THE IDEAL LAW, THE JURIDICAL SYSTEM AND THE LAW'S FINALITIES

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Abstract: *The paper tries to define the distinct questions of which both the General Theory of Law and the Philosophy of Law are deeply preoccupied the origin in the historical sense (the appearance); the aggregate of public behaviour rules, general and abstract and the origin of law in the sense of its substance, respectively the totality of the existing objective and permanent conditions.*

Key words: *Law' origin, juridical system, ideal law.*

Here are some distinct questions of which both the General Theory of Law and the Philosophy of Law are deeply preoccupied:

a) the origin in the historical sense (the appearance); the aggregate of public behaviour rules, general and abstract, founded upon the cohesion of the social group and, averagely, comporting sanctions - which, structuring the ensemble of inter-subjective relationships, do ensure the co-existence of liberties within an organized society. This is the definition of the concept of law seized as a phenomenon[1]. The idea of law[2] is tightly connected with the law's origin, this latter words being accountable for two meanings;

b) the origin of law in the sense of its substance, respectively the totality of the existing objective and permanent conditions.

Hegel rigorously separates the historical beginnings of the phenomenon "law" from what might be called the "existential provenience" and, of course, from the origin of law in the sense of objective and permanent conditions[3].

What proves itself to be important about the origin of law "is not the determining of the law's historical beginning, but its essence, the aggregate of the objective and permanent conditions which determine its existence and constitute its essence"[4].

Hypothetically, if the concrete and perpetual circumstances with a determining role in the law's formation and maintaining would disappear, the law's existence should no more be justified, would have no more ground, which means that the law's origin should be sought for "not in the past, but in the actual law, because the origin principle does exist as long as the object itself exists; yet the object exists for as long as the principle does"[5].

The essence of law is constituted by the need for rules that would be external to the individual conscience, rules of inter-subjective relationing, with no distinction made about their forms taken, rules to be created by a social group[6].

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[1] Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *Teoria generală a dreptului*, Ed. All Beck, Bucureşti, 2002.

[2] For details, see: vezi Ion Dogaru, D.C. Dănişor, Gh. Dănişor, op. cit., p. 42-70; D.C. Dănişor, *Drept constituţional şi instituţii politice*, Editura Ştiinţifică, Bucureşti, 1997; Gh. Dănişor, Metafizica devenirii, Editura Ştiinţifică, Bucureşti, 1992; Idem, *Metafizica prezenţei*, Editura Ştiinţifică, Bucureşti, 1998; P. Pescatore, op. cit., p. 360 şi urm.; Ion Dogaru, D.C. Dănişor, *Drepturile omului şi libertăţile publice*, Editura Zamolxe, Chişinău, 1998, p. 111 and fol.; Georges Burdeau, Traité de science politique, Tome I, p. 29 and fol.; E. Durkheim, *Regulile metodei sociologice*, Editura Ştiinţifică, Bucureşti, 1974, p. 47 and fol.; Nicolae Titulescu, Reflecţii, Editura Albatros, Bucureşti, 1985, p. 2 and fol.; G. W. Hegel, *Principiile filosofiei dreptului*, Editura Academiei, Bucureşti, 1969, p. 279 and fol.; Mircea Djuvara, *Drept constituţional*, partea I, 1924-1925, p. 124 and fol; J.J. Rousseau, *Contractul social*, Editura Ştiinţifică, Bucureşti, 1957, p. 99 and fol; Nicolae Popa, *Teoria generală a dreptului*, Editura Actami, Bucureşti, 1966, p. 121 and fol.

[3] See Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 42-43.

[4] Idem

[5] Ibidem.

[6] "The self-insufficiency, the loss of self-conscience as self-certitude determines the appearance of social structures, which tend to realize this self-conscience instead of the individual. These structures do not bring benefit to the individual person, but to the whole group, seen as a distinct entity. So the foundation of the group is not ensured by the

Thus, what enables the law to exist is exactly the individual's lack of capacity to establish rules without inevitably letting the other people aside of the process, to design these rules not only suiting himself, but also suiting his fellows people, to create optimum social relationships without the requirement of an existing structure able to direct them.

The systemically design of law ensures the unity of juridical norms and their settlement in independent parts, seen today as subsystems of the greatest one, that is to say in juridical branches and institutions[7].

For the theme we wish to approach, it is important to briefly precise the features of the juridical system.

To approach them does not lack complexity and difficulty.

This latter comes from the existence of concepts which often are ambiguous, understood either through equivalence or through antinomy .

It is this equivocal expression which hardens for us to define the essence of the juridical system through its own features.

These are in our context clarity, coherence, consistency and completude.

All these features are able to underline the variation existing between the idea of law, the juridical system and the law's finalities.

Firstly, the juridical system's clarity flows from its logics, involving the respect of the following principles[8]:

- the postulation of a finite number of terms or notions called prime terms or prime notions, and of the rules necessary to define the other terms (derived terms or derived notions);

- the postulation of a number of sentences (axiom) and the deduction rules for the other derived sentences (terms); and

- the law is formalized, an intuitive thought process is substituted by a purely formal one.

Since what matters is the social importance of the law's effects, there should be a solid reason for which the rules of law and the facts they are applied to would be determined that exact respective way they are.

From this we can easily deduce that the law system should be formalized, which means, simultaneously, that any real contents should be abstractionized and that all processes should go on in a purely formal way.

But yet we can easily deduce that, into law, what prevails is the material criterion, not the formal one.

Next, we can state that the finality of the law's application is justice, and that law ought to be a system of that kind.

Secondly, the coherence of the juridical system is one of its important features[9].

Its unity is given by its components' coherence, systemizing and hierarchy. The law's homogeneity lies under the risk of being altered, due to the multiple antagonic concepts we might meet into law; yet antinomies are often seen, they are rather inevitable.

Thirdly, the juridical system is characterized by its consistency.

A system is consistent insofar all its deductions are correct, the law is a system. The law' system owns consistent zones, but also inconsistent ones, issued from its linguistic fund or from the more and more diverse life to which it has to correspond.

Sometimes, concepts lacking precision are used, perhaps willingly non-precise, so juridical notions are not always rigorous, thus certain legal stipulations become elastic, for example infringing, into penal law, the principle *nullum crimen sine lege*[10].

«human nature», but by some sort of «human de-naturation». The basis of law is not the human reason, but the reason of the structure" (Ion Dogaru, D.C. Dănişor, Gh. Dănişor. op. cit., p. 43).

[7] See, to this purpose: Ion Dogaru, *Elemente de teorie generală a dreptului*, Ed. Oltenia, Craiova, 1994, pag 205.See also Ion Dogaru, Sevastian Cercel, Drept civil. Partea generală, Ed. Ch. Beck, Bucureşti,2007,pag. 6-7.

[8] For details, see Ion Dogaru, D.C. Dănişor, Gh. Dănişor. *op. cit*., p. 45 and fol.

[9] In this regard, see: Ion Dogaru, Sevastian Cercel, op. cit.,2007,pag. 6.

[10] To this purpose, see: Ion Dogaru, D.C. Dănişor, *Drepturile omului şi libertăţile publice.*

It is just that this kind of "flexibility" ("elasticity") still has its role in the development of law, in achieving the texts' synchronization for circumstances that are difficult to foresee at the law's issuing moment, this progress can be reached through the law's creative interpretation by the persons who apply the law.

Finally, fourthly, the juridical system is characterized by its completude.

We may say that "a juridical system is complete because it does not contain lacunae and, through the aggregate of its elements, it could determine the juridical statute of every deed"[11], this statement is confirmed by the principle instituted by the Synthesis Civil Law according to which the judge that should refuse to make a judgement allegation that there is no law or that the law is obscure will be held as liable for denial of justice[12]; in this kind of cases, the obstacle will be removed by appealing to the law's general principles, which are, often, themselves the oeuvre of judicial practice.

The connection between the idea of law, the juridical system and the finalities of law is strongly underlined by the fact that law is a self-organized system, its force, can be characterized as follows:

- the juridical system is self-determining by it own, according to its intrinsic nature, therefore, in the process of its founding and application, through this oeuvre itself, the system is submitted to natural mobility[13];

- the juridical system is interacting with the environment, even tending to create this environment "absorbing the external facts through its retro-action upon the causes"[14];

- though receptive to the environment seen as an information source, the juridical system is normatively closed. We are in the real presence of a normative confinement but of a cognitive affirmation.

The social trouble-causing frame which the juridical system, as a self-organized structure, has to regulate, does determine this latter's development, unless the major changes configured by a revolution should initiate the modification of the form taken by the juridical system itself.

The law, as a creation of the social organism once constituted, comes to rebuild this latter's structure and finality. A creation of the social corpus, the law comes to create its creators, respectively it creates the social corpus and its purpose, through a double mediation: the one of the social bodies and the one the of intrinsic purpose of the juridical system.

On the social co-existence as a finality of the law, the following precision are imperative:

a) "social co-existence does not equalize to society", because for that "to the fact of co-existence (ought) to be superposed another phenomenon, the one of a psychological nature this time, that should give to the group the definitive asset of being a society"[15], this asset consists in the transfer of thought from the individual person to the group.

The society presents itself as an inter-conditioned existence of individuals "an existence through the relationship as related to the relationship itself, an inter-human existence"[16].

As a conclusion, co-existence represents the automatically association of two objective components - space and time. The society involves the autonomous existence of what connects and of what is connected. This is what we might call the relationship's "inner self".

Law is "an external structure of behaviour rules ..."[17]. It was justified to sustain that the social juridical phenomenon is complex and that "this phenomenon determines an intensified effort

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[11] Ion Dogaru, D.C. Dănişor, Gh. Dănişor. *op. cit.*, p. 47.

[12] In other words, if the particulae norm might have lacunae, the law as a system could not have then.

[13] For developments, see: Ion Dogaru, Nicolae Popa, Dan Claudiu Dănişor, Sevastian Cercel,*Bazele dreptului civil*, Tratat, vol I,Teoria Generală,pag. 152.

[14] See, to this purpose: D.C. Dănişor, *Drept constituţional şi instituţii politice*, Editura Ştiinţifică, Bucureşti, 1997.

[15] Georges Burdeau, *Traité des sciences politiques*, Tome I, Le pouvoir politique, Paris, 1949, p. 29 and fol.

[16] Ion Dogaru, D.C. Dănişor, Gh. Dănişor. op. cit., p. 49. See also Nicolae Popa, *Teoria generală a dreptului*, Ed. Actami,Bucureşti,1966 pag 121.

[17] Ion Dogaru, Sevastian Cercel, *Drept civil*,parte generală.

of research upon it, a partition of roles, aiming to necessarily revaluate the correlated sides of this phenomenon[18].

Through its origin, society is a psychological phenomenon, a fact of human spirituality, but, in its turn, it creates its own psychology. Therefore, the psychology of the social being, of the objective inter-human existence[19].

Thinkers were preoccupied, since the most ancient times, by the question of primacy:

- the society or the individual? Aristotle stated that the state is prior to the individual[20]. From his statement is deduced the fundamental principle of the whole priority and also that the cause of this reunion is the individual's self-insufficiency. It also results that, for the human being, there is no pre-social state, which means that Aristotle has in sight the social individual, not the human being by itself:

- the individual is created by the society[21];

- in the relationship society-individual, the latter is primordial, so that[22], "All which contributes to promoting, feeding and developing the social life of humanity ... supposes an activity of the individuals, who should elevate themselves to self-consciousness in order to better accomplish their roles and better achieve their missions[23]. This opinion was rejected by the individualist society;

- the society and the individual "are two phenomena equally primitive and necessary"[24];

- the society is an entity. It does not effectively create the individual but, like any entity, by tending to state its identity and preserve its being it enters in a sort of contradiction with the individual-solved at the level of this latter's conscience by the idea of security and of easier satisfaction of his needs - and, tending to preserve its own embodiment, represented conceptually, it imposes to the individual a path of thought that would correspond to the needs of the social body. Society creates the individual, in the sense that it creates his psychology, the topics of his thoughts, imposing him certain solutions"[25]. As a conclusion "the purpose of law is social co-existence ... this social finality of the law means the predominance, by constraint if it should be needed, of the society's primacy over the individual, the former being an autonomous structure of inter-subjective relations"[26].

Another finality is represented by the fulfilling of the common good, known as the "social purpose" of society.

Celsus was sustaining, in the Antiquity, that the law is the art of goodness and justice (ius est ars boni et aequi), a statement supported by two ethical categories: the good and the justice. This definition was taking into account the reality of these times: law was not yet emancipated from the aegis of morality, thus its purpose was still to achieve moral goodness"[27].

According to E. Durkheim[28], it is necessary to understand the nature of society, in order to have an exact image of how it represents itself and the world which surrounds it, and not the nature of particular individuals.

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[18] Nicolae Popa, *Teoria Generală a dreptului*, Ediţia 3, Ed. Ch. Beck, Bucureşti, 2008, pag 4.

[19] Idem. Ion Dogaru, D.C. Dănişor, Gh. Dănişor. op. cit. p 49.

[20] "Therefore, it is clear that, by its nature, the state is prior to the individual, because since the latter is not sufficient to himself, he is to the state like the members of a body to this body while, on the other hand if he could not or would not need, because of his sufficiency to himself, to search for companionship in society then he might not be a member of the state, but would be either a beast or a god" (In: Politica, I, I, p. 12).

[21] See, to this purpose: J. de Maistre; See also Bonald, *Théorie du pouvoir. Oeuvres*, Tome XIII, p. 9.

[22] "The originary social ground is the individual" (J.P. Haesaert, *Sociologie générale*, 1956, p. 72).

[23] F. Geny, *Science et technique*, Tome I, 1914, p. 69.

[24] J.S. Mill. *La liberté*, Biblioteque des sciences morales et politiques, preface by Dupont White, p. 20.

[25] Ion Dogaru, D.C. Dănişor, Gh. Dănişor. *op. cit.*, p. 52

[26] Idem, *op. cit.*, p. 53.

[27] Nicolae Popa op. cit, 2008, pag 70

[28] *În regulile metodei sociologice*, Editura Ştiinţifică, Bucureşti, 1974, p. 47. "The representations which do not express the same subject, nor the same objects, could not depend on the same causes. In order to understand the way through which the society represents itself and the world which surrounds it we ought to look at the society's own nature, not at the one of the individual persons".

So, the common good might be understood as a vision of society about itself. This means that the search for the outline of common good ought to start from the essence of society, not from the one of the various individuals.

Recent juridical literature[29] promoted as the most adequate words, for the reasons noticed by the authors "social purpose" instead of "common good".

The question was also raised[30] if this social purpose is either individual or does it represent the aim of a trans-individual entity? The provided answer was that: "the social purpose is the purpose of society, not the one of the individuals who are its components, though it starts from their own interests and it is valued as their own; the structure, by itself, expresses through social purposes, and even through individual spirituality, its will only. But, above all, we should retain that individualism does not mean the superficial attitude which ostensibly states that the human being is everything, while it counts for almost nothing; it means an attempt to reconstitute the human self, with an appropriate choice of the premises we are obliged to start from"[31].

The recognition of the spirit's identity within a multitude of subjects does remain the prototype and the pre-supposed feature of any concrete and contingent relationship of social co-existence; it is the asset of historical life in its generality[32]; It is an action imposed by the existence of the humanity's thought, acting through each particular spirit, to the individual person, it is not an action of the individual that could pass through the experience of alterity.

It is rather through the individualization of the general finality, of an inter-human structural existence[33] that the social concrete finality is outlined, and not conversely (the edifying of the universal finality is not achieved by the generalization of precise individual purposes).

Thus, the general interest is: "a result, mediated by individuality, of the particularization of a pre-existing form, the existence of which could not be questioned by the individual[34] it is not a resulting vector of all the particular interests".

The formal elements of the social purpose are the ones of the common good. Their feature of being formal should be seized in a double sense:

- as formal elements which constitute the common good; and
- as structural elements composing the existing form[35].

These two are: the order and the justice.

According to G. Burdeau[36], the order "... might be easily seen as a given formal constant responding to the essential exigency of any society, which is stability; the ethical value of this order is not questioned, for this moment, it is only its existence, deprived of any significance, which matters for the common good, when only its formal value is considered".

For the society, order is not related to some ethical dimension; only the contents of the common good is ethical, the form having no contents of its own. Therefore, in regard to it, the individual is an abstraction. The predominance of the form is a consequence of the law's separation from morality[37].

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[29] " We have preferred to make use of the term «social purpose» instead of «common good», because the latter syntagma is less ambiguous. «Common good seems to suggest that this would be about a good pertaining to a heterogeneous crowd, and even more, a good pertaining to the individuals of whom this crowd is made of, a good commonly shared by many individuals. Yet, in fact, things do not stand this way. The common good is the society seen as a trans-individual entity, it is the purpose towards which tends this entity. This is why we preferred to name it «social purpose»" (Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 57).

[30] Idem, *op. cit.*, loc. cit.

[31] Ibidem, *op. cit.*, p. 59.

[32] See, to this purpose: Georgio Del Vechio, *Justiţia*, introduction to the preface of: Mircea Djuvara, p. 74, cited by Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 62.

[33] That is to say the society.

[34] Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 61.

[35] Lacking, by themselves, of a concrete contents

[36] In *op. cit.*, p. 104 and fol, cited by Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*, p. 62.

[37] Idem, *op. cit.*, loc. cit.

In certain circumstances, the order is characterized by neutrality, resulted from a misrepresentation of its normal sense, thus revealing the structure's general propension of becoming independent[38].

But when the order acquires the asset of normality, it could no more be thought of as outside of the ethical dimension, and it would suppose the re-settlement of law upon other grounds[39].

The term of "justice" signifies either identity with the concept of "law", or a concept meant to be superior and distinct from the law. According to Giorgio del Vechio[40] justice consists in the conformity to a law, while the law has to be in conformity with justice. Thus the law is considered to be a separating criterion for just and in just.

So, it has been said that: "Justice is a principle which, ultimately, depends in no way of the positive law and, as a consequence of this fact, neither of some concrete social order"[41].

The action of justice should be orientated towards an individuality's real moral elevation, towards naturally ensuring the others' liberty, with no need for some external rule to be imposed[42].

In the analysis of the relationship between form and contents, we should start from the relation of morals with law. Morals is considered to be a subjective ethics, while the law appears like an objective ethics characterized by alterity, or otherwise said an inter-subjective ethics.

Law operates only with social matters, though its finality should be to influence the individual; for the law, this latter could never be a perfect entity: what could be perfectible is the relationship only, or susceptible to be optimized. "For the law, only the other's freedom is origin; my own freedom is only a consequence of this free alterity"[43].

In this context, it results that the law defends only the relationship, which is seen to be free and autonomous, while the individual freedom is purely formal.

The individual is free within the relationship, not by himself, he is free for the society, which means that the individual appears as "a simple form which might have whatever abstraction of a contents"[44].

The following elements do institute the connections between the individual's freedom, the structural existence and the law[45]:

a) being conceived in the objective sense, the law has the features of being general and independent. Thus it presents itself as a logical form, with an objective structure;

b) in this quality, the law could not be influenced by individual reflections because, for the individual the freedom means duty, respectively his own adaptation to the existing order;

c) the adaptation to the order could be obtained either through education, or through constraint;

d) both the way of education and the one of constraint aim to ensure the coincidence of each individual will with the others' will;

e) into this context, freedom could be understood as the fulfilment of duty, respectively the foundation of law;

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[38] Of becoming a purpose by itself.

[39] See also: Nicolae Popa, op. cit ., 1998, pag 70, where the juridical system of modern peoples is said to be of a new kind, one of a realistic nature, one which opposes to the ancient, metaphysical type of system.

[40] *Op. cit*., p. 33: "If there are numerous and significant debates around the notion of law, doubts and differends around the notion of justice do grow even larger. This latter is, sometimes, considered an equivalent or a synonym for law. Otherwise, it is seen as a superior and distinct element in regard to the former. Under a certain aspect, justice consists in the conformity to a law. Yet, on the other side, it is said that it is the law that has to be in conformity to justice. Recognized, on one side as an adequate criterion through which just might be distinguished from injust, the law itself might be submitted to a judgement of the same type appearing, due to this, more like a fact pertaining to the empirical order. In the name of justice itself comes to be postulated a highest criterion of ideality, which transcends all the positive juridical determinings and the ground of which ought to be placed elsewhere"

[41] See: Vezi Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit*., p. 63.

[42] Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit.*

[43] Ibidem, *op. cit*., p. 64.

[44] Ibidem

[45] See, for details: Nicolae Popa, op. cit.,2008, the developments from pages 96-104

f) freedom might be conceived either from the perspective of the individual or from the perspective of the structure; these are two different things;

g) considered philosophically, freedom represents the human equation itself, with the struggles inside of the human being, with the need he has for the other so that he could be free;

h) juridical, the freedom is related to the bordering of human behaviour, seen as a "social actor"; it is a freedom-relationship, concerning only the maximal amount of prerogatives left to the individual's personal choice;

i) from this last point of view, freedom is conceived in the following two ways: as totally autonomous and as participation;

j) the freedom-autonomy is not unconstrained by society, it is not a complete compulsion over the human being, but yet it means something: a kind of interdiction, imposed to the governments, to trespass certain limits, to "penetrate" into the sphere reserved to the individual. Therefore, the freedom-autonomy is a freedom-relationship, which concerns not the individual by himself but the individual in his relationship with the public power. The freedom-autonomy results from the state's avoidance to intervene upon certain behaviours, so it presents itself as an obstructing freedom. Of course, being conceived this way, the freedom-autonomy is limited, it is partial, since the individual prerogatives are limited too. In spite of its limitations, the freedom-autonomy (beyond its partiality) is the ground of public liberties, because these could not exist in the absence of an individual autonomy. Ultimately, the right and only way to understand the freedom-autonomy is to see it as being in a perpetual contradiction with the existing public power;

k) the freedom-participation presents itself to be the way through which the individual person assumes the exertion, the instauration, but also the preserving of public power, because the individual could not preserve his own freedom unless he could master the instruments which might oppose to ("border") this freedom; and

l) finally, into this context, it is understood that the law's concept and finality can be seized only insofar they are related to the social purpose, the finality of the social existence, a connection which is unavoidably necessary for their explanation.

The maintaining of one's own existence is to be discussed in straight connection with the relationship: law for oneself - law for the individual person. To preserve their own existence is the purpose of social structures, meaning the conservation of the structure's logical coherence. Law itself is a logical structure; so consequently, the order would become forced without the imperative perfection of the individual. Therefore, the constraining side of order and the human side of the justice's equilibrium[46].

The law presents itself as inferior to morals[47] because it has no faith in human perfectibility and it has no flexibility. In the moral's case, this latter allows; for the human being, to be considered just as an individual. In other words, the law lacks the faith into human justice[48].

The following elements are important about the relationship education-coercion:

a)though juridical norms have no moral contents, this contents ought to increase, in order to diminish the law's inferiority in regard to morals[49];

b) the revigoration of natural law is to be desired, accompanied by a reinsertion of morals, aiming to bring together these two domains[50]. Through these, the imperfect individual might be allowed to become just;

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[46] See, to this purpose: Ion Dogaru, Sevastian Cercel, op. cit, (parte generală) 2007, pag 6.

[47] "The moral obligation starts from a special conception about the human being, a vision which is not the one provided by the law. Morals considers the human being under a perfectibility angle which is totally stranger to the law. An inferiority of law in regard to morals is not contestable" (Nicolae Titulescu, *Reflecţii*, Editura Albatros, Bucureşti, 1985, p. 2).

[48] " ... the law has in sight the common of mortals, and its rules do not have always the assent of morals, because what it has to realize is the order within companionship, not the perfection within life" (Idem, *op. cit*., p. 2).

[49] "Let me address to the law this wish: should all juridical obligations be executed with the scrupulous attention given to the execution of the morals' obligations by the people who feel that they are bound by them" (Ibidem, *op. cit*., loc. cit).

[50] See: Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit*., p. 68

c) this way, by perfecting itself, law might create juridical obligations bearing the nature and the force owned today by moral obligations; so, juridical obligations would be "sanctioned by the satisfaction of conscience"[51];

d) it is thought which imperatively requires restoration - in its principle. The restoration might concern at first the cause, enabling us to discuss over it. Then would be the turn of the social relationship - because, in virtue of his own thought, the human being is social[52]. People are the ones who matter[53]. Consequently, the categorical precepts of conscience hold a special importance[54];

e) Logically following, before being a social reality, law should be a rational reality, able to perfect the spirit first and then only to run for the material purpose; and

f) we might conclude that law signifies something more than positive law; the separation of law from force depends on, how positive law is humanized; the efficiency of a law does not depend exclusively on force[55].

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[51] Nicolae Titulescu, *op. cit*., loc. cit.

[52] The law's ground was sought for in social solidarity (see: L. Duguit, *Manuel de droit constitutionel*, E. de Boccard, Paris, 1918), cited by Ion Dogaru, D.C. Dănişor, Gh. Dănişor, *op. cit*., p. 69.

[53] " ... under the abstraction of laws, people are moving on" (Nicolae Titulescu, *op. cit*., p. 3).

[54] " ... beyond the strict limits of the law, the categorical precepts of the conscience are to be found" (Idem, *op. cit*., p. 5).

[55] " ... The effectiveness of the law whatever it would be and wherever we might get it from, is not exclusively relying upon its sanction by force" (Ibidem, *op. cit*., p. 5); See also Mircea Djuvara, *Curs de drept constituţional*, partea I, 1924-1925, p. 40, where, speaking of the fact that a law could not be imposed by force, no matter how rational it might be in itself, it is stated that the state only appears as: "a form of authority based upon its justification".

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