Eugeniu Speranția
- a great personality of the law philosophy during the Great Union in 1918*

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Abstract: *Eugeniu Speranția is, together with Mircea Djuvara, one of the most important philosophers of law in our country. Even at a brief review of his work, the first thought you need is that Speranția is an encyclopaedic spirit. Having a rich culture, based on in-depth reading in the field of exact sciences and nature, he succeeds in realizing a philosophy of law in connection with all other domains. It can be said, without mistaking, that Speranția is the philosopher who embraces the right to a universal vision of the world.*

Keywords: *law, philosophy, justification, sociology, Great Union*

A. The issue of defining law

One can say, without being wrong, that Speranția is the philosopher who integrates law in a universal view of the world, in general; law is part of an integrated world and philosophy of law gives it the guarantee of the unity with the great world of ideas which moves towards an ontologically established reality. Although it is part of a unitary whole, law is, in turn, a unitary reality differing from other realities, which gives it a distinct nature. In this sense, Speranția argued that "philosophy of law considers law as a unitary whole, in respect of what is identical with itself always and everywhere – which makes it a unitary reality, in respect of what distinguishes it from any other reality and establishes its own place and character within the entire imaginable and analyzable world"[1]. From this perspective, it results that law, as a distinct reality, is part of a much vaster world in which it brings its own way of being.

Starting from the inclusion of law in the large area of social sciences, Speranția tries to capture yet its characteristic elements, its essence, i.e. what distinguishes it in its ideality and reality.

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* This material was also published in Romanian in Nicolae Popa, Ion Dogaru, Gheorghe Dănișor, Dan Claudiu Dănișor, *Philosophy of Law. Great Currents*, Ed. a 3-a, Editura C.H. Beck, București, 2010.

[1] *E. Speranția,* Principii fundamentale de filosofie juridică, Ed. Institutul de Arte Grafice Ardealul, Cluj, 1936, p.1.

The main distinction he makes is between the science of social life (sociology) and the science of law and, correlatively, between social philosophy and philosophy of law. "Sociology, says Eugeniu Speranția, acknowledges certain phenomena, seeks their causal explanation and the regularity of their relations, whereas the juridical point of view is not that of causal explanation, but of *logical justification*"[2]. Speranția provides a concrete example in support of this assertion, namely that several peoples may have identical social institutions from a *sociological* perspective, "but if each people justifies them differently through legal rules and the principles organizing the local social life, they are no longer the same, juridically speaking"[3]. There is also a distinction between morality and law in the sense that a legal obligation is a perfect obligation, and the moral one is imperfect.

It is very interesting how Speranția deals with the concept of *constraint.* He notices that the sanction or non-sanction does not characterize only the legal norms. It is exercised in all walks of social life. Society itself is a reality which constrains us and forces us to subordinate ourselves to its way of being. Morality is, in turn, an internal constraint. In contradistinction with *Tarde,* who argues that constraint is not the only engine of social life, but imitation, Speranția shows that in the case of imitation, even if we are not in the presence of an external constraint, it is the result of an internal, involuntary impulse which, in fact, coerces into a certain adaptation to the environment. Speranția even says that constraint is actually a modality of imitation: "through it the process of uniformization, therefore imitation, is generalized and facilitated"[4].

Starting from the finding that social life is a manifestation of the human spirit, Speranția requires that the general and immutable laws of thought should be applied here, too, with consistency. According to him, the need for consistency is the most general need of the human spirit. This consistency is transposed into the principles of formal logic: the principle of identity and that of contradiction. Thus, imitation, in particular *constraint,* are nothing else but a consequence of the need for identity: "A = A, means that what is identical must, entirely and always, be likely to be substituted; and the other way round: those which are likely to be substituted are identical. Coercion, too, is a consequence (or a variant) of the aversion for contradiction, is the negation of inconformity, is the tendency to suppress all that prevents identification or aberration. One of these principles *asserts* the existence of the *norm*, the other denies the negation of the norm"[5].

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2 Ibidem, p. 4.
3 Ibidem.
4 Ibidem, p. 5.
5 Ibidem, p. 5.

The demonstration of Speranția is admissible because it succeeds in laying the fundamentals of the norm from a logical standpoint, namely demonstrating that it is a property of the human spirit, without which the very life of the spirit would be unconceivable.

But one must mention that social life is the accomplishment of the spirit beyond individual subjectivity. Therefore it is important to note that at the social level norms are imposed by the masses which instinctively elaborate coercive norms. "The norms that these sanctions are meant to guarantee are not themselves the creation of the legislatures, but formulas fanatically agreed to and adapted by the collective spirit"[6]. However, Speranția gives priority to the personal activity, since, when we talk about the norm as emanating from collective conscience, "its source still remains conscious thought". In other words, the logical norm, on the ground of which one can speak of rules and the control of the mental activity, lies at the basis of social normativity. Without norms, that is to say without rules, the spirit would disintegrate. Hence, Speranția's conclusion is a natural outcome: "normativity is inherent to spiritual life. Social life emanates from the human spirit. Therefore social life is implicitly encircled within norms. The logical rigour of these norms is emphasized as social life, evolving, gets away from the purely animal circumstances under which it came into being and becomes impregnated with the influences it suffers from the need for normativity which is inherent to the spirit"[7].

This way of thinking becomes rigorous because it reunites the logical and the juridical around a single notion, namely the norm. Thus constraint, characterizing the norm, overlaps with the need for identity and is, at the same time, a confirmation of the principle of contraction. If the norm is the essence of the human spirit, the legal norm, far from being an irrational concretization, is the result of a rigorous development of the spirit, therefore rational. One can thus say that, "as the spirit presides over human activity, the need for normality and non-contradiction is translated in social life through the organization of law, of the norm and the sanction"[8]. This view gives "any legal order the character of a rational systematization"[9] which relies on logical essence and consistency.

In this way, by approaching the notion of norm characterized by constraint and by identifying the constraint with fundamental logical concepts, such as identity and non-contradiction, Speranția manages to fulfil a logical basis of the norm. Going further, understanding that the logical basis is not enough and there is another necessary element, namely the conscience of the masses, the only one that ensures the binding nature of the norm, Speranția proves that the legal norm and

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6 Ibidem, p. 6.
7 Ibidem, p. 7.
8 Ibidem, p. 7.
9 Ibidem, p. 7.

law have sociality as an element. *Constraint* and *sociality* are the two elements which can define law in a first variant. But they both belong to *rationality.* Thus, law is "a system of social action norms, rationally harmonized and imposed by society".

Such a definition might seem complete. But Speranția does not stop here. So that the elements contained in this definition will acquire substance, they must become real instruments meant to serve a certain *purpose*. Will is highlighted along with purpose. It orients the rationality of law towards its *finality.* Its finality is ideal in nature, and the attainment of an ideal involves activity, which means that law ranks action among its important elements. In other words, to define law, one must take into account that reason and will form a unitary whole. "What determines law in its entirety, said Speranția, resides not only in its historical past, in the determining conditions of its emergence and the notes of its logical definition, but, to a greater extent, in its ideal destination"[10].

Turning these fundamental features of law into essence, Speranția considers that it aims at introducing the laws of reason into human activity, so "law is an instrument for the spiritualization of mankind".

All these grounds, once enumerated, impose philosophy of law as one of the disciplines called to highlight these features, the only one able to really take us to a domain of values, unlike other social sciences which are confined to a domain of exclusively historical and concrete realities.

B. **The importance of philosophy of law**

As happens with philosophy in general, philosophy of law also made the object of challenge, sometimes being fervently attacked. When he taught his course in Cluj, Speranția discovered a "progressive affirmation" of philosophy of law. He finds that philosophy had been seriously discredited in the 19th century, being challenged by the ascent of the scientific spirit, by the ephemeral time of materialism and empiricism.

It is known that in the first half of the 20th century neo-Kantianism distinguished itself and it was nothing but a reaction to the positivist excesses based, in fact, on a sort of dogmatism of the concrete. A quarter of a century before Speranția wrote his work *Principii fundamentale de filosofie juridică,* one could see a certain philosophical revival. "A rehabilitation of Philosophy of law, said Speranția, is very natural in the context of an increasing interest in the philosophical speculation"[11].

In Speranția's view, philosophy of law in the past centuries was closely correlated with the social and political sciences existing at that time. The epochs of great social and political unrest, of wars and revolutions brought great projects of social reform. Along with these projects "there

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[10] Ibidem, p. 8.
[11] Ibidem, p. 9.

appears a concern for the studies referring to the *justifying* fundamentals of law and the state"[12]. Focusing on the idea that social organization follows the logic of thought, Speranția concludes that, even if philosophy followed, to a great extent, the social and political oscillations, it corresponds to a general demand of the human mind, which provides it stability. From this continuity of philosophy of law, we believe, there results another consequence that was not emphasized by Speranția, namely that this concern is not confined to *justification*, on the contrary, it goes before its epoch and lies at the basis of new social organizations. If it were only a justifying role, the role of philosophy of law would follow historic events, but would have no contribution to their establishment. It would be only *descriptive.* We consider that philosophy of law provides a metajuridical basis for social and political phenomena. On the other hand, if it were only justifying in nature, it would evolve in close relation to these phenomena. But philosophy of law must be a perennial and critical look at social phenomena. Therefore it has a *meta* basis, beyond any change. There is no critical feature resulting from the justifying nature, since philosophy is subversive, it attempts to lead what is transitory (the social and the political) towards a perennial idea. In other words, philosophy always goes before the historical epochs that succeed each other. It is said that any philosophy is the daughter of its epoch, but just because it deeply investigates this epoch, it is separated from the transitory and surpasses it. Consequently, it is not only justifying, but also *challenging.* In a Hegelian style, we could say that a philosophy *is* and *is not* the daughter of the epoch when it emerged.

The positivist attitude was fully felt at the time of Speranția, this attitude trying to remove values from the scope of scientific research. The same thing happened in law. Actually, there was a tendency arising from the positivist spirit to eliminate philosophy from the sphere of scientific concerns on behalf of the so-called objectivity. In law there was an attempt to discuss problems pertaining to the general theory of law, to the detriment of philosophy of law. Thus, Ernst Rudolf Bierling, quoted by Speranția, while talking about the science of legal principles describes four categories of problems: 1. The nature and general structure of law; 2. The genesis and disappearance of law; 3. The disturbance and protection of law; 4. The practical handling and the scientific development of law. "These, says Speranția, are certainly general issues that can make the object of a treatise of legal encyclopaedia or 'general law' "[13]. But there are also other problems that cannot be contained in such a study, such as the relation between law and the general view of the world, which tries to establish the place and importance of law in the context of the universal order. On the other hand, a science of legal principles will raise questions relating to the existence of

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12 Ibidem.

13 Ibidem, p. 10.

universally valid moral ideas or the existence of an absolute criterion of value and non-value etc. These issues pertain to philosophy of law as its specific domain.

Speranția is one the most fervent supporters of Philosophy of law, being aware of the fact that it is the only one which can provide an appropriate basis for Law. Therefore he militates against the exclusion of philosophical issues from the General theory of law. Philosophy of law acquires, in his view, practical connotations, in the sense that "in all branches of scientific research it is harder and harder to contest the truth that between the philosophical conception of the world and the solution to detailed problems there is such an intimate correlation that any insignificant discovery or possible hypothesis may determine a change in the philosophical orientation, but it also carries some reverberations from an overall perspective"[14]. One may notice that Speranția, just as Djuvara, has a tendency towards an epistemological basis of law, which allows an attitude or place before the world, experience and reason. Such a stand before the world cannot be avoided in any field of scientific research. "One can avoid philosophical reflexion in the field of law even less, when we have to do with truths and relations of rank other than the material one, with attitudes of the human soul and motivations of the activity. The problem of the genesis and essence of Law cannot be approached or solved without a quick reference to the teleology, purposes and values of our lives"[15].

These lines are worth expressing, since they were written at a time when, as Kelsen used to do, among others, values were dismissed out of the theory of law. It is obvious that Speranția supported the ideas of neo-Kantianism, which had come into being as a reaction to the ascending positivist spirit. That is why Speranția, in the Kantian spirit, argues that philosophy of law "must investigate which are the aprioristic or *transcendental* fundamentals of law, in general". Besides these aprioristic fundamentals, philosophy of law must also consider the influence of external, extrinsic factors which are important in the development of the legal order. In addition to these two, a third factor plays a special part in the functioning of law. It is about "the finality of law as a technical means for the progressive spiritualization of mankind". In Speranția's opinion, "these three kinds of issues" "make up the logical skeleton"[16] of the philosophy of law written by him. All three belong to the domain of philosophy of law and go beyond mere normativity. As a proof, the issue of *justice.* We wonder each time whether a law is *just.* "Justice cannot be just compliance with the law as such. There are so many cases when the sense of justice requires the change of the law, because it persists *above the laws.* These are norms, they are imperatives which a legislature has

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[14] Ibidem, p. 11.
[15] Ibidem, p. 11.
[16] Ibidem, p. 15.

never enacted, but which expressly inspire the legislature even without knowing *what* and *who* imposes them"[17].

What has been said here clarifies the thought that Speranția wanted to establish the fundamentals of philosophy of law which, except Djuvara's, was almost inexistent in our country. Since philosophy of law must be included in a broad view of the world, it must, in Speranția's opinion, be preceded by a philosophy of the Spirit. The assertion is correct and it was successfully applied especially by Kant and Hegel. As "the characteristic and primordial function of the spirit is that of producing norms", it follows that law has a spiritual basis, and the issues relating to the spirit must be found, specifically, in the issues of law. The philosophy of law conceived by Speranția therefore has the purpose of laying the spiritual basis of law which, encapsulating science, offers the possibility of ascending to

[17] Ibidem, p. 12.