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Establishing the protection of natural resources by the state in 19th century natural law**

1. Introduction

Protection of natural resources by the state and the liability and sanctioning system that have followed from this are considered as one of the necessary reflections given by the modern civilisation to the phenomena of the increasingly industrialised and technologized society. The increasing demand for services and market economy approach regards natural resources as natural capitals that are motivated by profit maximisation going parallel with cost minimisation. Nowadays it can be seen that all this results in a degree of exploiting natural resources that threatens the adequate quality of life not only of the future, but of the current generations. As a consequence terms and endeavours in the international scene such as sustainable development, intergenerational justice, protection of the future generations emerged which indicate that the economic development in the long term are unrealistic without guaranteeing protection, safeguard and preservation of natural environment giving living conditions of mankind. The first paragraph of article P) of the New Fundamental Law of Hungary is also based in the same concept[1] by stating that „*Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations."* The wording of Fundamental Law suggests that primarily the state is in a position to guarantee effectively the liability and sanctioning system connected to the protection of natural resources and, moreover it requires the joint efforts of society as a whole.

The 19th century natural law can be marked as a milestone in the historical progress towards this recognition by elaborating a human-centred model based on environmental ethics emphasising the harmony between man and nature that lies upon the coherent interrelation of society, economy and environment.

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** *This study has been written as part of the Ministry of Justice programme aiming to raise the standard of law education.*

[1] See the United Nation General Assembly Resolution A/RES/70/1. of September 2015 on *„Transforming our world: the 2030 Agenda for Sustainable Development"* which contains an action plan to be carried out globally for the years 2015 to 2030, setting targets for balanced et sustainable development of societies and economies and for the protection of environment. Bak Klára: Fenntarthatóság – A természetvédelem szabályai, in: http://epa.oszk.hu/02600/02687/00007/pdf/EPA02687_jogi_tanulmanyok_2016_012-020.pdf (25.09.2017)

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2. The 19th natural law outlining a society based on ethical liability

The theoretical issues of jurisprudence were determined by the various concepts of natural law until the first half of 19th century. Natural law following the new approach coming into recognition since the 17th century in the field of sciences also tried to utilise the results of exact sciences for philosophical thinking, and support its own positions by rational arguments. To emphasize the rational basics of jurisprudence, in the 18-19th centuries the natural law was spreading under the name of law of reason[2] and became a synonym for the theory of jurisprudence as a science. This name based on Immanuel Kant's critical reason concept compared to the previous, strictly based on rationalism natural law did not claim the omnipotence of reason, but rather its possible mistakes that can be corrected following a formal logic. The law of reason doctrine, due to Kant's work – who with the so called '*moral turnaround*' guided the natural law out of the trend, which derived the source of rights from man's instincts and tendencies – argued that '*the sources of rights are provided by their ethical justification'* and they can be concluded by pure reason.[3] According to Kant's theory of knowledge the man who in his physical existence is determined by the law of nature is still able to control himself as a rational being, and as a consequence he is ethically responsible for his actions.[4]

This new legal philosophy trend reflecting Kant's conception has hardly taken root in Hungarian legal philosophy. The expansion of initially '*hated*' Kantian thoughts[5] started with a change of approach ongoing in Austria, when Karl Anton Martini's[6] concept, favoured in royal circles was officially replaced by views of Franz Zeiller and Franz Egger[7] adapting the Kantian doctrine at the University of Vienna. It was Mihály Szibenliszt,[8] who first adapted this new critical theory of reason within the natural law

[2] The name of Law of Reason has occurred at Adam Friedrich Glafey (1723) who was a follower of Thomasius, but "*it is mainly used since Kant, and characterises the trend of reason of science contrary to historical or theological jurisprudence*" Pauler Tivadar: *Bevezetés az észjogtanba*, Pest, Emich Gusztáv, 1852, 6. and Merio Scattola: Scientia iuris and ius naturae: The Jurisprudence of the Holy Roman Empire in the seventeenth and eighteenth centuries in: Damiano Canale, Paolo Grossi, Hasso Hofmann (edit): *Treatise of Legal Philosophy and General Jurisprudence,* Volume 9., History of the Philosophy of Law in the Civil Law World, 1660-1900. London, Springer, 2009, 23.

[3] Balogh Zsolt: Alapjogok – Általános rész, in: Schanda Balázs – Balogh Zsolt (edit.): *Alkotmányjog – Alapjogok*, Budapest, Pázmány Press, 2015, 13.

[4] Bayer József: *A politikai gondolkodás története,* Budapest, Osiris, 1998, 157.

[5] Szabadfalvi József: *A magyar jogbölcseleti gondolkodás kezdetei, Werbőczy Istvántól Somló Bódogig*, Budapest, Gondolat, 2011, 33.

[6] See Carl Anton Martini: *Positiones de iure civitatis in usum auditorii Vindobonensis*, Vindobonae, Typis Ioann. Thom. nobilis de Trattern, 1779.

[7] See Francisci Nobilis de Zeiller: *Jus naturae privatum*, *Editio Germanica tertia Latine reddita a Francisco Nobili de Egger*, Viennae, apud Car. Ferdinandum Beck, MDCCCXIX (1819)

[8] See *Institutiones juris naturalis conscriptae per Michaelem Szibenliszt Tomus II. Jus naturae sociale complectens*, Eger, 1821.

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and he gave way to such philosophers as Antal Virozsil,[9] Imre Csatskó,[10] István Bánó,[11] writing their theories in Latin.[12] At the end of the 19th century the theoretical summary of law of reason can be found in several works of Tivadar Pauler,[13] who himself shared its principles but dealt with law of reason mainly in a historical way. The same approach may also be recognized in the views of Ferenc Deák and József Eötvös on state.[14]

3. The State as a natural guarantee space for subsistence

The new version of natural law deduced the necessity of protecting natural resources by state from its complex purpose described by itself. This complexity contains all relevant functions that ensure the physical and mental health of people living in territory of state at the highest level. Natural law interprets the state as a natural guarantee space of subsistence and takes all necessary measures, i.e., all sovereign rights, to ensure the quality of it.

According to Aristotle the natural law admits that humans are *zoon politikon* (ζῷον πολιτικόν) and motivated by instincts, they call for higher level forms of association. It is based on the recognition that such co-operations of people are able to guarantee the sustainment of human existence at a higher level of security. Primarily the state is considered as the space where this security can be provided most properly, what is more it can be created by the way nature offers it. Natural law stresses that the immediate purpose of the state is aimed at establishing security (*securitas*) that both refer to ensuring subsistence and free practice of rights. People in order to achieve effectively their common goal creating a state (*status, civitas*) establish public power (*imperium*).[15]

[9] See Virozsil Antal: *Epitome juris naturae seu universae doctrinae juris philosophicae*, Pest, Typis Josephi Beimel, 1839.

[10] See Csatskó Imre: *Bevezetés a' természeti jogba és a' tiszta általános természeti* jog, Győrött Streibig Lipóld' betűivel, 1839.

[11] See Bánó István: *Elementa Jurisprudentiae naturalis secundum vestigia celeberrimorum Franc. nob. de Zeiller, ac de Egger aliorumque de jurisprudentia meritissimorum virorum conscripta a Stephano Banó*, Claudiopoli Typis Lycei Regii, 1836.

[12] Latin quotations are interpreted and translated by author of this essay.

[13] Pauler Tivadar: *Bevezetés az észjogtanba*, Pest, Emich Gusztáv, 1852., *Az észjogtudomány fejlődése 's jelen állapotja*, Buda, Tudománytár, 1843., *Észjogi előtan*, Budapest, Emich Gusztáv, 1873, *Észjogi alaptan*, Pest, Emich Gusztáv, 1864.

[14] Petrasovszky Anna: Eötvös József a Szibenliszt tanítvány, in: Varga Norbert (edit.), *VI. Szegedi Jogtörténeti Napok: báró Eötvös József születésének 200 évfordulója alkalmából*, Szeged, 2014, 151.

[15] „*Primarius. Quia sola haec securitas jam consilium Civitatem condendi tamquam naturae, et rationi perfecte conforme, proponit.*" *[…]* „*Securitas vero tantum per Civitatem, […] obtinetur.*" „*Proximus, Quamprimum enim Civitas adest, naturale immediatum consectarium est, jura omnium secura reddi, cum omnium vires ob hunc finem uniantur, et per communem constiuit Civitatem […]*" Szibenliszt 1821, 46.

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The Kantian law of reason defines the state as a community of citizens (*societas civilis*) united under common legal power.[16] This common legal power, i.e., public power, also called state power (*imperium*), by virtue of which a particular person or persons acting on behalf of community define the legal means necessary to achieve the purpose of the state and that power entitles to enforce them. They involve such measures that because of their considerable power in the interest of common security allow the governing all the subjects[17] (*gubernatio civitatis*).[18]

For the statehood the starting point is the society as a whole. As an interpretation of natural law the exerciser of state power (*imperans*) shall enforce the wish of all persons creating the state, this way representing the whole community.[19] Therefore the measure and way of the exercising power are determined by the principle of purpose limitation. This, on the one hand, allows the exercise as many rights as necessary to achieve the purpose of the state.[20] On the other hand, it imposes the obligation on the exerciser of state power to promote the aim of the state by all means, govern in a manner appropriate to the purpose of the state and exercise the sovereign rights given.[21]

The security of subsistence as the immediate objective for establishing the state is aimed at the common good considered as happiness and welfare (*summum bonum*). Since the modern state concept that emerged by the 16-17th century the originally virtue ethical term *summum bonum* has gained an interpretation with an economic approach.

[16] Kautz Gyula: *A politikai tudomány kézikönyve*, Budapest, Franklin-Társulat, 1876. 3. For definition of state see more: „*unio juridica plurium personarum sui juris sub eodem communi imperio securitatis causa uniant, Civitatem constituere […]*" Szibenliszt 1821, 46. "*State is a society united under a common public power to ensure the legal position and promote intellectual and material improvement*" Pauler Tivadar: *Jog- és államtudományok encyklopédiája*, Pest, Athenaeum, 1871, 11.

[17] The term „*subditus*", i.e., subject of the state, refers to the subordinate relationship between citizens and administration of state. Natural law outlining the legal institutions of private law uses expression "*persona*".

[18] „*Civitatis essentiale Imperium civile […] est jus media ad finem Civitatis jure valido determinandi, et exequendi […] , h. e. actiones omnium subditorum ad communem securitatem pro arbitrio dirigendi, et cum haec directio in suo exercitio etiam Civitatis gubernatio vocetur.*" Szibenliszt 1821, 66., see more: Zeiller, Franz Edlen von – Egger, von Franz: *Das natürliche öffentliche Recht, nach den Lehrsätzen des seligen Freyherrn C. A. von Martini vom Staatsrechte, mit beständiger Rücksicht auf das natürliche Privat-Recht des k. k. Hofrathes Franz Edlen von Zeiller/von Franz Egger, Band 2.*, Wien, Triest, 1810, 49.

[19] „*Inde patet:1) Subjectum imperii civilis voluntatis omnium membrorum, in Civitate unitorum, organum, et interpretem esse, totamque Civitatem represaentare,*" Szibenliszt 1821, 66.

[20] „*2) Eum tot juribus gaudere, quot necessaria sunt ad finem Civitatis assequendum*" Szibenliszt 1821, 66.

[21] „*ideo dicere possumus officium Imperantis esse: quantum possibile, fini conformiter Civitatem gubernare. […] quoad possibile fini conforme exercitum majestaticorum esse supremum Imperantium civilium officium*" Szibenliszt 1821, 210., See more: Martini 1779, 84. and Zeiller-Egger 1810, 291.

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By the law of reason school the system of eudaemonism[22] was regarded as a basis for discussion which was elaborated in Germany from the national economic trends, the key principle of which referred to 'promoting public wellbeing'.[23] The theory of eudaemonia – unlike profit-oriented utilitarianism – maintains that the economic activity should be principally aimed at commonwealth, which means human fulfilment, at both individual and collective levels. According to Christian Wolff's philosophy dating back to Aristotle, Saint Thomas Aquinas, and stemming from the English and French theories of contract then adopting the state theory of enlightenment to the absolutism, the aim of the state is to ensure the common happiness and welfare.[24] This aim embodied in the commonwealth shall be served also by the state so as to ensure the fulfilment of individual needs by regulating the living conditions as far as possible.[25]

4. Dual tool system of the implementation of commonwealth (summum bonum)

Ensuring the most favourable living conditions impose additional obligations on the State which can be described along two lines. It is stipulated as general obligation for the leadership of State (*imperans*) to make every effort 1) to preserve the State, 2) to increase its values and valuables. In order to achieve this, relevant measures should be chosen that are suitable for the implementation of this goal and the obstacles counteracting it shall be removed. It must seek to make use of both its capacity and intellectual authority in accordance with the will of its citizens, continuously increase

[22] Expression "*eudaemonia"* used by ancient philosophy for description of happiness, and with the concept of *summum bonum* meaning „the highest good" was the one of the key elements of the Christian virtue ethics. Since the 18th century it was an ethical conception according to which the aim of moral action shall be considered as happiness. Viczián János, Diós István (edit): *Magyar Katolikus Lexikon*, in: http://lexikon.katolikus.hu/E/eudaimonizmus.html (2017.10. 26)

[23] Kautz Gusztáv: Az *államigazgatás és igazgatási jog alapfonalai folytonos tekintettel Angol-, Franczia- és Németország törvényhozása- és birodalmára, Stein Lőrincz bécsi egyetemi tanár után s hazai viszonyainkra és törvényhozásunkra való utalásokkal*, Pest, Ráth Mór, 1871. 157., Eckhart Ferenc: *A bécsi udvar gazdaságpolitikája Magyarországon 1870-1815*, Budapest, Magyar Történelmi Társulat, 1958, 190-197.

[23] „*Imperantis officium est, imprimis virtutes tam intellectus, quam voluntatis subditorum suorum excolere, potentiam, gloriamque suae Civitatis in dies propagare, tum pericula interitus, ac perfectionis impedimenta amoliri.*" Szibenliszt 1821, 211., See more Zeiller-Egger 1810, 291.

[24] Csizmadia Andor: Az abszolutizmus magyarországi jogtörténetírói, in: Kovács Kálmán (edit.): *A magyar politikai és jogi gondolkodástörténetből, XVIII-XIX. század, Jogtörténeti értekezések, 12. szám,* Budapest, ELTE Magyar Jogtörténeti Tanszék kiadványai,1982, 23-24.

[25] Szabó Imre: *A burzsoá állam- és jogbölcselet Magyarországon*, Budapest, Akadémiai, 1980, 34., See more Pruzsinszky Sándor: *Természetjog és politika a XVIII. századi Magyarországon Batthyány Alajostól Martinovicsig*, Budapest, Napvilág, 2001. 11., Timothy J. Hochstrasser: *Natural law theories in early Enlightenment*, Cambridge, Cambridge University Press, 2002. 175-176.

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the assets and reputation of state, eliminate the dangers threatening the state and last, but not least remove the barriers to fulfilment of citizens.[26]

In order to fulfil this duty set out in general terms natural law grants two authorities for the exerciser of stat power. 1) By the virtue of the police power of the state (*ius politiae*) the governance of state is obliged to maintain the safety of public order in the interest of having prosperous agriculture, trade and industry as profitable sector. For the sake of the common good it does not give a platform to the arbitrary enforcement of private interests, the dominant economic position, and withdraw the licence from the ones who taking unfair advantage, etc.[27] 2) By the virtue of the state assets management (*ius circa bona civitatis*) governance of state should ensure that the common goods in accordance with its intended use will be allocated for the purpose of the state. It should guarantee that the extent of private assets will not exceed the threshold hindering the achievement of the goal of the state. Public burden shall be properly imposed on its citizens lest their financial and wealth resources be exhausted.[28] In accordance with the principle of equitable distribution of tax burden the taxes and contributions shall be defined in proportion with the quality and quantity of the financial abilities of subjects. I.e., in alignment with capacity of national economy and possibility of state and society it shall create an economic and legal environment which is able to ensure the best condition for its citizen's prosperity.

5. The Police Power of the State (ius politiae)

The creating the well-being of citizens presupposes the ensuring the set of instruments by which the goal can be achieved. It requires the state to create a social atmosphere which is based on harmonious relationship between social and natural resources and thus it is capable of getting the best out of its citizens, i.e., the resources of nation. In the field of developing capacity and potential of population the natural law imposes responsibilities on the state within the police power (*ius politiae*). Accordingly, the *ius politiae* is aimed at defining and using instruments by which citizens are able to protect and increase their assets and which can grant them appropriate way of life.[29] At the same time it also serves the security of state and removing the counteracting obstacles.[30] Thus this authority affects those things, assets and circumstances on which the way of life and physical-psychological well-being of citizens depend.

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[26] „*Imperantis officium est, imprimis virtutes tam intellectus, quam voluntatis subditorum suorum excolere, potentiam, gloriamque suae Civitatis in dies propagare, tum pericula interitus, ac perfectionis impedimenta amoliri.*" Szibenliszt 1821, 211., See more Zeiller-Egger 1810, 291.

[27] „*Circa jus politiae obligatur sanam instituere politiam, ut nimirum agricultura, commercia, opificia, et artes lucrativae promoveantur in Civitate*" Szibenliszt 1821, 214., See more Martini 1779, 86. and Zeiller-Egger 1810, 293-294.

[28] „*Circa jus in bona Civitatis tenetur Imperans bona Civitatis publica juxta naturam eorundem ad finem Civitatis applicare*" Szibenliszt 1821, 218.

[29] Martini 1779, 36., Szibenliszt 1821, 158.

[30] „*Haec notio convenit cum recentiorum notione, qui Politiam definiunt, esse complexum remediorum, quibus securitas […] promovetur.*" Szibenliszt 1821,158-159., See more Zeiller-Egger 1810, 206-214., and Virozsil 1939, 323., 329-335.

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The law of reason version of natural law in the spirit of eudaemonism borrows the approach from the Aristotelian and Aquinas virtue ethics that interprets the distribution of wealth in a specific target-instrument system. The hierarchy of wealth/goodness taken by Aquinas in the *Summa Theologiae* uses the category of the honest, the useful, the pleasant good[31] to which the natural law applies *res necessriae, res utiles, res iucundariae*. Accordingly, the *ius politiae* refers to securing power concerning the basic needs for living (*ius politiae respectu rerum necessariarum*), the ensuring the useful goods (*ius politiae respectu rerum utilium*), and last, but not least to the spending a pleasant pastime (*ius politiae respectu rerum iucundarium*). Certain state potentials are designed to promote the abovementioned tasks, others to remove obstacles of those.[32]

The 18-19th century law of reason does not identify the notion of *ius politiae* with the concept according to which the sole responsibility of policing is to eliminate risks threatening the peace and security in the strict sense and as a consequence later it was referred to as police science.[33] In fact, the state has only indirect means (*remota media*) for this, so *ius politiae* involves procuring the general welfare in all spheres of life as well as the security of supply, i. e. the safety of socio-economic environment.[34] In the field of ensuring the basic needs for living (*ius de vitae necessariis prospiciendi*) the state has a duty to organize and deliver secure food supply, to guarantee decent living conditions and protection thereof, that is to say to prevent all events which may endanger them. This includes organizing and providing adequate health care (*ius sanitatem curandi*) such as measures that are aimed at optimal patient care, the provision of medicines and health services and medical care, epidemiological measures, such as destruction of harmful food, etc., the public price control applied in order to make the value of basic goods and services available and affordable (*ius rerum pretia levia reddendi*); Also included are measures which seek to safeguard the consumers not to be misled and deceived (*ius defraudationibus occurendi*), and the regulation of weights and measure as well as currencies (*ius definiendi pondera et mensuras atque monatam suo nomine cudendi*).With regard to the latter precautions in order to ensure the citizens not being damaged in their monetary transactions.[35]

In the area of measures to ensure the useful goods, it is important to develop the agriculture (*ius agriculturam promovendi*), provide the use of supports (*praemia*) for encouraging the improvement of agriculture, and emphasize that it is desirable to apply fines on factors counteracting it.

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[31] Aquinói Szt. Tamás: *A Summa Theologiae kérdései a jogról*, Budapest, Szent István Társulat, 2011, 29., See more Baritz Sarolta Laura: *Új bort új tömlőkbe? Önérdek, piac és profit az utilitarizmus és erényetika tükrében*, in: http://docplayer.hu/37345269-Baritz-sarolta-laura-uj-bort-uj-tomlokbe-onerdek-piac-es-profit-az.html (2017. 10. 27.)

[32] „*Ex notione juris Politiae colligitur, tria in eodem jura fundamentalia contineri: 1) Jus Politiae respectu rerum necessariarum, 2) respectu utilium, 3) respectu jucundarium, seu voluptarium, et singulorum horum circa media ordinanda, et impedimenta removenda sui peculiaris finis versatur.*" Szibenliszt 1821,158-159.

33 Kautz 1871, 107. and Giuseppe Campesi: *A Genealogy of Public Security: The Theory and History of Modern Police Powers*, Abingdon, Routledge, 2016, 101.

[34] Korbuly Imre: *Magyarország közjoga illetőleg a magyar államjog rendszere*, Eggenberger-féle Könyvkereskedés (Hoffmann és Molnár), Budapest, 1884, 320.

[35] Szibenliszt 1821, 159-160., Zeiller-Egger 1810, 208-210.

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In relation the support of industrial production (*ius opificia perficiendi*) the state has to take into consideration the need to produce a broader range of products. It is advised that, from among a varied range of craft and industrial products the state supports ones that are specific to their region (*ius curandi ut opificia naturae territorii accomodata exigantur*). In support of commerce (*ius commercia promovendi*) the *ius politiae* affects equally domestic and foreign trade. It is necessary in particular to designate the market days (*nundinae*) and the fixed market locations (*emporia*) including the permanent sites of import-export commercial activity (*loca perpetua mercium importationi, et exportationi destinata*). Further, natural law stresses the important role of the state in carrying out market surveillance lest bona fide citizens suffer disadvantage in their market transactions (*ne negotiatorum fraudibus locus fiat*), and so as to prevent fraud (*ius perimendi artes vanas*). Measures under the *ius politiae* ensuring that the public spends its time in plearurable ways aims at the general welfare of citizens (*ius civium iucunditati*). These measures aim to guarantee citizens' moral character, social relationships, intellectual life and recreation and leisure at a high level. To this end, it co-ordinates appropriate support based on both public and private initiative, provided that it serves suitable entertainment, cultural learning, physical exercise, and leisure opportunities.[36] The tasks relating to this cover the three areas of responsibility: that is, the pursuit of knowledge (*cura scientiarum*), the improvement of morals (*cura morum*) and healthy demographics, i.e., the achievement of population growth (*magna populatio*). The aim of the state in regard to population policy and carrying out the administrative agenda related to population is to promote population increase. This includes measures that foster the increase in the number of children and their education and the removal of obstacles to this.

In virtue of *ius politiae,* the state, by ensuring security, provides an environment in which citizens have the right to optimum physical and psychological health. This means ensuring socio-economic conditions which, inter alia, ensure access to resources; their fair distribution; mitigation of poverty; bridging the gap between certain social groups; the organization of health care; reducing crime, and the transmission of cultural and civilized values to the next generation.

6. The state assets management (ius circa bona civitatis)

Besides raising the intellectual, cultural and economic standard of living to the highest level, it is important to improve the quality of management of natural resources – which are finite goods – so that they are sustained for future generations. Natural resources constitute a part of national wealth, so their conservation and preservation is in the interest of the community as a whole – that is, it is in everyone's interest. Natural law has to do with defining these values to be protected and the principles of responsible management by those concerned with them. It is the latter's responsibility to make an inventory of the state's assets (*ius circa bona civitatis*) and to ensure their effective management by the state.

[36] Szibenliszt 1821, 161., Zeiller-Egger 1810, 211-214.

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The goods are defined on the basis of categories borrowed from virtue ethics and by natural law as described in the *ius politiae;* they are those honest, useful, and pleasing goods that appear in the case of *ius circa bona civitatis* from an economic point of view. Natural law regards them as the source of goods and services produced in the economy. The key to their characterization is the extent to which they are covered by state power, and by what principles, and to what extent, they are at the state's disposal. According to eudaemonism, the natural law claims that economic goods shall be directed to the public good. Thus, under the notion *bona in civitate* it should be understood as goods suitable for realizing the purposes of the state. Therefore, natural law interprets natural resources as assets forming part of *bona civitatis,* and as being at the disposal of the state authorities. It takes into account its nature and the principles relating to the way in which the state exercises its power in the management of these assets.

Natural law interprets the assets on state territory (*bona in civitate*) in the broadest sense as *things*, thereby excluding persons from its scope. The property law centred approach distinguishes between goods in someone's ownership (*bona propria*), and free-standing goods, temporarily belonging to no-one (*bona iacentia*), also called ownerless goods (*bona adespota*). The distinction between public (*bona publica*) and private goods (*bona privata*) has a substantial impact on the exercise of *ius circa bona civitatis*.

The further differentiation is also important for the exercise of state power. So, among public goods it distinguishes on the one hand, goods that, whilst they belong to the community, they are still used by individuals, such as rivers, river banks, mountains, certain roads, etc. On the other hand, there are goods that are not used by individuals, but that belong to all citizens and are also known as the patrimonial wealth of the state (*patrimonium civitatis*), such as public buildings, public spaces, highways etc. This latter group of goods is allocated to the category that is generally referred to as treasury wealth (*bona Camerae*); it is known in monarchical states as crown wealth (*bona coronalia*), and in republics as national wealth (*bona nationalia*).[37]

The state is not indifferent to the sphere of private property, to which assets of single individuals and small companies belong. Such single individuals include the ruler in a monarchy where he or she owns certain goods not on the basis of power. Among goods belonging to legal persons – i.e. moral persons as they are referred to in natural law – are self-governing bodies, such as universities, cities, and villages.[38] Natural law calls the sum total of public and private goods: national wealth (*nationale dominium*).

[37] „*Haec etiam bona Camerae, in monarchicis Civitatibus bona coronalia, in rebuspublicis bona nationalia appellantur*" Szibenliszt 1821, 177., See more Martini 1779, 57., Zeiller-Egger 1810, 215-216., and Virozsil 1839, 366.

[38] „*Privata bona vel sunt singularium, vel societatum minorum, prout ad personas physicas, quo etiam bona Imperantis, non jure imperii obtenta, accenseri debent, vel morales pertinet […]*" Szibenliszt 1821, 177. See more Martini 1779, 57. and Zeiller-Egger 1810, 215-216.

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This name is used owing to the fact that the owner of the territory and wealth of the state is genuinely considered to be the people in the nation as a whole.[39] With respect to this wealth, ownership rights are exercised by the ruler of the state (*rector civitatis*) both because the legitimate authority is vested in him and because he is the state's function to ensure the common welfare of the nation as a whole.[40] However, the 19th century natural law rebuts the presumption of Hobbes that the *rector civitatis*, i.e., the ruler would be the beneficial owner of *bona civitatis* and the subjects would possess them by *precarium*.[41] According to the counter-arguments in the state of nature, as everyone had the right to everything, one cannot be said to have anything definitively. The Law of Reason School therefore recognises the title of ownership solely based on authorization in law, even if the legal approval took place through the ruler.[42]

6.1. Exercise of state authority over its national wealth

The extent of state authority over its national wealth is determined by the purview of the state over all goods that can promote or even hinder the aim of the state. Therefore, in virtue of its territorial sovereignty (*ius territorii*), it has regard equally to public and private goods. From the *ius circa bona civitatis* an additional power is derived, i. e., the financial power of the state (*ius financiale*), also known to natural law as financial authority (*potestas financialis*), involving the right to decide the disposition of assets accumulated in the state.[43] The state, having the right to own property, is generally entitled to manage its assets, on the one hand, and on the other, to manage property belonging to no one. Having the right to its own property (*ius dominii*), property of which it enjoys exclusive possession, it may also obtain benefit from the revenue from these assets. In this case the management of the assets shall be exercised in the name of the citizens, to whom the assets actually belong, and who are represented by the exercises of the public power (*imperans, rector civitatis*).[44]

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[39] „*Complexus omnium bonorum in Civitate publicorum et privatorum constituit nationale dominium sensu lato*" Szibenliszt 1821, 178., See more Martini 1779, 57., and Zeiller-Egger 1810, 216.

[40] „*Interim Rector Civitatis tum, quia in omnia exercet imperium, tum quia totam nationem, ut talem, h. e. ut conjunctionem ad finem securitatis, jure repraesentat, etiam dominus territorii appellatur*". Szibenliszt 1821, 178. See more: Zeiller-Egger 1810, 216.

[41] Hobbes, Thomas: *Leviatan*, Budapest, Kossuth, 1999., 270. és 333.

[42] „*Nam fundamentum Hobbesii, ex quo id asseruit, falsum est, falsum quippe est, in statu naturali fuisse jus omnium ad omnia, proinde neminem dominium habuisse ad aliquid, sed id solum per Imperantem legum auctoritate assignatum fuisse.*" Szibenliszt 1821, 178., See more Martini 1779, 60., Zeiller-Egger 1810, 228-229., and Virozsil 1839, 371.

[43] „*Jus Imperantis in bona Civitatis est essentiale majestaticum […] Hic jus majestaticum in bona Civitatis est jus iisdem finem Civitatis promovendi. Ex jure circa bona Civitatis fluit jus financiale (potestas financialis), seu jus sumptum necessiarios ad consequendum finem Civitatis ex bonis Civitatis colligendi.*" Szibenliszt 1821, 178-179., See more Zeiller-Egger 1810, 216-217., and Martini 1779, 60.

[44] „*Vi juris circa bona propria publica Imperanti competit jus dominii, i. e. jus exclusivum possidendi, emolumentum percipiendi, et disponendi sensu stricto (§ 85. J. E.), sed tantum nomine populi, cujus haec bona sunt, et cujus ille repraesentans est, habitoque semper respectu ad peculiarem naturam horum bonorum, et ad finem Civitatis, unde omnia jura majestatica mensuram suam accipiunt.*" Szibenliszt 1821, 180.,

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It is in the nature of public goods that the body which exercises state power shall possess it exclusively as its own so as to be able to protect citizens from all kinds of harm. From these assets it may benefit only to the necessary extent for its own purposes. The primary aim of public goods is to provide and preserve the security of the state. A further aim is the public benefit and only when this is taken account of can the exerciser of state power allocate resources for its own purposes to the extent necessary. The remainder of resources shall be made available to the public, bearing in mind the need for equal access.[45] The use of some public goods denied to citizens in certain cases is in the patrimonial nature of state asset-management and relates to the territorial authority (*ius territorii*) of the state. In this case also the aim of the state is a decisive fact, as it derives from the need for the body exercising state power to be allowed to allocate a certain part of public goods for its own purpose in a manner compatible with the aim of the state. Moreover, after careful overall deliberation, so not arbitrarily, it is able to dispose of them such public goods by other means, for example it may sell them.[46] In this respect, the state is granted the above financial power, i.e., it will be able to allocate certain amounts to public expenditure from revenue in normal cases, and from part of the capital in public goods in special cases.[47]

As regards the ownerless assets (*bona iacentia*) on state territory the body exercising public power as the representative of the nation has the exclusive right to take possession of them; this right can be exercised, on the one hand, in favour of the community, or, on the other hand, of individuals. As a result of exercising this right of possession on behalf of the community the assets shall include goods held in common as well as assets held by private individuals.[48]

6.2. Financial law and power on regal revenues (ius financiale et potestas financialis regalium)

As regards the ownerless assets (*bona iacentia*) on state territory the state has the financial power in a special manner which is embodied in the rights over regal incomes, i.e., in the financial management by the state over state benefits.

See more Zeiller-Egger 1810, 216-217., and Martini 1779, 60.

[45] „*Sic ex natura bonorum publicorum in specie intelligitur, quod Imperans populum in exclusiva possessione, et proprietate eorumdem adversus quemlibet tueri, et cuilibet civi usum eorumdem ad suos privatos fines necessarium, cum aequali reliquorum jure conciliabilem, admittere, debeat*" Szibenliszt 1821, 178-179., See more Martini 1779, 58. and Zeiller-Egger 1810, 218-219.

[46] „*Sine ex fine Civitatis intellegitur Imperantis esse: 1) ut haec publica bona, in quantum cum fine Civitatis conciliari potest, in sua naturali destinatione conserventur, et eo convertantur: 2) ut, si finis Civitatis exigat, proinde pro ratione necessitatis, non autem pro arbitrio, aliam dispositionem super iisdem faciat, e. g. vendat.*" Szibenliszt 1821, 178-179., See more: Zeiller-Egger 1810, 218-219.

[47] „*Speciatim circa haec bona, si naturae eorumdem non adversetur, Imperanti competit potestas financialis, h. e. jus in ordinariis casibus emolumenta, in extraordinariis vero ipsam substantiam eorumdem in sumptus publicos convertendi.*" Szibenliszt 1821, 180.

[48] Szibenliszt 1821, 180-180., See more Zeiller-Egger 1810, 218-219.

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In relation to assets whose nature is such that anyone has the right to use and derive profit from them, these shall be open to any individuals; but the profits from them shall be used for the proper functioning of the state.[49]

The variety of items having this exclusive right of use provides different financial revenues under the following heads: hunting rights (*ius venationis*), forestry rights (*ius forestale*), mining rights (*ius montanum*), right to treasure trove (*ius in thesauros*) and right to operate a postal sevice (*ius postarum*). The state enjoys these rights whenever a private asset is declared to be a state lease.[50] The general administration (*politica*) can require that the royal revenue, which otherwise falls within the competence of the state for financial purposes, be transferred to management by individuals. In this case, individuals are allowed to enjoy only partial benefits of assets; the share of the resulting benefits can be fixed either in cash or in kind[51] – where royal revenue is concerned the principle of concession applies.

6.3. Principles of managing income derived from public assets

Income derived from public assets originally belonging to all citizens can be realized in two ways: any citizens may immediately obtain their share, however, a decision may be taken according to which the government collects the revenue in order to share it among the citizens. In the latter case it is granted to the government to allocate the income from public assets to public costs.[52] Natural law, starting from the theory of the social contract, maintains that the purpose of state assets can often be determined in founding treaties (*pacta fundamentalia*). So long as there are no contrary provisions in these treaties, the purpose of the management of public assets shall be regulated by law.[53]

The purpose of public assets, of their nature, can vary as described by natural law in the following way.[54] In regard to the finances of the head of state, the purpose of public goods is defined as providing the ruler's lifestyle and reputation. (*ut vitae et dignitati conservandae Imperantis*).

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[49] „*Haec potestas semet praecipue exserit, ut financiale-Regalium jus, i. e. jus ex objectis, quibus spectata solum natura eorumdem jus utendi, et fruendi cuilibet etiam singulari civi competisset, emolumenta excluive percipiendi ad sumtus publicos sufficientes obtinendos*" Szibenliszt 1821, 181., See more Zeiller-Egger 1810, 219., Martini 1779, 58.

[50] Szibenliszt 1821, 179-180., Zeiller-Egger 1810, 21-221., Martini 1779, 59., Virozsil 1839, 367.

[51] „*Verum Politica svadet, ut illa regalia, quae non ex aliis rationibus, quam financialibus prae manibus Imperantis sunt, transverantur in privantos, vel eadem in commodum privatorum tantum ad unam partem occupati objecti, in natura vel pecunia praestandam, restringantur.*" Szibenliszt 1821, 182-183.

[52] „*Omnia bonorum publicorum in Civitate emolumenta originaliter ad omnia Civitatis membra pertinet, et quidem vel ita, ut quilibet civis suam ratam ex iisdem immediate accipere queat, vel ut regimen omnia emolumenta exclusive percipiat, ac inter subditos subdividat*". Szibenliszt 1821, 182-183.

[53] „*et si eatenus per pacta fundamentalia nihil determinatum fuisset, legibus regiminis destinationem bonorum publicorum stabiliendi*" ." Szibenliszt 1821, 182-183.

[54] The names are based on the former Roman distinction between the private and imperial treasury of the Emperor. James Macdonald: *A Free Nation Deep in Dept, The Financial Roots of Democracy*, Princeton and Oxford, Princeton University Press, 2006, 105.

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This category is specific to monarchies where it relates to immovable assets known as crown assets (*domania*)[55] income from which as special assets (*praedia*) immediately belongs to the ruler. The public goods are known as assets of state treasury (*bona aerarii*) whose function it is to be allocated to public administration, for the defence of the state.[56]

Based on this classification, according to the nature of state assets, the head of state has three different rights, he has unlimited personal ownership (*ius dominii illimitati)* which can be exclusively enjoyed at his or her own discretion. Its unlimited nature means that disposition of them does not fall under administrative regulation (*quia legibus regiminis non subest*); 2) the usufruct rights of the ruler's financial assets (*ius utendi et fruendi in bonis fiscalibus*) according to which income can be accounted as costs to the extent necessary; by exercising this right the ruler may keep account of his or her returns. 3) the management of state treasury (*ius aerarii administrandi*) according to which state assets are allocated to the public costs based on the ruler's decision. In exercising this right – in contradistinction to the foregoing – he may not take his own interest into account, but he must keep the public goals in mind; he must be vigilant in ensuring the integrity of state assets.[57] Natural law theorists warn that these types of assets are hardly separate, since overlapping goals might cause them to be confused.[58]

6.4. Principles of the management of state over private assets (ius tributi, ius eminens)

The management of state assets in reference to private property shall depend on whether or not the amounts necessarily allocated to the purpose of the state are sufficient. According to natural law theorists, there is no rational explanation whereby private property would be limited by the authorities in the event of there being abundant wealth. In this case the ruler is not allowed to exercise financial management of private property. If this is not the case, the management of state assets refers to private property.[59] This right can only be enforced in a subsidiary manner, and only in those cases where some sort of emergency is created, e.g. due to a scarcity of suitable public goods, in which case the following principles are considered to be relevant in natural law: The extent of contribution to public spending shall correspond to whatever is the necessary extent of expenditure.

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[55] „*Praedia, quorum reditus assignantur Rectori civitatis ad sustentandum se familiamque suam , dicuntur Domania*" Crhistian Wolff: *Jus naturae methodo scientifica pertractatum, pars octava, sive ultima. De imperio publico seu jure civitatis, in qua omne jus publicum universale demonstratur, et verioris politicae inconcussa fundamenta ponuntur.* Francofurti & Lipsiae, aere societatis Venetae, 1766, 273.

[56] Szibenliszt 1821, 183., Zeiller-Egger 1810, 222., Martini 1779, 59.

[57] Szibenliszt 1821, 183., Zeiller-Egger 1810, 222-223., Martini 1779, 59.

[58] „*Est tamen saepe arduum haec bona ab invicem separare*" Szibenliszt 1821, 84.

[59] „*Si illud, nulla est justa ratio, ob suam privati ad partem suorum bonorum suppeditandam adstringi, et Imperans potestatem financialem exercere posset; contra si hoc, potestatem financialem jure exercet in bona privata.*" Szibenliszt 1821, 184., See more Zeiller-Egger 1810, 223-224., Martini 1779, 59-60.

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Putting this principle into practice natural law points out a paradox whereby, this principle shall be reconciled with another conflicting principle according to which the state has constantly to try to increase the public revenues. With an end of necessary cost claims the obligation to contribute to public costs on account of private property should be removed. Actually, the contribution of citizens shall be adapted to their material condition and since the consumption of citizens depends on the extent of their contribution it is appropriate to impose less demand on the poor, having regard to the means of sustenance. No person on his own, or from his own position, whether native-born or legally resident, has any immunity from the financial power of the state in respect of private assets.[60] The financial power over private property has a dual nature: on the one hand it can be aimed at the income from private assets, or, on the other hand, at its capital worth. According to natural law the financial power exercised over private assets in the broad sense is considered to be the right of taxation (*ius tributi*). The part of income from private assets allocated to public costs by the state generally may be considered as a tax. Natural law theorists declare that the right of taxation extends only to a part of the income of private assets.[61] The financial power in relation to the capital of private assets is an 'eminent domain' (*dominium eminens*); that is a right covering the private assets (*ius eminens*), and it extents not only, to a part of the revenue deriving from it, but the whole of it; moreover, it relates to the capital itself. This extraordinary (*eminens*) right of the state aims at achieving the goal of the state, fully and effectively.[62] The reason for this latter right shall be only in an emergency situation, or it might be enforced to gain more benefits which can ultimately only be in the national interest (*ratio status*), i.e., the common wealth; therefore its legal basis must be sought in the public interest as ensuring the welfare of the community. Given that the head of state can use this right only for the public good, once the interest ensured by this extraordinary right has been achieved, those individuals whose assets or personal contributions were covered by this right shall be compensated (*resarctitio damni*).[63]

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[60] „*Ex dato principio, et fine potestatis financialis in bona privata fluunt sequentes ejusdem justi limites: 1) mensura praestationum cum necessitate erogationum congruat; […] 2) Cessante necessitate erogationum praestationes quoque aboleri debent; […] 3) Praestationes sint pro ratione facultatum civium, […] 4) Quatenus pro mensura praestationum consumtio civium eligitur, eatenus rebus ad vitam necessariis, velut pani, carni, lignis, quam minima onera, contra iis, quae soli commodati, et voluptati inserviunt, graviora imponantur, […] In se, et natura sua nulli civi, sive sit persona physica, sive moralis competit immunitas a potestate financiali quoad sua bona*" Szibenliszt 1821, 185-186., See more Zeiller-Egger 1810, 224-226., Martini 1779, 60

[61] „*Modus, quo potestas financialis in bona privata exerceri potest est duplex: nempe vel quoad quaedam solum consectaria, vel quoad ipsam horum substantiam […]. Si potestas financialis in consectaria bonorum privatorum exerceatur, jus tributi sensu lato nominari potest.*" Szibenliszt 1821, 186., See more Zeiller-Egger 1810, 226. Martini 1779, 60-61., Virozsil 1839, 371.

[62] „*Alter modus potestatem financialem exercendi in bona privata est, si in ipsam substantiam horum exerceatur; qui dominium eminens dicitur, h. e. jus ex privatis bonis subditorum non tantum proportionatam partem consectariorum, sed omnia consectaria, immo ipsam substantiam ad consecutionem finis Civitatis applicandi.*" Szibenliszt 1821, 188., See more Zeiller-Egger 1810, 230. Martini 1779, 62., Virozsil 1839, 375. p., Hugo Grotius: *A háború és béke jogáról*, Book I., Budapest, Pallas Stúdió/Attraktor, 1999. 32.

[63] „*Conditiones, sunt quibus justum exercit juris eminentis agnoscitur, sunt sequentes: 1) Exercitium juris eminentis tantum propter finem Civitatis fiat; […] 2) Si super bonis, vel personalibus praestationibus unius, vel*

7. Closing remarks

The nation states established by the 17th and 18th Centuries, based on practice settled over the two centuries, have provided opportunities to develop the principles concerning the effective functioning of the state, the achievement state goals by the authorities, regulation of the activities of public power, and, in general, the nature of public instruments. The 19th Century saw the natural law establish a comprehensive system of these principles enabling universal statements to be made on the nature of the state. In addition, Latin terms in these work are used corresponding to the age on the base of a monarchical state system, tendencies can already be seen that resonate with the requirements of today's rule of law. 19th Century natural law reflects such requirements, by now common knowledge, as sustainable development, a harmonious relationship between man and nature featuring the protection of natural resources by the state as an essential condition of the survival of humanity.

aliquorum pro bono Civitatis per Imperantem disponatur, iis, qui praecipuo onere gravati fuerunt, simul ac Civitatis admittit, resarcitio damni fieri debet; […] 3) In solo statu necessitatis, vel majoris cujusdam utilitatis reperitur sufficiens ratio, ex qua jus eminens intelligi possit, quae ratio justifica, seu principium juris hujus cum ratio status appellatur, dicere possumus, jus eminens in ratione status fundari." Szibenliszt 1821, 189-191., see: Zeiller-Egger 1810, 230, Martini 1779, 63. Virozsil 1839, 379-383.

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