

THE NATURAL LAW PRINCIPLES OF INTEGRATION AND ITS HUNGARIAN RESONANCE IN THE 19TH CENTURY

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1. Ideas of Natural Law in the Modern Period

Although the origin of the Natural Law's essence is to be found in the philosophical doctrines of the ancient ages, and it is also to be noticed within the framework of Christian theology having been prosperous in the Middle Ages. Its new type different from the philosophy and theology and focusing really on legal issues is shaping in the early modern period. From the 1600-ies onwards such political-philosophical questions were in the focus of interest as the origin and legitimacy of public authority, practical and appropriate ways of the exercising state power, the inter-relationship between the ruler and his subjects, which directed the centre of legal thinking towards the examination of public law issues. This trend was most markedly elaborated by the Dutch secular approach of Natural Law adopting the thoughts of French legal humanism and at the same time determined the tasks of natural law disquisition that aimed at establishing a comprehensive legal system and revealing universal principles of law which tend to prevail in a general way. The Natural-Law ideologists began to explore those principles, which basically regulate the coexistence of people.¹

According to *Hugo Grotius* human being who is created *a priori* for social life is endowed by God with the *appetitus societatis* namely an impelling desire for society.² Therefore people are capable of exploring the necessities that ensure the harmony of the social existence of people. *Thomas Hobbes* by his conception of "State of Nature" and his idea of the individual emerging from the above men-

¹ FRIVALDSZKY János: *Természetjog – eszmetörténet* [Natural Law – History of Ideas]. Szent István Társulat, Budapest, 2001, 219; HOCHSTRASSER, Tim J.: *Natural Law Theories in the Early Enlightenment*. Cambridge University Press, 2002, 176. POKOL Béla: *Középkori és újkori jogtudomány. Az európai jogi gondolkodás fejlődése* [Medieval and Modern Jurisprudence, The Development of European Legal Thought]. Dialóg Campus Kiadó, Budapest–Pécs 2008, 139.

² *Inter haec autem quae homini sunt propria, est appetitus societatis, id est communitatis, non qualiscunque, sed tranquillae et pro sui intellectus modo ordinatae cum his qui sui sunt generis: quam oikeiosis Stoici appellabant.* GROTIUS, HUGO: *De iure belli ac pacis*. Prol 6.

http://www.academia.edu/437645/Appetitus_societatis_and_oikeiosis_Hugo_Grotius_Ciceronian_Argument_for_Natural_Law_and_Just_War (Downloaded: 14. 07. 2015)

tioned state by entering into a social contract relocated the focus of the examination of Natural Law on the interrelation between the Ruler and his subjects as well as the status of the individual determined by this relation.³

Samuel Pufendorf in his work written in Latin enumerated the fields of legal regulation of social life while emphasizing the explorability of the community rules that are to be revealed by reason. In Pufendorf's work the turn of geometric thinking elaborated by Descartes and the French thinkers can be perceived, which by an abstract arrangement based on the case law solutions intended to set a generally predominating legal system lacking paradoxes.⁴

A few years later, in 1665 an English metaphysician, *John Locke* refreshed the Social Contract Theory, insofar as he argued in favour of the so-called *Agency Theory*⁵ in opposition to *Hobbesian Authorization Theory* considering the contract as irrevocable.⁶ According to the Lockian theory "the rights of each person are only loaned to the Sovereign"⁷ having a mandate from the subjects to exercise public power. It provides the Right of Resistance of subjects, which can be used in the case of violation of natural rules by the tyrannical ruler.⁸ However, in the German protestant provinces the Pufendorf's conception rejecting radicalism proved to be more popular and soon gained adherents such as *Christian Thomaisus* then *Christian Wolff*. Work of Thomaisus published in 1685 reflected such a human approach as to query the use of torture in criminal actions.

In the late 1700th Christian Wolff improved the system of Natural Law, which could serve as a base for German and Austrian codifications from the early 1800th. Christian Wolff specified the Natural Law conceived by Pufendorf in such a considerably abstract way⁹ that it already seemed to be appropriate for the codification

³ POKOL Béla: *Középkori és újkori jogtudomány. Az európai jogi gondolkodás fejlődése* [Medieval and Modern Jurisprudence, The Development of European Legal Thought]. Dialóg Campus Kiadó, Budapest–Pécs 2008, 142. HÖFFE, Otfried: *Immanuel Kant*. Beck, München, 2007, 215; COPLESTON, Frederick: *A History of Philosophy, the enlightenment, Voltire to Kant*, Cornwall. 2003, 97.

⁴ SZABÓ Imre: *A burzsoá állam- és jogbölcselet Magyarországon* [The Bourgeois Philosophy of the State and the Law in Hungary]. Akadémiai Kiadó, Budapest, 1980, 34.

⁵ STEELE, Dean A.: *A Comparison of Hobbes and Locke on Natural Law and Social Contract*. The University of Texas at Austin, 1993, 2; Jean HAMPTON: *Hobbes and the Social Contract Tradition*. Cambridge University Press, Cambridge, 1986, 3.

⁶ STEELE, Dean A.: *A Comparison of Hobbes and Locke on Natural Law and Social Contract*. The University of Texas at Austin, 1993, 2.

⁷ STEELE, Dean A.: *A Comparison of Hobbes and Locke on Natural Law and Social Contract*. The University of Texas at Austin, 1993, 2.

⁸ TAKÁCS Péter: Állam, megállapodás, jogszerűség. A társadalmi szerződés elmélete [State, agreement, legality. The Social Contract Theory]. In: TAKÁCS Péter (szerk.): *Államélet I*. Szent István Társulat, Budapest, 180–181.

⁹ POKOL Béla: *Középkori és újkori jogtudomány. Az európai jogi gondolkodás fejlődése* [Medieval and Modern Jurisprudence, The Development of European Legal Thought]. Dialóg Campus Kiadó, Budapest–Pécs, 2008, 143–144.

activities of Natural Law codifiers as Karl Anton Martini and Franz Zeiller, who could openly recline upon the Wolffian conception.¹⁰

By the time Immanuel Kant's ideology proved to be progressive in the field of Natural Law thinking. He established a scientific system of Natural Law by advocating the capability of the individual for freedom apart from the separation of Ethics and Law. For Immanuel Kant the person is regarded as a legal entity.¹¹ Thus he found notion form according to which the individuals were capable of differentiating justice from injustice as well as created the ethical base of Positive Law.¹² The aim of the Natural Law for him also meant to determine those unchangeable basic principles which served as the base of all sorts of positive regulations. Since then the Natural Law thinkers have agreed that it can be conceded: any individual might be a legal entity by declaring this theory each legal institution should be derived from human freedom.

Despite the fact that Natural Law received a great deal of criticism from the middle of 19th century – first and foremost for instance by the *Historical School of Jurisprudence*, which denied and considered speculative the existence of eternal human rules revealed by pure reason. It focused the attention to a number of issues, the examination of which served the harmonious coexistence of human societies. All concepts of Natural Law gave a crucial role to the principle of *pacta sunt servanda*, which can only be prevailed in the case of the individuals bearing total freedom as legal entities. The concept of person as a subject of rights and an independent individual is not only a foresight of the catalog of human rights that are entitled to every individual and called as basic rights, but it also defines the human character, which sets the legal framework of community life.

On the basis of the principle of „*pacta sunt servanda*” social life can only be based on social contract. The state considered as a *civitas* should be a treaty-based community of *sui iuris* citizens, i.e. community of persons who are endowed with all the rights. The purpose of the State is no more than ensuring its citizens to practice their rights safely, whose rules according to the concept of Natural Law jurists are also set by the eternal principles of Natural Law beside Positive Law.

The work of Immanuel Kant entitled *Perpetual Peace* serves as a summary of the Natural Law Principles evolving by the turn of the 18th and 19th centuries that acquire the essential purpose of Natural Law namely to reveal and set the universal rules of the balanced co-existence of human community. Kant's point of view regarding peaceful co-existence was an alliance, integration among nations. Each

¹⁰ STEIN, Peter: *A római jog Európa történetében* [Roman law in European History]. Osiris Könyvtár, Osiris Kiadó, Budapest, 2005, 149.

¹¹ KANT, Immanuel: *A tiszta ész kritikája* [Critique of Pure Reason]. (Ford.: Alexander Bernát és Bánóczi József) Akadémiai Kiadó, Budapest, 1971, 198.

¹² KANT, Immanuel: *Az erkölcsök metafizikája* [The Metaphysics of Morals]. In: KANT, Immanuel: *Az erkölcsök metafizikájának alapvetése. A gyakorlati ész kritikája. Az erkölcsök metafizikája* [The Groundwork of Metaphysics, Critique of Practical Reason, The Metaphysics of Morals]. Gondolat Kiadó, Budapest, 1991, 416.

separate State should be considered as a single human being living in the “Natural State”. The State of Nature is not the state of peace, but on the contrary, it is the state of war. In order to eliminate this state for each state it is advisable to form a League of Nations or enter there, which is capable of guaranteeing the rights of Member States ensuring peaceful exercising of rights. Kant outlined integration in which individual nations, states do not merge into one single state, “a State made up of these Nations”¹³ Kant stressed that the single rights of Member States should be considered as the rights of individual Nations, not the right of Nations unified into only one State. The Community Law, which was called International Right by Kant in accordance with the principles of Natural Law „shall be founded on a Federation of Free Nations”¹⁴ Since individual nations have their own constitutions they cannot be forced into broader constitutional frameworks. The realization of the latter statements could only be guaranteed by the contract among nations. Though this contract could not be viewed as a well-known peace treaty (*pactum pacis*), which is only intended to close a war. According to Kant the form of the suitable contract is the “League of Peace” (*foedus pacificum*), because only this type of contract is intended to terminate all war once and for all. Kant suggested that¹⁵ the idea of federalism (*foederalitas*) should have been adopted by all states and it was how eternal peace could be guaranteed.

2. Natural Law thinking in Hungary in the First Half of the 19th Century

At the turn of 18th and 19th centuries this newer concept of Natural Law influenced by Immanuel Kant’s views in Hungary was summed up by Mihály Szibeniszt following Franz Zeiller and Franz Egger who were Austrian Natural Law jurists in his work entitled *Institutiones juris naturalis*. This work was taught by him at the Academy of Law in Győr then in Faculty of Law at the University of Pest in the 1820-ies and 1930-ies. His natural-law work made his ideas possible, which were suitable for the elimination of the divisions of contemporary feudal society. Definition of law in the view of Kantian interpretation points out that while Natural Law defines universal principles, Positive Law is characterized by *particularism* and a kind of conformity. But Mihály Szibeniszt did not intend to discuss the importance of Positive Law, on the contrary, he designated the purpose of Natural-Law examination providing a better understanding of the practice of Positive Law since it is theoretical. Starting from interpreting law as a freedom of action, according to which anyone can be a subject of right Szibeniszt emphasized, exercising rights for the individual being isolated does not make sense, since exercising rights

¹³ KANT, Immanuel: *Perpetual Peace. A Philosophical Sketch*. Section II., 1795. <http://www.constitution.org/kant/perpeace.htm> (Downloaded: 05. 06. 2015)

¹⁴ KANT, Immanuel: *Perpetual Peace. A Philosophical Sketch*. Section II., 1795. <http://www.constitution.org/kant/perpeace.htm> (Downloaded: 05. 06. 2015)

¹⁵ Kant. mek.oszk.hu/01300/01325/01325.pdf (Downloaded: 12. 09. 2014)

seems to be relevant only in the copartnership of the individual.¹⁶ He emphasized that all rights are to be derived from personal rights, which should be understood as the dignity of man appearing as a legal entity. That is how the right of people to self-sufficiency, personal freedom and equality designates a framework which focuses on the right of independence. As a result of it we should not accept any foreign power against us. All the innate rights are characterized by equality.¹⁷ Stressing individual freedom involves the illegitimacy of arbitrary acquisition of the state power. Mihály Szibeniszt agrees that the subjected status of citizens reflected in the public relations ought to mean only a subjection to laws. All his concepts of Natural Law including his state theory are based on individual freedom. These thoughts were adapted by his “disciple” József Eötvös whose main work entitled *The Influence of the Dominant Ideas and Their Impact on the State* examined the civilizational aspirations of humanity. These efforts are in constant movement or circulation induced by individual freedom, which also led to the development of humanity in all walks of life. The progress is only to extend as far as freedom.¹⁸ The development of civilization or “embourgeoisement” in terms of Eötvös’s wording can only be sustained if it takes place gradually, as the radical movements are in accordance with the negative consequences of revolutions. Since violence is a force that undermines the freedom making progress possible.¹⁹ Eötvös considered the recognition of human dignity as a measurement for civil progress, which is a necessary consequence of the principle of equality. Each progress is the result of interaction of ideas. That is how civil development can only be possible if different entities, nations are in relation with one another.²⁰ Eötvös revealed that isolated nations without exception remained at a lower level of embourgeoisement.

The idea of freedom is innate for all people. The idea of equality is considered to be the instrument of realization of this innate desire, which aims at providing everyone with the enjoyment of freedom to the same extent – the notion of equality of Szibeniszt was enriched by Eötvös in such a way.

The Bourgeois Progress was promoted by the sense of necessity for some demands. The State as an elemental guarantee of individual freedom was emerged as a result of this kind of needs. However, higher quality of civilization always involves the emergence of wider communities. In parallel with the rise of the level of erudition and literacy the necessity for broader alliances is also inevitable. The

¹⁶ „Sola ratione [...] agnovimus, quemlibet hominem esse subjectum juri” SZIBENISZT Mihály: *Institutiones Iuris Naturalis* [Institutes of Natural Law]. Tomus I. Eger, 1821, Liber I, Pars I, Caput I, 42. §. 46.

¹⁷ “haec [jus] aequitatis non est per se subsistens jus, sed potius proprietas omnium juri-um connatorum.” SZIBENISZT Mihály: *Institutiones juris naturalis* [Institutes of Natural Law]. Liber I, Pars I, Caput II, 54. §. 62–63.

¹⁸ EÖTVÖS József: *A XIX. század uralkodó eszméinek befolyása az államra I–II.* [The Influence of the Dominant Ideas and Their Impact on the State] Eötvös József művei, Magyar Helikon Kiadó, 1981, 197.

¹⁹ EÖTVÖS: i. m. 485.

²⁰ EÖTVÖS: i. m. 485.

mutual protection and the common interests result in the approach of certain nations. This Kantian conception was followed by József Eötvös by expressing agreement with those who regards the federal system as the best way for safeguarding independence²¹. Eötvös emphasized in the light of social conditions of his era that the independent growth of the civilization of Europe's nations and the civilization of its people should depend on what extent the different nations succeed in uniting into a bigger community of States.²² In this context he projected the possibility of establishing a European Community of States as well as when he stated that "considering the present situation of different nations in Western Europe shows up so many elements which can develop into a solid alliance in the future."²³ However Eötvös draws attention to the fact that the all federal systems depend on certain conditions, which are as follows: ideological affinities regarding the most important relations, common interests and aims. These are the ties that are to create the cohesion of a strong and close union and only these constant conditions are to guarantee its permanence. Eötvös stated the fact about the nations of Europe that concerning their civilization the most significant relations and notions revealed no differences. He argued that common interest was manifested in the principle of free trade for him. He does not consider the emerging of mutual aims too far either to become a utopia, however he claims that in this respect the nations of Europe should combat a number of obstacles.²⁴ Eötvös states the existence of bigger States and community of States are not to be endangered by the fact that the citizens are provided with more individual freedom,²⁵ which statement indicates the starting point of those principles through which this kind of community of States could be established. The whole legal conception of Ferenc Deák – who was also a "disciple" of Mihály Szibeniszt and played a key role in the development of the great "integration conflict" fought in the middle of the 19th century in Hungary, that is of the relation to Austria in Austro-Hungarian Monarchy or rather to a common Ruler representing Austria as well – was built on a system of abstract truths, namely on Natural Law.

The relation between law and justice was frequently stressed in his parliamentary speeches. In 1833 he proclaimed in a speech, that "There is a law [...] which was not repressed by the power and violence and without which written law cannot be fair and exhilarating: this is an inviolable rule of Natural Law."²⁶

Deák managed to fight against the Doctrine of *Forfeiture* (*Verwirkungstheo-*

²¹ EÖTVÖS: i. m. 132.

²² EÖTVÖS: i. m. 61.

²³ EÖTVÖS: i. m. 132.

²⁴ EÖTVÖS: i. m. 131.

²⁵ EÖTVÖS: i. m. 61.

²⁶ STIPTA István: Deák Ferenc nézetei a jogról, igazságról és hatalomról [Views of Ferenc Deák about Law, Justice and Power]. *Review of Legal History*, 2003, 3, 1–4.

rie)²⁷ that supported the legality of the Austrian absolutism and caused a conflict with the Hungarian constitutionality by referring to the appropriate principles of contractual relations: “We have already heard this doctrine repeated frequently: if one of two contracting parties is not to respect the point of the treaty the other party is not required to respect it either. This doctrine called *Verwirkungstheorie* is not considered to be proper by us neither in theory nor in practice in terms of public law. But the doctrine, which is proclaimed by ‘B’, namely when one party constantly broke the negotiated contract and despite recent and stronger security measures and promises he acted repeatedly against the contract, the other party should not be expected to honour the treaty either, but one is to alter it unilaterally having the possibility even to eliminate it. This is a really new doctrine and astonishingly specific”. Also, this kind of treaty theory-reasoning was published in his famous “Easter Article” of April 16, 1865 underlying the Austro-Hungarian compromise, and also in his parliamentary speech when he claimed that the “Pragmatic Sanction” “was the basic treaty of the State, which was put into practice between Hungary and the Dynasty in 1723”. When one party (the ruler) even violated the treaty, the other party (the Hungarian nation) had the right to demand the compliance of the treaty. Based on the facts mentioned above it may be concluded that by the first half of the 19th century the natural law thinkers cited previously regarded principally the free will and personal freedom completed in practice by the doctrine of contractual freedom as well as the principle of *pacta sunt servanda* as incontrovertible elements of the integration among different nations. The theoretical elaboration of all the principles previously stated prove to be an inevitable merit of Natural Law thinkers.

²⁷ “The Hungarians rejected the constitution proposed by Vienna mainly because it insisted on the political Doctrine of Forfeiture (*Verwirkungstheorie*), which would have subjected Hungary to the administration of Vienna’s hereditary provinces. The Hungarian elite insisted on the country’s historic rights, and regarded the Pragmatic Sanction, a bilateral treaty from 1723, as the guiding principle of a new covenant. Furthermore, Hungarian experts of constitutional law were inclined to give the Pragmatic Sanction the radical interpretation that Hungary entered contractual relations only with the house of the Habsburgs and not with the Western parts of the Austrian realm. In this view, the Pragmatic Sanction acknowledged no more and no less than the right of the dynasty to succeed to the throne of the Lands of St. Steven’s Crown. Although Hungary’s fate was bound through the person of the ruler to those of the hereditary provinces, the Pragmatic Sanction preserved for the nation the right to its own legislative assembly and far-reaching an administrative autonomy.” NEUBAUER, John: The Austro–Hungarian compromise of 1867. In: CORNIS-POPE, Marcel–NEUBAUER, John (eds.): *History of the Literary Cultures of East-Central Europe: Junctures and Disjunctures in the 19th and 20th centuries – A Comparative History of Literatures in European Languages*. John Benjamins Publishing Company, Amsterdam/Philadelphia, 2004, 246.