical positivism, the "synthetic" legal philosophy of Julius [Gyula] *Moór* (1888–1950) accentuated the role of natural law in the definition of the very "idea of law", appreciated as lurking behind all legal developments. Indeed, Moór's stand represents an effort to reconcile Kant with Hegel. Moór, too, rejected natural law as an eternal, unalterable and categorically valid system of norms, since he saw history testifying just to the contrary. In addition, he was convinced that no one can derive legal norms either from human nature/reason or from "the nature of things". Just the other way round, he argued for a negative function of natural law, identifying it as a normative force limiting positive law (i.e., the allegedly free will of the sovereign).[19]

The new dialectics implied by the "synoptic conspectus" of Barna *Horváth* (1896–1973) was the next step to deconstruct definitively the antinomy between natural law and legal positivism. As he subtly argued, the latter is hardly more than a specific form of – or corollary to – the former, because "in its most coherent form, legal positivism, instead of being contradictory or opposite to natural law, does only represent a species as positive natural law."[20] According to him, natural law doctrines either give legitimacy to the positive law and order, or justify revolution and, thereby – additionally and in their specific way, in either case and on the final account –, they do contribute to the final strengthening of legal positivism. His relativization of the antinomic duality of natural law and positive law was also extended to his understanding of positivism itself. Having in view that almost the entire Hungarian professional community began to launch a new start in Hans *Kelsen*'s shadow at the time, Horváth criticized him as well. As he continued, formalistic legal positivism like Kelsen's had to accept from the outset the validity of logical "laws" in the field of law, consequently, by considering the fact that both logical and natural laws are equally held to be eternal and objective, positivism was also bound to accept the founding presence of a kind of natural law in legal scholarship. What is more, Kelsen's pure theory of law, being a doctrine of logical or "positivist" natural law armed with a peculiar formalistic dialectics, is therefore expressly starving for the idea of pure natural law.[21]

Horváth's student, István *Bibó* (1911-1979) agreed his master in rejecting the antinomy of legal positivism and natural law.[22] Albeit the later part of his successively developing oeuvre classifies rather as political philosophy, problems of law and legal philosophy have never disappeared from his thinking. In the field of international law and under the personal influence of Alfred *Verdross*, Bibó, opposing the crushing practice of Nazism and Communism, tried to construct a theory of international order with exclusion of any form of violence, founded on humanist moral principles. He was well aware of and deeply committed to the prospect that some kind of natural law rejuvenation to come might and would help to eventually overcome the paralysis of formalistic legal positivism. If at all, his jusnaturalism is somewhat akin to Gustav *Radbruch's* converted theorizing, with the main difference of Bibó's frequent referencing to Christian ethics.[23]

5. Natural Law and the Marxism of Socialism in Hungary

The *prima philosophia iuris* during the regime of Socialism (1949–1989), the so-called Socialist normativ-

ism, was neither a natural law theory nor a properly understood legal positivist doctrine. It was rather a legalistic ideology reducing law to the legislator's political will without the least intention to exact any axiologically grounded limitation on it.

When this normativism as the totalitarily upheld dominant legal ideology started to loose its official position and thereby also its doctrinal relevance from the late 1970s, Hungarian legal scholarship suddenly found itself in front of an abyss. Namely, while legal positivism seemed unacceptable as too much alienated from social reality, the idea of natural law was also sensed as to be rejected, for not being "scientific" enough. In search for a solution under the severe political climate by far not tolerating any alternative to Marxist legal theorizing, some scholars opted for George *Lukács*' late *Ontology of the Social Being* [24] as a philosophical framework. Lukács' ontology was an amalgamate of collectivist economic theory within a kind of "communitarian" political philosophy, as well as an evolutionist philosophy of history imbued by a materialist-cognitivist meta-ethics, with huge a many hints at foundational legal-philosophical issues. Values could also find their place within its boundaries as specific ontological parts of the total social reality, being components of the prevailing ideology at work in actual practice, mobilized by active members of the society. This line of theory construction offered a minimum potential for a materialist axiology as well, a practical conclusion of which could be fostering the chance of setting pragmatic limits on legislation. The argumentation went on to show that by the legislator taking values shared by social majority into account, the law itself as a technique of social governance can become more effective. As a synthetic and in this restricted sense also anti-formalist theory, such a way of Marxist legal theorizing was certainly closer to the tradition of jusnaturalism than to positivism, even if the contrary was mostly emphasized in a rhetorical manner.[25] In parallel, Lukács' conceptual set was also used to develop a complex legal ontology, in which the actual workings of the judicial mind itself (with all components of legal culture feeding the deontology of the legal profession) could be seen as the equal – even if complementary – part of what is ontologically meant by law, as reconstruable from its factual operation in society. Or, this was the realization that natural limitations on the law's actual workings spring from both the overall social totality – indirectly, and the participants' recognized value-consciousness – directly.[26] Moreover, the theoretical proposition of some "ideal law" could also thereby be filled within this scheme by the adapted reinvention of the notion of "legal policy", that is, by normative arguments which, instead of prescribing goals, were supposed to suggest effective legal means for achieving ultimate political goals, without detriment to Marxism's primitively inherent humanistic tendencies.[27] Or, legal scholarship as the reservoir of axiologically filtered traditions and basic principles offered itself to scrutinize the very policy within which the law itself can be reasonably resorted to at all.

At the same time, classical natural law texts from authors like *Stammler*, Giorgio *Del Vecchio* and *Radbruch* were translated into Hungarian in order to contribute to the widening of the intellectual horizon for readers interested also in natural law.[28] Contemporary natural law theories of the West were also made familiar in Hungary, especially through review articles[29] and book reviews.[30]

Independently from such professional academic jurisprudential efforts, important Neo-Scholastic natural law doctrines and secular theories of natural rights could also be published by the late 1980s, either within the restricted and segmented area of Catholic theology[31] or as mediated by the fora of the Hungarian political emigration abroad,[32] that is, without the least chance of contributing or intervening to the timely academic debates in the country. In a latent contrast, by the way, Catholic thinkers often overlooked the issue of natural rights, while natural rights theorists avoided to justify those rights in the proper terms of natural law.[33]

5. In and Between Synthetic and Analytic Theories: Natural Law Doctrines in Hungary Today

As the transition to the Rule of Law took place in Hungary in 1989 in the name of legal continuity and without the slightest reference to the idea of natural law, the emergence of new natural law doctrines was neither a political nor a historical necessity after the fall of the *ancien régime*.

The legal-ideological problem of what was tacitly meant by "transition" in Hungary was clearly indicated by the first president of the Constitutional Court, when at a later stage he summarized their official stand in that "legal certainty – within the bounds of which the Constitutional Court refers to legal continuity – gains its significance from political and ideological discontinuity."[34] His argument for an "invisible constitution" (used actually once, in their early decision on the abolition of the death penalty) was in a moment sharply criticized by many as coming too close to the idea of natural law, the fact notwithstanding that the founding president admitted himself to have only intended to "protect"

the Constitution from the prospect of recurrent politically motivated modifications. Indeed, instead of the idea of natural law, he may rather have had a coherence-theory of interpretation in mind, an ever evolving conceptual dogmatics positioned above – and thereby both substantiating and framing – the text of the Constitution itself, in terms of which the Court's interpretative practice, established through their evolving constitutional adjudication, is able to prevail even if the underlying text is eventually changed in the meantime. Certainly, there was no natural law motivation at play when, for instance, the Court rejected judging past (socialist *Unrecht*, i.e., denial-of-law) crimes by claiming that legal certainty – that is, formal legal continuity acknowledged by the successor legal regime – is prior in the hierarchy of values to any "subjective" preference for justice. Even when the Court adjudicated "hard cases" like the issues of abortion or euthanasia, some of the genuinely natural law arguments they presented in formal motivation were in fact dressed in positivist clothes, manoeuvring as if nothing was done except to textual interpretation.

After 1990, the legal philosophy of Oxford – the triumvirate of Joseph *Raz*, John *Finnis* and Ronald *Dworkin* – has been taken as a model by the new Hungarian analytic theorists, having in view that its Anglo-Saxon methodological approach could prove more apt to analyze formally conceptualized Rule of Law institutions such as the jurisprudence of the Constitutional Court.[35] For a number of Hungarian legal philosophers, Dworkin could thereby become the "link in the chain", connecting radical theories of natural rights of the 1980s with today's normative legal philosophy. By the way, Dworkin's thought had already exerted quite a definitive impact on several leading political philosophers of the democratic opposition. On the other side, the so called social science theorists of law as the well-established mainstream of recent times could be proud of having indeed already deconstructed the official socialist ideology, so they were in a position to continue their own paths started as early as during the 1980s.

In the 1990s, both the political context and local traditions suggested to emerging Hungarian natural lawyers not to reject historicity and sociology as basic foundations. After all, even in classical Hungarian legal philosophy the opposition between legal positivism and natural law was far away from any rigid antinomy. Consequently and since then, the line of demarcation within the community of legal theoreticians seems to have been between macro-sociological "grand theories" (e.g., Csaba *Varga* and Béla *Pokol*) and the analytical approach with a practical-philosophical background (e.g., Mátyás *Bódig* and Tamás *Győrfi*).[36] With intense variations amongst themselves, the first group criticizes the second arguing that by neglecting sociology they cannot have but a limited access to law as a socio-historical phenomenon. The second group claims to be theoretically superior to the first in that social theorizing itself cannot explain the normative character of law. (In any case, the past is now given a renewed attention, for the rehabilitation of the classical – pre-war and interwar – legal philosophies of Hungary is getting executed as a common moral obligation.)[37]

From a natural law perspective and on the one hand, the advantage of the social theories of law is that in contrast to analytical positivism it does not aim at any strict separation of law from morality and, therefore, it keeps on being compatible with the idea that certain commonly shared values may and do form the necessary part of any legal system. For some of them,[38] it is tradition that mediates between such values and the legal subsystem itself. The counter-argument raised by natural lawyers is the former's implied moral relativism within the theoretical bounds of its social science approach. For it is clear that once the working legal system is conditioned by social contexts and historical tradition, then values cannot be taken as objective, and societal values will be treated as mere components of the overall effectivity of the prevailing law and order at the most. In contrast, as the canon lawyer prime cardinal of the country argues, natural law and justice are stronger criteria for the evaluation of law.[39] On the other hand, by accepting the separation thesis, some analytical positivists claim to be able to harmonize objective values. In their view, the kind of a natural law theory as professed, for instance, by John *Finnis* is indeed closer to legal positivism than – let's say – the theoretical perspective of Karl *Bergbohm*.

A breakthrough in this divide was proposed by Ferenc *Hörcher's* "pragmatic" theory of natural law. Without elaborating a kind of scholastic hierarchy between the normative orders of natural law and positive law, he discussed multiple dimensions of human nature as the factor determining individual actions. According to the philosophical anthropology involved, man has a fallible nature and, therefore, nothing but his practical moral knowledge – called *phronesis* by ancient sages – can orient his life. For legal philosophy, it has to mean that adjudication is certainly more than a syllogistic application of the legislator's expressed will to given cases. Instead, as he continues, one has to realize that aesthetic, moral and legal judgments have something in common in nature. Moreover, they are interconnected in any particular case and situation of decision. In his view, if one can speak of legal science at all, it should be

called "*prudentia juris*" – the term referring to the final moral criteria of knowledge and action in the legal sphere.[40]

As regards the central issue of human nature, Hörcher is trying to combine a rather pessimist (anti-Cartesian) anthropology with the rehabilitation of the virtue ethics of Aristotle and Saint Thomas Aquinas. In Csaba Varga's *Paradigms of Legal Thinking*, in fact, an almost parallel approach is exposed on a social science platform in depth, based on Michel Villey's interpretation of the early Greek understanding of *dikaion*. This is a flexible measure adapted to the particularity of given cases when it is used as a criterion of the judgment. Slowly but surely, the very idea of having a measure at all has historically been transformed into a linguistically composed and rather technical mediator as the guarantee for both stability and flexibility in modern formal law, where both the social context of the law and the tradition of the given political community are also taken into account. Historically speaking, contexts and traditions are bound to change continuously, but in a given situation at any given time its established working may serve as an adequate and, for the time being, predictable, well-patterned measure. Indeed, Varga describes the legal phenomenon and its practical operation in a monographically detailed manner, taking it seriously that modern formal law is a complex social (sub)system, characterized by its simultaneously being – as Niklas *Luhmann* formulated it in a classical way – cognitively open and normatively closed.[41] Accordingly, the openness of the system permits to introduce not only new pieces of information and pressed interests but societal values as well, weighed against and balanced among each other under the personal responsibility to be borne unavoidably by the decision-maker. Concludingly, legal argumentation cannot become fully autonomous and still less mechanistic, for the actual workings of the legal system do necessarily reflect the state of the underlying social structure in a constant flux of changes.[42]

In contrast to all the above, the autonomy of legal argumentation is defended by Miklós *Szabó*'s value-oriented theory, which he calls "legal dogmatics" (pace Varga). This is maybe another variant to the *prudentia iuris* approach, its point of departure being legal logic (pace Hörcher) in a sense Chaïm *Perelman* ascribed to it. In accordance with the stand of social science theories of law, his argumentation theory is positivist in the sense that law is taken as a human adventure, but at the same time it is anti-positivist whenever legal positivism is reduced to normativism. But as to its methodology adopted, instead of sketching an anthropology of human nature like Hörcher or elaborating on a theory of law as a set of flexible measures like Varga, Szabó focuses on the lawyerly „craftsmanship" in decision making. Law is a special art of human undertakings, and lawyerly professionalism is to be defined by its artificiality. Szabó claims that it is insufficient to describe lawyers' activity as pure conceptual operation (at the point of which, again, both Varga and Hörcher would agree, although for different reasons). When confronted with "hard cases", due to either the indeterminacy of legal language or the moral dilemmas embedded in social life, the legal craftsman's supposed secret is rooted in a technically channelled practical-moral knowledge.[43]

According to János *Frivaldszky*, a natural lawyer in a more classical vein, society is a network of intersubjective relationships amongst persons possessing human dignity. These relationships, prior to the law as the mere command of the sovereign, are based on mutual respect, that is, by the recognition of each person's human dignity. Henceforth, the goal of the legislator is to recognize these intersubjective relations as legal tenets prevailing in their "political friendship", whereas legal validity is intimately connected to those fundamental intersubjective relations and principles of justice which are always balanced by the so-called "golden rule". Indeed, the legal system is about to reach its final purposes once everyone can get what he/she is due. All these altogether are to define what is just [*iustum*], or what is the nature of things, as the main measure of any judgment made in the process of adjudication.[44]

The very prevalence of such and similar natural law doctrines in Hungary are to prove that whilst Hungarian legal philosophers, beyond their facing their time's challenges, have been successful in finding their further paths[45] and problems,[46] they share the European value-oriented legal thought of today while keeping in touch with classical natural law traditions as well.[47] After all and (in its specific quality) the first time in the history of the country, by now natural law – added to theory of the state, philosophy of law, as well as legal anthropology and sociology – is being taught as a mandatory course in the law curriculum[48] and researched interdisciplinarily especially by legal theoreticians, historians and Romanists convened at the Catholic University of Hungary.

Notes

[1] *Das Ofner Stadtrecht* Eine deutschsprachge Rechtssammlung des XV. Jahrhunderts aus Ungarn, ed. Karl Mollay (Weimar: Böhlau 1959) 237 pp. Cf. also Katalin Gönczi *Ungarisches Stadtrecht aus europäischer Sicht* Die Stadtrechtsentwicklung im spätmitteralterlichen Ungarn am Beispiel Ofen (Frankfurt am Main: Klostermann 1997) x + 255 pp. [Studien zur europäischen Rechtsgeschichte: Ius commune Sonderhefte 92].

[2] *„das recht zu füederen und das unrecht zu hinderen und zu kreugken"*, quoted in Néda Davori Relković *Buda város jogkönyve* (Ofner Stadtrecht) (Budapest: Stephaneum 1905) 308 pp. [Művelődéstörténeti értekezések 12], p. 162, note 8.

[3] Cf. János Zlinszky 'La justice féodale en Hongrie et la »jus commune«' in *Justice populaire* Actes des journées de la société d'histoire du droit, tenues à Lille, 25–28 Mai 1989 (Hellemes: ESTER [Études scientifiques pour l'enseignement et la recherche] 1992) 205 pp. [L'espace judiciaire / Histoire judiciaire], pp. 65–75.

[4] The Customary Law of the Renowned Kingdom of Hungary *The "Tripartitum"* A Work in Three Parts Rendered by Stephen Werbőczy, ed. & trans. János M. Bak, Péter Banyó & Martyn Rady, introd. László Péter (Idyllwild, Ca.: Charles Schlacks & Budapest: Department of Medieval Studies [of the] Central European University 2005) xlviii + 473 pp. [The Laws of the Medieval Kingdom of Hungary 5].

[5] *Ibid.*, Prologue, ch. 5, 1–2.

[6] *Ibid.*, ch. 6, 1.

[7] *Ibid.*, ch. 6, 13.

[8] *Ibid.*, ch. 9, 1.

[9] Caroli Antonii de Martini [Baron Carl Anton von Martini] *Positones de jure civitatis* in usum auditorii Vindobonensis (Vindobonae [Vienna]: Typ. Joann. Thom. de Trattnern 1768) 386 pp. {translated as *A' Báro Martini Természet Törvénnyéről való állításainak magyarázatja*, mellyet Német nyelvből Magyarra fordított, és a maga költségén kiadott Diénes S[ámuel] (Bétsben [in Vienna] 1792) & resumed in *Positones de jure civitatis* in usum academiarum Hungaricae I–II (Budae: Typis Regiae Universitatis 1795)}.

[10] For an all-through regional overview, see Csaba Varga 'Philosophy of Law in Central and Eastern Europe: A Sketch of History' *Acta Juridica Hungarica* 41 (2000) 1, pp. 17–25.

[11] Sándor Pruzsinszky *Természetjog és politika a XVIII. századi Magyarországon* Batthyány Alajostól Martinovicsig [Natural law and politics in 18th century Hungary: From Batthyány to Martinovics] (Budapest: Napvilág 2001) 155 pp.

[12] E.g., for Catholicism, Pál Kecskés *A keresztény társadalomelmélet alapelvei* [Basic principles of Christian social theory] (Budapest: Szent István Társulat 1938) 391 pp.; for law, by József Hegedüs, 'A természetjog rehabilitációja' [The rehabilitation of natural law] *Jogállam* 34 (1935) 5–6, pp. 253–257 and 'A természetjog időszerűségéről' [On the timeliness of natural law] *Társadalomtudomány* 19 (1939) 1, pp. 153–183. See also Tibor Hanák *Az elfelejtett reneszánsz* A magyar filozófiai gondolkodás a század első felében [Forgotten renaissance: Hungarian philosophical thought in the first half of the century] {1st ed. at Bern 1981} (Budapest: Göncöl 1993) 308 pp. on pp. 110–131 and, by József Szabadfalvi, 'Neoskolasztikus természetjog a két világháború közötti Magyarországon' [Neo-Scholastic natural law in interwar Hungary], *Vigilia* 67 (2002) 8, pp. 586–594 and 'A természetjog rehabilitációja: Hegedüs József »szinthétikus« jogbölcselete' [The rehabilitation of natural law: Hegedüs' synthetic legal philosophy] in *Ius unum, lex multiplex* Liber Amicorum: Studia Z. Péteri dedicata (Studies in Comparative Law, Theory of State and Legal Philosophy) ed. István H. Szilágyi & Máté Paksy (Budapest: Szent István Társulat 2005) 573 pp. [Jogfilozófiák & Philosophiae Iuris / Bibliotheca Iuridica: Libri amicorum 13], pp. 513–523.

[13] By Sándor Horváth, *A természetjog rendező szerepe* [The regulatory function of natural law] (Budapest: Jelenkor 1941) 86 pp., 'A szociáletika alapvető problémája: a tulajdonjog Szent Tamásnál' [The basic problem of social ethics: the right to property at Saint Thomas] *Jelenkor* 4 (1942) 8, pp. 1–5 as well as 'Az örök törvény – a természetjog' [Eternal law – natural law] *Vigilia* 13 (1948), pp. 513–521 & 14 (1949), pp. 218–234.

[14] Sándor Horváth, *Állameszme és népek önrendelkezési joga* [Idea of the state and the people's right to autodetermination] (Budapest: Stephaneum 1918) 51 pp.

[15] By Alexander Horváth OP, 'Thomas von Aquin über die Würde des Menschen in der Volkswirtschaft' *Schönere Zukunft* (1928–29) 4, pp. 221–232, 'Besitz und Arbeit nach Thomas von Aquin' *ibid.*, pp. 239–242, 'Thomas von Aquin über die Grenzen des Eigentumsrechts' *ibid.*, pp. 265–266, 'Thomas von Aquin über des Sondereigentum und seine soziale Belastung' *ibid.*, pp. 310–311, 'Thomas von Aquin über Überfluss und Besitzverteilung' *ibid.*, pp. 331–332, 'Bestimmung des rechten Lebensstandards nach dem hl. Thomas von Aquin' *ibid.*, pp. 372–374 & 392–394, with all his research on the topic developed monographically in his *Eigentumsrecht nach dem hl. Thomas von Aquin* (Graz: Ulrich Moser 1929) viii + 240 pp. and complemented in his 'Zum Ringen um den rechten Eigentumsbegriff' *Schönere Zukunft* (1929–30) 5, pp. 56–58, 'Was ist nach Thomas von Aquin abzugebender Überfluss?' *ibid.*, pp. 83–84, 'Ist die Abgabe des Überflusses nur Liebes- oder auch Naturrechtspflicht?' *ibid.*, pp. 110–113 and 'Verwaltung des Eigentums und Staat' *ibid.*, pp. 163–165. For some outstanding specimens from its contemporary debate, cf. Joseph Biederlack SJ 'Zu P. Horvaths Buch: Eigentumsrecht nach hl. Thomas von Aquin' *Theologische-praktische Quartalschrift* LXXXIII (1930), pp. 524–535, Albert Mitterer 'Was lehrt St. Thomas, was lehrt p. Horvath über das Eigentumsrecht?' *Das Neue Reich* I (1930), pp. 379–381, A. Rohner OP 'P. Horvaths Buch: Eigentumsrecht nach dem hl. Thomas von Aquin' *Schönere Zukunft* (1929–30), pp. 540–542 & 568–569, as well as Stephan Schmutz 'Nach der Lehre des hl. Thomas' *Benediktinische Monatsschrift* XIII (1931), pp. 60–70 [Darstellung der Diskussion um »Das Eigentumsrecht«]. See also Hanák *Az elfelejtett reneszánsz*, pp. 125–130.

[16] Cf., by József Szabadfalvi, 'Revaluation of the Hungarian Legal Philosophical Tradition' *Archiv für Rechts- und Sozialphilosophie* 89 (2003) 2, pp. 159–170 and 'Portrait-sketches from the History of Hungarian Neo-Kantian Legal Philosophical Thought' *Acta Juridica Hungarica* 44 (2003) 3–4, pp. 245–256.

[17] Felix Somló *Juristische Grundlehre* (Leipzig: Felix Meiner 1917) xv + 556 pp. {2nd ed. 1927 „mit einem Vorwort von Julius Moór", reprinted by (Aalen: Scientia Verlag 1973)}.

[18] Cf. also in addition, Felix Somló *Schriften zur Rechtsphilosophie* ed. Csaba Varga (Budapest: Akadémiai Kiadó 1999) xx + 114 pp. [Philosophiae Iuris: Excerpta Historica Philosophiae Hungaricae]. See also, by József Szabadfalvi, 'Some Reflections on the Anglo-Saxon Influence in the Hungarian Legal Philosophical Traditions' *Acta Juridica Hungarica* 42 (2001) 1–2, pp. 111–119, 'The Spirit of the Common Law in the Hungarian Legal Philosophical Thinking' *Hungarian Journal of English and American Studies* 9 (2003) 2, pp. 199–208 and 'Prima Philosophia Iuris: A Sketch of Bódog Somló's Legal Philosophical Oeuvre' in *Theatrvm legale mvndi* Symbola Cs. Varga oblata, ed. Péter Cserne et al. (Budapest: Societas Sancti Stephani 2007) xvi + 674 pp. [Philosophiæ Ivris / Bibliotheca Ivridica: Libri Amicorvm 24], pp. 485–498.

[19] *Aus dem Nachlaß von Julius Moór* ed. Csaba Varga (Budapest: ELTE "Comparative Legal Cultures" Project 1995) xv + 158 pp. [Philosophiae Iuris] and Julius Moór *Rechtsphilosophische Aufsätze* ed. Csaba Varga (Budapest: Szent István Társulat 2006) xxii + 485 pp. [Philosophiae Iuris: Excerpta Historica Philosophiae Hungaricae Iuris / Bibliotheca Iuridica: Opera Classica 3]. See also József Szabadfalvi 'Wesen und Problematik der Rechtsphilosophie: Die Rechtsphilosophie von Gyula Moór' *Rechtstheorie* 30 (1999) 1, pp. 329–353.

[20] Barna Horváth 'Természetjog és pozitivizmus' [Natural law and legal positivism] *Társadalomtudomány* VIII (1928) 3–4, pp. 212–247.

[21] Barna Horváth *Rechtssoziologie* Probleme des Gesellschaftslehre und der Geschichtslehre des Rechts (Berlin-Grunewald: Verlag für Staatwissenschaften und Geschichte GmbH. 1934) xi + 331 pp. For an overview, see Lajos Cs. Kiss 'Szabadság és kényszer: Horváth Barna szellemi pályája' [Liberty and constraint: Horváth's intellectual biography] in Barna Horváth *Angol jogelmélet* {(Budapest: Magyar Tu-

dományos Akadémia 1943) x + 657 pp. [A M. Tud. Akadémia Jogtudományi Bizottságának kiadvány-sorozata 13] reedition} (Budapest: Pallas Stúdió – Attraktor Kft. 2001) 616 pp. [Bibliotheca Iuridica: Opera Classica], pp. 569–603.

[22] By István Bibó, 'Etika és büntetőjog' [Ethics and criminal law] *Társadalomtudomány* 18 (1938) 1–3, pp. 10–27 and his reprints in German and French in *Die Schule von Szeged* Rechtsphilosophische Aufsätze von István Bibó, József Szabó und Tibor Vas, ed. Csaba Varga (Budapest: Szent István Társulat 2006) 246 pp. [Philosophiae Iuris: Excerpta Historica Philosophiae Hungaricae], pp. 9–77.

[23] István Bibó *The Paralysis of International Institutions and the Remedies* A Study of Self-Determination, Concord among the Major Powers, and Political Arbitration, introd. Bernard Crick (Hassocks: The Harvester Press & New York: Wiley 1976) xi + 152 pp. See also István H. Szilágyi 'Etika, jog, politika: Bibó István (1911–1979)' [Ethics, law, politics] in *Portrévázlatok a magyar jogbölcseleti gondolkodás történetéből* Pulszky, Pikler, Somló, Moór, Horváth, Bibó, ed. Miklós Szabó (Miskolc: Bíbor Kiadó 1995) 310 pp. [Prudentia Iuris 3], pp. 267–309 and András Karácsony 'In the Attraction of Natural Right: Bibó István's Conception of Law' *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae: Sectio Juridica* 41–42 (2002), pp. 223–233.

[24] George Lukács *The Ontology of Social Being* trans. David Fernbach: Hegel's False and his Genuine Ontology (London: Merlin Press 1978) 117 pp., Marx's Basic Ontological Principles (London: Merlin Press 1978 [reprint: 1982]) 173 pp. as well as Labour (London: Merlin Press 1980) v + 139 pp. Cf. also Georg Lukács *Zur Ontologie des gesellschaftlichen Seins* Prolegomena, I–II, ed. Frank Benseler (Darmstadt: Luchterhand 1984–1986) 692 + 747 pp. [Georg Lukács Werke 13–14].

[25] Vilmos Peschka *Grundprobleme der modernen Rechtsphilosophie* (Budapest: Akadémiai Kiadó 1974) 235 pp. and Zoltán Péteri 'Gustav Radbruch und einige Fragen der relativistischen Rechtsphilosophie' *Acta Juridica Academiae Scientiarum Hungaricae* 1 (1960) 2, pp. 113–160.

[26] Csaba Varga *The Place of Law in Lukács' World Concept* [Hungarian ed. 1981] (Budapest: Akadémiai Kiadó 1985 {reprint 1998}) 193 pp.

[27] *Theoretische Grundlagen der Rechtspolitik* Ungarisch–österreichisches Symposium der Internationalen Vereinigung für Rechts- und Sozialphilosophie 1990, ed. Peter Koller, Csaba Varga & Ota Weinberger (Stuttgart: Franz Steiner Verlag Wiesbaden 1992) 185 pp. [Archiv für Rechts- und Sozialphilosophie, Beiheft 54].

[28] *Modern polgári jogelméleti tanulmányok* [Papers from modern western legal theory] ed. Csaba Varga (Budapest: Magyar Tudományos Akadémia Állam- és Jogtudományi Intézete 1977) 145 pp. and *Jog és filozófia* Antológia a század első felének polgári jogelméleti irodalma köréből [Law and philosophy: Anthology of western legal theory from the first half of the 20th century] ed. Csaba Varga (Budapest: Akadémiai Kiadó 1981) 383 pp.

[29] By Zoltán Péteri 'Az »újjáéledt« természetjog néhány jogelméleti kérdése a második világháború után' [Legal-theoretical issues of »revived« natural law after world war two] *Állam- és Jogtudomány* 3 (1962) 4, 469–505 and 'Perspectives for a Socialist Axiology of Law' in *Rechtskultur – Denkkultur* Ergebnisse des Ungarisch–österreichischen Symposiums der Internationalen Vereinigung für Rechts- und Sozialphilosophie 1987, ed. Erhard Mock & Csaba Varga (Stuttgart: Franz Steiner Verlag Wiesbaden 1989) 175 pp. [Archiv für Rechts- und Sozialphilosophie, Beiheft 35], pp. 96–105.

[30] By Csaba Varga, on Jacques Leclerq and Lon L. Fuller in 1967/1970 respectively, reprinted in his *Jogi elméletek, jogi kultúrák* Kritikák, ismertetések a jogfilozófia és az összehasonlító jog köréből [Theories and cultures in law: reviews of criticism in legal philosophy and comparative law] xix + 503 pp. (Budapest: ELTE „Összehasonlító jogi kultúrák" projektum 1994) [Jogfilozófiák], pp. 58–59 and 66–67, as well as 'Reflections on Law and on its Inner Morality' *Rivista internazionale di Filosofia del diritto* LXII (1985) 3, pp. 439–451, reprinted in his *Law and Philosophy* Selected Papers in Legal Theory (Budapest: ELTE "Comparative Legal Cultures" Project 1994) xi + 530 pp. [Philosophiae Iuris], pp. 77–89.

[31] Pál Bolberitz & Ferenc Gál *Aquinói Szent Tamás filozófiája és teológiája* [The philosophy and theology of Saint Thomas Aquinas] (Budapest: Ecclesia 1987) 581 pp.

[32] János Kis *Vannak-e emberi jogaink?* [Do we have human rights?] (Budapest: AB Független Kiadó 1986) 87 pp. & (Paris: Dialogues Européens 1987) 224 pp. [Magyar Füzetek könyvei 11]. This *samizdat* publication, illegal in the communist regime, was subsequently reprinted by (Budapest: Stencil Kulturális Alapítvány 2003) 247 pp.

[33] For a comprehensive overview, cf. Csaba Varga 'A szocializmus marxizmusának jogelmélete: Hazai körkép nemzetközi kitekintésben' [Legal theory of the Marxism of socialism: A Hungarian overview in an international perspective], *Világosság* 45 (2004) 4, pp. 89–116 & <http://www.vilagosssag.hu/pdf/20041124144450.pdf>.

[34] László Sólyom *Az alkotmánybíráskodás kezdetei Magyarországon* [Beginnings of constitutional adjudication in Hungary] (Budapest: Osiris 2001) 799 pp. [Osiris tankönyvek], at p. 65.

[35] Mátyás Bódig *Jogelmélet és gyakorlati filozófia* Jogelméleti módszertani vizsgálatok [Legal theory and practical philosophy: Methodological inquiries into legal theory] (Miskolc: Bíbor Kiadó 2004) 601 pp. [Prudentia Iuris 23], chs. II–IV and Tamás Győrfi *A kortárs jogpozitivizmus perspektívái* Válogatott tanulmányok [Perspectives of contemporary legal positivism: Selected papers] (Miskolc: Bíbor Kiadó 2006) 211 pp. [Prudentia Iuris 25].

[36] Cf. Máté Paksy & Péter Takács 'Continuity and Discontinuity in Hungarian Legal Philosophy' in *Transformation of the Hungarian Legal Order 1985/1990-2005* Transition to the Rule of Law and Accession to the European Union, ed. András Jakab, Péter Takács & Allan F. Tatham (Alphen aan den Rijn: Kluwer Law International 2007), pp. 638–648, especially at pp. 640f, commenting on Varga in the next note.

[37] For an overall assessment, cf. Csaba Varga 'Development of Theoretical Legal Thought in Hungary at the Turn of the Millennium' in *ibid.*, pp. 615–638.

[38] Cf. especially Csaba Varga *Comparative Legal Cultures* On Traditions Classified, their Rapprochement & Transfer, with the Anarchy of Hyper-rationalism, with Appendix on Legal Ethnography (Budapest: Szent István Társulat 2010) cca. 200 pp. [Philosophiae Iuris] {forthcoming}.

[39] Péter Erdő *Egyházjog* [Church law] (Budapest: Szent István Társulat 1992) 694 pp., 4th ed. (2005) 878 pp. [Szent István kézikönyvek 7].

[40] By Ferenc Hörcher, 'Egy pragmatikus természetjog felé' [Towards a pragmatic theory of natural law] *Századvég* (1997) 4, pp. 109–130, *Prudentia Iuris* Towards a Pragmatic Theory of Natural Law (Budapest: Akadémiai Kiadó 2000) 176 pp. [Philosophiae Iuris], 'Az ítélet mint esztétikai, etikai, politikai és jogi fogalom' [Judgement as an aesthetic, ethical, political, and legal notion] *Századvég* (2000) 3, pp. 3–26 as well as 'Mit jelent a pragmatikus természetjog fogalma?' [What does pragmatic natural law mean?] in *Natura iuris* Természetjog & jogpozitivizmus & magyar jogelmélet [Natural law, legal positivism & the Hungarian legal philosophy] ed. Miklós Szabó (Miskolc: Bíbor Kiadó 2002) 249 pp. [Prudentia Iuris 17], pp. 73–92.

[41] Csaba Varga 'The Basic Settings of Modern Formal Law' in *European Legal Cultures* ed. Volkmar Gessner, Armin

Hoeland & Csaba Varga (Aldershot: Dartmouth 1996) xviii + 567 pp. [Tempus Textbook Series on European Law and European Legal Cultures 1], pp. 89–103.

[42] By Csaba Varga, 'Measuring through Patterning in Law: Development of an Idea in Europe' *Acta Juridica Hungarica* 39 (1998) 1–2, pp. 107–130, 'Norms through Parables in the New Testament: An Alternative Framework for Time and Law' in *Time and Law* Is it the Nature of Law to Last? ed. François Ost & Mark Van Hoecke (Brussels: Bruylant 1998) 496 pp. [Bibliothèque de l'Académie européenne de théorie du droit], pp. 213–224, as well as *Lectures on the Paradigms of Legal Thinking* [1st Hungarian ed. 1996] (Budapest: Akadémiai Kiadó 1999) vii + 279 pp. [Philosophiae Iuris].

[43] By Miklós Szabó, *Ars iuris* A jogdogmatika alapjai [Foundations of legal dogmatics] (Miskolc: Bíbor Kiadó 2005) 313 pp. [Prudentia Iuris 24] and 'A jogdogmatika hivatása' [The vocation of legal dogmatics] in *Jogdogmatika és jogelmélet* ed. Miklós Szabó (Miskolc: Bíbor Kiadó 2007) 389 pp. [Prudentia Iuris 26], pp. 151–166 & 223–238.

[44] By János Frivaldszky, 'A jog interszubjektív jellege és a természetjog' [The intersubjective character of law and natural law] *Századvég* (1998) 10, pp. 101–112, *Természetjog – eszmetörténet* [Natural law – history of ideas] (Budapest: Szent István Társulat 2001) viii + 371 pp. [Jogfilozófiák] and 'Egy ma vállalható természetjogi elmélet körvonalai' [Outlines of an undertakeable theory of natural law] in *Natura iuris* ed. Szabó [note 40], pp. 59–72.

[45] E.g., for Christian theology, László Boda *Természetjog, erkölcs, humánum* A jogbölcseleti etika látóhatára [Natural law, morality, humanity: the perspective of a legal-philosophical ethics] (Budapest: Szent István Társulat 2001) 335 pp.; for the history of ideas, by Szilárd Tattay, 'Ius and Dominium in Thomas Aquinas' in *Theatrvm Legale Mvndi* ed. Cserne et al. [note 18], pp. 539–551 and 'Natural Law and Natural Rights in Ockham's Legal Philosophy' in *Ius unum* ed. Szilágyi & Paksy [note 12], pp. 457–472 as well as 'Natural Law and Legal Semiotics: Are They Irreconcilable?' in *La notion de justice aujourd'hui* ed. Petre Mares & J.-P. Clero (Târgovişte: Valahia University Press 2005), pp. 101–110.

[46] E.g., as to the notions of common good and ideal law, by Péter Takács, 'Der Begriff des Gemeinwohls' in *Theatrvm legale mvndi* ed. Cserne et al. [note 18], pp. 527–537 and 'A helyes jog' [The right law] in *Jogbölcseleti előadások* ed. Miklós Szabó (Miskolc: Bíbor Kiadó 1998) 309 pp. [Prudentia Iuris 11], pp. 75–110.

[47] Cf., for an anthology of translations, János Frivaldszky *Természetjog* Szöveggyűjtemény [Natural law: Texts] 2nd ed. (Budapest: Szent István Társulat 2006) 329 pp. [Jogfilozófiák]; and for translations of monographs, Helmut Coing *A jogfilozófia alapjai* [Grundzüge der Rechtsphilosophie, 1993], trans. Béla Szabó (Budapest: Osiris 1996) 294 pp. [Osiris tankönyvek], Zenon Grocholewski *II. János Pál jogfilozófiája* [La filosofia del diritto di Giovanni Paolo II, 1991], trans. Péter Szabó (Budapest: Szent István Társulat 2003) 71 pp. [Pázmány könyvek 4], as well as Javier Hervada *Kritikai bevezetés a természetjogba* [Introducción crítical al derecho natural, 1993], trans. Katalin Hársfai (Budapest: Szent István Társulat 2004) 198 pp.

[48] János Frivaldszky *Klasszikus természetjog és jogfilozófia* [Classical natural law and legal philosophy] (Budapest: Szent István Társulat 2007) 476 pp.