Cogito

MULTIDISCIPLINARY RESEARCH JOURNAL

Vol. V, no. 1/March, 2013

Bucharest, 2013
ISSN 2068-6706

The "Cogito" journal is published by
"Dimitrie Cantemir" Christian University

Address: Splaiul Unirii no. 176, Bucharest
Phone: 021.330.79.00, 021.330.79.11, 021.330.79.14
Fax: 021.330.87.74
E-mail: cogito.ucdc@yahoo.com

Cogito Journal was included in
IDB EBSCO, **PROQUEST**
(CNCS recognized) and in
INDEX COPERNICUS

Cogito

MULTIDISCIPLINARY RESEARCH JOURNAL

Vol. V, no. 1/March, 2013

PRO UNIVERSITARIA 2013®
BUCUREŞTI

CONTENTS

PAPERS PRESENTED AT THE INTERNATIONAL CONFERENCE
"THE EUROPEAN CULTURE FOR HUMAN RIGHTS"
THE RIGHT TO HAPPINESS
THE THIRD EDITION

13th-15th DECEMBER, 2012

LOGIC, PHILOSOPHY AND LITERATURE

JURIDICAL SCIENCES, POLITICAL SCIENCE AND HISTORY

HUMAN RIGHTS, HUMAN RESPONSIBILITIES AND EDUCATION: PREREQUISITES TOHAPPY LIFE

Jukka Kangaslahti*

kangaslahti@dnainternet.net

Abstract: *In today's multi-dimensional world, many important ethical dilemmas stem from the fact that people are not able to control, foresee or even understand the implications of all the actions they take. This is also true in my field of expertise namely educating and teaching. When it comes to educational systems or specific teaching programs, not to mention international programs, ethical responsibilities may seem to be overwhelming. This is so obvious that many individuals have never contemplated the implications involved.*

Keywords: *culture, globalization, human rights, happiness, education, communications.*

I would like to thank "Dimitrie Cantemir" Christian University, rector Corina Dumitrescu and Dr. Gabriela Pohoaţă for inviting me to address this distinguished international audience. I warmly welcome this conference and its aims to further the knowledge and professionalism of human rights.

It is widely believed that exposure to many cultural perspectives is an essential step when trying to specify an ethic of human solidarity and thus to strengthen the overall understanding of global human rights. Human rights in general are also in the core of code of ethics of many different professions. The basic principle in them is stating that each and every individual have the right to be treated with respect and fairness by any profession which is serving people in any way. When it comes to the European culture of human rights we may ask ourselves whether there exists a coherent one or not? I believe that there are numerous answers to this question. I am also aware that amongst the participants of this conference I am not the one who is eligible to give a relevant answer to the matter. I dare to say though that looking from an individual perspective today man's ability to affect the lives of fellow human beings, for better and worse, is greater than ever before. Inevitably, it follows that one of the guiding principles in human interactions is to make every effort to minimize any human harm. The fight against human harm lays the foundation stone for happiness amongst people.

Let me now go on by expanding the scope of the core perspective and the purpose of this important conference by bringing up two themes interrelated to human rights and to our right to happiness and to meaningful life in general. These are themes, which cannot be overlooked whenever human rights are at stake.

* **Professor Ph.D, - "Turku University", Finland; Visiting Professor, - Educational Sciences Faculty, "Dimitrie Cantemir" Christian University, Bucharest.**

The Nobel Peace Price laureate President Ahtisaari has addressed the other one of these topics I was referring to by saying as follows:

"The time has come for us to give some serious thought to Gandhi's comment, when he red the *Universal Declaration of Human Rights*, that "the Ganges of rights originates in the Himalayas of duties" (Ahtisaari 2000 a). "One of the positive aspects of globalization has been the universalization of human rights…it is time to complement this standard with the *Universal Declaration on Responsibilities*. This would articulate a globally shared set of ethical principles, a core standard by which we would commit ourselves – whether as governments or as individuals – to abide." (Ahtisaari 2000 b)

Many of us in this international conference are coming from multiple cultural and ethical backgrounds, which have been educating us since our childhood. An important part of our worldview is learned from our parents. As adolescents our ethical views have had new dimensions from university, our profession or the law. Each of our background contexts adds layers to our thinking and behaving. The importance of ethics is indicated in the fact that much of life, not to mention teaching and educating, consists a multiple chain of choices. All of our choices are made between many alternatives. In making decisions, each time one alternative must be favoured over others in the practice of choosing. It follows that before making up our minds, we have right and wrong options, better and worse behaviours to think of. However, it is impossible to avoid making choices although we all realize that there are different consequences behind each and every choice. Therefore, it is crucial to ponder of the reasons why one choice would be preferable than another one. If the process of pre-weighing different alternatives is neglected, there is no excuse to escape from the responsibility for the consequences of the actions taken. (Kangaslahti et al 1998).On the other hand, also the perils of inaction are seen, for instance, when a society is failing to meet with children's and young people's needs for proper education. I am referring to education, which would provide them with skills and competences to get and keep decent jobs; these are competences, which make their lives worthwhile living. The current economic crisis has had serious consequences in both global and European unemployment rate. Especially young generations have been affected. For example, to find the first decent job is oftentimes almost impossible in many areas of our continent. While addressing this issue it can be claimed that in the world of today there is a global need for a more responsible conscience, which means that human rights should be seen from a holistic perspective. If this approach sounds acceptable we should not leave behind us generations, which have never really had a chance to live up and experience the beautiful message written in the Universal Declaration of Human Rights in practice. It was Hans Küng who in the 1990s actively contributed to the awareness of global ethics, which according to him is a necessity movement as a counterweight to the many negative effects of globalization processes and to the misuse of religions in political conflicts (Küng 1991).

I am convinced that in this room the responsible conscience does not fall short. Therefore, the other topic I am briefly referring to is the UN's and UNICEF's mission to advocate for the protection of *the Rights of the Child*

adopted by the United Nations' General Assembly in 20th of November 1989. It certainly brings an important dimension in the conference theme. The importance of education and cultural identity are on the basis of that UN document. I am picking up just a few issues from it. In article 28 the right of the child to education is recognized with a view to achieving this right on the basis of equal opportunity by making the primary education compulsory and available free to all. Unfortunately, this aim is not a reality even in Europe of today. Article 29 points out "that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential". In other words, because children are different they should be treated and taught as individuals by nurturing their unique capabilities and interests. Later on in the same article it mentioned that child ought to be prepared for a "responsible life…among all peoples, ethnic, national and religious groups and persons of indigenous origin". It is also worth of noting the words in Article 31, which stress "the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child to participate freely in cultural life and the arts". Although there is a need to teach and learn e.g. mathematics, natural sciences and IT-skills it is good to notice that both the learning of humanities and skills in responsible approach to humanity are equally valued in the text referred. If one of these core aims of teaching is not properly realized, the goal of happy life cannot be fully achieved.

We all know that one of the most crucial prerequisite to the fulfilment of human rights is in the caring work amongst children. In fact the only sustainable way to create a better and happier world is through children and youth. By far the best method to learn any aspects of human rights is to have an everyday experience of them, to have an opportunity to be brought up in a context where the rights are fulfilled.

I presume that anything I have said here you have heard many times before therefore there is no need to go into more details of children's rights. In fact, as special experts you already possess the in-depth knowledge of the two interrelated topics I have addressed this far. The challenge for all of us, however, is not in the knowledge factor. The real issue is in "how to walk the talk and the message". Observing the European discussions today, we certainly can notice that many people are well aware of their rights as individuals, as members of different trade unions and as citizens of our respective European countries. The conscience of individual rights is growing. On the other hand, it may be fair to say that alarmingly few voices of the important human responsibilities and global ethics are heard.

Either human rights or human responsibilities cannot be guaranteed exclusively by political or economic agreements nor can they be globally respected by signing documents. In the final analysis all depends upon the unanimous, sincere and sustained engagement of peoples. Each one of us, no matter what our expertise, social position, religious affiliation, nationality, age, gender or cultural origin is called upon to create a more just world. This aim can only be achieved through our, behaviour, attitudes and concrete everyday acts. Together we are able to cultivate a world or equal human rights and

responsibilities. Let us ask ourselves: "What can I do for a more just world today?"

I am sure that all the presentations and discussions will help participants to relate theories to everyday actions. Constructive communications and exchange of ideas are not the ultimate goals of this conference. The purpose is to promote responsible social actions, which are ethically sound. If this principle can be sensed during these days at "Dimitrie Cantemir" Christian University, the conference will have been successful.

REFERENCES

Ahtisaari, M., (2000 a), *Address by President of the Republic of Finland Martti Ahtisaari at the Function on the Eve of the European Presse – Und Funk – Ball in Berlin on 7 January 2000*. Available at www.ahtisaari.fi

Ahtisaari, M., (2000 b), Diplomacy and Conflict Resolution Lecture by President Martti Ahtisaari at the International Institute of Strategic Studies 23 March 2000. Available at www.ahtisaari.fi

Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Available at

http://www2.ohchr.org/english/law/crc.htm

Kangaslahti, J., Mizutani, H. & Kangaslahti, V.J., (1998), *Ethical Responsibilities for a Global Programme*. Interspectives. Vol. 16.

Küng, H., (1991), *Global Responsibility*. London and New York: SCM Press.

THE METAPHYSICS OF HAPPINESS

Gabriela Pohoaţă*

gabriela_pohoata@yahoo.com

Abstract: *Happiness has been the aim of any metaphysics that has ever existed, because it represents the man's reason to exist and to live. We consider that a philosophy that did not have such a telos would suspend its vocation, since happiness is inseparable from self-conscience and is characteristically related to the meaning of the man's life. One reaches the meaning of life and happiness through self-knowledge, in other words, through philosophy.*

Keywords: *happiness, virtue, value, freedom, wisdom, self-conscience, meaning of life, metaphysics.*

Why the metaphysics of happiness?

Because happiness represents a theme that transcends the science of law; imagine a law that compels everybody to be happy; that would be nonsense! No one can oblige you to be happy and no one can guarantee your happiness either, unless you want it; also, it has no direct connection with social or public policies. Certainly, the problem of happiness cannot be solved with the help of public policies. A sociological or legal approach of happiness distorts its deep meaning because authentic happiness is linked to the spirit being a strictly individual matter that can be achieved only by means of self-knowledge. That is why a philosophy that would not envisage happiness would suspend its vocation.

Happiness has always represented the aim of any metaphysics. The philosophical approach teaches us that this is both a concept and a state of mind that can be acquired only by self-analysis. Happiness does not depend on external things or objects, etc. It is a state of equanimity, of spiritual balance that emerges from ideas, inner thoughts based on one's inner resources. Happiness is the Absolute and philosophy is "The Science of Absolute" as Hegel said.[1]

To the moving question: why does the human being live? the natural answer is: *to be happy*. Therefore, **perhaps the greatest mystery of human existence does not consist in living but knowing why you live.** But, *how can the human being be happy*? The answer is simple: **having a dream to strive for, becoming aware of the meaning of his existence**. We can thus understand that happiness is closely related to *the meaning of life*, representing undoubtedly the basic goal of life, the supreme value towards which all the other values converge: truth, freedom, justice.

The meaning of life is the basic philosophical problem, and happiness as the

* **Senior Lecturer Ph.D, - "Dimitrie Cantemir" Christian University, Bucharest.**

[1] Hegel, *Lectures on the Philosophy of Religion,* trans., Bucharest, Humanitas Publishing House, 2002, p.16.

meaning of human being's life is the main theme of the philosophical approach from Socrates to the contemporary philosophers. In this respect, we remind the longest-lived British philosopher, Bertrand Russell, who dedicated a book to the problem of happiness.[2] Throughout the history of philosophy there is no unique conception concerning happiness, but, however, we can speak about reference conceptions, about moral theories that made happiness their central philosophical concept. Thus, happiness was defined as pleasure (the most widespread criterion in Antiquity which was to be found in the concept of *hedone*), as austere joy of sacrifice, wellbeing or joyfulness, as pleasure purified by means of intelligence, enlightenment, wisdom, perfection etc. There are a variety of theories, conceptions and opinions related to happiness because the human soul is complex and variable, because the social status and the level of culture determine different ways to accede to happiness. Everyone, implicitly every philosopher, understands happiness differently. Therefore, I consider there is ***no universal recipe concerning happiness***. **No philosophy or religion around the world can teach us how to be happy**. **Every moment of our existence contributes to happiness, if we know to live rationally, to connect to a noumenal world, a world of perfect order.** Thus, even when we are unhappy, the hope of happiness does not disappear. The human being does not cease to seek, to strive and suffer for his happiness.

Therefore, I share the idea that the **human being would be capable to bear anything, including the thought of death knowing that he will achieve happiness.**

The ceaseless pursuit of happiness is closely related to the imperfect human nature. This may be the meaning of the German philosopher K. Jaspers' statement: *"As long as people exist, they will never cease to conquer themselves".*[3]

It is essential to understand that man's reason to be, to exist, is to achieve happiness. Thus, the pursuit of happiness appears to be the most natural thing for humans[4]. This search ennobles human existence springing from the human condition of conscious being. Only the man can be happy as he is the only being endowed with reason in the universe.

It is not by chance that Aristotle opens the Nicomachean Ethics with the *"duty to be happy"*. Thus, the philosopher of Stagira believes that the only categorical imperative of each and every man is the desire to be happy[5].

The doctrine of happiness enables us to rediscover a certain idea about the value that directs people's efforts, which is a guide, a source of activity and elation. Even if happiness does not exist, and people confuse happiness with happiness premises, it responds to the need for a different kind of life and it

[2] B. Russell: *The Pursuit of Happiness*, trans., Bucharest, Humanitas Publishing House, 2011.

[3] K. Jaspers: *The Origin and Goal of Histor,* trans., in Philosophical texts*,* Politica Publishing House, 1988, p. 133.

[4] G. Pohoaţă, *Propedeutica filosofică,* Bucharest, Pro Universitaria Publishing House, 2009, p.103-114

[5] Aristotle, the Nicomachean Ethics, book I, VII, 1097 b, book X, VI, 1176, The Scientific and Encyclopaedic Publishing House, Bucharest, 1988, pp. 16, 251 and following.

becomes, in this case, a moral requirement. "This is what Aristotle's Eudaemonism will express in an immanentist manner, simply replacing the transcendental sovereign good with happiness. [...] Therefore, we are not surprised when we read in the 10th book of the Nicomachean Ethics that happiness is an activity consistent with virtue and that wisdom makes us happy; that, since pleasure is mixed with happiness, wise activity will also be the most enjoyable one. Hence, the idea of blissful man"[6]. We can thus infer that happiness is the subject of Eudaemonism, based on the art of living and it involves remodeling the existence. It can be said, from this perspective, that what matters are the modalities of existence, and not existence itself. The Eudaemonism does not question the truths about being or non-being, but brings an amendment to natural and chaotic life, to irrational and disturbing life that mixes the best and worst. Therefore, we understand once more that there is no metaphysical difference between a moral happy life and a raw psychological life, and moral life is a stylization, an aestheticization of natural life: *happy life is made up of the best elements selected from ordinary life*.

A happy life is made up of sorted, selected elements of natural life. Plato's *Philebus* tries dosing various elements of life: science and pleasure in order to get a happy life.[7]. The rules governing this dosage are therefore related to one's own choice and sift the psychological feelings: some of them are considered useless or even harmful to moral happiness.

The Stoics used to consider passions and emotions harmful to happiness.

Spinoza used to appreciate that ambition and fickleness are sources of anxiety and unhappiness.[8]

It is worth noting that the eudaemonist doctrine appreciates that there is always something good within sensitivity. This property, although it does not represent the abstract Good, may still be retained in order to elaborate morale.

"All people want to be happy", used to say in unison all the scholars of Antiquity [...]. Eudaemonism is much more emphasized in *Nicomachean Ethics* than in Plato's work, but it is still an idea common to Aristotle and the philosopher of *Dialogues*. Nobody ever said in Greek Antiquity*:* Man *wants* to be happy*,* but he *must* be unhappy, the duty being made to contradict and confuse the will. The duty of unhappiness, if we can say so, was invented in Kant's time to counteract the will of happiness".[9] In fact, the Kantian morale is not a morale of happiness, but one of merit. The moral action is not the one that makes man happy, but the one that makes man worthy of being happy. In the German philosopher's view, happiness is an ideal of imagination that does not tolerate requirements and rules.[10]

---

[6] V. Jankelevitch, *L'Austerite et la vie morale*, in *Philosophie morale*, Flammarion, Paris, 1998, p. 440

[7] Plato, *Philebus,* in *Opere, vol. VII,* The Scientific and Encyclopaedic Publishing House, Bucharest, 1983, dosing life elements, cf. 53 b and 58 c.

[8] Spinoza, *Ethics*: «Ambition is the immoderate desire for power» (prop. XLIV) Romanian trans. by Alex. Popescu, The Scientific and Encyclopaedic Publishing House, Bucharest, 1981, p.169

[9] Ibidem, p. 438

[10] Imm. Kant, *Grounding for the Metaphysics of Morals,* The Scientific Publishing House, 1972.

The moderns, Nietzsche used to say, liked to say that they "have invented happiness"[11]. Even if Nietzsche's remark has a dose of irony, starting with the 18th century, the problem of happiness takes on a new meaning and a particular importance in the setting of intellectual and cultural life. Fighting against the thesis of human nature corruptibility, rehabilitating epicurism, pleasures and passions, the Enlightenment philosophers raised terrestrial happiness to the rank of supreme ideal. "The big problem, the only we need to ask ourselves, is now to live happily"[12], wrote Voltaire.

In front of the carelessness people generally treat this issue with, the moralists consider it their duty to resort to all means to enlighten their peers on the physical, moral and affective conditions that allow them to accede to a happy life. Thus, morale somehow sets up as the science of happiness, the only one that is effectively useful for people. The morale of happiness, as well as blissful dreams: myriads of utopian discourses that imagine a new type of society, reconciled with happiness; novels and poems, songs and plays that put it on stage[13], even the living environment (housing, interiors, garden, furniture, figurines, decorations) *materialize the newly recognized primordiality of pleasures and fulfilled life.*[14] We could assert that the world secularization was accompanied by making happiness sacred here, on the earth. From book to book, the same enunciation came to be postulated: man was born to be free and happy. The first of the "natural" laws, *the pursuit of happiness, appears to be the most important activity, the most urgent one of all those existing*. Starting with Bacon and Descartes, the Prometheic project of moderns is clearly outlined: the valued knowledge is the one that enables the continuous increase in people's welfare through an "infinity of fireworks". The power of science: due to technical applications, people will be able to enjoy freely the "fruit of the earth", will stay healthy, will prolong their life and will overcome the miseries of existence. An optimistic view of the future based on cumulative progress of knowledge and technology is developed; it will be systematized in the great philosophies of history of the eighteenth and nineteenth century. From Turgot to Condorcet, from Hegel to Spencer, a conception on the necessity of progress is imposed, the idea that history inevitably steps forward improving little by little. In contrast to the traditional ideas about decadence, the moderns have assimilated the history of a continuous and unlimited progress that leads to justice, freedom and happiness. In fact, the **access to reason**, which now becomes sovereign, opens **the way to freedom**, and the **overall appeal to freedom gives rise to a new idea: happiness.**

For most philosophers, happiness is the inner extension of freedom. The works of Jh. Locke, Montesquieu or Voltaire, each in its own way, prove the close

---

[11] Fr. Nietzsche, *Thus Spoke Zarathustra***: a book for everybody and for no one, Bucharest,** Humanitas Publishing House, 1994.

[12] Voltaire ,,Lettre a Madame la Présidente de Berniere" (1722), qouted by Robert Mauzi, *L'idée de bonheur dans la littérature et la pensée françaises au XVIII siècle*, Slatkine, Genève, 1960, p.80.

[13] P. Hazard, *La pensée européenne au XVIII siècle*, Fayard, Paris, 1963, pp.23-24.

[14] André Corvisier, *Arts et sociétés dans l'Europe du XVIII siècle,* PUF, Paris, 1978, p.238.

relationship between the two moods. This idea will have inspired the drafting of the texts: *The Declaration of the Rights of Man and of the Citizen* from 1789 (preamble) and, especially, that from 1793 (art. 1), making happiness a key goal of human being. From this "civic" perspective, the achievement of happy existence is closely related to the recognition of the natural rights of the person, which requires defending freedom and combating all forms of despotism. But happiness, according to many authors, also goes through a form of freedom that involves the rehabilitation of senses, exploration of feelings and even the pursuit of pleasure and love. Condillac's sensualism makes all spiritual faculties rely on experienced sensations (*Treatise on the sensations* 1754), Rousseau gives free scope to sentimental reverie and to sense expression (Confessions (1756 to 1770). Diderot did not hesitate to oppose religious education and to defend the idea that amorous passion and pleasure are the premises of a happy life (The Indiscreet Jewels, 1747). Happiness is, after all, a matter of pedagogy: it depends heavily on a process of intellectual and moral freedom, as two works that are so different, Emil (1762) by Rousseau and the Reform Projects of Public Instruction (1792) by Condorcet, try to demonstrate.

But I consider that no one managed to highlight the insurmountable dilemmas of the issue of happiness better than Rousseau. Incomplete being, unable to be self-sufficient, the man needs someone else in order to achieve happiness. But because it is inseparable from the relationships with another one, the individual is inevitably doomed to disappointment and exposed to the blows of life. Since I depend on others to be completely happy, my happiness is necessarily fleeting and unstable. Without the other I am nothing, with the other I am at hismercy: the happiness man can accede to can't be more than a "fragile happiness". [15]

Undoubtedly, no one will dismiss the idea that the efforts to refine the self, religious or philosophical spirituality can be refreshing, they can redesign our horizons, they can help us to have a better life. To believe that a system of thought or any kind of method can provide the sustainable, definitive solution for happiness is a big illusion. Also, happiness does not concern the professional philosopher, but the man who is able to overcome his own selfishness and negative emotions. Therefore, the schools of wisdom will always have one of the lowest "efficiency" compared to the psychological and metapsychological moods of people, happiness and joy of living being more like a "state of mind", a "gift received" than the result of consciousness awakening or transformation. A kind of state of grace, "it comes when it wants it, not when I want it to come"[16]. Hence the limits of all doctrines that speak about the ways of achieving happiness, overestimating the power of consciousness on the moods that we go through. The project of limitless power of the moderns reaches here, clearly, its limits: happiness does not progress, it stubbornly evades people's authority. Of course, we cannot completely separate the pursuit of happiness from technical

[15] Tzvetan Todorov, *Le jardin imparfait/The Imperfect Garden*, Grasset, Paris, 1998, especially, pp.294-296, (trad. Rom, Gradina nedesăvârşită: gradina umanistă în Franţa: Eseu, Trei, Bucharest, 2002).

[16] Fr. Nietzsche, ,,Beyond good and evil", Bucharest, Humanitas, 2006.

accomplishments, but a chasm still continues to separate the two universes. In other words, there is a disproportion between the evolution of human intelligence and human sensitivity. Thus, in terms of intellect, man turned into a giant, and from a moral perspective, it remained a midget. Nowadays man goes through a deep moral crisis, of self-knowledge, which puts his state of happiness to the test. Our perpetual pursuit of multiform happiness is not reducible to material goods. Whereas the concern for material goods gives rise to dissatisfaction and frustration, the spiritual efforts are focused on seeking inner balance, on harmonizing the body and the spirit, on expanding and deepening the consciousness. Under the label of ancient wisdom, the individualistic pursuit of modern happiness is actually extended. Everything seems to diametrically oppose the concept of material happiness to that of spiritual happiness. One focuses on the acquisition of goods on the market, the other on consciousness improvement; one prioritizes wealth, the other the being.

In his pursuit of material accumulation, man forgot himself and God. In other words, following one of Heidegger's thoughts, the contemporary man lives in the "forgetfulness of his own being". Thus, the man's main objective today is material prosperity and not spiritual wealth. Man mixes the means for the scope, making the material wealth a goal of his existence. Here occurs the imbalance. The material component is a necessary condition for our existence, but it is not enough. Everything depends on a certain understanding. I believe that when man does not connect himself to the Absolute, he lives in error, growing apart from the meaning of his existence and, implicitily, of his happiness.

The "new paradigm" is structured according to the following syllogistic schema: what happens is the mirror of our inner attitude. But I do not think you can achieve happiness aspiring both to the benefits of the modern world and to inner harmony. It is a certainty that material happiness can not be mixed with the spiritual one. We live in a confusing world: wisdom is confused with detachment and self-deprivation (Buddhism), happiness is mixed with pleasure and wellbeing. Along with the consumer capitalism, hedonism has established itself as the supreme value, and mercantile satisfactions – as one of the privileged ways of happiness. When happiness will identify itself less with satisfying continuously the countless needs and permanent renewal of objectives and entertainment, the hyperconsume cycle will close.[17] This socio-historical change involves neither giving up the material wellbeing nor the disappearance of organizing the ways of living according to the market principles; it involves a new pluralism of values, a reassessment of life, in fact *a new philosophy concerning happiness*.

REFERENCES

Aristotle, (1988), *Nicomachean Ethics,* Bucharest, The Scientific and Encyclopaedic Publishing House.

[17] G. Lipovetsky, *Paradoxal Happiness. Essay on hyperconsumption society,* Polirom Publishing House, Iaşi, 2006, p.322

Corvisier, André, (1978), *Arts et sociétés dans l'Europe du XVIII siècle,* Paris, PUF.

Hazard, P., (1963), *La pensée européenne au XVIII siècle*, Paris, Fayard.

Hegel, (2002), *Lectures on the Philosophy of Religion,* trans., Bucharest, Humanitas Publishing House.

Jankelevitch, V., (1998), *L'Austerite et la vie morale*, in *Philosophie morale*, Paris, Flammarion.

Jaspers, K., (1988), *The Origin and Goal of Histor,* trans., in Philosophical texts, Politica Publishing House.

Kant, Imm., (1972), *Grounding for the Metaphysics of Morals,* The Scientific Publishing House.

Lipovetsky, G., (2006), *Paradoxal Happiness*. Essay on hyperconsumption society, Polirom Publishing House, Iaşi.

Nietzsche, Fr., (2006), ,,Beyond good and evil", Bucharest, Humanitas.

Nietzsche, Fr., (1994), *Thus Spoke Zarathustra***: a book for everybody and for no one,** Bucharest, Humanitas Publishing House.

Pohoaţă, G., (2009), *Propedeutica filosofică,* Bucharest, Pro Universitaria Publishing House.

Russell, B., (2011), *The Pursuit of Happiness*, trans., Bucharest, Humanitas Publishing House.

Todorov, Tzvetan, (2002), *Le jardin imparfait/The Imperfect Garden*, Bucharest, Trei.

Voltaire, (1960), ,,Lettre a Madame la Présidente de Berniere" (1722), qouted by Robert Mauzi, *L'idée de bonheur dans la littérature et la pensée françaises au XVIII siècle*, Slatkine, Genève.

THE DIARY OF HAPPINESS - A WAY OF EVADING TIME

Mihaela Daniela Cîrstea*

mihaelajianu74@yahoo.com

Abstract: *The journal represents the genre of confession, presents intimate experiences of the individual. Happiness is a state of mind of the human being, an ideal to which everyone aspires. We will try to demonstrate that the coupling of the two words in the title of N. Steinhardt's title - "The Diary of Happiness" - represents its distancing from the intimate journal genre, from the daily entries of events and the entering into a state of grace, the escaping of the confinements of the epoch.*

Keywords: *happiness, emotions, journal, life, moments.*

Happiness is an abstract notion, hard to define, a state of bliss, thankfulness, fulfillment, and according to the dictionary, happiness represents "a state of intense and absolute thankfulness of the soul"[1]. It is a definition that doesn't say much about what the individual truly feels when he believes he is happy. Sometimes, in order to be happy, you need very little, and things that for someone may mean happiness could not represent a thing to another individual. Therefore, happiness is a personal state of the individual, a state through which he constructs the dimensions of emotions.

In this context, "The Diary of Happiness" by N. Steinhardt represents a paradox, because the events presented are from detention. The priest form Rohia describes a way of feeling free in the most constraining world, that of the prisons, because happiness can be built by the escaping in the imagination, in pleasant anterior events or faith.

In the Romanian literature, journals had started being written early in time, but were not taken into account by the Romanian critique and history, due to the fact that it was not considered a "literary genre", but pertaining to the confessional literature, through the consignment of certain events, private to the individual or personality. The journal, besides this consignment, which may or may not be of public interest, also represents a (subjective) document of the epoch it represents, because the private life of the individual is woven with historical events.

Eugen Simion says, in writing, that the intimate journal is a contested genre. "Usually the journal is thought of as a piece of writing adjacent to the poem or the novel. Memoirs, autobiographies, confessions - its older relatives - have succeeded in imposing themselves and fabricate the models they need. Making an

* **Lecturer Ph.D, - „Dimitrie Cantemir" Christian University, Bucharest.**

[1] *The Explanatory Dictionary of the Romanian Language,* Ed. Univers Enciclopedic, Bucharest, 1995, p. 374.

appearance later, and tied by many causes, the journal still fights to be accepted in literature and to obtain an esthetic status."[2] In spite of these, the journal represents a genre much liked by the public, interested by particular events in the lives of personalities, but also by the way in which they perceived the world they roamed in.

In this context, N. Steinhardt's book does not enroll in the usual line of journals, due to the fact that it does not represent a daily inscribing of events. On the contrary, his journal is written a while after the events had occurred, after his prison time is over.

N. Steinhardt, born in Bucharest in a family of Jews, is tied with, on the maternal line, with Freud. He is an academic spirit, finishes Law school, but is very active in the literary plan as well, activating in the "Sburătorul" circle, where he meets Constantin Noica, Eugen Ionescu, Monica Lovinescu. The latter even brings him up in her book "At the Water of Vavilon", realizing a commendatory portrait of him, but recording his tiny defects as well - one of those being his literary vanity. "The first (detention) he suffered in the Noica batch, where despite the beatings and the torture, he had behaved like his old father asked him to, like a hero. Words he would never have uttered. To Steinhardt a more accommodating term would be, in my opinion: humility. And not necessarily because his life ended in monasticism, he had given proof of humility before that. But that was a fierce humility. Resisting, but without arrogance, instead with an implacable conviction to all evil and incapable of committing any."[3] He is arrested in the "Noica-Pillat" batch. What is interesting is the fact that he, being a Jew, is included in this "legionary-mystical" batch, but this experience determines his closeness to orthodoxism, taking the veil at the Rohia monastery.

"The Diary of Happiness" is written, as a draft, exactly in prison, but the security confiscates it, twice even, in 1972 and 1987. The first version was given back to him in 1975. The version published by Virgil Ciomoş in Cluj, after the death of the author, is a redone version. *"The Diary of Happiness"* distances itself, in spite of everything from the classical formula of memoirs, and that of the traditional autobiography, seeing as the author does not intend to relate the entirety of his life and, along with it, the world he went through. He presents a capital experience (the detention) and the grounds to his religious conversion."[4]

The novel represents a political will of one who wishes to escape the daily routine and enter a better world. Three solutions are suggested ever since the beginning: 1) Soljeniţân solution equivalent with lack of any hope; 2) Zinoviev solution- „The Riotous" and 3) Winston Churchill and Vladimir Bukovski solution which assumes fight. „Mind this: Soljeniţân, Zinoviev, Churchill, Bukovski. Consented death, assumed, anticipated, provoked, indifference and impudence; bravery accompanied by tremendous joy. You are free to choose"[5]. However, the

[2] Eugen Simion, *The Fiction of the Intimate Diary*, Ed. Univers Enciclopedic, Bucharest, 2005, vol. I, p. 23.

[3] Monica Lovinescu, *At the Water of Vavilon,* Humanitas Editure, Bucharest, 2010, p. 465.

[4] Eugen Simion, *The Fiction of the Intimate Diary*, Ed. Univers Enciclopedic, Bucharest, 2005, vol. III, p. 375-376.

[5] N. Steinhardt, *The Diary of Happiness*, Ed. Dacia, Cluj-Napoca, 1992, p. 9

author of the journal comes with another solution: „But it is proper to realize the fact that- earthly, humanly speaking- another way to face the iron circle- which is mostly made of chalk also (see Camus'„ The State of Siege": the foundation of dictatorship is a *delusive picture*: fear) - it is questionable to find."[6]

The faith and devoutness are visible ever since the beginning of the novel, by the use of the biblical verse: "I do believe; help me overcome my unbelief!" (Mark 9: 24). The different character of this journal is also noticeable. Though diverse data appear inserted (the first is January 1960, and the last is December 1971), the events are being reconstructed from remembrance.

The journal has a sudden beginning, with an interrogatory in the Security, in which the reflections of the one who records are being included. Being in prison, the author will convert to Christianity, this being the course he considers suitable in order to depart from a world of unhappiness. Steinhardt's novel reveals events from detention in which memories from his life before detention are being inserted. The most important part is, however, the one in which he justifies Orthodoxism, faith being the only possibility to resist against all the humiliations he had to undergo.

"Nowhere and never did Christ ask us to be stupid. He urges us to be good, gentle, honest, lowly at heart, but never dumb (only about our sins it is said in the Pateric "to dumb them"). How could He glorify the stupidity the One that advises us to be always awake so that we won't be surprised by Satan."[7]

To Steinhardt, the prison/ the cell does not represent an element of constraint, on the contrary, it becomes a world from which he can evade in the past (by presenting events from childhood or before being arrested) or into Orthodoxism. Actually, his courage in front of Security is being showed, of the harm it represents. The novel becomes a confession, but none of the signaled aspects does not imply falseness; he writes for himself, as a way to free himself, but also for the others, in order to share the experience which marked him. The experience in prison is presented as a way of soul purification, a period in which he receives the Christian Baptism, it is not a burden.

"In this almost unreal sinister place I was about to have the happiest days in my entire life. How absolutely happy I was in room 34."[8] In this way, Steinhardt had found a way to evade a time of unhappiness and to enter into one of happiness, to elevate spiritually from a space of misery, in which terror was dominant.

God is present in all moments and all dimensions of the author, as his entire writing seems to be a prayer by which Steinhardt is trying to resist, and he really resists against all vicissitudes and humiliations. What is interesting and trivial in the economy of the diary is the Baptism moment on 15th March 1960, performed by Reverend Mina.

"...Reverend Mina, without taking his coat off, rushes into the room to get the only cup- it is a red cup, chipped, dirty and unappealing- and he fills it with fresh wormy water brought in his container carried by him and another convict.

[6] N. Steinhardt, *The Diary of Happiness*, Ed. Dacia, Cluj-Napoca, 1992, p. 9.
[7] N. Steinhardt, *The Diary of Happiness*, Ed. Dacia, Cluj-Napoca, 1992, p. 18.
[8] N. Steinhardt, *The Diary of Happiness*, Ed. Dacia, Cluj-Napoca, 1992, p. 30.

The two Greek-Catholic priests and the Godfather also come to my bed"[9]. Hence, a sacred moment, performed in unfavorable moments, but also an uplifting moment for the author.

The preparations for the major event are well taken care of, and the moment of leisure, of loneliness prior to it is beneficial for the one who enters a different type of existence, one full of humility, which helps him face the world he lives in. Once after all of those who take part in the communion resume their ordinary activities, the moments of reflection of the one who was christened and for whom Baptism is a happy moment, another moment of evading time and space, carry on. He perceives this moment completely different from a baby being christened, for he can truly understand its meanings, whereas the newborn cannot.

"The one being christened as a baby cannot know or presume what Baptism is. Waves of happiness rush over me every second. It is stated that the invaders come higher and strike more fiercely, with accuracy. That is to say, it is true that Baptism is a holy communion, it does exist. Otherwise, this happiness which surrounds me, overwhelms me, embraces me, defeats me could not be unimaginably wonderful and complete. Silence. And absolute ignorance. Towards everything. And this meekness. In my mouth, in my feet, in my muscles. In the same time a resignation, the feeling that I can do anything, the urge to forgive anyone, a kind smile which spreads all over..."[10]. Thus he is a graceful state, which he feels indeed, and a state of bliss surrounds him after the holy moment, a transformation which marks him produces inside him.

Steinhardt's book does not derive from immediate remembrances, from daily events he wishes to record, everything is filtered through his memory, as between the moment to record and the moments events occur there is a distance in time. "Moreover, a different writing first lost (the first version) and then found is requested between the two moments. I cannot realize to what extent the airy vision of the confiscated discourse has influenced the second biographical discourse (the one sheltered). It is certain that N. Steinhardt writes *The Diary of Happiness* after an experience of utmost importance (he was imprisoned between 1959 and 1964) and a different experience, disagreeable as well, provoked by the confiscation of the first manuscript".[11]

Actually, he goes through two experiences throughout this period. The first is the one in prison, where he finds himself in a humiliating position, but he does not lose his dignity and intransigence, he does not become a traitor. The latter is approaching Orthodoxism, which derives from the first. It is his way of escaping unhappiness and entering a time of happiness, it is his way of transcend time and space, to create his own time and space. To him, imprisonment is equivalent to redemption, it is his own "Golgotha" to reach redemption.

"The Diary of Happiness" is a special book for the way in which an unfortunate event of existence is perceived, for the way its author reaches redemption and for the special relation it establishes with Divinity. "The Diary of

[9] N. Steinhardt, *The Diary of Happiness*, Ed. Dacia, Cluj-Napoca, 1992, p. 82.
[10] N. Steinhardt, *The Diary of Happiness*, Ed. Dacia, Cluj-Napoca, 1992, p. 84.
[11] Eugen Simion, *The Fiction of the Intimate Diary*, Ed. Univers Enciclopedic, Bucharest, 2005, vol. III, p. 376.

Happiness" is an excellent book, an inextricable mixture of daily record, remembrance, confession, hermeneutics (indeed if we think of interpreting Ezdra, of the Crucifixion, as related to Socrates' death from Plato, to Juda's guilt, so useful to prevailing God's wish), humour, tragedy, history, politics, metaphysics, physiology."[12]

REFERENCES

Lovinescu, Monica, (2010), *At the Water of Vavilon*, Bucharest, Humanitas Editure.

Manolescu, Nicolae, (2008), *A Critical History of the Romanian Literature*, Piteşti, Paralela 45 Editure.

Simion, Eugen, (2005), *The Fiction of the Intimate Diary*, Bucharest, Univers Enciclopedic Editure, vol. I – III.

Steinhardt, N., (1992), *The Diary of Happiness*, Cluj-Napoca, Dacia Editure.

[12] Nicolae Manolescu, *A Critical History of the Romanian Literature*, Ed. Paralela 45, Piteşti, 2008, p. 142.

POST-MODERN VALUES IN THE PROJECT MANAGEMENT

Octavia Costea*

octavia_costea@yahoo.com

Abstract: *Our work assumes that rhetoric about the welfare state and the broad area of the human condition elevation flow with concrete and participatory life of the individual. But it is something deep in the human being, which could save off the comfortable global connections of community and reified type, which could be cultivated and could create self-becoming to the man and any degree of personal immunity in the current period and the post-modern world, not in the unique sense of social interest or not-know-who-inspired curriculum, but in the sense of need education and empowerment of individual through adherence to individual and collective post-modern values: to belong, to have power / control over his / her own live, to have freedom, to be happy. This leads to regulation of individual life in social by which it might produce reducing the conspiracy mentality and education of mentality on inspired project. Our work formalises data and results, 2011-2012, the Knowledge Economy Project (www. e-community), launched by the Romanian Government, Ministry of Communications and Information Society and the World Bank.*

Keywords: *globalisation, human condition, need of education and empowerment, local project, to belong, to have freedom, to be happy.*

1. Human condition in globalization

Global world bipolarization in distributor and customer brings new ways to transfer and mobility: redistribution of meaning and interpretation conforming to the criteria of relativism and pragmatism, and even obstructive strategies, smoothing and strong influence strategies. Since, nowadays, meanings and values as inductive social signifiers offer takes a potential of exogenous upward action, at the level of human groups, empirical trends of re-grouping, group cohesion - neo- tribal or religious fundamentalist - increase in gregarious and cohesive potential and decrease in civilizing integration and participation in globalization. For example, the African continent is re-receiver of exogenous globalization not only from the former colonizers who exercise their further economic -moral and cultural ascendancy, and also from the newest high powers as globalization emergent centres. If meanings and values produced by globalization centres, offshore and issued by location, but not localism can and are designed to operate in group, however, do not explain and did not directly inspire the human condition. Then who can and how can do it?

* **Professor Ph.D, - Educational Sciences Faculty, "Dimitrie Cantemir" Christian University, Bucharest.**

The investors become administrators and decision makers in the globalization according to principle of Albert J. Dunlap (1997)[1]. Today we live in this: in addition to the image of a divided space, we have the picture of mobility or in the view of Toffler migration, economic re-ordering according to exogenous over-management or co-management rules officiating competition in some areas of the world. We talk about competition and dispersion of decision centres, also about strategies authorized by these in the economic market, political influence and market information as an area of global freedom in the field, in pragmatic relation to the chosen territory or location based on convenient factors to the global profile. What happens at local level? Labour employee is mostly local, the employees are local, they have a historical and cultural structure specific to the site, immovable facing to the investors ubiquity. Investors are pragmatic and mobile, search and select only positive trend, instead, residents remain in place, collect globally all trends, positive and negative, and bear the consequences.

2. Mobility is the most powerful factor in globalization stratification

The mobility that enjoys new power centres of globalization entails moral obligations disavowal of political power incumbent historically on both the current generations and generations unborn, conforming to any technical agreements without perpetuating local community where they invest. But here there is a known and one unknown face to the fact of global and mobile investment. Access to communication infrastructure and participation education in building its own society and world discriminate negatively in the post-modern period. Given these elements with concrete social recoil everyday life, to whom and how could complain populations who collect and non participate in globalization?

Circumvention of moral and historical responsibility for consequences collected by local people and places in which is invested brings groups of investors in the privileged position of beneficiaries not only of the spatial freedom of ubiquity, but also of own decisional freedom - management or co-management in the case of acceptance to share power at the decisional centre. Zygmund Bauman (1999)[2] believes that "the circumvention of liability for consequences is the most cherished prize that the mobility brought to the free capital, unrestricted in space."

Is that a reiteration of the historical spiral of surplus collected by the privileged groups, noble courtiers or "absent" people from the places where it works for them? To the former absenteeism it is add the formation of free and mobile capital, without restriction to invest in the development of human local community. How to develop local human community in this case? Which types of impact and tension are created among traditions, prior to globalizing dominance, inertia and immediate imperative demands corresponding to the freely mobile capital, without borders? However, the local variables are more outnumber that

[1] Dunlap, Albert J., *Mean Business: How I Save Bad Companies and Make Good Companies Great*, New York, Fireside, 1997.

[2] Bauman, Zygmund, *Globalizarea şi efectele ei sociale,* Bucureşti, Ed. Antet, 1999, p. 14.

the classic formulas of social conflict, which lead to the idea of extending the social areas of conflict, as well as their acceleration. There are any atypical and personalized forms of social conflict as unique option. For example, hunger strike, self- burning, vagrancy.

Ubiquity power of emerging centres is manifested also through absenteeism of the social negotiation or intercultural communication. Autonomous mobility of capital allows its movement without restrictions, "without borders", without problems, by the simple decision centre and computer. Receivers of globalization already know that it is recommended to consider a building the "friendly" business climate, where investors have paved the way. One of the impact trends in social is that the organizers of "friendly" business environment for ubiquitous investors constrain their own human environment to which they belong, leading to convenient obedience to them, without having to consider a co-management based on the categorical social synergy or human dynamic of intercultural type such it should work for the managerial organizations with local capital or organizations of mixed type in the pre-global period.

If there are voices announcing the end of history, and we anticipate that we could talk about a history of periods, synchronically, on geographical areas, how should show the global geography? There are already maps of oil, natural and / or ionized agriculture, film industry, banks; also, maps of regional un -stability or stability, operational maps of the internet and so on, as there are relays between them. In short, an economic, political and informational ”products' geography”.

Mutatis mutandis: a products' geography is auto-set up, a geography of human distribution in elite / middle class, centre / local. In this context, receivers of globalization consume globally, less having the selection power of classical geography localization, they produce professionally on a scale increasingly lower and they are repetitively paid. Their localism will increase under the expectation factors of economic centres, interested in augmentation of local collectivism, listed, in this respect, preferably as a handy collectivism. The control of leader group and inductive media is subsidiary in the management of supranational organization. Not applicable human entity and its condition. Human entity is "formula of consume", advertising target and consumption stereotype: for example, porno film, commonplace literature, global brand products consumers, etc. Criticism, selectivity, optional, ethics of team from the project local initiatives counterbalance these negative trends.

Social individual turns to his -self mystically, mythically and Freudian. A free and mobile incipient industry already offers "packages of (self) interpretation" for this transition of the human condition. At the same time, the rhetoric of the broad scope of the human condition elevation will flow near to concrete and participatory life of the individual. But it is something deep in the human being, which could save off the comfortable global connections of community and which could be cultivated and could create self-becoming and a degree of personal immunity for man in the current period and the post-modern world, not in the unique sense of social interest or not-know-who-inspired curriculum, but in the sense of need education and empowerment of individual through adherence to individual and collective post-modern values: to belong, to have power / control

over his / her own live, to have freedom, to be happy. This leads to regulation of individual life in social by which it might produce the diminishing conspiracy mentality and education of mentality on inspired project.

Given the national pro-sovereignty current created in Europe, planetary current coming form liberal source against "institutionalized" globalization, we believe that the political national consensual powers could regulate the elevation of the human condition, counteracting the cynical effects of rendering the individual into handy communities.

Creative elite will be targeted by "headhunters", but will be international but dependent and dominated by the membership to the decision centres. In common speech, we find phrases like "specialist at...", "expert at ..." and so on, which indicates a common perception in which membership is obviously not professional profile.

3. The impact of social association and dissociation

Today, we talk about individual and collective values, about materialist and post-materialist values that are are more or less shared in Romanian society and European society.

- Individual values: freedom, happiness, personal expression, property vs. / collective values: relationship membership, belonging, social order;
- Materialist values, money, productive employment, social cohesion authority, labour, welfare state vs. / Post-materialist values: leisure, voluntary work, education for all, tolerance and reciprocity, interculturality.

Technical factors of mobility, means of travel and information generate a new perception of space and distance, and current values validated by modern development. Proxemics and awareness of its existence are cultural marks. Internalization of concrete or mediated by satellite distances at the end of the century created mutations in the thinking of elites: the collective will and groups' interest are almost synchronous, turn around the centres accumulating common intelligence, sharing almost the same values. And then, access is the main strategy offered and negotiated by decision centres: near access generates, in the reason and psychic life, recomforting state of self-confidence; far access produces hesitations and far distortion, localized frustration or exotic, in general rule, and, in the exception, not always propelling to overcome its own condition.

We talk about a new theory of proxemics, information flow newsmonger of the human substance, and thus, illusion of perpetual motion and continuity, where the unpredictable, unexpected as limits of technology and knowledge can segment the fluid image generated in the centre of globalization and accumulates in social status. Investors and power centres become distributors of proxemics and access, much more, rank them in pyramids. "Local community" comes into architectural thinking pyramid of power centres. But the local community is in the process of modernity, erosion and undermining of local social and cultural totality.

World Wide Web network transfers tangibility of physical distances in information un-tangibility, the spatial signifier is transferred in authorized signified by specialized institutions awarded by centres of power. As we noted in

other works, the signified has its own law based on ineffable human receptor, it slides continuously, it becomes a game whose rules are striving to explore and master the decision centres.

4. Three ages of "ritual" entries in the organized space

Economic and socio-cultural development projects of local associative life, as active means of intra-community creates a competitive environment for exotic inter -community or institutionalized globalization implant. Impact of instant communication directly determined by the natural personal ability of inter-relate in communities and transfer of intercommunity quantitative communication is self, enters into collective memory of local communities. What is happening in local communities with the amount of communication quickly transferred by Internet technologies? It remains inter and outer-community, generated by the centre, and the community individual becomes communication user. Two-way of local communication complementing, traditional and modern, is an interactive approach that allows out of the Internet labyrinth: preserves and perpetuates community collective memory tasks, increasing individual knowledge.

Local community association life projects, based on dialogue and partnership, of retention and perpetuation of local collective memory, create a human competitive local context for authorized communication signifiers distributed by decision centre. Social cohesion is, to any extent, a function of consensus, a common knowledge and internalization of culture in the presence or absence of updating and interaction. Some sociologists agree that the social flexibility is based on forgetfulness and low communication. Our century has created this lack of complex systems and structures at common level, but, no less true, that the experience shows that adaptation as flexibility lasting form, as well as integration are most commonly found for people who are holders of training structures, education. We believe that the social flexibility is an immediate product, expected in the efforts of institutional globalization.

The local community has three "ritual" ages of entries in the organized space: anthropomorphic, technical palpable and technical impalpable. In local communities, behaviours of these ages coexist and this fact brings the individual closer to epicureism as one of the sources of personal happiness. Overcoming the egocentrism of mythical essence and enter into the palpable and impalpable technical organized space are dominated by speed and cost prices. Or the local community retains speed inertia based on collective accumulation, and cost price discriminates at the individual level in local and central decision distributions in competition between centres. Although most sociologists talk about ubiquitous capital and mobile globalization, about profitability without local preference camps, yet centres are attentive to the rate of absorption of products which is competitive factor between different centres. For them can become profitable the human resources policy in the local community, in the desired direction of homogenisation, uniformity, immediately feed-back. The target population of institutional globalization is spread and specified on stage, from 20 years down. After all, even homogenisation and uniformity authorized by the power centres should not be taken strictly, fatalistic, as there is a tendency among some

sociologists, but we accept that it is and can be a type of negotiation, even if the dominant is globalization receiver. It is well known that in a negotiation process is important stake and the negotiation level of this approach.

5. Metaphysical effects in social

Technological focus of distance on instantaneous makes changes in the human mind. Some sociologists accredit the idea of polarization of the human condition in the context of globalization, rather than homogenize it. Converting distance to instantaneous delivers people from territorial constraints and leads to the creation of an image with extraterritorial meanings. Reflex and ancestral, people are embedded the spatial and distance reference. It appears a contradiction and a rotating of the spatial referential thinking. Identity crisis space will look contradictory: some lose their actual meaning (psychic transfer in alienation), others storm the space image, where they live virtually metaphysically. And some, and others order this space, we can tell, individually saved, conforming to the type of relationship suitable to the adaptation in his existential environment. What impact would this have?

Mobile elites acquire attributes of ubiquity and weightlessness of power, but the range and densities of power network that have made it not depend on this movement. Deterritorialisation of power is transferred to the re-structuring of artificial space but with safety features of isolation, from these are emanated metaphysical projections, disconnected from reality, with irrevocable decisions. Steven Flusty (2002)[3] forms a typology of these "restricted sites" designed for their owners in order to intercept, filter or reject unexpected potential users. Existential extraterritoriality of elites such as their public or private "agora" is provided and control discretely by the centres of power which they belong. Tendency to reconstruct the bounded existential space, from the inside centre to be separated and protected against the outside, is de-multiplied, it has succedaneum also at the ordinary level - tendency of isolation. Projects networks and multi-and intercultural mobility counterbalance these trends of ghetto.

6. Schism-genetic chains' theories

According to the schism-genetic chains' theory of Gregory Bateson (1979)[4], a schism appears and deepens hopelessly when we have a social position within a behaviour is replica standard to the symmetric behaviour. Each group tends to influence the other to leave the pattern leading to hypertrophy and collapse of system. For example, paranoia, megalomania of elites are transmitted and collected linearly in social. As there can be "cross-agreement": a behaviour is not standard response to the symmetric behaviour, but complementary. Then, the latest one can become the initiator of behaviour for standard replica to the symmetric expected behaviour. Power centres prefer schism-genetic symmetric chain strategy. Instead, we rely on the theory of complementarity for our proposal

---

[3] Flusty, Steven, *The Spaces of Postmodernity. Readings in Human Geography*, Blackwell Publishing Limited, 2002.

[4] Bateson, Gregory, *Mind and Nature: A Necessary Unity (Advances in Systems Theory, Complexity, and the Human Sciences)*. Hampton Press. 1979.

to build a reply to the initiatives of quick institutional globalization in local communities through priority of projects and strategies with goals focused on human resources from context as competitive complementary human systems (see above and throughout the paper). This would allow, on the one hand, the output of passive waiting or immobile state of "receipt" of globalization, on the other hand, and it is natural, to give a coherent and intelligent participation of our society in the process of globalization itself, whether natural or institutional. We do not believe that our society can afford fatalistic passivity instead of coming into this race conducted in string.

If we expect to come globalization roller as passive receivers, we will be among the first straighten, among the leading "cultural minorities" of Europe but this obedience is unnecessary (history remains irreversible), because all states are willing to negotiate their issues and future prospects that will lead to the relocation of the world, and maybe to the globalization. Export or distribution of globalisation will be more technical and more aggressive than what, until recently, we was called "zone of influence", will perform on the subsidiary of agreements, strategic pacts, partnerships as ways of expected transfer from political power centres. Unprepared countries, less prepared or outdated of this fast race, they will collect implosively external consequences which, according to the schism-genetic chain theory, will transfer them in their own social capital, adding them to its own tensions and social conflicts. So they will align quickly to the globalization: cumbersome and lengthy managing of the internal crisis is weakness symptom and sign in controlling global phenomenon or green light for institutional globalization.

A derivation of the chain schim-genetic theory we think that it is also the social phenomenon of elitist position mimicking. In urban areas, is mediated the continuing influence approved by power centres, in addition, here, are collected both implosive tensions or conflicts, that we were talking about before, and also frustration of rapid polarization of the human condition under the effects of institutional globalization. Concrete urban space is fragmented on issues, public space, agora, is decreased, falling ever more under the control of the power centres, because it bears the main attribute of globalization - density and territorial metaphysics. Segregation and separation of urban human community evolves linearly ("territory racism "). Chronic social problems are some invisible dividing lines in ordinary urban space, for example, districts in which the territory racism is mutual, immigrant districts to cities and capitals of Europe, areas or streets announced that they have uncontrollable degree of safety.

In the institutional process of globalisation or deterritorialisation, power centres are not interested, for this moment, of rural concret human territory, because the human resources' level do not meet their standards, but they are interest in the tourist globalisation, where the village as exhibition becomes profitable. Local communities lose more increasingly the associative life and emanation core of local community life, they are in danger of becoming without identity profitable localities for the power centres. But it is possible to speak, in a short time, about the fourth wave of institutional or competitive globalization, which would focus on rural tourism and ecosystem management.

There is also a global policy of the image of commercial space "Babylon" as supermarkets, where products' effects over the consumers to be immediate, seductive. In the everyday American culture or American South, for example, it is clear that the leisure of common man is ement for, completely replaced by purchasing pleasure or carnival enjoyment. Are these forms or offers of happiness? But these are not happiness its self.

7. Complementary adaptive logic

Complementary adaptive logic arises from the mixing paradox: opening to otherness involves even superimposing otherness.

Claude Levi-Strauss (1990)[5] introduces the concept of division, distinction, classification reflecting natural differentiation of human practices as cultural brands without these are attributes to the objective nature but actions and properties of human thought. State administration is no exception to the cultural rule: unification of objective and human space under its cultural direction does not mean a single management, human values are controlled by administrative. In the era of globalisation, state mission ranks geographically the central and local practices and transparence of space management is the key issue for affirming its powers.

To get the legislative and executive control over interaction and social dynamics, it is necessary transparency of its policies and authorized mapping of space to be managed. But human perspective element given to the space brings us to the point of global perception of the communities and individualities, but also to the perception point of free transfer in space. The concept of perspective performs a dual function: it capitalizes anthropomorphic and praxiological ways of entry of man in the modern space, but the human nature new acquired associated with its ubiquity (including the effects of space depersonalization and experiential objectification), placing it on a map of its interests. The crucible of his interests is local project.

REFERENCES

Argyle, Michael, (1969), *Social Interaction*, London, Methuen's and co-ltd.

Bateson, Gregory, (1979), *Mind and Nature: A Necessary Unity (Advances in Systems Theory, Complexity, and the Human Sciences)*, Hampton Press.

Bauman, Zygmund, (1999), *Globalizarea şi efectele ei sociale*, Bucureşti, Ed. Antet.

De Peretti, André, (1991), *Organiser des formations: former, organiser pour enseigner*, Paris, Hachette Education.

Demorgon, Jacques et Lipiansky, Edmond Marc (sous la direction de), (1999), *Guide de linterculturel en formation*, Paris, Editions Retz.

Dunlap, Albert J., (1997), *Mean Business: How I Save Bad Companies and Make Good Companies Great*, New York, Fireside.

[5] Levi-Strauss, Claude, *Race et histoire*, Paris, Ed. Denoël, 1990.

Duţu, Alexandru, (1986), *Dimensiunea umană a istoriei*, Bucureşti, Ed. Meridiane.

Flusty, Steven, (2002), *The Spaces of Postmodernity*. Readings in Human Geography, Blackwell Publishing Limited.

Goffman, Erving, (1961), *Encounters two Studies in Sociology of Interaction*, New York, The Bobbs – Merill C O.

Greimas, A.J., (1976), *Sémiotique et sciences socials*, Paris, Seuil.

Gumperz, John, (1982), *Discourse Strategies*, Cambridge, C.U.P.

Hall, E. T., (1966), *The Hidden Dimension*, New York, Anchor Books.

Lévy-Strauss, Claude, (1990), *Race et histoire*, Paris, Denoël.

Moskovici, Serge (coord.), (1997), *Psihologia socială şi dezvoltarea cognitivă*, Iaşi, Ed. Polirom.

Perotti, Antonio, (1994), *Plaidoyer pour l'interculturel,* Strasbourg, Les Editions du Conseil de l'Europe.

Véron, Eliseo, (1987), *La sémiosis sociale (Fragments d'une théorie de la discursivité)*, Saint-Denis, PUF.

A LA RECHERCHE DU BONHEUR DANS L'EUPHORIE PERPETUELLE DE PASCAL BRUCKNER

Iuliana Paştin*

julpastin@gmail.com

Plan de l'article:

1. La critique de la recherche du Bonheur dans la société occidentale
2 La tyrannie du bonheur obligatoire
3 Le bonheur ne peut être dissocié du malheur
4 Le paradis terrestre est là où je suis.
5 L'expression de la béatitude
6 La banalité de la vie quotidienne
7 Le malheur hors la loi et le crime de souffrir

Abstract: *Philosophical theme as well as poetic, sociological and psychological happiness has become synonymous with the search for the absolute, eternal obsession of humanity. As already thought Plato the universal aspiration of the people is to seek happiness. Pascal Bruckner in his philosophical essay "Perpetual Euphoria" performs a critique of this exacerbated research of happiness in the contemporary western society. We try to show in this communication the indirect criticism of the author of this morality dominated by the obsession of happiness as a duty.*

Keywords*: happiness, euphoria, duty, modern, western society, philosophy, society, world, communication.*

1. La critique de la recherche du Bonheur dans la société occidentale

Nous vivons dans une époque dominée par un individualisme accentué. Christian Vicki dans l'article «L'individualisme contemporain ou l'exaltation du plaisir à tout prix définit la pensée individualiste qui caractérise notre monde d'aujourd'hui[1]*:*

La pensée individualiste se refuse alors à envisager les problèmes humains de façon collective, et ne reconnaît pas comme des entités véritables et autonomes les grands ensembles qui sont la société, les peuples, les nations ou l'humanité. Elle n'accepte de voir en eux que des sommes d'individus et n'accorde de valeur qu'à ces derniers. L'individu autonome est donc la seule réalité, il est également source de valeur et but de toute pensée politique et philosophique qui revendique ce qualificatif d'individualiste.[2]

* **Senior lecture Ph.D, - "Dimitrie Cantemir" Christian University, Bucharest.**

[1] Philosophie et spiritualité –lecons de philosophie TPE sergecar.perso.neuf.fr/TPE/.../gai_savoir1.htElle consulté le 10 janvier 2013

[2] Idem:sergecar.perso.neuf.fr/TPE/.../gai_savoir1.htElle.consulté le 10 janvier 2013

Cette pensée qui n'accepte de voir que des groupes d'individus et n'accorde de valeur qu'à ces derniers est devenue assez fréquente au XXI et unième siècle. L'individu autonome est donc la seule réalité, il est également source de valeur et but de toute pensée politique et philosophique qui revendique ce qualificatif d'individualiste. Il faut souligner que la plupart des chercheurs trouvent que notre individualisme n'est pas seulement une conséquence de la quête épicurienne du plaisir illimitée, sensuelle et égoïste qu'une certaine critique intellectuelle de nos jours se plaît à remettre en question. En effet, qu'est-ce qui caractérise l'individu contemporain? L'argent, la rentabilité, la réussite matérielle, les honneurs, la beauté physique, le plaisir de la consommation dans les supermarchés? Difficile à dire. En somme, tout ce que la philosophie épicurienne qualifiait de désirs «non naturels et non nécessaires», plaisirs toujours changeants, c'est-à-dire en mouvement, condamnent l'homme à une frustration quotidienne.

2. La tyrannie du bonheur obligatoire

L'idée soutenue par l'essayiste français Pascal Bruckner dans *L'Éuphorie perpétuelle*, c'est qu'à force d'avoir fait du bonheur un idéal absolu, nous nous condamnons à être malheureux. **Être heureux est devenue une obligation**, qui, d'une manière paradoxale, au lieu de nous apporter le bonheur se transforme en source d'angoisse et de misère morale. *Nous vivons en effet depuis le XVIIIe siècle dans le culte du bonheur à tout prix. Comme nous ne croyons plus à la vie après la mort, nous exigeons le paradis sur terre. Les utopies de gauche et l'utilitarisme bourgeois se rejoignent sur ce point.*[3] «Tout de suite» et «jouir sans entraves», disaient les slogans en Mai 68. «Concilier réussite professionnelle, amoureuse, familiale, sociale, santé, beauté, etc.», demande-t-on plus prosaïquement aujourd'hui. Or, poursuit Bruckner, obsédés par cet idéal de perfection, nous méprisons tout ce qui n'est pas à sa hauteur[4]. Selon Pascal Bruckner, l'idée de ne pas vivre dans une euphorie perpétuelle nous effraie et nous rend malheureux. Et comme le philosophe constate, «les plus importants moments de notre vie sont en général neutres, ni heureux ni malheureux», alors nous sommes contraints de reconnaitre la triste vérité: notre vie quotidienne est triste et ennuyeuse. La crainte que les autres soient plus heureux est ainsi à la base des deux grandes passions qui nous hantent depuis longtemps: l'envie et la jalousie. L'obsession du bonheur nous empêche donc de jouir vraiment et d'être heureux. Cela nous place comme dans un miroir devant l'autre facette, celle du malheur et de la souffrance.

On pourrait alors dire que faute de bonheur tous les hommes sont «en quête» de ces valeurs matérielles, dans le double sens de l'expression, à la fois en attente et en manque douloureux. Cela voudrait dire que l'homme moderne n'aurait d'autres besoins que matérialistes, ce qui nous semble une exagération. En effet, il est singulièrement superficiel de dire que tout individualisme est nécessairement matérialiste, que tout homme vise le bonheur et recherche son

[3] La tyrannie du bonheur obligatoire selon Pascal Bruckner par Fernando Sartorius, mercredi 14 juin 2000, www.largeur.com.

[4] ibidem,www.largeur.com, consulté le 10 janvier

plaisir à n'importe quel prix, fût-il à n'importe quel sacrifice. Si le besoin reconnu universellement depuis l'Antiquité est le bonheur, les moyens que l'homme cherche pour réaliser ce but tendent à dépasser l'opposition superficielle entre individualisme et altruisme, spiritualisme et matérialisme. Nous vivons à une époque où l'ambiguïté et la confusion sont devenues des normes auxquelles on essaie de se soustraire. Le bonheur, oui, c'est une aspiration universelle, affirme l'auteur de *l'Euphorie perpétuelle*, mais pas à n'importe quel prix. Le plaisir oui, mais à condition de l'intégrer dans une vision globale de la personne humaine. Et Pascal Bruckner souligne aussi ««Que les hommes étaient heureux lorsqu'ils inventaient le bonheur... que les hommes sont malheureux quand ils subissent **la tyrannie du bonheur à tout prix.** Cette dérive est stigmatisée par le philosophe Pascal Bruckner, dans son dernier essai *L'euphorie perpétuelle*, Grasset, 2000:

Un nouveau stupéfiant collectif envahit les sociétés occidentales: le culte du bonheur. Soyez heureux! Terrible commandement auquel il est d'autant plus difficile de se soustraire qu'il prétend faire notre bien. Comment savoir si l'on est heureux? Et que répondre à ceux qui avouent piteusement: je n'y arrive pas? Faut-il les renvoyer à ces thérapies du bien-être, tels le bouddhisme, le consumérisme et autres techniques de la félicité? Qu'en est-il de notre rapport à la douleur dans un monde où le sexe et la santé sont devenus nos despotes? J'appelle devoir de bonheur cette idéologie qui pousse à tout évaluer sous l'angle du plaisir et du désagrément, cette assignation à l'euphorie qui rejette dans l'opprobre ou le malaise ceux qui n'y souscrivent pas. Perversion de la plus belle idée qui soit: la possibilité accordée à chacun de maîtriser son destin et d'améliorer son existence. C'est alors le malheur et la souffrance qui sont mis hors la loi, au risque, à force d'être passés sous silence, de resurgir où on ne les attendait pas. Notre époque raconte une étrange fable: celle d'une société vouée à l'hédonisme, à laquelle tout devient irritation et supplice. Comment la croyance subversive des Lumières, qui offrent aux hommes ce droit au bonheur jusqu'alors réservé au paradis des chrétiens, a-t-elle pu se transformer en dogme?

3. Le bonheur ne peut être dissocié du malheur

Afin de mieux appréhender le devoir du bonheur, l'analyse de Pascal Bruckner s'appuie sur l'origine du droit au bonheur et sur la reconnaissance de la souffrance dans la religion chrétienne. L'auteur cherche à démontrer que de droit le bonheur est passé à l'état de norme, imposé par la société. Cependant, pour Pascal Bruckner, le bonheur ne peut être dissocié du malheur.

L'ensemble de cette démonstration se découpe chez Pascal Bruckner en plusieurs phases:

- Première partie: du christianisme à nos jours et l'évolution de la conception du bonheur
- Deuxième partie: le bonheur dans l'espace-temps et les ressentis qu'il déclenche
- Troisième partie: les ingrédients du bonheur et la définition de ces gens heureux

- Quatrième partie: la place pour la souffrance et le malheur dans ce schéma

4. Le paradis terrestre est là où je suis

Le bonheur moderne peut se résumer à partir d'une citation de Voltaire selon laquelle: «le paradis terrestre est là où je suis». En effet, les conséquences de la révolution française impliquent deux préceptes: le bonheur est ici et maintenant, mais aussi le fait que l'homme ne doit plus subir le fardeau du péché originel comme dans la religion chrétienne. Et c'est toujours Pascal Bruckner qui affirme que: «cette époque montre la volonté d'instaurer le bien-être sur la terre et exprime la confiance de l'homme dans les pouvoirs croissants de la science, du commerce et de l'éducation. L'humanité est jugée seule responsable de ses maux, et l'on recherche dorénavant à être heureux plutôt qu'être pécheur ou sauvé. Le progrès de la science a fait diminuer les maladies, le corps n'est plus méprisable et la réponse à la douleur se traduit par l'amélioration de la vie ici sur la terre».[5] On retrouve cette philosophie même dans la déclaration d'indépendance des Etats -Unis avec la «vie, liberté et recherche du bonheur». Il n'est pas moins vrai que ce bonheur reste difficile à atteindre. Nous devons faire preuve de courage, faire des efforts pour y parvenir, être capables de combattre le mal pour améliorer l'espèce humaine. Le mal est indissolublement lié au bien, il est là pour nous permettre de poursuivre l'amélioration vers un monde meilleur. En effet, on constate que les sociétés démocratiques sont devenues «allergiques» à la souffrance notamment si les idéologies et les religions ont perdu de leur importance même si elles continuent à exercer une influence indirecte sur les hommes qui les reproduisent à l'échelle humaine, terrestre.

Ces nouveaux idéaux comportent cependant deux contraintes synthétisées par l'auteur de *l'Euphorie perpétuelle*:

•de vouloir proclamer le bonheur ici sur terre, cela veut dire de le matérialiser, de le conceptualiser. C'est dans ce cas un exercice dangereux supposant le risque de déception.

•la pensée laïque ne se contente pas de vague, d'aléatoire. Le bonheur doit être vécu au présent, avoir des effets dans la vie réelle, ce dont les religions n'ont pas été capables.

Le bonheur devient donc un ensemble de joies immédiates, d'histoires et d'accumulations de «petits bonheurs». «Le but de la vie n'est donc plus le devoir, mais le bien-être. Dans ce contexte, chaque petit chagrin nous touche profondément. Nous cherchons à en venir à bout, à mettre à mal tous nos malheurs. Mais cette volonté est illusoire et fausse. En effet, au cours de l'histoire, chaque tragédie, chaque cataclysme nous rappelle qu'il nous est impossible de mettre un terme à nos malheurs. Devant cet échec, et étant privée de «ses habits religieux», la souffrance ne signifie alors plus rien, ne s'explique plus mais se

[5] Cf..P Bruckner dans l'article "Le sanglot de l'homme blanc", Bruckner P., Points, avril 2002 .... Cette époque montre la volonté d'instaurer le bien-être sur terre et place sa confiance dans les pouvoirs croisés et naissants de la science, du commerce et de l'instruction. L'humanité est jugée seule responsable de ses maux, et l'on recherche dorénavant à les vaincre.

..voir: www.com.univ.collaboratif.utils..

constate».[6] Le rôle de la souffrance qui était illustré dans le christianisme par le salut de l'âme n'est plus actuel et cède la place à l'amélioration de la vie humaine, ici sur la terre et non dans l'au-delà. Les grandes idéologies du siècle dernier cherchaient à s'approprier leurs prérogatives aux religions. Malheureusement le bonheur est devenu à présent à peu près l'un des substituts de ces idéologies religieuses.

5. L'expression de la béatitude

Pour Freud, il n'existe pas de bonheur possible mais une satisfaction «épisodique momentanée». Cette dernière évolue à travers la société de consommation et l'aspect individualiste. Ces deux aspects permettent alors un bonheur possible, une félicité, qui se traduit par la société de consommation dans la société occidentale. Ainsi, comme l'affirme Pascal Bruckner, de droit, le bonheur est devenu loi, d'interdit il devient la norme. Le seul mot d'ordre est devenu à présent: c'est à nous de créer le bonheur, de le vouloir, de nous l'imposer. Après la révolte des étudiants français de Mai 68 il y a eu une opposition des jeunes contre le «bonheur tiède» de la société bourgeoise conservatrice et la manifestation du désir de le remplacer par un autre dogme: celui de l'absence d'interdit et par conséquent l'acceptation du plaisir sans limite. Le droit au bonheur devient celui d'un impératif dans la recherche du plaisir illimité. Le bonheur ainsi compris met la liberté au service de celui-ci. L'antagonisme existant entre bonheur et «réussite bourgeoise» ne doit plus exister. Le bonheur est aujourd'hui l'une des conditions de la réussite ou pour mieux dire, s'impliquent réciproquement. *Il est quelque chose que l'on me doit et que je me dois à moi-même*[7]. J'en suis pleinement responsable; cela ne tient qu'à moi de programmer et d'accomplir mon bien-être. Le bonheur relève donc de la volonté, de l'effort, du travail à la recherche de la perfection que la médecine esthétique peut nous offrir. Notre «transformation moderne» passe par le corps et non plus par l'âme. Le culte de la perfection du corps à l'aide des opérations esthétiques est devenu une obsession générale. Mais malgré ces efforts et ces progrès scientifiques, des malheurs persistent telles la maladie, la vieillesse, le malaise. Notre volonté et nos efforts ne sont pas suffisants. Nos sociétés parviennent ainsi à créer non pas le malheur, mais des gens malheureux de ne pas être heureux, toujours à la recherche d'une illusion à la façon d'une Fata Morgana. Le malheur est donc toujours là il existe encore, même s'il est nié, renvoyé à plus tard.

6. La banalité de la vie quotidienne

Autrefois, la religion rendait les épreuves et la vie sur terre supportables en attendant la grâce de Dieu et le salut avec l'espoir d'un monde meilleur. L'espoir rendait la souffrance et le malheur tolérables. La fin des idéologies religieuses a introduit un changement dans la mentalité des gens: l'absence du divin oblige les

[6] www.com.univ.collaboratif.utils.LectureFichiergw Fiche de lecture A l'attention d'Yvon PESQUEUX / Organisation: modèles et représentations – OR002 DSY 101 & 102 – TT - Dominique MOIRE Année 2005/ 2006 consulté le 10 janvier 2013

[7] voir: www.com.univ.collaboratif.utils..p.10

hommes à subir le fardeau de la vie, de s'assumer la responsabilité de l'existence. Aujourd'hui l'homme se retrouve désorienté, confronté à la banalité de cet espace réduit qui est la terre, où l'on est obligé de vivre. La question n'est plus de «comment vivre selon Dieu?» mais de «comment vivre sans Dieu» car dans la vision de certains philosophes «Dieu est mort». *Cet «homme sans destin» tente alors de se libérer de l'ordinaire, du quotidien par le biais de deux plaisirs: la griserie, en quête d'une certaine intensité ou bien la grisaille, la jouissance de l'insipide. Désormais, le purgatoire, le paradis et l'enfer sont sur terre et chacun peut les connaître au cours de son existence. Nous sommes condamnés à ne connaître qu'une seule vie, sans promesse d'avenir meilleur. Et ce mal s'étend au sein des démocraties à toutes les populations*[8]. En effet, le malheur existe et l'homme se retrouve seul à subir le poids d'une existence qu'il trouve le plus souvent absurde.

7. Le malheur hors la loi et le crime de souffrir

Pascal Bruckner affirme aussi dans *L'Euphorie perpétuelle* que «dès le 20ème siècle, on voit éclore la négation du malheur et l'interdit face à la mort. Tout ce qui est du ressort du deuil, de la douleur, de la maladie est considéré comme «hors-jeu», non désirable et passé sous silence. La souffrance ne disparaît pas pour autant, mais elle ne doit plus apparaître en public. Nous cherchons à exiler la souffrance, tout comme les souffrants. Au 19ème siècle, la souffrance était indécente. Au 20ème et 21ème siècle, la souffrance est refoulée au nom de la jouissance. Le malheur et la mort deviennent donc des sujets tabous empirant la souffrance endurée par l'individu[9]». Le paradoxe de la société contemporaine est qu'elle met en évidence davantage la souffrance, en nous occupant exclusivement du bonheur, et en estompant le malheur pour le faire oublier. Les grands changements des siècles derniers, dus aux progrès technologiques ne concernent pas le nombre de maladies, mais la façon de les appréhender. Le fait de ne pas faire la distinction entre les souffrances et les non souffrances voit apparaitre chaque jour de nouveaux malheurs. Etant toujours à la recherche du bonheur parfait nous ne nous sentons jamais assez aimés, récompensés, appréciés. Cette course aux désirs jamais satisfaite s'accompagne de l'effort et du mécontentement permanent. Bref, le malheur ne génère jamais de plaisir; l'enfer contemporain est de ne pas connaître les limites de la douleur. En ce sens, s'est développé dans les pays occidentaux, un véritable «marché» de la souffrance où chacun rivalise dans la course des sociétés des médicaments et des remèdes. Pour répondre à cela, les sociétés occidentales inventent un autre rapport à la souffrance, ce qui veut dire: reconnaître le malheur pour mieux le maîtriser. Toujours face à ce quotidien morose, nous avons des obstacles à dépasser afin de ne pas sombrer dans l'échec répété ou le malheur insurmontable. On pourrait ainsi payer le prix d'un certain effort, être confronté à une maladie afin de pouvoir éprouver la satisfaction de la victoire dans ce combat avec la souffrance, de la dépasser et se construire ainsi un avenir. Est-ce que c'est encore une illusion, d'autant plus qu'épreuve ne

[8] Ibidem, p. 12

[9] Pascal Bruckner, *L'Euphorie perpétuelle: Essais sur le devoir de bonheur,* Grasset, Paris, 2000.

signifie plus aujourd'hui pénitence?

Par conséquent, comme l'auteur nous le suggère, la recherche euphorique du bonheur ne peut être une fin en soi. Après avoir longtemps été l'apanage d'un futur non clairement explicité, on l'impose au présent. On nous impose d'accéder à cette euphorie perpétuelle que semble être le bonheur. Ce dernier, qui autrefois se rapprochait d'une quête spirituelle, devient commun, matérialisable, mesurable. Mais cette conceptualisation du bonheur masque le «côté caché de l'iceberg»: le malheur. En effet, le bonheur ne peut exister et s'approprier que par opposition au malheur. Nos petits bonheurs successifs ne sont possibles que parce qu'ils succèdent à nos maux. La souffrance, la douleur deviennent alors non plus des signes de reconnaissance, d'accession au divin, mais des états reniés, ignorés, preuves de nos faiblesses. Cette analyse de Pascal Bruckner nous amène à une réflexion à la fois sociologique et philosophique et en même temps **suscite une attitude critique** concernant la recherche obstinée de cette euphorie perpétuelle. Par le positionnement du concept du bonheur à partir de différents repères: passé et futur, laïc et religieux, l'auteur nous offre une clarification de la notion de bonheur au fil des ans et de notre histoire mais en même temps une réflexion critique sur la société contemporaine.

REFERENCES

Essais

Fourier, Seuil, 1975, présentation de l'œuvre de Charles Fourier.

Le nouveau désordre amoureux (en collaboration avec Alain Finkielkraut), Seuil, 1977.

Au coin de la rue, l'aventure (en collaboration avec Alain Finkielkraut), Seuil, 1979.

Le Sanglot de l'homme blanc: Tiers-Monde, culpabilité, haine de soi, Seuil, 1983.

La Mélancolie démocratique, Seuil, 1990.

La Tentation de l'innocence, Grasset, 1995 (prix Médicis).

Le Vertige de Babel. Cosmopolitisme ou mondialisme, Arléa poche, 1999.

L'Euphorie perpétuelle: Essais sur le devoir de bonheur, Grasset, 2000.

Misère de la prospérité: La religion marchande et ses ennemis, Grasset, 2002.

La Tyrannie de la pénitence: Essai sur le masochisme Occidental, Grasset, 2006 (Prix Montaigne).

Le Paradoxe amoureux, Grasset, 2009.

Le mariage d'amour a-t-il échoué?, Grasset, 2010.

Le Fanatisme de l'apocalypse. Sauver la Terre, punir l'Homme, Grasset-Fascelle, Paris 2011.

Romans et récits

Allez jouer ailleurs, Le Sagittaire, 1976.

Lunes de fiel, Seuil, 1981 (adapté au cinéma par Roman Polanski).

Parias, Seuil, 1985.

Qui de nous deux inventa l'autre?, Gallimard, 1988.

Le divin enfant, Seuil, 1992.
Les Voleurs de beauté, Grasset, 1997 (prix Renaudot).
Les ogres anonymes, Grasset, 1998.
L'amour du prochain, Grasset, 2005.
Mon petit mari, Grasset 2007.
La maison des anges, Grasset 2013.
Livres jeunesse
Le palais des claques, Points-Virgule Seuil 1986.
Au secours, le Père Noël revient (illustré par Hervé Di Rosa), Seuil 2003.
Sites consultés:
http://perso.wanadoo.fr/jacques.nimier/page56.htm**.**
www.com.univ.collaboratif.utils.LectureFichiergw Fiche de lecture A l'attention d'Yvon PESQUEUX / Organisation: modèles et représentations – OR002 DSY 101 & 102 – TT - Dominique MOIRE Année 2005/ 2006 consulté le 10 janvier 2013
Philosophie et spiritualité–lecons de philosophie TPE
sergecar.perso.neuf.fr/TPE/.../gai_savoir1.htElle consulté le 10 janvier 2013

Articles de presse:
Le Vaillant, Luc, *Hors des pensées battues*, Libération.fr, 21 juillet 2000
Pascal Bruckner Il faut soutenir le Pacte de Genève, Marianne, 1er décembre 2003.
Pascal Bruckner, «Punir Milosevic», Le Monde, 8 avril 1994
«En France, ces intellectuels qui disent «oui» à la guerre», Le Monde, 20 mars 2003

LINGUISTIC INNATENESS ON A PRIORI LOGICAL GROUNDS

Niloufar Jafari[*]

jafarin3@vcu.edu

&

Majid Amini[**]

mamini@vsu.edu

Abstract: *Since the cognitive revolution of 1960's wrought in through the pioneering work of Noam Chomsky, there have been a number of influential* a posteriori *and* empirical *arguments in favour of linguistic innateness, including Chomsky's own argument from the* poverty of the stimulus. *In pursuit of the same goal, Jerry Fodor has been forging a number of* a priori *and* logical *arguments in support of innateness of language. Following a brief historical overview of the fluctuating fortunes of cognitive nativism since its inception in the antiquity, the paper essays and assays two of Fodor's* a priori *and logical arguments for the postulation of language as innate. The final part of the paper will briefly consider the interrelationships between Chomsky's* empirical *evidence and Fodor's* a priori *argumentation for linguistic innateness.*

Keywords: *Ability Conception of Language, Argument from the Poverty of the Stimulus, Linguistic Innateness, Representationalism, Theory of Concepts, Theory of Learning.*

Noam Chomsky relates that Bertrand Russell as one of the most influential philosophers of the twentieth century is reputed to have remarked: 'How comes it that human beings, whose contact with the world are brief and personal and limited, are nevertheless able to know as much as they do know?' (Chomsky, 1986, xxv) This is what Chomsky has canonized as *Plato's Problem*: 'how we can know so much given that we have such limited evidence.' (Chomsky, 1986, xxv; 1988, 3)[1] In a similar Russellian spirit, Myran Gopnik offers the following observation about language: 'One of the puzzles about language is the fact that children do not speak when they are born, but by the time they are two they are using language and by four they are fluent speakers. How do they accomplish this amazing feat?' (Gopnik, 1997, 3)

Christine Howe conveniently crystallizes this developmental aspect of language acquisition in terms of the relationship between linguistics and

[*] **Professor Ph.D, - Virginia Commonwealth University.**

[**] **Professor Ph.D, - Virginia State University.**

[1] However, in an earlier work – namely, *Rules and Representations* – Chomsky gives a different characterisation which is historically closer to its original Socratic formulation: *viz.*, 'how can we know what in fact we do know.' (Chomsky, 1980, 180)

psychology – more precisely, in terms of the question: under what conditions should a *grammar* be accorded *psychological reality*? The underlying contention here is that any theory of grammar is bound by 'psychological reality as a constraint' which effectively delimits the set of the best representations and acquisition models of linguistic knowledge. (Howe, 1993, p. 2)

However, historically speaking, the acquisition of language by human beings has been explained in terms of two contrasting and competing analogies. On the one hand, John Locke in his classic work, *An Essay Concerning Human Understanding* (1689), contends that the mind of a child is like a *tabula rasa* or "blank slate" which passively receives the impressions of experience to form linguistic competence and performance. Basically, at birth, the mind is bereft of any understanding, and, subsequently, senses and experience inscribe linguistic marks on the empty tablet. Yet, on the other hand, Gottfried Leibniz in his *New Essays Concerning Human Understanding* (1703) explicitly inveighs against the Lockean blank slate analogy of language acquisition and argues that the mind of an infant is like a "veined block of marble" with its ingrained structure whereby experience can only carve at certain pre-specified forms and patterns.[2] On the Leibnizian account, the conceptual wherewithal of the mind is innate and pre-configured, and the senses and experience only provide the occasion for the knowledge of language to arise.

Although the idea of innateness appears particularly prominent in the epistemological disputes between *empiricism* and *rationalism* in the seventeenth and eighteenth centuries and was almost a permanent fixture in the controversies amongst that period's cognitive contenders, it has had a protracted and chequered history as far back as antiquity. In fact, the lineage of nativism could be traced back, at least, to *Plato's Meno*, and thus Chomsky's appellation, *Plato's Problem*.

In the particular case of linguistic innateness, there is indeed an amusing anecdote that is typical of a lot of speculation about the *origin* of language over the centuries. King James IV of Scotland (1473-1513) is said to have believed that Hebrew was the natural, original, innate language of humanity. His evidence was the *Old Testament*, but, deciding to put the matter to a "scientific test", he arranged to have two newborn infants and a deaf-mute nursemaid placed in isolation. Several years later, the three were retrieved, and sure enough (!) the King reported that the children 'spak very guid Ebrew'. (Fromkin & Rodman, 1993, 24)

One can imagine the reasoning underpinning the view that there is an innate language. Humans learn language from those who already know it, and languages evolve from other languages. But, apparently, there has to be a *starting point*. Could the first language have been invented without the use of language? It seems that language could not have been developed by an early tribe unless they could already think and people cannot think unless they already have language. (Gopnik, 1984) Clearly the reasoning here is predicated upon the principle of the

[2] Leibniz's analogy of a chunk of marble derives from the fact that marble has veins and as such the range of models that can be sculpted on it is rather limited.

priority of language over thought which is vigorously contested by positions like Elizabeth Bates' that uphold the converse canon of the *priority of thought over language*. (Bates, 1984)[3]

Nevertheless, with the modern rise and dominance of *empiricism* in various fields of study, the popularity and respectability of nativism as a theoretical explanatory account inversely waned. Yet, by the beginning of the 1960's, the fortunes of nativism started to change. Largely due to the influence of Chomsky, an increasing number of linguists, psychologists, anthropologists and philosophers have come to view the nativist position more favourably and to bestow more plausibility than typically conferred on it. Chomsky's arguments for nativism go back to his classic 1959 review of B.F. Skinner's *Verbal Behaviour*. But the arguments were resisted by most linguists, psychologists and philosophers. In the intervening years, however, psychologists and other social scientists have tried to subject nativist claims to empirical tests. As a result, a wealth of fascinating data has come to light bearing on such claims and related debates in other parts of developmental psychology and more recently in connection with various pathologies of linguistic and cognitive disorders.

Over the past several decades, it has become increasingly apparent that much of our cognitive abilities rely on the existence of innate theories of some specific domain of knowledge. For example, it seems that children possess an innate basis of information about other minds whose disruption can ensue in pathological states like autism. Innate beliefs have also been invoked in the explanation of other domains of cognitive competence such as: our knowledge of basic properties of physical objects and of kinds of stuff; children's ability at exploiting limited information about numbers, set, and basic algebraic operations; adults' conception of numbers; music perception; naïve conceptions of the physical world; certain facial expressions of emotions; deductive inferences and our reasoning concerning actions and their practical consequences. However, what is paradoxical in this situation is the revival of Cartesian *rationalism* by a descendent, *viz.* cognitive psychology, of its one time Lockean sworn enemy. The image of the organism as a *tabula rasa*, without predefined structures and central controllers, only enriched by the adjustments of an unconstrained medium to environmental pressures, has been jettisoned in favour of the progressive acceptance of different, more committing, levels of nativism. The reasoning that accompanies this shift of commitment is that if knowledge and learning involve representing, as most cognitive science seems to suggest, then the internal vehicle of representation must be innate.[4] This has accordingly led many to bestow

[3] As can be observed, the debate over nativism touches on one of the most intriguing cognitive conundrums concerning the relationship between mind and language.

[4] An important caveat concerning the doctrine of *representationalism* undergirding the above reasoning is in order here. There are cognitive researchers that take strong exception to the idea that the best computational theories of cognition require explicit representations. The objectors claim that there is in fact no evidence to support the view that such rules are explicitly represented. That is, even if one knows the input-output relations of a cognitive function, one still lacks a sure understanding of what happens in the intervening *black box* where representations or rules should be needed. Robert Matthews, for example, remarks that 'in each case the evidence adduced falls short of establishing the claim in question, and always for the same reason: the evidence adduced

organisms with a wide range of innate structures.

However, bestowing organisms with a wide range of innate structures does not undermine the role of experience as input and environmental trigger. A foetus does not develop, for instance, legs, arms and skin without exchanging oxygen, water and nutrients with its mother, and a neonate does not develop teeth and hair without breathing, drinking and eating. All of this involves interaction with an environment *external* to the organism. But, some critics of nativism overlook this point and create a straw man that can obviously be defeated, yet has no real defender! For example, in the widely quoted connectionist critique of nativism, *Rethinking Innateness*, Jeffrey Elman *et al.* enunciate that a trait is innate just in case it is 'the product of interactions *internal* to the organism' and then carry on to criticise the existence of innate representations on the grounds that the development of representations is sensitive to environmental factors.[5] (Elman *et al.*, 1996, 23; emphasis added) The following statement by Jerry Fodor should suffice to absolve nativism of the accusation:

Linguistics is the locus classicus of recent nativist theorizing. But linguists might reasonably claim to be the only cognitive scientists who have ever taken the interactionist program completely seriously.' (Fodor, 1998a, 146)[6]

Indeed, Fodor has been one of the most prominent contemporary philosophers at the forefront of defending the innateness of language through a number of influential arguments that are rather less empirical in nature and more abstract in orientation. What is, in fact, so conspicuous about Fodor's approach to language is his heavy use of *a priori* and *logical* arguments – as opposed to straightforward *a posteriori* and *empirical* reasoning – whereby he attempts to argue for the existence of innate knowledge not only of the *syntactic* categories and structure of language but also of internal *words*. One of his central arguments thus runs as follows:

Learning a language (including, of course, a first language) involves learning what the predicates of the language mean. Learning what the predicates of a language mean involves learning a determination of the extension of these predicates. Learning a determination of the extension of the extension of the

---

bears only on the input/output behavior of speakers or learners; it provides no support for hypotheses to the effect that such behavior is the product of a representation-using system. It could as well be the product of an input/output equivalent non-representation-using system.' (Matthews, 1984, 1083) However, in response, it should be noted that the argument from the alleged evidential poverty of representationalism still misses its target. For, even if one grants that there is yet to be a clue to the internal representation of the rules/procedures of a cognitive operation, *already the very form of their input/output data may suffice to make the case for representationalism*.

[5] The objection is obviously predicated on the twofold equation of "internal = organism" and "external = environment" and the association of the former with nativism and the later with anti-nativism. But, is this *absolutist* dichotomy warranted? The issue of "absolute" *versus* "matter of degree" interpretation of nativism is obviously in need of further clarification and discussion.

[6] As part of a fivefold nativist manifesto, Muhammad Khalidi remarks, nativists acknowledge that 'there are complex *interactions* between nature and nurture, or genes and environment'. (Khalidi, 2002, 252) But, as Christopher Horvath points out, not all nativist accounts comport comfortably with the idea of interaction; for example, on 'the developmental fixity conception of innateness, no psychological characteristic that is produced by an interactionist process can be innate.' (Horvath, 2000, 327)

predicates involves learning that they all fall under certain rules (*i.e.* truth rules). But one cannot learn that P [predicates] falls under R [rule] unless one has a language in which P and R can be represented. So one cannot learn a language unless one has a language. (Fodor, 1976, 63-64)

Now, from a critical point of view, the question is whether Fodor's argument is sufficiently persuasive or not. The task is obviously twofold: to see whether the argument is *valid*, *viz.* whether the conclusion follows from the premises, and whether it is *sound*, *i.e.* given its validity, whether the premises are justified. In order to probe these two aspects of Fodor's reasoning, the argument may be simplified, hopefully without distortion, in the following form:

1. Learning a language requires learning a rule.
2. Learning a rule requires representing a rule.
3. Representing a rule requires already knowing a language.

Therefore, 4. Learning a language requires already a knowing a language.

Premise 1: Languages and Their Rule

The first thing to note about this premise is that it can lend itself to two readings, since there is a *scope ambiguity* in the *existential quantifier* in the premise. The premise could be rendered either *strongly* or *weakly*, and accordingly the interpretations would be as follows:

(1) Strong Reading: There is a rule ***R*** such that one learns language ***L*** only if one learns ***R***.

(2) Weak Reading: One learns language ***L*** only if there is a rule ***R*** such that one learns ***R***.

They could be represented schematically in the language of predicate logic for existential quantifier in the following manner:

(1) ∃**R** (one learns **L** only if one learns **R**)

(2) One learns **L** only if ∃**R** (one learns **R**)

But, what is important to observe is that Fodor needs the strong version for sustaining his argument for nativism. For, what is required for the weak version is to construe *knowledge* of language only as an *ability* to use language. That is, an ability to conform to some rules which is not sufficient to support a nativist conception of language. Therefore, a weak reading of the first premise renders the argument invalid.

Chomsky has, however, countered the ability reading of linguistic knowledge by noting crucial *contrasts* between the concept of ability and what is involved in knowing a language. He points out that ability 'can improve with no change in knowledge' and, moreover, 'can be impaired, and can even disappear, with no loss of knowledge of language at all.' (Chomsky, 1990, 514-515) Furthermore, he notes that an ability conception of language has been completely unproductive. It led precisely nowhere. One cannot point to a single result or discovery about

language, even of the most trivial kind, that derives from this conception.[7] (Chomsky, 1990, 516)

Premise 2: Rules and Their Representation

The second premise is also susceptible to various renditions. For one thing, in characterizing a behavioural pattern, one has to distinguish between (i) *being guided by a rule* and (ii) *fitting a rule*. For instance, although a plant exhibits a *regular* behaviour, it does not represent a rule. That is, a tree's behaviour fits a rule but is not guided by the rule. Therefore, in the case of language, it may be claimed that although a child's speech pattern fits a certain rule, it does not follow that it is guided by it. The latter needs further justification.

However, what might be more damaging to the argument is an ambiguity in the premise. Again, there are two possible ways of reading the premise:

(A) Strong Reading:	Coming to know a rule requires a *prior* ability to represent it.
(B) Weak Reading:	If one has come to know a rule, one has to be able to represent it.

The problem is that although the weak version appears plausible, it does not entail the strong one. In other words, one may hold the weak version without subscribing to the other one, and the premise required for the nativist argument has to be in the strong sense. Fodor, nevertheless, offers a lemma in support of this and the next premise *vis-à-vis* the notion of *learning*.

Premise 3: Representations and Their Knowledge

This premise is also in need of clarification, specifically about the notion of *language* invoked. For, if the notion of language is broadly interpreted, then the claim verges on banality. However, Fodor's invocation of language is more substantial, and he adduces the following sub-argument in defence of his position.

The argument revolves round the *impossibility* of changes in the representational system of an organism. Fodor argues that a stronger representational system cannot arise from a weaker one by means of general *learning* involving, by and large, hypothesis formation and confirmation. (Fodor, 1976 & 1980) In fact, the argument is applicable to any *theory of learning* couched in terms of *conceptual enrichment*. On the basis of purely *logical* reasons, he contended that nothing new could be *acquired* during cognitive development. Basically, the insight is that theories purporting to explain such new acquisition can offer explanation on pain of presupposing the availability of the very concepts involved in the new acquisition. Notwithstanding possible misunderstanding, Fodor's following illustration gives a flavour of his intent:

[7] Obviously, the underlying thought here is that a respectable naturalistic-*cum*-scientific account of language must be able to provide a research programme which is very much reminiscent of, and even possibly inspired by, Imre Lakatos's work on the demarcation and methodology of science. (Lakatos, 1970)

Suppose we have a hypothetical organism for which, at the first stage, the form of logic instantiated is propositional logic. Suppose that at stage 2 the form of logic instantiated is first-order quantificational logic. The particular example does not matter in any respect, except that I want it to be clearly a case of a weaker system at stage 1 followed by a stronger system at stage 2. And, of course, every theorem of a propositional logic is a theorem of first-order quantificational logic, but not vice versa.

Now we are going to try to get from stage 1 to stage 2 by a process of learning, that is, by a process of hypothesis formation and confirmation. Patently, it can't be done. Why? Because to learn quantificational logic we are going to have to learn the truth conditions on such expressions as "(X)Fx." And, to learn those truth conditions, we are going to have to formulate*, with the conceptual apparatus available at stage 1*, some such hypothesis as *"(X)Fx" is true if and only if* ... But of course, such a hypothesis can't be formulated with the conceptual apparatus available at stage 1; that is precisely the respect in which propositional logic is weaker than quantificational logic. Since there isn't any way of giving truth conditions on formulas such as all "(X)Fx" in propositional logic, all you can do is say: they include Fa and Fb and Fc, and so on. (Fodor, 1980, 148)

The basic structure of the argument may be represented as follows:

1. Learning involves changes in the representational system of an organism.

2. Representational changes cannot take place unless the representational system already has the required conceptual apparatus for the change. In other words, a stronger representational system cannot arise from a weaker one.

Therefore, 3. Learning is impossible.

To tailor the conclusion of the argument for the context of language, it may be inferred that: one always starts with a language which is at least as powerful as any language which one can acquire. Intuitively, the argument sounds paradoxical, but as Piattelli-Palmarini observes, 'it is perfectly compelling', and he goes on to note that 'the appearance of paradox persists only if we maintain the traditional assumptions of the domain.' (Piattelli-Palmarini, 1995, 378) Yet, Fodor's intention was nothing but subvert those very assumptions.

A febrifuge for the Fodorian Fever

The apparent paradoxical air of Fodor's argument for the impossibility of learning may prompt one to revisit the issue of cognitive acquisition in general, and the acquisition of concepts in particular, to ascertain the viability of the Fodorian framework. Thus, the remaining part of the paper is concerned with a possible counter-argument against Fodor on concept acquisition and how he may deal with such criticism. This in turn will pave the way for a brief final discussion on the impact of Fodor's response to such counter-moves on the relationship between Chomsky's understanding of language and Fodor's corresponding conception.

A possible argument against the Fodorian nativism, which seems to enjoy the same brevity and ferocity as Fodor's, may run thus:

1. Linguistic ability requires conceptual apparatus.

2. To have a concept *C* (to think of something as a *C*) one must be acquainted with a *C*.

3. Objects with properties, like *C*, must persist in time.

Therefore, 4. One cannot have concepts in advance of such a knowledge.

However, in view of Chomsky's argument from the *poverty of the stimulus*,[8] one may circumscribe the counter-argument to the *content* of concepts. Thus, to express the conclusion less ambitiously: the content of concepts cannot be acquired in advance of knowledge by acquaintance. The implication of this circumscription is to restrict nativism to the syntax of the language of thought, since it is the syntax which defines a system of representation. As Martin Braine observes, one is thereby led to distinguish 'syntax of thought' from 'language of thought'. Indeed, one can contrast two 'language of thought' concepts. One is Fodor's, in which essentially everything is innate. In the other, the language of thought would be partially innate and partially acquired. (Braine, 1994, 244)

Thus, on this revised reading of nativism, syntax would be innate and provide the innate format for representing knowledge, and the content of predicates would be the acquired part.

In his more recent works on concepts, however, Fodor has mounted a concerted challenge to this syntactic nativism in favour of a full syntax plus semantic nativism by arguing for what he calls "Informational Atomism". (Fodor, 1998b & 2001) The doctrine of Informational Atomism is predicated upon two components: namely,

Informational Semantics: Content is constituted by some sort of nomic, mind-world relation. Correspondingly, having a concept (concept possession) is constituted, at least in part, by *being in* some sort of nomic, mind-world relation.

Conceptual Atomism: Most lexical concepts have no internal structure. (Fodor, 1998b, 121)

And, in response to the above argument that one cannot have concepts in advance of acquaintance with *instantiations* of the concepts in question thus undermining a combined syntax and semantic nativism, Fodor concedes that his account has a difficulty in this regard. (Fodor, 1998b, Chapter 6 and *passim* & 2001, 143 ff.) Yet, he attempts to parry the problem by introducing what he dubs "*The Constitution Thesis*": the idea that to be a, say, doorknob[9] is to have that

[8] *The basic idea behind the argument is that* no non-nativist language acquisition mechanism could reliably deliver knowledge of the language on the basis of the sort of exposure to the "data" a child actually has. *The reason for this is that there are simply too many possibilities for children to rule out, and the data they are exposed to are not sufficient to choose amongst these hypotheses, and reliably settle on the correct language. (Gleitman & Wanner, 1988) Chomsky himself acknowledges that arguments from the poverty of the stimulus have a long historical precedence dating as far back as Plato, and rationalists like Descartes and his followers ran versions of it. (Chomsky, 1966) However, it should be emphasised that what is new in Chomsky is the formal means of characterising language thereby providing a detailed appreciation of its complexity.*

[9] Fodor's favourite example!

property that minds like ours "lock to" in consequence of the kinds of experiences from which our kinds of mind learn the doorknob prototype.[10] (Fodor, 1998b, 134 ff. & 2001, 144 ff.) In effect, somewhat paradoxically, what Fodor is offering is only a variant on what his anti-nativist nemesis, Locke, offered on our acquisition of the concept "red": namely, make it a property that is defined relative to us. That is, red is a *mind-dependent* property that is caused by the *essence* of red things.

Now, according to this *hybrid* account of concepts, the acquisition of the concept "doorknob" – just continuing with Fodor's own example – has two phases. One of them maps from doorknob experiences to a doorknob prototype in the way that empiricists envisaged it. And the other one starts from a doorknob prototype and yields a mental representation that is of the right kind to be the concept of "doorknob": *viz.* a mental representation that is "locked" to an extension that includes all and only the doorknobs. On the basis of this "adulterated" account of concept nativism, Fodor then remarks,

I suppose it's just a brute fact about minds like ours that experiences of the sort that eventuate in doorknob-prototype-formation also eventuates in locking to doorknobhood; if we had different kinds of minds, we'd … 'generalize' differently from our experiences of prototypical doorknobs. Likewise, if we had different kinds of eyes, we would not generalize from experiences of tomatoes to a mental representation that's locked to being red. So said Locke, and so say I. (Fodor, 2001, 144)

Notwithstanding Fodor's own admission that 'there are lots of problems with this picture' and 'the odds are that nothing of this kind will work' (Fodor, 2001, 144), a couple of observations needs to be made. A relatively minor one is the commitment of the account to the existence of Lockean *essences* and generally to an *essentialist* view of properties. Should one harbour any reasonably justified enmity towards essentialism, the account would obviously be rendered unacceptable. But, more importantly, from the point of view of psycholinguistics, the account – especially in view of its *Constitution Thesis* – is more of a metaphysical hypothesis than a cognitive theory of concept acquisition. Certainly there is nothing amiss in furnishing an ontological underpinning of one's nativist theory, but, given the nature of such *a priori* theorisations, they stand aloof of evidential confirmation or disconfirmation, and thereby reducing the *empirical* content of one's nativist theory.

The latter observation, however, may leave Fodor unfazed as his argumentation for nativism stems from concerns other than empirical matters. This is an important point that has a direct impact on how his arguments should be *interrelated* to Chomsky's argument for nativism from the poverty of the stimulus. Fiona Cowie, for example, suggests that Chomsky's and Fodor's arguments are mutually independent. (Cowie, 1999) But, a close reading of

[10] The notion of "prototype" is closely associated in psychology with the work of Eleanor Rosch, Carolyn Mervis, and their colleagues on the structure of concepts, according to which concepts are represented by a cluster of properties that instances of the concept typically or usually exhibit. On the prototype theory, concepts have internal structure, but the structure is not definitional. (Rosch, 1973, 1978; Rosch & Mervis, 1975; Rosch *et al.*, 1976; Mervis *et al.*, 1976)

Fodor's argumentation shows that although Fodor's conclusion is independent of Chomsky's, the latter cannot be true unless the former is. That is, the success of Chomsky's reasoning is dependent upon – or to use another metaphor, embedded within – the Fodorian framework.

The reason for this reading of the interrelationship between Chomsky's and Fodor's works is that should Fodor's argumentation fulfill its promise, there would be a large *domain general* inventory of innate concepts, among which one may encounter linguistic ones, that have been established on *non-empirical* grounds. In other words, although Fodor's nativism encompasses linguistic innate items, there is, in Fodor's words, 'nothing particularly linguistic about' it. (Fodor, 2001, 110) In contrast, Chomsky's nativism is an innateness of *domain specific* propositional attitudes, *viz.* linguistic cognitive states, that has been propounded on the basis of *empirical* premises. This means that the innateness of Chomsky's linguistic propositional attitudes is indebted to the innate existence of their constituent parts, *i.e.* innate concepts. Yet, the very existence of innate concepts – Fodor's position – does not logically imply the existence of innate linguistic cognitive states – Chomsky's position.[11] Therefore, the interrelationship between Chomsky's nativism and Fodor's is a matter of unidirectional dependence, not mutual independence.

REFERENCES

Bates, E., (1984), 'Bioprograms and the Innateness Hypothesis', *Behavioral and Brain Sciences*, 7: 188-190.

Braine, M.D., (1994), *'Mental Logic and How to Discover It', in* The Logical Foundations of Cognition, ed. by J. Macnamara and G.E. Reyes, Oxford: Oxford University Press.

Carey, S., (1985), *Conceptual Change in Childhood*, Cambridge (Massachusetts): MIT Press.

Carey, S., (1991), 'Knowledge Acquisition: Enrichment or Conceptual Change?', in *The Epigenesis of Mind: Essays on Biology and Cognition*, ed. by S. Carey and R. Gelman, Hillsdale (New Jersey): Lawrence Erlbaum Associates.

Chomsky, N, (1966), *Cartesian Linguistics,* New York: Harper & Row.

Chomsky, N., (1980), *Rules and Representations*, New York: Columbia University Press.

Chomsky, N., (1986), *Knowledge of Language: Its Nature, Origin and Use*, London: Praeger.

Chomsky, N., (1988), *Language and Problems of Knowledge*, Cambridge

[11] The logical implication holds unless one subscribes to a theory of concepts that has become known as the "theory-theory" of concepts (to be distinguished from its namesake in the theory of mind as applied by some researchers to, for example, autism). According to this theory, concepts are representations whose structure consists in their relations to other concepts as specified by a mental theory. (Carey, 1985 & 1991; Murphy & Medin, 1985) On this account of concepts, contrary to Fodor's contention, no concepts can be innate unless some propositional attitudes are. But, even under this theory of concepts, Cowie's claim about the mutual independence of Chomskyan and Fodorian arguments would be wrong.

(Massachusetts): MIT Press.

Chomsky, N., (1990), 'On the Nature, Use and Acquisition of Language', in *Mind and Cognition*, ed. by W. Lycan, Oxford: Basil Blackwell.

Cowie, F., (1999), *What's Within? Nativism Reconsidered*, Oxford: Oxford University Press.

Elman, J. L., E.A. Bates, M.H. Johnston, A. Karmiloff-Smith, D. Parisi, & K. Plunkett, (1996), *Rethinking Innateness: A Connectionist Perspective on Development*, Cambridge (Massachusetts): MIT Press.

Fodor, J.A., (1976), *The Language of Thought*, Sussex: Harvester Press.

Fodor, J.A., (1980), 'On the Impossibility of Acquiring "More Powerful" Structures', in *Language and Learning*, ed. by M. Piattelli-Palmarini, London: Routledge & Kegan Paul.

Fodor, J.A., (1998a), *In Critical Condition*, Cambridge (Massachusetts): MIT Press.

Fodor, J.A., (1998b), *Concepts*, Oxford: Clarendon Press.

Fodor, J.A., (2001), 'Doing Without What's Within: Fiona Cowie's Critique of Nativism', *Mind*, 110: 99-148.

Fromkin, V. & R. Rodman, (1993), *An Introduction to Language*, Fort Worth: Harcourt Brace Jovanovich College Publishers.

Gleitman, L.R. & E. Wanner, (1988), 'Current Issues in Language Learning', in *Perceptual, Cognitive and Linguistic Development*, ed. by M.H. Bornstein and M.E. Lamb, Hillsdale (New Jersey): Lawrence Erlbaum Associates.

Gopnik, M., (1984), 'From Pidgins to Pigeons', *Behavioral and Brain Sciences*, 7: 194-195.

Gopnik, M., (1997), 'Introduction', in *The Inheritance and Innateness of Grammars*, ed. By M. Gopnik, Oxford: Oxford University Press.

Horvath, C.D., (2000), *'Interactionism and Innateness in the Evolutionary Study of Human Nature',* Biology and Philosophy, 15: 321-337.

Howe, C., (1993), *Language Learning: A Special Case for Developmental Psychology?*, Hillsdale (New Jersey): Lawrence Erlbaum Associates.

Khalidi, M.A., (2002), *'Nature and Nurture in Cognition',* British Journal for the Philosophy of Science, 53: 251-272.

Lakatos, I., (1970), 'Falsification and the Methodology of Scientific Research Programmes', in *Criticism and the Growth of Knowledge*, ed. by I. Lakatos and A. Musgrave, Cambridge: Cambridge University Press.

Matthews, R.J., (1984), 'Troubles with Representationalism', *Social Research*, 51: 1065-1097.

Mervis, C., J. Catlin, & E. Rosch, (1976), *'Relationships among Goodness-of-Example, Category Norms, and Word Frequency',* Bulletin of the Psychonomic Society, *7: 283-284.*

Murphy, G. & D. Medin, (1985), 'The Role of Theories in Conceptual Coherence', *Psychological Review*, 92: 289-316.

Piattelli-Palmarini, M., (1995), *'Ever since Language and Learning: Afterthoughts on Piaget-Chomsky Debate', in* Cognitive on Cognition, *ed. by J. Mehler and S. Franck, Cambridge (Massachusetts): MIT Press.*

Rosch, E., (1973), 'On the Internal Structure of Perceptual and Semantic

Categories', in *Cognitive Development and the Acquisition of Language*, ed. by T. Moore, New York: Academic Press.

Rosch, E., (1978), 'Principles of Categorization', in *Cognition and Categorization*, ed. by E. Rosch and B. Lloyd, Hillsdale (New Jersey): Lawrence Erlbaum Associates.

Rosch, E. & C. Mervis, (1975), 'Family Resemblances: Studies in the Internal Structure of Categories', *Cognitive Psychology*, 7: 573-605.

Rosch, E., C. Mervis, W. Gray, D. Johnson, & P. Boyes-Braem, (1976), 'Basic Objects in Natural Categories', *Cognitive Psychology*, 8: 382-439.

LEIBNIZ AND CANTEMIR *VIA* NOICA OR WHAT LANGUAGE DO PHILOSOPHERS SPEAK

Alexandru Ştefănescu[*]

alex_stefanescu@ymail.com

Abstract: *There are many ways of superimposing philosophical systems, with both distinct and mutual roots, and affinities. The history of philosophy is generous with such endeavors. However, I presently choose to take a different and perhaps harder approach. Since both Leibniz and Cantemir are masters of thought and language, I turn to a third spiritual authority, the Romanian philosopher Constantin Noica, in order to find out what kind of language do philosophers speak. Ontology and enunciation, history and spirituality – these are the ingredients of a great philosophy. The endeavors of Leibniz, Cantemir and Noica are different "faces" of the same man: the perennial philosopher! However, I am not concerned with Leibnizian and Cantemirian philosophies intrinsically, but rather with Noica's interpretation of their spiritual legacy.*

Keywords: *culture, mathesis, joy, spirit, language, enunciation, Romania.*

When philosophers speak, men are silent. Otherwise, men speak insofar as philosophers have already spoken. Being silent to begin with, they tend to speak when the world of words has descended upon their silent homes. First, Socrates descended his word in people's homes and people listed until they got tired of so many words, and killed him. Then, Jesus descended in Capernaum and Jerusalem, his word fascinated and terrified, and from this very fascination and terror he also died. Later, the "lesser" philosophers spoke to the crowds about mathematics and astronomy, politics and morals. Some of them perished "on their own terms", such as Giordano Bruno, who also faced the "monad" received as a gift from Pythagoras and Plato; others lived plentiful lives.

The great Leibniz, cosmopolite and refined, Parisian, Londoner and Hanoverian altogether, spoke about worldly matters, life, faith, ontology, religion and language, about Egypt and China. He lived well and apparently died a good death. Far to the East, in the world of lords and sultans, Dimitrie Cantemir, who was somewhat of an Eastern Leibniz, spoke the language of politics and diplomacy. Reigning for a few moments, philosophizing for all eternity, being a shrewd diplomat his entire life, he lived large on Russian and Turkish soil, searching for a Romanian culture abroad. How much do we honor them? What kind of a modern conscience endeavors to receive their "excesses", as any good host to a greater philosophy would? We, alone, manage their wealth. And we increase its profit by putting them face to face.

But how can we do this? How to depict their mutual gaze? It seems to me

[*] **Lecturer Ph.D, - "Dimitrie Cantemir" Christian University, Bucharest.**

that to make them stare at one another like statues, without ever moving, may be an exercise that creates an illusion of handiness. After all, inert bodies are easier (or perhaps harder!) to manipulate. Symbolically and thematically, if we are willing to consider the history of thought as a "primordial soup" in which all ages are not unlike statuaries, the aforementioned "exercise" is solved through membership and "elective affinities". Namely, an interlocking of two great centuries lived in a Renaissance and illuminist manner, an expression of eclecticism, a widespread logic of "quantity" and encyclopedic existence as "solution" to a fragmented world.

On the other hand, this particular "gaze" relationship may support a different approach, as well. To the question of "whether there is or not a common paradigm, shared by Leibniz and Cantemir?" we may bring forth a separate answer, mediated by means of some of Constantin Noica's thoughts. But what road should we choose in order to get there? First, throughout his disciples – those that historically seem closer to us, being able to mediate between the general public and Noica's reasoning and philosophical burdens.

In his book *Minima moralia*, Andrei Pleşu, while taking the idea of cultural endeavors into account, reflects on its potential utility. He openly asks: "how can people concern themselves with culture?", since culture itself is not a problem-solver by any means, nor does any moral deductive reasoning stem from it. (See pp. 94-95)[1] Thus, being somewhat stuck in a personal *lamentatio* regarding cultural inutility with moral, social and heuristic manners, Pleşu turns to his lifelong master Constantin Noica, whom he asks: "how can someone be a man of culture and why are cultural endeavors worthwhile"?

What are Noica's thoughts on the matter at hand? Offering a synthetic perspective, he states that there are four main reasons justifying cultural investment. 1). First, culture is the only certain source of truly *lasting joy*; 2). Then, culture is the true form of *spiritual maturity*, while concerning itself with a metamorphosis of the world; 3). Moreover, culture is the only place where *freedom* truly feels at home; it frees the world from any and all constraints; 4). Last but not least, culture is a highly efficient form of *spiritual cleansing*. (See pp. 96-99; as well as the following codicils – pp. 99-101).

In Noica's logic, the aforementioned "joy" is complicit with the "joy" from *Mathesis or the Simple Joys*, while the second recurrent notion, "spirit", may as well be found both in *Mathesis* and in *Open Cartesian, Leibnizian and Kantian Concepts in the History of Philosophy*. Since we have an acute interest in that "gaze" relationship between Leibniz and Cantemir, we will take into account two manifestations of that spirit.

I should start with what Noica depicts as "schemes of spirit" (*Mathesis*, p. 85), those schemes that would fairly translate to "knowledge content" and "living content" (p. 86). Our two philosophers are also bound by Noica's scheme, as they devote themselves to a universal science, a "Mathesis universalis". Noica himself is similarly devoted to it: "I advance this need for a serene and deliberate

[1] All resources will be shown in brackets (with indication of pages, as well as authorship and/or title when needed) according to listed references.

devotion to a Mathesis universalis of a spiritual kind" (p. 34). In those terms, the simple joys become universal and vast, mathematics and superiorly artificial, shifting away from the inferiorly natural and corporal. (See p. 34; and Ion Ianoşi, *Constantin Noica – Between Construction and Expression*, p. 40)Geometrical culture – says Noica – is all about "unification", and it dearly suffers from a "nostalgic approach to oneness", in a somewhat monotheistic fashion. (See p. 11; also Ianoşi, p. 40) Leibniz himself becomes the explicit model of such "unification" patterns, along with Plato or Husserl. (p. 11) Thus, tagging along with the commentator's thoughts: "the simple joys are abstract and general, logical and mathematical. [...] A meaningful world is bound by mathematical and linguistic omens". (Ianoşi, p. 41) Noica's project is connected to the "idea" itself, as well as to that joy derived from a cosmic frost built up around the "idea". His "scientific" calculus lays down an "eternally simplifying night" in which one can see only *because* it's dark. (See p. 35)

It's plain and simple! "This life, that has so many times outsmarted science, can find its own *Mathesis*. Let the exercise of pure acts begin. And let it incorporate ideas and turn them into a universal language, while giving people a chance to get along and coincide with all eternity. Let us turn to the general, simpler and vaster joys, instead of the regional ones. Let us bring forth the general and eternal mathematical spirit to replace historicity." (p. 34) We are dealing here with the "extrapolation" of life itself to a scientifically immutable value, that is geometry. Being opposed to linear timeline, geometry has been responsible for the European cultural emergence, from the Ancient Greeks to Noica himself.

The second meaning of Noica's "spirit" is historically bound. His book, *Open Concepts*, projects itself through an unraveling foreword (dated September, 1936, Sinaia) where Noica tends to distinguish among several concerns in the history of philosophy: "summarization", "exposition" and "demonstration" of philosophical ideas. (p. 8; also see Iano şi, p. 43) In other words: "a breviary of ideas", an exposition as historical picture, and a demonstrative systematization. And although the third one seems "the only viable historical way", he chooses to advance an alternative channel: "let us retrace the spirit behind the ideas" (p. 9) We therefore return, almost "by chance", to Noica's "spirit". Moreover, Noica's "retracing" also means that philosophical systems would remain open! Ideas themselves remain unlocked, which means that "they could always be reopened" (Ianoşi, p. 43).

What tends to stay "open" inside Leibniz and Catemir? As far as the Hanoverian universe goes, it's all about the formidable Leibnizian ontology – an occasion for that simple and abstract joy that Noica is talking about. Strangely or not, Noica also changes its logic, when he requests that we "put windows all around us", "not merely to look inside the world", "but rather to make the world gaze upon us" (p. 87).

Secondly, concerning Dimitrie Cantemir, his "Romanian words" seem to stay open. As a philosopher who builds up linguistically, Noica himself receives from his foreign, as well as domestic antecessors, a philosophy which, following Heidegger's way, concerns itself with language. And Noica's linguistic approach is

all about Romanian enunciation.

Here we are then, before the linguistic "intertwinement" and those omens depicting the way of the world. Mathematics and linguistics, concepts and words – these are the pairs found in *Mathesis* – a geminated paradigm fit for all three philosophers. As far as language goes, the great commentator Donald Rutherford reckons that Leibniz distinguishes himself by means of a twofold linguistic approach: on the one hand, an artificial and ideal language (*characteristic universalis*), on the other hand, numerous philological endeavors regarding natural languages, presumed as viable "roots" for a universal linguistic project. Language, as seen by Leibniz, is interconnected with the world. It is not a barrier blocking the light, as some of his contemporaries believed, but rather a master key, controlling the world itself and all of its functions. Language is part of the spirit ruling the world. Both Rutherford and Noica mention a letter Descartes sent to Mersenne, in which he assumed an interaction between a universal language and future philosophical excellence. (Rutherford, *Philosophy and Language in Leibniz*, p. 232; Noica, *Concepts*, p. 74) Leibniz disagrees: fundamentals are all we need, as philosophy and language are two waters sprung from the same source. Our philosophers is searching for the signs attached to a language of ideas, both eternal and immutable – as all fine Ideas would be – as well as actively integrated *hic et nunc* within "flowing" universality. A "logically bound" language (p. 77), ideographic and spiritual alike.

Not unlike the manner in which Leibniz did search for an "alphabet of ideas" to be signified within a universal project, Cantemir sought to introduce a Romanian "spiritual alphabet". It is again Noica the one we turn to, regarding his "Romanian enunciation". In a 1968 foreword to his *Romanian Philosophical Enunciation*, Noica writes: "let us face history's judgment with our own language" (p. 9) and with "our Romanian part" (p. 10), owing our "Romanian thought pattern dues" (p. 10) to the world. Such a process will be reliant on some "philosophical key-words" (p. 11), entailing a somewhat Heideggerian hermeneutics, as well as a Hegelian linguistically-oriented joy. But before working in the garden of words, one must tend to their seeds, and allow them time to grow. What kind of seeds do we have?

The "seminal" alphabet (from the Latin *semen*, which means seed) of Dimitrie Cantemir–the one Noica saw as "the first eastern European" and "a westernized Romanian" (*What's Eternal and What's Historical in the Romanian Culture*, in *Romanian Soul Pages*, p. 22) with his gaze directed towards Romania, a one man orchestra learning foreign languages in order to build up a Romanian philosophy – is actually a twofold "alphabet". The first half is obvious as soon as we take a glance at Cantemir's words and concepts, closely connected to Noica's "word research" and his ontologically-oriented linguistic "peeling". The proof regarding Cantemirian "names" is self-evident: „activitas" (activity), „apofthegma" (gnome), „aporia" (aporime), „atomuri" (atoms), „axioma" (axiom), „gheneralis" (general,), „dialectic" (dialectic), „energhie" (energy), „idea" (idea), „categorii" (categories), „materie" (matter), „metafizica" (metaphysics), „siloghismos" (syllogism), „theorie" (theory), „ypothesis" (hypothesis) and so on. (See *Dictionary of Romanian Philosophical Works*, p. 103) Such neologisms

create and recreate philosophical idioms, and also implicit cognitive typologies. But there is more to it: Cantemir's Romanian calques. Or else mere translation does not always suffice – which is clearly seen by numerous cultural "interpreters", like Cicero when attempting to break the Roman philosophy away from the Greeks. Language is quite a turning point in both spiritual and mundane affairs. Linguistic creation does set in order various existential and cognitive patterns, as men "move inside the world throughout words" (*Dictionary*, p. 29). As far as Cantemir's *Hieroglyphic History*goes, Noica himself retains three major linguistic endeavors – mirroring the Aristotelian categories of "substance", "quantity" and "quality": "ceinţă" (what is it?), "câtinţă" (how big?) and "feldeinţă" (of what nature?). Brought together, they amount to "a philosophical mentality and a lesson" (*Romanian Philosophical Enunciation*, p. 110). The "roots of reason", the "mind's existential wonder", and "the wonder of being a world in itself" (p. 113) –we feel them closely as they are linguistically close, and they tend to grow on a Cantemirian field, where "culture" (derived from the Latin *colere*, which literally means working the land) blossoms.

I cannot rest other than by the "legacy" issue. When it comes to a Romanian philosophical heritage, it's time to ask who stands tall in the very eye of the storm. Where did we come from and where do we go from here? Noica will sometimes choose to discuss whose role is it tomeld universal values inside a spiritual Romanian philosophy. Not so much as a vane "wisdom" for a philosophy, but rather one of true sensibility and personalization. And although his models seem to be Lucian Blaga, Nae Ionescu or Mircea Vulcănescu, one thing is certain: that any philosophical spiritualization of the Romanian environment is painstakingly, yet no doubt rewardingly, foreshadowed through the Neagoe–Cantemir junction. (Ianoşi, p. 144)

Looking behind me, I wonder how much did we come of age with our "gaze". It is for others to judge. I only see a strong "air" inhaled by both of them into the philosopher's lungs. As wise men and "masters" of humanity (from *magister*, derived from *magis* meaning "more") they divided the world, form West to East, from the great ocean to the sea, and set out their offspring. If they had met, at Peter the Great's court or some place else, they would have written, side by side, a kind of philosophical "bible" that goes like this: "In the beginning, the Spirit created geometry and language. And language was formless and empty. Who was there to speak it? Darkness was over the surface of the deep, and the Spirit was hovering over all. And the Spirit said: 'Let us make mankind in our image, in our likeness, so that they may rule over words and forms, bodies and ideas'. And the Spirit saw that it was good".

REFERENCES

Bălan, M., (1997), "Istoria ieroglifică" ("Hieroglyphic History"), in Ianoşi, I., (coord.), *Dicţionarul operelor filozofice româneşti* (*Dictionary of Romanian Philosophical Works*), Bucharest, Humanitas.

Ianoşi, I., (1998), *Constantin Noica – între construcţie şi expresie* (*Constantin Noica – Between Construction and Expression*), Bucharest, Ed.

Ştiinţifică.

Lavric, S., (1997), "Cuvânt împreună despre rostirea românească" ("On Romanian Enunciation"), in Ianoşi, I., (coord.), *Dicţionarul operelor filozofice româneşti* (*Dictionary of Romanian Philosophical Works*), Bucharest, Humanitas.

Lavric, S., (1997), "Mathesis sau bucuriile simple" ("Mathesis or the Simple Joys"), in Ianoşi, I., (coord.), *Dicţionarul operelor filozofice româneşti* (*Dictionary of Romanian Philosophical Works*), Bucharest, Humanitas.

Noica, C., (1992), *Mathesis sau bucuriile simple* (*Mathesis or the Simple Joys*), Bucharest, Humanitas

Noica, C., (1995), *Concepte deschise în istoria filozofiei la Descartes, Leibniz şi Kant* (*Open Cartesian, Leibnizian and Kantian Concepts in the History of Philosophy*), Bucharest, Humanitas.

Noica, C., (1996), *Cuvânt împreună despre rostirea românească (On Romanian Enunciation*), Bucharest, Humanitas.

Noica, C., (1991), *Pagini despre sufletul românesc* (*Romanian Soul Pages*), Bucharest, Humanitas.

Pleşu, A., (1994), *Minimamoralia*, Bucharest, Humanitas.

Rutherford, D., (1995), *Philosophy and Language in Leibniz*, in Jolley, N., (ed.), *The Cambridge Companion to Leibniz*, Cambridge University Press.

THE NARRATIVE IMAGINARY OF THE ABANDONED WALL: ELIADE'S PUZZLE AND THE ROMANIAN 'DUALIST' LEGENDS*

Mona Mamulea*

monam@institutuldefilosofie.ro

Abstract: *In* Comments on the Legend of Master Manole*, Eliade expressed his perplexity in what concerns Romanian voivode's obstinate quest for an abandoned unfinished wall as a place for his new revered edifice. Indeed, there is a widespread traditional belief all over the world according to which the place chosen for a new building must be free of the suspicion of a sinister past. My aim is to suggest a mythological solution that is likely to untangle Eliade's dilemma by resorting to his very own explanative theory of ritual conduct.*

Keywords*: Romanian myths of creation, cosmogonic dualism, abandoned place, ritual behaviour, Mircea Eliade.*

In *Comments on the Legend of Master Manole*[1], Mircea Eliade expressed his perplexity regarding Negru Vodă's apparently bad choice of an ill-fated place for his monastery. In fact, the mythological beliefs all over the world require that the location of a new building be an auspicious one, its beneficial character being usually checked and validated through specific magical practices. In Ukraine by instance, small amounts of bread and water are left on the spot; their staying intact until the next day suggests the propitious quality of the desired place. Since it is "untouched" and "unhaunted", the place is believed to be a well-chosen one. However, an "untouched" site does not necessarily make up a proof in favour of a good choice. The Maravi tribe (east of Nyasa Lake) arrived at the opposite conclusion. With the prospect of a new building in mind, they used to consult the genius of the place which commonly resided near a tree. Its attitude was tested by scattering some flour at the bottom of the tree and watching the area within twenty-four hours. If the flour remained intact until the end of this interval, the genius definitely rejected their choice, and so they had to search for another location. In India, the master mason used to drive the first pile into the ground in such a way to strike through the head of the Cosmic Serpent – the underground snake that bears the world on its back. This ritual is sustained on the one hand by

* **The present article is supported by the Sectoral Operational Programme Human Resources Development (SOP HRD), financed from the European Social Fund and by the Romanian Government under the contract number POSDRU/89/1.5/S/56815. The article is based on a paper delivered at the International Conference „Unity and Diversity in Knowledge Society", organized by the Iasi Branch of the Romanian Academy on September 27–30, 2012.**

* **Ph.D, researcher 3rd grade, - Romanian Academy, Iaşi.**

[1] Mircea Eliade, *Comentarii la legenda Meşterului Manole* [Comments on the Legend of Master Manole], Bucharest, Humanitas Publishing House, 2004, pp. 67 sqq.

the belief that every act of building must begin at the centre of the world, and on the other hand by the necessity to avoid the earthquakes caused by the possible movements of the big serpent[2]. But whatever reasoning is involved in the choice, the location of a new building must be in any circumstances free of the suspicion of an ominous past.

In what concerns the Ballad of the Argesh Monastery, however, as Mircea Eliade noticed, things turned the opposite way. Negru Vodă seems to obstinately search for the wicked place:

"'Worthy shepherd lad, / Piping *doinas*, sad, / Up the Argesh where / You drove your flocks there, / Down the Argesh, too, / Where flocks went with you— / Have you, wandering there, / Noticed anywhere / An unfinished wall / Ruined, shunned by all, / Near a hazel copse / On a green hill's slopes?'/ 'Yes, my lord, it's true; / I saw, passing through, / An unfinished wall / Ruined, shunned by all. / Soon as my dogs see it, / They draw back and flee it, / Bark at it with dread, / Howl as at the dead'"[3].

"It's rather obscure this voivode's quest for the 'abandoned and unfinished' wall. Did he want by all means to continue the effort of a predecessor about whom the ballad does not give a clue? Would his chance of success seem more guaranteed if he resumed an interrupted action, if he tried to incorporate his work in a certain tradition?" – Eliade wrote[4]. The voivode's choice is disconcerting indeed. According to the Romanian traditional mentality, to build a house on the ruins of another structure is equally unsafe. There is something terribly ghastly about an abandoned building. It implies a miscarried creation, unfinished or devastated because of either a depraved behaviour (murder, suicide, forbidden love, etc.), or a malicious intervention of some sort. But whatever the case might be, the abandoned wall points to a *non-livable* space that did not succeed to become a *kosmos* or was turned back to a chaotic state in sinister circumstances.

Regarding the ruined buildings, the Romanian traditional beliefs are as clearly expressed as anywhere else: the abandoned houses are haunted places, left at the disposal of mischievous spirits. Any abandoned human edifice – which may be a mill, a well, a bridge, a road, etc. – is in a similar poor condition. Ernest Bernea provided a classification of bad places according to the Romanian traditional mentality, and the abandoned places are included in the collection[5]. Furthermore, we can learn from Tudor Pamfile that not only that such places must be avoided by all means – even by the traveler's eyes! –, but also that they are not allowed to be moved or destroyed in order not to let the malicious spirits,

---

[2] *See* „Alegerea locului şi consacrarea «Centrului»" [Choosing the Place and Consecrating the "Centre"] in Mircea Eliade, *Comentarii la legenda Meşterului Manole* [Comments on the Legend of Master Manole], ed. cit.

[3] "Master Builder Manole", in W.D. Snodgrass, *Selected Translations*, Rochester, NY, BOA Editions, Ltd., 1998, pp. 76–77 (translated with Ioan and Kitty Popa and with Radu Lupan).

[4] Mircea Eliade, *Comentarii la legenda Meşterului Manole* [Comments on the Legend of Master Manole], ed. cit., p. 68.

[5] Ernest Bernea, *Spaţiu, timp şi cauzalitate la poporul român* [Space, Time and Causality at the Romanian People], Bucharest, Humanitas Publishing House, 2005, pp. 23 sqq.

deprived of their dwelling, to escape in the human territory[6]. We can also find in Elena Niculiţă-Voronca's anthology (*The Customs and Beliefs of the Romanian People*) a series of testimonies according to which the abandoned place are liable to become the residence of evil spirits. As an instance, on the Ţeţin Mountain near Cernăuţi there are the ruins of an old fortress which is believed to have turned into a residence of the demons. From the same anthology we learn that the act of summoning the devil is preferably done in abandoned places[7]. Following the same popular conviction, Marcel Olinescu (*Romanian Mythology*) recorded the idea that the devils used to meet in abandoned houses and especially in abandoned churches. If people happen to abandon a church, it is immediately taken into possession by devil. The abandoned buildings and churches are also the places where poltergeists, vampires and ghosts use to gather[8]. An abandoned place tells a story of neglect, unconcern and carelessness. There is something worrying about it. It is a no man's land which lies outside the human order. It is not a place strictly speaking, since a place is not mere a spot in the Universe; it suggests regulation and order. The abandoned place is a non-place which can become at any time the container of anything that is not within human order.

In short, instead of looking for a *eutopos*, the Romanian voivode is looking for a *dystopos*. Mircea Eliade noticed the inconsistency of this action with the mythical mentality at large (no mention of the Romanian tradition, though) and subsequently left the subject in favour of some other motives such as the consecrating of the centre and the sacrifice. Since he gave up finding an explanation for the voivode's obstinate search of a wicked place, he must have found none to fit the general picture of his well-known theory of ritual reiteration. According to him, any ritual is endowed with meaning only as far as it reiterates a primordial act. A cosmogonic ritual repeats therefore the very act of creating the world. It is, as he put it, a "microcosmic" imitation of creation[9]. The Ballad of Master Builder Manole, being „itself a folkloric result of a cosmogonic type"[10], does not make an exception. If we consider the Ballad of Argesh Monastery as being derived from a construction ritual and if we consent at the same time to Eliade's idea that any construction ritual imitates the primordial act of Creation, a series of uncomfortable questions arise. Would God, for instance, or any primordial deity – assuming that we deal with a creationist model of *Deus Faber* type – have chosen a precarious place for the creation? Even in *Enuma Elish*,

---

[6] *See* Tudor Pamfile, *Mitologia poporului român* [The Mythology of the Romanian People], edited and Foreword by I. Oprişan, Bucharest, Vestala Publishing House, 2006, p. 656.

[7] Marcel Olinescu, *Mitologie românească* [Romanian Mythology], Bucharest, Saeculum I.O., 2001, pp. 363, 365.

[8] Elena Niculiţă-Voronca, *Datinele şi credinţele poporului român adunate şi aşezate în ordine mitologică* [The Customs and Beliefs of the Romanian People], Volume 1, edited by Victor Durnea, with an Introduction by Lucia Berdan, Iaşi, Polirom Publishing House, 1988, p. 403.

[9] Mircea Eliade, *Comentarii la legenda Meşterului Manole* [Comments on the Legend of Master Manole], ed. cit., p. 13; *see also* Mircea Eliade, *Tratat de istorie a religiilor* [Treatise on the History of Religions], with a Preface by Georges Dumézil and an author's Foreword, translated by Mariana Noica, Bucharest, Humanitas Publishing House, 1992, Chapter „Morfologia şi funcţia miturilor" [The Morphology and Function of Myths].

[10] Mircea Eliade, *Comentarii la legenda Meşterului Manole* [Comments on the Legend of Master Manole], ed. cit., p. 53; *see also* pp. 71, 86, 98.

where the body of the fierce primordial mother goddess is dismembered and used in the construction of an ordered world, Marduk's creation would not have been possible until the old state was destroyed[11].

The interpretation delivered by Eliade from the general view of the construction rituals shows a manifest universalist standpoint. As he confessed himself, „In the present *Commentaries* I did not have in mind the 'people's' interpretation to the legend – because we don't have genuine documents on this matter, and even if we had had, they would not have been of too much help since we cannot tell what people believed two hundred or one thousand years ago. In the absence of the genuine testimonies of the creators and listeners of the legend, we content ourselves to consider the legend in itself, as a self-sufficient spiritual universe"[12].

My basic assumption is that the mythological motifs entail not only a universal dimension, but also a local one. They are the result not only of a so-called generally human imaginary – as archetypal motifs –, but also of the imaginary of the specific culture that deals with them. Let us admit, therefore, that the abandoned wall motif could be made coherent by resorting to the *Romanian specific tradition*, and try to search for a reliable explanation in the *local myths of creation*. The solution is more likely to be found here rather than in any other place, especially as the discussed motif shows only in the Romanian version of the ballad[13].

The mythological explanation I suggest (which I regard as being complementary, rather than substitutable to other kinds of explanations) is resorting to the Romanian legends of creation in which the actions of two cosmocrats interfere: Fârtatul and Nefârtatul (roughly, The Fellow and the Non-Fellow). The first is God the Creator, the second is Devil the Trickster. In most of the cosmogonic Romanian legends, God didn't create the world by himself. The almost all of them show him in partnership with the Devil, either with or without his will. However, the latter is far to be depicted as a supreme negative principle, the terrifying cosmic evil that threatens the universal order of creation[14]. He is rather God's accessory; a sort of a stupid and lazy assistant employed in the dirtiest jobs or whatever task that doesn't require intelligence – as in the diving legends, where the trickster is sent to bring earth from the depths of primordial waters[15]:

---

[11] When he was acknowledged as a chief of gods, Marduk, the owner of the thunderbolt, is empowered as both Destroyer and Creator; *see Enuma Elish*, The Fourth Tablet (*Enuma Elish. The Seven Tablets of the History of Creation*, translated by L.W. King, London, 1902).

[12] Mircea Eliade, *Comentarii la legenda Meşterului Manole* [Comments on the Legend of Master Manole], ed. cit., p. 119.

[13] According to Eliade's research, the Romanian version of the ballad is the only one that begins with the choosing of the place. „It [the Romanian ballad] starts with a ritual, i.e. the searching for the place on which the monastery will be erected, while all the other versions start with a failed human effort (the collapsing of walls)"; *Comentarii la legenda Meşterului Manole* [Comments on the Legend of Master Manole], ed. cit., p. 33.

[14] *See* Elena Niculiţă-Voronca, *Datinele şi credinţele poporului român adunate şi aşezate în ordine mitologică* [The Customs and Beliefs of the Romanian People], Volume 1, ed. cit., Chapter „Facerea lumii" [The Making of the World].

[15] *Ibidem*, pp. 23–24.

"At the beginning there was nothing but water there and everywhere. God and the Devil were the only ones to walk over the waters. And so they came across each other. 'What's your name?' – God asked. 'Non-Fellow', answered the Devil. 'What's yours?' the Devil asked. 'My name is Fellow', God said. 'Let us make land', said God. 'Let's', Non-Fellow said. 'Go down in the sea and take some earth in my name', said God. Non-Fellow went down and said: 'I'm taking earth in my name, not yours'. When he drew his hand out of the water, there was nothing left in it; the earth had been completely vanished in the water. 'See? You took it in your name, not mine, said God. Go down again.' Non-Fellow went down and said as before: 'I'm taking it in my name, not yours". But God created a skin of ice on the surface, and until the other managed to break it, the earth had vanished again. 'See? You still did not do as I told you!' First, the Devil had water up to his knees, then up to his waist, and now up to his neck. 'Be careful, said God, you are going to drown yourself.' The Devil dived but still did not do as God told him. Again God made ice at the surface. When the Devil went up and saw that there was no earth in his hand and, besides, he was going to drown himself, he said: 'Well, let it be in his name, too'. When he said this, a bit of earth remained under his nails, and this is all he carried when he went up. God grasped a straw and picked his nails, and then he molded a pat of soil out of it. He breathed into it and tapped it with his hand. When he opened his hands, there was a bed of land. He put the pat on the water: 'Now we have land to sleep on tonight', said God"[16].

The Devil is in a permanent frenzy of creation, but his anarchical and reasonless approach hinders him from completing his work. He is not able to finish anything he starts. His unfinished or abandoned work is each time took over by God, who finishes and endows it with meaning and purpose. According to some legends, even the man's creation was the initiative of the Devil:

"As to the man, the Devil made him from clay and started to talk to him; but the clay did not answer. God, who was wandering by, asked him what was that he was doing. 'Why, this is something I made, but he does not talk!' 'Give it to me!' 'Take it, it's yours!' God breathed holy spirit into him, and man started to talk"[17].

The Devil built the house, but he made no windows for it and unsuccessfully tried to bring the light inside with the help of a bag. It was also him that invented the cart, but he made it in the house and did not manage to bring it outside. He constructed the mill as well, except that it was not fit for grinding since he didn't make the device that poured the grains between the stones. He also made the plough, but he could not use it because he did not know how to yoke the oxen. The fiddle was also crafted by him, but it could not be played because it had no sound holes[18]. "He made everything, except that he did not know how to complete things."[19] The two authors make up a complementary couple: God lacks raw material, while the Trickster lacks spirit. God may create by himself the light, the fire and whatever ethereal, but he cannot create the world in the absence of that handful of earth he obtained with the help of the Trickster. On the other hand, the

[16] *Ibidem*, p. 23.
[17] *Ibidem*, p. 26.
[18] *Ibidem*, pp. 25, 26, 27.
[19] *Ibidem*, p. 27.

Devil has initiative; but, like the raw nature, he works chaotically, at random, in a lawless manner, since he lacks intelligence, cognition, order and purpose. Unlike God – the genuine creator –, the Devil is rather an artisan; he creates from pre-existing materials.

In all of the situations described above – and in others as well – God willingly assumes the unfinished work of the Devil, but only *after* he persuaded the latter to hand them over to him, that is *after he took possession of them*. In order to complete the work of the other, God firstly makes sure that it is *his*. This action of taking into possession of the unfinished object is more than a simple detail in the Romanian legends. Assumed and finished by God, "the work of the Devil" changes its status into "the work of God".

Perhaps there is more than a simple coincidence in the similarity between God's and Negru Vodă's actions. The latter acted much in the same way as God. He voluntarily assumed the "abandoned unfinished wall": 'Here's *my* wall!' – pronounced the voivode, and his decision had the character of a genuine act of taking into possession. Like the work of Devil, that is redeemed and freed of all its negative connotations in the very moment in which God assumes it, the wicked place is converted into a propitious one by the mere determination of Negru Vodă to appropriate it. By taking into possession the ill-omened place, Lord Negru Vodă, the founder of Wallachia, reaffirms by ritual means the action of taking into possession carried out by the first Lord, the founder of the world, which, according to the Romanian mythology, used to appropriate the unfinished work of the Devil and to *complete* it, that is, to bring it to completeness. It is only such identification with the founder of the world that allows the founder voivode to wish for a perfect edifice and explains at the same time the sacrificial act in the end of the ballad. Mircea Eliade made an interesting observation in what concerns man's relation to its own creation. Though he incessantly strives to perfection, man is frightened by the work that comes of his own hands. Man's work ought not to be perfect, since the perfection is the exclusive privilege of God. As a result, a perfect human work entails the death of the creator, because man can create something perfect only at the cost of his life. The fear of perfection (which Eliade relates to the fear of death) is what sometimes made the masons to deliberately leave a flaw in their work, so as not to say that it is completed. As a result of the same fear, the Romanian popular art objects are never "finished": "a new adornment can be added, they can be appended, adjusted, completed"[20]. However, Negru Vodă's construction is not a building of a common kind; it is a place of worship – another aspect in which the Romanian version of the ballad differs from all the neighbouring ones[21]. A church is a small-scale *imago mundi*. The position Negru Vodă identifies with is that of the creator of the entire world, thus the powers of the latter become his own powers. Assuming God's attitude towards the unfinished work, Negru Vodă assumed also his quality as the sole holder of perfection.

[20] Mircea Eliade, *Comentarii la legenda Meşterului Manole* [Comments on the Legend of Master Manole], ed. cit., pp. 43–44.

[21] *Cf.* Lucian Blaga, *Spaţiul mioritic* [Mioritic Space], in *Trilogia culturii* [Trilogy of Culture], Foreword by Dumitru Ghişe, Bucharest, World Literature Publishing House, 1969, pp. 177–178.

A mythological motif can be construed by resorting not only to some universal patterns, but also to the specific culture that employs it. While remaining inside Mircea Eliade's framework, we may admit at the same time, as I tried to show here, that the voivode's choice might be seen as a reiteration of the primordial act of creation in its Romanian version.

REFERENCES

Bernea, Ernest, (2005), *Spaţiu, timp şi cauzalitate la poporul român* [Space, Time and Causality at the Romanian People], Bucharest, Humanitas Publishing House.

Blaga, Lucian, (1969), *Spaţiul mioritic* [Mioritic Space], in *Trilogia culturii* [Trilogy of Culture], Foreword by Dumitru Ghişe, Bucharest, World Literature Publishing House.

Eliade, Mircea, (2004), *Comentarii la legenda Meşterului Manole* [Comments on the Legend of Master Manole], Bucharest, Humanitas Publishing House.

Eliade, Mircea, (1992), *Tratat de istorie a religiilor* [Treatise on the History of Religions], with a Preface by Georges Dumézil and an author's Foreword, translated by Mariana Noica, Bucharest, Humanitas Publishing House.

Enuma Elish, (1902), *The Seven Tablets of the History of Creation*, translated by L.W. King, London.

Niculiţă-Voronca, Elena, (1988), *Datinele şi credinţele poporului român adunate şi aşezate în ordine mitologică* [The Customs and Beliefs of the Romanian People], Volume 1, edited by Victor Durnea, with an Introduction by Lucia Berdan, Iaşi, Polirom Publishing House.

Olinescu, Marcel, *Mitologie românească* [Romanian Mythology], Bucharest, Saeculum I.O. Publishing House.

Pamfile, Tudor, *Mitologia poporului român* [The Mythology of the Romanian People], edited and Foreword by I. Oprişan, Bucharest, Vestala Publishing House.

Snodgrass, W.D., *Selected Translations*, Rochester, NY, BOA Editions, Ltd., 1998 (translated with Ioan and Kitty Popa and with Radu Lupan).

CUSTOM, JUDICIAL DECISIONS AND DOCTRINE – SOURCES OF INTERNATIONAL PROTECTION OF HUMAN RIGHTS

Titus Corlăţean[*]

titus.corlatean@mae.ro

Abstract: *The sources of international human rights law are legal means to express the rules of this branch of law.*

An important role is played, in the contemporary period, in addition to international treaties, by custom, judicial decisions and doctrine in the protection of fundamental rights and freedoms. Promoting the understanding of the development in today's international human rights protection through this means represents the essence of the present article.

Keywords: *sources of international law, human rights, custom, judicial decisions, doctrine.*

1. Sources of international human rights law- concept

In the philosophy of law the term "sources" of law means the specific methods whereby the content of certain rules of law is expressed. The classic doctrine of the international law made a distinction between **material** and **formal sources**.

The concept of **material sources** means the social conditions leading to the emergence of certain rules of law, such as the public opinion, collective consciousness, social solidarity, various interdependencies between the subjects of the international relations etc.

The **formal sources** of the international law represent the legal methods whereby the rules of law of this branch of law are expressed.

"Mutatis mutandis", such definitions also apply to the sources of the international human rights law.

The doctrine provides more **classifications of the law sources**. **One of them**, pertaining to the general theory of law, identifies **three groups of law sources** in all legal systems: a **conventional** source (agreement or treaty), **spontaneous** sources (customs, general principles of law) and **authoritative** sources (laws, regulations).

In recent years, the writers of specialized literature have placed a special emphasis on the role of the international treaty as a source of the international human rights law. It is our intention to provide below an overview of the importance of the custom, judicial decisions and doctrine as main sources of law in the mentioned field.

[*] **Lecturer Ph.D, - „Dimitrie Cantemir" Christian University, Bucharest.**

2. Custom-based international sources in the field of human rights

The custom is the oldest source of both international law and international human rights law.

In fact, until the beginning of the twentieth century, the international law consisted, to a great extent, of customary rules[1].

All legal systems have generally defined the custom as an unwritten rule which is binding for the actors of the legal relations.

The authors of the doctrine have agreed to emphasize the distinction between "custom" and "usage". Usage represents only a stage of the custom[2], without actually defining a certain rule of conduct leading to the conclusion that a legal obligation is involved[3]. Therefore "custom begins where usage ends"[4].

A widely accepted definition of the international custom, also applicable in the field of human rights protection, refers to a general practice, used over a relatively long period of time, constant and uniform, deemed by the subjects of international law to express a rule of conduct with binding legal force.

The customary rule is therefore the result of a series of acts constituting precedents. Consequently, the **two constitutive elements of the custom** are: the **material element**, defined by the recurrence of certain acts over a longer period of time and the **psychological** or **subjective element**, expressed by the belief that such acts correspond to the fulfilment of a legal obligation ("*opinio juris sive necessitatis*").

Prior to the adoption of the Universal Declaration of Human Rights and, subsequently, of the relevant international treaties, the international custom in the field of human rights has been the main source of international law, especially as regards the prohibition of slavery, genocide, abolition of apartheid, prohibition of racial discrimination, forced labour, torture etc. Therefore, the international custom has often brought about the process of treaties codification. Even though at present, due to the proliferation of the international treaties in the field, the role of the international custom has lessened, it preserves its importance. Sometimes rules contained in certain treaties might be accepted not only by the signatory States but also by third States parties, whose conduct is therefore based not on the written rule of the treaties they did not sign, but on the custom.

Moreover, certain declaration texts, documents with high political value adopted by certain international organizations (UN, Council of Europe etc.) might influence the subjects of international law to adopt certain rules of conduct resulting in the emergence of new international customs.

3. Principles of international law

Article 38 paragraph 1 indent c) of Statute of the International Court of

---

[1] J.G. Starke, *Introduction to International Law,* Butterworths, London, Tenth edition, 1989, page 35

[2] J.G. Starke, work cited, page 36

[3] Paul Reuter**,** *Droit international public*, *1ère éd.,* PUF, Paris, 1958, page 109

[4] J.G. Starke, work cited, page 36

Justice (CIJ) refers to" the general principles of law recognized by civilized nations" as the third source of international law, apart from the custom or treaty.

The concept of "general principles of law" refers to the entire body of general rules underlying any legal system, either national or international.

On the other hand, the Charter of the United Nations lists in Art. 2 seven principles underlying the organization and operation of the international relations system after the Second World War, principles governing the actions of both UN and member states for the attainment of the purposes set forth in the very first article of the Charter. Among these principles the following are mentioned: settlement of international disputes by peaceful means, promotion of international peace and security, refrainment from the threat or use of force etc., principles that are applicable on a wider scale also in the interest of protecting and guaranteeing the fundamental human rights and liberties.

The above mentioned principles are used in order to attain the purposes set forth in Article 1 of the Charter, among which we place a special emphasis on "promoting and encouraging respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language, or religion".

Recognition of the general principles of law as a source of international law generally fills certain voids of this law. However, they are not merely complementary to the treaty and custom but constitute independent rules of law.

This opinion has been confirmed by the practice of the international arbitration courts even prior to the establishment of the International Court of Justice and, subsequently, by the case-law of the ICJ itself which grounded numerous of its judgments, among others, on the general principles of law.

The principles of the international law, which constitute a specific expression of the substance of the general principles of law at the level of international relations, had their authority validated and were enforced by means of the international judge and customary or conventional mechanisms[5]. The principle "pacta sunt servanda" is illustrative in this respect.

From the body of the international law principles, the principles of peremptory norms - „*jus cogens*"- set themselves apart, being recognized and accepted by the international community as a whole, important to the international public order and from which no derogation is permitted. Among these principles a few have constantly been mentioned by the doctrine: prohibition to threat or use force, (art. 2 par. 4 of UN Charter), „pacta sunt servanda" (art. 26 of the Vienna Convention on the Law of Treaties), fundamental rights to life and human dignity (prohibition of genocide, slavery, racial discrimination, observance of the rules of the international humanitarian law)[6] etc.

If an action or agreement conflicts with certain principles and rules of *jus cogens* it will be deemed void *ab initio*.

The peremptory nature of the rules of conduct to be adopted by the subjects of international law, that take into consideration such

[5] Paul Reuter, work cited, page 118-119
[6] J.G. Starke, work cited, page 56

principles of international law, defines the peremptory norm as a source of international law, also in the field of the international protection of human rights. This is all the more obvious as the judicial decisions of the European Court of Human Rights, for instance, have often been grounded on these international law principles or due to the fact that they have been transposed either in the codified texts of specialized international treaties or in contemporary international customs.

4. Judicial decisions-based international sources in the field of human rights

Article 38 paragraph 1 (d) of the Statute of the International Court of Justice (ICJ) refers to "the judicial decisions (...) as subsidiary means for the determination of rules of law".

In the classic doctrine of the international law it is deemed that judges do not make rules of international law but only apply such rules. The same doctrine mentioned Article 59 of the Court Statute in order to emphasize that the decisions of the ICJ "have no binding force except between the parties and in respect of that particular case".

The evolutions in the last decades have shown a qualitative change in this view, in the sense that **the decisions of the international courts have gained an increasingly important role in the development of the international law**, also due to the value of the precedent created, the authority and the restrictive nature of such decisions conferring them a larger importance than they commonly enjoy *stricto-sensu*.

This fact has been well demonstrated in the specific field of human rights.

At present, the decisions of the international courts specialized in this field represent an important and rich source for the international protection, especially for the European Court of Human Rights. The decisions of the specialized international courts generate binding conducts of the states, related rights and obligation not only between the parties to the dispute (so-called ***res judicata***), but also in the relations with third parties, including by way of precedent (***res interpretata***). The judicial decisions of the European Court of Human Rights are relevant in this respect as in ever increasing number of cases the Court decisions are binding also for other States parties to the European Convention of Human Rights than the state in dispute.

The current international doctrine of human rights, including the Romanian one[7], provides a wider meaning to the term "judicial decisions" in the matter of human rights protection, as source of international law in this field.

This takes into account the fact that a great number of international treaties in this field, in addition to the actual stipulation of the fundamental rights and liberties protected, also contain procedural provisions for the protection of such rights and create specialized bodies meant to carry out of such competencies, thus

[7] Corneliu-Liviu Popescu, *„International protection of human rights",* All Beck, 2000, page 30.

generating case-law (in the wider sense).

The term "judicial decisions" as a source of law is understood as defining **both the binding judgments, namely the judicial decisions of the judicial institutions** (Courts of Justice) such as the European Courts of Human Rights, Inter-American court of Human Rights, African Court on Human and Peoples' Rights, **and non-judicial decisions** rendered by various bodies created under specialized international treaties which do not meet the requirements of independence and impartiality specific to the Courts of Justice (the former European Commission of Human Rights that used to function prior to the Protocol No. 11 to the European Convention of Human Rights, the Committee of Human Rights created under the International Covenant on Civil and Political Rights etc.).

5. Doctrine-based international sources in the field of human rights

Article 38 paragraph 1 indent d) of the ICJ Statute includes "the teachings of the most highly qualified publicists" among the subsidiary means for the determination of rules of law.

The science of international law deals with identification, systematization and evolution of the contents of various rules and institutions, thus enjoying authority in the process of enforcing the international law.

The doctrine comprises both contributions of certain world renowned specialists and works of certain international scientific conferences or forums that have gained authority and prestige over the time.

An important dimension of the doctrine is provided especially by the studies, articles published by the judges of the courts of justice, including judges of the courts specialized in international protection of human rights, as well as by the separate opinions or individual opinions of certain international judges, as it is the case of the judges from the European Court of Human Rights. Such minority opinions opposed to the view of the majority of judges rendering the judgment of the Court in a dispute may constitute, due to the rationale provided, an actual contribution to the doctrine enrichment[8].

Traditionally, the case-law of the international courts used the doctrine as evidence that a certain rule existed and not as a law-creating factor. It has been defined as a subsidiary means meant to influence the judge in rendering a judgment.

Moreover, the doctrine of both great European authors in the field of human rights and judges from the European Court of Human Rights, even as separate or individual opinions, has prefigured and urged the supplementary codification process in relation to the European Convention of Human Rights, and has contributed to the adoption of certain amending or facultative protocols to the Convention, such as Protocols No. 11, 12, 13 and 14 to the European Convention.

Lastly, the specialized literature deems[9] that the opinions of the jurists and

[8] Raluca Miga-Beşteliu, *International Public Law, volume I,* C.H. Beck, Bucharest, 2010.
[9] J.G. Starke, work cited, page 51.

renowned publicists may have evidentiary value not only in respect of the existing and functioning customary rules but especially in respect of those to be created.

In conclusion, it may be asserted that in the international law the doctrine has a double role as, on the one hand, due to its scientific analyzes, it is able to contribute significantly to the development of the international law and, on the other hand, it may also have a certain role, obviously a narrower one, among the sources of the international law, including the international law of human rights.

6. Final remarks

As a **general conclusion**, in today's international human rights law the custom, the judicial decisions and the doctrine represent active and dynamic sources of law, generating new dimensions and new norms as a result of the developments within these important institutions of public international law.

REFERENCES

Brownlie, Ian, (1990), *Principles of public international law,* Fourth edition, Clarendon Press Oxford, New York.

Combacau, Jean, Sur Serge, (2010), *Droit international public,* 9e édition, Montchrestien, Paris.

Harris, O' Boyle & Warbrick, (2009), *Law of the European Convention of Human Rights,* Oxford University Press, Second Edition.

Miga-Beşteliu, Raluca, (2010), *International Public Law,* volume I, C.H. Beck, Bucharest.

Popescu, Corneliu-Liviu, (2000), *„International protection of human rights",* All Beck.

Rennucci, Jean-Francois, (2001), *Droit européen des droits de l'homme,* LDGJ, Paris.

Reuter, Paul, (1958), *Droit international public,* 1ère éd., PUF, Paris.

Shaw, Malcom, (2010), *Cambridge University Press,* Sixth edition, Third printing.

Starke, J.G., (1989), *Introduction to International Law,* Butterworths, London, Tenth edition.

INDUSTRIAL AGGLOMERATION FACING THE ONGOING ECONOMIC CRISIS: SOME ASPECTS

Ivano Dileo*

ivdileo@libero.it

Abstract: *Spatial firm's agglomeration didn't seem to explain competitive advantages of localisations. Globalisation and the recent economic crisis underline the linkages between cyclical and structural shocks strengthening the idea of no stable knowledge economies being exposed to technological changes and new market selections.*

This heterogeneity would suggest to analyze the different type of factors involved, both tangible (capital and labour) and the intangible ones (information, ideas and financial flows), as well as the mix of other microeconomics (risk propensity) and macroeconomic elements (governance capacity of the territory and production processes).

A new competitiveness model of SME's will have to move towards new forms of inter-industrial relations maybe closer to the characteristics of the supply chain rather than an industrial district. This is in order to preserve local areas from demand and supply shocks. So, a new paradigm in a new "mentality" could be the access key which will carry forward us towards a new global vision of the organization of production at the local level.

Keywords: *Industrial agglomeration, globalisation, economic crisis.*

1. Introduction

Lately, the economic advantages of proximity seem to be less related to agglomeration. So, networks among economic actors are dispersed over space.

Nowadays, spatial firm's agglomeration didn't ever seem to explain competitive advantages of localisations. Globalisation and the recent economic crisis underline the linkages between cyclical and structural shocks enhancing the idea of no stable knowledge economies being exposed to technological changes and new market selections.

So, these events are making in discussion the economic advantages of the industrial agglomerations, mainly the industrial districts. Then, it cannot be an unique model of agglomeration or a set of rules for agglomeration, simply because market selection does not occur according to *stylized facts*, but according to the economic advantage and territorial qualities.

Then, can the economic externalities be considered important variables for organizing production processes at territorial level? It seems that the

* **Professor of National Accounting, Ph.D in "Economics and Demography of Large Geographical Areas", Department of Political Sciences, University of Bari "Aldo Moro", P.zza C. Battisti, 70121, Bari (IT).**

geographical model of industrial agglomerations should be re-organized because agglomerations rely on institutional factors, which aggregate individuals decisions, whilst economic networks arise from a collective decision developing a private institution as well[1].

2. Literature background: some aspects

Several models and approaches tried to explain why economic activities tend to localize within some regions, mostly urban. We mainly refer to the cumulative causation theories[2], Poles of Growth[3], centre-periphery model[4], New Economic Geography[5] which showed a hierarchic vision of economic space considering rural areas depending from the urban ones, i.e. where the industrial production usually concentrates.

This last theoretical approach emphasizes the interaction between transport costs and firm-level scale economies as a source of agglomeration and the role of regional localization as well as agglomeration of economic activities in terms of cumulative economic process[6] which demonstrates that labour surplus tries to migrate towards different branches within regions characterized by increasing returns and variety in industrial goods supply[7]. It also focuses on forward and backward trade linkages as causes of observed spatial concentration of economic activity and tried to demonstrate that firms will mostly prefer to localize their activities within wider markets because able to generate cumulative mechanisms and processes. Of course, the question[8] why economic activity is not evenly distributed across space[9] is older[10]. In the context of economic growth theory there has also been interest in the fact that economic subjects can benefit from each others' mutual proximity[11].

Due to the global structural changes, the hierarchic organization of the space has been abandoned for promoting specific characteristics of the local context.

In fact, other approaches emphasized the dynamics of industrial districts and

---

[1] Johansson B., Quigley J.M., *Agglomeration and networks in spatial economies*, Papers in Regional Sciences, 83, 2004.

[2] Myrdal G., *Economic Theory and Underdeveloped Regions*, (London, Duckworth), 1957.

[3] Perroux F., *Note sur la Notion de 'Pôle de Croissance'*, in "Cahiers de l'Institut de science économique appliquée", série D, n. 8, 1955.

[4] Friedmann, J., *A Case Study of Venezuela*, (Cambridge Regional Development Policy: Mass.: MIT Press), 1966.

[5] Krugman P., *Increasing Returns and Economic Geography,* Journal of Political Economy, Vol. 99, n. 31, pp. 483-499, 1991.

[6] Myrdal, op.cit..

[7]Krugman P., *First Nature, Second Nature and Metropolitan Location*, in Journal of Regional Science, Vol. 33, n. 2, p. 129-134, 1993.

[8] Christaller W., *Die Zentralen Orte in Suddeutschland*, Fischer, Jena, traduzione di BASKIN C. W., 1966, Central Places in Southern Germany, (Prentice Hall, Englewood Cliffs, N.J), 1933.

[9] Von Thunen J., *Der Isolierte Staat in Beziehung auf Landwirtschaft und Nationalökonomie*, Teil 1., traduzione in Inglese di WARTENBERG C. *von Thünen's Isolated State* (Pergamon Press), Oxford, 1826.

[10] Losch A., *The Economics of Location* (New Haven), CT, 1954.

11 Romer P.M., *Endogenous Technological Change*, Journal of Political Economy (University of Chicago Press), vol. 98(5), pages S71-102, October, 1990.

the labour systems mostly based on SME's[12] and highlighted the local growth dimension[13] in which economic, social and cultural elements interact and play a crucial role in defining development models.

Successfully, other approaches tried to explain the spreading agglomeration advantages distinguishing between exogenous and endogenous factors.

Agglomeration leads to positive external effects which increase productivity and attracts more employment which in turn leads to further agglomeration. Among these dynamic endogenous factors, the literature distinguishes between so called Jacobs[14] and MAR externalities[15]. Both externalities explain how agglomeration causes positive effects on productivity and employment growth[16]. They differ in the specific form of agglomeration that has to exist for them to become effective[17].

Nowadays, economic literature still considers industrial agglomeration as a kind of spatial aggregation of economic and human activities[18] but there's a small amount of theoretical and applied speculations which investigate on the *causes of agglomeration*[19].

The ongoing economic crisis is accentuating these problems and at the same time is stimulating the literature for investigating the impact of the crisis on the different form of agglomerations at regional and sub-regional level as well.

Unfortunately, although empirical studies are providing detailed approached, applied researches are generally limited to the analysis of case studies which cannot give a unitary support both at theoretical and applied level[20].

---

[12] Becattini G., Rullani E., *Sistema Locale e Mercato Globale*, in Economia e politica industriale, n. 80, 1993.

[13] Sforzi F., *Il Sistema Locale come Unità d'Analisi Integrata del Territorio*, in E. Gori, E. Giovannini e N. Batic (a cura di), (Verso i Censimenti del 2000, Atti del Convegno della Società Italiana di Statistica, Udine), 1999.

[14] Jacobs J., *The Economy of Cities*, (Random House, New York), 1969.

15 Marshall A., *Industry and Trade* (MacMillan, Londra e New York), 1920; Arrow K.L., *Localised Technological Change* (Routledge, London), 1962; Romer P.M., *op.cit.*.

[16] Henderson V., ***Marshall's Economies*****,** NBER Working Papers 7358, National Bureau of Economic Research, Inc., 1999.

[17] Behrens K., Mion G., Ottaviano G.*, Industry Reallocation in a Globalizing Economy*, (CEPR Discussion Papers) n. 6049, 2007.

[18] Duranton G., Puga D., *Micro-Foundations of Urban Agglomeration Economies*, in Henderson, J.V., Thisse, J.-F. (Eds.), Handbook of Regional and Urban Economics, North-Holland, pp. 2063–2117, 2004; Rosenthal S., Strange W., *Geography, Industrial Organization, and Agglomeration*, in The Review of Economics and Statistics 85, 377–393, 2003; Glaeser E.L., Kerr W.R., *Local Industrial Conditions and Entrepreneurship: how Much of the Spatial Distribution Can We Explain?*, in *Journal of Economics & Management Strategy, Vol.18, Issue 3, pages 623–663, 2009;* Overman H.G., Puga D., *Labour Pooling as a Source of Agglomeration: an Empirical Investigation,* in Edward L. Glaeser (ed.), Agglomeration Economies (Chicago, IL: Chicago University Press), 2009; Monseny J.J., Lopèz R.M., Viladecans-Marsal E., *The Mechanism of Agglomeration: evidence from the Effect of Inter-Industry Relations on the Location of New Firms* (Universitat de Barcelona & Institut d'Economia de Barcelona), 2011.

[19] Puga D., T*he Magnitude and Causes of Agglomeration Economies*, in Journal of Regional Science, 50, 203-219, 2011.

[20] Puga, op. cit.; **Glaeser E.L., Gottlieb J.D., *The Wealth of Cities: agglomeration Economies and Spatial Equilibrium in the United States*,** in Journal of Economic Literature, 47(4), 983-1028, 2009.

3. Dynamics of the industrial agglomeration: what's changing?

The agglomeration of economic activities is a phenomenon too complex to be justified through territorial differences and natural advantages[21]. Its strong heterogeneity as well as the existence of multiple factors contribute to its complexity.

It's demonstrated that the impact of these factors changes according to the geographical area. As consequence, an industrial agglomeration cannot occur without limits, nor does it develop with same conditions.

Although we know there's a positive correlation between agglomeration and growth as well as among different kinds of agglomeration, global changes allow us to make some reflections.

- *Hp1: an agglomeration process is a no-static phenomenon: it changes over time and among geographical areas.*

The first effect produced by globalisation on industrial agglomerations is the growing international competition. In fact, in many industries the economic advantages arising from the physical proximity can be overcome through cost approaches for a typical life product cycle. So, the agglomeration may assume different forms.

One of these forms has produced an increasing exportation of final goods inside some industrial districts, which tend as consequence to enhance the existing internal relations.

Other forms increased goods' exportation of district suppliers which produce intermediate goods. Within industries in which technical knowledge has embedded within single components or capital equipments, the competition could be stronger.

Other form has occurred when the suppliers of final goods started to import components or equipments or required external outsourcing of production activities.

This means that the benefit arising from an industrial agglomeration could change over time. So, changes in agglomeration forms would contribute to slowly transform the models through intertemporal choices. The reason can be found in the different level of industrial development: i.e. when the industry is new, expanding or already consolidated and, therefore, depending on the stability of agglomeration over time.

- *Hp2: global changes produce causal relations no more predictable nor automatic.*

The analyses show that where the ideas quickly flow, more wealth is generated.

Opposite, an increasing density can also represent the effect of agglomeration economies, rather than the cause of an agglomeration. One of these forms caused production and employment growth in the short term but not accumulation which is an effect of medium-long run.

The case of the French "Poles of Growth" applied in the southern Italian

[21] De Groot Henri L.F., Martijn J.P., Smit J., *Cities and Growth: a Meta-Analysis* (paper presented at the MAER-Net Colloquium, Hendrix College USA, October 1-2), 2010.

regions showed that capital concentration immediately caused employment. At the same time, the abandonment of many small firms, due to the expectation of higher wages, created an "adverse business risk" and dismantled the production system. For example, for the Pole of Apulia region in the south of Italy (Bari for the mechanical production, Brindisi for petrochemicals, Taranto for steel industry), many firms specialized for household goods production, iron manufacturing and food processing, have been abandoned.

In fact, each firm were concentrated where the driving firms were located. In these terms, the pole of Apulia Region represents the case of *"an agglomeration without accumulation"*. Then, the accumulation has worked for the external localization areas, i.e. ones concerning management, design and marketing, according to the logic of exogenous development model.

Other experiences demonstrate that the agglomeration is an effect of an accumulation process as well as of different organizations of production. The case of industrial districts shows that the accumulation led to the subsequent agglomeration, i.e. *"accumulation occurred independently from an agglomeration process"*. In fact, capital, skilled labour, know-how and other intangible goods have been locally developed thanks to a historic transformation which determined the subsequent accumulation process. In this case, the agglomeration was born in terms of territorial organisation of production and adopted stratetegies to react against the selection of the global market. It was based on innovation and cohesion among firms, also in terms of competition-cooperation, according to the endogenous development model. These two examples show that the agglomeration has been totally insignificant for the long term growth and considered totally negative for the case of the pole of Apulia region.

So, the agglomeration may first represent the effect and then the cause of an accumulation process. Since capital and labour represent explicit costs and revenues, they can explain a stronger effect compared with the intangible goods as industrial districts show.

Hp3: human capital is more concentrated inside cities as well as associated to a higher productivity level.

Obviously, this last view is closely connected to the different dynamics of human capital it when moves from a region to other.

Nowadays, both dimensions of interregional and international migrations have different meanings in a context of global mobility.

In fact, interregional flows are based on a greater knowledge about the different use of the labour among origin regions and the destination ones. This knowledge can reduce dynamic uncertainty, i.e. the risk connected to the integration inside a less domestic location. Anyway, the agglomeration is an "effect" arising from a mix of territorial concentration of immobile factors or at least embedded within destination regions, and mobile factors -such as human capital- concentrated in regions with immovable factors too. These last are not able to employ oversupplied skilled workers if we compare this with employment perspectives in loco.

On the other side, international migrations, which are dictated by urgency

aims and survival, create “welfare expectations" able to overcome the connected direct and migration costs (transportation, social inclusion) and the connected indirect migration costs (risk, discrimination, underpayment). International migrants rarely have skilled human capital as well as the parameters which can stimulate an agglomeration process or enhance the pre-existing factors of a self-reinforcing process (as age and higher education). In this context, direct costs (charged to single individuals) are becoming less important than indirect ones (which, on the contrary, are to be paid by the community).

If the territorial concentration involves the agglomeration of skilled workers too, in medium-long term this agglomeration will become a cumulative process due to the market push especially through a coherent industrial policy[22]. On the other side, if an agglomeration occurs through not selected migrations based on the above mentioned factors, it may be an agglomeration without accumulation and, therefore, without growth.

Concluding, an agglomeration may be deemed as having a triple feature:

- the immediate representation of the effects of a cumulative process already started (powered and guided by spontaneous market mechanisms);
- the result of the interaction of specific factors changing from one territory to another;
- a process which can be activated and guided through "applied policies" for the accumulation over the medium-long term.

Therefore, the diversification of agglomeration processes in the global era shows a very differentiated fungibility in terms of accumulation and growth over time and the presence of multiple factors and their impacts change according to regions and cities.

This heterogeneity would suggest to analyze the different type of factors involved, both tangible (capital and labour), intangible ones (information, ideas and financial flows), as well as the mix of microeconomic (risk propensity) and macroeconomic tools (governance capacity of the territory and production processes).

4. The agglomeration facing the ongoing economic crisis

The recent economic shocks have deeply affected decisions and expectations of economic agents. Some analyses demonstrate the weakening of linkages among economic activities and agglomerations even if these events could require a long time to express the related effects.

These last dynamics induced a big variability and uncertainty on final consumer’s choices as well as on upstream and downstream production processes.

So, it seems that firms don’t tend so much to localize their production inside a specific territory. Probably, this last aspect will lead us to rethink on Marshallian model because a large part of these phenomena altered the structure of agglomerations transforming them from a territorial configuration –where the

[22] Bianchi P., Labory S., *Conceptualisations, Relationships and Trends between Innovation, Competitiveness and Development: industrial Policy beyond the Crisis, in* (EDWARD ELGAR PUBLISHER), *Innovation, Global Change and Territorial Resilience,* pp: 295-312, 2012.

total effect prevails compared with the single strategies of firms- towards a more verticalized system.

Then, the territorial competitiveness is not only based on dynamic externalities, i.e. on their total net effect, but also by policy makers decisions, especially when an economic system is not able to get efficient equilibria through self-organized mechanisms.

The ongoing economic crisis has strongly impacted on (Italian) firms including the districtual ones. The crisis can also weaken the survival of competitive firms, especially the suppliers of small and medium-sized firms, due to the reduction in the job's share outsourced by bigger firms. This factor (which was the main factor of the competitive advantage of the industrial district) will require economies of scale for innovating and completing the restructuring process inside a new competition context[23].

The analyses of structures and performances of italian industrial agglomerations during the past decade have shed light on the contraction of the sectoral specialization and the increasing weight of the larger firms within the district.

It also shows the gradual reduction of the productivity and other advantages which characterized firms more concentrated, particularly the smaller ones. Although Industrial districts remain an important element of the Italian production system, we don't know if they can overcome the "gap" of the small size of the big part of Italian firms.

The high degree of dependence on the economic externalities provides certain structural risks, especially when considering the existing disparity in the level of productivity of domestic and foreign companies. The crisis put a lot of firms out of the market and, at the same time, has created new opportunities for other firms which are able to acquire tangible and intangible assets as well as increase their integration inside supply chains extended abroad, through global alliances.

It seems that both distrectual and no distrectual firms have suffered in the same way the increasing costs imposed to the production system. Consequently, the production system has reacted by higher impacts in terms of factors remuneration costs on total production costs. Then, it created a growing gap in terms of total factor productivity compared with international competitors[24].

5. Conclusions

We are not able to show if an agglomeration process could be first considered as "cause" or "effect" of an accumulation process. An agglomeration process is path dependent as well as considered a phenomenon territorially heterogeneous and different. In fact, it is to be intended like a factor connected to the potential "expected risk" arising from different performances of the firms. These outcomes will depend on the specific production input able to attract and spread in long term the ability in reducing the congestion costs.

[23] Iuzzolino G., Menon C., *Le Agglomerazioni Industriali del Nord-Est: segnali di Discontinuità negli Anni Duemila,* in Banca d'Italia, L'economia del Nord-Est, Seminari e Convegni, Workshops and Conferences, 2011.

[24] Iuzzolino and Menon, *op.cit.*

Furthermore, in a such diversified global economic system, a precise agglomeration has less sense than in the past. This confirms that an agglomeration can be only a benchmarking tool dictated by specific conditions of the places where agglomeration processes are generated.

Among these, the agglomeration of human capital assumes a greater importance too because migrations show different features, such as in terms of interregional and international migrations.

Maybe the next goal will be to understand the new competitiveness model of SME's which, unable to totally benefit from the agglomeration effects coming from the related local geographical area, must move towards new forms of inter-industrial relations maybe closer to the characteristics of the supply chain rather than the industrial district. This is in order to preserve local areas from the demand and supply shocks.

So, it needs to achieve worldwide quality standards in order to start and increase supplying internationally competitive supply chains. Higher productivity levels will permit to improve the technological progress inside specific sectors in order to match a price declines.

Through the way we act within the crisis will depend our industrial growth just in a context where single firm as well as production systems are changing. For this reason, we cannot pretend to dismantle our production system. It's also important that the pre-crisis outcomes are protected and that these new processes will be continued.

REFERENCES

Arrow, K.L., (1962), *Localised Technological Change*; Routledge, London.

Becattini, G., Rullani E., (1993), *Sistema Locale e Mercato Globale*, in Economia e politica industriale, n. 80.

Behrens, K., Mion G., Ottaviano G., (2007), *Industry Reallocation in a Globalizing Economy*, CEPR Discussion Papers n. 6049.

Bianchi, P., Labory S., (2012), *Conceptualisations, Relationships and Trends between Innovation, Competitiveness and Development: industrial Policy beyond the Crisis,* in (EDWARD ELGAR PUBLISHER), Innovation, Global Change and Territorial Resilience, pp: 295-312.

Christaller, W., (1933), *Die Zentralen Orte in Suddeutschland*, Fischer, Jena, traduzione di BASKIN C. W., 1966, Central Places in Southern Germany, Prentice Hall, Englewood Cliffs, N.J.

De Groot Henri L.F., (2010), Martijn J.P., Smit J., *Cities and Growth: a Meta-Analysis*, paper presented at the MAER-Net Colloquium, Hendrix College USA, October 1-2.

Duranton, G., Puga D., (2004), *Micro-Foundations of Urban Agglomeration Economies*, in Henderson, J.V., Thisse, J.-F. (Eds.), Handbook of Regional and Urban Economics, North-Holland, pp. 2063–2117.

Friedmann, J., (1966), *A Case Study of Venezuela*, Cambridge Regional Development Policy: Mass.: MIT Press.

Glaeser, E.L., Kerr W.R., (2009), *Local Industrial Conditions and*

Entrepreneurship: how Much of the Spatial Distribution Can We Explain?, in Journal of Economics & Management Strategy, Vol.18, Issue 3, pages 623–663.

Glaeser, E.L., Gottlieb J.D. (2009), *The Wealth of Cities: agglomeration Economies and Spatial Equilibrium in the United States,* in Journal of Economic Literature, 47(4), 983-1028.

Henderson V., (1999), *Marshall's Economies*, NBER Working Papers 7358, National Bureau of Economic Research, Inc..

Iuzzolino, G., Menon C., (2011), *Le Agglomerazioni Industriali del Nord-Est: segnali di Discontinuità negli Anni Duemila,* in Banca d'Italia, L'economia del Nord-Est, Seminari e Convegni, Workshops and Conferences.

Jacobs, J., (1969), *The Economy of Cities*, Random House, New York, 1969.

Johansson, B., Quigley J.M., (2004), *Agglomeration and Networks in Spatial Economies*, Papers in Regional Sciences, 83.

Krugman, P., (1991), *Increasing Returns and Economic Geography,* Journal of Political Economy, Vol. 99, n. 31, pp. 483-499.

Krugman, P., (1993), *First Nature, Second Nature and Metropolitan Location*, in Journal of Regional Science, Vol. 33, n. 2, p. 129-134.

Losch, A., (1954), *The Economics of Location*, New Haven, CT.

Marshall, A., (1920), *Industry and Trade*, MacMillan, Londra e New York.

Myrdal G., (1957), *Economic Theory and Underdeveloped Regions*, London, Duckworth.

Monseny, J.J., Lopèz R.M., Viladecans-Marsal E., (2011), *The Mechanism of Agglomeration: evidence from the Effect of Inter-Industry Relations on the Location of New Firms,* Universitat de Barcelona & Institut d'Economia de Barcelona (IEB).

Overman, H.G., Puga D., (2009), *Labour Pooling as a Source of Agglomeration: an Empirical Investigation,* in Edward L. Glaeser (ed.), Agglomeration Economies. Chicago, IL: Chicago University Press.

Perroux, F., (1955), *Note sur la Notion de 'Pôle de Croissance'*, in "Cahiers de l'Institut de science économique appliquée", série D, n. 8.

Puga, D., (2011), *The Magnitude and Causes of Agglomeration Economies*, in Journal of Regional Science, 50, 203-219.

Romer, P.M., (1990), *Endogenous Technological Change*, Journal of Political Economy, University of Chicago Press, vol. 98(5), pages S71-102, October.

Rosenthal, S., Strange W., (2003), *Geography, Industrial Organization, and Agglomeration*, in The Review of Economics and Statistics 85, 377–393.

Sforzi, F., (1999), *Il Sistema Locale come Unità d'Analisi Integrata del Territorio*, in E. Gori, E. Giovannini e N. Batic (a cura di), Verso i Censimenti del 2000, Atti del Convegno della Società Italiana di Statistica, Udine.

Von Thunen, J., (1826), *Der Isolierte Staat in Beziehung auf Landwirtschaft und Nationalökonomie*, Teil 1., traduzione in Inglese di WARTENBERG C. *von Thünen's Isolated State*, Pergamon Press, Oxford.

THE ROMANIAN PARLIAMENT ON RELIGION (2008-2012): NORMALISATION OR RECONFIGURATION?*

Iuliana Conovici**

iuliana.conovici@gmail.com

Abstract: *This article proposes an assessment of the role the Romanian Parliament has played in the restructuring of the role of religion in the public sphere during the 2008-2012 legislative term. We seek to understand how much interest the Parliament has shown to it, to what extent Parliamentary drafts have been successful, and in what areas legal action has been taken. A case study of the debates surrounding the Education reform will provide us with insights concerning possible directions for a future readjustment of the public status of religion in Romania.*

Keywords*: Religion, Parliament, legislation, normalization, neutrality, separationism.*

Law 489/2006 on religious freedom and the general status of denominations[1] had come, in theory, to put an end to sixteen years of inter-institutional disputes between the main religious and political actors directly concerned in the legal definition of the public status of religion in Romania[2]. Despite the fact that it has been contested even before its adoption, this ended a period of legal incertitude in the field of Church-State relations. Following its adoption, it was to be expected that a period of legal normalization would ensue: the principal rules governing the legal status of denominations had been established, and the main contended points – clarified, though not entirely settled.

As the Law came into force, a change of pace emerged in the engagement of the Orthodox Church – the largest religious institution in the country – with society, but also with State institutions, with the death of Patriarch Teoctist and the election of Patriarch Daniel Ciobotea in 2007, followed by the adoption of a

* **This work was supported by the strategic grant POSDRU/89/1.5/S/62259, Project "Applied social, human and political sciences" cofinanced by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013". The author would also like to thank Ms. Irina Ionescu for her expert advice and friendly encouragement, which have been instrumental to the writing of this article.**

** **Lecturer Ph.D, - University of Bucharest.**

[1] Published in *Monitorul Oficial,* part I, no. 11/8.01.2007.

[2] The process of adoption and the slow negotiations that led up to its adoption have been more elaborately documented and analysed for example in Lavinia Stan and Lucian Turcescu, *Religion and Politics in Post-Communist Romania,* Oxford, New York, Oxford University Press, 2007; Iuliana Conovici, *Ortodoxia în România postcomunistă. Reconstrucţia unei identităţi publice*, Cluj-Napoca, Eikon, 2009, pp. 370-402.

new Statute for the organization and functioning of the Romanian Orthodox Church in 2008. Several bilateral Protocols concluded in 2007 and 2008 by the Romanian Patriarchy with a number of public institutions came to confirm the Orthodox Church's commitment to acquire a stronger role in the areas of welfare and healthcare, as allowed by the new Law.

The succession of events and legal measures had thus created the premises both for the normalization of the legal status of religion and for the opening of new areas of negotiation in terms of the role of religious institutions and religious belief in the public sphere. The effects of these measures of normalization would be expected to materialize in the years following their adoption, we have decided, for convenience, to focus in our present analysis only on the period of the 2008-2012 legislative term[3]. This paper seeks to find out how and to what extent the Romanian Parliament has been involved in the restructuring of the public role of religion and of religious institutions during the last legislative term.

We believe this analysis to be both useful and necessary for several reasons. Indeed, as the experience of the adoption of Law 489/2006 has proved, the Parliament has been, in the past, a field for open, though not necessarily conclusive debates, when the adoption of major policy decisions in the field had been at stake (Conovici 2010). Though it has been proved that the Romanian Parliament, despite its potentially prominent role in the constitutional architecture of the Romanian State, has been consistently playing a subordinate role in terms of policy legislation either to the Executive or to the dominant political parties[4], it has nevertheless remained a permanent arena of political and policy *debate*.

On the other hand, the 2008-2012 term has been one of reforms in several major policy fields, including education, welfare and healthcare, State-paid salaries etc (all of which, as we shall see, are relevant for our study). This was also a period of heavy use by the Government of legal instruments allowing it to circumvent normal parliamentary procedures on major policy issues: besides the pre-existing procedure of legislating through (Emergency) Government

[3] Previous developments have been discussed in: Stan and Lucian, *Religion and Politics*; Radu Carp and Ioan Stanomir, *Limitele Constituţiei. Despre guvernare, politică şi cetăţenie în România*, Bucureşti, C.H. Beck, 2008, Title I, Chapter VII: "Religia şi normele dreptului public. O interpretare constituţională", pp. 136-172; Iuliana Conovici *Ortodoxia în România postcomunistă. Reconstrucţia unei identităţi publice*, Cluj-Napoca, Eikon, 2009-2010, vo. 1-2; Iuliana Conovici, "'Social partnership' Between Church and State as a Field of Negotiation for the Public Status of Religion in Post-Communist Romania" (paper presented at the International Conference "Religion and Politics in the Globalization Era, June 22-24, 2012, Cluj-Napoca), etc.

[4] See for example Daniel Barbu, *Republica absentă. Politică şi societate în România postcomunistă,* Bucureşti, Nemira, 2004, pp. 167-192; Radu Carp and Ioan Stanomir, *op.cit.* ; Cristian Preda, Sorina Soare, *Regimul, partidele şi sistemul politic din România*, Bucureşti, Nemira, 2008, pp. 36-43 („Parlamentul atrofiat"), and the conclusions of Cristian Preda, "The Romanian Political System after the Parliamentary Elections of November 30, 2008", *Studia Politica. Romanian Political Science Review*, vol. IX, no. 1, 2009, pp. 9-35; Irina Nicoleta Ionescu, *Le rôle du Parlement dans la creation des politiques publiques en Roumanie postcommuniste,* Iaşi, Institutul European, 2011.

Ordinances, the PDL[5]-led Government in particular engaged its responsibility on legislation in key policy areas, avoiding parliamentary debates and possible amendments.

Furthermore, major religious institutions are preserving good relations with significant political actors across the political spectrum. Amongst them, the Romanian Orthodox Church is pragmatically careful to avoid any definitive political commitment to any single political party; the Reformed Church is traditionally seeking the support of the UDMR, and promoters of the interests of the Muslim minority are usually representatives of the Turkish or Tatar minorities; Evangelical (neo-Protestant) communities, are more susceptible of reaching local arrangements with individual parties and promoting their own community leaders as members of Parliament [6]. Most major religious denominations, however, have been treating the Romanian Parliament, both before and after the adoption of the 2006 Law, as a significant institutional actor, and engage with it either at an inter-institutional level, by means of letters, requests, or information, or by directly or indirectly endorsing or participating in the discussion of various draft laws[7]. It is to be expected that this practice has not been discontinued.

For the construction this analysis, we will focus on several types of sources. The Chamber of Deputies and the Senate databases on the legislative process have provided the framework of our research. Laws and legislative proposals and the official documents pertaining to the legislative process of each of these have been our main focus. Several law proposals withdrawn by their proponents before event the beginning of a legislative process have also been considered. These include the various forms of the legislative proposals discussed and adopted/rejected by either Chamber of Parliament, the Government's point of view on these same proposals, the examining Commissions' remarks, transcripts of Parliamentary debates, as well as some documents of an exceptional character, such as Presidential requests for re-examination or the Constitutional Court's opinion on these same projects.

A thematic selection, based primarily on the key areas signified in the Law no. 489/1006 on religious freedom and the general status of denominations, corroborated with results of our previous investigations in the field of Church-

---

[5] The acronyms of the political parties have been preserved in their Romanian form: PDL – Democratic-Liberal Party, PSD – Social-Democratic Party, PNL – National Liberal Party, UDMR – Democratic Union of Hungarians in Romania.

[6] Lavinia Stan and Lucian Turcescu, *Religion and Politics in Post-Communist Romania*, pp. 119-143; Iuliana Conovici, *Ortodoxia în România postcomunistă. Reconstrucţia unei identităţi publice,* vol. I, pp. 415-452. On various Evangelical blogs and websites the link between the religious and the political profile of the candidates is emphasised (they are the "Evangelical candidates", and in some cases their accession to the Parliament is openly connected to a form of "representation" of those religious communities in the Parliament, for example in a blog article by Pentecostal pastor Vasilică Croitor, „Candidaţi evanghelici – diaspora – Mircea Lubanovici" (December 4, 2012) http://rascumparareamemoriei.wordpress.com/2012/12/04/candidati-evanghelici-diaspora-mircea-lubanovici/ the issue had already been taken up at the 2008 elections by another Pentecostal pastor, Laurenţiu Balcan, in „Cu cine au votat 'pocăiţii'?", December 8, 2009, https://penticostalul.wordpress.com/2009/12/08/.

[7] Lavinia Stan and Lucian Turcescu, *op. cit.*; Iuliana Conovici, *op.cit.*.

State relations and with debates in the mass-media have provided us with a wider range of significant documents to be taken into consideration[8].

In the first part of our analysis, sources will be examined in quantitative perspective, firstly by looking at the proportion of the relevant draft laws in the total number of proposals, and to the implications thereof. Secondly, we will examine them from the point of view of their current legal status? Thirdly, we will take a look at the distribution of the draft proposals by thematic areas. Finally, we seek to understand how the influence of the Parliament proper and that of the Government are balanced in the policy-making process by looking at the originating institution of the draft laws that are relevant for our analysis.

In the second part of our analysis, an effort will be made, first of all, to understand the institutional origin of these proposals (Parliament-based vs. Government-based, and party-based vs. cross-party initiatives) and their possible motivations. A closer examination of the legal production of the Romanian Parliament in the field of education will provide us with useful insights for understanding some possible directions for the future reconfiguration or at least readjustment of the public status of religion in the Romanian society and legal system.

The public status of religion in the Romanian Parliament: a quantitative assessment.

During the 2008-2012 legislative term, the Romanian Parliament examined a number of draft bills that dealt with the general status of religion and/or of religious institutions. But the selection of the Laws and law proposals relevant for our analysis was not always easy. While there have been a few proposals concerning specifically and/or exclusively the situation of one or several religious denominations, there are a number of other documents that might have a direct or indirect impact on the same, but which are not Laws or Law proposals on the status of religion. Texts selected for our analysis come from a variety of policy areas, as will be shown below, yet the list may still not be absolutely complete.

The largest number of drafts have been introduced and/or adopted in 2009, their numbers declining in 2010 and 2011. In 2012, a year of political turmoil, when the overall number of law proposals and promulgated laws declined sharply, the number of documents relevant for our research also dropped. Documents falling into the first of the above mentioned categories make out for a small proportion of the total number of relevant documents, except in 2009, when the number of denomination-specific drafts was particularly high.

Year	Draft laws (total/year)	Church-State (all relevant)	%	Church-State (principal)	%
2009	772	35	4.53%	16	2.07%

[8] A selection based on keywords in the title of these documents would not work properly for our purposes, as it has emerged, for most of the selected law proposals do not include any direct or indirect reference to religion.

2010	885	23	2.60%	5	0.56%
2011	787	21	2.67%	4	0.51%
2012	473	13	2.53%	3	0.63%
Total	2917	92	3.15%	28	0.96%

A similar dynamic may be found if we look at the current status of each proposal, at least for the first three years (most draft laws of 2012 are still under debate): the number of adopted documents declines every year, and the same applies to rejected proposals. The growing number of drafts under debate is linked to the duration of parliamentary procedures.

	2009	**2010**	**2011**	**2012**
Definitive rejection	14	10	9	1
Withdrawn by proponent	5	0	0	0
Under debate	3	6	7	10
Laws	13	7	5	1
TOTAL	35	23	21	13

With respect to the institutional actors acting as proponents of these draft laws, we may notice that a little over two thirds of them have been submitted by deputies or senators. These we have termed Parliament-based laws, including here some (noticeably the main draft laws on Education) that originated, in fact, with the major parties. Only about a third were Executive-based drafts– either initiatives by the Government or Laws for the adoption of Government Ordinances, as well as an occasional proposal introduced by the President, through the Government. Thus, our data points to the fact that, in terms of sheer *activity* in the policy areas we are dealing with, the Parliament has been consistently more productive than the Government.

Draft laws	**2009**	**2010**	**2011**	**2012**	**Total**	**Total %**
Parliament-based	23	16	14	9	62	67.40%
Government-based	12	7	7	4	30	32.60%
Total	35	23	21	13	92	100%

Further inquiries reveal, however, that, in terms of their actual *success*, only four out of the 61 Parliament-based proposals have been adopted, and a little under two thirds were either rejected or withdrawn by their proponents[9]. By

[9] Rapidly rejected, punctual initiatives are generally opposed by the Government and rejected on procedural grounds, (notably absence of financial impact details), while for wider-ranging initiatives, their rejection is generally called for on grounds of terminological inconsistency or incoherence with the existing legal framework; some drafts are discarded by the Constitutional Court that deems them unconstitutional. Drafts are typically withdrawn when the Government

contrast, almost all Government-based proposals have been adopted or are in the process of being adopted. Thus, the situation in our area of interest is consistent with pre-existing overall analyzes [10] pointing to a clear dominance of the Executive in the policy-making (and including the legislative) process.

	2009	2010	2011	2012	Total
Govt – adopted	11	6	4	1	22
Govt – pending	1**	1**	2	3	7
Govt – rejected	0	0	1	0	1
Parl-adopted	2	1	1	0	4
Parl-pending	2	5	5	7	19
Parl-rejected	19	10	8	2	39

**A version of the national education Law; later version *was* adopted.

Out of the four Parliament-based proposals that became Laws, two acquired some small advantages for the Muslim community, one established a public holiday (November 30, St. Andrew's Day), and the other one dealt with partnership between the public and private sector, and affected religious institutions only indirectly.

Typically, in this interval, draft Laws dealing directly or indirectly with religious denominations and/or religious beliefs appear to be cross-party initiatives, frequently with a consistent participation of members of the Minorities' parliamentary groups. Individual proposals did not get adopted. Unilateral, Opposition parties-based initiatives are – naturally – generally not successful, but the repeated shifts in the political structure of the Parliament majority somewhat blurs this distinction, as no single parliamentary party seems to have been completely excluded from participation in the political power over the last legislative term[11]. However, membership in the Government party was not sufficient either to guarantee the adoption of a draft law – not even when such proposals draw the support of large numbers of party representatives.

Areas of legislation

The Parliament has been dealing with a wide variety of topics pertinent to

wishes to propose its own (or a different) version of that legislation. Tacit adoption by one Chamber, without discussions, by surpassing the legal deadline for discussions is also relatively frequent, leaving debates to the other (generally the deciding) Chamber.

[10] Irina Ionescu, *op.cit.*

[11] This seems to confirm in a rather curious way the partitocratical character of the Romanian political regime, as observed by Daniel Barbu, *Republica absentă. Politică şi societate în România postcomunistă*.

our analysis. We have identified twelve main areas where Romanian MPs and/or the Government drafted such laws. The largest number of law proposals relevant for our analysis falls into the field of education, with 19 out of a total 92 Law proposals (2009-2012). In the first two years of this legislative term, representatives of all the major parties, as well as the Government have all submitted multiple Education Law proposals. Though their main focus is not religion proper, all the various draft Education Laws include provisions which may greatly affect the public status of religion and religious institutions in the long run: the main principles of national education, religious education in public schools, theological education and private confessional educations, addressed in these documents, are all relevant for our analysis and the various contributions will be discussed later on.

A second body of proposals is concerned with the family, social mores and bioethics – from provisions on engagements and the status of *de facto* civil partnerships in the Civil Code to attempts for the legalization of prostitution, to laws on transplant, assisted human reproduction, adoptions or family violence. These do not deal with religious *institutions*, but their provisions have moral implications that affect the social status of traditional values, as well as the individual religious conscience. Or, in these areas, religious institutions have played a constitutive role, both by shaping public morality rules and customs, and by inspiring and/or participating in their writing into law. As such, they have an impact both on the public status of religion and in the internal economy of religious institutions that have to deal with and readjust to changes in both legal and social arrangements.

In our particular case, while some draft laws in the area have incited wider public debates that have also involved religious actors, others have remained marginal, as we shall see later on. In post-Communist Romania, the role of religious institutions in the definition of public "politics of the body" has been a matter of dispute. Though some religious institutions have had a role in some such policy decisions (or in their postponement), the relevance of their contribution has been far from universally acknowledged politically; the choice of areas of intervention by religious institutions in some, but not in other public debates may be seen as somewhat haphazard[12].

A third very important body of proposed legislation dealt (directly or indirectly) with the status of religious institutions as charitable institutions and "social services providers" and as partners of the state in the development of its own social policies. These ranged from the controversial 2009 proposal on Church-State partnership in the field of social assistance to the social security laws, public-private sector partnership, and social entrepreneurship law proposals. Interest in this area peaked in 2011, when the 2009 law proposal on Church-State partnership was also amended and adopted in the Chamber of Deputies. The introduction of provisions relevant for our analysis in this policy area is to be directly connected to statements in the 2006 Law on religious

[12] Conovici, *Ortodoxia în România postcomunistă. Reconstrucţia unei identităţi publice*, vol. II, pp. 638-724.

freedom and the general status of denominations, which deems recognized denominations as "social services providers", "public utility entities" and possible partners of the State in various areas.

Area/year	2009	2010	2011	2012	Total drafts 2009-2012	Adopted 2009-2012
Bioethics	2	3	0	2	7	1
Budget	6	2	0	1	9	6
Constructions	3	1	1	0	5	0
Education	10	6	3	0	19	1
Family and social mores	3	1	4	3	11	5
Financial support	3	1	0	1	5	0
Funeral laws	2	0	2	1	5	1
Holidays	0	1	2	2	5	1
Property	2	2	0	1	5	1
Salaries	2	2	1	0	5	4
Social/partnership	1	1	7	1	10	4
Miscellaneous	1	3	1	1	6	2
Total	35	23	21	13	92	26

A fourth major category of Law proposals included financial measures affecting religious institutions - the financing of religious constructions or renovations and subsidies for the salaries of the clergy. While the unification of the administration of salaries, introduced by the Government, was eventually passed, none of the other Law proposals that entailed other forms of direct financing actually succeeded, with the exception of the yearly budgetary laws and their periodic rectifications, which typically included adjustments in the financing of religious institutions.

Proposals that had an impact on religious institutions included some documents dealing with the legal conditions for the restitution of properties confiscated by the Communist regime. They seldom dealt distinctly with religious institutions.

Out of three Law proposals pertaining to the area of funeral law, two dealt with the status of public, confessional and privately-owned cemeteries, where religious institutions had an important part to play. A third, and the only one that eventually became Law was to allow the speedy release from hospitals of the bodies of deceased Muslims, in accordance with Muslim rapid burial requirements.

A few draft laws on the creation or protection of various monuments occasionally mentioned religious buildings. Other law projects, including a constitutional amendment project and a proposal for a law that would penalize all

forms of discrimination mentioned religion only miscellaneously. A more curious proposal (Pl-x 664/2010) seemingly aimed at the "protection of individuals extorted by divination and by means of other occult practices" dealt in fact with the establishment of divination and witchcraft as a legal profession[13]; tacitly adopted by the Senate, it was eventually rejected by the Chamber of Deputies.

II. The status of religion under debate – between the Parliament, the Churches and the (rest of) civil society. The case of the Education reform.

2009, the first year after the general elections, was the most prolific in law projects concerning religious denominations and the public status of religion. It was also the year of the most denomination-specific proposals. The year 2010 was dominated by debates on several major policy areas: education, health, and salaries, while in 2011 and 2012 the main areas of focus were those of bioethics and social mores, and the development of social partnership. In the following lines, we will proceed to a closer examination of the draft Laws pertinent to our analysis.

Thus, three drafts focused on members of the Islamic confession. The first of these (Pl-x 66/11/2/2009), introduced primarily by Minorities' group deputies, aimed at the establishment of higher education structures for Muslim Theology, particularly at the Ovidius University in Constanţa. The proposal was rejected on procedural grounds[14].

A Law project (Pl-x no. 97 of February 11, 2009) on a versified version of the Bible to be used as an alternative manual of Religion for the primary school was introduced by a multi-party group of MPs[15]. It had apparently been previously discussed in the Parliament's Ecumenical Prayer Group[16], but lacked the support of the Government, which deemed it discriminating towards non-Christian groups and contradictory to existing legislation. The proposal was rejected in less than a month.

Debates on the reformation of the national system of education were largely concentrated in 2009 and 2010. All major parties presented their own "packages" of draft Education Laws, and the Government offered its own. All the 2009 proposals were either rejected (the PNL projects: Pl-x 276/2009, 277/2009, 279/2009) or withdrawn (the PDL proposals: Pl-x 330/2009, 331/2009. 332/2009 and 333/2009), including the first of the Government's projects (Pl-x

[13] Full text of the proposal online at:
http://www.cdep.ro/proiecte/2010/600/60/4/se664.pdf. Endosed by 21 deputies and senators, 17 of which were members of the PDL.

[14] The representative of the Tatar minority, who voted against the proposal as he held the Parliament was not the right instance where to address this issue, suggested that the proposal itself should and would have to be addressed to the competent authorities (Transcript of the session of the Chamber of Deputies, May 12, 2009, at:
http://www.cdep.ro/pls/steno/steno.stenograma?ids=6638&idm=8,065).

[15] See http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=9869.

[16] According to the introductory argument of the Law project, online at: http://www.cdep.ro/proiecte/2009/000/90/7/em97.pdf

379/2009[17], which was struck down as the Constitutional Court had deemed unconstitutional the latter's attempt to push for its adoption without parliamentary debate by engaging its responsibility[18]. After the breakup of the PDL-PSD coalition government in October, 2009, and the decision of the Constitutional Court, new Law proposals and draft law packages on education were introduced in the new session of the Parliament in 2010. The PSD presented a separate project (Pl-x 110 of March 30th, 2010), shortly after followed by a new Government proposal (Pl-x 156 of April 12, 2010) and a new PNL education laws package (Pl-x 180, 181 and 182 of April 19, 2010).

Eventually, the Government would again engage its responsibility on a third draft education Law (Law project no. 587 of October 10, 2012), claiming that the Parliament had delayed the adoption of the law by abusing parliamentary procedures for an unwarranted period of time[19], and this became the National Education Law no 1/2011. The text introduced only marginal modifications with respect to the status of religious education in public schools. The most intensely discussed issue was that of the legal age when pupils would be authorised to make their own choice on the study of religion in public schools, a matter that had been previously discussed in many occasions. The 2008 draft law proposed by the Ministry of Education under PNL Minister Cristian Adomniţei had advocated the age of 16[20], the age when children are considered able to choose their own religion by the Law 489/2006 on religious freedom and the general status of denominations (art. 3.2), and this was taken up in the successive PNL-supported drafts. According to PNL Deputy Adriana Săftoiu, who criticised the current situation of religion classes on grounds of being too "apologetic" in character, her party had supported the idea of making religion classes "optional"[21].

Eventually, the National Education Law 1/2011 would include most of the elements discussed in the various parties' Law proposals. The principle of the "independence" of education from "religious dogmas", as well as from ideologies and political doctrines would be inscribed in the text of the law (art. 3n)) was not

[17] http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=10366

[18] Decision of the Constitutional Court no. 1557 of November 18, 2009, online at: http://www.cdep.ro/proiecte/2009/300/90/3/393_DC.pdf

[19] According to the Introductory argument for the Law project, p. 2 (online at: http://www.cdep.ro/proiecte/2010/500/80/7/em587.pdf)

[20] Pl-x 277/2009 on the pre-university education system, http://www.cdep.ro/proiecte/2009/200/70/7/pl277.pdf; see the legislative process file for the proposal at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=10180; for evolutions prior to 2009, see Iuliana Conovici, *Ortodoxia în România postcomunistă. Reconstrucţia unei identităţi publice*, vol. II, pp. 601-608.

[21] Amongst other things, she argued, on one occasion: "we, the liberals, we have a great reservation with respect to this law: religion. This religion that is being studied in schools. We are a secular state and I thing religion should have been an optional discipline in schools. For, after all, my dears, what is going on during religion classes is apologetics. It's not religion." (Transcripts of the debates in the Chamber of Deputies, May 9, 2010:

http://www.cdep.ro/pls/steno/steno.stenograma?ids=6833&idm=6). While religion classes had, in theory, been optional (with a preference for an *opt-out* rather than an *opt-in* system), the first PNL project had indeed limited the presence of religion classes "as part of the core curriculum" only to elementary education and middle school (art. 10.1), and did not mention high-school or professional schools.

explicitly contrasted, like in the first PNL proposal, with "universal fundamental values", but was instead associated with the principle of "freedom of thought". This principle would however remain discretely divergent with the principle of "neutrality" of the State that was at the core of the Law 489/2006 on religious freedom and the general status of denominations.

Furthermore, besides its social integration purpose, education was to aim at the "formation of an understanding of life based on humanistic and scientific values, on the national and universal culture and on the stimulation of intercultural dialogue", and was to lead to the formation of "a spirit of dignity, tolerance, and respect for the fundamental human rights" (art. 4 d and e). Religious "proselytizing" and political activities were to be banned from schools (art. 7.1).

On religious education in public schools, the law remained conservative in that it included in religion in the core curriculum from elementary school to high-school, including in professional and vocational schools (art. 18.1). It followed the principle of the Law on religious freedom and the general status of denominations in that it opened access to religious education in public schools to recognized religious denominations – and only to them. The novelty lay in the emphasis placed on the *constitutional* right to religious education, and in the fact that religious education in their own religious confession was to be granted "regardless of their number", whereas before this, religion classes were to be organized in school only if a certain number of pupils of that religion would be present. The text also preserved the possibility of *opt-out* from religion classes for pupils "of legal age" and for the tutors of underage children (art. 18.2).

The status-quo was preserved in the employment of teachers by mutual agreement between the Education Ministry and the respective religious denominations (art. 18.3). The law also consecrated the principle of "double subordination" of public theological education institutions to the Education Ministry and to the leadership of their respective denominations (art. 15.1), and invoked the legally consecrated principle of "proportionality" of these institutions to census data on religious belonging.

Furthermore, the Law acknowledged the right of religious denominations to organize their own private confessional education system (art. 15.2) "according to the specific requirements of each recognized denomination" (art. 3s), but this right is apparently limited to religious denominations, and does not include the religious associations recognized as such under Law 489/2006.

From the point of view of provisions directly affecting the status of religion in the public space, the new Education Law, as it was adopted, was a middle-of-the-road solution between the PDL Government's proposal and the PNL proposal, which, we may add, originated with a former Education Minister, Cristian Adomniţei. Some aspects, including the status of religion classes in public schools were also debated in the Parliament, but the project was pushed through the Parliament by the Government by the radical procedure of engaging its responsibility, in the midst of harsh inter-institutional disputes between Parliament, Government, Presidency, and the Constitutional Court.

Two further drafts pertaining to the area of education, dating from 2011, may

be deemed relevant for our study. They were intended to complete rather than modify the existing legal framework. The first, of these, an initiative by PNL deputy Adriana Săftoiu (and eventually rejected), concerned textbooks to be used in the public education system (Pl-x 51 of February 21, 2011). The text may be deemed relevant for our discussion in the context of the general debate sparked in 2007 and rekindled in 2012 on the contents of religion classes and more specifically on Religion manuals, with a special focus on the majority Orthodox confession. As Adriana Săftoiu was a supporter of the secular character of public schools and had previously supported the limitation of religion classes to elementary and middle school, it is likely (though the proponent herself did not choose to emphasize that in the introductory argument to the Law proposal[22]) that, amongst other goals, the project was also aimed at a stricter supervision of Religion textbooks.

The privileged area of religion in the field of education – namely, that of theological and confessional education has, in general, been preserved and even consolidated throughout the past legislative term. Existing institutional arrangements on religious education in public schools have, however, come under challenge, notably from the PNL, which has become, as of the middle of 2012, one of the two major governing parties. It will be interesting to observe if, during the following legislative term, the party will uphold the position it advocated throughout this term or whether it will forgo the matter altogether.

One discrete terminological shift, namely the emergence of the notion of "independence from religion/religious dogma" as opposed either to "freedom of thought" or to "scientific and humanistic values", as inscribed in the various drafts of the National Education Law appear to have been discretely endorsed by all the major parties represented in the Romanian Parliament. Though of little significance on the surface, the emergence of this particular notion of "independence" points to a more "separationist" interpretation of the notion of "neutrality" of the Romanian State with respect to religion. Curiously put on the same level with "ideologies and political doctrines", religion is clearly cast here into a divisive rather than a cohesive role. The move is consistent with provisions in the Constitution and the Law on religious freedom and the general status of denominations that emphasize the same, but is somewhat contrasting with the "benevolent neutrality" regime instituted by the latter.

Concluding remarks

The results of this analysis of the Parliament's relevant legal production of the 2008-2012 legislative term may be deemed useful on a number of different levels. In the first place, it has revealed once more that the Parliament itself has only a limited impact in the policy-making process in our area of interest in terms of legislative *initiative*. Though MPs do avail themselves often of their right of initiative, Parliament-based drafts are very seldom successful; without the full support of the Government, or at least of the governing party or coalition, they

[22] For the introductory argument, see: http://www.cdep.ro/proiecte/2011/000/50/1/em51.pdf

are quickly discarded or, in some other cases, procedures drag on for years, without any guarantee of adoption – they may either become obsolete at the end of the legislative term, be deemed unconstitutional by the Constitutional Court, or sent back for re-examination by the President. Indeed, the only effective guarantee for the adoption of a Law proposal seems to be membership in the Government.

The Parliament, however, does have a role as a space for *debate*, and as a means of raising concern or awareness on specific topics, and, in the policy areas where the Government does not succeed in avoiding parliamentary discussion altogether, it also serves as an instrument of *verification* and *amendment* of the legal text. Full discussions and the amendment of the various draft laws are usually conducted in the deciding Chamber, with the other Chamber (usually the Senate) tacitly passing many bills that eventually fail in the other Chamber[23].

Furthermore, even failed initiatives play a role, by signaling the existence of public concern over specific topics; they also help stimulate public debate, particularly with the help of parliamentary commissions. We may also argue that parliamentary debates and the workings of parliamentary commissions function as a sort of background mirror where one may read the main themes of debate and public interest. As such, they also reflect the ambiguities in the current definition of the public status of religion in Romania.

We may also observe that the *compartimentalization* in the public institutions' approach on religion[24] has been perpetuated – and become even more marked – in this period. On the one hand, religious institutions are not treated consistently from one field to another, and not even, occasionally, within the range of a single policy area – from one draft law to another, they are either consulted or invited to debates or are completely ignored.

In the area of education, for example, though the institutional status quo has been formally preserved, recent evolutions point to the emergence and a growing consensus in the political arena of a separationist principle that is likely, in the long term, to lead to changes in the status and content of religion classes in public schools, if not to change the overall system of Church-State relations. In this context, we may well wonder if the now governing PNL, the main supporter of this trend during the 2008-2012 term will take up again the matter of the limitation on religion classes to the primary and middle school.

On the other hand, the *protected*, privileged *space* given to religious institutions within society[25] remains, to an extent, an enclosed space. In this pre-defined space, some reverence is indeed given to the voice of religious

[23] Indeed, the same procedure had been used for the Law on religious freedom and the general status of denominations, tacitly passed by the Senate after the expiry of the legal period allowed for its debate, and the bill was extensively discussed only in the Chamber of Deputies.

[24] Iuliana Conovici, "'Social Theology' and Social Work in the Romanian Orthodox Church. A paradoxical Development?" – paper presented at the International Interdisciplinary Conference "Orthodox Paracdoxes: Heterogeneities and Complexities in Contemporary Russian Orthodoxy", Doorn-Amsterdam, September 12-14, 2011 (under publication).

[25] Iuliana Conovici, „Biserica Ortodoxă Română în postcomunism: între stat şi democraţie", in Camil Ungureanu (coord.), *Religia în democraţie. O dilemă a modernităţii,* Iaşi, Polirom, 2011, pp. 379-399.

denominations, and legal action may yet be taken to accommodate their requests, particularly if this may also be (like the eventual vote on the establishment of a new legal holiday) of some marginal popularity benefit for the deciding political body. Religion is not expected to have an impact in the public space beyond these pre-defined boundaries, and, as we have seen, in many policy areas it is not called upon to make its contribution as a civil society actor.

But this situation may be changing, due to a notion set out in the Law no. 489/2006, that of "partnership" between the State and religious denominations. The concept of social partnership between religious denominations and the State set out by the Law was designed to open to religious denominations the space of welfare and social work. Yet, as it stands, it poses a challenge for this very (State-) managed space, for it helps to blur the line between religious institutions and civil society. In these areas, NGOs and religious denominations are dealt with sometimes together, sometimes separately. The new legislation on social assistance and the draft law on Church-State partnership respectively testify to this ambiguity.

REFERENCES

The Chamber of Deputies online database at www.cdep.ro (for the draft laws' legislative process files).

Barbu, Daniel, (2004), *Republica absentă. Politică şi societate în România postcomunistă,* Bucureşti, Nemira.

Carp, Radu and Ioan Stanomir, (2008), *Limitele Constituţiei. Despre guvernare, politică şi cetăţenie în România*, Bucureşti, C.H. Beck.

Conovici, Iuliana, (2009-2010), *Ortodoxia în România postcomunistă. Reconstrucţia unei identităţi publice*, vol. 1-2, Cluj-Napoca, Eikon.

Conovici, Iuliana, (2011), „Biserica Ortodoxă Română în postcomunism: între stat şi democraţie", in Camil Ungureanu (coord.), *Religia în democraţie. O dilemă a modernităţii*, Iaşi, Polirom.

Conovici, Iuliana, (2011), 'Social Theology' and Social Work in the Romanian Orthodox Church. A paradoxical Development?", paper presented at the International Interdisciplinary Conference "Orthodox Paradoxes: Heterogeneities and Complexities in Contemporary Russian Orthodoxy", Doorn-Amsterdam, September 12-14.

Ionescu, Irina Nicoleta, (2011), *Le Rôle du Parlement dans la creation des politiques publiques en Roumanie postcommuniste,* Iaşi, Institutul European.

Law 489/2006 on religious freedom and the general status of denominations, published in *Monitorul Oficial,* part I, no. 11/8.01.2007

Preda, Cristian, (2009), "The Romanian Political System after the Parliamentary Elections of November 30, 2008", *Studia Politica. Romanian Political Science Review*, vpl. IX, no. 1.

Preda, Cristian and Sorina Soare, (2008), *Regimul, partidele şi sistemul politic din România,* Bucureşti, Nemira.

Stan, Lavinia and Lucian Turcescu, (2007), *Religion and Politics in Post-Communist Romania,* Oxford, New York, Oxford University Press.

ELECTORAL FRAUD. FEW THOUGHTS AND INSIGHTS ABOUT THE PHENOMENON*

Bogdan M. Popescu**

bm_popescu@yahoo.com

Abstract: *Electoral fraud is a phenomenon affecting many contemporary democracies and a challenge for many electoral management bodies involved in running up of elections.*

Understanding the mechanisms that lead to election fraud, analyzing different forms of electoral corruption associated to the specific activities and periods of the electoral cycle can undoubtedly improve the integrity of elections, increase professionalism of electoral players, and constitute a guarantee of credibility in future electoral processes.

This article intends to investigate the multiple facets of the complex phenomenon of electoral fraud – the definition of the concept, characteristics, electoral players, favoring factors associated with frauds or electoral corruption, electoral frauds in the context of the electoral cycle. At the end, the article will take into account current developments of technology in the prevention of electoral fraud.

Keywords: *electoral fraud, electoral corruption, malpractice, manipulation, electoral cycle, technology.*

1. Introduction

Election fraud, as a form of corruption specific to the electoral process, is a genuine threat and a challenge to existing democracies, newer or older, with significant consequences in terms of legitimacy, political participation of citizens in democratic processes and in terms of confidence in the rule-of-law state.

Election fraud is a threat not only to countries with emerging democracies, but also to democracies with electoral traditions and strong democratic institutions. However, we can say there are players and socio-cultural environments that are more conducive to the emergence of election fraud.

Understanding the mechanisms that lead to election fraud, analyzing different forms of electoral corruption associated to the specific activities and periods of the electoral cycle, investigating the best practices known to prevent and combat electoral corruption, can undoubtedly improve the integrity of

* **Acknowledgments -** This work was supported by the strategic grant POSDRU/89/1.5/S/62259, Project „Applied social, human and political sciences. Postdostoral training and postdoctoral fellowships in social, human and political sciences" cofinanced by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007 – 2013.

** **Lecturer Ph.D, - Scientific researcher, Institute of Political Science and International Relations, Romanian Academy.**

elections, increase professionalism of electoral players, and constitute a guarantee of credibility in future electoral processes.

On the other hand, given the dynamics of the phenomenon, as fraud strategies develop and improve, new techniques, and methods of fraud emerge. They are often highly sophisticated and creative; require knowledge of the phenomenon and a realistic assessment of potential risks of fraud.

This article intends to investigate the multiple facets of the complex phenomenon of electoral fraud – the definition of the concept, characteristics, electoral players, favoring factors associated with frauds or electoral corruption, electoral frauds in the context of the electoral cycle. At the end, the article will take into account current developments of technology in the prevention of electoral fraud.

2. Election fraud or malpractice? Concepts, characteristics, electoral players

Any analysis of the phenomenon of election fraud should start with a clarification of the concept. Which are its features and how does it differ from other related concepts? Expressions such as election fraud, malpractice, electoral irregularities, electoral corruption, etc. are often used interchangeably to refer generally to a form of manipulation of the popular willpower expressed in the election process and procedures that govern it for the benefit of one of the competitors.

Therefore, these concepts refer to tampering with the electoral process (manifest both as an action or omission in the case of a player with official electoral responsibilities), having the effect of violating fundamental rights such as the right to vote and to be elected, equal opportunities, rights of minorities and freedom of opinion and expression.

Also, defining the context of election fraud is of utmost importance, for example some countries forbid that the President in office endorse a presidential candidate; or "door to door" election campaigns; in others, like the United States, these practices are common. The definition of election fraud or corruption is relative. It differs from one socio-cultural environment to another, from one country to another and even within the same country at different times.

Etymologically speaking, fraud comes from the Latin "fraus, fraudis" which means "deceit", "deception", "act of bad faith committed to obtain an advantage" or "damage"[1]. In legal terms, election fraud and malpractice can be defined as all illegal actions or violations of electoral law. Both can occur not only during elections but also in pre-election and the post-election period.

The existing literature abounds with many definitions, not always in agreement with each other. Thus, one definition describes election fraud as “a deliberate violation of stipulations in the Electoral Law in order to change the election results so as to overtake or to harm a candidate.” They draw the customary distinction between fraud, on the one hand, and “mistakes, accidents,

[1] In Roman mythology, *Fraus is the goddess or spirit of deceit and cheating,* the Greek equivalent of Apate.

insufficiencies, incompetence or violations of the electoral process" on the other hand, but admit that in practice this line may be blurred, as it can be difficult to gauge intent.[2]

For the sake of convenience, electoral corruption as a form of manipulation can be broken down into three types according to object: the manipulation of rules (the legal framework), the manipulation of voters (preference-formation and expression) and the manipulation of voting (electoral administration).[3]

How can we differentiate election fraud from malpractice, or other various irregularities that occur in the electoral process?

A first difference between fraud and malpractice can be found in the existence of the author's intent. Elections may be incorrect, although they are not rigged. Fraud involves the existence of intent, difficult to prove in most cases, whereas malpractice is a form of negligence or disregard of rules and procedures.

The presence of intent is an important indicator as to how to report a particular offense. For example, failure to update the electoral lists can be an administrative negligence with serious consequences for the electoral process, or a deliberate strategy of fraud. It suffices that failure to update the electoral lists in some cases may exclude entire categories of voters from the vote: ethnic or religious minorities, youth, women, etc., and result in a distortion of the will of the citizens of that constituency.

As such, the lack of action (i.e. updating the electoral lists) can be considered fraud. Similarly, accepting to leave deceased persons on the list or citizens who do not live in that district can be an administrative negligence or a deliberate strategy of fraud, this may even influence the result of a scrutiny. For example, in case of a referendum that has a quorum of participation, the failure to update the electoral lists may lead to its invalidation and may generate controversies regarding the legitimacy of the final results as it can be seen from the occasion of the national referendum for impeaching the president of Romania from July 2012.

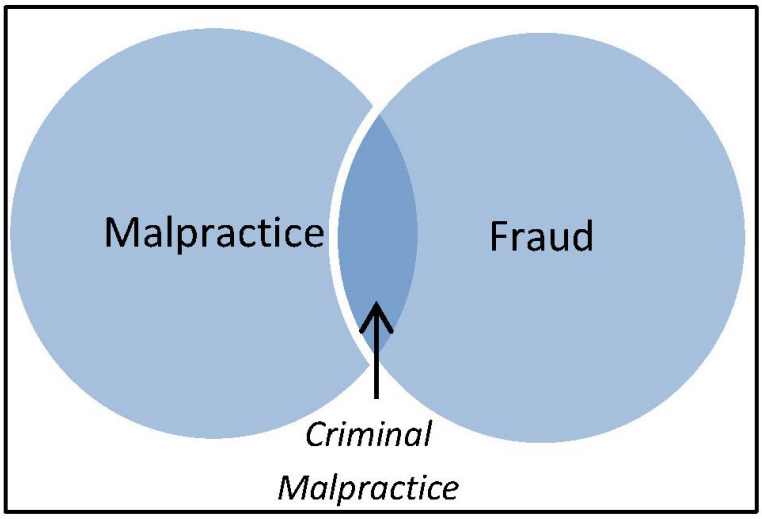
As Chad Vickery and Erica Shein point out in their research, a breach of the duties of service can lead to significant penalties and even prosecution, including cases where intent is difficult to prove[4].

---

[2] Hector Davalos and Nguyen Huu Dong, "Fraud and Fraud Prevention," paper presented at the 8th European Conference of Electoral Management Bodies, European Commission for Democracy through Law (Venice Commission, May 2011).

[3] See Sarah Birch, „Electoral Corruption", in Todd Landman and Neil Robinson (eds.), Handbook of Comparative Politics, Sage, 2009. For the author, electoral corruption is the same as electoral malpractice and electoral manipulation.

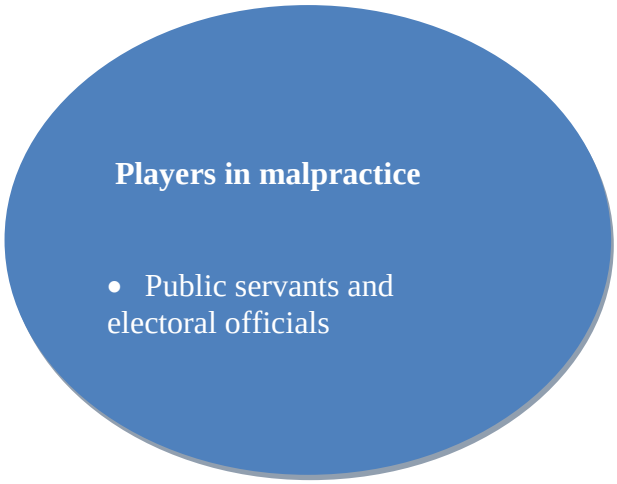
[4] This situation refers to an extreme case of malpractice – an overlap between election fraud and malpractice – that some authors refer to as „criminal malpractice." See Chad Vickery and Erica Shein, "Assessing Election fraud in New Democracies: Refining the Vocabulary," IFES, May 2012, p. 11.



It should be noted that in present-day democracies most irregularities seen in the electoral process are due to limited capacity of state intervention, lack of adequate training of electoral officials or the existence of legal provisions that are confusing and subject to interpretation, rather than the result of deliberate attempts to defraud the electoral process.

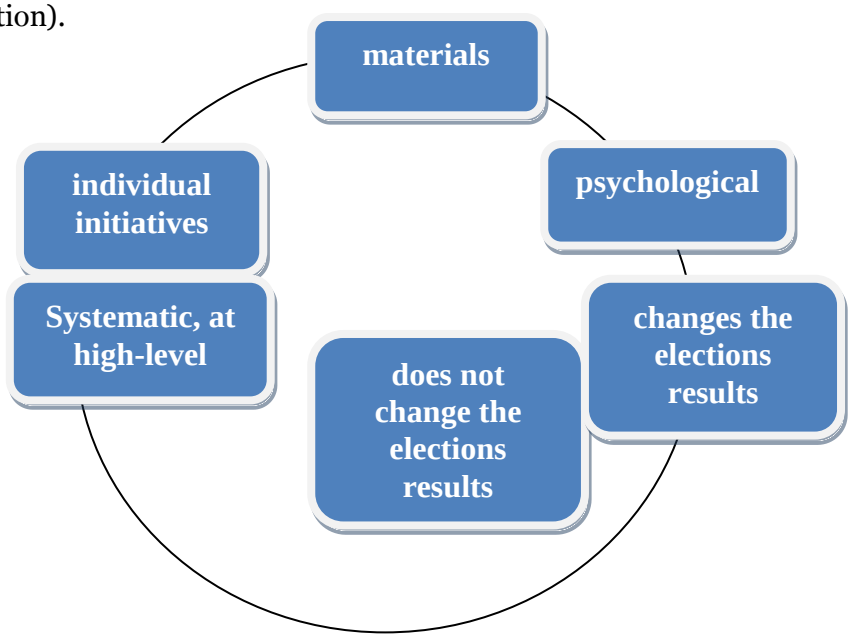
Election fraud and malpractice are also different in terms of the range of possible players [5]. In this sense, election fraud covers a wider range of stakeholders than malpractice, like media, political parties, government officials, state institutions, electoral officials, voters and candidates. While the malpractice players are primarily government officials and electoral officials (for example, electoral bureau members).

[5] See Figure 2. Elements and Applications of Election fraud and Malpractice in Chad Vickery and Erica Shein, "Assessing Election fraud in New Democracies: Refining the Vocabulary," IFES, May 2012, p. 12.



As we can see, sometimes players who commit election fraud / malpractice are the very persons in charge of combating it.

An important distinction concerns the effects of election fraud on election results. Some of these affect / change the election results, others do not. In addition, some fraud can be systematic and organized at high level, or just individual initiatives. Another classification regards the nature of fraud: material, physical (e.g. destruction or invalidation of ballots) or psychological (e.g. intimidation).



One of the matters that concern the experts' community is to identify the favoring factors that are associated with frauds or electoral corruption. Putting it otherwise – the factors in a society that discourages the electoral corruption. Knowing the circumstances that favor the frauds in this field allows a better

elaboration of strategies and action plans for preventing and combating the phenomenon.

There are different variables, more or less controversial, which can be used in this regard. Of these, we can mention: the presence of degrees of fraud in previous elections; the time elapsed since the first multiparty elections; existing economic inequalities; the type of electoral system used; and the degree of cohesion within the party.

For example, some studies indicate that majority-based systems with single-member constituency that use the first-past-the-post voting method, also known as the "winner-takes-all," which show reduced party cohesion and control of candidates, are more prone to fraud than proportional or mixed systems[6].

Other variables that could be considered are: regime stability, urban-rural population ratio or the degree of corruption present in public administration. In this respect, some studies have shown that the most important factor that facilitates election fraud is the interaction between electoral corruption and other types of public-sector corruption[7]. Also, variables that may be relevant in some situations could be the membership (or intent to have this quality) in certain international organizations and aid dependence on the international community at the time of elections.

Measuring electoral corruption is something that it is difficult to do directly, and most measures of this phenomenon rely on reports written by observers, on legal action filed, court rulings, or the findings of popular surveys and opinion polls; or by undertaking statistical analyses of election results in order to identify patterns that are unlikely to be found in non-manipulated elections[8].

These sources should be corroborated; transparency is a key factor in determining electoral fairness. Difficulties may be encountered in the states with old democratic traditions that do not support election monitoring.

3. Electoral frauds in the context of the electoral cycle

A careful analysis of the electoral process shows it is not a set of disparate events that succeed more or less randomly, but rather a continuous flow of different integrated, interdependent, and conditioned activities. The successful holding of elections depends on its good management. Mismanagement of an unplanned or unprepared task adversely affects other activities, sometimes with consequences difficult to assess.

The concept of "electoral cycle" was proposed by specialists in electoral

---

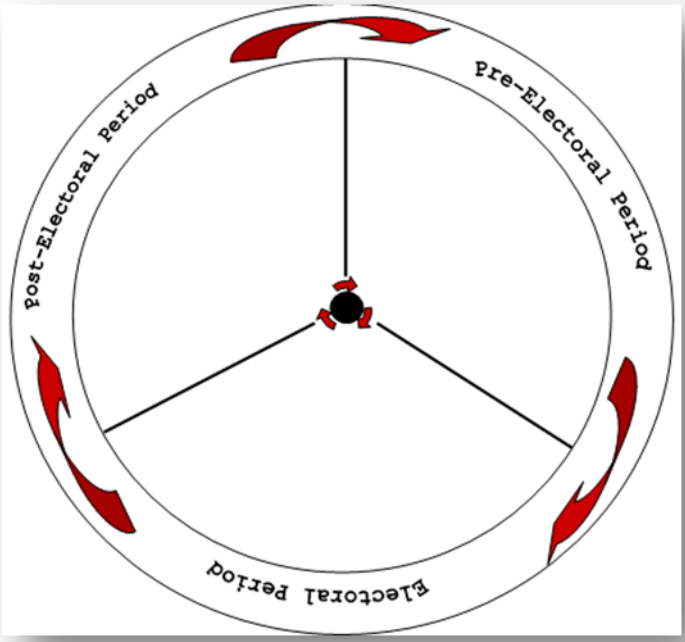
[6] Sarah Birch, "Electoral systems and Electoral Misconduct", Comparative Political studies, Volume 40 Number 12, December 2007, University of Essex, Colchester, United Kingdom pp.1533-1556;

[7] There are also other, more general, favoring factors, for example, the extended redistributive politics runs the risk of transforming "constitutional democracy" into a populist, corrupted and inefficient "electoral democracy"...as such we can create perverted social mechanisms that will generate new types of group solidarities. See Sabin Drăgulin „Guvernul „Robin Hood": câteva observaţii sociologice" in *Sfera Politicii* no.11 (165)/2011.

[8] See Sarah Birch "Electoral corruption," Institute for Democracy & Conflict Resolution – Briefing Paper (IDCR-BP-05/11) Institute for Democracy and Conflict Resolution (IDCR), available on-line: http://www.idcr.org.uk/wp-content/uploads/2010/09/05_11.pdf (accessed on 1.02.2013).

assistance as a useful tool to ensure long term sustainability of the electoral process, together with the professionalization of electoral management bodies. The main benefit this concept brings is the understanding of the interdependence of various electoral activities.

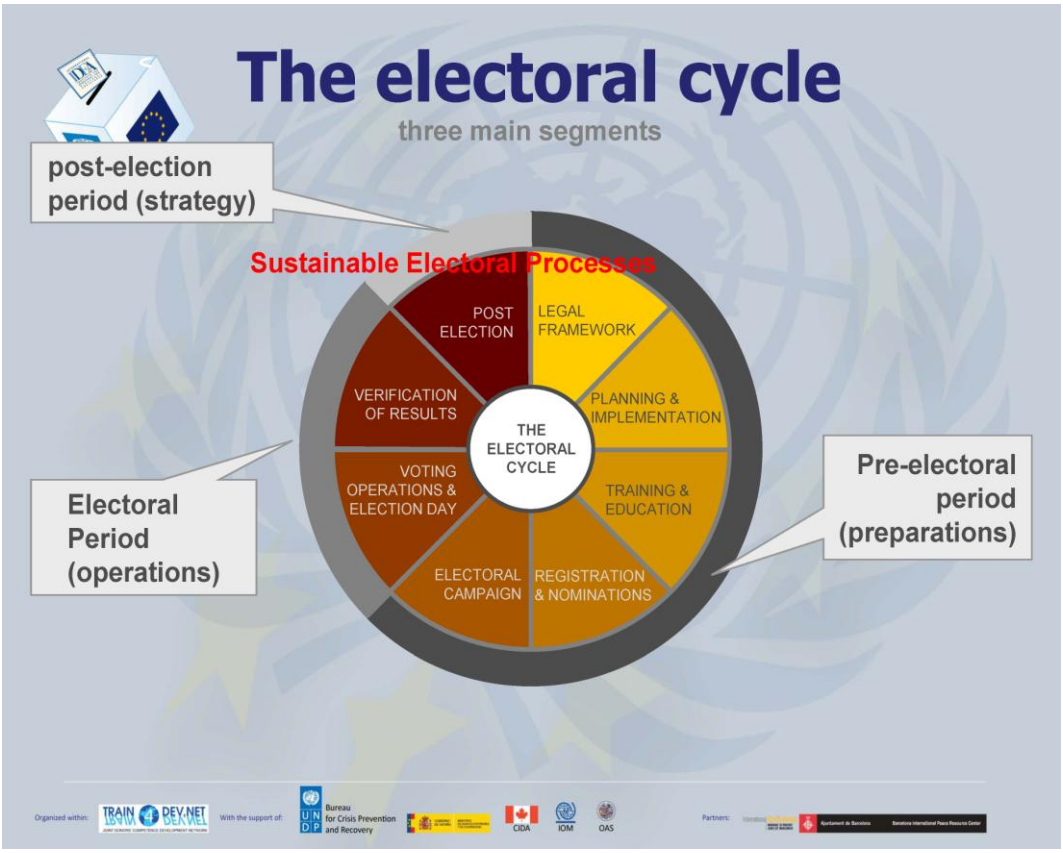
At the broadest level, the electoral cycle can be divided into three periods: pre-electoral, electoral, and post-electoral.



Each of these periods has its specific activities:

- Planning, training and education, information, registration of parties, candidates and voters[9], etc. - pre-electoral period;
- Submission of candidacies, election campaign, voting, official results, complaints and appeals, etc. - during the campaign;
- Strategy, legal reform, audits and evaluations, professional development, etc. - post-electoral period.

[9] In some countries, citizens can request to be included on the voters' list only by applying through a form.



Source: BRIDGE Project [10]

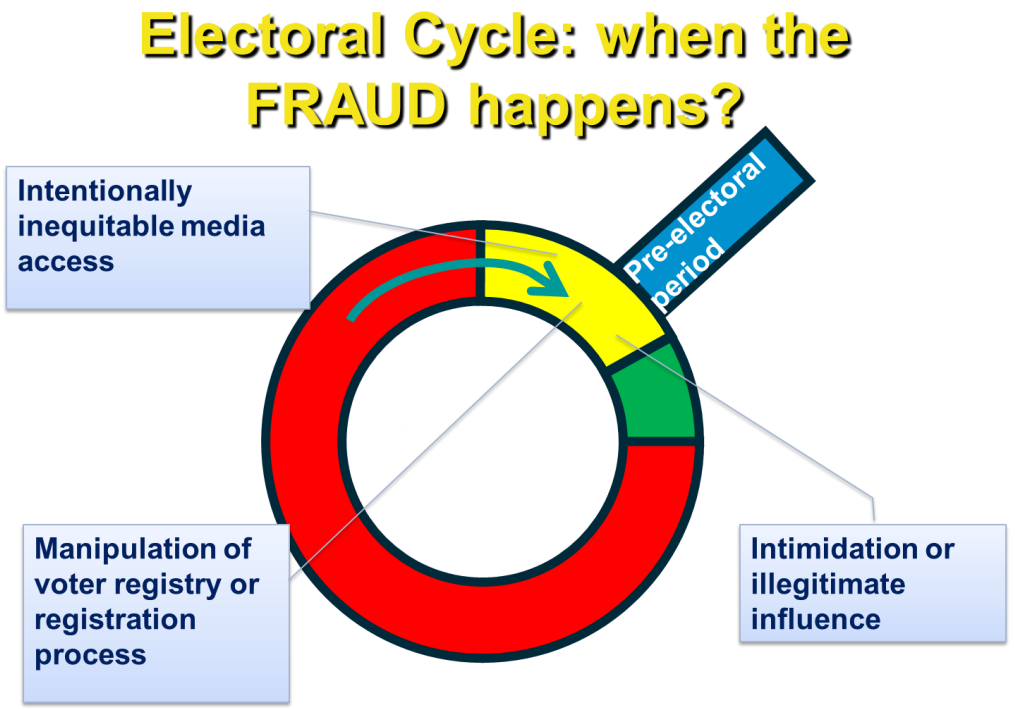
From case to case, some of these activities shown in the figure below can take place in other electoral periods depending on the requirements and the electoral specificity of each country. For example, training for electoral officials can take place in all three periods of the electoral cycle, noting that during the campaign these training sessions aim primarily on understanding the electoral procedures and organizing the voting process.

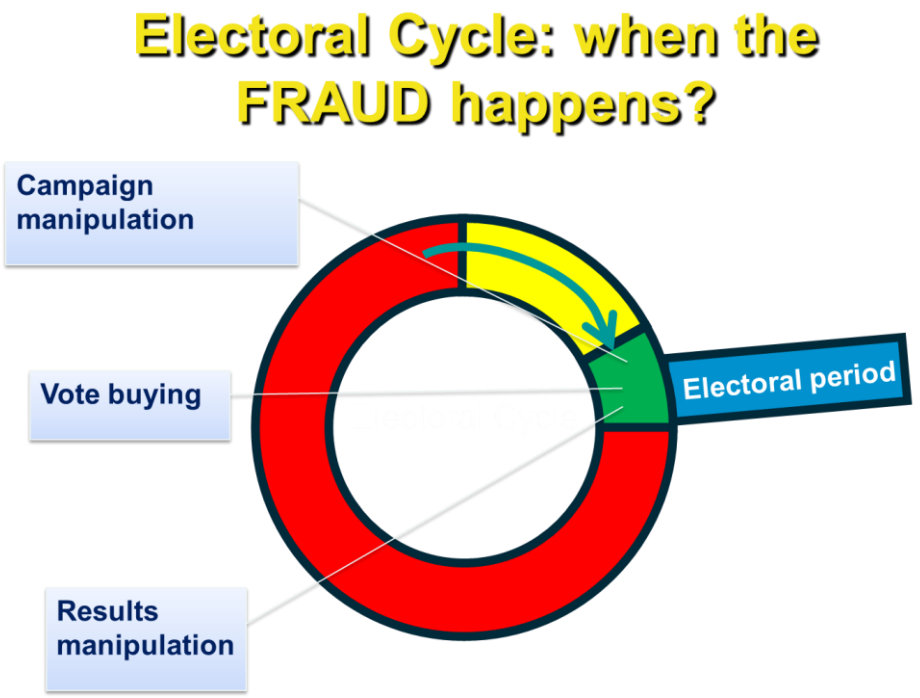
[10] BRIDGE stands for Building Resources in Democracy, Governance and Elections. It is a modular professional development program with a particular focus on electoral processes. BRIDGE represents a unique initiative where five leading organizations in the democracy and governance field have jointly committed to developing, implementing and maintaining the most comprehensive curriculum and workshop package available, designed to be used as a tool within a broader capacity development framework. The BRIDGE partners are: the Australian Electoral Commission (AEC), International IDEA, International Foundation of Electoral Systems (IFES), United Nations Development Program (UNDP) and the United Nations Electoral Assistance Division (UNEAD).
More information is available on**:** http://bridge-project.org/ (accessed 01.02.2013)

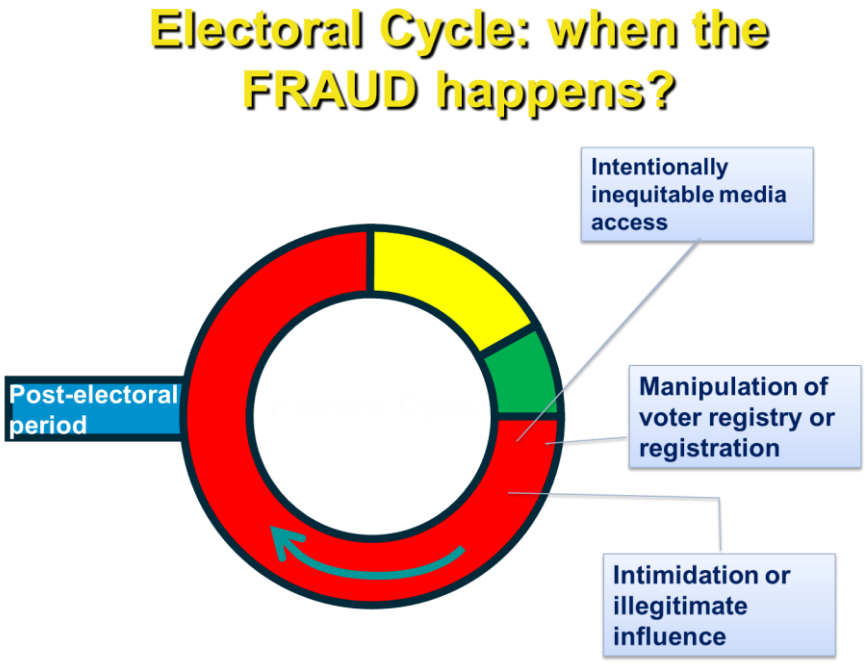
Source: BRIDGE Project

Introducing the concept of "electoral cycle" is useful in terms of strategies and allocation of resources in advance, for the prevention of election frauds. However, despite the widely shared opinion that election frauds take place on Election Day, they can occur in all periods of the electoral cycle.

Below are some types of election frauds associated with different periods of the electoral cycle.


Electoral Cycle: when the FRAUD happens?
Intentionally inequitable media access
Pre-electoral period
Manipulation of voter registry or registration process
Intimidation or illegitimate influence


Electoral Cycle: when the FRAUD happens?
Campaign manipulation
Vote buying
Electoral period
Results manipulation



Even in those instances where fraud does not change the election results, it may cause serious damage to the democratic functioning of the state, e.g.: undermining public confidence in the electoral process, a low voter turnout, lack of legitimacy and credibility in the elected political class. Allegations of fraud, whether confirmed or not, can lead to violence and social instability if not dealt with promptly, in a transparent and professional way. Unproven perception of fraud can be as destructive to the electoral process as the fraud itself.

4. The role of technology in the prevention of election fraud

One strategy to combat election fraud adopted by several countries of the world is the implementation of a solution based on the advancement of new technologies IT&C. A recent *E-voting handbook* published by the Council of Europe at the end of 2010 takes into account developments in the application of electronic voting since the Recommendation (Rec. (2004) 2011) on legal, operational and technical standards for electronic voting adopted by the Committee of Ministers in 2004.

A cost-benefit analysis shows that although the initial investment for acquiring these technologies (servers, electronics, software, maintenance and technical support, etc.) are significant, on long term costs are significantly reduced, resulting in savings for the organization of elections. Currently, different technological solutions can be used for operational activities of the electoral cycle and also ensure a high level of security against fraud attempts.

Noteworthy are[11]:

• Direct recording electronic computers[12] installed in polling stations that record automatically voting options, usually via a touch screen or a special pen;

• Internet voting – in a controlled (polling station) or uncontrolled (remotely) environment;

• Optical and digital scanning devices used to scan ballots to reduce errors caused by manual counting;

• Various IT&C technologies have been implemented for the creation of electronic electoral lists with high accuracy (e.g. Bangladesh[13]).

Also, computerization of electoral activities may be an effective means to:

- Prevent illegal voting (or "multiple" voting, as it is called);
- Monitoring and public informing on voter turnout on the day of the elections;
- Editing, checking and electronic transmission of reports on voting results from the polling stations to the hierarchically superior electoral offices.

Pilot projects undertaken to implement IT&C technologies in the polling stations confirm the benefits of adopting these solutions for increasing the quality of the electoral process.

Case Study: The Permanent Electoral Authority - "Pilot Project for Computerizing the Electoral Activities in Polling Stations" (2010) [14]

In 2010, during the course of two partial elections in uninominal constituencies for the election of members of the Chamber of Deputies, PEA has developed a "Pilot project for Computerizing the Electoral Activities in Polling Stations." Thus, in order to alert on illegal voting attempts, this pilot project was based on a computer system ensuring that all of the voter's social security numbers are collected in a central database of voters who have expressed their right to vote. The system then verifies the existence of social security numbers in the electoral register corresponding to each college. As a backup option if the Internet connection was not working or if polling stations were too crowded, the system operated via SMS. Atypical cases (duplicated social security numbers, social security numbers omitted from the electoral lists, invalid social security numbers in existing IDs) were resolved by special operators that worked in a call center. After polling stations closed at 21:00, the social security verification module was disabled while the data

[11] Direct Recording Electronic computers (DREs);

[12] «As Bangladesh gears up for its first parliamentary elections in seven years on 29 December, the first ever computerized photo voter list in the south Asian country containing pictures of more than 80 million people is now complete after taking 11 months to compile with United Nations help. An independent audit of the list by the Washington-based International Foundation for Electoral Systems (IFES) has concluded that the list was compiled with a "high degree of accuracy," and no 'ghost voters' were found, the UN Development Programme (UNDP) said in a statement today.»,

http://www.un.org/apps/news/story.asp?NewsID=29415&Cr=bangladesh&Cr1=election (accessed on 1.02.2013).

[13] See the brochure of the *Pilot Project for Computerizing the Electoral Activities in Polling Stations*, project developed by the Permanent Electoral Authority in Romania and the Special Telecommunications Service in 2010, available on:

http://www.roaep.ro/ro/section.php?id=cauta&termen=bucuresti&page=15

[14] Susanne Caarls (ed.), *E-voting handbook. Key steps in the implementation of e-enabled elections,* p. 45, available on: www.rijksoverheid.nl (only in Dutch).

collection module of the transcripts has been activated. Operators completed the electronic form transcripts, which reported the errors, where necessary, through the validation keys, and which were forwarded to the Central Electoral Bureau. Voting consolidation was done in real time, i.e. 2 hours after the polls closed.

Another way adopted by some countries to ensure transparency of the electoral process and to prevent illegal voting was the use of video recorders at the entrance or inside the polling stations. For example, in Romania, such a solution was used for the presidential elections in 2009.

With the support of prefects and mayors, webcams or other video recorders connected to computers, with sufficient storage capacity for 14 hours of video, were installed at the entrance of special polling stations and showed people who voted. Subsequently, records were stored on optical media and delivered via districts' and Bucharest's electoral offices to the Permanent Electoral Authority.

Such measures, sometimes challenged on grounds of violation of the principle of secret voting, have been implemented in countries like the Russian Federation (the presidential elections in 2012), Bangladesh (partial elections in 2012), Azerbaijan (2008 presidential elections and local elections in 2009) etc. or are being implemented (Ukrainian parliamentary elections to be held in October 2012).

More and more states consider it appropriate to initiate pilot projects on remote electronic voting as a viable and modern alternative, according to the advance made by the new IT&C technologies, including in the electoral area. Experimentation with alternative electronic voting is, in fact, a current trend encouraged by the International and EU forums.

In recent years Internet voting has been tested or used on a limited scale (the primary elections, local, or referendums on issues of local interest) in countries like USA, UK, Estonia, Netherlands and Switzerland.

An interesting case study in Europe for the introduction of electronic voting is the Netherlands:

"The Netherlands has conducted two e-voting experiments for voters living and/or working abroad on election day in order to facilitate the casting of their vote. The first experiment was held during the European Parliament elections in June 2004, and voters had the option of voting via telephone or Internet (as well as using the usual method of postal voting). 7 195 out of 15 832 registered voters used the Internet and telephone to cast their vote.

In November 2006 a second experiment was conducted. Voters living and working abroad on election day could cast their vote for the national parliament elections via the Internet (as well as using the usual method of postal voting). This time 19 815 of 34 305 registered voters cast their vote through electronic means. As the result of controversy about the use of electronic voting machines at polling stations, no further action was taken."[15]

As some authors show, one of the lessons of the failure of the electronic machines in Holland is that before being used any new voting method closely

[15] See Leontine Loeber, "E-Voting in the Netherlands; from General Acceptance to General Doubt in Two Years" in Electronic Voting, Vol. 131GI (2008), p. 29

tested and evaluated by the supporters and also by the critics (especially). Introducing prematurely such methods may lead to public trust's loss that once lost will be hard to win back.[16]

Currently, in Europe, Estonia is the only country where Internet voting is used in general elections. Even in this case the method was used optionally with the classic method of voting, and voters who chose to vote via the Internet were a minority. The Estonian National Electoral Commission declared that in Estonia, "Internet voting from home is possible for all elections. Estonian legislation gives voters the opportunity to cast their vote via the Internet from the 10th to the 4th day before election day. A voter may change his/her electronic vote during the advance voting period by casting another vote electronically or by voting at a polling station by paper".

Implementation of current technological solutions to render various campaign activities operational is an irreversible process, similar to what happens in other spheres of society we live in. These technologies lead to greater administrative efficiency and, on the long term, they reduce the cost of organizing elections; these are benefits that can hardly be questioned. Electoral consensus and public players that usually are reluctant to abandon the traditional skills of political participation, play a key role in the adoption of such solutions.

Ensuring transparency, integrity and security of the electoral process after the electoral processes and independent auditing of the system are rendered operational can be a challenge that election managers should take into account for the implementation of advanced technologies in the election process. Public debate, unbiased and informed dialog between electoral managers, politicians and civil society is essential to overcoming inherent suspicions on introduction of such technological solutions that are not always accessible to the public.

REFERENCE

Birch Sarah "Electoral corruption," Institute for Democracy & Conflict Resolution – Briefing Paper (IDCR-BP-05/11) Institute for Democracy and Conflict Resolution (IDCR) 2011, available on-line: http://www.idcr.org.uk/wp-content/uploads/2010/09/05_11.pdf.

Birch Sarah, (2009), „Electoral Corruption", in Todd Landman and Neil Robinson (eds.), Handbook of Comparative Politics, Sage.

Birch Sarah, (2007), "Electoral systems and Electoral Misconduct", Comparative Political studies, Volume 40, Number 12, December University of Essex, Colchester, United Kingdom.

Caarls Susanne (ed.), *E-voting handbook. Key steps in the implementation of e-enabled elections*.

Davalos Hector and Dong Nguyen Huu, "Fraud and Fraud Prevention," paper presented at the 8th European Conference of Electoral Management

[16] Susanne Caarls (ed.), *E-voting handbook. Key steps in the implementation of e-enabled elections,* p. 13 www.vvk.ee/internetvoting. See Leontine Loeber, "E-Voting in the Netherlands; from General Acceptance to General Doubt in Two Years" in Electronic Voting, Vol. 131GI (2008), p. 29

Bodies, European Commission for Democracy through Law (Venice Commission, May 2011).

Loeber Leontine, (2008), "E-Voting in the Netherlands; from General Acceptance to General Doubt in Two Years" in Electronic Voting, Vol. 131GI.

Vickery Chad and Shein Erica, (2012) "Assessing Election fraud in New Democracies: Refining the Vocabulary," IFES, May.

BRIDGE Project http://bridge-project.org/

Pilot Project for Computerizing the Electoral Activities in Polling Stations, project developed by the Permanent Electoral Authority in Romania and the Special Telecommunications Service in 2010, available on:

http://www.roaep.ro/ro/section.php?id=cauta&termen=bucuresti&page=15

EU EXTERNAL COMMUNICATION CAPACITY- STEPS FROM A RESEARCH AGENDA*

Lucian Jora**

lucian.jora@europaeus.eu

Abstract: *European Union has enormous public diplomacy potential – the combined "infopolitik" might of the 27 member states and the Commission is formidable at least in theory. It is true that there are several political and administrative obstacles to a unified and integrated EU.*

Keywords: *European Union, International relations, Public Diplomacy.*

Building *on the march* a credible European Union Diplomatic Service involves the creation of functional specific tools first off all capable to individualize to EU voice within an anarchic International System.[1] In doing so the member states must first ask with realism questions related to issues like: How well are the EU institutions communicating to the world today by comparison with another "voices"? Is the Union capable to compete for audience in the field of international communications? How should the Commission's approach to third-country communication differ from that of states?[2] To what extent will the EU's developing global role require a new approach to communications outside the Union? Who is going to perform this communication, which language and hose's culture among the member states would be valorized, and on what kind of cultural and political environments? Is it appropriate for the EU to be as calculating in its communication strategies as EU member states and if yes who will agree or control this communications strategy? How should strategy be designed, negotiated among the member states coordinated and implemented in a manner to represent all its 27 member states?

There is no question that the European Union has enormous public diplomacy potential – the combined "infopolitik" might of the 27 member states and the Commission is formidable at least in theory. It is true that there are

* **This work was supported by the strategic grant POSDRU/89/1.5/S/62259, Project „Applied social, human and political sciences, Postdoctoral training and postdoctoral fellowships in social, human and political sciences" co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007 – 2013.**

** **Ph.D, - Lucian Jora is since 1998 a researcher at the Institute of Political Sciences and International Relations of the Romanian Academy. Mr. Jora welcomes questions and comments about the content at the address lucian.jora@europaeus.eu**

[1] Milner Helen, *"The Assumption of Anarchy in International Relations Theory: A Critique" in,* Review of International Studies Vol. 17, No. 1 (Jan., 1991), pp. 67-85 Published by: Cambridge University Press.

[2] Fiske Philip de Gouveia with Hester Plumridge, "Developing EU Public Diplomacy Strategy", *European Infopolitik*, The Foreign Policy Centre London 2005, pp. 2-19.

several political and administrative obstacles to a unified and integrated EU. As an entity comprising more than 450 million inhabitants, which contributes 40 per cent of the United Nations budget and 25 per cent of global GDP, the European Union is punching well below its weight in communication terms. This is a difficult subject for analysts. Conceptualizing and understanding how "Europe" and Europeans project themselves to, and engage with, non-Europeans is not easy. First the concept of "Europe" and "Europeans" is blurry. Too...often by "Europe" and "Europeans" in fact the non-European world perceive the culture of few (3 or 4) member states from the old western club. There is also a matter of control. With or without a "strategy" the Communication between Europe and "Non-Europe" occurs daily *de facto* in an incalculable number of ways: the televised speech of the member states politicians, the performance of a Verdi opera, the screening of a European coproduction film ("1492- The Conquest of Paradise" been probable the best example), the exhibition of a Renaissance of Baroque masters, the Euronews or Arte TV Channels (but also the good old fashioned BBC World Service, RFI or Deutsche Welle) , the French or Italian fashion shows, the exhibition of various gourmet products (usually French, Italian or Spanish...sometimes Hungarian).

As the EU seeks to develop a recognizable role in the world, policymakers should both make that leap and act upon it. The way how European Union as a political structure is perceived in the world at large remains a source of debate. The European Union has been described by a variety of writers in a variety of ways: as a 'civilian power', as a 'normative power', as a 'postmodern power'. Europe is seen by some commentators as the 'champion of multilateralism', 'a community of democracy' and the purveyor of norms and values like human rights, sustainability and the rule of law. The views of Europeans themselves are perceived by some both to shape and reflect the global most advanced attitudes on issues such as climate change and gender equality. At the same time, European culture and commerce are very appealing to global consumers. Six of the top ten countries on the Anholt -GMI nation branding index are European.[3] Sixty-one of the top 140 companies in the "Global 500" are European.[4] According to Joseph Nye: The European Union as a symbol of uniting power carries a good deal of soft power.[5] Polls conducted in the last decade found that a majority of Americans had a favourable image of the European Union, and ranked it fourth for its influence in the world behind the United States, Britain and China[6]. Even if many researchers still consider that trough the "European eyes", there is no

[3] Anholt Simon, "Places: identity, image and reputation" in Frank Go & Robert Govers, *International Place Branding Yearbook 2010: Place Branding in the New Age of Innovation*, Palgrave publication London 2010, p. 13.

[4] ibidem.

[5] Nye Joseph, "Soft Power: The means to succeed in world politics", New York: Public Affairs, 2004.

[6] For an analysis of how the EU is perceived in the Asia-Pacific , for example, see research conducted by Martin Holland and his team at the University of Canterbury, New Zealand, www.europe.canterbury.ac.nz/research/2005_database.shtml - see also "The EU through the Eyes of the Asia-Pacific", Martin Holland and Natalia Chaban, *E Sharp! Magazine*: www.peoplepowerprocess.com

common European identity, in contrary to them we can prove that at least in the last two decades in many respects thanks to the exchange programmes like Erasmus a sense of a common identity was developed especially among the young generation. This sense of European common identity always existed in a way or another with the significant difference that it has another place ia a personal "multilevel identity". Also surprisingly many researchers when talking about the "European identity" and its existence adopt a simplistic attitude careless about the multilevel identity issues and particular social, political or cultural environment issues. A bunch of people coming from various European countries in a foreign cultural environment like Asia or US would be perceived and would consider themselves "Europeans" in a different extent that they will in their native countries cities or villages.

Even more, in the Chinese, eyes often it would seems that you are all the same. In some cases they cannot tell the French from the Belgians or the British from the Germans. They would be simple called "Europeans". However even here the things are not at all that simple. Perhaps a Chinese from the Mainland China would not distinguish a British from a German...but is not the case for a Honk Kong Chinese, neither for an Indian for whom Britain is something apart and especial as regarding Europe. In the same extend a Cambodian or a Vietnamese would not confuse a French from a German or from a British, neither an Indonesian a Dutch from an English, Neither a Pilipino a Spanish from a French. The generalization habit with all its attractiveness for social scientists has its own several limits, with consequences often beyond the academic rigour when they are translated into EU Policy papers. More exactly in certain parts of the World EU should be represented by that part of its identity and cultural component that does not carry painful memories from the colonial past (Dutch, Portuguese, Spanish, French or British).

When it comes to Europe's conducting of external communication actions under various forms of public diplomacy, the EU institutions are key actors – and their role in communicating Europe and the Union to the world are almost as varied as the communication itself. Even if it is rarely described as such, the Commission particularly is already engaged in public diplomacy activities through third-country delegations, the activities of the external Directorate-generals, and the Euro-Med Partnership among others. Many of the activities conducted by, for example, DG Education and Culture as part of its Intercultural Dialogue programme, may also be described as public diplomacy. Again here came into discussion the question about the extent to which the Commission functionaries represent the Union with he least common denominator of 27 member states or just a few "elite" more "equal" than other members. And also the question about the extend the EU Institutions succeeded to create a functional body of EU functionaries independent enough from their country of origin. The publication in July 2005 of a new EU Communication strategy (by the renamed DG Communication) is part of a decades old trend. Debates over how to communicate with, and to, the citizens of Europe in a neutral "European" way have been going on for generations. Often debate has, in fact, centred around means of conducting public diplomacy with the people of Europe, even when it

was not described as such. The 1973 Declaration on *European Identity*, the 1984 *Television Without Borders* Directive, the 1984 EU Committee for a *People's Europe*, the 1992 Maastricht Treaty, the 1993 De Clercq Report, and the 2001 Communications Strategy all contained recommendations for action designed to improve communication to European publics. These included now familiar initiatives like the creation of a European currency, a European Multilingual television channel, a Euro-lottery, harmonized passports and driving licenses, a European literature prize, and themed European weeks, months and years.[7] Europe has access to the world's greatest fund of public diplomacy experience and capabilities. The 27 member states of the European Union are among the most experienced in the world at conducting public diplomacy and cultural relations. In the field of international broadcasting – a key strategic public diplomacy tool – the BBC World Service, Deutsche Welle and Radio France International are world leaders. Cultural organizations such as the French Cultural Institute, Goethe Institut or the British Council have worked for decades to facilitate and improve informal people-to-people relations between their own countries and others. The knowledge base of these organizations has a high value and can be incorporated into the EU Communication capabilities.

The French diplomats are those and even today about, half their budget for foreign relations on it. But whereas the French Government has traditionally identified this work closely with French interests and foreign policy, the general tendency in other democracies since 1945, has been to distance it from government direction and control. The idea of people communicating with each other across national boundaries has been a constant theme throughout the world over the last 40 years and is one of the fundamental beliefs of the European Community. Is not difficult to understand where this belief is coming from. The practical experience of the Cold War has shown that the cultural diplomacy and the public diplomacy where in fact more influential than the latest generation of weapons.

In theory if we would consider the sum of activities conducted by the 27 member states make the collective European Union easily the most active and well-funded Public/Cultural diplomacy actor in the world. France alone reportedly spends more than $1 billion annually, or $17 per capita, on a combination of public diplomacy activities, in comparison with the USA which spends on average a mere $0.65 per capita.[8] Until now among the member states such activity has tended to be competitive although the cooperative approach is always emphasized as a necessity. Public diplomacy is an expensive strategic tool for many European governments and one they are inevitably reluctant to surrender or share to a multinational structure like the EU unless they will benefit somehow directly from it.

But there remains considerable unfulfilled potential both for greater co-

[7] According to the EU's *Communication Strategy for Enlargement*, information is the 'flow of facts and figures' and communication 'the presentation of objective messages in the form of key messages adapted to particular audiences': – http://www.europa.eu.int/comm/enlargement/communication/pdf/sec_737_2000_en.pdf.

[8] Nye Joseph, "Soft Power-Growing a Bigger Europe", British Council publication, 2004, p.81.

operative efforts between member states, and for the EU institutions to work with, and through, member state organizations). Some attempts have been made. One initiative which has tried to facilitate greater co-operation between member states' public diplomacy organizations is CICEB (an abbreviation for "Consociato Institutorum Culturalium Europaeorum Inter Belgas"). Consisting of 12 members, with plans to expand to the 25 member states, CICEB attempts to co-ordinate activities conducted by the various European cultural relations institutes. CICEB output typically includes language diversity training awareness, journalist networking initiatives, and European "active citizenship" programmes. Thus far CICEB's focus has tended to be intra-EU but the organization is reportedly keen to expand its sphere of activity to third countries. In 2006 CICEB became EUNIC Brussels (European Union National Institutes of Culture) as part of a wider cooperation between national institutions of culture across Europe. Although working since 2006, the European Union National Institutes for Culture was officially introduced in Brussels on February 21st 2007. At that time EUNIC consisted of 21 organizations from 19 countries. This was the first major partnership of cultural institutes aimed at promoting European culture globally and at strengthening relations with countries outside Europe. The Romanian Cultural Institute joined EUNIC in 2007.[9] The past four years have seen a series of other national culture institutes join EUNIC, and, more importantly, the establishment of many EUNIC clusters. The network currently consists of 29 organizations from 27 countries and operates through its 57 clusters worldwide.[10]

However as far as the EU is concerned the key actors in EU public diplomacy in third-countries are the various DGs with external remit – RELEX, Trade, Enlargement, Development, ECFIN and ECHO – and their dedicated "information and communications" units now concentrated in EEAS.

DG RELEX – the former Commission's Foreign Ministry like body - spent €7 million on communications in 2005 through its bilateral delegations and the figure is almost similar 7 years latter within the EEAS. This is a very small figure compared to, for example, the British Council's £551 million annual turn-over. The EU should establish an equivalent of the British Council, an ***Alliance European***. Such an organization could gather all the EU's cultural diplomacy efforts, coordinate EU country efforts and boost the EU's engagement in the Middle East. New funds are needed for cultural exchanges, university scholarships, and similar activities. These should compliment national programs, not seek to replace them.

The Institutional reformation and even the supplementary budget cannot replace the personal individual enthusiasm and skills. The Moscow delegation's information unit, for example, is well funded and has about 9 permanent staff members.[11] According to one official there, it devotes half of its time to media

[9] EUNIC leadership between July 2010 – June 2011 was insured by Horia-Roman Patapievici, President, Romanian Cultural Institute, Bucharest.

[10] http://www.icr.ro/bucharest/eunic-1/story-of-eunic.html, accessed 01.05.2102.

[11] Fiske Philip de Gouveia with Hester Plumridge, *European Infopolitik*: "Developing EU Public Diplomacy Strategy", The Foreign Policy Centre London, 2005, pp. 2-19.

relations – liaising with local media and locally-based foreign correspondents, running press conferences, and organizing media trips to EU funded projects – and the other half of its time doing conventional communication work – managing the delegation website and monitoring the local media. The Moscow delegation has also organized an annual EU film festival for the last 8 years.[12] The Ankara delegation communications team, by contrast, has only 4 permanent staff members.[13] This is surprisingly enough taking into account the enormous challenge represented by the "European Integration" of Turkey and the considerable implications the EU would have in its communication with the civil society in this candidate country. Beyond standard activities outlined above, the unit also co-ordinates a group of academic lecturers sympathetic to the EU called "Team Europe", and has contracted a number of city and town chambers of commerce to host small EU Information centres.

Apart from the EEAS diplomatic representation trough the EC Delegations there are several programs and initiatives which may be well conceived as EU public/cultural diplomacy. Probable the most well known example would be the Intercultural Dialogue programme conducted by DG Education and Culture (among others) in relation with the EuroMed Program. Commission Intercultural Dialogue activities include the Erasmus Mundus initiative, a cooperation and mobility programme in the field of higher education, promoting exchanges between the EU and third countries.

There is significant room for improved contact and networking between EU officials and institutions and the NGO-s, EU Universities and even individuals, working on public diplomacy and third-country communications. A database and 'EU Public Diplomacy handbook' based on best practice around the world would aid refinement of strategy and implementation. There is a lot of potential and interests especially among the youth on intercultural dialogue today.

However there is little know how to do that, with what kind of initiatives, where to obtain information and above everything how to obtain some sponsorship for them. Is also highly advisable to provide a better "value for money" of the public/cultural diplomacy like activities already financed by the EU. The sustainability of various programs and projects should be a major concern among those in charge with the programs. Too often a generous funded program is lost after the end of sponsorship. Too often expensive events like the conferences are organized in the benefit of always the same participants, for instance their informative impact would be close to zero. On the same level of sustainability we must insist on the dissemination of hardly and expensively achieved know how trough the creation and continuous updating of an an easily accessible database of all EU public/cultural diplomacy and external communications activities. Ideally this database should include contact names and details of all delegation information officers and units to facilitate networking but also the name and contact dates of various experts in the field coming from across the member states (Universities, Cultural institutes, private corporations

[12] ibidem
[13] ibidem

involved in communication activities and so one). We sharply disagree with the opinion of these experts who suggest the limitation of access to the data base and mutual exchange best practices between EU delegations to the EU officials only. The EU officials are limited in terms of number, capabilities and often knowledge and experience. They should be not carriers but facilitators of communication, public and cultural diplomacy actions carried on by various entities, but with the EC mandate to do so (in order to have their message content legitimated somehow as "the EU voice"). The various personal experience of each among the 27 member states should be valorized. Contractual positions for experts coming from both the public and private sector should be created on a temporary base with concrete missions in order to achieve best results from each individual.

Historically, co-operation between various member states cultural relations agencies has been quite limited. Events like "The Night of European Cultural institutes" well promoted would have certainly an impact on third country capitals. Also as a consequence of recent trends in migration and former colonial links almost all European countries have access to massive diaspora network. The member states are already exploring means of leveraging these networks to aid national public diplomacy strategies. Perhaps the European Union should find the right strategies to do the same.

In the Euro-Mediterranean Partnership, the European Union has created one of the most ambitious and comprehensive public diplomacy initiatives in history. The Commission should refine the public diplomacy and communications elements of the initiative so as to ensure maximum impact on public perceptions and intercultural dialogue across the region. A very important aspects rely in the concentration of synergies and expertise between various structures with public diplomacy allure (the possibility of renewed co-operative international broadcasting initiatives between organizations like the BBC, RFI, Deutsche Welle and Radio Netherlands). The already existing high quality initiatives should be given o boost in terms of reach and audiences (EU television channels like Arte and EuroNews must be supported to reach third-country wider audiences). Also the scholarship and exchange programmes are among the most cost effective and successful ways to promote the inter civilization dialogue for instance there are strong *cost efficiency* like arguments in favour of increasing them.

The European context is particularly fruitful for the analysis of the behavior of non-state actors. Specifically, the European Union, has managed to create areas for dialogue and the participation of non-state actors, by using them as regular interlocutors to obtain information and to apply European policies. On other occasions, it has been the non-state actors who have taken the initiative to influence the decisions taken in Brussels or to complete policies which they believe to be wanting.

The European Union has shown a significant ability to provide normative frameworks that establish patterns for negotiations and discussion procedures. As models of negotiation are replicated, these new practices acquire stability, and the new institution established gain recognition. Moreover, the EU's 'multi-level governance system' offers a suitable structure that allows interaction among

different authority structures and gives space for new players at different territorial levels to participate in the decision-making processes.

Heard-Laureote has examined the behaviors of non-state actors in their relations with the European Commission and has determined what conditions influence successful Community legislation. The dynamics she identifies and her conclusions are applicable to other international areas. According to her, the necessity for legitimacy for non state entities prevails in the two scenarios where these actors have a role to play: when they propose to intervene in the decision-making processes of the organizations that govern international order (the input side), and when they want to apply these decisions or put them into practice among their supporters (the output side). In either case, their legitimacy to act must be acknowledged by the citizenry and the organizations. The question asked by R Langhorne about the negotiating power of actors like Google or the guarantees a state may have that any agreement which such an entity will be observed and respected would be as well legitimated duting the negotiation with some states.[14] Issues such the negotiating power in international relations are open also for nation states and some of them are more turbulent, and more non predictable (for internal and external reasons) than a major NGO or multinational company which also in terms of financial capabilities (and solvability) may be better of than some states.

The web will have a major impact in the development of public and Cultural Diplomacy although it is difficult to determine exactly the nature of that impact will be, given the rapid pace of change. Organizations involved in Cultural Diplomacy practices often use the web primarily not only as an extension of their marketing or information activities but as a main tool of visibility and dissemination. It is not just „another outlet" through which they can inform audiences of something happening but a major tool designed to increase visibility, to collect instant information about the impact of their message and to expand. The trend is confirmed by the gradual move towards the digital media. Effective public and Cultural Diplomacy at global stage involves an intercultural dialogue and it involves an increased level of interaction, and this interaction trough the virtual space can be effectively realized at very convenient costs.

The search for communication and dialogue achieved trough interactivity seems to dominate the use of the web for Cultural Diplomacy aims.[15] Is not only about a platform to reach foreign audiences more easy and more effectively it is also about an essential dimension of Cultural Diplomacy, more exactly, the ability to engage the target group. The search for engagement and feed back demands new kind of programs and the reshape of the old ones. Also the entire strategy must keep on track with the rapid changes in technologies and social behaviors associated to it. In the last five years there was an explosive grow of social web communication trough socialization sites like Facebook facilitated by new dedicated devices like e-tablets and smartphones. Stevee Green remarque brilliant the way it introduces a kind of „instant reality check" and a need for

[14] Langhorne, Ralph, "The Diplomacy of Non-State", *Diplomacy and Statecraft*, London: Sage 2005, pp. 331-339.

[15] ibidem

instant answers and instant reactions to various issues including Cultural Diplomacy related ones.[16]

Probable there is no better recent example of the challenge represented by the technology revolution than the spread of anger and extreme violence triggered by a short documentary film *Innocence of Muslims* posted on YouTube by a group of extremists. It was instantly perceived as an American government inspired action. As Philip Seib notes, simply is all about technology:[17] „Ten years ago, the *Innocence of Muslims* controversy would not have happened. YouTube did not exist, and without this means of reaching a global audience the offensive snippets of the film would never have been seen".[18] It shows the impotence of foreign policy responsible even in a country like US in front of complex and hard to control realities like those contained by YouTube, Twitter or Facebook. With around 72 hours of video content uploaded every minute in 2011 and growing, in particular YouTube is too vast to be controlled or screened even for US dedicated services.[19] This incident is old and new at the same time. In 1988 were recorded several violent Islamic riots following Salman Rushdie book release, and there was no YouTube. However those riots were targeting a specific physical person and only tangential a government protecting him. We cannot agree entirely as far as Cultural Diplomacy is concerned with assertions like "– a decade or more ago – diplomacy was mostly government to government, with diplomats talking only to other diplomats" because is simply not that easy.[20] A decade or two decades ago, there was indeed a Cultural Diplomacy practiced very effective trough literature, cinema, music or popular fashion products. Also classic Diplomacy's definitions like the one given in 1939 by the British diplomat Harold Nicolson who wrote that among his colleagues "it would have been regarded as an act of unthinkable vulgarity to appeal to the common people upon any issue of international policy"[21] is just irrelevant. The British diplomat was talking about a term with a more restrictive meaning at the time. Even if in 1939 Cultural Propaganda or public diplomacy did exist under various forms, but, those actions were not labeled as *Public Diplomacy*.[22] The importance of the common people gradually increased partly because of their increased decision power, partly because of growing (uncontrollable) information sources available to them. The recent information explosion through the internet, places public diplomacy (and the adjacent communication capabilities) at the center of any governmental

[16] ibidem

[17] Philip Seib is Director, at *the Center on Public Diplomacy, USC*. US.

[18] http://www.huffingtonpost.com/philip-seib/the-perils-of-youtube-dip_b_1885633.html, accessed on 20 of September 2012.

[19] ibidem

[20] ibidem

[21] Quoted by Seib Philip in "The Perils of YouTube Diplomacy" available on line and accesed by 28.10.2012.
http://www.huffingtonpost.com/philip-seib/the-perils-of-youtube-dip_b_1885633.html

[22] At the time often, actions labeled today as pure Cultural Diplomacy would have been labeled as "Propaganda", at the time a word without negative connotations. Many European countries use to have at the time a "Propaganda ministry" or at least a Propaganda department (Germany, Italy Romania etc).

action and EU is not an exception from this. In many countries young people taping half a day their Smartphone to navigate on the internet is a common image. Two out of three adults in UK have a Facebook account, and people seem to be just addicted to the social media. This phenomenon is growing with the continuous support of major phone companies. The competition for attention in this environment is fierce and a wise government must adapt its message for the virtual space, instant answers etc.

REFERENCES

Anholt, Simon, (2010), *"Places: identity, image and reputation" in Frank Go & Robert Govers,* International Place Branding Yearbook 2010: Place Branding in the New Age of Innovation*,* Palgrave publication, London.

Fiske, Philip de Gouveia with Hester Plumridge, (2005), "Developing EU Public Diplomacy Strategy", *European Infopolitik*, The Foreign Policy Centre, London.

Langhorne, Ralph, (2005), "The Diplomacy of Non-State", *Diplomacy and Statecraft*, London: Sage.

Milner, Helen, *"The Assumption of Anarchy in International Relations Theory: A Critique" in,* Review of International Studies Vol. 17, No. 1 (Jan., 1991), p. 67-85 Published by: Cambridge University Press.

Nye, Joseph, (2004), "Soft Power: The means to succeed in world politics", New York: Public Affairs.

Nye, Joseph, (2004), "Soft Power-Growing a Bigger Europe", British Council publication.

Seib, Philip, "The Perils of YouTube Diplomacy", *Huffington post*, on line edition, http://www.huffingtonpost.com/philip-seib/the-perils-of-youtube-dip_b_1885633.html.

CERTAIN CONSIDERATIONS REGARDING THE REGULATION OF THE TRUST WITHIN THE NEW CIVIL CODE

Cristian Jora*

jora.cristian@gmail.com

Abstract: *as the regulation of trust is representing a news within the Romanian legislation, its significance will be noted in the close future. Its regulation points out marked effect, presenting however, certain imperfections approached in the present study.*

Keywords: *trust, establishment), parties, the contect of the trust contract, termination.*

1. Trust is regulated by the new Civil Code, art. 773 – 791 and such a regulation represents an absolute news within the private Romanian law, its introduction in the continental law and now in the Romanian law is the follow up of a long process of interference between the continental civil law and the Anglo-Saxon law and among the regulations of the former, more law institutions or contract types were taken over in the continental law, as consequence of globalization.[1]

By introducing fiduciary contract it was intended to adapt the institution's legal trust, with the term of *trust*, from the Anglo-Saxon law system in the continental system, preserving the particularities of each national legal regulations, the practical importance of this institution consisting in that it enables the shearing of the assets belonging to persons, civil law subjects within the same patrimony, without the need to establish different legal entities, in order to permit the engagement of limited responsibility.[2]

We would like to remind that within the roman law, the establishment of trust implies *datio,* or property transferring, consisted in material remission of the good, by using a ritual formula before the magistrate *(in jure cesio)* or in the presence of five witnesses and the existence of a written document (*pactum fiduciæ),* at the time two kinds of trust being known - *fiducia cum amico* and *fiducia cum creditore.*[3]

---

* **Associate Professor Ph.D, - „Dimitrie Cantemir" Christian University Bucharest; Scientific Researcher at the Institute of Judicial Researches „Acad. Andrei Rădulescu" of the Romanian Academy.**

[1] C.R. Tripon, *Fiducia, rezultat al interferenţei celor două mari sisteme de drept: dreptul civil continental şi dreptul anglo-saxon. Conceptul, clasificarea, evoluţia şi condiţiile de validitate ale fiduciei,* Revista Română de Drept Privat nr. 2/2010, p. 165. În legătură cu fiducia, a se vedea şi Hunor Burian, *Fiducia în lumina Noului Cod civil,* Revista Scientia Iuris – Revista Româno-Maghiară de Ştiinţe Juridice nr. 1/2011, pp. 30-48.

[2] Hunor Burian, *op.cit.,* p. 30.

[3] Alain Berdah, *La fiducie,* http://www.lafiducie.fr/, pp. 3-5, citat de Hunor Burian, *op.cit.,* p. 31.

The current institution of the trust originates in the English law, where the existence of the trust allowed the separation of the fiduciary patrimony from the personal patrimony of the trustee, as application of the splitting ownership theory[4] or splitting title theory

The institution of *trust* within the English Law designates a judicial report concluded through acts between alive civil subjects or for death cause, to a person named settler, which transfers one or more goods under the control of a trustee, in the benefit of a person or with a certain purpose.[5]

It was mentioned that trust is a legal entity established by a settler, for designated beneficiaries, based on legal regulations and of a valid trust instrument, the trustee having the fiduciary duty to manage the assets and the revenues that are objects of the trust, in the benefit of all trustees.[6]

It was also highlighted that within the current conditions, the trust institution has a much wider applicability, being found in Anglo-Saxon legal systems, such as UK, USA, Canada and the continental systems, such as France, Luxembourg, Germany, Switzerland, Austria and legal systems in Africa, South America, Asia (Japan, China, Singapore).

Regulation of the new Romanian Civil Code took inspiration from Law no. 2007-211 of 19 February 2007, by which the French legislator introduced Title XIV "About trust" in the French Civil Code[7].

According to the rules of art. 773 of the new Civil Code, the fiduciary is a legal operation in which one or more constitutive transfer real rights, rights instruments, securities or other property rights or a set of property rights, present or future, to one or more trustees who perform them to fulfill a specific purpose, for the benefit of one or more beneficiaries and mass patrimonial rights are also autonomous, distinct from other rights and obligations Heritage Trust.

The definition has been criticized in the legal doctrine, showing that it does not refer to trust as contract, but the legislature calls it *legal operation*, which is a broader term, broader than the contract, nor is clear from the definition given by the Civil Code, which are the legal subjects of the juridical report that arise, the legislator speaking about the *settler, trustee and beneficiary*, but in reality the parties of the trust contract being only the settler and the trustee.[8] The same author also addressed the concept of transfer, a very broad notion, which does not mean an estrangement. By Transfer one can understand the transmission of rights and obligations, which means alienation, but we also can understand just transfer of the asset rights and obligations of a patrimony to another, both properties belonging to the same owner, which is not equivalent to an estrangement.

---

[4] C.R. Tripon, *op.cit.,* p. 191.

[5] B. Florea, *Drept civil. Drepturile reale principale,* Ed. Universul Juridic, Bucureşti, 2011, pp. 215-216.

[6] C.R. Tripon, *op.cit.,* p. 168.

[7] *Idem, op.cit.,* p. 32.

[8] B. Florea, *op.cit.,* pp. 216-217.

2. By regulating the sources of the trust, the legislator states at art. 774 of the new Civil Code that trust may arise by law, or by contract that must be *ad validitatem*.

In the situation of the legal trust, the legislator provided the necessity of adopting a special law regulating the trust, law that complements the regulation of trust within the new Civil Code.

The new Civil Law enforces the absolute nullity sanction of the trust contract, aiming to achieve an indirect freedom for the beneficiary, the porpoise aimed by the legislator being not to allow the circumvention of the legal provisions regarding the donations and legacies, seeking protection for succession reserves and avoid the possibility of the debtor to avoid paying creditors.[9]

3. The parties of the fiduciary contract are the settler and the trustee. The settler may be any natural or legal person, while regarding the trustee, art. 776 para. (2) and (3) of the new Civil Code establish particular conditions.

The following may have the trustsee quality credit institutions, investment companies and investment management companies investment services, insurance and reinsurance companies legally constituted public notaries and lawyers, regardless of the form of profession practicing, the law submitting a limited list.

The judicial doctrine stated - correctly, we believe - that in the future such a limited list should be abandoned and and also should become legal for any legal subject to obtain a fiduciary capacity, if it meets certain requirements on solvency and honorableness.[10]

The judicial doctrine supported discussions about the possibility of lawyers and notaries to act as a fiduciary[11].

The trust beneficiary may be the fiduciary settler, the trustee or a third person, but the beneficiary is not a party of the fiduciary contract.

When there is no contrary provision, the fiduciary settler is able to designate a third party to represent its interests in performance of the contract and to exercise its rights arose from the fiduciary contract.

Since the acceptance or renunciation of the trust is an act of disposal, it is necessary for the natural person trustee to exercise full capacity. [12]

A new problem arose, whether the fiduciary settler capacity may be added with that of the fiduciary beneficiary, stating that unless the law forbids such addition, the two qualities may be combined [13]; however, another opinion considered that this situation could bear some uncertainties regarding the contractual relationship between the parties and the execution of the contract[14].

By *lege lata,* according to the provisions of art.777 of the Civil Code, the

---

[9] Hunor Burian, *op.cit.,* p. 35.

[10] C.R. Tripon, *op.cit.,* p. 196.

[11] M. Uliescu, A. Gherghe, *Drept civil. Drepturi reale principale,* Ed. Universul Juridic, Bucureşti, 2011, pp. 160-161.

[12] Hunor Burian, *op.cit.,* p. 37.

[13] C.R. Tripon, *op.cit.,* p. 197.

[14] Hunor Burian, *op.cit.*, p. 37.

fiduciary beneficiary may be even the settler, but we do not exclude the future possibility that legislator may present certain clarifications regarding the beneficiary quality of the fiduciary settler.

4. Fiduciary contract must contain real rights, debt rights, securities and other transferred property rights, the time length of the transfer, which may not exceed 33 years from the date of conclusion of the contract, the settler identity or, where appropriate, the identity of the settlers, of the trustee or trustees where appropriate, or the elements necessary to determine their identities, fiduciary purpose and scope of management and administration powers of trustees.

The maximum length of time of the fiduciary contract is established to 33 years, the legislature not regulating the extension possibility of the contact's effects, beyond the dead line provided by art. 779 para. (1) b of the new Civil Code.

The absence of any of the the elements referred to art. 779 para. (1) of the new Civil Code draws the absolute nullity of the fiduciary contract.

Regarding the fiduciary contract termination, while not accepted by the beneficiary, it may be terminated unilaterally by the settler..

In case the fiduciary contract has been accepted by the beneficiary, it can not be unilaterally modified or revoked by the parties or terminated by the settler, without the consent of the beneficiary, or if this consent does not exist, a court approval is demanded, according to the new Civil Code art. 789.

We note that the legislature, within art. 773 of the Civil Code is presenting the trust as a *legal operation*, but afterwords, in all the following legal texts, the legislature talks about *contract*, which entitles us to state that, eventually trust is a contract and not a legal operation. And if so, then we must ask why fiduciary contract was not governed by Title IX of the Civil Code, respectively *Various special contracts*, but was himself subject to special regulations in a different title, title IV of Book III *Regarding goods*.

5. Another main mandatory requirement, provided by law requires the registration of the fiduciary contract and its amendments to the tax authority, in order to administer amounts owed by the trustee to the consolidated state budget. The obligation to register belongs to the trustee, which should make all the efforts for the contract registration within one month after its conclusion and, where appropriate, within one month after contract amendments. Not fulfilling the registration obligation provided by art. 780 para. (1) of the new Civil Code is sanctioned by absolute nullity of the fiduciary contract.

The same sanction is provided by law when the fiduciary patrimony comprises immovable property, for which the law requires registration with the responsible for managing amounts owed to local budgets of territorial administrative units in whose district the buildings are and in these situations the fiduciary incidental legal provisions must be observed.

When the trust beneficiary is not stated in the trust contract fallowing to be subsequently designated, this designation must be done in written form, registered top the same specialized department of local government authority

priory mentioned. If such requirement is not met, the applicable sanction is absolute nullity of the fiduciary contract.[15]

The new Civil Code also provides administrative sanctions according to the conditions of art. 780 final para., in the meaning that if the transfer of real rights requires the fulfillment of specific form provisions, a separately document must be concluded with the observance of the legal requirements. The lack of tax registration act done separately, in such cases, does not lead to a sanction of absolute nullity, but only administrative sanctions.

With the purpose of effective opposability against third parties, fiduciary contract must be registered with the Collateral Securities Electronic Archive, and the breach of this provision results in unenforceability of the fiduciary contract against third parties.

6. When the trustee takes action in the name of a fiduciary patrimony, he may expressly state regarding this, with the exception of the cases when he is interdicted to do so by means of the fiduciary contract. In the absence of an express indication of the legislature regarding the document in which should be set out, it is appreciated that this document should be the Electronic Archive of Movable Securities[16]. The legislator uses the expression "he can mention..." within art. 782 para. (1) of the new Civil Code. In our opinion, in this case, the trustee should be required to state that he is acting in the account of a fiduciary patrimony and thus not only to recognize him this as a possibility.

When the fiduciary patrimony contains rights of which transmission is subject to publicity, the trustee may request the indication of the trustee name and the state allowing him to take action, within the publicity register, according to art. 782 para. (2) of the new Civil Code.

This text can raise some problems, due to the wording. Thus, it was considered that because the legislature used the phrase of "may request", that would mean the trustee is not bounded by obligation, but he only has the right to request and indicate the name and quality advertising registry, and the use of the "name" term, would lead to the idea that the legislature wanted the regulation to be applied only for legal persons trustees, not for those who are natural persons. Comments are fair and accurate, but we tend to believe that in both cases, meticulously reported in the literature, this was not the will of the legislature, but the problems refer to some inaccuracies – unfortunately, not the only ones in the content of the new Civil Code - which can be subsequently revised.

We consider necessary that in this case too, the legislator should regulate the obligation regarding the statement of the trustee identity and of his state based on which he takes action within the prior mentioned register.

In all cases where the settler or beneficiary requests this under the fiduciary contract provisions, the trustee is required to specify the capacity in which it acts, and otherwise to the extent that the act is detrimental for the settler, it is considered that the document was concluded by the trustee in his own name as

[15] Hunor Burian, *op.cit.,* p.38.
[16] B. Florea, *op.cit.,* p. 220.

provided by the provisions of the final para., art. 782. of the new Civil Code.

7. The fiduciary contract must include the conditions under which the trustee is accountable, under which he must responds to the settler on the fulfillment of its obligations.

Also, according to the fiduciary contract, the trustee is held to account, both to beneficiary and settler representative, upon request, resulting, therefore, that the trustee must respond to the settler according to the contractual terms at any time at the request of the settler, while in relation with the beneficiary and the settler representative, the trustee must respond only within terms of time established within contract[17]. It is easy to understand that this provision can be improved.

According to Art. 784 of the new Civil Code as regards third parties shall be considered that trustee has discretionary power over the trust property, acting as real and unique holder of the rights in question, unless it can be proved that third parties knew the limits of his power.

Regarding the remuneration of the trustee, related to the duties performed, he is remunerated according to the provisions of the contract and when this provisions are not established, according to the regulations applicable for the management of the goods belonging to others.

In case of opening the insolvency proceedings against the trustee, this is not likely to affect the trust patrimony.

.

8. The assets of the fiduciary property can be tracked- as required by art. 786 para. (1) of the new Civil Code - as follows:

- By the holders of claims arising in connection with such goods;
- By the creditors of the settler, who have a security interest over its assets and whose enforceable is acquired prior to the establishment of trust;
- By the other creditors of the settler, only under final judgment action admissions by which the fiduciary contract was eliminated or became opposable, in any way, with retroactive effect.

The law provides that holders of claims arising in connection with goods from fiduciary property can track only the assets of the patrimony mass except where, by fiduciary contract is provided the obligation of the trustee or his and that of the settler or just that of the settler alone to respond for a part or for all the fiduciary liabilities and, in such case, the fiduciary patrimony assets will be tracked firstly and then, if necessary, the assets of the trustee and those of the settler or their both assets will be tracked , with the limits and in the order agreed upon in the fiduciary contract.

9. Regarding the problem on engaging the trustee responsibility related to the damages caused by conservation and management acts of fiduciary property, the trustee shall be held to respond only with the other rights of its patrimony.

According to Art. 788 para. (1) of the new Civil Code, if the trustee fails to fulfill its obligations or jeopardize the interests that he was entrusted with, the

[17] *Idem, op.cit.,* p. 221.

settler, its representative or the beneficiary may request the court the replacement of the trustee.

Until the request is solved, the settler, its representative, or in their absence, the beneficiary must appoint a provisional administrator for the fiduciary property – according to art. 788 para. (2), Thesis I, of the new Civil Code.

In the case the settler, its representative or the beneficiary designates both a temporary administrator, then the appointment by the settler or its legal representative.

It was correctly noted in the legal doctrine that is an inconsistency between the provisions of art. 788 para. (2) and those of art. 788 para. (4) of the new Civil Code, which provides that the appointment of a new trustee or provisional administrator may be ordered by the court, only with their consent.[18]

Since the appointment of the new trustee and interim manager may be ordered by the court, the question arises, why the art. 788 para. (2) the legislature specified that temporary administrator shall be appointed by settler, his legal representative or by the beneficiary? Maybe the legislator thought to the possibility of fast appointing of an administrator, prior to the application submitted to the Court, because then the new trustee and administrator to be appointed provisionally (confirm, rather) by the court? Difficult to give a categorical answer, because, para. (3) of Art. 788 of the new Civil Code provides that the mandate of the provisional administrator to be withdrawn or in the moment of the replacement of the trustee or when the final rejection of the request for replacement, indicating that the replacement of the trustee is done with emergency and priority.

From the moment of appointment of a new trustee, he is granted with all the rights and obligations provided by the fiduciary contract and it must be registered within the conditions of art. 780 and 781 of the new Civil Code. It must be highlighted that the replacement of the trustee is done only after performing the registration provided by law.

10. Causes for termination of the fiduciary contract are referred to in art. 790 of the new Civil Code. Thus, fiduciary contract is terminated:

- By the deadline;
- By achieving the goal, when it comes before the deadline;
- If all beneficiaries renounce to trust, and if in the contract is not specified how fiduciary relationship will continue, it should be noted that the declarations of renunciation are subject to the same formalities of registration as fiduciary contract and the termination operates on completion of formalities of the last registration waiver;
- In case of ordering the opening of insolvency proceedings against the trustee;
- When the effects of the reorganization of the legal entity

The termination of the fiduciary contract is also admitted when it is dissolved by court decision of action admissions made by other creditors of the

[18] *Idem, op.cit.*, p. 222.

settler who have no real guarantee on his property (according to art. 786 para. 1, Thesis I of the new Civil Code) and the revocation of the contract by the parties, with the consent of the beneficiary or, if he refuses to give consent, the authorization of the court (according to art. 789 para. 2 of the new Civil Code)[19].

Following termination of the fiduciary contract, the existing fiduciary patrimony is transferred to the beneficiary, and in his absence, it is transferred to the settler.

The legislature provides that the fusion of the fiduciary patrimony with the patrimony of the beneficiary or of the settler is done only after the payment of the fiduciary debts.

REFERENCES

Florea, B., (2011), *Drept civil. Drepturile reale principale,* Bucureşti, Ed. Universul Juridic.

Hunor, Burian, (2011), *Fiducia în lumina Noului Cod civil,* Revista Scientia Iuris – Revista Româno-Maghiară de Ştiinţe Juridice nr. 1.

Tripon, C.R., (2010), *Fiducia, rezultat al interferenţei celor două mari sisteme de drept: dreptul civil continental şi dreptul anglo-saxon. Conceptul, clasificarea, evoluţia şi condiţiile de validitate ale fiduciei,* Revista Română de Drept Privatat nr. 2.

Uliescu, M., Gherghe, A., (2011), *Drept civil. Drepturi reale principale,* Bucureşti, Ed. Universul Juridic.

[19] *Idem, op.cit*., p. 223.

COMPARATIVE LAW AND EUROPEAN UNION LAW COMMONALITIES AND DISSIMILARITIES

Rustin-Petru Ciasc*

rustin.ciasc@just.ro

Abstract: *The main objective of this paper consists in the reflection of the interdependence between comparative law and the law of the European Union, with necessary references to the foreign law, international law or European Union law, trying to emphasize the fact that - despite the peculiarities of each of these law branches with elements of transnational specificity - between them resides connections which reach the same common law principles. In the content of the paper, it is also presented a general perspective of the different characteristics of these types of legislations, the concepts could not have been misinterpreted, given the numerous citations of other papers that have analyzed the respective law branches from an exclusive perspective. Therefore the current paper aims at outlining the existence of the inter linkages between these law branches, offering a different analytical approach to some information previously treated individually and from a stiffer perspective.*

Keywords: *European Union law, comparative law, international law, principle of law, Court of Justice.*

In its bylaws, the International Academy of Comparative Law of Hague indicates within the comparative law notion the systematic proximity of legal institutions from various countries and the conciliation of national legislative provisions. Continuing the same idea, the jurist Marc Ancel stated that the comparative law is mainly represented by finding out some commonalities and some differences existing between two or several national laws, adding that a comparing process is foremost involved. Beginning with these considerations, defining, for example the comparative criminal law as being the study of differences and similarities between law structures taken into account by considering their aspects connected to felony and its consequences is rather comfortable. However, a double perspective, mainly the geographic and material one, must clarify the first relationship no matter the substantive law type under analysis.

From a geographical point of view, this is obvious a comparison between different national laws, each of them having its own territorial applicability. Nevertheless, it was believed that the limitation manner to a comparison between the laws of countries could be insufficient and even erroneous, for example the strict comparison between the preventive approaches of Spain and the

* **Judge, President of Caraş-Severin County Court, Ph.D, Candidate, Faculty of Law and Administrative Sciences, West University of Timişoara.**

Netherlands. Actually, there are three law levels that can be subject to comparative analysis. Aside of this comparison between the countries' laws, another perspective does not refer to the regular level, made up of every country, and leads to the need to take into account the existence of some countries with a federal structure, as well as of regional ensembles bringing together several countries. Thus, the comparison will actually occur between various law ensembles that can exist in a state having a federal structure (as in the case of Switzerland, Mexico, Canada or United States of America). In these countries, each federal entity, be it named canton, province or state within a federation, can have its own criminal procedure code and even its own criminal code. The existence of these federal entities is more important as they often have very extended powers; relevant for this is the case of the United States, a country where the federal law interpreted in restrictive manner coexists with the local law, the country being made up of fifty different legislations, one for each federal state[1].

A vaster perspective is that according to which the comparison refers to ensembles far greater than the states, this being on some countries that make up a system upon relying on the "law family"[2] model. Considering this perspective, it can be actually seen that a community of principles or law sources brings together those country groups. Thus, this community can be the result of a long process of historical transformations (the case of countries that belong to the Romano-Germanic family) or the result of an agreement (an example for this is the European Convention of Human Rights that the member countries of the European Council signed).

From a material point of view, one must take into account the entire law system, be it the substantive law (general theory of evidence for example in the criminal law), or be procedural matter considered. More, the problem of limiting to a legislation no longer arises, and considering this, the comparative legislation terminology is not very adequate. Actually, any law branch includes jurisprudence and the specialty literature, this being the doctrine, next to the legislation. As R. Rodière[3] indicated, given the context of formulating the great comparative law methodological norms it is important that the perspective of considering just the legislation be surpassed, at the same time with developing an overview on all law sources. Especially jurisprudence has a vital importance as proven by the example of the one developed by the Supreme Court of the United States of America. Its importance is higher than that provided by the constitutional amendments whose aridity totally opposes the depth of developing the judgment rulings. Still, the limits according to which certain law matters are regulated by different means that surpass that specialization must be reminded; they cannot be considered in this context (this is mainly the case of regulations in the discipline or administrative matters)[4].

[1] Jean Pradel, *Droit pénal comparé*, 2e édition, Paris, Ed. Dalloz, 2002, pg. 3 et suivants.
[2] according to R. David's expression, *Traité élémentaire de droit civil comparé*, Paris, 1950
[3] *Introduction au droit comparé*, Dalloz, Paris, 1969, pg. 137 et suivants.
[4] Jean Pradel, *Droit pénal comparé*, 2e édition, Paris, Ed. Dalloz, 2002, pg. 3.

Coming as the result of a community of ideals and dating back to the Middle Ages by considering the predominance of Christian values, then enriched by the philosophical thinking of the 18th century, a certain Europe was born and developed. Thus, in the European common framework there are certain principles as free competition, democracy or observing the human rights. Such principles were set out in a conventional manner during two assemblies, these being that of the Rome Treaty of 1957, completed by numerous subsequent conventions, and that of the European Convention for protecting the human rights of 1950, also followed by various other conventions. In time, the two assemblies led to the creation of two structures that are sketching today the European Union, these being the Community Europe and the European Council. All these texts constitute a true European law applicable to all signatory countries. At the same time, they have preserved their national laws when the norms within then do not contradict the agreements indicated above. Thus, a collection of European rules that led to drafting the principles of European Covenant and some community law principles exists. The applicably of such principles is verified by the Court of Justice of the European Union.

Thus, there is a series of law principles unanimously accepted by the member countries of some regional or continental organizations. These general principles are implemented in the national legislations, the best example for this being, according to the introduction from the previous paragraph, the European community law. This law branch brings together, to a certain degree, elements of the national legislations, stating the general principles that apply to the national legislations according to certain procedure and substantive law rules. Several categories of general principles of the community law can be enumerated; they are made up of principles of public international law, principles of member states' legal systems, and principles that derive from the provisions of the community treaties or fundamental human rights. One must emphasize that all these principles are filtered by the community objectives. That is, they are "communitarized" thus that sometimes they can be limited for complying with the European Union law. The standpoint according to which the community legal order resembles more the internal order than the classical international one is broadly shared.[5]

The fact that the source of general principles of the European Union law remains the internal law of member states cannot be doubted. For this, the Court of Justice of the European Communities (CJEC) has a certain degree of liberty. It is praised the fact that, in connection to the extra-contractual liability matter, CJEC created an autonomous system, separated of the liability one, while the Treaty expressly refers to the general principles common to the member states. In other words, CJEC does not follow a mechanical approach that would lead to considering only the unanimously acknowledged principles in all member states. In fact, according to a comparative analysis the Court of Justice of the European Communities attempts to set out some trends without granting obvious priority

[5] Augustin Fuerea, *Drept comunitar european. Partea general (European Community Law. General part),* Bucharest, All Beck Publishing House, 2003, pg. 141

to a majority tendency. Thus, the principles expressly acknowledged only by one member state as, for example, the proportional system or legitimate confidence, have been considered. Adopting them was facilitated also by the fact that there was no opposition concerning these principles in the other member states, where they existed under the form of tradition. Nevertheless, it does not suffice for a principle to be common to the member states for being applied in the community law; it must be compatible with the "framework and structure of Community's objectives". This is about the autonomy of the European Union law.[6]

The affirmation according to which the natural source of general community law principles should be the general principles of international law is not fortuitous, given that the European Communities are based on certain international treaties. However, CJEC manifests some reserve concerning these principles to the degree they correspond to an international organization relying on equality reports between the law subjects, because the community legal order is conceived according to a hierarchical basis, an egalitarian system not being considered. The states and the individuals are the addressees and not the authors of the norms adopted by institutions, thus that observing these norms is ensured by a centralized jurisdictional control and not, as in the case of international law, by means of reciprocity. This is the reason for which the Court of Justice of the European Communities hesitates in adopting the principle of reciprocity translated into *exceptio non adempleti contractus,* this being the state's ability to be entitled to judge matters on its own, in the European Union law. Nevertheless, recognizing such a law implies challenging the unity of the common market because the rules applicable to individuals would vary according to the application of the principle by member states. CJEC accepted the application of general principles of international law to the matters that belong, given their nature, to the latter: relations between contradicting treaties, interdiction of a country to refuse foreign citizens to enter and stay on its territory, and good faith principle. At the same time, there are certain principles connected to the institutional structure of the Community that are or not explicitly acknowledged in the Treaties, such as the principle of institutional equilibrium or that of self-organization competence of institutions. However, they cannot be qualified as general law principles because they apply in connection to the institutional operation of the Union and have their source in the institutional provisions of the Treaties.[7]

On the other hand, the principle of immediate applicability of European Union law is acknowledged; it applies also to the Union's documents that imply adopting some national measures for transposing them (such as the case of directives, framework decision and decisions sent to the states). These measures refer only to implementing these documents and not to receiving them in the national legal system that occurs de jure by their simple entry in force. Unlike the classic international law that allows the states to choose the manner of receiving them in the national systems (according to the dualist or monist conception), the

[6] Ibidem, pg. 143
[7] Ibidem

European union law, given its nature, can be applied immediately from the legal order of all member countries no matter the conception they implement in connection to the international law. Thus, the conclusion is that the European Union law is de jure fully integrated in the internal legal order of the member states by its simple coming into force, without being necessary any special receiving form.[8] On the other hand, in the case of directives and framework decisions, the date when they enter in force (which occurs on the date indicated in their text or lacking it, twelve days after their publication in the Official Journal of European Union, according to article 297 TFUE) must not be mistaken for the date when they must be adopted by the national law (the latter is a deadline for adopting it; nothing hinders the member states to adopt that directive or framework decision immediately after its coming into force).

The principle of direct effect of European Union law implies acknowledging the fact that the direct effect of Union's law is represented by its ability to create rights for the natural and legal persons that they could call upon before the national course of law; the latter would be bound to guarantee such rights. However, it is certain that not all community law norms have a direct effect. For having direct effects, the law norms of the European Union must fulfill the cumulative conditions indicated below.

First, it is necessary for the law norms to be unconditional, this being that the norm applicability is not subordinated to any subsequent approach that would depend on the Union's or member states' discretionary power. The norms that, although requiring the adopting of some subsequent measures for applying them, are not subject to the member states' or Union's institutions' discretionary power to implement them or not, but are bound to do so. The second requirement refers to their clear and sufficiently precise character[9].

By synthesizing the two conditions, one could say that a norm has direct effect any time its traits make possible the norm application by a court of law. The court of law can use the norm interpretation without this affecting the norm's direct effect. The direct effect is removed, given the separation of powers, only by the existence of some discretionary power to assess belonging to the legislative or administrative authorities.

This effect can be classified, according to the type of litigation in which it appears, as directly vertical effect (in the case of litigation against the state) and directly horizontal effect (in the case of litigation between natural and / or legal persons), but it differs according to the source of legal norm called upon. Thus, there are norms having a directly complete effect (vertical and horizontal). Such norms have only a directly vertical effect, and there are also norms lacking any direct effect.[10]

Another principle having impact in connection to the comparative law norms is that of European Union's law supremacy on the national norms. Being applied

[8] M. Blanquet, *Droit général de l'Union européenne,* 9e édition, Paris, Ed. Dalloz, 2007, pg. 264 et suivants.

[9] Ibidem, pg. 272.

[10] C.Blumann, L. Dubois, *Droit institutionnel de l'Union européenne,* Paris, Ed. Lexis Nexis Litec, 2010, pg. 520.

immediately to the national legal order of member states, the Union's law inevitably conflicts with the national law. For solving this conflict, the Court of Justice of Luxembourg acknowledged, by the jurisprudence, the principle of Union's law supremacy before the national law. In practice, the principle of supremacy is awarding a certain effect to all community law norms in their relations to the national legislation of the member states, simply because they enter in force. Thus, they lead not only to the de jure inapplicability of any contrary provision of the existing national legislation, but also to hindering the validly adopting of some new normative acts provided they would be incompatible with the European Union's norms.[11]

Among the practical consequences of applying this principle, one stands out. This is the fact that all national courts of law are bound to apply in full the Union law and to protect the rights it gives to the individuals, by not applying any provision contrary to this, from the national legislation, no matter if it is constitutional, legislative or administrative norms, be it prior or subsequent to the community norm. By expanding the consequence of principle of supremacy even further, the Court of Justice of European Union authorized the national court of law, to which a litigation is submitted that discusses the incompatibility of a national norms to the European Union law and that sent a preliminary question to the Court of Justice of European Union concerning this, to suspend the application of the national norm until the Court of Justice gives its ruling, and even if the national law would forbid this.[12]

By the Decision of January 22, 1997 given by the Court of First Instance in the case of Opel Austria v. Council, it was stated "the principle of legal security imposes for the community legislation to be safe and its application –predictable, and any community document that has legal effects to be clear, precise and made known to the concerned party, thus that he can be aware of the exact time when that document has legal effects. This requirement is imposed mainly to the documents that could have financial consequences". A series of rules with protector character for the individuals derive from this, mainly as regards the matter of publishing the documents. It implies that any person can be aware of the rules applying to him and to ground his actions, with all his faith, on these rules, which involves the drafting of a clear and predicable European Union legislation.

Another form of the same principle is that of legitimate confidence that involves the fact that the individuals are protected against a modification of the legislation without notice. In order to be viable and legitimate, the legislative modifications should rely on precise declarations of the administration without these contradicting the legislation in force and without the individual acting unlawfully. The individual is protected also against the effects of a modification of the legislation in force, if it is proven that an informed operator could not have

[11] Claudiu Ecedi-Stoisavlevici, *Implicaţiile aderării la Uniunea Europeană în contextul dreptului penal (Implications of European Union accession from the criminal law perspective),* Revista de drept penal nr. 4 (Criminal Law Review issue 4), Bucharest, Universul juridic Publishing House, 2011, pg. 133-134

[12] Ibidem

foreseen this legislative change or if the European Union did not indicate previously that it intends to engage in such a modification. The condition for applying the principle is that, relying on the stability of community legislation, the individual has legitimate hopes in connection to any type of activity. It is mandatory for such measures, even adopted upon observing the predictability requirement, to be announced on time in connection to their possible repercussions on the investments made by individuals. Thus, the principle of legitimate confidence is not applicable in numerous cases when it is obvious that the European Union legislation is often adapted to the economic situation evolution, a thing that frequently occurs in the agriculture area where adaptation according to the market's fluctuations is necessary.[13]

Closely connected to those indicated above is the obligation to differentiate the comparative law of the foreign law. The law of a certain country implies the foreign law, while the comparative law notion moves further of the foreign law, being determined on the path of confrontation between two or several law systems, looking to determine the differences and the similarities in order to reach some common aspects. Concerning this, one can consider that Von Liszt mentioned in the foreword of his book "*Criminal law in the states of Europe"* the fact that the researches referring to knowing one or several criminal legislations and the comparative criminal legislation that must attempt to create a synthesis in order to reach some common aspects existing in various legislations used are mandatory for beginning any comparative law analysis. When applying these techniques, the proximity between the comparative law and the foreign law cannot be denied although the limit between these two education subjects is not very clear. The first reason for this is due to the fact that the analysis is determined to compare that foreign law to the national one, especially if the two law systems are extremely different and then, because any comparative law study involves the foreign law materials, the latter appearing to be the raw material of comparative law.[14]

Another distinction refers to the existing limit between the comparative law and the international law. The two education subjects have a common aspect, this being the expanding of their activity area outside the national framework or, as applicable, of the framework of a federal state no matter its regional organization form. The comparative law hypothetically involves researching some rules that belong to various law systems, while the international law always assumes an extranetiy element, this being a fact that is legally connected to a different country of that where the remaining facts are located (the example of some felonies against the patrimony that were committed in a country, sending the profits acquired by that criminal activity being made to the territory of another state). In the international law, the rules created for solving such a situation involving an extranetiy element implies that next to the law rules applicable to an exclusively national situation (internal law), there are rules designated to solve a situation whose various aspects stretch beyond the national frontiers, the rules

[13] Augustin Fuerea, *Drept comunitar european. Partea general (European Community Law. General part),* Bucharest, All Beck Publishing House, 2003, pg. 141

[14] M. Ancel, *Utilité et méthodes du droit comparé,* Neuchatel, 1971, pg. 89

being connected to the international law. Considering this, some principles of the European Union law were presented above; they can be applied next to the legal norms stated by the national legislations of the European Union member states.

As example, one could consider the situation when an individual commits a felony on the territory of a state and then seeks refuge on the territory of another state. The problem is to know which of the two states is the competent to judge him and to apply a possible punishment. When it is accepted that the first country holds the necessary competences, setting up a procedure that would allow the extradition of that individual is mandatory. Thus, the extraneity element leads to the occurrence of an ensemble of new rules, be they conventional rules (agreements between the countries of the extradition covenants type), or the rules set out unilaterally by each state apply (for example, a state determining its own judicial competence).[15]

The general law principles are one of the community legislation's elements and they are imposed, as such, to the European Union institutions. Thus, they hold a superior ranking, in the norms hierarchy, to the derived law. However, the principles discussed here are imposed also to the member states when they act in the area of community law. This situation is not valid only for the fundamental rights, but for all principles. Because the general principles are part of the European Union legislation, it is natural that they apply to any situation governed by the community law, be it at community level, be it at national level. A solution to the contrary would bring negative effects on the uniformity of community law and would acknowledge discriminations between individuals according to the member state where this law applies.

Beyond the interdependence existing between the comparative law and the European Union law, going through the foreign law, the international law or the European law, it must be accepted the fact that the various notions cannot be mistaken. The community law is given as continuation of its own rules, that either adds to the national rights, or eliminates them, while the comparative law is only a confrontation and a comparison between the preexisting rules. Nevertheless, one must consider that the comparative law is not completely detached of the comparing approach, being possible and even recommended the confrontation of some legal rules within it with the ones characterizing other legal ensembles. More, certain European Union texts have been drafted beginning with a synthesis of national rights, be it just because in drafting it jurists from various European Union member states participated.

REFERENCES

Ancel, M., (1971), *Utilité et méthodes du droit comparé,* Neuchatel.

Blanquet, M., (2007), *Droit général de l'Union européenne,* 9e édition, Paris, Ed. Dalloz.

Blumann, C., L. Dubois, (2010), *Droit institutionnel de l'Union européenne,* Paris, Ed. Lexis Nexis Litec.

[15] Jean Pradel, *Droit pénal comparé*, 2e édition, Paris, Ed. Dalloz, 2002, pg. 6

David, R., (1950), *Traité élémentaire de droit civil comparé*, Paris.

Ecedi-Stoisavlevici, (2011), Claudiu, *Implicaţiile aderării la Uniunea Europeană în contextul dreptului penal,* Revista de drept penal nr. 4, Bucureşti, Ed. Universul juridic.

Fuerea, Augustin, (2003), *Drept comunitar european. Partea generală,* Bucureşti, Ed. All Beck.

Pradel, Jean, (2002), *Droit pénal comparé*, 2e édition, Paris, Ed. Dalloz.

Rodière, R., (1969), *Introduction au droit comparé*, Dalloz, Paris.

THE PLACE AND ROLE OF THE CONSTITUTIONAL COURT IN THE SYSTEM OF PUBLIC AUTHORITY

Dumitru Brezoianu*

brezoianu.dumitru@lovefm.us

Abstract: *The Constitutional Court was created by the Constitution of Romania of 1991, taking almost exactly the provisions of the Constitution of France. By the revision of the Constitution, there have been granted broad powers to the Constitutional Court which, in practice, make it the leading public authority in Romania. Thus, when a law is challenged in the Constitutional Court for unconstitutionality, in this case the Parliament ceases to be the sole legislative authority, the legislative authority becoming the Constitutional Court, because the Parliament is bound to adopt the law according to the decision of the Court. Constitutional Court decisions being generally binding, become binding for the Parliament too. Although the principle that "nobody is above the law" is established in the Constitution, the Constitutional Court, through its decisions, canceling the law, can be believed to be above it. Since the Constitutional Court decisions cannot be controlled by any other public authority, the Constitutional Court judges can violate the Constitution; no one can check if a decision of the Court shall comply with the fundamental law.*

Keywords: *Constitutional Court, public authority, law review, decision, unconstitutional Parliament.*

The Constitutional Court was established by the Romanian Constitution of 1991, taking almost exactly to the Constitution[1] of France of 1958, with ulterior amendments. In the period immediately following the coming into force of the Constitution, I noticed that this authority, respectively the Constitutional Court, is the most important public authority in the state system organization of Romania.

I made this observation starting from the structure of the Constitution. The largest and biggest subdivision of the Constitution is the title.

The titles are organized into chapters and some chapters into sections, as their subdivisions. Chapters and sections are of less importance than titles.

Title III of the Constitution, entitled 'Public authorities' is organized in the following chapters:

Chapter I – The Parliament, Chapter II - The President of Romania, Chapter III – The Government, Chapter IV - Public Administration, Chapter VI - Judicial authority.

* **Professor Ph.D, - "Dimitrie Cantemir" Christian University, Bucharest.**

[1] Dumitru Brezoianu, Mariana Oprican - *Public administration in Romania*, Master Collection, C.H. Beck, Bucharest, 2008.

As one can see, this title includes public authorities that administer the three powers in the state legislature (Parliament), executive (President of Romania, government, public administration), the judiciary (judicial authorities).

The Constitutional Court is not included in this title. Because of this, one can conclude that this authority is distinct from the public authorities exercising the three powers in the state, and does not render, thus none of these powers.

In terms of proceedings, the Constitutional Court resembles courts, but is not part of their system, which consists, according to art.126, par. (1) of the Constitution, of the High Court of Cassation and Justice and of other courts established by law.

So, besides the other public authorities that administer the three powers, there is a public authority, the Constitutional Court, which holds a distinct activity from the activity done by the three categories of state bodies.

Thus, the question arises - which is the position of the Constitutional Court against the state powers, against public authorities that administer them?

This problem can be answered by the following consideration: the state that made the three powers are included, all in a single title, Title III, entitled 'Public authorities,' in which the Constitutional Court is not found as being regulated.

The Constitutional Court is not a legislative authority, because, according to the Constitution, the sole legislative authority of the country is Parliament. Also, the Constitutional Court is neither a public authority and there is no judicial authority.

In this case, which is the legal nature of the Constitutional Court, which is the place occupied by it in the system of public authorities, of constitutional democracy?

It is a question to which one can give a clear and precise answer. The Constitutional Court occupies an odd position in the organization of state system.

According to the Constitution, a whole title is devoted to the Constitutional Court, entitled "the Constitutional Court," while to the public authorities that administer the three powers are only devoted chapters within a title. According to art.1, par. (2) of Law no. 47/1992, about the organization and functioning of the Constitutional Court, it is independent of any public authority.

Taking into account strictly the structure of the Constitution, one can reach the following conclusion: the Constitutional Court is the most important organ of state in Romania.

By the Revision of the Constitution law, this statement was confirmed. According to art. 147 of the revised Constitution, the provisions of the laws and ordinances in force, and those of the regulations found to be unconstitutional, end their legal lapse in 45 days after the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or Government, as is the case, find the unconstitutional provisions disagree with the Constitution.

During this period, the provisions found to be unconstitutional are suspended. In cases of unconstitutionality of laws, before promulgation, the Parliament is obliged to reconsider those provisions to bring them into line with the Constitutional Court decision.

Constitutional Court decisions are published in the Official Gazette.

Since their publication, decisions are generally binding. The presented constitutional provisions are conclusive in the mentioned problem. Since the Constitutional Court decisions are generally binding, this means that they are mandatory for the Parliament, for the Romanian president, government, courts, other public authorities and citizens of the country or to any person in Romania.

Since court decisions are binding on the Parliament, that means that, in terms of legal force of the decisions they take, the Constitutional Court is superior to Parliament, although this, according to art. 61, para. (1) of the Constitution, is the representative body of the people and the sole legislative authority of the country.

Constitutional Court decisions have legal force superior legal to the force of laws passed by Parliament.

In the event that a law is challenged in the Constitutional Court, Parliament shall cease to be the sole legislative authority of the country, making the Constitutional Court a legislative authority, since Parliament is obliged to adopt the law according to the decisions of the Constitutional Court.

MPs' will is constrained, as they are not adopting the law according to their will, but according to the will of the judges expressed in the decisions of the Constitutional Court.

One may consider thus that the nine judges of the Constitutional Court decide the country's legislation instead of the Parliament that, under the Constitution, is the sole legislative authority of the country.

An irreconcilable conflict was born in this way between the provisions of the same bill, being violated also important provisions of the Constitution.

While a law may be controlled by the Constitutional Court, Court decisions cannot be controlled by any public authority, because they are generally obligatory. In practice this may create the following situation: organization and functioning of the Constitutional Court are established by the Constitution and organic law.

Suppose that after the passage of the law, it is challenged in the Constitutional Court, which decides that certain of its provisions are unconstitutional, a decision that cannot be disputed. The Parliament will then be obliged to restore the text of the law according to the decision rendered.

Results the following conclusion: The Constitutional Court shall adopt its own organization and operation. In such a situation the question arises: does the Parliament retain the status of sole legislative authority of the country?

In our opinion, the Constitutional Court has been granted powers too large in its relations with Parliament by the Revision law of the Constitution.

Regarding these reports, we believe that art. 145, paragraph (1) of the Constitution was more appropriate, before the revision. According to art.145, in cases of unconstitutionality, in accordance with Art. 144, letter. a) and b), the law or regulation shall be returned for review. If the law is passed in the same form, with a majority of at least two thirds of the members of each room, the objection of unconstitutionality shall be removed, and promulgation becomes binding.

According to art. 144, the Constitutional Court:

a) decides on the constitutionality of laws, before their promulgation, upon

notification by the President of Romania, one of the presidents of both Chambers, the Government, the Supreme Court of Justice, a total of at least 50 deputies or 25 senators, and the office on initiatives to revise the Constitution;

b) to adjudicate on the constitutionality of Parliament regulations, upon notification by one of the presidents of the two rooms, a parliamentary group, or a total of at least 50 deputies or at least 25 senators.

In our opinion, the regulations in art. 145 of the Constitution, before the review, are more appropriate than the current provisions of Art. 61 paragraph (1) of the Constitution, under which the Parliament is the sole legislative authority of the country.

The revision of the Constitution created a conflict, a contradiction between the provisions of art. 61 and those of art.147 of the Constitution.

Since Parliament represents the Romanian people, being elected by voters nationwide, while the Constitutional Court judges are appointed by Parliament and the President of Romania, and since the Parliament is the sole legislative authority of the country, it is natural that it decides on laws they adopt.

One should mention another aspect, namely that the Parliament decides the content of the Constitution, even if it is approved by referendum. Through the revision of the Constitution, the Constitutional Court has become a public authority superior to the Parliament because of the legal force of its decisions which, being generally binding, are binding for the Parliament also.

This has created thus a paradoxical situation. After establishing the content of the Constitution, and therefore the legal status of the Constitutional Court, the Parliament is obliged to obey court decisions, although the organization, functioning and responsibilities are determined also by the Parliament.

As can be seen, Parliament becomes less of the authority which it created, because there was no Constitutional Court until the Constitution in 1991.

In what concerns the relation between Parliament-law, the following observation can be made: the Parliament decides the content of the Constitution, which is the fundamental law. Instead, the Parliament cannot always have the laws they adopt, but depends on the intervention of the Constitutional Court; although the laws it adopts are lower in legal force to the fundamental law.

This has created a bizarre situation. The Parliament, although is able to do more, cannot do less.

According to art.16, par. (2) of the Constitution "nobody is above the law". However, the Constitutional Court violates this principle, because it can disregard the law, moreover, it may even annul a law or articles thereof, as it happened in several cases, e.g. the status of teachers.

In connection with the work of the Constitutional Court one may ask the question whether this public authority may violate the Constitution?

Formally it may not, because it represents the guarantor for the supremacy of the Constitution.

However, in fact, it may do this, under other constitutional provisions, according to which the Constitutional Court decisions are generally binding.

Being generally binding, the decisions of the Constitutional Court cannot be controlled by any other public authority, nor can they be tackled in any way.

Under these constitutional provisions, the Constitutional Court may violate the Constitution, because a decision cannot be disputed. No one can check and decide whether a decision of the Constitutional Court complies or not with the Constitution.

One may consider thus that the Constitutional Court is above the law, because in the absence of control over its decisions, it may even violate the fundamental law itself.

Moreover, in practice one has faced provisions violating the fundamental law.

Thus, through a decision[2] of the Constitutional Court, it was stated: "in exercising the powers envisaged by art. 85, par. (2) of the Constitution, the President of Romania may refuse, once, with a reason, the proposal of the Prime Minister to appoint a person to the vacant position of Minister. The Prime Minister is obliged to propose another person."

According to art. 85. line (2) of the Constitution, "in the event of a government reshuffle or vacancy of office, the President of Romania shall dismiss and appoint, at the proposal of the Prime Minister, some members of the Government."

As one can see, the Constitution does not compel the President of Romania to refuse only once with a reason, the proposal of the Prime Minister to appoint a person to the office holiday Minister.

On the other hand, the Prime Minister is not obliged to propose another person.

Through the signaled decision, the Constitutional Court added new provisions to the constitutional text, prerogative that has arrogated it without any legal basis.

Since the powers of the Constitutional Court are established by the Constitution, thereby, the Court has violated the provisions inserted the fundamental law, creating a new article therein. This is without doubt, because since the coming into force of this decision, any President of Romania in function will be obliged to refuse the proposal of the Prime Minister only once and, in case of refusal, the Prime Minister will be obliged to submit another proposal.

In our opinion, the existing powers of the Constitutional Court should be entrusted to the High Court of Cassation and Justice, in which there should be set up a special section called "The Constitutional Division", which control laws in the first instance, and its decision can be appealed to the plenum of the Court composed of judges from other departments, and their decision then is to be debated in Parliament.

If the Parliament adopts the law on the same form, by a vote of two thirds of the number of MPs, the objection of unconstitutionality shall be removed, and the law can be applied.

Also, it should be provided that a law can be challenged only before promulgation.

[2] Decision no. 98 of February 7th, 2008, on the request to find a resolution to the legal conflict between the parties of Romania and the Romanian Government, formulated by the Prime Minister Calin Popescu Tariceanu.

Once entered into force, aside from the Parliament, no other public authority can control and challenge a law.

In this way, two important provisions of the Constitution are met:

The provision according to which the Parliament is the sole legislative authority of the country and would be only one entitled to dispose, finally, of the laws they adopt.

At the same time respecting the provision that no one is above the law, after its entry into force the law being binding for all public authorities, to any person.

I present a proposal that is based on the grounds under which the Constitution enshrines the principle of separation and balance of powers in the state. This balance requires a mutual control between the three powers and the authorities that administer them.

Thus, the acts of Parliament, that exercise legislative power, should be controlled by another authority exercising power.

In our opinion, this authority should be the High Court of Cassation and Justice, which is the supreme court and exercises judicial power.

ROMANIA AND THE ENTENTE DURING THE SECOND BALKAN WAR (I)

Nicu Pohoaţă[*]

nicu_pohoata@yahoo.com

Abstract: Romania and the Entente during the Second Balkan War.

The study analyzes Romania's relations with the Entente in the course of the Second Balcan War, in the context of the Great Powers' policies, positioned in opposite political-military groups with respect to the South-East European zone. Gravitating in the political orbit of the Triple Alliance, which faced a true crisis situation, Romania had a great freedom of action in the relation with the Triple Alliance. But his relationship with this political-military group did not lead to a reorientation of the Romanian state's external policy towards the Entente, as was sometimes considered in the historiography of the researched theme. Basing on a rigorous analysis of historical sources, the author shows the real nature of this relationship and emphasizes the exceptional value of Romania's political-diplomatic and military actions, which led to the ending of the war and to the conclusion of peace between the conflicting states.

Keywords: *mediation, arbitrage, non-intervention, European concert, Great Powers' conference, conference of the conflicting forces, the Turtucaia-Balcic line, Balkan balance, negotiations, accord, armistice, demobilization, peace.*

There is one century since Romania's entering of the Second Balkan War, in summer 1913. Recalling facts, with the pretended and needful lucidity brought by the distance in time from the moment of their occurring, there can be noticed that, after one hundred years from de evolvement of the Balkan Wars, the historical interpretations given to events are different or even contradictory, in all states then involved, being influenced by a multitude of factors, wherefrom the political or national ones play a very important role. This appreciation is valid for the historiography analyzes performed in all South-East European states, as the territorial disputes mostly create long-term animosities and resents, with reverberations on history writing.

In this context, we appreciate that in the Romanian and foreign historiography have been formulated different points of view regarding the way in which has been evaluated, from history perspective, Romania's external policy during the Balkan Wars. Thus, while some historians deem that the external

[*] **Senior Lecturer Ph.D, - "Alexandru Ioan Cuza" Police Academy, Faculty of Archives Studies, Bucharest; the president of the Bucharest Branch of the Romanian Historical Sciences Society.**

policy of the Romanian state was entirely justified, contributing, by the participation in the Second Balkan War the re-establishing of peace in South-East of Europe, others manifest a disapproving attitude, considering that Romania's implication was a grave error, which led to the creation of long-term animosities in the Romanian-Bulgarian relationship.

Going out from these appreciations, we do consider that only in a spirit of historic reconciliation, by assuming the past, as it was, by all parts, it is possible to reach a better knowledge of the respective events. Therefore, the judgment of facts in the context of that epoch in which they occurred and not from the present time perspective, is of essential importance.

Taking these considerations into account, we propose in the present study to address the mentioned historical facts exclusively basing on a rigorous analysis of the sources, in the hope that the author's subjectivism, if not completely avoided, will albeit be considerably limited.

The Decision regarding Romania's entrance into the Second Balkan War was taken late on June 26./July 9. 1913. France's minister to Bucharest, C. Blondel, after having consulted his Russian counterpart, N. Schebeko, had an encounter with Titu Maiorescu during which the Romanian prime-minister had declared him: *"We have already announced for quite a time our intent to take action if the hostilities between Bulgarians and Serbs don't cease and this in the aim of avoiding Serbia's weakening, as prevention against Bulgaria's ambitious attempts, in one word to secure, by taking part in the negotiations, as far as possible, the Balkan balance. Our mobilization and its consequences have shown our being positive to pursue our goal, but equally committed not to exceed it. Our entering the Bulgarian territory has for objective to* ***warrant the execution of the arrangements possibly offered or imposed*** *(author's underlignment). Thus if, and I would welcome it, for the best of all, that this would be possible to be realized in a time as short as possible, Bulgaria cedes us the Turtucaia-Balcic line* (*the Powers, or some of them, as for example France, offering to be warrants of the strict observing of this arrangement), we will stop immediately, on condition however of, in the same time, our having the certitude that a final agreement would have intervened between the Balkan States."*[1]

On July 11.1913, Stanciov, Bulgaria's minister to Paris, briefed Pichon, France's foreign minister, that *"Romania has just declared war to Bulgaria"*. At the same time, he was communicating the Bulgarian government's decision for *"the Bulgarian forces not to oppose any resistance to the Romanian army"*, arguing that the decision taken at the Petersburg Conference "*having solved the problem raised by Romania's territorial pretentions, any other Romanian request being no longer justified."* In respect of Romania's action, the Bulgarian government expressed *"its utmost powerful protest possible"*.[2] The same protest expressed, in the name of the Bulgarian government, the appointed person for affaires of this country to London. Sir Edward Grey responded: *"I have said that*

[1] ***Documents diplomatiques français. 1871-1914*** (to be quoted ***D.D.F.***), Paris, 1933, 3 e série, tome VII, doc. nr. 335, p. 374. Blondel to Pichon, July 11. 1913.

[2] ***Ibidem***, doc. nr. 340, p. 377-378. Stanciov to Pichon, July 11. 1913

Bucharest was the only place suited to protest against this action. I couldn't have intervened and I think that neither the great Powers would do it. [...]. When the Romanian minister has initially announced that the intent of his government was to act to the aim of promoting Romania's interests, if the Balkan states will continue to fight the ones against the others, I had expressed my hope that Romania will not complicate things and I would use any opportunity to make use of my influence to bring peace; but this time it should be a general peace."[3]

Russia's diplomatic action in view of ceasing hostilities and conclusion of an armistice faced great difficulties. Venizelos, the prime minister of Greece, declared that the negotiations would allow Bulgaria to reorganize its armed forces, a possible armistice being only possible to be signed *"at site of battle"*. He recommended Russia to take action on Sofia in order to determine it to reach an *"exact perception of reality"*. In the same time, the Greek prime minister pleaded for the conclusion of an alliance between Serbia, Greece and Romania.[4]

The Serbian prime-minister Pasici was disposed to accept in principle the Russian mediation, but, in order not to compromise it again, there were important to know, in first line, *"the concessions Bulgaria concedes to do in order to establish a sound basis for negotiations"*, in order to secure an acceptable territorial repartition for Serbia and Greece. From these negotiations *"Romania should not be completely left aside."*[5]

The Bulgarian government accepted the conditions imposed by Russia for its intervention in view of ceasing hostilities, but Danev's policy and the Russian intervention were vividly criticized by the opposition parties, except that led by Malinov. [6] In fact, Russia acted in order to regain the influence lost in Sofia in favour of Austria-Hungary.

Taking into account the difficulties faced by Russia for reaching the ceasing of hostilities and armistice conclusion, Pichon asked the French ambassador in Petersburg, Delcassé, to suggest Sazonov the solicitation of the Great Powers' contribution to support it in its efforts. The head of French diplomacy deemed that the Russian government should limit its efforts to the hostilities' ceasing and to reserve for direct negotiations between the conflicting forces or to the collective action of the Great Powers the determining of peace conditions.[7] Otherwise, the Russian government was disposed to collaborate with the French one in view of the realization of the mediation action, being very receptive to France's suggestions and proposals. On July 13. 1913 the French diplomacy was informed, through the Russian ambassador in Paris, Izvolski, on all measures undertaken until than by the Russian government.[8]

---

[3] ***British Documents on the Origins of the War. 1898-1914 (to be quoted B.D.O.W.)*** London, 1934, vol. IX., part II. doc. Nr.. 1135, p.905, Sir Edward Grey to sir H. Bax-Ironside, the 11.July 1913.

[4] ***D.D.F.***, 3 e série, tome VII, doc. nr. 334, p. 373-374. Deville to Pichon, July 11., 1913.

[5] ***Ibidem***, doc. nr. 342, p. 379. Descos to Pichon, July 11. 1913.

[6] ***Ibidem***, doc. nr. 346, p. 385. Panafieu to Pichon, July 12. 1913.

[7] ***Ibidem***, doc. nr. 338, p. 376. Pichon to Delcassé, July 11. 1913; doc. nr. 347, p. 385-386. Pichon to Delcassé, July 12. 1913.

[8] ***Ibidem***, doc. nr. 351, p. 392. Izvolski to Paléologue, July 13. 1913.

In Romania's capital, in concerted activity, the ambassadors of Russia and France, Schebeko and Blondel, acted for determining the Romanian government to cease the forward march of its army on Bulgarian territory, in exchange of guaranteeing the endeavoured strategic border. Being well informed on the objectives pursued by the Romanian government led by Titu Maiorescu, Schebeko was briefing Petersburg that *"the accepting in 48 hours by Bulgaria of the Turtucaia-balcic line would lead to the ceasing of hostilities"*. The Russian government asked this way the Bulgarian government to immediately notify Sofia's accord in this respect.[9]

Russia's and France's actions in Bucharest were deemed as being necessary, as the entrance of the Romanian army into war was increasing Serbia's and Greece's intransigence in the negotiations they had in Bulgaria intermediated by Russia, which made considerably more difficult the acceptance of an armistice by the conflicting parties. Talking about the stage of negotiations between Belgrad, Athens and Sofia, held through Russian diplomacy intermediation, the British ambassador in the Bulgarian capital, Sir H. Bax-Ironside, briefed Sir Edward Grey that *"Romania's action places Bulgaria at the mercy of its opponents"*, under these circumstances *"the Bulgarian government being prepared to offer the line Turtucaia-Balcic"*[10].

Titu Maiorescu was preoccupied, during the discussions he had with foreign diplomats, to show that, in the solving of the Balkan problems, all interests of the Romanian state should be considered, which would only be feasible in the situation of organizing a conference of the conflicting states, in which Romania should participate too. In first place there was obviously taken into account the securing of a convenient balance of forces in South-East Europe. Thus, in a meeting with Blondel, on July 14. 1913, the Romanian prime-minister declared: *"Romania being today in state of war with Bulgaria, it should participate, if not in the discussions preceding the peace preliminaries, at least at their signing."* Thus, the French diplomat briefed Pichon that Titu Maiorescu deemed that *"Romania's participation in this act, as well as in the signing of the peace treaty, would be a warranty for the future, as this would allow to the Romanian government to intervene in case of infringement of this treaty by one of the parties."* The French diplomat assured him that France *"will seek to find the most proper way to conciliate the interests of the conflicting parties and of Romania with those of the powers wishing to make an end to the conflict."* Asked if he would accept Petersburg as venue for the upcoming peace conference, Titu Maiorescu *"didn't dare to respond negatively"*, but he suggested that *"this solution wouldn't suit him"*. Subsequently discussing this problem with Schebeko, Blondel was briefing Pichon that the Russian part would obviously want Petersburg as venue for peace negotiations, but the French minister uttered the opinion that in this situation, Austria *"would put everything at stake to make it fail"*.[11]

---

[9] ***Ibidem***, doc. nr. 352, p. 393. Delcassé to Pichon, July 13. 1913.

[10] ***B.D.O.W.***, vol. IX, Part II. doc. nr. 1140. Sir H. Bax-Ironside to Sir Edward Grey, July 14. 1913.

[11] ***D.D.F.***, 3 e série, tome VII, doc. nr. 354, p. 399-400. Blondel to Pichon, July 14.1913.

In the meantime, the Romanian troops had occupied Silistra, without any resistance from the Bulgarian troops, and went forward towards the Turtucaia-Balcic alignment, while others were prepared to cross the Danube. There was an unanimous consensus of the political people regarding Romania's entrance to the war, some of them participating as reserve officers. Among them there were I.I.C. Brătianu, N. Filipescu and N. Iorga.

Under the circumstances of the Romanian army's advancing on Bulgarian territory, the government in Sofia undertook desperate diplomatic actions in Petersburg and Paris claiming for interventions on Bucharest. On July 13. 1913, Stanciov, the Bulgarian minister to Paris, submitted two official requests to Quai d'Orsay in this respect, with the specification *"very urgent"*. In the first, there wrote: "I am honored to brief Your Excellency that ***the Bulgarian government took an action by the Russian imperial government in respect of stopping the advancement of the Romanian troops in Bulgaria*** (author's underlignment) [...] I am honored to kindly ask that Your Excellency might ***join the Russian government in order to exert a pressure with this effect on the Romanian government***. (author's underlignment)"[12] In the second one was presented the position of the Bulgarian government on *"the mediation problem requested by the imperial government of Russia and exerted by him": "We do accept the ceasing of hostilities. The troops will remain on their positions; the government will send the negotiators to Petersburg or to the town which will be subsequently appointed in this respect.* ***The Bulgarian government accepts demobilization under the moral warranty of Russia and obeys to the arbitrage of the Russian emperor for the partitioning of territories.***"[13] (author's underlignment)"

On July 14., 1913, the French minister to Sophia, Panafieu, briefed Pichon that *"Russia's minister communicated yesterday to the President of the Council Sazonov's proposals for the ceasing of hostilities, proposals which had been transmitted also to Beograd and to Bucharest, and which will have to serve as bases to the peace conditions.[...] Waiting for this decision of Russia* – Panafieu continued – *the Bulgarian government was desperate"*. The result did not correspond to expectations. *"A council was held in the evening at the Palace under the king's presidency*, continued Panafieu the briefing, *in the beginning of which Danev submitted his resignation, but the king turned it down. He decided to immediately respond to Russia that Bulgaria would obey to the tough conditions imposed."* During the night, the Finance minister, in the assent of the king, asked the French ambassador for a meeting. Briefing him on the government's decision, the Bulgarian minister, emotionally expressed *"the hope that France will be able to make heard its equitable and authorized in Petersburg, Beograd and Athens, enabling Bulgaria to obtain some relieving of the imposed treaty"*.[14]

On the same day, Blondel, the minister of France to Bucharest, briefed Pichon on the Russia's ambassador having got instructions to announce the

[12] ***Ibidem***, doc. nr. 355, p. 400. Stanciov to Pichon, July 14. 1913.
[13] ***Ibidem***, doc. nr. 357, p. 401. Stanciov to Pichon, July 14. 1913.
[14] ***Ibidem***, doc. nr. 360, p. 402-404. Panafieu to Pichon, July 14. 1913.

Romanian government that Russia, *"having full power from Bulgaria"*, can guarantee to Romania the possession of the Turtucaia-Balcic frontier-line, on three conditions:

1. Romania to commit not to claim other territories than those comprised in this line and that the Romanian troops would not pass the Danube through another point;
2. To be noted that the two governments, Romanian and Bulgarian, would act concertedly in order to reach peace between the conflicting parties;
3. The Romanian government to use its good offices in Beograd and Athens to recommend conciliation.

Blondel relates that Schebeko insisted to consult him before executing these instructions. The French ambassador made him the following remarks: *"Regarding the commitment requested to the Romanian government of not claiming territories beyond the Turtucaia-Balcic line, I estimate that, given the very formal declarations made by the Council's President, we should count on the fact that he will subscribe without difficulty, but that there will be difficult to obtain the promise of non-intervention of the army through other points, as some units have already been installed upstream of Turtucaia; the Romanian government will consider a military demonstration on the right shore of the Danube as indispensable, in order to compel Bulgaria to conclude peace with Serbia and Greece, under the threat of a march to Sophia. It seems to me that the third condition should be favorably received by the President of the Council and we should, in my opinion, congratulate ourselves for putting it. Maiorescu expressed his wish to take actively part in the negotiations and in the signing of the peace treaty. The occasion not only offers us the possibility to give him satisfaction, but also to have the means to emphasize his action and interfering. If, finally, the Romanian government would consent to address Beograd and Athens in order to council the two cabinets towards a conciliation policy, he will already have been taken into the gear, if I can possibly express myself this way. Later on, the cabinets of Beograd, Athens and Cetine, as well as that in Sophia, with which the conversation has been engaged, will have more facilities to propose the cabinet of Bucharest a general reunion in the capital at their choice and thus, things having been led to that point, it will be more difficult to the Romanian government to withdraw; perhaps then we will see Maiorescu accompanying the representatives of the four Balkan states to Petersburg, to proceed to the final signing of the peace treaty.*

On these two points – continued Blondel – *I would see no inconvenient to insist. Regarding the second condition, I expressed to my Russian counterpart the opinion that* ***we would expose ourselves, if not to a formal refusal, at least to the danger of warning Maiorescu too soon against a solution we would only have to follow with extreme caution*** (author's underlignment) *We should not forget that, even yesterday, Maiorescu declared us that* ***Romania didn't want to tie its hands on neither part, that it should remain free in its moves and pursue mainly a national policy*** (author's underlignment). *I am afraid that* ***in presence of a too precise proposal, Maiorescu would not operate a withdrawal action***

***contrary to Austria's minister opinion**, (author's underlignment), which, undoubtedly, would inspire the cabinet in Vienna to one of these subterfuges it got us used to, in the aim of making fail the confirmation of a precise agreement, first of all moral, which he fears most. So I deem that it would be preferable to slide on these proposals and to determine Romania little by little to bind itself as part with the Balkan states, favouring its inference in negotiations. My Russian counterpart* – concluded Blondel his report to Pichon – *has admitted my point of view and was convinced that in this respect we should talk one after the other to the President of the Council."*[15]

Blondel's point of view did not coincide entirely with that of the head of the French diplomacy. Therefore, in an answering telegram, Pichon cautioned Blondel: *"In the situation in which you are risking to issue suggestions that do not entirely concord with the action we are ourselves exerting in London and in Petersburg, I recommend you a particular reserve. Continuing with Maiorescu your amiable conversations, limit yourself to answering him that you will report me."*

We deem the telegram sent by the foreign minister of France as being particularly eloquent for the appreciation of the importance that attracting Romania into the Triple Agreement (Entente) had for the cabinets in Paris, London and Petersburg. In essence, Russia's mediation action had started after a meeting between Sazonov and Delcassé, in which the French ambassador had suggested him the idea of remaking the "Balkan Confederation" under Russia's leadership, but also by including Romania. This would have had to be done in the context of peace restoration in the Balkans. So it was essential for the Triple Entente to obtain a formal declaration from the Romanian government from which would have resulted that it acted south of Danube *"in concert"* with Russia. But Blondel, well knowing Maiorescu's position, even if he sometimes overstated certain declarations of his, was aware that the Romanian prime minister would not have consented to do this step officially.[16]

On July 15. 1913, the British ambassador to Bucharest, Sir G. Barclay, briefed Sir Edward Grey that *"the Russian minister has informed the foreign minister* (of Romania – author's note) *of having been enabled by the Bulgarian government to offer the Turtucaia-Balcic line. At the same time, he expressed his hope that the Romanian troops would not advance beyond this line and that the Romanian government would use its influence in Athens and Beograd in a conciliating way. The Russian minister awaits an answer today, but he deems that, as soon as they would be prepared, the Romanian troops would pass the Danube by force. He had done everything was possible to prevent the Romanian government's undertaking of this step."*[17]

At the same time, Delcassé informed Pichon that the Serbian prime minister Pasici, in a confidential talk with Hartwig, the Russian ambassador to Beograd, showed himself uneasy about the the excessive pretentions of the Greek

[15] ***Ibidem***, doc. 362, p. 404-406. Blondel to Pichon, July 14. 1913

[16] ***Ibidem***, doc. nr. 364, p. 407. Pichon to Blondel, July 15. 1913.

[17] ***B.D.O.W.***, vol. IX, part. II., doc. nr. 1144, p. 910-911. Sir G. Barclay to Sir Edward Grey, July 15. 1913.

government, but that he still hopes that *" Greece requests much in order to perform these last concessions."* At the same time, he expressed his "*hope that Romania would participate in the negotiations for the peace treaty. The interest in the Balkan balance which it emphasizes particularly would make it exert an useful pressure on Greece and determine it to give itself an example of moderation. On this point,* ***Maiorescu has just declared to the Russian minister that, any extension the territory that the Romanian army could occupy would have, its requests would not be increased*** (author's underlignment). *She* (Romania – author's note) *wishes the Turtucaia-Balcic line, including Dobrici. The frontier line would go out from a determined point some kilometres west of Turtucaia. Authorizat by Sofia,* ***the Russian government just made known to Bucharest that the Turtucaia-Balcic line was accepted*** (author's underlignment.)"[18].

Giving Bucharest these assuring, the Russian diplomacy acted forcefully in Sophia, Beograd and Athens in view of armistice conclusion in Nis. In a note sent to the Russian embassy in Paris was specified that the Russian mediation would have in view that this would expel *"any humiliating character for Bulgaria"*. It was also shown that " *the Russian government would welcome an agreement between conflicting parts based on the already known territorial partitioning, the governments in Beograd and Athens should be convinced of this being the only means of them to avoid and external intervention, because if Serbia and Greece would try to impose on Bulgaria too onerous conditions, even in the situation in which the Bulgarian government would be forced to accept, such a preliminary treaty would bear the risk of being subject to revision, which could have less favorable results for Serbia and Greece. The present requests of Greece cannot meet Russia's consent and Sazonov had reasons to think that the other Powers should be of the same opinion."*[19]

Confident in Russia's good intentions, the Bulgarian ambassador to Petersburg asked Sazonov, in the name of his government, to propose Serbia and Greece to suspend hostilities and send their representatives to Petersburg to negotiate the peace treaty, continuing to occupy the territories conquered by them. The Bulgarian ambassador added that, *"if this proposal would seem inacceptable,* ***the Bulgarian government gives Russia a general and unlimited mandate to treat in his name*** (author's underlignment)". Delcassé briefed Pichon that the Russian government would not deliberate on this proposal, but, in his opinion, the request of the Bulgarian government *"didn't suit the imperial government at all"*. Albeit *"wishing to reduce to a minimum the Bulgarian casualties"*, it *"is not tempted to assume the heaviest responsibilities"*.[20]

The attitude of the Bulgarian government was determined by the precipitation of events south of the Danube, Sophia having not only to face military operations engaged with the Serbs and Greeks, but also the advancement of the Romanian and Ottoman army. Panafieu transmitted from Sophia to

[18] ***D.D.F.***, 3e série, tome VII, doc. nr. 363, p. 406-407. Delcassé to Pichon, July 15. 1913.
[19] ***Ibidem***, doc. nr. 365, p. 407-408, July 15. 1913.
[20] ***Ibidem***, doc. nr. 366, p. 408. Delcassé to Pichon, July 15. 1913.

Pichon: *"After certain information received by the government, the Romanian and Ottoman troops continue to advance. The first occupied this morning Varna and probably Rusciuk. [...] King Ferdinand has just taken new action on me for this situation to be signalized to your Excellency. He has come to the point of asking whether the present attitude of Russia had not the aim to make him go from Bulgaria."*[21]

The same day, Delcassé informed Paris that Nekliudov, Russia's ambassador to Sophia, had sent a telegram to Petersburg which said that *"within the diplomatic circles in Sophia there begins talk about a congress of the Great Powers to regulate the Balkan questions. Vienna is that one who sustains the idea of the congress."*[22]

But Russia does not accept to sustain openly Bulgaria, in order not to expel Serbia and Greece. Relating on the reactions registered in Sophia in respect of Russia's attitude, Pichon was contouring the picture of a true political crisis in Bulgaria: *"Instead of making known the final decision Bulgaria had accepted in advance, Sazonov has just the Bulgarian government to send a representative to Nis to participate in a conference wished by Pasici and Venizelos, at an undetermined date.* ***Russia thus refuses her arbitrage*** (author's underlignment) *and asks herself why had she traced the general lines of the future frontiers herself if that were not to mark that she is supporting Serbia and Greece. On the other hand, if the Bulgarian government sends a delegate to Nis, this seems difficult, as he would not have the entire freedom to defend his country's interests. It is likely that Serbia and Greece, insured by Russia's encouragements and by Romania's support, will not make any concession. Bulgaria would have to obey to their will and to an even greater humiliation than if Russia would pronounce the sentence herself. Wishing to avoid any direct responsibility in the solving of the conflict and at the same time any risk of intervention from Austria, Russia definitively expels Bulgaria, which would contribute to a great extent to its defeat and humiliation.* ***The most fervent partisans say openly today that the policy of understanding with the Franco-Russian group has failed*** (author's underlignment). *Danev submitted his resignation this morning, which does not seem as having to be accepted. Kung Ferdinand addresses today a supreme call on the emperor Nicolae."*[23]

In the realm of the Triple Entente there did not exist an unity of views concerning the solving of Balkan problems. From London, the French ambassador, Paul Cambon, warned Pichon that *"a too marked insistence from our part in favor of an unconditioned ceasing of hostilities would indispose spirits against us in Athens. Or, all that we would loose as influence and sympathy in Greece would be to the direct benefit of Germany"*, whose influence on the Greek government is increasing. On the other side, Paul Cambon cautioned England of having a policy different, to a certain extent, from that of France and Russia. Relating on the fact that a depute had taken the initiative to suggest to the English government an action towards an armistice, the Secretary

[21] ***Ibidem***, doc. nr. 369, p. 409-410. Panafieu to Pichon, July 15. 1913.
[22] ***Ibidem***, doc. nr. 371, p. 410-411. Delcassé to Pichon, July 15. 1913.
[23] ***Ibidem***, doc. nr. 372, p. 411. Panafieu to Pichon, July 15. 1913.

of State from the Foreign Office replied that *"simple words come from the part of a foreign government could in no way change the situation in the Balkans.* ***In order to obtain peace, this should be forced onto the conflicting parts. So the British government will limit its ambitions to maintaining the European concert, in making its decisions to be respected; it will join the efforts of the Great Powers, without isolating itself*** (author's underlignment)". The French ambassador, commenting this statement asked himself *"whether our situation with respect to Russia allows us a line of conduct analogous to that defined yesterday by Sir Edward Grey. But it seems to me that this conduct would be less dangerous for our influence upon the conflicting parties than the pacific insistence for which won't like us neither the winners nor the losers."*[24]

On the same day, Paul Cambon briefed Pichon that Sir Edward Grey had invited the ambassadors asking them to consult their governments on the need for the Powers to respect the principle of non-intervention in the Balkan Peninsula. The Austro-Hungary ambassador, after having received the response from Vienna, stated that *"the Austro-Hungarian government declares not having the intent to intervene, but that its interests are those as to not being able to commit remaining always in expectation, and that* ***it consequently sees no utility of an accord which could hinder it at a give moment*** (author's underlignment.)"[25].

France's foreign minister, Pichon, replied to the French ambassador in London, Paul Cambon, that *"he approved entirely the formulated remarks",* assuring him that his action would be exerted in this respect. He also expressed his "*complete accord*" with the opinions expressed by Sir Edward Grey[26].

Thus, within ***the Triple Entente there were to be distinguished two perspectives of solving the Balkan crisis: That of Russia, which had offered its mediation services, but had refused an arbitrage in Bulgaria's favor, pointing to a conference of the conflicting parties, and that of England, agreed by France, which had in view a conference of the Great Powers.***

As the Bulgarian government considered that a conference of the conflicting parties, without an open support from Russia, would put Bulgaria into a disadvantageous situation, due to the result of the military operations, it hoped to obtain support by achieving a mediation through the Great Powers. To this respect, the Bulgarian minister to Paris, on behalf of Bulgaria's king, had a meeting with the President of the French Republic, Raymond Poincaré, also attended by the foreign minister Pichon. The results of discussions have been made known to all embassies of France in the Great Powers' capitals and in those of the Balkan states, by a circular signed by Pichon, in which were stipulated the instruction to follow in this respect: *"He* (the Bulgaria minister – author's note) *has asked, on behalf of the king of Bulgaria, that France should use its good offices in order to obtain the ceasing of the war by a Great Powers' mediation,*

[24] ***Ibidem***, doc. nr. 373, p. 412-414. Paul Cambon to Pichon, July 15. 1913.
[25] ***Ibidem***, doc. nr. 375, p. 415. Paul Cambon to Pichon, July 15. 1913.
[26] ***Ibidem***, doc. nr. 377, p. 421. Pichon to Paul Cambon, July 16. 1913.

which should establish the peace conditions. He pointed out that, if the Romanians which just entered Varna, would continue their campaign to Sophia, and if there would be insisted upon Bulgaria's treating directly with the conflicting forces, the result would be the slowing down (of negotiations – author's note) *and complications which, not only would compromise peace, but could also stir a revolution in the Bulgarian capital.[...]. The president of the republic answered that France, true to its constant attitude, accepts and takes into account voluntarily, all measures that allow the* ***rapid conclusion of peace by the accord of all Powers*** (author's underlignment) *and he* (the Bulgarian ambassador – author's note) *was convinced that I* (the foreign minister of France – author's note) *would make known this opinion to the different governments. On the other side, I understand* - continued Pichon – *from a brief handed out by Izvolsky, that Sazonov thinks that peace conclusion could be accelerated* ***by the direct negotiations*** (author's underlignment) *and by sending a plenipotentiary Bulgarian appointee to the reunion of Serbia's and Greece' representatives proposed by Mr. Pasici. There would undoubtedly be convened to also participate a Romanian plenipotentiary representative. Either of these solutions would be adopted, it would have our agreement, on condition of being* ***admitted by all Powers*** (author's underlignment) and ***we would accept the second one, which seems having to lead the fastest possible to the end of hostilities*** (author's underlignment)"[27]. In fact, ***despite the French diplomacy having in view that the situation to be reached should meet the accord of all Powers, they do not pronounce themselves for the organizing of a Conference of the Great Powers in view of adopting compelling conditions for the conflicting parties, as had been laid-out by the British diplomacy. France is held to model its Balkan policy according to Russia's interests, as its engagements towards Petersburg were of a completely other nature than those of England. Consequently, France, albeit having in view an accord of the Great Powers on the solving of the Balkan crisis, sustained, the idea of a peace conference only between the conflicting parties, alike Russia***. So, in order to achieve this, the French and Russian diplomacies acted towards the ending, as soon as possible, of the hostilities.

Bulgaria's calls upon the cabinets in Petersburg and Paris, in order to obtain an intervention of the Great Powers in this respect, were desperate and are eloquent in demonstrating the fact that the taking action of the Romanian army had the effect of tilting in the most obvious way the balance of forces in favor of Serbia, Greece and Montenegro, which had also been joined, by an independent action, by the Ottoman troops. On July 16. 1913, Panafieu transmitted from Sophia:

"The Romanian chivalry has stopped yesterday in Mezdra and, by all probabilities, could possibly be tomorrow in Sophia. If the Powers want to avoid the gravest events, it is indispensable to stop the Romanian army's campaign by a forceful intervention."[28]

[27] ***Ibidem***, doc. nr. 376, p. 419, July 16. 1913.
[28] ***Ibidem***, doc. nr. 379, p. 422. Panafieu to Pichon, July 16. 1913.

On the same day, Stanciov, Bulgaria's minister to Paris, was submitting to the head of the French diplomacy, Pichon, a telegram from king Ferdinand of Bulgaria. In its text, after relating on the disastrous situation on military operations' sites, there was mentioned: *"Yesterday, the Danev cabinet has resigned, not seeing any issue, as no party is willing to assume governmental responsibility for the moment."* Interesting are also Stanciov's remarks on the mentioned telegram's text, as they show the way in which the Bulgarian diplomacy understood to obtain an intervention of the Great Powers: *"[...] Does Europe want a revolution in Bulgaria? Conclusion: there should be acted in order to stop the Romanians' absurd campaign and the invasion of the Turks, in flagrant contradiction with the London treaty. The two questions are independent of the armed conflict between Greece, Serbia and Bulgaria."*[29]

Under these circumstances, the Romanian government was preoccupied of the not being given an erroneous interpretation to the participation of the Romanian army in the second Balkan War. On July 3./16. 1913, the Ministry of Foreign Affairs has sent a note to the Romanian embassies of abroad, in order to making it known to those respective governments, in which were précised the reasons of the intervention and the aim pursued: *"Making its army campaign on Bulgarian territory,* ***Romania neither pursues a policy of conquest, nor the defeating of the Bulgarian army*** (author's underlignment) *Romania's military action was due in first place to the obligation of procuring now a secured frontier line for its territory from the other side of the Danube. The present conflict between the Balkan states, and above all the origin of this conflict, issued from the intransigence of the Bulgarian government and his aggression exerted against his former, erstwhile allies of this war's eve, have strengthened the Romanian government in his conviction that* ***a strategic frontier*** (author's underlignement) *was compulsory to impose towards Bulgaria, in order to make possible peaceful relationship between the two states in future. This frontier is the line Turtucaia-Dobrici-Balcic with a certain number of kilometers to west and south according to field configuration. Beside these things,* ***Romania's essential interest in the Balkan Peninsula did not allow us to remain simple spectators with respect to the tendency of hegemony Bulgaria manifested at the expense of the other states*** (author's underlignment), *on the very second day after their joint fight for freedom. In its capacity as constant element of order and peace in the East of Europe,* ***Romania has the duty to participate in the final settlement of a question which, occurring at its very ports, has been a threat for too long time and afterwards troubled the general peace*** (author's underlignment).

Working, under these circumstances, to reach a final arrangement with the conflicting parties, ***Romania does not only deem contributing to the securing of the legitimate interests of the directly involved parties, but also to help in the endeavours for peace of the Great Powers"*** (author's underlignment)[30].

[29] ***Ibidem***, doc. nr. 380, p. 422-423. Stanciov to Pichon, July 16. 1913.

[30] **The *Green Card***, in vol. Titu Maiorescu, ***Romania, Balkan Wars and The Quadrilateral***, edited by Stelian Neagoe, Machiavelli Edition, Bucharest, 1995, p. 221.

On the same day, Romania's Parliament has been convoked in extraordinary session, Titu Maiorescu submitting the Message of the Throne, in which were exposed the reasons of Romania's entrance into the war. The session's convocation had been made to the aim of submitting to approval the projects of laws *"required by the circumstances"*. The Romanian prime minister submitted a project of law by which there was disposed the declaring of the "estate of emergency", by Royal Decree, up to the total demobilization of the army. The Project, submitted to the Depute Assembly, has been admitted by 71 votes against 19[31]. The new law seemed to be justified by the fears manifested with respect to some actions against the war, which could have been likely to produce certain social and even political troubles. In reality, as was noticed, the gatherings against the war were initiated by Chr. Rakovsky, of Bulgarian origin, and other leaders of the socialist motion which did only succeed to attract a reduced number of participants.[32]. Consequently, we deem that the new law was motivated only by Romania's estate of war, being no real danger of social or political troubles which would have been determined by Romania's military action south of the Danube.

While the Romanian minister to Paris, Lahovary, made known the Romanian government's position to the French government[33], the head of the French diplomacy, Pichon, was entertaining a diplomatic audience with all ambassadors of the Great Powers, appointed in the French capital.

Discussions pointed to *"the gravity of the events"* which were developing in the Balkan Peninsula, and ***the ways of diplomatic intervention of the Great Powers for ceasing hostilities, agreed upon by common accord***. Thus, three essential objectives of these were laid out:

"*1. The sending to Bulgaria of a plenipotentiary to Nis in order to negotiate with Serbia's, Greece's and Romania's representatives;*

2. The sending of instructions to the ambassadors in Constantinople, for their concerting in view of an urgent action by the Port, to the effect of stopping the Ottoman troops campaign on the frontier line;

3. ***Urgent intervention in Bucharesti*** *(author's underlignment) to avoid Romanian troops' entering Sophia, as Bulgaria cedes the Turtucaia-Balcic frontier line, and Romania, as had always declared it, only understands to participate, without any other advantages for herself, but for an equitable repartition of Balkan territories*"[34].

The diplomatic interventions of the Great Powers had an immediate effect, as the governments of Serbia, Greece and Bulgaria made known on the same day their sending of a representative to Nis for an armistice to be concluded.[35]. In this situation, Sazonov considered as *"almost finished the task he had assumed to accelerate the ceasing of hostilities"*. Relating the content of a discussion he had

---

[31] ***Debates of the Deputes' Assembly***, extraordinary session, 1913, nr. 1, sess. of July 3. 1913, p. 1.

[32] A. Iordache, ***The Political Crisis in Romania and the Balkan Wars. 1911-1913***, Paideia Edition, Bucharest, 1998, p. 242-243.

[33] ***D.D.F.***, 3 e série, tome VII, doc. nr. 381, p. 423-424. Lahovary to Pichon, July 16. 1913.

[34] ***Ibidem***, doc. nr. 382, p. 424-425. Pichon 5to Panafieu, June 16. 1913.

[35] ***Ibidem***, doc. nr. 384, p. 425. Delcassé to Pichon, July 16. 1913.

with the head of the Russian diplomacy, Delcassé briefed Pichon: *"The peace conditions being, at least from the point of view of the territorial boundaries, accepted in rough lines by the Bulgarians, the foreign minister hopes that the preliminaries would be able to be signed in two or three days. He will act immediately to submit the Nis treaty to Europe, which will ratify it this way, in conformity with the work of the London Conference. Where would gather the Powers' representatives for this general settlement of the Balkan problems? Sazonov takes into account that proposing Petersburg would raise Austria's susceptibilities and opposition. He does not deem that Sir Edward Grey, tired after the works of the London Conference, wants very much to see a second conference held at Foreign Office. Well examining matters, he thinks that Paris would be well designed as venue and takes on to address this problem with the count Pourtalès* (Germany's ambassador to Petersburg – author's note) *which he would receive during the afternoon. I did not make him change his mind, in the very interest of the project, if you would like to join in."* Delcassé pointed out that *"Germany, in fact, will not see the choice of Paris more favourably than would Austria see the choice of Petersburg. And if she would see that there is not a perfect and sound unity of views on this point among the Powers of the Triple Entente, she would be the one to warn London in advance. First of all, it would be right to ask Sir Edward Grey, which probably would be the first in the capacity to propose Paris, if he has no personal or political reasons to maintain London as the venue for a new conference. Sazonov would not do anything ahead of knowing what you think with respect to his project. If you approve it, you will have to consult Sir Edward Grey"*[36].

Pichon answered Delcassé the next day: "*I think, like Sazonov, that for ratification by Europe of the diverse treaties referring to Balkan problems, it would be difficult to make Petersburg to be accepted. I estimate like you, that it would be useful to check the English government in view of choosing London as venue. In this respect, I talked yesterday to Izvolski. The Russian government should consequently consult the British government, saying he agreed with us. He could not propose Paris, unless England would make the proposal."*[37]

In the meantime, important news came from the Bulgarian capital. Panafieu briefed Pichon that *"the representatives of the Powers reunited today in order to exchange their points of view on the situation. They agreed deciding to remain in Sophia, under lack of contrary instructions from their governments, in case the Court and the Bulgarian government would leave the capital. They estimate, on the other hand, that the advancing of the Romanian troops and of the Ottoman ones are of the kind to provoke the gravest and bloody events, if not stopped as soon as possible."*[38] On the same day, Panafieu resumed with a telegram: *"The from yesterday resigned Danev cabinet, will be almost certainly replaced by a ministry of national defense in which will enter representatives of all parties. Nothing is decided yet on its composition, but it is very likely that*

[36] ***Ibidem***, doc. nr. 385, p. 426-427. Delcassé to Pichon, June 16. 1913.
[37] ***Ibidem***, nota 1, p. 426-427. Pichon to Delcassé, July 17. 1913.
[38] ***Ibidem***, doc. nr. 386, p. 427. Panafieu to Pichon, July 16. 1913.

Malinov will be the President of the Council."[39].

Acting in accordance with received instructions, the ***ambassadors of Russia and France to Bucharest, N. Schebeko and C. Blondel, have intervened by the Romanian government in view of ceasing the Romanian army's advancing towards Sophia.*** In the report submitted to king Carol I the next day, Titu Maiorescu notes: "*Yesterday, Wednesday, the second day after (His Majesty's leave for the army), the ministers of France and Russia, sirs Blondel and Schebeko, joined me between 7 and 8 o'clock in the evening, at my place, both uneasy about Bulgaria's situation after the rapid advancement of our troops towards Sophia. I assured them that, no matter how far we might advance, we would only require the frontier line Turtucaia-Dobrici-Balcic, with the number of kilometers to west and south as needed by the topographical configuration, and our participation in the peace negotiations. I suggested them, by the way, the idea of choosing for these negotiations, Sinaia or Bucharest, as venue for the representatives of the five conflicting states. Today, Thursday, at 7 o'clock in the evening, Mr. Schebeko came again, to communicate me the advice for the Romanian army not to advance anymore towards Sophia, as* ***Russia guarantees the annexing of the Turtucaia-Balcic line*** (author's underlignment), *and namely Dobrici too. I answered him that I couldn't judge from Bucharest on the military necessities in the Balkans; but that we, in any case, don't want to conquer more territory than that shown, but we want to impose peace and to take part in its negotiations."*[40].

In his report to Pichon, from July 17, 1913, mentions: "*Maiorescu believes that the direct negotiations between the representatives of the five conflicting states are the* ***only means*** *(author's underlignment) to reach promptly the solution of the conflict. He fears the slowness of a mediation by the Powers and* ***would not accept it*** *(*author's underlignment)*, adding, however, that Serbia and Greece would refuse it undoubtedly, as well. He is against it and ready to make all military operations to be suspended when the day and venue of the reunion of the five conflicting countries' delegations would be fixed, of course, if Bulgaria, Serbia, Greece and Montenegro would act alike. My efforts to determine the President of the Council to stop the army's campaign collided on the idea of his, alike the main part of his colleagues, that Bulgaria might not respect its word; he consequently considers that* ***Romania cannot leave Serbia exposed to a resuming of the Bulgarian offensive*** (author's underlignment) and that ***the presence of the Romanian army at the side of the Serbian army is of the kind of defending Serbia in front of an Austrian ultimatum, possible at any time*** (author's underlignment). *Maiorescu repeated me, however, […], that Romania, irrespective of its military moves, would not increase its pretentions and would only claim the Turtucaia-Balcic line*". Blondel was assured by Titu Maiorescu that "*the Romanian army would continue to advance in its campaign […] until the day when the reunion*

[39] ***Ibidem***, doc. nr. 387, p. 427. Panafieu to Pichon, July 16. 1913.
[40] ***The Green Card***, p. 221-222.

projected by the conflicting states would be a decided thing." The French diplomat could only obtain ***the promise that the Romanian army would advance more slowly***. In his report to Pichon, Blondel also noted Maiorescu's opinion according to which, if Bulgaria wanted to ask for peace, "*she should accept the idea of the reunion of the conflicting states' representatives and all efforts should be pointed to the Beograd and Athens' cabinets, in order of their joining this solution."*The French diplomat also showed: *"A very friendly telegram, addressed this morning by king Ferdinand to king Carol I, indicates that Bulgaria is ready to come to an accord with Romania. This intervention will undoubtedly determine the government [...] to take the initiative of convoking a conference between the delegations of the Balkan states. [...] He consequently proposed for this conference to take place in Sinaia, which would offer an adequate and agreeable venue [...]. In conclusion* – said Blondel – ***Romania does not want to separate its cause from that of the Serbians and of the Greeks'; she wishes peace, advises Beograd and Athens to moderation, but, in the same time, she understands to remain under arms up to the moment when, by a mutual agreement, there are commenced the negotiations proceeding to demobilization*** (author's underlignment)"[41].

In his report to Sir Edward Grey, the British ambassador to Bucharest, Sir G. Barclay, related, on July 17., 1913: *"The Russian and French ministers have advised Romania yesterday, according to their received instructions, not to advance troops to Sophia; moreover, the French minister asked the foreign minister* ***if Romania would like to come to an agreement by the mediation of Paris. The foreign minister rejected categorically this last suggestion*** (author's underlignment) *and has insisted on the direct discussions between the five conflicting states. The foreign minister said that the Romanian government had no intention to push things further than was necessary, but that he could not stop the advancing of their troops until the moment when arrangements were done for discussing the preliminaries of peace. At the same time, the advancing of troops did not imply increasing of Romania's requests, which are those declared in the circular submitted yesterday to the Powers. The foreign minister suggested Sinaia or a Danube port as being suitable venue for the reunion of the five delegations and said that the preparations for the advancement of the Romanian troops would not be accelerated, in order to give them time to arrange the meeting."*[42].

[41] ***D.D.F.***, 3 e série, tome VII, doc. nr. 388, p. 428-429. Blondel to Pichon, July 17. 1913.

[42] ***B.D.O.W.***, vol. IX, part II., doc. nr. 1156, p. 918. Sir G. Barclay to Sir Edward Grey, July 17. 1913.