

THE PHILOSOPHY OF LAW IN THE WORK OF VAIDA LADISLAU

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Abstract: *The definition and enlargement of the concept of nation are ideas that can be found in the work of Vaida Ladislau. The evolution of the concept is realized in stages, from the feudal concept of “nation” as the whole of the privileged ones, gifted with the right to take part in the governance of the country to the modern notion of “nation”, in the sense of including all who have the same origin, language, historical traditions, life style, common interest, regardless of their social origin and confession to which they belong. The cultivation of rationality and combating religion are central themes also for Vaida, who tries to remove the divine law.*

Keywords: *Nation, Divine Law, Vasile Vaida, Transylvania, Villains.*

JEL Classification: *K 00, K39*

Short biography of Vasile Vaida¹

- He was born in 1780, at Glod, Cluj county;
- His family came from the old kingdom into Transylvania, and they have been ennobled by Gabriel Bethlen, and provided with land;
- He attended high school at Baia Mare, and philosophy and law at Cluj;
- In 1801 he began his career as a public servant: at first he was chancellor at the Royal Government of Transylvania, registrar at the tax direction and then conceiver;
- Starting with 1817 he was a professor of criminal law history at Cluj²;
- In 1821 he married Iosefina Meheși, daughter of Vasile Meheși “the best Romanian and the author of several valuable writings and petitions³”;
- In 1824 he published the courses: „*Noțiunea dreptului și a legilor civile private din Transylvania*” (*The notion of law and of the private law rulings in Transylvania*), „*Istoria dreptului transilvănean*” (*The history of Transylvanian law*);
- In 1829 he was appointed secretary to the Transylvanian royal government, during which time he was the right hand of the Romanian bishops in both political and religious questions;
- In 1830 at Oradea he published “Poemation”, together with his Adnotations (Reflexiones IX);
- In 1833 his wife died, her death affecting him seriously;

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¹ Biographical data was collected by: Vasile Bichigean, „*Poemation de secunda legione Valachica sub Carole barone Enzembergio*” in Arhiva Someșană no. 2/1925, p.16; Iuliu Moisil, „*Biografia căpitanului Anton Cosimelli și opera sa Poemation de secunda Legione Valachica*”, Arhiva Someșană nr.25/1939, p.451-452 and Vasile Lechințan „*Dicționar. Oficiali de stat români din Transilvania (1368-1918)*”, Ed. Argonaut, Cluj-Napoca, 2003, p.350.

² According to another point of view, the discipline of Vasile Vaida at the Academic College of Cluj was the *Law of the Nation*, Vasile Lechințan „*Dicționar. Oficiali de stat români din Transilvania (1368-1918)*”, p.350.

³ Vasile Bichigean, „*Poemation de secunda legione Valachica sub Carole barone Enzembergio*” in Arhiva Someșană no.2/1925, p.16.

– In 1834 „one of the few defenders of the Romanian cause in Transylvania” died. It is told, that at his funeral, officiated by bishop Ioan Lemeni, one of the assistants would have exclaimed: „*The Christ of the Valahians died*”⁴.

The enlargement of the concept of nation

The definition and enlargement of the concept of *nation* are ideas that can be found in the work of Vaida Ladislau. The evolution of the concept is realized in stages, from the feudal concept of “nation” as the whole of the privileged ones, gifted with the right to take part in the governance of the country to the modern notion of “nation”, in the sense of including all who have the same origin, language, historical traditions, life style, common interest, regardless of their social origin and confession to which they belong.

In the Adnotation of the Poemation of Cosimelli (Adnotările la Poemationul lui Cosimelli)⁵ it can be observed the intention of Vaida to define the concept of nation on other bases. Vaida, in the spirit of the national movement, grants a huge importance to the Romanian nobility and to the rights that belong to them. The existence, and share of these rights, as well as the fact that the Romanian nobles exercised in the past important public functions are important arguments in sustaining the rights initially hold by the Romanian, lost due to the distancing of some Romanian noble families from their nation and belief, on the ground of the barriers put in their way in acceding to public office, because of their orthodox origin.

Within Note 9⁶ Of the Poemation, Vasile Vaida describes the religious evolution of the Romanians and explains the confusion between nations, he describes the religious evolution of the Romanians insisting over the quality of noble, as a consequence of belonging to the western church, respectively, tolerated as a consequence of the belonging to the oriental church. “*The Romanian nobles united with the other nobles of hunnish origin, and were equal with them in their liberties*”.

In other words, the followers of the western church were considered nobles (Hungarians)⁷, and the followers of the oriental church – the schismatic, tolerated, (Romanians), regardless of the hunnish, Hungarian or German origin “*many families of Hunnish, Hungarian or German origins were considered as belonging to Romanians, attached to them by the orthodox religion, borne firstly in this region...*”⁸. This fusion, confusion between nations routed in religious belonging is highlighted by Vaida: “*And should not be seen a paradox by anyone, if I say that many families of Hunnish, Hungarian and German origin were numbered among Romanian families for that, because they followed the Greek ritual*”⁹.

The mile stone of generalizing the notion of nation for the Romanian movement is represented by the way and degree of implication of the peasantry, which represents the vast majority of the Romanian people in Transylvania, and whose force is the only one capable to give

⁴ Ibidem.

⁵ *Reflexiones IX* The two adnotations to the „*Poemationul*” of Cosimelli are realized by the Transylvanian jurist Vasile Vaida and published with the most common spread edition of the Poemation, the one of 1830 from Oradea.

⁶ Trying to construct a table of contents of the *Adnotations to the Poemation*, we consider that this would have the following structure:

- *Admonishment* for the readers;
- *Note 1, Descriptuion of the Transylvanian population;*
- *Note 2, The motives of Poemationului;*
- *Note 3, Description ofi Rodnei Valley;*
- *Note 4, The Someș;*
- *Note 5, The riches of Rodnei Valley;*
- *Note 6, The administrative organization of the border regiment;*
- *Note 7, The Military Institute of Năsăud;*
- *Note 8, Military campaigns of the IInd border regiment;*
- *Note 9, Personal considerations*

⁷ Vasile Bichigean, „*Poemation de secunda legione Valachica sub Carole barone Enzembergio*” in Arhiva Someșană no.4/1926, p.73 „...all those who are gifted with noble prerogatives shall be considered Hungarians”.

⁸ Vasile Vaida oferes a serries of examples of Hungarians who were orthodox, *religion firstly born in Transylvania*: Gyula duke of Transylvania, Mihai, the brother of duke Geiza, King Saint Stephan established an elegant Church of oriental rite, marriages between kings of Hungary and princesses of oriental religion. Vasile Bichigean, *art.cit.*, p.71.

⁹ *Ibidem*, p.72.

consistency to aspirations of national and social emancipation¹⁰. The interest for the fate of the peasantry, the sympathy for its emancipation and its integration into the modern concept of nation represented an early preoccupation; these ideas were to be found in the demand of Inochentie Micu. Subsequently, the representatives of the Transylvanian School reproduce this issue, by combating the origins of the villains (iogabi) and they look for solutions for the removal of the abusive and unfair situations. Vasile Vaida is to be considered in the same direction, by enlarging the concept of nation and considering that the peasants as well as Romanian nobles should not be despised for their fate, "but neither the ordinary people who lack rights, because the fate that the one or the other has...it can not be considered neither as a virtue nor as a vice, but neither can be imputed". Interesting is the attempt to define nations, realized by Vaida by starting from the criteria of confusion between co-inhabiting nations, confusion generated by the religious "shield". Vaida observes this confusion and concludes that by identifying a nation with a religion, it resulted a situation in which Hungarians and Germans were considered Romanians just because they were orthodox. Therefore, Vaida, starting from this confusion, observing the principle of legality, proposes the elimination of ethnical discrimination, in the *establishing nations will not be taken in the consideration of blood origin (which is dubious if is taken individually)*" and establishes as criteria for participation to public life, in accordance with art. VI from 1744, and with the response of the - deputației sistematice – of 1791 "*the right of the one who must have land*"¹¹. It can be observed that in his attempt to define nations, Vaida recalls on one hand the confusion between nations realized during time, by the point of view of hiding after religion, and proposes as a criteria of definition, the respect for some legal provisions.

The historical law at Vaida.

Among the Transylvanian School, the historical argumentation regarding the rights of the Romanian nation was the central point of any work. Starting with Ion Budai-Deleanu, this perception is changed, and the tendency is to eliminate these arguments and to use the arguments of natural law is justifying a form of government or even in the official acknowledgment of the Romanian nation. Vaida is one of the continuators of this tendency, in his Adnotations combining the historical arguments with the wish to abandon such arguments and to use other grounds in justifying certain rights. In this context, Vasile Vaida makes use of historical works¹² that confirm the existence of the Romanians as descendents of the Romans on these territories, before the migration of the Hungarians. „*This notary (the notary if king Bella) tells us that when Tuhutum entered into Transylvania, these places were inhabited by Romanians and Slaves, under the domination of the duke of the Romanians Gealon, and Gealon dying in the fight, the inhabitants (Romanians and Slaves) showed no resistance, but concluded an agreement, elected Tuhutum as their leader ...thus (concludes Vaida) the Romanians subjected themselves not defeated by weapons but on the basis of an agreement*"¹³.

In sustaining the argument that the Romanian nation never was in enslavement, Vasile Vaida recalls the covenant concluded în 1427 between the nobles and villains: "*with the event of reconciliation...they reached peace with the nobles, the Romanian and Hungarian villains, thus it results that as the nobles, the villains were constituted of Romanians and Hungarians*"¹⁴.

After realizing a whole argumentation regarding the rights of the Romanians from Transylvania, Vaida reaches the conclusion that regardless of these theories, or even in the event that one theory that combats the roman origin of the Romanian nation and the Latinity of the language, this conclusion would not imperil the rights of the Romanians, because, any theory could "*give or take something (from the Romanians), but a nation makes fame not by the origin of blood, but by its own virtues and gains glory not by its lineage, but by its acts and by the acts of its ancestors, or only by its acts.*"¹⁵.

¹⁰ Ladislau Gyemant, „*Mișcarea națională a românilor din Transilvania 1790-1848*”, Ed. Științifică și Enciclopedică, București, 1986., p.475.

¹¹ Vasile Bichigean, *art.cit.*, p.73. According to these regulations, nobles and united priests, were incorporated in that of the three nation on the territory of which they were established.

¹² There are references to Anonymus, Katona, Benkö.

¹³ Vasile Bichigean, *art.cit.*, p.69.

¹⁴ *Ibidem*.

¹⁵ *Ibidem*, p.66.

Thus, the existence of the rights of the Romanians has as basis not only a certain origin of blood (as it is not contested by Vaida but justified with historical arguments) but the acts of the nation. But to what facts is wording Vaida? In this situation he regards the fights of the border control regiment from Năsăud, because the acts of this regiment represent the central issues of the Poemation. "Famous for its belief, courage and perseverance, (the militia) showed what is the meaning of and of what is capable the love for one's country...rather it sacrificed life then to give up before the enemy, in such a manner that you can believe that their Hunnish and Roman ancestors revived in their grandchildren".

The cultivation of rationality and combating religion are central themes also for Vaida, who tries to remove the divine law. Education represents a way of cultivating the rationality and a modality of contribution to the common well being "At one time with the mother's milk they suckle a warrior nature, that endures different troubles, they gain an impulse towards glory and a power to distinguish in such a manner if you will educate a Székely or a Romanian (Vasile Vaida make us for the first time of the notion "Romanian" nation in his Adnotations) enrolled in the border militia, you will make him capable of any art, science, craft, ready to fulfill any business."¹⁶.

In what regards religion and its role in the life of the society, Vaida adopts a contradictory position. He does not declare himself against religion, but only against the orthodox religion, that is the principal responsible for the state of the Romanian nation. In this sense, Vaida looks for responses to the question "for what reasons the Romanians are not at the same cultural position as the three principal nations?"¹⁷. The response of Vaida to this question is one of a religious nature. Shortly, Vaida considers the orthodox religion as responsible for the fate of the Romanians. Due to this religion, the Romanians are not "at the same cultural level as the other nations". On the other hand, Vaida remarks the benefits of the union of the Romanians with the Church of Rome, within the Adnotations being presented the main moments of the constitution of the Greek/catholic church and the main "mishaps" of this union.

The theory of the social contract at Vaida.

In his works, even if he treats legal issues, Vaida shows the assimilation of this theory and the attempt to define the role of courts in resolving cases and finding true. Thus, in his work, *Az erdélyi polgári magános törvényekkel három könyve*¹⁸ - *Cele trei cărți ale cunoștințelor despre legile civile private ale Ardealului*, in Book II, entitled "About the persons who can intervene in the administration of justice" the author underlines the modality by which the society entrusted the power to the emperor: "The High Royal Power, to whom the society (republica) entrusted the private and public initiative, internal and external, has as main attribution, the regulation in accordance with law,, of the disputes between citizens, and bearing in mind the multiple tasks of the High Royal Power, it can not solve this disputes, thus, the Courts were created and empowered with jurisdictional power; from here we can conclude the reason for which, Werboczi, in his introduction sustains that Public Law is the law that refers to the the Power, to the keeping of Customs, respectively to public affairs, including here the Holly itemns, Priests and Officials (public servants); from this we conclude that the one who makes offence to the address of a priest, to Holly items, or to Officials, can be accused with an offence to the address of the public well being"¹⁹. From the text it results that by the fact that the society entrusted the sovereignty (internal and external) to the High Royal Power (the theory of social contract) and the fact that the powers in the state are separated (the reason for this being the multiple tasks of the High Power.)

The Principle of legality.

The respect for law is a legal principle present in all legal works of Vaida. Every modification in the structure of the society can be realized only on a legal basis, and the whole activity of state organs has to be within the limits of this principle.

¹⁶ Vasile Bichigean, „Poemation de secunda legione Valachica sub Carole barone Enzembergio” in Arhiva Someșană nr.3/1925, p.58.

¹⁷ It can be observed the use of the concepts of „principal nations” and not „recognized nations”, „official nations”.

¹⁸ The title of the work is *Az erdélyi polgári magános törvényekkel való esmeretségek*, Cluj, 1830. It consists of three Books: Book I *Despre modurile de dobândire a proprietății*; *Cartea II Despre persoanele care pot interveni în înfăptuirea justiției*; *Cartea III Despre ordinea judecării, despre căile legale care se ivesc și despre excepții*.

¹⁹ Vajda Ladislau, *Az erdélyi polgári magános törvényekkel való esmeretségek második könyve*, Cluj, 1830, pp.1-2.

In the same Book II., the activity of solving cases is viewed in conformity with the law in force, the Romanian jurist making several referrals in this regard:

- The analysis of the facts that form the object of the litigation on the basis of the documentation proposed by the opposing Parties, the evidence that emerged from this document, respectively their corroboration with the arguments of the Parties and with the Laws;

- The judge shares justice to his people by Law;

- The law is subject to the scope of finding the truth, and because of this, the Judgment depends on the dispute brought before the Judge in what regards the decision that will be pronounced in accordance with law;

The same principle of legality can be found in the introduction by Vaida to the third book, entitled "*About the order of Judgment and the legal ways and exception*". In this book, in the First part, entitled "Common aspects regarding the legal ways that emerge in the order of the process" an introduction is realized regarding procedural aspects, about the public well being and the scope of the society, about the importance of the Emperor and the leaders of the state, about the governance of the country with the assistance of Law: "*The Scope of the society (Republic) is courage, its means and methods are the Laws, its maintainer is the Prince and his representatives, who act as Accusation in the event of a violation of the rights of the Prince, and by hearing the accused person, they realize justice*"²⁰.

Criminal law principle (the influence of Beccaria) in the work of Vaida.

In his second book, Vaida describes the procedure of judgments in criminal trials, insisting not only on the application of law but also on the appeal to "right conscience". He insists on establishing the circumstance of the criminal act, on the proportionality of the penalty with the gravity of the fact, and on the inapplicability of law to the past: "*In the litigations of a criminal nature this situation emerges when the crime took place in the same circumstances as the Lawmaker had in mind at the moment when the law was created; according to the principles of criminal law, the punishment has to be adapted to the committed crime, and this can be realized only when, the situation will be interpreted in accordance with the circumstances that existed at that moment in which the accused decided to commit the crime; in this way, the circumstances can totally save the accused, can attenuate or aggravate the criminal act, or can move the whole situation into the field of another crime as the one discussed initially, all this being details that if not taken into consideration by the Judge in his Judgment, then the punishment will be mistaken; taking into consideration all this we can conclude that in the litigations of a criminal nature it is not always possible that the judgment to be taken only on the strict basis of law, the judgment has to be taken on the basis of the conscience of the judge, more than that, in this kind of cases, the complaints of the Applicant, cannot exhaust all the details of such cases, meaning here the circumstances in which the accused committed the act can be found only during the process, on the basis of evidence brought by the Parties.*"²¹.

The idea of truth.

The truth does not appear only as a judicial truth, pronounced by one or other court, and regarded only on the strict base of law, even if these legal aspects are not removed by solving one case, because they represent the central point of any judgment, it appears regarded to the so-called "righteous conscience": "*The judicium of the Judgment is of two kinds, and namely one founded upon the strict understanding of Law, respectively, based on conscience.*" The mission to find the truth regards the Judge, the only one who has this professional obligation, meanwhile being the only person empowered by law with such an attribute: "*The judge is named ...for the purpose of finding the truth...and finding the truth is only necessary when it is being questioned, and this purpose can be achieved only by the one who is empowered in this sense; thus we can see the definition of the notion of Judge presented above*"²².

²⁰ Vajda Ladislau, *Az erdélyi polgári magános törvényekkel való esmeretségek harmadik könyve*, Cluj, 1830, p.2.

²¹ Vajda Ladislau, *Az erdély... második könyve*, Cluj, 1830, p.3.

²² *Ibidem*.