The Wager of Law in The History of Other Peoples

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Throughout time, history in general and the history of law in particular have approached the study of compurgation. Although this institution incited the interest of some of the most brilliant historians and jurists of the time: A. D. Xenopol, B. P. Haşdeu, A. Rădulescu, D. D. Stoenescu, Gr. G. Tocilescu, George Alexianu, Ghe. Cronţ, N. Iorga and many others, its origin and functioning were the subject of much controversy, each of the above advancing their own theory as regards its formation and existence.

Compurgators were present in Romania since the beginnings, underlying one of the main forms of court proceedings. This institution has existed with all the peoples around us, and even with the more remote populations, at a certain time of their development, being maintained or disappearing in time, depending on the interests of the ruling class from that particular period. The existence and functionality of the wager of law appear to have represented a custom of the Romanian people since the dawn of time.

Many personalities of the time believed and argued that the institution of compurgators had different origins, namely Slavic, Romanian, Serbian, Italian or German. This opinion is supported by those historians who, without having analysed it in terms of its social function, claim that compurgation has other origins than national ones. We maintain, however, that the institution is of Romanian extraction and we shall try to prove this hereinafter.

The existence of the written records from Transylvania reveals the presence of compurgators ever since the ninth-tenth centuries. The register from Oradea for the years 1208–1235 shows that there were several trials in which oath-helpers were used as means of proof. In addition, a document issued by the Comes of Bihor, Laurenţiu, in 1236, shows the manner in which compurgators were used in a lawsuit concerning the setting of boundaries. Almost all the documents relating to various trials indicate the existence and use of this institution as means of proof.

In the Romanian Countries, written sources appeared at a later date. However, the documents we have studied evince the fact that the wager of law was in an advanced organisational form, which suggests that it had been in existence before the advent of written records.

To prove the theory that the institution of compurgators was not borrowed from any other people, because it was conditioned by a certain type of social relations, and that its characteristics are determined by the specific nature of the social development that is peculiar to each nation, we shall outline its main features of as they appear in the case of other peoples.

The wager of law and the ancient peoples

Compurgation and oaths were also known to the ancient peoples of Asia. In the "Code of Hammurabi," dating back to the second millennium B.C., an institution that resembled the wager of law was mentioned alongside ordeals.[1] In Mesopotamia, those charged with committing an offence exculpated themselves through compurgators who placed themselves under oath. The custom of oath-helpers, oaths and ordeals was also used by the ancient Indians, as reflected in the Romanian translation of *Manava-Dharma-Sastra*, published by I. Mihălcescu under the title of *Legile lui Manu* [Manu's Laws] (Bucharest 1920), Indian society being dominated by the social order of castes at that time.[2]

There is more consistent and accurate information as regards the existence of oaths and compurgation in ancient Greek culture. Thus, the laws of Draco recorded in writing the Athenian juridical customs referring to criminal offences and the judicial procedure that was in force in the seventh century B.C. Oath-helpers had the task of swearing together with the accused. During the period of gentilic relations, the parties to the trial came to court together with their kin and their friends. The latter swore to exculpate the defendant without knowing the facts, simply because they were convinced of his innocence.[3] Greek criminal trials used the proof with oath-givers/ witnesses and the proof with oath-givers/ arbitrators, who were between 2 and 15. In time, when gentilic relations were replaced with social relations based on land ownership, compurgators were no longer taken from among family members or friends, but were chosen from among the litigant's neighbours. Their number was set at 9 compurgators. Notwithstanding all this, the family and the members of the defendant's community exhibited strong solidarity in defending the latter. We may see thus that gentilic relations were very strong, even at the beginning of the slave-owning system. During this period, most lawsuits that used the wager of law involved criminal cases. Family and tribal solidarity was manifested especially in criminal lawsuits, but also in other situations. The members of these families, groups, or tribes were well acquainted with each other and defended themselves together against other groups. Witnesses could not be used because no member of the community would betray solidarity by giving objective evidence; moreover, in these cases, which were very rare, the one in question was immediately isolated, rejected or downright eliminated. The sole judicial evidence that could be used in these cases was that based on religious mysticism and family and tribal solidarity. That is why oaths, alongside ordeals and the wager of law, were also found in ancient times, with peoples that were in the stage of their gentilic organisation and in the period of their organisa-

tion on territorial bases. These proofs were also found in the medieval legal practice, as an outcome of mystical mentality and the survival of certain gentilic relations.

The wager of law and the Romans

Since the Romanian institution of compurgators has been compared with and alleged to originate in Roman law, we are compelled to show the characteristics of some Roman institutions that it resembled in some respects.

Bogdan Petriceicu Haşdeu investigated these institutions and compared the Romanian oath-helpers with a college created by the Romans, called the Arval society, as shown in the chap. "The Origin of the Institution." This was a college whose members were called *fratres arvales*,[4] who had the power to judge. The Arval brethren determined whether the accused was guilty or not, the conviction coming from the praetor (the high magistrate). Their list, which we have referred to before, was compiled by the praetor for a one-year period, that is for the duration of his mandate.[5]

The differences between the institution of the Romanian compurgators and the Roman institution of the Arval society has been shown in chap. I of this paper, so we shall not refer to them again.

The Romans knew and used oaths, which had a sacred character. Perjury, or the violation of an oath, attracted the harshest punishments.[6] According to Aulus Gellius, oaths were extremely important for the Romans: "That an oath was held to be sacred and inviolable among the Romans appears from their manners, and from many laws (*moribus legibusque multis ostentitur*), so much so that that the one who violated it once was faced with public condemnation, preferring to die rather than live in shame."

By comparison with the oath sworn by the *arvales,* the one taken by the Romanian witnesses differed on account of the following reason, even though both had the same sacred ceremonial: the Romanian witnesses swore, in a trial, in order to support those asserted or denied by the person for whom they were adjured, while the *arvales* swore once, namely at the beginning of the lawsuit for which they had been chosen from the list *album judicium*. Moreover, if the *arvales* deemed themselves incompetent to pass judgment on the case, they would swear they were not competent and would be replaced with other *arvales*. As for the Romanian compurgators, if a litigant failed to produce the required number of oath-helpers and if even one was missing, he would automatically lose the case, without the others having to testify under oath.

In his desire to show that the roots of the Romanian wager of law system lay with the Romans, B. P. Haşdeu mistook oath-helpers for jurors. Because of this, his research on compurgation was not taken into consideration. In fact, the historian himself acknowledged this when he said ". . . something altogether different from the jury, with which I had once confused it by mistake."[7]

Gr. G. Tocilescu, who had initially endorsed B. P. Haşdeu's theory, reinforcing his conclusion that the institution of compurgators was of Roman origin, later retracted this, claiming, as we have shown, that the institution was of Germanic extraction.

The wager of law and the Germanic peoples

We may learn about the wager of law as it appeared in the case of the Germanic peoples from Du-Cange's *Glossarium* and from the various *leges barbarorum* which codified the Germanic legal customs of the fifth-eighth centuries, laws such as: the Burgundian, Salic, Ripuarian, Lombard, Allaman, and Friesian laws.[8]

German historical sources referred to oath-helpers as: *conjuratores, conjurantes, compurgatores, sacramentales*.

The judicial practices of the Germanic peoples from the fifth-tenth centuries entailed that the accused took the oath by placing their hands on weapons. After Christianisation, they swore on relics and sacred objects. However, the oath of the accused had no value unless it was accompanied by the collective oath of the compurgators. This system of exoneration, of removing the suspicion hovering over the innocent defendant by people who swore with him, was nonetheless insufficient to shed light on the matter for the judges, because it did not ensure their fool proof certainty in determining guilt or innocence. That is why other types of evidence were used in addition to this proof furnished by oath-helpers. The Old German law stipulated, with regard to evidence, that: "if someone is accused of wrongdoing, the accused shall clear himself of suspicion, without the denouncer being bound to prove his allegation."

Thus, the German means of proof had as its starting point the idea of individual value, which determined who would prevail in court.[9]

The proofs used in criminal proceedings were: *conjuratores*, judicial duels, and ordeals—which included the ordeal of fire, of boiling and cold water, and the ordeal of the cross.

In civil lawsuits, the proofs were: witnesses and documents. Still, there were also cases when oath-helpers were also used in civil trials, especially for ascertaining the material facts in these cases. For instance, a defendant could request the use of evidence secured by compurgators so as to prove through the oath the latter swore that he did not have the means to repay a large debt.[10] The *Lex Ripuaria* mentions the use of proof furnished by oath-helpers in legal disputes concerning inheritance division and in trials referring to the status of persons. This proves that the Germans' wager of law system had also started to be determined by the new relations based on estate ownership, and not only by family and gentilic relations, while remaining entrenched, to a large extent, in criminal justice procedure.[11]

Compurgators or *conjuratores* had to be of the same social condition as the accused, and their number was subject to the seriousness of the offence. The *Lex Salica* stipulated a number of 12, 24[12] or even 65.[13] In the *Lex Ripuaria,* the number of compurgators was 3 or 6, while for the more serious cases 36 up to 72 compurgators were required. Typically, the proof ensured by the testimony of 12 compurgators was used.[14] The wager of law (evidence given by the *conjuratores*) could only be used by free people: this was not a privilege for slaves or for persons of a quasi-servile condition, since absolution by oath was considered to be an attribute of absolute freedom.

Slaves and serfs could prove their innocence through ordeals. These were:

- the red-hot iron ordeal;
- the hot-water ordeal;
- the frozen water ordeal;
- the judicial duel;
- the ordeal of the cross.

The last ordeal, that of the cross, which was introduced and used by the Church, entailed that the defendant and the plaintiff should stand next to a cross: the one who got tired faster was found to be guilty.[15]

In certain cases, the applicant could request the proof by judicial duel, which assumed that the accused person could purge himself of the accusation by swearing a false oath or by the wager of law. (The judicial duel or the wager of battle was an adversarial system practised by the parties involved or by their representatives, who were armed and confronted themselves in a public duel, according to strictly regulated canons sanctioned by custom, the result of the battle being decisive. The last trial by battle dates back to 1623, when the actual fight no longer took place. The procedure was relinquished until 1819, when attempts were made to revive it, but ended with its abolishment).

The Burgundian and the Ripuarian Laws provided that: "when the said man presents himself with compurgators and before they place their hands upon the altar, the plaintiff may challenge him to a duel or the ordeal of the cross." Also, under the same laws, those who could not find oath-helpers were allowed to justify themselves in court through the ordeal of fire.

The wager of law or compurgation was an ancient judiciary practice of the Germanic peoples. To justify the fact that burden of proof was the obligation of the accused, the German authors Bethmann-Hollweg, H. Brunner and others have proposed an explanation based on the German sentiment of racial pride. They have claimed that the Germanic peoples regarded any accusation as an offence brought to their personal honour and only the accused person could defend his honour by swearing an oath and resorting to compurgators, or by subjecting himself to ordeals.

We must admit that now, seen through the lens of the subsequent historical events in which the Germans were involved, this explanation appears to be very justified, the Arian sense of pride being more than powerful.

The wager of law and the Hungarians

The Hungarians were also familiar with this institution. Thus, Du-Boys[16] states that in 1298, King Andrew III issued a decree concerning the noblemen's commission of various crimes and offences like murder, violence, or assaults on honour and property. In these cases, the king chose a number of 12 nobles, whom he had swear and not judge, and *seek the truth according to their conscience and their fear of God*. The 12 nobles would summon the priest who presided over the oath-taking and drafted a decree of punishment addressed to the court, which passed the final criminal sentence in full awareness of the case.

In Werboczi's work *Tripartitum*, it is claimed that *conjuratores autem non de veritate*, meaning that compurgators do not swear about the truth but about credibility (the deserving trust, "sed de credulitate jurant," in the original).[17]

As regards the Hungarian wager of law system, there can be no question of the Romanians' having borrowed it therefrom, and it would be much safer to assume that the Hungarians borrowed it from the Romanians. An argument in support of the above is the fact that when the Hungarian tribes were expelled by the Pechenegs and Bulgarians from the North-Pontic steppes and were crossing the Forested Carpathians, Pannonia and Transylvania were populated by heterogeneous communities in terms of their ethnic composition. King Bela's Anonymous Notary recounts, on the basis of older chronicles, that on the Hungarians' penetration of Pannonia, this land was inhabited by Slavs, Bulgarians and Romanians, that is, by the Romans' shepherds (*quam terram habitaternt Sclavi, Bulgarii et Blachii ac pastores Romanorum*). The chronicler clearly shows that the Romans withdrew from Pannonia and other provinces to Italy, but the Romans' farmers and shepherds, that is the Vlachs or the Romanians voluntarily remained in place. The Anonymous Notary says about Transylvania, which had also been subject to the Hungarians' plundering expeditions in around the year 900, that it was inhabited by Romanians and Slavs organised in an incipient state formation led by Romanian Duke Gelou. We may see thus that during the Hungarian tribes' penetration from Pannonia to Transylvania, in the early years of the tenth century, the Romanians had an advanced economic, political and legal organisation in the voivodeships from Biharia, Cuvin, Dăbâca and others,[18] which demonstratex that not only did the Hungarians exert no influence on the Romanian legislation and legal procedures, but they most likely borrowed their own from the Romanians.

The wager of law and the Anglo-Saxons, the Swedes, and the French

Anglo-Saxons

In Du-Cange's *Glossarium*,[19] there is evidence that the compurgation system was used by the Anglo-Saxons in criminal (penal), civil as well as religious matters. There is, in this sense, a definition of compurgators:

> *Juratores I. C. Anglis dicuntur duodecim homines, qui inquolibet fere judicio sive civili, sive criminali, de facto prius decernunt, quam index de jure pronuntiet.*
>
> Meaning that:
> *the English oath-helpers shall be called those twelve men, who, in the case of a civil or criminal offence, shall be the first to submit conclusions under the legal code.*

The English compurgators had to have the same social status as the accused. For instance, a priest had to bring priestly compurgators, while a nobleman—*noble compurga-*

tors. Similarly, women could call female oath-helpers. Compurgators were prevalently chosen from among family members, relatives, or friends.[20]

The most important text showing the existence and importance of the Anglo-Saxon wager of law system belongs to Glanville, who, in Book XIII, describes the trial procedure when evidence provided by oath-helpers was used:

> *Sic porro procedetur ad juratant judiciarum judex cognita ex partibus litigantibus controversia, de qua lis est, tenentem seu actorem interrogat si aliquid velit vel sciat dicere, quare assisa teneatur. Si les est hujus modi, ut per juratam dirimatur, justitiarus bebet dare Breve, per quod vice comes summonere jubetur per bonnos summonitores duodecim liberos et legales homines de vicineto de illa villa, ut sint coram se, et justitus suis ad, illum terminum parati sacramento recognescere si et nomina eorum imbreviari faciat, ac denique per bonos submonitores illum, contra quem lenens agit, submoneat, quo juri stet.*[21]

Meaning that:
in this way it is proceeded in the court composed of sworn witnesses, the judge being aware of the dispute between the parties (at stake). The judge shall ask the defence of the opposite party if they have anything to say (state), if they know anything . . . if the dispute (case) can only be solved through sworn witnesses. The judge shall give the sheriff a quick order that he should choose 12 free and lawful men of the neighbourhood, that they be before him, prepared, in their justice, to return at the due time and prove it on their oath. Their names shall be imbreviated. And therefore these good men, of the one who holds that claim, shall warn him to stand on the side of justice.

Compurgators swore simultaneously, with their hands joined, that the offence asserted by the party for which they swore was true.[22] In this procedure, oath-helpers were in actual fact witnesses for the party that had summoned them, their assertion that the words asseverated were accurate amounting to a *veredictum* or a confirmation by oath, which entailed the defendant's acquittal.

Like the Germans, the English practised the adversarial system of trial by battle or the judicial duel, when the armed parties faced each other in a duel, the winner of this clash actually winning the trial.

The wager of law existed in the Anglo-Saxon system until the thirteenth century, when the duty to decide on matters of guilt or innocence was increasingly entrusted to a petty jury, composed of twelve faithful men, who, going through the stage simple investigators of and witnesses to the cases, became jurors.[23]

The Swedes

The Swedes were familiar with the wager of law system in the medieval period. Compurgators were used in criminal proceedings. We find traces of this system in the Code of 1347, passed under King Magnus Cricson, which provided between 6 and 12 oath-helpers for the usual cases and the royal council, which consisted of 12 landowners.[24] Moreover, in the Upland Act, compiled in 8 books by Master Ander And, Churchwarden of Upsala, there are several provisions relating to oath-helpers. Thus, in book I,

called the Book of the Church, the proof of the 18 compurgators is mentioned in the context of arson:

if the church should burn down because of the fire set by the sacristans, they shall bring proof with the oath of 18 compurgators. . .

. . . the oath with 2 compurgators, when the priest cannot come to bury a poor man. . .

. . . the oath with 10 compurgators that the neighbour did not bar the access of a relative to baptism. . .

. . . the oath with 2 priests, if the priest is accused of not having offered communion to a sick man. . .i

. . . the oath with 10 compurgators for adultery . . .[25]

In the second book, also known as the King's Book, it is stated that the violation of a house requires the disavowing proof with 18 oath-helpers.[26]

These details allow us to see the resemblance of this institution with that of the Germanic peoples, because the idea of the individual value that determined who prevailed in court also predominated here.

The traces of the wager of law in the French system are found in the work of Allard,[27] who tells us that the ordinary number of French oath-helpers was 12. Later their number dropped to 7 and the one who summoned them was the seventh. Women could serve as compurgators if the one who requested the proof was female. Oath-helpers were also used in proving individual freedom.

As shown by other French historical sources of the early tenth century, the evidence furnished by oath-helpers, oaths, judicial duels and ordeals was used in the French judiciary practice. The Church also used these types of legal proofs and oaths, in particular.[28]

The compurgators summoned by the claimant were called *electi*, while those brought by the accused were called *quales invenire poteret*.

On the territory of present-day France, the practice of ordeals began to disappear in the thirteenth century, but compurgation and oaths continued to be used, being gradually relinquished in the fourteenth-fifteenth centuries. The judicial duel was, however, regarded as primary evidence in both civil and criminal cases, which is why it was most frequently used. This system gradually disappeared in the fourteenth-fifteenth centuries too.

As practised by the French, the wager of law system was almost identical with that of the Germanic peoples. Notwithstanding all this, given the statements made by the German scholars on the characteristics of this institution and the Germans' sense of racial pride, some French authors have disagreed with these claim. In *Cours elementaire d-historie du droit francais* (Paris 1906), A. Esmein shows that the oath, the wager of law and the ordeal were not practices that were exclusively adopted by the Germanic peoples, since these customs with similar features were also used by other peoples.

The wager of law and the Slavic peoples

In the case of the Eastern Slavs or the Russians, oaths and compurgation were widely used as means of proof in court. Testimony and witness statements were recognised as evidence. When they took an oath, the Russians accompanied it by symbolic gestures. They swore on the gods and on their ancestors' graves. After Christianisation, the oath was sworn on the cross, on icons or by wearing a swath of land on one's head (in land-related litigations). In the early feudal law, two kinds of oath were practised. One served as additional proof and was required of the claimant in cases of lesser importance, in the absence of other evidence. The other type was the expiatory oath,[29] which was granted to the defendant or the accused, also on account of the lack of evidence. Some researchers believe that compurgators were witnesses to heard facts, whereas witnesses attested to seen facts. In this interpretation, compurgators were regarded as oath-helpers, because they swore together with the defendant and were witnesses not to fact, but to the latter's good faith.[30]

If the trial did not end with the confession of the accused or the defendant and with the testimony of the oath-helpers, then recourse was made to ordeals or the judicial duel.

Compurgation was used in some regions of Russia, mainly in the mountainous regions of the Caucasus, until the nineteenth century. The number of compurgators ranged between 1 and 12, depending on the seriousness of the offence, the situation of the plaintiff or the defendant, and the situation of the oath-helper.[31]

The medieval Serbs

The wager of law system was known to the medieval Serbs before the twelfth century, when the first documents presenting this institution were produced. Compurgators, who were also referred to as *jorotniţi* or *jorotniki*, had to be chosen from the same locality as the litigants. They were usually 12 and swore *on their souls*, making depositions on their findings.[32] We may notice that a peculiarity of compurgation in the case of this people resided in the fact that Serbian compurgators did not testify under oath to the reputation or innocence of the accused without documenting themselves first and without knowing the facts that had led to the trial. It may be said that the institution was no longer subject to gentilic relations, which were obsolete at this stage, and the compurgators' powers underwent a radical transformation. They did not swear attesting the credibility of any of the parties involved in the trial: instead, they used their newly conferred powers to show the objective truth, making statements on the facts they had ascertained through investigation and not through what they had seen or heard. In this case, we believe that this was no longer a question of oath-helpers or witnesses, but of a transformation of compurgation as an institution. Nonetheless, the gentilic origin of the wager of law system is still reflected in *Dušan's Code* (Zakonik).[33] Its Art. 150 provides:

> *The imperial order: From now henceforward let there be a jury for great matters and small ones. For a great matter, let there be 24 jurors, and for a lesser matter 12 sworn witnesses, and for a small matter 6 jurors. And these jurors shall not be authorised to make peace*

between the parties, but to acquit or else convict. And let every jury be in a church, and the priest in robes shall swear them, and whatever the majority of the jury swear to and whoever they acquit, that shall be believed.

This Serbian code also provided the practice of ordeals as means of evidence. Also, in the case of false oaths, the code stipulated the penalty of a fine of 1000 perpers and "these (who swore) shall remain fallen, and shall not to marry."

The Polish

The Polish used the wager of law in the days of the feudal monarchy in criminal proceedings as well as in civil litigation. To this period dates the case of Queen Sofia, the wife of King Vladislaus Jagiellon, who was accused of adultery, but rebutted this charge, "swearing together with seven other noble and honest women."[34]

Another source attesting to the use of compurgation in Poland is the commercial treaty between King Sigismund I and Voivode Stephen IV of Moldova, concluded in Kraków in December 1519 between two Polish commissioners and five Moldovan commissioners. Here, in paragraphs 5 and 6, mention is made of talking the "oath in threes." In the code of Polish law from 1277, the use of oath-helpers was stipulated for criminal litigations in accordance with the gravity of the facts, as follows: "3 or 6 sworn witnesses for the petty offences, 9 for the cases of theft and 12 for murder and arson."[35] Compurgators had to belong to the same social class as the accused person and their testimony had to be consistent with his.

The Czech's system of compurgation is presented by the Russian writer Ivanicheff. He says that "in serious criminal cases—the oath of 6 people plus the defendant, and in the other cases, 3." 12 oath-helpers could be required to swear in support of the claimant's or the defendant's good reputation, stating that the latter's oath was not false. The accused had to submit the oath using a practice that could not be changed. In the period before Christianisation, the oath was pledged with the hand on a red-hot iron or immersed in boiling water. If he did not cope with this test for as long as uttered the oath, he would lose the case. Subsequently, the oath was sworn with the hand on the cross.

H. Jirecek's studies[36] show that during the period of the feudal monarchy, compurgation was used by manner of a court of justice. Compurgators had jurisdiction to actually hear cases, performing, in effect, the duties of a jury. We can only note the almost perfect similarity between this institution and that of the Serbs.

In the case of the Croats, this institution was regulated under the *Vinodol Statute*[37] of 1280, published by Professor Majuranic in 1842. This statute provided that, in criminal matters, the accused could to seek absolution from liability by resorting to oath-helpers. Let us quote directly:

if the case before the Court is for violence or theft, if those who speak on the matter and the accuser have no witnesses against the accused, then the accused shall be allowed to testify together with another 24 sworn witnesses about violence, and together with 12 sworn witnesses for the above said theft. . .;

. . . for stealing from the village and burning the harvest from the field and the seizure of hay stacks by night, for such offences the accused shall swear with only 6. . . ;

. . . and if a woman is raped and there are no witnesses to that violence, a jury composed of women shall decide.

Compurgators were essential to conducting and completing criminal proceedings. Though the oath they took, they removed blame and did not assert. They swore when the claimant had no witnesses to support his claim. We may notice that in this type of trial there was a clear distinction between the institution of compurgators and the institution of witnesses, the latter declaring in court what they had seen and heard, their testimony being decisive for the passing of sentence.

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Translated into English by Carmen-Veronica Borbély

Notes

1. 1. Legal evidence based on torture, considered to rest on divine judgment and used to prove guilt or innocence.
2. Ghe. Cronţ, *Instituţii medievale Româneşti* (Bucharest: Ed. Academiei, 1969), 89.
3. *Ibid.*, 89.
4. Ghe. Cronţ, 84.
5. *Ibid.*, 84–85.
6. Gr. G. Tocilescu, "Juriulu la români," *Foaia Societăţii Românismului* 12 (1870), 508–511, BP Haşdeu, "Juriul la români şi sârbi," *Aullu Gell. lib. VII*, 1867; Gr. G. Tocilescu, "Juriulu la români," *Foaia Societăţii Românismului* 12 (1870): 509.
7. B. P. Haşdeu, *Cuvente den Bătrâni*, Vol. 1 (Bucharest: Ed. Tipografia Societaţii Academiei Române, 1878–1881), 119–125.
8. D. D. Stoenescu, *Instituţia junătorilor. Studiu istorico-juridic* (Craiova: Institutul de arte grafice Samitca, 1921), 71.
9. D. D. Stoenescu, 72. Reference is made to the negative evidence based on the principle: *facti preprii unusquisque praesumitur melius scire veritatem*, from Leg. Norm. II. 63. 8.
10. D. D. Stoenescu, *Lex Salica Emmendata* (Paris: Ed. Pardessus, 1843).
11. The jurist Setzer said the following about oaths in a book written in 1608: *the fashion of swearing with oath-helpers has never existed in the civil law.*
12. D. D. Stoenescu, "Bajuvar Law," title 1, chap. 6.
13. Fustel de Coulauges, *Istoria instituţiilor politice din trecutul Franţei. Monarhia francă* (Paris, 1905), 428–430.
14. *Duodecina manu sen tertiade cum jurare*. . .Reference is made to the *Burgundian Law*, chap. 8, which set the number of compurgators in criminal matters to 12. Described by H. Brunner in *Deutsche Rechisgeschichte*, vol. 1, 177–180; vol. 2, 360–386.
15. A. Esmein, *Histoire de la procedure criminelle en France et specialement de la procedure inquisitoire depuis le XIII siecle jusqu'a nos jours* (Paris, 1881), 70 and passim.
16. Du Boys, "Istoria dreptului penal al popoarelor europene [Histoire du droit criminel des peuples europeens]." apud D. D. Stoenescu.
17. I. Werboczi, *Tripartitum*, (Budapesta: Asociaţia Franklin, 1897), 179. .

18. Constantin and Dinu Giurescu, *Istoria Românilor din cele mai vechi timpuri* (Bucharest: Ed. Albatros 1975), 168.
19. Du Cange cites Fortescuti from *Legum Angliae*, chap. 25 and from *Statutum 2. Vestmanastiriens*, chap. 42, our translation.
20. *Legea Henrici I. Reg. Angliae*, chap. 64. In 1865, the Transylvanian *Foaia pentru minte* published a Slavonian document which stipulated that compurgators had to be on the same social rung as the accused.
21. *Glanville, Book XIII*, in the original. Apud D. D. Stoenescu. Our translation.
22. D. D. Stoenescu, 63.
23. Sir Maurice Sheldon Amos K. C., *Justiţia Britanică* (Bucharest: Ed. Librărie Papetărie, 1945), 13.
24. *Ibid*.
25. *Legea Upland*, Chap. 6–13, apud D. D. Stoenescu.
26. *Ibid.*, chap. 16.
27. Allard Alberic, *Histoire de la justice criminelle au seizieme siecle* (Paris–Leipzig: 1868). Reprinted in 1997.
28. Gheorghe Cronţ, 92.
29. Meant to redeem a mistake.
30. Gheorghe Cronţ, 96.
31. The principle that was applied in establishing the number of compurgators was: "The higher the damage occasioned by the violation of a right, the larger the number of oath-helpers." Thus, for an insult 2 compurgators were required, for murder—7, and for litigations concerning the payment of debts—12.
32. Jevrem Gherasinovici, *Vechiul drept sârbesc* (1925), 144.
33. This was the *Zakonik of the Serbian Tsar Stephan Dušan*, o remarkable enactment of Serbian law from the years 1349 and 1354. It was published in Serbian for the first time by Archimandrte Raici. It was translated into German by Engel and into French by Ami Bone.
34. D. D. Stoenescu.
35. D. D. Stoenescu, 54–55.
36. Hermenegild Jirecek , *Slovanske pravo v Cechach a na Morave* (Prague, 1864), 213. Apud Ghe. Cronţ, *Institutii medievale romanesti* (Bucharest: Ed. Academiei, 1969), 99.
37. Vinodol—a province in Croatia situated on the shore of the Adriatic Sea. In the Middle Ages, it formed a principality under the (Italian) dynasty of the Frankopans. În 1842, the Vinodol Statute was drafted in the local dialect at the initiative of Prince Leonardo.

Abstract

The Wager of Law in The History of Other Peoples

The wager of law or compurgation existed in the three Romanian Countries, functioning in the juridical systems of various periods of time and adapting in accordance with them. At first, this institution appeared to be conditioned by kinship relations, being the legal expression of family solidarity. During this time, criminal trials were more frequent, which means that family solidarity, expressed through collective oaths, tended to manifest itself in this type of litigations. In the Middle Ages, in the period of transition from gentilic relations to feudal relations, the wager of law underwent a transformation, becoming the institution of class solidarity. It began to be used in civil lawsuits disputing land and the ownership thereof. In this way, compurgators or oath-helpers and oaths appeared in trials as means of providing legal evidence, functioning as an institution that was well known to the Romanian people. Many historians and jurists refer to the general characteristics of this institution, contending and at-

tempting to prove that compurgation was borrowed from various other nations. Embarking on an analogous demonstration, we have shown how the wager of law system was regarded by these peoples, with a view to disproving the above claims as unfounded. Although the written legal sources from the first millennium are virtually inexistent, there are sufficient documents from the second millennium that support and emphasise the Romanian origin of this institution. The study of these documents reveals that compurgation represented an ancient practice, being used as a custom, as the law of the land. The method of securing evidence by means of compurgation was used by all the social classes, ranging from litigations among the peasants to lawsuits involving the great nobles or even certain rulers. In almost all the documents describing trials where the wager of law was used, the following indications appeared: "under law and justice," "as done since the beginning of time," "as we know from olden times," "according to the law and custom," after the law of the land.

Keywords
compurgators, origin, legal expression, evidence, history of law.