

IDEOLOGICAL JUSTIFICATION OF THE AUTHORITY OF LAW IN EUGENIU SPERANTIA'S VIEW

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Abstract

The entire development of a state involves carrying out activities that can be reduced with a view to the existence and validity of an appropriate legal order. The Legal Order serves the maximum possible sociality of a community which produces its rules making allowance to its social and legal requirements. The state serves the nation by Law and the progressive development of the state is a law of the evolution of Law itself. Law, as an aspect of human life, was under the dominion of natural, unwritten, common laws. As a particular aspect, the life of Law shall be governed by special laws, derived from general ones, but focused on the conditions of reality, because the life of Law has specific laws of evolution. The changes in society and the social events are identical with the evolution of living organisms, and because Law is an emanation of life and a living process, any development and differentiation is a natural law that applies to it.

Eugeniu Sperantia assumes that truths are of two kinds: those established by theoretical judgments and those observed by value judgments. Value judgments can convert to imperatives and imperatives can be considered value judgments that undergo a special conversion. The legal norms, being imperative, imposed themselves as they meet the legal requirements of society, demonstrating logical consistency with certain principles and legal norms, recognized and adopted by individuals. The coercive conditions implied by the intervention of the social force, the sanction and the threat are the socio-ideological requirements of the Law's mandatoriness. The social authority of Law depends on the justification of its structure, regardless of justice or of the absolute concord with the way of its consideration within society. The Legal Order as a whole may appear as justified or not justified in its existence, according to the power that it emanates.

Key Words: *law, evolution, norms, justice.*

1. Philosophy-Foundation of the general theory of law

Philosophy was a science to recover much in our country at the beginning of the 20th century. The philosophical spirit, rather marginalized, enters a period of rediscovery and redevelopment. The antimetaphysical current decreases in consistency and the horizons open beyond the limit established and acknowledged before.

Eugeniu Sperantia is among the first Romanian authors producing a work of philosophy and sociology of law, naming his pioneering work *Course in Philosophy of Law and Sociology. I Lessons of legal encyclopedia with a historical introduction in the philosophy of law*, printed in the printing house Romanian Book in Cluj, in 1936. Encyclopedic spirit, based on a broad general education and a concern for all areas of Humanities, Professor Sperantia started on a road that had not been covered

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by other university colleagues in the interwar period.

In the introduction to his work, the author justifies his choice, talking about the need for a "general theory of law", seen as "... a repeated and varied foray into other areas of science to clarify the social realities where law appears and lives. Law is indeed itself a social reality, hence both general sociology and social sciences with special character ... can and must be consulted because they have an important informative tribute to give for an ample knowledge and understanding of legal life".¹

Eugeniu Sperantia, philosopher, sociologist and lawyer alike, to mention just some of the specialties that could be given to the Romanian encyclopedic humanist, was aware that law and legal research must resort to philosophy, with all its branches, in the academic efforts, through notions of psychological, economic, moral and even religious nature. The call for ethnography, history of civilization, anthropology, philosophy of values, culture philosophy belongs to the humanities gallery that must be used in developing a work of philosophy and sociology of law.²

2. Ways of justifying the existence of the rule of law

Eugene Sperantia assumes that truths are of two kinds: those established by theoretical judgments and others established by value judgments. Value judgments can convert into imperatives and imperatives can be considered value judgments subject to special conversions.³ The legal rules, as imperatives, imposed themselves as they meet the legal requirements of society, demonstrating logical consistency with certain principles and legal norms, recognized and adopted by individuals. The coercive conditions created by the intervention of social force, sanction and threat, are social and ideological conditions of the mandatory nature of Law.⁴ The social authority of Law depends on the justification of its composition, regardless of justice or of the absolute concord with the way of its consideration within society. The Legal Order as a whole may appear as justified or not justified in its existence, according to the power that it emanates. In this respect the author lists several acceptations or ways to justify the existence of the legal order, which will be analyzed further.⁵

a) The religious acceptance

The religious acceptance is the first justification for the authority of law in the Sperantian view. The author believes that legal norms were derived from religious rules and conditionings since ancient times. Being of divine origin, regarded as imperatives or commandments which derive from the will of the gods, the religious norms have a binding effect, and individuals who believe in gods, because of their faith, will respect all divine decisions. Therefore, religious norms, with legal, social

¹ E. Sperantia, *Curs de filosofia Dreptului și Sociologie. I. Lecțiuni de enciclopedie juridică cu o introducere istorică în Filosofia Dreptului*, Cartea Românească Publishing House, Cluj, 1936, p. 3.

² *Ibidem*, pp. 4-5.

³ *Ibidem*, p. 88.

⁴ *Ibidem*, p. 89.

⁵ *Ibidem*.

and ceremonial nature derive from a religious sense.⁶ Eugeniu Sperantia notes that vigor, rigor, authority and effectiveness of laws and religious rules do not depend within society on the prevalence of religious dogma, neither on metaphysics nor on logic, but on faith, piety and religious fanaticism of the followers of that religion.⁷

Laws and mores of religious inspiration are closely related to the severity of the respective gods, a bond that influences the monarchs, as considered almost divine, by installation and power, especially in the Eastern monarchies. Sperantia quotes Voltaire⁸, who is the advocate of royalty origin theory in religious and legal norms, due to warlike virtues: „... *le premier roi fut un soldat heureux*”⁹. Criticizing Voltaire's description as insufficient, Sperantia believes that certain religious beliefs are so deeply rooted in peoples' lives, especially in antiquity, that a great military victory is not attributed to the hero and his personal qualities if not to the will of the gods. Winning soldiers are chosen by and protégés of the gods, and such a government, based on victories by divine support is a natural consequence of the will and divine providence.¹⁰

Submission of people to a regime established by divine will is a result of obedience to the gods, and then the sovereign or the monarch appears as a divine sent to earth. This is how the author explained the religious, military and social prestige of Egyptian pharaohs and of the monarchs of Eastern, Mesopotamian and Persian inspiration. But military victories are not mandatory to ensure throne and gain respect of the subjects, because the gods have other means to elect messengers.¹¹ The will of the Christians European sovereigns, starting with the Middle Ages, is a source of Law, because kings are anointed messengers of God on earth, especially in autocratic monarchies. As long as the subjects receive laws issued by kings, due to their faith any decree issued by them is received "ab initio" with no protests, no inferences and no discussion. Among the theorists of this religious acceptance of the authority of Law, Sperantia include Socrates¹², Cicero¹³ and Dante Alighieri¹⁴.

⁶ *Ibidem*.

⁷ *Ibidem*.

⁸ I. Davidson, *Voltaire: A Life*, Profile Books Publishing House, London, 2010, pp. 7-9. Francois- Marie Arouet Voltaire lived between 1694 and 1778, in France. He was the most remarkable French illuminist, philosopher and historian, an advocate of civic and religious liberties. Prolific author, he wrote more than 20 000 letters and more than 2000 works, books and pamphlets.

⁹ E. Sperantia, *op. cit.*, p. 90.

¹⁰ *Ibidem*, p. 90.

¹¹ *Ibidem*.

¹² J. Brun, *Socrate*, Presses Universitaires de France, Paris, 1978, pp. 39. Socrates lived between 469 and 399 B.C., in Ancient Greece. He is considered the most important philosopher of his time, Platon's educator. Though no work written by Socrates was preserved, Platon often cites him.

¹³ Anthony Everitt, *Cicero: the life and times of Rome's greatest politician*, Random House Publishing House, New York, 2001, pp. 13. Marcus Tullius Cicero lived between 106 and 43 B.C., in the Roman Empire. He was a philosopher, lawyer, orator, consul, specialist in Roman Law. He is considered the creator of the Latin philosophic and juridical language.

¹⁴ *Encyclopedia of the Middle Ages*, Fitzroy Dearborn Publishers, Chicago, 2000, p. 1517. Durante degli Alighieri, known as Dante, lived between 1265 and 1321, in Italy. He was considered one of the most important Italian writers of his time, being called the father of the Italian literary language. He was a poet, writer, philosopher, politician and a profoundly religious man. His most famous work is

b) The democratic acceptance

A second justification for the authority of Law in the Sperantian view is the *democratic acceptance*. In some societies, where democracy had a long tradition in the Ancient era¹⁵, the norms of Law are not considered of a divine inspiration and will, but they are regarded as an emanation of the will of the people, in a form of democracy. This way of justification of Law reappears in Europe in the Renaissance and the Reformation era, between the fifteenth and eighteenth centuries¹⁶. Eugeniu Sperantia notes that especially in the eighteenth and nineteenth centuries this idea of an abundance of ideas could converge with other theories alike: "*The democratic idea has since¹⁷ become a commonplace and provides the occasion of facile rhetoric and interested ideological virtuosity to the grotesque cohorts of Baccalaureate and other half-learned individuals, eager for fame and deputy terms. Social and political sciences have anyhow begun since then, to discover numerous lacks in the old argumentations of this topic*"¹⁸.

Sperantia is a fierce critic of this theory, considering that this "political ideology" requires a great "enthusiasm" from those who apply it, by dogmatic definitions, and it is only later that the scaffolding of arguments that claims to be a support of democracy appears. Despite these shortcomings, noticed by the author, the democratic acceptance forms the basis of the legal system in many state organizations¹⁹. The rational foundation of the democratic acceptance is extremely simple. If the law is the product of all citizens in a society, if it is the will of all and decrees rules of Law, it means that what the majority of a society wants is applied legally and respected. While giving this theory, the author has doubts about the logic of such inferences that can be labeled as sophism²⁰. Eugeniu Sperantia disagrees with the idea that "power of a state emanates from its nation," here being possible to include the legislative power as well. This theory creates in the collective mental consciousness the belief that the laws governing legal rules and govern individuals are nothing but an emanation of the collective will in a "democracy". The moral situation of the citizens subjected to political ideology is different from that of humble and fatalistic individuals, subject to a strict religious ideology and the religious acceptance of the legal justification²¹.

The feeling and sense of responsibility, freedom and power exercised by the community opens new horizons and perspectives of social life, thought and human activity. Among the theorists of the democratic acceptance, the author lists Marsilius

La divina commedia, thought to be the best literary work written in Italian and a masterpiece of the world literature.

¹⁵ Though not naming them, the author means the Greek democracy, especially that in Athens, and the Roman one, from the time of the Republic, when the juridical norms were thought and approved within the Roman Senate by consulting the free Roman citizens.

¹⁶ Eugeniu Sperantia, *op. cit.*, p. 91.

¹⁷ I.e. the moment of the French Revolution in 1789, considered by Sperantia a key moment in the democratic acceptance of the authority of Law.

¹⁸ E. Sperantia, *op. cit.*, p. 92.

¹⁹ *Ibidem.*

²⁰ *Ibidem.*

²¹ *Ibidem.*

of Padua²², the Jesuits²³, Locke²⁴, Montesquieu²⁵ and the encyclopedists²⁶, most notably Jean Jacques Rousseau²⁷. Sperantia notes that the distorted democratic acceptance can lead to anarchy and social disintegration due to an arbitrary nature present in the very roots of this concept, and the masses are easily subject to certain suggestions, they do not create ideologies by themselves. By initiating, spreading of concepts and finalities among the masses, the authors and propagators of theories become true shadow leaders in some societies, the will of the masses is their will, the triumph of the masses is their own triumph, possible only due to the governing of people²⁸. When diametrically opposed influences are exercised, the masses physiognomy is not the same and there is political instability, which calls forth an "authoritarian" regime. To some extent, the success and influence of the social democratic doctrines, by which a legal order is justified, belong to other acceptations of the authority of Law, such as that of "national mysticism" and "state mysticism"²⁹.

c) The naturalist acceptance

The naturalist acceptance or that of natural Law is the third ideological justification of the authority of Law. Through it Sperantia shows that another way to explain and justify the validity and the binding power of the Law for individuals appeared even in Antiquity, through the Stoic philosophy, admitting that there are certain fundamental legal precepts whose origin can be found in the 'nature of man'³⁰. According to this theory, there are similarities between all people, similarities related to "nature", from which, in Sperantia's view, the similarities between legal norms also arise. Alongside with the human Law, there is also the natural Law, claims the author. Against the last one nobody can object, nor argue, because man cannot separate from his nature. This topic emerged and was much discussed during the eighteenth and

²² Hwa-Yong Lee, *Political Representation in the Later Middle Ages: Marsilius in Context*, Lang Publishing House, New York, 2008, p. 6. Marsiglio da Padova lived between 1275 and 1342, in Italy. He was an Italian scholar, doctor, politician and visionary thinker. His main work, where he talks about the political system and democracy, is *Defensor pacis*, considered the most revolutionary political treaty written in the late Middle Ages.

²³ S. Iesu, Society of Jesus, is a monastic catholic order, established by Ignacio de Loyola, in 1534. The Jesuit monks were renowned for their implication in society, in education and diplomacy.

²⁴ R. Ashcraft, *Revolutionary Politics & Locke's Two Treatises of Government*, Princeton University Press, Princeton, 1986, pp. 17. John Locke lived between 1632 and 1704, in England. He was a philosopher, being named father of liberalism. His most famous theory is that of the social contract. The work that Sperantia cites is *Two Treatises of Government*, published in 1689.

²⁵ *Enciclopedia Universală Britanică*, Litera Publishing House, București, 2010, vol.10, pp. 316. Charles-Louis de Secondat, baron de La Brède et de Montesquieu, known as Montesquieu, lived between 1689 and 1755, in France. He was a politician and an illuminist thinker, partisan of the separation of powers in the modern state. The work referred to by Sperantia is *De l'esprit des lois*, published in 1748.

²⁶ F. A. Kafker and S. Kafker, *The Encyclopedists as Individuals: A Biographical Dictionary of the Authors of the Encyclopédie*, Voltaire Foundation Publishing House, Oxford, 1988, pp. 8. The encyclopedists were a group of French writers, more than 100 people, who activated in the XVIIIth century, in France, most of them philosophers, being initiators and authors of the famous work *Encyclopedie*, published by Denis Diderot and Jean le Rond d'Alembert.

²⁷ E. Sperantia, *op. cit.*, p. 92.

²⁸ *Ibidem*, p. 93.

²⁹ *Ibidem*.

³⁰ *Ibidem*, p. 93.

nineteenth centuries, especially in circles of lawyers and legal professionals, but was not a popular foundation of people's respect for a positive law order³¹. Sperantia believes that this theory can justify, at most, the need for law in general, but not the moral validity and the binding nature of certain statutes. Some legal theories imply acceptance of belief in certain principles of Law as absolute value principles, "erga omnes". Faith in Law and justice presupposes the existence of beliefs which do not differ much from those contained in the natural Law³².

d) The rationalistic acceptance

The fourth justification of the authority of Law is Sperantia's view, *the rationalistic acceptance*, seen as a derivation from the previous acceptance or a variant of it. Compared to the above ideas, the rationalist acceptance has an advantage in that it does not refer to the concept of "nature" but considers Law an architecture built by the human mind, a legal requirement that ensures the promotion and observance of legal norms in society³³. Not even this topic could win the consent of the masses, to underlie the domination of any positive legal system. On the other hand, as Sperantia notices, the sense of rationality had a very important role in supporting the validity of Law as compared to the individual consciences, in Greek³⁴ and Roman³⁵ societies. The author believes that the Greeks' and Romans' inclination towards rationalism shows the importance of law and justice in Greek and Roman societies³⁶. Besides rationalism, religion and democracy accompanied and supported the legal order in the social life of the Roman state, because the fact that pure rationalism has never exercised attraction over the masses³⁷.

e) The national mysticism acceptance

The national mysticism acceptance is the fifth justification of the authority of Law, whose theoretical origins are seen by Eugeniu Sperantia in the theories of the historical School of lawyers. The author recalls the ideas of Savigny and Puchta, who use "the national spirit" in creating a "national mysticism". In this combination, Law is rooted in the people, but not in the will of the people if not in "the nature and structure" of the people, in their traits and the way of being of the nation concerned³⁸. The origin of Law can be found in the human nature, but not in the nature of humankind from everywhere and anytime, if not in the nature of a particular distinct group of mankind, which thanks to the common past and the common aspirations

³¹ *Ibidem*, p. 94.

³² *Ibidem*.

³³ *Ibidem*.

³⁴ I. Arnaoutoglou, *Ancient Greek Laws*, Routledge Publishing House, New York, 1998, p. XIV. Ancient Greek Law is often associated with the Roman one especially in Eastern, Hellenized regions of the Roman empire. The existence of some general principles of the Greek Law in Antiquity can be noticed in the relations between several fortress-states, between the citizens of the same state. The general unity of the Greek laws can be remarked especially in the statutes concerning heritage and adoption, in those regarding commerce and contracts. The registrations of statutes in Athens began with the year 683 B.C. by the six high magistrates called thesmothetai.

³⁵ E. Sperantia, *op. cit.*, p. 94.

³⁶ The Greek-Roman Law was the most relevant in Europe and the entire Antiquity, with norms staying in force up to the Middle Ages, in the time of the formation of the European medieval states.

³⁷ E. Sperantia, *op. cit.*, p. 95.

³⁸ *Ibidem*.

presents distinct features and characteristic ways of reaction. A weakness of this theory may be the distortion of the national spirit and of the national mysticism with a propagandistic purpose. Eugeniu Sperantia captures these deviations in the national socialist ideology (Nazi), which began to dominate Germany in the 30's of the last century, when he was editing his course, the reference works under our consideration here³⁹.

Under the impetus given by the enthusiasm of a nationalistic ideology, the Law order and the State order appear to the masses as spontaneous products of the popular ethos and the moral obligation and the justification of their obedience arise thus inevitably. The law does not need to derive from the anonymous masses, because of people appearing at a time in the life of a nation as saviors, who decree the "welfare of the nation"⁴⁰. Eugeniu Sperantia identifies how a dictator, under the guise of the welfare brought to the nation, may influence the masses, so that they accept the application of any measures considered necessary for the common welfare: "*Convinced by the salutary character of the dictator's measures, the masses will agree enthusiastically to their rigorous application, because each individual aware of his inferiority and of the need for the triumph of the national interest, accepts heroically the sacrifice or the abdicates from any self-love and from any subjective tendencies, aligning himself to the service ordered.*"⁴¹ Beyond the discussions on the accuracy of such ideology, the author notes its outstanding practical utility⁴².

f) The "state mysticism" acceptance

The sixth justification for the authority of Law is *the "state mysticism" acceptance* which in Sperantia's view is originated in the political history and in the history of political doctrines of the remote past⁴³. The political and juridical organization of the state of Sparta and Plato's⁴⁴ ideology are examples given by the author to justify the existence of the state mysticism ever since the ancient era. The state is a self-contained entity and has its justification in its own existence. These arguments were taken up by Hegel⁴⁵, whom Sperantia appreciates because of the strong arguments and the success of his ideas on the role of the state in the act of justice⁴⁶. The author notes that the Marxist socialism, linked to the omnipotence of the state, including in legal terms, is a doctrine developed under the influence of the

³⁹ Sperantia's observation is the more correct and valuable, as in the year 1935, the year of editing this work, Adolf Hitler had been a leader of Germany for just two years, becoming a chancellor in 1933 only, and the national socialist ideas regarding the "purity of the German race" were barely getting ideological shape.

⁴⁰ E. Sperantia, *op. cit.*, p. 95.

⁴¹ *Ibidem*, p. 96.

⁴² As a true prophet, Sperantia expressed the huge momentary potential of the nationalist ideology but also its decline, the most vivid examples being the Nazi Germany and Fascist Italy.

⁴³ E. Sperantia, *op. cit.*, p. 96.

⁴⁴ The author refers to Plato's work *Republica*, written around the year 380 B.C, as a Socratic dialogue in which the great Greek philosopher defines Justice, Law, the character of the fortress-state and of the righteous human.

⁴⁵ F. Beiser, *Hegel*, Routledge Publishing House, New York, 2005, p. XX. Georg Wilhelm Friedrich Hegel lived between 1770 and 1831, in Germany. He was one of the most highly considered philosophers of his time, being the creator of the German idealism. The work Sperantia refers to is *Grundlinien der Philosophie des Rechts*, published in the year 1820.

⁴⁶ E. Sperantia, *op. cit.*, p. 96.

Hegelian philosophy. On the other hand, the state can be identified with the "collective spirit", organized by the principles of legislative function, but also characterized by a preservation and expansion propensity. It is from such perspectives that the fascist politics as well as the Soviet one derive⁴⁷. In the fascist and Soviet states, the justification of the legal order follows a reasoning path close to the democratic acceptance, but also to the nationalist one. If the laws provide welfare to the state, they are implicitly desired by the community: "*The leader, the dictator is the representative, the summary and the executive body of the collective spirit of the state. It is through it that the collective spirit expresses their desire and thus does each of the spirits composing the community*"⁴⁸.

g) The negative acceptations

The negative acceptations are the last category analyzed by the author in the ideological justification of the authority of Law. They do not indicate any justification for the legal order, but even avoid and deny it, merely replacing it with other explanations⁴⁹. In Sperantia's thinking, there are three negative acceptations. The first one considers Law as arising from the force, called by the author the *antagonistic theory of Law*; another theory considers Law as a dictate of the interest to remove everything that is not agreeable in life, called the hedonic theory of Law and, finally, the utilitarian theory. The first theory proclaims as just what can be imposed as such by force, the second theory considers as just only what is pleasant and the last advocates as just is only what is useful⁵⁰.

Eugeniu Sperantia believes that the *antagonistic theory* of Law originates from ancient times, having roots in the ancient Greek sophists, although basically it originates from the intimate conviction of those availing themselves the despotic power⁵¹. The author believes that this theory has partisans during the Renaissance and the Enlightenment, declaring that Law is based on force. To prove these assertions, Sperantia quotes from Spinoza⁵², Schopenhauer⁵³, Jhering, Bismarck⁵⁴, Count

⁴⁷ A visionary thinker, in the 30s, Sperantia caught a glimpse of the similitude between fascism and communism, theoretically two totally opposed ideological systems, but identical through their origins and the call for "national mysticism".

⁴⁸ E. Sperantia, *op. cit.*, pp. 96-97.

⁴⁹ *Ibidem*, p. 97.

⁵⁰ *Ibidem*, p. 97.

⁵¹ The author considers the regulations elaborated in the Easters absolute monarchies, the most famous cases being those in the Persian Empire where the emperor claimed divine honors and considered himself the supreme legislator.

⁵² S. Nadler, *Spinoza: A Life*, Cambridge University Press, Cambridge, 2001, pp. 120. Baruch de Spinoza lived between 1632 and 1677, in Nederland. He was a Jewish Dutch philosopher appreciated only after his death. His main work is *Ethica*, published after his death, in 1677. The statement cited by the author is: "*Each person has as much Law as he has power*".

⁵³ B. Magee, *The Philosophy of Schopenhauer*, Clarendon Press, Oxford, 1997, pp. 13. Arthur Schopenhauer lived between 1788 and 1860, in Germany. He was one of the most important German philosophers of the XIXth century. His fundamental work is *Die Welt als Wille und Vorstellung*, published in 1818. The Schopenhaurian quote is: "*Law is the measure of powers*".

⁵⁴ E. Crankshaw, *Bismarck*, The Viking Press, New York, 1981, pp. 13. Otto Eduard Leopold, prince of Bismarck, duke of Lauenburg, known as Otto von Bismarck, lived between 1815 and 1898, in Germany. He was the most important German man of state in the XIXth century, the artisan of the modern Germany. He was a prime minister of Prussia, and then, from 1871 a chancellor of imperial Germany. Bismarck is attributed the dictum: "*Force overrides Law*".

Schwerin, Nietzsche⁵⁵. According to Sperantia, the most widespread and insidious form of the antagonistic theory is the one which restricts Law to coercion, to penalty; if one accepts the idea that Law is only in the hands of that who can restrict, it can be stated that only the powerful one is right⁵⁶. Eugeniu Sperantia states with high conviction that such a Law, based only on force and coercion, is not truly a creator of justice and does not ensure sociality, therefore this antagonistic theory cannot exist alone, but it is helped by the other two theories⁵⁷.

i) The hedonic acceptations

The *hedonic theory* in Sperantia's thinking, is originated in the ancient sophists' theories and in the Epicurean school. It is based on a false psychology, admitting that no one can fulfill the interests unless they have, to some extent, force as well. If "just" is nothing else but what is pleasant, then the author admits that the pleasure is of the one who governs and has the power⁵⁸. Sperantia states that this concept can never justify a legal measure, because of the fact that not everything that is liked has to be just.

The utilitarian theory does not differ from the hedonistic theory, in terms of its faults, in Sperantia's thinking. The author notes that the concept of "utility" has a very loose character, so that he must first define a criterion of utility⁵⁹. Eugeniu Sperantia wonders what social utility is. Is it the utility of individuals, of the community, of the present generation, of future generations, of the nation, of a group of nations, of all humanity? Does utilitarianism virtually meet economic, political, religious, moral, educational demands?⁶⁰ The definition of Justice through utility is criticized by the author, because the utilitarian solution for the problem of Law leads to great difficulties. Sperantia notes that no individual can say which the social interest to be served is. In the depths of some of the positive acceptations of the justification of Law lies the danger of slipping into the negative elements. Whenever the existence and mandatoriness of Law is based on the collective will and not on intrinsic rationality, the idea of "good will", of "arbitrary" or of the idea of "force" must be manifested in practical reality, in the explanation given to the society⁶¹.

3. Conclusions

The entire development of a state involves carrying out activities that can be reduced with a view to the existence and validity of an appropriate legal order. The Legal Order serves the maximum possible sociality of a community which produces

⁵⁵ C. Cate, *F. Nietzsche*, The Overlook Press, Woodstock, New York, 2005, pp. 37. Friedrich Wilhelm Nietzsche lived between 1844 and 1900, in Germany. He was a philosopher, poet, novelist and philologist. He is considered one of the most important philosophers of the XIXth century and a fierce promoter of the Nihilism. Nietzsche is the one most criticized by Sperantia, who cannot accept that moral values such as mercy, tolerance, sense of justice can be signs of weakness and aggressiveness and cruelty proofs of strength.

⁵⁶ E. Sperantia, *op. cit.*, p. 98.

⁵⁷ *Ibidem*, p. 98.

⁵⁸ *Ibidem*.

⁵⁹ *Ibidem*.

⁶⁰ *Ibidem*, p. 99.

⁶¹ *Ibidem*.

its rules making allowance to its social and legal requirements. The state serves the nation by Law and the progressive development of the state is a law of the evolution of Law itself.

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