



ORIGINAL PAPER

The historical values of legal reality

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Abstract:

Explaining law, from a historical perspective, is opportune and useful in order to understand its essence. The possibility of knowing law must be accompanied by the integration of the historical phenomenon in determining reality. Undoubtedly, the understanding of legal reality is conditioned by the recourse to historical sources whose role is noteworthy in changing the life of law.

The broad content of history, the diversity of circumstances of this kind reveal their influence and, therefore, their importance in the mobile construction of law. The creation of law can be perceived as a consequence of the effects of a concrete historical fact that configures, in time, a distinct legal phenomenon.

The legal orientation actually follows the social-historical and political trajectory of each society. This relation of law to history is permanent. The harmonization of current law with all past events ensures the creation and proper application of the social-legal norms.

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Introduction

What I am trying to discuss in this paper is nothing new from the point of view of knowledge, but only a pertinent return to the unfolding of our current existence, while bringing to the fore some generally valid arguments in support of the idea of national historical and legal continuity, of compatibility and coordination of historical realities with the legal system, in the creation of which the social needs had a conclusive contribution and the historic events that took place in our society determined the articulation or even the transformation of legal reality. I thus begin my brief approach with the presentation of the historical values that constitute the essential support of the legal phenomenon and represent an important framework in the creation of the rules of conduct and their adjustment to the circumstances of our people's life.

Through their specificity, the Romanian historical values acquire the merit of creating a legal system whose authenticity cannot be doubted.

The values that became and are preserved as a national support, unworn by time, worthy of demonstrating and permanently renewing the bond between the conscience of the Romanian people and national values arose from the conscience of our people. "Far from exerting, as static objective elements, a constant influence on conscience, values are created by it, but their creation does not come to an end, it is constantly being fulfilled, as the conscience that creates them is also being fulfilled." (Moutsopoulos, 2005:76)

Determining one's own values is the result of transposing and directing our conscience towards good, towards success, towards authenticity, towards effectiveness. Variations in conscience cause variability in value. The more vibrant our conscience is, the more enduring our values become, untainted by the inevitable upheavals of a life tried by hardships, shortcomings, or even venality. Aspirations towards a good, truthful and self-protective spirit give the viability of values and provide the much-needed vigour to a society. "The personality - the subject of the value - enters into a relationship with other personalities, enters into a social connection, in which it exercises an activity, which is subject to appreciation, therefore a process of valorisation." (Andrei, 1997: 175). In general, "the value system covers the entire conscious life of existence, to the extent that it draws from this very existence its own force to impose itself on it". (Moutsopoulos, 2005: 93).

Considerations on the historical values

It is considered that "a phenomenon acquires historical character only through the relationship with a *value*" (Andrei, 1997:1169) and values "must be understood in their historical-social dynamics". (Ceterchi, Craiovan, 1998: 26). It is obvious that, constantly, within the society of any era, what emerges as important and acquires, as a consequence, a special significance, remaining in the collective memory, are the facts likely to be essential for social life.

The values of the past are strengthened, through the natural effect of time, expressing, in a just way, their historical character, and contemporaneity in turn creates values under the seal of the present, which, without jeopardizing the previous ones, come to enrich and enliven, in turn, in an original way, this heritage, so that "compared to the abundance at our disposal, the past can seem very poor." (Cassier, 1994: 39-40).

However, it sometimes happens that people are seized with a sense of contempt for the age in which they live, and instead they love and admire unreservedly a period of the past with such devotion so that it is clear that, if they had to choose, they would live

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during that period rather than the present one". (Berlin, 2004:19) It follows that each of us can observe the historical periods from different points of view, but, as a whole, history is of unbroken essentiality for both collectivity and man. The role of history to clarify in the sequence of time "the relationships between people and the relationships established between people and the environment" is recognized. (Berlin, 2004:51) " 'In order to get to know yourself', says Comte, 'get to know history' ". (Cassier, 1994: 94) Historical values form the national and universal scenery which never changes because they are the effect of our actual and continuous efforts which imprint time without exhausting themselves.

History emanates from individuals and enshrines itself in a society. Consequently, the truth emerges that everything we develop under the auspices and strictly personal interest without creating a general perspective in the form of a convenient gain for the collectivity is not valued from a historical standpoint, being considered, in other words, worthless. But, "although value is constituted by relating objects to social needs, historically determined by practice, the name of value is assigned to the things, ideas or actions that certain human communities value and to which they aspire." (Craiovan, 2001: 5) Moreover, "the depth of the human being, based on an elevated spirituality, has as a criterion of valorisation 'to be' and in its highest sense it can even go beyond any valorisation." (Dănişor, Dogaru, Dănişor, 2006:10).

As a natural part of things and our earthly existence and out of an explainable interest, every human being thinks at least once about his origin as man, thus reaching providence or not in relation to his creed, or to special theories in this respect in order to identify himself, as a member of a family in which he was procreated and of a collectivity in which he developed. Of course, "just as each man is interested in his parents and ancestors, so are nations interested in their past." (Giurescu, 2000: 13) "The need to know the origins unites disciplines and generations, in a defining effort for the very human condition." (Zub, 1994: 12).

As in any sphere, in the legal sphere, we are also driven by the desire to know as accurately as possible remarkable elements about the origin of law, resorting in this sense to historical sources worthy of helping us to intuit truths.

But, the objectivity of the facts that reveal our legal identity can appear differently in relation to the optics of an individual or a social group and in conclusion, it cannot be generally valid because the very configuration of our universe as a being reflects special habits, different attitudes, confrontations which life offers and which in no way can be identical to those of other beings. Moving forward in life is ultimately about developing through a personal process of will, progressing through different skills, projecting your perspectives differently. "Space and time constitute the framework within which the whole reality is involved." (Cassier, 1994: 66).

There were recorded transient situations, as well as facts which received historical consecration because, by their magnitude, they became fundamental in the construction and foundation of legal concepts and, although they were subject to the inevitable irreversible course of their own duration, they remained for future generations as the victors of time. The conclusion is therefore that "*...everything new and valuable that will be achieved in the determination and definition of historical time represents valid contributions for general time.*" (Tănase, Isac, 1980: 93).

Fidelity towards history is preserved in an evolutionary way because our reality becomes a past explored by our descendants, invited to research it, to subsume its guiding ideas, to develop them, to modify them or to substitute them with their own that

will surely become, at a given moment, past too, adding to it and thus amplifying, through their substance, the historical phenomenon.

The historical valences of various facts are accurately stated by specialists in the field. "A historian aims to emphasize what is specific, unique in a certain human character, in a certain chain of events or historical situation, so that the reader faced with such an account is able to understand 'the concreteness' of that situation, i.e. the way in which it happened at that specific moment, in that specific place, as a result of specific antecedents within specific events in which it and only it appeared - the points in which it differs from whatever came before or may come after it." (Berlin, 2004: 44).

It follows that the durability of a legal conformation coincides with the durability of the historical era in which it was designed. But, "to understand human development over time, the historian needs not only the *mind*, but also the *heart*, that sympathy which makes him participate somehow in the life of the vanished worlds." (Zub, 2000: 312).

Awakening a past era is an impossible thing, but the history of that era can remain evocative from certain points of view for the future.

Due to the current acceleration, one can observe distinctions in many respects compared to the past, on the one hand, many more possibilities of knowledge, but, on the other hand, also many inconveniences which, even if of a different nature than those in the shadow of the past, can be found, undoubtedly, unfortunately, successfully, at present.

As we have already emphasized, we cannot deny that we direct our attention in our existence in relation to the environment in which we live to values perceived through the filter of our own concerns, that we train ourselves in the sense of obtaining advantages in the private sphere, that we try to smooth our way of social, intellectual, professional evolution somehow shaped according to our demands, while becoming neutral towards the significant aspects of society.

Our predispositions are to potentiate activities considering their usefulness over time within the perimeter of our needs, ignoring that they could also represent a contribution to peers and posterity.

"This is what it means to bring a past era to life! The road is beset by deceptive traps; each age, each group of people, each individual has its own perspective, and these do not remain static, but change [...]. Moreover, every perspective from the past differs from the perspectives of all subsequent observers." (Berlin, 2004:48)

The attitudinal peculiarities prove to be natural because the relationships through which we pursue what is of personal interest are natural, but it is not natural to raise ourselves too high in our position, causing real chasms between us, in order to reach our own goals. We are careful to choose, in general, what is propitious for us, promising us satisfaction. I don't consider the habit of noting the particular effectiveness of things to be new, but we must never ignore the fact that sharing our experience and not avoiding being providers of what we know or will know, emphasizes a generic good whose spirit sheds light over everyone, including us.

It is natural and confirmed that "humanity's life is constantly changing: peoples, languages, laws, customs appear and disappear or are transformed; after some time, the appearance of mankind is different; [...] the leading ideas are different." (Giurescu, 2000: 13). We can give as an example regarding these changes the very revolution that took place in our state in 1989, considered a real source of law, because it determined radical changes at the political level and not only that, and these changes also extended

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to other levels of our life producing, as a consequence, a substitution of the previous legal system with a new, democratic structure. “The first concern of the servants of history and culture was directed towards the process of repair, of eliminating what was harmful and bringing to the surface, in the sight of all, the truth unencumbered by distortion or concealment.” (Saizu, 2008: 173)

Not only will such an event forced by the precarious circumstances of life that have marked generations remain, in a motivated way, in our historical memory as a form of collective revolt by virtue of the effects of which another content of Romanian law was created and substantiated, but our entire life under the sign of its changing meanings in the actual unfolding of time.

In fact, each historically consecrated event ultimately reveals a particular conformation and effects that we feel as the result of certain needs expressed over periods of time through the inevitable reference to existential circumstances, to our characteristics as individuals belonging to a particular society and the evolution of our relationships within it. We can state, however, that the successive unfolding of historical episodes, even with the physiognomy specific to certain times, promises the continuity of the historical process, from which it follows that “the history of law must not be understood as a series without unity of some legal institutions, but as an attempt to discover the laws of the evolution of institutions”. (Dănișor, Dogaru, Dănișor, 2006:13)

It is obvious that we should not permanently imprint the present with the emotions of the past, but we can appreciate that the past can become educational, that a society learns from the past like any person who learns from difficult situations or life imbalances to adopt elementary but correct rules to avoid conjunctural inconveniences, learns how to dissociate between useful and useless and comes to the conclusion that, over time, the dimensions of good must be promoted mainly by cultivating and idealizing it, in this sense dripping from the symbols of the past in the process of developing a continuous present that is clearer, more open and more valuable. “Man and time therefore remain essential concepts, without which history cannot be thought of.” (Zub, 2000: 266)

Considerations on legal reality

“Legal reality, in its capacity as an object of legal science, is a historical one.” (Dănișor, Dogaru, Dănișor, 2006: 13) In other words, the representation and impartiality of law engages historical reality in the creation and consecration of legal values. It follows that when “we talk about law as a science of norms, we introduce the *notion of value*.” (Andrei, 1997: 231) The practical meaning of law and the meaning of the rules of conduct that constitute it provide the necessary balance for our society, “guiding people's behaviour in the direction of promoting and consolidating social relations according to the ideals and values which govern that society.” (Craiovan, 2001: 212) “Law as a way of crystallization of value regulates types of conduct and ensures compliance by the addressees.” (Mihai, 2003: 5)

It is argued that “value appears to us as a fulfilment of knowledge, in which the product of knowledge is related to man, to his needs, aspirations, goals.” (Craiovan, 2001: 3) “By this general value, two things can be understood: 1. *a value recognized in a real way by all individuals*; 2. *a normative ideal*.” (Andrei, 1997: 174) “The very process of establishing the legal norm involves an inherent value-related dimension, because the former concerns the fullness of possibility and virtuality, the will relating to what is not yet, to an ideal towards which a reality must aim.” (Craiovan, 2001: 212).

There is a refinement of the urge that my will in congruence with the will of my fellows illustrates a general will, the will of the social group identified under its own, idealized juridical physiognomy.

The further integration of the law of the national social group into a universal legal system is only possible under certain generically conjugated aspects because each legal system values itself differently, mainly in connection with the values of its own traditions.

But there are concepts which emerged and remained regardless of the interpretations subject lively received by generations under the harshness of time, and never burnt their substance, such as the concept of freedom, equality, fairness, truth and justice on which the adversities of their time were felt but they penetrated and roamed that time becoming perpetual symbols of our existence. “Not contemporaneity, but *the community of values* binds people to their peers from other times.” (Gulian, 1967: 13) The values recognized as permanence of time are, however, received, from a practical standpoint, in a special manner.

For example, “since there are different interests at the level of individuals or social groups, justice will have a different content for each of them.” (Dănișor, Dogaru, Dănișor, 2006: 10) With reference to the value of freedom, professor Dan Claudiu Dănișor believes that “we do not mean by concept a given objective thing, but only a mental reality, strongly individualized for each subject and towards which we can have no certainty that it will be identical to the representation of any other subject”. (Dănișor, Dogaru, Dănișor, 2006: 25). As for the first life form of law in the specialized literature, it follows that “law, in terms of legal rules of cohabiting life, arose with language, an instrument of communication, of consensus and disagreement among people, once, and in interference with morality and religion.” (Mihai, 2003: 104).

Therefore, the insight into law and the considerations on its emergence represent a sensitive and intricate topic because we cannot say that there is a definite demonstration regarding a single moment or a set phase denoting the first legal adaptations, the more so as it is well known that other spiritual skills already acclimatized to the living environment pre-existed among people, and legal norms could easily have been combined and consequently confused with them. It results that “the genesis of law is an integral part of the historical process, of the historical becoming of society itself, in which a multitude of factors and relations of determination, influence, interaction, quantitative accumulations and qualitative leaps can be identified”. (Craiovan, 2001: 5) “Each branch of modern law has its own history.” (Dănișor, Dogaru, Dănișor, 2006: 14).

Later, the rules were identified in a comprehensive normative structure whose configuration coincided with the state organization. However, it is considered that “the state, no matter how important, is not everything.” It cannot express or absorb all the other activities of man”. (Cassier, 1994: 94).

Consequently, it can be considered that, in order to balance coexistence relationships, the human community issued rules in this regard, during the period prior to the assimilation of the state concept and its constitution. Somehow fitting these rules into the existential framework of our predecessors determined and enshrined what we call today customary law, which stands out, in conclusion, as the law preceding the state. “Chronologically speaking, the custom was the first form of manifestation of law.” (Craiovan, 2001: 228).

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The content of these unwritten rules mediated the relationships between individuals, mitigated shortcomings, expressed a social stability needed at any moment. Although simple by construction, the unwritten rules determined man's caution to the challenges of the environment, they transformed him into a better observer of what was more useful and worthy for him and his family by implementing the idea of the rigour of a behaviour and thus shaping the manifestation of each through adherence to the group mindset, as a whole, which thus began to develop in other terms. Custom also meant the history of national law, which it characterized temporarily, until the creation, naturally in time and under special circumstances, of written rules.

From the moment individuals knew and appropriated a state organization, some of the unwritten legal rules were reformed, framed, fixed and authorized under the written law or new rules were established, all knowing a new process of historical becoming because no rule on both written law and unwritten law can remain the same for good. We can thus say that the legal ideas arose through the thinking of times. "The emergence of the state only determined an intensification of law by widening the social field for regulating conduct, changing its form of expression and amplifying coercion." (Guțan, 2017: 4).

The presentation of unwritten law under a different guise did not, at least immediately, have the effect of suppressing it by decreasing people's receptivity to the old prescriptions. Law was enhanced and over time the written rules were strengthened, harmonizing with the new social perspectives and becoming binding for the individual. Ultimately, we are the possessors of the paths to progress, the only ones whose occupation is to change their route in our becoming, to avoid difficulties, and to install and maintain the measures of our existence.

This is why we cannot just stop and assess the law in force on the basis that it is within our reach, neglecting its historical dimensions. As such, the History of Romanian Law is the discipline which deals with the characteristics of our old law, presenting it and advancing it chronologically under the burden of time from the source to the present.

The history of law engraves, from the depths of the past to the tumult of the present, the actions of great emotional charge without ignoring any of them and by explaining them successively it gives them a well-deserved appreciation because they all represent the path to the unification of the nation and an urge for generations to be strong, to sediment what is worthy for them, to cross the thresholds of time with courage and to maintain themselves in positions worthy of the possessors of some values of their time. All these actions not only of the past but also of the continuous present can be qualified as real sources capable of shaping the progressive image of a legal system.

To the present, the past recommends wisdom acquired by practical experience, experience acquired by patience and courage. Similarly, "*understanding* can of course contribute to a cognitive reproduction of historical facts, to the creation of bridges between the spirit of generations [...]" (Tănase, Isac, 1980: 250). Advancement in the field of knowledge nowadays gives us the chance to accurately discover common or disjunctive conceptual elements from the influx of the past, to reflect, even if sometimes under dilemmas, on the dimension of the legal universe. Travelling along the path of law under the variations of time, people preserved, modified, interpreted the historical-legal values in every respect, acquiring the quality of founders, interpreters, guardians of times. "But no matter how extensive the field that sciences would manage to control, no matter how detailed [...] and coherent the accounts of the best historians may be, a huge

amount of data is inevitably lost sight of at both sides of the scale - both the deepest and most pervasive categories that enter too much into the composition of our whole experience to be easily detached for observation, and at the other side the ever-changing conceptions [...], which constitute the uniqueness of each individual and each of his acts and thoughts, [...] the particular pattern of a life, [...] of an institution, [...] of an entire culture, era, nation or civilization.” (Berlin, 2004:40).

But what remains remarkable is the access that each of us has to our own past. Voluntary concerns to often launch ourselves into knowing it, constitute an evaluation of its sources and consequently a gain of ideas, and the addition of new ideas into the value field represents the balance between origins and the current state, favourable for the whole society. Moreover, “some of the solutions of the current law do not date from our era, but have their origins in more or less distant periods of human history.” (Dănişor, Dogaru, Dănişor, 2006: 13).

Conclusions

“There is a system of values for every human community, historical and social changes entailing changes regarding the criteria for valorisation as well as those for chaining and ranking values and imprinting a certain dynamics of values.” (Craiovan, 2001: 321). As for the legal value, it occurs as “a measure of the facts, because it deems the facts according to the compliance with the rules and laws established by the legislature.” (Andrei, 1997: 233) “Because historical facts never repeat themselves exactly, history cannot reach the laws... However, they have a common goal: finding out the truth [...]” (Giurescu, 2000: 13).

The accumulation of decisive historical elements is perpetual because each people clarifies through history aspects of its origin and continuity. It is not only the theme of the past of a particular importance that acquires historical character; history also characterizes the present viewed in the exercise of the role of becoming history, able to open horizons intended to predict a future. “History, which apparently comes to us from the mists of the past, but which actually also besieges us from the future, like an inexhaustible river, can be recreated by moving *upstream*, to the sources, and somewhat ‘predicted’ through meditations on its future dimension” (Zub, 2000: 268) [...] “because we do not see in which area of existence, other than that of everyday life, historicity could be reflected.” (Veyne, 1999: 34). Moreover, it is considered that “all our actions take place in a relative present because their roots are in the past and their tendencies are directed towards the future.” (Tănase, Isac, 1980: 259) or “history is the discipline that methodically investigates, objectively explains and causally clarifies the development of all mankind.” (Giurescu, 2000: 13).

In general, history is of particular interest to the individual who looks strictly at himself or looks at himself collectively. An idea emerges from the specialized literature (Giurescu, 2000: 13) that “researching the past is not only an act of curiosity but also one of piety and spiritual strengthening”. The particularities of a people's history are cultivated under its dome and arc over time, eternalizing themselves in a specific form for each generation, therefore “the same legal institution can have different meanings in different social climates, in time or in space.” (Dănişor, Dogaru, Dănişor, 2006: 15).

In today's society, ideas are practically transposed by experts in the field and not only. Through his skills the individual thoughtfully endows his own universe whose significance is imprinted accordingly to its founder. The judgments that evoke the past can be appreciated as famous examples in the complex creation of the legal universe,

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since they come to consent in addition to the effects of human quality in constituting a normative configuration originally and permanently matched to the new. From the current perspective, we see the previous values enhanced in accordance with the ways of living, the environment, customs, claims, and under the rule of the current human universe we demonstrate ease, strength, determination in the edification of our lives and in the knowledge of our legal history, considering that the past will never end, because, “without going back along the thread of history, some of the current institutions would seem obscure, unjustified, bizarre.” (Dănișor, Dogaru, Dănișor, 2006: 13).

We agree that “the meaning of duration isn’t therefore, from the perspective of knowledge, unequivocal, but has a double meaning and a double finality: the present gives meaning to the past, through a reverse movement, of returning to the source, and the past enriches, in turn, the values of the present”. (Zub, 2000: 268).

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