

## IDEAS, POLITICO-JUDICIAL CONCEPTS IN THE XVIII<sup>th</sup> AND EARLY XIX<sup>th</sup> CENTURY IN TRANSYLVANIA

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**ABSTRACT:** *Regardless of any particular historical timeframe, the usage of legal arguments has represented an efficient means of shaping a national consciousness and of tuning to the European trends within the Transylvanian School. The representatives of this current have succeeded in imposing themselves in the fight with the empire and the three “recognized nations”, using in their endeavor ideas and political and legal concepts.*

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**JEL CODE:** *K10, K19*

### 1. JUDICIAL IDEAS PRECURSORY TO TRANSYLVANIAN SCHOOL

*The struggle between the natural law and divine law* - Inochentie Micu Klein. In the second half of the XVIII<sup>th</sup> century, the Diet of Transylvania had an outdated conception, fighting for the maintenance of feudal privileges, as it results from 1750s documents: “it is the divine law of nature that the serf is a slave and regardless of the changes which could occur in this arrangement, the basis of this laws would be weakened and it would annihilate the rights within feudal world.” Blaga (1966, p.46) There can be noticed differences between the divine law and natural law – the law of nature – but it can also be acknowledged that there is a confusion between the two concepts – *the divine law of nature*.

*The idea of nation.* Klein requested the Diet of 1744 to recognize the united Romanians as the fourth political nation, but the Diet’s answer embraced the specific feudal definition for the political nation, namely that nations are considered to be the people who have political rights and participate in state government: “the united Bishop has asked for some requirements that no one ever asked our ancestors to accomplish and none of their descendants will be asked for.. he requires what injures the highest privileges and judgments gained from ancient kings and princes. He asks for something that overturns the foundation of rights and freedoms the nations have had before. He asks for what actually staggers and disturbs the whole system of this country which was kept in

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good religious, political and economic order until now. He asks for what is not proper for Wallachian plebeians and for the clergy Blaga (1966, p.47).” Klein uses modern criteria to fight the old way of thinking and defining the political nations. Thereby, he uses numeric criteria (the mass, the number) to demonstrate that in Transylvania the Romanian people is more numerous than other nations taken together and as a result, its *contributions in money and blood* for the state exceeds the other nations’ contribution. Therefore, the non-feudal criterion must be applied: whoever has loads and debts, also has rights. Willingly or not, during Klein’s struggle, his conception of nation suffers many transformations, leading to a modern significance. If initially he fought for the rights of united Romanian priests and nobles, at the 1744 Synod of Blaj the concept of nation is expanded, the vindications are also made on behalf of the serfs, and the nation includes not only the united people, but also the Orthodox.

In the medieval thinking, the idea of nation implies an organized community that benefits from political rights by participating in the state government. Therefore, following the reasoning based on the existing political rights that cover the concept of nation, it can be concluded that only a social class (the nobles) can be considered a nation. In this context, the foundation of Romanians’ national consciousness represented a multistage process. While some historians considered that the source of this concept was the activity of the united Bishop Inochenitie Klein, Blaga (1966, p.89) others foresaw it in the orthodox’s fight against the union. Iorga (1989) Even before the union there existed a dim conscience of the nation, primarily based on common speech, on cohabitation on the same territory and on common customs and heritage consisting of goods of anonymous origin. Over the time Orthodoxy has become a distinctive feature of Romanians from the other nations from Transylvania, having the function of so said "Romanian law." Blaga (1966, p.90) Embracing the national consciousness, the Orthodoxy heads Transylvania to a new position, that of a shield. This process of joining and identification of people with a particular religion is also ascertained to the cohabiting nations. A Saxon could not be a Saxon in his own conscience if he is not Lutheran. Once with the unification, the Romanians feel a fissure in the shield of Orthodoxy, so that they try to find other means to avoid being absorbed into Catholicism and into other existing political nations. The solution reached was to recognize the united Romanians as the fourth nation, solution justified by the idea of the Romanian continuity in Dacia: “if the antiquity of people in their settlement regions is to become a source of rights, then we are older than the Saxons. We are from Traian onwards.” Blaga (1966, p.97)

Based on the trend of secularization, the concept of nation has gradually gained new contours. This trend was amplified during Joseph II, when the two "laws", the Greek-Catholic and Orthodox - that disputed their supremacy over the shielding nature of Romanian nation - become neutral contents of the new national consciousness, even if things fall on the track of restitutions during post-Joseph era. Blaga (1966, p.105)

In conclusion, the concept of nation for the XVIII<sup>th</sup> century Transylvanian Romanians "widens and narrows". It changes and it is enriched according to the social and political aspirations, depending on the political context of the time and on the reaction of the receiver. The core of this beginning was built by the national consciousness based on the reality of a speech community, but also on the coexistence on the same territory and common habits. During the Supplex era both meanings of the idea of nation, the medieval

and the modern one coexisted, confusingly interfering and emphasizing the transition from a concept to another.

## 2. PHILOSOPHY OF LAW WITHIN THE TRANSYLVANIAN SCHOOL

*Samuil Micu.* Running across the ideas of wolffian philosophy, through his disciples' writings, Micu aims to rethink this philosophy in the Romanian language, thus making it available to his people. Ghișe and Teodor (1972, p.60) The value of his philosophical work is not diminished by lack originality of the ideas and concepts. Assessing the concept of originality, it has to be taken into consideration that in the eighteenth century and early nineteenth century this notion was not so rigorously defined. The assessments of historian D. Prodan are suitable when it comes to the Enlightenment and their works: "The concept of "originality" and "specialty" that are so familiar to modern man, were less familiar in the Enlightenment. He does not have the "originality" obsession, for him the culture should be a public good and ideas should be everyone's right. He does not have exclusivity of specialty. He is still a scientist, taking the full freedom to break the indefinite drawn boundaries of science. Being tempted by the omnipotence of rationality, by the power of man to put in his own service the forces of nature through the science and being attracted by the lure of the new culture, his goal is to lighten as many departments of knowledge as he could. Driven by the thought that a culture should not only be realized, but also outspreaded in the community, he attacks all the domains, not only by creating and copying, but especially copying, assimilating and forwarding it. Before creating an original culture, he has to merely realize a culture at all costs as soon as possible". Șincai (1964, p.6)

In his work *The Logics*<sup>1</sup>, the scholar demonstrated that all human knowledge can be divided into: historical knowledge, philosophical knowledge and mathematical knowledge.

"When we know what it is or what is to be done, then it can be said that we have historical knowledge. Historical science is the knowledge of the things that exist or will be done. Namely, you know that the magnet pulls the iron itself. You know it is bad weather when there is thunder and lightning. You know all this historically ... The more you understand the reasons things happen, the richer your knowledge is. This philosophical knowledge is the knowledge of things. It means that you have to know that the downfall of the Roman Empire was caused by the greed brought by wealth and by the fact that the Romans gave themselves to pleasures, passions and laziness, so they lost their empire. The knowledge of this empire's downfall is a philosophical one.... It is said that those who beside knowing the reason things happen are capable of determining the extent and strength of the cause, they have a mathematical knowledge. The mathematical knowledge means knowing the proportion or the measure of a thing, how big that thing is". Clein (1799)

From Samuil Micu's works we can learn ideas regarding the individual freedom, under the form of freedom of will. Thus, in his *Laws of Nature (1800)* he defines the free will:

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<sup>1</sup> Mostly, Samuil Micu's philosophic works are influenced F.C. Baumaister's philosophic treatise from 1747. Essentially, Baumaister's papers follow Christian Wolf's ideas and methods.

"a paperwork realized with free will is the one realized with a volitional judgment. Volitional deeds are made with understanding and ability. The works that are belonging to crazy people and sleep wanderers, and those belonging to drunken people cannot be considered volitional."

In the above mentioned work he defines the concepts of law and the law of "nature". It can be ascertain his attempt to distinguish between the concept of law applicable to human actions (positive law applicable to any action) and the moral law that distinguishes between right and wrong. Blaga (1966, p.149) <sup>2</sup>

It may be also noted that the focus is on duties and less on the rights. Samuil Micu realizes a classification of these duties that a man has to his creditor:

- duties to God. It refers only to those liabilities arising from what the reason reveal and imposes to humans;
- duties of man to himself, namely the duties to the "soul" and "body". "Who has a book in hand all day and all night to train his mind and to gain more knowledge than others; and take minimal care of his body even if it is a not very healthy one Blaga (1966, p.151)" the author insisted on cultivating the mind even in these conditions;
- duties to "his will". Are given exhortations to sobriety and to temperate passions;
- Debt to his fellow men "seek to increases the happiness of others." Trying to define self-defense Micu talks about the "temper of the innocence defense", showing that in this case restraint should characterize a man before "one another";
- duties to our possessions. It is about respect for other people's property and the care and duty to defend your property, this being considered orders of nature (natural law elements) "you must protect at full blast the things you possess and you have to stand up against those who forcibly want to take them from you, and to throw away what is not useful for you"; Blaga (1966, p.153)
- duties to the word given to, to the pacts and agreements. In the discussion regarding usury, Micu sustains that it should be constituted so as neither creditor nor debtor to be damaged;
- duties arising from marriage. The institution of marriage is the outcome of instincts sown in man: "No lust, from the nature of the body, will ever be found stronger and bestly as the one the men have for women and the women have for men and that is no marvel, as this lust naturally unites them in having infants."
- duties to the ones that "rule, that is the parents of the nation". Micu will present in eulogistic terms the absolute power of the emperor, which is seen as a "human God", urging obedience to the Emperor. The only limitation of the imperial power are the laws of being and God's laws: "But the Emperor must not commend something that is either against the laws of being or against God's law, as we must obey the laws of being and God's law with the price of our lives, that's why if [the Emperor] would had commanded something regarding this, against the laws of being or against God's law, it must no way be obeyed and fulfilled." Blaga (1966, p.153)
- duties to masters. The author exhorts the subjects to discharge debts to the master and also the masters to behave as comprehensively and with as much consideration as there is regarding the "hackneys" and "slaves"; this aspect indicates the recognition of the

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<sup>2</sup> The term *law* means "urge and orders which we are beholden to follow and to realize our works willingly"; for the *law of nature* it is given a generic formula "do good deeds and beware of the bad ones!"

feudal organization, even if it is accentuated the appeasement of the régime in accordance with the natural law, "laws of being".

*Ion Budai-Deleanu* is an advocate of the natural law theory, having contact with the work of Grotius and Puffendorf, being an adversary of the feudal institutions. He declares himself the follower of the genuine science detrimental to the "dogmas" that no mind could ever comprehend, combating religion in any and all of its forms. He represents, politically speaking, the radical wing of the Transylvanian School, subjecting to a severe criticism the feudal ruling classes and ordinances and appreciating the revolutionary struggle of the masses. *Antologia gândirii românești*, (1967)

He proclaims himself supporter of the democratic, liberal and independent republic, and condemns the monarchy.<sup>3</sup> The X<sup>th</sup> Song from *Țiganiada* is a confrontation of the main ideas from that era and the proof that these ideas were known in Transylvania. Montesquieu's view from (On) *The Spirit of the Laws* and Rousseau's from the "Social Contract", as well as those of Voltaire's from *Le Mondain* are used as argument and counterarguments in the dispute between Budai-Deleanu's characters.

In the final Song from *Țiganiada* the idea of battle to self liberation from serfdom is combined with the battle of national liberation. For Budai-Deleanu, the nations must not endure the bondage and the injustice, as they have power and lucidity. The mind helps them to understand the means and the ways for liberation, and the power, if organized, can assure their freedom.<sup>4</sup> Throughout his characters, the author accentuates that only in "a republic.../the country is his sweet mother/and he is its boy/and and it is not called so for nothing/as it gives him food, life, land/freeman and brave makes from him." *Antologia gândirii românești*, (1967, p.126)

Elements of law philosophy, attempts to define the natural law, the concept of nation and the rule of law can also be found in the works of:

- *Ioan Molnar-Piuariu* advocates for the role of all sciences in the daily humans lives and elimination of all misconceptions, being one of the initiators of the periodical *Philosophical and Moral Annunciations* (*ro. Vestiri filosoficești și moralicești*) whose *singular* leaflet appeared in 1795. In a speech relating the establishment of this periodical, the Romanian scholar said: "that by polishing the style and by learning the teachings the nature of many nations has ascended trough the higher stat of immortality"; "only by learning this teachings the power of the mind is getting sharp enough to muse in illuminated true upon the heavenly, seen or unseen." *Antologia gândirii românești*, (1967, p.136)

- *Paul Iorgovici* takes the burden of proof upon the natural law, especially of the French influences. In this way the author argues (idea taken form Rousseau) that the man comes into this world with good inclinations to be grown. The law of human nature and some innate rights are presented by Iorgovici, who says that "only the philosophers by

<sup>3</sup> VI Song from "Țiganiada" 101. "Everything from the known/ From the most absolute monarchy/ The monocracy was such born/ As the cockle from the corn appers"; 112. "As good the monarchy could be/In time it moves into monocracy/Which than the tyrants crowned;/ They carry the vulgus into villainage/ Squeeze to dust and wilt/ Forever and ever the mankind".

<sup>4</sup> XI Song from *Țiganiada* 16. "You are learning dogma that no mind/Can comprehend; no other costumes beside/The daily way and holy believes/No precession and no feelings /Fit fit the human nature"; 17. "You teach the man to not see/When he sees, to not know when he knows/To believe not when he believes/ Telling him his mind is mad/His feeling is disgrace flame/His being is always a sin."

knowing these beings are ascending to knowing the powers which are born within them, which all are being made according to their power. And so from the powers born within a man, which he works upon and envelops himself and from which his debts tends to those principles; as well as all creatures, which run to the same end through their inner powers, the same the man, sympathetic creature, is in debt to direct himself to everybody greater good. The man is born from nature's imperfect hands and with a tendency for perfection.”  
*Antologia gândirii românești*, (1967, p.139)

Iorgovici militates for compliance with laws and obedience, showing that by education the humans must become useful for the kingdom “a tax payer submitted to his one *lex terra*, must be useful for the emperor and the kingdom, which wellness is in the non harming of the civic laws... to make from himself a man, a friend, a loyal neighbor, a parent to be honored by his sons; only in the end to become a man as required by nature and human society”.

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