

Mihai Eminescu's contribution to the philosophy of law

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Abstract: *The paper aims to demonstrate, against all prejudices that still persist, that Mihai Eminescu was not only a great poet but also a great thinker, an encyclopaedic spirit anointed with a philosophical chosen vocation. And that philosophical vocation proved fertility not only in the ontology, gnoseology and aesthetics, but also in the philosophy of politics, moral philosophy and philosophy of law. It is true that the brilliant poet-thinker has not developed systematic treatises that have developed a cohesive concept as some claim epigones. But his meditations fragmentary manuscripts remaining in or contained in journalism worth, most of the times, more than all the treatises of trained researchers, but without the ability to scan the deeper reality.*

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1. Practical coordinates of Eminescu's philosophy

Even during his studies in Vienna and Berlin, besides their theoretical project of a philosophy that first target ontology, Eminescu was seeking solutions of practical philosophy with the intention of being useful to his people. Let us remember that, while Titu Maiorescu was waiting to give his doctorate in philosophy, in order to be appointed professor at the University of Iasi, Eminescu had sent a letter on February 5, 1874, in which he confessed that he is not concerned by his doctorate, but by something much more important which was a solution to the philosophy of law and of the state for the practical interest of Romania. Here is an excerpt from the letter: "*I think I found the solution to those issues, bringing together demonstrating concepts and systems (proofs) that accompany each stage of evolution in targeting timeless antinomies of history, law and politics, but not in the Hegelian idea of evolution. As for Hegel way of thinking and being - this is not the case. Practical interest for our country would be, I think, to remove any theoretical justifications for uncritical importation of foreign institutions that are nothing but specific organization of human society in the struggle for existence, which can therefore be taken in their general principles, but casuistry which should result empirically the relationship between the people and the country (territory). I can not say now more on the subject, but it took me most of my own meditation and studies, so far I have not met in my themes a sequence of didactic type*" [1]. We conclude therefore that the young student had highest priority concerns for his homeland, theoretical but also practical. This truth is recognized and strongly emphasized by Vasile Gherasim, a Bucovina researcher: "*In contradiction to the philosophy, with the Schopenhauer one, the assumption of J. J. Rousseau, Eminescu creates a social philosophy stately great and original - so far yet, of little relevance*" [2]. But he was recognized and commented favourably by Theodor Codreanu, a researcher of Eminescu's works: "*The poet believes that without a Romanian way of thinking, beyond the general principles of historical philosophy and law, the country has no chance to have a future*" [3].

2. Eminescu's vision on the juridical culture

About the impressive cultural literacy and enrollment that Eminescu's work all the researchers studying it, confessed about his encyclopedic mind. A special place is occupied by the synthesis made by George Calinescu, the details and observations made by D. Vatamaniuc and the observations of Al. Oprea. The conclusions of these researches, combined with others concerning Eminescu's work, emphasize the fact that, from a tender age, the poet read the ancient classics, the modern thinkers and his contemporaries. He knew, deeply, very much of philosophy, history, linguistics, economics, law, etc.. Therefore, any investigation into the complex Eminescu's work should follow the dimensions which ensure his unity and originality.

In this context, Eminescu's work commentators have sought to discover the sources of the poet - thinker intellectual formation. They found that even during the undergraduate period, he started a documenting activity in the library of the secondary-school of Cernauti. There was the place where he could study important works either in the original or in translation. But the foundations of Eminescu's formation for such issues such as justice and law are created during his studies in Vienna and Berlin. "*At the University of Vienna, Eminescu attends the Faculty of Philosophy, where he participates at Robert Zimmermann, Theodor Vogt, and Karl Sigmund Barach – Rappaport lectures. He also enrolls for the winter semester 1871/1872 and the summer one 1872 at the Faculty of law, which he was attending that time together with Ion Slavici, his closest friend since his university years in Vienna*" [4].

Eminescu's meditations on matters of law are not coincidental. His fair character and fighter ambition could not place him outside of such concerns. This explains why as a student in Vienna and Berlin he was attending the courses of great lawyers, as: Ihering Rudolf, Ludwig Ritter, von Lorenz Stein, Heinrich Dernburg, and others. But his concern for the study of law was maintained after returning in the country where, engaged in publishing, he fought to improve the situation of the Romanian Principalities, not only culturally but also economically and legally. The fact is that most of his reflections on the issue of law are of great actuality today. Anyway, his reflections are of great utility in the formation of students studying law. This is, in fact, the main justification for this work.

Within the structure of this unit there must be also emphasized Eminescu's contribution to the philosophy of law. Some steps in this direction have already been made. I mean the book "*Ethical Values of Eminescu 's work*", signed by C. Jornescu and C. Petrescu (Minerva Publishing House, Bucharest, 1989), and the anthology of legal writings in Mihai Eminescu 's work, conducted by Eugeniu Safta-Romano, who makes a substantial introductory study (Junimea Publishing House, Iasi, 1994). In addition, there should also be mentioned the study "*Justice and public law in Eminescu's writing*" published by Barbu B. Berceanu in Journal of Philosophy, no.3/1993.

But the research on Eminescu's contribution to the clarifying the theoretical and practical issues regarding the law should be continued, with more boldness. Especially since nowadays Eminescu's manuscripts are available to every researcher interested in the matter. Contact with the manuscript in 2286 , pages16-23 dedicated to defining law or manuscript 2257, pages 196-208 and 216-217, where there is analysed the balance between state and law is an encouraging argument , as there it is revealed the depth and sophistication of the thought with which the poet - thinker addresses the legal concepts. But such discovery can be made consulting Eminescu's publicized works. Even his literature soaks the lightings with reference to philosophy, ethics and law.

3. The justice and law in Eminescu's vision

During time, most researchers who dealt with the socio-political thinking of Eminescu insisted mainly on state issues, dealing fewer reflections on law and justice message. Even George Calinescu

when addressing the issue of the law in Eminescu's work insisted upon issues of the state, work and morals. Moreover, Călinescu exaggerating here also, as he usually did, when speaking of Schopenhauer's influence over Eminescu. We must not forget that, referring to the philosophy of Eminescu, the great critic and literary historian stated that it “*is in essence a variant, sometimes more than a commentary on Schopenhauer's philosophy*” [5]. It goes without saying that today such a position can not be sustained.

It is true that Eminescu, although attended law courses during college, he did not intend to specialize in the science of law. But his constant desire for knowledge and understanding of phenomena, stimulated by the depth and originality of thought explains the importance of his social and political work. Stressing this importance, the famous lawyer researcher Eugeniu Safta-Romano notes that: “*I catch the accuracy of using legal concepts, subtle arguments, the correct interpretation of legal texts, the ease with which legal terms from the different branches of law are treated*” [6]. The idea is that, as he bent over the other fields of study, Eminescu systematically studied social and political sciences issues, including legal sciences. He was not satisfied just simply with a simple piece of information, but insisted to understand and propose strong solutions to practical problems related to the design and implementation of the law. The same Eugeniu Safta-Romano writes: “*the poet gives ample space to define the idea of law, its essence, the origin of state, the justice mechanisms, the content of laws, the formation of all property rights arising from it, not forgetting any problems of constitutional or international law*” [7]. An evidence in this regard comes from his friend Ioan Slavici, a law student himself, who admits: “*When I was full of pandect, canons and medieval institutions, Eminescu was full of all sorts of philosophies and if I was strong in my field of study, Eminescu was strong in argument, and winning even when discussing about law, that it always gave me the impression that he does not know law the same as me, but he better understands the law and judges the matter better than me*” [8]. The opinion is confirmed, after about a century, in the research of D. Vatamaniuc, who felt entitled to say: “*Eminescu interpret the legal issues with a wider scope than that of his contemporaries, though not specialize in legal sciences*” [9].

From the perspective of legal philosophy, Eminescu paid most attention to the problem and the issue of state law, the doctrine organics perspective. “*Legal Historicism of Eminescu is not a system of thought developed, connected to all its joints, but it is - undeniably - a line of thinking, a set of themes interwoven in a romantic register with a certain shade organics and evolutionary, with the core formed by the idea that the right is created by the collective spirit of the people*” [10].

It is known that there is a wide range of theories which have attempted to explain the origin of the state and law. Most of these theories have emerged on the ground of the dispute between romanticism and illuminist. “The rationalist illuminist represents the voluntarism – creationist conception about world and life, and the historic - romantic is the organics - evolutionary doctrine, according to which one can actually create anything through the intervention of reason and human will, everything must conform to a process of becoming, excluding sudden changes. Institutions of the present are - in a romantic concept - the result of a long historical development, so the national traditions born with deep roots in the past. Therefore romance is regarded as the discoverer of history, synonymous with historicism. Along with the above mentioned features, the ideas of the body and the organic development of organics are perhaps the most important defining elements of romantic thinking” [11].

The historical school of Law appeared in the late eighteenth century reached its peak in the first half of the next century, especially in Germany. One of the main representatives of this school was Friedrich Karl von Savigny (1779-1831). He argued that the law, like other natural products specific to human life, is a work of nature, a product of the time that “*it is not done, but does itself*”, as a plant grows. “*Savigny considers that law, like the language we speak, like the literature and folk art, reflects faithfully the historical past of a people*” [12]. According to the concept promoted by the

historical school, every nation has a spirit, a his soul, which is reflected in a series of events, such as art, morality, language, law, etc. Soul grows together with the people' soul, and reflects the whole history of the people.

Eminescu is situated, in his own way, along this line of thinking. „... *And peoples sleep. In the instinctive beginning of their lives, they live in the natural state, like bees, they create institutions and a use, that should find them good if they would create these with the consciousness, and even that their views are more rational well-drafted than the laws and institutions created by reflection. Institutions grow as the plants, everything in them is good, without the support of mind in their growth, the only instinct of nature created them good and people are watching in this living body without realizing it, and they even do not think how it could be otherwise. ... But when these laws are written? When do the controversies appear, when naivety ceases, when use begins to be viewed as a blank form and not as the spontaneous expression of a sense of a necessity ...*” [13].

We can find arguments on naturalistic and evolutionary option of Eminescu in other texts of manuscripts, or from newspaper articles. Here is an example of journalism: „...*Not especially so are the forms of government, not expedients, nor the work of deliberate intention, but an organic product of nature, gentle, as all products of that sort; it's our business to know properties of natural and not to dictate new laws, but to adapt to them which are innate laws ...*” [14]. Moreover, the conception of organic development, slow and continuous company appears frequently in socio-political thinking Eminescu, who rejects uncritical importation of institutions and foreign laws. „*True civilization of a people consists not in the adoption of laws, forms, institutions, labels, foreign clothes. It is to develop natural, organic, own powers, its own faculties ...; the legal civilization do not hang in the translation of foreign laws, but in the perfection and completion of the old ones and their own beginning of laws and legal life creation*” [15].

Within the perimeter of the “*phenomenology law*”, Eminescu emphasized strongly on the need to ensure the legitimacy of all the rules of law , so they have not only juridicity, but also justice, that is to be based on the validity of their social and moral charge. And juridicity should be related to history ground and national spirituality.

Although he did not build a systematic legal ontology, Eminescu brings profound arguments based on unbeatable reasoning, with historical and organizational premises, concerning the formation of law. Referring to this issue, some commentators suggest an approach of Eminescu to R. Ihering, who was his professor at the University of Vienna.

R. Ihering was influenced, at the beginning of his formation, by the representatives of the historical school of law. Later however, although he will remain in this high current, he will adopt his own position. This position was exposed in several works, of which the most important are *Fight for law*, published in 1872 and *Aim in law*, on which he worked between 1877 and 1883, but remained unfinished. Following Jeremi Bentham, Ihering will argue that *the purpose of law is growing pleasure and avoiding pain, namely protection of interests*. But, unlike Bentham, who pleads for individualism, Ihering fights individualism. He will argue that individuals must obey social rules. The short work *Fight for law* contains revised and added text of a conference Ihering addressed to the lawyers' society in Vienna in 1872. The main idea of the work is that the human person, in order to self-preserve, must fight to defend his property. Hence the consequence that the human person must fight for justice, fight for law. In the words of the German thinker, we find that: “*Without this struggle, or, better said, without this resistance that they must fight injustice with, the law would have negated itself. As long as the law will be inextricably linked to injustice - and this will last as long as the world will - it will not be spared in the struggle. Therefore, the fight is not something alien to law, on the contrary, it is inseparably linked to its being, it is an element of the notion of law. ... This is why Justice holds the balance in one hand, with which it weighs justice, and in the other hand the sword, with which it protects. The sword without the balance is the brutal force, and the balance without the sword is the*

inability of law. One cannot exist without the other and a perfect legal system governs only where the force with which Justice uses the sword is equal to the skill with which it wields the balance" [16]. Hence, according to the German thinker, the fight for justice is both a matter through which people must serve their own interests, as well as a matter of social responsibility.

With arguments of this kind, Ihering reaches the following conclusion: *"The state that wants to be respected abroad and remain well established internally has no greater value to protect and cultivate than the national sentiment of justice"* [17].

Of course, such ideas were not without consequences in shaping Eminescu's manner of thinking. Thusly, meditating on material sources of law, in his articles he writes: *"Laws and institutions are but the expression of that preservation instinct of nations in hundreds of unusual forms, because a nation, as a society organized by nature against nature's destructive agents, must fight heat here, the sea, earth's infertility, repeated invasions there and all having the same purpose, namely the preservation of their own existence, the nations use the most special means to reach it"* [18].

Eminescu's merit derives from the fact that he understood, supported and argued the truth that law is rooted in social and national. For him, economical, political, moral, psychological, etc. race realities formed the soil from which our law system must nurture. His line of thinking is within the broad perspective of legal historicism. Specifically, in Eminescu's view, existing law in a state has historical character and is confirmed by the respective nation's history. In addition, the poet-thinker also predicts the formative virtues of law.

4. The Eminescu's theory on the state

Eminescu proves to be original through this theory on the state as well. It is explained, because the state, seen as a politic-legal institution, occupies a central place in his meditations. We can also add to the explanation the great interest the poet-thinker always manifested for the social-political life: *"His general state of mind, essentially historical, has formed a certain way of thinking, organics and naturalist, covering the entire vision of genesis, essence, functions, mission, organizing and management of the state"* [19].

Furthermore, the authors above also establish lineages followed by Eminescu in discussing state issues. *"The Eminescu's notion on the origin of the state descends from Hegelian philosophy, from Montesquieu and German sociological theories on the state, as well as from the physiocrat doctrine of Dr. Quesnay, considering it a living historical organism that develops gradually, in successive stages, after its own laws. The Hegelian immanentism and organics form the pillars of Eminescu's notion on the origin and essence of the state"* [19]. Vasile Gherasim comes with an interesting opinion: *"According to Eminescu, the highest mission of the state would be to share justice, and this supreme justice would be equal work for everyone taking into account the qualities of each one. Everyone should aspire that his work inspires others to work"* [20].

On the other hand, Theodor Codreanu draws attention to the fact that to understand the originality of this notion of the state, the program of the Eminescu's practical philosophy must be taken into consideration. *"The theory on the state reveals the meanings only in the ensemble of the secondary Eminescu's ontology, being directly related to other matters: ideological apriorism, work teleology, nation archest, ethnic gap. Only in such an ensemble Eminescu's originality will be clear on the common background of European manner of thinking"* [21]. And to avoid confusion, Theodor Codreanu warns us that we must distinguish *"between the natural state as a utopia, the natural state as an explanation of the genesis of the state and, finally, the organic state as an Eminescu's option, perfectly argued scientifically and philosophically"* [21]. Without a clear distinction of these ideas the possibility of an error in believing Eminescu was a utopian thinker is created. The example Theodor

Codreanu gives is that of Sorin Antohi. He, in a study called "*Eminescu's utopia*", reaches the following conclusion: "What seems undeniable is the thread that binds Eminescu to utopianism: regressive utopia with all its references to old traditions (Paradise, Golden Age, etc.), chronic, and the whole organics argumentation, ethno-pedagogical and linguistic utopia can be sustained, in Eminescu's case, without forcing - hoping without fear of blasphemy - the spirit of his writings". But about the utopianism of Eminescu's thinking talks a younger researcher that should have taken into account Theodor Codreanu's explanation. I refer to professor Adrian Jicu, who appreciating Sorin Antohi, writes: "The utopianism of Eminescu's thinking can be addressed on two levels: a thematic one and a pragmatic one" [23]. This provided that, as it is known, Eminescu fiercely rejected utopias.

But I think it is best to find out what Eminescu himself was saying about the essence of the state. We thus learn, in an article from 1878, that the state "*is a product of nature and not of conventional institutions and, as a person can be sick having the most sublime ideas in his head, neither the health or soundness of a state doesn't hang from the written laws. A state can be healthy and sound with barbaric institutions, another rotten with all its beautiful institutions, that all the praise brought to the mission, written on paper, does not comfort us*" [24]. And more than half a year later, in the same paper, Eminescu added: "*Our manner of seeing is entirely modern: for us the state is an object of nature that must be studied individually, with its history, customs, race nature of territory, all outstanding and not hanging by the free will of individuals, in a certain moment, society is composed of. Therefore, our tendencies and ideas can be called reactionary, epithet with which our adversaries gratify us, this reaction we admit only in the sense physiology gives us, reaction of a body capable of becoming healthy again against the corrupting influences of foreign elements introduces within itself*" [25].

To understand, we have to come back to the separation proposed by Theodor Codreanu, between the natural state as a utopia, natural state as an explanation of the genesis of the state and, finally, the organic state as Eminescu's option. The researcher on Eminescu starts from the belief that "utopia is nothing but a broken idea or archeity" [21]. Which is not the case of Eminescu. Hence Eminescu makes the transition from the natural state to the organic state, but not by the utopian version. According to the concept of Theodor Codreanu, "the compensation theory realizes the idea of an *organic state* with Eminescu, having as basis *the theological establishment of work*, the only way in which a nation becomes a creator of civilization and original culture" [26]. Furthermore, the Eminescu researcher updates the issue: "In current language, the organic state overlaps its semantic area over the concept of rule of law. ...the organic state is something other than natural. The organic state is the leap from nature into history, and the demagogic state - the decline from history into semi-barbaric" [26].

Eminescu's belief was that all theories that begin from general humanitarian principles ignoring the nature of the state end in demagoguery. And, to make himself understood, concerning the nature of the state, he often uses, as an archetypal image, that of the bee hive. "He knows he must start from a principle, as starting point, and he must know the stance through which humane distances itself from animal and plant level. Therefore the thesis that that state is a "product of nature", although it has the same ontological roots as the "state of bees", is not the same as the latter. He resorts to a different type of dialectic than the Hegelian one, but the idea of qualitative leap does not bypass him" [27].

Metaphorically speaking, Th. Codreanu claims that Eminescu places the destiny of the world "in a human heart", namely he gives overwhelming importance to individual energies. "*But the man must overcome his own "falling in the world" remembering his origins, keeping Archaeus's memory*" [28]. Otherwise, demagoguery invades society. The demagogic state develops the overlapped blanket and all its accompanying effects. The solution is the teleological establishment of work in an organic state.

Conclusions

The hypothesis we left from, that that Mihai Eminescu has significant contributions also in philosophy of law is confirmed. His strong redeeming conscience determined him to meditate at length on all matters related to social-political life. He did it in a good and coherent way.

First, he meditated on his own on the being, assumed the *archaeus* as an explanatory principle and placed himself on the “pinnacle of modern philosophical thinking” [29]. In other words, he was above the dilemma of traditional European philosophy. He predicted a general ontological explanation, from which he left to blossom a practical philosophy as well. In short, “Eminescu tries to interpret the history of philosophy from within its own ontology, because the metaphor for *the embryo* or *acorn* substitutes *archaeus*. The poet captures, in action, different - *isms*, without declaring himself the supporter of neither. However, he did not consider himself “elephant” (materialistic), or “nun” (idealist). And then the question if the *archaeus* is matter or spirit returns? Neither one, nor the other, or both. The *archaeus* is what... *It is*, the being itself in its generality, *Sein* and *Dasein*” [30].

For a valorisation of Eminescu’s notion, in the sense discussed above, the lawyer Barbu B. Brezianu advocates: “*We see within Mihai Eminescu’s way of thinking all stances of law and justice design. And I think this range of human spirit research, common to us all, is what we have to remember first of his manner of thinking - only after this the options, linked necessarily to his time, by his nation, his position in society. He thought more than he solved. A manner of thinking more difficult to depict from poetic formulations or passions that tore at each other on the barricades of journalism, a manner of thinking in which an intense culture was reflected, including the one received from some reputable lawyers, a manner of thinking in which an uncommon sensibility was reflected, expressed by mastering the Romanian language*” [31].

In Eminescu’s works, published articles, or texts remaining in manuscript, references are made to all the factors that contribute to configuring law, namely the human factor, the social-political framework and the natural environment. The explanations emphasize the role of each, but also the way in which these factors relate to each other, bringing influences of one kind or another.

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