

IDEAS, POLITICAL-LEGAL CONCEPTS IN TRANSYLVANIA DURING THE 18TH CENTURY AND THE BEGINNING OF THE 19TH CENTURY

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*Abstract:*In Transylvania, the end of the XVIIIth century and the beginning of the XIXth century are marked by a series of political-legal ideas of west-European influence, ideas that have been transmitted in the legal environment by the precursors and the representatives of the Transylvanian School. The main ideas reflected in the ideas and the work of these representative personalities are: the idea of nation, the idea of justice and the origin of this concept, natural law, historical law.

*Keywords:*legal ideas, Transylvanian School, rights, law

1. Legal ideas prior to the Transylvanian School.

The fight between natural law and divine law at Inochentie Micu Klein. In the second half of the XVIIIth century, the conception of the Diet was profoundly antiquated, militating for maintaining feudal privileges, as results from documents dating from the 1750's: "it is a divine law of nature for the serf to be a slave and any change brought to this ordering would weaken the grounds of these laws and would crumble the rights of feudals"¹. We can notice the signs of differentiation of divine law "divine law" and natural law "natural law", while in the same time we cannot overpass that there is also a confusion of the two notions "divine law of nature".

The idea of reason. Klein demanded the 1744 Diet to recognize the united Romanians as the fourth political nation, but the answer of the Diet is maintained within the boundaries of the definition of political nations specific to the feudal age, in the sense that only those people that participate in running the state are considered nations: "The united Archbishop demands certain things that no one has ever asked from our ancestors and will not be able to ask either from their descendants demands what brings prejudice of the highest degree to the privileges and the oldest sentences gained from the kings and from the principes. Demands something that overturns from the grounds the rights and freedoms that the nations of the country enjoyed in peace so far. Demands what in fact shakes and disturbs the entire system of this country that has so far been kept in good order in both religious matters and political and economic ones. Demands what the Wallachian clergy and plebeians are never owed"². Klein uses modern criteria in order to dispute the old fashioned way of thinking and defining political nations. Thus, he makes use of the numeric criteria (mass, number) showing that the Romanian people is greater in number in Transylvania compared to all the other nations combined together and that therefore its contribution money-wise and blood-wise to the state exceed those of other nations and a non-feudal criteria must be applied; whomever has duties and debts must have rights too. The concept of nation at Klein goes through (willingly or non-willingly) numerous transformations throughout his battle, tending towards a modern signification. If initially he

¹Lucian Blaga, „Gândirea românească în Transilvania în secolul al XVIII-lea”, Editura Științifică, București, 1966, p.46.

²*Ibidem*, p.47.

stood for the rights of the united priests and of the united Romanian nobility, at the 1744 synod that took place in Blaj the concept of nation is enlarged and the claims are made also in the name of the serfs, and nations does not anymore refer to merely the united but also includes the orthodox.

In the feudal reasoning, the idea of nation implied the meaning of an organized collectivity that benefited from political rights and participated in running state business. Therefore, following this line of reasoning, of existing political rights, rights that confer this nation trait, we can reach the conclusion according to which only one social class (the nobility) can be a nation. Within this frame-work, the process of creating and forming the national consciousness at Romanians has involved more steps and some historians consider the source of this process to be the activity of the United Bishop³ Inochentie Klein while others identify the beginning of the fight of orthodox against the unification⁴. Even before the unification a nation-like consciousness is manifested, based in particular on a community of speech, the inhabitation of the same territory and on the community of so many habits or of the patrimony consisting of goods of anonymous culture. Over time, orthodoxy becomes a distinctive characteristic of Romanians compared to other nations from Transylvania, taking over the role of “Romanian law”⁵. Together with the nation consciousness and forming for a while a common body with it, orthodoxy takes a whole new direction in Transylvania, that of a shield. This process of joining and identifying the nation with a certain religion can be also found at the co-inhabiting nations. A Saxon could no longer be a Saxon before its own consciousness if it wasn't also a Lutheran. Once with the unification, Romanians sense a breach in this shield of orthodoxy, and this is the reason why they try to find other means to not get absorbed in Catholicism and other existing political nations. The found solution was to recognize united Romanians as the forth nation based on the idea of the roman legacy and of the continuity of romans in Dacia: “*if it is about the seniority of a people in the lands where it is localized, to become source of rights, then here it is: we are older than the Saxons. We have been since Traian*”⁶.

Gradually, the concept of nation gains new valences, based on a tendency of secularization. This tendency amplified during the age of Joseph the IInd, when the two laws the Greek-catholic and the orthodox, which have disputed the supremacy over the role of shield for the Romanian nation, become neutral content for the new national consciousness even if in the post-Joseph period things fall within a restitution trend⁷.

In conclusion, the concept of nations for Romanians in the XVIIIth century “widens and narrows”, it changes and becomes richer depending on the political and social aspirations, depending on the political context of the age, depending on the reaction of the receiver. The core of this beginning is represented by the nation consciousness built on the reality of a common speech but also on the fact of inhabiting the same territory, as well as the common habits. During the *Supplex*, both meanings of the idea of nation, the feudal one and the modern one, co-existed,

³ Augustin Bunea is the author that considers, in his work „*Din istoria românilor. Episcopul Ioan Inochentie Clein*” that the beginnings of the national consciousness or Romanians coincide with the fight for rights initiated by the Bishop - see Lucian Blaga, *op.cit.*, p.89.

⁴ Nicolae Iorga in his work „*Istoria Românilor*” sees in the fight of the orthodox against unification the beginnings of the national consciousness.

⁵ Lucian Blaga, *op.cit.*, p.90.

⁶ The idea of the Roman legacy and its continuity mentioned by Klein proves that these idea were known through the Romanian humanist, as well as the German and Italian ones. - Lucian Blaga, *op.cit.*, p.97.

⁷ *Ibidem*, p.105.

interfering one with the other and highlighting, in a confused form, the stage of passing from one concept to the other.

2. Legal philosophy at the Transylvanian School

Samuil Micu. After having been in contact with the *wolffien* philosophical ideas, through the writings of its disciples, Micu desired to “make in Romanian” this philosophy, to rethink it in the language of his people and, thus, making it accessible to it and gifting it to it⁸. The fact that his philosophical work does not have the originality of ideas and concept does not diminish its value. When considering the concept of originality one must take into account the fact that in the XVIIIth century and the beginning of the XIXth century, this notion was not as rigorously defined. The more justified are thus the assessments of historian D. Prodan concerning the Illuminists and their works: “For the Illuminist, from the very beginning, notions such as “originality”, “specialization”, so familiar to the modern man, are less familiar. The Illuminist does not have the obsession of “originality”, for him culture must be a public good, and the ideas a right of all. He does not have either the exclusivism of specialization, for he is still an encyclopedia-phase and takes full liberty to brake boundaries, indecisively drawn, of sciences. Tempted now by the omnipotence of reason, by the human power to put through science, in his service, the forces of nature, attracted by the new lure of culture, his ideal is as much possible light in as many bins of knowledge. The Illuminist starting the general assault against the massive surrounding darkness, doesn’t worry about the property of his weapons, doesn’t have any available table for specialization never takes care of the property of his weapons, no table available for specialization. Driven by the thought that a culture must not only be made but also given to the masses, the attacks all the areas, not merely the concepts and also takes over, especially takes over, assimilates, passes forward. Before creating an “original” culture, he must at all costs make a culture, pure and simple, as fast as possible.”⁹

In his work “Logic”¹⁰, the scholar shows that all human knowledge can be divided into: Historical knowledge, Philosophical knowledge, Mathematical Knowledge.

“When we know what exists and what is done, then it is said that we have historical knowledge, that the historical science is knowing the things that are or that are done. For example: you know that the magnet attract the iron. You know that thunders and big lightning means bad weather All this you historically know ... And when you know the cause of things, than your level of knowledge rises and it is called philosophical knowledge which is knowing the cause of things. Thus, if you know that the Roman Empire has fallen because the richness brought greed and the Romans engaged in affections and passions and laziness, and that’s how they lost The Empire. Knowing why they lost the Empire is philosophical ... Those that, besides the cause of things, also know the measure and the strength of causes, it is said that they have mathematical knowledge, that the mathematical knowledge means knowing the measure of thins, how great or big is something”.

From the works of Samuil Micu we can find ideas on individual freedom as freedom of will. Thus, in his work *Legile Firei* (1800) – *Natural Laws*, free will is defined: “a doing cannot be

⁸ Dumitru Ghișe, Pompiliu Teodor, „*Fragmentarium iluminist*”, Editura Dacia, Cluj, 1972, p.60.

⁹ Foreword for Gheorghe Șincai, „*Învățătura cea firească spre surparea superstiției norodului*”, Editura Științifică, București, 1964, p.6

¹⁰ To a great degree, the philosophical works of Samuil Micu are influence by the philosophy treaty of F.C. Baumaister, published in 1747. Basically, the works of Baumaister transmit the knowledge and methods of Christian Wolf.

called willing except those that are done out of the judgment of will. Willing are those deeds that are done with understanding are skillfulness ... The deeds of those that are crazy and those that walk in their sleep and of those that are very drunk or those that are asleep cannot be called willing¹¹.”

In the same work, we can find a definition of the notion of law and of that of natural law. It is noticeable the attempt to distinguish between the notion of law applicable to human actions (positive law, applicable to any action) and moral law, that distinguished good from bad¹².

You can find also the fact that the focus is on debts and less on rights. Samuil Micu achieves a ranking of these "debts", that someone has depending of the person of the one owed to (creditor):

- debts towards God. This includes only those debts that result from what reason shows and imposes on a person;
- debts towards its own self, meaning those debts that are towards the soul and the body. “If day and night is with a book in his hands, in order to work its mind and make it more clever, to have a lot of education and to be more well-known than those alike him; and it takes little care of the health of its body or none at all, a person like this can be called a destroyer of self¹³”, the author insists upon cultivating the mind even in these conditions.
- debts towards “its will”. Exhortations are given toward sobriety and restraint of the passion;
- debts of a person towards its own kind “the best you can try to enhance others happiness”. Attempting to define self-defense, Micu talks about the “innocent defense and its temper”, proving that even in these situations moderation must characterize the person in relation with its kind;
- mandatory debts and services towards what we have or what we own. Its about the respect shown for the property of another and the care and duty to protect your own property, these being considered **commands of nature** (elements of natural law) “The things that you own you must protect them with all your strength and to stand before those that want to, unlawfully, take them away from you and to send away those that want to spoil what is your¹⁴;
- debts towards the given word or promise, towards agreements and contract. Discussing the issue of interest, Micu sustains that this should be in such a way constituted that neither the creditor nor the debtor can prejudice;
- debts that arise from marriage. The institution of marriage is the result of instincts rooted in the man: “Of all the cravings that are in the body there is no one as strong as that of men for women and women for men and it is no wonder since craving naturally unites them into having babies¹⁵;
- debts towards those that “rule, the parents of the homeland”. Micu presents in laudatory terms the absolute power of the emperor, who is counted as a "human God" urging obedience to the Emperor. The only limitations on Royal power are natural laws and the

¹¹Samoil Clein „Logica”, Craiasca Tipografie, Buda, 1799, apud Lucian Blaga, *op.cit.*, p.141

¹² By law we understand “certain directions and commands towards which we have to act according to and make our willing deeds”, and by natural law a more general formula is found “Do good and stay away from the bad and don’t do bad”, Lucian Blaga, *op.cit.*, p.149.

¹³*Ibidem*, p.151.

¹⁴*Ibidem*, p.153.

¹⁵*Ibidem*.

laws of God: “Only the Emperor not to order something, which is either against the natural law or the law of God, for what is natural law and God's law with the loss of life we are in debt to obey, and therefore if the emperor would command something of the sort, something to be against natural law or against God's law, it needs not to be listened and the command of the Emperor needs not be obeyed”¹⁶.

- debts towards the masters. The author urges the subjects to fulfill their debts towards their masters, as well as the masters to behave with much understanding and consideration toward the “slaves”, which indicates recognition of the feudal system, even though it insists on tempering the regime in accordance with natural law, “laws of nature”.

Ion Budai-Deleanu is the proponent of the theory of natural law, comes into contact with the works of Grotius, Puffendorf, and is an opponent of feudal institutions. He declares himself a believer in true sciences instead of “dogmas” which no mind can fully comprehend, fighting religion in all its forms. He represents, from a political perspective, the radical wing of the Transylvanian school: severely criticizing the dominant classes and the feudal rules and appreciating the revolutionary struggle of the masses¹⁷.

He declares himself the adept of the democratic republic, free and independent and condemns the monarchy¹⁸. The xth song of the work *Țiganiada* represents a confrontation of the main ideas of the age and the proof that these ideas were known in Transylvania. The ideas of Montesquieu from “The spirit of laws”, those of Rousseau from the “Social contract” and those of Voltaire from “The modern man” become arguments and counter-arguments in the dispute between Budai-Deleanu’s characters.

In the final song from the work *Țiganiada* the idea of the struggle from freedom of the serfs intertwines with that of the fight for national liberation. For Budai-Deleanu, nations do not have to stand for slavery and injustice because they have power and reason. Reason helps these understand the means and ways for reaching liberation and the power, if organized, ensures their victory¹⁹. Through its characters, the writer underlines that only “in republic .../is the homeland its sweet mother/and he to the motherland just like a boy/and not in vain is he called its boy/since it feeds him, gives him life and stat/makes him a free and courageous man”²⁰.

There can also be found elements of legal philosophy, attempts to define natural law, the concept of nations, the supremacy of law, in works of:

- *Ioan Molnar-Piuaru* campaigns for the role of sciences in people's lives and the elimination of all prejudices, being one of the starters of the periodical publication entitled „*Vestiri filosoficești și moralicești*” (Philosophical and moral news), revue that has a prospect appeared, the only one, in 1795. In a speech related to the establishment of a publication, the Romanian scholar showed: “by polishing the style and gaining teachings the mind of many nations elevated, until reaching

¹⁶*Ibidem*, p.154.

¹⁷*Antologia gândirii românești*, Partea I, Ed. Politică, București, 1967, p.125.

¹⁸Cântul VI din “*Țiganiada*” 101. „Totul după practeca știută/ Din monarhia cea mai deplină/Despoția în urmă fu născută/ Cum naște din grăul bun neghină”; 112. „De ar fi monarhia cât de bună/ Cu vreme se mută în despoție/ Care apoi pe tirani încunună;/ Acești duc pe norod la șerbie;/ Apasă în țărână ș-ovilesc/ De-a pururi neamul omenesc”.

¹⁹Cântul XI din „*Țiganiada*” 16. „Înveți dogme care nici o minte/ Le cuprinde, obiceiuri afară/ De fire și crezăminturi sfinte/ Însă nici o știință adevărată,/ Nici o precerere și simțire/ Potrivită cu omeneasca fire; 17. „Tu înveți pe om ca el să nu vază/ Când vede, să nu știe când știe;/ Iar cându-i de a crede, să nu crează;/ Zicându-i că mintea-i nebunie/ Simțirea-i patimă rușinată/ Firea-i totdeauna necurată”.

²⁰*Antologia...*, p.126.

the highest stage of immortality”; “that only by gaining these teachings the power of the mind sharpens and we can think enlightened about the in the sky, the things seen and unseen”²¹.

- *Paul Iorgovici* proves that he had knowledge about natural law, especially the French influences. The author sustains, in this sense, (ideas taken from Rousseau) that the man comes into the world with good inclinations and instincts that must be cultivated. The law of nature and certain innate rights are expressed by Iorgovici through this phrase “Only the philosophies from the knowledge of beings, take on to know the powers that are innate in these, that are all made after shifting their powers. Thus, from the strengths that are innate in the man, and with which he works and in which his class is included, his debts also arise from, towards these laid principles; like all living creatures through their innate powers to the same end, all run for the sake of all, as such the man also, understanding creature, its his duty for its deeds for the sake of all to direct. The man comes from the hands of nature imperfect, but but with an innate inclination towards perfection”²². Iorgovici stands for compliance with the law and obedience, showing that in the wake of education people need to become useful to the Kingdom “a slave subject to the laws of the land in which he lives in, useful to the emperor and the Empire: whose welfare derives from obeying citizen laws To make a man from this man, a friend, a faithful neighbor, a parent that his children will respect and honor; later on to make a man out of him as nature and the human society demand”²³.

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4. *Antologia gândirii românești*, Partea I, Editura Politică, București, 1967

²¹*Ibidem*, p.136.

²²*Ibidem*, p.139.

²³*Ibidem*, p.140.