

# VOX POPULI - PARADIGM OF CONTEMPORARY LAW

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## Abstract

*In the contemporary society, which tends to be more and more close to uniformity and globalization, law tends to harmonize the individual interests with the general one. Social life is guided by all the norms imposed on individuals and collectives, which in some particular cases may be applied even through the coercion of the state.*

*Public institutions and democratic societies live through the coexistence and cooperation of their members. As long as the constituent elements of the societies are represented by individuals, each of them must also comply with the coexistence and cooperation rules necessary to maintain the balance of the rule of law.*

*As a society, we need justice, but it is not necessary for people to get tired of pretending justice to be done. Meanwhile, there is a need for a different justice, with a true culture of law and with strong liability.*

*Lately worldwide events, such as great protests with high impact over national administrative and legal systems, as well as over international political relations have proved to be a massive arm against the entry into force of normative acts.*

*The purpose of the paper and the objectives pursued by us will try to reveal whereas the initiatives of the people in their entirety, and not as individuals, are legally solid and if the role of such events is positive or it will only end in destabilizing the rule of law.*

**Keywords:** rule of law, protest, coexistence, cooperation.

## 1. Introduction

Often invoked in intermediary, economic, and political discourse, the term *populism* tends to become an infallible label without ideological coverage. The obstacle faced by all those who have tried to define populism is its ambiguity. Margaret Canovan, in her work *Populism* already reported this diffusion, quoting that the spectrum of the diversity within liberalism or socialism is lower than the one within populism. The primary reason is that the use of the first two terms was determined to the greatest extent by adherents.<sup>1</sup>

Two are the sources of populism: Russian natives and American populists. Both currents marked the last quarter of the nineteenth century. Slavic, orthodox, nationalist intellectuals exalted tradition and fought the modernization and westernization of Russia. Being a synthesis between western socialism and the peasant civil society raised at the standard of political organization, nationalism even theorized the advantages of background economy. The American people, whose political expression was the People's Party, had a different social base. Independent agricultural producers are the core of the movement, and private property is for them the fundamental economic principle. The opponents are the big banks or rail trusts, which played an increasingly important role, to the detriment of small producers. Their political vision implies an increase in federal power in order to defend the interest of the "people." Unlike Russia, the impulse comes here from the people, not from the elite. The identity issue of populism comes from its

problematic situation on the right / left axis. A mixture of revolutionary socialism and economic conservatism, it definitely goes out of the way.

Eugeniu Speranția's philosophical conception about law is organically integrated into his conception about the world and society as a whole. Spiritual life is presented into two aspects: one which is subjective or individual and the other one which is objective or social. The close interactions between them will result in their development, their continuous enrichment. Personality cannot form itself and progress, unless this can happen in a properly organized legal society; likewise, society will not be able to reach a high degree of organization, unless it's done by laborious and orderly work of the personalities inside her. There will be no justice, nor order of law in a society where individuals are lacking in logical consistency, but neither discipline nor individual consistency can be done in a society lacking in order and justice. In any case, the two aspects of spirituality are developing together.

## 2. The concept of the universal norm

In his conception of state and law, E. Speranția does not exclude the aprioristic transcendental factors related to the genesis and functions of the law. The law appears to us as a spiritual, synthetic product, which tends towards a maximum of harmony and consistency; in relation to this, philosophy of law has to be primarily interested in spiritual issues. Spirit creates certain universal and necessary imperatives, which are conditions of rationality.<sup>2</sup> Such a spiritual

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<sup>1</sup> Margaret Canovan, *Populism* (New York & London, 1981)

<sup>2</sup> E. Speranția, *Principii fundamentale de filosofie juridică*, (Cluj, 1936), p. 16-17

manifestation is normality - the constitutive dimension of the human being, which explains the natural need of people to obey norms. In all the actions that people do, they realize that there are certain directions to be followed and some limitations that must be respected.

"We know we can not afford anything and that no one has to be able to allow everything in the world, we always and everywhere find out that something must be or not to be. Everything that comes into the field of our attention is subject to evaluation, anything that is the object of consciousness is inevitable subject to appreciation, any fact or thing is a value or a non-value."<sup>3</sup> Therefore, an infallible norm appears to us as dominating our whole world, not as a natural law, but as imperative commander of things; this norm is the norm of universal normalization, it is the norm of norms - a fact that is categorically imperative and, from a logical point of view, all the imperatives emerge from it and are formally justified by it. The imperative character of universal normalization does not specify which are concrete rules that regulate people's actions, but, in any case, it contains the need for a rule to be respected in all circumstances. In a more concrete social plan, people's lives could be adjusted by moral principles, programs, ceremonies, labels, legal norms or technical standards and so on. But all these are alternatives of the general rule in order to implement justice by legislating the social life. Any attempt to limit the universality of any norm is a defeat of the fundamental exigency of the spirit.

Thanks to the imperative of universality, the Ego will conceive the *alter* as an exterior of its own; any person attributes to an *alter* the same goal position and the same requirement to obey a universal norm. These premises issue the following results: first of all, the exigency of equality of rights, secondly, the exigency of reciprocity and lastly, the exigency of compensation.

### 3. The need to legislate

Speranția did not limit himself to enunciating legal mandatory statements, instead he systematically portrayed the form they take in social life. There are two strong tendencies within it: the possession of material goods and the possession of spiritual goods. The first tendency amplifies people's selfishness, shakes and threatens social cohesion, while the latter tends to bring people closer to their hearts and intensifies their sociality. Tempering the contradictory effects of the two tendencies that threaten the cohesion of social life lies in the spiritual power of the human community, which will intervene in regulating the possession tendency of material goods through certain rules. Social life can not dispense with norms, otherwise it would become precarious. Consequently, law is a necessity, it is a rational and intentional creation, similar in terms of technical constructions.

But the nature of law can only be understood by taking into account the nature of the spirit, which is always absolute and universal. Our spirit is the source of the initial and an *a priori* imperative of law, from which the justice will be applied in the social order. Justice, in a social sense, is a perfectly consistent social order with normative principles admitted by our spirit. Compliance with a generally admitted rule, either by the theoretical deduction of other particular norms, or by translating it into an action, constitutes justice. A sentence is fair when it complies with a rule of law. A rule of law is equitable when it is in accordance with a more general one or with a principle which is known and admitted in advance, whereas inconsistency occurs as injustice.

Applied to concrete social relations, the imperatives of justice, along with justice as a perennial value, acquire relativity. Justice is relative because it can not be the same everywhere as long as ideologies and traditions change in place and time. The positive law is an ensemble of elements that change their character and circumstances while passing through history. Moreover, in varied historical times, ideologies and traditions could give to the aprioristic norms some interpretations, acceptations or circumstances that have distorted and denigrated their own meaning, so that the legal positive order ended in being damaged by serious injustices. However, Speranția believed that "there are some universal and eternal foundations of justice and those are the aprioristic normative beliefs grown in the general structure human minds. Compliance with them constitutes absolute and universal social justice"<sup>4</sup>. Such aprioristic rules that derive from the very structure of our mind are, for example, the principle of alterity, the observance of the commitments, the logical imperative of consistency with ourselves, the Christian principle that demands to love your neighbor as yourself or the imperative respect for the human person, the human person being regarded as the supreme value and as the arbitrator of its own values.

Law, as a set of norms governing human actions and interpersonal relationships has, among its essential qualities, the one of favoring sociality and always having in its structure a conformity or logical consistency with certain pre-established principles. The legal rules are varied by the degree of generality, by degree of compulsion; some seem to have axiomatic validity, others seem to be arbitrary related; some are more effective than others; after another criterion - that of their importance for social cohesion and the protection of people, some are crucial, vital. On the latter, E. Speranția called them cardinal rules. However, there are rules that are intended to ensure or to facilitate the application of cardinal norms, called adventive norms. The institution intended to ensure the application of all these types of cardinal legal norms is the State. The need for normalization and the justice of the collectivities can be met by express legislation. The

<sup>3</sup> E. Speranția, *Introducere în Filosofia Dreptului*, (Sibiu, 1944), p. 283

<sup>4</sup> E. Speranția, *Introducere în Filosofia Dreptului*, (Sibiu, 1944), p. 292

willful creation of the rules of law and the positive legal order implies state goals (plans) and means (procedures, agents, support points, etc.). The actions of purposeful regulation are regulated by valuation values, according to which there have to be established priority programs. The supreme value to which the legislative action is directed is the social peace. Redefining and re-establishing legal values in a new hierarchy by the legislator is very rare in history: such events meet with the revolutions when a new ideology becomes dominated by people's consciousness. According to the principles of the new ideology, there will undergo profound restructuring within the law, new interpretations of the traditional legal norms, some habits, practices will be discussed, it can even get to absurdly altering aprioristic rules.

#### 4. Populism-the opponent of the rule of law?

Legislative actions start from a condition of disaffection of the governors towards the existing society and law, accompanied by a negative assessment, according to which they will elaborate a plan, a possibility of superior justice. In this sense, E. Speranția pointed out that "the legislative activity, being an activity directed to the social order, implies discontent regarding the present given situation and it pursues a new social order of superior value. It is understood that the way of appreciation, the scale of values of the legislator and its possibilities to conceive the change, the means of service and the degree of success are very variable and depend on a large number of factors: the legislator's own mental faculties, the mentality, conceptions, beliefs, habits and criteria of appreciation of the respective social group, all of these constituting also the circumstances that the legislator will take into account, as well as the material on which the legislator is supposed to act upon, but it also constitutes a decisive factor which, by determining the conscious life of the legislator, determines its mode of action."<sup>5</sup>

Laws, once issued, must be justified and accepted. The more a law will be accepted, the more it will be respected. If legal imperatives are unconditionally accepted due to rational character and they must not be proclaimed by the legislator, then the rules of the law must be convincing, accepted and justified. The most spread concepts of justification of the validity of the law in history, were the religious one and the democratic one.

The religious justification of the authority of law considers that laws are, in one way or another, from God. The stronger the religious belief of citizens will be, the more secure will be their obedience to laws, which are considered to be revealed by the divine will. Speranția had noticed that although religious

acceptance seems to be outdated for his time, no other justification could give the positive law created by various legislators a more solid basis than compliance to the multitudes of persuasion. On the other hand, democratic acceptance has a rational logical foundation of the thinking that had as protagonists Marsilio of Padova, the Illuminati, in the forehead with J. J. Rousseau, A. de Tocqueville, etc. This could be summarized as it follows: "if the law is the product of the will of all people, if the law decides what they all want, it follows that the law that forces and governs the individual is nothing but the expression of his own will, that no one is more free than the one who obeys the law, for only so he works according to his will. The one who breaks the law contradicts itself (.....) the law, made by all people, wants the good of all and there can be no better lawmaking according to the common good than the one emanating from the general will."<sup>6</sup>

But Speranția considered this doctrine of the legitimacy of the legal norms as having a lower intake to the masses, being dependent on the level of intellectual culture and education of citizens. Plurality identification with mediocrity or chaos is translated into elitism that rejects any attempt or any hope to take into account what people say. If the democratic justification of the law would be complemented by religious interpretation, then the degree of acceptance and compliance of citizens to legal norms would be greater. On the same note, Speranția brought substantial criticism of the justifying currents of the law of his time: the acceptance of national or social mysticism, the acceptance of the mysticism of the state (fascist, Stalinist, etc.), the social antagonisms theory, hedonistic acceptance, utilitarian acceptance, implicitly promoted by legal positivism.

Who decides in one case or another, if there should be taken into consideration the voice of the people or combat him in the name of the public interest? No one knows. In other words, the possible errors and the realized ones of the *vox populi*, do not permit a reflection upon the limits of the democracy, instead they permit an instrumentalization that allow the leaders of the state to give to the people what they demand or, on the contrary, give them what brings them to silence. In the latter case, when the popular voice finds a way to express itself, the leaders do not have words to describe anger. Contempt of classes is so odious in itself, just as contempt of race. In Europe, the first one is a national sport, meanwhile the second one is a crime. Is talking too easily of "people", as if it is a delimited and determined entity, as if we could introduce it in an entirety. When we talk about people referring to populism, we talk about a part of the average of people, difficult to quantify and preliminary define. How could populism become such a disputed opponent during the glory of the triumphant democracy?

<sup>5</sup> E. Speranția, *Introducere în Filosofia Dreptului*, (Sibiu, 1944), p. 315

<sup>6</sup> E. Speranția, *Introducere în Filosofia Dreptului*, (Sibiu, 1944), p. 315

Law, as one of the social aspects of life, analogically evolves as any vital process. Law, as a spiritual fact, evolves through the gradual assertion of human spirituality. The historical development of the law and the genesis of the new laws simultaneously constitute an individual product, as well as a collective one, as human consciousness in general. The origin of the law can not stand in only one will or in "collective consciousness" - it can not be an exclusively natural product which appears only from "the national soul", placing itself above the individual will. Any legal norm, any legal institution keeps a trail of the mind that created it from the beginning. That's why in every law the intentionality and rationality of her author persists as a fundamental and original element. A legal norm, enrolled in the popular use, forming part of the customs of the community, however, anonymously showing up at some point, must have sprung up from a mind of a man who wanted it, thought and formulated to propagate it in the minds and hearts of others.

The state, as an institution overlapped with the institutions of a collectivity and as the coordinated ensemble of the three powers (legislative, executive and judicial) is subordinated to the rule of law: the state operates in the service of the Law. But neither the law is an end in itself: it exists to secure justice and, through it, social cohabitation, which is a requirement of human spirituality. The latter is the supreme value that condenses all conscious goals and actions.

People's life in the community requires organization; organization requires legal normalization; the beginnings of the political organization of human collectives were marked by the tendencies to normalize the functions of creation and to defend the rules. That's why organizing politics is synonymous with the basic organization of the State. As an institution, the state assumes: a) a systematic ensemble of social actions; b) its actions converge for a determined purpose; c) the actions of the state are carried out according to pre-established rules. Being an institution, the state is not a sum of individuals, nor social group, nor can it be identical to the nation, as "organized nation". The fundamental purpose of the State is to ensure a maximum of justice for a maximum of sociality. In this sense, the State creates and defends the rules that constitute the order of law and for this mission he has to follow certain norms of creation and defense of norms.

The State, as an institution intended to organize the legal norm, is self-regulatory by applying the rules designed to ensure or to apply other norms. Through everything that state does, it will subordinate itself to the *a priori* and cardinal imperative of the need for

justice. That is why all the state bodies and institutions have a concentric configuration, the pivot of which is the need for justice. In the service of this need, the state creates and dispenses by public force - the guarantee of stability, of the achievement of the spiritual goals. State always defends an order of law and a certain spirituality. Law, as a deductive system of social norms, provides that maximum of sociality in a community. That's why, as long as the State goes in a collectivity, so will the power of his laws and vice versa. Therefore, nothing is more likely to jeopardize the unity of a state than the lack of unity of its legislation.

### Conclusions

The populist assault on the institutions generates political instability and confusion, apparent cohesion beyond classes and private interests, meaning the fragility of social tissue. The reverse of the medal is the demagogic use of the term "populist" to condemn positions that are not in line with right or left political orthodoxy. In itself, the populist aspiration towards advanced democracy is a progressive one, but it systematically fails in authoritarianism. If we schematize populism in some of the enduring features, it would be: the transideological character, the revolt of the ordinary man against the elite, the distrust in intellectuals and politicians, as a model for the future and the denial of progress, the small private property as the basis of economic dynamism and equity, the inclination towards direct democracy or a strong leader as a form of government. Beyond nationalism, socialism, communism or fascism, or messages of this type. To deny them the right to self-existence by virtue of an analytical sufficiency is an error.

However, the various issues raised by the philosophy of law do not have definitive solutions. The theoretical constructions of the law philosophy are designed to accommodate the endless conflicts of our spirit with itself, the contradictions between the terms, concepts and beliefs that has developed. Avoiding internal contradictions is for the mind what avoidance of pain is for the body. Our philosophical exploration will then continue to look for whether the life of the law, taken in its universality, contains principles around which the whole law is structured and evolves; what is the normality in general and the derivation of the legal; what is the essence of the relationship between logic and right, between legal, social and spiritual, between law, state and nation.

### References

- Daniel Smilov, Courts and the Making of Public Policy. Populism, Courts and the Rule of Law: Eastern European Perspectives, The Foundation for Law, Justice and Society in collaboration with The Centre for Socio-Legal Studies, University of Oxford
- Erick J. Haynie, Populism, Free Speech and the Rule of Law: the "Fully Informed" Jury Movement and its Implications, in The Journal of Criminal Law & Criminology, Vol. 88, No. I, 1998

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- Margaret Canovan, *Populism*, New York & London, 1981
  - Nicola Lacey, *Populism and the Rule of Law*, International Inequalities Institute The London School of Economics and Political Science, London, 2019
  - Sergiu Gherghina, Sergiu Mișcoiu, Sorina Soare (ed.), *Populismul contemporan. Un concept controversat și formele sale diverse*, Institutul European, Iași, 2012
  - Speranția Eugeniu, *Principii fundamentale de filosofie juridică*, Cluj, 1936
  - Speranția Eugeniu, *Introducere în Filosofia Dreptului*, Sibiu, 1944
  - Théo Fournier, *From Rhetoric to Action – a Constitutional Analysis of Populism in EUI Working Papers*, European University Institute, Department of Law, 2018