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**HUMAN RIGHTS CULTURE IN THE LIGHT OF
HANNAH ARENDT'S HUMAN RIGHTS THEORY
AND THE SOCIO-LEGAL STUDIES**

The Right to Have Rights in Respect of the Anthropology
and Sociology of Human Rights

Summary of Doctoral Thesis

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DOI: 10.15476/ELTE.2021.090

Budapest, 2021

I. BRIEF SUMMARY OF THE RESEARCH TASK

In the literature on human rights theory of the last two decades, a vibrant debate has ensued between moral¹ and political² justification theorists. The 2010s have seen the emergence of new theoretical works combining the two earlier positions, which reconsider the moral-political controversy and simultaneously acknowledge the moral and political-legal characteristics of human rights. This doctoral thesis attempts to take this new paradigm as a starting point to show that it is possible to approach human rights theory from a different perspective. This new approach can be based on the theoretical tradition of socio-

¹ A non-exhaustive list of the most influential works on moral theories of justification in the last decades:: Alan Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996); James Griffin, *On Human Rights* (Oxford; New York: Oxford University Press, 2008); John Tasioulas, „Taking Rights out of Human Rights”, *Ethics* 120, No. 4 (July 2010): 647–78, <https://doi.org/10.1086/653432>.

² Major authors of political justification and their works: John Rawls, „The Law of Peoples”, *Critical Inquiry* 20, No. 1. (1993): 36–68; Joseph Raz, „Human Rights without Foundation”, in *The Philosophy of International Law*, ed. Samantha Besson és John Tasioulas (Oxford ; New York: Oxford University Press, 2010), 321–39; Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2011).

legal studies, using a holistic methodology and taking into account the results of sociology and anthropology.³

This thesis has attempted to show that, starting from Hannah Arendt's theory of human rights,⁴ there was already an understanding of human rights after the Second World War which examined them using the aforementioned comprehensive approach. Arendtian human rights theory studied the issue from a complex multidisciplinary perspective, combining philosophy, history, and social criticism; it thought of human rights as a social fact and not as an abstract theoretical problem.

³ For more information see: Roger Cotterrell, *Law's Community: Legal Theory in Sociological Perspective* (Oxford: New York: Clarendon Press; Oxford University Press, 1995); William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge: Cambridge University Press, 2009), <https://doi.org/10.1017/CBO9780511807374>; Brian Z. Tamanaha, „A Holistic Vision of the Socio-Legal Terrain”, *Law and Contemporary Problems* 71, No. 2. (2008): 89–97; Roger Cotterrell, *Sociological Jurisprudence: Juristic Thought and Social Inquiry* (Abingdon; New York: Routledge, 2017).

⁴ Hannah Arendt, *A totalitarizmus gyökerei* (Budapest: Európa, 1992); Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1998); Hannah Arendt, *On Revolution* (New York: Penguin Books, 2006). The thesis is mainly based on Arendt's ideas as expressed in these three books, but we have also placed great emphasis on minoressays and lectures.

Arendtian theory can therefore be used as a theoretical basis for a socio-legal paradigm of human rights theory.⁵

It is important to note that Arendt linked the practical operation of human rights to the existence of active political communities based on civic action, for according to her theory human rights cannot be conceived of as innate, natural rights, but as artificial social institutions created by human beings. The Arendtian theory of human rights is therefore also suitable for assessing the socio-legal practice of human rights from the previous normative starting point.

As mentioned above, one of the recurrent problems in Western legal theory is the issue of human rights.⁶ Over the last two decades, the theoretical literature on the justification of human rights has been engaged in an unremittingly intense debate on the philosophical

⁵ We have taken Tamanaha's work as a starting point for the explanation of the theory of socio-legal studies: Brian Z. Tamanaha, *A General Jurisprudence of Law and Society* (Oxford: Oxford University Press, 2001); Brian Z. Tamanaha, *A Realistic Theory of Law* (Cambridge: Cambridge University Press, 2017).

⁶ Gábor Halmai, „Az emberi jogok igazolása”, in *Az emberi jogok és az európai tradíció* (Budapest: Osiris, 2002), 20.

foundations of human rights.⁷ Two dominant positions have emerged, which, following Adam Etinson, can be described as the opposition between the orthodox and the political camps.⁸ The moral approach derives the existence

⁷ Samantha Besson, „Human Rights: Ethical, Political...or Legal? First Steps in a Legal Theory of Human Rights”, in *The Role of Ethics in International Law*, ed. Donald Earl Childress III (Cambridge: Cambridge University Press, 2012), 211., Adam Etinson, „Introduction”, in *Human Rights: Moral or Political?*, ed. Adam Etinson, 1. köt. (Oxford: Oxford University Press, 2018), 1, <https://doi.org/10.1093/oso/9780198713258.003.0001>. Gerhard Ernst and Jan-Christoph Heilinger, „Introduction”, in *The Philosophy of Human Rights*, eds. Gerhard Ernst and Jan-Christoph Heilinger (Berlin ; Boston: De Gruyter, 2011), VII–XIV, <https://doi.org/10.1515/9783110263886.3>. VII, Rowan Cruft, S. Matthew Liao, and Massimo Renzo, „The Philosophical Foundations of Human Rights”, in *Philosophical Foundations of Human Rights*, eds. Rowan Cruft, S. Matthew Liao, and Massimo Renzo (Oxford: Oxford University Press, 2015), 2–4, <https://doi.org/10.1093/acprof:oso/9780199688623.003.0001.2-4>.

⁸ Etinson, *Introduction*, 1:1., Andrea Sangiovanni, *Beyond the Political–Orthodox Divide* (Oxford: Oxford University Press, 2018), 174, <https://doi.org/10.1093/oso/9780198713258.003.0011>, Samantha Besson, „Legal Human Rights Theory”, in *A Companion to Applied Philosophy*, ed. Kasper Lippert-Rasmussen (New York: John Wiley & Sons, 2017); Samantha Besson, „Human Rights: Ethical, Political... or Legal? First Steps in a Legal Theory of Human Rights”, in *The Role of Ethics in International Law*, ed. Donald Earl Childress (Cambridge: Cambridge University Press, 2012).; John Tasioulas, „Towards a Philosophy of Human Rights”, *Current Legal Problems* 65, No. 1.(1 January 2012): 1–30. The two theoretical positions are known by a variety of names, from Samatha Besson’s political and ethical theories to John Tasioulas, who captured the theoretical problem of human rights in the “functionalist-foundationalist” pair of concepts. In addition, Etinson found the terms naturalistic, humanistic,

of human rights from a higher, moral value. It is based on the theoretical paradigm that human rights are natural rights that all human beings are due by virtue of their very human existence.⁹ Representatives of the political perspective build their theory and catalogue of human rights from practical ends, linked to the justification of political action. They argue that human rights play a crucial role in international politics.¹⁰

Because of the contradictions in the theoretical debates surrounding the justification of human rights, both sides acknowledge that their theories on the nature of human rights are difficult to comprehend¹¹ and therefore

traditionalist, old-fashioned, or philosophical to designate the orthodox camp in theoretical literature. For the political camp, we find the designation such as practical, institutional and functional.

⁹ Etnison, “Introduction”. Exemplars of this view are Alan Gewirth, John Griffin, John Tasioulas.

¹⁰ Etnison, 1–2., Cruft, Matthew Liao, and Renzo, „The Philosophical Foundations of Human Rights”, 2–3. The “political” camp includes John Rawls, Joseph Raz and Charles Beitz, among others.

¹¹ Jeremy Waldron, “Human Rights A Critique of the Raz/Rawls Approach” in *Human Rights: Moral or Political?*, ed. Adam Etnison (Oxford: Oxford University Press, 2018), 136, <https://doi.org/10.1093/oso/9780198713258.003.0007>. James Griffin, „Human Rights: Questions of Aim and Approach”, in *The Philosophy of Human Rights*, eds. Gerhard Ernst and Jan-Christoph Heilinger

often do not bring us closer to their original aim, which is to help us better understand the nature of human rights.¹² Recognizing this, a third, separate school of thought has emerged over the last decade alongside the two traditional positions,¹³ which argues that a strictly pluralist conception of human rights places these two schools of thought within an dialectically opposed framework.¹⁴ Among these latter authors we find Jeremy Waldron, Samantha Besson and Andrea Sangiovanni, who argue that ‘there is no reason why these two approaches cannot be combined’,¹⁵ since human rights theory must grasp both the moral and practical dimensions of these rights in order to provide a genuine contribution to understanding their

(Berlin ; Boston: De Gruyter, 2011), 6, <https://doi.org/10.1515/9783110263886.3>.

¹² Griffin, „Human Rights”, 6.

¹³ I will refer to this theoretical trend in the rest of this chapter as the “dissenting trend”.

¹⁴ Besson, „Legal Human Rights Theory”, 338–39; Jeremy Waldron, „Human Rights: A Critique of the Raz/Rawls Approach”, NYU School of Law, Public Law Research Paper, no. 12–73 (2013); Jeremy Waldron, *Is Dignity the Foundation of Human Rights?*, NYU School of Law, Public Law Research Paper, No. 13–32 (2013); Waldron, “Human Rights A Critique of the Raz/Rawls Approach”, 118., Sangiovanni, *Beyond the Political–Orthodox Divide*, 214.

¹⁵ Waldron, *Human Rights A Critique of the Raz/Rawls Approach*, 119.

essential features .¹⁶ According to these authors, this synthesizing theorizing can also be a missing link, because the traditional moral-political discourse mostly fails to consider that human rights have a socio-legal practice. According to the dissenters, neglecting practice consequently cannot lead to a credible theory, and it is therefore important that theories take account of this.¹⁷ Besson argues that these dissenting voices, which go beyond the moral-political debate, can draw on the work of Arendt as a theoretical starting point.¹⁸ Arendt's perhaps best-known theoretical work on human rights is to be found in her 1951 book *The Origins of Totalitarianism*,¹⁹ which Besson considers her main starting point.²⁰

¹⁶ Samantha Besson, „The Right to Have Rights: From Human Rights to Citizens' Rights and Back”, in *Hannah Arendt and the Law*, eds. Marco Goldoni and Christopher McCorkindale (Oxford: Hart Publishing, 2012), 336.

¹⁷ Besson, „The Right to Have Rights: From Human Rights to Citizens' Rights and Back”, 342., Etinson, „Introduction”, 4.

¹⁸ Besson, „The Right to Have Rights: From Human Rights to Citizens' Rights and Back”, 338–39.

¹⁹ Arendt, *A totalitarizmus gyökerei*.

²⁰ Besson, „The Right to Have Rights: From Human Rights to Citizens' Rights and Back”, 336.

II. THE RESEARCH METHOD

The research was primarily done using a theoretical-historical methodology. Balázs Fekete summarized the specific characteristics of the history of ideas methodology as follows: “ *regarding these sources of the history of science, it must be pointed out that their selection was based not on some strict, prior concept, but always in the light of the results of the given paradigm-creating scientific community. In other words, the examined authors were analysed in the context of a paradigm were those who were clearly considered by the scientific community to be members of that community. Who is or is not a member of a particular scientific community was never decided on the basis of prior assumptions, but by examining references to papers published in the period or other works that represented the scientific consensus, such as laudations or other secondary sources.*”²¹

²¹ Balázs Fekete: *A modern jogösszehasonlítás paradigmái. Doktori értekezés tézisei.* (Budapest: Pázmány Péter Katolikus Egyetem Jog- és Államtudományi Kar Jog- és Államtudományi Doktori Iskola, 2009)3-4.

A similar line of thought was followed in the selection of sources for this thesis. In Arendt's case, it was necessary to extract ideas on human rights theory from her often patchwork-like writings and then place them in the context of her oeuvre. In presenting the anthropology and sociology of human rights, she presented the ideas of the most important authors in English-speaking socio-legal studies, focusing on their writings on the relationship between the political community and human rights. The second and third chapters therefore focus specifically on those authors who are typically dominant in English-speaking social sciences and who have identified themselves as followers of the anthropology of human rights or the sociology of human rights. In the chapter on the prospects of socio-legal research on human rights in Hungary, the selection of authors emphasized primarily those from Hungarian social theory of rights.

We are convinced that the methodology of research in the history of science was best summarized by Niklas Luhmann in his research proposal to the University of Bielefeld, which was "very short and it stated: topic:

‘social theory, duration: 30 years, costs: nothing’”.²² In the case of the present thesis, Luhmann’s methodological premise are apt, as they present research is intended to be the beginning of what is expected to be a longer research project, which will focus on the socio-legal study of human rights. The work described in this thesis is intended to lay the foundations for this longer research. The methodology of the research was therefore based primarily on a review and synthesis of a vast body of literature.

III. A SUMMARY OF THE DOCTORAL THESIS

The first chapter of the thesis outlines Arendt’s theory of human rights, with particular reference to the idea of the right to have rights. The chapter pays particular attention to the fact that this idea appears in many places, but less attention is paid in the literature to where it is located in Arendt’s work in general and what exactly this theoretical construct entails.

²² András Karácsony: „Luhmann társadalomelmélete”, in *Kommunikáció és társadalom. Luhmann-olvasókönyv*, ed. Bulcsu Bognár and András Karácsony (Budapest: Gondolat, 2014) 304.

The first chapter therefore also focuses on showing what Arendt thought of the international institutional system for the protection of human rights and the historical experience from which her critiques of it were drawn. The chapter then presents Arendt's vision of a proper political community in order to explain why she linked the practical realisation of human rights to the existence of political communities and what kind of community life he considered ideal. The last part of the first chapter describes Besson's theory of human rights and then explains why, in addition to Besson's concept, which focuses primarily on the internal legal culture, it is necessary to study the external legal culture of human rights.

In the case of political communities, the German philosopher considered her model of the polis to be ideal, in which each member of the community is given the opportunity to appear freely before the other members of the community and to express his views freely through her actions and speech.²³ Arendt considered the act of speaking and acting before the community to be a second

²³ Arendt, *The Human Condition*, 175.

birth, whereby people could transcend their mere biological existence and be reborn as members of the community.²⁴

Closely linked to Arendt's theory of human rights and her views on the polis is her analysis of revolutions, in which she distinguishes between freedom and liberation.²⁵ This conceptual clarification can help us to understand the philosopher's views on human rights by making it clear that, learning from the revolutionary tradition of the eighteenth century – from which we derive the idea of universal human rights – it is important to bear in mind that the right to participate in public affairs is of primary importance after the right to have rights.²⁶ However, this right can only be created if we avoid the practice of the politics of pity, that is, prioritizing the satisfaction of biological needs over the possibility of freely appearing

²⁴ Hannah Arendt, *The Human Condition* (University of Chicago Press, 1998), 178 Arendt calls this process as the actualization of natality.

²⁵ Arendt, *On revolution*, 28.

²⁶ Hannah Arendt, *The Freedom to Be Free: From Thinking without a Banister* (New York: Vintage Books, 2018), 12–13.

before others.²⁷ Instead, Arendt stresses that for human rights to work, it is necessary to bear in mind their dual nature. On the one hand, this means the right to the free opportunity to participate in public affairs, which must avoid becoming the privilege of the few, and, on the other, the importance of respecting the separation of public and private spheres. A further tendency to be avoided according to Arendt is seeking to undermine the integrity of the private sphere by falsely equating liberation with freedom.²⁸

Arendt's theory of human rights can serve as a kind of minimum theory for both the jurisprudential and the socio-legal theory of human rights. Besson's legal theory of human rights illustrates that the concept of the right to have rights transcends the debate between moral and political justification theories. It is therefore also important to bear in mind that the human rights enshrined in international law can only be considered human rights if

²⁷ Margaret Canovan, *Hannah Arendt: A Reinterpretation of her Political Thought* (Cambridge University Press, 1992), 171–72, <https://doi.org/10.1017/CBO9780511521300>.

²⁸ Arendt, *On Revolution*, 60–61.

they are also protected by a nation state.²⁹ Besson's theory, however, examined the question of human rights exclusively from an internal, lawyers' perspective and did not take into account the external, non-legal social practice of human rights.

Therefore, taking Arendtian theory as a starting point, research into the social legal practice of human rights may also be important in understanding in which cases the human rights protection system provided can be considered successful. Using Friedman's conceptual dichotomy between internal and external legal cultures, this thesis therefore primarily considers the research possibilities of external human rights cultures.³⁰ Therefore, we first of all examined the theoretical and methodological possibilities for exploring the folk concept of human rights. By this concept we primarily mean Tamanaha's simplified definition, according to which no single, exclusively correct definition of law, including human

²⁹ Besson, „The Right to Have Rights: From Human Rights to Citizens' Rights and Back”.

³⁰ Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, (New York: Russel Sage Foundation, 1975), 223; Friedman, *The Human Rights Culture*.

rights, can be given. Therefore, socio-legal research must start from a pluralistic concept of law and human rights in order to obtain valid answers on the functioning of human rights.³¹ Another starting point for this thesis is Friedman's theory of the culture of human rights, according to which human rights are “serious social facts“ that are both culturally and historically determined.³²

The theory of the right to have rights, by making the practical realisation of human rights conditional on belonging to a community, also presupposes that human rights are to some extent embedded in the local socio-cultural *milieu*. The thesis has sought to make this case through a theoretical history of the anthropology of human rights and the sociology of human rights. The thesis ranges from an introduction to the work of anthropologists studying local small communities to the sociology of social practice.

The second chapter seeks to show how anthropologists of human rights have contributed to

³¹ Tamanaha, *A Realistic Theory of Law*, 117.

³² Friedman, *The Human Rights Culture*, 9.

proving the Arendtian hypothesis that the idea of human rights can only succeed if it can adapt to local communities with different socio-cultural characteristics. The first sub-chapter of the second chapter explores the theoretical and methodological debates that preceded the acceptance of research on the practice of human rights in legal anthropology. Through an introduction to the cultural relativism-universalism debate that emerged in anthropology after the Second World War, the thesis argues that research on the cultural and social embeddedness of human rights can be undertaken from an anti-antirealist, or moderate relativist, perspective, as advocated by Clifford Geertz.³³ This approach does not deny that there may be universal cultural values valid for all humanity, but it considers that this can be explored from a cultural relativist starting point, which assumes that the socio-cultural practices of individual communities differ from one another.

³³ Clifford Geertz, „Anti-antirelativizmus”, in *Az értelmezés hatalma - Antropológiai írások* (Budapest: Osiris, 1994), 344–74.

The importance of the relationship between human rights and local communities is demonstrated by Sally Engle Merry's vernacularization thesis and Michael D. Jackson's existentialist anthropology.³⁴ Merry considers the extent to which human rights have become part of the vernacular linguistic environment, i.e. how often and in what context human rights discourse is used in everyday language in cultures that are more or less different from the Western, individualistic approach, to be the primary criterion for the localisation of human rights. The community-bound nature of human rights is also demonstrated by Merry's assertion that only when human rights enshrined in international law, or even in nation-state constitutions, are adapted to local cultural conditions can they become effective instruments. This process involves in all cases a change of meaning from the global human rights discourse.³⁵

³⁴ Sally Engle Merry, „Anthropology, Law, and Transnational Processes”, *Annual Review of Anthropology*, 21 (1992): 357–79; Michael Jackson, *Existential Anthropology: Events, Exigencies, and Effects* (New York: Berghahn Books, 2005).

³⁵ Sally Engle Merry, „The Potential of Ethnographic Methods for Human Rights Research”, in *Research Methods in Human Rights*, eds.

Merry's thesis can be complemented by Jackson's theory and methodology, which, unlike Merry's, does not focus on the mediators between global and local discourses, but concentrates on the lowest level of this discourse, the stories of individual people. According to Jackson, who draws on the writings of Walter Benjamin, Arendt and Michael Oakeshott, among others, to theorize, it is important to represent narratives of critical events because ethnography can be used to highlight how people do not primarily interpret their grievances as violations of their human rights, but as a crisis of their human existence and their place in the community.³⁶ According to Jackson, the adoption of human rights terminology, while it has enabled Western countries to take the problems of survivors more seriously, has in many cases oversimplified the suffering they experienced during armed conflict,

Bård Andreassen, Hans-Otto Sano, and Siobhán McInerney-Lankford (Cheltenham: Edward Elgar Publishing, 2017), 146, <https://doi.org/10.4337/9781785367793>.

³⁶ Michael Jackson, „Whose Human Rights?“, in *Existential Anthropology: Events, Exigencies, and Effects* (New York: Berghahn Books, 2005), 174.

preventing them from articulating their grievances in an adequate way.³⁷

The sociology of human rights significantly contributes to the understanding of the impact and effectiveness of the legal and social institutions that protect human rights by examining the social realization of human rights at the macro level. Such research will help us to understand the functioning of the “social life of rights”, i.e. the embeddedness of human rights in different social contexts on the one hand, and the social constraints and contradictions of this realization on the other.³⁸ Social sciences research on human rights, like anthropological research, has confirmed the Arendtian hypothesis that the adaptation of the idea of universal human rights into international and national law is not sufficient to transform them from an “ultimate utopia” into a “real utopia”,³⁹ i.e.

³⁷ Jackson, 167–69.

³⁸ Patricia Hynes et al., „Sociology and Human Rights: Confrontations, Evasions and New Engagements”, *The International Journal of Human Rights* 14, No. 6 (November 2010): 821, <https://doi.org/10.1080/13642987.2010.512125>.

³⁹ John Rawls, *The Law of Peoples*, (Cambridge: Harvard University Press, 2003).

to make them genuinely defensible, and that their validity depends in all cases on their ability to be embedded in the most diverse social contexts. The third chapter is specifically devoted to a presentation of the authors who have been cited in recent volumes of contemporary studies on the sociology of human rights as the theoretical and methodological developers of the sociology of human rights as a sub-discipline in its own right.⁴⁰ Most of the authors of recent volumes argue that the foundations of the sociology of human rights were laid down in the 1990s by Bryan Turner, Malcolm Waters and Anthony Woodiwiss.⁴¹ The chapter therefore focuses on the

⁴⁰ Damien Short, „Sociological and Anthropological Approaches”, in *Human Rights: Politics and Practice*, ed.. Michael E. Goodhart, Third edition (Oxford ; New York: Oxford University Press, 2016); See also: Gideon Sjoberg, Elizabeth A. Gill, and Norma Williams, „A Sociology of Human Rights”, *Social Problems* 48, No. 1. (February 2001): 11–47, <https://doi.org/10.1525/sp.2001.48.1.11>.

⁴¹ Bryan S. Turner, „Outline of a Theory of Human Rights”, *Sociology* 27, No. 3. (1993): 489–512.; Bryan S. Turner et al., „Symposium: Human Rights and the Sociological Project”, *The Australian and New Zealand Journal of Sociology* 31, No. 2 (August 1995): 1–44, <https://doi.org/10.1177/144078339503100201>; Neil Stammers, „A Critique of Social Approaches to Human Rights”, *Human Rights Quarterly* 17, No. 3 (1995): 488–508; Caroline New, „Sociology and the Case for Realism”, *The Sociological Review* 43, No. 4 (November 1995): 808–27, <https://doi.org/10.1111/j.1467-954X.1995.tb00720.x>; Sharyn Roach Anleu, „Sociologists Confront Human Rights: The

findings of these authors, and then seeks to outline how the sociological study of human rights has become a diverse and colourful field over the last three decades.

The final chapter of the thesis sought to answer the question of what existing domestic socio-legal research precedents (or traditions) might provide, at least in part, insights into certain aspects of Hungarian human rights culture. This chapter, like the rest of the thesis, focuses mainly on the material available in the post-World War II period, because the global spread of human rights discourse can be dated to the post-World War II period and – if we accept Samuel Moyn’s account – it is from the mid-1970s that it has become the “last utopia” in both hemispheres of the then bipolar world.⁴² We also

Problem of Universalism”, *Journal of Sociology* 35, No. 2 (August 1999): 198–212, <https://doi.org/10.1177/144078339903500205>; Malcolm Waters, „Human Rights and the Universalisation of Interests: Towards a Social Constructionist Approach”, *Sociology* 30, No. 3 (August 1996): 593–600, <https://doi.org/10.1177/0038038596030003011>; Bryan S. Turner, „A Neo-Hobbesian Theory of Human Rights: A Reply to Malcolm Waters”, *Sociology* 31, No. 3 (1997): 565–71.

⁴² Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Belknap Press of Harvard University Press, 2012).

considered it important to pay particular attention to the reconstruction of the Hungarian social attitude towards human rights in the period before the regime change, because we agreed with H. Szilágyi that there was no comprehensive socio-legal understanding of this period, and because we hypothesized that the social attitude towards rights and human rights in this period still determines Hungarian human rights culture today.⁴³

It is also important to underline that the last chapter of this thesis did not aim to present all the ways of understanding human rights culture, but focused primarily on the ways of understanding the external, i.e. non-legal culture, the folk concept of human rights. The final chapter then focused on the cognitive issues of the “anthropological foundations” of human rights.⁴⁴ Since there has been no domestic legal anthropological research on human rights, the chapter sought to approach the

⁴³ István H. Szilágyi, *A jogi antropológia főbb irányai* (Budapest: Osiris, 2000), 94.

⁴⁴ Significant contributions to the Hungarian human rights literature: eds. Gábor Halmai et al., *Emberi jogok* (Budapest: Osiris, 2008); Gábor Szabó, *Szétszakadó világunk – A globalizáció emberi jogi kockázatai* (Pécs: Publikon, 2010).

question of the ‘anthropological foundations’ from two directions. On the one hand, we reviewed the “traces”⁴⁵ in the post-WWII history of legal anthropology that can help us to understand human rights culture, and on the other hand, we looked at works that are not specifically on legal ethnography but that are nonetheless valuable sources for human rights research. The first part of the fourth chapter outlines the history of Hungarian legal anthropology from Ernő Tárkány Szücs to the efforts of István H. Szilágyi and Sándor Loss, paying particular attention to the past obstacles that made it impossible for a strong tradition of legal anthropology to develop in Hungary.⁴⁶ The selection of the authors presented in chapter four was motivated primarily by the idea of presenting scholars from the field of domestic legal theory whose work has placed a strong emphasis on understanding external legal culture.

This chapter argues that certain features of Hungarian human rights culture can be revealed, even if

⁴⁵ H. Szilágyi, *A jogi antropológia főbb irányai*, 90–91

⁴⁶ Ernő Tárkány Szücs, *Magyar jogi népszokások* (Budapest: Gondolat, 1981); István H. Szilágyi, *A jogi antropológia főbb irányai* (Budapest: Osiris, 2000); István H. Szilágyi and Sándor Loss, „A cigány per”, *Beszélő*, No. IV (2001): 94–100.

only in fragments, from Hungarian sociographic literature, which can also serve as a source for reconstructing the legal culture of the recent past. The best example of this reconstruction is the integration of narrative jurisprudence into Hungarian legal theory, which was initiated by Tamás Nagy. Nagy's studies, focusing on the works of Péter Hajnóczy, are not only about presenting law and literature, but also provide important insights into the factors that have long determined Hungarian legal and human rights culture.⁴⁷

The thesis sought to prove the hypothesis that human rights, which are essentially individual in nature, can fulfil individual expectations in everyday practice only if there are functioning communities behind them. To ground this theoretically, Arendt drew on her theory of human rights. Using the concept of the right to have rights, she argued that we must reject natural law justifications of human rights that conceive human rights as innate, universal rights that we are entitled to on a moral basis,

⁴⁷ Tamás Nagy, *Egy arkangyal viszontagságai: jog, irodalom, intertextualitás Hajnóczy Péter műveiben* (Budapest: Gondolat, 2018).

without existing social practice or legal adaptation.⁴⁸ Arendt, on the other hand, argued that the primary and universal human right is that everyone should be a member of a political community capable of providing them with further rights.⁴⁹ The aim of the present thesis is to draw on the available theoretical and methodological literature to provide a basis for future research that is able to verify the above Arendtian hypothesis in the local context.

⁴⁸ Arendt, *A totalitarizmus gyökerei*, 356.

⁴⁹ Arendt, 328–77.

IV. LIST OF PUBLICATIONS

MTMT ID: 10061871

MATYASOVSZKY-NÉMETH, MÁRTON: *Vázlat a kortárs emberi jogi antropológia egyes irányairól.* [A sketch of some trends in contemporary human rights anthropology.] MTA Law Working Papers 2021 (10): 1–20.(2021)

MATYASOVSZKY-NÉMETH, MÁRTON: *Mark Goodale: Anthropology and Law: A Critical Introduction* (New York: New York University Press 2017). *Állam- és Jogtudomány* 61 : 4 pp. 151-156., 5 p. (2021)

MATYASOVSZKY-NÉMETH, MÁRTON: *A szocialista törvényesség kultúrája a Hajnóczy–Nagy-féle jogi néprajz tükrében* [The culture of socialist legality in the light of Hajnóczy-Nagy's legal ethnography] In: Bodnár, Kriszta; Fekete, Balázs (szerk.) *Iustitia emlékezik* Budapest: MTA TK Jogtudományi Intézet, (2021)

MATYASOVSZKY-NÉMETH, MÁRTON: *Taking Socio-Legal Studies Seriously: Some Comments on the Status of Social Rights in Hungary.* *Jahrbuch für Ostrecht* 2019 : 1 pp. 221-235., 15 p. (2019)

MATYASOVSZKY-NÉMETH, MÁRTON: *Módszertani naturalizmus, empiria és emberi jogok. Az emberi jogok társadalomtudományi kutatásának története.* [Methodological naturalism, empiricism and human rights. The history of human rights research in the social sciences] *Állam- és Jogtudomány* 60: 2 pp. 28-49., 22 p. (2019)

MATYASOVSZKY-NÉMETH, MÁRTON: *Személyes történelem és jog Bertók László Priusz c. munkájában.* [Narrative Jurisprudence in 'Priusz' by László Bertók] In: Bodnár, Kriszta; Fekete, Balázs (szerk.) *Iustitia meghallgat.* Tanulmányok a "jog és irodalom" köréből. Budapest: MTA TK Jogtudományi Intézet, (2018) pp. 141-153., 13 p.

FÁBIÁN, ÁRON; MATYASOVSKY-NÉMETH, MÁRTON: *Brian Z. Tamanaha: A Realistic Theory of Law* (Cambridge: Cambridge University Press 2017). *Állam- és Jogtudomány* 59: 1 pp. 111-122., 12 p. (2018)

MATYASOVSKY-NÉMETH, MÁRTON: *A Welfare Rights Movement és az amerikai Legfelsőbb Bíróság szociális jogokkal kapcsolatos esetjoga*. [The Welfare Rights Movement and the Cases of the Supreme Court of the United States of America Concerning Social Rights]. *Studia Collegii De Stephano Bibo Nominati – Tudományos Diákköri Dolgozatok 2017 II. KÖTET 2017: 1 pp. 85-123., 39 p.* (2017)