

IN THE ATTRACTION OF NATURAL RIGHT: ISTVÁN BIBÓ'S CONCEPTION OF LAW

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István Bibó (1911–1979) is one of the most significant figures of the Hungarian political mind in the 20th century. Although he started his career as a scholar dealing with international law and law philosophy, his vocation made a direction towards the political sphere. More precisely: he believed in the connection of the commitment of the scientist and the politician, i.e. the skills in jurisprudence and politics, the knowledge gained in these fields cannot only be used in the way of a “room-scholar”, but – in the possession of this knowledge – he can also act as an active former of the society. Bibó was convinced that it was just the tradition of social sciences that pointed out: there is no stiff dividing line between the activity of the scholar and that of the politician. In order to prove this fact I would like to give two examples from his life-work.

In his inaugural address at the Academy of Sciences in 1947 (“*The Separation of Sovereigns Formerly and Now*”) he emphasized that “in the principle of the separation of sovereigns – like in all principles of the science of politics – there are two elements mingling with each other: one is the endeavour to describe, classify, tipify, systematize and understand the phenomena of state life, the other is the endeavour trying to drive state life into a good direction, in the word of the moralists that is the endeavour to the *moral*, in the word of the utilarists that is the endeavour to the *expedient*, in the word of the evolutionists that is the endeavour to the *progressive* – in one word – to the *proper* construction of government.” He finished his train of thoughts as follows: “it’s not the abstract question: how the manifestations of the function of sovereign power can be categorized that we are interested in, but how – through the newer and newer problems – the principle of the separation of sovereigns gains eternal actuality. This principle is rooted in the most productive endeavour of European thinking dealing with state life and in the refinement of sovereign power into service and moral task.¹ Some decades later in his analysis entitled “The Sense of the European Social Development” the same thoughts did emerge. In this essay he emphasized that in the sphere of politics “it’s not only the practical doer of politics, but also the theoretical doer of politics that should necessarily keep the intuitive, suggestive and artistic elements of political attitude and political activity, and these elements are not to be eliminated.”² I. e. the scholar of political theory cannot be expected to refrain himself from the political standpoint. Of course – and Bibó saw it very clearly – when a scholar formulates a political attitude he is already leaving the exact world of science.

What kind of career could have met this demand? In the thirties Bibó was planning his future in such a way that he would be working for an international organization or

taking part in the formation of Hungarian politics as a scholar. This career he had been longing for could not be realized because of the turn-about of Hungarian history in this century. As a doer of politics he could only act during the years between the expelling of the occupying German army and the development of the Soviet system, i. e. between 1945 and 1948. It shows clearly how important he considered these years even afterwards that some decades later he declared that on his tomb there should be written as follows: *He lived from 1945 to 1948*. In these years he mainly exercised an influence on public opinion by his analysing studies. The communist turn-about then didn't let him have his word heard. It was during the autumn revolution in 1956 when he had a chance to return to politics. As Minister of State of the Imre Nagy-government he formulated a protest warning against the Soviet intervention.³ The communist restoration imprisoned Bibó together with a lot of other revolutionists. He was set free in 1963, and was working until his retiring as the co-worker of the Central office of Statistics. During the Kádár-era he was neither given the chance for active engagement in politics nor was he allowed to publish his scientific-political essays which were far from the Marxist canon in the then Hungary.

István Bibó's works at the intersection of law and politics were partly workshop studies of public administration. From his youth on he showed great concern about the idea of the transformation of the Hungarian administration system. The other part of his studies fitted into the subject matter of international law and law philosophy. Further on I am going to deal only with the latter, with his activity of international law and law philosophy. Through the presentation of this field it can be seen how Bibó placed himself among the trends of law philosophy in our century, how he formed a standpoint which was strongly approaching the conception of natural right.

In so far as we look for the influence-historical roots of Bibó's law philosophical thinking, on one hand we come into Kelsen's Verdross-debate, on the other hand into his professor's, Barna Horváth's "synoptic" interpretation of law. The interesting waves of these two influence-connections can be observed in Bibó's intellectual activity. It was Kelsen who had a great effect on the scholar of law starting his career in the first half of the thirties, but it was very soon that his attention was drawn by Alfred Verdross' critical treatise. However, in the second half of the decade it was already Barna Horváth's synoptic methodology – which otherwise also set out from Kelsen – altering the "pure theory of law" that clearly meant the most important point of orientation for Bibó.⁴ How important Bibó considered the above mentioned Kelsen-Verdross debate was it is well shown by the fact that in the introduction of his monography entitled "*The Paralysis of International Institutions and the Remedies*" written some decades later, in the seventies he returned to the basic thought of this debate once again: "On the questions of the ultimate bases of the international community, I think the debate between Hans Kelsen and Alfred Verdross thirty years ago is still instructive: in this connection I found Kelsen's conceptions significant chiefly in that they aroused my spirit of contradiction."⁵

Further on at first, briefly, I am going to survey the theories having an important part from the effect-historical point of view (I.), then István Bibó's writings which are relevant from the point of view of law philosophy (II.), and finally I am going to make some general comments upon the approach of natural right expressed by Bibó (III.).

I.

The origin of international law goes back to the Roman "ius gentium" which did not only mean the law between states, but also the law of contacting peregrines and the common law of all peoples. The original designation can be found even today in the following translations: "Völkerrecht", "law of nations", "droit des gens", "diritto delle genti". At the beginning of modern times (from the 16th century on) there was a new designation emerging: "ius inter gentes" (Vitoria, Suarez) and in the English- and Romance-speaking world this one came into general use ("international law", "droit international", "diritto internazionale"). Whether we think of the German terminology preserving the original name (Völkerrecht), or of the English idea following the change of meaning ("international law"), international law did not only mean the law between states. It didn't for the simple reason that besides states among the possible subjects of international law there are the Holy See, the international organizations (e.g. U.N.), the International Committee of the Red Cross or the Knights of Malta. Moreover – although in a restricted way – there are some concrete persons who can also possess the rights and obligations on the basis of international law, let us just think of the civil servants of the international organizations.

Considering the bases of international law there were two opposite traditions emerging in modern times. According to one of them (e.g. Pufendorf) international law can be placed on clear bases of natural right. The other approach, however, (e.g. Moser) setting out from positive law thought that international law can only be based upon the will of states holding sovereignty. This debate-position was still clear-cut. The followers of natural right, in an understandable way, transgressed the will of state as source of law; the law positivists clung to the juristic authority of state, and they also included international law in it. Kelsen's appearance however, rearranged this polarity in the 20th century because as a law positivist he professed the primacy of international law.

However, this standpoint of his was gradually evolving. In his work published in 1920, entitled "*Das Problem der Souveränität und die Theorie des Völkerrechts*" Kelsen considered the decision concerning primacy to be an ideological problem coming from value judgement, i.e. to be a problem beyond law. For that very reason he was defending the possibility of choice. Then in his work of constitutional theory following this one ("*Allgemeine Staatslehre*", 1925) he emphasized that both theories are rightful from the scientific point of view, but he advised the jurists not to mix the two. In his main work entitled "*Reine Rechtslehre*" (1934), however, – disputing the principle of sovereignty – he was already relativizing state and formulated the primacy of international law. As Kelsen has it, this primacy can already be recognized by the fact that it's just the international law that assures the territorial and temporal validity of the forced actions of states.

There were two thoughts Kelsen had took over from his disciples that had a significant part in the change of his views. One is the *monistic* methodology worked out by Alfred Verdross, which – assuming the unity of standard system – combined the inner law of states with international law. The other is Adolf Merkl's theory of the gradual articulation of legal system. Kelsen connected these two ideas with the thesis of "primary standard" (*Grundnorm*). And thus he fitted the legal formations in a chain:

from the unity of title of simple contracts through the unity of title of the country to the international unity of title. The primary standard as the supreme authority beyond positive law is the hypothesis of jurisprudence about the validity of legal standards. At this point Kelsen's legal positivism diverged not only from the conception of natural right but from the traditional legal positivism, too. Moreover there is, also, such a valuation which reads that Kelsen formed a particular, so-called transcendent-logical natural right.⁶

Through this we have got to the Kelsen-Verdross debate which was so important for Bibó. The key question of the debate was the definition of the sources of international law. In compliance with the methodology of pure jurisprudence, Kelsen precluded the points of view of morals and righteousness from law. He relegated the genesis of general standards of international law to the field of customary law and contracts. In his opinion the fundamental rule – which defines how the new general standards are to be created – is the principle of *pacta sunt servanda*.

It was only for a few years that – following neokantianism – Kelsen sympathized with Verdross. From 1923 already he definitely drew away from the standpoint of law positivism. His own conception of Christian natural law – among others – was formed – by the effect of Franciscus de Vitoria and Franciscus Suarez's views. This meant that it was on the basis of the philosophy of value that he contemplated international law and also, that he placed general legal axioms in the sources of international law – among them the principle of righteousness as one of the most important axioms. In Verdross's view the real function of international arbitration shows precisely that – besides customary law and contracts – the general legal axioms take a fundamental part in the ruling upon debates. And there is a moral standpoint expressed in these axioms. It was this very thought that Bibó was fascinated by. He also thought it was necessary to exceed Kelsen's conception of law which was too much "naked", namely by emphasizing the legal relevance of moral standards.⁷ And this took him close to the conception of Natural Right. However, on this way there was a short detour: the influence of Barna Horváth's synoptic law sociology. What did this influence consist in?

It was in 1934 that Horváth, who considered Bibó to be one of his most promising disciples at the university, published his monography entitled "*Rechtssoziologie*", in German language. Somehow contrary to the strictly German-oriented tradition of Hungarian legal mind Horváth created his synoptic methodology looking at the English conception of law. What characterized this methodology? In Horváth's view causality and normativity (with other words *Sein* and *Sollen*) in the legal reflection can be "observed together." Although the difference between facts and values cannot be surmounted, the lawyer is able, moreover, is obliged to do this in order to observe facts in the perspective of values and in order to observe values in the perspective of facts. Enlightening this with a simple example: with full knowledge of the statement of facts the judge looks for the legal standard which can be related to this; and with full knowledge of the legal standards he estimates the statement of facts. The connection of these two views takes place in a definite *procedure*, i.e. it is a process not a single action. Horváth thought that the processual legal theory formed by this synoptic methodology is able to exceed the dichotomy of natural right–law positivism.

II.

István Bibó's law philosophical writings in his youth show: it was very quickly that he drew away from Kelsen's ideas. Kelsen's pure legal theory motivated Bibó to form a conception different from Kelsen's one, namely such a legal conception which includes values, ideas and social-psychological effects as well. Briefly: Bibó got to the necessity of the connection of law and morals. The problem of international law was continuously present in his work. This problem so to say framed his life-work, beginning with his thesis in 1932 ("*The question of sanction in international law*") and closing with his analysis written between 1965–1974 about the paralysation of the international commonwealth ("*The Paralysis of International Institutions and the Remedies*"). While at the beginning of his career there was a definite demand in his writings to investigate purely theoretical questions, later it was rather in connection with practical political problems that Bibó referred to the theoretical pillars of his conception of law.

Although, roughly speaking, the "sanction"-analysis fitted in the conceptuality of Kelsen's legal theory, at an essential point, at the judgement of lawfulness, Bibó already turned aside from this conceptual frame. In Bibó's view the enforcement of law can be assured not only by legal regulations, but by moral, sociological factors (tradition, authority, religious conviction) as well. Namely law is not isolated from the society it exists in. Also, Bibó saw the stiffness of Kelsen's standpoint in the thesis that in modern times wars can be interpreted as lawful sanctions of some legal injury. Not only does this standpoint contradict experience according to Bibó, but it is a wrong conclusion theoretically as well. The reason why it is wrong from a theoretical point of view is because the moral demand that war should be merely the lawful sanction of some legal injury was reworded by Kelsen as a logical necessity. If we accept that a war is necessarily the lawful sanction of a legal injury of some kind then every war is lawful. Bibó considered this conclusion indefensible, and on the basis of his teacher, Barna Horváth's analysis he estimated Kelsen's standpoint as follows: "through his own most dogmatic positivism he got to a logical natural right."⁸

The next publications of young Bibó followed the same direction, i. e. Kelsen's theory remained a basic point of comparison when dealing with problems of law-philosophy and international law. However, he was criticizing these starting-points more and more vigorously, although this criticism was still partial in the first publications. Thus in the "*Compulsion, law, liberty*" (1935)⁹ he was debating Kelsen's standpoint of according to which compulsion is the specific of legal standard. As Bibó has it there is a wrong reduction hiding doubly in this idea. On one hand from the world of law it eliminates everything that is not compulsion, on the other hand takes no notice of the existence of the compulsion beyond law (social, social-psychological compulsion). I. e. Bibó did not connect compulsion and law exclusively, but in his view the specific of law was: that the compulsion in it was objectified on a higher level, so it appears in a more intensive form.

In these years Bibó published two studies abroad, one was published in French ("*Le dogme du "bellum justum" et la théorie de l'infalibilité juridique. Essai critique sur la théorie pure du droit.*" 1936)¹⁰, and in this, again, he examined Kelsen's pure

legal theory in the connection of sanction. In Kelsen's approach he discovered the bias that with Kelsen the *general* idea of obligation was ousted from law, because according to pure law the behaviour realizing a forbidden action is determined by *concrete* sanctioning actions. And these actions are isolated from each other, their connection, *common* contents remain in obscurity. Despite all his criticism Bibó also gave voice to his conviction that the method of pure law contributed to the logical explanation of the elements of law, and even other theories cannot disregard its results. However, his second study published abroad ("*Rechtskraft, rechtliche Unfehlbarkeit, Souveränität.*" 1937)¹¹, is already the document of the entire alienation from Kelsen. Not even critically did he deal with Kelsen. He set as an aim of his analysis to expound a standpoint opposite the one-sidedness of pure law. The reason why Bibó considered Kelsen's methodology biased was because – in the stiff dichotomy of standard-fact – it apprehended law as *sg* being tied only to one side, to the standard. Although opposite to this, Gurvich and Verdross's interpretation offered a theoretical alternative worthy of attention, but these did not give a satisfactory solution for Bibó. Bibó found the radically new theoretical alternative in Barna Horváth's conception of law, which created the *balance* of the two poles (standard-fact) by the synoptic methodology.

From the beginning of the forties, with the exception of the already quoted inaugural address at the Academy of Sciences, István Bibó did not deal with the problems of law philosophy and international law. It was only in "*The Paralysis of International Institutions and the Remedies*" published in 1976 in England (and not to be published in Hungary until 1990) that he returned to the theme of his youth. However, this work is not a theoretical investigation, the abstract questions of law philosophy emerge when treating the concrete problems of *practical* legal life and those of international law.

For what reason – asked Bibó –, were the international conflicts intensified in our century to such an extent that this led to the outbreak of two world wars? Moreover, even the experience of these two world-wide catastrophes was not enough to develop the suitable institutionalized techniques of peaceful arrangement of the very numerous international conflicts. In his above mentioned book published in 1976 Bibó made an attempt to answer this question, i. e. to explain the impotence of international commonwealth and in connection with this to outline the possible tendencies of solution.

In international politics the paralysis can already be seen in the field of principles (e.g. state sovereignty, inviolability of territory, independence, right of peoples to self-determination) About the relation of these principles to each other, about the validity should they violate each other, about their range there was no general agreement at all. Despite this fact Bibó saw a ground to confidence too, namely "There can be little doubt that a *system of rules and international law* does in fact exist, despite the confusion over premises and principles. What is far less certain is what the real function of this system can be in respect of the conflicts that affect the order and balance of the community. The functioning of international law is not precisely comparable to that within individual states."¹²

The usual way of peaceful arrangement of conflicts emerging in international political life, which either led through the United Nations Organization or it meant the immediate negotiation of the debating parties, was not considered particularly effective

by Bibó. He thought international arbitration much more promising. Although it only deals with *legal* debates not concerning the vital interest of states, i.e. it was not used in *political* conflicts, but its formalized procedure, as Bibó has it, can function as a model to the establishment of an *international political arbitration*.

It was the general acceptance of the principle of self-determination in common conviction that Bibó considered to be the primary condition and at the same time to be the self-creation of the requirement of political arbitration, for the simple reason that this principle is the only possible and valid state-creating and country-planning principle of international commonwealth. It is such an institution that is necessary which is able to maintain peace among the ambitions of self-determination which are in conflict with each other.

According to the experience of the last one hundred years the significance of international arbitration of legal kind has been thoroughly increasing. At the same time there were no fundamental state-creating or territorial questions emerging among the matters of the ordinary (legal) international arbitration. The peace congresses of the Hague undoubtedly had a significant part in clearing up the unsettled questions of the *right* of war. Moreover, as a result of this a permanent international arbitration was established which, however, did not deal with political arbitration. International arbitration strengthened the enforcement of the *rule of law*, which at the same time does not mean the elimination of *political* conflicts leading to war.

There were two questions Bibó scrutinized thoroughly. One of them is: the difference between the legal and political international arbitration. The other: for what reason has the establishment of the institutions of political arbitration still failed to come about?

a) *The difference between legal and political international arbitration.*

The fundamental difference lies in the different function. The procedure of political arbitration is only possible as an exceptional procedure, while the ordinary court spans a wider and wider field, moreover in the future it can even act as *compulsory* jurisdiction. "Another fundamental difference is in the relationships between the judges and the procedures and rules, and hence in the attitudes of the arbitrators. For political arbitration, especially in its initial state, there are no readily available rules outside the basic principle and the practical problem; the rules must be formulated by the agency for arbitration. But for ordinary international arbitration there is an extensive system of rules and precedents available, even if it is a freer system than domestic jurisdiction within individual states."¹³ This situation reminded Bibó the position of ancient jurisdiction: at that time also it was only from the fact of the debate and some general principles they set out. There were no concrete rules, but in spite of this they did quite often find the right decision. It was not in the melting into ordinary arbitration in the course of time that Bibó saw the possible way of the development of international political arbitration, he was more inclined to imagine a future position similar to constitutional jurisdiction. "Though this is as yet very distant, the best hope for international political arbitration would be to become an international constitutional jurisdiction."¹⁴

b) *The arguments against the establishment of international political arbitration.*

One can often hear the opinion that, in this field, similarly to other questions it is impossible to make impartial decisions in international commonwealth. Also, it is a counter-

argument requiring consideration that the inclination of submission is inconsistent with the strong interest-enforcing ambitions of the countries concerned, and for lack of this it is impossible to make a consensus satisfactory for *all* parties. And finally: the great powers are not interested either in passing the possibilities of decision to impartial organs.

As Bibó has it, the reason why these counter-arguments can be overcome is because political arbitration can assure the long-distance (strategical) interests of the countries. Naturally, the establishment of the institution of political arbitration may only take place gradually. In so far as the arbitrage at the beginning of its operation – when the great powers and the already existing world organs and maybe even the parties still refrain from the complete i. e. compulsory submission to an impartial court – made only decisions giving opinion, the the parties concerned would be able to get acquainted with the points of view and basic pattern of political judicature. And in possession of this experience there would be a greater chance that they should submit to the compulsory decisions in the future. Namely, the complete function of international political arbitration includes making compulsory decisions. Without this it would only increase the number of the international organizations consulting with respectable intentions but being impotent.¹⁵

According to Bibó's conception the competence of international political arbitration could prevail in two different directions. It comes natural on the basis of the things already discussed that its competence spans the opinion of territorial debates, movements and proposals tending to create new state-formations and from time to time it also spans compulsory decisions. However, we can read about another function too, and in this Bibó's conviction is expressed remarkably that in the relationship between states the predominance of certain values can be required. I. e. in his opinion international political arbitrage could decide about the restriction or suspension of rights concerning states in international relationship. "This could happen when a state fails to allow even a minimum of legal human rights, or the most elementary requirements of political morality as set by the rest of the community."¹⁶

Briefly: the measure of the *minimum of public life and law and order* could be formed in the work of arbitrage. This is more than merely the stability of state power, at the same time it is not obliged to any type of political arrangements, because this minimum should mean the general opinion of the *whole* international commonwealth. This minimum – first of all – means the primary fundamentals of public life and the development of politics and law and order, (local and corporative government, civil and judicial specialization, opportunity to criticism, basic human rights, civic equality, the assurance of minority rights, basic traffic freedom and defence against exploitation etc.).

In the process of international political arbitrage first of all the *impartial* clearing of the historic-political-legal position should be done, then a *value-committed* decision should be made. Value-commitment does not mean the acceptance of the political points of view of one or the other political party, but it means the find of the optimal decision in which the ambitions of the debating parties to the non-violent solution of the conflicts still can be maximally accepted.

According to Bibó's conviction it's not simply the arbitrariness of power – which pays no regard to moral demands – that prevails in international commonwealth, but –

and in this he joined Verdross – the final fundamentals of international law can be found in *moral common conviction*. The arbitrage taking part in the solving of international conflicts can rely on the same morality. Bibó's whole life-work is penetrated by the thought that the ambition tending to the humanization, rationalization and moralization of social technics is not a Utopia but reality in the European social development. However, the humanity of the aim of Bibó's proposal cannot conceal the fact that concerning his concept also some doubts can be formulated. Mentioning just two of them as follows:

a) Bibó imagined international political arbitration similar to constitutional jurisdiction. At the same time as such an organization which works on the basis of political judgement. However, these two expectations can hardly be in line with each other. The criticism against constitutional jurisdiction will be intensified just then and there when some political considerations are given part in its decisions. Namely, the decision made on the basis of political judgement only partly does rely on legal principles. In the field of political standards behind it there is a less formed consensus in modern society.

b) We can look at arbitration as a rational procedure assuring a dialogue. For this very reason we can suppose that in case of political conflicts the states concerned will apply to political arbitrage if their political ambitions are controlled by reasonable consideration. The question, of course, emerges here: to what extent is reasonable consideration able to rule will, wishes and interests?

III.

Surveying the development of István Bibó's conception of law it can be ascertained that Bibó – as a scholar starting his career – very soon committed himself to the conviction that the validity of law is not only a formal question, but also, the moral standards of civilized humanity have a fundamental part in law. And if we talk about the moral standards of civilized humanity we attempt to intertwine two different traditions. On one hand this attitude can be characterized as a standpoint of natural right which emphasizes the morality being present in law, on the other hand the attribute "civilized" belong to the "enlightened", i. e. intends an important part for the rule of reason. Maybe the effect-historical strength of Bibó's life work just lies in the fact that his writings and actions formed the intellectual dilemmas of the reconciliation of reason and morals, and he gave value-comitted answers to these questions.

We are not in an easy position if we want to place Bibó's conception of law among the ruling paradigms of legal theory in this century. We can set out from the fact that he is *not* a law positivist, namely he emphasized that law and moral values are unbreakable, and it is this commitment where his intellectual sympathy for Verdross's conception comes from. With this knowledge we have to place his conception of law in the domain of the conceptions of natural right. However, this definition needs correction.

The history of the mind of natural right which goes back to the Graeco-Roman thinking shows many kinds of conceptions being different from each other. Even if we take a simple historical scheme we can separate three phases. The way of thinking of natural right was settled in a religious world concept as far as enlightenment (St. Thomas

Aquin), then in the enlightenment the natural right concept was formulated as natural law (Pufendorf). In our century the fundamental distinctive feature of the theories of natural right: the application of the measure of righteousness in the valuation of positive law (e.g. Radbruch from 1945). Bibó's conception of law could rather be ranked to this third type as his fundamental ambition tended to the following problem: how can a righteous and non-violent procedure be created in order to solve the problems between nations? However, the signs of the religious thinking of natural right can also be found with Bibó. Although he refused that world-history can be explained by God's saving plan, but he considered Christ's sentences and gestures unique in the establishment of non-violence, in particular the realization of the power of gentleness of Christ, the example of Christ of "childish trust".

Under the influence of Barna Horváth's synoptic legal theory Bibó was characteristic of the rise above the dichotomy of law positivism/natural right. His inaugural address at the Academy of Sciences and his "paralysis"-book written in 1976 clearly shows that the view of natural right – also inspired by Verdross, being characteristic of moral value-commitment – remained the central element in Bibó's conception of law and politics.

- 1 As few essays are available by István Bibó in English, French and German translations, I generally denote the publication in Hungary as a source. In this case: Bibó, István: *Selected Studies* /further on: *SS*/ (in Hungarian) vol. II. 1986. Magvető Kiadó, Budapest, p. 369. and 397. Some selections by Bibó in foreign languages: *Misere des petits États d'Europe de l'Est.* L'Harmattan, Paris, 1986; *"Democracy, Revolution, Self-Determination."* Columbia University Press, New York, 1991; *"Zur Judenfrage. Am Beispiel Ungarns nach 1944."* Verlag Neue Kritik, Frankfurt am Main, 1990; *"Die deutsche Hysterie. Ursachen und Geschichte."* Insel Verlag, Frankfurt am Main – Leipzig, 1991; *"Die Misere der osteuropäische Kleinstaater."* Verlag Neue Kritik, Frankfurt am Main, 1992.
- 2 Bibó: *SS*. vol. III., 1986. p. 8–9.
- 3 See: Bibó: "Die Lage Ungarns und die Lage der Welt. Vorschlag zur Lösung der Ungarn-Frage." *Die Presse* (Wien) 8. September 1957.
- 4 Barna Horváth: *Rechtssozologie*. Grunewald Verlag, Berlin 1934. The methodology-like first part of Horváth's book; it was published again together with his other essays: *Probleme der Rechtssozologie*. Duncker und Humblot, Berlin, 1971.
- 5 István Bibó: *The Paralysis of International Institutions and the Remedies*. /further: "Paralysis"/ Harvester Press, Hassocks, 1976: II.
- 6 Verosta, S.: Alfred Verdross – Leben und Werk. in: Heydte, F. A. et al. (Hrsg): *Völkerrecht und rechtliches Weltbild*. (Festschrift für Alfred Verdross). / further: *Festschrift* / Wien, Springer Verlag. 1960. p. 22.
- 7 In 1935-ben Bibó pursued his studies in Geneva. In one of his letters written from there he characterized Kelsen's conception of law as follows: "With Kelsen's pure jurisprudence you are somehow in the situation as if you were peeling a thin carrot; you scrape the dirt of earth so long until all the flesh of the carrot goes down only its fibre remains. In Kelsen's case this fibre is worthy of being looked at, but it is not enough to feed life."
- 8 Bibó: *SS*. vol. IV. 1990. p. 24.
- 9 Bibó: *SS*. vol. I. 1986. p. 5–147.

- 10 in: *Revue Internationale de la Théorie du Droit* (Brno), year X, part 1 (1936), p. 14–27.
- 11 in: *Zeitschrift für Öffentliches Recht* (Wien), vol. XVII, part 5. (1937), p. 623–638.
- 12 “*Paralysis*”, p. 3.
- 13 “*Paralysis*”, p. 129.
- 14 “*Paralysis*”, p.130.
- 15 Bibó dissected the possible institutional characteristics of international political arbitration in detail, i.e. exceptional competence, impartiality and independence; it's not in the application of rules that arbitration is realized but on the basis of political judgement.
- 16 “*Paralysis*”, p. 137.

RESUME

In der Anziehung des Naturrechts: die Rechtsauffassung von István Bibó

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István Bibó (1911-1979) war eine der bedeutendsten Gestalten des politischen Denkens im Ungarn des 20. Jahrhunderts. Seine Laufbahn begann er als Fachwissenschaftler des Völkerrechts und Rechtsphilosophie, aber seine Tätigkeit verlagerte er allmählich und wurde zum Politiker. Die Studie befasst sich mit Bibó als Rechtsphilosoph. Die Rechtsauffassung von Bibó war am Anfang seiner Laufbahn durch den Rechtspositivismus von Kelsen geprägt, aber später nahm er eine zum Naturrecht nahe stehende theoretische Position ein, und hielt daran bis zum Ende seines Lebens fest. Er war nämlich davon überzeugt, dass sich der Problembereich des Rechts und der Politik nur im Zusammenhang mit der Moral analysieren lässt.