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THE THEORY OF NATURAL LAW BY MIHÁLY SZIBENLISZT, WITH SPECIAL REGARD TO THE CONCEPT OF STATE

PhD Thesis Summary

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I. Objectives of the Research

The purpose of my dissertation is to describe the author's concept of Natural Law on the basis of his work entitled *Institutiones juris naturalis*, with special regard to his views on State. My goal is twofold: firstly, I intended to outline the perception of public law at the dawn of the 19th century, upon which basis the Hungarian political players of the Reform Era were able to sketch up the public law that corresponded to the needs of the bourgeois period. Secondly, the analysis of the concept of State developed by Mihály Szibenliszt also provides an opportunity for highlighting the role of the State, formulated for the first time in the 17th and 18 th centuries by the public lawyers active in the European centralized states that had renounced particularism; the reconciliation of such roles with civilian freedom became the characteristic program of the 19 th century.

The analysis of Szibenliszt's *Institutes of Natural Law* (considered as his main work, however not yet thoroughly researched) can significantly contribute to a more nuanced picture of Hungarian jurisprudential tradition, and help us discover the values discernible in the effort of Szibenliszt to try and update the officially approved and in many respects outdated views regarding Natural Law by Karl Anton Martini, an Austrian philosopher, in accordance with the then contemporary spirit of Szibenliszt's era.

In the *Institutes of Natural Law* the author speaks as a natural lawyer, and analyses certain legal institutions and legal terms that were compulsorily discussed by contemporary scholars of Natural Law from a philosophical point of view. Based on the scientific achievements of the 18th century regarding Natural Law, Szibenliszt compiled a two-volume recapitulative study that was intended to be used as a legal textbook, written in a polished and elegant Latin adapted to the requirements of his age. His work also provides a theoretical basis for the views and opinions that consider the State as a social phenomenon in the 19th century.

Szibenliszt was active in an era when legal theory (due to the development of the so-called Natural Law School, later called the Law of Reason School) had become

a discipline in its own right. The task of philosophers was to specify the contents of Natural Law, and develop codices based on the Law of Reason, also with regard to the innate characteristics of Man. In Hungary this trend had many followers even in the 19th century. With his work published in 1820, Szibenliszt may be classified as a representative of the Hungarian Natural Law School, who pursued his research under the influence of the Kantian „law of Reason" and also wished to comply with the tasks outlined above.

The *Institutes of Natural Law* of Szibenliszt were not permitted to substantially deviate from Karl Anton Martini's *Principles of Natural Law*, compulsorily taught in Hungary until the Austro-Hungarian Compromise in 1867. Szibenliszt was the first scholar who reversed this official jurisprudential trend by his work; such attitude reflected the paradigm change that in the meantime had occured in Austria. His *Institutes* conveyed the views of Zeiller and Egger regarding Natural Law, and also incorporated the new Kantian approach. At that time the works of Zeiller and Egger (the successors in the chair of Martini at Vienna) on Natural Law were already declared part of the official university curriculum. Quite obviously, the approach adopted by Zeiller and Egger regarding Natural Law was based on Martini's *Principles*, and also commented on his work, but - according to the new academic approach - it also endeavored to distinguish morality from law more precisely, and define the legal terms in an accurate manner. By publishing his *Institutes of Natural Law* and using his own experiences as teacher of Natural Law, Szibenliszt offered his students a textbook that helped them to interpret the compulsory curriculum of Natural Law quite creatively. In doing so, an analytical work was created, characterized by a specific manner of reasoning and a clear editing conception. In the cases where the author refutes Martini's allegations, his dissenting opinions are often based on the views of Zeiller and Egger.

The most detailed analysis of Szibenliszt's work in the 20th century is interpreted by Imre Szabó. Szabó calls the author's philosophical approach restrained, cautiously adopting the Kantian ideas, according to which Szibenliszt answers certain Kantian queries in a „feudal" manner. Imre Szabó opines that, in his concept relative to State, Szibenliszt entirely followed Martini's views. In my dissertation I also tried

to examine these conclusions, with special regard to the fact that the theory of State as proposed in the *Institutes of Natural Law* has not yet been examined in detail, despite the fact that such topic represents a significant part of the Natural Law theory of Mihály Szibenliszt.

First of all, as a first step, I intend to outline the processes that conducted to the development of the Hungarian teaching of legal theory. I wish to point out the requirements of the era in question that challenged Szibenliszt and to which – according to my conclusions – the author tried to give adequate answers at the highest possible standard under the circumstances.

Thereafter, in addition to the presentation of the structure of the *Institutes of Natural Law*, I endeavor to outline the general principles of Natural Law that Szibenliszt consistently displayed in his work, and consequently applied to the State as well.

The Natural Law of Szibenliszt focuses on examining the individual and society. Based on the analysis of the individual, the general characteristic of communities and associations, then the specific types of the latter, the author arrives at the State, considered the most significant social formation of individuals. Following this system, I present the concept of State based on Natural Law, as developed by Mihály Szibenliszt that provides additional interpretational basis for the understanding of the legal theoretical trend that emerged at the beginning of the 19th century.

II. Research Methods and Resources

As I mentioned hereinabove, the most recent academic assessment of the Natural Law theory of Szibenliszt is provided by Imre Szabó, who opines that Szibenliszt followed Martini without any criticism while he was developing his own concept regarding State. Therefore, I considered it indispensable to compare the two systems of Natural Law from the aspect of Constitutional (Public) Law. In such comparison I used the second edition of the work of Mihály Szibenliszt entitled „*Institutiones juris naturalis*", published in two volumes in 1830-1831 in Latin, furthermore Martini's works (also published in the Latin language) in 1795, entitled *De lege naturali positiones* and *Positiones de iure civitatis*. With the exception of *De lege naturali positones*, such works have no Hungarian translation. In addition to such publications I also reviewed the text of Martini's *De lege naturali positiones* translated into Hungarian by Samuel Dienes and published in 1792, with regard to the fact that contemporary Hungarian academic studies generally refer to such edition.

I also considered it important to examine the works of certain contemporary authors whom Szibenliszt generally refers to. Therefore I extended my reading to the work of Franz Zeiller titled *Das natürliche Privatrecht* and published in 1802 (whose Latin translation was published under the title of *Jus naturae privatum*), that incorporated the latest intellectual achievements of the era; furthermore the work of Franz Egger published in 1809, entitled *Das naturliche öffentliche Recht*, that interpreted Martini's concept of Natural Law.

Furthermore, it was also important to point out the significance and role of Kant's ideas in the opus of Szibenliszt that can be observed in the discussion of the general priciples of Szibenliszt's Natural Law. I paid particular attention to two works of Antal Virozsil, a successor of Szibenliszt in the university chair; the first one was published in 1833 under the title of *Jus naturae privatum* and the second one in 1839 entitled *Epitome juris naturae*. I endeavored to study these works under the aspect, to what extent such works offered new interpretations compared to the concept of Szibenliszt, or followed the concept of Natural Law as proposed by Martini.

III. Summary of Scientific Achievements and Their Possible Utilisation

I trust that the subjects examined contribute to obtaining a deeper understanding of the theoretical works of Hungarian Jurisprudence in the early 19th century. The textbook of Szibenliszt was created in a period when any reference to Natural Law (as Law of Reason) might provide a good basis for the formulation of certain reformative ideas. The references to certain "natural laws" given by God and supported by Biblical quotations were slowly replaced by a conceptual system based on rational arguments. This kind of reasoning can be perceived in the works of Hungarian reformers of the 1840s, such as Ferenc Deák and József Eötvös, who both had been students of Szibenliszt and who effectively represented the new manner of thinking.

Szibenliszt's concept of Natural Law is not based on the characteristics of human nature, and on the detailed examination thereof from an ethical aspect, but – in perfect accordance with the principle of abstract racionalism – the author derives it from pure reason. In doing so, Szibenliszt follows Kant's theory, as he also believes that Natural Law is manifested most clearly in the distinction between "legitimate" and "illegitimate". In his opinion, it is the essence of human nature (on the basis of sensual experiences) to seek happiness; however, on the basis of rationality, which is a superior ability, people pursue a behaviour that is considered lawful by any other intelligent being.

1. Szibenliszt's definition of Law is based on Kant's thoughts, as far as the concept of law and legal order include the authorization to use force (*coactio*). In order to illuminate the essence of Natural Law, Szibenliszt compares it to Positive Law. While Natural Law sets out certain principles of universal validity, and it is considered as necessity, Positive Law is based on arbitrary decisions and is particularistic, as well as it is characterized by constraints, a dependency on certain conditions, and temporality.
2. In addition to the presentation of certain principles of Natural Law, Szibenliszt

considers it essential to use these principles in practice as well. He also points out that society is necessarily to be analyzed not only in its abstract details, but also in the most specific relations as well, thus the study of Positive Law is of great importance.

3. While setting up a distinction between Natural Law and ethics, Szibenliszt is more consistent than his predecessors. This is also indicated by the fact that he avoids dealing with the interpretation of ethical terms. If the author still does so, such interpretations have a legal significance. For example Szibenliszt emphasizes that, in all cases, rights are accompanied by obligations, and he attributes great importance to this legal principle later, when he describes the rights of the sovereign. In order to illustrate this principle he explains the essence of innate rights (*jura connata*) that are parallel to the innate obligations (*obligationes connatae*). Thus he refers to moral obligations such as fairness to others, the recognition that all people are equal (*officia aquitatis*), the obligation to assist others (*juvare*), the love towards others (*caritas*), the fair treatment of one's enemies (*officia erga inimicum*), and finally the abstention from any illegal conduct (*abstinentia a violatione juris*).
4. With reference to the discussion concerning innate and acquired rights - such as the right to self-preservation and perfection (*jus conservadi et perficiendi corpus*) arising out of personal freedom, the right to preserve one's mental health (*jus conservandi et perficiendi animum*), which also implies the freedom of thought and speech (*jus liberae cognitionis et liberae communicationis idearum*) and the right to good reputation (*jus bonae aestimationis*) – Szibenliszt provides a very detailed description of ownership (*dominium*). It also shows that he considers ownership as an important and fundamental right, despite the fact that ownership is defined as an acquired right. By making a parallel between ownership (*dominium*) as an acquired right, and the right to supreme State power (*imperium*), Szibenliszt emphasizes the illegitimacy of the arbitrary acquisition of supreme State power. The acquisition of State power, similarly to ownership, is based on consensus - which excludes, among others, the reference that a sovereign rules by God's grace.

5. While explaining the essence of Natural Law, Szibenliszt refutes the idea of Martini, according to which the various possible concepts of Natural Law have their origin in God, which concept still emphasizes that Natural Law has its fundaments in certain theological arguments. With this distinction Szibenliszt intended to demonstrate that natural Law was different from ethics.
6. In his book Szibenliszt refers to the division of Natural Law into Private and Public Law, as also used by Kant, however Szibenliszt prefers a classification by setting up the categories of *jus extrasociale* and *jus sociale*. This typology permits to develop a system into which the Law of Nations (*jus gentium*) can also be integrated with relative ease; however, in a manner different from the methodology of Martini, Szibenliszt discusses the issues of *jus gentium* within the realm of *jus sociale*. By using the division of Natural Law into Private and Public Law, Szibenliszt argues in favor of the concept proposed by Zeiller and Egger, but also insists on his own ideas relative to systemising.
7. Szibenliszt presents the general rules of society (*societas*) in the second part of his Natural Law, under the heading of *jus sociale*. He includes the discussion of the basic types of society, such as the family and the State, and the specific rules applicable to such communities. This thematization is different from the concepts of Martini, Zeiller and Egger, and is based on the consideration that one must examine the social basis that is the starting point for the development of the community into a state. The general regularities can be deduced from this aspect, and such general principles are also valid for the State as the highest form of human coexistence. Thereby such a definition of society is proposed, whose conceptual elements are generally recognizable in all types of society: no human community may lack the contractual base, the common goal, the acting as a moral person in the community area, and the legal personality attached to such moral entity.
8. Szibenliszt consistently argues that every society is created by contract. Thereby he rejects Martini's alternative concept relative to the origin of human society, according to which a society can arise not only by contract, but pursuant to a command of law as well. As an example of human society created

by a command of law, Martini, Zeiller and Egger refer to the society formed by parents and children (*societas parentalis*) – while Szibenliszt insists on the contractual basis and finds the origins of such community in a contract, namely matrimony, that also includes the raising and education of any future children of the married couple.

9. According to Szibenliszt the relationship between masters and servants (*societas herilis*) cannot be considered to be a real society, because such relationship lacks a common goal. In his opinion such relationship is governed by a work agreement (*locatio conductio operarum*), and thereby the author excludes the issues of servitude and slavery from the realm of Natural Law. Szibenliszt's statments suggest that he considers subordination as a characteristic of Public Law and not Private Law, as in the realm of the latter equality of rights must prevail.
10. Szibenliszt attributes separate legal effects to all three types of social contract (*pactum unionis, pactum constitutionis, pactum subjectionis*); thereby he breaks with the theory of unified social contract as represented by Martini.
11. In accordance with the traditional theory of society proposed by Natural Law, Szibenliszt adopts the fundamental distinction between equal (*societas aequalis*) and unequal societies (*societas inaequalis*). With regard to the discussion of the decision-making process, the former one has more significance. In the case of equal societies the members have equal rights to vote, and the votes are not allowed to be weighed. The decision is usually adopted by unanimous voting, that expresses the unanimous will of the members. As it is quite difficult to reconcile the various views within any society, and therefore unanimous decisions are relatively rare, such problem can be eliminated if the members determine the matters in advance, and by unanimous voting, in which they require a different voting order. Thus Szibenliszt refutes the view – still supported by Antal Virozsil – that, in the case of equal societies, decisions can be drawn by a majority of votes without any prior consultation, with reference to emergency.
12. Szibenliszt's specific analysis of societies is limited to two association types,

which can universally be found in every human community: the domestic society (*societas domestica*) and the civil society (*societas civilis*). Szibenliszt excludes the Church (*ecclesiae*) for several reasons, and he also excludes the relationsip between master and servant from the sphere of *societas domestica*, because he opines that such relationship does not entirely display all major characteristics of society.

13. Among the characteristics of the State as *societas*, the author emphasizes the desire of common good as a common goal because, in exercising the supreme State power, the common goals must always be kept in perspective. Szibenliszt also proposes that the establishment of a State is governed by the same rules applicable to any other society; therefore the three fundamental types of *contrat sociale* have their own significant legal effects.
14. The author does not expressly refer to the various conceptual elements of statehood; however, in the analysis of the fundamental characteristics of civil society (in addition to the discussion of supreme power - *imperium civile*), he refers to the population and the territory of a state. In Szibenliszt's interpretation the subject status of the citizens means subjection to the laws, and the author regards citizens as passive participants of State power. *Civilis nexus* means any and all rights and obligations, to be interpreted as a Public Law relationship between the subjects and the Head of State (*Imperans*). In this regard the author points out that one should not make any distinction between citizens on the grounds of gender, religion, wealth or race.
15. Szibenliszt presents the issue of territorial sovereignty in accordance with the traditional system. In this system, territorial sovereignty is one of the sovereignties exercised by a State. However, in the analysis of *jus territoriale*, it becomes quite obvious that Szibenliszt disagrees with the approach that considers the territory of a State as the private property of a sovereign. The territorial sovereignty by Szibenliszt can be interpreted only within the framework of Public Law; such sovereignty is a right representing the powers of a State within its borders. It expresses the right of a State pursuant whereto the party exercising State sovereignties is legitimately able to determine the

actions of the subjects permanently (*subditi proprii*) or temporarily (*subditi temporarii*) living within its territory; in other words, he has the right to govern such subject legitimately. By this approach Szibenliszt substantively detaches from the concept that interpretes *jus territoriale* as a part of State sovereignties.

16. Szibenliszt doesn't regard the classical and traditional attributes of State power as being unlimited. Such attributes may be enforced within the sphere of authority of a State - in other words, the powers of the State shall not be exercised beyond the the limits designated by the ultimate goal, which is common good. Szibenliszt draws a parallel between supreme State power (*imperium*) as an acquired right, and another acquired right, which is ownership (*dominium*). Based on the model of ownership, supreme State power can be subdivided into partial rights. With this statement the author anticipates the famous later model based on the separation of powers.
17. State power (or public power) is an essential and basic right that determines the valid and legal measures necessary for the achievement of the goals of the State, the latter conceived as a community; furthermore, State power also authorizes the enforcement of such measures – claims Szibenliszt, while he conceives the exercise of governing authority within an already existing legal framework. This right, in a manner similar to ownership, is an exclusive right, which also means that only a sovereign State may universally exercise it. The divisibility of State powers into certain partial rights does not contradict the idea that such powers are indivisible, as said indivisibility refers to the circumstance that a State exclusively holds all sovereignties, and it does not share such powers with other organizations, thereby avoiding any particularism and feudal fragmentation.
18. Supreme State power, as it has been previously stated, is not an unlimited right, and it is limited by several factors. The first of these factors is that such power is an acquired one; in other words, it is limited by the fundamental social contract that resulted in the establishment of the State in question. A further limit within the realm of essential sovereignties (*jura majestatica essentialia*) is the principle of limited goals, i. e. State power can involve only as much right

as it is required in order to sustain legal certainty. As far as accidental (*jura majestatica accidentalia*) or acquired sovereignties (*jura majestatica acquisita*) are concerned, their limitation is determined by the means of their acquisition, which depends on the contents of the contract concluded between the subjects (*subditi*) and the Sovereign (*Imperans*). The interpretation of sovereignties as representative rights (*jura representativa*) acts against the unrestricted exercise of State power as well, because the supreme leader of a State is conceived to act on behalf of the subjects, as a representative of the State in question.

19. Szibenliszt provides a descriptive interpretation of the separation of powers, he contemplates such separation from a technical aspect, and he identifies the basis of such separation of powers in the trial governance functions that characterize all types of society. While describing unequal societies, the author exposes his ideas relative to the creation of norms, their enforcement and the revision of their effectiveness. These are the measures of governing that characterize all types of societies.
20. The author conceives the scope of legislative authority in accordance with the goals of State. Szibenliszt opines that the actions of the subjects should harmonize with the goals of the State in question. Law-abiding behavior requires that the norms to be followed be promulgated among the subjects, thereby avoiding that individual and biased decisions be made in favor of certain subjects. Thereby Szibenliszt formulates a fundamental and essential requirement, namely that laws must be equally binding for everyone. His opinion concerning the personal requirements of legislation is as follows: legislative assemblies and bill-drafting bodies are able to provide the complex legal expertise and competence required for legislation, as such knowledge is seldom held by an individual. With this idea the author directs the attention of his readers towards the concept of parliamentarialism. Differently from Martini's view, Szibenliszt derives the binding force of State laws from consensus and not any supreme power, i. e. he considers the binding force of such laws to be an obligation arising out of the original *contrat sociale*.
21. Within the framework of a specific "theory of legal norms", Szibenliszt

expresses the opinion that the objecives of State laws can only consist of certain voluntary and externalized actions. Furthermore, there exist certain actions of the subjects that do not fall within the competence of any public authority, and in this respect civil freedom must be guaranteed. The legislator should always consider the freedom of citizens, and such freedom may be restricted only to due and proper cause, and only by specific legal regulations.

22. Szibenliszt believes that the principle of equal rights requires that the same laws apply to each individual. However, this principle cannot always be enforced, as people are physically and intellectually unequal – therefore Szibenliszt recognizes that positive discrimination may be justified in certain cases, when some subjects may be exempt from certain laws on the basis of fair treatment. Furthermore the author agrees that the legislator, exercising supreme State power, has the right to consider themselves exempt from State laws. This principle expresses the lack of liability and inviolability of the State – however Szibenliszt adds that State laws enacted in accordance with certain fundamental rules of Natural Law also bind the sovereign, consequently the sovereign may also be forced to abide them, just like any other subject.

23. By virtue of the supervisory power (*potestas inspectoria*) the State assesses the conditions and circumstances under which it is possible to specify the measures necessary to achieve the goals of the State. The principal aim of the supervisory power applicable to the natural and moral persons is to harmonize the actions of the subjects and the goals of the State, and to make efforts in order to prevent and eliminate any acts harmful to society.

24. The executive power (*potestas executiva*) of the State, as defined by Szibenliszt, is the authority to enforce the rights of the same State, in respect whereof the State may also use coercive measures. However, during the exercise of such coercive power, the State is obliged to respect the rights of every subject, which also implies that - in the absence of ultimate necessity – no coercive measures can be applied. On the other hand, the State shall apply such measures in the event of emergency; still, only to such extent that inspires the subjects to avoid any practices contrary to State goals and harmful to

society. In doing so, the principle of proportionality must be followed.

25. The theory of Natural Law proposed by Martini, Zeiller and Egger describes a great number of specific competences within the sphere of executive power. Szibenliszt also deals with such issues, but within a different framework. He declares that these competences cannot be considered as originating only from executive power, and consequently subordinated only and exclusively to such executive power. In order to exercise such competences, legislative and supervisory powers are also required. Executive authority is necessarily manifested through the exercise of the supervisory power by a State, and its scope and range of validity are defined by the legislative branch. The latter statement by Szibenliszt cautiously expresses the requirement formulated by Rousseau; namely that the executive branch must be subjected to the control of the legislative branch.

26. Szibenliszt's statements suggest that, to a certain extent, he also requires the separation of juridical and executive powers. Such approach is demonstrated by his opinion expressed in connection with the exercise of criminal juridical power (*suprema criminalis potestas*), namely that the sovereign (*Imperans*) can exercise the right to modify penalties (*jus poenas mutandi*) only as legislator; in other words, he may modify the method and type of criminal sanctions only in accordance with the legislative process. This right is doubtlessly conferred upon the sovereign as legislator, as the laws of a State must always be adapted to the current circumstances. On the other hand, in the course of the exercise of the executive power, the sovereign has a limited scope of action, because the power stated above should be exercised in accordance with the currently binding laws. Consequently, this right is extended to Court decisions only if they are contrary to the final goals and aims of the law. Although the author formally adopts the concept of Martini and Egger that considers juridical power as a special type of general executive State power (*jus majestaticum universale*), he separates the judiciary branch from the general executive powers both substantially and structurally. In his work the discussion of the juridical power immediately follows the general description of universal

sovereignties, and this structural change − which is different from the respective concepts of Martini and Egger − may be interpreted as a certain theoretical step towards the independence of the juridical branch.

27. As far as criminal juridical power (*suprema criminalis potestas*) is concerned, Szibenliszt adopts an approach characterized by criminal jurisprudence, and he specifically focuses on certain terms and principles of criminal law. He recognizes the principles of *Nullum crimen sine lege* and *Nulla poena sine lege* as fundamental ones, and he excludes certain acts, considered illicit under Civil Law, from the category of crimes. He supplements Martini's concept of Natural Law by adopting certain contemporary views concerning perpetrators, and he further develops the doctrine of accomplicity originally proposed by Mátyás Vuchetich. He analyzes the aims of punishment under several aspects, and he confronts such theories with his own views; in doing so, he is ahead of his time, because in the Hungary of the early 19th century no general theoretical basis was developed in respect of the aims and goals of criminal sanctions. In a manner similar to Martini, Szibenliszt also regards the punishments of *infamia* and *mutilatio* as unjust, and he rejects the application the principle of *talio* and the punishment by *exilium* from a utilitarian point of view. In the analysis of the death penalty, he presents arguments for and against capital punishment, and he concludes that the death penalty can only be applied as *ultima ratio*. On the other hand, Szibenliszt opines that it is utterly unadmissible to apply any kind of torture, and he expressly rejects the approach proposed by Martini, who believes that (under certain circumstances) it is recommendable to use torture in order to protect certain State interests. Szibenliszt expressly argues that torture is an utterly unreliable method in fact-finding, so it cannot and does not serve the interest of the State.

28. Following the analysis of the juridical power, Szibenliszt describes the most important specific State power, i. e. the police power of the State (*jus politiae*). He considers it as a sovereignty that guarantees the security of the State and prevents subversive activities. In Szibenliszt's theory, in a manner different from any previous approaches, *jus politiae* is a subcategory of the executive,

governing power. Its function is to prevent any future danger and to define the measures and means that govern the everyday life of the citizens.

29. In a manner different from Martini and similar to Egger, Szibenliszt dedicates a separate chapter to the right to delegate State powers (*potestas mandandi*), such chapter entitled *De jure potestatis mandandi*. Martini includes the discussion of such option in the chapter about State trusteeship, under the title *Ius circa bona et munera*. However the approach adopted by Szibenliszt differs from Egger's concept as well, because he includes in this chapter the issue of *jus armorum*, and military service. This conceptual approach may be justified by the fact that the major part of the general principles of law governing the activities of civil servants has its roots in the hierarchically structured military governance, and public service is divided into military and civil administration.

30. The rights and duties of the sovereign are in parallel line with the rights and duties of the sovereign's subjects. Based on this consideration, Szibenliszt describes certain rights of public officers not yet mentioned by Martini. Szibenliszt opines that civil servants are public officials, whose capacity includes special rights and duties; among such rights there is the right to proper career, remuneration and pension, and thereby Szibenliszt emphasizes that being a public officer is a vocation for life.

31. Szibenliszt proposes that the economic management of a State always plays an important role in central governance, since it determines the economic basis of the State in question. Consequently the State may organize its own economy, in order to achieve the principal aim of its existence, i. e. the common good. The trusteeship of the State (*jus circa bona civitatis*) is extended to any assets that promote the achievement of any State goals, therefore such trusteeship applies to any item representing any economic value and falling under the authority of the State (*bona in civitate*) either in the private or the public sector. Such approach reflects the statement reiterated by Szibenliszt; namely that the recognition and protection of ownership can only be guaranteed within the framework of a State. Therefore, the State has the duty to protect and enhance the national wealth (*dominium nationale*), private and public property included.

In Szibenliszt's interpretation, any owner's duties (*dominium*) of the State must be interpreted as a public function (*imperium*), and therefore the trusteeship by the State must not be enforced arbitrarily, but always subordinated to the goals of the community. Szibenliszt also emphasizes that the goals and purposes of public wealth management must always be determined by laws.

32. In an era where nobility was exempt from taxes, Szibenliszt advocates for the rationality of a general and just sharing of public burdens and taxes. He allows any exercise of financial State power against private property only in a subsidiary manner, when public property is not sufficient for the operation of the State. He sets out the general principle that any contribution to public expenses may be required only if such expenses are necessary; consequently, the individual's obligation to contribute terminates if the public expense in question is not considered necessary any more. No individual shall enjoy immunity against the financial power of the State over private property, and the obligation to contribute shall be set out in accordance with the respective financial resources available to the individuals. Expropriation is permitted only in the event of emergency, or in order to achieve major common good, but such measure is to be applied as *ultima ratio* in any case. As long as the public goal may be achieved by any other means, expropriation cannot be exercised; furthermore, due and proper compensation shall be paid in consideration of any assets and services subject to expropriation.

33. Szibenliszt analyzes the relationship between State and Church from a conceptually new perspective, at the same time he includes the State competences specified by Martini in his own system. He originates the right of intervention by the State into the internal affairs of the Church from State authority, and he justifies such power of intervention with arguments derived from Natural Law. However, in the era in question, State control over the Church was quite open and manifested (principally due to the edicts of Emperor Joseph II); therefore Szibenliszt adopts a nuanced approach in this respect. Compared to the attitude of Martini, Szibenliszt tends to support the importance of worship by providing long and logical arguments, and – based

on a distinction between *jus circa sacra* and *jus in sacra*- he even emphasizes that State intervention should be limited. He attributes high importance and value to the freedom of conscience and religion, and he proposes that the Church should be evaluated in accordance with the principles applicable to any other secular societies and communities within the framework of the State. Such approach may also be regarded as Szibenliszt's answer to certain issues arising in connection with the Church in the first half of the 19th century, principally as the reverberation of the Josephinist church policy. The State concept by Szibenliszt outlines the image of a secular State free from any Church tutelage; a State considered to be *maxima societas*, thereby vindicating certain new powers over the Church. In this concept the Catholic Church is not considered to be a state church, and the issue of a state church is considered under the aspect of denominational neutrality, pursuant to which the State exerts equal influence over any and all denominations.

34. In the concept of Natural Law by Szibenliszt we can discover certain efforts to draw a parallel between the rights and duties of a sovereign and the rights and duties of the subjects of the sovereign in question. This tendency can also be detected in the approach that – in a manner different from any previous theories – Szibenliszt equally emphasizes the rights and duties of a sovereign, and he draws a parallel between the rights of the sovereign and the rights of the sovereign's subjects. It can also be observed that, in addition to the duties of subjects, Szibenliszt also points out that subjects have rights as well. Therefore, in the chapter describing the duties of subjects, we may also read about the right of subjects to legal certainty (*securitas jurium*) to be guaranteed by the State, their right to reside in the territory of the State, their right to voluntarily emigration under certain conditions, and their right not to be expelled or deported from the territory in the event they display a law-abiding behavior. Szibenliszt also discusses the right of subjects to proper justice and due process among such rights.

35. Szibenliszt dedicates no separate chapter to the rights of subjects, but he describes such rights while discussing the various sovereignties. For example,

while analyzing the judicial power, Szibenliszt states that each and every subject is entitled to equality before the law, representation in court and to be presumed innocent until proven guilty. In addition, the author dedicates several chapters to the innate and acquired rights of Man, such as the right to life, self-preservation and human dignity, good reputation, freedom of speech and religion, independence and property. These rights are discussed in addition to the rights of subjects in the second book of Szibenliszt's opus.

36. Similarly to the issues above, the duties of subjects are also complemented by the tractation of individual sovereignties. For example, regarding the trusteeship of the State, we can also read that the subjects are required to contribute to the public expenses in proportion to their available financial resources. However, the most significant and classical obligations are described in separate chapters. Such duties and obligations include the duty to obey the laws, conscription, the compulsory care of minors, and the contribution to public expenses.

37. The State theory of Mihály Szibenliszt follows certain classical principles. Having described the types of certain state forms and their respective attributes, the author focuses on certain important issues that mainly refer to the monarchy. It is not a coincidence, because these issues were also the current topics of his time; therefore Szibenliszt focuses on the assessment of the deeds of a sovereign, the subordination of such acts and deeds to the laws, the issue of State power, the alienation of public property and any part of the country, the accountability of the sovereign and the right of resistance of the subjects. In this regard Szibenliszt goes beyond the views proposed by Martini who, regarding the principle *Princeps legibus solutus est*, pronounces that the monarch exercises public authority, consequently he is subject to the authority of God and no other legislative power. In the approach of Szibenliszt the monarch exercises public authority yet, in the exercise of such authority, he is subject to certain limitations. Certain fundamental laws that – by virtue of the social contract determining the governmental structure (*pactum constitutionis*) – apply to the entire community, also bind the monarch, therefore his rights

must be exercised in accordance with such laws, and the monarch must observe his contractual duties. Szibenliszt argues that the govermental activities of the monarch may be criticized by his subjects. The executive power can be exercised only under the control of the laws; otherwise the citizens are entitled to avail themselves of the various forms of resistance, however always in accordance with the principles of gradualism and proportionality.

38. The presentation of the various forms of government, and the description of their respective advantages and disadvantages, were also intended to provide the law students of the era with a tool permitting to develop their own concepts regarding the right form of goverment. On his own behalf, Martini argued in favour of the monarchical form of goverment. Mihály Szibenliszt asserts that there is no structure resulting in a "pure" form of goverment, and in the very ultimate reading he channels the attention of his readers towards the mixed form of goverment. The mixed form of government potentially and theoretically permits the division of State powers; therefore it may also be considered as the forerunner of the later classical principle of separation of powers, in respect whereof Szibenliszt expressly states that such structure has special benefits.

39. Szibenliszt claims that State power (*imperium*) is not innate, but it is an acquired, hypothetical right, subject to certain circumstances and conditions, thereafter he examines the various cases of its acquisition and termination. As far as the acquisition of State power is concerned, Szibenliszt also emphasizes that it must be based on a contract, and this requirement also applies if, in practice, the the acquisition of such power occurs by law. The issue of acquisition and termination of State power is examined by Szibenliszt in terms of the social contract, and he doesn't ignore the historical experiences of the then contemporary societies either. He provides a fairly detailed analysis of the principles concerning the order of succession to the throne in patrimonial monarchies, and in monarchies based on entailment. Among the cases of cessation of State power, Szibenliszt thoroughly analizes the cases that may characterize a monarchy, and pays particular attention to the issues of

dethronement and usurpation of throne.

In sum, and contrary to the critical opinions published until now, I have concluded that – under the aspect of development of the theory of Natural Law - the work of Szibenliszt represents progress. Compared to the commentary by Zeiller and Egger on the *Positiones* of Martini, the work of Szibenliszt proposes a different structure in the discussion of the legal terms and theories previously analysed by Martini, Zeiller and Egger. The Natural Law concepts of Zeiller and Egger are structurally better adapted to Martini's work but, as a result of their commentary style, the texts of Zeiller and Egger are also more voluminous than the original opus., What is however important in this respect is that they further develop the *Positiones* of Martini in accordance with the Kantian spirit that would also become the basis for Szibenliszt's *Institutes of Natural Law*. While criticizing Szibenliszt, we must also take into consideration that the aim of his work was not to develop his own independent legal theory based on his own theses and propositions, but to provide an interpretation of Martini's thought (a compulsory study material for Hungarian students), and such interpretation was to be published as a textbook for law students. Quite obviously, Szibenliszt wished his work to be officially recognized as a textbook; consequently he had to be quite careful while criticizing Martini and deviating from the contemporary dogmas recognized and endorsed by the State.

Notwithstanding the above, the ideas of Szibenliszt - compared to Martini's theory - are different and represent a more progressive stance relative to various relevant issues. Therefore, in my opinion, it is quite hasty and insufficiently substantiated to pronounce that Szibenliszt is nothing more than an epigon of Martini, he merely represents „a static theory of State dating back to the 18th century", and „he often gives feudal answers to questions".

Compared to the works of earlier critics who ignored certain important details, my dissertation is based on comparative analysis, and I sincerely hope that my conclusions may provide a more sophisticated and even a potentially more authentic approach to Szibenliszt's concept of Natural Law. We should not forget that many outstanding thinkers and politicians of the Hungarian Reform Era (such as Ferenc

Deák and József Eötvös) became acquainted with the ideas of Szibenliszt during their legal studies – consequently, if we appraise the work of Mihály Szibenliszt in a more realistic and thorough manner, we can gain a new perspective about Natural Law, supported by enlightened absolutism and distinguished by the name of Martini, later reinterpreted by his successors, and becoming a point of departure and a point of debate for a developing and independent Hungarian school of legal theory.

IV. LIST OF PUBLICATIONS RELATIVE TO THE TOPIC OF THE THESIS

1. *Az állam büntetőjogi hatalma Szibenliszt Mihály művében* (The Criminal Repressive Power of the State in the Work of Mihály Szibenliszt), in: Doktoranduszok Fóruma Miskolci Egyetem. A 2005. november 9-én tartott konferencia szerkesztett kötete, A Miskolci Egyetem Állam- és Jogtudományi karának Szekciókiadványa Miskolc, 2005. pp. 209-215.

2. *Büntetőjogi alapelvek Szibenliszt Mihály* Institutiones juris naturalis *című művében* (General Principles of Criminal Law in the Work of Mihály Szibenliszt titled „*Institutiones juris naturalis*"), in: Jogtörténeti Tanulmányok VIII. Szerkesztette: Béli Gábor, Kajtár István, Szekeres Róbert, Kiadja: PTE BTK-PTE ÁJK Pécs, 2005. pp. 405-429.

3. *Szibenliszt Mihály általános államtana* (The General Concept of State by Mihály Szibenliszt), in: Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica. Tomus XXV/1. Szerkeszti: A Miskolci Egyetem Állam- és Jogtudományi Kari Kiadványokat Szerkesztő Bizottsága, Miskolc, University Press 2007. pp. 121-139.

4. *„Jus circa bona civitatis" mint az állam vagyonkezelői joga Szibenliszt* Institutiones juris naturalis *című műve alapján* („*Jus circa bona civitatis*" as Trusteeship of State in the Work of Szibenliszt Titled „*Institutiones juris naturalis*"), in: Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica Tomus XXXVI/1. Szerkeszti: A Miskolci Egyetem Állam- és Jogtudományi Kari Kiadványokat Szerkesztő Bizottsága, Miskolc, University Press 2008. pp. 139-157.

5. *„Potestas judiciaria" mint állami felségjog* („*Potestas judiciaria*" as State Sovereignty in the Institutes of Szibenliszt). Edited version of the lecture at the

conference: „IV. Szegedi Jogtörténész Napok” in 12-13 November 2009 (in press)