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NATURAL AND SOCIAL STATUS. HISTORICAL AND LEGAL IMPLICATIONS

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eywords
*Natural status,
Social status,
Act of justice,
Legal implications*

Abstract

The history of philosophy and the history of legal doctrines mention and analyze the differences, often categorical, between the existence of man in his natural status and on the other hand, his existence in social status. The doctrine of the social contract is the mainstream of the thought that analyzes the existential status of man in the social environment and the natural environment by arguing, according to the author and the philosophical conception, the historical, social and juridical particularities of the natural status and social status. In our study we support the compatibility between the two existential forms of man, we identify the existential categories in which these can be defined, and emphasize the implications of these categories in realization of the act of justice.

BRIEF HISTORICAL AND DOCTRINAL CONSIDERATIONS

The dichotomy between the natural status and the social status of human existence is present in different forms, contents and meanings in all philosophical thinking and creation, juridical or of other nature, from antiquity up to the present.

The fundamental concepts of **John Locke's** social philosophy are the freedom and equality that, in philosopher's conception, are part of the human nature.

The relationships between the people in nature status are relationships of force, but the right is not an expression of these relationships, it is rather the connection between a free being and another free being, a relationship that is achieved in equality. These relationships are naturally constituted before any other convention leading to the constitution of the civil society. For Locke there is a natural society before any civil society. In this way, the philosopher continues the aristocratic idea, namely that of man as a social being, like a natural dimension of this. If man wouldn't have in him the call to be associated with other people, as a natural gift, the civil society cannot be established. Therefore, there was a natural right, unwritten, previous to the positive right specific to civil society. The main element of this right is freedom. The right to be free is the happiness of man, and it is concretized in his ability to possess assets. In this way, the property ownership right is another important element of the natural right. In philosopher's view, this right is absolute, and its preservation and defense is essential for the existence of man, both in natural status and in social status. It is important to note that John Locke's view on property is based on work.

For Locke, the crucial issue is no longer the government, but the establishment of a rule-based civilization and of a legislative system that leads to a good administrative organization and to the limiting of state's discretionary power.

The need for the existence of laws is vital for the existence of society and for the survival of community: Unlike Hobbes, Locke believes that the nature status of man has some characteristics that brings it closer to civil society and makes possible the transition. It is important to underline that, in philosopher's view, "the natural state is a rational, natural and pre-legislative state." The natural state is rational because by reason it regulates its life within bearable limits, because here freedom and equality prevail. It is natural because people have some rights in accordance with the reason, as a natural law: legality, equality, the right to prosperity, and paternity are among the most important ones. The natural state is pre-legal because the private justice dominates here. This

right of private justice means essentially the reciprocity necessary to human behaviors, but also the validity of each individual's right to his defense. In essence, in philosopher's view, the natural state is especially based on moral concepts with universal validity and intangible, and at the same time it is a state of social peace.

John Locke believes that the transition to the civil society has taken place following a general consensus, because people wanted for a maximum of security and freedom. The transition from the natural State to the Civil State was based on a *contract* based on the principles of joint consent and free association. It is important to note that, in Locke's view, the subject of the social contract is the guarantee of the natural rights, not their suppression in favor of the sovereign, as Hobbes thought. In fact, the only natural right that associates make available to civil society is to do justice, to punish. The power of the sovereign is, in excellence, a purely legal and limited one. This theory considered to be profound and democratic by most authors is to be found in the modern doctrine of the liberal state and democratic constitutionalism (Popa, Dogaru, Dănișor, Dănișor, 2002: 167).

John Locke appreciates that "people being free by nature, equal and independent, no one can take them out of this status to be subjected to the political power of another one without their own consent, through which, they can agree with other people to unite in a society for their preservation, for their mutual safety, for the peace of their lives, in order to take peacefully advantage of what belongs to them in their own right and to be better sheltered from the insults of those who want to harm them."(Locke, 1961: 89)

The democratic liberalism claims its principles out of Locke's conception in regard to individual relationship with the state. The natural rights are purely individual. This thesis is also supported by the contemporary constitutionalism, which states that the holder of the fundamental rights consecrated in the Constitution can only be the man, not the human collectivities. The social state was set up to protect these individual rights as natural rights, because in the natural state these guarantees were not offered, and the man, by his very nature, is also a social being. For Locke, the political society identifiable with the social state is merely the product of a partial and provisional renunciation of the people to their natural status in the interests of a better organized justice and a more effective power. The political power remains always limited by the natural rights.

The state's goal can only be that of securing the individual freedom and equality, to every society member, but also to ensure legality. To justify the existence and to bring the social peace, the state

must be just. It is important to point out that, in John Locke's view, the political power is not legitimate in itself, but only through the moral values it defends and in which it exercises its powers. Otherwise said, it is not the law that legitimizes the power, but the very moral purpose of it. The problem of power is a matter of morality. The goal of the whole theoretical construction in the field of politics is to limit the power in order to favor and not to impede the individual freedom. Locke supports the theory of separation of powers in the state as a guarantee for avoiding the arbitrariness in the exercise of state power. Through his social political thinking, John Locke establishes the liberalism that will inspire modern liberalism, which in the name of the concept of limiting power will make important distinctions between the public and the private, the individual freedom and public obligations, the sphere of state intervention and the sphere of action of the individual, the attributions of the institutions and, last but not least, the establishment of an area for law's regulation. The problem analyzed by the great philosopher is an important theoretical opening of what constitutes the complex dimension of the relations between society and the state on one hand, on the other hand, the human individual. We note that in his work, Locke emphasizes on man as a holder of the natural rights, and therefore in his relationship with society also the state has a dominant role, the other subjects of the relationship having a recessive position, even subordinated to the human individual.

Just as David Hume and John Locke, also in the work of Jean Jacques Rousseau there is a concern to distinguish between society and nature, between the natural man and the social man. Unlike other authors, in Rousseau's view this opposition is analyzed deeper, and the consequences of the distinction between society and nature are exploited to a higher level. We support this because, in Rousseau's overall conception, the opposition between the natural and the social is transposed into a deeper metaphysical plan, namely the opposition between being and appearance. It can be argued that on the duality of the being - is built the opposition between the natural man and the social man.

Rousseau's theoretical elaborations appear, in particular, in his fundamental works *Speech on Science and Arts*, *Discourse on the inequality between people* and, obviously, in the *Social Contract*.

The Genovese thinker emphasizes that society is part of the sphere of appearance, not having the ontological fullness of the natural, because it is exclusively the creation of man. Moreover, it receives autonomy and turns against the individual with an anonymous and hostile force. This force is considered by Rousseau to be "apparent", because

it does not represent man in his natural authenticity. In his paper *Discourse on the Origin of Inequality*, the author points out that: "The first source of evil is the inequality, because from the inequality comes the riches; the words poor and rich are relative and because there where people are equal there will be neither rich nor poor. Riches give birth to luxury; luxury comes from beautiful arts and the laziness coming from science".(Rousseau, 1960: 27)

Thus, society, like a creation of man, turns against its creator using man's willingness to give up very easily on his freedom as a being and to accept the appearance of a civilization that constitutes a coercive factor, essentially hostile to man. This is what Hegel in his work will call the "cunning of the reasoning", because society, in its existential appearance, becomes autonomous and accomplishes its purpose, sometimes the social progress, without the one who created it to be able to control it, man becoming a simple element in a scaffold that is becoming more and more constraining.

The above-mentioned aspects, as well as others that result from the work of the philosopher, highlight the superiority of the natural man over the one living in a civilized society. The transition, we would say dialectic, through its complexity, from the nature status to the civilization status is, in author's view, not a progression, but rather a degradation of the being, of the human essence. In Rousseau's conception, the contradiction manifests itself not only between the nature and society, or between nature and civilization, but almost paradoxical for a Western contemporary philosophical thought, also between the nature and culture. The latter one is not considered as a factor for the realization of the human being through the transition to a higher level marked by its spirituality, but is thought to be as a voidance of sense of the human authentic, as a change of direction of the human essence. To understand such a conception, it is good to point out that the whole concern of the thinker to explain nature, man and society is based on moral foundations, much more is even trying to find a way to happiness. Referring to culture and society, Rousseau states, "What have I gained with it? Chatter, riches and unnecessary discussions, in other words enemies of virtue and common sense. Instead, we lost our innocence and morals. The crowd crawls in misery, being all slaves of vices." (Rousseau, 1960: 11)

It is remarkable the author's concern to link, even indirectly, the culture to morality. This theme is also to be found in philosophy, but especially in contemporary Orthodox theology. The natural existence, the authentic ontological dimension is accomplished through man, the only being who can think and live morally. That's why culture, as an existential fact, is in its authenticity only if it carries the moral values in itself, we would

predominantly say the moral values deriving from the truths of faith. In this respect, Father Professor Dumitru Staniloae said: "The good man is strong; good doing is a strengthening of existence."

In an attempt to describe the human being in its true essence, Rousseau will build a theoretical model of man's natural being. This is the primitive man. Therefore, the status of nature to which the philosopher refers involves the a-social primal existence of man in all his biological and affective naturalness. This natural, primitive status of man, Rousseau will compare to the social man status. Rousseau believes that this existential status of the natural man and in the middle of nature, without constraints, means true happiness. The absence of any limitations, conditioning, or limitations guaranteed the absolute freedom, because man was practically identifying himself with the nature of his origin, and the status of happiness was existential, ontological, permanent, not a creation of thought, in the sense that the natural man was happy, because he did not think of happiness. In this way, happiness and freedom were to be found in the theoretical model of the being of the primitive man. Rousseau said that "the natural man was happy without thinking of happiness, free without making use of his freedom; independently, because he was deprived of all lasting relationships with his close relatives; innocent, through the absence of any moral conscience" (Ory, 2011: 112). The above description of the natural status is the proper being of man. The appearance is the social man.

The basis of human social existence is a "*mutual agreement of will*" through which they try to better preserve their existence. From Rousseau's fundamental works, it follows that the natural man, conceived as self-sufficient, did not depend in any way on his fellow men, and did not have sociability within his nature, such as Aristotle and later John Locke claimed. Therefore, the "association" that determines the society and eventually the sociability of man does not have the human being's ontological dimension, but only a phenomenological one, that is, an appearance and is produced exclusively as manifestation of the will of man. The thought of association and implicitly the will to associate is determined in man by the need, largely natural, to preserve his existence.

In Rousseau's *discourse on science and the arts*, Rousseau will point out that the unwritten agreement of will by which men lay the foundations of the social existence, is a source of mutual hopes in achieving common interests, forcing everyone to compete in the happiness of others so that himself to be happy. But these are hopes, rather illusions because, as Rousseau said, "at a closer examination many deviations result from what could make the man happy." It is wonderful that people are brought in the

circumstance making them unable to deceive, betray, destroy each other. We must take care not to see ourselves such as we are: people whose interests meet and have no means to succeed, other than the one to self deceive" (Rousseau, 1960:11). Rousseau therefore makes a praise of simplicity, of naturalness in its deepest ontological dimension with reference to the human existence sphere of values.

EXISTENTIAL CATEGORIES OF THE NATURAL STATUS AND SOCIAL STATUS

In our view, however opposed to some of the representatives of the social contract doctrine, the natural status of human existence cannot be identified with the primitive status of man, with the prehistory of his existence, characterized by the lack of organization forms specific to society and state.

That's why we consider that in an approach that does not concern only the existential historical succession, but the essence of human existence, the social status does not remove man's natural status on the contrary, it supposes it. For us, man in his natural dimension corresponds to the character created by God, the good man because all creation is good, and at the same time the man as a free and responsible person was created in a relationship of communion and love with God and through God with all men and with whole universe. The natural status is the first beauty of man created in the image of God, which has the duty to acquire also the one in grace with God, to become the son of God by grace.

That is why the natural status does not disappear once man moves forward towards the social status, but is a permanent presence, because the all good temperament created by God cannot be cancelled, yet is true it can be hatched, shaded by the social manifestations of man, contrary to his natural status. Man, through creation received the gift of freedom, the possibility to choose between good and evil, to receive or refuse the communion with God, the freedom to consider that the social status and all that civilization, culture assumes are their own assets and represent, at the same time, the only reality of existence. This is the image of man that lives exclusively in the social dimension of his existence, which he considers to be the opposite of the natural status, regarded especially as a primitive form of existence, which is considered to be self-sufficient for him. Such a man considers that the existence resumes only to this century, and the meaning of existence is only the "own self" and human reason.

Without trying to deepen this analysis, we argue that between the natural status and social status of man is a possible unilateral contradiction and not a

relationship of recession. The natural status does not exclude the social status of man because the Savior incarnated himself into social existence, but the social status can contradict the natural status of man, his nature.

The great Romanian theologian, Professor Dr. Dumitru Stăniloae, characterized in memorable words the human nature: "So, rightfully, the human nature must be defined as an infinite tension. The will to aim always for greater perfection, is the perfection of the very human nature. It has at the same time the experience of infinity and finiteness, which is, in every minute there is an infinite distance between our infinite capacity and our realized existence. We always have the knowledge of both of these things. For the distance traveled by us, however large, remains minimal in relation to the infinite. Human nature travels everlastingly over the distance between the finite and the infinite, but it is launched by the desire and by some kind of experience before its finitude inside the infinite, without embracing, its very essence. What he has obtained is never everything, but it is the beginning of everything "always the beginning of the infinite" - as Saint Gregory of Nyssa said (s.n.)" (Stăniloae, 2003: 468-469).

The social status is the expression of the normative, moral or legal order, any norm involving directly or indirectly the constraint, including the moral or ethical norm, based or not on moral theology. The juridical norm is the one that offers the most comprehensive existential expression of the social status, and that's why we can characterize the entire social existence of man, both in a synchronous dimension but also in terms of historical transformations as a "legal status", a legal order based on norms created by man, but also on the values promoted by him and which, to a certain extent, tend to evolve autonomously outside the possibilities of decision and control of their creator. There is a rather obvious tendency for the evolution of man's legal (social) status to increasingly contradict human nature, his temperament said otherwise, the civilization which by itself is the expression of the legal and normative order in general, to be considered as self-sufficient, in especially through the pragmatic dimension which any component of it involves.

In this context, the natural question arises to try to characterize the legal, the normative order specific to the social status of man. It is based on an essential dichotomy that Kant noticed when analyzing in its fundamental work "The Metaphysics of Morals" the legal norms and the right. This dichotomy means the clear division between "**yours**" and "**mine**". Any contract, any normative act and any judicial decision, in one form or another, gives expression to this division, which means the identification through and within the legal order of human individuality in the

existential social sphere. In essence, this is a dissolution because it separates and does not unite, even if apparently a contractual act, a meeting of the will of two people onto the legal level, the law as a concretization of the normative order, a judicial decision would achieve a harmonization of the interests, be them either convergent or divergent. We maintain that the above-mentioned dissolution, of the essence of the legal order of right between "yours" and "mine" is maintained, regardless of the form of expression of the law, because the so-called harmonization of individual, particular, sometimes contrary through law, by the law enforcement acts or even manifestations of human will remain in the sphere of the general, of the abstract because any legal norm is by itself impersonal, abstract, and its materialization by the voluntary legal acts, does not lead to materialization in the existential sense of the legal rule generality, the normative general remaining in this way opposed, more or less, to the evident existential wealth of individual's concrete.

Opposed to this legal status is the natural status itself, the status of the human temperament based, in our opinion, on two existential concepts "**to give**" and "**to receive**". It is obvious that in this situation we are in the presence of the existential unity of the communion of human existence based not on pragmatic interests, but on the very existential characters of human nature, the virtues and values with which he was naturally endowed, among which the power to love being essential. The man that manifests himself in the social plane most obviously and most significantly within this natural dimension based on the unity between "giving and receiving" remains in the authenticity of his natural existence, of the created nature, is no longer a simple individual but a free person in communion of love with God and with all men, There is also the possibility of choice for man, a manifestation of his freedom. The forms of culture and civilization of the human existence must manifest not in contradiction with his disposition, his nature, but in harmonization with it. Schiller said that "man must increase the nature in the midst of nature." We believe that even today, no matter how high the culture is and how much civilization evolved, this statement is valid if we understand by nature the good essence created of man. Moreover, in the theological doctrine it was noted that there is no opposition between culture and faith. Father Patriarch Daniel said in this respect: "Faith descends to man through culture, and culture ascends to heaven by faith."

LEGAL IMPLICATIONS

Justice is the most obvious form in which the legal status of man is preserved within the limits of this

dichotomy "yours" and "mine". The boundaries of human justice are the limits of the social and even rational existence of man, determined on one hand by the normativeness of the law and, on the other hand, by pragmatism, i.e. by the concrete interests of those who come before the justice. It is an existential limit that must be very well understood, because beyond it we find that natural status of naturalness, of man as a free and responsible person in the relationship of communion with others.

Every manifestation of justice is clearly subordinated to law, which generalizes and divides. The question is whether justice, as value and human virtue can be identified with the law as a prerequisite for achieving justice. We answer this question by thinking of the words of the Savior: "Unless your righteousness does not exceed the righteousness of the Pharisees, you will not enter the kingdom of Heaven." (Matthew, Chapter 20).

This means that the juridical law remains at the level of righteousness of the Pharisees, for the righteousness to which the Savior referred to, which was proper to the Pharisees, was a justice of the Old Testament law. Therefore, the justice that goes beyond the boundaries of the law is that given through grace, is the justice that has as foundation not the constraint, without which the legal norm or even the moral norm can not be conceived, but the *freedom*. In fact, this reality has been noticed even in the philosophical and legal doctrine. Rousseau said: "To give up one's freedom means to give up one's human quality, one's human rights, and even one's duties. There is no possible compensation for the person who gives up his freedom; such a waiver is incompatible with the nature of man". (Rousseau, 1957: 107-108)

In the same sense, Mircea Djuvara said: "We cannot conceive the right neither the moral without freedom, as we cannot conceive the laws of nature without having determined the cause. Freedom must therefore be fully in the society status otherwise the right loses any normative value. A right that only imposes, in an absolute manner, removing the free expression of will is no longer a right, but a law of nature, a manifestation of a rigorous determinism, of a mechanical necessity." (Djuvara, 1997:187)

In a somewhat idyllic sense, the justice should therefore overcome the justice of the law and realize the justice of grace as a human nature. That's why perhaps, we should think more, even to some principles of a constitutional nature, in terms of their values and limits. We do not want to insist here on this issue, but it is known that the basic principle of the legal order that characterizes the social status of man is the supremacy of the law - "No one is above the law", the Constitution states. We believe that in the natural existence of man, this principle is transgressed and somewhat transfigured

by the principle of freedom. Freedom, as own virtue of the created disposition of man, is above legal law. That's why the act of justice should tend to achieve this freedom, which is the very justice to which the Savior was referring.

CONCLUSIONS

Is it possible that in the concrete work of solving the civil or criminal disputes, to happen such a raising of the generality of legal law up to the existential concrete of human freedom? As a magistrate I have an experience over 26 years and I have not encountered situations in which, by applying the law, in everything that represents the rigors of the act of justice, to achieve justice as a freedom adequate to human nature. It is natural to do so because any manifestation of justice is limited to the generality of the law, but also to its purpose: constraining. A judicial decision is not pronounced in the name of justice, but in the name of the law. However, it cannot be considered that such a situation is negative in itself, on the contrary, it is a normal way of achieving the role of justice, namely, the social balance, but within the limits of man's social existence. What is very important to the lawmaker is to realize this reality and not to absolutize the act of justice, not to absolutize the law and to minimize or even deny man, as a complex and infinite being through his created nature. Many times, in the phenomenological manifestations of the act of justice, one remains in the generality of the law and man is subordinated to the law, the magistrate forgetting that the man is not made for the law, but the law is made for man.

However, there have also been many outstanding experiences for me.

In the ashes of existential, painful conflicts, impregnated with much suffering, but also with passions and more or less obscure interests, that come to manifest themselves in front of the justice and especially in front of the criminal justice, it is sometimes revealed like a shining diamond, the value of human nature through what it is appropriate as own disposition: freedom and love.

In a criminal case in which the defendant was accused of a serious crime, namely attempt of murder against his own brother, we found such a reality that justice did not generate, but the human nature in its purity and beauty. The conflict was between the brethren, and the injured party, the defendant's brother, as a result of his actions, was closed to death. Asked by the Court what he thinks should happen to the defendant, who was his brother, the injured party said simply and convincingly: "*To go to his children.*" These simple words go beyond what represent man's instincts in the social environment, the desire for revenge, or

the desire to punish the perpetrator. It is the pure expression of love, the forgiveness, of a natural natural feeling that absolutely transcends the limits of the legal law. In fact, Father Dumitru Stăniloae clearly stated that God gave to man "the power of forgiveness, not the power to judge." "*To go to his children*" is indisputably a diamond of man's natural existence, in all its purity and beauty and, personally, I had the joy, even if it is ephemeral, to mold the law in relation to this natural manifestation of love. The justice at most can only pay, justice can never forgive. Forgiveness is a gift from God, but it is also a commandment of God for man. Only a man who is a free person, living in the fear of God can fulfill it as a divine commandment and not only as an ethical virtue or as an expression of the pragmatism typical to the existence social.

The people involved in litigation I was speaking about were simple people, having no culture, no education, but they lived, even if not necessarily in a conscious, rational way, the beauty of human existence, the one according to nature. Father Arsenie Boca said that holiness has as conditions the simplicity of spirit and purity of heart. That is why justice needs to adapt to such existential realities and not try to subordinate them arbitrarily to the generality of legal norm.

Father Arsenie Boca said that "you need to have an understanding over man's helplessness." Father Teofil Părăian appreciated that these are perhaps the most beautiful and significant words spoken by confessor Arsenie Boca. And Constantin Noica said that "you must have the understanding of the most insignificant ones to see their significance."

Justice should have an understanding of everything that represents human helplessness and existential precariousness, in order to try not only to achieve the restoring to the previous situation, which is not possible through the act of justice, but especially a to obtain a balance, a social harmony, a reconciliation of what, at some point, appears to be definitively contradictory. It's an ideal, but it worth trying.

In this context, I asked myself what are the teleological meanings of justice, i.e. the purpose of the act of justice:

If the purpose of the act of justice is the law, then justice is pragmatic, utilitarian, and the judge acts according to the duty, as Kant says. If the purpose of the act of justice is the man, then the justice thus performed is moral, natural, and the judge acts in the name and in accordance with the justice, and this is no longer limited by the constraints of the positive law. The relationship between law and justice could be expressed as a unilateral contradiction in the sense of the philosopher Constantin Noica: the positive law can contradict the justice, that abounded law, cannot contradict the law.

How can one be humble in the Christian sense of the word, a judge to whom the man has entrusted so much power over man? Here is a legitimate question whose answer we believe we can find in the parable of the unfair judge by the Gospel of Luke (Luke 18.2-8). However, there is a possibility for the one who has reached his deeper self, to overcome the self-pride determined by the precariousness and glory of this world, of the one who knows himself as being governed by God and by that is owner over himself. The unfair judge, in the parable of Saint Evangelist Luke, was not afraid of God nor was he ashamed by man. *The humble judge is the one who fears God and is ashamed by man.* This is the condition for the act of justice to be not only in accordance with the law, but also in accordance with the law of freedom. One can say that there is an ideal for the Judge invested with temporarily powers, which we can formulate as follows: "Thou shalt have a righteous judgment out of gracious love in the name of God, without judging anyone."

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