

# FROM AN AUTONOMOUS PROVINCE TO A HABSBURG PRINCIPALITY. THE LEGISLATIVE ROLE OF THE TRANSYLVANIAN DIET DURING THE 18<sup>TH</sup> CENTURY

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## *Introductory considerations*

Our approach aims to shed light on the evolution of the Transylvanian *constitution* and constitutionalism after the incorporation of the Principality of Transylvania within the administrative structures of the Habsburg Empire, the upper chronological limit being the provisions the Diet issued in 1791. In order to achieve this goal, we intend to examine all the aspects that contributed decisively to shaping the constitutional realities in the Principality, focusing in particular on the institutional and legislative role of the Diet, as a representative authority for the nobility in its relationship with the Habsburg sovereigns.

The conquest of Transylvania by the Habsburgs gradually brought about major changes as regards the law-making institutions, and some of these changes were made with the direct involvement of the Diet. The central aspect on which we shall dwell and which, in our opinion, was the quintessence of the entire legislative process unfolding throughout the 18th century, revolved around the articles of law enacted by the Diet of 1744 and, respectively, of the Diet of 1791. By analysing their specific provisions, we shall attempt to highlight the changes that took place in the *constitutional* structure of the Principality up until the turn of the 19th century.

Another point of interest for our study revolves around what certain historians regard as the very foundation of the Transylvanian political system, namely the *Constitutions* of Transylvania: Werböczy's *Tripartitum*, *Aprobatae Constitutiones* and *Compilatae Constitutiones*. Transposed into the Leopoldine

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Diploma, a statute with constitutional value whereby all the privileges of the Estates were recognized and guaranteed, the centralization trends exerted by Vienna throughout the 18th century met the categorical refusal of the Hungarian nobles, the Saxons and the Szeklers, who saw these *bibles* as a guarantee for their ancient rights and the maintenance of the enshrined constitutional order. The fierceness with which the *nations* of Transylvania defended the privileges established under these enactments put the Court of Vienna in difficulty, the Austrians being compelled to use all their political skill and ability in order to circumvent the main articles of law. At stake was the complete control that could be exerted over the central institutional compartment of the province and, thus, of the entire Principality. Without the Transylvanian constitution being cancelled *de jure*, its *de facto* amputation occurred through a skilful political game from the moment the province went under the administration of the House of Habsburg. The contradiction between the provisions of the constitution and the political reality, determined by Vienna's centralist tendencies, as well as by the claims of the Transylvanian Estates influenced the constitutional development of the province in the 18th century.<sup>1</sup>

Vienna's centralizing political strategy, especially starting from the second half of the 18th century, was largely due to cultural influences coming from the European space, upholding the notion that the only salvation for the underdeveloped, archaic areas from the east of the continent was *enlightened despotism*. The adamant insistence of the nobiliary Estates on maintaining and even enhancing their ancient privileges precluded the reforms from advancing and the central administrations oftentimes remained powerless before these political monoliths.

According to the Enlightenment conception Vienna upheld, these provinces were to be ruled by an elite of French expression, often evincing a French culture and mentality, which would allegedly seek to regain lost time and speed up progress. That form of administration, the Austrians believed, would be better suited for the Eastern spaces than the older densely populated centres of Central Europe (Bohemia, Austria, Bavaria) and the Mediterranean, or in the non-Catholic rather than in the Catholic territories.<sup>2</sup> Like the despotism of the physiocrats, the regime preferred by the enlightened princes was absolute, administrative monarchy, similar to the political system that had characterized the age of Louis XIV. This type of monarchy focused on economic development or, as it were, the recovery of delays and lags that were detrimental to the state.<sup>3</sup> The Habsburg Monarchy was fortunate, from this historiographical vantage

<sup>1</sup> Angelika Schaser, *Reformele iosefine în Transilvania și urmările lor în viața socială* (Sibiu, 2000), 29.

<sup>2</sup> Pierre Chaunu, *Civilizația Europei în secolul luminilor* (București, 1986), 276.

<sup>3</sup> Ibid.

point, to have two enlightened monarchs, Maria Theresa and Joseph II, whose reformist policies we shall discuss in the light of the dietal statutes in the pages that follow.

### *I. The constitutional evolution of Transylvania in the Habsburg Empire between 1691 and 1744*

The end of the 18th century brought about a major change in Transylvania regarding its legal status, given its incorporation as a province in the Habsburg Empire. The Ottoman failure to conquer Vienna in 1683 led to a general counteroffensive of the imperials, who concluded an alliance with Poland and the Republic of Venice, known as the *Holy League*.<sup>4</sup> Over the span of a few years, under the command of the Duke of Lorraine, the troops of the *League* managed to advance deep into Hungary, where they occupied Buda in 1686, and entered Transylvania in the following year, after the Battle of Mohacs. In this context, on 27 October 1687, the Estates of Transylvania were forced to sign the agreement of Blaj, which entailed the military occupation of the country.<sup>5</sup>

The death of Prince Michael Apafi on 15 April 1690 left the country's leadership in the hands of his son, a 14 year-old youth, elected by the Diet in 1681 and confirmed as such in the agreements with the Habsburgs.<sup>6</sup> The state of tension that enveloped the Principality during those moments enabled the Turks to attempt a reversal of the situation and to impose Emeric Thököly, their own candidate, on the throne. Leading a Turkish-Tatar contingent and supported by troops coming from Wallachia, he invaded Transylvania, defeated General Heisler at the Battle of Zărnești on 21 August 1690, and was crowned prince in the same year.<sup>7</sup>

The redirecting of the imperial troops led by the Margraf of Baden from the area of Serbia towards Transylvania marked the final defeat of Thököly, who was driven away at the end of October.<sup>8</sup> However, the Habsburgs' position of force towards the Principality of Transylvania was tempered, the *politics of cannons* being replaced with the card of diplomacy. The defeat suffered in the fall of 1690, coupled with the possibility of a long war with the Porte, occasioned the adoption of a cautious strategy of negotiating with the political actors of the Principality. The appeasement of the Estates and the identification of an

<sup>4</sup> Erich Zöllner, *Istoria Austriei de la începuturi până în prezent*, vol. I (București, 1997), 312.

<sup>5</sup> Ibid.

<sup>6</sup> Mathias Bernath, *Habsburgii și începuturile formării Națiunii Române* (Cluj-Napoca, 1994), 54–55.

<sup>7</sup> Ioan-Aurel Pop, Thomas Nögler, András Magyari, eds, *Istoria Transilvaniei de la 1541 la 1711*, vol. II (Cluj-Napoca, 2005, hereinafter *Istoria Trans.*), 348.

<sup>8</sup> Bernath, *Habsburgii*, 55.

effective solution of governance for the following period led to intense negotiations with the representatives of the Principality.

Under these circumstances, a Transylvanian commission headed by Nicholas Bethlen travelled to Vienna, where, on behalf of the Transylvanian Estates, it engaged in talks with the imperial authorities. The negotiations resulted in the so-called *Leopoldine Diploma*, ratified on 4 December 1691, a document that served as the Constitution of Transylvania<sup>9</sup> for over 150 years.

Divided into 18 sections, the Diploma confirmed all the constitutional provisions enshrined during the period of the autonomous Principality, establishing Transylvania's place and role within the Habsburg Empire.<sup>10</sup> Its preamble reinforced the juridical fiction whereby Emperor Leopold would ensure the *de jure* continuity of the princely office until the elected Prince Michael Apafi II came of age. Under the laws of Transylvania, the legal age that guaranteed the full exercise of the sovereign prerogatives was 20 years.<sup>11</sup> Meanwhile, the administration of the Principality was to be entrusted to a government (the *Gubernium* or *Excelsum Consilium Regium Guberniale*), consisting of the governor and a council of 12 members,<sup>12</sup> a body composed entirely of Transylvanian citizens.<sup>13</sup> For reasons pertaining to his *security*, the Prince-Elect was transferred to Vienna, where he was to receive an education that was consistent with the importance of this position.<sup>14</sup>

<sup>9</sup> *Istoria Trans.*, 350.

<sup>10</sup> Anton E. Dörner, "Administrația Transilvaniei în prima jumătate a secolului al XVIII-lea", *Revista Bistriței* IX (1995): 178.

<sup>11</sup> Alexandru Herlea, Valeriu Șotropa, Romul Pop, Iuliu Nasta, Ioan N. Floca, eds, *Constituțiile Aprobate ale Transilvaniei (1653)*, Partea a Doua, Titlul I, Art. 7 (Cluj-Napoca, 1997, hereinafter *Constituțiile Aprobate*), 70. The precedent establishing a governor at the head of the Principality of Transylvania dates from the year 1652, when George Rákóczi junior was elected as Prince by the Diet convened in Cluj. Since he could only obtain effective government after coming of age, which in Transylvania was 20 years, the administration of the country was to be entrusted to a governor and his council.

<sup>12</sup> Jozef Benkő, *Transsilvania, sive magnus Transsilvaniae principatus, olim Dacia. Mediterranea dictus orbi mundum satis cognitus*, vol. II (Claudiopolis, 1833, hereinafter *Transsilvania*), 16.

<sup>13</sup> "The laws (which the noble orders believe must be adhered to firmly) do not consider the aforementioned teen, aged fourteen, fit for government before attaining the age of twenty. For this reason, we deem that in these times, troubled also by Tököly's infidelity, it would be of no use either to the interests of Transylvania or to the common good if these laws were violated and if revisions were made in this respect" [our translation]. Translation made after the Latin text of the Diet of 1791, Art. II, in *Corpus Juris Hungarici, Magyar törvénytár, 1540–1848 évi Erdélyi törvények*, ed. S. Kolosváry, K. Óváry (Budapest, 1900, hereinafter *CJH*), 488.

<sup>14</sup> "Thus, the minor shall be entrusted to those intimate counsellors who are governing the land and shall be educated until the age of adolescence, acquiring the due virtues for his succession, awaiting the manifestation of those spiritual talents that will grow and take root in him, all the while protecting the imperial and royal mercy channelled towards the good of the country" [our translation], *Ibid.*

The opportunity offered to the Habsburgs of legally removing Michael Apafi II opened the door to institutional innovations at the level of the provincial administrative apparatus. Consequently, in the Diet of 1692 the decision was reached to create a new institution, the *Aulic Chancery of Transylvania*, with the role of maintaining a permanent connection between the provincial bodies and the capital of the Empire. Headquartered in Vienna, the Aulic Chancery was independent of other similar bodies in the capital of the Empire and had a partly outlined administrative structure.<sup>15</sup> The institution became operational only in 1695, with the appointment of the Catholic Samuel Kálnoki as chancellor,<sup>16</sup> but was placed under the authority of the Gubernium, the Diet and the Transylvanian Chancery.<sup>17</sup> On the other hand, the success of the Transylvanian Estates resided in the fact that they had maintained the right to draft the laws under which the new institution would function.<sup>18</sup> Nevertheless, the Court also issued instructions which it sent to Vice-Chancellor Kálnoki, seeking to subordinate the institution.<sup>19</sup> The frequent deputations of the Transylvanian officials and, in particular, of Chancellor Nicholas Bethlen in Vienna were aimed at strengthening the influence of the Diet by continuously renewing the directives that were contrary to those issued by the Court. The members of the Aulic Chancery were advised to uphold the laws of the country and not to encroach upon the interests of the Government and the Provincial Chancery – the actual leading authorities of Transylvania.<sup>20</sup>

Returning to the provisions of the Leopoldine Diploma, the 18 articles consolidated the autonomous legal and political status of the Principality and beyond. The first article prohibited any change among the four officially accepted religions (Reformed-Calvinist, Unitarian, Evangelical-Lutheran and Roma-Catholic) and allowed the Catholics to raise a church in Cluj at their own expense and, respectively, to rebuild the one in Alba Iulia, which was in ruins.<sup>21</sup> It also confirmed all the donations, privileges and benefices granted to the nobility in Transylvania and Partium by kings and princes. It maintained and strengthened the old Transylvanian laws: Werböczy's *Tripartitum*, *Aprobatae Constitutiones*, *Compilatae Constitutiones*, except Article 9 of the Golden Bull of

<sup>15</sup> Zsolt Trócsányi, *Habsburg-politika és Habsburg Kormányzat Erdélyben. 1690–1740* (Budapest, 1988), 223.

<sup>16</sup> Dörner, "Administrația Transilvaniei", 181.

<sup>17</sup> Ibid.

<sup>18</sup> Anton Dörner, "Structuri birocratice în Transilvania epocii prerreformiste în contextul administrației habsburgice", in Remus Câmpeanu, Attila Varga, Anton Dörner, *În Pragul Europei. Instituțiile Transilvaniei în Epoca Prerreformistă* (Cluj-Napoca, 2008), 254.

<sup>19</sup> Dörner, "Administrația Transilvaniei", 181.

<sup>20</sup> Dörner, "Structuri birocratice", 254.

<sup>21</sup> *CJH*, the Diet of 1791, 488.

1222, regarding the nobility's right of disobedience to the king. It maintained the Saxons' municipal laws and, respectively, the ancient laws and privileges of the Szeklers. It kept intact the rules of judicial procedure and the right to appeal to the king, as well as the provision allowing the filling of all public administration, justice or economic positions solely with Transylvanian natives, irrespective of their religion. Moreover, the donation of the estates that would be seized by the fiscal authority in the case of discontinuances in the line of succession or because of the crime of infidelity went now exclusively to the country's citizens. The offices of governor, commanding general of the Transylvanian army, chancellor, intimate councillor, supreme comes, captain of the Szeklers and all the other dignities were reserved exclusively to the country's nobles, of the four officially accepted religions, on the basis of merit. This provision, which was intended to bring some fairness in the representation of the accepted religions at the level of state leadership turned into an actual Catholic monopoly.

All candidacies for the superior positions (governor, intimate councillor, chancellor, protonotary) had to be submitted to the emperor for confirmation, while the office of vicecomes or noble judge remained at the discretion of the local communities. At least three members of the Intimate Council and the High Court Panel (*Tabla de Judecată*) had to be Catholic. Chancellor Nicholas Bethlen contended that of the 18 sections of the Leopoldine Diploma, only this and the one referring to receiving the Jesuit fathers back into the country were modified by the Habsburgs. The initial version he had proposed and submitted to the emperor for confirmation used the expression three Catholic councillors *tantum* (at most), which was changed in Vienna into *saltem* (at least).<sup>22</sup> By promoting primarily Catholics to the key positions in the Principality, this article made possible numerous abuses perpetrated by the central power, overturning thus the religious balance of forces.

The legislative dialogue between the sovereign and the estates was achieved *via* the Diet, a representative political institution in the history of the Principality of Transylvania, reconfirmed by Article Ten of the Leopoldine Diploma. This remained the main debate forum for the fundamental public matters of the country, its annual convocation becoming mandatory.<sup>23</sup> Legislative decisions were subsequently submitted to the sovereign to be confirmed and promulgated. Section 12 set the amount of the contribution, which provided for the payment of an annual fee of 50,000 thalers in peacetime and 400,000 Rhenish florins in wartime.

<sup>22</sup> Nicolae Bethlen, *Descrierea vieții sale de către el însuși* (Cluj-Napoca, 2004), 222.

<sup>23</sup> The provision regulating the mandatory annual convocation of the Diet of Transylvania is included in the text of the Approved Constitutions. *Constituțiile Aprobate*, Part III, Tit. I 17, Art. 1, 118.



The conflicts that marked the history of the Habsburg Empire during the 18th century constantly increased its need for money and, proportionately, the burden on the provinces. Since the task of determining, dividing and levying those amounts was the responsibility of the orders, meeting in General Congregation, the steady increase in the amount generated a broad debate and grounds for dissatisfaction. In the context of the Spanish Succession War, the Vienna Court commissioned Count Johann Friedrich von Seeau, Director of the Chamber Commission in Transylvania, to demand the sum of 800,000 florins from the Diet, being allowed to lower the amount, in case of opposition, to 750,000 and, under extraordinary circumstances, down to 700,000. This demand caused outrage among the Transylvanian Estates, which insisted to pay the 400,000 florins they owed by law. Eventually, the sum of 600,000 florins was agreed upon, but the distribution of this amount resulted in endless disputes.<sup>24</sup>

Moreover, the money issue was the sore spot in the negotiations between the sovereign and the Estates throughout the 18th century. The imperial claims in this regard encountered the fierce opposition of the Estates, which made recourse to any means possible in order to delay, eschew or refuse the payment of the requested sums. The numerous *gravamina* that the Diet submitted to the emperor on the occasion of its meetings invoked the ruin the country was in,<sup>25</sup> highlighting the exaggerated and excessive financial demands as its causes. The complaints made reference to the Leopoldine Diploma and the contribution amount stipulated there, and then presented the real increase in payments over time,<sup>26</sup> which had been downright burdensome for the actual possibilities of the country. The abuses of the army stationed in the province, as well as its maintenance costs, represented further grounds for dissatisfaction and irritation. The 1737 Protocol of the Diet mentioned several complaints that the county officials had addressed to the Royal Government concerning the abuses committed by the soldiers stationed in the province.<sup>27</sup>

<sup>24</sup> Rolf Kutschera, *Landtag und Gubernium in Siebenbürgen 1688–1869* (Köln, Vienna, 1985), 85.

<sup>25</sup> A long request sent to the emperor through a deputation, which invokes all the misfortunes of Transylvania caused by Vienna's exaggerated claims, is found in The Romanian Academy Library, Cluj-Napoca Branch (hereinafter BAR CJ), Mss. R. 1027–1028, *Alpha et Omega als der... und das ende alter Göttlich*, from sheet 177 to 189 (hereinafter Mss. R. 1027–1028)

<sup>26</sup> *Quod annis praeteritis Patria ista praestitit, in infinitum praestare poterit. Praestitit anno 1688 ses qui millionem. Anno 1689, millionem et 300 m floren: aliquot inde annis modo plus, modo minus, isque ad annum 1691 quo diploma stabilitum est, a quo tempore modo 600 m flor: magazinales necessitates, modo etiam minus, aut plus Transilvania contribuit. Sed per illas ipsas contributiones adeo in miseria sua contemnit et decoxit [...]. Ibid.*

<sup>27</sup> The complaint submitted by the Comes of Cluj David Mariafi deplores the serious excesses that the inhabitants of Cluj County endure from the soldiers stationed there. *Logvumtur gravamina quodum et gravissimi excessus occasione intertentionis militiae [...]. BAR CJ, Ms. Lat 290, Protocollum Diaetale pro anno 1737, sheet 24.*

The problem of Transylvania's contribution was resolved by the Court in the early 1760s, by promoting the *Buccowianum* taxing system, which established a flat duty, thus eliminating the decision of the estates and also the usefulness of convening the Diet.<sup>28</sup> Its last meeting was held in 1762, after which it was excluded from the ranks of the constitutional factors in the Principality for almost 30 years.

Section thirteen of the Leopoldine Diploma offered assurances that new taxes would not be introduced and that customs duties or the *tricesimation* (one-thirtieth tax) would not be raised. The next section confirmed the Szeklers' exemption from any public duties, except that of defending the country at their own expense. The tithes leased by the nobles remained theirs, but the lease went to the tax authorities. The freedom of trade was guaranteed, respecting the privileges of the nobility. From a military standpoint, the presence of the imperial army in the country was legitimized with a German commander, who was required to cooperate with the government and the governor's council, as well with as the country's army commander. Although it was expressly provided in the Diploma, the *militia indigena* was never summoned in the 18th century. Article eighteen guaranteed the exemption of the population from hosting and providing for the public officials, who were bound to use stagecoaches and inns during their journeys.<sup>29</sup>

In its provisions, the Leopoldine Diploma reconfirmed, in detailed manner, all the laws, civil and religious rights and privileges which the country had theretofore enjoyed. The pact made between the Habsburg dynasty and the Transylvanian Estates sanctioned Transylvania's internal autonomy, establishing the economic, political and legal relations and laying the foundations of governance up until 1867.<sup>30</sup>

One of the most important gains of the new status, which was also enshrined in this document with a constitutional value, was undoubtedly the maintenance of Transylvania's political identity. Thus, Transylvania was incorporated within the ancient boundaries of the Empire as a distinct Principality from Hungary. This perpetuation of Transylvania's statehood allowed for the preservation of its pre-Habsburg institutions and older legislation, with a role in consolidating a particular Transylvanian spirit. Moreover, the transition to the new political reality

<sup>28</sup> Avram Andea, "Instituțiile centrale ale Transilvaniei", in *Istoria Românilor*, vol. VI, *Românii între Europa Clasică și Europa Luminilor (1711–1821)* (București, 2002), 352–373.

<sup>29</sup> Art. 2 of the Diet of 1791, in *CJH*, 488–496. The translation of the 18 sections of the Leopoldine Diploma is found in George Barițiu, *Părți alese din Istoria Transilvaniei pe două sute de ani din urmă*, 2<sup>nd</sup> edition, ed. Ștefan Pascu, Florin Salvan (Brașov, 1993), 688–693.

<sup>30</sup> R. W. Seton-Watson, *A History of the Romanians from Roman Times to the Completion of Unity* (Archon Books, 1963), 121.



did not seem to change deeply-ingrained habits much, but, on the contrary, to reinforce and complete them. Having been negotiated with great skill by Nicholas Bethlen, the 18 sections of the Diploma comprised the most important aspects, meant to provide continuity to the Principality and to maintain it, at least *de jure*, outside interferences with the power circles in Vienna.

Called to exercise the legislative powers together with the Prince, the Diet represented, without a doubt, the cornerstone of maintaining genuine autonomy. The juridical evolution of Transylvania in the first half of the 18th century depended almost exclusively on the status this institution had kept in relation to the central authority. One of the most important attributes of sovereignty held by the Diet was the right of the Estates to the *libera electio* of the prince, who guaranteed their actual power. This opportunity to exercise the option regarding the person of the sovereign prevented the *de facto* unification of the Habsburg Empire and the integration of the Principality in the administrative structures of the monarchy. From the perspective of the Estates, the Habsburg monarchy was nothing but a substitute for the Ottoman Empire, a sort of guarantor of security, which nonetheless lacked prerogatives in domestic politics. The perpetuation of the Transylvanian statehood was achieved through the Prince-Elect, Michael Apafi II, by virtue of and under the authority of the synallagmatic contract *signed* between him and the Estates. This Werböczyan conception about power had been underlying the Transylvanians' constitutional thought ever since the early in the 16th century.

Werböczy's popularity among the nobility derived from the coherence of his ideas, which justified and endorsed the *bicephalous* system of political power. He upheld the notion that the laws of the kingdom were not the result of the monarch's will, but represented the joint will of the two legal entities: the Estates and the king, by virtue of an agreement that dated back to the time of the first sovereigns. Therefore, in matters concerning the legislative organization, there survived two fundamental principles that marked the legal thinking of the following centuries. The first referred to the manner of drafting and passing laws, understood as a necessary pact between the Estates and the sovereign. The second principle related to the matter of the political community that formed the *General Congregation*, understood as the assembly of the country's noblemen.

The dominant influence of Werböczy's *Tripartitum* was exerted precisely during this final stage in the existence of St. Stephen's kingdom. Under the circumstances of the establishment of the Habsburg administration, of the Ottoman domination and, eventually, of the triple division of the kingdom, the *Tripartitum*, which consolidated a sole legal and social system in Hungary, Croatia and Transylvania, acted as an integrating and unifying force for the

component territories of the former kingdom.<sup>31</sup> Moreover, the legal concepts Werböczy set forth, concerning the primacy of custom over any other form of law<sup>32</sup> proved to be an excellent counterweight to the imperial legislative maelstrom of the following centuries.<sup>33</sup>

Werböczy did nothing more than define and justify the role of the nobility and its representative institution in the constitutional life of the Kingdom of Hungary. Based on this reality, at a political level, he laid the theoretical foundations for a constitutional conception based on the unifying principle of the *Holy Crown*, for a unique nobility forming an entire country, as well as for the unity of Catholicism as a state religion,<sup>34</sup> this conception governing the Hungarian and Transylvanian system for several centuries.

Once Protestant ideas permeated this space from Western Europe, this central political gear, represented by the prince and the institution of the Diet as the main legislative actors of the Principality, overlapped with the religious factor, which determined and stabilized the new constitutional order for more than 300 years. The articles promulgated by the Diet of Turda in 1568 launched a new stage in Transylvania's religious policy, asserting the principle of free proselytization and of the communities' freedom to choose the confession they wished to adhere to, in the spirit of the principle of *cuius regius eius religio*, established under the Peace of Augsburg. Superimposed over the political situation, the religious reality supplemented the system of the three nations with that of the officially accepted religions (one of the articles passed by the Diet of 1595 stipulated, for the first time, the legally recognized denominations, namely: Catholicism, Calvinism, Lutheranism, Antitrinitarianism), Orthodoxy maintaining its status as a tolerated religion.<sup>35</sup> The legislative and political system based on the three nations (the Hungarians – largely assimilated with the nobles, the Szeklers and the Saxons) and the four officially accepted religions emerged

<sup>31</sup> László Peter, "The Irrepressible Authority of the Tripartitum", in Stephen Werböczy, *The Customary law of the Renowned Kingdom of Hungary: A Work in Three Parts (Tripartitum)*, ed. & trans. János M. Bak, Péter Banyó and Martyn Rady, DRMH 5 (Idyllwild, Budapest: CEU, 2005, hereinafter, *Tripartitum*), XVIII.

<sup>32</sup> For explanations referring to the primacy of custom in Hungarian and Transylvanian law, see: Gelu Fodor, "Între legea scrisă și dreptul cutumiar", 71–83.

<sup>33</sup> Ibid.

<sup>34</sup> Ioan Drăgan, *Nobilimea românească din Transilvania 1440–1514* (București, 2000), 107; Henry Marczali, *Hungary in the Eighteenth Century* (London, 1910), XXXII.

<sup>35</sup> Cf. David Prodan, *Supplex Libellus Valachorum* (București, 1984), 101; *Az mi a religio dolgát nézi, végeztük országúl, hogyaz recepta religiok, tudniillik catholica siue romana, lutherana, caluinistica et ariana libere mindenütt megtartassanak*. See Sándor Szilágyi, ed., *Monumenta Comititalia Regni Transylvaniae. Erdélyi országgyűlési emlékek*, vol. III (Budapest, 1877, hereinafter MCRT), 472.

thus towards the end of the 16th century and largely remained unchanged until the Revolution of 1848–1849.

According to the Werböczyan scheme of thought, the nobility represented the Hungarian nation, while Scythia was the ancestral territory whence it originated.<sup>36</sup> Under the Scythians' law, in the beginnings, all the members of the *nation* had been free and equal in rights. The situation had changed over time due to the inability of some to participate in war, an inability that had condemned them to servitude, causing the social divide between the peasants and the noble elite.<sup>37</sup> From that point, his argument tackled the idea whereby the king and the corpus of nobles belonged to the *Holy Crown*.<sup>38</sup> Since the noble community had the *Holy Crown*, the identity of monarch was decided by election and not by hereditary succession.<sup>39</sup> In the nobiliary republic envisioned by Werböczy, the king was nothing but a representative of the nobility, at most a *primus inter pares*. Moreover, the aristocracy did not even owe allegiance to the monarch, but rather to the *Holy Crown*, as the embodiment of the kingdom and its political community. The conclusion that emerges from this is that King was denied the capacity and authority of making legislation by himself, as he required the consent of the whole nation, legally convened in a congregation.<sup>40</sup> Through a subtle legal rhetoric, the author of the *Tripartitum* laid out, on the one hand, the theory of the mutual dependence between the king and the nobility, enshrined in the doctrine of the *Holy Crown*, and on the other hand, the right of the community or the country (*ország*) to elect the sovereign and to participate in government along with the monarch, through the Diet.<sup>41</sup>

Seen from the point of view of the Habsburgs, Transylvania was nothing but a province with an ambiguous status. Vienna's intentions to circumvent the provisions of the Leopoldine Diploma became highly visible in the first years of the reign, when there were repeated attempts to depose the young Prince Michael Apafi II. All the three memoranda written and sent to the emperor by the Estates of Transylvania between 1692 and 1693 – requested him to confirm Apafi as Prince – remained unanswered.<sup>42</sup> Moreover, the Prince-Elect relinquished this dignity in 1696, in exchange for a life annuity offered by Emperor Leopold. Anticipating Apafi's resignation, a separate Aulic Chancery was established in Vienna, the country being definitively considered as a *corpus*

<sup>36</sup> "Stephen Werböczy and his *Tripartitum*", in *Tripartitum*, I. 3 [1] ().

<sup>37</sup> *Ibid.*, I, 2, [1].

<sup>38</sup> *Ibid.*, I. 4 [1].

<sup>39</sup> *Ibid.*, I. 3 [7].

<sup>40</sup> *Ibid.*, II. 3 [3].

<sup>41</sup> Robert W. B. Gray, *Land Reform and the Hungarian Peasantry c. 1700–1848* (unpublished PhD Thesis, London UCL, 2009), 22 (online version).

<sup>42</sup> *Istoria Trans.*, II, 363.

*separatum*, under the direct authority of the emperor and not of the countries that were part of the Hungarian Crown.<sup>43</sup> In this new institutional context, the administration of the country landed in the hands of the government, the central body *provisionally* created under the Leopoldine Diploma. The removal of Michael Apafi II from the equation and the confirmation of the government as the main executive body of the country reshuffled the component pieces of the Transylvanian legislative assembly, reversing thus the poles of power.

The increased powers granted to the new institutions, designed to ensure the imperial control over the country,<sup>44</sup> emphasized, however, the state of generalized discontent among the nobility, paving the way for the insurrectionary movement from the beginning of the 18th century. In parallel with all these internal institutional changes, the Peace of Karlowitz (1699) officially recognized, in an international political framework, the Habsburg rule in Transylvania.<sup>45</sup>

The structural changes marking the country's evolution since its incorporation into the Habsburg Monarchy generated a triple crisis: political, social and economic, which manifested itself at the beginning of the 18th century. Caused both by internal factors (a decrease in the agricultural production) and, especially, external ones (the presence of the imperial troops of the territory of the country and the excessive taxes generated by its maintenance), this created a general state of dissatisfaction. On the one hand, the population was outraged by the constant growth of the tax burden, while on the other, the Estates protested against the increasing intrusion of the central power in the institutional life of the country. Together, they brought about a massive anti-Habsburg uprising (1703–1711), led by the Hungarian nobleman of princely blood, Francis Rákóczi II.<sup>46</sup> By mid-1704, the uprising had swept across the entire Transylvania, culminating in the election of Rákóczi as Prince, in the Diet of the session from 27 March 1707.<sup>47</sup> As the uprising was crushed by the imperial forces, peace was concluded in Satu-Mare in 1711, where the nobles were granted forgiveness in exchange for their recognition of the new authority.

Not only did the compromise reached in Satu Mare legitimize the Habsburg dominion over Transylvania, but it also marked the transition to the next stage of its history, that of institutional consolidation. The stakes of the new period revolved around the degree of influence that the two sides strove to acquire in the structures of the new institutional order, and the first step envisaged acquiring

<sup>43</sup> Robert A. Kann, *A History of the Habsburg Empire* (London, 1974), 74.

<sup>44</sup> See, in this sense, Dörner, "Strukturbirocratie", 203–272.

<sup>45</sup> Susana Andea, "Țările Române în secolul al XVII-lea", in Ioan-Aurel Pop, Ioan Bolovan, eds, *Istoria României. Compendiu* (Cluj-Napoca, 2007), 352.

<sup>46</sup> *Ibid.*, 355.

<sup>47</sup> L. Gál, *Az erdélyi diaeták végzéseinek nyomdokái és a compilata constitutio után költ articulusok kivonatja*, vol. II (Kolozsvár, 1837), 195.

control over the Government and the Chancery. Theoretically, concerning the appointment of these officials, the Leopoldine Diploma offered a small advantage to the Estates because Article 7 granted the Diet the prerogative of selecting the candidates,<sup>48</sup> the role of the emperor being limited to confirming them as office holders (*nobis ad confirmandum praesentent*).<sup>49</sup>

An occasion for constitutional conflict arose in 1712, amid the vacancy of the governor's seat. Meeting in session, the Diet designated István Wesselényi as a candidate, advancing this proposal to the emperor.<sup>50</sup> The latter's decision flaunted the plans of the Estates, by appointing Sigismund Kornis in office, a devotee of the *ruling House*.<sup>51</sup> The Diet's reaction to this violation of the Constitution was rather prompt, and during the following year, they submitted a lengthy memorandum to the sovereign, in which they required explanations for the decision he had made, as well as clarifications on the matter of a new provincial chancellor being appointed.<sup>52</sup> The problem of the chancellor arose in the context of the Rackoczian rebellion when, faced with charges of collaboration with the Kuruc rebels, Bethlen had been arrested and removed from office.

The answer to both inquiries arrived a year later, on 31 March 1713. Kornis's appointment as governor was motivated by the Court by reference to the exceptional qualities he had evinced and his vast experience in the administration,<sup>53</sup> while the question concerning the appointment of a new chancellor received an answer that was as diplomatic as possible. It was argued that the chancellor's situation was still unclear due to a pending trial, the office being suspended until a resolution was issued on the case.<sup>54</sup>

<sup>48</sup> "The supreme director, who used to be called a voivode, or his deputy shall be chosen from among the citizens, the nobles and the aristocrats in Transylvania, be they Catholic or of another accepted religion, provided that they have distinguished themselves by their devotion and personal merit" [our translation] *CJH*,. 492.

<sup>49</sup> "We shall clemently allow them that change, entailing that whenever the positions of governor, commander of the Transylvanian army, chancellor, intimate adviser and protonotary are filled, the persons appointed to these positions shall be presented to us so that we may give our consent with a view to maintaining the peace among the estates of the various nations, removing the dangerous and illegal occupations of these positions, as well as planting in the heart of everyone that commonly shared desire to strive together for the common good, which is the highest goal of governance" [our translation]. *Ibid.*

<sup>50</sup> Andea, "Instituțiile centrale", 368.

<sup>51</sup> *Ibid.*, 358.

<sup>52</sup> Ms. R 1027–1028, 334–339

<sup>53</sup> *Ibid.*, 347.

<sup>54</sup> *Ibid.*, 349. [...] *Propositio seu commendatio sollummodo fidelium notis Statuum petenda, quam sic perandam a profatis Consiliariis Nostris eam voto et opinione eorum elementer exspectabimus, Sed quia Cancellary Comitis Nicolai de Bethlen captivi sententia nondum est pronuntiata, Vacantia Cancellaria nondum datum legitimia Candidatios aliorum ejus loco pro nunc Suspendenda.* [...]

The disregard for the Estates' desire shed light on Vienna's attitude as regards its plans for Transylvania, confirming the political tendency to isolate the traditional Transylvanian institutions. The stake, represented by the person of the governor, was too high to leave it entirely to the decision of the Diet, which, through an inspired move, could come to dominate the political and administrative life of the province. The appointment of a governor who was close to and loyal to the Court was tantamount to imposing the central authority and marginalizing the Diet in the constitutional life of the Principality. The Court's intrusions were aimed at transforming the government institution into the sole executive centre of Transylvania, impervious to the control and influence exerted by the Estates.

The situation of 1712 was reiterated with the same outcome in 1734, when the Diet convened in Sebeş elected the same Wesselényi István as governor, the emperor preferring Johann Haller in his stead this time.<sup>55</sup> Once established, the precedent of invalidating the Diet's will regarding the person of the governor led to a practice that acquired a permanent character throughout the 18th century.

On the other hand, the elimination of the provincial Chancery from among the institutions with great decisional power also had a very specific cause. As a bridge between the provincial and the central authorities, the Transylvanian Chancery controlled the activity of the Vice-Chancellor in Vienna, offsetting any of the emperor's interferences in the internal affairs of the country. The power position the Estates had obtained at the time of its foundation, through the establishment of the chancery's headquarters in Transylvania and only of the Vice-Chancellor's office in Vienna, put the central authorities in difficulty for a good while.<sup>56</sup> The Diet was aware of the influence this function exerted on the constitutional life of the province and the role it could play in tilting the balance of powers in the Estates' favour. The delay in settling the matter of the chancellor was perpetuated until 1742; during this while, the competences of this institution were clarified. Its prerogatives were reduced so drastically that they boiled down to the level of a mere office for mediating the correspondence between the central and the local authorities.<sup>57</sup>

Although they continued even after the enthronement of Charles VI (1711–1740), the pressures exerted on the Transylvanian institutions experienced a less rapid pace than during the previous period. As this monarch lacked direct male-line heirs, the imperial policymakers undertook a series of steps meant to settle this constitutional problem. Rákóczi's uprising prompted the emperor to resort to a conciliatory policy with the Estates, with a view to their

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<sup>55</sup> Gál, *Az erdélyi diaeták*, 219.

<sup>56</sup> Dörner, "Administrația Transilvaniei", 180.

<sup>57</sup> Andea, "Instituțiile centrale", 366.



adopting the *Pragmatic Sanction* (the law on direct succession to the throne of the empire); a demonstration of force would not have been appropriate, especially because of the fear that it might lead to an even bloodier revolution.<sup>58</sup> Consequently, the adoption of the *Pragmatic Sanction* was to be accepted voluntarily by the Estates throughout the Habsburg provinces.

The Austrian and the Bohemian estates ratified the law in 1720, while the Croats accepted it over the following year. As expected, the most difficult negotiations were held with the Estates of Hungary and Transylvania.<sup>59</sup> After lengthy negotiations with the authorities in Vienna, the Transylvanian orders approved this document in the Diet of 1722. The Congregation repealed the Estates' right to elect their prince, stipulating, at the same time, the Habsburgs' hereditary rule over the Principality of Transylvania. Under the *Pragmatic Sanction*, the Estates expanded the hereditary inheritance<sup>60</sup> over the principality to the female line, too, but only in the event of the lack of a male heir. This decision represented the first major change in the legislative structure of the Principality of Transylvania, operated nearly 30 years after the establishment of the Habsburg rule. The ratification of this document and, implicitly, the acceptance of the new constitutional order virtually legitimized the Habsburg dominion over the country, which had hitherto been legally questionable, under the Leopoldine Diploma.

Certain historiographers, however, explain this historical decision also by reference to the Diet's internal corruption. Far from rallying together in a nobiliary monolith, the deputies could be enticed by the Viennese court with various political and public offices, in exchange for a favourable vote that could be given in key situations. One such case was that of István Wesselényi, who, after the *Pragmatic Sanction* was approved, acquired estates and important functions,<sup>61</sup> being nominated later for the position of governor. The fact that some of the nobles – especially those of the Catholic confession – were lured onto the side of the initiatives promoted by the Habsburgs was meant to undermine political opposition and facilitate the adoption of legislative initiatives.

Charles VI's urge for a diplomatic approach to the adoption of the *Pragmatic Sanction* did not spring out of his desire to disregard the provinces' to a representative government, but out of cautiousness, as Hungary and Transylvania

<sup>58</sup> Kann, *History*, 77.

<sup>59</sup> Ibid., 59.

<sup>60</sup> *De facto*, Apafi II's relinquishment of the dignity of Prince and his death, which occurred in 1713, meant that the title was taken over by the emperor, contrary to the Leopoldine Diploma and the laws in force. Bernath, *Habsburgii*, 69–70.

<sup>61</sup> Andreea Fehér, *Sensibilitate și identitate în izvoarele narative maghiare din secolul al XVIII-lea* (Cluj-Napoca, 2012), 94.

still had power of opposition. This perceived power was due to the fact that the two provinces were not fully integrated in administrative terms within the Habsburg Empire.

On the other hand, the formal perpetuation of Turkish suzerainty over the Principality represented another cause for concern for the Court of Vienna. Too deep and direct an involvement in the internal affairs of Transylvania could escalate the situation, forcing a regrouping of the Estates around the Porte. The legal possibility to resort to this connection forced Vienna to use, during the period immediately following the uprising led by Francis Rákóczi II, a prudent watchful waiting strategy.

Beyond the adoption of the law of succession, no other major constitutional change occurred during the reign of Charles VI. The problems caused by wars and the concern for imposing his daughter, Maria Theresa, as heiress of the Danubian Empire kept him away from the problems of the eastern provinces and, in particular, those of Transylvania. Although they were voted on and adopted in 1722, the articles that modified the Empire's rules of succession came into force only in 1744, when they were promulgated by Maria Theresa.<sup>62</sup>

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<sup>62</sup> *CJH*, Art. III of the Diet of 1744 promulgated the law of hereditary succession to the Principality of Transylvania, as follows: "[...]Therefore, the bodies, by their unanimous vote, by voluntary decision, by word of mouth and with all their heart and soul, stipulate the extension of the right of hereditary inheritance to the daughters of the Austrian house in case the said imperial and royal line is interrupted; this right of inheritance shall apply primarily to His Imperial and Royal Majesty Charles VI, then, in the case of the interruption of this line, to the line of the late Emperor Joseph, and then, in the case of the interruption of this line, to the heirs of the late Emperor Leopold and their legal successors and to the Austrian archdukes of both genders, according to the rule granting priority to the first-born, because the aforementioned Emperor and King Charles VI shall have the same right of inheritance in his countries and provinces inside and outside Germany, as well as in the Transylvanian principality and its annexed territories, indivisibly and inseparably. All the bodies and the orders of the three nations in the Principality of Transylvania, after the Diet of this principality, announced and held on 19 February 1722 and in the subsequent period, on 30 March the same year, have unanimously accepted these issues, with a joint will, for them and for their successors, forever; regarding this, they have prepared a solemn document endowed with the power and effect of Pragmatic Sanction, namely a law that is unchangeable by anyone in any way, forever excluding all contradictions, objections, dispensations, exemptions and exceptions; after the sacred emperor, the beloved father of the august king, consolidated the aforementioned on 30 December 1723, and after their promulgation and ceremonial acceptance in the general Diet of the principality on 24 February 1724, they were considered to be included in the legal code. For this reason, now, in this article, we shall introduce, reinforce and establish the right of inheritance by succession of the august Austrian House and the Austrian archdukes of both genders, in the way and manner mentioned above, together with the related Pragmatic Sanction, this right becoming an unchangeable law; we hereby also declare this right to be in harmony with the article from the year 1723 of Hungary and a dear, fair and acceptable right, whose literal content is accompanied by the imperial and royal endorsement" [our translation]

## II. The Diet of 1744 and the emergence of a new constitutional reality in Transylvania

The incorporation of the Principality of Transylvania in the Habsburg Empire also meant the start of a long process of administrative centralization, marked by the energetic and persevering intervention of the Viennese court in its internal affairs. The country's structural incorporation in the institutional apparatus of the Monarchy started during the reign of Emperor Leopold I and was then continued, more or less aggressively, under his successors, Joseph I and Charles VI. The most significant advances were made, in any case, during the second half of the 18th century, when the reins of the monarchy was taken over by Empress Maria Theresa (1740–1780) and her son Joseph II (1780–1790). The reason for such an undertaking was given by a desire to standardize the institutional and administrative structures of the Empire and to annihilate the provincial particularities that threatened the unity of the monarchy.<sup>63</sup> To succeed in their program, the first thing the decision makers from Vienna had to accomplish was to counter the opposition of the Estates grouped around the Diet.

After the period of juridical lull that was characteristic of the end of Charles VI's reign, the authoritarian principles of government experienced a revival, with the accession to the throne of Empress Maria Theresa (1740–1780). This monarch changed the paradigm of governance, imparting it a blatantly absolutist orientation. Dominated by wars and facing the fierce opposition of the Estates from Hungary and Transylvania, the Monarchy required the implementation of a comprehensive program of structural reforms that would modernize its outdated and inefficient administration and increase its subjects' payment opportunities. In this political, economic and social context, the empress convened a series of diets which, through their legislative activity, were to stabilize the constitutional ensemble of Transylvania by the end of the century. The resolutions issued by the Diet between 1744 and 1848 are known in history as the *articole novelare* (the new statutes).

Held in an extremely tense socio-political atmosphere,<sup>64</sup> the Diet of 1744 played a major role in the legislative evolution of Habsburg Transylvania during the second half of the 18th century and the first half of the next. The articles that it passed and were, later, ratified by the empress completed and consolidated Transylvania's political and legal status in the Habsburg Monarchy, a process that had begun with its incorporation into the imperial structures. The adoption

<sup>63</sup> Andea, "Instituțiile centrale", 392.

<sup>64</sup> Prodan, *Supplex*, 162. The three political nations aimed for the consolidation of their own constitutional rights and privileges, the cancellation of laws that were prejudicial to the Catholic religion and the establishment of the legal situation of the Romanians united with Rome.

of the final bills of law established a clear and unambiguous framework for the relations between the central power and the provincial institutions, in general, or with the Diet, in particular.

Article 1, entitled “On the acceptance of the rule of the August Austrian House by the Principality of Transylvania and the repeal of laws that establish a connection with the Ottoman Porte,”<sup>65</sup> began with a historical sketch of the intra-Carpathian Principality, starting from the period when it was part of the Hungarian Crown until its incorporation into the Empire.<sup>66</sup> It emphasized the autonomy the principality had enjoyed throughout all the historical periods and its constitutional evolution. It presents vassalage to the Ottoman Empire as a result of the adversity of times and as a provisional measure taken for the state’s self-preservation. During this relationship of suzerainty, the Principality’s power-holders had reached certain decisions concerning the Turkish connection and the obedience due thereto, which were prejudicial to the rule, reign and governance of the House of Austria and which this Diet abandoned, repealed and abolished by public decision.<sup>67</sup> All the statutes that laid down the connections between Transylvania and the Ottoman Empire, comprised by the legislation of the Principality, were expressly repealed by

<sup>65</sup> *CJH*, the Diet of 1744, art. 1, 360.

<sup>66</sup> “Centuries ago, the Principality of Transylvania was part of the Holy Crown of Hungary, but even then, carrying the title of a Transylvanian part, it was a separate province, having its own jurisdiction and being governed by voivodes, under certain laws and autonomous statutes. Because of the adversity of the times and circumstances, it broke off and got separated from that kingdom, sitting then under its own princes. Given the increasing power of the Ottoman Porte, with a view to self-preservation and impelled by the necessities that had inevitably arisen under those circumstances, this principality was forced to accept the protection and patronage of the Ottoman Porte, passing different laws and decrees concerning the Turkish connection and the obedience due thereof. Moreover, this principality, after relinquishing the patronage and adhesion of the Porte, surrendered voluntarily under the reign of the glorious Emperor Leopold; in 1687 there followed the negotiations with the *serenissimo* Duke of Lorraine and, in 1688, with General Karaffa, while in 1691 it accepted the Caesar-Royal diploma issued by the same August Emperor for this principality” [our translation] *Ibid.*, 360, 362.

<sup>67</sup> “These included not only a cessation of the connection with the Ottoman Porte, but clearly stipulated the free election of the prince, the voluntary submission to the reign of King Joseph, who was to rule as legal heir of his illustrious father; it has evidently accepted the reign, governance and dominion of this mighty king and his mighty Austrian house, and states that those laws that oppose or contradict this shall obviously lose their effect, being repealed, abandoned and cancelled. We have already done our utmost, in the previous articles, to declare this; so far we have not had such power, but now we can prove our devotion even more. For the rescission by public decision of the laws and decrees encroaching upon the reign, governance and dominion of the said Austrian house, we, all the bodies and orders the three nations from the Principality of Transylvania, by common will and assent, by virtue of this article of law, shall abandon, abrogate and abolish them” [our translation], *Ibid.*

this dietal article.<sup>68</sup> Once the connection with the Ottoman Empire had been broken through constitutional measures, from the standpoint of public law, Transylvania's full incorporation into the Habsburg Empire was also accomplished. What is, however, interesting is the delay with which Vienna initiated the repeal of the laws governing Transylvania's relations with the Porte. A working hypothesis in this sense would be the opposition or successive adjournments of the Estates, concerned to curb the excessive influence of the Court in the internal affairs of the country.<sup>69</sup> Any infringement of its political autonomy or the cancellation of fundamental provisions included in the Constitution could, theoretically, cause Transylvania's reorientation towards the power that was still its *de jure* suzerain. The political inability of the Porte to lay further claims on the intra-Carpathian Principality, coupled with the steep decline in the Diet's authority, drove the Habsburgs to force the removal of any dependency relations between the two.

Article 2 of the Diet of 1744 formally repealed the Estates' right to elect the Prince, which had been laid down in the *Approved* and *Compiled* statutes.<sup>70</sup>

Although the principle had been ousted more than 20 years before, through the approval of the *Pragmatic Sanction*, the official confirmation came under the provisions of the Diet from 1744. The idea that the Prince's mandate depended on the will of the Estates, manifested through their right to *free election*,<sup>71</sup> insti-

<sup>68</sup> Article 2 of Chapter 1 in Part II of the *Approved Constitutions*; Section 5 of the late Prince Gabriel Báthory's provisions; in Article 3, the first paragraph of Section 2 of the same provisions stipulated by Gabriel Báthory, as well as Section 7 herein; in Article 4, Section 13 of the provisions left by Catherine of Brandenburg; in Article 5, Paragraph 3 of the provisions of George Rákóczi I; in Article 6, Paragraph 3 of the provisions of George Rákóczi II; Article 7 of Title 1 in Part II, Section 4 of Francis Rákóczi's provisions; under Title 1 of Part II of the *Compiled Constitutions*, Section 3 of Acațiu Barcsay's provisions and formula of the citizens' oath, contained herein; in Article 4, Paragraph 3 of John Kemény's provisions; Sections 3 and 23 of Michael Apaffy Senior's provisions, together with the formula of *regnicolar* oath contained herein; Edicts 44 and 45 in Part V. *Ibidem*. For the abrogated articles of law, see *Constituțiile Aprobate*, 62–76 and *CJH, Compillatae Constitutiones*, 271–275. Georg Müller, *Die Türkenherrschaft in Siebenbürgen. Verfassungsrechtliches Verhältniss Siebenbürgens zur Pforte 1541–1688* (Sibiu, 1923), 1–148.

<sup>69</sup> See note 65.

<sup>70</sup> Article 1 of Chapter 1 in Part II of the *Approved Constitutions*, together with Prince Sigismund Rákóczi's oath formula; and also Article 2 of the same chapter, along with the oath formula of Prince Gabriel Báthory and Sections 2 and 4 of the provisions; Article 3 and Section 7 of Prince Gabriel Bethlen's provisions; in Article 4, Paragraphs 1 and 2 of Catherine of Brandenburg's provisions; in Article 5, Paragraph 9 regarding free election, introduced by George Rákóczi I and II; further, in Article 7, Paragraph 1 of Francis Rákóczi's provisions; in Article 1 of Title 1 from Part II of the *Compiled Constitutions*, Sections 1 and 7 of Acațiu Barcsay's provisions referring to free election; similarly, in Article 4, Section 7 of John Kemény's provisions and, finally, also herein, Section 7 of Michael Apaffy Senior's provisions. *CJH*, 364.

<sup>71</sup> *Constituțiile Aprobate*, II, 1, [6], 9, 28

tuted an absolute right of decision, which they were entitled to as regards the candidate to the highest office in the state. This possibility of selecting and swearing in the highest official gave the Estates the theoretical advantage of excluding an excessively authoritarian prince. The rescission of the legal articles regulating the right to elect the prince stipulated the hereditary right of the Austrian Emperors over the Principality. This provision being abolished, the Estates lost one of the main legislative powers that had enabled them to play an active role in the constitutional life of the Principality.

Article III of the same Diet completed the previous one, “establishing the right to inheritance and the hereditary right of both lines of succession in the House of Austria,”<sup>72</sup> already discussed in another section of this article. Once the law of succession had been changed, the oaths of mutual allegiance also had to be changed, a constitutional obligation dating from the period of the autonomous Principality. The procedure for the investiture of the monarch, established in the late 16th century,<sup>73</sup> provided that the oath be sworn before the Estates, the monarch undertaking to respect the privileges of the nobility, the accepted religions, the nations, the laws and customs of all co-inhabiting nations, the donations, conveyances, privileges, pledges, the rulings of the previous princes and, in general, all the matters pertaining to the good and welfare of the country.<sup>74</sup> Once sworn, the oath acquired the status of a fundamental law of governance<sup>75</sup> and had to be complied with to the letter.

The same obligation was incumbent on the Estates, which pledged allegiance and loyalty before the sovereign, in the same elective Diet – known as the inaugural Diet in the 18th century. Those who, for whatever reason, were not present in the assembly when the oath was taken were bound to do so in the shortest time possible. The oath could be taken before the prince’s syndics in any assembly, townspeople being able to swear it even in their own home.<sup>76</sup> The penalty for those who knowingly and obstinately failed to take the oath of allegiance was the confiscation of both movable and immovable assets.<sup>77</sup> The role of this mutual commitment between the prince and the Estates was to ensure the constitutional legitimacy of the state’s main governing bodies, allowing them to operate in complete legality. Failure to comply with these obligations incurred, however, the non-legitimacy of their decisions and, implicitly, of the entire governance.

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<sup>72</sup> *CJH*, the Diet of 1744, Art. 3, 364–380.

<sup>73</sup> *Istoria Trans.*, 146.

<sup>74</sup> *Constituțiile Aprobate*, II, 1, [1], 62.

<sup>75</sup> *Istoria Trans.*, 146.

<sup>76</sup> *Constituțiile Aprobate*, II, 1, [1].

<sup>77</sup> *Istoria Trans.*, 77.



Formally maintained in the Diet of 1744, the mutual oaths of allegiance were intended to strengthen the contract signed between the monarch and the Estates and to legally perpetuate the constitutional life of the country. The obligations it stipulated meant that the Estates were reassured of the monarch's goodwill, while the latter received the loyalty of his noble subjects. Failing to honour the contract by either party rendered the governance unconstitutional, entailing the illegality of all the legal documents.

Article 6 reinforced the rights and powers of the Three Nations and four accepted religions,<sup>78</sup> confirmed the rights of the nobility and of the Romanian Greek-Catholic priests,<sup>79</sup> while Article 7 repealed the offensive provisions of the *Approved* and *Compiled Constitutions* concerning the Diocese of Greek rite of Făgăraș united with Rome and the Order of the Society of Jesus, consolidating their existing properties and estates.<sup>80</sup> By strengthening the Catholic religion in all its rights and by cancelling all the limitations thereto, Empress Maria Theresa tried to reinforce her rule by instituting an official state religion. The first piece in this puzzle had been laid in the late 17th century, when a part of the Orthodox Church had united with the Roman Church. On the other hand, receiving the Jesuit fathers back in the country and their reinstatement in all their rights did nothing but reinforce a well-concocted confessional plan.

<sup>78</sup> Prodan, *Supplex*, 163.

<sup>79</sup> "[...] We hereby guarantee and assure all the devoted bodies and orders belonging to these three nations of our beloved Transylvania, together and separately each, without religious discrimination, even the Greek Catholics who, indeed, have united with the Roman Church and thus they are Catholic too, and all the other inhabitants of this principality of ours, of all orders and ranks, together and separately each, that we will strengthen and preserve intact all the rights, laws, privileges, immunities and advantages that our Transylvania received from the said majestic precursors, namely from our beloved grandfather, uncle and father, either through diplomas or through resolutions and sanctions accompanying the letter of faith, both in ecclesiastical and in secular matters" [our translation], *CJH*, 386.

<sup>80</sup> "May the Order of the Priests of the Society of Jesus, as well as the Diocese of the Greek rite of Făgăraș, truly united with the Roman Catholic religion and truly admitted therein, live strengthened in their existing properties and wealth, through the rescission of those items included in the *Approved Constitutions*, *Compiled Constitutions* and other documents that stipulate the opposite, either generally or specifically and partially; thus, we shall declare void those articles that, without prejudice to other religions, insult the Roman Catholic religion, exclude the bishop, prohibit the maintenance and protection of the canons by the archives in Alba Iulia and Cluj-Mănăstur, restrict the positioning of churches, colleges, monasteries and seats of the monks that truly exist in the country to certain locations, prohibit the free practice of religion and oppose in any way the freedoms of the church, declaring void also those articles that expel the Society of Jesus and declare as infidels those who protect it members" [our translation]. *Ibid.*, 390.

Article 9 confirmed the prince's right to turn the bills proposed by the Diet into statutes, by strengthening them with his seal and signature.<sup>81</sup> Although meetings of the Diet had been held prior to that moment, their invalidation by the prince had reduced them to the status of historical drafts, without any juridical import. The right of opposition the Transylvanian Estates had imposed on Prince Michael Apafi on his election was repealed by Article 9 of the Diet in 1744. From that date until 1848, there came into effect a very strict procedure for approving the Dietal resolutions. Pending the monarch's assent, the laws were called "historical documents." The monarch had the right to approve them entirely or partially, to postpone their promulgation (which happened very frequently) or simply to refuse signing them.<sup>82</sup> The transfer of the entire legislative initiative from the hands of the local Estates into the competence of the sovereign in Vienna meant the demise of the Principality's constitutional autonomy and its full assimilation in the bureaucratic structures of the Empire. The loss of all its jurisdictional prerogatives in less than 50 years transformed the Diet into an institution with a strong executive character, whose institutional existence was no longer justified.

The total subordination of Transylvania's central institutions marked the end of the first stage of Maria Theresa's reign, when the sovereign authority was consolidated in relation to the power of the provincial Estates. Consequently, the empress rescinded the legal prerogative of convening the Diet from the year 1762 on, which led to a long period of absolutist rule. The situation was maintained during the reign of her son, Joseph II, who imposed his Enlightenment conceptions as regards the manner of state government, exclusively through edicts and patents.

Guided by his enlightened and utilitarian precepts, Joseph II reigned in a fundamentally different manner from Maria Theresa, from at least two perspectives. First, the measures promoted by Joseph exclusively addressed the needs of the aggrieved, of those oppressed by fate,<sup>83</sup> whom he considered to be the most productive social class. By promoting social policies targeted at the emancipation of the peasantry, the monarch infringed the very constitutional

<sup>81</sup> "[...] the merciful assent expected from His Majesty requires a certain time, and thus the bodies shall construe the article in question as if they, in their own name, in the form of articles, whatever they decide, did not receive legal power until the assent of His Majesty is received and the decision cannot be issued solely under seal and signature, but, at most, it can kept in archives and registers. Then, after the assent of the prince has been received, the printed article shall be endorsed with the seal and signature of the prince and shall be deposited in places stipulated therein. Construed thus, that article may be kept without infringing in any way the sovereign power of the prince" [our translation], *Ibid.*, 392.

<sup>82</sup> Kutschera, *Landtag*, 79.

<sup>83</sup> Prodan, *Supplex*, 258.

privileges of the Transylvanian *nations*. The patent that abolished serfdom in 1785 imperilled the foundations of Transylvanian *constitutionalism*, specifically expressed here through the dissolution of seignorial relations and the placement of the subjects under the protective umbrella of the enlightened state. Joseph's endeavours envisaged, as the text of *Reveries* reveals, a state where there would be no nobility or privileges, and where the emperor and the law would reign supreme over all. On the other hand, although discontent with the opposition manifested by the Estates of Transylvania against her social reforms, Maria Teresa had never ventured to question the nobility's rights over the colons or to abolish personal servitude. The empress upheld the notion of a consensus and of indirectly involving the nobility in the governance process rather than removing the nobles therefrom. The support provided by the Transylvanian and Hungarian Estates in 1741, in the context of the War of Succession to the throne of the Habsburg Empire, drew the young empress's undissimulated sympathy towards them, which she maintained throughout her life.

Secondly, Maria Theresa's religious fanaticism was not shared by Joseph, who adhered to the idea of confessional equality between the denominations present within the Habsburg Empire. Under the 1781 Edict of Tolerance, Joseph II granted religious freedom to the denominations from Transylvania, including the Orthodox, and paved thus the way towards religious emancipation. In the emperor's view, the sovereign – and, by no means, the Church, or the Catholic Church, for that matter – was the sole link that had to exist between the ruler and the people. The emperor's direct relationship with his subjects, consolidated during his many visits to the provinces of his Empire, persuaded him that what was needed was a massive restructuring of the Monarchy. The social inequities he encountered led him to establish a comprehensive reform program, which encompassed all the levels of the administration. During the ten years of his solitary rule, Joseph strove to erase all traces of feudal privileges and of inequalities between people and religious denominations. His legislative enthusiasm was so strong that on the eve of his death, the Empire was on the verge of dismantling. Though he was animated by the purest intentions, his political thought was well ahead of the period in which he lived, dooming his reformist program to failure.

The removal of the Diet from the Principality's institutional sphere enabled the decision makers from Vienna to impose their modernizing Enlightenment precepts through a much simpler, direct legal mechanism: edicts, patents, rescripts, etc. The abundance of these types of regulations, issued over a relatively short period of time, nearly 30 years, highlights the willingness of decision makers at the central level to reform and restructure the institutions of the Principality according to modern, pragmatic and efficient patterns.

The structural changes operated in the economic, social, legal, educational and administrative fields brought forth a fresh, progressive spirit, based on the principles of performance and administrative efficiency, which had been successively implemented in the western provinces of the Habsburg Empire.

The annihilation and subordination of Transylvania's main central institutions allowed the imperials to introduce the Enlightenment principles of government and, at the same time, to attempt to replace the principles of law espoused by the previous legislatures. The major problem of this approach, which actually slowed down the process, was the shortage of sufficient numbers of well-trained and loyal staff members. Although the Diet of 1791 sanctioned the organization of the administrative tier by establishing permanent headquarters for the local administrative institutions and a quick and efficient mail system, carrying out, thus, the royal proposals, the personnel occupying the executive positions still came from among the ranks of the local nobility, averse to any type of juridical and institutional changes.

In the context of a difficult international situation, the failure of this direct and authoritarian formula for administering the Empire reopened the path towards restoring the constitutional formula, which had been abandoned at the onset of the seventh decade. The decision to convene the Diet in 1790 provided the opportunity to the Estates to reaffirm and reinforce the Tripartite Pact and to rehabilitate the old institutional order from before the age of reforms. The restored balance of power with the central government, sanctioned under the enactments of the year 1790–1791, also reaffirmed the social contract between the sovereign power and the noble *people*, conceptualized by Werböczy and reinforced by the writings of Montesquieu and Jean Jacques Rousseau.

The works of the Diet were conducted in an extremely tense atmosphere, during the years 1790 and 1791, the participating nations clamouring for a *restitutio in integrum* of all the rights, prerogatives and privileges that had been skirted or infringed throughout the 30 years of *unconstitutional* rule. The compromise reached between the centre and the provinces as regards Transylvania's legal system had, as a result, the continued recognition of the Habsburgs' authority in Transylvania, which had been severely affected after the reign of Joseph II.

### *III. The Diet of 1791 and the recalibration of the constitution*

The Diet or the *Comitia*<sup>84</sup> of Transylvania represented the country's central decision-making body on matters of legislation, justice and administration and formed the highest proof of the real autonomy of the state. The incorporation of

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<sup>84</sup> The General Congregations that were convened throughout the 28th century were alternatively called *Dieta* or *Comitia*. See *CJH*, 357–398.

Transylvania in the Habsburg Empire reaffirmed the constitutional position it held, keeping its powers and structure intact. Under Article X of the Leopoldine Diploma all its functions and powers were reinforced, consecrating it, along with the sovereign, as the central hub in the country's political gear.<sup>85</sup>

The sinuous course of the institution throughout the 18th century found its final consecration in the works of the famous Diet of 1791. The death of Emperor Joseph II offered the Estates the opportunity to reassert the *constitutional* role of the Diet in the Transylvanian legislative apparatus and to urge the publication of its own internal regulations. This *procedural code* set the structure, functioning and powers of this body, comprising, within a mere five statutes, all the written and unwritten laws theretofore.

Article VII granted the Prince and the Estates convening in the Diet the right to draft, amend, repeal and construe the laws.<sup>86</sup> According to the constitutional precepts formulated by Stephen Werböczy in the *Tripartitum* and subsequently reinforced through practice, the laws of the kingdom did not ensue from the monarch's will, but represented the common will of the estates and the king.<sup>87</sup> Moreover, Section Three prohibited the prince from devising laws that

<sup>85</sup> Article X of Leopoldine Diploma concisely presents the future roles of the Diet, which is referred to as *Comitia*. We shall reproduce this article in full here: *Decimo: Annua Comitia, ad negotia publica tractanda, justitiam administrandam, et propositiones regias, si quae fuerint intelligendas necessaria nec non terminorum octavalium celebrationem nostro Gubernatori et intimo Consilio promulganda comittimus, reservando Nobis omnium quae sic geruntur regiam confirmationem*. The 18 sections of the Leopoldine Diploma have been published by Ioan Lupaş, *Documente istorice transilvane*, vol. I (1599–1699) (Cluj, 1940), 443–444.

<sup>86</sup> “His Holy Majesty graciously admits that the power of drafting, repealing and authentically construing the laws in the Great Principality of Transylvania is common, being shared between the prince and the bodies and orders legally convened in the Diet, stating also that this right of the orders shall remain untouched and, as he has inherited it from the late Leopold I, he shall in turn transfer it to his august successors without amends” [our translation]. BAR CJ, the Diet of 1791, Ms. 17/3, 312. It is significant that for the first time in the history of the Transylvanian Principality, the term legislative power is used. The influence of the work *The Spirit of the Laws* is indisputable, a work written by Montesquieu and published in 1748. The work had tremendous echoes in the former Kingdom of Hungary and even in Transylvania, because it legitimated the principle of the separation of state powers and, respectively, the legal equality between the monarch and the estates. Peter, “The Irrepressible Authority”, XIX.

<sup>87</sup> [3] *Attamen princeps proprio motu et absolute potissimum super rebus iure divino et naturali praeiudicantibus atque etiam vetuste libertati totius Hungarice gentis derogantibus constitutiones potest non facere sed accersito interrogatoque populo si si eis tales leges placeant an ne? Qui cum responderint quod sic, tales postea sanctiones (salvo semper naturalique iure) pro legibus observantur*. [4] *Plerumque autem et populus ipse nonnulla que ad publicum bonum conducere arbitratur unanimi consensu decernit, in scriptisque ptincipi porrigit suplicans super illis leges sibi statui. Et si princeps ipse eiusmodi sanctiones acceptabit et approbabit, tunc vim legis pari modo sortiuntur. Et de facto pro legibus reputantur*. *Tripartitum*, II 3 [3–4], 228.

could undermine the privileges and liberties of the Hungarian *nation*. On the other hand, the *populus* was entitled to legislative initiatives in the matter of the common good, which it was bound to present to the monarch in writing thereafter, for promulgation. Under Article Four of the *Tripartitum*, the princely sanction granted them the legal force required for their juridical enforcement.

Article Seven of the Diet held in 1790–1791 did nothing but reconfirm the right enacted in the *Tripartitum*, whereby the right to draft, rescind and construe laws belonged jointly to the Prince and the Estates legally convening in the Diet.<sup>88</sup> This paragraph served as a preamble to the prohibitions imposed to the Prince in the next one.

Consecutively, Article VIII referred to the executive power, which was also divided between the Estates and the emperor, but was delegated to the provincial representative bodies. The central authority incurred some limitations in this respect, being entitled to issue patents and ordinances only under certain circumstances, strictly regulated by the laws of the country. The monarch could resort to the legal possibility of intervening only when the law was deficient and could not only be completed by this type of statutes.<sup>89</sup> This clarification was specially introduced and drew attention to the far too great number of imperial edicts and patents issued during 1765–1790. The abusive construal of the statutes and the direct and absolutist manner of government led, in the second decade of the reign of Maria Theresa and, especially, during that of Joseph II, to an unconstitutional rule, at variance with the principles of the law in force. On the other hand, the exclusion of the Diet from the legislative process provided a solid reason for the Estates to consider that the period in question was illegal and illegitimate.

<sup>88</sup> “His Holy Majesty graciously admits that the power of drafting, repealing and authentically construing laws in the Great Principality of Transylvania is joint, being shared between the prince and the bodies and orders legally assembled in the Diet, stipulating, at the same time, that he will maintain this right of the orders untouched and, as he has inherited it from the late Leopold I, he will in turn transfer it to his august successors without alterations” [our translation]. *CJH*, the Diet of 1790–1791, 500.

<sup>89</sup> *Ibid.*, art. VIII. “His Holy Majesty hereby reassures the bodies and the orders that he will never govern this principality of Transylvania and its incorporated parts by edicts or so-called patents, which, in fact, cannot be accepted in any court of the country. The issuing of patents is reserved only for the cases in which the effective proclamation on certain otherwise legal themes represents the sole possibility thereof. Thus, by his royal power, he will not modify the legislative exercise as determined or determinable by law and will not prevent the enforcement of legal sentences by court orders that are incongruous with the law and will not allow their being prevented by others; moreover, he will not alter or suspend the legal sentences of the judicial authorities by court orders imposed from above. Legally appointed competent judges shall be the ones who will judge, under the laws that have been created or that may be created in the future, and under the constitution of the country attested by the documents, and the executive power shall be exercised by His Majesty and his successors, upholding the laws.”



During the ten years of his reign, Joseph launched an experiment, guided by the precepts of enlightened absolutism and aiming to structurally change the government system of the Empire. The Josephine reforms envisaged mainly the emancipation of the peasants, the taxation of nobiliary estates, the introduction of new civil and criminal codes, local administration reform and, above all, the eradication of all noble privileges, which hindered the country's development in his view. Without exception and without the aid of the Estates convening in the Diet, all his reforms were introduced by decrees or patents. The onslaught of the Josephine reforms against the privileges of the nobility was doubled by a propaganda that targeted the Transylvanian legislative system and aimed to demonstrate that in Transylvania public law had been perverted by the narrow interests of the nobility, concerned solely to preserve its own privileges.<sup>90</sup>

On the other hand, the issuance of decrees and patents was not unusual in the legislative system of the Empire. On the territories of the Hungarian Crown, including Transylvania, the application of this type of mandates was based on two principles. The first was manifested through the plenitude of power, which belonged to the monarch by virtue of his mandate. This precept was promoted rather intensely by the Habsburgs during the 18th century because it allowed the sovereign to issue laws (*ius legis ferendae*)<sup>91</sup> without the assent of the Estates meeting in the Diet. It was partially used by Maria Theresa in the second half of her reign and fully by Emperor Joseph II from 1780 on.

The second principle stemmed from the right of supervision pertaining to the monarch, as provided in the first article of law issued in 1526.<sup>92</sup> This conception entrusted the monarch the prerogative to use all his authority, power and skill in all aspects of governance, in the wise spending of public money and in everything concerning defence, the freedoms of the people and the other needs of the kingdom.<sup>93</sup>

The right of supervision could be manifested over a fairly wide range of matters, especially regarding the administration and justice. Imperial circulars fell, for instance, into this category. The most important statutes issued by the sovereign that derived from this principle were, however, patents and rescripts. The former had the power to intervene in the amendment and revision of the laws that were deficient or no longer corresponded to the practical needs, while

<sup>90</sup> Derek Beales, "The false Joseph", in *Historical Journal* 18 (1975): 489–490.

<sup>91</sup> Martyn Rady, *Customary Law in Hungary: Courts, Texts and the Tripartitum*, unpublished manuscript, 221.

<sup>92</sup> Ibid.

<sup>93</sup> *Decreta Regni Mediaevalis Hungariae: The Laws of the Medieval Kingdom of Hungary, 1490–1526*, eds. János M. Bak, Péter Banyó and Martyn Rady (Budapest and Idyllwild, CA, 2012), 265.

rescripts (from the Latin *rescriptum* = to respond in writing) supported the enforcement of the law in practice.<sup>94</sup>

Patents governed a comprehensive array of subjects, with a fairly broad spectrum of applicability, ranging from issues pertaining to education and religion to agrarian matters. The most notorious such regulations were: *Certa Puncta*, issued in 1769, which established the duties of serfs and peasants to the nobles; *Ratio Educationis totiusque Rei Litterariae per Regnum Hungariae et Provinciae eidem Adnexas*, on education reform,<sup>95</sup> issued on 22 August 1777; the *Edict of Tolerance* (1781); the *Patent abolishing personal dependence* (1785), issued by Emperor Joseph II after the revolt led by Horea, Cloșca and Crișan,<sup>96</sup> etc.

Rescripts, on the other hand, dealt mostly with law enforcement in certain specific cases, legal mandates, instructions on procedure, etc.<sup>97</sup> Rescripts addressed to the courts of law intervened mainly to speed up trials, to remand cases to a higher court, or to transfer the sentence on the grounds of the judges' possible bias.<sup>98</sup>

In fact, the dietal article did not prohibit the use of patents as a legislative instrument, but circumscribed its applicability to a certain kind of situations requiring such a solution. Thus, by his sovereign power, "the emperor shall not modify the legislative exercise that is determined or determinable by law and shall not prevent the enforcement of legal sentences by court orders that do not comply with the law."<sup>99</sup> One of the ardent desires of the Diet was that the sovereign or his representatives should avoid engaging in the juridical act by issuing rescripts that modified or suspended the sentences issued by the courts of justice, and that the legally appointed judges should be allowed to sovereignly hear the cases.<sup>100</sup>

<sup>94</sup> Henrik Marczali, *Magyarország története II. József korában*, 2<sup>nd</sup> edition, vol I–II (Budapest, 1885–1888), vol. I, 333.

<sup>95</sup> Lucia Protopopescu, *Contribuții la Istoria Învățământului din Transilvania 1774–1805* (București, 1966), 23.

<sup>96</sup> Ovid Sachelarie, Nicolae Stoicescu, *Instituții feudale din Țările Române. Dicționar* (București, 1988), 353.

<sup>97</sup> Endre Varga, Miklós Veres, *Birósági Levéltárak 1526–1869* (Budapest, 1989), 42–60.

<sup>98</sup> Rady, *Customary Law in Hungary*, 235.

<sup>99</sup> CJH, Art. VIII of the Diet of 1790–1791, 502.

<sup>100</sup> "Thus, by his royal power, he shall not modify the legislative exercise that is determined or determinable by law and shall not prevent the enforcement of legal sentences by court orders that do not comply with the law and shall not allow others to prevent this; moreover, he shall not alter or suspend the legal sentences of the judicial authorities by court orders sent from above. Legally appointed competent judges shall be the ones who will judge, according to the laws that are or will be in force in the future and in keeping with the constitution of the country, as attested by documents, and executive power shall be exercised by His Majesty and his successors, in keeping with the laws." Ibid.

As a final consideration concerning this dietal article, we may notice that the terms of legislative power and executive power were used here for the first time in a legal document of the Principality. The connection with Montesquieu's *Spirit of the Laws*, a book that left its imprint on the juridical thinking of the era, is evident in this regard. The principle of separation of powers, enunciated by Montesquieu in his work, legitimized the Estates' claims to a dual system of governance, in line with the text and spirit of Werbözy's *Tripartitum*. Given that it justified and confirmed the expectations of the nobility about the division of powers in the state, the legal terminology imposed by Montesquieu was adopted in the text of the Diet held in 1790–1791. The *New Bible* of the Hungarian nobility<sup>101</sup> led to the Transylvanian Diet held in Cluj in 1792 opening its works with a trio, sung by the Three Graces, a symbolic gesture suggesting the tripartite division of power and the existence of constitutional balance.<sup>102</sup>

In what followed, the statutes consecrated the procedure for convening the *Comitia*, which was to be held annually, at the initiative of the Prince, at a time and place he would set. The summons was to be made by a royal letter sent by the Royal Government, and the Estates were bound to attend the assembly under the penalty provided for in the laws of the country.<sup>103</sup>

Information on the manner and order of the Dietal proceedings are found in Section XI. The Diet consisted of the Royal Government, the Royal High Court (*Tabla Regească*), the supreme officials of the counties, of the Saxon and Szekler districts and seats, the royalists or the royal officials invited to participate in the works through royal letters and representing the prince, two deputies from each Hungarian county and district, from the Saxon seats and districts, the representatives of the royal free towns and boroughs, as well as of the tax-levying places – representatives of all the bodies and orders of the three nations in the Principality. In addition to the categories listed above, by way of innovation, the Catholic Chapters of Cluj-Mănăştur and Alba-Iulia were also represented in the 18th century, with two members each.<sup>104</sup>

<sup>101</sup> Péter, "The Irrepressible Authority", XIX.

<sup>102</sup> Sándor Eckhardt, *A francia forradalom eszméi Magyarországon* (Budapest, 1924), 26–80.

<sup>103</sup> BAR CJ, the Diet of 1791, Ms. M.S., 17/3, 312–313. "Under the laws of the country and section 10 of the Leopoldine Diploma, the Diet shall be held annually, at the time and place set by his Holy Majesty depending on the circumstances; the bodies and the orders shall be convened in assembly in the usual way, by royal letter sent by the Royal Government, and they are bound to attend the Diet, under the condition of the sanction stipulated by the laws. On the occasion of every Diet, under the provisions of their own laws in force and the royal letters of warrant, all the royal bills shall be treated and submitted, with legal freedom, to His Royal Majesty for revision, as shall, besides these, other matters, too, and the complaints which the orders intend to discuss. The laws established by the Diet and consolidated by royal power under Article 9 of 1744 shall be enforced to the letter, and His Majesty and his successors shall oversee their enforcement."

<sup>104</sup> Gál, *Az erdélyi diaeták*, art. 4 of the Diet of Sibiu from 1728.

The deputies' attendance of the Dietal works was subject to their meeting certain requirements. The royalists were appointed by the prince after hearing the Royal Government, which summoned them through special letters, and they had to have the following characteristics: to be sons of the motherland, by consent, to be prestigious nobles with sufficient estates; to possess the characteristics prescribed by law, such as experience, impeccable manners, fair in resolving issues; to be suitable in all respects for discussing the matters of the prince and country.<sup>105</sup>

The deputies sent by the Szekler counties and seats had to have the following virtues: to be well-off nobles, to have knowledge about public administration and to be as different as possible from the confessional point of view. The same qualities, except that of being noble, were demanded of the Saxons from the *Royal Land*.<sup>106</sup>

Once the sovereign's assent on the prince's mandate was granted, the governor, together with the council, handled all the organizational aspects of the Diet, whose works started most often the day of the Holy King St. Stephen. The invitation letter specified at least the theme of the main royal proposals, and the venue was determined by the prince after consultations with the Government. A commissary with full powers was the emperor's delegate, who attended the Diet and represented the sovereign. The official opening of the *Comitia* was done by reading out loud the imperial rescript whereby the bodies and the orders were informed of the royal proposals and the royal resolutions addressed to the bodies and the orders. The prerogative of dissolving the Diet belonged also to the commissary, at a time to be set by His Majesty.<sup>107</sup>

The function of president was normally held by the president of the orders; during his absence, the Royal Government sent one of the most distinguished councillors as president. But before occupying the position, the president of the orders was required, under the old custom, to attend the Government's meeting, where he was to present the agenda of the Dietal congregation. On the other hand, he had to listen to the proposals submitted by the Government so as to inform the orders as accurately as possible, and then to communicate these things in the Diet's session. If the governor participated in the Dietal meetings, he occupied the position of president.<sup>108</sup> If the Dietal assemblies were chaired by the governor, the central power gained, in most cases, a large advantage. As the latter's representative, the president set the agenda and the manner in which the

<sup>105</sup> *CJH*, art. XI, 504.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

sessions were to be held, being entitled to censor certain opinions or simply to ignore the views of certain deputies.

If attending the Dietal sessions, the Government had the following competences: to promote the interests of the prince and of the orders by all manner of counsel referring to the Diet; to strive to balance any differences of opinion and votes between the bodies and the estates, to offer advice, not only when invited to the meeting of the bodies and the orders, but also if things and circumstances required it, by attending the sessions together with them. The Government was also barred from modifying or precluding any resolution adopted by the bodies and the orders, regardless of its quality or contribution.<sup>109</sup>

Having as its main duty the constitutional administration of the country, the Royal Government was not always present among the Estates, but was required to maintain contact with them through delegates. On behalf of the orders, there were usually sent, probably depending on the themes that were to be discussed, two senior officials and two delegates from each of the counties, the Szekler and Saxon seats and, respectively, the tax-levying places. Their role was to present the subject and the causes of the possible disagreements, explaining also which part of the orders was against it. The Government's opinion on the case was submitted to the Diet either through two Secretaries or through certain deputies, depending on the circumstances.<sup>110</sup>

The Diet of 1791 strictly regulated both the order of the debates and the legislative issues debated by the deputies. Thus, the themes proposed were all those issues related to the good of the country and the legislation, arising from the royal recommendations and the desire of the Estates, including the settlement of complaints that generally affected all the orders, certain nations or particular communities and persons. The topics included the determination of the tax amounts, the method of their distribution and collection, elections and nominations for certain diplomatic functions the orders had competency over, the granting of citizenship, borders issue and tax assets, resolving border incidents, provisions governing ownership rights and inheritance rights related to tax assets, cases that could be heard and resolved by virtue of the judiciary power of the orders, under the law. The oppression of any individual was strictly forbidden, the right of expression being guaranteed. In discussing the problems listed above, certain rules were to be followed: above all, everyone was bound to respect the constitution and the government, as well as the rights, privileges and laws of each nation separately. The votes cast were collected by protonotaries, but the report issued by the bodies and the orders that was to be submitted

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<sup>109</sup> Ibid.

<sup>110</sup> Ibid., 504, 506.

to the court had to be accompanied by the opinion of the opposition party or parties.<sup>111</sup>

The agenda was also rigorously established. After the announcement of the royal proposals and the other legislative matters, it was the duty of the president of the orders or the Governor, if the Royal Government was present, to indicate the topics for discussion. It follows directly that without the prior permission of the President, no one could submit anything to debate, not could one interrupt the sequence of discussions that had been defined by the president.<sup>112</sup>

However, in certain well-defined circumstances, the president was required to suspend the normal order of discussions and announce or allow the immediate presentation of certain cases brought before him, if they were very urgent and could not be postponed. These could be: the infringement of aspects pertaining to the common good or cases concerning the oppression of individuals, if their postponement posed the risk of dangers coming to them. The other issues that were not urgent were submitted to the president in writing, and he determined their order in the sequence of discussions, depending on the subjects to be debated. If the president omitted, for some reason, or hindered the tackling of the themes thus advanced, the one who had made the referral had the right to appeal, first to the royal governor and, if he received no solution, then to the royal commissary.<sup>113</sup>

Plenary discussions were also highly regulated. By the end of discussions on a particular subject, no other topics could be taken up, nor could they be mixed with other issues under discussion, except in the cases described in the previous paragraph.<sup>114</sup>

The president highlighted, in each meeting, a preview of the themes that could be discussed during the next meeting and the date of the following session. He also informed the orders of the place where he had filed or would file the most important documents, so that everyone could inform themselves and prepare accordingly for the coming debates. The schedule of the meetings had to be established so that there would be an adequate period of time between addressing an issue and submitting it to the Common Office.<sup>115</sup>

After the clear presentation of the nature of the text under discussion, all the attending deputies were entitled to express their views and contribute to the discussion. Whoever wanted to express his opinion had to stand up and beckon the President by raising his hand or to state his intention. The president was

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<sup>111</sup> *Ibid.*, 506.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*



required to give the floor to everyone, in the order in which the deputies had signed up through the procedure described above, without granting any other priorities. In order for the correct order of the discussions to be maintained, it was very important that every class and every individual should remain in place and on their designated seats.<sup>116</sup>

Those who took the floor had to be brief and moderate, not to extend to other topics that were unrelated to the matter in question and not to create a state of tension through the use of obscene or indecent words against those of a different opinion. Otherwise, they were to be severely reprimanded by the president, and if this behaviour continued, they were permanently removed from the Diet, under the penalty of a *broken seat*. It is uncertain whether the penalty of the broken seat was applied *ad litteram* or whether the turbulent deputy or deputies were simply removed from the Diet. Unfortunately, neither the Romanian, nor the Hungarian historiography provide any indication in this regard.<sup>117</sup>

The right to speak was guaranteed and speech interruption was strictly prohibited. In the event that this happened, the president took over his role as a mediator, restoring order, reprimanding the culprit and punishing him, if his behaviour continued, with the penalty stipulated in the preceding paragraph.<sup>118</sup> Dietal meetings were open to the public but only subject to seat availability and under strict rules.<sup>119</sup>

After all opinions had been heard, the president had the duty to summarize the matter. He listed the for and against reasons, as well as the strong arguments, proceeding to make a decision in keeping with the majority votes.<sup>120</sup> The first to vote were the royalists, including the Royal High Court (*Tabla regală*) and

<sup>116</sup> Ibid., 508.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid., 510.

<sup>120</sup> "The consecrated ballot model in the Transylvanian Diet was the ballot by nations (*Kuriatvotum*), the unanimity of the three nations being required to validate an article or a law in its entirety. The right to vote remained unchanged up until the Diet of 1791. Regarding the order, royalists were the first to vote, then the government members cast their ballot, followed by the great officers, the county and district deputies, and the delegates of the tax-levying settlements, but their voices were assimilated to the common voice of the nation to which they belonged. Thus, while the approximately 300 individual voices were not taken into consideration, the three curiate voices of the Nations were. If one of the Nations (especially the Saxon one) voted with a majority against a decision of the Diet, the latter became, by law, invalid. The curiate vote, which protected the Saxon Nation, was repealed by a majority vote in the Diet session of 7 July 1791; the individual vote was instituted, and the means of opposition left to the Saxons was the refusal of applying the seal of their Nation on the decisions reached by the Diet." Seton-Watson, *History of the Romanians*, 174; Kutchera, *Landtag*, 74.

the senior officers, and then the ballot was cast by the representatives of the counties, of the Szekler seats, the Hungarian districts, the Saxon seats and districts, the royal towns and the tax-levying places.<sup>121</sup>

The procedure of authenticating the resolutions was rather difficult; protocols were drafted at the end of each congregation by the Systematic Deputation, being subsequently reread at the beginning of the next session and, if they were approved, the president of the orders and the protonotary authenticated them. Preparing the proceedings in accordance with the resolutions was the duty of the protonotary scribe who, after drafting them, read them in session before the bodies and the orders. After their approval, the proceedings had to be transcribed and marked with the seals of the three nations.<sup>122</sup>

### *Final considerations*

The constitutional evolution of Transylvania in the first half of a century after its incorporation in the Habsburg Empire witnessed three important moments. The first coincided with the issuance of the Leopoldine Diploma on 4 December 1691, the peak political moment in the evolution of the relations between the Court of Vienna and Transylvania's Estates. Throughout the 18th century, the efforts of both camps were centred on compliance with or circumvention of the 18 sections of the Diploma, and the supreme stake was the control exerted over the newly established institutions. The skilful use of diplomacy and a rewards policy focused on promoting characters who were loyal to the absolutist policy to key positions in the Principality tilted the balance of power in favour of the Habsburgs in the middle of the 18th century.

The second moment refers to the exploitation of the political influence Vienna had gained in relation to the Estates of Transylvania through the Dietal resolutions of 1744. The position of force Empress Maria Theresa had acquired enabled her to force the adoption of a new *Legislative Code*, which, on the one hand, eliminated the autonomist provisions and, on the other hand, confirmed the new constitutional realities.

As seen in this study, the incorporation of the Principality in the Habsburg Empire did not initially attract fundamental changes in the institutional functionality of the Diet. With its prerogatives preserved intact and guaranteed by Article Ten of the Leopoldine Diploma, it continued to meet and debate the bills submitted by the Prince, even though not as consistently as before. The fundamental problem this body was confronted with in the early part of the 18th century concerned, however, its legal effectiveness. The Habsburg emperors'

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<sup>121</sup> *CJH*, the Diet of 1791, 508.

<sup>122</sup> *Ibid.*

tendencies of taking over legislative decision and institutional control led to a vast process of administrative centralization. The Court's energetic intervention in the internal affairs of the Principality manifested primarily by marginalizing the constitutional role of the Diet, which was forced to discuss only matters of little or secondary legislative import. Its activities revolved around discussions about the amount of the taxes and military quarterage, which created many conflicts between the three constitutional *nations*.

In this entire period, the country experienced the slow but systematic integration of all institutional structures within the bureaucratic apparatus of the Monarchy. Although it started during the reign of Emperor Leopold I and continued, more or less strongly, under his successors, Joseph I and Charles VI, the most significant centralizing progress was registered in the second decade of the 18th century, when the reins of the monarchy were taken by Empress Maria Theresa (1740–1780).

Aware, at the time, of the danger that passing legislative initiatives without the consent of the Estates grouped in the Diet represented, the empress promoted a different legislative strategy from that of her predecessors. She summoned the Estates to confirm and to enshrine, under the law, all the constitutional amendments made in the legislative system of the Principality since its incorporation into the Empire. Through an astute strategy that used both the policy of rewards and that of political pressures, Maria Theresa succeeded, within the span of only ten years, in tipping the balance of power in favour of the Court in Vienna.

The Diet of 1744 played a major role as regards the subsequent juridical relations between the Court of Vienna and Transylvania's key decision-making institutions. The legislative issues debated and then enacted by the sovereign constitutional operated such profound changes into the realities of the Principality that historiography has rightly called it the *new legislative code* of Transylvania. Among other things, it validated the amendments brought to the laws and the *constitution*, by decisions taken in the previous period, and we are referring in particular to the provisions of the *Pragmatic Sanction*. Articles Two, Three and Four raised the new juridical order to the status of law, abolishing the right of the Diet to elect the prince and, at the same time, accepting succession along the female line.

Besides political issues, Vienna was also interested in religious matters, the Catholic denomination being at the forefront of the Habsburg officials' concerns. Article Seven of the same Diet of 1744 repealed the articles included in *Aprobatae Constitutiones* and *Compilatae Constitutiones*, which were detrimental to the Roman Catholic religion, putting an end to the status of inferiority that it had in relation to Protestantism. At the same time, the law also recognized the status of the Greek-Catholic Church and its clergy, guaranteeing the latter's

existing properties and the free exercise of its faith throughout Transylvania. A final aspect that the empress pursued strongly and meticulously concerned the status of the College of the Society of Jesus. Restoring it into legality under Articles Seven and Eight represented a particularly important victory for Maria Theresa over the Estates, which were forced to confirm and to return all its previously confiscated properties. The importance of this order in the eyes of the sovereign rested on its ability to revive the Catholic faith in Transylvania and gradually change the confessional paradigm in the Principality through intense religious proselytism.

The articles of the Diet held in 1744 highlighted two fundamental issues that were specific of Maria Theresa's entire reign. The ethnic and religious diversity that characterized the Habsburg Monarchy and the rapid territorial acquisitions the Empire had acquired over the past hundred years demanded a quick answer to this issue, meant to homogenize and provide cohesion to a heterogeneous political ensemble. The empress's plan was aimed, on the one hand, at creating a dynasticism designed to gather together the provinces around the monarch, seen as a true cementing bond between the peoples of the empire. The haste with which the sovereign proposed to the Transylvanian Diet that the *Pragmatic Sanction* should be elevated to the rank of law and the right of appeal granted to the subjects by Article Two of the Diet held in 1753–1755 confirm this hypothesis.

On the other hand, placing Catholicism at the focus of reformist concerns represented a political necessity rather than a personal whim at the time. In the midst of a war for succession to the throne, Maria Theresa was convinced that along with various aspects pertaining to dynastic loyalty, the Catholic religion would play a crucial role in creating a common identity. The measures taken to promote Catholicism were evident ever since the beginning of her reign and continued until her death in 1780. The legislation issued in the following Diets confirmed this denominational strategy.

The third moment that marked the consolidation of Transylvania's constitutional realities in the 18th century was coeval with the Diet of 1791. This Congregation brought to fruition the legislative labour characteristic of the 18th century by definitively entrenching the patterns of governance. The constitutional conflict between the centre and the province, which lasted exactly 100 years, had found its final expression in the movement for restoring the institutional and political structures prior to the age of reforms.<sup>123</sup> Carried out in the spirit of *restitutio in integrum*, its provisions rebalanced the relations of power with the central government, so damaged during the reign of Joseph

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<sup>123</sup> Ibid.

II. The monarch's prerogatives were strictly outlined. He was made aware that he shared both legislative and executive authority with the provincial Estates and his right to govern through patents was strictly prohibited. The issuance of such normative documents was reserved only for certain cases, well established under the laws of the country. Through the decisions it took, the Dietal assembly virtually reinstated the *de jure* situation enshrined in the statutes of 1744, placing them in definitive patterns.

#### DE LA PRINCIPAT AUTONOM LA PROVINCIE HABSBURGICĂ. ROLUL LEGISLATIV AL DIETEI TRANSILVANIEI ÎN SECOLUL AL XVIII-LEA

##### *Rezumat*

Acest studiu și-a propus să abordeze mai multe aspecte fundamentale legate de istoria constituțională a Principatului Transilvaniei în secolul al XVIII-lea, concentrându-se asupra rolului legislativ deținut de instituția dietală. Cu prerogativele sale intacte din punct de vedere juridic, așa cum erau garantate de articolul 10 din Diploma Leopoldină, Dieta a continuat să se întâlnească și să discute inițiative legislative până la cea de a doua jumătate a secolului al XVIII-lea, atunci când, datorită politicii de centralizare promovată de către împărăteasa Maria Tereza, a dispărut pentru o lungă perioadă de timp din viața constituțională al principatului. Eșecul modului direct și autoritar de administrare a Imperiului, în contextul unei situații internaționale dificil, a condus spre restabilirea formulei constituționale abandonate la începutul deceniului al șaptelea. Decizia împăratului Leopold al II-lea de a convoca dieta în 1790, a permis stărilor să reafirme și să restabilească vechea ordine instituțională de dinainte de epoca reformelor. Echilibrul de putere cu guvernul central, sancționat în conformitate cu articolele legislative ale anului 1790–1791, a reafirmat, de asemenea, contractul social între puterea suverană și popor (nobilime), conceptualizat de Werböczy și consolidat prin scrierile lui Montesquieu și Jean Jacques Rousseau .