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## STATE AND LEGAL PLURALISM

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### Abstract

*In this paper, we try to outline some of the concepts that led me to thoroughly analyse the correlations between the state and the many legal systems established and maintained by national legal provisions, international legal norms or community law norms.*

*Of course, the approach remains to be done on the ground of the legal phenomenon, a component of the social structure, made out of it, from one point of its evolution so far. It is a reference point and it is irreversible marked by the apparition of the state, a political phenomenon without which law could not be supported and explained.*

*Highlighting the relationship between state and law is not a new issue in jurisprudence, what is new in its approach is the legal plurality generated by different legal stances in which the state, as a source of national rules of law, may be: national state, state - subject of international law, European Community State. We will focus, for the moment, on the national state and national law order.*

### Law – an Expression of the Will of the State. Elements of Legal Administration

#### 1. The Political and Legal Order

In this paper, we tackle a topic of great complexity, always present, that we consider necessary and useful for deciphering the meanings of the legal state phenomenon. We start from the definition of law as an expression of the will of the state, which imposes the need to investigate and explain the legal term, in all its aspects and depth, in conjunction with the state. We bring as testimony the statement of the prestigious interwar Romanian *junist* that “the strongest and most interesting concept in law, the most challenging to be studied, is the state”.

Capturing the essence of the freedom of speech of the state will, as crystallized in time, but also in different human areas, especially in the modern era, the disclosure of



peculiarities of the state, generally the state of law, in particular, raise, even briefly, issues regarding the concept of state, the form of government, etc. are strictly necessary to elucidate the legal and political connotations of the two social phenomena, which, although they have distinct missions, meet and collaborate in the establishment and maintenance of social order, a balance between social forces and trends.

As we pointed out above, law expresses a will of the force that legally has the power, and the state can exist and function only in certain frames set by the rules of law. Therefore, apart from their common origin, explained by common determinations, have to be revealed constant and combined efforts which the two social components must provide for organizing the human community, so as to ensure a social balance founded on the rules of human behaviour with political and legal nature (plus, naturally, other social norms: religious, moral, economic, etc.).

Based on the above-mentioned social norms, a social order emerges without which man and humanity could not exist and evolve. Therefore, human behaviour is subject to both natural imposed rules and human norms (result of human creation). In this sense, we can say that the society is in an order followed, supported by a broad system of social rules: political, economic, legal, religious, moral ones. At any stage in human history, we find such a system composed of different species of social norms, which are in an indissoluble unity. Therefore, with all their diversity, the rules governing human action (legal and non-legal) must be consistent and flexible, in order not to contradict and exclude each other. So viewed, the social order breaks down into forms of expression supported by categories of social norms. It is therefore about a political, legal, moral, economic, religious order, etc.

The social order is part of a universal order,<sup>1</sup> because human society is part of the supreme infinite universe. Therefore, speaking of the many normative components, we have to understand that they fall through the social order, in the universal order, whose ordinances have to be observed.

Focusing on the legal system, we find, first, that it can be identified in a social order, which is circumscribed, in its turn, to a universal order. Secondly, it should be noted that compared to other normative components of social life, law (legal normativity) distinguishes through certain specific features, given by the form and force of legal systems imposed by the state authority. Being subordinated to the social order, the legal order “is strongly marked by the two meanings of the concept of law”.<sup>2</sup>

Therefore, there are two dimensions of legal order:

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<sup>1</sup> In the philosophical sense of the term, the order is defined as logical and natural repeatability and regularity, or as logical-normative uniformity and regularity. For details, see GH. C. Mihai, *Inevitabilul drept*, Publishing House. Lex, Bucharest, 2002, p. 120.

<sup>2</sup>Fr. Rigaux



1. The existence of a human society where people are equal in nature, creators and recipients of legal norms;  
The existence of an institutional apparatus able to establish and maintain social order through law. Taken in interaction and influence, the two components relate to the state as a political authority and to law as expression of the will of the state (if we speak of the static law).

The state, however, may occur as a matter of law in at least three phases:

- As a national state providing a model for national order;
  - As a state – direct subject and of international law, ensuring an international legal order;
  - As a state – member of a community form, driven in an order of community law.
- In light of the proposed objects, we focus on the first hypothesis.

## **2. The National State and the National Legal Order**

The national state is still the most elaborate model of legal order, the normal form of organization of political society, although it is of a variety of political, economic, cultural, legal forces, which contribute to the relocation and reconfiguration of global order. It is, in a broad sense of the concept of „human society as it appears as a result of the rule of law”. In this respect, Kant’s remarkable statement, according to whom “the state is the bringing together of a multitude of people living under the same law”. In similar terms, the author described the state “as a group fixed in a particular territory, where most countries impose their will to the weak”, (relying on legal rules – s.n.).

The definitions above are suggestive, with undeniable merits, but are incomplete and in some respects questionable. Therefore, bringing the necessary correctives, the philosopher and jurist Ghio. Del Vecco proposed, in his turn, an enlightening definition for the link that unites them. The state is - according to the author “the subject of the legal order in which is accomplished the community life of a nation”. It is a definition that serves to accentuate the personality of the state and to emphasize the fundamental difference between state and society. The two entities do not merge, because the state is just „the backbone of society, around which are placed the different social categories; it is based on complex relationships that make up the community life of a nation”.

This idea is widely embraced by some Romanian authors. After having emphasized that, in a certain sense, the state designates the governors in order to distinguish them from public bodies as a whole, the authors add that “the state is distinguished from civil society – a term reserved for individuals and private groups”.

From the very brief conceptual sketch on the main issues concerning the state (strictly necessary, moreover, for our approach) we can see the need to research and explain the law – in conjunction with the state. The first argument is a historical one; their



common origin prepared for a long historical period in which the two phenomena were missing (the ancient age). But even in this extended arrangement a social order has been coagulated, because any form of human community, from ancient communities to modern forms, we felt the need for order and interpersonal relations, to enable social harmony and the coexistence of the members of the community, and some unwritten rules of human behaviour (social norms) were more or less formed, for the dawn of humanity transposes the time of writing, with some of them being real legislative monuments". In the ancient age, the compliance to social rules was provided by the authority of the head of the family, then in tribes, tribal union by their leaders (with religious, military, administrative competences, alone or together with a collective leading body (eldership).

Over time, at the community level was constituted a special body called to apply and enforce the rules of human behaviour. It was a body separated from the human community, which embodied the public authority and which over time has acquired its own physiognomy and a special social mission, which is to organize and lead the community on its behalf. Therefore, the state emerged as a political phenomenon, and, linked to the state, appeared the law as an expression of state stability. Then we could talk about a political order based on social norms with the same name and about a legal order with a very special mission and configuration. To be able to perform its interests and to secure the allegiance of others, the social group leading the state sets certain regulations necessary for a normal social life. For the identified regulations to become mandatory for all members of society, is needed a system of bodies equipped with appropriate means (by force, mainly). This body must be able to impose rules of behaviour as mandatory for all society.

Therefore, the state, as organization of political power in a given territory, which fulfils the accomplishment of society management by the force in power, can only achieve its social position through law, through which the will of the leading social group becomes official, belonging to the state, hence mandatory.

In addition to historical arguments, the correlation between the state and law is explained by the fact that "the state is organized and operates on the basis of structural-functional which are enshrined in legal norms, portraying themselves as a legal body". (note)

The legal order is part of a social order, as coagulated through the social norms that appeared and evolved over time, based on archaic societies, passing through antiquity and feudalism, until the modern and contemporary era.

In human community life, the order implies the existence of rules of conduct indicating to every man prohibitions and permissions, in other words, how to behave, what behaviour he should adopt in his life. Where legal order is maintained, prohibitions and permissions take the shape of legal force. By the rules of law, people's actions and



deeds are grouped so as to enable the balance between individual and general (public), possibly by the force of state coercion.

Thus regarded, the legal order cannot be analyzed and understood than reporting it to the human community, to human facts and actions. Natural phenomena, subject to natural laws, do not have these attributes, being far from the logical form of law, which, by prescribing behaviours, address to human beings. In connection with human action, it should be noted that this fact is not only human (natural), but also a fact of will, especially a fact of will assigned to a topic. As an objective manifestation that belongs to the physical (objective) world, the action is a psychological entity, a state of mind, an affirmation of the will. Thus regarded, a fact of life is action if it belongs to a topic and expresses an attitude of its will, its way of manifesting.

Reported to human actions, the law should be considered above all as a criterion for assessing them. As it takes into account human actions, the law should consider, necessarily, the reasons that determine and give form to them. Analyzing the context of circumstances which contribute to determining an action, assessing the degree of conscience and will with which it is done, has a great significance for law. In this way, it is a mature side of human action which exceeds the field of thinking, since it has a psychic aspect. But every act of thinking has a relation with the outside world and therefore a material substrate, which leads to a finding of the external sides of human action. It must be emphasized, however, that the domestic efforts which give expression and foundation to the legal will, externalized as we have evolved over time, are very important. At the beginning of the state life, thus, motivating human actions was only researched by humans. With the development and clarification of many aspects related to the legal order, motivating human actions is analyzed even more carefully. For the organization of contractual life, for example, the motivation of the actions of contracting parties can be inferred by interpretation, even when the will is not fully implemented in the contract stages. Among the principles of interpretation of contracts, enshrined by the new Civil Code, there is also the one that compels the interpreter to take into account the consensus between the parties and not necessarily the literal meaning of the words. In determining the consensus, we take into account, inter alia, the purpose of the contract, the negotiations between the parties, the practices established between them and their conduct after the conclusion of the contract art. 1266, par. 1-2, the New Civil Code).

## **Conclusions**

We included our approach in a broader context, defined by the organizing and structuring the human community based on political and legal norms of human behaviour.



We always bore in mind the symbiosis between the state phenomenon (essentially political) and the legal phenomenon – the law – as an expression of the will of the state. We insisted on the inseparable and indestructible correlation between the state and the legal component, without which, the order and balance of human society could not be imagined and explained, from a certain point of its historical evolution onwards. Is it a reference point, of crossroads of human history and it is marked by the contribution of state organization and by the equipping these organizations with rules of human behaviour that express the will of the legitimate political force and can be brought out, if necessary, by state coercion. The correlation between the state and law can be maintained, first, by an argument of internal order, namely their common origin, explained by objective causes. To these causes can be added an argument of structural-functional nature, both in terms of state and law. The state organization, the structure of state bodies, their activity and operation are precisely determined by laws and other regulations. Also, the organization and unfolding of state activities involves the use of methods and procedures set by legal norms. Therefore, the investigation of state bodies and institutions, of their hierarchical relationships, of their work and their operation is not possible without an examination of the legal regulations. The issues mentioned above.... do not affect the state as regards the political component, but only validate the emblem of “state of law”.

#### Referneces

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