

Damaschin Bojincă – Legal Scholar and Translator in Pre-Modern Romanian Culture¹

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Abstract: The figure of Damaschin Bojincă is linked to the activity of the Transylvanian School, even though he spent most of his life in Moldavia as a jurisconsult. Benefitting from the culturally effervescent period at the turn of the 19th century, from a varied education in several fields and in a European context, as well as from the direct contact with European prominent scholars and intellectuals, Damaschin Bojincă is known in the specialty literature as a historian, linguist, legal scholar and translator. However, all these fields of activity revolve around the ideology of the Transylvanian School, that of creating a national identity and an educated Romanian readership. The purpose of this paper is to present the personality of Damaschin Bojincă and the manner in which these goals were achieved both in his historical writings, where he acted in fact as translator, as well as in his active position as jurisconsult and professor of law in Moldavia.

Keywords: Damaschin Bojincă, Transylvanian School, Enlightenment, nationalist discourse

1. Introduction: The figure of Damaschin Bojincă in the context of early modernity

Born at the beginning of the 19th century in a region dominated ideologically by the Habsburg rule, Damaschin Bojincă may be regarded as a typical representative of the Transylvanian intellectuals of the time, even though the specialty literature does not include him in the category of prominent members of the Transylvanian School movement.³ Nonetheless, educated initially in present-day Romania, then at the University of Pest, graduating in the legal field, Bojincă fully benefitted from the contact with both the Romanian intellectuals, as well as the European Enlightened scholars of the time. In the former half of the 19th century, the Hungarian capital city hosted an impressive number of Romanian-

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³ Ion Lungu states that the true representatives of the Transylvanian School are Samuil Micu, Gheorghe Șincai, Petru Maior and Ioan Budai-Deleanu, whereas Bojincă belongs together with others to a group of “Enlightened scholars only affiliated to the Transylvanian School”, according to: I. Lungu, *Școala ardeleană. Mișcare ideologică națională iluministă*, Editura Minerva, București, 1978, p. 109. See also O. Papadima, who considers Bojincă to belong to “a second generation of the Transylvanian Enlightenment”, according to: O. Papadima, *Ipostaze ale iluminismului românesc*, Editura Minerva, București, p. 245.

speaking students and intellectuals, who had founded there a Romanian school and a Romanian church, in other words a community of Romanian intellectuals, all centered in fact around the university printing house. The effervescence of a European metropolitan city, its rich cultural life, with a university and several libraries, provided ideal premises for the formation of Damaschin Bojincă, who would use in his future activity not only the information and knowledge gathered from the period of his studies, but also the personal connections established with various scholars in this time. It is, for instance, a direct result of the Hungarian period that Bojincă became fully acquainted with the ideology of the Enlightenment in general and the adapted nationalist version promoted by the Romanian intellectuals. Furthermore, the direct contact with the scholars around the university printing house gave Bojincă the opportunity to commence his activity as author of historical writings, promoting ideas typical for the Transylvanian School ideology that would eventually become emblematic for his entire activity.

In fact, it is precisely due to his activity in various fields, such as historiography, law, linguistics or pedagogy, which was actually symptomatic for the Transylvanian intellectuals at the turn of the 19th century, that Damaschin Bojincă may be considered to embody the principles of the Transylvanian School. On the one hand, being a disciple of Petru Maior, an emblematic figure of the Transylvanian School, Bojincă strongly supported the core idea of the Latin origin of the Romanians in the attempt of creating a national identity and awareness that would also contribute to a unification of the territories inhabited by Romanians. On the other hand, the didactic and formative purpose of Bojincă's writings, regardless of their topic, is equally worth mentioning.

2. The literary activity in the context of the European and Romanian-specific Enlightenment

From a thematic point of view, the writings of Damaschin Bojincă may be classified in several categories, even though they all reflect, to a lesser or a greater extent, the same ideas: the importance of educating the readership, the Latin origin of the Romanian people, the need of a national identity, all these representing in fact the ample ideological program promoted by the Transylvanian School, under the influence of the European Enlightenment in general and of Josephinism in particular.

The specialty literature mentions the main topics according to which his writings may be categorized, namely polemic, historical, legal, pedagogical and ethnographic.⁴ From our point of view, however, the polemic writings also deal with historical facts and could thus be regarded as belonging to the category of

⁴ See the classification suggested by N. Bocșan, *Damaschin Bojincă – un istoric uitat*, in: *Banatica*, vol. 1/1971, pp. 289-299. The same classification of Bojincă's writings is mentioned by O. Urs, *Scrierile polemice și istorice ale lui Damaschin Bojincă. Premise și context*, in: *Caietele Sextil Pușcariu*, vol. III/2017, pp. 406-419.

historical writings. These polemic texts are in fact only two and both have a common starting point, namely a booklet written by the Serbian historian Sava Tököly, *Erweis, daß die Walachen nicht römischer Abkunft sind, und dieß nicht aus ihrer Italienisch-Slavischen Sprache folgt*, initially published anonymously in 1823, and four years later in a second bilingual edition in German and Romanian. Itself a reaction to Petru Maior's *Istoria pentru începuturile românilor în Dacia*, the above-mentioned writing contradicts the thesis according to which the present-day Romanian population would originate from the Roman colonists who used to inhabit the territory of Dacia. Not only as a result of his personal connection to Petru Maior, but also emboldened by the nationalist ideology promoted by the Transylvanian School, Damaschin Bojincă reacted to Tököly's writing by publishing an answer first in Latin (1827), *Animadversio in Dissertationem Hallensem*, then in Romanian (1828), *Respundere desgurzătoare la cărtirea, cea în Halle în anul 1823 făcută*. The preface to Bojincă's second edition justifies the choice of language for the two texts in that the Latin version was addressed to European scholars, whereas the Romanian text was meant for the readers who, knowing nothing but Romanian, were unable to read texts written in other European languages, but should nonetheless learn how to react to defamatory discourses.⁵ This justification could in fact summarize the two main directions of Damaschin Bojincă's activity as a writer and as a scholar, in general: the idea of the Latin origin of Romanians, derived mainly from the impulse of creating a national identity, and the intention of educating a large mass of Romanian readers.

Though not so direct as in the two polemical writings, the two principles mentioned above are to be found in Bojincă's historical texts as well. The category of historical texts is representative also of Bojincă's two-year collaboration with the first periodical written entirely in Romanian (though still in Cyrillic alphabet), which fit the nationalist ideology of the time. This periodical, *Biblioteca românească*, published in Buda under the supervision of Zaharia Carcalechi, provided Bojincă the best opportunity to write short informative texts in a language accessible to a wide readership. The historical topics presented by Bojincă posed interest to the Romanian population, dealing either with the history of the Roman Empire⁶ or with emblematic personalities⁷ who could stand out as models

⁵ The original quote in Romanian: "[...] alcătuii întâia oară acea răspundere în limba latină, pentru ca să o înțeleagă și să o judece și învățații a tuturor națiilor străine, cărora sânt cunoscute vechimile și schimbările timpurilor [...]. Iar a doua oară întorcând-o pe Romănie o aștern iubitoriului de cetire naționalist înainte, ca cetind-o să înțeleagă cum se cuvine a răspunde defăimătorilor de nație [...]; mai vărtos pentru acei cetitori grăesc aceste, carii numai limba românească sciind, nu pot ceti istorii și în limbi străine scrise din care ar învăța ce se cuvine a crede și ce nu", in: D. Bojincă, *Respundere desgurzătoare*, Crăiasca Typografie a Universității Ungurești din Pesta, Buda, 1828, p. 8.

⁶ The text *Istoria romanilor* was published in the periodical *Biblioteca românească* in four parts, in all the four issues from the years 1829 and 1830.

⁷ The three texts dedicated to figures of rulers considered emblematic by Bojincă, are: *Viața lui Dimitrie Cantemir, domnul Moldaviei și prințip în împărăția rusească*, published in 1829 (the first issue), *Istoria lui Radu Șerban, prințipului Țării Românești din familia*

for the present-day society. Even though these historical writings have been identified to be in fact translations mainly from German sources⁸ or compilations of several texts⁹, certain paragraphs inserted by Bojincă in the corpus of these texts reveal his principles. Furthermore, the writing style adopted by Bojincă, more similar to older chronicles rather than European historical studies of the 19th century, could be interpreted as a manner of writing history in a widely accessible Romanian language. Even the choice of the three historical figures presented in the texts published in the periodical *Biblioteca românească* may be considered emblematic for the idea of a Romanian national identity, since Bojincă chose to write about a Moldavian ruler (Dimitrie Cantemir), a Wallachian ruler (Radu Șerban) and finally, in the most extensive text, about Mihai Viteazul, the ruler who had achieved, even though for a very short period of time, the first unification of the territories inhabited by the Romanians.¹⁰ Whether this choice of Bojincă was deliberate or not is debatable, but the aspect worth mentioning here is the fact that writing (or translating) history in a story-based manner enabled the author to educate the target readers more easily, by conveying clear messages in the form of an accessible reading material.

3. Contributions in the legal field: activity as jurisconsult, professor and translator

Bojincă's activity in the legal field is connected mainly to the period spent in Moldavia. After graduating law in 1829 and spending several years in Pest, Bojincă moved to Moldavia in 1833, to occupy a vacant position of jurisconsult, together with Christian Flechtenmacher. The names of the two Moldavian

Basarabilor, carele au domnit dela anul 1610, published in 1829 (the second issue) and *Vestitele fapte și perirea lui Mihai Viteazul prințipului Țării Românești*, published in two parts in both issues of the periodical from the year 1830.

⁸ The main source was identified to be a chronicle written by an Austrian historian, rather popular at the time, namely Johann Christian von Engel, *Geschichte der Moldau und der Walachey*, published at Halle in 1804, which was in fact just a part of a monumental chronicle, *Geschichte des ungrischen Reiches und seiner Nebenländer*, published during the period 1797-1804. The fact that Bojincă had direct access to the work of Engel is proved by the existence of the complete chronicle in Bojincă's personal list of books presented to the Moldavian censorship upon entering the country in 1833 (according to Nicolae Bocșan in the Introduction to the study: D. Bojincă, *Scrieri. De la idealul luminării la idealul național* (Studiu introductiv, selecție de texte și note de N. Bocșan), Editura Facla, Timișoara, 1978, p. XII).

⁹ For instance, the text on Ancient Rome, *Istoria romanilor*, was identified to be a compilation of several sources, such as ancient authors (Titus Livius, Eutropius Polibus, Florus, Plutarh), Goldsmith's *Geschichte der Römer* and Montesquieu's *Considérations sur les causes de la grandeur des Romains et de leur décadence*. Most of the writings published in the periodical *Biblioteca românească* were signed by Bojincă as a translator, even though he did not clearly indicate the source texts, but only made isolated references to them in the corpus of the texts.

¹⁰ This idea is suggested by O. Papadima, *op. cit.*, p. 250f.

jurisconsults are synonymous to the beginning of the modernization of Moldavian law. Since both jurisconsults had a legal formation under Austrian influence and maintained constant contact with the latest European texts and scholars, gradually one could notice a new and modern legal practice in Moldavia, which would also influence the law of the future United Principalities. Among several contributions in the legal field, worth mentioning is the Romanian translation of the Calimach Code, which had been in use up until 1865 upon its replacement with a civil code valid for the United Romanian Principalities. Even though based on the Austrian legal code¹¹, the Calimach Code was adapted to the Moldavian realities, being in fact an almost life-long preoccupation of Bojincă, since he constantly revised and amended it, not only from a linguistic point of view¹², but also inspired by the Moldavian legal practices and needs.

Bojincă published his first legal writings in the same period, which he would later use in his teaching activity at the *Academia Mihăileană*, where in the year 1842 he was appointed professor of civil law, Roman law and Moldavian law. A brief overview of the main ideas from his legal writings completes the image of this intellectual in a period in which his activity moved more and more towards the sphere of public life. Even in the legal texts and despite the geographical distance, Bojincă remained faithful to the ideology promoted by the Transylvanian School, in that he attempted to prove the Latin origin of Romanians also by means of suggesting the influence of the Roman law upon older legal codes used in the Romanian territories, an idea which can be found in his course *Învățătura legilor împărătești*, in the section *Introducerea Vasilicalelor în Moldova*. Similar to the writing style adopted in the historical texts, that of conveying information in an accessible language so as to educate a large mass of readers, the legal writings of Bojincă emphasize, among others, the importance of knowing Roman law, since this is the foundation of the Prussian, French, Austrian and Moldavian civil codes.¹³

Even though this 1834 writing about the Roman law is considered to be Bojincă's most valuable contribution to the history of Romanian legal education, his name is connected to three other writings found in manuscript at the Romanian Academy Library, namely *Drept penal*, *Istoria legislațiunii romane* and *Introcucere*

¹¹ In fact, the Austrian influence upon the original form of the Calimach Code (promulgated for the first time in the year 1817), previous to Damaschin Bojincă's arrival in Moldavia, is attributed entirely to Christian Flechtenmacher, according to: A. Rădulescu, *Pravilistul Flechtenmacher*, Academia Română, Memoriile Secțiunii Istorice seria III, tom I, mem. 4, Editura Cultura națională, București, 1923, p. 11.

¹² For instance, shortly after the Romanian translation, namely in the year 1835, Bojincă communicates to the authorities a list of mistakes in the text, suggesting sending this list to all the courthouses, according to: A. Rădulescu (ed.), *Codul Calimach, ediție critică*, Editura Academiei, 1958, p. 14f. and p. 870 (where Bojincă's letter and list of mistakes are published in an appendix).

¹³ According to D. Bojincă, *op. cit.*, 1978, p. XLIII.

în știința dreptului¹⁴, which were most probably linked to the courses held at the future University in Iași. These courses however are mainly adaptations and translations of popular contemporary European works in the legal field, such as J. E. Ortolan's *Eléments de droit pénal* or Karl von Rotteck's *Lehrbuch des Vernunftrechts und der Staatswissenschaften*¹⁵, these sources of inspiration suggesting the constant connection of Damaschin Bojincă to European scholars of his time.

This stage of legal writings, which are in fact a direct result of the teaching activity, marks a definitory point in the intellectual profile of Damaschin Bojincă: no longer a mere theoretician (as was the case of the period of polemic and historical writings), but rather a public figure, a scholar directly involved in the reformation and modernization of the legal system, as well as the consolidation of an education system in Romanian. To support this idea, we could mention a memorandum from the year 1836 signed, among others, by Flechtenmacher and Bojincă, in support of the national language, as a direct response to the plan of Mihail Sturza (the Moldavian ruler at that time) to replace Romanian with French as the language of instruction in superior education institutions.¹⁶ Therefore, it is once clearer that, despite the relocation in Moldavia, Bojincă remained faithful to the ideology promoted by the Transylvanian School, that of creating a Romanian identity, which also implied the modernization of the Romanian language, as well as its constant use in an academic context.¹⁷

Following the unification of the two Romanian principalities, Moldavia and Wallachia, Bojincă's ideology and activity mark a new evolution: the nationalist spirit and advocate of the unity of all Romanians is gradually replaced by the liberalist thinker, mainly preoccupied by the modernization of the fundamental institutions of the state. Even though the affinity for the European liberalism can be intuited from the period of his studies in Hungary, the ideological orientation is definitely linked to his activity in the legal field, be that of jurisconsult or professor. Therefore, not surprisingly and as a confirmation of the popularity that Damaschin

¹⁴ According to Gh. Ciulei, *Damaschin Bojincă*, in I. Ceterchi (ed.), *Din gândirea politico-juridică din România. Figuri reprezentative*, Editura Științifică, București, 1974, pp. 121-132.

¹⁵ As suggested by N. Bocșan in the Introduction to the study *Damaschin Bojincă*, *op. cit.* 1978, p. XLIV ff.

¹⁶ The text of the memorandum *Memoriul comitetului academic*, one of the most important documents in supporting the national character of the education system in Moldavia, is presented entirely in V. A. Urechia, *Istoria școalelor de la 1800-1864*, volume 1, Imprimeria Statului, București, pp. 327-331.

¹⁷ Worth mentioning here would also be the constant efforts of Transylvanian scholars in introducing the Latin alphabet instead of the Romanian-Cyrillic one, which had been in use for several centuries. Damaschin Bojincă himself published a short historical text (*Descrierea nașterii și a eroicescilor fapte a multu vestitului și de tota Europa minunatului Erou Joan Corvinus de Huniad. Tradusa de D. Bojincă*) in the periodical *Calendariu românesc pe anul dela Cristos 1830*, written in two parallel columns, in Latin and Cyrillic alphabet.

Bojincă must have had in the Principality of Moldavia, he was appointed Minister of Justice in Mihail Kogălniceanu's first government in 1860. Even though his political career would not last this long¹⁸ so as to be able to bring a decisive contribution to the modernization of the legal system of the United Principalities, this position towards the end of his life¹⁹ may be seen as a culminating point in the career and activity of this scholar.

4. Conclusions

The figure of Damaschin Bojincă as a representative of the Transylvanian School, but also beyond this ideological movement, should be understood in the context generated by the appearance of nation-states all over Europe, which lead to a nationalist discourse in all fields of activity. One may even state that scholars of the time instrumentalized history so as to give a certain direction to their discourse.

Damaschin Bojincă is no exception to this pattern: educated in the spirit of the European Enlightenment, yet living in a Habsburg-dominated Transylvania and later in Moldavia, prior to the unification, Damaschin Bojincă fully assumed the role of an enlightened scholar serving his nation. The constant efforts of defining a national identity, by means of consolidating a national language and historiography, as well as of educating a Romanian readership are obvious not only in all his writings, but also in his professional activities and public discourse. Belonging indeed to a later period of the Enlightenment, Damaschin Bojincă may also be considered a precursor of Romanticism, which in the Romanian culture was characterized by a strong sense of nationalism, as well as, on a political level, by the liberalist ideology. Yet, due to his intense activity in various fields, not only on a theoretical level, but also in practice, his name should remain a reference point for the incipient modernization of the Romanian culture, which includes the legal system, schools and the education process as a whole, as well as the consolidation of a national language and a national history.

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¹⁸ Damaschin Bojincă was Minister of Justice in the period May 1860-January 1861.

¹⁹ Damaschin Bojincă died in 1869.

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