



## ORIGINAL PAPER

# The Articulations of Social Reality in the Configuration of Legal Norms

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**Abstract:**

As follows from the entire reality of life and, as recognized and enshrined by the qualities and force of law, the creation of different relations among people is the process giving birth to the variety of legal norms, the necessary coordinator of the inherent human relations which turn out to be, generically speaking, the fundamental reason of the creation of the legal sphere.

We can thus say that we are the legal founders of law before the entities invoked and charged with the burden of its concrete determination can operate and prove diligence so that the rules, thus conceived, will conform to the obvious reality, a reflection of human life and thought.

Man, the creator of relations, relations that create law, out of necessity, from the belief of a fulcrum in the understanding of the human spirit, in the permanent search for self-discovery and, as a natural matter, for harmonizing with fellow human beings, determines and justifies the desire to dispose of a real support, useful in demonstrating justice, truth, righteousness, values sensitive to human thought and reason under any existential circumstance which, independently, are, at the same time, indelibly connected in the development of the human universe.

**Keywords:** *righteousness, the human spirit, the human universe.*

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### **Introduction**

The literature in the field reveals the fact that “legal rules express a social necessity” and “their source is collective consciousness”. (Dănişor, Dogaru, Dănişor, 2008:121) The General Theory of Law professors, (Dănişor, Dogaru, Dănişor, 2008:121) emphasize that “the needs of this collective consciousness command the existence of law”.

According to another opinion, “social reality unfolds according to the laws of evolution, progress, revolutions”. (Baltasiu, 2007: 24)

In this sense, the Romanian revolution of December 1989 represents a historical situation which none of the Romanians can ignore and which they characterize as a political, economic, and last but not least social event. This accomplishment, which acquired historical character, had to overcome the inevitable difficulties created from the very moment of recording this success in the lives of the Romanians.

The three political, economic and social elements present in the initiation of the Romanians’ movement came to support the fundamental ideas of what is called democracy in the sense of the development and application of this concept to the Romanian life, under original circumstances. The social background of this fact expresses the truth from the reality of Romanian society, becoming a major cause of all, i.e. to remove social inequities, essential in the act of revolting.

The political and economic aspects following this historic event were complemented by the social ones, all used in the construction of legal bases that were adapted, harmonized and combined from the perspective of a new structure, unified and directed towards a common and precise goal, democracy.

Approaching the aspect of the articulation of social reality in the configuration of legal norms, we have to mention in this regard the category of “real sources” of law as they result from the relevant literature, respectively that of “realities external to the legal system which determines its concrete content”. (Dănişor, Dogaru, Danişor, 2008: 121)

### **Considerations on the social reality**

From the point of view of social reality, the general desire is to identify relations in their original form, without the pressure of factors of strictly political interest, especially to depict in the life of the present time a new element of their development, freedom, needed to consolidate and widen a unitary framework of relations in unpreconceived and independent forms. However, it can be considered that “freedom is a great burden, therefore, most of the time, people are afraid to assume it”. (Turcanu, 2006:198)

From a historical perspective, the opinions of Philippe Aries are expressed in the sense that “we can better understand the origins of the notion of progress if we recognize in it a historical conscience”. (Aries, 1997: 224)

Looking back to the past we can consider that the real background of our revolutionary movement were the people and only the people and their lives viewed with their particularities in a parallelism with the process of determining the new fundamental aspects of social life, with democratic elements under the direction of which the way of national existence changed.

“Our familiarity with the past is like that between us and our grandparents; they exist in flesh and blood, so that the days go by and we never think that their biography, of which we know almost nothing, is full of events as exciting as ours”. (Veyne, 1999: 27)

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The knowledge of what is essential for our social development, the clear understanding of the content of social values, the organization of new connections naturally demanded educational perspectives towards their assimilation as correctly as possible, placing value on solid considerations and concerns in order to be able to successfully enter a sphere of law and appropriate the content of some guiding norms.

Therefore, the provision of norms in a new social context requires the skill of the creators of law in whatever is considered essential in and for the Romanian society, an adequate orientation of the legislature in order to fully enter the sphere of our needs indicating rules in full compliance with the horizon of democracy.

The expression of new social norms determined the very foundation of law, which acquired special features, while amplifying other ideas and views for the present with the aim of inaugurating a complex legal order that should persuade through justice and truth.

“Man has different needs, some fundamental, others derived, some natural, others artificially created”. (Dănișor, Dogaru, Dănișor, 2008: 79)

In this sense, the term of appreciation regarding our needs acquires great importance for the clear and precise construction of legal rules so that they can be considered correct, justified and edifying. According to the renowned professors Dan Claudiu Dănișor, Ion Dogaru and Gheorghe Dănișor, “a certain balance must be devised between individual and common interests”. In the opinion of law specialists, “this balance is justice itself”. (Dănișor, Dogaru, Dănișor, 2008: 70)

The power of deeming what is beneficial to our society implied a systematic knowledge of the circumstances as well as of what is essential in our activity and for our preoccupations. Moreover, legal provisions must usually be well oriented towards the data and situations that are related to the actions or inactions of each individual, even if a rule, in principle, deals generically with a legal subject.

Paul Veyne’s views are also expressed in the sense that “the smallest incidents of the life of human societies are considered worthy of not being forgotten”. (Veyne, 1999: 80) and that “our belonging to a national, social, family group... can make the past of this group exert a special attraction as far as we are concerned”. (Veyne, 1999: 101)

Thus, like any movement, the revolution of 1989 was and remains representative of the entire people in its many grievances, knowing emotional moments and tragic parts that marked our past from a historical point of view, but through which the life of Romanian society under a different personality became as complete and fair as possible, with wide and varied horizons.

As for us, to leave some oppressive rules determined by the austerity of an original regime does not imply that, in another time and under other auspices, it is not necessary that the rules be sanctimoniously observed in their new configuration. The rigour of a legal rule is not abandoned, but preserved under the rigour of the current social reality.

As one can notice in the expression of some ideas with reference to this exemplary moment in all aspects for the Romanian society, I tend to pay attention to and especially emphasize its social causes, essential through their different representations before and after communism without, of course, eliminating the other determinations of law.

The legal regime, even adequate to the present social reality, is certainly being mobilized because social reality is not static but transformable from one time to another

through our evolution. In the view of law professors Dan Claudiu Dănișor, Ion Dogaru and Gheorghe Dănișor, “the original principle, the essential provenance of law must be a set of objective and permanent conditions and, if they disappeared, law itself would disappear”.

Thus, even if it may seem to have an accessory role, reality, without any influences, offers us the truthful knowledge of what is optimal for us as a result of simple, but varied experiences, always becoming a source of objective inspiration for the legal creation. In this sense, Adam Schaff said that “reality in its totality as well as its parts are infinite to the extent that the amount of their correlations and their changes over time is infinite”. (Schaff, 1982: 118)

It is, naturally, an illustration of a social reality worthy of consideration to an important extent in the elaboration and foundation of legal concepts and in the composition of a new legal system, practically the significant role of social reality in determining the legal phenomenon and the difficulty of establishing categorical links between the legal phenomenon and social facts.

The variability of our attitudes obviously marks the objective peak in constituting the rules of law that take into account that they must serve as starting points in expressing them justly. Naturally, everything depends on our needs perceived differently in their satisfaction and which are accordingly articulated through different standpoints in confronting the claims of the models of conduct established by law with regard to justice.

Moreover, justice represents the object of reflection both through law and in the light of one’s concerns, but in the latter case these are different standpoints in the actual perception of this value, in the attempt to discover it we can sometimes feel that we are far from actually obtaining it.

Social reality, although perhaps only a segment of or addition to the process of establishing a legal order, besides the important factors of a political, economic, philosophical nature, proves its significance subject to evaluation in the light of numerous doctrines or by one’s own conviction. But, our orientations from the perspective of values are based on separate criteria that create different conceptions, so that “the particular complexity of social reality makes it possible to study it from several points of view, each with equal correctness” (Baltasiu, 2007: 42)

Reality will always claim legal norms corresponding to it. While clarifying the surrounding reality, the sphere of law can be precisely configured, it can be built on a lasting foundation, precisely shaped according to the social needs.

Therefore, besides political and economic movements, social reality in its original form represents a real source of law, crystallizing specific norms of coexistence, transposed into legal norms, the result of the full and just understanding of what is beneficial to society.

The legal system must not deviate in any way from the normal social conditions which give sufficient guidelines on the content of the law and which must be concretely assimilated in order to determine its correct content.

At the same time, we can consider that the opening to new legal horizons does not mean a fundamental break with tradition, from which we are really moving away slowly and necessarily, as a consequence of a natural development, but which should be a landmark in knowing the evolution of each society.

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However, the process of adaptation as appropriately as possible to the new realities is perpetual because social life is not without fluctuations, a fact entailing a sort of sensitivity in the elaboration of legal norms.

The conclusion can be that legal norms, taking into account as a fundamental premise the harmonisation of the relations within a society to ensure its unity, make the objective law itself, that set of rules generating model conducts, share, at the moment of their construction, the impulses of social reality, thus creating an original system, a system in which balance is reached by means of two forces, the social force and the force of law.

It is also considered that “the notions of individual and society have an inseparable reality”. (Baltasiu, 2007: 34)

The human personality built on a personal, lasting foundation is remarkable. In the view of law professors Dan Claudiu Dănişor, Ion Dogaru, Gheorghe Dănişor, “the finality of state law in the liberal state governed by the rule of law is the individual, his freedom”. (Dănişor, Dogaru, Dănişor, 2008: 114)

On the other hand, society in the development of his personality must lean towards the needs of the individual and take on an original form through the full, deep and fair understanding of his personality, hence the fact that radical distinctions cannot be made between the individual and society, but rather the originality of the harmony of individuals in the creation of society and the avoidance of imbalances in the difficult phases of the strengthening and evolution of the social body.

Practically, any political event includes a main, central intention, a projective idea that convinces, but the final effect strongly opens significant valves at the social level. It thus becomes “certain that the state fulfills a certain social role through law”. (Dănişor, Dogaru, Dănişor, 2008: 114)

Despite the inconveniences, the idea of coherence presides over social relations by decreeing a customary order in a state governed by the rule of law. Yet, against the background of the diversity of relations, problems always appear and, in conclusion, concerns for solving them. “As for individuals, they remain the goal of law only through a double mediation: that of social bodies and that of the intrinsic goals of the legal system”. (Dănişor, Dogaru, Dănişor, 2008: 41)

In fact, law specialists emphasize that the state governed by the rule of law is “a state that respects diversity, a state that guarantees the right to identity”. (Dănişor, Dogaru, Dănişor, 2008: 116)

It follows that the attitudes, even if of different destination, are properly adjusted towards an absolutely necessary original unity, within which social reality is expressed in the light of the relations between us and plays a central role, we could say a formative role in fixing the legal framework. The complex of different behaviours generally determines the creation of a stereotype that imposes the barriers necessary to maintain a balance.

In this sense, professors Dan Claudiu Dănişor, Ion Dogaru, and Gheorghe Dănişor consider that “state action must meet a requirement of necessity and proportionality”. (Dănişor, Dogaru, Dănişor, 2008: 114-115)

### **Conclusions**

The conclusion arising from the legal literature is that “the political movements, economic demands, social movements, philosophical ideas, doctrines dominating

collective consciousness at a certain historical moment represent the forces that create a certain type of law". (Dănișor, Dogaru, Dănișor, 2008: 121)

Being recognized as a real source creating law, the revolution of 1989 determined the process of establishing a progressive legal formation through which other values were defined and recognized and as a consequence man became unadapted to a certain social environment and, through a different humanization process which continued and continues, has adapted to new living conditions in which fundamental values, dignity, respect, freedom, justice, truth, as a matter of course, in the spirit of their conservation, must evolve in an interdependent relationship with the development of our personality. "The rule of law is thus based not only on the value of justice, but on social justice". (Dănișor, Dogaru, Dănișor, 2008: 113)

Types of conduct existed before the establishment of a system of legal norms, in the form of simple social norms which, even with gaps in their construction, demonstrated deep reflections, worthy of penetrating the significance and meanings of a moral and religious order, of becoming symbols and responding to the realities of the time.

In fact, "the social state governed by the rule of law implies an overcoming of the formal vision, not by denying it purely and simply, as in the case of the socialist state, but by incorporating the formal mechanisms for guaranteeing rights and freedoms... in a material view of the rule of law, which involves a determination of the state by society". (Dănișor, Dogaru, Dănișor, 2008: 106)

The characteristics of our society are presented through their real side under the criterion of objectivity, with consequences in the public life, in relation to facts, to the manifestations of people and their own circumstances. In its upward march, under a new complex, the Romanian society oriented itself with a force not lacking in difficulties, towards the real atmosphere of the democratic regime.

"Values have thus become central to the rule of law, which is no longer the rule of any law, but the state whose law respects the dominant values in society". (Dănișor, Dogaru, Dănișor, 2008: 106)

Of course, this new appearance of our society, leaving behind all inflexibility leads to another process of consciousness of social reality. It is said that when "the state is determined by society, the social constitution subordinates the political constitution". (Dănișor, Dogaru, Dănișor, 2008: 106)

According to the same view, the political constitution "is only formally at the top of the normative hierarchy, the social constitution materially being located in this position, i.e. a certain state of collective consciousness, certain principles and values intrinsic to society". (Dănișor, Dogaru, Dănișor, 2008: 106)

Gradually, other concerns acquire proportions proving the embrace of new convictions which normally intervene and vigorously direct the new generations because, over time, people always reflect the reality at the social level through their own criteria of resonance. Legal rules will always have a social meaning because the attitudes of humans in the relationship represent the only element and create their supreme and continuous interest, whereas the multiplicity and generality of these rules is ultimately subject to a certain understanding, the understanding of the Romanian mentality.

Legal norms outline for individual characters expected to manifest themselves under the rule of the general order, a veritable benchmark of the measure constantly updated so as not to distort reality. "Therefore, at a social level, justice is the highest

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principle on which law will be gradually constituted”. (Dănișor, Dogaru, Dănișor, 2008: 70)

In conclusion, in the determination of a legal existence, it is easy to observe the weight of social reality, that social core which, through the amount of elements it contains, objectively fixes norms applicable to concrete cases and confirms them.

If legal norms were not a creation with social preponderance they would not extend and project themselves adequately through their own regulations onto the real needs of life, from which it follows that there is undoubtedly an overwhelming significance of social reality in the creation of legal norms. The proof in this sense are the legal forms registered as direct sources based on the inherent human existence.

The concerns of law particularly include series of relations constituted and reconstituted over time. The objective receptivity of the creator of law to the realities of life determines the physiognomy of the legal phenomenon. Consequently, “the contemporary legal order knows a multiplicity of sources of law”. (Dănișor, Dogaru, Dănișor, 2008: 122)

Among these sources, social reality is expressed through the many aspects of human nature, through many life events with often complicated consequences and determines this complex of legal norms whose purpose is social and which is named in the specialized literature, “common good” (Dănișor, Dogaru, Dănișor, 2008: 47)

Dignity, respect become an expression of human discipline. Law is established by us and identified by our demands becoming, by generalization, impersonal. Law is, consequently, “a creation of the social body, but once created, it recreates this body and its purpose”. (Dănișor, Dogaru, Dănișor, 2008: 41)

Human behaviour changes all the time under the sign of new aspirations. According to Adam Schaff's beliefs, “the object of knowledge is infinite, whether it is about the object considered as the totality of reality or the object perceived as one of the fragments and aspects of the real”. (Schaff, 1982: 118)

The juxtaposition of social reality with economic and political elements and the common direction towards a precise interest determine the substance, structure and forms of law. We conclude that the origin of law represents this totality of real, inherent and continuous elements of our existence.

### References:

- Aries, Ph., (1997). *Țimpul istoriei*, Bucharest: Meridiane Publisher.  
Baltasiu, R., (2007). *Introducere în sociologie*, Craiova: Beladi Publisher.  
Dănișor, D. C., Dogaru, I., Dănișor, Gh., (2008). *Teoria generală a dreptului*, Bucharest: C.H.Beck Publisher.  
Schaff, A., (1982). *Istorie și adevăr*, Bucharest: Political Publisher.  
Țurcanu, I., (2006). *Istoria. Receptare, cercetare, interpretare*, Iași: Junimea Publisher.  
Veyne, P., (1999). *Cum se scrie istoria*, Bucharest: Meridiane Publisher.

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