

Mitoma, Tamio¹**Between Norm and Fact: The Intellectual Heritage of the Hungarian School of Jurisprudence²***Abstract*

This paper explores the intellectual legacy of the Hungarian School Jurisprudence from the late 19th to mid-20th century, focusing on thinkers such as Pulszky, Pikler, Somló, and Horváth. It examines their attempts to reconcile legal norms with social facts, within frameworks ranging from evolutionary theory to neo-Kantianism. While Somló emphasized the normative force of law grounded in legal logic, Kelsen pursued a “pure” jurisprudence detached from empirical elements. In contrast, Horváth proposed a procedural approach and the synoptic method, offering a dynamic perspective that bridges normative and factual dimensions. This study highlights how the Hungarian tradition contributes to contemporary debates on legal interpretation, the rule of law, and the integration of legal theory with sociological insight.

Keywords: Hungarian School of Jurisprudence, Legal Philosophy, Norm and Fact, Procedural Legal Approach, Synoptic Method

I. Hungarian jurisprudence at the beginning of the 20th century: Pulszky and Pikler

Hungary’s tradition of legal philosophical schools began at the turn of the 19th to the 20th century. This school of thought’s objective was theoretically to explore the ideal legal system that should be modern civil society’s foundational pillar. Within the evolutionary worldview at the end of the 19th century, Ágost Pulszky (1846-1901) and Gyula Pikler (1864-1937) discussed the dynamic development of law and society.

In the form of parallelism, Pulszky sought to secure a place in the spiritual world, which can be swallowed by the material world’s laws of development. According to Pulszky “It is undeniable that an intimate connection exists [in] life, arbitrary in the groups of phenomena.”³ In other words, the spiritual and material worlds do not have a causal but a correspondingly mutual relationship. We should “be merely obliged to recognize two sciences, connected indeed with each other, yet irreducible to any common higher law, each relating purely to phenomena, or rather to relations subsisting between appearances, and each being conclusive as to the laws of causation within its own separate province.”⁴ Pulszky characteristically focused on legal norms generated by people’s daily interactions in societies guided by evolutionary theory.

If we think of the law as directly reflecting human beings’ essence, it becomes like the laws of nature, which are, above all, subordinate to scientific truths, and in which values apart from facts become meaningless. However, from the standpoint of Spencer’s theory of social evolution – that is, human interaction drives evolution – the law differs from the laws of natural science and has many artificially created elements. In other words, law is not a depiction of society’s natural laws.

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³ Pulszky, Augustus [Ágost]: The theory of law and civil society. T. Fisher Unwin, London, 1888, p. 32.

⁴ Pulszky: op. cit. p. 32.

Furthermore, when we consider the laws of society while witnessing the progress of human society, the “social evolutionary” view becomes dominant, and there is a momentum to create our own societies and institutions. During the early 20th century, in fact, social science associations’ activities, led by young social scientists, gained momentum as a political movement of citizen radicals.

Gyula Pikler, who succeeded Pulszky after his premature death, was quite politically charged from the start. Pikler’s theory of the law was then a sensation, with its straightforward assertion that people’s insight into profits mainly drove the law’s creation and development. He asserted, “People have created law and continue to create new institutions, maintain, or change law, because they thought or thought that their actions were expedient and suited to the needs of life.”⁵

Within an evolutionary framework, both Pulszky and Pikler considered the law a tool for creating social institutions. They saw it as reflecting social facts; as long as confidence exists that society will evolve into something good, no contradiction will exist between social facts and legal values. In real life, however, when legal norms relate to us and the state enforces the law, legal norms appear as a system of unique laws that differ from natural laws.

II. Neo-Kantian influences: Somló and Kelsen

At the beginning of the 20th century in Europe, the neo-Kantian school of legal theory and the Durkheim school of sociology dominated social theory. The influence of Spencer’s theory of social evolution was hidden, but Pikler’s successor, Bódog Somló (1873-1920) achieved outstanding research in both schools. Somló’s *Juristische Grundlehre* [Fundamental Principles of Jurisprudence] (1917) systematically discusses the abstract principles that form the premise of legal knowledge. According to Kantian philosophy’s framework, the basic principles of jurisprudence are a priori concepts in their pure form.

At the same time, Somló proposed the concept of “legal ability,” which implies legal norms’ binding power and the power to establish legal norms. Somló believed that legal force supports the legal system and maintains its unity. Somló’s *Fundamental Principles of Jurisprudence* broke ground by explaining formal aspects in the law’s logical elements by contrasting them with the law’s content. At the time, the German Legal Philosophy Society regarded the work particularly highly, and it is still regarded as a classic must-read text in the philosophy of law.

One problem in Somló’s legal theory, however, was the concept of the state. For Somló the state was “a society formed by the observance of norms by the force of law,” and “the concept of the state is reduced to the concept of law.”⁶ In other words, Somló clearly sought the law’s source in the law’s power.

At first close to Somló, the Austrian legal philosopher Hans Kelsen (1881-1973), attempted to grasp the law’s systematicity but gradually differed in his understanding of the state. For Kelsen, too, the state is the same as the law, and the two are “different modes of the same substance, different ways of thinking of the same object”.⁷ But rather than recognizing legal force as the basis of legal order, as Somló did, Kelsen saw it as “one of the essences of the various causes of lawful acts, in which certain norms oblige itself”⁸. For Kelsen, legal ability was a concept of a sociological nature, and for pure jurisprudence, it was, so to speak, an impure element.

⁵ Pikler, Gyula: *A jog keletkezéséről és fejlődéséről*. Grill Károly könyvkiadó, Budapest, 1911, p. 1.

⁶ Somló, Bódog: *Juristische Grundlehre*. 2. Auflage, Felix Meiner, 1927, pp. 251 and 253.

⁷ Kelsen, Hans: *Der soziologische und der juristische Staatsbegriff*, 2. Auflage, Tübingen, 1928, p. 204.

⁸ Kelsen, Hans: *Das Problem der Souveränität und die Theorie des Völkerrechts*, 1928, p. 34.

In contrast to the causal description based on the natural sciences' existence (Being = Sein), Kelsen aimed for the study of law to be a pure normative science based on the concept of attribution (Sollen = Ought). Therefore, Kelsen consistently sought to exclude the time's sociological and psychological elements as belonging to existence and to exclude them from the logical system of normative science.

In contrast to Kelsen, Somló's approach focused on empirical elements derived from the existence that is the premise of legal judgments and considers the point or source of their convergence or origin as legal force. Nagy J. Endre has previously observed that concepts of rights, duties, and states, which Somló found to be fundamental principles of jurisprudence, are derived from experience (Seiendes Sollen), and they are often useful for sociological and psychological analysis.⁹

While Kelsen's pure jurisprudence opened a perspective for grasping legal phenomena through jurisprudence's logical characteristics, Somló's basic principles of jurisprudence can be considered to indicate the conception of a new legal and social system while incorporating other social humanities' research results.

III. Systematism and the autonomy of law

When we view the law as an expression of the power of the law, as Somló did, the law's legitimacy is, from the beginning, embedded as a force in the law itself. Kelsen criticized this as a tautological state in which "norms oblige themselves"¹⁰. Kelsen most wanted to avoid an argument that sought to place the law's premise in substantive power. In contrast to Somló's theory of legal ability, (reminiscent of the classical theory of legal imperatives [John Austin]), which states that the basis of law is the decree of those in power, Kelsen saw the basis of law not as God or king but as the logical system of law itself. At its apex, however, Kelsen's legal system assumes a "fundamental norm" to maintain its purity.

Somló's system was intended to be an empirical science that sought consistency in society's laws, with a strong sociological tinge, while Kelsen's system was more like rational metaphysics, shelving value judgments. In any case, both Somló and Kelsen believed that the social system of law was intended to be a rational system that secures its legitimacy in opposition to political power's arbitrariness.

From the viewpoint of its original purpose, however, even if the law is as systematic as an empirical science that starts from existence, or as a normative science composed of purposes, this does not have much significance in the law's actual interpretation and practice.

IV. Horváth's method: The procedural legal approach and the synoptic method

Barna Horváth (1896-1973) carefully discussed these difficult issues and offered a new perspective. Horváth began by rethinking the law's dualistic problem from the perspective of procedural law. According to Horváth, "The essence of the procedural approach lies in the idea that law is not a mere proposition (norma) or a mere fact (factum), but a relationship between the two, an abstract type of action and a corresponding actual act."¹¹

⁹ Nagy, J. Endre: *Eszme és valóság: Magyar szociológiatörténeti tanulmányok*. Pesti szalon könyvkiadó, Budapest-Szombathely, 1993, p. 79.

¹⁰ Kelsen, Hans: *Das Problem der Souveränität und die Theorie des Völkerrechts*, 1928, p. 34.

¹¹ Horváth, Barna: *A jogelmélet vázlata. Attraktor, Máriabesenyő – Gödöllő* [First published in Szeged in 1937], 2004, p. 7.

This procedural approach does not omit facts from norms, and it provides a perspective that enables legal value judgments without sacrificing norms' logic. This perspective is inherent in the legal interpretation that reconciles norms and facts. Indeed, correspondence between legal articles and facts is never 100%, and the correspondence between social factual value judgments, customs, principles, public order and morals, and moral norms in each case reinforce correspondence. This seems to be syncretism from the standpoint of sticking to the law's logical systematicity, but Horváth called the synoptic method a positive attempt to solve the problem by renewing it. According to Horváth, "that is, law is not an object of knowledge, but a way of looking at norms and facts, i.e., mutually exclusive objects of knowledge, in a certain schematic, continuous, interrelated way, and its social objectification."¹² This is not a synthesis of causal and normative methods, but rather a synoptic approach to problem solving while simultaneously examining the two methods. That is, "causal and normative series, which are assumed to be independent of each other, are seen together through a kind of 'search' for both."¹³

V. Legacy of the Hungarian School of Jurisprudence: Values and reality

In addition to norms and facts, Horváth's "mutually exclusive objects of knowledge" include concepts such as the Rechtssoziologie [Sociology of Law] (1934), the concept of reason and existence, norms and nature, and value and reality. All these combinations make sense, given that legal interpretation is basically a legal value judgment of facts, but above all, the relationship between value and reality was "one of the central issues of the history of Hungarian legal philosophy, from Bódog Somló through Gyula Moór to Barna Horváth."¹⁴

In addition, this thinking can be traced to the legal theories of Pulszky and Pikler, who were Somló's predecessors. Having a strong sociological tinge, their theories were at the source of this trend in that they aspired to a legal system of civil society based on fairness and justice. Modern law is neither God nor king but seeks the rule of law by citizens, both formally and practically. Modern civil society's legal system must be fair, just, and open to all equally. However, the legal system's operation is always a function of power. Thus, the law's operation according to its wording is not always the case. The people's elected legislature does not enact ideal legislation, the executive does not always adhere to public administration principles, and, under political pressure, the judiciary often decides unfairly. These three branches of government each weave their fairness (and unfairness) from citizens' interactions through the law.

Horváth's proposed procedural approach generated understanding of legal justice in a bottom-up context that incorporates procedural justice. It has the effect of an automatic control device preventing the legal system from being swallowed by sovereignty's action. And the synoptic method embodied in the procedural legal approach still brings new implications to the law's epistemology. Furthermore, the synoptic method not only directly contributes to the study of the sociology of law but also contributes significantly to the formation of political thought that the modern civil law system requires.

¹² Horváth: op. cit. p. 9.

¹³ Horváth: op. cit. p. 9.

¹⁴ Vida István – Nagy Endre – ifj. Bibó István (szerk.): Bibó István válogatott tanulmányok 1935-1944, Magvető könyvkiadó, Budapest, 1986, p. 643.

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