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Apprehension of the Codex of Govora – A Comparative View

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Abstract

The first book of laws in Romanian language (1640), the Govora Code of Laws or the Little Code of Laws is also a referential corpus of traditions and popular beliefs on existential ceremonials. We aim to draw a comparative analysis of the two reference levels, traditional Romanian mentalists and Church discipline, the latter being subject to ancient Byzantine law provisions and to the canons established by the Synods of the Eastern Church. Popular beliefs and the Church code of laws have convergences and divergences in the way the rituals of baptism, marriage and funeral are carried out, and this is what motivates the functioning of stereotypes due to the constraints of religious faith and popular beliefs.

Keywords: the Codex of Govora, church code of laws, customs, the law of the land, existential rituals

"If order does not exist, this means that all those have to die. Where there is no order, there is no law and where there is no law, nothing can last" (E. Bernea)

Life in intra and extrafamilial context has been conducted by imposed and self-imposed rules. Compliance occurred after the referral and critical reception. The reference system is self-assumed through knowledge or imposed by the community (the family or, in extenso, the society). It

means both knowledge and compliance, or submission (the acceptance of the rule as a written or unwritten law of the social environment).

In a well-known allocution regarding morality and religion, H. Bergson (1) stated that there are human societies that have no science, no art, no philosophy. But there is no society without religion. And yet, societies have always had an abiding code - customs and traditions that have worked and still work as a first level of heteronomous ethics (entailed by the microuniverse of the family in the patriarchal village).

The Romanian rural universe has sent a set of behavioral rules as unwritten laws, land laws, which govern intra and extrafamilial relationships. The integration into the community, beyond the family microuniverse, which consists of the house (spatial localization) and lineage (as time axis), could only be achieved from the perspective of family inheritance, an indisputable atavistic dowry, impossible to ignore. Systems are defined as seeking “to guide human life as life”. (2) And life had two moral and behavioral paradigms from which the “laws” of the earth derived: the popular belief, the custom (“as they have said”, “so shall it be known”) and religious faith (“believe and do not question”).

In the early seventeenth-century audiences were divided into no more than two large groups (the one which lived by the word of the priest and associated it with tradition, with custom, excluding those who would not comply, and the one represented by those who either followed the rules of the church on a primary basis – and, by default, those of popular belief, – or the rules of conduct imposed by folk tradition).

The persuasive function came to the rule that was part of both reference systems (popular belief and religious faith). In addition, the religious calendar was associated with the popular calendar, prohibitions and absolutions being valid for both referential frames. In the early seventeenth century the “unwritten” right operated, a right “which we could righteously call the law of the land, that is, even in common parlance Moldovans call it by its Slavic name: obicei”. (3)

The traditional peasant behavior is focused on three symbiotic relationships: with self, with others and with God. The degrees of involvement, as well as the differences in attitudes range from respect to indifference, from fear to reverence.

Constraints work much better than free will, and therefore concise prohibitions, penalties are stipulated by law and by custom.

It is essentially the idea of order: an order of the material world, an order of the spirit (the divine and the man working together) and a social order, a mediator between the two previously mentioned and social constraints. In

other words, it's the human law and divine law: "the former must follow the second, otherwise you do not know when you commit a sin". (4)

The elder's council in the patriarchal village will be replaced by the late seventeenth century official, endowed with judicial power. At the end of the seventeenth century there was another category of officials responsible for the judicial act: vornicii de poarta sau de gloata (gate or vulgus stewards) in Moldova and portari or vornicii al doilea (portars or second stewards) in Wallachia. Their task was to judge "the small issues at the royal gates" [therefore, in the community], to punish unvirtuous families, if a girl should sin with a reprobate or should she be taken by force, they command them to be wed in church if they are both of the people, or if one of them is born of men of wealth, they refer it to the prince". (5)

The charter drafted by Leon Tomşa (Wallachia, 15/25 July 1631) read that the trial should not be done with bribes or or as the boyars wanted, but with justice "according to the Christian law". In the seventeenth century, the judgement of the prince, within the Divan was the highest law court, where trials were judged again and in some cases the prince would personally investigate "is more serious or criminal matters". (6)

Penalties were established by the "custom" (tradition), according to law (pravila), the prince being nonetheless able to apply any penalty.

Starting with the second half of the fifteenth century, the written rules of canon law (church compendia, God's law) and the Byzantine imperial law (the royal laws) were introduced in Moldova and Wallachia. They are being translated into Romanian.

The Nomocanon merged the secular canon law with the civil law, mainly with the penal. In monasteries "small codices" or even "sbornice" (manuscripts that contained various texts), which only morally sanctioned felony, are copied. Judges were also inferior ranked clerics. These had practical legal utility, "having nothing to do with moral books".

One nomocanon or small codex, a South-danubian compilation prominent in the Romanian Provinces before 1640, printed by the order of Matei Basarab, was known as "The Small Codex of Govora".

"The Romanian Book of Teachings" (1646) made by Eustratie (Dragos Istratie) covers all aspects of the criminal section of society in the seventeenth century. In 1652 "The Correction of Law" is written in Targoviste, an encyclopedic writing about secular and religious law.

These codices are the first law codes. The Codex of Govora includes canons of the Apostles, of Synods and of the Church Fathers and some chapters refer to laymen. It is a "îndreptariu de lege" (law corrector) for the clerics to use. It is an educational manual for tying relationships to rule, hence the link with tradition.

“The Codex of Govora” or “The Small Codex” is based on old sources of written law and includes provisions of Romanian church and secular law. (7) They are not compiled in a systematic way, by industries or institutions, therefore civil law rules alternate with those of criminal law.

“The rules of criminal law are developed in a form corresponding to the religious conception of crime and punishment. Thus, the offense was considered a sin and the punishment – an expiation (“the sin of killing”). (8)

Acts as murder, insult, slander, witchcraft are punishable. Sentences are classified into physical punishment (beating, mutilation, death penalty) and spiritual punishment (prayer, fasting).

There are few documents from that age that are based on the ecclesiastical law text. The explanation is simple: most provisions are related to kinship, to the behavioral code during religious holidays and less to property.

Criminal or family law judgments were given in orally, and if written text they did not specify the codex text which they were based on.

A famous example remains: Alexandru Ilias's decree of 23 December 1616 states that in the inheritance trial of the two daughters of Michael the Brave – Florica (legitimate) and Maria (illegitimate) – the decision was based on the Codex, and the trial was won by legitimate daughter “. (9)

Also when it comes to customs, most prohibitions and, thus, adjustments in behavior refer to the family environment, the entire existence (birth, marriage, death) being based on the “it’s proper/it’s not proper” dichotomy. One can illustrate the *oral test* as a common element in both forms of behavior law: the mere testimony, the witnesses and the furrow oath. The witnesses would make an oath in church that they would “proceda cu dreptate” (do things righteously). (10)

It was probably the most widespread test and it was named the “law” like the Law of the country. The decision was more important than the written law: it was said that the one that won the trial “s-a apucat de legi” (got into law) while the one who lost “a ramas de lege” (remained with no law). Hence the sayings *e in afara legii* (he’s an outlaw) = a *ramas de lege* (he remained with no law).

The furrow oath operated as a judicial symbol – it was a functional ritual, an animistic view of the deified earth. The Church replaced the furrow with a “curse book”, the test in itself lasting for centuries.

The traditional custom was the essential and unique source of the Romanian law, and the compendia have been applied in judicial activity. As a system of laws that brings order to the community life, establishing

prohibitions and sanctions, “the Codex of Govora” also gathers popular beliefs that support the Romanian written law. An example: “Parents and grandparents always have a say in matters, their word is law for they come from God; it has been so since the beginning of time. Their word must be obeyed.” (11) So works the word as a law - unwritten, but never broken. It is in fact a traditional Romanian custom based on justice, shame and decency, respect and fear of sin.

The family institution, which is founded on these criteria, was protected by the Romanian written law validated in 1640 through the Codex and the land law. We draw attention to some issues: “Cine se va însura într-altă credință, fetele și feciorii, unii ca aceia să aibă pocăință în 5 ani, așisderea și popii ceia ce-i vor cununa, și aceia să aibă pocăință 3 ani afară de biserică”. (12) (Those who will marry someone of different religion must do penance within 5 years, while the priest that marries them must do penance within 3 years). It is a sign of respect towards faith and the need to pass it on through family. The same attitude of repudiation can be noticed towards those who do not want to marry:

“Cine se scârbește de nuntă a se însura, sau muiere a dormi cu bărbatul ei, sau bărbatul a dormi cu nevasta lui...anatema să fie una ca aceia”. (Those who don't want to marry, or don't share the bed with his or her wife shall be punished).

Prohibitions are set forth in the development of family relationships, ensuring the position of each family member and the respect for religious holidays:

... să nu greșească cu muierea până la paști (13) călugărițele sunt „schimmice” și „neschimmice”,

... nici în postul mare nu se pot ține de păcate.

De va fi făcut și malachia, ce se zice păcat cu mâna, sau cu alt ce, întru postul mare, nici acela să nu se împărtășească până la Paști. (14)

Those who do not follow these behaviour rules are marked by the people in the community. They know who does not confess, who is fasting. The feasting of priests is done in prayer, not by partying. In the family, women gathering together to party is a breach in normality and is permitted only in moments of transition (Threshold). The Epiphany is one such moment that closes the cycle of winter holidays (12 days from Christmas to St. John, the symbolic reduction of the year). On this day, the women of Oltenia gather to enjoy themselves, the men gave them money and food, saying that once a year the woman is “greater than man.” Until the early twentieth century, in Moldova, on the same day people held a celebration called “tontoroiul femeilor” (women's whirl). Women could leave their homes and enjoy themselves.

It is a violation of the code of behavior, but it is usually accepted in the name of a perpetuated habit. However, putting on a devil face or practicing witchcraft were not allowed in the “Codex of Govora” or by traditions and popular beliefs. In his book, “Legal Ethnology”, Romulus Vulcanescu (15) points out the rule that did not allow women to disguise, to wear masks or men clothes, that is, “to put on a devil face”

The codex reads:

... cine poartă farmece și ierburi la grumazul lui, are parte de slujirea bozilor (16)

Christians are not forgotten:

... care țin lucrul ereticesc (17)

Those who give up their Cristian religion bear the anathema and *.... cine ia mana grâului sau altceva dintr-acelea, aceste iată știu lucrul dracului ori din vin, ori din pâine, ori dintr-alte ce* (18)

The conduct code of the community insists on the respect of Christian morality and religious practice, as it is generated by the rural community life. The women associated with the devil were known, but people talked about them in a low voice, they were not allowed to enter the church, even if they were “forgiven” (old women), they were not allowed to attend existential celebrations (birth, marriage, death), could not knead the ritual bread, they were, so to say, “outsiders”. This way behaviour patterns are set out, the exceptions are emphasized and a penalty is given: The exclusion from community life in crucial moments when moral integrity was considered a rule. The family is protected both by written law and by popular belief. Deviations are fined and repudiated by the community.

The wedding ceremony is a complex ceremony, as it implies multiple meaningful ritual acts and a large number of participants from the community. Legalization of marriage shall conform to strict rules of kinship. The Codex of Govora states that kinship “is divided into three lines: those who gave birth to parents, ancestors, those who are born amongst us, that is the sons, daughters, grandchildren, nieces and the relatives - brothers and sisters, that is.”

The age must be the biological one, showing the reproductive capacities. *Omul să fie de 15 ani și așa să intre într-o nuntă, iar muierea să fie de 12 ani.* (19)

Young people must receive the blessing of their parents. The Codex, as any other set of laws, specifies who should not marry: cousins, to the third degree, first cousins (representing the fourth generation), the second cousins (sixth generation), cousins in the third degree (eighth generation). Those of the eighth generation, states the Codex, should not marry, but if this

happens “without their knowledge, under no circumstance should they separate”. (20) Hence perhaps the curse “to the seventh generation” (not allowed), the sins that they can expiate on someone’s behalf up to the seventh generation. It is also written in the Codex that men over 45-50 years old should not marry, *Să nu-l primească sfânta și cinstita biserică a lui Dumnezeu.* (21)

If a family breaks up because of a man, who takes the wife

Să nu cuteze nimeni a-i cununa pe dânșii (22) (no one dare to marry them)

There are interdictions within the marriage:

Să aibă două paturi, în ele să se culce duminica și în alte zile sfinte și la praznice domnești, și în săptămânile mari. (23) (They must have two beds to sleep in on Sundays and on other holy days and celebrations)

The family is sacred. The sacred space must be kept untouched, the wife must keep the “fire of love” alive. The Codex sanctions the degree of emotional distance among people.

Cine se scârbește de nuntă a se însura, sau muiere a adormi cu bărbatul ei, sau bărbatul a dormi cu muierea lui, și va grăi cineva că nu-s destoinici ca aceia împărăția cerului, anatema să fie unii ca aceia. (24)

Godparents are spiritual parents and must be respected. They must be greatly honoured. *Și dragoste li se cade decât părinți trupești* (25)

The Codex provides an explanation of the privileged position of godparents.

... părinții cei trupești, blestemul dezlădăcinează din temelii, iar cei sufletești, sufletul pierd (26)

The imprecation of the parents is the most severe as it draws natural death. Godparents, as they are vested in a ritual, lose the soul, but can not generate disaster, as the sacred is meant to protect not to physically punish.

The popular calendar records that on Palm Sunday, a meaningful custom takes place in Oltenia, in Izbiceni, Olt County. This custom is significantly called “The Flower of Forgiveness.”:

On the first Palm Day after the wedding, the newlyweds go to their parents and godparents to ask for forgiveness. They dress as bride and groom, as a reminder of the wedding day. They once again live emotional tension of the wedding act. They go to church. The priest performs the service and confession. It is a time of mystery, when the hardship of the beginning of a new life is shared with the priest. Due to the confidentiality of the confession act nobody will ever know how hard the adjustment to the new life is.

The image of a church filled with brides is a new one. At the wedding brides were not allowed to meet, and if this happened, the brides of

the godmothers exchanged hair pins. It was a gesture that canceled the presence of evil by using iron, an object considered to offer protection from evil spirits.

Nowadays brides within the year stand together the house of the Lord. It's an image reminding of the royal court, with the bridesmaids in diaphanous dresses. And yet something is missing. The veil, a crown-mark of virginity. Some wear a white scarf, which is compulsory for the presence of women in church (not to be bareheaded). The bride's dress is the only reminder of the wedding. And perhaps the presence of a hectic groom, ready to take the weight of the new destiny on his shoulders.

“The Brides of Izbiceni” is a unique event, a moment frozen in time, braided with a fleeting instant. The Brides of Izbiceni apologize to parents and godparents in the middle of blossoming spring. Through symbol transfer, spring-a season of circular time within linear space appears as a season of linear time within the century of man . A wish emerging from fulfilling youth, whose gaze never rests on the white scales of old age. The brides of Izbiceni are evidence of the reiteration of spiritual celebration, which is performed in order to preserve the joy of the beginning. After the service, the newlyweds walk through the village as they are watched and admired by those who see in them a symbol of everlasting youth. They then visit their godparents to share impressions about the celebration and to reel for advice as to what will be.

“The Forgiveness of Flowers” remains a beautiful story in Izbiceni Olt, reiterated on the day when the outburs of flowers that welcome our Lord fulfils youth’s wish with respect and devotion.

The Codex of Govora - the first code of church laws specifies the hierarchy of kin, which was considered an unbreakable law in the traditional mentality. The village does not admit marriages between relatives, considering them incestuous, while the children resulting from this kind of relationships were considered damned.

“The Codex of Govora” clearly defines kinship and its steps:

“Rudenia este anume și se găsește între oameni și se împarte în 3 rânduri, spre cei de sus, și spre cei de jos, și despre cei de mijloc. Cei de sus sunt ceia ce au născut și ce nasc, ce se zice, părinții, moșii și strămoșii, iară cei de jos sunt ceia ce se nasc dintre noi, ce se zice feciorii, fetele, nepoții, nepoatele, iară cei din mijloc sunt cei ce se zice la arătare, ca niște străini nouă, ce se țin rude, ce se zice frații, surorile. Și ce sunt din dânșii 3 despărțituri sunt și opresc rândurile ce se nasc fețele nunțiilor”. (27) (Kinship is specific and is found among people and is divided into three categories, those above and those at the bottom, and in the middle. The

ones above are those who gave and still give birth – parents, grandparents and ancestors, those at the bottom are those who are born among us, that is the sons, daughters, grandchildren, nieces, while the ones in the middle are the relatives, that is, brothers and sisters.)

To avoid confusion in the hierarchy and kinship denomination, “The Small Codex” sets “lines and boundaries”:

- “un rând și hotarul dintîi ce e de la sfântul și mântuitorul botez”;
- “al doilea rând și hotar”, “ce e rudenie după sânge trupesc”;
- “al treilea rând și hotar”, ce se nasc din cei nuntași, ce se zice din adăugarea cuscrilor”. (28)

Traditional mentality punishes guilty love, “the sin”, it ridicules it in satirical verses and exposes them to public disapproval. In a song from Valcea, the image is suggestive:

Foaie verde ș-o sulfină,
Fină, fină și iar fină,
Ia-mă și pi la grădină
Să te iubesc ca pi-o strină.
Nașule, n-o fi păcat,
Trei copii mi-ai botezat,
Pe mine m-ai cununat?
Finișoară, nu-i păcat
C-are nașu la parale,
Face cruci și sărindare,
Le pune la drumul mare,
Cine-o trece să se-nchine,
Să fie finii de bine,
Nașului de sănătate
C-a iubit finele toate!

The interdictions are also mentioned in the Codex, which classifies prohibited relations:

- the godfather and his goddaughter, her mother and her sister
- the goddaughter and the godfather’s son cannot get married;
- Blood relatives cannot get married, parents sons, brothers and sisters or cousins or second cousins or third cousins. Only “those sons of third cousins, can gather and be wedded.”

In the case of prohibited relations, between relatives not linked by blood ties, the punishment is the expulsion from the community:

- In the case of a son-in-law – mother-in-law relationship, the mother-in-law is punishable:
 “...să se călugărească într-o mănăstire și să slujească lui Dumnezeu pentru sufletul ei, iar acel bărbat să petreacă ci muierea lui și să robească drept acele păcate, în 15 ani, că ia certare de la duhovnicul lui”. (29) (She must retire to a convent and become a nun, while the man remains with his wife, doing penance for 15 years)

Kinship is a special relationship between people, of either biological origin – blood kinship, or based on religious principles, relatives by marriage. Alliance is driven by relationships between the families of the newlyweds (in-law) or spiritual family (the result of baptism or marriage).

The “lines” and “boundaries” set by the church code of laws correspond to blood kinship on a direct line, ascending or descending and collateral (each graded by the number of generations to come between those relatives).

The social pattern of the village community was scrupulously respected in order not to attract divine punishment. Mixed “Blood” was a curse because of the infringement kinship rules. The church had a decisive role in the act of purifying the relations by establishing rules of behavior between relatives.

Marriage has preserved many Daco-Roman traditional elements but also Christian ones. Tradition (custom) in the rural areas referred to marriage by “order into being” and “following the word.” It thus enabled young people to know each other. In the late seventeenth-century, the new legal regulations will replace the custom. However, the common basis of traditions and religious laws are obvious, the sanctions are similar (exclusion, isolation, repentance).

The concept underlying the legal procedure is that the trial should be “by law and justice”, “by justice and by the custom of our country”. (30)

“Legea sau obiceiul sunt Șegea Țării, iar dreptatea este morala epocii, conștiința juridică, aceia care trebuie să vegheze la respectarea moravurilor, la justa interpretare și aplicare a legii”. “The law or custom are the Law of the Country, and justice is the morality of the era, its legal consciousness, those who must ensure compliance with morals, the true interpretation and application of the law”. (31)

And perhaps as a defining element of the imperative manner of passing on and complying with the code of church laws, the Codex and the popular tradition is a heritage, in a dual form: a spoken and written will. The spoken will called “limba de moarte” was made in the presence of

witnesses; the priest is in most cases the main witness. He represented the civil and religious authority, a double status within two reference systems: the church law and law of the land.

Romanian sayings were largely diffused at that time and had a significant contribution to the assertion of the written law. Their dissemination through the spoken word in the secular and clerical environment led to the unanimous recognition as “the laws of the land,” with a practical finality, as applied in the work of all courts.

Yet, they were not kept to only because of their status as written laws. They were also accepted as a set of folk traditions, with greater persuasive force. The phrases “as I have said,” “it’s the law of the land”, have greater impact than the royal laws.

The legal activity of the seventeenth and eighteenth centuries recorded the implementation of early codices and their importance in the evolution of the Romanian written law. The ecclesiastical or canonical compendia are pragmatic which resulted in a higher degree of approval.

The Codex of Govora is an eloquent synthesis of the church laws and popular traditions, a legislative framework of moral norms necessary to leading a life “without sin” to the eyes of the community and divinity.

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