

# Felix Somló's Three Theories of State

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**Abstract.** This paper examines the excellent Hungarian legal philosopher, Felix Somló's theories on the state and politics. It claims that Somló had three theories of state. The first could be reconstructed from the sociological allusions and hints of his first book, titled *Állami beavatkozás és individualismus* [State intervention and individualism] (1903). His second theory of state was based on legal concepts exposes in a Neo-Kantian fashion, and it has been explicated in his *Juristische Grundlehre* [Basic Legal Concepts and Ideas] (1917). His third theory of state is an unfinished theory prepared in his unpublished *Állambölcséleti jegyzetek* [Notes for a Philosophy of State] (1919/20). The core idea of the first theory is regulation (which was considered by Somló as interference); the central concept of the second theory is the so called 'Rechtsmacht' [legal might], which was coined by Somló; whereas the third theory revolves around the possibility of so called eternal truth of history of ideas.

**Keywords:** Felix Somló, theory of state, philosophy of law, state intervention and *state interference*, history of ideas and theories of state in Hungary, relation between science and politics

Felix Somló, who is known in the literature of Hungarian and international legal theory primarily as a legal philosopher, engaged, throughout his life, with theoretical questions of the state and also formed special theories of state. He has explicated more than one theories. This paper examines these theories and additionally discusses the question whether his image regarding the 'scholar and/or politician' problem should be adjusted in the light of his theories of state.

## 1.

The first question that needs to be answered is whether Felix Somló did have a theory of state in the sense of a general theory of state (*allgemeine Staatslehre*)? It is important to raise this question since in his lifetime Somló did not publish any studies with the exclusive topic of the state or any of its features. Even in his work *Állami beavatkozás és individualismus* (State Intervention and Individualism)<sup>1</sup> from his first creative period, it cannot be stated unconditionally that he analysed 'merely' the questions of the state on the level of its general features. In this book, he examined the relationship between certain social processes and a specific state activity. Thus, this study, which holds great significance in respect of Hungarian social sciences, is most likely to be classified as a general social theory with references to sociology of state under today's scientific-taxonomic categories.

He never had published works exclusively on questions of the state, at least during his lifetime, by reviewing the list of his works,<sup>2</sup> however, it becomes surprisingly evident that he published a considerable number of studies whose topic concerns, in a certain way and degree, the state or politics. The number of these studies is around twenty, a round one third of his publications. Many of these works are recensions, encyclopedia entries or other short texts and obviously show that was continuously engaged in issues of the state and politics from the very beginning of his career. His publications may suggest that his concern

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<sup>1</sup> See Somló (1907) 178.

<sup>2</sup> For the most comprehensive bibliography of his works, see Somló (2016) 225–37.

subsided between 1910 and 1917, however, it will be shown below that, this impression is pretty deceiving.

Somló obtained his doctorate degree in science of state shortly following his doctorate in law<sup>3</sup> and his dissertation topic was one of the institutionalized forms of the modern state – parliamentarism.<sup>4</sup> Furthermore, one of his first scientific works dealt with the specific mode of operation of the state, war and peace.<sup>5</sup> Part of his entries in *Jogi Lexikon* (Legal Encyclopedia) was written on classical thinkers of state and legal philosophy – Aristotle, Grotius, Hobbes, Rousseau, Fichte and Kant.<sup>6</sup> The subject of his first recensions was works discussing the questions of the state.

On the basis of the arguments above it can be stated that Somló was interested in theoretical questions of the state and politics even when he analysed essentially sociological issues in the early 20<sup>th</sup> century. Furthermore taking into account that some 100 of the 531 pages, one fifth of *Juristische Grundlehre* (1917), deals with questions of the state,<sup>7</sup> it becomes clear that the state was not an incidental topic of examination but also stood in the centre of Somló's interest in that period.

The clear evidence that Somló's ideas about the state were not simply a theory in the framework of a legal philosopher's theory of law is provided *par excellence* by his philosophy of state – a work he dedicated the last two years of his life. Part of this work remained in the form of a manuscript. From his diary entries and publications it is quite obvious that after the 1918 and 1919 'flus and revolutions'<sup>8</sup> he gave up his readings in philosophy as well as his ambitions to develop a 'first philosophy',<sup>9</sup> and, as a reaction to the course of history, started to write a theory of state. His diary was kept more or less regularly from 1896 was interrupted on 15 April 1919 and on that day, he wrote the following entry in his diary: '15 April 1919. Lenin: The upcoming tasks of the Soviet power. An outstanding tactician. His reasoning follows not from eternity but from the current situation. *Sub specie momenti*.'<sup>10</sup> His interests turned once again to the theory of state and understood that in order to comprehend the events of his age, he needed to know the contemporary theories of politics with practical effects, whether they are correct or 'eternal' or not.

His manuscripts clearly demonstrate his ambition to prepare a work on the theory of state. From *Állambölcséleti jegyzetek* (Notes on Philosophy of State) and the autograph manuscript *Platon államtana és vegyes jogfilozófiai jegyzetek* (Plato's 'Theory of the State' and Mixed Notes on the Philosophy of Law)<sup>11</sup> there emerge the contours of a work in the

<sup>3</sup> In the late 19<sup>th</sup> and early 20<sup>th</sup> century, law schools in Hungary were entitled to give 'doctoral degrees in legal studies' in the first place; following a few supplementary exams, they were allowed to issue 'doctoral degrees in science of state', as well.

<sup>4</sup> Somló (1896) 39.

<sup>5</sup> Somló (1900) 21–30.

<sup>6</sup> See Márkus (ed.) (1898–1907) *passim*.

<sup>7</sup> Somló (1917) XV + 556.

<sup>8</sup> Reference to one of his diary entries in which he wrote the following: 'after a second flu and a second revolution [namely after the Hungarian Bolshevik Revolution in 1919] ...' etc. See Somló (1896–1919) MSS vol. 4. (entry on 5th of April, 1919). It must be added that part of his diary and correspondence of interest to the public is available in German in Funke and Sólyom (2013) 95–165. and 166–249.

<sup>9</sup> See Somló (1926) 107.

<sup>10</sup> Somló (1896–1919) MSS vol. 4. (entry on 15th of April 1919).

<sup>11</sup> See Somló (1919–1920a) MSS *passim* and Somló (1919–1920b) MSS *passim*. These manuscripts were published in Somló (2016) 19–134.

nature of a history of theory. Part of the manuscript of this planned work on the philosophy of state was published in a ‘scattered’ way and in parts. Some parts were published in the 1980s, more than six decades after his death, while some other parts were published in Hungarian in the 2010s.<sup>12</sup> Those who wish to evaluate the content of the whole manuscript should read this scatteredly published work as a whole in some way. By doing so, this synopsis as a sinoptic view of his ideas shows a work in the field of state theory, or more precisely in the field of the history of philosophy of state, which was not necessarily meant to be but could undoubtedly be understood as a ‘final summary’. This work makes Somló undeniably a representative of not only legal science but also the science of state (*Staatswissenschaft*).

To answer the first question it can be argued that Felix Somló was occupied with the problems of state and politics throughout his life and he did have some sort of a theory of state although a theory with a single semantic unit was not published as a separate work. All the more, he actually had several theories of state during his lifetime as his intellectual angles changed throughout his career.

## 2.

What are these theories of state and what do they contain? It can be said that Felix Somló had three characteristic theories of state: The first underpins his work *Állami beavatkozás és individualismus* (State Intervention and Individualism) (1903, 2nd ed. 1907); the second is elaborated in *Juristische Grundlehre* (1917, 2nd ed. 1927, 3rd ed. 1973) as part of his legal theory and the third refers to the manuscript *Az állambölcselet története* (History of Philosophy of State) which he was going to write in 1919–1920 but remains in note form due to the tragic turn in his life.

His work *Állami beavatkozás és individualismus* (State Intervention and Individualism) is based on the acceptance of the conceptual separateness of ‘state and society’. The overriding idea of this work is that state intervention which is ‘perceived as an artificial governance of natural selection’ ‘extends to an ever-larger scope’.<sup>13</sup> However, this scope will also be larger during the process of development and human freedom, which tries to change it. Somló claimed and approved the increase in state interventions by criticising the naïve liberalism of Herbert Spencer. A textual analysis of the work shows that by state intervention he meant state regulation, legislation in general terms or at most coercive regulation.

This is not surprising as he could not have any information about the tools that are known today as state intervention in 1903 and 1907. He did not know, for instance, the 20<sup>th</sup> century tools influencing market processes of economic governance – subsidies and endowments, credit and interest rate policies, taxation policies, pricing policies, inflationary policies, investment and consumption stimulation, demand stimulation, the creation and cessation of state-owned enterprises. These formed a system after the 1928–1932 Great Depression in the Keynesian economics. He could not also know anything about nationalization and privatization, which characterized neoliberal economic policies in the second half of the 20<sup>th</sup> century. Furthermore, he could not know the wide ranging, i.e., national, welfare systems (pension and health insurance etc.), which were created during

<sup>12</sup> See e.g. his notes on Aristotle, Cicero etc.

<sup>13</sup> See Somló (1907) 96–102. and 192.

the 20<sup>th</sup> century by the welfare state. Finally, he could not know the population policies, including emigration and immigration policies, the housing and employment policies, the influencing of culture by institutionalized political means, not to mention states' nationality policies and some of their tools (the encouragement of assimilation, forced displacement, ethnic cleansing and genocide). He could not consider these as state intervention.

Instead, what he termed 'state intervention' was in fact *state interference*. However, one century later, regulation by public authorities is no longer considered intervention. Such state regulation as interference can transform or even disrupt the spontaneous development of things or the naturalness of development that can well be regarded coercion, where self-regulation is impossible or inevitable. However, in terms of its content, it does not form such an institutional system or policy stance that is today assumed in the term intervention. It can also be paradoxically formulated that *Állami beavatkozás és individualizmus* (State Intervention and Individualism) does not say anything about state intervention in the present meaning of the word<sup>14</sup> but instead discusses the relationship between state and society as well as the consequences of *state regulation*.

Somló's interest in the theory of state remained even after 1909–1910<sup>15</sup> and he placed a great emphasis on the questions of state in *Juristische Grundlehre*. It has been characterized as his second theory of state but there is no doubt that it was elaborated as part of a legal philosophy. Thematically, it is his most complete work in respect of the state as its main topics include all the usual questions of modern theories of state, which can be reconciled with the foundations of the Neo-Kantian theory. It discusses the character, aim, structure, function and people of the state as well as the system of state relations, state infringements and so forth.

The *Juristische Grundlehre* deals extensively with issues of the theory of state in two instances: The main section analyses legal power (*Die Rechtsmacht*) in the framework of the *concept of law* while the second section the problems of the state (*Der Staat*) are discussed under the title 'elements and consequences' of the concept of law.<sup>16</sup> The term *Rechtsmacht*, which is more or less untranslatable into English (literally, law-power; in a more nuanced way, legal power but more often lawmaking and law enforcing power) stands, according to a substantial part of the literature, for nothing else but the state. According to a precise analysis, this is, at best, generally true.<sup>17</sup> However, the question can

<sup>14</sup> This statement might sound peculiar since the Hungarian *terminus technicus* 'állami beavatkozás' [state intervention] is believed to be created by Somló, or at least it is supposed to be him who distinctively used it the first time when – in my assumption – he was looking for a Hungarian equivalent for the English term *state interference*. By examining the linguistic structure of the text and by reviewing its literature background it becomes obvious that the Hungarian term 'beavatkozás' stands for 'interference' rather than for 'intervention'. For instance, in several locations of the text, he refers to the work of David G. Ritchie which apparently had a great impact on him regarding his critique of Spencer. See Ritchie (1891) *passim*. (A marginal comment: one of the appendixes of the work deals with the theoretical tradition of the conceptual separation as well as linking of 'state and society' – e.g. Hegel's theory – in a still instructive way.)

<sup>15</sup> According to some scholar, Somló 'broke definitively with the theory of state' from 1909 onwards (see e.g. Navracsics (1991) 26.), however, this seems unfounded in the light of the arguments below.

<sup>16</sup> See Somló (1917) 93–120. (chapter 2) and 251–329. (chapter 10).

<sup>17</sup> According to Somló, *Rechtsmacht* 'is not *outside* or *above* but *in* the state, and belongs to that' (Somló (1917) 275.); however, he never claimed that the former would be *identical* with the later.

still arises why this phenomenon had to be discussed in two locations of the text. It is my opinion that such a discussion creates the possibility to discuss an issue from two perspectives, an integral characteristic of all Kantian and thus, both Kantian and Neo-Kantian philosophies. These philosophies, following Kant, work with dualities – they depict the world in dualities such as *Sein* and *Sollen* ('is' and 'ought' judgements), fact and value, reality and ideal etc. On this basis, both law and state will have two aspects and the analysis will show both of them.

In the case of state and law, one of the most characteristic dualities, in both the Kantian and Neo-Kantian theories, is the duality of *normativity* and *factuality*. Since state and law are partly separable and partly interconnecting subjects, the usual duality gets further complicated and provides several possible variations when Neo-Kantian reasoning transfers some features from the one to another or abolishes one of them. However, these variations are not abolished by the 'legalization' (*Verrechtlichung*: in German) of the state or by emphasizing that law is bound to the state since what happens is not that law gets to the sphere of normativity and state to the sphere of factuality but that both are present in both spheres.

In *Juristische Grundlehre*, it means that the state, just like law, gets into the sphere of normativity while its factuality is also present and is integral despite its secondary nature. This factuality is expressed by terms such as the 'habitual obedience' to legal power (which Somló borrowed from John Austin's theory) and the 'habitual abided nature' of legal norms placing validity into the general context of fulfillment. Nevertheless, the state remains a *legal* phenomenon in this work. 'The state – according to its widely quoted definition – is nothing else but the society that evolves by abiding the norms of a legal power' (*Rechtsmacht*).<sup>18</sup> Essentially this is a Kantian idea.<sup>19</sup> It is Kantian in the sense that the definition of state refers back to the definition of law and is functionally secondary in relation to the latter. According to *Jogbölcsészet* (Legal Philosophy), which summarizes, in Hungarian, *Juristische Grundlehre* written in German, 'no definition of the state can be created without including that of law and there can be no definition of law that would not involve that of the state.'<sup>20</sup> There is no point in trying to find the disputable points of such a theory and all such theories e.g., the suppressed nature of enforced and implemented law, the question regarding the legal nature of customary law or canon law, the unboundedness of the 'state of power' to law. It is, however, important to realize that the thus interconnected phenomena have a common element in Somló's theory – *Rechtsmacht*, which unites two subjects. The inter-conditional nature of the two aspects, factuality and normativity, does not end on the conceptual level.

For this reason, it is not a coincidence that the most influential element of the work became the concept of legal power (*Rechtsmacht*).<sup>21</sup> In the first place, this is a legislative power and secondly, a law enforcing power. Law is bound to this power regarding both its

<sup>18</sup> Somló (1917) 251. Needless to say that this definition of the state is far from his earlier standpoint which assumed the conceptual separateness of 'state and society'.

<sup>19</sup> In Kant's theory, the state stands for the 'union of people under laws'; cf. Kant (1797) 45. §.

<sup>20</sup> Somló (1920) 70. For the same content, see Somló (1917) 251–53.

<sup>21</sup> Recensions of the work focus predominantly on *Rechtsmacht*. See in particular the detailed analysis of Slovenian legal philosopher and specialist of international law Leonidas Pitamic; cf. Pitamic (1918) 80–90. Furthermore, see critically Bárd (1918) 353–54 (where the Hungarian equivalent of the previously unusual term is 'joghatalom').

origin and enforcement.<sup>22</sup> *Rechtsmacht* is part of the phenomenon of law i.e., a concept bound up with normativity; however, its characteristics refer to *facts*. One of its features relating to facts and not to norms is that in a certain group of people it can enforce its regulations habitually and more effectively than other powers. Moreover, for its characterization Somló used attributes which are usually employed for the characterization of sovereign power e.g., it is the main power and in certain instances, the power 'of the highest category' or 'of permanent nature' etc. Eventually, he argued that it is not the state or a state organ but legal power that is to be considered sovereign.<sup>23</sup> Having said that, it is no wonder that the reference to facts and ideals, as it can be observed in the case of most of the definitions of sovereignty, has been quasi 'floated' in the work. Those who talk about factuality or reality in relation to that, are faced with ideals or normative correctness, while those who refer to the latter are faced with the former. In the case of most of the characteristic categories of theories of state (sovereignty, legitimacy etc.) this method works without Neo-Kantianism but particular philosophy only exacerbates it.

It is a peculiar interpretative connection that in this work, Somló builds his Neo-Kantian theoretical construction by applying John Austin's study of law and sovereignty theory. Its peculiarity stands in its uniqueness in terms of the history of theory. Namely, Austin was well-known for his utilitarianism in respect of social and legal philosophy, which is the dipolar counterpoint of Kantian philosophy in terms of legal approach. Furthermore, while on the basis of his latter imperative theory of law, no natural or human right can be established and set as a standard for the state, the Kantian philosophy which places law before the state, and thus, as far as possible, leads to the principle of the rule of law, achieved success in establishing these rights when it justified basic and unrestrictable rights on the basis of the unconditional nature of the values of human personality and integrity of dignity.

From the particular problems of approach of *normativity* and *factuality* there emerge some contradictions regarding content in Somló's theory, as well, which are inevitable in the reconciliation of facts and values, reality and ideals i.e., fire and ice, in the relationship between state and law. These do not stand out in Somló's second theory of state because he based it on Georg Jellinek's synthesizing theory of state, besides Kant and Austin.<sup>24</sup> On the one hand, Jellinek argued that the state might have legal obligations, *inter alia*, because it is able to oblige itself, and on the other hand, he claimed that legal rules might sometimes arise from the actual but not always lawful state practice. He explained the former connection with the nature of promises to create obligations, prevailing also in the area of public law, and the latter with the normative power of factuality (*normative Kraft des Faktischen*). Accordingly, a kind of regularity might arise from the mere facts of the

<sup>22</sup> According to *Juristische Grundlehre* 'law thus means the rules of a power which usually meets with obedience, is widespread, permanent and of the highest category'. Cf. Somló (1917) 105.

<sup>23</sup> This was not an extraordinary point of view in the time of the birth of the concept of so-called legal sovereignty; in this respect, see the theories of Hans Kelsen and Hugo Krabbe. Cf. Krabbe (1906) and Kelsen (1920) *passim*.

<sup>24</sup> The two most often cited authors in *Juristische Grundlehre* are – besides Bierling, Jhering and Stammler who are mentioned as legal theorists – Hans Kelsen and Georg Jellinek. The former appears on the ground of his 1911 'study of constitutional law' as the developer of the *public law* approach in the context of Somló's work, while the latter primarily as the author of the 1900 *General Theory of the State* (*Allgemeine Staatslehre*), which is partly a legal analysis and partly a sociological theory of state.

usualness of coincidental behaviors and such behaviors might be associated with the idea of appropriateness which goes hand in hand with the idea of a rule. Somló adopted and applied this thesis, which is almost indispensable for the understanding of the modern state, in his own legal approach supplementing it with the concept of ‘promising law’ which was also inspired partly by Jellinek.

However, while in Jellinek’s work, these opposing thoughts do not lead to contradictions due to the often exploited historical context and psychological analysis and do not question the synthesis that he creates for a moment – for for a single book –, the situation is pretty different in Somló’s case. In Somló’s work, these, together with his strong legal positivism (which does not characterize Jellinek), occasionally lead to incompletenesses. Although, for instance, *Juristische Grundlehre* distinguishes between power and right, criticizing, among others, Ferdinand Lassalle who claimed that if one gets the power to something they also has the right to that, its author argues that one of the essential characteristics of law is that even regulations created unlawfully can amount to regulations. This made him accept that ‘the requirement of lawfulness cannot be included in the definition of law’.<sup>25</sup> It is now clear that such statements were characteristic for the culmination of legal positivism. For such incompletenesses, Somló paid the price of theoretical weakness regarding the state in this theory of state. This weakness is highly visible, for instance, regarding his views on state infringements. According to Somló, the state can commit infringements only if the legislative power had already tied itself *vis-à-vis* its subjects in the form of ‘promising law’, practically, through promises in the form of law. In the lack of such promises he talks at most about ‘arbitrariness in the sense of morality’ which he does not consider excludable or even criticizable.<sup>26</sup> While he does not argue that *princeps legibus solutus est* (the *princeps* is not [ever] bound by laws), he accepts that *quod principi placuit, legis habet vigorem* (what pleases the prince has the strength of law).<sup>27</sup> Although he includes certain rules of state constitutions in the definition of ‘promising law’ but, unlike Kelsen, he does not propose that in the case of state infringements there must exist an institution with the task to eliminate ‘unlawful laws’, or in today’s terminology: unconstitutional laws.

Despite such problems it is possible to argue that the theory of state, elaborated in *Juristische Grundlehre* which forms part of a legal theory, is not only thematically complete but also formulates separate theses within the Neo-Kantian theoretical traditions. Moreover, on the basis of contemporary academic literary, he possessed the ability to argue on a high level – although not always indisputably.

Felix Somló’s third theory of state remained in a scattered form: two papers published by their authors and a nearly 500-page-long manuscript, some parts of which have subsequent been published, is kept in the Hungarian National Széchényi Library under the title *Allambölcseleti jegyzetek* (Notes on Philosophy of State). The manuscript was reconstructed by me and published in a modern edition in 2016.<sup>28</sup> Although the remaining text has a short thematic part, as well, its author planned to present his views on the state as part of a history of the theory of state but his early death prevented that. Some parts of the

<sup>25</sup> Cf. Somló (1917) 115–17.

<sup>26</sup> Somló (1917) 298–309.

<sup>27</sup> Somló (1917) 307–308. and Somló (1920) 88–89. For the source see *Digesta*, 1.4 and 1.3.31.

<sup>28</sup> Somló (2016) 264. See further Zödi (2017) 130–35.

manuscript are in the style of a book report<sup>29</sup> while other parts are materials intended for publication, together with their more or less final preliminary versions.

Somló did not regard such an 'employment' or 'application' of the history of theory a constraint but a methodological-conceptual decision – 'what will concern us is what today's theorists of state can learn from the history of this discipline. Therefore, we should deal exclusively with such products of the history of the theory of state that contain the eternal truths of science'.<sup>30</sup> The methodological decision is based on two contradictory considerations: It presupposes that in the science of state, scientific theses depend – at least partly – on world views, ideologies and perspectives and on the other hand, it is based on the consideration that the science of state has 'eternal truths' which are, in principle, ascertainable. The contradiction stands in the fact that while he claimed that no one can possess the philosopher's stone, he was looking for 'perpetual wisdoms' and 'eternal truths'. In doing so, he applied old theories for the present, he talked about the past but wanted to comment on the present and, in György Litván's words, 'he judged his own age by turning to the distant past'.<sup>31</sup> Formulating it a bit more sharply, it is possible to argue, in Csaba Varga's words, that 'he fled history [taking place in present continuous tense] to history [took place in past tense]',<sup>32</sup> if he fled at all.

Besides this methodological problem, the question arises what characterizes the theory of state of *Állambölcseleti töredék* (Fragments on Philosophy of State) regarding its content? Did Somló's views on the state change? The short answer is yes! The most visible change is that his position clearly shifted toward a theory of state that is not based on law or legal science. Two years after the development of a legal definition of the state he argued that 'the state does not end at the boundaries of law' adding that 'law constitutes only part of the state'.<sup>33</sup> However, if not law or the relation of power to law than which factor determines the character of the state in this new theory? Although he did not develop a clear answer to this question in 1919–1920, he mainly referred to correlations which were in the air: psychological and economic-organizational factors, the race issue as well as the issue of authority.<sup>34</sup>

<sup>29</sup> In this respect – as Csaba Varga puts it – 'the manuscript demonstrates that Somló wanted to walk the same path that the political thought of Western civilisation had walked'; Varga (1985) 362.

<sup>30</sup> Somló (2016) 180.

<sup>31</sup> Litván (1973) 41.

<sup>32</sup> Varga (1985) 361.

<sup>33</sup> Somló (2016) 32.

<sup>34</sup> According to his notes on Aristotle, there is no point in constitutions '[...] if the spirit of citizens lacks the characteristic which alone can make a state strong and can give vital energy to the legal machinery whatever beautifully it is constructed'. Somló (2016) 72. In the same sense: 'One of the least developed topics of politics [i.e., science of state] is the political significance of enterprises. Not from the perspective from which historical materialism highlighted it [...], but rather from the perspective that claims the economic system to be an additional part of the political system. The economic system as one of the integral parts of the administration.' See Somló (2016) 31–32. On the so-called race issue he wrote the following: 'If it is not a marginal question for a whole what constitutes its parts, than the race issue cannot be marginal for the state either. Since it concerns the features of individuals who constitute the state. [The] only wrong thing is [to] lead everythin[g] back exclusively to the race issue and to rule out everything else. However, it is equally wrong to completely ignore racial features.' Cf. Somló (2016) 23. Finally, on authority and prestige: shortly after two Hungarian revolutions he argued that 'those who destroy the state for the sake of remote ideals in the present seriously offend the state' and noted that 'the people who are fed up with the experiments of bunglers crave for prestige'; cf. Somló (2016) 23.



It can be assumed on the ground of the prioritization of the authority issue that conservatism also materialized in his political views. He argued that ‘statehood and conservatism are one and the same thing’. Furthermore, the usual patterns of old conservatism appeared in his theory, as well: he noted that ‘the state is based not on rights but on duties’ adding pathetically that ‘despite asking the state like a child what it gives us we should look at what we owe it like a man’.<sup>35</sup>

Finally, in my evaluation of *Állambölcseleti töredék* (Fragments on Philosophy of State) the question was raised why it was his writings on Plato and Machiavelli that Somló published in 1920 and not other writings. For those who write or at least read histories of the theory of state, it might seem evident to pair Plato with Aristotle, Machiavelli with Campanella or perhaps with Thomas More: namely because in the history of political theory, the duality of *utopism and realism* is usually exemplified by these pairs of philosophers. According to this assumption, Somló deviated from these well-known pairs because his aim was different as Plato and Machiavelli seemed more appropriate for him for the demonstration of the duality of *idealism and pragmatism*. Political idealism does not stand for utopism but for a possibility of an elevated relationship to politics which does not take into account the chance of immediate success and shows the right *sub specie aeternitatis* (viewed in relation to the eternal) regardless of space and time. For this reason and to this extent, it is possible to take it as a sign of comfort and a possibility for action. Similarly, political pragmatism is not simply a form of realism but a way of thinking and behavior whose representative, making usefulness the criteria for truth, is willing to abandon the positive moral quality of action since the direct goal they hopes to achieve is more important to them. This is the reason why there are so many critical notes to Machiavelli in Somló’s works as he never put the accuracy of moral position in parenthesis. Although Somló’s stance towards Machiavelli is critical, it is not absolutely condemnatory in an international context. It is more like a sad realization, not as a position of principle but rather as a bitter experience<sup>36</sup> of the fact that this time it was him who was right in certain things since *sub specie momenti* (from the perspective of a moment) he can also be right. After noting that ‘our separate Hungarian tragedy took place and proceeds very much in line with Machiavelli’s receipts’, he concluded that ‘the quintessence of international relations is imperialism and we only have a choice between our or others’ imperialism. To be either hammers or anvils, that is the choice of nations’.<sup>37</sup> It is a matter of argument whether he was right in this question at *that* time and, if yes, whether this stance remains valid *after* almost hundred years.

<sup>35</sup> Somló (2016) 28.

<sup>36</sup> Cf. Litván (1973) 41.

<sup>37</sup> Somló (1921) 41. and 55. It is important to note that the well-known maxim (*a man must either be anvil or hammer*) is believed to have spread in the time of Somló through German chancellor Bernhard von Bülow (1900–1909) who justified Germany’s policies towards Poland with the argument that dominant nations enforce their own will on weak ones. The maxim is sometimes attributed to Oswald Spengler (‘who does not dare to be a hammer is forced to be an anvil’); however, Somló is unlikely to have known it as it was formulated in Spengler’s work *Jahre der Entscheidung* (eng.: The Hour of Decision); see Spengler (1934) 109. A peculiarity about this maxim – which can allegedly be traced back to Goethe – is that it was also formulated by István Széchenyi when he wrote the following in his diary: ‘A man must either be a hammer or an anvil. I am the latter...’, cf. Széchenyi (2002) entry of the day of 4th of July 1823.

## 3.

Throughout his life, Felix Somló dealt with questions of the state and developed several theories of state quasi continuously. He is part of the traditions not only in the quality of a legal philosopher but also as a representative of the theory of state. However, in this case the question which nevertheless arises what his attitude was to politics and it must be extended to this context, as well. Does his image regarding the problem of scholar and/or politician modify in view of his theories of state? Merely on this ground, it is my opinion, it does in no way but this image can be made clearer.

In the academic literature, there are various views on Somló's relationship with science and/or politics. As previously indicated, there are some who confront him with himself and attribute some of his works to 'Somló the scholar' and others to 'Somló the politician'.<sup>38</sup> Others argue that Somló was not a politician in the 'modern' sense of the word.<sup>39</sup> If it is true, it might be true, because 'his ideal, the purpose he was holding on to almost convulsively was the calm contemplation in a quiet library room uninterrupted by the outside world'.<sup>40</sup> Again, according to others, he was 'drawn in' by politics,<sup>41</sup> after he had, from time to time, naturally 'turned away' from that.<sup>42</sup> In short, the image is pretty colorful, so much so that it is untenable in this diversity.

While, due to his sensitive intellect, fragile mentality and theoretical conviction which was looking for 'eternal truths' –, he continuously avoided the 'odious rush', 'whirlwinds' and 'withches' kitchen' of everyday life – in other words, politics. The question arises whether he also fled politics, in the sense that was possible for a scholar in that period? I think György Litván's argument is correct, with minor correction, who emphasized that Somló was 'habitually apolitical'.<sup>43</sup> Certainly, it must be added that Somló was apolitical in the field of political actions and in theoretical standpoints with action value, as well as in the sense of keeping distance from politics. However, a habitually apolitical person can deal with questions of politics and the state on a theoretical level. If he realized that his standpoints formulated on a theoretical level inevitably get into a practical-political context, his practical steps do not always work out well or are doomed to failure to start with, he gets distracted.<sup>44</sup> This happened several times to Somló, in 1903, 1906, 1908 and 1918. The reason for this could have been his moral fibre – an argument that is challenged by only a few authors. While he continuously dealt with the questions of the state, 'he could not bear the interconnectedness of science and politics... [and] the shift of beautiful ideological

<sup>38</sup> Cf. G. Fodor (2002) 66–90.

<sup>39</sup> According to Navracsics 'he caught the attention of both his friends and opponents as a person who is sharply engaged in politics; however, Somló was not engaged in politics in the modern sense of the word...'; see Navracsics (1991) 16.

<sup>40</sup> Varga (1985) 359.

<sup>41</sup> Funke – Sólyom (2013) 89.

<sup>42</sup> László Kupa discusses the problem of *scholar and/or politician* in a dynamic way examining its evolution over time; see Kupa (1998) 43–48. This work, which takes into account a plenty of things, does not bring the issue into conclusion since it can be assumed that although Somló's relation to science and politics changed over time it did have some sort of a constant core.

<sup>43</sup> Litván (1973) 35.

<sup>44</sup> Its foundations in Somló's personality from a psychological perspective are elaborated by Endre Nagy and Csaba Varga (who more or less agree with the argument of Litván). Beyond these alarms, the former sees the urgency and repulsion of a 'soul preoccupied with an ideal' to act, while the latter sees Somló's unspecified 'force to flee'. Cf. Nagy (1981) 764–72. and Varga (1985) 359–63.

struggles to the not exactly clean arena of politics'.<sup>45</sup> Thus, it was not the whirlwinds that disturbed him but rather the dust they bring along, which, as he experienced, inevitably gets into one's eyes. However, György Litván's thesis could not be considered defensible which claims that Somló 'could never clarify his relation to politics' and 'he could move to neither the right nor to the left'<sup>46</sup> rather he wanted to move neither to the right nor to the left because he had reservations to both sides, he did not want to waste his time for public activity and perhaps assumed that taking a practical political stance might endanger the objectivity of his scientific theses. He did not want to formulate *sub specie momenti* because he thought or rather hoped that what he *sub specie aeternitatis* says could be more valid. His life was tragic in many aspects and one of these aspects concerned his work on the theory of state – it was not given unto him to formulate 'eternal truths' in this area.

In the light of the facts mentioned above, György Litván's assessment that Somló stood in 'no man's land of politics' is inspiring but not necessarily justifiable.<sup>47</sup> In the sense of political movements and party politics it is perhaps true but only just in the sense of ideas. There is, however, no doubt that he distanced himself from the movement of radical civic (bourgeois) intellectuals very early on and got in touch with them again (pretty officially) around 1918 only with reservations and did not join others either. His political stance, discernable from his texts and decisions, was, however, characteristic – he joined the silent moderates. Moderate persons do not stand in 'no man's land', but are, especially in times of revolutions, lonely men.

## MANUSCRIPTS

- Somló, Bódog (Felix), *Naplójegyzetek 1–4 kötet (kézirat)* (Diary Entries, Volumes 1–4) 1896–1919. MSS (Budapest: National Széchényi Library, Department of Manuscripts) Quart. Hung. 3038.
- Somló, Bódog (Felix), *Allambölcséleti jegyzetek (kézirat)* (Notes on Philosophy of State). (1919–1920a) MSS (Budapest: National Széchényi Library, Department of Manuscripts) Quart. Hung. 3039.
- Somló, Bódog (Felix), *'Platon államtana' és vegyes jogfilozófiai jegyzetek (kézirat)* ('Plato's Theory of the State' and Mixed Notes on the Philosophy of Law). (1919–1920b) MSS (Budapest: National Széchényi Library, Department of Manuscripts) Quart. Hung. 3040.

## LITERATURE

- Bárd, József, 'Somló Bódog jogászati alapvetése' (The Basic Legal Premise of Felix Somló) (1918) 19 Huszadik Század 346–54.
- Funke, Andreas, and Sólyom, Péter, (eds), *Verzweifelt objektiv. Tagebuchnotizen und Briefe des ungarischen Rechtsphilosophen Felix Somló (1873–1920)* (Böhlau Verlag 2013).
- G. Fodor, Gábor, "Politikai szecesszió" – a kivonulás politikája' ("Political secession" – the politics of withdrawal) (2002) 7–8 Magyar Szemle 66–90.
- Kant, Immanuel, *The Metaphysics of Morals* (originally: *Die Metaphysik der Sitten in zwei Theilen* Friedrich Nicolovius 1797) (Ed and transl: Mary J. Gregor Cambridge University Press 1996, for references see the pages of 1996 edition).
- Kelsen, Hans, *Das Problem der Souveränität und die Theorie des Völkerrechtes Beitrag zu einer Rechtslehre.* (J. C. B. Mohr, Paul Siebeck 1920)
- Krabbe, Hugo, *Die Lehre der Rechtssouveränität* (Wolters 1906).

<sup>45</sup> Litván (1977) 504.

<sup>46</sup> Litván (1973) 37. and Litván (1977) 504.

<sup>47</sup> Litván (1973) 43.

- Kupa, László, 'Somló Bódog' (Felix Somló) (1998) 5 *Jura* 43–48.
- Litván, György, 'Egy magyar tudós tragikus pályája a század elején: Somló Bódog (1873–1920)' (The Tragic Career of a Hungarian Scholar at the Beginning of the Century 1883–1920) (1973) 16 *Valóság* 32–42.
- Litván, György, 'Somló Bódog munkássága' (The work of Felix Somló) (1977) 4 *Szociológia* 503–507.
- Márkus, Dezső (ed), *Magyar Jogi Lexikon* [Hungarian Legal Encyclopedia] volumes 1–6. (Pallas Irodalmi és Nyomdai Rt. 1898–1907)
- Nagy, J. Endre, 'Erény és tudomány. Vázlat Somló Bódog gondolkodói pályájáról' (Virtue and Science. An Outline of Bódog Somló's Intellectual Career) (1981) 12 *Világosság* 764–72.
- Navracsics, Tibor, 'Somló Bódog államelmélete (1898–1909)' (Felix Somló's Theory of State 1898–1909) (1991) 7 *Valóság*. 16–27.
- Pitamic, Leonidas, 'Eine "Juristische Grundlehre"' (1918) 3.6 *Österreichische Zeitschrift für öffentliches Recht* [ÖZöR], 734–757. reprinted in: Somló, Felix, *Schriften zur Rechtsphilosophie. Ausgewählt und eingeleitet von Csaba Varga* (Akadémiai Kiadó 1999) 77–96.
- Ritchie, David, G., *The Principles of State Interference. Four Essays on the Political Philosophy of Mr. Herbert Spencer, J. S. Mill, and T. H. Green* (2nd edition, Swan Sonnenschein 1891/1896)
- Somló, Bódog (Felix), *A parlamentarizmus fejlődéséről*. Doktori értekezés. (On the Development of Parliamentarism. Doctoral Thesis) (Cluj-Napoca/Kolozsvár 1895); in print: *A parlamentarizmus a magyar jogban* (Parliamentarism in Hungarian Law) (Gibbon Albert 1896)
- Somló, Bódog (Felix), 'Háború és béke' (War and Peace) (1900) 1 *Magyar Egyetemi Szemle*. 21–30.
- Somló, Bódog (Felix), *Állami beavatkozás és individualismus* [State Intervention and Individualism] (Budapest: Politzer, 1903, 2nd edition: Grill, 1907)
- Somló, Felix, *Juristische Grundlehre* (Leipzig: Verlag von Felix Meiner, 1917, 2nd edition: 1927; reprint: Aalen: Scientia Verlag, 1973) (for quotations and references see the pages of the 1927 edition)
- Somló, Bódog (Felix), *Jogbölcselet* (Legal Philosophy. Extracts from the *Juristische Grundlehre* in Hungarian) (1920, reprint: Bóbor Kiadó 1995, for references see the edition of 1995).
- Somló, Bódog (Felix), 'Machiavelli' (1921) 1 *Társadalomtudomány* 41–69.
- Somló, Bódog (Felix), *Prima philosophia. Gedanken zu einer erster Philosophie* (Walter de Gruyter, 1926).
- Somló, Bódog (Felix), *Állambölcseleti töredék. Somló Bódog írásai és hátrahagyott jegyzetei egy megírni tervezett Állambölcseletből* (Fragments of a Philosophy of State. Felix Somló's Writings and his Posthumous Notes from a Planned Philosophy of State, ed Takács, Péter, Gondolat Kiadó 2016).
- Spengler, Oswald, *Jahre der Entscheidung. Deutschland und die weltgeschichtliche Entwicklung* (C H Beck 1934) (in English translation: *The Hour of Decision 1934. Germany and World-Historical Evolution* Routledge Revivals 2018).
- Széchenyi, István, *Napló* (Diary) (Budapest: Osiris, 2002).
- Varga, Csaba, 'Somló Bódog végső summázata: az ismeretlen Állambölcseleti jegyzetek' (The Final Synopsis of Felix Somló: the unknown Notes state philosophical notes on Philosophy of State) (1985) 28 *Állam- és Jogtudomány* 359–63.
- Zódi, Zsolt, 'Book review on Takács, Péter (ed.), Somló, Bódog *Állambölcseleti töredék. Somló Bódog írásai és hátrahagyott jegyzetei egy megírni tervezett Állambölcseletből*' (Fragments on Philosophy of State. Felix Somló's Writings and his Posthumous Notes from a Planned Philosophy of State, Budapest: Gondolat Kiadó, 2016) (2017) 2 *Állam- és Jogtudomány* 130–35.