

REFORMING THE LEGAL EDUCATION SYSTEM IN 18TH CENTURY HUNGARY AND KARL ANTON MARTINI

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Abstract: In Hungary, the scientific cultivation of law used in the field of education was based on the *Tripartitum* by István Werbőczy until the 18th century. The kind of literature on natural law that conveyed the spirit of Enlightenment, henceforth equally meant the theoretical cultivation of law could start its journey in Hungary with some delay, however, proved very fruitful in terms of views on natural law. The era of rational natural law, the so-called Law of Reason arrived by the end of the 18th century, thinkers of this line derived answers given to questions of state and legal settlement from the human reason. Karl Anton Freiherr von Martini was the most outstanding figure in the 18th century Austrian natural law, a representative of the Law of Reason branch (*Vernunftrecht*) in the German linguistic area, which bore the ideals of Enlightenment on itself. These works were course books at the same time, counted as compulsory study material at the Austrian Faculty of Law until the 1820s. Their authority, however, had a lasting effect since they were regarded as basic works in Hungarian legal education until 1848.

Keywords: *Natural law, Law of Reason, Karl Anton Martini, education reform, Ratio Educationis, legal education, Martini's works on natural law, legal philosophy, the Kantian natural law*

1. THE SITUATION OF THE SCIENTIFIC APPLICATION OF LAW IN 18TH CENTURY HUNGARY

Until the 18th century, the Scientific cultivation of law – also used in the field of education – was based on the *Tripartitum* by István Werbőczy. The *Tripartitum* had a considerable impact on the development of Hungarian law, not only by the fact that it was applied in customary law until 1848, but its theoretical effect cannot be neglected either. Due to this, – according to Moór Gyula – instead of the reception of Roman Law, institutions established by the *Tripartitum* came into being in Hungarian legal practice, furthermore, “speculations in natural law” that are so fashionable in contemporary Western Europe did not gain a significant influence in Hungarian legal thinking. (Moór, 1992, p. 6)

The kind of literature on natural law that conveyed the spirit of Enlightenment, henceforth equally meant the theoretical cultivation of law could start its journey in Hungary later on this century with some delay, however, proved very fruitful in

terms of views on natural law. (Pauler, 1843, p. 209) The era of rational natural law, the so-called Law of Reason arrived, in which the ideals of Enlightenment and keywords like citizenship, humanity, and equity became predominant, and thinkers of this line – through Pufendorf, Leibniz, Thomasius, Wolff as far as Fichte, then Kant – derived answers given to questions of state and legal settlement from the human reason. (Frivaldszky, 2001, p. 219)

Even though at the University of Nagyszombat (Trnava) natural law was taught in the spirit of the old, Aristotelian scholasticism as a part of the Arts studies, legal education gradually became a field of acceptance of new ideas. (Molnár, 1881, p. 223) In this process, the engagement of the state in the field of education served as the actual catalyst, and development took a new momentum mostly due to state initiatives. More and more scholars and experts compiled a draft on public education for enlightened monarchs, in which they emphasized the public character of education, they regarded it as an undeniable state task, which aims at educating subjects that are useful and loyal to the state. Such a draft was the one compiled by Diderot for Empress Catherine II, the concept compiled by Christian Wolff for Frederick II as well as the objectives created by Karl Anton Martini and Joseph Sonnenfels, the main ideologists of Empress Maria Theresa. An excellent reference was the Wolffian thesis, where the main aim of the state is to ensure public welfare, for which it is the ruler who is entitled to govern the affairs of all citizens, education included, in a sovereign way. (Kornis, 1927, p. 4)

2. KARL ANTON MARTINI (1726–1800)

Karl Anton Freiherr von Martini was a counsellor on central administration of Maria Theresa, then Joseph II and Leopold II, a legal academic of great authority of the school of natural law, a late follower of Samuel Pufendorf and Christian Wolff, who was awarded the title of Austrian baron (*Österreichischer Freiherr*) for his work in 1779. He was Paul Joseph Riegger's student at the University of Innsbruck, following his studies in Philosophy in Trento. He received his doctorate at the University of Vienna. Following his studies in Germany, the Netherlands, France, Italy and Spain, he completed a diplomatic service of 13 months at the Madrid Embassy. He started his career as a lecturer in law at the Collegium Theresianum in the 1750 (Hebeis, 1996, pp. 70–74), an academy for the nobility established by Maria Theresa, where the most lecturers came from the Jesuit order, except for the law teachers at the Faculty of Law.

The Habsburg imperial court ordered the foundation of the Collegium Theresianum with the decree dated on 24th February 1746 following the initiative of the Austrian Jesuit province. The institution opened its gates in 1746 under the guidance of the Jesuit fathers. At that time, the Collegium Theresianum welcomed 24 students, including two Hungarian noble youths, József Niczky and Earl András Perényi. (Kökényesi, 2012, p. 35) The main aim of the institution was to facilitate access to higher education for noble youths, as well as to train well-qualified professionals for public service. In the beginning, only subjects belonging to the framework of the

later grammar school were taught in the institution. However, later subjects included modern languages and legal studies, and as a result of this, representing an academic level, the institution became an academy. Thus, after finishing their grammar school studies, students attended the University of Vienna in their first and second academic years as boarding students. Hungarian students, however, were required to complete their third and fourth year at the University of Pest, or with some higher permission in other, but by all means Hungarian member institution.

Therefore, the legal training at Theresianum, underwent a considerable modernization in comparison to the one at its establishment, due to which it represented the highest level of legal education in the Habsburg Monarchy – prior to the reform of the University of Vienna. The reform of legal education at Theresianum started in 1749, lecturers on law hired for the renewed curriculum later became decisive professors at the University of Vienna, where they also took part in the restructuring of the Faculty of Law as well as in the renewing of its training. In the renewing staff of the Theresianum we find Paul Joseph von Riegger, former professor at Innsbruck University, followed by Martini on the list of professors as one of the professor's best students from Innsbruck. Martini had already gained considerable prestige at the Theresianum, due to therefore which he was invited to the University of Vienna in 1753, where he was asked to reform the Faculty of Law. Within the framework of the reform, a separate department was set up for the education of natural law, Martini was appointed to be the Head of the Department.

From 1761, he gained even greater authority as a court educator in Maria Theresa's court and as an educator on law of Prince Leopold Peter, therefore, it was no accident, that as an education reformer, he had a major word in the reorganization of public education initiated by Maria Theresa between 1760 and 1779. All this did not mean the end of his state duties, he played an important role not only in education matters, but also in economics and church politics as a state counsellor to Joseph II. (Hebeis, 1996, pp. 70–74.) Martini's reform activities remained unbroken even under Leopold II when he participated in the preparatory works of the Austrian Civil Code, which lasted almost sixty years. Emperor Leopold II (1790–1792) continued the codification process begun by Maria Theresa, which her son, Joseph II failed to accomplish. Leopold II convened new commissions, which included legal experts on natural law, like Karl Anton Martini, and after his death Franz von Zeiller. The Austrian bill got its final form by 1796 and as a trial version it entered into force in West Galicia in 1797. This so-called Galitian Code "meant the first and complete codification in private law both on a European and on a global scale". (Hamza, 2002, pp. 113–114)

3. MARTINI AS A LEGAL ACADEMIC

Martini was the most outstanding figure in the 18th century Austrian natural law, a representative of the Law of Reason branch (*Vernunftrecht*) in the German linguistic area, which bore the ideals of Enlightenment on itself. With Paul Joseph Riegger he

built his concept of state and law on Samuel Pufendorf and Christian Wolff's doctrine of duty. Samuel Pufendorf was the first to present natural law in a system, that became suitable for being officially supported as an academic science. This kind of practical legal philosophy examines innate (*iura connata*) as well as acquired rights of the individual (*iura adquisita*) in the light of the obligations associated with them. (Pufendorf, 1673, pp. 28–37) “Right is based on obligation, obligation precedes right, because if there was no obligation, we could not speak about right either.” – claims Christian Wolff. (Ahrens, 1870, p. 115) The obligation refers to the goal that man must always improve themselves. (Pauler, 1852, p. 67; Frivaldszky, 2001, p. 216) On the one hand, this concept was suitable to justify the engagement of the state in this field, since according to the Wolffian views, the main goal of society is to ensure personal improvement. The state needs to serve this goal – which is embodied in public welfare – in a way “to ensure the satisfaction of personal needs by the most comprehensive regulation of public relations”. (Pruzsinszky, 2001, p. 11) On the other hand, this line of Law of Reason gave the basis to practical answers in the rational relationship between law and state, which was based on common sense and in compliance with the demands of the era. It contributed to natural human rights getting a more secure theoretical basis. (Frivaldszky, 2001, pp. 208, 222) This system of ideas, presenting some practical character, besides Frederick II was in compliance with Maria Theresa's reform ideas, whose primary goal was to build a uniform state structure, to steer the church under a state influence, to restructure central administration, to codify entity in private and criminal law and to set up a board of officers being able to operate the state. (Szabó, 1980, p. 35)

Martini therefore worked out his views on natural law in the spirit of the Wolffian theory, so useful to the Viennese court, too, in which he suggested principles of law and state, showing how the ruler is provided with the most widespread rights by his status to care for his people and their welfare. (Palme, 1999, p. 127) However, his doctrines can be interpreted as a preliminary criticism of the Austrian natural law since he claimed more strongly than his forerunners that the ruler should intervene into personal fundamental rights resulting from natural law to the extent justified by the social purposes. (Kraus, 1953, p. 299) He developed his views most comprehensively in his work entitled *De lege naturali positiones* published in 1767 and in *Positiones de iure civitatis* published in 1768.¹ (Mészáros, 1989) These works were course books at the same time, counted as a compulsory study material at the Austrian Faculty of Law until the 1820s. Their authority, however, had a lasting effect since they were regarded as basic works in Hungarian legal education until 1848.

The common opinion concerning Martini's work was that although he constructed his thoughts remarkably, they are not really original. (Hebeis, 1996, p. 109)

¹ His textbook on natural law, firstly published in Vienna in 1767, was published several times in Hungary. Thus, in 1777 in Kolozsvár, and then in the publications of the University of Buda in further editions (1795 and 1800). Mészáros, I. (1989). *A tankönyvkiadás története Magyarországon*. Budapest: Tankönyvkiadó.

Although Martini built his legal theses on Christian Wolff's geometric method as well as on the antique and scholastic knowledge, his conclusions were in compliance with the contemporary natural law doctrine. In some questions – such as the development of statehood – he builds a completely independent natural law. (Palme, 1999, p. 127) It is evident from his arguments that he possessed a deep knowledge of the Bible and antique authors. He endeavours to prove that natural law can exist only in accordance with the truth revealed in the Bible. However, this system of argumentation leads to the fact that according to his natural law, the spheres of law and morals are often blended together. More precise separation of ethics and law will appear only at his successors who apply guidelines accepting the Kantian natural law.

4. THE REFORM OF LEGAL EDUCATION

From 1745 the reform of the University of Vienna started under the leadership of Gerhard van Swieten, counsellor of Dutch origin to Maria Theresa. Within this framework, education got into the hands of the state, first at the Faculty of Medicine and Theology in 1752, then at the Faculty of Law in 1753 in a way that besides the former Jesuit lecturers lay professors were also invited to the board of university teachers. The Faculty of Law in Vienna boasted professors such as Rieger and Martini. In the legal training, a separate department was set up for the education of natural law, with Martini was appointed as the head. The equally restructured Faculty of Arts had professors like Sonnenfels and Miksa Hell among its lecturers. At the University of Vienna, Martini and Sonnenfels – similarly to the Wolffian spirit at German universities – became proclaimers of the *maxima societas*, i.e. the scope of state power extending on the whole society. Slowly, scientific awareness came to accept the consequences of clear state philosophy based on deductions of the new Law of Reason, which proclaimed that public education is subject to state regulation. (Kornis, 1927, p. 4)

Reforms executed at the University of Vienna did not only mean a structural transformation of the university, but also brought an essential change both in the education and the study materials. They intended to reduce church hegemony in both fields and sought to separate legal thinking from theological views of the world. Education of natural law played an important role in it, since it was the newly developing science dealing with rights of the individual, their social obligations, ideals of the state and regulations of international relations.

The Viennese government made the education of private and public law compulsory before the reorganization of the University of Nagyszombat (Trnava). In its decree (Kovachich, 1786, pp. 66–69) regulating legal education to the Esztergom Cathedral chapter dated on 3rd November 1760, the Royal Council ordered that the lecturer on Roman law had to lecture on natural law as well. Earlier, however, natural law knowledge was taught together with morals at the Faculty of Arts, due to the decree of 1760 Mihály Szedmáky, lecturer on Roman and Feudal law taught natural law as well to first year students. For the education of natural law, a separate department was established by Maria Theresa's decree dated 14th December 1769. (Pauler,

1843, p. 209) The *Norma Studiorum*, issued on 29th October 1770, laying down the rules of studies for each faculty, claimed that concerning the University of Nagyszombat (Trnava) subjects taught at the University of Vienna needed to be the norm, therefore study material of the University of Vienna was to be followed, also in the case of natural law. (Kovachich, 1786, pp. 66–69) The same regulation ordered that the lecturer of natural law should introduce his students into “the literature of this science, advantages and disadvantages of its major authors and deny doctrines dangerous to the state or religion”.² (Kovachich, 1786, p. 67) The Head of the newly formed Department of Private and Public Natural Law became professor Van der Hayden, who, following the Viennese decree regarded Martini’s books as fundamental ones. Besides university education, Departments of Natural Law were ordered to be founded at the royal academies of law, where the application of Martini’s works was made obligatory.

In Chapter 6 of *Ratio Educationis* from 1777, §186. entitled “Legal education in the academic section as well as details of Law Major” declares that for the education of natural law “two hours a day need to be consecrated in the first year of legal studies in a way that natural law, general and international public law must be lectured in the first semester based on Martini’s theses”. (Komlósi, 1983, p. 147) Therefore, the education of natural law happened taking Martini’s works entitled *De lege naturali positiones*, as well as *Positiones de iure civitatis* into consideration.³ (Kovachich, 1786, pp. 99–100)

However, Martini’s books on natural law presented knowledge related to natural law in a fairly concise way, structured in points – according to Győző Concha: “Martini’s abstract and burdensome style is scholastic”, (Concha, 1885, p. 16) – therefore it became inevitable to complete them with explanations for beginner students. (Pauler, 1878, p. 285) This gave a new momentum for an era in legal literature that lasted for almost fifty years, making Martini’s views known, explaining them, and making them more practical, which characterized the end of the 18th century and the beginning of the 19th century. A whole sequence of Martini commentators published their articles on natural law, such as György Lakits, (Lakits, 1778) Samuel Dienes (Dienes, 1792), Adam Brezanóczy, (Brezanóczy, 1795) János Ujfalussy Nep., (Ujfalussy, 1825) János Szilágyi, (Szilágyi, 1813) Samu Benkő, (Benkő, 1787) Pál Rosos,

² “*Ex post jus quoque naturae ac publicum universale seu gentium, in Universitate hac Tyrnaviensi tum ob studiorum horum utilitatem, cum vero in majus universitatis ornamentum et decus, per introducendum distinctum professorem subtilius declarata ratione expanabuntur.*” *Norma Studiorum* dto. 29 Oct. 1770.

³ See also: “*Ordo Praelectionum in singulis facultatibus. Series authorum, qui in facultatibus praeleguntur. [...] In facultate iurica. Professori iuris Imperialis praelegenda et expleanda venirent: I) ordo historiae iuris civilis ad ductum libelli Carolide Martini hunc in finem edidit.*” Kovachich M. Gy. (1787). *Mercur von Ungarn: oder Litterarzeitung für das Königreich Ungarn und dessen Kronländer*. Vol. II, Pest, pp. 99–100, which provides a list of authors whose works were required to be performed at university lectures.

(Rosos, 1777) Antal Virozsil, (Virozsil, 1833) some of them strictly followed Martini, others modified his structure, still others restricted themselves on commenting only on certain parts of the Martini style natural law.

In the meantime, at the University of Vienna, although Immanuel Kant's ideas started to show their effect, they still existed besides Martini's ones and only semi-officially. The Kantian Law of Reason line was represented by Franz Zeiller, Martini's successor in the department who endeavoured to establish Kant's views at the University of Vienna and wrote a manual on private law "appropriate to science" entitled *Das natürliche Privat-Recht*. (Zeiller, 1802) Zeiller's work slowly marginalized Martini's *De iure naturali positiones* in the education of private law related to natural law. Concerning state and international law Martini's *Positiones de iure civitatis* was regarded as fundamental, but parallel to this the commentary entitled *Das natürliche Recht* written by Franz Egger to Martini's *Positiones de iure civitatis* was also used. Finally, Zeiller's private natural law revised by Egger, complemented by Egger's commentary on state law became official material at the University of Vienna. (Szabó, 1980, p. 97)

In Hungary, Martini's natural law was first reconsidered by Mihály Szibenliszt – a lecturer at the Academy of Lay in Győr and the University of Pest in the two volume *Institutiones juris naturalis*. (Szibenliszt, 1820, 1821) Szibenliszt endeavoured to revise Martini's theses knowing that the Zeiller–Egger course book, which Szibenliszt also used for compiling his own institutions, had already been introduced at the University of Vienna. His innovative work, however, did not gain unanimous recognition in the domestic scientific life. Even though his work got official permission, his superiors at the University of Pest ordered the author to follow Martini's theses more strictly in his education. (Eckhart, 1936, p. 278)

5. AFTERWORD

Martini was the most prominent figure in the 18th century Austrian natural law as a representative of the Law of Reason (Vernunftrecht), which appeared in the German linguistic area and bore the spirits of the Enlightenment on itself. His work is outstanding both on a theoretical and a practical level. As a university lecturer, court educator and counsellor, besides his active role in the codification of the Austrian Civil Code and popularization of public education, his theoretical works used at the universities and the legal academies of the Habsburg Monarchy had a deep impact on the legal education and the legal thinking of successive generations of lawyers. The Kantian line, developing his theses further on, gradually surpassed his views and served as a point of reference for a considerable amount of time during its organic development – at least formally and especially in Hungary. Martini's works on natural law can be considered the starting point of the intellectual prosperity that marked the complete Hungarian literature on natural law during the 19th century. (Concha, 1885, p. 13)

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