



ORIGINAL PAPER

Philosophical and Historical Influences in the Evolution of Law

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Abstract:

The complementary relations between law and philosophy are obvious throughout the evolution of the legal entity. Philosophical support is noticeable at any historical stage of the development of law. From a philosophical perspective, the insight into the essence of law offers various observations in the appreciation of the legal phenomenon. Interesting aspects resulting from the connection of law with philosophy are worthy to highlight even today and further demonstrate an essential role of philosophical views in establishing the rational direction of law. Considering that such an approach to law is always welcome and wanting to emphasize it, once more, as a necessity in any endeavour that affirms the power of law, on a common, philosophical-historical ground, we will try to reveal some of the philosophical aspects of the incessant legal phenomenon.

Recognizing the significance of philosophical ideas in the context of law and the way to explain the legal phenomenon by taking into account the points of view transmitted from the philosophical sphere reveal its own scope. While discussing law from a philosophical standpoint, we find in the stages of its evolution, a support in detecting the radical of this concept. The recourse to history so as to find the elements of the philosophical-legal relationship is inevitable.

Keywords: *legal phenomenon, philosophical sphere, philosophical-legal relationship.*

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Introduction

It is not a figment of the imagination that law embraces elements of philosophy and history, delves into the world of thought, and constantly fixes subtle reasons for concern meant to depict the elements of the time. Nor can we remain indifferent, and we continue, with a natural spirit of observation, to capture, record, process, and modestly animate in our writings what is beautiful from the world of thought, famous ideas that demonstrate much truth from all phases of life. Clear thinking, communication, and the spirit of observation happily reveal all that concerns us. According to the renowned professor Ion Craiovan, "the development of a science with a philosophical conscience constitutes a creative ideal." (Craiovan, 1999:12).

Regarding the emergence of the Theory of Law, it is considered that "the legal science called the Theory of Law did not appear ex nihilo but emerged from Philosophy, as a foray into the significant layers of the notion of 'Philosophy of Law' can demonstrate." (Mihai, 2003: 36).

In the work "Fundamentals of Law," Professor Gheorghe Mihai mentions "the cautious delimitation made by Kelsen between philosophy and the theory of law: 'I believe that the philosophy of law and the general theory of law equally have reasons to exist.'" (Mihai, 2003: 42).

Also, when talking about law, it is impossible not to discuss continuous history and not to emphasize its connection with law. It is by no means a novelty that "we can study the legal phenomenon from a philosophical, sociological, psychological, historical perspective..." (Mihai, 2003: 33).

Following the value of law, we discover the most eloquent historical moments that contain established truths through which we identify our lives and find our social strength.

It is said that "the destiny of man—as results from Hegel's deep thought and to which his method leads—is not a historical destiny." (Popa, Dogaru, Dănișor, Dănișor, 2002:285) "Man is an ahistorical being, but who must traverse this path of history without which he could not taste the freedom that is found as an understanding Spirit." (Popa, Dogaru, Dănișor, Dănișor, 2002:285)

Facts and truths have been present in the creation of law, and even if events belong to the past and are unrepeatable, they allow us to make observations and formulate new questions under the aura of modern world mentality.

The authenticity of history determines the authenticity of law. We cannot doubt the value of historical reality behind the law. Treated with care, history fulfills the lives of people, expresses their way of thinking in experimenting with relationships, and reveals the attributes of humanity. "In a way, man's sacrifice, passing through history and falling in time, is what makes him fully taste his freedom." (Popa, Dogaru, Dănișor, Dănișor, 2002:285)

At the same time, philosophy remains a continuous and remarkable source. The predilection for philosophy, this major concern towards the essence of what exists through a simple but exceptional perception, at least for some of us, provides the opportunity to explain an ideal accordingly. To better understand the complete relationship of law with philosophy, we must necessarily understand the philosopher's conception of law because the greatness of philosophy establishes and highlights the power of law. Thus, for Hegel, "The philosophy of law investigates the genesis and conceptual foundation of law, which is what we should also say today," states Professor Gheorghe Mihai (Mihai, 2003: 37).

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How precious philosophy is and how useful it is for life: beautiful thoughts that have illuminated the depths of the mind and constituted the sturdy elements and solid foundation of each culture, traversing the souls of humanity and receiving the importance and brilliance they deserve. Focusing particularly on the concept of "law," it is and remains considered "the object of philosophical reflection." (Mihai, 2003:24)

However, law establishes criteria that sometimes situate it above the philosophical climate, which it eventually abandons, a fact particularly significant for identifying law as a distinct entity.

In legal doctrine, the question is posed: "Why has this philosophical approach to law significantly devalued since the beginning of the 19th century?" (Mihai, 2003:44).

"Could this devaluation be the result of the 'death of man' and at the same time the death of God, which together would mean the 'death of the spirit'?" ponders Professor Gheorghe Mihai (Mihai, 2003:45).

In favor of law, there are details containing elements of differentiation for each population on this planet, and philosophical conceptions have followed different directions carried by social and political waves.

The renowned author of the work "Fundamentals of Law" (Mihai, 2003:37) reminds us that "around the year 1830, parallel with the Encyclopedia of Law—a preparatory study in the science of law, later named Introduction to the Study of Law—the habit of naming 'philosophy of law' the type of works that correlated debates on an abstract ideal of 'justice' with issues related to the 'positive' historical reality of legal phenomena was established."

Considering historical reality, we always succeed in reconstructing the physiognomy of law, of society, as well as our own physiognomy, as humans among humans, highlighting particularities, focusing on the vitality of the present, intercalating the action of the past with new facts, illustrating the verisimilitude of reality, and expressing our unanimous consent towards the freedom of spirit.

"It is not about renouncing the time of history," appreciates Professor Ion Dogaru, coordinator of the work "Civil Law. The Idea of the Flow of Time and Its Legal Consequences" (Dogaru, 2002:9). "Modern culture is a historical culture," and "man has become an existence in time." (Dogaru, 2002:9). "Continuous time, the linear time of progress, is still perceived today as the only foundation of history," he asserts (Dogaru, 2002:3).

From the specialized literature (Craiovan, 2001:5), 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 determining, influencing, interacting factors and relationships can be identified."

At the same time, many believe that a series of philosophical ideas place you in front of special transformations of the spirit and that by following a philosophical plan, anyone can be favored in discovering a pure truth.

It is said that "In modernity, wherever he goes, man only meets himself. Real or potential, all processes on earth are mastered or triggered by man." (Dogaru, 2002:8). "What matters today is to be in step with the times," but "this active man of the present lives in the ephemeral moment," states Ion Dogaru (Dogaru, 2002:9), hence his conclusion that "only the moment with its fashion must be consumed. Work is completely separated from play. Excluding each other in our time's formula, work

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prepares comfort and the simulacrum of play at the end of the day or week (the excursion, the sports show, the virtual world of the screen)." (Dogaru, 2002:9).

The idea is clear that when our convictions are set, we tend to disregard other real perspectives and even consider them contrary to our beliefs. However, the desire to continually seek truth without any personal interest should persist because "an exclusively pragmatic rationality, undoubtedly democratic... in which everything is subordinated to the political, is in danger of producing a new totalitarian fantasy." (Dogaru, 2002:11)

Yet, even now, philosophy can be easily viewed and understood if supported by experiences that gradually intervene, thereby determining a measure of understanding the nature of things. A conscientious rapprochement between law and philosophy can give rise to a broad field of unique experiences. Otherwise, it is believed that we might witness "the emergence of a 'democratic' society in which individual human beings become ignoble and sordid culturally because they are subjected to an artificial political structure without any philosophical openness." (Dogaru, 2002:10-11)

To admit the reality of phenomena through their explanation and to fully convince ourselves of them through an appeal to rationality remain needs of our existence, needs to acquire qualities that serve the spirit.

"Philosophers have meditated on law, but from outside of it, meaning they started from the law of their time but did not remain there; instead, they descended to the foundations, to ontological, gnoseological, and axiological springs, surpassing the condition of mere witnesses to a precarious present." (Mihai, 2002:89) "This is their greatness," continues Professor Gheorghe Mihai. (Mihai, 2002:89)

We do not wish to exalt the power of philosophy, but we believe that a drastic separation of law from the philosophical sphere can be painful. The development of philosophical culture, thanks to the glorious contributions of our mentors, justifies the high esteem we recognize for the work of creation.

This is because, with each inspiration philosophy offers us, we realize the value of the cornerstones of this world, the importance of those wonderful ideas that, once accepted, facilitate a deep understanding and make us increasingly convinced of their significance. Regarding the field of law, "if the knowledge of law is a science - it must be receptive to the need for philosophy, to the arguments brought in this sense," says Ion Craiovan (Craiovan, 2009:34).

Ideas in their expressiveness are progressively founded, and the philosophical perspective, in correspondence with reality, captures the individual from a path of fixed ideas and rigid beliefs. Philosophy initiates him into complexity. Guided by curiosity on new trajectories, we note experiences that contribute to cultural elevation, especially as we have the opportunity to intertwine original elements with so many borrowed aspects in developing values. A continuity link in time between past and future, unique in so many ways, philosophy opens a sensitive side of man in cultural development, offering him a considerable wealth of spirit. Capable of awakening the individual from inertia, creating balance in calm souls, overcoming mental strains, philosophy abounds in history, and even today "we should assume that our feelings and impulses exclude rigidity and indifference."

But ultimately, no one needs to support you to know the truth; it is necessary to want to see it, understand it, and consciously accept it. Each truth suggests a thought. The feeling of doubt about the truth, however, can divert you from the process of knowing it.

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In supporting and maintaining human beliefs, viewed in all senses, philosophical education, like religious and moral education, will not lose its purpose; instead, it can continually prove its practical existence, dependent on man because people create ideas, consecrate them, and offer them for common attention.

"It is not the law that achieves justice, but its spirit, that which founds it," results from the specialized literature (Dogaru, 2002:11). "The law, which is relative and subject to historical time, if it does not refer to something beyond and if it only responds to particular reductionist demands, can at some point become contrary to the purpose for which it was adopted." (Dogaru, 2002:11)

At the same time, according to leading legal specialists (Popa, Dogaru, Dănișor, Dănișor, 2002:282), "The identification of philosophy with real history is the consequence of identifying the movement of thought in itself with the movement of reality because reason is common to both." (Popa, Dogaru, Dănișor, Dănișor, 2002:284)

It becomes difficult not to mention impressive moments, not to take up and enrich historical tradition to make it stronger. Certainly, a multitude of interesting things emerge by resorting to historical past, and just as many generous ideas constitute the realistic basis of life subjects. "Law is generated, structured, and directed in an indissoluble connection with the constellation of values of the historical time in which it is elaborated," asserts Professor Ion Craiovan. (Craiovan, 2001:3)

In a historical context, it would be ideal to seek to be governed by a truly individual thought, to enjoy the precious tradition both in substance and form, and to succeed in carrying it forward with a sense of respect.

Seeking satisfaction in tradition, continuously enriching its content with the courage to give it a nature consistent with our conscience, treating and exposing values that characterize us, expanding and strengthening consciousness in perceiving the states of our life, with our needs, with the description of things and experiences of the past, demonstrates the perseverance of preserving these for transmission to new generations, who in turn create values. Moreover, the conclusion found in specialized literature is that "The values of the present form—as do the values of the past—documents by which future generations will characterize our time." (Andrei, 1997:159)

Ultimately, history must be under our care, those of us living now, to be enshrined in accordance with the application of life states, in which in no way is excluded the fruitful experience with other peoples and the fact that each generation has knowledge different from the preceding ones as it takes into account its own needs in the work of discovering new horizons. It becomes ideal to be determined in what we desire and to demonstrate enthusiasm and determination in what is of utmost priority to us.

Spread across the earth, traditions illustrate the power of thought, the goal of each people's life, its consistency, specific folk wisdom, presenting the various lights of the mind resulting from the course of life, providing a unique spiritual satisfaction. Words wisely dressed reveal these realities on which we surely reflect deeply to clear our spirit.

We believe it is always easy to return to the past to rediscover the virtues of the people obtained through worthy deeds that deserve respect and can resonate even now.

Appreciating deeds distant from the present brings us real moral benefit, reminding us that we must always trust in the development of our own ideals, keep them alive, promise ourselves sincerity, be proud of what we have accomplished, and consecrate a wise spirit everywhere. "All human creations are meant to add something to

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the heritage received from ancestors, to enhance this inheritance, thus forming the cultural tradition of a nation." (Andrei, 1997:159)

"We have anticipated many difficult situations, faced many challenges, and encountered doubtful thoughts, but such moments have strengthened us, allowed us new impressions, and offered us triumphs received with humility.

Currently, according to Professor Gheorghe Dănișor, 'the offensive of the artificial is so great and powerful that man falls into indifference and is carried further away from the "natural world," which in fact fundamentally grounds him.' (Dănișor, 2014:311)," he asserts.

However, it can be proven that a simple spirit can symbolize human creation, with its particularities, energy, and warmth, creating a high spiritual ambiance. It is good that our perspective, in the realm of our ideas, should triumph as our own vision, suitable for us, avoiding automatic, strict, permanent, and robotic adaptations to a certain framework that we do not transcend through the complexity of our actions. This would allow us, now and in the future, to present deeply human images.

As loyal continuators, to a large extent, of a tradition, we know and presently understand reality, but we are also able to describe it from a historical perspective, revealing our own emotional values, disclosing our qualities and reactions, significant values, and a unique perspective. With deficiencies and qualities, we present the foundations of the Romanian world under our own vision, always the most appropriate for us based on a harmony that is not triggered but revealed and maintained in relationships, representing their substance and conferring durability.

Our attitudes accompany the historical journey and are imprinted in the form of the most representative pictures drawn from the social rhythm of life, all as many symbols of the national being that reveal to us a spirit adaptable to circumstances, original, currently seen through the eyes of the present. It is also appreciated that "by history we do not necessarily mean the succession of past events, but rather a certain conception of time..." (Dogaru, 2002:10). Tradition, defined by a lively interest in circumstances, through the multiplicity of customs it encompasses, shows an evident continuity, open and receptive to the ideas of the generations of the time, nuanced by new experiences, capturing new meanings, demonstrating an appropriate attitude towards reality, acquiring new values while maintaining its moral quality by expressing worthy reactions to what is new and, moreover, not losing its significance, value, and efficiency regarding the unity of the people.

History, despite its nuances, through its entire orientation, clearly defines an image with vigorous human accents, with images of great spiritual depth, representing the essential axis of life. Customs converge to emphasize the natural atmosphere of a community based on authentic solidarity, on significant moral characters in the social context that demonstrate the strength of an attitude and leave their mark on affective resources.

Although perhaps seen more detached, the vague contours of illustrative past human states can regain their value even today. If we view them through the clear eyes of the present and analyze them with finesse, they consequently acquire new perspectives. Matters of remarkable seriousness can be regained if, along the way, they have changed shape or lost efficiency under the empire of fluctuations and chance. "An identity-based thought, whatever it may be, can only create a historical time accordingly," says Professor Ion Dogaru. (Dogaru, 2002:12) and then, perhaps, "it is above all up to the philosopher, heir to an open and plural rationality, to bring his

critical, yet impartial vigilance to solving the pressing problems of the moment." (Wunenburger, 2000:145)

Unexpected deficiencies can always arise, which can be compensated for by human substance qualities. The presentation of a free, optimistic, lucid life, in different circumstances, with profound social and ethical accents, facilitates the achievement of the most substantial accomplishments. Interferences prove useful in establishing a nation as a large family where the harmony of life is not disturbed, reflects original traits, and acquires new dimensions. The feeling of efficiency, sometimes expressed through small things, sensitively constitutes human satisfaction over simple and concrete situations.

Conclusions

It is considered that "philosophy appears only when the spirit has already accomplished history" (Popa, Dogaru, Dănișor, Dănișor, 2002:288) and "legal knowledge could not avoid the relationship with philosophy" (Ion Craiovan, 2009:34).

According to Professor Ion Craiovan, "Ultimately, we can assert that Law is Philosophy through imperative norms susceptible to public constraint in the name of Justice belonging to a historical time; and Philosophy is Law, that is, that imperative normative project of the human, part of the universal order." (Craiovan, 2009:37-38)

The limits of ideas derive from the visions tied to our ideals, to which it is useful to return to remember where or why they originated. Thus, we discover deficiencies, fluctuations, other forces of suggestion, and as a consequence, new dimensions of the human spirit. We can gain a rich sensitivity by extending the paths to knowledge and assimilating new traits. As a result of direct contact with masses of people from around the world, we can determine a world of new and advanced ideas that demonstrate the ideals of a realistic history of life. By concretely understanding reality, we progress in the universal construction of new strong mentalities dominated by the complexity of things and the consciousness of justice for each of us.

"Reason is involved in the world at every moment and at all its levels. In other words, reason is historical. Therefore, the only one that captures history in its rationality is philosophy." (Popa, Dogaru, Dănișor, Dănișor, 2002:282)

References:

- Andrei, P., (1997). *Filosofia valorii*, Iași: Polirom, Fundația Academică „Petre Andrei” Publisher
- Craiovan, I., (1998). *Introducere în filosofia dreptului*, Bucharest: ALL BECK Publisher
- Craiovan, I., (1999). *Doctrina juridică*, Bucharest: ALL BECK Publisher
- Craiovan, I., (2001). *Tratat elementar de teoria generală a dreptului*, Bucharest: ALL BECK Publisher
- Craiovan, I., (2009). *Prin labirintul juridic*, Bucharest: Universul Juridic Publisher
- Dănișor, Gh., (2014). *Dincolo de logos*, Craiova: Universitaria Publisher
- Dogaru, I., coordinator, (2002). *Drept civil. Ideea curgerii timpului și consecințele ei juridice*, Bucharest: AL LBECK Publisher
- Mihai, C., Gh., (2002). *Inevitabilul drept*, Bucharest: LUMINA LEX Publisher
- Mihai, Gh., (2003). *Fundamentele dreptului I-II*, Bucharest: ALL BECK Publisher
- Popa, N., Dogaru, I., Dănișor, Gh., Dănișor, D. C., (2002). *Filosofia dreptului. Marile curente*, Bucharest: ALL BECK Publisher
- Wunenburger, J., J., (2000). *Omul politic între mit și rațiune*, Bucharest: Alfa Press Publisher

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