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UNIVERSITATEA BABEȘ-BOLYAI
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MIRCEA DJUVARA ŞI FILOSOFIA DREPTULUI

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ABSTRACT

Key words: *rational law, positive law, philosophy of law, Neo-Kantian legal doctrine, legal encyclopaedia, constitutional law*

Mircea Djuvara is the first Romanian philosopher who, by turning to the (Neo-)Kantian epistemology, defined the formal framework necessary for the autonomy of legal knowledge and for the establishment of law as subject matter which is, given its complexity and its relations with the other major subject matters (morals, sociology, psychology, biology, physics, mathematics), on top of the "hierarchic order of sciences"[1]. Mircea Djuvara is, according to Nicoaie Culic, also the theoretician who "contributed, (...), to law's acquisition of self-knowledge"[2].

Professional evolution. Mircea Djuvara was born in Bucharest in 1886 (18th/30th May), son of Estera (born Păianu) and of Traian Djuvara. In his father's family tree (given forth in Appendix 1 to this work) (1855-1906), of Aromanian origin and having a jurist's profession, the names of other four jurists can be found: Trandafir (III) (1856-1935) and Alexandru Djuvara (1858-1914), Traian's first cousins, Radu Djuvara (1881-1968), Mircea's cousin, and Neagu Djuvara (n. 1906) – who was awarded the title of doctor of law in Paris in 1940, Mircea's nephew. Trandafir Djuvara (III)[3] had an impressive diplomatic career, and Alexandru Djuvara was Romania's Minister of Foreign Affairs between 1909 and 1910. In such conditions, the fact that Mircea Djuvara embraced a legal career came naturally. At first, he attended "Elementary School No. 4" of Bucharest. After having graduated it, he attended the "Gheorghe Lazăr" High School of Bucharest, which he graduated in the summer of 1906, year in which his father passed away.

Mircea Djuvara enrolled with the Faculty of Arts and Philosophy of Bucharest in 1906. A crucial part in his intellectual formation was player, at that time, by Titu Maiorescu and *the Course of history of the contemporary philosophy* which he taught at the University of Bucharest between the years 1884 and 1909. In the lecture held on the occasion of his professor's

[1] Mircea Djuvara, *Contributions to the theory of legal knowledge. Spirit of the Kantian philosophy and legal knowledge*, in *Essays of philosophy of the law*, introductive study, text selection and notes by Nicolae Culic, Bucharest, Trei Publishing House, 1997, p. 297. Part two of this writing is made up of the lessons held at the Faculties of Law from the Universities of Berlin, Viena and Marburg in January 1942.

[2] Nicolae Culic, "Mircea Djuvara – theoretician and philosopher of the law", introductive study to *Essays of philosophy of the law*, p. 39.

[3] In 2009 the book *My diplomatic missions* (1887-1925) was issued by the Europen Institute Publishing House from Iaşi under Trandafir G. Djuvara's signature.

commemoration, on 18th February 1940, Mircea Djuvara would confess: "I was one of Titu Maiorescu's students: I take pride in that and I am as grateful to him as to one who underlay my intellectual formation"[4]. This statement is not a formal one; the evocation includes important information for the exegetics of Djuvara's philosophical work.

The Kantian philosophy, gone through the lectures and development of classical Neo-Kantians (Johann Gottlieb Fichte, Johann Friedrich Herbart) and through those of the members of the School from Marburg (Hermann Cohen, Paul Natorp, Rudolf Stammler), represented for Mircea Djuvara the main source regarding ideas and methodology in the foundation of *rational law*. The assimilation of the Kantian criticism began in his years as a student, under Titu Maiorescu's guidance, and the first studies in which Mircea Djuvara exhibited and analysed the ideas of the German philosopher were published in *Literary interlocutions* starting from 1909, year in which he graduated both the Faculty of Arts and Philosophy and the Faculty of Law which he had enrolled to in parallel. Until 1912, Djuvara published in Junimea's pages studies such as: "New trends in philosophy: pragmatism" (1909)[5], "Idealism and philosophy" (1910); "Two trends in contemporary philosophy" (1911); "A few considerations regarding the nature of space and time" (1911); "Change. Centre of a new philosophy" (1912); "Contemporary philosophy and law. A few principles of philosophy of law, according to the Kantian doctrine" (1913).

In Mircea Djuvara's case, the Kantian option was not predetermined by Maiorescu's influence, but rather cultivated and shaped by the professor, adapted by Mircea Djuvara himself based on his own epistemological interests and on the necessity of the logical-philosophical analysis of legal knowledge.

Over the period of his studies in, begun in 1909, after having accomplished his military service in the country, Mircea Djuvara attended, until 1913, both law courses – field in which he was awarded the title of doctor, and philosophy, maths, medicine, sociology and psychology courses. In these four years he also travelled for studies purposes in Germany, where he also heard lectures from various fields. As it appears from the pages of this Ph. D. thesis, his openness and interest in various study objects emerged from epistemological reasons.

[4] The lecture was published in: Mircea Djuvara, "Titu Maiorescu professor of philosophy", in "The Philosophy Magazine", no. 1, January-March, 1940, p. 39. The number of the magazine was dedicated to Titu Maiorescu's memory.

[5] The study was edited, in the same year, also at the "Carol Göbl" Institute of Graphic Arts of Bucharest.

Main ideas. Mircea Djuvara's work is made up of ample theories of the rational substance of law and analytical ingressions of legitimation of legal knowledge. There are a few ideas that cross all of Mircea Djuvara's major writings. The three most significant ones are: (1) the existence of a rational law which gives consistence and validates, both from the philosophic and from the scientific point of view, the positive law; (2) law is defined by the ambition to fulfil the ideal of justice and, implicitly, on the co-existence of liberties; (3) including the idea of nation and the idea of *legal substance* must be legitimated in relation to "rational law", when major constitutional amendments and "modernization" of legal institutions are taken into consideration.

In *Rational law, principles and positive law*, Mircea Djuvara distinguished between "the regulatory idea of justice" (as fundamental postulate of any legal thought) and "the material idea a person or society can make at a certain point about justice in relation to the society's state of fact at that time". In this respect, he ascertains that "law itself is a justice in its essence and any social organization cannot have other purpose than an achievement of the law and, thus, of justice itself, in the broadest and deepest understanding of this expression"[6]. Consequently, he reaches the following definition:

"It is otherwise inexact to say that «law» or «justice» had as «purposes», that law had as purposes, besides justice and general interest and others alike: justice is a purpose itself, being the highest rational value of practical life, and law achieves it in accordance with the historical and social contingences. Law does not have as purpose neither the «utility», nor «social solidarity» (Duguit), nor «preservation of society» (A. Ravà, *Lezione di Filosofia del Diritto*...), nor «social harmony» (Bonnecase, *La notion de droit en France au dix-nevième siécle*, 1919), nor « social progress» (G. Renard), nor «temporary commowealth» (Dabin, *La Philosophie de l'ordre juridique positif*), not even «social values» (Windelband, Rickert, Lask, Radbruch, W. Sauer, Rümelin, Jerusalem, Meyer, Binder, Wielikovski, Kaufmann etc.); it «consists» in a certain measure of all of them, being a rational coordination of every moral liberty and, by that, a cultural ethic value" (Mircea Djuvara, *Le fondement du phénomène juridique. Quelques réflexions sur les principes logiques de la connaissance juridique*, Paris, 1913, and *General theory of the law*, 1930, Bucharest, 3. vol., *Rational law, principles and positive law*, 1934).

[6] Mircea Djuvara, *Rational law, principles and positive law*, in Djuvara, Mircea, *General theory of law. Principles and positive law,* Introductive speech my Barbu B. Berceanu, edition under the care of Marius Ioan, Bucharest, ALL BECK Publishing House, 1995, p. 504.

Stages of creation. Even though he approaches, inherently in a pluridisciplinary way and from various philosophical perspectives, all the themes and major branches of the general theory of law, Mircea Djuvara's work has a systematic feature, owed especially to contrasts, logical and methodological foundations of Neo-Kantian nature. It also has an organic feature. Its evolution in time did not meet major self-contradictions but, from the conceptual point of view, it recorded certain significant changes according to which we can distinguish two stages of his creation.

The first stage is comprised between 1909, the year of his start in volume with the essay *New trends in philosophy: Pragmatism*[7], and 1930, when Mircea Djuvara published *General theory of the law (Legal encyclopaedia)*[8], work based on the course with the same name which the author taught at the Faculty of Law in Bucharest in the academic year 1927-1928. In the writings from this period, the theoretician and philosopher distinguishes between "natural law" and "positive law", dimensions of the law insufficiently grounded from the theoretical and rational point of view, in his opinion, as long as there are no relations between them and they are not placed in a relation of complementarity, rather only conceived as counteragent, like, for instance, in "School of natural law", in "Historical school", in the theories of "Legal utilitarianism" or in those of "Legal positivism". Mircea Djuvara suggested a more complex relation between the two dimensions, with implicit elements of continuity by means of the Kantian development and of logical and legal development of the Neo-Kantians from the School in Marburg, even from his Ph. D. thesis[9], taken in 1913 at Sorbonne and published in the same year, also in Paris.

The first stage of Mircea Djuvara's philosophical conception is made up of his works before the War, which have the feature of philosophical prolegomena, and *General theory of law (legal encyclopaedia)*. In the writings before the War, neglected by the exegetes of Mircea Djuvara's work, the main research directions which the philosophy of law imposes as necessary

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[7] Mircea Djuvara, *New trends in philosophy: Pragmatism*, Bucharest, "Carol Göbl" Institute of Graphic Arts, 1909. The study also appears in the Magazine *Literary interlocutions*, no. 7, 1909, pp. 765-775. The essay is also the first to be mentioned in the brochure, drawn up by Mircea Djuvara himself, *Publications of Mircea Djuvara the professor until June 1941*, Imprimeriile Independenţa Publishing House, Bucharest, 1941, 14 p.

[8] Mircea Djuvara, *General theory of the law (Legal encyclopaedia)*, 3 volumes, Bucharest, "Socec & Co., S.A." Bookshop Publishing House, in the collection *Academic library of law "Romanian Pandects" under the guidance of Mr. C. Hamangiu*, 1930. The work was reissued in the edition: Mircea Djuvara, *General theory of the law (Legal encyclopaedia) / Rational law, principles and positive law*, introductive foreword by Barbu B. Berceanu, edition under the care of Marius Ioan, Bucharest, ALL Publishing House, 1995 (1999 second edition).

[9] Mircea Djuvara, *Le fondement du phénomène juridique. Quelques réflexions sur les principes logiques de la connaissance juridique*, Paris, Librairie Sirey, 1913.

in the science of law are pre-established. The last part of the *General theory of the law*, named "The rational element in law", represents the beginning of the problematization regarding the relation between the rational substance of law and its positive origins, respectively the problematization regarding the rational consolidation of positive law.

The Ph. D. thesis published in 1913 represents Mircea Djuvara's "intellectual maturity test" and, implicitly, the writing from which arise most of the ideas subsequently taken over, as he had little "discontinuity" in his way of thinking. In this respect, we described in an analytical way the evolution and development of ideas in their passage from one stage to another and we analysed their shading and ramifications from the writings of decades four and five, and after this endeavour we concluded that *The foundation of the legal phenomenon* represents Mircea Djuvara's *prolegomena* to his philosophical conception by means of which he would theoretically impose rational law. His Ph. D. thesis, drawn up in 1913, did not enjoy an exegesis up to this moment, being omitted both by inter-war interpreters and by those from the last two decades, so that neither Nicolae Bagdasar nor Nicolae Culic or Dumitru-Viorel Piuitu analyse it per say. Nevertheless, it should be considered a beginning part of Mircea Djuvara's theoretical system. Its analysis reveals the coherent, homogeneous and organic feature of Mircea Djuvara's work.

The second stage begins in 1933, with the issuance of the book *Rational law, principles and positive law*[10], which comprises the development of the ideas exposes in the report the author presented at the First International Congress of Philosophy of Law and Legal Sociology (Paris, October 1933). It is the moment when Mircea Djuvara introduces the concept of "rational law", built in a theoretical way, by which he shall substitute the one of "natural law" and which he shall deem as decisive in the legitimation of "positive law".

One cannot speak of a theoretical mutation per say in the passage from one stage to the other but rather of a conceptual crystallization. In the *General theory of law*, Mircea Djuvara finds that, after certain compelling analyses, carried out based on the premises of Neo-Kantian philosophy and in its spirit, it can be confirmed that "there is a natural law with a variable content", since "the rational method of assessment represents a pure form, which is applied, always the same, to the exiting judicial institutions, always changed depending on the conditions de facto (the economy of the

[10] Mircea Djuvara, *Rational law, principles and positive law*, Bucharest, "Socec & Co., S.A." Bookshop Publishing House, in the collection *Academic library of law "Roman Pandects" under Mr. C. Hamangiu's guidance*, 1933. Reissued in 1995 and 1999 – see note 4.

respective society)"[11]. "Natural law with a variable content" will become "rational law" in the work that opens, as I have previously mentioned, the second stage in the evolution of Mircea Djuvara's work.

If in the first stage the writings on the theory of law alternate and/ or coalesce with the ones of the philosophy of law, having relatively the same weigh from the quantitative point of view in Mircea Djuvara's work, in the second stage, that is from the mid 30's until the end of his life (1944), the philosopher and jurist will mostly deal with the epistemological foundation of an autonomous science of law. It is this point when he meets the famous theoretician Hans Kelsen, who built a *Pure doctrine of law* "free of any political ideology and of all the elements of life sciences, aware of its own laws governing its object and, in this way, aware of its specificity"[12], objective also shared by the Romanian philosopher and jurist.

Synthetically speaking, in this work we aim to open seven levels of analysis which have as object the following characteristics and theoretical cores of Mircea Djuvara's work, with their similarities and differences from the two stages: (1) the Kantian exegesis which the philosopher carries forth even from his first writings and the Neo-Kantian specificity towards which his perspective evolves; (2) the coherence of the rational foundation of the "legal phenomenon", of the "legal reality" and of the "idea of justice"; (3) the structural and axiological relations between law and morals; (4) the epistemological commitment present each of his endeavours for conceptualization and scientific validation of the theories he proposed or which he had turned to; (5) the conceptual precision, spread, contemporaneousness, validity and fecundity of his methodology; (6) theory of the "rational law", which became fundamentally different from the "natural law", and its placement in relation to "positive law", to which the author assigns a logical support which legitimates and/ or limits its positivity; (7) the cultural importance of this philosophical work in the Romanian inter-war period and the autonomy of his conception in relation to politics and ideology in general.

Mircea Djuvara created a dynamic system, law having as *limit*, towards which he aims continuously, the ideal of *justice*, which positive law can never achieve, but which it has as guideline and towards which it rationally converges, adequate to the historical an social realities of the nation it applies to by different state bodies. In this respect, Mircea Djuvara postulates "the

[11] Djuvara, Mircea, *General theory of the law. Principles and positive law,* ed. Cit., p. 404.
[12] Hans Kelsen, *Pure doctrine of the law*, translation by Ioana Constantin, Bucharest, Humanitas Publishing House, 2000, p. 5.

identity of internal structure in logics of moral, of rational law and of positive law"[13], stating: "In order to make an assessment in morals and law one has to begin the research with the necessary assumption that ethical assessments can only be made regarding free persons. Any individual ethical knowledge involves **the general and universal law of freedom** as a postulate and a prerequisite of our mind"[14].

Rational law is the keystone of Mircea Djuvara's thinking system, being, at the same time, the angular stone of (re)defining the main concepts on which he establishes the philosophy of law. Given the fact that it is built on ethical principles (from the Kantian point of view) and it presumes the identity of internal structure with morals, it is grounded on five main principles: ***freedom, right and obligation, idea/ ideal of justice, legal entity***. The first four are also "ethic commandments", which "are self-imposed, by the fact that we conceive them with our mind, and they do not depend on anything else, representing real imperatives, being, in this respect, «inconditional». One must achieve the ***good and justice*** for themselves, this imperative of the mind is not imposed from the outside by any necessary law of nature, but rather it is freely conceived by our reason. We have the obligation to obey morals and justice not to achieve a higher purpose, but for their value itself. This is also the way in which we must observe even the prescriptions of positive law, not only out of an opportunity spirit, but first and foremost by a higher «obligation» we have in this respect"[15]. Mircea Djuvara believes, in the spirit of the Kantian philosophy, that these ethical commandments express a "spiritual *Sollen*", a commandment of reason expresses as right and obligation, given the fact that for any right there is a corresponding obligation, valid by itself as such, and a *Sollen* with the understanding of a condition that *must* be achieved so as to avoid something bad or to gain an advantage. This *Sollen* is opposed to *Müssen*, which expresses constraint by a phenomenon of nature. The status of the legal science also consists in this difference, different from the one of life sciences.

Freedom represents a prerequisite of legal thinking and of ethics, having the same status as determinism in life sciences. The ethical values which rational law is built on are unconditional values, "supreme values", inherent values. At the same time, they do not represent means to achieve other goals, but rather goals themselves. *A priori*, from the Kantian point of view, are

[13] Mircea Djuvara, *Precise of legal philosophy. Fundamental theses of a legal philosophy*, in *Essays of philisopy of the law*, p. 182.
[14] *Idem*, p. 190.
[15] *Idem*, p.186.

also the ***ideas of debt/ obligation and right***. They cannot be "eliminated by abstraction from experience", but they are the logical condition itself of any ethical experience. Reason, in Mircea Djuvara's belief, represents the ethical experience by general ideas, in the same way as the experiences of sciences about nature, but with analogous values[16].

When it comes to ***justice*****,** to Mircea Djuvara it is "the purpose of law", an absolute imperative imposed by reason, which involves the development of the spiritual values through their achievement in moral consciences, requiring and, at the same time, postulating the free activity of people. Justice and law are the concretization of moral activity; however, law should not be mistaken for morals, though they have the same structure of values, as they aim only social actions which involve *someone else*, a second legal entity towards which the individual holds a set of obligations and rights, all of them rationally developed based on the idea of freedom. According to the idea of justice the activities of the individual are coherently and rationally coordinated and structured in a free environment.

The idea of justice represents the constitutive category of law, the rational guarantee for the general functioning of law and, implicitly, of the positive law. As we have previously seen, "law itself is justice in its essence". Justice is not only the main idea, the keystone of law, but also its ideal.

Over the entire work we have had in mind the idea according to which including the idea of nation and the idea of *legal substance* must be legitimated in relation to "rational law", when major constitutional changes and "modernization" of the judicial institutions are taken into consideration and our entire demonstration was organized according to it.

In chapters one and two of the work we have performed a description of Mircea Djuvara's intellectual evolution, revealing those features which support the hypotheses of reflection from the fifth chapter. We have followed the dynamics of important ideas and concepts from Mircea Djuvara's work which can be developed also from the point of view of the philosophy of culture in general. Thus, we considered vital to highlight Maiorescu's influence and to reveal the development of a new own Neo-Kantian conception. From the second stage of Mircea Djuvara's writings, more truthful to the Kantian conception than the ones in the first one, we can take a glimpse at the belief in the nature of the faculty of pure reason of being practical by itself". Based on this postulate, its Neo-Kantianism will evolve both in the direction of "legist orientation" (The

[16] Mircea Djuvara, *On the autonomy of the moral and judicial consciousness*, in *Essays of philosophy of law*, p. 79.

School of Marburg – Cohen, Nartop, Cassirer), and towards "valorising criticism" (The School of Baden). This Neo-Kantian bi-valence helped him avoid the logistic "dogmatism" and to develop "rational law" in an original way.

In chapters three and four we described in an analytical way what rationality of rational law and rationality of positive law mean, but also the relations between law and morals and between law and sociology. The flexibility and dynamics of rational law, which involve a continuous process of rationalization, indicate the presence of a positivity which is nothing more than the manner of adaptation to the realities given and, implicitly, the operation with empirical data. The connection between law and sociology enforces the place of law in the hierarchy of sciences, hierarchy invoked by Djuvara in *Precise of legal philosophy* and *Contributions to the theory of legal knowledge*.

Concerning the relation between law and sociology, essential in the economy of surprising the "positivity" of law, we found that there are a few benchmarks by which rational law establishes and keeps contact with every day realities, at the same time offering the formal background to acknowledge legal realities. In the process of acknowledging social realities there are taken into consideration, "by virtue of an exigency of justice", causality by freedom and rational ideas of law and obligation, as this is the only way in which a security of the judicial and an order among social needs can be consolidated. So as to observe this "order", positive law acts on the strength of jurisprudence working together with the principles of rational law, which defines the criteria of objectivity, so that decisions are neither arbitrary nor a consequence of having followed certain mechanical applications of the regulations given, of ethics or tradition. The law corpus is a living body, ever-developing, -assimilating and -rationalizing.

The legal activity of interpreting judicial regulations inevitably includes an alteration a widening of the scope of rational regulations or of the ones coming from principles. By synthetizing Djuvara's arguments, we can state that positivity gives the mobility of adaptation and the application of general regulations and rationality verifies them by relating them to the idea of justice and by controlling them in a logical way, as such, also pre-establishing the order invoked by the author of the essay *Law an sociology*. These things become even more obvious when we notice and accept as proof that "evolutions of existing systems of positive law, (…) can never be crystallized in final forms", and when striving for that, by virtue of the social and ideological changes occurring in history, "they manage to get to loggerheads with the exigencies

of justice"[17]. This "crystallization in final forms" is, from Djuvara's point of view, a trap of the natural law.

In chapter five a reflection was unfolded in which the aim was to determine the rationality and positivity of the judicial substance. This chapter was begun with a synthesis in which we aimed at establishing the relations of analogy between the "rational law"- "positive law" binomial and the "substance" and "forms" of the judicial and constitutional system in Romania.

Theoretically, this aspect can be reduced to a set of equations between law and sociology, between "rational law" and "positive law", as it can be considered that the former is crucial in the rational foundation of the latter's *substance*, and the latter represents the *forms* by which law, generally speaking, is adequate and applied to the realities given. This networking is also important in the economy of modernization of the judicial institutions. Practically, things are much more gradated, especially that "positivity" involves a wide spectrum of attributes and manners to relate to the social pressure and interests. A phrase such as "the will of the people" raises issues that surpass these theoretical equations. This "will of the people" can be philosophically conceptualized with the means made available by Henri Bergson's intuitionism – which Djuvara had read and assimilated in his theories; nevertheless, it cannot represent a criterion that can be totally rationalized in the general relation proposed.

As long as we related to Mircea Djuvara's major writings on the philosophy of law – namely to his Ph. D. thesis, to *Rational law, principles and positive law*, to *Precise of legal philosophy* and to the other works and essays from decades four and five – we could rationally establish the connections with social realities by means of positive law, which, in order to objectify them, permanently turns to its substance, which is nothing else but "rational law". The two dimensions of the law are inter-dependant and the relations corresponding to this characteristic gives them both rational objectivity, founded in ethical postulates, and dynamics of the adaptation to society's linear or sinuous evolution, both politically and social and classically speaking in general.

In his conjunctural writings, which, from the chronological point of view, are between the Ph. D. thesis and the other writings mentioned above, other two dimensions appear which should also be taken into account, especially that this is not an ordinary "conjuncture", but the debate of *The Constitution from 1923*. Consequently, it seemed right to follow the intrusion of the ideological in this writing, but also the manner in which Djuvara explicitly relates to the

[17] Mircea Djuvara, *Rational law, principles and positive law*, p. 301.

European constitutional "traditions". This writing proves to be not a secondary one, just like *Evolution and revolution* cannot be seen as one, because the ideal of justice is present here, as well, and the aspiration towards it is at many times an appeal to Europe's national and constitutional tradition.

If, theoretically, the "substance" of the legal system is that specific theoretical and ideal construction grounded on the idea of freedom, of right and obligation, that of person and that of justice, from the practical point of view of the enactment of the new Constitution, the forms and substances of the institutions depend on "the separation of power", the autochthonous traditions and customs, the higher realities the War imposed, the interests and will of certain social groups, which can be divergent. Here too the rational substance is invoked, but Djuvara does not limit himself to that but rather turns to the life-long tradition of certain constitutions systems such as that of France or Belgium which he believes as compatible with the autochthonous substance.

The importation of laws had proved to be efficient for the Constitution of 1866 as well, which was based on the Constitution of Belgium and, from Djuvara's perspective, the constitution of the same state could represent a source also for our Constitution of 1923, especially since an important corpus of law would remain unchanged.

There is no need for a great effort to imagine the significance of such as a debate regarding the "substance" and "forms" of the Romanian justice and Constitution in contemporaneousness. As a member state of the European Union, since 2007, Romania went through two major moments of change regarding the Constitution after the Revolution, in 1991 and in 2003, the latter for the purposes of adhering to the European Union. In 1923, the Constitution was changed after the transformations imposed by the First World War. Even though from the point of view of the historical events the situations are not similar, in the end they show important likeness. Romania is forced to take into account the Treaty of establishment of a European Constitution, signed at Rome on 29th October 2004, by a legislation coming from the outside, and the adaptation to the national identity is crucial.

In this context, but also after the changes in the last years, we believe as adequate to turn to Mircea Djuvara's philosophy of law and to his way of placing himself, in a comparative way, to Europe. Not only did the discussion of "the forms without a substance" brought in the core of the Romanian culture and society by Junimea's writers continue, but it gains accents which will face us against realities we will be able to interpret through a doctrine like that of Mircea Djuvara. As

such, his thinking is a present-day one, especially since it involves a rational substance, adequate to social and political evolutions and his attitude and ideology, in the line of "the passion for moderation", represents a very important substance for the present days.

In conclusion, Mircea Djuvara created a real system of philosophy of the law based on the Neo-Kantian rationalism to which he adapted his liberal ideology according to which he had a political career which he had always seen as an extension of his judicial activity, both aiming to attend to the idea and ideal of justice.

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[386] Ediţiile postume ale operei lui Duvara pe care le-am citat pe parcursul lucrării. În anexa 2 redăm bibliografia exhaustivă antumă a lui Mircea Djuvara.

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