# WHITEHEAD´S IDEAS WITHIN SOME ROMANIAN JURIDICAL THINKERS

**Mihai BĂDESCU***

**Abstract**

*Alfred North Whitehead (1861 – 1947) was a mathematician, logician and English philosopher, being the most important representative of the philosophical school of thought known as "process philosophy," which today has found application to a wide variety of disciplines such as: ecology, theology, physics, education, biology, economics, psychology.The main ideas of Whitehead's thinking can be circumscribed to the following:(i)every real-life object can be understood as a series of events and similarly constructed processes;(ii)if philosophy is successful, it must explain the link between the objective, scientific and logical discourses of the world and the present world of subjective experience;(iii)all experience is a part of nature;(iv)a good life is best thought of as an educated and civilized life;(v)recognizing that the world is organic rather than materialistic is essential for anyone who wants to develop a complete description of nature and so on.Regarding Whitehead's work, we appreciate that, even in our country, there have been and are authors whose views, if not overlapping with Whitehead's thinking, at least present a series of common elements.As far as the present study is concerned, we propose to bring, from this perspective, in the analysis, the conceptions of the most important philosophers of Romanian law: Eugeniu Speranţia and Mircea Djuvara. Eugeniu Speranţia's philosophical work is characterized by a strong biological, social and metaphysical trait. Speranţia admits that none of the fundamental philosophical problems can be resolved unless life is taken into account – which is the original principle of existence – and social reality. What seems to stand in the way of the foundation of a single science that deals with both organic and psychic facts is individuality or discontinuity, on the one hand, and, on the other hand, the fluid continuity of states of the soul. What characterizes every living being is unity and its synthesized activity, which assimilates amorphous and disparate elements, thus portraying itself as a continuous process of synthesis in analogous forms (expansion, conquest, construction). Regarding the philosophy of law, Speranţia maintains – in an obviously Kantian spirit – that it must investigate the a priori or transcendent foundations of law in general. Because a philosophy of law must fit into a broad view of the world, it must be preceded by a philosophy of the Spirit. The philosophy of law has as an aim the spiritual justification of law which, encompassing science, offers it the opportunity to rise to the principles or the first causes. Regarding Mircea Djuvara, we agree with the statement that no one up to Mircea Djuvara brought the legal phenomenon under the eyes of the philosophers, and no one offered the practitioners such a broad horizon, the horizon he considers necessary: «the philosophy of law contains one of the indispensable elements of a true culture». In short, Mircea Djuvara's thinking can be qualified as dialectical idealism; it is not a subjective idealism but obviously an idealism whose epistemological way requires experience, a conception in which matter and spirit are mixed, forming two simple aspects of the experience, the deontological result of which reduces everything to objective relationships. Mircea Djuvara is a strict relationalist: „it is a danger to believe that our lives can work without categories." There is no human consciousness without its own philosophy, the practical attitude towards life, the inherent attitude of every human being. Reason, detached from subjectivity, predominates in every human being; the very law – expression of social relations – has a predominantly rational character: attitude towards life determines in any human consciousness a certain philosophical consciousness, the attitude towards*

* Professor, PhD, Bucharest University of Economic Studies, Permanent member of the Academy of Romanian Scientists (e-mail: badescu.vmihai@gmail.com).

*society determines a certain philosophical consciousness, the attitude towards society determines a certain legal consciousness.*

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1. The philosophy of law is the philosophical reflection on the law, which deals with the right in a dual sense: as an objective law (in its sense), as a set of rules, norms that organize social life and as a subjective law (in its sense), respectively as a faculty, as the possibility, the enabling, the prerogative of a subject (of law) to have, to capitalize and to protect themselves against another a certain legally protected interest.

The Romanian philosophers of law have made important contributions - together with other thinkers of the world - to the development and affirmation of the philosophy of law in the world in an attempt to explain and evaluate the principles on which one of the major dimensions of human existence is based, the normative dimension (ethical and legal).For example, in this regard the following can be taken into account, Alexandru Vălimărescu, Traian Ionaşcu, Petre Pandrea, Dumitru Drăghicescu, P.P. Negulescu, Gheorghe Băileanu, Şt. Zeletin, Nicolae Titulescu. Out of them, the following have made themselves known through their own conceptions: Eugeniu Speranţia and Mircea Djuvara. In their works are ideas that can be appreciated as being close to Whitehead's thinking, an aspect on which we will settle on in the following passages.

2. A thinker of the greatest rank and a true encyclopedic spirit, the author of an impressive work in the field of philosophy of law was **Eugeniu Speranţia.**

Eugeniu Sperantia was born in Bucharest on May 6/18, 1888. He attended the secondary and university education in Bucharest; in 1912 he completed his Ph.D in law with the thesis called: „*Pragmatic Apriorism"*.

He subsequently specialized in Berlin and upon his coming back in the country (1914) he had a position in a department in the secondary education after which he was appointed lecturer (1921) and professor (1923) in the philosophy of law and sociology within the Faculty of Law and the Orthodox Theological Academy, both from Oradea.

Among the most important scientific studies and researches we enumerate: Pragmatic Apriorism (1912), Definition and Prehistory (1912), The Philosophy of Magic (1916), The Beauty as Great Sufferance (1921), The Philosophy of Thinking (1922), The Ideal Factor (1929), Social Phenomenon as Spiritual Process of Education (1929), Course in General Sociology (1930), Problems of Contemporaneous Sociology (1933), The Historic Spiritualism (1933), Judicial Encyclopedia, with an Historic Introduction in the Philosophy of Law (1936), Immanent Lyricism (1938), Introduction in Sociology (1938).

Eugeniu Sperantia was one of the few Romanian thinkers that attended the international congresses of philosophy of the time, collaborating at the same time with foreign magazines of philosophy.

The thinker's philosophical work is characterized by a strong biological, social and metaphysical feature.

None of the fundamental philosophical problems can be solved, according to Sperantia, if social reality and life, which is the original principle of existence, are not taken into consideration. In other words, there is a unique formula with the help of

which both biologic phenomena and psychological acts may be expressed, starting with the simplest ones.

What seems to stay in the way of incorporating a single science dealing both with organic and psychical acts, would be the individuality or material discontinuity of organic beings on one hand and the fluid continuity of the moods, on the other hand.

Any living creature is defined by unity and its synthesized activity, whereby it assimilates amorphous and disparate elements, appearing thus as a permanent preservative and expansive process of synthesis. But creating syntheses is one and the same with conquering and creating. The phenomenon of conscience is defined by the same features: the tendency to preserve itself as a process of synthesis, under analogue forms: expansion, conquest, construction.

This resemblance of features leads us to the idea, according to Sperantia, that both at the basis of biological and psychological phenomena lies the same impulse, that psychology could have great advantages by using biology and also that, biology would obtain precious information by using and consulting psychology. Sperantia is strongly convinced that we would reach very interesting knowledge if we decided to consider conscience (despite all vicissitudes of its short existence and in all relationships with its peers) as representing the minimal vital phenomenon and hence, as presenting in itself, in abbreviated form, all essential and distinctive features of life in general.

According to Sperantia, the logical laws are laws that the thinking subject requires alone and which it forces itself to comply with. Having a binding feature, they may be breached but when this is happening the thinking subject feels the need of a reprimand or reprobation, or at least of an apology and seeks to make things right.

If life represents the total acts of thinking and movement, then the world is only the content and virtual aspect of life. A reality can only be conceived for and by a living creature.

Along with philosophy in general, the philosophy of law was also challenged for many times, being often attacked in a fervent way and of course, groundlessly.

Sperantia – who found out that philosophy had been severely discredited in the 19$^{th}$ century, being challenged by the ascension of the scientific spirit, by the ephemeral time of materialism and empiricism – considered, at the time he was teaching his course in Cluj that, a "*progressive affirmation*" is close to the philosophy of law.

According to Sperantia, the philosophy of law was closely correlated in the last centuries with social and political sciences of those times. The periods of great social and political turmoil, wars or revolutions brought along with them great projects of social reform. At the same time with these projects it appears, however, an interest in the studies related to the justifying bases of the right and state.

Starting from the idea that social organization closely follows the logic of thinking, Sperantia reaches the conclusion that, even if philosophy followed the social and political oscillations to a great extent, it corresponds to a general exigency of the human mind, which it renders the feature of stability.

Sperantia is one of the most fervent supporters of the philosophy of law, being aware of the fact that it is the only one that can contribute to a proper creation of the law. That is why he militates against the exclusion of philosophical problematic from the General Theory of Law. The philosophy of law gains, in his conception, practical connotations, to the meaning that "*in all branches of scientific research it is more and more difficult to challenge the truth that between the philosophical conception of the*

*world and the solution to problems of detail there is such an intimate correlation that any insignificant discovery or verisimilar hypothesis may cause a modification of the philosophical trend".*

In Kant's spirit, Sperantia argues that the philosophy of law must examine which are the aprioristic or transcendental bases of law in general. Besides these aprioristic bases, the philosophy of law must also take into consideration the influence of external, extrinsic factors which are important in the elaboration of judicial order. Besides these two factors, a third one has a significant role in the functioning of law. It is the finality of the right as technical means of progressive spiritualization of the humankind.

Because a philosophy of law must be framed within a broad vision about world, it must, in Sperantia's opinion, be preceded by a philosophy of the Spirit. The statement is correct and it was applied with success especially by Kant and Hegel. Since the characteristic and primordial function of the spirit is that to create norms, it results that the law has a spiritual foundation, and the spirit-related problematic must be found, specifically, in the problematic of law. The purpose of the philosophy of law conceived by Sperantia is the spiritual substantiation of the law which embedding the science, it offers it the possibility to ascend to principles or to first causes.

Eugeniu Sperantia, known for having a rich culture founded on thorough readings in the field of social sciences and nature, succeeds to carry out a philosophy of the law in connection with all other fields. Without fear of error, one may state that Sperantia is the philosopher that frames the law within an universal vision about the world in general; the law is framed within and is part of an integrated world and the philosophy of law is the one that requires and renders it the endorsement of unity with the great world of ideas that transits to an optically founded reality.

Although it is a part of a unitary whole, the law is, at its turn, a unitary reality, which is different from other realities, which confers it a different feature. To this purpose, Sperantia stated that "*the philosophy of law shall consider the right as a unitary whole, in what it has identical with itself always and everywhere –which makes it to be a unitary reality, in what it differentiates it from any other reality and in what it assigns to it an own place and feature inside the whole imaginable and thoughtful world."* From this way of raising the question, it results that the law, as a different reality, is part of a much broader world and in which it brings its characteristic way of being.

Starting from the framing of the law within the broad area of social sciences, Sperantia tries to catch, however, its the characteristic elements, its essentiality, that is what it distinguishes it in its idealism and reality itself.

The main distinction made by him is the one between the science of social life (the sociology) and the science of law and, correlatively, between the social philosophy and the philosophy of law. "*Sociology* – argues Eugeniu Sperantia – *ascertains certain phenomena, it seeks for their causal explanation and the regularity of their relationships, while the judicial point of view is not that of causal explanation but of logical justification".*

It is very interesting the way in which Sperantia approaches the concept of constraint. He remarks that the sanction or non-sanction doesn't characterize only the norms of law. It is exercised under all aspects of the social life. The society itself is a reality which constrains us and forces us to subordinate ourselves to its way of being. Moral is also, at its turn, an internal constraint. In contradiction with Trade who argued that not only constraint is the engine

of the social life but also imitation, Sperantia, will show that in case of imitation, even if we are not in the presence of an outer constraint, it is however the result of an inner, involuntary impulse that in fact, constrains to a certain adaptation to environment. Sperantia states that in fact, constraint is one way of imitation: "*through it, the process of unification, hence of imitation, universalizes and smoothens itself."*

Starting from the ascertainment that social life is a manifestation of the human spirit, Sperantia requires that the general and imitable laws of thinking should apply also here with all consistency. In fact, according to him, the need for consistency is the most general need of the human spirit.

Approaching the notion of the norm characterized by constraint and identifying the constraint with fundamental logical concepts, such as those of identity and non-contradiction, Sperantia, succeeds in performing a substantiate logic of the norm.

Dealing with the laws of evolution of right, Eugeniu Sperantia, assimilating what other thinkers brought positive in this matter and completing with his own contributions, determines the following laws:

- the law of progressive intentionality: the right evolves through a transition from instinctive and automatic to intentional;
- the law of progressive rationality: the right evolves through a transition from irrational to rational;
- the law of transition from anonymous enactment to enactment by established bodies;
- the law of progressive organization of sanction – which, implying an increasing intervention of intentionality and rationality, represents a corollary of the two laws;
- the law of continuity or of psychological adaptation of the new institutions to the old mentality;
- the law of progressive solidarity of society with the individual;
- the law of evolution from particular to universal (supported by Giorgio del Vecchio);
- the law of transition from a "status" to a "contractus" (or the law of Sumner Maine) which could be also called –Sperantia says – the law of gradual affirmation of human personality (thus appearing as a corollary of law 6);
- the law of transition from psychological inferior grounds to superior grounds;
- the law of gradual simplification of the procedure;
- the law of sweetening and individualization (extrinsic and intrinsic);
- the law of progressive organization of creation and self-preservation functions of the right;
- the law of functional and adaptive motivation.

All these laws would be reduced, according to Sperantia, to two general laws, that is:

- the right– as one of the social aspects of life – similarly evolves with any vital process;
- the right – as spiritual fact – evolves through the progressive affirmation of human spirituality

The evolution of practical behaviour and of the human spirit is carried out through a permanent and progressive union of means of "intermediation" (as a transition from immediate to mediate).

Despite having an obvious biological conception about the world, Sperantia does not exclude though aprioristic, transcendental factors in establishing the right. On the contrary, he strongly highlights their role. "*The law* – says Sperantia – *appearing always as a spiritual synthetic product aspiring to a maximum of harmony and consistency, a philosophy of law must be preceded by at least one concise*

*introduction in the philosophy of Spirit*". The spirit creates itself certain exigencies to which it understands to obey, because they express the life of the Spirit itself and they make it possible. Which are these universal and imperative exigencies without which the spirit itself couldn't exist? They are the following:

- the spirit conceives itself as universal;
- the spirit considers itself as sufficient to itself;
- the spirit is and requires always to be subjected to a universal norm enacted by itself;
- the exigency of universality is the condition of rationality;
- any confinement of the universality of a norm represents for the spirit a defeat of its fundamental and primordial exigency;
- the sensible experience is a series of defeats of aspiration of the spirit to the universal;
- any defeat of the aspiration to the universal represents a negation of identity of the real with the spiritual and the rational;
- the horror of contradiction, the impulse to reject and avoid any contradiction is the defensive attitude of the spirit which tends to preserve its identity with itself and its aspiration to the universal norm;
- the individual spirit ("*the ego")*, as we know it in subjective conscience, postulates the objective existence of the spirit;
- thanks to the exigencies of universality, "*the ego"* conceives "*the alter*" as its own exteriorization;
- "*the ego*" assigns to each "*alter"* the same position of purpose in itself and the same requirement to be subjected to a universal norm. The consequences of identity of the subjective spirit and of the application of the same norm are:
  - the exigency of "equality of rights";
  - the exigency of "reciprocity";
  - the exigency of "compensation"

The real "*social conflict*" is reduced to the subjective, inner conflict, among the affective tendencies and rational norms. Any interdiction that starts from the normal conscience is a form of imperative of non-contradiction, a refusal of our logic, such as any exigency of the moral conscience is in fact still a logical existence.

Naturally, Sperantia is not content only with establishing the judicial imperatives which, as we have seen, they are exigencies of the spirit and they show as systematically the appearance that such imperatives have in the social contingency.

Spiritual life assumes social life, the latter being a constituent of the former: spiritual life is not possible without social life. Two strong tendencies are noticed in social life: on one hand, the tendency to possess material goods and on the other hand, the tendency to possess spiritual goods. While the latter tendency almost animates the humans and intensifies sociality, the former tendency alienates the humans, hence threatening the social cohesion. The explanation for these adverse effects of the two tendencies lies in the fact that while spiritual goods are susceptible of a simultaneous, unlimited affiliation, material goods, being exhaustible, are susceptible only of a limited affiliation. The exigencies of animality on one hand, the limitation of goods on the other hand, threatens not only the social life but also the spiritual one. That is why the spirit can not remain indifferent, but reacts, reducing or limiting the tendency of possession of material goods by certain norms. By doing so, the spirit is not the only one subjected to confinements: Organic life itself is subjected to norms, but to certain norms which are dictated to it from outside. Logical thinking creates alone norms for itself, according to which it develops, without which it wouldn't be a thinking but just a simple incoherent dream.

Social life can not dispense with norms, because it would be fully precarious without norms. This is why the law intervenes and establishes the necessary norms. Of course, besides the proper judicial norms, social life is followed by habits, customs, manners, commons laws, rules of politeness and ceremony, religious rites, etc., such as the individual conscience is normalized, besides the logical laws, by the laws of association. The right though, is not the result of fortuity or of human conscience taken in the amplitude of its formations, but "it is a rational and international creation", resembling to this respect with technical constructions.

The law must accomplish a high function: that of insuring human spirituality by protecting the social life, indispensable to the spirit.

3. Above all Romanian authors who consecrated the life and work of philosophical and legal writings is **Mircea Djuvara**, the representative figure of Romanian culture, the founder of an original thinking system, of definite theoretical and methodological value[1].

Mircea Djuvara was born in Bucharest on May 18th (30th), 1886, son of Estera (born Paianu), and Traian Djuvara, of a family of Aromanian origin who gave the Romanian society more jurists. With his existence, Mircea Djuvara marked a new opening in the Romanian interwar philosophy. A prominent personality of the time, Djuvara is an important landmark for any current research in the field of legal philosophy.

Mircea Djuvara followed, with very good results, the general education in Bucharest, also graduating from high school, the studies having provoked him *"That ferment of ennobling and intellectual creation found in every human consciousness ... when I realize today how complete was the study cycle I have undergone in my childhood and how great was the influence it has exercised in its entire complexity upon my being, I bring through this the highest honor to the high school in which I have studied"*-(the "Gheorghe Lazăr" highchool - n.a.)[2].

During high school, which he graduated in 1903 with honors, he was awarded the "Romanian Youth" award, a prestigious pedagogical institution of that time.

He starts his University studies in Bucharest, where he attends the Faculty of Law and the Faculty of Letters and Philosophy. Here he receives the influence, decisive for his scientific orientation, of Titu Maiorescu, a jurist and philosopher himself.

In 1909 he defends his thesis, both at the Faculty of Law and at the Faculty of Letters and Philosophy, the latter educational institution awarding him the mention "*magna cum laude*". Later, at Sorbonne, Mircea Djuvara gets the title of Doctor in Law with the thesis entitled *Le fondement du phénomène juridique. Quelques reflections sur les principes logiques de la connaisance juridique,* thesis which he publishes in 1913.

Characteristic for that age in which he begins to publish his studies, are collaborations in the "Facts" section of

[1] Above all, Mircea Djuvara, who through the vastness and depth of his attempts must be recognized not only as the greatest Romanian thinker but also one of the greatest contemporary thinkers in the field of Philosophy of Law." (Giorgio Del Vecchio, *Lecţii de filosofie juridica (Lessons in the phylosophy of Law)*, Europa Nova Publishing House, f.a.).

[2] M. Djuvara**,** *Confessions of a former student* (*Confesiuni ale unui elev de altădată,)*in the "Gheorghe Lazar" High School Monograph in Bucharest, (1860-1935), on the occasion of the 75th anniversary of its foundation, Bucharest, Inst. a.g. Luceafărul, 1935, pp. 299-301.

"Literary Conversations" where he makes himself known through his high level of knowledge, giving preference to the signaling of the interdisciplinary phenomena, revealing the unity of the universe, by the skill, even then, in the nuanced presentation of moral and social problems, with the desire to become a *homo universale*[3].

In 1920, he started his university career at the Faculty of Law of the University of Bucharest, where he gradually obtained all degrees and where he would carry out most of his teaching activity. He was also a professor at The Hague International Law Academy and lectured as an associate professor at law schools in Rome, Paris, Vienna and Marburg.

His scientific work materialized - including chronographs, reviews, lectures, conferences and interventions - in over 500 titles, of which, apart from his PhD thesis, we take into account the most important: *Teoria generală a dreptului (Enciclopedia juridică) (The General Theory of Law (Legal Encyclopedia))*, 1930; *Drept raţional, izvoare şi drept pozitiv (Rationally, Sources and Positive Law)*, 1934; *Dialectique et experience juridique*, 1939, *Le fondement de l'ordre juridique positif en droit international*, 1939; *Precis de filosofie juridical (Tezele fundamentale ale unei filosofii juridice) (Précis of legal philosophy (The Fundamental Theses of a Legal Philosophy))*, 1941; *Contribuţiile la teoria cunoaşterii juridice/Spiritul filosofiei kantiene şi cunoaşterea juridică (Contributions to Theory of Legal Knowledge / Spirit of Kantian Philosophy and Legal Knowledge)*, 1942. The entirety of this scientific work was to culminate in a published Legal Philosophy Treaty, practically outlined, at least in part, in three of the aforementioned works: the 1913 thesis, the 1930 printed course and the *"Précis"* started in 1941.

Along with these basic works, Djuvara's scientific research consisted of numerous studies and works of theory and philosophy of law. As early as 1907, he began publishing articles and philosophical studies in the magazine" *Convorbiri literare*", then in other magazines and periodicals as well, such as: „ *Democraţia*" (1919-1932)," *Dreptul"* (1920-1935), " *Revista de filosofie"* (1924-1940)," *Pandectele române*" (1923-1942), " *Rivista internationale di filosofia del diritto* „(Roma, 1931-1936)," *Revue internationale de la théorie du Droit*" ( 1931-1939)," *Archives de philo- sophie du droit et de Sociologie juridique*"( Paris, 1937)," *Annuaire de l'Institut international de philosophie du droit et de sociologie juridique*" (1934-1938), „*Analele Facultăţii de Drept din Bucharest"*(1938-1942), „*Revista cursurilor şi conferenţiarilor (universitare*)"," *Revue roumaine de Droit privé*", *„Forme*"," *Buletinul Academiei de Ştiinţe Morale şi Politice*", „*Cercetări juridice*", as well as in the newspaper" *Universul"* .

Regarding Mircea Djuvara's entire work, it can be appreciated that it is a broad analysis, in which are included elements of general philosophy or juridical philosophy as well as elements of the theory of law or sociology of law. The great project of Mircea Djuvara, which identifies solid foundations for the entire legal research, is based on a complex series of epistemological and axiological researches, which induce a certain pre-eminence of the philosophical analysis in relation to the whole work. Moreover - as Nicolae Bagdasar claims - from the investigation of juridical phenomena, Mircea Djuvara always wants to exceed the limits imposed

[3] B.B. Berceanu**,** *Universul juristului Mircea Djuvara (The Universe of Lawyer Mircea Djuvara)***,** Romanian Academy's Publishing House, Bucharest, 1995, p. 26.

by the strictly determined thematic framework of legal philosophy in order to relate to the much broader horizon of general philosophy: *"What characterizes Djuvara's philosophical attitude in general ... is that by examining issues of philosophy of law, he is convinced that they cannot be untied without an overall, epistemological and philosophical conception.. For, according to Djuvara's conception, the problems of the philosophy of law are not isolated from the great philosophical problems, but they are closely related to them, the philosophy of law integrating organically with general philosophy"*[4].

Most philosophical concerns of Mircea Djuvara aimed at identifying the ontological and epistemological foundations of law. When inventing the various elements of legal reality, the Romanian philosopher transposes legal analysis in the field of juridical logic, and when the structure of legal appreciation and implicitly the system of juridical values is investigated, research is transposed into the horizon of legal epistemology.

In addition to his scientific and publishing activities, Mircea Djuvara was directly involved in the work of highly reputable scientific institutions and organizations. He was an active member of major institutions: The Association for the Study and Social Reform (later became the Romanian Social Institute on February 13, 1921), the Society for Philosophical Studies (the Romanian Society of Philosophy), the Institute of Administrative Sciences, the Romanian Academy (Correspondent member elected in the Historical Section on May 23, 1936, following the proposal of Andrei Rădulescu, until then the only representative of the law science in that institution), The Institute of Moral and Political Science (which became, on November 20, 1940, the Academy of Moral and Political Science), the International Institute of Philosophy of Law and Legal Sociology in Paris (at whose congress he participated, being also one of its seven vice-presidents and the president of the Romanian Institute of Philosophy of Law, founded by him and affiliated with the previous one),The Academy of Sciences of Boston (Honorary Member), the Society for Legislative Studies (from its establishment until July 1921) and the Romanian Legal Chamber (from its establishment until February 1942, as Vice-President, at whose private international law session he attended)[5].

As a teacher, Mircea Djuvara has been a lecturer since 1920, an aggregate professor since 1931 (August 10) and a permanent professor (June 1, 1932) at the Faculty of Law in Bucharest. As a professor, he held the chair of General Theory of Law with Application to Public Law, a chair transformed on November 1, 1938 into the Department of Encyclopedia and Philosophy of Law. He held, up until the last academic year (1943/1944), lectures on the philosophy of law, and until tenure, lectures of constitutional law as well.

Djuvara also had an important activity as a lawyer in the Ilfov Bar.

*„Those who have known him - colleagues of scientific research, chair or bar, organizers or auditors of conference cycles, students - emphasize his vocation as a researcher and teacher, his culture and intelligence, oratory elegance, urbanity and courtesy in disputes, his sense of justice, character and power of work, his modesty, charm, fine humor".*

[4] N. Bagdasar, *Istoria filosofiei românești (The History of Romanian Philosophy)*, Tipo Moldova Publishing House ,Iași,1995, p. 387.

[5] B.B. Berceanu, *op. cit*., p. 27-28, which cites the Romanian Academy, "Anale", 56, 1935-1936, p.128, "Cercetări juridice", 2, no. 2, 1942, p. 121 and "Curierul Judiciar", 28, 1921, pp. 407-408.c.

Mircea Djuvara was a legal advisor to the Permanent Delegation of Romania at the Paris Peace Conference (1919), during which he edited a Newsletter and published the most comprehensive legal study on Romania's participation in World War I, preceded by a history of the country, unfortunately, only in French.

After the war, Mircea Djuvara was aware of the importance and problems of the Great Union ("*We live in our country in such great times that it would seem that we cannot in any way ascend to their meaning [...] our intellectuals - especially ours - must come to understand, those who have the mission of thinking and not action, that their role today is not in criticizing what is being attempted, but in helping what is being done*").

Mircea Djuvara brought legal arguments against the local autonomy tendencies, contrary to the decision of the Great National Assembly in Alba Iulia (December 1, 1918), and stressed the necessity of legislative unification, recalling, after J.E.M. Portalis, that "*People who depend on the same sovereignty, without being subject to the same laws, are necessarily strangers to each other*"[6] and, aware of the weight of developing massive codes, proposed urgent partial changes.

Mircea Djuvara was a delegate of Romania at the General Assembly of the League of Nations and other international conferences, being also Vice-President of the International Union for the League of Nations and Chairman of the Executive Committee of the Romanian Association for the League of Nations. He was minister from August 29, 1936 to March 31, 1937 (but with the portfolio of Justice only until February 23, unable to stand in the defense of legality to the Carlist junctions). He was the only Minister of Justice - to give a single example of respect for the lawfulness - under which the positions of the State Attorney, a post of that time, was given through n examination, in accordance to a law not respected by those who had promoted[7] it; He has politically militated for barring the fascist ascension[8].

The dictatorships established under the pressure of Nazi fascism were, for Mircea Djuvara as well, a difficult challenge. He followed his way, continuing to promote, under the new circumstances, the values he believed in. Thus, in 1941, the opposes to the Nazi ideology, the subject of *the Romanian Nation as a principle of our law*[9] *and combats that "nationalism ... which, instead of remaining the representative of one of the holiest sentiments, of justice, foreign subjects to an unfair regime without any legitimate reason or which counts other nations as devoid of any rights"*[10].

He keeps alive the idea of freedom in Nazi Germany - in Berlin, Vienna, and Marburg - and still defends the Romanian view of the nation, underlining the difference between it and the German-Italian conceptions (more precisely the idea of *Volksgemeinschaft* of the German National Socialists and the Fascist Italian Conception, Which, in relation to the nation-state report, claims that the state creates the nation and not the other way around).

[6] M. Djuvara, *Intelectualii şi necesitatea noii constituţiuni*, in the magazine "Revista vremii", 2, no. 24, 10th Dec. 1922, pp. 1-2.

[7] See: Arh. St. Buc., Min. Just., Judiciary Dir., file 18, 1936, vol. II, F. 468.

[8] Armand Călinescu, *Memorii* (Memoir), 25th Oct. 1936, Arh. ISSIP., fond XV, DOS. 65.403.

[9] M. Djuvara, *Naţiunea română ca principiu al dreptului nostrum* (The Romanian Nation as a principle of our Law) ("The Academy of Moral and Political Science", 4th Dec. 1941), The Academy of Moral and Political Science, Communications, 3," Buletinul", 1941/1942, pp. 41-68.

[10] *Idem*, Precis of philosophy of law (Fundamental theses of a legal philosophy) in" The Annals of the Faculty of Law", no. 34, p. 58.

Mircea Djuvara, at the same time, adds that "in international law we cannot also admit the violation of national rights, and we also acknowledge here a supreme justice that is not based on either security or interests", That we tend "to a community of nations as a beginning of a new universal age", that the struggle of every nation throughout history must be carried out "with all sacrifice" but only "for justice, defending itself and rounding itself where Their essential rights are disregarded[11]",An attitude that is a true condemnation of the invasion war of the Third Reich and its general policy[12]. It had previously fought the idea of Grozraum ("great space"), later became the Lebensraum ("vital space"): "It is beyond any doubt that any state, even a small state, possesses spheres of interest that often extend very far, in <large spaces>, because of international solidarity"; but such interests intertwine and their existence "does not imply any right of tutelage or international domination for one another". In no way, therefore, "can there legally exist Great Powers, be they global or European, destined to govern the Little Powers"[13].

He also criticized the Nazi doctrine, which reduces the right to physical and biological phenomena. And still during full Nazi eruption, he dedicates a work to Professor Frantisek Weyr of the occupied Czech Republic, the only time he dedicated a work to a person (except for participation in collective homage). At the death of Henri Bergson (1940), Djuvara published a warm obituary and, from the chair, emphasized the greatness of the one who neglected his life because he understood not to use the regime of favor in relation to the one that was imposed on his Jewish countrymen by the Nazi occupation (whose responsibility for the premature death of the French philosopher was thus underlined)[14].

Also in this last period of life, Mircea Djuvara wanted to inform and warn the Romanian reader about the content of some writings by the Nazi lawyers, emphasizing their removal from the science of law, signaling their misgivings and removing the ambiguity, underlining their lack of scientific quality and Legal, ironizing and defending the idea of law.

*Concerning the domestic law, in which the constitutional regime was suspended (1940-1944), Mircea Djuvara observes that such a regime presupposes the existence of principles over which an abusive lawmaker cannot pass; For without a wise interpretation that would lead to an objective and unyielding justice against the legislator himself, "the rule of law can easily be translated, especially to us, in the reign of whim".*

In his last year of life, struggling with the illness, he seeks, accompanied and watched by his wife, to continue his courses and even suggests to students, at a time when such initiatives were unthinkable, to take a political attitude *("... and what are you waiting for?")*; He organizes seminars with students at home, requests of the members of the institute that he be allowed to chair the meeting while lying on the couch. He thinks and writes until the last day of his life, dying in Bucharest - we could say symbolically -

[11] *Idem, Contribuţie la teoria cunoaşterii juridice/Spiritul filosofiei kantiene şi cunoaşterea juridică (Contribution to the theory of legal knowledge / Spirit of Kantian philosophy and legal knowledge)*, in the "Analele Facultăţii de Drept" ("The Annals of the Faculty of Law"), Bucharest, 4, no. 1-2, p. 67.

[12] B.B. Berceanu**,** *op. cit*. p. 30.

[13] Carl Schmit, *Völkerrechteiche Grossraumordnung mit Interventionsverbot für raumfrem, Deutscher Rechtsvereag* Berlin-Wien, 1939, in "Analele Facultăţii de Drept Bucharest" ("The Annals of the Bucharest Faculty of Law"), 1 no. 2-3 apr.-sep. 1939, pp. 382-384.

[14] B.B. Berceanu, *op. cit.*, p. 31.

on November 7, 1944[15], at the age at which Immanuel Kant, who influenced his philosophical conception and whose life he had as a model, had just begun working on the *Critique of Practical Reason*[16].

Mircea Djuvara's main merit - even between 1918 and 1938 - is of having extended the creative effervescence of the time from the literary-artistic field to that of moral, legal and political disciplines. "*In this circumstance - writes Prof. Paul Alexandru Georgescu - Mircea Djuvara worked as a multiplier of brightness. He extended the plenary system, integrating a doctrine of the philosophy of law developed on the basis of the Kantian concept, but with direct and fertile applications in our country*"[17].

The state of philosophy of law in 1936 was simple: neo-kantianism was the dominant center, challenged only by extremes: Marxism and totalitarian nationalism. The differences between these positions being radical and the exacerbated adversities they did not pose the problem of synthesis or integration.

Djuvara's philosophy in the history of doctrines of law philosophy was the third stage of development that brought about the solving of the millenary confrontation between fact and normality, between the world of *Sein* ("what is") and *Sollen* ("what is needed"). After the metaphysical postulation of a natural right with the pretense of being eternal and immutable, occupying antiquity, the Middle Ages, the Renaissance and extending with the rational right of the century of Enlightenment, following the unrealistic reaction of the Historical School and the legal positivism which, with the help of sociology, denied values and subdued the right to the brutal facts — interest or force — the critical idealism, supported by Mircea Djuvara, alongside and often beyond prestigious neo-kantians like Stammler and Radbruch, appears as a final solution, as a superior synthesis of the previous thesis and antithesis[18].

Djuvara allies and dialectically articulates the two major components of the legal phenomenon: the rational irradiation of the idea of justice, conceived as an open consistency of logically constrained activities and wills and the concrete social realities that justice and the legal norms inspired by it assume and to whom they apply. In this vision, the State becomes a reporting and attribution center, and the legal experience a network of assessments containing increasing doses of justice, within a legal order that gains a somewhat mathematical structure; This consisted of a continuous series, consisting of acts and act-generated situations, both legally built[19].

In any encyclopedic dictionary, Mircea Djuvara appears as a neo-kantian thinker, a neo-kantian "logico-methodologist (Marburg School), also receiving echoes from the Baden School of Values, but closer to Kant than the two neo-kantian schools ", the result of direct research and self-reflection. Djuvara himself did not conceal his point of departure: "We have started our scientific, legal and philosophical studies in the University, with the premise conviction that empiricism, sensualism and utilitarianism are the truth: strict positivism was our only method. A lesson by Titu Maiorescu about Kant's <transcendental aesthetics> was a true

[15] He was incinerated at the "Cenușa" crematorium on the 9th of November 1944, at $12^{00}$.

[16] B.B. Berceanu, *op. cit*., p. 31.

[17] P.A. Georgescu, in the Preface to the work of B.B. Berceanu, *Universul juristului* Mircea Djuvara (*The Universe of the Lawyer* Mircea Djuvara), *op. cit*., p. 13.

[18] *Ibidem*, p. 14.

[19] *Ibidem*.

revelation to us and changed our perspective all at once.

*Since then, we have continually gone into this new direction: we have sought to deepen the spirit of Kant's philosophy, further enlightening his criticism, detaching from him what remains alive today, and completing it with new scientific and philosophical contributions*[20] *"His own conception was presented as "a new return to Kant," a Kant "transformed by Fichte and Hegel and adapted to the contemporary scientific themes"2*[21].

For Mircea Djuvara, Immanuel Kant was, if not the "deepest thinker that mankind had"[22], he was anyway "the one who, after Plato, was perhaps the greatest philosopher of all time,"[23] who opened Before us an "imperial path", which gave "the only philosophy of the ideal that can be coherent", i.e. a logical idealism contrary to the psychological one, a concept in which <empirical realism> is solved in a "transcendental idealism"; Which put the "theoretical basis of contemporary science and culture"[24]; The one whose philosophy "fits, explains and legitimizes all the advances of contemporary science"[25]; The one to begin with in order to reach W. Wilson's principles of the Peace of 1919, as well as the socialist theories of the era[26].

What is certain is that Mircea Djuvara has treated Kant's work and less that of neo-kantians[27]; Alongside Kant, Djuvara distinguished between knowledge and reality, while emphasizing the connection between them ("between knowledge and its object cannot be an abyss")[28]; Along with Kant he attested to the existence of values, mainly of the ethical idea, first of all of the right-obligation, being at the antipode of positivism and, to the extent that it encompasses it, at the antipod of psychological and intuitionistic trends.

Mircea Djuvara accepted the Kantian distinction between numen and phenomenon. But Kant's assimilation of the former with an incomprehensible "thing in itself", parallel to the relativization of the value of experiential knowledge ("for Kant, experience is a combined product of the work itself and of thought"[29]), a thesis considered having the quality of rejecting an absolute idealism (and also an absolute realism) did not prevent Mircea Djuvara from condemning it ("*"It is bizarre to see the reason that he reaches a conclusion of his reflection on himself, to his own helplessness"; "a reality in itself, incognoscible, has no significance*"[30]); Or to bring <this thing in itself> into the sphere of thought, for *"nothing is given, everything is*

[20] M. Djuvara, *Precis.....op. cit.*, p. 5-6.

[21] *Idem, Contribuţie la teoria cunoşterii juridice (Contributions to the theory of legal knowledge)*, II. *Ideea de justiţie şi cunoaştere juridică (the idea of justice and legal knowledge)*, *op. cit*., p. 63.

[22] *Idem, Teoria generală a dreptului* (Enciclopedia juridică) (*general Theory of Law*, Legal Encyclopedia), II: *Noţiuni preliminare despre drept (Preliminary Notions of law)*, Bucharest, Librăriei Socec Publishing House, 1930, p. 44.

[23] *Idem, Contribuţie la teoria cunoşterii juridice (Contribution to the Theory of Legal Knowledge)*,I: Ceva despre Kant: Spiritul filosofiei lui (About Kant: the Spirit of his Philosophy), p. 3.

[24] *Idem, Teoria generală (General Theory*…) III: Realităţile juridice (Legal Realities), p. 158.

[25] *Idem*, Contribuţie I:Ceva despre Kant, p. 4.

[26] *Idem, Teoria generală I: Introducere (Introduction)*, p. 28, II: *Noţiuni preliminare despre drept (Preliminary Notions of Law)*, pp. 77-78.

[27] For more, please see Alexandru Boboc, *Kant şi neo-kantianismul (Kant and Neo-kantianism)*, Scientific Publishing House, Bucharest, 1968.

[28] M. Djuvara, *Dialectique et expérience juridique,* in "Revista de Filosofie" no. 2 (April-June) /1938.

[29] *Ibidem*, p. 7.

[30] M. Djuvara**,** Considerations sur la connaissance en géneral et sur la connaissance juridi-que en particulier: la Realite, la Verite et le Droit, in "*Annuaire de l'Inst*'' 2, 1935/1936, Paris, Libr. Du Recueil Sirey, 1936, p.83-96"

*built; And even to consider that it is "a rational formula, which, in its entirety, gives objectivity to knowledge*". Still, between the obligatory and the incomprehensible <thing in itself> there is no, as it had been interpreted, the cause of the phenomenon (which can only be a phenomenon as well), but as M. Djuvara interpreted in time - <the act of knowledge>, "If we look at him in his logical nature, in his rational, inherent and necessary tendency towards truth," he is apart from time and space, he will become an object of psychological knowledge, a phenomenon.

Kant and Djuvara's eternal intangible ideal is more than a nuance[31].

"The activity of knowledge gives itself, in accordance with the internal logical necessity which constitutes its law, its own object"[32] For knowledge and its object are correlative, and one cannot think without the other (Aristotelian thought that thinks of oneself).

In another hypostasis, the "thing itself" is, "in a good interpretation of Kant," the freedom.

Concurrently, therefore, Mircea Djuvara defended Kant and at the same time opposed him, the danger in his system was removed, that which stated that the minds oppose themselves, as ourselves - in our aspiration for truth - to hinder ourselves[33].

The characteristics of Djuvara's thinking, which divide both Kant and Comte, consist also in the dual approach to the object of his thought, his conception of the double epistemological approach. It is not just the inductive approach, starting from the individual to the general, attributed to science and the deductive, attributed to philosophy, the expression of two methods compensating each other, but also the psychological and logical approach, the empirical and the transcendental approach, of the development of knowledge and a priori principles.

Thus, Djuvara's philosophical thinking was influenced by his legal knowledge; The idea of a relationship, specific to law, is fully present in its general philosophy.

Djuvara's pro-Kant philosophical attitude did not prevent the former from appreciating the founder of positivism A. Comte and, in general, the French positivists[34], to appreciate institutionalism[35], pragmatism[36] and other trends of thought, and to retain from these thinkers and these trends of thinking to aid in setting up his system, valuable elements[37].

If the history of Romanian law has benefited from broad-minded personalities, with a penetrating legal sense — such as Mihai Eminescu and Nicolae Iorga — if he guided people of legal formation either to the science of history — as BPHasdeu— to the thought of the science of history — As ADXenopol — or directly to the building of history — as Mihail Kogălniceanu — or to generalization and synthesis — like Simion Bărnuţiu, Titu Maiorescu and Dumitru Drăghicescu — we can say that no one up to Mircea Djuvara brought the legal phenomenon under the eyes of the philosophers and no one offered

[31] B.B. Berceanu**,** *op. cit*., p. 38.
[32] M. Djuvara**,** *Contribuţie la teoria*, p. 17.
[33] B.B.Berceanu, *op. cit*., p.39.
[34] Constitutional Law, Part II, PhD [The Methods of French Positivism in Public Law] 1924-1925.
[35] *Idem*, some observations on the relationship between the philosophy of intuition and today's great tendencies of law, a fragment of the conference "Henri Bergson and the Modern Trends in Law", Universitatea liberă, 22 November 1922, in "Convorbiri literare", 55, 1923, pp. 378-389.
[36] *Idem*, *New trends in philosophy: pragmatism*, în "Convorbiri literare*"*, p. 43, 1909, pp. 765-775.
[37] B.B. Berceanu, *op. cit*., p.37.

practitioners such a wide horizon, a horizon they considered necessary: *"The philosophy of law is one of the indispensable elements of a true culture"* [38], he said, addressing both philosophers and lawyers[39].

Mircea Djuvara felt the need to draw attention to the fact that "most lawyers are content to make simple compilations for legal practice or, in public law, they think they are doing science through simple acts of obedience to authority"[40]; But "only the scientific understanding of the idea of justice and rational elaboration can ensure a strong affirmation of cultural legal values, in light of which we must guide the world that is meant to create and apply our positive right", a goal analyzed by the philosophy of law [41]. He devises for this this law "a profound and original analysis" in a work that he — at one point — divided it into four parts: I - philosophy, II - the philosophy of law, III - applications of the philosophy of law, IV - politics. The philosophy of law thus makes the connection between philosophy and positive law, and politics, in the same conception, studies the means of achieving the law. The philosophy of law is a part — a necessary part — of philosophy, the goal of which is to bring the whole Truth (the right itself has a rational character) and to guide the positive right.

Mircea Djuvara's thinking can be described as dialectical idealism. It is not a subjective idealism, which is rejected by the following: *"It is impossible to firmly support idealism in the form of the unique and exclusive existence of my own self, in which the world would only be a representation in the sense of a subjective image. My conscience is, quite contrary to itself, a product of relationships that necessarily and objectively, through their creative dialectics, put forth a plurality of consciousness*." But, obviously, an idealism whose epistemological way requires the experience, a conception in which — after C. Rădulescu-Motru's formulation — matter and spirit are confused, forming two simple aspects of the experience[42], whose ontological result *"reduces everything to objective relationships "*[43].

Mircea Djuvara is a strict rationalist[44]. It is a danger to believe — he says — "*that our lives can work without categories"*[45]; His confidence in the possibilities of knowing reason is total: *Cogito ergo realia sunt*, he will say at some point. According to Mircea Djuvara, there is no human consciousness without its own philosophy, the practical attitude towards life, an inherent attitude for each one, which *"determines, of course, in any consciousness with reason, a certain*

[38] M. Djuvara**,** *Precis,* no. 2, p. 6.

[39] B.B. Berceanu, *op. cit.*, p. 34 and following.

[40] M. Djuvara Review of Romul Boila's work: *The State*, vol I:" *Consideraţii teoretice"(Theoretical Considerations)*,(Tipografia Cartea Românească Publishing House, Cluj, p. 246), în "Analele Facultăţii de Drept Bucureşti", 3, no. 1-2, Jan-Jun 1941, pp. 486-489 1018.

[41] M. Djuvara, *Filosofia dreptului şi învăţământului nostru juridic- fragment dintr-un memoriu* (*The philosophy of law and our legal education - fragment from a memoir)*, in "Pandectele române" 21, 1942, IV, p.7.

[42] M. Djuvara, *Dialectique et expérience juridique,* in" Revista de filosofie*"* no. 23, 1938, p. 21.

[43] N. Bagdasar**,** *Mircea Djuvara in "Istoria filosofiei moderne"*, vol. V, Bucharest, Societatea Română de Filosofie, 1941, p. 310.

[44] B.B. Berceanu, *op. cit.*, p. 35.

[45] M. Djuvara, *Review of the work of Mircea Gorunescu: Reinhard Höhn şi disputa în jurul personalităţii juridice a Statului (Reinhard Höhn and the dispute over the legal personality of the State,)*, in "Cercetări Juridice", year I, no. 2, April 1941, p. 491.

*philosophical consciousness*".[46] It reduces to rational data all other human values. Djuvara believes that reason, detached from subjectivity, predominates in every human being. The very Law — the expression of social relations — has a predominantly rational character, for, according to Djuvara, as attitude towards life determines in a certain human conscience a certain philosophical consciousness, as the attitude towards society determines a certain legal consciousness[47]. Mircea Djuvara's logical idealism did not stop at the possibilities of logic: *"…. The whole knowledge, and hence the whole human action, is the product of a sui generis creative activity, the so-called dialectic, this activity proceeds in successive and unceasing differentiations, and the systematic ordering of its products leads to the idea of truth*[48] *"*.

**References**


- Nicolae Bagdasar, *Istoria filosofiei româneşti* (The History of Romanian Philosophy), Profile Publishing, Bucharest, 2003
- Mihai Bădescu**,** *Filosofia dreptului în România interbelică* (Law Philosophy in Interwar Romania), Sitech Publishing House, Craiova, 2015
- Barbu B. Berceanu**,** *Universul juristului Mircea Djuvara* (The Universe of the Lawyer Mircea Djuvara), Academiei Române Publishing House, Bucharest, 1995
- Alexandru Boboc**,** *Kant şi neokantianismulul* (Kant and Neo-kantianism), Stiinţifică Publishign House, Bucharest, 1968
- Mircea Djuvara**,** *Precis de filosofie juridică (Tezele fundamentale ale unei filosofii juridice)* (Precis of legal philosophy (the fundamental theses of a legal philosophy)), in „The Annals of the Faculty of Law", no. 34
- Mircea Djuvara**,** *Dialectique et experience juridique*, in the „Philosophy magazine" no.2/1938
- Mircea Djuvara**,** *Problema fundamentală a dreptului* (The Fundamental Problem of Law), in "Convorbiri Literare" („Literary Conversations"), 50, 1916
- Ion Dogaru, Dan Claudiu Dănişor, Gheorghe Dănişor**,** *Teoria generală a dreptului* (General Theory of Law), C.H. Beck Publishing House, Bucharest, 2006
- Eugeniu Speranţia**,** *Locul vieţii psihice în construcţiunea unei biologii generale*(The Place of the Mental Life in the Construction of a general Biology), in the „Philosophy magazine", 1934
- Eugeniu Speranţia**,** *Legile şi formele gândirii ca proecţiuni ale proprietăţilor vieţii* (The laws and the Forms of thought as Projections of the Properties of Life), in the „Philosophy magazine", 1934
- Eugeniu Speranţia, *Principii fundamentale de filosofie juridică* (Fundamental Principles of Philosophy of Law), Institutul de Arte Grafice Publishing House, Ardealul, Cluj, 1936
- Eugeniu Speranţia, *Lecţiuni de enciclopedie juridică*, Cartea Românească Publishing House, Cluj, 1936.


[46] *Idem*, Câteva reflexiuni asupra laturei filosofice a sufletului reginei Elisabeta (Some reflections on the philosophical side of Queen Elisabeth's soul), in "Convorbiri literare", 50, 1916, p. 361.

[47] M. Djuvara**,** *Dialectica creatoare a cunoaşterii juridice (The Creative Dialectics of Legal Knowledge)*, lecture, 1935/1936.

[48] *Idem, Problema fundamentală a dreptului,* în "Convorbiri literare", 70, 1937, p. 2.