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Abstract of the PhD Thesis

Eugeniu Sperantia - Philosophy of Law

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ABSTRACT

The paper aims to analyze the main themes regarding the philosophy of law on which Eugeniu Sperantia has reflected, by indicating what he has called “combinatorial juxtapositions”, expression that is synonymous to that of “creative synthesis”, used by Gabriel Tarde. This approach is concordant with the point of view expressed by Sperantia, according to which the originality implicates the presence of as many and multilateral “influences” as possible, because only in this way we can witness the occurrence of instances where ideas are being connected, ideas that have never met, and thus we are able to create unexpected synthesis. In the same perspective suggested by the “Laws of imitation”, highly regarded and preferred by Sperantia, the paper aims to present him as “inventor”, more exactly as a person capable of associating ideas that were that far considered to be rather alien one to another.

On the other hand, the paper attempts to supply, as much as possible, a gap of missing interpretations regarding the works of Eugeniu Sperantia concerning the philosophy of law.

Therefore, along a few chapters, there is a presentation of the answers given by the thinker towards the great issues of the philosophy of law, accompanied by their “biography” and “genealogy”.

The *Introduction* of the paper presents Eugeniu Sperantia in his position of professor of philosophy at the Academy of Law in Oradea and University of Cluj, where he taught Encyclopedia and Philosophy of Law.

The concept “encyclopedia of law” doesn’t correspond to the content of the course and, of all things, to Sperantia’s conception which stated that an “encyclopedia that is against philosophy” in the field of law is an illusion.

On one hand, the characteristics and the way in which the encyclopedia or law theory has been constituted are being analyzed; on the other hand, there are indications that reveal that Sperantia’s approach during his classes is a philosophical one, so that his teaching profile is completed by this philosophical aspect, as it is underlined by Mircea Vulcănescu.

The second chapter, *Law as an Idea of reason and as postulate of pure reason* brings out Eugeniu Sperantia’s conception regarding the existence of a law that situates

itself beyond our perceptions and representations. Beyond the positive juridical order there is the Idea of Law which has an absolute character- to this no empirical condition of application cannot be specified.

The idea of Law is a presumption imposed to the thought by the nature of the systematic research. The idea of Law is essentially transcendent towards any possible experience and possesses only a regulative application. This is just an ideal form in relation to real contingent law. According to the idea that an eternal and universal law doesn't exist in our experience, it would be wrong to assume that it does not exist. The existence does not reduce itself to our empirical data. They are affirmable experiences and altogether alien to the empirical reality, in the absence of which the empirical reality would be itself non-existent.

The idea of Law is only regulative and not constitutive for the positive law. It is not an idea in a platonic way, respectively an immutable form, eternal which reproduces itself by mirroring in the sensible world, creating the positive law, a concrete, variable, perishing reality.

The absolute just law has a purely rational existence; it's an Idea necessary to reason, according to Kant. Sperantia conceives that Law is analogous to the way in which Kant conceived the Beautiful and the juridical attitude is analogous to the esthetic one. The ideal existence of the law has always served as a polar star in orienting the juridical order.

In parallel with Sperantia's conception regarding law as an Idea of reason, the Idea of Hans Kelsen is presented. This analyses the necessity of the evacuation of the problems that occur in the case of values and, implicitly, that of justice from "The Pure Theory of Law". According to the epistemological rupture operated by him, the general theory of law targets only the law that exists in fact, the effective and positive law. The theory refuses to evaluate it in the name of strict separation between "what it is" and "what it has to be".

The Idea of Law is according to Sperantia's apprehension a postulate, belonging to the field of "pure reason". Its reliability results from the impossibility to be denied. As a postulate, the Idea of Law is not logically necessary, but is indispensable for its thinking.

The third chapter, *Objective law and the social life*, starting from Sperantia's definition of Law, displays his idea about society as reality created throughout the exchange of knowledge contents.

Law is "a system of social norms intended to assure a maximum of sociality possible in a determined social group, by means of a maximum attainable justice".

For Sperantia law is the necessary rhythm of conscience, on the background of the contraposition of our partiality in relation to an alien partiality and of its recognition as pertaining to an order of relations with the others.

Sperantia takes from Gabriel Tarde the conception referring to the social relations comprising the passing on of spiritual values that he calls "psihome". Just like Tarde, he believes that there is a direct relationship between the intensification of the values' circulation and the intensification of the social life. The promotion of the values is done by contagion, a similar term of the one of "imitation", established by Tardes.

The spiritual activity is the one that creates the social peace; it is the fundament for cooperation and it explains the social progress.

Sperantia borrows from Tarde the idea that concerns the need of consolidation of the peaceful relationships within the society so that the cohesion is not affected and the circulation of ideas is protected because it is constitutive for the social world.

The maximum degree of spirituality cannot be achieved unless a maximum degree of sociality is reached, and this cannot be done without the presence of a maximum of security.

The social disaggregation factor is represented by the race for obtaining the material values. The solidarity of the group cannot be guaranteed and organized unless some norms exist, which are meant to suppress or attenuate this competition. The enclosing concerning the possession of the material assets is conducted through norms that restrict the conflicts which threaten the social life. Hence, the positive law is by its origin, constitution and effects, the most active factor for humanity's spiritualization.

The fourth chapter, *Law and morals*, asserts the idea that the definition of law given by Eugeniu Sperantia prejudices the solution of the relation between law and morals.

Once the notion of justice is viewed as constitutive for the law, hence it results that this is based on morals, and the philosophy of law can offer more than its objective's description, namely to establish not only what the law is, but also what it should be and how it should be practiced.

Both the norms of the law and the moral ones are logically derived from given principles; the two domains can be distinguished only through finality. Unlike the juristic ones, the norms of morality don't aim directly at society.

Respecting the judicial order is first of all a moral issue.

Sperantia's conception concerning the law-morals relationship coincides with that of Giorgio del Vecchio. According to him between law and morals there are relationships that cannot be determined a priori, because they are logical necessities.

Sperantia rejects the Kantian principle referring to the "principle of the possibility of some external constraints that are able to coexist alongside with everybody's freedom, according to a universal law". Therefore, the external constraint doesn't represent anymore the criteria for law, and law's sanction cannot define law.

On the other hand, the arguments of Hans Kelsen are presented according to which law is not a part of the moral order and the distinction between the two social orders is not a problem of content and form, consisting in the manner in which they are imposed or authorize the human acts.

The fifth chapter, *The Judicial Norms*, synthesizes Eugeniu Sperantia's conception about the necessity and essence of the judicial normativity.

He takes from Hobbes the idea that the state of peace between humans is not a natural state (*status naturalis*). Within the state of war, the state when everybody is against everybody, each one of us is driven by his own reason.

As in the case of Kant, the solution for the "unsocial sociability" is not the "Leviathan", but an order of reason that can make possible the coexistence of the responsible and free people, from the formal point of view.

The need to guarantee a society understood from a spiritual perspective implies the insertion of norms that would regulate the conflicts generated by the competition for the achievement of sensorial values and, especially those of utility, necessary for the preservation of the organic life. These are limited and consumptible, insusceptible of unlimited affiliation, unlike the conceptual values.

Sperantia affirms that there are postulates of the practical thinking, just like in the case of the theoretical one, that are unconditional. The general and purely formal law of

the entire practical thinking is: there has to be something, in the sense of norms for any action.

“It must be useful” is the “law of the laws”, the *sine qua non* condition of a practical being.

Laws are required by the “law of the laws”. Even if they are not cognitive assertions, but imperative ones, a logical derivation of the detail normative depositions is possible to be extracted amongst the general principles.

The foundation of coerciveness, the normative agent of cohesion that gathers all the elements into a solidary whole is given by the rational deduction.

Alongside, the theory of Hans Kelsen is being exposed, according to which the foundation of the law cannot situate outside itself. The issue of the foundation of law is not one that regards the validity, but the way in which it was created. There is an “assumed” “fundamental norm” that constitutes the logical condition of the possibility of a normative order which is valid and effective.

Sperantia’s conception regarding the legitimacy of the judicial order is drawn from Max Weber.

Legitimacy is a revendication of power based on the appreciation of those who are bearing it. Authority is the power considered to be legitimate.

Sperantia assumes Webber's typology regarding legitimacy, operating on the modifications of its ideal and typical forms.

Sperantia's analysis dedicated to the judicial norms enfolds not only their typology, but also the way in which the "war of the gods" can be overcome without restraining the law only to the positive law— as Hans Kelsen does. According to Sperantia, the judiciary field doesn't display itself. Beside the concrete, factual order of law, there's another order, of the "presuppositions", of the "postulates", which are not given to us through experience, but helps to put a brick to its foundation. After exploring these presuppositions we cannot attain knowledge (*wissen*), but a possession (*haben*).

Sperantia describes a metaphysical system that is, as a matter of fact, inherent and implicit to any human spirit, accessible through revelation.

The sixth chapter, *Social Genesis of Law* describes the other source-materials of the law, namely the common law, the ideologies, morals etc. , underlying the elements assumed by Eugeniu Sperantia from the conception of the "historical school of law"- the conception of Ihering and Gabriel Tarde.

Therefore, law is a natural fact, a sociological one, and also an intentional and rational product with historical character.

Sperantia casts out the metaphysic of the Volkgeist and he improves it with one of a society that is essentially a spiritual synthesis, resulted from the interactions of the

individuals that compose it. Because the binds between people are spiritual in nature, the society is the result of their spiritual contact.

Law belongs to “the world of things that depend on people”, in which there is intentionality and sense.

Furthermore, assuming Max Weber’s conception regarding the rationalization of the law, Sperantia presents seven types of judicial regimes to paraphrase the four categories of law analyzed by Weber.

The sixth chapter, *Principles of law’s evolution* characterizes Sperantia’s conception that law pertains to a world where “things depend on the human being”, a world that has been created by him. People’s universe (culture) resides in finalism, throughout sense and its explanation has to be teleological. Sperantia intended to describe the fundamental tendencies, the soul’s propensions responsible for the creation, continuous development and complication of the human universe.

Sperantia takes the idea of the “historical school” which states that there are similarities between the genesis and the life of law and the organic beings. For this reason a “general biology” is possible which can take into account both the spiritual and the organic life.

At the same time, Sperantia understands law as a social fact, in the way Durkheim has acknowledged the term, and on its basis he lays out 14 principles of its evolution (four of them were taken from Del Vecchio).

The regulative Idea of the human kind history's progress may have made Sperantia to meditate on the progress of the judicial world ("The Idea of the human history from the cosmopolitan point of view).

The final chapter, *Instead of conclusion* tries to underline the similitude between Gabriel Tarde's conception of "invention" and Eugeniu Sperantia's regarding the intellectual creation – which has probably presided over the ideas in his works of philosophy of law.

Essentially, according to Tarde, a new idea represents a combination of old ones, that appear in distinct things and which are often very different. The first condition needed for them to combine is to meet in a brain that is able to combine them. Sperantia assumes his originality by understanding it as a take-up of foreign elements in order to have the opportunity to relate ideas one to another, ideas that have never met before and create, thus, unexpected synthesis.

Glossary

Idea – a concept of reason, whose object can be met with nowhere in experience, with regulative role, for the sake of the all-pervasive coherence of the empirical use of our understanding.

Conceptual values – psihome, knowledge contents introduced among the mental attitudes thanks to the processes of pure perception, abstraction and mental spontaneous construction, which are susceptible of unlimited affiliation

Sensorial values – limited and consumptible material values, of whose possession implicates the possibility of physical action and which are not susceptible to unlimited affiliation.

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