

CUSTOMS AND CUSTOMS LAW IN THE ROMANIAN PAST

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The customs and the evolution of customs law can be investigated and analyzed from manifold perspectives; first of all, from the standpoint of their situation in the present, namely the way they are in the contemporary legal system, secondly, from a diachronic perspective, examining them in their past progression, along a limited time span.

The customs system and its regulations are practices established after gradual and lengthy processes occurring in the field of material exchanges and commercial life. Exchange economy has in its turn several aspects, such as its relation to political and military life, to law and monetary practices, all interrelated, in close connection and forming together a unique social system. Consequently, the customs and the customs law are intertwined with economic-social phenomena, so that the history of customs can be regarded as a part and parcel of the general history of society.

Among various aspects of the commercial life, the customs and customs law are doubtless one of the most important due to the prominent part they play in trade. They are born out of the needs of the society and are meant to serve and defend its interests. In any state customs law is normative and coercive, comprising norms and sanctions that regulate various relations between traders and the state or states where they carry on their commercial activity. The customs and customs law cannot be separated from the rest of the social-economic life, as they cannot exist without society or state, which in their turn cannot function without them. In other words, customs law is far from a mere abstraction, it is something quite real, a phenomenon that evolves and changes according to the same laws as the entire state life of a people.

The history of customs in the Romanian past aims at sketching the development of customs and customs law from the beginnings of the

medieval society to the modern age. The goal of our approach is to delineate their essence and the part they played throughout history, as well as the consecutive changes the customs institution underwent during the evolution of the Romanian medieval and modern states. From this perspective, one may say that the history of customs has been a part of the general history of our states and their legal regulations. Due to the fact that our research is focused on a specific and limited area of the legal institutions field, namely the history of customs and customs law, it belongs to a special historical field that we would like to investigate in the future.

As concerns the geographical area of investigation, the present dissertation deals with the entire territory of nowadays Romania. Consequently, we are investigating the development of customs and customs law throughout the area of the Romanian Countries, namely in the voyvodat and principality of Transylvania, as well as in the extra-Carpathian lands, Moldavia and Wallachia. When dealing with the history of the customs system and its law in the case of Transylvania and the western lands, under different foreign occupations but chiefly inhabited by a Romanian majority, we had to constantly take into consideration the evolution of customs practices and law both in the kingdom of Hungary and the Hapsburg Empire, where Transylvania belonged to beginning with the 11th-12th centuries to the end of the 17th century.

As for the chronological span, we have started with the reconstruction of the coming into being of the constitutive elements of the customs system and its regulations, as we deemed that without the knowledge of the framework in which these elements emerged and developed in the medieval, even pre-state, epoch one cannot understand their quite complex subsequent

evolution. Our research includes the customs and customs law in the time of the pre-modern and modern state to the end of the 19th century.

We should also mention that the history of customs and customs law could not be properly reconstructed from the sources and comprehensively interpreted without a previous incursion in the historical writing dedicated to the field, which explains our concern to offer a critical presentation of the evolution of the historical and legal writing dealing with the topic. Thus we have included a chapter dedicated to historiography, in which we have approached one by one the great stages in the evolution of historical writing, each time stressing out the noteworthy viewpoints and perspectives in the historical and legal works. The beginnings are related to the activity of the forty-eight generation, to the names of Mihail Kogalniceanu, August Treboniu Laurian and Nicolae Balcescu who dealt, among others, with the analysis of the customs system and its regulations in the past. These initiatives were continued and developed by Bogdan Petriceicu Hasdeu, and in the second half of the 19th century, by several economists educated in the German school of Lujo Brentano, such as Constantin I. Baicoianu. The latter wrote several works dedicated to the history of our customs and trade policy from the Organic regulations to around 1900, published abroad and in the country. Side by side with the specialized concerns of the economist Baicoianu, historians both in the Romanian kingdom and Transylvania were more interested, truly within a more general framework, in the publication of sources concerning customs and customs law. Among them we should mention Teodor Codrescu, Eudoxiu Hurmuzaki, M. Mitilineu, Szilagyi Sandor, Jakab Elek, Franz Zimmermann, Carl Werner and others. In Transylvania, we should note the works of interpretation and synthesis by

Otto Fritz Jickeli and Horvath J., in Wallachia and Moldavia the most relevant writing belonged to Nicolae Iorga and I. Nistor.

In the interwar period, to the contributions in the field were added the writings of Gheron Netta, Solyom Jenő, Stefan Metes, V. Th. Iordăchescu, the latter approaching the topic with the insight of the jurist as proved by his synthesis on the *Evolution of Romania's Customs Policy and Law in 1408-1886* (Bucharest, 1934).

After the war, within the context of materialist-dialectical historical writing, few syntheses were published as the historians chiefly distinguished themselves by critical studies, interpretative and well documented, but unfortunately geographically and chronologically restricted. An exception would be the more general works on the history of trade written by Radu Manolescu, Andrei Otetea and Alexandru I. Goanta, which include relevant data on the customs and their law, and the chapters on the customs in Transylvania comprised in the syntheses dedicated to the history of bondage in the 16th-17th century published by David Prodan. A special attention deserves the more recent work of Ion Chirtoaga and Nicolae Valcu , *The History of Moldavian Customs* (Chisinau, 2006).

Starting from this rich historiography and the countless collections of sources, we were able to take up again the research on the customs and customs law in Romania. But the investigation also required an analysis of the available historical and legal sources, which we have attempted in the chapter *Sources and Methodology*. We have thus step by step reviewed the sources published by Enlightenment and romantic historians, ending with the activity of the positivists who edited for the first time in a critical manner the documentary and legal sources that form the basis of any modern research. The endeavor was continued in the interwar period and after 1944,

when these concerns became the focus of cultural institutions such as the Romanian Academy with the collections *Documenta Romaniaae Historica* and *Collection of Written Sources of Old Romanian Law*.

After these two in a way preliminary chapters we have chosen to deal with the relation between routes and customs, obviously because the customs were established and organized in close connection both to the navigable hydrographic network and the land routes. Each category of communication route where customs were set up had its specific evolution in time, depending on the nature of the transportation and their commercial importance, culminating in the railroad transportation and steam navigation inaugurated here in the 19th century.

The essential part of the present doctoral dissertation are chapters V-IX, dealing with the customs and customs law in Transylvanian in the voyvodate age (11th-16th centuries), in Wallachia and Moldavia in the 14th-16th centuries, in the autonomous principality of Transylvania (16th-17th centuries), in Wallachia and Moldavia during the Ottoman monopoly and the Capitulations regime (16th-19th centuries). Our analysis is completed with the research on the evolution from cameralism to protectionism of the customs in the Transylvanian Principality and the western lands during the Hapsburg rule (18th-19th centuries).

The research on the customs in the Arpadian period emphasizes the fact that they came to be coveted both by church, the foreign colonists in the Transylvanian Voyvodate, and the Kingdom's nobility. Consequently, the practice of bestowing them became more and more common, at the beginning upon ecclesiastic institutions, then upon towns, boroughs, colonist communities and, of course, upon noblemen. During the three centuries of Arpadian dynasty rule, the numbers of documents concerning customs grew

significantly, outcome of repeated donations, which led to restrictive regulations meant to hinder both the loss of royal customs and the abusive setting up of estate customs by the noblemen.

These attempts of establishing a customs policy not always yielded the results expected by the royal court and the abusive practices of the aristocracy would continue under different guises during the rule of the Angevins too. As the increase in the number of customs led to the obstruction of circulation, under the Angevins and Jagellonians we noted a struggle against abusively established customs, illustrated in the documents and regulations of the epoch, and this situation was perpetuated during the time of the autonomous principality as well.

The forging of the medieval states Wallachia and Moldavia in the 14th century triggered not only an increase in their commercial exchanges but also the emergence of a specific customs system, regulated and supported by the Romanian rulers as revealed by the countless trade privileges granted to foreign merchants, chiefly those from Brasov and Lvov. Beginning with the second half of the 15th century, they constantly promoted a protectionist commercial and customs policy, manifested in the organization of “border fairs” in response to the right to stop and storage held by the towns of Brasov and Sibiu. The final success of this new fair policy for the Romanian traders is mirrored in Neagoe Basarab’s commercial regulation from 1517, whose positive outcome would be annulled from the middle of the century by the establishment of the Ottoman commercial monopoly and the Capitulation regime.

The establishment of the Transylvanian Principality under Ottoman sovereignty (1541) marked a new stage in the development of the customs system and law, as the princes were able to promote a customs policy in the

interest of their own commerce and exchequer. This is revealed by the series of decisions made by the Estates Assemblies, as well as by other documents of the epoch, which also emphasize recurrent abuses perpetrated by the owners of private customs or officials responsible with the princely customs. In order to put an end to these practices, the Country Assembly repeatedly tried to regulate the customs system, the fares demanded by customs owners, to eliminate the most common abuses of the customs officers. We should stress out that all these measures aimed only at a financial policy that would enrich the princely treasury, so that the customs system was not seen as a means to ensure the development of the exchange economy of the Principality by supporting the principles of customs protectionism.

Our research also deals with the evolution of the customs and customs law in the time of the Ottoman monopoly over the trade in Wallachia and Moldavia, or according to a more recent expression of the Ottoman Studies historians (for instance Mihai Maxim) the time of priority sales to the Porte. These practices were accompanied in time by the provisions of the Capitulations, namely the system of treaties including commercial-customs regulations between the Ottoman Empire and several more developed European states (France, England, Holland, etc.). This stage in the Romanian customs past actually lasted from the second half of the 16th century to the independence of 1877-1878. In spite of these conditions imposed by the Turkish sovereignty with extremely negative consequences for the economy of both states, one can notice the constant effort of the Romanian rulers to promote their own customs policy, which culminated, after the Adrianopol Treaty (1829), with the customs unification of the two Romanian principalities in 1847. The manifestations of customs independence increased after the political unification of 1859, when the legislation

elaborated under Alexandru Ioan Cuza and Charles I favored the export of Romanian products and protected the budding national industry. In fact, under the new circumstances, the customs policy of the Romanian authorities, far from playing only a strictly fiscal part, was meant to serve as a most necessary tool for promoting customs protectionism in the more general interest of the economic development of the country.

This complex economic function of the customs policy could be much sooner found in the Transylvanian Principality, promoted by Austrian cameralism beginning with the 18th century. The ninth chapter of our dissertation deals with the evolution of this policy and its positive consequences on the economic development, successively recording the emergence of this trend and the promotion of its principles chiefly within the reform politics during Maria Theresa, Joseph II and their descendants. The results of this policy became soon apparent as mirrored in the documents of the age whose recorded statistics have been used in our research.

Conclusions, several illustrative annexes, and the bibliographical list complete our analytical and interpretative approach.

Our investigation has proved to be a very difficult attempt, which required the interpretation of a rich and diverse documentary material that was not comprehensively used until now. Even though the topic has already drawn the specialists' attention, it has been approached only in general, fragmentary, and partial terms, on local and isolated cases, far from what we would like to call a synthesis. Therefore we have tried, as much as possible, to embark upon a new critical analysis and interpretative path of the whole available information. Without any doubt, our conclusions may be altered in the future, amend in certain respects, depending on the emergence of new sources or new angles of approach.

We nevertheless believe that the investigation of the history of customs and customs law in the Romanian past offers several advantages. First of all, it gives additional explanation to certain historical processes or events and, as an institution part and parcel of the social fabric, enables a better understanding of the history of the society itself. As the customs emerged and evolved within the framework of the history of the society it is only natural that the historian who studies the development of the customs institution can understand better the general history itself and the history of law.

Selective Bibliography