

# Legal Order Founded on Human Wisdom

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*The ideal of law is nothing but an aspect of the ideal of good,  
and the good cannot be separated from human wisdom.*

## **Abstract**

*In the present work I approach a topic of great complexity, always anchored in social actuality because it addresses to an extremely sensitive area in which law is intertwined with the human wisdom.*

*I start from the reality that human spiritual balance as an obvious sign of human wisdom can be maintained in a secured social balance of the social order, as a manifestation of this virtue at a community level.*

*I insist on the interferences between universal and social order in which is enrolled as an individual component the legal order. The specificity of this latter form of the inter-human relations is ensured by the peculiar physiognomy of law rules. There are rules of human behaviour which although present some own features to other social norms (generality, impersonality, typicality), these stand out by their obligation which allows, when necessary, to be done using coercive state power. Both creation and especially interpretation and application of the law rules, involves the legislature wisdom, to impose people legal orders which to order and discipline their relations with the environment in which they live and other members of human community so as to make possible a social balance and harmonious coexistence of humans.*

*Legal order gives concreteness and expression to some fundamental valences of law: justice, equity and righteousness. Therefore, in the vast majority of live situations, especially in cases in which norms of law express “the will of the many”, they convince through their correctness and validity, harmonizing with the interests and aspirations of those whom are addressed, which exclude the intervention of human coercive force. Here, is a sign of human wisdom. But also as a sign of human wisdom can be considered appropriate and necessary the coercive intervention of the state, when the violation of a right occurred, the social order (also the legal one) being more or less disturbed. In these situations, law intervention is justified to re-establish the disturbed order and grant appropriate compensation. In this way, the rules of law which underlies the broken legal order are restored to their social role and functions. And the mission of law, to regulate*

*and direct human behaviour, in the required way of solving necessary social problems can find fulfilment.*

**Keywords:** *law, legal order, wisdom, political power, social order, legal philosophy, social balance, strength, universal order.*

### *Human Relations with Nature and The Collectivity It Belongs*

If the balance of the human soul is an obvious sign of human wisdom, the social balance ensured by the social order is a confirmation of this virtue inside the human community.

The social order falls within a universal order and includes in its turn among other components the legal order with a physiognomy and a very special support, given by the legal rules under which it is organized and maintained.

Regarding the “unity, integrity, harmony, dynamic balance which characterizes the universe, science, philosophy and religion, they share a common vision.”<sup>1</sup> There is a natural, social and universal order<sup>2</sup> which “must be carefully discovered, explored and used by man to satisfy its material and spiritual life needs,<sup>3</sup> without affecting its existence (irreparably sometimes). Subordinated to universal order, it appears as the most important component, the social order is inextricably linked to the appearance of man and human society.

The man appeared and evolved in a natural environment (environment consisting of ground and its complicated forms of life), between the man and natural environment being established certain reports, long before the emergence of states and law. The interaction between man and the natural environment created a regulatory code for the first rules of human behavior, which in the ancient times did not have a legal nature. The oldest rules of human behavior aiming human relations with nature gave shape and value to a religious, moral and political conscience (rudimentary, of course). In the absence of some reliable information we can assume that the first rules of social conduct regarded the primary occupations of the human, covering his needs such as: harvesting, fishing, hunting, fire protection, collective defense against wild animals or natural

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<sup>1</sup> Elena Iftime, *Teoria generală a dreptului* (Bucharest: Didactică și Pedagogică, 2013), 8.

<sup>2</sup> In the legal doctrine, the order is defined either “as a necessary repeatability, uniformity and natural-logical regularity or as a law like uniformity and regularity. The society is in a teleological order, namely established through a broad set of legal, political, economic and moral rules.” George C. Mihai, *Inevitabilul drept* (Bucharest: Lumina Lex, 2002), 120.

<sup>3</sup> Papa Ioan-Paul II, *Planul lui Dumnezeu* (Bucharest: Enciclopedică, 1999), 56.

phenomena. Therefore gradually have been crystallized the norms of human behavior in the natural environment which being repeated and transmitted from generation to generation have become habits (old habits).

But man is a natural and social being at the same time, so that interpersonal relationships were not reduced to its interaction with the natural environment. Based on a natural existence has been developed social reports (within the family firstly and then in other areas of social life), so in a slow evolution, specific to the dawn of humanity, would expand increasingly in the area related to the human life and occupations. Of course the idea of primitive human solidarity had as a drawback a collective disapproval of the violation acts and facts, or disregarding the social norms of life. Much later when the humanity was engaged in the transition from the primitive forms of community to state organization, the collective disapproval started to be accompanied by a collective constraint.

The state appeared as a form of collective organization of the society which through its authority gave to collective constraint a special character of a force organized to develop social norms and ensure compliance. Since then, social norms were addressed to humans not as recommendations, life suggestions but as an order, as a command whose failure was drawing state's compulsion.

Since then until now the law (as an expression of the state will and legislature's wisdom), was and is the most important factor of ordering human relationships with other people regarding the natural, social and private environment.

### *The Social and Legal Order*

#### 1. GENERAL CONSIDERATIONS

As shown, order implies the existence of some conduct rules which indicate to each man the prohibitions and permissions, in other words, how to behave, what conduct to adopt in his life. The implementation of social order is made using the conduct rules. To the ordering of inter-human relationships and social order competed throughout the ages, the habits, religion, moral and political precepts and also law rules under which a legal order has been coagulated.

The social order is inextricably linked to the appearance of man and human society. The two processes (man formation and human society) have a correlative nature and community life was imposed since ancient times. Isolated, the man could not survive. Obtaining in common of the basic needs (food, shelter, clothes) by labor division and use of objects as tools, then their production, facilitated by articulated speech have led to social sense and then of the behavior rules among

which in ancient times we don't find it as a rule of law. Life and work of the archaic man were imposing gradually an ordering of the inter-human relationships using normative rules to ensure cohesion in the primitive community.

For the start, such norms had a ban character with a strong mystical mark. These were not based on a normative mature thinking. Later, towards the end of the ancient age, human communities manage to configure a minimum of social rules focused on the idea of social, political and religious obligation. While the tribal organization is replaced with an organization of power (that of the state) many of the old tribal rules acquire a legal form constituting customary law of whose observance is based on coercion, applying some ecstatic sanctions. These rules were completed and corrected if necessary by creating some new written rules. It emerges therefore a new component of social order – legal order – established and maintained by mandatory legal norms which govern the inter-human relations in the sphere of domestic or international life.<sup>4</sup>

Legal order appears as a component of social order, because as a social phenomenon represents one of the regulatory aspects of social order both regarding consciousness and the rules. Legal order reflects therefore the structure of society with a “corpus” of regulations. It should be noted that the doctrine and legal practice operates regarding the topic, with three terms: rule of law, public order, and legal order. Legal order is installed and maintained by structuring society, by means of some law norms which compelling the people and organizing them make possible to balance the individual interest with the general one (public).

Public order is ensured by a complex of public and private law rules which protect the general interests, personal and financial of the persons (natural or legal), institutions and values of a particular society.

It should be added that the notion of legal order cannot be analyzed and understood only as a human activity. Natural phenomena subjected to natural laws

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<sup>4</sup> Regarding the issue in question, there are a few clarifications to be made to: domestic law, international law and Community law. Domestic law regulates the relations between public and private power (public law) and between individuals (private law). The international law regulates the relations between the international actors: states, international organizations (between sovereign entities). Distinct from the two legal arrangements, is looming a legal form “sui generis”, Community law. Although similar to domestic legal system, the Community law is triggered by an international legal technique based on a treaty, which assumes the sharing of some sovereignty segments with Community methods and the respect of some specific principles: the primacy of Community law over national law of member states; principle of subsidiarity; direct effect principle of Community law, principle of state's solidarity regarding the rights and their obligations. For details see Gyula Fabian, *Drept institutional al Uniunii Europene* (Bucharest: Hamangiu, 2012), 53 and next; Damian Chalmers, Gareth Davies and Giorgio Monti, *European Union Law* (Cambridge University Press, 2010), 32 and next.

don't have these attributes, being foreign to the law which addresses only to human behavior. Regarding human action, it should be mentioned that this should be seen from a double angle. "Being an objective manifestation which belongs to the physical world (objective) the action is a mental entity an intention a mood, an affirmation of the will."<sup>5</sup> So, a fact of life is action if it belongs to a subject and expresses an attitude of its will, a way of manifesting.

As for the law, this must be examined first as an evaluation criterion of human action. Since it appreciates the actions, the law must necessarily take into account the reasons which cause and shape the actions. Finding the reasons which contribute to the determining an action, assessing the degree of conscience and will to which it is accomplished, is of a great significance to law. It is being shaped otherwise an internal side of the human action which is linked to the sphere of thinking, having a psychic aspect.

But every act of thinking has a relation to the outside world and a material substrate, leading to an external side of human action. Very important are also the internal feelings which give expression and shape to the legal will and which seen a separately evolution. In the early life of the state and therefore legal, the motivation of human actions was briefly studied. With the development and clarification of several aspects regarding legal construction, the motivation of human actions is thoroughly considered. In civil law for example, one of the fundamental principles of contract interpretation is formulated as<sup>6</sup>: "Contracts shall be construed as a consensus between the parties and not by the literal meaning of terms." In determining the concurrence of wills, it will be taken into account among others the purpose of the contract, the negotiations between the parties, the practices established among them and the later behavior after the conclusion of the contract.<sup>7</sup>

## 2. HUMAN WISDOM AND LEGAL ORDER

In the light of the proposed objectives, we shall insist in the followings upon the correlation between human wisdom and the legal order based on the specific nature of law rules. It is a relationship which forms a topic of investigation and debate with a multidisciplinary nature. It is located at the crossroad between law science and law philosophy seen as a "branch" or a component of the general

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<sup>5</sup> Giorgio Del Vecchio, *Leții de filosofie juridică* (Bucharest: Europa Nova, 1983), 189.

<sup>6</sup> The rule was consecrated by the art. 977 of Civil Code of 1864 and was reiterated by the art. 1266 al. 1 of the new Civil Code. For details, see Liviu Pop, Ionuț Florin Popa, Stelian Ioan Vidu, *Tratat elementar de drept civil. Obligații* (Bucharest: Universul Juridic, 2012), 132.

<sup>7</sup> See the art. 1266. al .2 of the new Civil Code.

philosophy which study law in terms of universality, as a general human phenomenon. It is illustrative in this respect, the statement of the prestigious jurist and philosopher Giorgio Del Vecchio according to which “law philosophy is the discipline which defines law in its universal logic, researching the origins and the general characteristics of its historical development, and cherishes it as the ideal of justice stated on pure reason.”<sup>8</sup> Equally, the relationship under discussion concerns the general theory of law, of which some authors confuse it to a point with law philosophy, a questionable aspect if we consider the object and ration of the two disciplines. It is true that both discipline call into question common problems such as: determining the concept of law, fundamental legal concepts, types of legal norms which constitute the legal system.

But the general theory of law is the “starting point in the study of particular legal disciplines, giving a definition to the common concepts of the existing different legal systems, to bind to each other after a typology or another, inside a legal system.”<sup>9</sup> On the contrary “law philosophy is placed above positive law and seeks to explain its orientation relative to scale of values. Law Philosophy develops a unique reflection upon the scientific theories of law and seeks to highlight the relative and contingent character.”<sup>10</sup>

Both disciplines analyze law problems in its essence and also in the various forms that is presented for an age or a specific people.

But what is the Law? This is a question that still concerns the theory and practice of law, which could not provide a unitary explanation.<sup>11</sup>

The Romans define Law as being “an art of good and justice” (*jus est ars bonni et aegui*), having as basis the precepts: “*honeste vivere, alterum non laedere, suum cuique tribuere*”. And the science of Law had in the Roman view, the purpose to discover human and divine things, of wisdom to distinguish what is right from what is unjust. In the same conception, justice represents the stable will and generally valid to give everyone what is his. The law that every people appointed himself is his own and is called civil law, being a proper right of the

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<sup>8</sup> Del Vecchio, *Lecții de filosofie juridică*, 120.

<sup>9</sup> Bruno Oppetit, *Philosophie du droit* (Paris: Dalloz, 1998), 19; see Iftime, *Teoria generală a dreptului*, 41.

<sup>10</sup> *Ibidem*.

<sup>11</sup> In his time, the German philosopher Immanuel Kant warned that “even today the jurists are still looking for a definition of law” and perhaps the claim keeps its validity (s.n.). Cf. Del Vecchio, *Lecții de filosofie juridică*, 179.

community. “What the nature of things arranged for everyone is guarded by every people and is called the law of nations.”<sup>12</sup>

Also the Romans, through the contribution of jurist Ulpian tried a definition of natural law, considered as a complex of behavior rules that all the beings have learned it from nature, because this right is not specific only to humanity but is common to all animals. “From this comes the connection between man and woman that we call marriage, raising the children, and their education. We see in fact that the animals, even the wild ones are considered acquainted with this right.”<sup>13</sup> The natural law is always fair and good, because after all people are equal (and free) from the nature.

The Law definition made by the Romans is questionable. The law is not “an art” in the philosophical meaning of the word, an art of its social consciousness distinct from the legal one. But we can talk among others, about the “art of the Law” to establish and maintain the social balance needed for survival. Also should be brought in question the social character of law rules, so that the prescribed behaviors which cannot be addressed only to the man gifted with conscience, in other words, with power and wisdom to react towards the imposed command.

Closer to our days, Immanuel Kant defined the Law as being “the set of conditions which limits the freedoms to make possible their agreement.”<sup>14</sup> In the German philosopher’s conception, the law reflects the set of conditions in which everyone’s free will can coexist with the free will of all, in accordance with a universal law of freedom.

From the formal-normative perspective J.L Bergel stated that the Law “is the set of conduct rules, in a society more or less organized, which regulates social relations and whose compliance is ensure, if necessary by public coercion.”<sup>15</sup>

Nowadays, in a suggestive expression, the French author Jean-Luc Aubert<sup>16</sup> defines law as a “rule of the game’ life conceived on a national scale”.

The definitions mentioned above confirm the social character of the law rule, in other words,<sup>17</sup> the correlation between human wisdom and law.

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<sup>12</sup> Mihail Vasile Jakotă, *Dreptul roman*, vol. I. (Iași: Fundației Chemarea, 1993), 121.

<sup>13</sup> Del Vecchio, *Lecții de filosofie juridică*, 189.

<sup>14</sup> Cf. Louis Josserand, *Cours de Droit Civil Francais* (Paris, 1930), 2.

<sup>15</sup> J.L. Bergel, *Théorie générale du droit* (Paris: Dalloz, 1989), 118.

<sup>16</sup> Jean Luc Aubert, *Introduction au droit et themes fondamentaux du droit civil* (Paris, 1984), 5.

<sup>17</sup> At this point of our approach we mention that the definitions to which we referred, largely capture the character of legal norms; social, abstract, impersonality, generality. Seen like this, the rule of law may be confused with any other social norms (moral, religious, political, of courtesy) which also have the vocation to govern the social life. Therefore to the generality and impersonality

But whatever would be the starting point in deciphering the relationship between human wisdom and the legal phenomenon, one thing is certain. The Law (analyzed in a broad sense of the term) is an act of human creation, I would say one of the fundamental human creations whose social purpose is “to ensure the necessary conditions for human survival, a normal course of life, by respecting the rights and human freedoms.” This is, according to the Italian journalist Giorgio Del Vecchio a necessary product of human nature or as it was defined by the Romans “the duty to recognize and to give everyone what deserves.”

The social mission of the Law is to coordinate the inter-human relations to harmonize their interests and aspirations in order to achieve a social balance, a general state of well.

It appeared from the human need for fairness, justice; the Law orders and conducts human behavior towards achieving their aspirations and wishes that is why it passes through the filter of consciousness and human will. As long as the law does not interfere with the other social norms to regulate the relations between people, the society remains a simple collectivity of individuals. Transforming this group into a civil society is ensured primarily by the order established by the legal rules.

As a mean to express social reports, the law supports the influences of the social environment and of human wisdom. As is known, the social organization requires (from a point of its evolution) the right as a coordinator of the inter-human relationships and the law at its turn cannot achieve its normatively valences only in a society. Moreover, the law must reflect (cover) all the compartments of social life and the relationships between them, because are linked to all parts of the social system.

But the idea on which are based the valences of law is that of: justice, equity, righteousness, does not belong only to the Law. Also other social components (moral, religion, politics) are based among others on these concepts.

What is specific to the field of legal life, customizing it from other normative components of the social life, is the fact that the idea of justice, the guarantee of its implementation is given by the rule of law. This rule governs the relations between people in social life and is sanctioned by the political authority, so if is necessary is imposed by coercion.

The use of force to achieve the rule of law appears as a last solution (*ultima ratio*), because the most rules of law especially in the societies in which these

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of the social norm we must add the coercive character of law rule, derived from the fact that is sanctioned by public authority.

express “the will of the many” convince through their merits and justice, harmonizing with the interests and aspirations to whom are addressed, thing which exclude the coercive force. In situations like this, respecting the rules of law is ensured by human convince that these are developed by a legitimate government. And the aim is the regulating and directing the human behavior in the sense required by solving the general problems of human community, without which social life would not have the necessary harmony and balance for a normal life.

At the same time, through the preventive and educational function that performs it, the rule of law warns on the exposed danger of the offenders, so that for fear of constraint many people will adapt their behavior, eliminating the intervention of coercive force. When however the infringement occurred, use of force appears as the only way to reinstate the legal norm and its social role and functions. Therefore it is claimed for a justified reason that “the justice without force is powerless as power without justice is tyrannical.”<sup>18</sup>

In conclusion, in a synthetic form the interface between human society and law, human wisdom and legal order, can be expressed by an old and common Latin adage:” ubi societas ibi jus”, true not only for the present society but also for the perspective of its historical evolution. At the same time, human wisdom confirms the meaning of another Latin adage “ubi jus, ibi societas”.

### **Bibliography:**

1. Aubert, Jean Luc. *Introduction au droit et themes fondamentaux du droit civil* (Introduction Law and fundamental Civil Law Themes). Paris, 1984.
2. Bergel, J.L. *Thèorie gènèrale du droit* (General Theory of Law). Paris: Dalloz, 1989.
3. Chalmers, Damian; Davies, Gareth, and Monti, Giorgio. *European Union Law*. Cambridge University Press, 2010.
4. Fabian, Gyula. *Drept institutional al Uniunii Europene* (Institutional Law of the European Union). Bucharest: Hamangiu, 2012.
5. Iftime, Elena. *Teoria generală a dreptului* (General Theory of Law). Bucharest: Didactică și Pedagogică, 2013.
6. Jakotă, Mihail Vasile. *Dreptul roman* (Roman Law), vol. I. Iași: Fundației Chemarea, 1993.
7. Jossierand, Louis. *Cours de Droit Civil Francais* (Civil French Law Course). Paris, 1930.

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<sup>18</sup> Blaise Pascal, *Cugetări* (Bucharest: Științifică, 1992), 63.

8. Mihai, Gheorghe C. *Inevitabilul drept* (The Inevitable Law). Bucharest: Lumina Lex, 2002.
9. Oppetit, Bruno. *Philosophie du droit* (Philosophy of Law). Paris: Dalloz 1998.
10. Papa Ioan-Paul II. *Planul lui Dumnezeu* (God's Plan). Bucharest: Enciclopedică, 1999.
11. Pascal, Blaise. *Cugetări* (Thoughts). Bucharest: Științifică, 1992.
12. Pop, Liviu; Popa, Ionuț Florin, and Vidu, Stelian Ioan. *Tratat elementar de drept civil. Obligații* (Elementary Treaty of Civil Law. Obligations). Bucharest: Universul Juridic, 2012.
13. Vecchio, Giorgio Del. *Lecții de filosofie juridică* (Lessons Philosophy of Law). Bucharest: Europa Nova, 1983.